Loan
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the authoritative voice
of the EMEA market

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20 March 2019

Jan Ceyssens
Cabinet of Vice-President Valdis Dombrovskis
Directorate-General for Financial Stability, Financial Services and Capital Markets Union
European Commission
1049 Bruxelles/Brussel
Belgium

Dear Mr Ceyssens

Proposed Directive of the European Parliament and of the Council on credit servicers, credit purchasers and the recovery of collateral ("Proposed Directive")

The Loan Market Association[1] ("**LMA**") has been following the development of the Proposed Directive and welcomes this opportunity to comment on it.

The LMA recognises the positive legislative intention of the Proposed Directive to encourage development of secondary markets for non-performing loans ("**NPLs**") whilst maintaining high standards of consumer protection. However, as previously discussed with the European Commission, we are concerned that the Proposed Directive includes measures that would cause significant uncertainty and disruption to the syndicated loan market[2] and create additional barriers to the development of secondary NPL markets.

The LMA broadly supports the proposed amendments set out in both the Council Presidency's compromise text dated 16 January 2019 ("**Compromise Text**") and in the European Parliament's draft report dated 11 March 2019 ("**Parliament Report**"). In particular, we welcome the proposed narrowing of the scope of the credit purchaser requirements (and the credit servicer requirements under the draft Parliament text) so that they apply only to NPLs. This narrowing of scope mitigates some of our concerns about potential disruption to the broader syndicated loan market, which is a well-established and organised professional market, often international and cross-border in nature, and one which provides much of the capital used by some of the largest companies in the world.

[1] The LMA is the trade body for the European, Middle Eastern and African syndicated loan markets. 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 organisations across EMEA, including the European Commission, and consists of banks, non-bank investors, borrowers, law firms, rating agencies and service providers.

[2] For further detail on the syndicated loan market, please see Annex 2.

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However, we have identified a number of areas where we consider that further, targeted amendments could deliver substantive improvements in achieving the overarching aims of the Proposed Directive. These are summarised below. We have also included further detailed discussion of these issues in Annex 1 of this letter.

In preparing these comments, we have consulted widely with bank and non-bank LMA members that are active across the primary and secondary syndicated loan markets and this letter reflects their views and feedback.

1. *Removing national barriers to secondary transfers of loans*

   We support the Commission's aim under the Proposed Directive to encourage the development of secondary markets for NPLs by lifting existing restrictions on transferring loans to non-bank institutions under national law. In our view this is consistent with the overarching aims of the CMU and Banking Union projects to increase the effective deployment of capital to SMEs and other real economy players across the single market and reduce market fragmentation along national lines. Therefore, we request that the Council and Parliament both reinstate the original wording of Article 15(2) on the removal of national barriers to the transfer of loans to credit purchasers, which we consider should apply to transfers of both performing and non-performing loans.

   If there is insufficient consensus among Member States and MEPs to agree Article 15(2) in its original form, at a minimum we request the deletion of provisions expressly indicating that Member States may introduce national regulation in areas not covered by the Proposed Directive (see for example Articles 2(3a) and 15(1)). We consider that these provisions are unnecessary and that they could be interpreted as an express invitation for Member States to make new national laws and regulations that would contribute to market fragmentation along national lines and hinder the development of the single market.

2. *Ensuring that the definition of an NPL in this context is appropriate and capable of assessment*

   Whilst we very much welcome the proposed narrowing of the scope of the credit purchaser requirements (and the credit servicer requirements under the Parliament Report) to NPLs, we would highlight that the criteria against which a "non-performing exposure" is to be assessed is potentially very problematic from the point of view of those who will be required to undertake the relevant assessment, for the reasons set out in Annex 1. Therefore, in case of assistance, we have provided some proposed drafting which we believes resolves this issue in Part A of Annex 1.

3. *Refining the scope of the credit servicer regime*

   Firstly, we welcome the Parliament's amendments limiting the scope of the credit servicer requirements to NPLs and request that the Council Presidency adopts a similar approach.

