

**Loan
Market
Association**

the authoritative voice
of the EMEA market

Improving Liquidity in the Secondary Market

May 2017



**A Loan Market
Association Guide**

A LOAN MARKET ASSOCIATION GUIDE

IMPROVING LIQUIDITY IN THE SECONDARY MARKET

Loan Market Association

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This "Guide to Improving Liquidity in the Secondary Market" is not intended to be completely comprehensive. Rather, it seeks to highlight some of the main provisions in syndicated facility agreements which impact liquidity in the secondary loan market. Most importantly, this publication is not designed to provide legal or other advice on any matter whatsoever.

The Loan Market Association

The Loan Market Association (LMA) is the trade body for the Europe, Middle East and Africa (EMEA) syndicated loan market and was founded in December 1996 by banks operating in that market. Its aim is to encourage liquidity in both the primary and secondary loan markets by promoting efficiency and transparency, as well as by developing standards of documentation and codes of market practice, which are widely used and adopted. Membership of the LMA currently stands at over 600, covering 60+ nationalities, and consists of banks, non-bank lenders, borrowers, law firms, rating agencies and service providers. The LMA has gained substantial recognition in the market and has expanded its activities to include all aspects of the primary and secondary syndicated loan markets. It sees its overall mission as acting as the authoritative voice of the EMEA loan market vis à vis lenders, borrowers, regulators and other interested parties.

CONTENTS

	Page Number
EXECUTIVE SUMMARY	3
INTRODUCTION	4
UTILISATION AND INTEREST PERIODS	5
HMRC DT TREATY PASSPORT	6
TRANSFERABILITY	7
CONFIDENTIALITY	13
CONCLUSION	15

EXECUTIVE SUMMARY

This guide highlights issues that have the potential to impact liquidity in the secondary market, focusing primarily on those issues prevalent in the leveraged loan market.

The guide specifically draws attention to the following issues:-

- **Utilisation and Interest Periods:** The structure of the transaction, including the number of utilisations, currencies and interest periods agreed, can all impact on liquidity and settlement times in the secondary market.
- **HMRC DT Treaty Passport:** Market participants should be aware of the Double Taxation Treaty Passport Scheme applicable to loans taken out on or after 1 September 2010, as provided for in the LMA Leveraged Document.
- **Transferability:** Caution should be exercised when agreeing to tighten transfer language. For example, restricting syndicates to a narrowly defined group of lenders; seeking Borrower consent to any transfer; or imposing minimum transfer amounts, minimum hold amounts, high transfer fees or non pro rata transfers, can all reduce the liquidity of the loan.
- **Know Your Customer (KYC):** There is a move in the market for agents to commence KYC on or shortly after trade date, as opposed to on receipt of signed Transfer Certificates, which will help reduce secondary settlement times.
- **Execution of Transfer Agreements:** Caution should be exercised when amending the execution provisions of any transfer agreement from a simple agreement to a deed, unless for legal or jurisdictional reasons, as this can impede the settlement process due to the stricter signing formalities of deeds.
- **Confidentiality:** It is suggested that LMA recommended language regarding the disclosure of certain information to numbering agencies and service providers should be included, to facilitate the ease of transaction automation, which should improve liquidity in the secondary market.
- **Amending LMA templates:** The LMA templates are designed to work together. Therefore any amendment to, for example, a facility agreement, must be tracked through to Confidentiality Letters, Transfer Agreements, etc.

Whilst LMA facility agreements will be negotiated to reflect the requirements of the specific transaction, participants in the primary market should give due consideration to loan transferability at the outset of any transaction, as this will impact the efficiency of the settlement process going forward. Improving the efficiency of the settlement process and, as a result, reducing settlement times for any particular loan, will increase secondary market liquidity for that loan, and will also help attract new investors to the loan product generally.

