

THE BOND MARKET ASSOCIATION PRACTICE GUIDELINES FOR TRADING IN DISTRESSED BONDS

A. Introduction

Set forth below are The Bond Market Association's recommended trading practice guidelines ("Guidelines") for trading in distressed bonds. The Association believes that these Guidelines will help establish standard trading, clearance and settlement practices for trading of distressed bonds that are consistent with current market practices and needs, while preserving flexibility where needed. The Association further believes that these Guidelines will improve market efficiencies for buyers and sellers trading in distressed bonds.

These Guidelines are recommendations only and are intended for use by the Association's members in order to promote the efficient functioning of the market for distressed bonds. These Guidelines do not and should not restrict the flexibility of parties to negotiate the specific terms of any particular transaction.

The Association recognizes that many of its guidelines are widely observed, on a voluntary basis, by a variety of other market participants. It is anticipated that these Guidelines may also be used by these other market participants for the same reasons that motivate the Association's members: namely, the market efficiency that results from the broad application of, and common adherence to, uniform standards governing the trading, clearance and settlement of distressed bonds. Market participants wishing to make these voluntary Guidelines legally enforceable with their counterparties should consult with their own attorneys.

B. Definitions

1. Accrued Interest. The amount of Interest which the issuer is obligated to pay, but has not yet paid, to the Registered Owner. For trades that settle with "Accrued Interest", the Accrued Interest represents that portion of the coupon payment that the seller is entitled to claim from the buyer on the Settlement Date. The buyer of the bond must pay the seller this amount in addition to the agreed trade Price.

2. Adequate Protection. The right of a secured creditor to protection from decline in value, or loss, of its interests in collateral, in the face of a bankruptcy debtor's (a) sale, use or lease of such collateral, or (b) incurrence of pari passu or senior liens on such collateral. Adequate Protection typically takes the form of any or all of (i) cash payments, (ii) new liens on additional assets and (iii) "administrative" claims in the bankruptcy proceeding.

3. Beneficial Owner. The party entitled to Principal and/or Interest payments on a bond, and who may otherwise exercise any rights in respect of a bond, even if the Registered Owner is a different entity.

4. Current Face Value. As of any day, the current Principal balance outstanding on a bond.

5. Default. The failure of an issuer to make a full Interest, Principal, or payment-in-kind payment when due, or to meet other obligations to the bondholders, such as maintenance of collateral or compliance with financial or other covenants. An issuer may be said to be in Default even though any Grace Period has not yet expired. Conditions that can give rise to a Default are generally defined in the Indenture.

6. Due Bill. (1) An obligation by one party to a trade to pay any Principal, Interest or other distributions it receives to the other party in accordance with the agreed terms of the trade. Currently, Due Bills are most commonly used to evidence an obligation to deliver an interest payment. (2) A document delivered by a seller to a buyer in lieu of the sold bonds that evidences the seller's obligation to deliver the actual bonds to the buyer at a later date.

7. Escrow. Bonds, cash or other property deposited with a third party (generally referred to as the escrow agent) to be redelivered to the depositor or a third party upon fulfillment of certain conditions as established in the Indenture and/or escrow agreement.

8. Event of Default. A Default that continues after the expiration of any Grace Period. An Event of Default allows bondholders to exercise the remedies specified in the Indenture, potentially including accelerating the maturity of the bonds, liquidation, rescission or annulment.

9. Flat. A bond trading without Accrued Interest (i.e., a bond for which the buyer is not obligated to pay the seller an amount above the agreed Price in respect of accrued and unpaid Interest).

10. Grace Period. The period of time if any, during which an issuer has the ability to cure a Default (e.g., make an Interest or Principal payment after missing a Payment Date or return to compliance with financial ratios) before the failure becomes an Event of Default. During this period of time, an issuer's creditors cannot act to force an involuntary bankruptcy proceeding based on the Default.

11. Indenture. A legal contract between a bond issuer and the trustee or fiscal agent for the benefit of the bondholders. Provisions typically included in the Indenture are the Interest Rate and dates of Interest payments, Maturity Date, collateral requirements, restrictions on other borrowing by the borrower, remedies available in an Event of Default and specifics of a sinking fund or potential calls.

12. Interest. Payment made or accrued on a bond in respect of its Principal amount.

13. Interest Accrual Period. The period of time in which a bond accrues Interest that is payable on a related Interest Payment Date.

14. Interest Rate. The stated annual percentage rate of Interest, whether fixed or variable, payable on a bond. Also known as the coupon or coupon rate.

