

June 20, 2013

KEY REVISIONS TO THE LSTA'S TRADING DOCUMENTS

New versions of the Loan Syndication and Trading Association's (the "LSTA") trading documents will take effect on June 28, 2013. The noteworthy revisions to the trading documents are summarized below.

LSTA's Form of Par Trade Confirm:

- The purchaser of an unfunded revolving loan or commitment must post collateral, unless the parties agree otherwise. Previously, the Standard Terms and Conditions for Par/Near Par Trade Confirmations provided that a seller may require a purchaser to post collateral for an unfunded revolving loan or commitment. The LSTA updated its default position and now requires the purchaser to post collateral. This is a significant dealer friendly revision to the LSTA Par Trade Confirm.
- LIBOR (the London Interbank Offered Rate) reflects the average rate at which banks can obtain unsecured funding in the London money market for a certain period and currency. While the British Bankers Association (the "BBA") currently publishes LIBOR, there may be a successor to the BBA in the future. The LSTA updated the Standard Terms and Conditions for Par/Near Par Trade Confirmations to acknowledge that there may be a successor to the BBA.
- The Par Trade Confirm now includes ERISA representations that are similar to the ERISA representations present in the Distressed Trade Confirm.

LSTA's Form of Distressed Trade Confirm:

- The LSTA clarified the purchase price calculation with respect to Proceeds in Section 4 the Standard Terms and Conditions for Distressed Trade Confirmations. The prior version implied that a purchaser would not receive the benefit of a permanent reduction of principal on the Restructuring Date. The current purchase price calculation for Proceeds clarifies that the purchaser will receive any permanent reduction of principal occurring on the Restructuring Date. The LSTA also revised the language to prevent parties from any potential "double counting" of cash Proceeds from permanent reductions from and after the Restructuring Date that are payable to the purchaser.
- Similar to the Par Trade Confirm, the definition of LIBOR is updated to reflect the potential replacement of the BBA.

LSTA's Form of Purchase and Sale Agreement:

- The LSTA did not make any substantive changes to the Purchase and Sale Agreement. This document is republished to reflect a June 28, 2013 effective date.

Collateral Annex:

- The LSTA published a new Collateral Annex for participations and is applicable when a purchaser settles a trade as a participation and is required to post collateral with the seller for any unfunded portion of a revolving loan or commitment. Collateral may be important in a trade where there is counterparty risk. In the event a participant defaults on a funding obligation, the grantor can enforce its security interest in the collateral and foreclose on the collateral. There are several key features of the new Collateral Annex that are worth noting.
 - The default position in the LSTA Trade Confirms has flipped and collateral is required unless parties agree otherwise.
 - The LSTA Collateral Annex details several different ways in which a seller can deposit the collateral. Any such determination must be made at the time of trade. A seller, for instance, may deposit collateral in the seller's omnibus account or in a segregated customer account. The seller and purchaser negotiate where the seller may deposit the collateral.
 - There is a collateral shortfall formula (the "Collateral Shortfall Formula") that is used to calculate the amount of collateral a purchaser must provide to the seller from time to time. The Collateral Shortfall Formula takes into account the value of the funded participation.
 - The Collateral Annex includes a Schedule that allows trading parties to identify the amount and type of collateral that will be posted. The Schedule also allows the trading parties to identify triggering events that require the purchaser to post additional collateral.

We are available to discuss any questions you may have with respect to these new trading documents and your individual trades.

We are also participating in the LSTA's committee meetings with respect to the new withholding and reporting requirements foreign banks face under the Foreign Account Tax Compliance Act (FACTA). The LSTA will update the trading documents to include FACTA, and we will keep you updated with respect to these new developments.

If you have any questions or need additional information about this Alert, please contact the following attorneys:

Thomas T. Janover
 Partner
 tjanover@kramerlevin.com
 212.715.9186

Justine J. Block
 Associate
 jblock@kramerlevin.com
 212.715.9414

Jennifer B. Pastarnack
 Associate
 jpastarnack@kramerlevin.com
 212.715.9498

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