Warsaw, 19/12/2015

Position paper of the Polish Mortgage Credit Foundation to the European Commission's Consultation Document "COVERED BONDS IN THE EUROPEAN UNION"

QUESTIONS – COVERED BOND MARKETS: ECONOMIC ANALYSIS

1. *In your opinion, did pricing conditions in European covered bond markets converge and diverge before and after 2007, respectively? If so, what where the key drivers of this convergence/divergence? Please, provide evidence to support your view.*

Until 2007 the pricing conditions of covered bonds (further: CBs) exhibited a high level of convergence, after the outbreak of the financial crisis, investors became more risk-sensitive, while the prices of CBs began to better reflect the country risk of the issuer.

In Polish case, after the outbreak of the crisis, additional pricing problems occurred due to the low number of investors and a shortage of money in the market.

2. *Was pricing divergence an evidence of fragmentation between covered bonds from different Member States? Do you agree with the reasons for market fragmentation described in section 2.1 of Part I? Were there any other reasons?*

CBs' pricing divergence was due to investors' doubts regarding the economic potential of some European countries. More risk-sensitive investors were not willing to invest in instruments from these countries, regardless of their nature and structure. It seems that neither the existence of a single European covered bond, nor the introduction of minimum standards for CB Framework would affect this situation, as the CBs will always be associated with the macroeconomic fundamentals of the economy (in particular the relation to the national real estate market).

3. *In your view, is there any evidence of pricing differentiation/fragmentation between covered bond issuers on the basis of size and systemic importance, as well as their geographical location?*

To some extent, the size of the market is important for investors. They may not be interested in analyzing the risk of a small market with limited number of issuers and rare issues. On the other hand, given the fact that investors are interested in private-placement issues – it seems that even smaller issuances, tailored to the needs of the investor - can enjoy success on the CB market. The experience of the Polish market indicate that the pricing conditions on a given market are influenced not only by the number of issuers, but also a number of investors active in this market.

It seems that more important is the history of the national market - as exemplified by Germany and Denmark, as well as the geographical location of the issuer (some investors generally reject the possibility of investing in instruments originating in certain countries) and systemic

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importance of CBs on the local market (due the possibility of getting support from the government and central bank).

4. *Is there an appropriate alignment in the regulatory treatment between covered bonds and other collateralised instruments? If there is a misalignment, could you illustrate what differences in regulatory treatment you deem as inappropriate and why?*

The preferential treatment of CBs (in comparison to other secured instruments) is justified due to the special requirements, which are applied to every CBs' issuance, including: using only high quality assets as a cover pool, special requirements regarding valuation of assets, cover pool monitor and special supervision, transparency requirements and privileges for CB investors in the event of bankruptcy of the issuer.

5. *Are operational costs for covered bond issuance lower than for other collateralised instruments? Can you quantify the respective costs, even if only approximately?*

The operational costs of any single CB issue are relatively low, but significant costs must incur in connection with the necessity of on-going regulatory requirements, which determine the quality of the instrument.

The operational costs related to securitization are higher (compared to CB) due to: (i) the need to carry out due diligence of the portfolio, (ii) the costs of the SPV, (iii) the high costs of developing legal documentation.

6. *Are there significant legal or practical obstacles to:*
   a) *cross-border investment in covered bond markets within the Union and in third countries?; and*
   b) *issuance of covered bonds on the back of multi-jurisdictional cover pools?*

a) Withholding tax, used in some jurisdictions, may be considered as an obstacle to cross-border investment in covered bond markets.

b) The obstacles to cross-border CB issuances (according to PL system) include: (i) the inability to back the issuance by the foreign cover pool, the need to secure a loan on a property located in Poland; (ii) questions of interpretation of national law as to the possibility of dematerialization of domestic CBs abroad, ie. whether the instrument dematerialized abroad is still subject to national law, or becomes subject to the law of the place conducting deposit (CSDR shall dispel these doubts since 2017); (iii) problems with the use of CBs for repo purposes (inability to use for the repo transactions instruments denominated in foreign currency, the inability to use instruments which shall be revalued/ recalculated in the course of repo transaction), (iv) questions of national law, whether it is possible to issue Polish covered bonds on the basis of foreign structures (eg. Polish mortgage bond emitted in the form of New Global Note in Luxembourg).

