2 September 2011

INTERNATIONAL CAPITAL MARKET ASSOCIATION (ICMA)

RESPONSE TO CONSULTATION DATED 23 JULY 2011 ON COLLECTIVE ACTION CLAUSES TO BE INCLUDED IN EURO AREA SOVEREIGN SECURITIES

1. Background

This response addresses the consultation with interested parties, launched under cover of a letter dated 23 July 2011 from the Chairman of the EFC Sub-Committee on EU Sovereign Debt Markets, in respect of collective action clauses ("CACs") to be included in all new euro area government securities beginning in July 2013. We thank you for this further opportunity to express our views on this important topic.

ICMA is a pan-European self regulatory organisation of over 40 years standing, with in excess of 400 members. We represent a broad range of capital markets interests including global investment banks and smaller regional banks, as well as issuers, asset managers, exchanges and other venues, central banks, law firms and other professional advisers. Our main role is to set industry standards to help create and maintain orderly and well-functioning international capital markets. Our particular interest in the new proposed CACs derives from the extent to which they will impact on the European and international capital markets. As an organisation based in Europe, we are keen to work collaboratively with the European authorities in furtherance of their and our objectives.

The views expressed in this response reflect the outcome of discussions with our members and within our Sovereign Debt Working Group and the responses to our Sovereign Bond Consultation Paper of 23 November 2010, and has been prepared with the assistance of Clifford Chance LLP. However, given the diversity of our membership, our response should not be read as having specific endorsement from any individual ICMA member firm. The range of input provided by ICMA's member firms includes representations made from issuance, intermediary and investor perspectives. As such this response presents a synthesised view informed both by firms that act for issuers by arranging issuances of the sovereign debt securities in which the proposed CACs will feature and firms that invest in such securities. ICMA considers that this provides a well informed, broadly based response to the proposals.

In addition, ICMA has a particular interest in CACs in view of its publication in October 2004 of standard CACs for the terms and conditions of sovereign notes. This standard form CACs language was developed in response to the 2002 G10 recommendation that CACs be included in sovereign debt contracts; and was cognisant of the April 2003 agreement of EU Member States to include CACs in their international debt issuances. The existing ICMA CACs for sovereign bonds have subsequently been used as a basis for many English law governed debt issues by European and other sovereigns. The clauses form part of the ICMA Primary Market Handbook used by market participants and practitioners, which has for many years served as a pillar of the international debt origination market.

This submission is part of the ongoing process of engagement we have had to date with the Eurogroup since it first announced its intention to introduce CACs in euro area government bonds in November 2010. As part of this process of engagement, ICMA has already submitted a number of letters to the Chairman of the EFC Sub-Committee on EU Sovereign Debt Markets relating to CACs.

ICMA's previous submissions include a draft revised form of CACs based on its 2004 standard CACs for the terms and conditions of sovereign notes which was sent to the Chairman of the EFC Sub-Committee on EU Sovereign Debt Markets on 25 February 2011 and which built on the existing ICMA model clauses taking into account the additional proposed characteristics of the new euro area form of provision. The draft reflected the initial consultation carried out with members and legal advice obtained in a number of key euro area jurisdictions.

On 3 March 2011, ICMA submitted a paper to the Chairman of the EFC Sub-Committee on EU Sovereign Debt Markets on sovereign bond transparency, financial information and market education.

On 17 March 2011, ICMA provided a memorandum to the Chairman of the EFC Sub-Committee on EU Sovereign Debt Markets from Clifford Chance LLP setting out broadly the issues which ICMA believed merited further consideration by the Eurogroup in developing this policy tool, together with some detail as to the thinking behind the approach adopted by ICMA on CACs, three key questions which ICMA suggested national law officers should consider in each Eurogroup Member State and some analysis which ICMA felt could be relevant in scoping the pool of affected debt securities for the purposes of developing further thinking on the breadth of the intended aggregation feature in the proposed CACs.

On 30 March 2011, ICMA submitted a further letter to the Chairman of the EFC Sub-Committee on EU Sovereign Debt Markets with a paper from Clifford Chance LLP on the differences between the roles of a trustee and a fiscal agent in debt issuances.

In addition, ICMA representatives have attended a meeting of the EFC Sub-Committee on EU Sovereign Debt Markets in Brussels at which we expressed our views and concerns; and have engaged in bilateral discussions with a number of euro area Member States, the European Commission and the European Central Bank together with our counsel.

2. **Executive Summary**

ICMA welcomes the opportunity to contribute to the examination of the proposed form of standardised CACs language in the texts presented for the purposes of this consultation exercise. The circulation of the draft form of language is an important step in framing properly and informing the debate on this topic. ICMA recognises the underlying objectives and the ambitious goal being pursued by way of the development of standardised euro area sovereign debt CACs and their subsequent mandatory adoption across all new euro area government securities.

Whilst being fully supportive of these endeavours, ICMA considers that, as articulated in this response, there are nevertheless some significant considerations which will need to be carefully addressed in the finalisation of this standardised form of CACs language. For the reasons set out below, we consider that the correct approach is to introduce CACs provisions which are as acceptable to – and easily understood by – investors as they can be, whilst still achieving the desired policy objectives underlying their introduction. The market expectation is that the proposed CACs will be based on currently market standard provisions.

In overall terms we think that the proposal in respect of standardised euro area CACs unduly favours the sovereign issuer as against investors. This is apparent in, for example, the setting of lower voting thresholds set by reference to those attending (or represented at) meetings, the approach to aggregation, the provision for partial cross-series modification and disenfranchisement more generally.

We are concerned that the cumulative effect will be seen in the market as undermining investors' customary legal protections and as moving away from best market practice. This would ultimately also be contrary to sovereign issuers' best interests. We believe that it is important that, in introducing CACs provisions, investors do not become concerned about them in a way which would impact negatively on the pricing of new issues or discourage them from investing in euro area sovereign debt.

As a result of recent developments, investors are particularly concerned by the possibility of sovereign debt restructuring in the euro area, and the introduction of the new CACs will be seen as the policy tool chosen by the Eurogroup to facilitate such processes from the sovereign's perspective. Whilst it is no doubt the case that the introduction of the new CACs will not have any immediate impact on issuance conditions for the strongest core countries with higher credit ratings, the same cannot be assumed to be true across the whole of the euro area.

It is important that any sovereign which suffers a break in market access should not find that the presence of the proposed CACs acts as a further barrier to regaining market access successfully. Investors are also sensitive to the fact that, once introduced, the way in which CACs are utilised, but not their inclusion, could lead to there being a CDS restructuring credit event (under existing ISDA provisions) – albeit this is something which the European authorities have so far been keen to avoid in the context of the private sector involvement relating to Greece.