   Secondly, the definition of "credit servicer" as originally proposed was drafted extremely broadly and it risked capturing facility or security agents as well as credit fund managers. We therefore welcome the intention to clarify this definition in the draft Council and Parliament texts. However, we remain concerned that the definition of "credit servicer" does not clearly exclude facility agents and security agents, which perform an important but purely administrative role in syndicated lending. We therefore request an express carve

out for entities performing these roles. In case of assistance, we have provided suggested drafting in this regard in Part B of Annex 1.

Thirdly, we welcome the exclusion from scope of the credit servicer requirements for fund managers authorised under AIFMD or the UCITS Directive. However, there is no similar carve out for investment managers that are regulated as MiFID investment firms. We think that this may be an oversight and request that Article 2(4)(a) is amended to carve out MiFID investment firms from the credit servicer requirements.

Finally, we remain concerned that the Proposed Directive does not allow non-EU entities to become authorised as credit servicers or otherwise perform this role. This concern would be particularly acute if the definition of "credit servicer" is not narrowed to expressly exclude facility agents and security agents under syndicated loan arrangements. It is also a significant issue for non-EU credit fund managers that service loans purchased by their funds. We therefore request that the Council and Parliament consider potential solutions to this issue, such as limiting the scope of the credit servicer regime to consumer and SME loans and/or the introduction of a third country equivalence regime.

4. *Proportionate application to wholesale loans*

Many requirements of the Proposed Directive seem to have been drafted with consumer protection considerations in mind. We understand this is a key concern for the Presidency and support the intention of ensuring an appropriate level of protection for distressed borrowers who are consumers and SMEs, where their loans are transferred to a non-bank lender and/or serviced by a third-party credit servicer.

However, many of these consumer protection measures are neither necessary nor appropriate for transfers of wholesale loans between sophisticated entities, where borrowers are typically large corporates that enjoy a strong negotiating position. We remain concerned that extending these measures to transfers of syndicated and other wholesale loans risks disrupting extremely well-established and fully functioning market practice.

Our preferred solution to this issue remains that syndicated and other wholesale loans should be carved out of scope of the requirements relating to transfers of loans. Nevertheless, we recognise that it may be difficult to make such a significant change to the scope of the Proposed Directive at this stage of negotiations. Therefore, we welcome the carve out for transfers of performing loans, which mitigates some of our concerns about potential disruption to the market, at least in the context of transfers of performing loans.

5. *Enhancing clarity and legal certainty*

We have also identified in Annex 1 to this letter further areas where we consider that targeted amendments and clarifications would enhance legal certainty and help ensure consistent interpretation and application of these requirements across the EU.

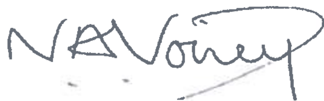
For example, it is not clear whether requirements relating to credit purchasers apply only when there is change to the lender of record (for example, under a legal assignment) or whether they may also apply to other synthetic arrangements such as sub-participations. We are of the view that the Proposed Directive should apply only to transfers that result in a change to the "lender of record" and request that this is made clear.

Furthermore, the practical application of the Proposed Directive specifically to syndicated lending arrangements also remains unclear and therefore requires greater clarification. For example, we consider that that, for a lending syndicate consisting of a broad mix of lenders, the presence of a single EU established credit institution should not bring the whole facility agreement within scope but that the requirements would instead apply only to that single bank's participation. Again, we would request that this point is clarified.

If these issues are not addressed, we are concerned that the Proposed Directive would make it more difficult for EU banks to transfer NPLs from their balance sheets and would create an additional barrier to the development of secondary NPL markets. This would in turn reduce liquidity and may limit the ability of banks to extend further credit to consumers and SMEs, undermining a key objective of the Proposed Directive and the broader CMU and Banking Union project.

We would welcome the opportunity to discuss any aspect of our comments with you in more detail and to meet with you as required to make the necessary amendments so as not to damage the syndicated loan market. If we can be of any further assistance, please do not hesitate to contact me via email at nicholas.voisey@lma.eu.com or by telephone on +44 (0) 207 006 5364.

Yours sincerely



Nicholas Voisey
Managing Director
Loan Market Association

Annex 1: Discussion points and requested amendments to Proposed Directive (based on the Compromise Text and the Parliament Report)

We have set out below further detailed discussion of the key issues raised in the main body of the letter, as well as some additional requests for clarification and drafting amendments.