INTRODUCTION

The LMA takes the view that a robust, liquid secondary loan market is an important ingredient for the health of the syndicated loan market as a whole. With this in mind, this guide is intended to assist market participants and their advisors who are involved in the origination and execution of syndicated loans in the primary market, by highlighting certain issues which have the potential to impact liquidity in the secondary market. This guide will primarily focus on those issues prevalent in the leveraged loan market, but it should be recognised that the secondary market is not exclusively related to leveraged loans.

This guide is not intended to constitute a set of requirements or guidelines, but rather aims to provide primary market participants with a list of considerations which they may wish to take into account prior to completing a transaction.

All capitalised terms which are not defined in this document shall have the meaning ascribed to them in the LMA Senior Multicurrency Term and Revolving Facilities Agreement for Leveraged Acquisition Finance Transactions (the "**LMA Leveraged Document**")¹ and any references to clauses shall refer to the relevant clauses in the LMA Leveraged Document.

Where the points raised may also be considered applicable when documenting investment grade facility agreements, the appropriate clauses in the LMA Multicurrency Term and Revolving Facilities Agreement for primary transactions (the "**LMA Investment Grade Document**")¹ are referenced by way of footnote.

It should be noted that this guide intends to address those issues impacting secondary market liquidity in the syndicated loan market generally, not just those transactions documented on LMA recommended forms.

¹ References to the LMA Leveraged Document or the LMA Investment Grade Document are correct as at 1 April 2017, but may differ when future versions of these documents are published.

Section 1

UTILISATION AND INTEREST PERIODS

When first looking at a new transaction, particular care should be taken when agreeing the structure. Specifically the number of utilisations², any currencies³ and the interest periods⁴ requested should be given careful consideration, as they can all impact on liquidity and settlement times in the secondary market.

Points to note:

- I. Agents will typically freeze transfers of any given facility up to three business days prior to an individual loan rollover. Where a borrower is afforded flexibility to have several loans outstanding under one facility (or tradable sub-tranche of a facility) for interest periods of one month (or indeed less if permitted), and where the individual loans have varying maturities within a given period, this can give rise to limited availability for agent banks to effect transfers, thus significantly impacting secondary settlement times for the asset in question.
- II. Thought should be given as to the degree of flexibility required by the borrower and whether utilisation of term facilities for shorter periods should be limited, particularly those facilities (or sub-tranches thereof) targeted at the institutional investor market and/or where secondary liquidity may be desirable.

² Clause 4.4 (*Maximum number of Utilisations*) of the LMA Leveraged Document and clause 4.4 (Maximum number of Loans) of the LMA Investment Grade Document.

³ Clause 5.3(b) (*Currency and amount*) of the LMA Leveraged Document and the LMA Investment Grade Document.

⁴ Clause 16.1 (*Selection of Interest Periods and Terms*) of the LMA Leveraged Document and clause 10.1 (*Selection of Interest Periods*) of the LMA Investment Grade Document.

Section 2

HMRC DT TREATY PASSPORT

The UK HM Revenue and Customs (HMRC) launched a Double Taxation Treaty Passport Scheme applicable to loans taken out on or after 1 September 2010. Clause 19 (*Tax Gross Up and Indemnities*) of the LMA Leveraged Document⁵ incorporates the relevant Treaty passport language.

Points to Note:

- I. Further details of the scheme are available at <https://www.gov.uk/double-taxation-treaty-passport-scheme>. Inclusion of Treaty Passport language is encouraged as the new scheme facilitates the participation of Treaty Lenders in syndicated loans.

⁵ Clause 13 (*Tax Gross Up and Indemnities*) in the LMA Investment Grade Document.

Section 3

TRANSFERABILITY

A. IDENTITY OF NEW LENDERS

Under clause 30.1 (*Assignment and transfers by the Lenders*) of the LMA Leveraged Document, a lender may assign or transfer its rights in a loan to "*another bank or financial institution or to a trust, fund or other entity which is regularly engaged in or established for the purpose of making, purchasing or investing in loans, securities or other financial assets*".⁶

Borrowers may seek to negotiate tighter transfer language within facility agreements in order to restrict syndicates to a narrowly defined group of lenders – for example by specifying a minimum credit rating. In addition, borrowers may seek to insert "white lists" (which set out pre-approved transferees).