The proposed CACs will be significantly different from the more traditional form of CACs included in many of the existing foreign law debt instruments issued by European sovereigns, as well as being, for the most part, entirely novel in the context of domestic law governed debt instruments. This is surprising to some market participants, given that, as is mentioned in the Introduction to the Explanatory Note, the euro area authorities specified that the CACs should be based on those commonly used in the UK and US after the G10 report on CACs of 26 September 2002 (which it is worth noting would not include aggregation).

The following points provide some more of the detail underlying these overall concerns.

Application of the CACs

We do not consider, in general terms, that the adoption of the CACs will increase the probability of a euro area sovereign issuer defaulting on or modifying its debt securities, but rather it is a mechanism to facilitate agreed action should that prove to be necessary. As referred to above, it is, however, important to be aware of the climate in which such CACs are being introduced and the heightened sensitivities that exist to these provisions.

While the market is aware of statements about the equality of treatment of pre- and post-2013 sovereign bonds in the event of restructuring, there are still concerns in the market that holders of debt securities in which there are CACs provisions will in the event prove to be treated differently from holders of debt securities in which there are no such provisions.

Aggregation

We note that the term "cross-series modification" has been adopted instead of the term "aggregation". As you are aware, to date only a handful of emerging markets sovereign issuers have included the aggregation concept in their debt securities and to the extent the market is aware of such concept it is familiar with the terminology of "aggregation". Hence we believe this terminology should also be used in this case.

Thresholds for modification to reserved matters have been drafted as 66⅔% for a single series; or 66⅔% in aggregate and 50% for each series within the aggregation. We note also the setting of the level of the quorum as 66⅔% of the aggregate principal amount of the bonds outstanding. We are concerned at the setting of the threshold levels and we continue to believe that aggregation should be subject to a higher 75% threshold – which we also consider would be more consistent with the 24-25 March 2011 Council conclusion that this clause should enable a "super majority of bondholders" to approve changes. (As described below, these thresholds should be referenced to outstanding principal amounts).

We also consider that it is important that investors receive some clarification regarding the way in which aggregation may be used, either through details in the drafting of the CACs or in a commitment to provide some form of supporting guidance at issuance (to be subsequently updated as necessary to reflect the addition of any new instrument types to the aggregation). For investors to form any view of the exposure they may face as a result of being bound by the decisions of other investors, it is essential that it has been made clear to them what constitutes a single series of debt securities (which the draft language attempts) and which other series of debt securities may be brought into the aggregation. The current proposal seemingly leaves the issuer free to choose to what extent to use aggregation in place of or in combination with approvals per series. In essence this means that an investor will have no details when investing in the bonds as to what will constitute the "majority" which will be able to bind it if it ends up being in the minority where the cross-series modification feature is utilised. The argument that those in the minority agreed on purchasing the instruments, through contract or the existence of relevant legislation to be bound by decisions taken by the majority of the holders of that sovereign's other debt securities with CACs could be undermined through lack of certainty and knowledge by investors as to the pool of debt securities which would be captured in any decision making. This could result in a higher risk of legal challenge in the courts of certain Member States.

Our concern about the need to communicate intentions clearly to the market is also reflected more broadly in comments below on the possible role for a set of euro area fair debt restructuring principles.

This brings us to a related point of concern. The proposal includes the concept of “Partial Cross-Series Modification”. We consider that this is inappropriate and recommend it should be dropped. Otherwise investors are being asked to vote on a basis including multiple potential outcomes, some of which are at the option of the issuer.

Voting Benchmarks

Throughout our thinking we have assumed that the basis for determination of a decision to make changes to reserved matters through the CACs provision would be support from holders of the requisite proportion of the outstanding principal of the bonds. We note the requisite thresholds of 66⅔% of principal amount of bonds outstanding to obtain a quorate meeting for consideration of a reserved matter, but we are concerned that the CACs include a proposal to allow such decisions to be passed on the basis of the requisite percentage of those present (or represented) at a quorate meeting rather than by reference to the outstanding principal of the bonds.

We are also concerned that the quorum requirement for an adjourned meeting is 25% of the principal amount of bonds outstanding irrespective of the type of modification to be voted on. The market would expect a much higher threshold to apply, especially if the matter being considered is a reserved matter.

We are greatly concerned that the current drafting leaves open the possibility that a minority proportion (less than 45% in case of a first meeting; and less than 17% in case of an adjourned meeting) of outstanding principal holders could bind a majority to a reserved matter change. We consider that this is contrary to good market practice and that it carries certain legal risks in some jurisdictions.

Disenfranchisement

In a similar vein, we are particularly concerned by the topic of disenfranchisement. We recognise that the standard starting point is related to securities held or controlled by the issuer. Nevertheless we consider that there are characteristics of the euro area which heighten the normal concerns regarding how other holders might be motivated to vote. A number of factors may lead to public sector holders of euro area sovereign debt securities, whose decision making may conflict significantly with that of private market holders, having compelling reasons to act in concert with each other and the issuer.

It is always difficult and more so in the context of a euro area sovereign debt issue to draft the CACs so as to ensure that only “genuine” investors vote on any proposal put to bondholders. Despite the breadth of the disenfranchisement provision, there will always be a risk that there will be bondholders whose interests are focused on matters other than their investment and who are not subject to the control of the issuer. Therefore the typical “top down” disenfranchisement provision that has been seen in sovereign bonds is likely to be less effective in protecting investors in euro area sovereign bonds. We consider that, in determining the applicable details of other elements of these CACs proposals, it is important to bear in mind the existence of this investor “risk factor”. It should be noted that the sovereign bond market is a global market and the views of investors outside of the EU may also be crucial to the success of a bond issue.

Again, we consider that it is important to avoid misunderstanding. If investors think that they are protected by the disenfranchisement provision but find out, when the CACs are activated, that they are not, those investors could determine to sell off holdings of debt securities issued by other sovereigns perceived to be in difficulty, thereby increasing borrowing costs and accelerating the problems of those other sovereigns.

Reserved Matters

In our earlier proposals we suggested moving away from the existing market approach of retaining certain matters as requiring unanimity to approve any change. We note that this approach has been followed in the proposed CACs but we are concerned that the list of reserved matters has been shortened as compared to the market standard reserved matters definition.

Bondholder Representative

We note that this proposal has dropped the idea of a bondholder representative, but has introduced the notion of a calculation agent (a party which fulfils a different role altogether). We approve of the notion of a calculation agent as such. Nevertheless we think that there are some important related details requiring further consideration.

