

**Financial Institution
Issuer Forum**



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

19 June 2013

Dear Sirs,

**Reference: EBA/CP/2013/05
Draft Implementing Technical Standards (ITS) on Asset Encumbrance Reporting**

The ICMA¹ 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 ITS in accordance with the mandate contained in Article 95a of the Capital Requirements Regulation and the Report on Bank Funding published in February 2012 by the European Systemic Risk Board. The ICMA also notes that this consultation includes a wide range of reporting templates and related instructions which will be used for regulatory reporting on asset encumbrance going forward, which draw on existing concepts from COREP and FINREP reporting frameworks. It is understood that the information gathering is to be used by regulators with a view to giving a harmonised measure of asset encumbrance levels across institutions, allowing supervisory authorities to carry out comparative analyses, allowing supervisors to assess the ability of institutions to handle funding stress and allowing for an assessment of the assets available in a resolution situation. Whilst the reporting templates are of significant interest, this response nevertheless focuses on the more general, high level concerns of the issuing community.

In this regard, 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. As such, it represents a well informed considered, broadly-based view of the proposals from the relevant perspective and consequently, the ICMA respectfully requests that the EBA gives careful consideration to the points that this response raises.

GENERAL:

The ICMA agrees in principle with the reporting of asset encumbrance on the basis that transparency is needed by regulators to be able to effectively supervise and intervene, if required, without exacerbating a loss of confidence in the particular institution and the market in general. The ICMA understands that, while a lot of

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

data already exists on encumbrance, what is available already is fragmented and is provided under different reporting requirements. The ICMA also appreciates that the asset encumbrance reporting exercise is driven by the need for harmonisation of the available information at a European level in order to provide comparable information across all firms, albeit with different funding models and in different jurisdictions. Notwithstanding these opening remarks, standardisation may not be easy to achieve precisely because of variances in funding models, jurisdictional issues etc. However, the ICMA is fully supportive of the work being undertaken in this area.

DEFINITION:

The ICMA understands that the definition of asset encumbrance is based on broad economic principles, and appreciates the difficulty that it is hard to shoe-horn “assets” into the definition. The ICMA considers it correct that the definition covers all assets pledged that cannot be freely withdrawn. However, it should be clarified that it is intended that any liquid assets which are held for the purposes of meeting LCR requirements are capable of being freely withdrawn, and therefore, are not encumbered.

SCOPE & USE OF INFORMATION:

The ICMA notes that the information will be reported to the national authorities on the basis of individual institutions, and would like to stress that information should only be required on a consolidated basis for institutions with a centralised funding and liquidity operation i.e.: at group level on a consolidated basis. While the reporting requirement may be an information-gathering exercise (the purpose of which is as set out in the introductory paragraphs of this response), it is important to ensure that the information is put to the correct use and considered as part of a range of variables in order to reach a correct, qualitative analysis of asset encumbrance levels. For example, consideration should be given to the different sources of encumbrance, the reasons and context for certain levels of encumbrance and differing business models.

TEMPLATES:

The templates appear to capture two different sets of variables – firstly, subordination of the balance sheet, and secondly, liquidity capabilities. Much of the relevant information intended to be captured regarding subordination of the balance sheet stems from accounting systems which are used to provide such information as required under IFRS. The required information regarding liquidity capabilities is not dissimilar to LCR/NSFR information, which is a function of a bank’s Treasury department. Mixing the two sets of required information is a very complex operation for the banks and it is unclear what value can be derived, and what can be concluded, from such a mix of information.

The templates assume a single allocation of encumbered assets to be matched against specific liabilities, which in the opinion of the ICMA is not reflective of the balance sheet position in practice. In order to take account of this disparity, reporting should be required on an aggregated cover pool level as opposed to an individual loan level. An additional point on which the ICMA would be grateful for clarification is how the information is to be produced - do the banks have to publish information in the EBA required format in their accounts, or is the information to be provided separately to the EBA.

CONTINGENCY:

As regards the contingency situations, due to national stress test requirements, there is a potential for double stress-testing and an overlap with the recovery plans set out in the Recovery & Resolution Directive. With required stress-testing of the LCR and capital needs of banks, to stress the encumbrance levels as well is to introduce a lot of pressure points for a bank’s treasury team to consider.

MARKETABILITY:

As regards marketability criteria, the ICMA considers that if central bank repo eligibility criteria were used, it would need to be harmonised on a pan-European level with, and take guidance from, the liquidity coverage ratio criteria for liquidity and ECB criteria for marketability. Any such harmonisation will also serve to limit the reporting burden on institutions.

COST V. PROPORTIONALITY:

Banks must currently report by different asset classes using a number of valuations, so to capture the additional information required by the templates would require new costly IT systems. Further, the administrative burden of the reporting could outweigh the funding advantage of issuing certain instruments like covered bonds, leading to a reduction in covered bond issuance. Additionally, reporting on unencumbered assets that are eligible to be encumbered from across the whole balance sheet could pose a massive burden on the banks.

This cost/benefit analysis is particularly relevant to those institutions who do not consistently reach or exceed the required thresholds of total assets or material asset encumbrance, or who do occasionally reach the material asset encumbrance threshold due to a one-off peak in activities, and for whom full reporting templates may therefore be too complex. That said, it would be unwise to assume that only the larger institutions who consistently exceed the thresholds are the only ones capable of being troubled, so in order to maintain a level playing field, smaller institutions should remain subject to reporting requirements, albeit on the basis of simplified measures and additional proportionality criteria. Additionally, clarification is required as to those entities to which the asset encumbrance reporting requirement may not apply at all – special mortgage institutions, non-deposit taking solo entities, insurance operations.

TIMING:

The ICMA notes that reporting is expected to commence from May 2014. However, given the complexity of reporting, the end of 2014 is considered to be a more realistic time frame for institutions to get their systems in place.

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