Points to Note:

- I. In those instances where white lists are to be included, it may be worthwhile to note that the mere existence of a white list is not intended to be a method by which borrowers may reasonably withhold consent to requests for transfers in the future, simply on the basis that the incoming lender is not included on the list. Furthermore, consideration should be given as to who is responsible for the maintenance of a white list, and how to ensure it is readily available for review by syndicate members.
- II. Whilst the inclusion of transferability restrictions in facility agreements may be considered appropriate for certain transactions, when they are drafted too rigidly, the potential knock-on effect is that the number of available investors within the secondary market is automatically reduced. In order to ensure that the secondary loan market remains open and accessible, particularly for new entrants, the concerns of borrowers need to be carefully balanced against the need to preserve liquidity in the secondary market. Secondary market liquidity is an important factor for banks in terms of underpinning underwriting capability and ongoing credit portfolio management, and the transfer language is the method by which the balance between all parties' requirements and interests (both present and future) is maintained.
- III. Given that sub-participations of loans (whether risk or funded) and credit derivatives deal with the transfer of credit risk rather than the transfer of the loan itself, there are generally no contractual restrictions imposed on these types of transactions. However, requirements relating to disclosure of confidential information must be complied with. Borrowers' concerns around these types of transactions are that an unknown third party may be influencing a lender's decisions in relation to a facility. These transactions considerably enhance the liquidity of the secondary loan market and the lack of a borrower consent or consultation requirement is an important feature of this.

⁶ Clause 24.1 (*Assignments and transfers by the Lenders*) in the LMA Investment Grade Document.

B. CONDITIONS OF TRANSFER

I. REQUIREMENT FOR CONSULTATION/CONSENT

Under clause 30.2 (*Parent Consultation/Parent Consent*) of the LMA Leveraged Document, existing lenders may transfer or assign their loan interests without seeking borrower consent. There is, however, optional wording which requires lenders to consult with the borrower for a pre-agreed number of days, unless the transfer or assignment: 1) is to a pre-defined group (which includes existing lenders, affiliates or (in the case of lenders who are funds) Related Funds); or 2) occurs whilst an Event of Default is continuing. Conversely, borrower consent is required under clause 24.2(a) (*Conditions of assignment or transfer*) of the LMA Investment Grade Document (although it may not be unreasonably withheld or delayed) unless the transfer is to an existing lender or an affiliate of an existing lender. Consent is deemed to have been given five Business Days after the request unless expressly refused by the borrower within that time. Deemed consent is a means of trying to achieve recommended settlement times thereby enhancing liquidity in the secondary loan market.⁷

Under clause 30.3(a) (*Other conditions of assignment or transfer*) of the LMA Leveraged Document, the consent of any Issuing Bank is required before a lender is able to transfer or assign its interest under a revolving credit facility ("RCF")⁸. Some Issuing Banks may seek to insert rating and other "acceptable bank" language into the transfer provisions in relation to RCFs, particularly given recent concerns in relation to counterparty risk.

Points to Note:

- I. The inclusion of consent provisions may be appropriate in some transactions, particularly for certain investment grade borrowers or where the lender/borrower relationship underpins the incentive to lend. However, even for these transactions, the ability to transfer without consent whilst an event of default is continuing is often a heavily negotiated point. Whilst this carve-out is not contained within the LMA Investment Grade Document, those negotiating documents may wish to consider its inclusion, especially if a credit default swap is likely to be entered into in respect of the facility.
- II. Borrowers are likely to be particularly sensitive around transferability of RCFs, since their availability must be guaranteed throughout the term of the facility. That said, the inclusion of consent provisions may trigger settlement delays when the loan is subsequently traded in the secondary market, particularly if "deemed consent" provisions (where consent is automatically given after a certain period of time if the Borrower fails to respond⁹) are not included within the documentation. Therefore, those negotiating the terms of such provisions may wish to consider not only the need to accommodate the borrower's/sponsor's (or, in the case of RCFs, issuing bank's) wishes, but also the advantages of reducing settlement delays in the secondary market. As part of this process, suitable time frames for providing consent should be carefully considered, as should the practical impact on

⁷ Clause 24.2(b) (*Conditions of assignment or transfer*) of the LMA Investment Grade Document.

