

15 October 2018

Sent via email:

nsiireview@beis.gov.uk

Dear Sir/Madam

Representations relating to the National Security and Investment White Paper ("White Paper") - consultation on proposed legislative reforms (the "Consultation")

The Loan Market Association (the "LMA") is the trade body for the EMEA syndicated loan market and was founded in December 1996 by banks operating in that market. Its aim is to encourage liquidity in both the primary and secondary loan markets by promoting efficiency and transparency, as well as by developing standards of documentation and codes of market practice, which are widely used and adopted. Membership of the LMA currently stands at over 700 institutions and consists of banks, non-bank investors, law firms, rating agencies and service providers. The LMA has gained substantial recognition in the market and has expanded its activities to include all aspects of the primary and secondary syndicated loan markets. It sees its overall mission as acting as the authoritative voice of the EMEA loan market vis à vis lenders, borrowers, regulators and other interested parties.

Response to Consultation

The importance of matters relating to national security are accepted and understood by members of the LMA, who recognise the positive legislative intention of matters discussed in the White Paper. Above all, we strongly support the underlying objectives of the legislation.

However, the express reference to trigger events for loans and related collateral set out in the White Paper is likely to have an unnecessarily detrimental impact on the functioning of the syndicated loan market,¹ as well as corporate loan market liquidity more generally. This is on the basis that the proposal, as currently drafted, has the potential to bring all bilateral and

¹ For more details on syndicated lending, please see Annex 1.

syndicated loan arrangements carried out in the financial markets within the parameters of the regime.

This letter is therefore intended to echo concerns already raised in this regard by participants active in the syndicated loan market. In particular, we have seen the submission produced by one of our members, Clifford Chance LLP, and respectfully request that their suggestions which relate specifically to syndicated loans and collateral, are taken into account when any legislative measures are introduced in respect of the proposed reforms.

If you have any questions with regards to this response, or in relation to the syndicated loan market more generally, we would be happy to discuss any aspect with you in more detail and to meet with you as required. If we can be of any further assistance, please do not hesitate to contact me via email at Clare.Dawson@lma.eu.com or by telephone on 0207 006 2216.

Yours faithfully

A handwritten signature in dark ink, appearing to read 'Clare Dawson' with a stylized flourish at the end.

Clare Dawson
Chief Executive
Loan Market Association

Annex I

Overview of the primary syndicated loan market and the syndicated loan product

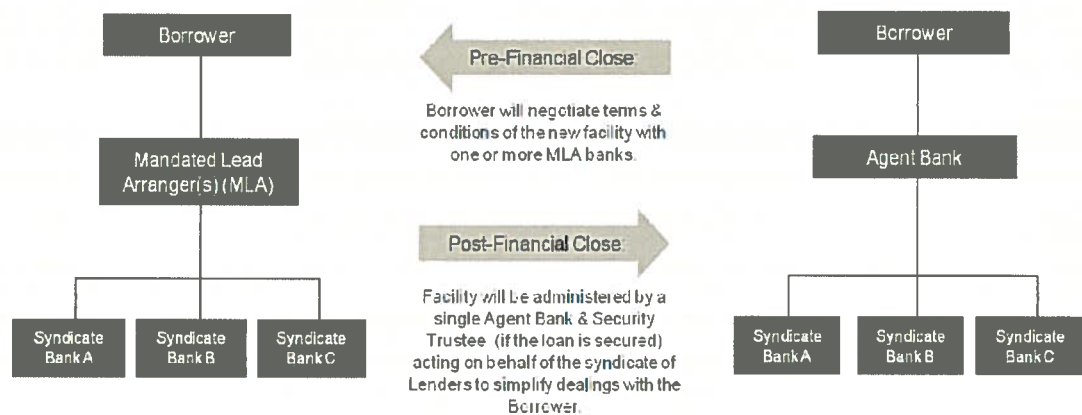
The syndicated loan market is an organised professional market, often international and cross-border in nature, providing much of the capital used by some of the largest companies in the world for a variety of purposes. The most common division of borrowers is between investment grade and sub-investment grade and the product is used for multiple types of financings, including acquisitions, projects, real estate, infrastructure, shipping, aircraft and structured trade and commodity finance.

A syndicated loan facility may encompass a single loan facility or a variety of different facilities, making up a total facility commitment (the "**Facility**"). Most commonly, this will constitute a term loan and/or a revolving credit facility, but may also include a swingline facility, standby facility, letter of credit facility, guarantee facility or other similar arrangements. Whilst the underlying instruments may differ, however, the structure of a syndicated loan is always the same - in each case, it involves two or more institutions contracting to provide credit to a particular corporate or group. Under a syndicated loan, the borrower or borrowing group (the "**Borrower**") will typically appoint one or more entities as "mandated lead arranger(s)" (the "**MLA**"). The MLAs will then proceed to sell down parts of the loan to other lenders (the "**Lenders**") in the primary market, whilst often retaining a proportion of the loan itself/themselves. The arrangement is put together under one set of terms and conditions (the "**Facility Documentation**"), usually following Loan Market Association recommended form facility documentation ("**LMA Facility Documentation**"), with each Lender's liability contractually limited to the amount of its participation. As a result, the syndicated loan market facilitates the sharing of credit risk, and it is therefore possible for a large number of Lenders to participate in facilities of various amounts, well in excess of the credit appetite of a single Lender. The syndicates themselves can range in size. Syndicates of only two to three Lenders are often referred to as "club loans".

To facilitate the process of administering the loan on a daily basis, one Lender from the syndicate (usually an MLA) will be appointed as facility agent (the "**Agent**").

Although some syndicated loan facilities are unsecured (particularly when such loans are extended to highly rated investment grade borrowers), the majority of mid-market, M&A, real estate, asset finance, structured trade and project finance syndicated lending is, in some way, secured against some or all of the assets of the Borrower and/or other group members. If the syndicated loan is to be secured, a Lender from the syndicate (usually also the Agent) will be appointed to act as a security trustee to hold the security on trust for the benefit of a defined class of beneficiaries (i.e. the Lenders and any other finance parties with a security interest, such as hedge counterparties).

The following diagram illustrates the structure of a syndicated loan, both pre and post financial close of a transaction:



The origination and syndication of a syndicated loan transaction takes place in the primary market. Following final allocation of commitments in respect of the Facility to the Lenders, the Facility then becomes "free to trade", subject to the terms and conditions contained in the Facility Documentation. The secondary loan market, therefore, refers to any sale of a loan by Lenders in the original syndicate ("**Seller**") or by a subsequent purchaser ("**Buyer**"). It should be noted that, whilst trading can take place as soon as the Facility becomes free to trade, such trades cannot be settled until the Seller becomes a Lender of record under the Facility Documentation.

A Lender may decide to sell its participation in a syndicated loan for a variety of reasons, including to realise capital, for risk management purposes, to meet regulatory capital requirements or to crystallise a loss. A Buyer, meanwhile, may wish to acquire/increase a commitment in a Facility, for example to develop/expand a Borrower relationship or simply for investment purposes.