

This "FAAN Borrowing Base Ancillary – Guidance Note" is not intended to be completely comprehensive. Rather, it seeks to provide an introduction to the FAAN Borrowing Base Ancillary Facility (as defined below) and its treatment in combination with LMA facility documentation. Most importantly, this publication is not designed to provide legal or other advice on any matter whatsoever.

1. Introduction

Reference is made to the template Ancillary Document developed on behalf of FAAN and its members for purposes of its "borrowing base" financings (the "**FAAN Borrowing Base Ancillary Document**").

This guidance note provides an introduction to the FAAN Borrowing Base Ancillary Facility and its treatment in combination with LMA facility documentation.

All capitalised terms which are not otherwise defined in this guidance note have the meaning given to them in the FAAN Borrowing Base Ancillary Document.

2. Applicability

The FAAN Borrowing Base Ancillary Facility Document has been developed for situations where cashflow financing is combined with a borrowing base facility provided by one or more member(s) of FAAN (the "**Borrowing Base Facility**").

The FAAN Borrowing Base Ancillary Facility Document has been prepared under the assumption that:

- (a) there will be LMA facility documentation in place, which is based on the LMA senior multicurrency term and revolving facilities agreement for leveraged acquisition finance transactions (the "**LMA Leveraged Document**"), subject to certain required changes (see paragraph 3 below);¹
- (b) all of the Borrowing Base Facility Commitments will be made available as an Ancillary Facility under the FAAN Borrowing Base Ancillary Facility Document, which shall be entered into between, amongst others, the relevant Borrowers under the Borrowing Base Facility, the Borrowing Base Agent and the Lenders under the Borrowing Base Facility;²
- (c) the Lenders under the Facilities (other than the Borrowing Base Facility) are Holding Companies or Affiliates of the Lenders under the Borrowing Base Facility;³

¹ The FAAN Borrowing Base Ancillary Document will also be a good starting point for scenarios where the credit agreement is based on one of the other formats of LMA, but will require further consideration.

² As opposed to Ancillary Documents relating to an RCF which are generally provided on a bilateral basis.

³ The FAAN Borrowing Base Ancillary Document will also be a good starting point for scenarios where the Lenders under the Facilities (other than the Borrowing Base Facility) and the Lenders under the Borrowing Base Facility are not affiliated, but will require further consideration.

- (d) the debt structure and selected lending syndicate does not require an intercreditor to be put in place;⁴
- (e) the Lenders under the Borrowing Base Facility have separate acceleration rights in respect of the Borrowing Base Facility Commitments (including instructions rights in respect of the Borrowing Base Agent and Borrowing Base Security Agent);
- (f) the Borrowing Base Facility is provided on a secured recourse basis; and
- (g) the Ancillary Borrowers are incorporated in the Netherlands.⁵

3. Structural changes required to the LMA facility documentation

This paragraph specifies the structural changes that are required to the LMA Leveraged Document in order to allow for a Borrowing Base Facility to be made available under the FAAN Borrowing Base Ancillary Facility Document. This does not purport to be an exhaustive list, and the preparation of the LMA Leveraged Document continues to require further consideration and resolution by users in the context of the relevant transaction.

As the assumption is that no intercreditor agreement is in place, the LMA Leveraged Document will need to be amended to arrange for all Security Agent-, application of proceeds-, hedging- and other related provisions to be included. These changes are not specific to the FAAN Borrowing Base Ancillary Facility Document and will therefore not be further specified in this guidance note.

Borrowing Base Facility

The LMA Leveraged Document must be amended by including a new facility as "Borrowing Base Facility" (to be included globally). The Borrowing Base Facility Commitments may only be made available as Ancillary Facility under the FAAN Borrowing Base Ancillary Facility Document (to be reflected in Clause [2] (*The Facilities*) and Clause [9] (*Ancillary Facilities*) of the LMA Leveraged Document).

Borrowing Base Agent

The LMA Leveraged Document must be amended by including an additional agency role as "Borrowing Base Agent" (to be included globally).

The administrative provisions applicable to the Agent will also apply to the Borrowing Base Agent and will need to be included in the LMA Leveraged Document. The detailed rights and obligations of the Borrowing Base Agent in respect of the dealings with the Borrowing Base Facility will be arranged in the FAAN Borrowing Base Ancillary Facility Document.

The FAAN Borrowing Base Ancillary Facility Document assumes that the Borrowing Base Agent is authorised to, and shall, on instruction of [all][the] Lenders under the Borrowing Base Facility use its acceleration rights. This is reflected in the FAAN Borrowing Base Ancillary

⁴ If this is not the agreed position, other debt layers are applicable or an Intercreditor Agreement is put in place, parties should consider the agreed approach in respect of acceleration, instructions and voting under the Facilities Agreement and/or Intercreditor Agreement.