⁸ The LMA Investment Grade Document does not incorporate an "Issuing Bank" concept.

⁹ The Court of Appeal has confirmed that parties may give their consent to novation in advance, through the inclusion of "deemed consent" provisions in the facility agreement, that allow for the borrower to pre-approve a transfer of the loan to another bank or financial institution subject to certain conditions, or that stipulate consent is deemed after a specified period has expired (*Habibsons Bank Ltd v Standard Chartered Bank (Hong Kong) Ltd* [2010] EWCA Civ 1335).

settlement times if borrower consent is simply required to be "not unreasonably withheld".¹⁰

- III. In the post-financial crisis environment, banks have sought the right, without restriction, to charge or assign their rights under the finance documents by way of collateral to central banks. Borrowers have generally accepted the inclusion of these provisions, as they do not involve a change to the lender or affect the obligations of the lender vis à vis the borrower.
- IV. The requirement for consent is not a pre-requisite to a trade. In the instance that borrower consent is refused, the concept of "a trade is a trade" stands, meaning the parties cannot walk away from the trade, and the transaction will need to be settled via another means, for example, by way of a funded participation.

II. MINIMUM TRANSFER AMOUNTS

Whilst not a concept included in LMA documents, minimum transfer amounts are often agreed at the request of the borrower. The aim of a minimum transfer amount, from a borrower's perspective, is to prevent large numbers of small trades, which in turn could result in a potentially large number of investors within a borrower's syndicate. It is equally true that large numbers of small trades may increase the administrative burden for agent banks.

Points to Note:

- I. Whilst minimum transfer amounts are seen as a method of ensuring that the number of investors in a loan is held at a manageable level (particularly with regards to voting rights in those instances where "all lender" consent is required) their inclusion has the potential to impact liquidity in the secondary market, particularly when trading conditions are difficult and there are fewer investors in the market who are willing to take on large commitments. The need for minimum transfer amounts to satisfy borrower/agent concerns should therefore be balanced against the potential impact on investor availability within the secondary market.
- II. Minimum transfer amounts can cause issues for those lenders who buy at the minimum threshold, following which the borrower makes a prepayment. In such a circumstance, the lender is then prevented from being able to transfer its interest in the facility without entering into a subsequent trade to purchase. The same may be true following a borrower restructuring, which results in lender commitments falling below the minimum threshold. This would effectively freeze any secondary activity on a particular transaction from taking place. To offset this risk, lenders can look to include a permission to transfer their entire commitment in the loan, where their commitment falls below the minimum transfer amount.

¹⁰ Consent may be qualified by a requirement that it must not be "unreasonably withheld or delayed" (*Porton Capital Technology Funds & Ors v 3M UK Holdings Ltd & Anor* [2011] EWHC 2895 (Comm)). However, there are currently no banking legal authorities or reported cases which provide direct guidance as to when a borrower's refusal of consent (in relation to an assignment or transfer) is reasonable or unreasonable.

III. MINIMUM HOLD AMOUNTS

Minimum hold language (optional wording for which is contained in clause 30.3(b) (*Other conditions of assignment or transfer*) of the LMA Leveraged Document) may be requested by borrowers in an attempt to ensure that their original lenders retain a minimum interest in the facility¹¹ and also to limit the size of the syndicate.

