



Distressed Debt & Claims Trading ADVISORY ■

JANUARY 6, 2021

LMA Updates Secondary Bank Debt Standard Terms & Conditions to Include EU Bail-In Provisions

In conjunction with Brexit becoming effective on January 1, 2021, the Loan Market Association (LMA) updated its Standard Terms and Conditions for Par and Distressed Trade Transactions (Bank Debt/Claims). LMA bank debt trades occurring on or after January 1, 2021 will now be explicitly subject to European bail-in legislation, which gives European regulators the power to modify liabilities owed by certain failing European financial institutions of the UK and Member States of the EU. These regulations include supranational rules, such as Article 55 of the European Union's Directive 2014/59/EU, as well as national-level regulations of the UK, Iceland, Norway, and Liechtenstein. Broadly, Article 55 requires certain financial institutions of Member States to include a special term in almost every document that they are a party to and that is governed by the law of a non-EEA country. Following the end of the Brexit transition period on January 1, 2021, the Article 55 requirement became applicable to English law documentation (which is used for LMA documentation) as a non-EEA law.

By using the updated LMA Standard Terms and Conditions, parties to LMA trades acknowledge that the terms of their bank debt trade may be altered by a European governmental body exercising such power. This agreed-upon contractual language may bind counterparties not otherwise subject to European bail-in rules whereby any obligation owed to a counterparty may be reduced or canceled under an open or settled trade. Beginning on January 1, 2021, all LMA par and distressed bank debt trades will expressly incorporate the updated language in the LMA Standard Terms and Conditions, and such terms will automatically be incorporated by reference into the other related transaction documents necessary to close the trade (such as the pricing letter and form of purchase agreement). At this time, the updated European bail-in rules are not included in certain other LMA trade documents (such as multilateral netting agreements, termination and transfer agreements, and bilateral netting agreements). The LMA plans to update these form documents in the near future.

Should you have any questions, please do not hesitate to contact us at Alston & Bird.

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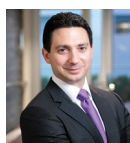
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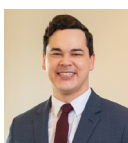
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