We note that the meeting provisions are silent as to which entity performs certain functions, such as administering the proxy appointment process, and presume that it is intended that the issuer perform those functions. In the absence of a trustee or fiscal agent, there is a question of whether the meeting provisions are transparent enough to provide comfort for investors and protection for the issuer during a consent solicitation. We also consider that it is essential that all rules relating to bondholder meetings in any one Member State should be published at the time of the first issuance with the new CACs so that they are freely available and easily accessible to investors.

We believe that the proposed CACs should fully provide for a bondholder representative in respect of relevant debt securities.

Identical Application of CACs

The various Eurogroup statements on CACs to date have highlighted the policy objective that the legal impact of CACs should be identical. Whilst being aware of the stated overall rationale, we continue to believe that this is likely to be extremely challenging in an environment where each country which is to adopt the model CACs has a different legal system and where substantive amounts of sovereign debt in any one country are governed by its domestic law. The greater the extent of any deviation from the CACs already extant in certain euro area sovereign issues, the more the scope exists for confusion and complication to arise, which we consider favours an approach closely based on ICMA's existing standard form CACs.

Acceleration and Withdrawal of Declaration of Acceleration

We believe that acceleration provisions are important protection for investors and should be included in the proposed CACs.

Transparency

We think that it is essential that each euro area sovereign issuer makes the terms and conditions of each set of bonds freely available and easily accessible, so that investors have certainty as to the nature of the bundle of rights they hold, in particular in view of the aggregation feature. We see this as a key element to ensuring the uniform application and the enforceability of the proposed CACs. We set out our further thinking on this in Section 5.4 below.

3. **Summary of Conclusions**

Whilst stressing that we believe it is important that all of the points raised in this response are carefully considered and suitably addressed, our conclusions may be summarised as follows:

- consideration should be given in each jurisdiction in the euro area as to whether the definition of debt securities should include any specific exceptions to the requirement that the CACs be applied to all euro area government debt securities with an original maturity of more than one year;

- Member States should clarify at issue which series of bonds would be aggregated and whether all or some only and on what basis (e.g. comparability of treatment, say based on NPV loss);

- "change of law" should be a reserved matter in all cases, as should any change to a provision of the bonds describing circumstances in which bonds may be declared due and payable prior to their scheduled maturity date;

- for reserved matters, voting thresholds should be based on the aggregate principal amount of bonds outstanding and not on those present or represented at the meeting;

- the threshold for the first limb of the aggregation test for reserved matters should be set at a level of 75% of the outstanding principal amount of the aggregated debt securities;

- the voting thresholds and related benchmarks required for the passing of votes at bondholder meetings should not be less onerous than those required in respect of the passing of written resolutions;

- the Partial Cross-Series Modification operates as an incentive for investors not to participate in a vote due to the risk of amendments affecting only some series of bonds and should accordingly be dropped;

- investors are concerned that, particularly in the euro area context, there are risks related to the concept of disenfranchisement, in consequence of which there is heightened concern regarding the details of other aspects of the CACs provisions (including voting thresholds);

- thought should be given to appointing a calculation agent at the time of issuance, as it may in practice prove difficult to find someone willing to act at short notice in a time of crisis. It is also important that the nature of the role is clearly specified and that investors are able to be confident in the impartiality of an agent who will be appointed, and paid for , by the issuer;

- all rules relating to bondholder meetings and the passing of written resolutions in any one Member State should be published so that they are freely available and easily accessible to investors at the time of issue and these should be the same in respect of all debt securities with CACs;

- there are functions relating to meeting mechanisms that require an entity such as a fiscal agent or trustee or bondholder representative to be appointed to perform them in order for the meeting mechanisms to operate and we are more broadly supportive of such a representative being part of the issuance structure of relevant debt securities;

- a provision allowing for the acceleration of the bonds on the direction of holders of at least 25% of the aggregate principal of the bonds outstanding and the rescission of acceleration on the direction of holders of at least 50% of the aggregate principal of the bonds outstanding should be included (and be a reserved matter);

- it is essential that each euro area sovereign issuer makes the terms and conditions of each set of debt securities freely available and easily accessible, so that investors have certainty as to the nature of the bundle of rights they hold;

- legislative changes are likely to be required in some euro area jurisdictions to ensure that the proposed CACs are uniformly applicable and enforceable as intended; and

- complementary to the adoption of the CACs, serious consideration should be given to promulgating a set of euro area fair debt restructuring principles.

4. Clause-by-Clause Response

4.1. *General Definitions (Clause 1)*

We note that the definition of "debt securities" does not include syndicated loans, or other obligations such as derivatives. Albeit that some theoretical complications may exist with respect to economically linked instruments (e.g. derivative hedges), we agree with this approach.

We note that the definition of "debt securities" also limits the application of the CACs to securities with maturity above one year, albeit that we note this is calculated by reference to original maturity. We are comfortable with this approach, even though there are some commercial arguments for why this might rather be done by reference to residual maturity.

Nevertheless we continue to recommend that each jurisdiction which will incorporate the proposed model CACs provision needs to consider carefully the securities it already has in issue and evaluate whether any of these should be exempt from the mandatory application of these CACs provisions for other reasons. If, for example, there are low denomination, domestic, retail savings products issued in the form of debt securities, there is a need to make clear if in future these will not include the new form of CACs. We recommend that the outcome of such evaluation should be made available to the market as and when made and updated as necessary.

We note that the definition of "series" does not carve out first payment dates from the requirement that subsequent tranches should be identical in all respects except for their issue date. Further tranches of debt securities will often have a different first interest payment, unless an adjustment is made to the issue price.

We are concerned that the list of reserved matters does not include any change to any provision of the bonds describing circumstances in which bonds may be declared due and payable prior to their scheduled maturity date.

In (viii) of the reserved matters list the term "pledged" is referred to. The term has different meanings in different jurisdictions as acknowledged by the Financial Collateral Directive. Under English law, for example, it has a narrow meaning and we would therefore suggest that the term "charged" is also used.

We also note that “change of law” is not to be considered a reserved matter in the case where the law initially adopted is the domestic law. We do not see any reason why such a distinction should be made and consider that seeking to do so merely gives rise to unnecessary concerns about what motivation might lie behind it. For example, it would be theoretically possible for an issuer to try to change from its own governing law to that of some other state that is less “friendly” to investors. We therefore refute the reasoning made in the Explanatory Note, considering that the selfsame argument underscores the fact that there is no need to confuse the standard CACs by insisting upon such differential treatment. The governing law is an important facet of the terms and should not be subject to change through the operation of the CACs unless the higher thresholds associated with reserved matters are duly satisfied.

We would also suggest that the list of reserved matters should include put/call prices where the debt securities include a put and/or a call option.