Points to Note:

- I. If minimum hold wording is deemed to be required, the relevant thresholds should be carefully considered in the context of the size of the total facility – the greater the required hold of the lenders, the less liquid the asset will be.
- II. Be aware of restructurings. In the event of a restructuring, lenders may find that their restructured commitments fall to or below the minimum hold, which will effectively freeze any secondary market activity. When negotiating a restructuring the original minimum transfer/hold amounts should be reviewed to see if they are appropriate in the context of the restructured transaction.

IV. TRANSFER FEES

An incoming lender is usually required to pay a fee to the agent on the date of transfer, unless waived by the agent, and excluding an assignment or transfer "(i) to an Affiliate of the Lender, (ii) to a Related Fund or (iii) made in connection with primary syndication of the Facilities" - clause 30.4 (*Assignment or transfer fee*) of the LMA Leveraged Document.¹² This fee is usually fixed regardless of the size of the trade.

Points to Note:

- I. Whilst transfer fees are intended to compensate the agent for the time taken to effect a transfer between an incoming and outgoing lender, if transfer fees are set at too high a level, they may act as a disincentive to investors who are considering acquiring an interest in a particular loan, particularly if such investors prefer to take smaller commitments and therefore the effect of the transfer fee on the economics of the trade is greater.
- II. Agents may seek to remove exclusions to the payment of transfer fees on the basis that an agent's time and resources are required to effect any transfer, irrespective of the identity of the new lender.

V. KNOW YOUR CUSTOMER

An agent is not required to sign an otherwise duly completed transfer certificate or assignment agreement until it is satisfied that it has complied with all necessary KYC or similar checks in relation to a new lender. Similarly, an assignment of rights will only be effective once an agent has performed all necessary KYC or similar checks in relation to such

¹¹ This clause is not contained in the LMA Investment Grade Document as borrower consent provisions apply. In addition, investment grade deals are fundamentally relationship deals comprised of a small number of lenders, with relatively few transfers anticipated over the life of the deal.

¹² Clause 24.3 (*Assignment or transfer fee*) in the LMA Investment Grade Document. Note that this clause does not contain any exclusion for an Affiliate, Related Fund or where the transfer is made in connection with primary syndication.

assignment to a new lender. See clauses 30.6(b) (*Procedure for transfer*) and 30.7(b) (*Procedure for assignment*) of the LMA Leveraged Document.¹³

Points to Note:

- I. There is much debate in the market regarding when agents should commence KYC checks on a transfer. Traditionally, agents have commenced KYC checks only upon receipt of notice that a transfer is about to take place to a specified lender. However, agents are increasingly being asked to start KYC on or shortly after the trade date, when parties have entered into a binding contract to trade. This has caused some concern in the market, as agents are wary of the potential of cancelled trades or changes to the new lender ahead of trade date, which would effectively render any time spent on KYC checks wasted. Despite this, and in order to reduce settlement times, agents are increasingly adopting a practice of starting KYC checks as soon as possible, with a view to promoting liquidity in the secondary loan market.
- II. Agents are not required to carry out KYC checks on behalf of a lender. The agent benefits from a confirmation that each lender is solely responsible for any such checks and may not rely on any statement relating to such checks made by the agent.¹⁴

VI. NON PRO RATA TRANSFERS

LMA documents do not require transfers to be on a pro rata basis between tranches.

Points to Note:

- I. For secondary liquidity purposes, it is suggested that lenders should be permitted maximum flexibility in relation to which tranches they may transfer, particularly with regard to term loan tranches.
- II. For non pro rata trading to be of maximum benefit, those structuring transactions may also wish to consider isolating certain borrowers/currencies into separate tranches. This is particularly relevant for those borrowers/currencies which are difficult to trade, for example for tax reasons or which involve lenders in overseas jurisdictions, requiring specific, and often time consuming and costly, perfection procedures.