15. Liquidity Provider. An entity that makes, or may be obligated to make, payments on behalf of another entity that does not have sufficient liquid assets to make such payments.

16. Litigation Rights. An entitlement to proceeds from litigation or the right to pursue a litigation. Under current law, certain Litigation Rights arising under the Indenture are transferable without specific documentation. However, if Litigation Rights are transferred without specific documentation (e.g., a separate written rider), then the bond may trade at a discount. Certain Litigation Rights may not be transferable (e.g., Litigation Rights arising under Rule 10b-5 of the Securities Exchange Act of 1934) and certain laws and rules may limit the transfer of Litigation Rights (e.g., state champerty statutes).

17. Maturity Date. The date on which the final Principal amount of the bond and any accrued but unpaid Interest is due and payable to the Registered Owner.

18. Payment Date. Any date that Principal or Interest payments are scheduled to be made on a bond. Also known as the payable date.

19. Price. The dollar amount or relevant currency amount to be paid for a bond, which may also be stated as a percentage of its Current Face Value (which may be more than 100%).

20. Principal. The amount of a bond outstanding, exclusive of Accrued Interest, if any, and payable on the Maturity Date.

21. Record Date. The date as of which the trustee or fiscal agent determines, pursuant to the Indenture, the Registered Owners entitled to receive a payment of Principal and/or Interest on the related Payment Date.

22. Registered Owner. The name in which a bond is registered as stated on the certificate itself or on the books of the Indenture trustee or paying agent. Principal and Interest payments are made to the Registered Owner as of the Record Date, even if a different Registered Owner holds the bonds on the Payment Date. The Registered Owner is responsible for making payments on to the Beneficial Owner.

23. Settlement Date. For the sale of bonds, the date agreed upon by a buyer and a seller for the payment of funds and the delivery of bonds.

24. Settlement Period. The period between the Trade Date and Settlement Date. Generally, the Settlement Period is said to be the number of business days following the Trade Date to and including the Settlement Date.

25. Suspended Bonds. Bonds or debt for which the Securities and Exchange Commission (the "SEC") or another regulatory authority issues an order suspending trading.

26. Trade Date. The date on which parties enter into an agreement for the purchase and sale of bonds.

C. Guidelines

1. Events That May Trigger Flat Trading

A bond may begin trading “flat” when there is uncertainty regarding whether bondholders will be paid Principal or Interest in a timely fashion. Some or all of the events described below may trigger “flat trading” because they are a potential indication that an issuer may be unable to make timely or full Principal or Interest payments. Certain bonds, however, may benefit from protective features such as an Escrow account, the existence of Liquidity Providers or Adequate Protection payments, which may allow an issuer to continue to make Interest or Principal payments even after the occurrence of an event that would typically trigger flat trading. Therefore, parties should not assume that the events described below will automatically trigger flat trading¹.

1.1. **Announcement of a Bankruptcy Filing or Similar Event.** An announcement of a bankruptcy filing or similar event by the issuer, or, as to an issuer, by its regulators, or an involuntary bankruptcy filing against the issuer by third party creditors.

1.2. Other Events

1.2.1 A material adverse change that puts into doubt the issuer’s ability to operate without filing for bankruptcy (e.g., issuer announces the loss of a client that accounts for most of its revenues).

1.2.2 A repudiation by the issuer of its obligations under the Indenture (e.g., issuer announces that it will not make an upcoming Interest or Principal payment) or an announcement that an issuer is in Default under the Indenture.

1.2.3 An ongoing failure by the issuer that continues past the Grace Period (i.e., the occurrence of an Event of Default).

1.2.4 The ownership or the assets of an issuer are nationalized, expropriated or are otherwise required to be transferred to any governmental agency.

2. Interest Payments and Record Dates

2.1 **When Trading With Accrued Interest.** On the Settlement Date, the buyer must pay to the seller the agreed upon Price plus an amount equal to the Interest accrued between the first day of the last Interest Accrual Period and

¹ Note that The Bond Market Association Guidelines, unlike the International Securities Market Association’s rules, do not mandate when a bond should trade flat. Instead, the Guidelines provide factors that market participants may wish to consider when determining whether a specific bond should trade flat.

the day before the Settlement Date. If a bond that was sold with Accrued Interest goes Flat during the Settlement Period, the buyer nonetheless remains responsible for paying the Accrued Interest to the seller.