Issue	LMA position
	A. Credit purchaser regime
Definition of "non-performing credit agreement" (Article 3(13) of Compromise Text/Article 3(11a) of Parliament Report)	We welcome the narrowing of scope at Article 1(1)(b) of the Proposed Directive such that the credit purchaser requirements are limited to transfers of NPLs. However, we are concerned that this requires firms to assess whether a loan is a "non-performing exposure" according to the criteria set out at Article 47a(3) CRR (in the case of the Council text) or at Annex V, Part 2, paragraph 213 of Regulation 680/2014 (in the case of the Parliament text). In our view, these criteria are not sufficiently objective and are too complex to allow firms to make clear and consistent assessments of when a credit agreement should genuinely be classified as "non-performing". We understand that EU credit institutions will assess their exposures against the criteria at Article 47a(3) CRR for capital purposes and against the criteria under Regulation 680/2014 for CRR supervisory reporting purposes. This may therefore have been the reason for linking the scope of the Proposed Directive to these definitions and criteria. However, non-bank credit purchasers will not generally be subject to CRR requirements and we consider it would be impracticable to require them to assess loans in this way. In particular, Article 47a(3)(b) CRR refers to "relevant accounting standards", which non-bank credit purchasers may not use. Other criteria also involve the exercise of judgement in assessing whether a default or recourse to security is "likely" and so there is a risk that firms may reach different conclusions in some cases as to whether an exposure is "non-performing". In addition, the definition of "non-performing exposure" at Article 47a CRR relates to banking book exposures only, whereas brokers purchasing NPLs with a view to selling them on may treat these as trading book items. Again, this calls into question whether and how this definition would apply to NPLs in a bank's trading book and, more fundamentally, whether trading book loans would fall within scope of the Proposed Directive at all.

Issue	LMA position
	In conclusion, we consider that a simpler and more objective test should be used, to ensure consistency across the market and to aid comprehensibility for non-bank credit purchasers, whilst still fulfilling the aims of the Proposed Directive. In particular, we consider that these requirements should apply in respect of credit agreements where a default has actually occurred. We therefore propose that Article 3(13) is amended as follows: "*'non-performing credit agreement' means a credit agreement in respect of which a default is considered to have occurred in accordance with Article 178 of Regulation (EU) No 575/2013*;"
Clarification of scope and application to syndicated loans (Articles 1 and 2)	The subject matter and scoping provisions of the Proposed Directive refer to credit agreements "issued by a credit institution established in the Union". We understand that the intention is to capture credit agreements where the original lender of record is an EU-established credit institution. However, the term "issued" is not commonly used in respect of loans and has the potential to cause confusion. We therefore request that this point is clarified. Further, the Proposed Directive is not drafted from the perspective of a syndicated lending arrangement and so the way in which it would apply to syndicated loans also remains unclear. In particular, it is not clear whether the presence of a single EU established credit institution in the original lending syndicate would bring the whole facility agreement within scope or whether the requirements would apply only to that single bank's participation. In our view (as we assume must be the intention), the requirements should be understood as applying only to that single EU bank's participation and only to the extent that it is within the power of that bank to comply with the relevant requirements. This is because it will not generally be within an EU bank's power to impose requirements on other syndicate members, particularly where there is a minority of EU banks in the syndicate. If EU banks were expected to agree terms with other syndicate members that would effectively require those other syndicate members to comply with provisions of the Proposed Directive. This would likely put EU banks at a competitive disadvantage and risk effectively shutting EU lenders out of predominantly non-EU syndicates. However, there may be real practical difficulties in determining whether a loan participation held by a non-EU bank derives from a participation first originated by an EU bank. EU banks could also find themselves at a competitive disadvantage to other syndicate members if they seek to transfer their participation in a loan that has turned non-performing. This is because other syndicate members and their transferees would not be subject to the requirements of the Proposed Directive, whereas the EU bank and its transferee would be. However, we

