

April 13, 2006

Memorandum to: Clients and Friends of the Firm

From: Carl Winkworth
Michael Mann
Jon Kibbe

Re: Managing Bank Loan Confidential Information in the U.K.

Participants in the U.S. bank loan market are keenly aware of the importance of managing exposure to borrower confidential information. Credit agreements require borrowers to continually disclose information to their lenders that may be both material and non-public. In turn, lenders and prospective purchasers of bank loans take on contractual obligations to maintain the confidentiality of borrower information. Purchasers and sellers of bank loans routinely establish internal structures and controls to ensure that they do not breach confidentiality obligations, and to ensure they comply with regulatory regimes prohibiting the use of inside information.

As the bank loan market becomes global, the complexity of these issues increases due to the multi-jurisdictional nature of international lending. In the U.S., the Loan Syndications and Trading Association (the "LSTA") has promulgated "best practice" guidelines relating to the management of borrower confidential information based upon U.S. legal principles. (See *"Confidential Information Supplement to the LSTA Code of Conduct"* published by the LSTA, which is attached as Exhibit A). Last week, the London-based Loan Market Association (the "LMA") published a similar note entitled *"Dealing with Confidential and Price Sensitive Information."* The LMA note discusses the legal obligations imposed when handling confidential and price sensitive information under English and EC law, and is attached to this memorandum as Exhibit B.

The LMA note deals with the following topics:

- The difference between confidentiality and price sensitivity
- The treatment of privileged information
- The EU Market Abuse Directive
- Effective organization of firms to ensure compliance

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Participation in the bank loan market and the receipt of borrower confidential information are now the subject of two standards for "best practice." Whilst in many respects these standards are similar, application of the underlying legal requirements can often lead to very different results. Consequently, international loan market participants need to develop practices and compliance systems that accommodate those differences in result that they are in a position to identify and proactively address effects of receipt of borrower confidential information.

For loan market participants, it is no longer merely a question of identifying which compliance regime is most relevant. They must also consider whether their internal procedures comply with the rules and regulations in each jurisdiction in which (a) they conduct a transaction; (b) the bank loan or related security that is the subject of their transaction is traded; or (c) their counterparty is located. Failure to have such procedures in place may result in an institution becoming unintentionally restricted when it comes to dealing in regulated securities, or even incurring liability, not only to its immediate counterparty but to the entire lending syndicate or perhaps, more significantly, may cause the regulatory authorities in the relevant jurisdiction to bring their enforcement authority to bear on the institution.

For further advice on any of the matters raised above please contact Carl Winkworth in our London office (+44 20 7033 3150), Michael Mann in our Washington office (+1 202 261 2960) or Jon Kibbe in our New York office (+1 212 530 1860).