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QUESTIONS – LEGAL FRAMEWORK AND INTEGRATION

1. *Would a more integrated "EU covered bond framework" based on sound principles and best market practices be able to deliver the benefits suggested in section 2 of Part II? Are there any advantages or disadvantages to this initiative other than those described in section 2 of Part II?*

A more integrated "EU covered bond framework" could deliver benefits to the market, although it is not clear whether it's possible to achieve all the advantages highlighted by the Commission in the consultation paper (p. 15 - 16). In our opinion, sound principles and best market practices won't influence the existing barriers on national CB markets. Given the fact that hitherto existing national CB markets have been functioning efficiently, the introduction of a common framework for the CB must be carried out carefully, keeping in mind the need to maintain a high quality of CBs, so as not to aggravate the already existing national standards.

2. *In your view, are market-led initiatives such as the "Covered Bond Label" sufficient to better integrate covered bond markets? Should they be complemented with legislative measures at Union or Member State level?*

No - market initiatives, although useful, do not contribute to increasing integration of the CB sector, because they can not be imposed on market members that do not participate in these initiatives. Moreover, it is doubtful whether self-regulation of CB market participants may become the basis for granting CBs a preferential regulatory treatment.

3. *Should the Commission pursue a policy of further legal/regulatory convergence in relation to covered bonds as a means to enhance standards and promote market integration? If so, which of the options suggested in section 3 of Part II should the Commission follow to that end and why?*

It must be emphasized that the scope of the envisaged framework/ regulation, which will be the result of the consultation process, should determine the choice of appropriate methods / options of further CB markets' harmonization.

We can consider regulating the market through a directive based on minimum harmonization, which would apply only to key elements of the CB market, i.e.: eligible assets, special supervision, investor protection, segregation of assets in the event of bankruptcy, determining the law applicable in case of cross-border issues and most of all: key definitions and the terms used (eg. LTV).

It seems that the solution in the form of a 29th regime shall not entail the desired effect - countries with developed CB markets are not expected to apply to such a regime, whereas the peripheral CB markets would become even more fragmentized; moreover, doubt arises whether the 29th regime would be able to cover all the specificities of national markets.

4. *Specifically, if the Commission were to issue a recommendation to Member States as suggested in section 3 of Part II would you consider that sufficient or should it be*

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complemented by other measures (both legislative and non-legislative)? (see question 8 below)

Non-legislative measures are not advised in his context (see also point 2 above).

5. *On the suggested list of high level elements for an EU covered bond framework:*
   a) *is the list sufficiently comprehensive or should it include any other items?*
   b) *should the Commission seek to develop all the elements or a subset of them?*
   c) *if only a subset, should the Commission give priority to the target areas identified by the EBA Report: (i) special public supervision of cover pools and issuers; (ii) characteristics of the cover pool; and (iii) transparency?*

The proposed list of issues that should be considered in the new Framework is sufficient. As key components of the CB market, we consider: the criteria for the selection of eligible assets, special supervision, investor protection + transparency requirements, segregation of assets in the event of bankruptcy, priority for investors in the CB.

6. *What are your views on the merits described under section 3 of Part II of using different legal instruments to develop an EU covered bond framework? In particular, would it be desirable to harmonise through a directive some of the legal features of covered bonds and requirements applicable to them under Member States' laws? If it were proposed, how could a 29th Regime on covered bonds be designed to provide an attractive alternative to existing national laws?*

The harmonization through a directive – see the answer to Q. 3.

As mentioned above, the harmonization by establishing a 29th regime (complementary to existing national legislation) is not optimal.

