LMA DOCUMENTATION – UPDATE
25 SEPTEMBER 2017

On the **25 September 2017**, a number of changes to the LMA's suite of documents for secondary trading went live. Broadly speaking, the changes relate to:

1. the **LMA Standard Terms and Conditions** (the "**Standard Terms**"):

   (a) the section of the Standard Terms which deals with '*Interest and Accrued Fees*' has been amended to ensure that if the parties elect that delayed settlement compensation shall apply, and as a consequence the seller makes a payment to the buyer at settlement in respect of cash-pay interest which at the next interest payment date is then capitalised (i.e the borrower elects to capitalise the interest under a PIK 'toggle' facility), the seller is able to clawback such amount paid to the buyer;

   (b) under the '*Settlement Amount calculation*' section of the Standard Terms, language has been inserted with the intention of clarifying that the calculation methodology used in respect of a '*Permanent Reduction*' (e.g. a cancellation of commitment) shall apply regardless of whether such commitment is funded or unfunded. As a result, if a buyer purchased an unfunded commitment at a discount to par and that commitment was cancelled between the trade date and the settlement date, the buyer would be entitled to receive a 'netback' on the cancelled commitment; and

   (c) the ERISA language contained in the Standard Terms has been widened to allow for the new fiduciary rule introduced by the US Department of Labor earlier this year (the "**New Fiduciary Rule**");

2. the **LMA form of Funded Participation**:

   (a) a grantor now need only sign a transfer certificate whereby it agrees to the transferring of the rights under the participation from the current participant to a third party transferee, once the grantor has satisfied all of its KYC or other similar checks on such third party transferee; and

(b) as above, language addressing the New Fiduciary Rule has been incorporated to cover the period the participation is in force; and

3. the **LMA Secondary Debt Trading Documentation User Guide** (the "**User Guide**"):

   (a) amongst other things, the updated User Guide clarifies that any permanent repayment of principal satisfied via a non-cash distribution (e.g. a debt-for-equity swap) will not count as a 'Permanent Reduction' for the purposes of the Standard Terms. Furthermore, the User Guide explains that when calculating the settlement amount in these circumstances, the permanent repayment of principal should be ignored. In practice, this is likely to mean that whilst taking receipt of the non-cash distribution at settlement, a buyer would pay against the original principal amount it had committed to purchase on the trade date, notwithstanding that such principal would have been reduced/cancelled altogether following the non-cash distribution. This guidance is in keeping with the principle in the Standard Terms that a buyer shall bear the risk of any 'Binding Amendment and Debt Restructuring' following the trade date; and

(b) the User Guide also makes reference to the removal of the 'LMA Pricing Panel' concept in the version of the Standard Terms which came into force on 27 June 2017.