The definition of "holder" includes a reference to a "legal holder" of a bond. We note this can lead to some concern where in the context of global bonds the legal holder may well be the common depositary or common safekeeper. Issues also arise in respect of ownership rights for the recognised clearing systems, accountholders and so on. In a typical Eurobond issue governed by English law the meeting provisions customarily cut through these layers to the accountholders in the clearing systems but they are not customarily perceived to be the "legal holders". The definition may also raise concerns where securities have been "pledged" and the voting rights are exercisable by the pledgor.

Consideration should be given as to whether the definition of "holder" or other suitable provision should make it clear that a holder does not have to vote all its bonds in the same way in order to cater for custodians or others holding on behalf of multiple clients.

Finally, we would ask that consideration be given as to whether in the definition of "record date" it should be made clear that this is equally applicable to written resolutions as to meetings.

4.2. *Modification of Bonds (Clause 2)*

Reserved Matter Modification (Clause 2.1)

An appropriate balance needs to be struck between threshold levels acceptable to euro area sovereign issuers and to investors and other market participants, while at the same time ensuring that such provisions remain enforceable and not open to successful challenge in the courts of any Member State.

Thresholds for reserved matters at Clause 2.1 have been drafted as 66⅔% of the aggregate principal amount of the outstanding bonds represented at a quorate meeting of bondholders for a single series. The quorum requirement is set at 66⅔% of the aggregate principal amount of the outstanding bonds. Using the bonds represented at a quorate meeting as a reference for the threshold means that bondholders holding less than 45% of the aggregate principal amount of the bonds could affect a change to a reserved matter (and in case of an adjourned meeting this could fall to less than 17%).

We discussed the setting of threshold levels at length before making our own earlier proposals and concluded that setting the thresholds at the levels we recommended but with reference only to the aggregate principal amount of outstanding bonds achieved a proper balance between affording issuers a sufficient prospect of obtaining agreement to proposals from bondholders and offering sufficiently robust protection to investors from amendments to reserved matters being made by a minority in an aggregation context. We also looked to mitigate against the risk to issuers of potential legal challenges being made by a "minority" bound by a set of amendments voted through by a potentially unknown constituency (to other investors on day one) in an aggregation context. This is also consistent with the approach reflected in the existing ICMA Primary Market Handbook CACs' language.[1] A key concern for us remains to mitigate against any risks that the proposed CACs could be subject to legal challenge in a number of euro area jurisdictions where the cross-series modification feature is utilised.

We note that the Explanatory Note shows inconsistency of reasoning between the statements that (in 3. A.) "[e]ven though bondholder meetings are rarely, if ever, attended by all holders, the likely disproportionate representation at a meeting of investors opposed to a proposed modification will in practice, in the Committee's view, often make it as difficult to obtain the same nominal level of approval at a meeting of bondholders as of all outstanding bonds" and that (in 3. C.) "experience suggests that a significant percentage of the principal amount of outstanding bonds will in fact be represented at a meeting called to vote on the proposed modification of a euro area government's debt securities". As the Explanatory Note concedes in the second statement, most bondholders vote by proxy so even a "disproportionate [physical] representation" of investors opposed to a proposal should not affect the outcome of the meeting. Proposing a formulation that allows the possibility of

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1 Consideration should be given to requiring as well the consent of 50% by number of individual holders (to prevent one or two large holders driving through a solution that favours them). This could also be used when amending multiple series. The meeting provisions of corporate bonds may provide an indication of how this could work in practice. As a stylized example, say there are two bonds in a capital structure, one 1 billion issue and one 100 million issue. A large holder of the 1 billion issue could in theory buy over 50% of the small issue and then be able to push through a restructuring that is overly generous to the larger issue versus the smaller, which is a structural problem in the proposed solution. If both a majority by amount outstanding and by number of holders of each series had to approve a restructuring, some of our concerns regarding the approach to aggregation might be addressed.

changes with the consent of such low proportions of the total outstanding also significantly amplifies the significance of the concerns we describe relating to disenfranchisement.

The Explanatory Note does not set out any reasoning to explain the discrepancy between the mechanism for voting at a meeting or in respect of a written resolution. We believe the mechanics adopted for putting and passing the resolution should be neutral with respect to voting whether at a meeting or by way of written resolution; and hence the provisions concerning voting at meetings should be raised to the same standard as that proposed for written resolutions.

We are concerned by the statement in the Explanatory Note that "the Committee is of the view that the apparent indifference of the absent bondholders can fairly be understood as constituting their silent acquiescence to the proposed modification". It is just as likely that bondholders will absent themselves because, knowing that the general market sentiment is against the proposal, they do not want to waste their time and money in turning up to the meeting or appointing a third party as their proxy with the administrative requirements involved. Equally, given the often complex structures through which ultimate bondholders hold their bonds, the CACs provisions should not incentivise issuers (in the knowledge that silence is ultimately likely to lead to a proposal being accepted) not to do their utmost in their attempts to reach the ultimate bondholders during a consent solicitation.

We are also concerned that the quorum requirement for an adjourned meeting is 25% of the outstanding bonds irrespective of the type of modification to be voted on. At the levels at which the voting thresholds are currently being proposed, this could lead to very small numbers of bondholders being able to pass resolutions relating to reserved matters and the majority being bound, which would not be in line with best market practice and investors' current protections.

We agree with the threshold level proposed for written resolutions at 66⅔% of the aggregate principal amount of the bonds outstanding. The major advantage of written resolutions is that they allow a modification to be made more quickly and with greater administrative ease than would be possible using a bondholder meeting. The significance of reserved matters is such that the satisfaction of this threshold level should remain the applicable benchmark even where it is decided to obtain approval by way of a resolution passed at a bondholder meeting.

Indeed, we have given some consideration to the view that it might be simpler for all concerned to formulate these CACs provisions purely on the basis of written resolutions, albeit that this would depart from the continued market practice of reflecting the possibility to proceed through the conduct of duly convened meetings. In any event, albeit that bondholders largely "attend" meetings by voting through a third party such as a proxy, consideration should be given as to the practical complexity which may arise from the holding of meetings potentially attended by very large numbers of bondholders.

We note the reference to "Bondholders" in Clause 2.1(a) – is a distinction being drawn between these and the reference to holders?

Cross-Series Modification (Clause 2.2)

We note that the term "Cross-Series Modification" has been adopted. As you are aware, only a handful of emerging market sovereign issuers have included the aggregation concept in their debt securities and to the extent the market is aware of such concept it is familiar with the terminology of "aggregation". Hence we believe this should also be used in this case.

