HAHN& HESSEN Distressed Trading Alert

# REVISIONS TO THE LSTA'S PAR TRADING DOCUMENTATION – INTEREST AND ACCRUING FEES

The Loan Syndications and Trading Association (the "LSTA") has published revisions to the Standard Terms and Conditions for Par/Near Par Trades (the "Standard Terms"), which will take effect in two phases, with the first phase to take effect on September 1, 2016 and the second phase on November 1, 2016. The revisions to the Standard Terms reflect a change from a no-fault system to a requirements-based system with respect to a party's right to receive Interest and Accruing Fees. Answers to some key questions about the revisions are set forth below:

## What will be the new standards as of September 1, 2016?

- For a secondary par trade, in order for a party to receive Interest and Accruing Fees, the Buyer must, by T+6 (i) execute all required documentation (*i.e.,* the Trade Confirmation and the Assignment Agreement), and (ii) agree to be financially able to settle the trade on any business day from and including T+7 up and until the settlement date ("Persist"). Under Standard Terms, these are called the "Basic Requirements."
- For an Early Day or "when issued" trade, the requirements are the same, except that the Buyer must fulfill the Basic Requirements no later than Trigger Date +14 and Persist.
- If the Basic Requirements are not met in the designated time period, the Buyer will not receive Interest and Accruing Fees.
- From September 1, 2016 to October 31, 2016, parties will not be penalized if they designate a "lead time" for settlement.

## What will be the new standards as of November 1, 2016?

- In order to further shorten settlement times, the Basic Requirements must be met by T+5 rather than T+6 for secondary par trades, and T+10 rather than T+14 for Early Day trades. Buyers will be able to choose either no lead time or 1 day lead time, however, Buyers will lose 1 day of Interest and Accruing Fees if they designate a 1 day lead time.
- If the trade is settling on a settlement platform, the dealer (which may be Seller or Buyer) must submit the trade details into the settlement platform by T+1. If both parties to the trade are dealers, then the Seller must submit the trade details.
- Note that the changes in both phases will apply to trades settled on paper.

## Under what circumstances will the new standards not apply?

- The new standards will not apply to trades that are initially entered into as participations.
- If settlement is delayed due to an agent freeze or because "Know Your Customer" ("KYC") checks have not been completed, as long the Basic Requirements have been fulfilled, Interest and Accruing Fees will pass to the Buyer.
- A new CLO issuer may designate one maximum 5 business day period (the "Blackout Period") where they will not be required to settle trades, but will still receive the benefit of Interest and Accruing Fees. The CLO manager must inform the settlement platform of the Blackout Period dates. If the Blackout Period exceeds 5 business days and the agent and dealer are ready to settle the trade, but the CLO is unable to settle, the CLO will forfeit Interest and Accruing Fees.
- Buyer will be entitled to receive Interest and Accruing Fees if (i) Buyer does not timely pay the purchase price due to a calculation error in the funding memo, (ii) Buyer does not timely execute the Assignment Agreement due to a material error in the Assignment Agreement (provided that the Buyer

will be required to provide notification of such error by T+3 and if such error is promptly cured on or prior to T+4, Buyer will be required to timely execute the Assignment Agreement), or (iii) if there is a functionality issue on the electronic platform that prevents execution of the Trade Confirmation and/or Assignment Agreement.

## What can I do to prevent losing Interest and Accruing Fees on a trade?

- Trade Confirmations and Assignment Agreements should be reviewed as soon as they are posted on the Settlement Platform or provided by the counterparty. Errors in the documentation should be pointed out to the counterparty immediately.
- Each party should provide its allocations in the settlement platform as soon as possible after entering into a trade.
- Parties should provide KYC and tax documentation to the agent and counterparties with which it expects to trade at least three days prior to entering into or sub-allocating a trade.

We are available to discuss any questions you may have with respect to these revised trading documents and your individual trades. If you have any questions or need additional information about this Alert, please contact the following attorneys:


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