7. How should an EU covered bond framework deal with legacy transactions?

Legacy transactions should benefit from the preferential treatment - instruments in accordance with 52 (4) UCITS Directive should retain preferential treatment for 15 years from the entry into force of the new CB Framework.

8. Would you view a combination of recommendations to Member States (Option 1) and targeted harmonisation of certain minimum standards (Option 2) as desirable and sufficiently flexible? If so, what should be the subject of each option?

The harmonization through a directive – see the answer to Q. 3.

QUESTION – COVERED BOND DEFINITION

1. *What are your views on the proposals set out in section 1 of Part III for a "new legal definition" of covered bonds to replace Article 52(4) of the UCITS Directive?*

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The new European framework for covered bonds should provide a revised definition of CB, replacing the existing regulation of the UCITS Directive.

It is important to bear in mind that the term "regulated covered bond" must be used/considered very carefully in order not to cause the impression that only "European CB" is an regulated instrument, and "national CBs" - are not.

As for the second criterion mentioned in Section 1 Part III of the document - ie. the introduction of a system of CB certification - such action would be difficult to implement in practice, especially if this would mean the need for certification and registration of every single CB issue. The idea behind the new Framework should not be to certify each single CB issue, we should rather develop a national list of instruments which comply with the Framework.

Regarding CBs issued by third countries - because of the problems with performing a full economic and legal analysis of those instruments - they should not benefit from the same preferential treatment as covered bonds issued in the EU.

QUESTIONS – ISSUER MODELS AND LICENSING REQUIREMENTS. ROLES OF SPVs

1. *Should the current licensing system be simplified to require a "one-off" authorisation only for all covered bond issuers based on common high level standards? What specific prudential requirements (that is, in addition to those in CRR and CRD) could be applied as a condition for granting a covered bond issuer license?*

It is not advisable to open the possibility of issuing CB to every credit institution (as defined in CRR). Detailed conditions of licensing system should be regulated by national laws.

2. *If the covered bond issuer is subject to a one-off covered bond-specific licence, what would be the additional benefits of requiring that each covered bond programme be subject to prior authorisation as well? Alternatively, would pre or post notification to the competent authority of the programme and of each issue within or amendment to the programme suffice? How should "covered bond programme" be defined for these purposes?*

Detailed conditions of licensing system should be regulated by national laws.

3. *Should the Framework explicitly allow the use of SPVs to ring-fence cover pools of assets backing issues of covered bonds? What specific requirements should apply to these SPVs?*

This issue should be regulated by national laws.

The use of SPV should be allowed in those countries where national legislator considers SPV to be a useful tool for the ring-fencing. An adequate degree of SPV's independence should be ensured, so that in the event of bankruptcy of the issuer, the SPV is not absorbed by the issuing bank.

4. *Regarding the use of pooled covered bonds structures and SPVs:*
   a) *would it be desirable for an EU covered Bond Framework to allow the use of these structures and why? What legal structures are used in your jurisdiction to pool assets from different lenders or issuers?*

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b) *which approach would be the most suitable for pooling assets across borders?*

c) *where the issuer of pooled covered bonds is an SPV, should this issuer be regulated as a credit institution or as some other form of legal entity?*

a) SPV is a good mechanism to collect the assets of several banks in order to create a larger cover pool, which subsequently will be transferred to the issuing bank.

In Poland, the pooling of assets is based on a true-sale model (receivables are purchased from other banks), so there is no need to create SPV.

b) It does not seem possible to achieve cross-border harmonization through the pooling of assets.

c) SPV must be subject to the same level of obligations / regulations, as the credit institution within the meaning of the CRR (it's especially important in case of resolution).