Issue	LMA position
	consider that the only effective solution to these issues would be to carve (wholesale) syndicated loans out of scope altogether.
Timing and other practical issues for assessing whether a loan is non-performing (Article 2(1)(b) and Title III)	We should be grateful for clarification as to whether the assessment of whether a loan is performing or not (and accordingly whether its transfer falls within scope of the Proposed Directive) should be made at the point of original transfer only or when each subsequent transfer is made. We would emphasise that there may be practical challenges for firms in carrying out this assessment on subsequent transfers, as they may not be aware of whether the credit agreement was originated by an EU credit institution (particularly if it has been transferred several times as a performing loan before turning non-performing). In addition, it will not be workable in practice to require non-bank credit purchasers to make this assessment against the proposed definition of "non-performing exposure" under CRR, as discussed above. In general, we also note that only the transferor will be able to make the assessment as to whether a loan is performing or not. The potential transferee will not typically have independent access to the information it would need to make this assessment (at least not until the transfer has taken place). Therefore, in practice, a credit purchaser will be reliant on the existing lender informing it as to whether the transfer falls within scope of the Proposed Directive.
Definition of "credit purchaser" (Article 3(8) of Compromise Text/Article 3(7) of Parliament Report)	The definition of credit purchaser refers to the transfer of a "creditor's rights" under a credit agreement as well as the transfer of a credit agreement itself. Similar wording is included throughout the compromise text. We wonder if this wording is intended to reflect the fact that transfers of loans are often made by way of legal assignment, which amounts to a transfer of the creditor's rights under the agreement. That being said, it is not clear from the proposed drafting whether this would also capture other types of arrangements, such as sub-participations or security assignments, which have a similar economic effect to a legal assignment (where the lender of record changes) but should be distinguished from a legal perspective, as the original lender will remain lender of record and the arrangement may have little or no impact on the contractual relationship between the original lender and the borrower. Therefore, we are of the view that the Proposed

Issue	LMA position
	Directive should apply only to assignments that result in a change to the "lender of record" and we request that this point is expressly made clear. In addition, we should like to understand the intended significance of new wording at the end of the "credit purchaser" definition in the Compromise Text which refers to a credit agreement purchased in the course of business "*in accordance with applicable Union and national law*". Does this mean that a credit agreement is in scope only if the transfer of that agreement is governed by the law of an EU Member State? Again, we would request that this point is clarified.
Mandatory disclosure requirements (Article 13(1))	The requirement for mandatory disclosure in Article 13(1) of the Proposed Directive would introduce significant changes to well-established, existing market practices based around the "buyer beware" principle. We are concerned that this does not take into account the sophisticated nature of the parties engaging in wholesale secondary loan transactions and could expose existing lenders to liability risks outside their control, in the event that the information they possess turns out to be incomplete or inaccurate. The limitation in scope of these requirements to transfers of NPLs goes some way to mitigate these concerns. We also welcome the intention of the new wording in Article 13(1) on ensuring protection of information made available by the creditor and the confidentiality of business data. However, we should be grateful for express clarification that this does not impose an obligation on the transferor to "ensure" that the purchaser complies with confidentiality obligations. In addition, we remain of the view that these provisions may act as a disincentive for existing lenders to transfer NPLs to non-banks, particularly if proposed Level 2 standards require provision of extensive and granular information which may not always be practicable or appropriate and which may, in some cases, cut across firms' existing processes for complying with market abuse requirements. We therefore consider that the Level 1 text should make clear that existing lenders should only be required to disclose information about a credit agreement and/or the borrower: • within the actual knowledge of individuals in the relevant part of the firm's business (for example, this would exclude information that may be held behind an information barrier);

