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# Accomplishments and Initiatives on the Operations and Settlement Front

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# Closing and Settling Loans Today

## Processes

- Trade Confirmations and Other Terms of Trade
- Step up provisions and up-streams on Distressed Trades
- Agent Workflow
- Borrower / LC Issuing Bank Consent

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# Closing and Settling Loan Trades Today

## Step-Up Provisions

- Step-Up provisions can be given on a complete basis such as when the seller or a prior seller bought the debt on par documents on or after the Shift Date (in which case, distressed provisions are missing in their entirety).
- Step-Up provisions make the Sellers representations, warranties, and indemnities speak not only to seller's own status of action or inaction but also that of each Covered Prior Seller.
- Specifically, when step up provisions apply, the definition of Retained Obligations is stepped up, along with the following representations and warranties: proceedings, future funding, acts and omissions, performance of obligations, consents and waivers, and other documents.
- The idea behind Step-Up Provisions is simple: put the buyer in the same position it would have been had had it received an uninterrupted chain of distressed Upstreams on market terms from the Shift Date onward.

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Deemed Consent Language – added to standard June 9, 2009

- the consent of the Borrower (such consent not to be unreasonably withheld) shall be required unless (x) *[institution to select appropriate cross-reference to default]* has occurred and is continuing at the time of such assignment or (y) such assignment is to a Lender, an Affiliate of a Lender or an Approved Fund; provided that the Borrower shall be deemed to have consented to any such assignment unless it shall object thereto by written notice to the Administrative Agent within [5] Business Days after having received notice thereof;

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## Complexities

- Non-standardization of data
  - CUSIPS
  - Markit Entity Identifiers
  - Tax Forms
- Amendments
- Shift Date Polls
- PIK Provisions
- Bankruptcies
- CAM Exchanges

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## FpML and CUSIPs

- LSTA Standards to enable:
  - Electronic messaging,
  - Lender position reconciliation, and
  - Electronic settlement and clearing
- As of October 2009:
  - There are approximately 11,200 CUSIPs applied for by 30 Agents
  - Approximately 4,200 Deal CUSIPs
  - Approximately 7,000 Facility CUSIPs.
- CUSIPs:
  - must be issued for ALL deals/facilities, except Bilateral Deals
  - must be issued PRIOR TO the closing of a deal or amendment
  - must be included on all primary allocations as well as credit and trading documentation
  - must be maintained in all agent, dealer and buy-side systems
  - CUSIP data must be continually cleansed by Agent Banks

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- PIK Calculations – An Example

Deal:	ABC Company								
Trade Date:	<b>1/28/2009</b>								
Seller:	Dealer XYZ								
Buyer:	Hedge Fund D								
Trade Amount	1,000,000.00								
Current trade amount	<b>1,025,273.97</b>								
% of Trade Amount	0.2666667%								
Price:	10.0000%								
T+20:	2/26/2009								
Settlement date	<b>5/28/2009</b>								
Facility	Term Loan								
Global	375,000,000.00								
Total Principal	\$100,000.00								
<b>PIK Fully Capitalized</b>									
<u>Global</u>	<u>Transferred Amount</u>	<u>Start Date</u>	<u>End Date</u>	<u>PIK Amount</u>	<u>Prime</u>	<u>Spread</u>	<u>Penalty Spread</u>	<u>All-In Rate</u>	
\$375,000,000.00	\$0.00	12/31/2008	3/31/2009	\$9,477,739.73	3.250000%	5.00%	2.00000%	10.25000%	
<u>Global</u>	<u>Transferred Amount</u>	<u>Start Date</u>	<u>End Date</u>	<u>PIK Amount</u>	<u>Prime</u>	<u>Spread</u>	<u>Penalty Spread</u>	<u>All-In Rate</u>	
	\$1,000,000.00	12/31/2008	3/31/2009	\$25,273.97	3.250000%	5.00%	2.00000%	10.25000%	
<b>Cost of Carry</b>									
<u>Amount</u>	<u>Price</u>	<u>Principal</u>	<u>Daily Average Libor Rate</u>	<u>T+20</u>	<u>Settlement date</u>	<u># of Days</u>		<u>Total Cost of Carry Due</u>	
\$1,000,000.00	10.0000%	\$100,000.00	0.44994%	2/26/2009	5/28/2009	91.00		\$113.73	
							<b>Total</b>	Principal	<b>\$100,000.00</b>
							<b>Total</b>	Cost of Carry	<b>\$113.73</b>
							<b>Total Due To:</b>	<b>Seller</b>	<b>\$100,113.73</b>

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## CAM Exchange – An Example

	Pre-CAM Commitments			Post-CAM Commitments		
	RC	TLA	Total	RC	TLA	Total
Investor A	60,000,000.00	40,000,000.00	100,000,000.00	20,000,000.00	80,000,000.00	100,000,000.00
Investor B	-	200,000,000.00	200,000,000.00	40,000,000.00	160,000,000.00	200,000,000.00
	60,000,000.00	240,000,000.00	300,000,000.00	60,000,000.00	240,000,000.00	300,000,000.00

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# Closing and Settling Loans Today

## Market Realities

- KYC Process
- BISO Provision
- Collateral Posting for Loan Trades
- Borrower Buybacks
- Fault Compensation
- Participations

# Closing and Settling Loans Today

## Buy-In/Sell-Out Mechanism

- The latest publication of the Par Confirm includes the revised Buy-In/Sell-Out Provisions.
- When a par trade fails to settle by T+20, a performing party can effect a cover transaction. A BISO Notice cannot be delivered if the parties are settling the transaction as a participation (traders should note the new “Assignment Only” check the box option on the face of the Par Confirm – a material term of trade).
- To qualify as a performing party, a party must have performed its “Settlement Delivery Obligations”. Generally this means that the party has executed and delivered to the other party a confirm and assignment agreement.
- A performing party can send its counterparty a BISO Notice any time after T+20 (previously, a BISO Notice could only be served during a short five-day window shortly after the trade date).

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## BISO Timeline

- “Cure Period” – After delivery of a BISO Notice, a nonperforming party has 10 business days to perform its Settlement Delivery Obligations.
- If the nonperforming does not “cure”, its counterparty can effect a cover transaction. The counterparty must effect the cover transaction with 10 days after the expiration of the cure period.
- If no cover transaction is effected within that time, then the confirm remains in full force and effect. No further BISO Notice can be delivered without consent of party.
- “Permanent Shield” – A seller who receives a BISO Notice can permanently shield (ie, prevent its buyer from effecting a buy-in) by satisfying its “Upstream BISO Obligations”. In this way, an innocent party caught in an open chain of trades can protect itself from a buy-in.

# Closing and Settling Loans Today

## Borrower Buybacks: Reverse Dutch Auction Mechanics

- Borrower announces tender to all lenders.
- Borrower defines price range, target debt amount and minimum size for proposed purchases and sets deadline (generally 2 business days).
- Lenders submit offers on amount and price.
- Offers within the target price range will be accepted starting with lowest price and increasing until last dollar of debt amount is covered. The last price is the clearing price for the debt buyback.
- All lenders between the low end of range and the clearing price will have their loans purchased at the clearing price, subject to pro-ration if the tender offer is oversubscribed.