

Trade Timeline: LMA Par and Distressed

Time	Event
T-X	KYC satisfied Parties exchange NDA if required
T	Trade Date (phone or otherwise)
T+X	Parties agree confidentiality agreement and Seller sends Credit Documentation as promptly as practicable (Condition 7.2) Seller requests Agent to request any required Borrower's consent Suggested: T+1
T+2	Responsible Party sends LMA confirm (Condition 4(a))
T+4	Other Party executes and returns LMA confirm
T+5	Responsible Party sends Transaction Documentation (including Form of Purchase and Pricing Letter) To be executed as soon as reasonably practicable (Condition 8)
T+7	Suggested: any Borrower's consent received
T+X	Parties execute Transaction Documentation and deliver to Agent Suggested: T+7 for Par Suggested: T+15 for Distressed
T+X	Settlement Date as soon as reasonably practicable (Condition 10.1)
T+10 (Par) T+20 (Distressed)	Delayed Settlement Compensation accrues if applicable (Condition 11)
T+60 (Par)	Buy-in/Sell-out applies if one party fails to deliver executed documentation (Condition 23.3)

LMA Confirmation: overview

- LMA precedents for Bank Debt or Claims
- Definitive record of terms of trade which survives execution of Transaction Documentation
- Incorporates the LMA Standard Terms and Conditions (Par/Distressed) in particular:
 - Counterparty insolvency (Condition 3):
 - Insolvency prior to Settlement Date allows automatic termination or termination by the non-insolvent party
 - The amount due is the difference between the Early Termination Amount (as determined by the non-insolvent party based on broker-dealer quotations) and the Settlement Amount
 - Purchased Assets: include the Traded Portion, the Ancillary Rights and Claims (Condition 5) and Non-Cash Distributions
 - Settlement Date: as soon as reasonably practicable (Condition 10.1)
 - Transfer fees: shared equally by Buyer and Seller unless otherwise agreed or Buyer/Seller related funds (Condition 18.1(a))
 - Representations (Condition 22): see later slides
 - Indemnities by Buyer/Seller (Condition 23):
 - For breach of LMA Confirmation, Transaction Documentation or LMA representations, failure to perform obligations, and for any required disgorgement/reimbursement
 - E.g. under sharing provisions in the Credit Documentation or following a successful insolvency officer challenge of a payment under the Traded Portion

LMA Confirmation: Key Terms I

- Standard provisions:
 - Credit Agreement
 - Trade Date
 - Traded Portion
 - Form of Purchase (Condition 6.2)
 - Legal Transfer (if no consent/condition not fulfilled then fallback to participation and then mutually agreed alternative)
 - Legal Transfer only (if no consent/condition not fulfilled then fallback to mutually agreed alternative)
 - Purchase Rate
 - Accrued interest treatment (Condition 15.2/15.5/15.6)
 - Settled Without Accrued Interest (Interest and Recurring Fees are for Seller until Settlement Date)
 - Trades Flat (Interest and Recurring Fees are for Buyer from Trade Date)
 - PIK: Trades Flat by default
 - Delayed Settlement Compensation (to put Buyer and Seller in position of T+10/20 settlement (Condition 6.2)):
 - Seller pays all Interest and Recurring Fees
 - Buyer pays Settlement Amount funding cost (average daily 1-month EURIBOR/LIBOR)
 - Break funding (par only) (Condition 16): not applicable by default (if applicable it compensates Seller/Buyer for break costs from the Settlement Date to the next loan interest payment date)
 - Buy-in/Sell-Out (par only) (Condition 23.3): not applicable by default (if applicable from T+60 a BISO notice can be served giving a party which hasn't delivered executed documentation 15 BDs to remedy. If not remedied then the non-defaulting party has 15 BDs to enter into a substitute trade (and the relevant party pays the price difference).

LMA Confirmation: Key Terms II

- FATCA:
 - Withholding at 30% may arise under LMA trades under US Internal Revenue Code 1986
 - July 2013 LMA FATCA riders allow parties to incorporate provisions in the LMA Confirmation and LMA participations:
 - Permitting the parties to withhold on account of FATCA
 - Entitling the parties to request certain FATCA information about each other or about an Obligor
- Other terms of trade (variations to standard terms to be agreed at time of trade):
 - Amendments to standard terms, representations, liability limitations/caps
 - Specific fees: early bird fees, consent fees
 - Voting rights: from Trade Date to Settlement Date (NB regulatory/reputational carve-out)
 - Local law requirements: Seller representations regarding e.g.
 - Spanish Borrower: equitable subordination
 - French Borrower: to confirm that the loans are held on the Seller's books and records in a branch located outside of France (to avoid the territorial scope of the French Banking Monopoly Regulations)
 - Broker conditionality: sale is subject to successful completion of purchase by Seller from its predecessor