The thresholds for the Cross-Series Modification at Clause 2.2 are set at 66⅔% in aggregate and 50% for each series within the aggregation. We understand that the inclusion of the two limb aggregation test reflects a view that this is more legally robust than a one limb test; and are not opposed to seeing the two limb test. We are, however, concerned at the setting of the voting threshold levels and their operation by reference - other than in the case of written resolutions – to those represented at a meeting rather than by reference to principal amounts outstanding. As stated above, we discussed voting thresholds at quite some length before making our own earlier proposals and we continue to believe that aggregation should be subject to a higher overall 75% threshold set by reference to the outstanding principal amount of all aggregated debt securities – which we also feel would be more consistent with the 24-25 March 2011 Council conclusion that this clause should enable a "super majority of bondholders" to approve changes.

In the context of a two limb test for aggregation there is an accepted balance being struck in which the threshold for the second limb for aggregation (50% in this case) is lower than the applicable single series test (66⅔% in this case), whilst the threshold for the first limb for aggregation is increased (75% being our expectation in this case). This presents the issuer with a fair choice in addressing investors either on a series by series basis or through the use of aggregation, as against the consultation proposal which uses aggregation as a way of giving benefit to the issuer with no offset. This situation is not to be confused with the distinct proposal which we have previously aired in which aggregation would be based on a single limb test.

Generally, we have the same concerns in respect of the relationship between the voting thresholds and quorum for bondholder meetings and written resolutions in the Cross-Series Modification provision as in the Reserved Matter Modification provision.

The Cross-Series Modification feature, which does not feature in ICMA's published standard CACs language and has only been used by a handful of emerging market issuers, is relatively novel and prompts both increased market and legal concerns. We consider that it is important that investors receive some clarification regarding the way in which aggregation may be used, either through details in the drafting of the CACs provision or in some form of supporting guidance. For investors to form any view of the exposure they may face as a result of being bound by the decisions of others, it is essential that it has been made clear what constitutes a single series of securities (which the draft language attempts) and which other series of debt securities may be brought into aggregation. The current proposal seemingly leaves the issuer free to choose to what extent to use aggregation in place of or in combination with approvals per series. Indeed it has rejected the constraint of only applying aggregation across series "subject to the law of a single jurisdiction", which was stated in the 24-25 March 2011 Council conclusions. We consider that efficient aggregation might also encompass other splits such as maturity buckets and/or instrument types (e.g. fixed, floating, index-linked). Perhaps most importantly we anticipate that the market would expect to see cross-conditionality, such that a "yes" vote only stands if all other proposals being considered at the same time are also accepted. Absent such protection there is no incentive for an investor to subject himself to the risk of accepting changes when others may not be participating.

Leaving aggregation in the hands of and at the option of the issuer may allow for scenarios which would be unfair. For example, allowing holders of zero coupon or stripped issues to vote on a proposal to reduce interest rates. Or a sovereign could potentially strategically aggregate certain series of bonds together but not others, acting in the knowledge that such (partial) aggregation would increase the likelihood of a particular vote being passed.

More broadly we consider that providing clarity regarding aggregation intentions is just one element of what are already understood to be "fair debt restructuring principles". An existing standard form of such principles, drawn up by the IIF with ICMA support, was internationally agreed in relation to emerging markets and is reported on annually (applicable information is available at http://www.iif.com/emp/principles/.) We believe that it would be appropriate for the euro area to promulgate a similar set of principles alongside its adoption of standardised CACs and would be keen to assist in the development of these principles. We note that the 24-25 March 2011 Council conclusions included paragraphs stating that the beneficiary Member State would adhere to the principles of proportionality, transparency, fairness and cross-border coordination, when negotiating with creditors. However, there does not seem to be any reference in the ESM Treaty to those principles. We think it would be beneficial to the market if these principles were developed further. We also see that this notion of principles is closely linked to the vitally important assurance, which has already been given more than once, that any restructuring would be applied to all relevant debt securities whether or not they include CACs (in the absence of such assurance the introduction of CACs would most certainly risk bifurcating the market in a way which could compromise market access). It is very important that this assurance is made as robust as possible, as there are concerns that the treatment of holders of debt securities in which there are CACs provisions will in fact prove to be differentiated from that of holders of debt securities in which there are no such provisions. Promulgating a set of euro area fair debt restructuring principles could be a concrete way in which to mitigate these concerns.

The drafting of Clause 2.2 could also be clarified so that it is absolutely clear to investors whether in relation to an issue of debt securities there would only be one meeting to consider Reserved Matters Modification and Cross-Series Modification at the same time (if relevant and subject to comments below on Partial Cross-Series Modification) or whether two separate meetings would be convened each one in relation to each such type of modification and whether the Cross-Series Modification could lead to a meeting of all holders of the debt securities to be modified being convened. We understand the latter is not envisaged and that individual separate meetings will take place on a series by series basis.

Partial Cross-Series Modification (Clause 2.3)

This brings us to a related point of concern regarding the consultation's proposed concept of "Partial Cross-Series Modification". We consider that this is inappropriate and recommend it should be dropped. If proposals are made using the aggregation provisions and they do not achieve all the requisite approval levels, then the issuer should proceed by bringing forward new proposals, if necessary doing so on a series by series basis. Otherwise investors are being asked to vote on a basis including multiple potential outcomes, some of which are at the option of the issuer. Again this will serve to discourage investors from being subjected to outcomes potentially not shared by others. Further, amendments may be mutually dependent.

In this Clause, there is a reference to a notification being published within 10 days of the last approval required which suggests that proposed cross-series modifications may not be sought on a parallel timeline. This may cause uncertainty for investors. We would be interested in the point being clarified. In any event we believe the clause would merit from some drafting clarification. For example, how are the mechanics intended to work if a series does not approve the resolution by the 50% majority? Are the bonds in that series ignored for the purposes of deciding whether the 66⅔% majority was achieved in relation to the other series which voted and approved the amendments or are those votes taken into account?

Multiple Currencies and Zero-Coupon Obligations (Clause 2.4)

As Clause 2.4(a) is currently drafted we query whether there is sufficient clarity in respect of the applicable euro foreign exchange reference rate. Is this rate unique? Should an applicable time of day be referenced, a buy/sell rate specified, details as to when the rate is published?

Alternatively, we would suggest that a currency conversion mechanism providing only for conversion into euro restricts the operation of the CACs. At some point in the future, flexibility as to which currency to select as the base currency may be desirable. Permitting the calculation agent to select an "appropriate base currency" into which everything would be converted for voting purposes should not be controversial and potentially enhances the usefulness of the CACs. It might be considered that "appropriate base currency" should be defined as that currency in which the majority of the applicable obligations are denominated.

