

ASSET MANAGEMENT AND INVESTORS COUNCIL

European Banking Authority

Tower 42
25 Old Broad Street
London EC2N 1HQ

London, March 20, 2014

Dear Sirs,

EBA CP – Draft guidelines on disclosure of encumbered and unencumbered assets

The ICMA Asset Management and Investors Council ('AMIC') was established in March 2008 to represent the buy-side members of the ICMA membership. ICMA is one of the few trade associations with a European focus having both buy-side and sell-side representation.

The AMIC composition embraces the diversification and the current dynamics of the industry – representing the full array of buy side interests both by type and geography. The AMIC's focus is on issues which are of concern to its broad membership, rather than having a specific product focus.

The members of the AMIC welcome the opportunity to discuss [EBA on their asset encumbrance reporting initiative](#). The AMIC has in fact set up a specific working group, chaired by Tim Skeet, consisting of investors to consider the various aspects of asset encumbrance reporting, the impact of the resolution regime and the proposed application of the 'bail-in' to investors. The group will consider the practical implications and technical operation of the bail-in regime, the imposition of a 'Point of Non-Viability' by regulators, the valuation of a failed banks assets, the hierarchy of creditors and other points of interest relevant to investor claims.

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.

Working group members welcome a comprehensive and harmonised disclosure across the EU, and the standardisation of a minimum amount of information, which can always be supplemented by further explanations, is beneficial for comparability and for investors' analysis. The working group agrees with the frequency of the reporting as

proposed by the consultation paper.

However an open narrative as proposed in Template D would not only reduce comparability over time and across institutions, but could be less comprehensive if institutions were to emphasize certain forms of encumbrance at the expense of others. The proposed grouping of liability line items would not necessarily enable market participants to identify encumbrance related to specific transactions such as ELA.

The working group discussed and raised concerns on the fact that ELA would not be disclosed. Regulators will have access to information that investors will not be able to monitor in an event of default. 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, there is a danger that such non-disclosure may render the overall disclosure incomplete and misleading. Indeed the consultation paper also asked for these assets to be reported as 'unencumbered'. As well as placing the banks in a legal dilemma, the guidelines would create a significant problem for securities regulators across Europe in determining whether or not to enforce accounting requirements and for the professionals who prepare financial statements. It could lead to an over statement of contingent funding capacity and availability of collateral, and secondly, certain numbers may not match with other sections of the accounts. This information asymmetry might spur investors to pre-empt regulatory action by withdrawing credit earlier in times of stress, lest they get caught in a resolution of an organisation and all of its associated economic consequences. The lack of disclosure could prove even more destabilizing than full disclosure of bank ELA usage as investors would likely "assume the worst" absent complete information. In similar circumstances a discount would be applied to a bank's (share) valuation. It was also noted that collateral eligibility criteria vary from one European Central Bank to the next, and clarity regarding these requirements would be of help in this context.

As far as the timing of the disclosure is concerned, the working group would recommend that all relevant financial information is disclosed at the same time. Disclosures on asset encumbrance should be no exception and therefore information on asset encumbrance should be provided in conjunction with regular financial reporting, ideally on a quarterly basis, and there should be clear criteria that define when a time delay of up to six months is appropriate. In periods without significant systemic distress, complete disclosure of asset encumbrance information should be provided immediately, even if that provides a means for the market to identify institutions that are experiencing specific idiosyncratic challenges. In addition reconciliation to balance sheet statements is important for debt and equity investors and reporting of median values is unlikely to tie to quarter-end financial statements. As a result the working group recommends that banks report both median and end-of-period balances for asset encumbrance disclosures.

However there are some items the working groups feel are missing and would be useful:

- Regarding disclosure information on encumbered assets, it is noted that repo is included as a form of encumbrance and would be interested to understand whether repo is treated as encumbrance in European regulatory framework.

- Disclosure of items that could be quickly encumbered in an event of default to demonstrate financial flexibility. This should be made available on a quarterly basis
- Investors would find it useful to obtain more detailed information regarding deposits. The disclosure would benefit from distinguishing between guaranteed deposits versus unguaranteed to establish which might rank ahead of senior unsecured liabilities increasing encumbrance and those which do not. It should also be noted that retail deposits may not prove as sticky in the future as in the past thanks to advances in technology.

The AMIC understands that the sell-side membership of ICMA has sent a separate response to the consultation.

The AMIC would be happy to discuss further with you the points made in this letter. The Secretary of the AMIC, Nathalie Aubry-Stacey, can be reached at Nathalie.aubry-stacey@icmagroup.org should you need further information.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Robert Parker', with a horizontal line underneath the name.

Robert Parker
AMIC Chairman