LMA Terms and Conditions: Representations I

- **Condition 22**
 - Seller makes representations on behalf of itself and its Predecessors-in Title.
 - Buyer has recourse against Seller which then has recourse against its direct predecessor and so on up the chain of title
 - Chain of representations - improves quality and liquidity of the assets and supports/substitutes for asset diligence
 - Buyer recourse is monetary compensation through an action in damages or an indemnity
 - Timing: Trade Date and/or Settlement Date
- **Mutual representations** (Condition 22.1): i.e. corporate status of the parties
- **Seller representations:**
 - Common representations (Condition 22.2) i.e. both Par and Distressed:
 - Unencumbered title (at Settlement Date): legal and beneficial ownership
 - No other documents (at Trade Date and Settlement Date): other than the Credit Documentation binding Seller or Predecessors-in-Title
 - No default (at Trade Date and Settlement Date): of Seller or predecessors in relation to the Purchased Assets
 - Alienability (at Trade Date and Settlement Date): assets are capable of being assigned/participated
 - Pricing Letter (at Settlement Date): amounts used to calculate the Settlement Amount are true and accurate
 - ERISA status (at Trade Date and Settlement Date)
 - Ancillary Rights and Claims (at Trade Date and Settlement Date): not materially limited by Seller or predecessors
 - Additional par representation (Condition 22.3):
 - No decision (at Trade Date) to accelerate or enforce the Credit Documentation
 - No set-off rights (at Trade Date and Settlement Date) in favour of an Obligor

LMA Terms and Conditions: Representations II

- Additional distressed representations (Condition 22.4):
 - Provision of Credit Documentation (at Trade Date and Settlement Date): if agreed then material documents to Buyer
 - No "connected parties" (at Trade Date and Settlement Date): Seller and predecessors not "connected" with any Obligor under Insolvency Act 1986 or similar foreign provisions (that extend the risk period or alter presumptions)
 - No "bad acts" (at Trade Date and Settlement Date): by Seller or predecessors that would result in Buyer receiving proportionately less than similar creditors (e.g. if Seller hasn't joined legal proceedings against the Borrower)
 - No rights of set-off (at Trade Date and Settlement Date): exist against the Purchased Assets (including to the best of Seller's knowledge in relation to predecessors)
 - No Claim Impairment (at Trade Date): no notice received by Seller or predecessors and no knowledge of, e.g. a right of an insolvency officer to challenge a guarantee/security interest as a preference or transaction at undervalue
 - No funding obligations (at Trade Date and Settlement Date)
 - No litigation (at Trade Date): against Seller or Predecessors-in-Title which would adversely affect the Purchased Assets e.g. a third party court challenge to the validity of the debt or the Seller's right to it
 - LMA Assignment Agreement / Participation: status of any insolvency claim, i.e. proof of debt filed, filing deadline not passed, or claim is admitted
- **Buyer representations** (Condition 22.5):
 - Use of information: compliance with confidentiality requirements
 - ERISA status (at Trade Date and Settlement Date)
- **Non-reliance and independent investigation** (Condition 21):
 - No liability or obligation to repurchase relating to: effectiveness of Credit Documentation, non-performance by parties thereto, or Obligor financial condition
 - No liability if one party possesses material information unknown to the other (except if it results in a breach of representation)
 - Big boy language (which can be supplemented in the Other Terms of Trade, e.g. where Seller is on the CoCom)

Transfer Certificate / Assignment Certificate / LMA Assignment

- Transfer Certificate/Assignment Certificate:
 - Form attached to the Credit Agreement
 - Executed by Buyer, Seller and Agent (NB any local law notification, notarisation, power of attorney requirements)
 - Transfer fees

- LMA Assignment Agreement:
 - Based on LMA form for Bank Debt or Distressed/Claims
 - Executed by Buyer and Seller
 - Allocation of payments between Buyer and Seller remains governed by the LMA Confirmation
 - Transfer of Ancillary Rights and Claims occurs under the LMA Confirmation (not the LMA Assignment)
 - Notice of assignment (Annex B) required under s.136 Law of Property Act 1925

LMA Funded Participation I

Participation structure:

- Participant and Grantor relationship is a debtor-creditor relationship (Condition 6.1):
 - Participant pays Grantor an upfront Settlement Amount, and any expenses under the Credit Agreement
 - Grantor pays Participant an equivalent *pro rata* share of all principal and interest received under the loan
- Grantor remains legal and beneficial owner
- Participant takes credit risk on both Borrower and Grantor
- Grantor benefits from off balance sheet treatment (derivative accounting) under UK GAAP or IAS 39
- NB US GAAP requirement for a “true sale” (i.e. no credit risk on Seller) to obtain off balance sheet treatment means LSTA participations are transfers of beneficial ownership

Key terms:

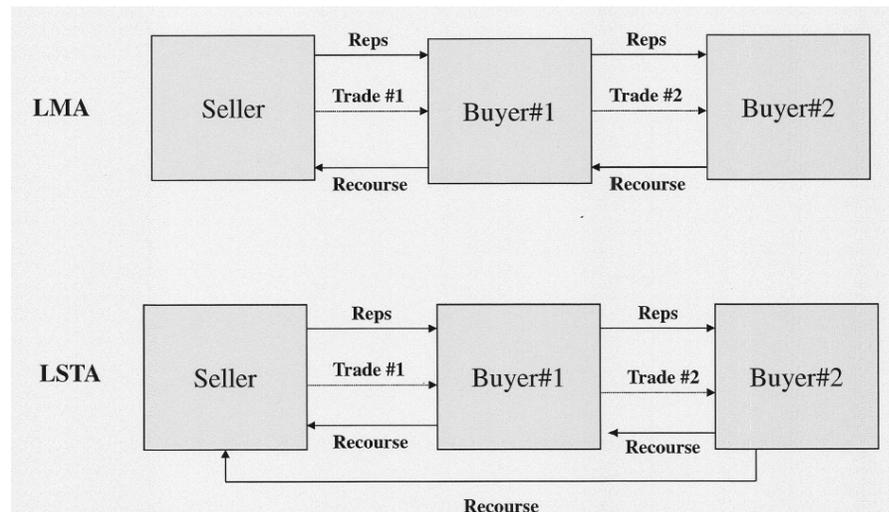
- Duty of care (Condition 6.3) : Grantor duty to exercise the degree of care had it not participated the loan
- Grantor payments (Condition 3.2): obligation to pay Participant only amounts Grantor actually receives
- Sums due from Lenders (Condition 2.2) : Participant given 2 BDs (or less) notice of requirement to funds any required amounts
- Non-Cash Distributions (Condition 3.3): to be transferred by Grantor to Participant as soon as practicable
- Non-attributable sums (Condition 3.4) : allocated *pro rata* between Grantor and Participant
- Grantor withholding (Condition 4.3): Grantor pays net and has 30 days to deliver a tax certificate to Participant
- Information Rights (Condition 5): to be agreed (NB public/private requirements)

LMA Funded Participation II

- Voting rights (Condition 6.2):
 - Distressed Trade: voting rights to be agreed
 - Par Trade: Participant has no voting rights
 - Par Trade (of all Grantor's commitment): Participant has voting rights on key matters only (changes to payments dates, amounts, currencies, reduction in Interest/Recurring Fees, release of security, unanimous Lender matters)
- Collateral for undrawn commitment (Condition 9): Annex 2 form of collateral agreement
- Binding Amendment and Debt Restructuring (Condition 10):
 - Participant bears the risk but not obliged to participate in any increased exposure
 - Grantor can participate in any restructuring
- Termination (Condition 15): Grantor may terminate on Participant breach of material obligations (2 BDs to cure) or representations
- Elevation (Condition 19):
 - At the request of either party: commercially reasonable endeavours to elevate
 - If the Participation resulted from lack of a required consent then Grantor must use reasonable endeavours to elevate
 - At Grantor request: if Participant elevation is not possible Participant has 10 BDs to nominate a third party (else Grantor can reasonably nominate a third party)

LMA versus LSTA

- Factors: Buyer/Seller preference, credit agreement governing law, obligor jurisdiction, matching upstream/downstream
- A “trade is a trade”:
 - LMA: Bear Stearns v. Forum Global Equity Limited
 - LSTA: oral agreements not enforceable (Statute of Frauds) but loan trades are exempted as “qualifying financial contracts”
- Representations:
 - LMA: Seller steps-up for its predecessors, Buyer recourse directly against direct predecessor only
 - LSTA: Seller provides Buyer with predecessor transfer agreements, doesn't step-up if upstreams are incorrect, Buyer recourse against any predecessor up the chain



- Participations: debtor/creditor vs. “true sale”, double credit risk vs. beneficial interest
- Counterparty insolvency: LMA termination on counterparty insolvency