European Banking Authority

By email

20 March 2014

Dear Sir,

EBA/CP/2013/48 "Draft guidelines on disclosure of encumbered and unencumbered assets"

I am writing to give you the Financial Reporting Council's views on some aspects of this consultation paper. Whilst we recognise that the paper has been prepared in response to a recommendation of the European Systemic Risk Board and that there are tensions between the objectives of the transparency and stability, we have significant concerns about the conflicts that the guidelines could create.[1].

The FRC is the UK's independent regulator responsible for promoting high quality corporate governance and reporting to foster investment. In our Corporate Reporting Review work we are responsible for ensuring that the provision of financial information by public and large private companies complies with relevant reporting requirements.

Our primary concern relates to Section 4, Title I, paragraph 4 of the CP[2] which provides that "in public disclosures, assets and matching liabilities encumbered to central banks via emergency liquidity assistance shall be reported as unencumbered", thereby expressly prohibiting banks from providing disclosures that are likely to be relevant to investors' understanding of the financial position of the business.

We understand that these disclosures are intended to be public and that the guidelines would have legal force. This could give rise to a conflict between the guidelines and, the EU's IAS Regulation which requires banks to comply with international accounting standards. These make clear that the nature and extent of risks arising from the financial instruments the banks hold or are exposed to should be disclosed.

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 the accounting requirements and for the professionals who prepare financial statements. Accountants, including auditors, are required under ethical codes to act with integrity and to

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[1] Recommendations of the European Systemic Risk Board of 20 December 2012 on funding credit institutions, ESRB/2012/2, recommendation D

[2] CP Section 4, Title I, paragraph 4 which states that "Institutions should not disclose the following information: assets in insurance activities that back liabilities to policyholders; the amount of emergency liquidity assistance (ELA) provided by central banks, which means that in public disclosures assets and matching liabilities encumbered to central banks via ELA shall be reported as unencumbered, such that the sum of encumbered assets corresponds to the institutions' total assets on balance sheet: collateral swaps with central banks."

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disassociate themselves from reports which they believe contain false or misleading information. Requiring them to prepare accounts, or give unqualified audit opinions on accounts, that report encumbered assets as unencumbered would be contrary to their responsibilities.

For these reasons we think it is important that a fresh look is taken at the key issues of substance arising in relation to disclosures in the financial services sector, and that a better coordinated discussion is arranged between banking regulators and those with responsibilities for securities and reporting legislation.

Yours sincerely

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