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***By email: [taxtreaties@oecd.org](mailto:taxtreaties@oecd.org)***

Dear Sirs

**BEPS: Action 6 – Treaty Benefits**

The LMA is the trade body for the European syndicated loan 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 570 across EMEA and consists of banks, non-bank investors, law firms, rating agencies and service providers.

An important and expanding element of the loan market are debt funds, CLOs, securitisations and other special purpose entities established to advance or acquire loans to corporate borrowers. For ease of reference we will refer to all these entities as debt funds.

Typical investors in debt funds are financial institutions, insurance companies, pension funds, hedge funds and sometimes high net worth individuals. Their investments may take the form of debt securities, shares, units or limited partnership interests. From the investors' perspective, the purpose of the arrangements is, generally speaking, to gain exposure to a diversified portfolio of corporate loans.

Although debt funds are not tax motivated transactions, some tax planning is required to ensure the transactions are economically viable, as interest rates on loans are typically set on the basis there will be no withholding tax. The debt fund itself or a subsidiary will therefore be a special purpose company ("SPV") located in a jurisdiction which has tax treaties with expected borrower jurisdictions to ensure that interest on loans that are acquired can be paid free of any withholding tax. For example, an SPV lending to European borrowers will generally be established in the UK, Ireland, Luxembourg or The Netherlands.

As the arrangement is entirely commercial, we think it is clear that debt funds are not "abusive" and we would therefore say it is entirely appropriate to grant Treaty benefits to a debt fund SPV. We are, however, concerned that the proposals in the document *Preventing the Granting of Treaty Benefits in Inappropriate Circumstances – Action 6: 2014 deliverable* may inadvertently deny Treaty benefits to debt fund SPVs. In particular, we are concerned that such entities may automatically fail the proposed Limitation on Benefits ("**LOB**") Article, because it will generally be impracticable for the SPVs to identify their ultimate investors, or even impossible (e.g. where the investors hold cleared debt securities).

Debt fund SPVs (and other securitisation/capital markets SPVs) are, in essence, vehicles for collective investment. We note that the OECD is doing further work in the Funds area and that policy considerations will be addressed to make sure that the Action 6 proposals do not unduly impact collective investment vehicles (CIVs) and non-CIV funds in cases where countries do not intend to deprive them of Treaty benefits. We would kindly request that this stream of policy work also includes debt fund SPVs.

In the meantime we have the following observations on the range of different approaches suggested for funds in the context of such SPVs:

- Ignoring the problems associated with debt funds completely will in practice mean that debt fund SPVs will not be eligible for Treaty relief. A large proportion of lenders in the loan market would simply be unable to continue to lend, and would have to exit their existing positions. This would cause a significant loss of liquidity and contraction in credit in the loan market, with potentially very serious adverse consequences for businesses seeking new finance, or to refinance their existing debt.
- There would therefore clearly be a preference for all States to treat all bona fide debt fund SPVs as individuals for the purposes of a Treaty and hence not subject to the LOB provisions at all;
- The "mid" approach of leaving it to individual States to allow fund vehicles to fall within the definition of a "qualified person" will inevitably lead to inconsistent approaches and uncertainty.
- If States choose additional restrictions, those restrictions should be drawn up with debt funds in mind. For example, the suggested requirement that a fund entity's "shares" are listed would disqualify CLOs, securitisations and other debt fund SPVs that issue debt securities. Further, if a "less generous" approach is taken by States such SPVs may have to determine their entitlement to Treaty benefits by reference to their investor base. As noted above, this will be impracticable at best, and impossible in many cases.

Please do not hesitate to contact us if you would like further information on any of the above.

Yours faithfully

A handwritten signature in blue ink, appearing to read 'Clare Dawson'.

**Clare Dawson**  
Chief Executive

cc HM Treasury