⁵ If any of the Ancillary Borrowers are incorporated in another jurisdiction, a limited local law review will be required.

Facility Document. This should also be reflected in Clause 29.20 (*Acceleration*), the agency provisions and the security agency provisions of the LMA Leveraged Document.

Borrowing Base Security Agent and Borrowing Base Transaction Security

The LMA Leveraged Document must be amended by including an additional security agent role as "Borrowing Base Security Agent" (to be included globally).

The Transaction Security Documents will need to be split in "Borrowing Base Transaction Security Documents" and "Term/RCF Transaction Security Documents". The "Borrowing Base Transaction Security Documents" will be created in favour of and held by the Borrowing Base Transaction Security Agent and the "Term/RCF Transaction Security Documents" will be created in favour of and held by the Security Agent.⁶ The Secured Obligations of these Transaction Security Documents will be the same (as per LMA), provided that (i) the application of proceeds of the Borrowing Base Transaction Security Documents will be applied first towards the discharge of any amounts outstanding under the Borrowing Base Facility (and any remainder towards the discharge of any amounts outstanding the Term/RCF Facilities) and (ii) the application of proceeds of the Term/RCF Transaction Security Documents will be applied first towards the discharge of any amounts outstanding under the Term/RCF Facilities (and any remainder towards the discharge of any amounts outstanding the Borrowing Base Facility).⁷

The FAAN Borrowing Base Ancillary Facility Document assumes that the Borrowing Base Security Agent is authorised to, and shall, on instruction of the Borrowing Base Agent or [all][the] Lenders under the Borrowing Base Facility exercise any or all of its rights, remedies, powers or discretions under the LMA Leveraged Document and/or Borrowing Base Transaction Security Documents. This should also be reflected in Clause [29.20] (*Acceleration*), the agency provisions and the security agency provisions of the LMA Leveraged Document.

4. Preparing the FAAN Borrowing Base Ancillary Facility Document

This paragraph sets out a number of structural options that are included in the FAAN Borrowing Base Ancillary Facility Document. This does not purport to be an exhaustive list, numerous drafting notes are included in the FAAN Borrowing Base Ancillary Facility Document which need to be taken into account and the preparation of the documentation continues to require further consideration and resolution by users in the context of the relevant transaction.

Cross references to the LMA Leveraged Document

The FAAN Borrowing Base Ancillary Facility Document assumes that the definitions listed in Schedule 1 (*Definitions included in the LMA Leveraged Document*) to this guidance note are included in the LMA Leveraged Document. If this is not the case, the relevant definitions should be inserted in either the LMA Leveraged Document or the FAAN Borrowing Base Ancillary Facility Document. If preferred by parties, the definitions already included in the LMA

⁶ As customary for any Dutch transactions on the basis of the (originally English law) LMA Leveraged Document, appropriate parallel debt wording should also be included to mirror these secured obligations.

⁷ This is subject to the customary steps of sums owing towards the relevant Agents and/or Security Agents for fees etc. Hedging to be considered on a transaction basis.

Leveraged Document can also be included in FAAN Borrowing Base Ancillary Facility Document.

Fronting role

The FAAN Borrowing Base Ancillary Facility Document assumes that the Borrowing Base Lenders shall provide the Borrowing Base Ancillary Facility through the Borrowing Base Agent as fronting agent. This means that the Borrowing Base Agent will pre-fund the Advances on behalf of the Borrowing Base Lenders on the terms set out in the FAAN Borrowing Base Ancillary Facility Document.

Users should consult with the relevant entity appointed as Borrowing Base Agent whether any specific changes are required in order for it to fulfil its fronting role. Various options in the FAAN Borrowing Base Ancillary Facility Document depend on the relevant entity appointed as Borrowing Base Agent.

In particular, the Borrowing Base Agent should be consulted in respect (of the monitoring) of its obligations, including:

- (a) the monitoring of certain Eligibility Criteria (and, if applicable, manually calculating the Borrowing Base Inventory Amount);
- (b) interest calculations and sharing amongst the Borrowing Base Lenders (such as the entitlement of the Borrowing Base Lenders to receive their participation in the Base Rate whether or not funded or only if actually funded); and
- (c) the specific information undertakings (e.g. frequency, content and relevance of Borrowing Base Certificates).

The terms applicable to the Online Portal and the format for the Borrowing Base Certificate will need to be provided by the Borrowing Base Agent and attached to the FAAN Borrowing Base Ancillary Facility Document.

Cash dominion

The starting point of the FAAN Borrowing Base Ancillary Facility Document is a structure with Collection Accounts which are held in the Borrowing Base Agent's own name but for external purposes referring to the relevant Borrower (*inzakerekeningen*).

The FAAN Borrowing Base Ancillary Facility Document also includes optionality to set up a structure with Collection Accounts which are held in the relevant Borrower's own name and subject to Borrowing Base Transaction Security. If this structure is selected, the concepts of "Cash Sweep" and "Cash Dominion Event" may be applicable.