Whilst being broadly supportive of the direction taken by the consultation proposal with respect to zero-coupon obligations, we note that a significant proportion of government debt (in particular that of France, Italy and Spain) is strippable and there is an active market for principal-only and interest-only debt. We question whether there is sufficient detail in Clause 2.4(b) to deal with this. Similar issues would apply to deep discounts and zeros. We think that some of this could (and should) be dealt with through general principles. For example, if there is a vote to reduce the interest rates and zeros were included in the aggregation, the proposal could include an adjustment to the principal amount payable on maturity of the zero in order to ensure that the return on the zero is roughly equivalent to the return on the interest bearing securities. Alternatively, the zeros should be left out of any such aggregation. For the strips, we would expect a similar adjustment to the principal of those bonds that have been stripped (because the holder will have received the present value of the coupons on sale).

We are also concerned that a two-tier market could develop, with CACs and non-CACs strips. In deep/liquid strip markets where the volumes are sufficiently high to support two tiers, the effect would not be disastrous. However, less liquid markets could be adversely affected.

Non-Reserved Matter Modification (Clause 2.5)

Subject to the resolution of concerns regarding the split between reserved and non-reserved matters, we are of the view that non-reserved matters are of lesser concern. Lower thresholds are therefore acceptable.

Outstanding Bonds (Clause 2.6)

A typical CAC will disenfranchise the sovereign issuer itself and others, where the issuer has the power to direct the casting of votes at the meeting of bondholders. Often the provision will disenfranchise specific state owned bodies; and it will also define, by a generic test, other agencies or government instrumentalities that are to be deprived of their vote, together with a generic test as to what amounts to "control" for the purpose of determining whether the issuer can direct voting.

Essentially, therefore, this is a "top down" test that is designed to stop the issuer or those it controls from voting.

For a euro area issuer, however, the question is more complex, for the following reasons:

- the euro is both the domestic currency of the issuer and an international currency. If a failure by bondholders to agree to the proposal put to them might result in a threat to the euro, other euro area states (and their agencies) and various other European institutions will have every reason to vote in favour of the proposal;
- a number of euro area states are currently receiving funding from the Eurogroup and from the European Financial Stability Facility (the "EFSF") (which is itself funded through support given by other euro area states). The EFSF could end up holding euro area Member States' securities as the ECB is currently doing following purchases of bonds under its Securities Market Programme. If a failure to pass a proposal put to bondholders would result in other euro area Member States having to continue to bear (or even increase) their financial exposure to the issuer, those other Member States will be inclined to vote (and to encourage those they can influence to vote) in favour of the proposal;
- the euro area is an important trading partner for many non-EU states. If a rejection by bondholders of a proposal that is put to them could lead not just to a default by the issuer but, through contagion, to increased financial and political difficulties in other euro area Member States and even for the euro area as a whole, it may be in the interests of those non-EU states to vote in

favour of the proposal, rather than to risk a deterioration in their trade with the euro area; and

- the euro is an increasingly important reserve currency for a number of non-EU states. If the result of a rejection of the proposal put to bondholders might be a collapse in market confidence in the euro, and therefore in the value of the euro relative to other currencies, then those non-EU states may favour their larger economic interests over their direct interests as bondholders and vote in favour of the proposal.

It follows from these brief non-exhaustive examples that it is very difficult in the context of a euro area sovereign issue to draft the CACs so as to ensure that only "genuine" investors would be entitled to vote on any proposal put to bondholders. Despite the breadth of Clause 2.6, there will always be a risk that there will be bondholders whose interests are focused on public policy matters (rather than their direct investment) and who are, nevertheless, also not subject to the control of the issuer. Therefore the typical "top down" disenfranchisement provision that has been seen in other sovereign bonds will be less effective to protect investors in euro area sovereign bonds. In our view this is not a matter that will be resolved in the drafting of the CACs language but is a "risk factor" which will colour investors' views of the exposure which they face in consequence of the mandatory adoption of the euro area sovereign CACs language. This is significant in thinking about the correct balance to strike in fixing the language of other elements of the CACs provisions, particularly including those other points covered in the first paragraph of the Executive Summary. In particular, this point argues strongly in favour of higher voting thresholds for both reserved and non-reserved matters, on the basis that the higher the threshold is the more this will allay private investors' concerns regarding these risks.

To the extent Clause 2.6(c) remains we would suggest the insertion of "(A)" following the wording "the Bond is held by", the insertion of "(B)" prior to "a corporation, trust or other legal entity controlled by the Issuer..." and the insertion of "referred to in (B)" in line 4 prior to the wording "the holder of the Bond does not have autonomy of decision ...". It is worth noting that a ministry is a legal entity under English law.

Consideration should also be given to issues arising from certain current innovations in the market which could make the determination of the exact amount of any bond outstanding more challenging. For example, a number of euro area sovereign issuers have recently introduced a new procedure for stripping and reconstituting fixed-rate bonds, an innovation being made in line with efforts to modernise the strips segment and improve the liquidity of the debt markets. The new procedure will introduce a "fungible zero-coupon certificate", a single certificate with no distinction between principal and interest. When a fixed-rate bond is stripped, it will be divided into a set of these new certificates, with the same face value but different maturities calibrated on the cash flows from the original bond. All same-maturity certificates will be fungible with each other. It will then be possible to reconstitute either the original fixed-rate bond, or a synthetic bond composed of certificates from different fixed-rate issues. As a consequence a fixed-rate bond may have at a given moment a larger outstanding amount than the amount issued by the issuer. The determination of the number of voting rights to be distributed to investors will require a system to enable the precise calculation of the aggregated principal amount of fixed-rate bonds outstanding. We note the Committee is considering related issues further in the context of the Zero-Coupon and Index-Linked Obligations also.

Entities Having Autonomy of Decision

We would suggest a longer cut-off than no less than five days should be required. We are concerned by the reference to the list being "non-exhaustive" and suggest there should be an obligation on the issuer to make all due internal enquiries in a timely manner to enable such information to be as complete as possible as well as an obligation to continue to update as further information is available.

Exchange and Conversion

There is no commentary in the Explanatory Note as to the Committee's thinking in respect of this provision and we would welcome this. We would be concerned if the sequencing of any proposed amendments and any mandatory exchange was such that it undermined investors' rights or confidence in the operation of the proposed CACs.

Such a mandatory exchange or conversion of the bonds suggests a redemption and replacement of bonds. If this were the intention query whether the definition of "modification" is sufficiently wide to include such redemption and replacement. Modification is not the same as replacement nor should this necessarily be at the option of the issuer.