Issue	LMA position
	• where it has obtained this information in its capacity as lender (and not, for example, by virtue of the existing lender also being a shareholder of the borrower); and • if requested to do so by the new non-bank lender (as some non-banks active in secondary loan markets lack infrastructure to establish information barriers and so would typically request not to receive non-public information about a loan). We also note that secondary transfers of wholesale loans are usually effected via a broker and so it would likely fall to the broker to ensure it receives the required information from the selling bank and transmits this information to the ultimate purchaser. Again, we consider the clarifications set out above should help mitigate this practical burden on brokers.
Reporting requirements for non-bank transferees (Articles 13(2) and 19(1))	Again, the limitation of these requirements to transfers of NPLs goes some way to mitigate our concerns that the proposed reporting requirements for non-bank transferees are overly onerous and may discourage potential credit purchasers from acquiring NPLs originated by EU banks. We also welcome the proposal that the relevant information should be reported on a quarterly basis rather than transaction by transaction. However, we consider that proposed requirements for a transferor to provide information about the controllers of a credit purchaser without an LEI are unworkable in practice. The transferor is very unlikely to be able to obtain this information from a prospective credit purchaser and so this effectively amounts to a prohibition on transferring loans to credit purchasers without an LEI.
Non-EU credit purchasers required to appoint an EU representative or credit servicer (Articles 15(1) and 17)	We remain concerned that the requirement at Article 17 (in the Compromise Text) for non-EU credit purchasers to appoint an EU domiciled or established representative may be unduly burdensome in practice and non-EU entities without an EU affiliate may struggle to find an EU firm to act in this regard. We have similar concerns in relation to the proposed requirement at Article 15(1) of the Compromise Text and Parliament Report for non-EU credit purchasers to appoint an EU-authorised credit servicer (or another EU entity that may perform this role without requiring authorisation as a credit servicer).

Issue	LMA position
	Whilst we appreciate that these requirements now only apply where the loan being transferred is non-performing, we are concerned that they will negatively impact the willingness or ability of non-EU entities to purchase EU NPLs. In this context, we note that many of the largest investors in distressed debt are based outside the EU and so this restriction risks cutting off an important supply of potential NPL purchasers to the EU market and could make it more difficult for EU banks to transfer NPLs from their balance sheets.
Deletion of pre-enforcement notification requirement (Article 18)	We welcome the deletion of Article 18, which required non-bank transferees to inform competent authorities before directly enforcing a loan. This addresses our concerns that this requirement could have significantly disadvantaged all lenders under a syndicated loan (including lenders that are not subject to the Proposed Directive).
Removing national barriers to secondary transfers of loans (Articles 2(3) and 15)	We strongly support the Commission's aim to encourage the development of secondary markets for NPLs by lifting existing national restrictions on transferring loans to non-bank institutions. We consider that this is consistent with the overarching aims of the CMU and Banking Union projects to increase the effective deployment of capital to SMEs and other real economy players across the single market and reduce market fragmentation along national lines. Therefore, we request that the Council and Parliament re-instate the original wording of Article 15(2) on the removal of national barriers to the transfer of loans to credit purchasers, which should apply to transfers of both performing and non-performing loans. However, if there is insufficient consensus among Member States and MEPs to agree Article 15(2) in its original form, at a minimum, we request deletion of the provisions expressly indicating that Member States may introduce national regulation in areas not covered by the Proposed Directive, set out in recitals (16a), (18) and (34) and at Articles 2(3) and 15(2) of the Proposed Directive. We acknowledge that Member States are able to introduce national regulation as described in these provisions. However, it is not necessary to state this explicitly in the Proposed Directive and we are concerned that these provisions could be interpreted as an express invitation or encouragement for Member States to introduce new national regulations along these lines that would contribute to market fragmentation and hinder the development

Issue	LMA position
	of the single market. Therefore, we request that these provisions are deleted from the Compromise Text and the Parliament Report.
	B. Credit servicer regime
Limiting scope of the credit servicer regime to NPLs (Articles 1(a) and 2(1)(a))	We welcome the Parliament's proposed amendments limiting the scope of the credit servicer requirements to NPLs and request that the Council Presidency adopts a similar approach.
Definition of "credit servicer" could capture facility and security agent roles (Article 3(9) of Compromise Text/Article(7a) of Parliament Report)	The definition of "credit servicer" as originally proposed was drafted extremely broadly and risked capturing facility or security agents, which perform a crucial but purely administrative role in syndicated lending arrangements. We therefore welcome the intention to clarify this definition. However, we remain concerned that the definition of "credit servicer" does not exclude facility agents and security agents to a clear enough extent. The definition remains broad enough that there is a risk that firms performing these roles could fall within the definition of "credit servicer" and become subject to authorisation and other regulatory requirements, which are entirely out of place in this context. Therefore, we request an express carve out for entities performing these roles in respect of syndicated loans, which we would propose defining as follows: "*'facility agent' means:* *(a) a person appointed under a syndicated credit agreement at the time that arrangement is entered into as the lenders' agent for administrative purposes and which is required to act in accordance with any instructions of those lenders or any specified majority of them; and* *(b) any successor to that person in that role.* *'security agent' means:*

