

ELFA's Transferability Series

First Series Instalment: Definition of 'Loan to Own/Distressed Investors':
Issue in Transfer and Assignment Provisions

ISSUE #1

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‘Loan to Own/Distressed Investors’ Definition

Restrictions On Transfers To ‘Loan To Own/Distressed Investors’

Current Situation:

-  The definition is often very broad in scope and ambiguous and so it is unclear if an entity is a ‘permitted transferee’ – this leads to uncertainty, delay, disproportionate transaction costs and/or the trade not happening at all
-  Multi strategy managers that pursue both distressed debt and par lending strategies find their CLO / par lending vehicles excluded from becoming LoRs or from holding voting sub-participation (even where the manager is on the ‘Approved List’), by virtue of their affiliation with distressed debt funds
-  Impacts liquidity of the secondary market
-  Hampers efficient portfolio management and asset allocation across a manager’s CLO platform

Proposed Solution:

-  Change the ‘Loan to Own/Distressed Investor’ definition so that CLO / par lending vehicles do not fall within the definition even where they are (a) affiliated to a distressed debt fund; and / or (b) managed by the same investment manager as manages the distressed debt fund

Proposed Additions to ‘Loan To Own/Distressed Investor’

Proposed Additions in *Italics and underlined*:

‘**Loan to Own/Distressed Investor**’ means any person whose (or any of whose Affiliates’ or Related Funds’ including an Affiliate or a Related Fund of a Lender or a transferee which satisfies the requirements set out under paragraph (b) of Clause [x] (Conditions of transfer)) principal business or material activity is in investment strategies whose primary purpose is:

- (a) the purchase of loans or any other debt securities with the intention of (or view to) owning the equity or gaining control of a business (directly or indirectly); and/or
- (b) investing in equity and /or acquiring control of, or an equity stake in, a business (directly or indirectly),

Provided that:

- i) any Affiliate of such persons which are a Rated Bank which are managed and controlled independently to any such person who meets any of the criteria referred to in subparagraphs (a) to (b) above and provided that any information made available under the Finance Documents shall not be disclosed or made available to such person or its other Affiliates; and/or
- ii) any such persons whose principal business or material activity is in investment strategies whose primary purpose is the purchase of loans or any other debt securities at, or around, par without the intention of (or view to) owning the equity or gaining control of a business (directly or indirectly) but who, but for this proviso, would be a Loan to Own/Distressed Investor if any of its Affiliates or Related Funds meet any of the criteria in sub-paragraphs (a) to (b) above.
- iii) any Original Lender, shall not, in each case, be a Loan to Own/Distressed Investor.

To read a detailed version of the publication, please click [here](#)

About ELFA:

ELFA is a professional trade association comprised of European leveraged finance investors from more than 60 institutional fixed income managers, including investment advisors, insurance companies, and pension funds. ELFA seeks to support the growth and resilience of the leveraged finance market while acting as the voice of its investor community by promoting transparency and facilitating engagement among European leveraged finance market participants. For more information please visit ELFA’s website: www.elfainvestors.com.

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