VII. PRO RATA INTEREST SETTLEMENT

Under the terms of pro rata interest settlement, rather than the agent bank paying the entire interest due under an interest period to the lender of record on the interest payment date, the agent bank will pay the interest entitlement due to each lender which was (or still is) a lender of record during the interest period.

Points to Note:

¹³ Clause 24.5(b) (*Procedure for transfer*) and clause 24.6(b) (*Procedure for assignment*) in the LMA Investment Grade Document.

¹⁴ Clause 33.10(d) (*Exclusion of liability*) in the LMA Leveraged Document and clause 26.10(d) (*Exclusion of liability*) in the LMA Investment Grade Document.

- I. When possible, pro rata interest settlement is encouraged as this reduces the administrative burden for both buyers and sellers - clause 30.11 (*Pro rata interest settlement*) in the LMA Leveraged Document provides optional language.¹⁵ It may, however, require the agent bank to make several payments rather than one.
- II. It should also be noted that not all agent banks are able to distribute interest payments on a pro rata basis.

C. PROCEDURE FOR TRANSFER

Loans are transferred to new lenders either by assignment or novation. Under the LMA Leveraged Document and LMA Investment Grade Document, a loan is assigned by way of an assignment agreement (the form of which is set out in Schedule 6) or novated by way of a transfer certificate (the form of which is set out in Schedule 5). Market participants may wish to bear the following in mind when negotiating these documents:

I. USE OF DEEDS

Although neither the assignment agreement nor the transfer certificate in the LMA recommended facility agreements stipulate that they should be executed as deeds, these documents can sometimes be amended from simple agreements to deeds. This has consequences for the settlement process, since deeds require stricter signing formalities.

Points to Note:

- I. It is suggested that regard should be given at the outset as to whether transfer documentation (including accessions to intercreditor agreements) actually needs to be executed by way of deed. Lenders/investors and agents typically have restrictions on which individuals have the authority to execute documents as deeds, which frequently results in delays in execution, particularly if the individual with authority to execute has not previously had sight of the document and requires a separate review. While it is recognised that there will be genuine instances when a deed is necessary for legal or jurisdictional reasons, if care is taken to ensure that the requirement for deeds is restricted to such instances, delays are likely to be reduced when the loan is subsequently traded in the secondary market.

D. DELIVERY VERSUS PAYMENT

The transfer of a loan occurs on the later of (i) the agent signing the transfer certificate; or (ii) the date specified in the transfer certificate. Therefore the transfer of a loan occurs in accordance with the mechanics set out in the facility agreement irrespective of whether the new lender has paid the purchase price to the existing lender. This has not generally been an issue in practice, however there is a risk in such a case that the existing lender is left with an unsecured contractual claim against the new lender for payment of the purchase price for the loan. If the new lender enters into some form of insolvency, any such claim would rank alongside all other unsecured creditors.

¹⁵ Clause 24.9 (*Pro rata interest settlement*) in the LMA Investment Grade Document.

Section 4

CONFIDENTIALITY

Given the uncertainty of the scope of the common law duty of confidentiality owed by a bank to its customer, clause 43 (*Confidential Information*) of the LMA Leveraged Document contains an express undertaking given by each lender to keep all Confidential Information relating to the borrower and the finance documents confidential. In market standard syndicated facility documents, the undertaking is made subject to a number of express disclosure permissions including express permissions on the part of the borrower that allow limited disclosure of confidential information to potential and actual purchasers. Typically disclosure will be permitted subject to receipt of a confidentiality agreement.

Parties should be aware that even if the borrower agrees to disclosure of confidential information, compliance will be required with the applicable rules relating to disclosure of information, insider trading, market abuse and other securities laws.

A. STANDARDISATION

Clearly, confidentiality is a fundamental requirement within all facility agreements and the confidentiality undertaking and disclosure permissions contained in clause 43 (*Confidential Information*) of the LMA Leveraged Document¹⁶ have been carefully crafted to ensure that borrower confidential information is protected whilst at the same time allowing lenders to make necessary disclosures, including to enable secondary market activity. Amendments to these provisions should not, therefore, be necessary.