2.1.1 Effect of Grace Period on Payment. If a bond is sold after a Record Date but before the related Payment Date, the buyer is generally responsible to the seller for the related Interest payment to the extent such payment is received by the buyer. (Note that the buyer would not have “paid” for the interest to be paid with respect to this Record Date, since the payment belonged to the seller.) If the Accrued Interest payment is not made on the actual Payment Date, but is made during the Grace Period, any Interest payments will accrue to the seller. If Accrued Interest is paid after the Grace Period, it will belong to the buyer when paid.

2.2 When Trading Flat. On the Settlement Date, the buyer must pay to seller *only* the agreed upon Price, without any payment in respect of Interest. The person holding the bond on the Record Date receives any and all Interest payments whenever made. If a Record Date occurs before the Settlement Date, seller will get any Interest paid on a bond that is trading Flat. It is the responsibility of each of the buyer and the seller to be aware of Record Dates.

2.3 Change in Record Date. If there is a change in the Record Date, anyone who was a bondholder with respect to the prior Record Date loses any rights they may have had to receive any related payment of Principal or Interest.

3. Confirmations and Comparisons

3.1 With respect to each trade in the United States, U.S. brokers-dealers must send *either* a confirmation meeting Rule 10b-10 requirements if the counterparty is a customer *or* a trade comparison if the counterparty is also a broker-dealer. In addition to the information that must be contained in the confirmation, these Guidelines recommend that the confirmation also contain, where there is any potential for uncertainty, the following information: whether the bond is trading Flat or with Accrued Interest, whether future Litigation Rights are included, whether the bond is subject to a Due Bill and any special instructions material to the trade.

3.2 Parties should attempt to “match” (i.e., agree upon trade details) with their counterparty by noon on T+1. If parties do not match, they should attempt to resolve any discrepancies as promptly as possible. If parties are able to resolve the discrepancies, a revised confirmation containing the correct trade terms should be sent by one of the parties to its counterparty within one business day following the resolution. This second confirmation should be dated and should specify that it is a correction.

4. Trading of Suspended Bonds

4.1 Suspended Bonds cannot be traded in the United States. The SEC currently takes the view that the suspension of trading is effective immediately at the time designated in the SEC’s announcement, whether or not the parties knew of the suspension. The timestamp on the order ticket or trade execution ticket, as the case may be, will constitute evidence of the time at which the trade took place. When a party believes that a trade to which it agreed was in fact entered into after the time of the suspension, that party should promptly contact its counterparty to determine whether the trade took place before the suspension (and thus remains in effect) or during the suspension (in which case the trade would be void).

5. Court Orders Limiting Transfer

5.1 Bankruptcy courts can issue broad orders at the request of a bankruptcy debtor that halt or seriously restrict trading in all of the debt and equity of the debtor corporation for the protection of the bankruptcy debtor’s net operating loss (“NOL”) carryovers and other tax attributes of the debtor.

The Association and the Loan Syndications and Trading Association (“LSTA”) have developed a standardized form of model order (“Model NOL Order”) for the protection of a debtor corporation’s NOL carryovers in bankruptcy proceedings. The development of the Model NOL Order was initiated in response to the recurring disruptions to the bond and loan trading markets that have resulted from broad orders entered by bankruptcy courts at the request of debtors in many recent proceedings, the effect of which has been to halt or seriously restrict trading in all of the debt and equity of a debtor, unfairly leaving investors in a dangerous state of limbo for prolonged periods of time. The Model NOL Order is expected to benefit both the bankrupt corporation and its investors while minimizing market disruption. In contrast to the restrictive orders that have been entered in many recent proceedings, the approach adopted by the Model NOL Order attempts to minimize the restraints imposed on claims transfers, while nonetheless establishing adequate safeguards to ensure that a debtor’s existing NOLs will, to the extent feasible, be preserved in the reorganization plan process. The goal of this approach is to strike an appropriate balance between creditors’ property rights and the maximization of the value of the estate for the benefit of all parties in interest. The Model NOL Order will be available on the Association’s website, www.bondmarkets.com.

6. Minimum Transfer Requirements

6.1 “Minimum denomination transfer requirements” are generally found in the Indenture and the offering documents and provide that a transfer of a bond whether in physical or book-entry form be made in certain minimum denominations.

7. Settlement in Physical Form

7.1 U.S. corporate bonds that are delivered in physical form must be paid for in Fed funds (cash available on the same day).

8. Transfer of Litigation Rights

8.1 To determine what Litigation Rights can be transferred with the sale of a bond, as well as how the transfer of such Litigation Rights should be documented, consult your legal counsel.