QUESTIONS – ON-GOING SUPERVISION AND MONITORING OF COVER POOLS (PRE-INSOLVENCY)

1. *In your view, would it be desirable for an EU covered bond Framework to set common duties and powers on competent authorities for the supervision of covered bond programmes and issuers? What specific duties and powers should be included in the Framework and/or EBA or ESMA Guidelines?*

Continuous supervision over the CB issuer is crucial for an instrument of this type. The set of common duties and powers, which should be reflected in the Framework/ EBA or ESMA Guidelines, should include: cover pool supervision, the issue of eligibility of the underlying assets, property valuation and calculation of coverage. In addition, regular reports to and controls of the supervisor should also be required. We also advise a separation of the functions of cover pool monitor and the supervisory authorities.

2. *What are your views on the proposals set out in subsection 2.2 of Part III on the appointment of and legal regime for cover pool monitors?*

We support EBA's recommendation. Developing a more detailed recommendations is difficult, given the fact that the functioning of the cover pool monitor is subject to the national CB regulations.

QUESTION – COVERED BONDS AND THE SSM

Should the ECB have specific supervisory powers, and if so which ones, in relation to covered bond issuance of credit institutions falling within the scope of the SSM?

As the CB system is embedded in the national regulations – the supervision over the CB market should also be regulated on a national level (also in relation to institutions under the SSM).

QUESTION – DUAL RECOURSE PRINCIPLE

Do you agree with the proposed formulation for "dual recourse"?

The principle of dual recourse is crucial for the new CB Framework.

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QUESTIONS – SEGREGATION OF THE COVER ASSETS

1. *Are there any advantages to using an SPV as an additional segregation mechanism at issuance? Are cover assets typically transferred to the SPV at issuance via legal or equitable assignment?*

See answer to Q III.B.3.

2. In your jurisdiction, what legal and practical steps are required in order to segregate effectively the cover assets from the issuer's insolvent estate or in resolution? Would it be necessary to serve a notification to each borrower of the issuer? Until notification is served, what is the legal status of any proceeds of the cover assets which may be paid directly into the insolvent estate or to the issuer in resolution?

The detailed procedure, regulating the mortgage bank's insolvency has been described in Article 442-450 of the Polish Bankruptcy and Reorganization Law (in force Since 01/01/2016).

It assumes, among other things: the creation of separate bankruptcy pool, addressing the claims of CBs holders; the bankruptcy proceedings are conducted under the supervision of the court, with the participation of the curator representing the interests of CB holders; an extension of 12 months (since the date of bankruptcy) of the maturity of mortgage bank's liabilities against CB holders, performing a coverage balance test and a liquidity test (the first to check if the liabilities included in the CB register are sufficient to fully cover the claims of CB holders, the second – to check if those liabilities are sufficient to satisfy the investors if the CBs' maturity is extended).

QUESTIONS – LEGAL FORM AND SUPERVISION OF THE COVER POOL

1. *Should the cover pool be incorporated as a regulated entity? In that case, what type?*

No, it should only be ensured that cover pool assets can be used only for covering the claims of CB investors.

2. *Who should be the supervisory authority for these purposes, the competent authority or the resolution authority?*

Not applicable.

QUESTIONS – SPECIAL ADMINISTRATOR OF THE COVER POOL

1. *What are your views on the proposals set out in subsection 3.3 of Part III on the appointment and legal regime for a cover pool special administrator?*

Technical details of managing an insolvency estate after issuer's default should be regulated in national laws. It is sufficient to regulate in national law the powers of cover pool monitor and in the event of bankruptcy – of a curator and of an insolvency administrator.

2. *Should the special administrator be obliged to report regularly to the relevant supervisory authority? Should the content and regulatory of such reporting be the same as for the issuer?*

The national supervisory authority should be constantly involved in post-insolvency proceedings. The technical details of this supervision should be regulated in national law.

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QUESTIONS – RANKING OF COVER POOL LIABILITIES

1. *Do you agree with the suggested ranking for cover pool liabilities? Is the wording proposed in subsection 3.3 of Part III sufficient to define clearly the claims that may arise, avoid confusion between claims and prevent claims in an unreasonable amount from arising?*

In Poland: the costs of liquidation are covered first, the other costs – pari- passu.