Points to Note:

- I. The LMA recommended facility agreements are structured such that the current form of the LMA Confidentiality Letter (Seller) or Confidentiality Letter (Purchaser) for the secondary trading of loans should be inserted at the appropriate Schedule.¹⁷ In the case where primary syndication takes place after the facility agreement is signed, the current form of LMA Confidentiality and Front Running Letter should also be included to avoid confusion over which form of confidentiality letter is appropriate.
- II. In order to avoid settlement delays occurring in the secondary market, it is suggested that there are benefits in using LMA confidentiality letters without modification, unless changes are absolutely necessary. For the same reason, it is also suggested that the LMA Form of Transfer Certificate be used, although it is acknowledged that modifications may be required to cover cross-border or security transfer issues.¹⁸

¹⁶ Clause 36 (*Confidential Information*) in the LMA Investment Grade Document.

¹⁷ Schedule 10 (*LMA Form of Confidentiality Undertaking*) in the LMA Leveraged Document and Schedule 11 (*LMA Form of Confidentiality Undertaking*) in the LMA Investment Grade Document.

¹⁸ Schedule 5 (*Form of Transfer Certificate*) in both the LMA Leveraged Document and LMA Investment Grade Document.

B. IMPROVING SETTLEMENT EFFICIENCY

One of the key challenges faced by the international syndicated loan market is the need to improve settlement efficiency, which, in turn, will require increased automation in servicing/administration terms. The first step in the automation process is the introduction of loan identification numbers (ID numbers) at facility level and ISIN¹⁹ identifiers are now being applied by a number of leading agent banks to European facility agreements.

Current forms of LMA recommended facility agreements incorporate a clause which enables the agent bank to provide selected information to a numbering agency as the initial step in allocating an ID number, and lenders are encouraged to ensure that the appropriate language is included in facility agreements. The LMA recommended documents also incorporate language enabling parties to the facility agreement to provide information to entities providing administration and/or settlement services and lenders are equally encouraged to ensure that the appropriate language is included in facility agreements, as using the various services now available to lenders may also contribute to improved administration efficiency.

Points to Note:

- I. It is suggested that all facility agreements should include the LMA recommended language relating to the borrower(s) permitting the agent bank to disclose information to the numbering agency – clause 43.3 (*Disclosure to numbering service providers*) in the LMA Leveraged Document.²⁰
- II. It is also suggested that the LMA language relating to provision of confidential information to service providers be included – clause 43.2(c) (*Disclosure of Confidential Information*) in the LMA Leveraged Document.²¹

¹⁹ International Securities Identification Number.

²⁰ Optional wording at clause 36.3 (*Disclosure to numbering service providers*) in the LMA Investment Grade Document.

²¹ Clause 36.2(c) (*Disclosure of Confidential Information*) in the LMA Investment Grade Document.

CONCLUSION

Whilst it is important to acknowledge that all provisions of the LMA Leveraged Document and the LMA Investment Grade Document are freely negotiable, participants responsible for the execution of documentation in the primary market should note that material departures to the standard form in relation to transfer, confidentiality and the other issues discussed above, can lead to delays when the loan is subsequently transferred to a new lender. This, in turn, can result in liquidity in the secondary market being adversely affected.

Given the ongoing need to: (i) make the settlement process more efficient; (ii) reduce settlement times; and (iii) attract new investors into the loan market, primary market participants should be aware of the ultimate advantages of structuring and executing loans with greater consideration being given to loan transferability from the outset.



Improving Liquidity in the Secondary Market

A Loan Market Association Guide

A robust, liquid secondary loan market is an important ingredient for the health of the syndicated loan market as a whole. With this in mind, this guide is intended to assist market participants and their advisors who are involved in the origination and execution of syndicated loans in the primary market, by highlighting certain issues which have the potential to impact liquidity in the secondary market.

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