4.3. *Calculation Agent – (Clause 3)*

The proposed CACs provisions have introduced the notion of a calculation agent. We approve of the notion of a calculation agent, although we have recently discussed the term “coordination agent” – in order better to convey that the role needs to extend across series of debt securities included in an aggregation (and to avoid any confusion with a role which may in some cases already exist e.g. in respect of the calculation of certain payment amounts). Nevertheless we think that there are some important related details requiring further consideration. In particular, thought should be given to procuring the appointment of such a party at the time of the debt issuance, as it may in practice prove difficult to find someone willing to act at short notice in a time of crisis. It is also important that the nature of the role is clearly specified and that investors are able to be confident in the impartiality of an agent to be appointed, and paid for, by the issuer (assuming this is the intention). We believe the role of calculation agent needs to be undertaken with impartiality in view of the significance of the role and the fact that the calculation agent can make decisions binding on bondholders and can rely on certificate issued by the issuer. The CACs should provide that the issuer will appoint a professional party which customarily undertakes such activities commercially in the capital markets and is independent of the issuer. If such a party is not to be appointed on issue consideration needs to be given to a complaints procedure if investors object to the party appointed in such capacity by the issuer at the time of the consent solicitation.

Separately, further consideration needs to be given to the need for another party to be to act for investors (bondholder representative/trustee or at the very least a fiscal agent or similar).

4.4. Bondholder Meetings; Written Resolutions – (Clause 4)

The 24-25 March 2011 Council conclusions stated that "Appropriate representation will be put in place."

We think that it is essential that additional rules adopted by each sovereign issuer relating to bondholder meetings, as contemplated by Clause 4.1, are published so that they are freely available and easily accessible to investors at the time of issuance.

We note that meetings of bondholders may be convened by the issuer at any time and that the issuer will be obliged to convene a meeting if an event of default has occurred and is continuing and is requested by holders of not less than 10% of the aggregate principal amount of the bonds then outstanding. However, should an issuer in default choose not to comply with its obligations, bondholders will be in a worse position than is currently the case in the international capital markets, where, in syndicated international issues at least, a third party trustee or fiscal agent will be obliged to convene such a meeting. The clause states that any action taken by the issuer may be taken by its agent. This should be broadened to require a fiscal agent or trustee or bondholder representative, as the case may be, to take action if the issuer fails to do so. We understand that this will result in more substantive changes in respect of domestic issues but believe it is important to have a bondholder representative when the proposed mandatory euro area sovereign debt CACs are introduced.

We note that the period for convening a meeting has been shortened compared to the ICMA model CACs widely used in the Eurobond sovereign debt market, from a minimum of 30 days to 21 days, and query whether this may reduce participation from beneficial holders holding bonds through a series of intermediaries. Given the practicalities of holding structures we consider it is important that adequate time is provided to allow for the proper completion of communication through to the beneficial holders (and back again). Also, in Clause 4.3(c) we would suggest that five days should be extended to at least five business days. Some registrars may in reality need a little longer.

In Clause 4.3(d) will the form necessary be "enclosed" if the Notice is published on a website or in a gazette?

It is not clear who will administer the mechanics for the meeting so that there is transparency for investors. In a debt issuance where there is a trustee, a fiscal agent or a bondholder representative, investors have the comfort of a third party administering the meeting. The CACs are silent on this but seem to contemplate that the issuer will fulfil many of the functions usually undertaken by such a third party.

Given the absence of a trustee, fiscal agent or other bondholder representative, we are not convinced that these mechanics are sufficiently certain or transparent to prevent challenge from bondholders. If there is no trustee, fiscal agent or bondholder representative acting under the type of market recognised contractual documentation which is customary in the international capital markets, it will be necessary to provide that there is a party responsible for performing all the relevant steps relating to the convening of meetings of bondholders including compliance with applicable voting procedures at meetings and compliance with the procedural steps related to the passing of a written resolution. These would include, for example:

- receiving requests for voting certificates from bondholders and providing a voting certificate to bondholders wishing to attend a meeting in person;
- collecting votes from bondholders wishing to instruct a proxy to vote on an extraordinary resolution without attending a meeting and either attending the meeting or appointing a proxy to attend to cast a block voting instruction;
- collecting confirmations from bondholders that notes in respect of which a bondholder wishes to vote have been blocked in the relevant clearing systems and notifying the issuer that such notes have been blocked;
- signing a written resolution on behalf of bondholders if instructed to do so by bondholders;
- convening a meeting or putting a written resolution to bondholders on behalf of holders of a specified percentage of notes; and
- receiving confirmation from the issuer of the aggregate amount of notes outstanding at the time of a vote.

Thought will therefore need to be given at national level (if not across the Eurogroup) as to model meeting provisions or guidelines terms of reference or similar so that investors are subject to equal treatment, especially in the context of aggregation. Inevitably this will have implications for domestic issuances which, to date, may have had limited terms and conditions.

We would also suggest that Clause 4.7 on written resolutions should refer to a record date.

In Clause 4.10 there is no reference to block voting instructions which are very commonly used in the euro markets.

4.5. Publication – (Clause 5)

We suggest that there should be a specific requirement to publish notices through clearing systems where the instruments are traded through a clearing system.

5. Other Comments

5.1. *Identical effect of the CACs*

A common theme throughout the statements made by the Eurogroup has been that the introduction of CACs should be standard across the euro area.

The Statement by the Eurogroup on 28 November 2010 stated that "standardized and identical collective action clauses (CACs) will be included, in such a way as to preserve market liquidity, in the terms and conditions of all new euro area government bonds starting in June 2013".

The Conclusions of the European Council of 24-25 March 2011 state that the CACs should be such that their "legal impact is identical in all euro area jurisdictions".

Article 12(3) of the ESM Treaty states that "[c]ollective action clauses shall be included in all new euro area government securities, with maturity above one year, from July 2013, in a standardised manner which ensures that their legal impact is identical".

We are conscious that most CACs which are regularly used in the international capital markets are based upon those common in the terms and conditions of bonds governed by English law or New York law. There is substantial jurisprudence in both of those jurisdictions that underpins the functioning of CACs. In the case of the exercise being proposed, we continue to believe that each euro area Member State will need to analyse its own jurisprudence and determine what legislative changes, if any, are required to ensure the enforceability of the CACs, as proposed, in its own jurisdiction. If the jurisprudence of other jurisdictions is applied to the CACs, the CACs are very unlikely to have identical effect in each jurisdiction. We believe in this context that the lower the thresholds for voting (especially as they have been set by reference to those present at the meeting rather than principal amounts outstanding and in view of the introduction of the aggregation feature) the higher the risk that the utilisation and/or the enforceability of the CACs may be open to challenge by "minority" holders (which based on this CACs proposal may constitute a significant arithmetic majority of the outstanding principal).

