

ESMA  
103 rue de Grenelle  
75007 Paris, France

*London, August 18, 2014*

To whom it may concern,

**ESMA Consultation Paper on the Clearing Obligation under EMIR (no.1)**

The [ICMA Covered Bond Investor Council](#) ('CBIC') was established in March 2009 to represent the views of investors in the covered bond market. The CBIC is an investor driven organisation, independent of both issuers and the market, for which the International Capital Market Association (ICMA) provides secretariat and administrative support services. ICMA is one of the few trade associations with a European focus having both buy-side and sell-side representation.

The CBIC welcomes the opportunity to respond to the Consultation Paper launched by the European Securities and Markets Authority (ESMA) on 11 July 2014 on the Clearing Obligation under Regulation (EU) No 648/2012, which outlines the framework of the European Market Infrastructure Regulation (EMIR).

The CBIC is only commenting on the section of the Consultation Paper which focuses on the treatment of covered bond derivatives. The Council understands that ESMA is primarily looking at feedback from the covered bond derivatives users and CCPs. The Council comment will remain of a general nature, and we understand that legal and technical feedback will be provided by these users.

The CBIC is concerned that whilst the consultation should centre on covered bond derivatives, ESMA is in effect making a legal statement regarding the European covered bonds regulatory framework, through statements on the posting of collateral and listing criteria related to the inclusion/exclusion of contracts associated to defined covered bonds programmes. At the same time this discussion seems to disregard the existing regulatory framework, set in CRD 129(7) and UCITs 52(4), but also more importantly the current review of covered bonds as noted in [the European Commission communication on long-term financing of the European economy](#) and [the EBA report on EU Covered Bond Frameworks and Capital Treatment](#).

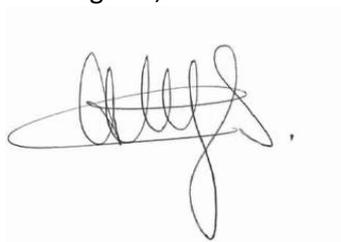
For instance, the EBA has noted in its report to the European Commission that although the Authority will consider that a minimum over collateralisation constitutes regulatory best practice, it did not actually set a minimum. ESMA in 54(f) has in effect made a recommendation of that threshold. The EBA in its Best Practice 5 explains '*that a quantitative legal/regulatory minimum over-collateralisation level would require further analysis as it depends on several factors including, but not limited to, the class of cover assets as well as, crucially, the chosen coverage principle among the*

*several different coverage principles currently adopted across jurisdictions (nominal, net present value, prudent market value, net-present value under stress, etc.)'.*

The CBIC has been keen to be involved in the latest legislative developments affecting covered bonds. CBIC members welcome the steps initiated so far to stabilise financial markets and to improve the supervision and soundness of the European banking sector. Covered bond legislation is specifically designed to protect the market against financial turmoil. Therefore, we welcome the fact that the ESMA has acknowledged the special features of covered bond-related. However Council members urge the ESMA recommendation to maintain the proper functioning of the covered bond market in general and not add confusion to the regulatory developments, and therefore rely on the existing frameworks in place.

The CBIC would be happy to discuss further with you the points made in this letter. The Secretariat of the CBIC, can be reached at [cbic@icmagroup.org](mailto:cbic@icmagroup.org) should you need further information.

Kind regards,

A handwritten signature in black ink, appearing to read 'Nathalie Aubry-Stacey', with a large, stylized flourish extending downwards and to the right.

Nathalie Aubry-Stacey  
CBIC – Secretariat