2. *Is it possible to define hedging activity better and, if so, how?*

This issue should be regulated in national laws. The position of derivative counterparty against other CB holders (also in the event of insolvency) should be made clear.

QUESTIONS – INTERACTION BETWEEN COVER POOL AND ISSUER IN INSOLVENCY/RESOLUTION

1. *Are current provisions in EU law sufficient to deliver effective protection for bondholders in a resolution scenario involving covered bonds? In particular, is it sufficiently clear:*
   a) *how the cover pool would be segregated under each possible resolution or recovery scenario of the issuer?*
   b) *how the full recourse against the issuer would take effect if the issuer is in resolution and is not placed subsequently into liquidation?*
   c) *what procedural steps should be followed in resolution and by whom in order to make effective the dual recourse mechanism?*

a) Currently the EU regulations do not specify how to achieve the protection of CB investors. Article 52(4) UCITS Directive requires only that the asset segregation should be achieved, but doesn't specify how this should be done.

b) EU law currently does not regulate this issue. These regulations should be of principles-based only, because more precise solutions at the EU level would not provide any added value for the sector.

Basically, the regulations should exclude CB acceleration in the event of bankruptcy of the issuer; moreover - both CB and underlying assets should be excluded from the bankruptcy proceedings.

The new Framework should clarify the issue of CB's timely payment - if the assets in the cover pool will prove to be insufficient or not enough liquid - there should be detailed procedures addressing this issue (bankruptcy procedures, pass-through structures, etc.).

It also needs to be clarified, whether the operating procedures of the bank / issuer in the event of bankruptcy CB ensure timely service should be regulated by general law or by issuance documentation.

c) A separation between the general insolvency regime and procedures for the CB portfolio needs to be made(the latter should be given priority).

2. *Should the Framework provide for a cut-off mechanism as suggested in subsection 3.4 of Part III? In particular, should such a cut-off mechanism:*

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a) *preclude the closure of insolvency or resolution before possible residual claims from the covered bondholders against the issuer or the insolvent estate have been identified and quantified?*

b) *set out clear and objective requirements on the valuation of the cover pool and the timing for such valuation?*

c) *extinguish the residual claim on the estate or the successor credit institutions after sufficient assets have been segregated for the benefit of covered bondholders at the outset of the resolution or insolvency proceedings?*

d) *give specific powers and duties to the resolution authority and, if so, what should those consist in?*

a) Yes, the Framework should preclude the closure of insolvency or resolution before possible residual claims.

b) Valuation of cover pool assets should be regulated in national laws, taking into account the new BRRD requirements.

c) No – extinguishing the residual claim against CB should be excluded.

d) No – the resolution authority shouldn't deal with the CBs or the cover pool.

QUESTIONS – RESIDENTIAL AND COMMERCIAL LOANS

1. *Do you agree with the proposed definitions for "residential" and commercial loans" as cover assets? Should certain riskier residential or commercial loans (ie. buy-to-let mortgages; second home loans; loans to real estate developers; etc.) be excluded from the cover pool or permitted subject to stricter criteria?*

We accept those definitions – as a rule they should be coherent with the definitions of residential/ commercial property provided by Article 124-126 CRR. We don't support the exclusion of certain types of loans secured on property from the cover pool (buy-to-let, loans to developers – even though there are some restrictions with regard to these in Poland).

2. *In relation to mortgage loans:*

   a) *what are your views on the proposed requirements on "perfection of security" and "first ranking mortgage"? Is registration of the security a requirement for perfection in your jurisdiction?*

We accept the proposed requirements.

   b) *is the enforceability of mortgages in the different Member States equivalent or should there be additional requirements to ensure their equivalence?*

The level of enforceability of mortgages is different in different Member States – introducing minimum standards in mortgage enforcement procedures would be difficult in practice.

   c) *are minimum standards for mortgage rights in third countries necessary?*

Not relevant.

