

**Financial Institution**  
**Issuer Forum**



European Banking Authority  
25 Old Broad Street  
London  
EC2N 1HQ  
United Kingdom

19 March 2014

Dear Sirs,

**Reference: EBA/CP/2013/48**  
**Consultation Paper on draft guidelines on disclosure of encumbered and unencumbered assets**

The ICMA<sup>1</sup> is a pan-European self regulatory organisation and an influential voice for the global capital market. It has a membership of over 400 firms and represents a broad range of capital market interests including global investment banks and smaller regional banks, as well as asset managers, exchanges and other venues, central banks, law firms and other professional advisers. The ICMA's market conventions and standards have been the pillars of the international debt market for over 40 years.

The ICMA notes that the EBA has developed the draft guidelines to cover both unencumbered and encumbered assets in accordance with the mandate contained in Article 443(a) of Regulation (EU) 575/2013 (CRR) and the Report on Bank Funding published in February 2012 by the European Systemic Risk Board. The ICMA also notes that these guidelines will be reviewed after one year and will form the basis of the binding technical standards on more extensive disclosure that will be developed by 2016.

The views expressed in this letter have been compiled in light of a range of inputs provided by the ICMA's member firms, including representations made from the issuer perspective and the European Repo Council. As such, it represents a well informed considered, broadly-based view of the proposals from the relevant perspectives and consequently, the ICMA respectfully requests that the EBA gives careful consideration to the points that this response raises.

The ICMA appreciates that the asset encumbrance reporting exercise is driven by the need for comprehensive and harmonized disclosure across the EU, and that the standardization of a minimum amount of information, which can always be accompanied by additional explanations, is beneficial for comparability and for investors' analysis. The ICMA also considers that an appropriate balance has been struck between the amount of information which is useful for an investor and excessive disclosure which can be overwhelming and lead to confusion.

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<sup>1</sup> For more information regarding the ICMA, please go to <http://www.icmagroup.org/>

## **GENERAL**

While there is significant alignment with other reporting requirements, including IFRS, firms will need to invest in different systems in order to be able to present the information in the form prescribed by the EBA templates. In addition, there is some concern over the actual presentation of figures in the templates themselves, with information being required on the carrying amount of selected financial liabilities, without taking account of netting, which doesn't necessarily give the full picture.

### **[QUESTION 1]**

#### **SHOULD THE DISCLOSURE INFORMATION ON ENCUMBERED AND UNENCUMBERED ASSETS, IN PARTICULAR ON DEBT SECURITIES, BE MORE GRANULAR AND INCLUDE INFORMATION ON, FOR EXAMPLE, SOVEREIGNS AND COVERED BONDS?**

Regarding disclosure information on encumbered assets, it is noted that repo is included as a form of encumbrance. The ICMA has previously highlighted potential unintended consequences of including repo (on a gross basis) as an encumbrance and has pressed for recognition of repo/reverse repo netting. The ICMA would like to restate its concerns about the EBA's definition of asset encumbrance, and the danger of using a catch-all approach to reporting securities financing trades (SFTs). The ICMA fully supports the reporting of SFTs where legal title remains with the lender of the security (such as pledges) as encumbered. However, where legal title is passed to the borrower (as is the case with repurchase agreements transacted under the General Master Repurchase Agreement), the ICMA feels that the correct guidance should be to report these transactions as unencumbered assets and on a net basis.

Where haircuts (in the form of over-collateralization) are applied to these transactions, the ICMA recognizes that this is a form of encumbrance. Accordingly, we would expect guidance for reporting net haircuts received as a form of encumbered assets. Similarly, the marginal contingent encumbrance arising out of SFT margining should also be reported. In this instance the ICMA would suggest some form of appropriate risk-weighting be applied to the underlying asset to represent this marginal contingent encumbrance.

The ICMA feels strongly that the reporting of asset encumbrance with respect to SFTs should not only be consistent with the legal form of the transactions, but equally it should not be reported in a way that could be misleading. If the EBA disagrees with the ICMA's interpretation of asset encumbrance arising from SFTs, we would be grateful for an explanation of the basis for any other interpretation.

### **[QUESTION 7]**

#### **SHOULD THE INFORMATION BE DISCLOSED AS A POINT IN TIME (E.G. AS OF 31 DECEMBER 2014) INSTEAD OF MEDIAN VALUES? PLEASE EXPLAIN WHY.**

Information disclosed which is based on median values (of at least quarterly data of the reporting year) would introduce additional reporting requirements around the processes developed to support annual disclosures, and would affect the transparency of such processes and disclosures. Therefore, disclosure should be on a point-in-time basis for the immediately preceding period, which is consistent with annual reporting.

### **[QUESTION 8]**

#### **DO YOU AGREE WITH THE PROPOSED LIST OF DISCLOSURES UNDER NARRATIVE INFORMATION IN TEMPLATE D? SHOULD THE GUIDELINES EXPLICITLY STATE THAT EMERGENCY LIQUIDITY ASSISTANCE BY CENTRAL BANKS (ELA) SHOULD NOT BE DISCLOSED?**

The opportunity to include narrative information relating to the impact of a business model on an encumbrance level, and the importance of encumbrance in an individual firm's funding model, is welcomed.

However, this may present a challenge without guidelines in terms of consistency of drafting and extent of narrative disclosure.

With respect to the non-disclosure of emergency liquidity assistance, it is appreciated that the integrity and confidentiality of such exercises by central banks must be preserved if ELA is to continue to be capable of being provided. Nevertheless, in the first instance we would question the motivation behind what might be regarded as instituting regulatory infrastructure to allow purposeful opacity. Additionally, there is a danger that such non-disclosure may render the overall disclosure incomplete and misleading and may distort the full picture for the investors in that firstly, it could lead to over statement of contingent funding capacity and availability of collateral, and secondly, certain numbers may not match with other sections of the accounts. Mindful of these considerations, further guidance on how to account for ELA across the accounts would be welcomed.

Stronger firms will generally have more diversified secured funding sources - including access to multiple central bank facilities – but the opacity surrounding non-disclosure of ELA could disadvantage any firm for whom a greater proportion of secured funding and encumbrance is from either market sources or by way of ELA. Additionally, although an investor is likely to be able to assess any potential ELA by checking prior year disclosures, this seems unnecessarily burdensome.

**[QUESTION 9]**

**DO YOU AGREE THAT THE DISCLOSURES SHOULD BE PUBLISHED NO LATER THAN SIX MONTHS AFTER THE PUBLICATION OF THE FINANCIAL STATEMENTS? DO YOU CONSIDER A TIME LAG OF NO MORE THAN SIX MONTHS SUFFICIENT TO ENSURE THAT THE INFORMATION DISCLOSED WILL NOT ADVERSELY IMPACT THE FINANCIAL STABILITY OF MARKETS AND INSTITUTIONS?**

We consider that disclosures should follow the usual annual reporting period with no time lag, which is consistent with rest of the liquidity disclosures.

**CONCLUDING REMARKS**

The ICMA appreciates the valuable contribution made by the EBA's examination of the issues articulated in this response paper and would like to thank the EBA for its careful consideration of the points made herein. The ICMA remains at your disposal to discuss any of the above points.

Yours sincerely

Katie Kelly  
Director – Market Practice and Regulatory Policy