



## Market Advisory

July 1, 2024

### **Cooperation Agreements, TSAs, RSAs and other Ad Hoc Group Agreements**

In the light of the recent wave of cooperation agreements (and other similar agreements such as transaction support agreements and restructuring support agreements) being entered into in by ad hoc groups of lenders (collectively such agreements referred to herein as “Lock Up Agreements”) in connection with syndicated corporate credit facilities, the LSTA is publishing this market advisory of best practices for secondary market participants who are trading credits whereby loans being sold are subject to the terms of a Lock Up Agreement. This LSTA market advisory recommends that whenever a seller looks to sell loans subject to a Lock Up Agreement, such seller should notify its buyer counterparty that such loans are subject to such Lock Up Agreement. Such disclosure can avoid unintended problems later during the life cycle of a loan trade and improve liquidity generally within the marketplace.

With the continued use of non-pro rata liability management transactions being structured by stressed/distressed borrowers over the last few years, more and more lenders are seeking to unify with other lenders who own, collectively, greater than the majority of debt in a syndicate to, amongst other things, protect their interests by agreeing with the other participating lenders that each of them will generally receive equal, pro rata treatment relative to other parties subject to such Lock Up Agreement (whereas non-participating lenders may be left behind). In addition to certain benefits a party receives by becoming subject to a Lock Up Agreement (a party to such Lock Up Agreement, “LUA Party”), there are also certain negative consequences that limit such LUA Party’s rights once it becomes bound by a Lock Up Agreement. Hence, a non-participating lender will often weigh the pros and cons of purchasing loans subject to a Lock Up Agreement (such loans, “Lock-up Loans”).

Lock Up Agreements will usually include restrictions on the transfer of Lock-up Loans by a LUA Party. A LUA Party will be required to transfer the LUA Loans only to (i) another LUA Party, or (ii) a transferee who agrees to become a LUA Party prior to the effective date of the transfer by executing and delivering a joinder to the Lock Up Agreement (a “Permitted Transferee”).

Additionally, typically the Lock Up Agreements will include provisions to allow a LUA Party to sell to a trading desk that operates as a marketmaker/dealer (a “Qualified Marketmaker”) without the requirement that such Qualified Marketmaker become a party to the Lock Up Agreement so long as

such Qualified Marketmaker sells the LUA Loans to (i) a LUA Party or (ii) a Permitted Transferee within the timeframe provided in the Lock Up Agreement.<sup>1</sup>

In order to help improve liquidity within the marketplace it is important that end buyers, and particularly Qualified Marketmakers, are made aware by the seller whether the loans are subject to a Lock Up Agreement before entering into a trade. It is vital that strong internal communications exist within sell-side and buy-side institutions whereby once it enters into a Lock Up Agreement such information is promptly disseminated internally amongst all the people who need to know, including, the trading desk, internal counsel, salespeople, analysts and closers.

Critically, parties must focus on the details of the applicable Lock Up Agreement since the agreements each have slight nuances that can affect the rights and obligations of a seller, a Qualified Marketmaker, and an end buyer in connection with a trade. Careful review is strongly encouraged by market participants before agreeing to terms of a trade which relate to loans subject to a Lock Up Agreement. These agreements will almost uniformly include a provision that states that transfers not done in compliance with the Lock Up Agreement will be deemed void and that each party subject to the Lock Up Agreement will have the right to bring an action to enforce such remedy. To avoid such issues arising post trade the LSTA further recommends that market participants document the understanding of the parties relating to loans subject to a Lock Up Agreement by adding appropriate “other terms of trade” in the LSTA Par/Near Par Confirmation or the LSTA Distressed Confirmation, as applicable, evidencing such agreement.

Learning that loans being sold are subject to a Lock Up Agreement post-trade date can raise significant settlement and legal issues and cause unnecessary delays within the secondary trading market. With the assistance of market participants following the guidance of this market advisory, such delays and issues can be avoided. In the light of the foregoing, the LSTA is publishing this market advisory to strongly recommend that whenever a seller is looking to sell loans subject to a Lock Up Agreement, that such seller notify its buyer counterparty at the time of trade that such loans are “locked up”.

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<sup>1</sup> In 2020 the LSTA published Model Transfer Provisions for Restructuring Support Agreements.