Eligible Receivables [and Eligible Inventory]

The FAAN Borrowing Base Ancillary Facility Document assumes that the Borrowing Base Ancillary Lenders will in any event provide credit in the form of advance financing on Eligible Receivables. In addition, the document includes optionality to provide credit in the form of advance financing on Eligible Inventory.



There are various optionalities included in the Eligibility Criteria which will need to be considered to complete the document. Additionally, users will need to consider any specific changes that may be needed depending on the type of receivables or inventory on a case-by-case basis, in particular relating to the Eligibility Criteria (including limits), Receivables Reserve [and Inventory Reserve], Insurances and information undertakings that may be needed.

Risk free rates

The FAAN Borrowing Base Ancillary Facility Document does not purport to offer any standardised position in relation to any IBOR-reform in respect of the Base Currency and/or Optional Currencies, a number of issues associated with the use of compounded risk-free reference rates or the operation of those conventions. These conventions will need to be addressed on a case-by-case basis.⁸

Users should refer to the [RFR Destination Table](#) and consult with the relevant Lenders involved.

⁸ Generally, any risk free rate provision of the SFA apply to Loans (and do not apply to Ancillary Documents or drawings under such Ancillary Documents).

SCHEDULE 1 DEFINITIONS INCLUDED IN THE LMA LEVERAGED DOCUMENT

"**Additional Guarantor**" has the meaning ascribed thereto in the Facilities Agreement.

"**Additional Obligor**" has the meaning ascribed thereto in the Facilities Agreement.

"**Affiliate**" has the meaning ascribed thereto in the Facilities Agreement.

"**Ancillary Facility**" has the meaning ascribed thereto in the Facilities Agreement.

"**Bank Agent**" means the Agent under and as defined in the Facilities Agreement.

"**Bank Security Agent**" has the meaning ascribed thereto in the Facilities Agreement.

"**Borrowing Base Ancillary Facility Commitment**" has the meaning ascribed thereto in the Facilities Agreement.

"**Borrowing Base Disposal Proceeds**" has the meaning ascribed thereto in the Facilities Agreement.

"**Borrowing Base Insurance Proceeds**" has the meaning ascribed thereto in the Facilities Agreement.

"**Break Cost**" has the meaning ascribed thereto in the Facilities Agreement.

"**Cashflow**" has the meaning ascribed thereto in the Facilities Agreement.

"**Default**" has the meaning ascribed thereto in the Facilities Agreement.

"**Event Default**" has the meaning ascribed thereto in the Facilities Agreement.

"**Finance Document**" has the meaning ascribed thereto in the Facilities Agreement.

"**Financial Quarter**" has the meaning ascribed thereto in the Facilities Agreement.

"**Financial Year**" has the meaning ascribed thereto in the Facilities Agreement.

"**Group**" has the meaning ascribed thereto in the Facilities Agreement.

"**Holding Company**" has the meaning ascribed thereto in the Facilities Agreement.

"**Intellectual Property**" has the meaning ascribed thereto in the Facilities Agreement.

"**[Intercreditor Agreement]**" has the meaning ascribed thereto in the Facilities Agreement.

"**Joint Venture**" has the meaning ascribed thereto in the Facilities Agreement.

"**Lender**" has the meaning ascribed thereto in the Facilities Agreement.

"**LMA**" has the meaning ascribed thereto in the Facilities Agreement.

"**Quasi-Security**" has the meaning ascribed thereto in the Facilities Agreement.



"Relevant Market" has the meaning ascribed thereto in the Facilities Agreement.

"Relevant Period" has the meaning ascribed thereto in the Facilities Agreement.

"Repeating Representations" has the meaning ascribed thereto in the Facilities Agreement.

"Restricted Party" has the meaning ascribed thereto in the Facilities Agreement.

"Sanctions" has the meaning ascribed thereto in the Facilities Agreement.

"Sanctions Authority" has the meaning ascribed thereto in the Facilities Agreement.

"Sanctions List" has the meaning ascribed thereto in the Facilities Agreement.

"Secured Obligation" has the meaning ascribed thereto in the Facilities Agreement.

"Secured Party" has the meaning ascribed thereto in the Facilities Agreement.

"Security" has the meaning ascribed thereto in the Facilities Agreement.

"Subsidiary" has the meaning ascribed thereto in the Facilities Agreement.

"Supplemental Deed of Pledge" has the meaning ascribed thereto in the Facilities Agreement.

"TARGET Day" has the meaning ascribed thereto in the Facilities Agreement.

"Third Party Disposal" has the meaning ascribed thereto in the Facilities Agreement.

"Transaction Security" has the meaning ascribed thereto in the Facilities Agreement.

"Transaction Security Documents" has the meaning ascribed thereto in the Facilities Agreement.