We undertook preliminary legal analysis in the UK and seven euro area legal jurisdictions in respect of our own earlier draft CACs proposals and our thinking reflects the outcome of these preliminary findings. Some doubts were raised in respect of the aggregation elements in the draft ICMA form of revised CACs, and the proposals presented in this consultation include lower thresholds. A key element in all such analyses was that bondholders should have full disclosure of their rights and obligations on entering into the arrangements (especially in respect of the aggregation feature and its operation).

We understand that all euro area Member States have agreed to take all action necessary to implement the standardised CACs, and we would ask that further details are made available on the various initiatives. We would expect a substantial number of Member States to pass legislation in view of the aggregation feature. It will be important for investors to be made aware of such measures and of their scope and application. Without the commitment across all euro area Member States to giving effect to the CACs uniformly, the entire endeavour could be significantly undermined.

5.2. *Acceleration*

An important part of ICMA's existing CACs for the Terms and Conditions of Sovereign Notes as set out in the ICMA Primary Market Handbook are the provisions relating to a Declaration of Acceleration and a Withdrawal of Declaration of Acceleration.

The former specifies that if an event of default occurs and is continuing then the holders of at least 25% in aggregate principal amount of the outstanding bonds may, by notice in writing to the issuer (with a copy to the fiscal agent), declare all the bonds to be immediately due and payable.

The latter specifies that if the issuer receives notice in writing from holders of at least 50% in aggregate principal amount of the outstanding bonds to the effect that the relevant event of default has been cured and that such holders wish the relevant declaration to be withdrawn, the issuer shall, give notice to the bondholders (with a copy to the fiscal agent), whereupon the declaration shall be withdrawn.

We believe that these are important protections for investors and should be included in the proposed CACs provisions. We note the helpful reference to events of default in Clause 4.2(b), and we would urge that further acceleration and rescission of acceleration language be included as well as the related references in the definition of the reserved matter.

5.3. *Adoption of CACs in domestic law governed issues of treasury securities*

Domestic issues of treasury securities (local law governed, locally settled and cleared), whether distributed through an international syndicate of underwriters or via primary dealers in an auction, typically include much lighter terms and conditions when compared with international bonds issued by the same sovereigns. As domestic treasury securities typically do not have as full a set of terms as international bonds issued by the same sovereigns, the introduction of CACs into new issues of domestic treasury securities will, we expect, focus the minds of investors on the lack of readily available detailed terms. In addition, some of the details of the CACs will need to fit in with other terms which are not readily discernible in respect of domestic treasury securities, for example, events of default. We expect this to drive further developments in the market in order to create a level playing field across euro area government bond issues. We consider that euro area Member States will need to give this further thought.

5.4. *Transparency*

ICMA recognises that although EU sovereign issuers frequently do not produce the same form of offering disclosure as corporate debt issuers because EU sovereigns are exempt from the requirements of the EU Prospectus Directive, the decision to exempt them was made on the grounds that there is already more than adequate public disclosure material available relating to EU sovereigns. For example, there is already a significant volume of relevant published financial data available through national websites, at EU level on harmonised basis through Eurostat, and at international level through the IMF.

But there is very little information readily available in a consolidated form in respect of the legal terms relating to bonds (contractual or legislative). As the Greek sovereign debt crisis unfolded it became apparent that many investors were not aware of the fact that most Greek sovereign bonds were governed by Greek law; and did not have access to their contractual or legislative conditions.

Transparency has always been one of the fundamental pillars of the international capital markets. As part of our Sovereign Bond Consultation Paper of November 2010, we conducted a survey of our members about the contractual terms of sovereign issues, covering both auctioned and syndicated issuance under domestic law and foreign law. The feedback from respondents to the survey indicated that there is strong support from ICMA members for the terms and conditions of all sovereign issues to be made readily available, including an English language version for all euro area sovereign issues, as they are all effectively sold to investors across national borders. The main concerns were the following:

- information presented by DMOs on the full legal terms and conditions of their respective sovereign bonds is variable and in some cases incomplete;
- details relating to auctioned issues are generally harder to find than those applicable to syndicated issues; and information that is available is not always easy to find;
- presentation formats vary greatly across both issue types and issuers;
- not all information on issues sold to investors across national borders is available in English; and
- in some cases, statutes under domestic law form part of the contractual terms of an issue of debt securities and are not readily available to investors or fully referenced.

ICMA seeks to promote the achievement of a consistent, high quality standard of transparency in respect of the full legal terms and conditions applicable to all sovereign bond issues. Such transparency is considered important in and of itself but is also intimately linked to ICMA's concern that the enforceable enactment of the proposed CACs provisions requires clear disclosure of the applicable terms. The risk is that without such disclosure investors may contest the enforceability of CACs containing aggregation provisions which bind a potentially very substantial "minority" pursuant to terms which were not sufficiently detailed, transparent and freely available at the outset.

We believe that the need for transparency and disclosure is driven by both legal and practical considerations. Holders of debt instruments have a bundle of rights evidenced in that debt instrument, so transparency and disclosure affects the proper construction of the terms of those rights. ICMA strongly believes that it is essential that holders have full and ready access to all of the terms of the relevant debt instrument so that there is certainty as to the nature of the rights held, which would facilitate an orderly process if a consent solicitation were required with respect to a debt instrument.

To enhance transparency, ICMA has proposed that:

- sovereign issuers should make all applicable information readily available through the websites of their DMOs (or their equivalent), reflecting all applicable legal provisions, and covering all issues, whether foreign law or domestic law governed and whether auctioned or syndicated. The terms should be available in English or in an English translation, in the case of all issues sold across national borders (as all euro area issues are);

- sovereign issuers should make their information available in as consistent a format as possible. To achieve consistency across issuers, there would be value in establishing some form of “template” for the presentation of the applicable details, which could either carry, or link into, the full terms and conditions. ICMA has developed a working draft of a “template” as a basis for discussion; and
- to facilitate access to such information, ICMA would itself be willing to host on its website a page of applicable links; and would encourage others, such as the EU Sovereign Debt Markets Group, to do likewise.

5.5. *Implementation*

We note that the cover letter accompanying this consultation from the Chairman of the EFC Sub-Committee on the EU Sovereign Debt Markets states that it is expected that the CACs will be adopted by the euro area Member States before the end of this year. We would be grateful for clarification as to whether this signifies that issuances from 2012 across all euro area Member States will include such provisions, or whether until July 2013 none, or some euro area Member States only, may voluntarily choose to implement them prior to such date.