Allocation of "Ticking Fees" Under LSTA Par/Near Par Trade Confirmations

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The Loan Syndications & Trading Association (the "LSTA") recently issued a market advisory with respect to the allocation of "ticking fees" between a buyer and seller under an LSTA Par/Near Par Trade Confirmation ("Par Confirm"). "Ticking fees" is an informal market term that is used to describe two different types of payments made from a borrower to lenders. The advisory alerted market participants that the allocation of the ticking fee can be different depending upon the nature of the payment made.

When the term ticking fee is used to refer to a fee paid to a lender under a syndicated credit agreement for the unused portion of the lender's commitment (also referred to as a "commitment fee" or an "unused commitment fee"), the advisory indicates that the ticking fee should be allocated in the same manner as interest is allocated under the Par Confirm. In most cases, an accrued ticking fee that is unpaid before the settlement date would be for the account of the seller (subject to rules providing for "delayed compensation" if the trade does not settle within seven business days of the trade date).

A ticking fee may also refer to a fee paid to a prospective syndicate member for a delay in closing the credit agreement. In this case, the ticking fee is paid pursuant to a commitment agreement signed by the prospective lender rather than the credit agreement. The allocation of this type of ticking fee is not addressed in the standard Par Confirm and should be expressly addressed by the buyer and seller at the time of the trade.

Although the question of how to allocate ticking fees generally arises in the context of par trades, the same analysis would apply to the allocation of ticking fees in connection with distressed trades. If the term ticking fee is referenced in connection with a new trade, the parties should clarify the nature of the fee and agree on how such fee is to be allocated.

To discuss further, please contact your primary Kleinberg Kaplan attorney or:

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