3. *In relation to LTVs:*

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a) *what are your views on the proposals set out in subsection 4.1 of Part III on minimum LTVs?*

First of all, it must be defined, which value of a property will be taken into consideration whi8le calculating LTVs – we recommend using Mortgage Lending Value (MLV).

Then, it should be clarified if LTV limit is considered as a funding limit or a lending limit – we support the first option (funding limit). At the same time, we don't support the introduction of LTV limits determining whether a loan is cover poll eligible. In particular, we should refrain from regulation, according to which a loan with LTV>100% would have to be removed from cover pool – that would weaken the effectiveness of mortgage security, esp. in the event of bankruptcy.

b) *in the case of insured properties, should higher LTV limits be allowed if the insurance cover meets certain requirements and, if so, what should such requirements be? In what other cases should higher LTV limits be allowed? Could loan-to-income requirements be used to replace or complement LTV limits?*

No, insurances should have no influence on LTV limits.

c) *should there be an additional average LTV eligibility limit at portfolio level?*

No, additional LTV limits are not recommended.

d) *with the advent of a Binding Technical Standard defining Mortgage Lending Value, is it appropriate to apply this for eligibility in all cover pools across the Union as a prudent measurement?*

We will express our opinion after the publication of Binding Technical Standard.

e) *should LTV limits be used to determine: eligibility (loan in/out) of loans at inception? Eligibility (loan in/out) of loans on an ongoing basis? Should they instead be used to simply determine contribution to coverage? A combination of the above?*

It is not recommended to introduce LTV limits determining loan eligibility – in particular, we should refrain from regulation, according to which a loan with LTV>100% would have to be removed from the cover pool, as it would destabilize the cover pool. For safety reasons, we suggest imposing a limit of LTV at inception, amounting to 100% (this solution is used in Poland).

4. *In relation to the valuation of cover assets:*

a) *how frequently should the value be updated and in which way (revaluation, update of the initial valuation, and in which way)?*

Valuation requirements should be coherent with article 208 CRR. The market value of a property should be monitored on a frequent basis – at least once a year for commercial properties and once every 3 years for residential properties. More frequent monitoring should be carried out if significant changes in conditions were observed on the market: monitoring can be carried out with use of statistical methods.

When it comes to MLV – given the fact that MLV is by definition a long-term stable value, which standards are set out at the legislative level – there is no need to perform updates of MLV.

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b) *what criteria should be applied to (i) the valuer and (ii) the valuation process to ensure that they meet the transparency and independence principles set out in the first and second subparagraphs of Article 229(1) CRR?*

The qualified valuer:

I. should possess appropriate knowledge and qualifications in estimating the value of the property (e.g. RICS/ Tegova);

II. should pass the examination confirming the above qualifications;

III. has not been punished for a crime against property/ documents/ business/ trading in money and securities/ tax offense.

Moreover, the independence of the valuer needs to be guaranteed – the valuer cannot be involved in granting of loans or in the creditability assessment process.

5. *Should the Framework adopt the definition of "non-peforming exposures" as set out in the EBA's draft Implementing Technical Standards on Supervisory Reporting on Forbearance and Non-performing Exposures8?*

NPLs should be defined as loans with payments in arrears for more than 90 days.

6. *In light of the EBA's prudential concerns in relation to the use of RMBSs and/or CMBSs in cover pools, should the Framework exclude these assets completely from qualifying as cover assets (including, for these purposes, as substitution assets) or should they be allowed only subject to strict criteria and within the 10% limit currently permitted under Article 129 of the CRR? What is the added value and practical uses of RMBS/CMBS as collateral in your jurisdiction/issuer?*

It should not be allowed to use RMBS/ CMBS in the cover pool, otherwise the pool will be contaminated with assets which – in investors'' assessment – create risk different to instruments traditionally included in CB cover pools.

QUESTIONS – PUBLIC SECTOR LOANS

1. *What are your views on the proposals for public sector loans as cover assets set out in subsection 4.1 of Part III?*

Issues related to public sector finance shouldn't be harmonized on EU level.

