**Trade Timeline: LMA Par and Distressed**

<table>
<thead>
<tr>
<th>Time</th>
<th>Event</th>
</tr>
</thead>
<tbody>
<tr>
<td>T-X</td>
<td>KYC satisfied&lt;br&gt;Parties exchange NDA if required</td>
</tr>
<tr>
<td>T</td>
<td>Trade Date (phone or otherwise)</td>
</tr>
<tr>
<td>T+X</td>
<td>Parties agree confidentiality agreement and Seller sends Credit Documentation as promptly as practicable (Condition 7.2)&lt;br&gt;Seller requests Agent to request any required Borrower’s consent&lt;br&gt;Suggested: T+1</td>
</tr>
<tr>
<td>T+2</td>
<td>Responsible Party sends LMA confirm (Condition 4(a))</td>
</tr>
<tr>
<td>T+4</td>
<td>Other Party executes and returns LMA confirm</td>
</tr>
<tr>
<td>T+5</td>
<td>Responsible Party sends Transaction Documentation (including Form of Purchase and Pricing Letter)&lt;br&gt;To be executed as soon as reasonably practicable (Condition 8)</td>
</tr>
<tr>
<td>T+7</td>
<td>Suggested: any Borrower’s consent received</td>
</tr>
<tr>
<td>T+X</td>
<td>Parties execute Transaction Documentation and deliver to Agent&lt;br&gt;Suggested: T+7 for Par&lt;br&gt;Suggested: T+15 for Distressed</td>
</tr>
<tr>
<td>T+X</td>
<td>Settlement Date as soon as reasonably practicable (Condition 10.1)</td>
</tr>
<tr>
<td>T+10 (Par)</td>
<td>Delayed Settlement Compensation accrues if applicable (Condition 11)</td>
</tr>
<tr>
<td>T+20 (Distressed)</td>
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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
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