Issue	LMA position
	(a) a person appointed under a syndicated credit agreement at the time that arrangement is entered into to hold or administer the transaction security for the benefit of the lenders and other financing parties and which is required to act in accordance with any instructions of those lenders and any others having an interest in that security or any specified majority of them; and *(b) any successor to that person in that role.* *'syndicated credit agreement' means a credit agreement that provides for, or contemplates, two or more creditors*."
Carve outs for fund managers and MiFID investment managers (Article 2(4))	We welcome the exclusion from scope of the credit servicer requirements for fund managers authorised under AIFMD or the UCITS Directive. We consider this is proportionate on the basis that these entities are already regulated and subject to supervision. Similarly, we consider the carve out for credit institutions and their subsidiaries is appropriate for the same reasons. However, there is no similar carve out for investment managers that are MiFID investment firms. This seems to be an oversight and is inconsistent with the rationale for excluding from scope fund managers, credit institutions and their subsidiaries. We therefore request that Article 2(4)(a) is amended to include an additional carve out from the credit servicer requirements for MiFID investment firms.
Prohibition on third country firms acting as credit servicers (Article 5)	Article 5 of the Proposed Directive requires a credit servicer to have its registered office or principal place of business in an EU member state. Otherwise, the credit servicer is not eligible for authorisation under the Proposed Directive. However, this means that non-EU entities will be prohibited from performing a credit servicer role in respect of credit agreements originated by an EU credit institution. This would be particularly problematic if the definition of "credit servicer" is not clarified to expressly exclude facility agents and security agents. The effect would be to prevent non-EU firms from acting as facility agents or security agents in respect of loans originally made by an EU established bank. This seems counterproductive, particularly since filling agency roles for syndicated loans can already be difficult in some cases.

Issue	LMA position
	Non-EU credit fund managers seeking to service EU-originated loans purchased by their funds would also be in a particularly difficult position. They would need to be authorised under the Proposed Directive but would be unable to obtain this authorisation since they are not incorporated in the EU. The effect may be to prevent them from purchasing loans originally made by an EU established bank. This seems counterproductive, particularly since many of the largest investors in distressed debt are based outside the EU and so this restriction risks cutting off an important supply of potential NPL purchasers to the EU market. We understand and support the aim of the credit servicer regime in ensuring a high level of borrower protection and in addressing the risk of borrower detriment if an unregulated credit servicer were to aggressively or unfairly pursue a borrower for repayment. However, this concern is relevant primarily for consumer and SME loans and so a potential solution could be to limit the scope of these requirements to consumer and SME loans. Alternatively, this issue could be addressed via the introduction of a third country equivalence regime, allowing third country firms subject to supervision equivalent to EU credit institutions, investment firms, AIFMs and UCITS managers to act as credit servicers.
Content of credit servicing agreement (Article 9)	The requirements at Article 9 for the content of a credit servicing agreement seem to have been drafted with consumer protection considerations in mind. We support the intention of ensuring an appropriate level of protection for distressed borrowers who are consumers and SMEs, where their loans are serviced by a third-party credit servicer. However, it is not appropriate for some of these consumer protection measures to apply more broadly to wholesale loans, where borrowers are much more sophisticated In particular, it is not necessary or appropriate for the contract between a credit servicer and a wholesale borrower to include an undertaking by the parties to comply with applicable laws "*including in respect of consumer... protection*". Similarly, we consider that the proposed requirement in both the Parliament and Council texts for a contractual term requiring "*the fair and diligent treatment of the borrowers*" is appropriate in the context of consumer and SME loans only. Therefore, we request that the requirements of Article 9 relating to the content of the contract between a credit servicer and creditor should be limited to consumer and SME loans.

Annex 2: 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 ("**LMA**") 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 (the "**Security Agent**"), 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 (together known as the "**Secured Finance Parties**")).

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.