2. *What eligibility requirements in terms of validity and enforceability should apply to the guarantee granted by the relevant public sector entity?*

First of all, there's a need to clarify the definition of „public sector entity".

QUESTIONS – OTHER ASSET CLASSES: AIRCRAFT, SHIP AND SME LOANS

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1. *Should the Framework exclude aircraft, ship and SME loans from cover pools or should they be allowed only subject to strict criteria and limits? If so, what criteria and limits should be applied?*

Ship/ aircraft loans should be allowed to be included into separate cover pool. SME loans should be excluded from cover pool.

2. In relation to SME loans, is it possible to identify a category of "prime" SME loans as a potential eligible asset class for cover pools?

No, SME loans should be excluded from cover pool.

QUESTIONS – MIXED POOLS AND LIMITS ON EXPOSURES

1. Do you agree that mixed-asset cover pools should be allowed?

It should be allowed to mix assets within the range of one basset class (e.g. mortgage secured commercial loans with mortgage secured residential loans). Accepted number of classes should be limited (assets secured by mortgage/ public sector/ ships/ aircraft).

2. What are your views on the proposed limits on specific assets and concentration of exposures? Should any other limits or requirements apply?

We don't recommend the introduction of limits, however the scope of each class should be precisely defined.

QUESTIONS – COVERAGE REQUIREMENT

1. *Which option should be preferred for the Framework to formulate the coverage requirement and why?*
   a) *a general requirement along the lines of Article 52(4) of the UCITS Directive, amended to include the wording suggested by the EBA;*
   b) *a nominal coverage;*
   c) *a net-present value coverage;*
   d) *a net-present value coverage under stress; or*
   e) *any other or a combination of the some or all of the above.*

The framework for the European CB should include specific guidelines for coverage and over-collateralisation. The calculation of coverage should be based on nominal value of underlying assets.

2. *If the coverage requirement were formulated as net-present value coverage under stress, should the stress tests be specified in any form in the Framework or ESMA/EBA regulatory guidelines? If so, what specific stress tests should be required and why?*

Any technical details regarding stress tests should remain a matter for national supervisors. Both the real estate markets and the markets of CB are too diverse to apply a harmonized EU approach to technical standards.

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3. *Should derivatives entered into in relation to the cover pool be taken into account for the purpose of determining the coverage requirement? If so, what valuation metric should be used for these purposes?*

Derivatives should be included in the calculation.

4. *What exposures to credit institutions within the pool should be taken into account to determine the coverage requirement and why?*

Exposures to central banks and / or swap counterparties.

QUESTIONS – OVERCOLLATERALISATION

1. *Should a quantitative mandatory minimum OC level be set in the Framework? If so, what should that level be and should it be the same for all types of covered bonds?*

We might consider introducing a uniform OC requirement at European level, provided the harmonization of methodologies for calculating the OC. Unified value of the index should be moderate (we suggest single-digit value) and the national regulator would have the option to raise the requirement.

2. *If a mandatory minimum OC level were set in the Framework, should there be exceptions to the requirement? (for example where the issuer applies a precise "match funding model" or where certain targeted liquidity and market risk mitigation measures are used – see subsection 4.3 of Part III)*

No, any exceptions to the OC level would apply only to the use of the increased requirement for OC, established by the national supervisor.

3. *Should the Framework set a maximum level of permitted OC? If so, when and at what level?*

No, at European level only the minimum requirement of OC should be considered. Fixing a maximum OC level should be left in the hands of national supervision.

4. *Should the Framework provide for the treatment of voluntary OC in the event of insolvency/resolution of the issuer?*

Any assets that are the part of the cover pool must be designed to meet the claims of investors in CB. Only any surplus of funds should be included in the total bankruptcy mass of the issuer. This means in practice that the 'voluntary' OC should be protected / segregated.

QUESTIONS – MARKET AND LIQUIDITY RISKS

1. *In your view, are OC levels adequate to mitigate market and liquidity risks in the absence of targeted measures such as those described in subsection 4.3 of Part III?*

OC may be one of the methods to cover the abovementioned risks.

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2. *Should the Framework lay down specific requirements on the use of derivatives as suggested in subsection 4,3 of Part III? How should "eligible counterparties" be defined for the purposes of entering into permitted derivatives?*

The Framework for the European CB should clearly indicate that it is permissible to include the derivatives into the cover pool, while retaining the current limits of Article 129 CRR on credit quality of the derivative counterparty. It should also clarify what will happen with the derivative contract in the event of bankruptcy of the issuer - in particular, it must be ensured that derivative counterparty was not a member of the same banking group as the issuer.

3. *What are your views on the potential provisions on the management of cashflow mismatches suggested in subsection 4.3 of Part III? In particular:*
   a) *for issuers, do cashflow mismatches between cover assets and covered bonds arise in your jurisdiction and/or transactions, and, if so, in which way? Are you able to describe a scenario for the timely repayment of the covered bonds? Do you plan for contingencies? Are such scenarios and contingencies disclosed to investors?*
   b) *for investors, do you understand how such cashflow mismatches would be dealt with in practice? Would it be beneficial from your perspective to get systematic information about cashflow mismatches and how these would be managed?*

Polish regulations: The bank's income from interest on its mortgage-secured receivables, may not be lower than the amount of the bank's payable interest on outstanding CBs.

When bank functions without problems, cashflow mismatch risk should be minimized through the use of liquidity buffers. In the event of bankruptcy of the issuer, in order to provide support payments, the use a soft-bullet structures / pass trough should be considered.

4. *On the EBA's liquidity buffer recommendation:*
   a) *should covered bond issuers hold a "liquidity buffer" to mitigate liquidity risk in the cover pool and, if so, in what circumstances?*
   b) *should the buffer be calibrated to cover the cumulative net out-flows of the covered bond programme over a certain time frame? What length of time should be used as a time frame for calibration purposes?*
   c) *what eligibility criteria should liquid/substitution assets meet to qualify for the purposes of this buffer?*

a) Yes.

b) Yes, 6M.

c) LCR – eligible.

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QUESTIONS – TRANSPARENCY REQUIREMENTS

1. *What are your views on the current disclosure requirements set out in Article 129(7) of the CRR? If more detailed requirements were preferred, do you agree that issuers should disclose data on the credit, market and liquidity risk characteristics to a more granular level? If so, what data and to what level of granularity?*

We give positive assessment to the disclosure requirements set out in Article 129(7) CRR.

2. *Should issuers disclose information on the counterparties involved in a covered bond programme and, if so, what type of information?*

No, due to the requirements of banking secrecy.

3. *How frequently should covered bond issuers be required to make disclosures to investors?*

Every 6 months, in line with Article 129 (7) CRR.

4. *What are your views on the existing and prospective investor reporting templates prepared by industry bodies and referred to in section 5 of Part III? Would these templates:*
   a) *be granular enough to enable investors to carry out a comprehensive risk analysis as recommended by the EBA? and*
   b) *be sufficient without further legislative backing to deliver enhanced and consistent disclosure in European covered bond markets?*

We consider investor reporting templates prepared by industry bodies to be enough granular and sufficient.

5. *Should detailed disclosure requirements apply to all European covered bonds or only to those that would fall within the scope of the Prospectus regime?*

Disclosure requirements should apply to all European covered bonds.

6. *Should the same level of disclosure standards apply pre- and post-insolvency/resolution of the issuer (except for those reporting items referring to the issuer itself)?*

Yes, the same level of disclosure standards should be applied pre- and post-insolvency.

7. *In relation to covered bonds issued in third countries, what minimum level of disclosure should apply for European credit institutions investing in those instruments to benefit from preferential risk weights?*

CBs issued in third countries should not benefit from preferential risk weights.

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Warsaw, 19/12/2015

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