



# Unencumbered Assets EFMLG “Collateral” Working Group - Report



**BNP PARIBAS**  
CORPORATE & INVESTMENT BANKING

The bank for a changing world

48<sup>th</sup> Meeting of the EFMLG – Frankfurt - 24 June, 2014

# I. ICMA Working Draft Paper

## □ Presentation in February 2014 : ICMA Working Draft Paper on “New regulation and collateral fluidity”

- Following ICMA's previous paper “Avoiding Counterproductive Regulation in Capital markets : A Reality Check”
- Presents BCBS/IOSCO joint Working group proposals on Margining requirements for non-centrally cleared derivatives
- Goal: pointing out overlaps/conflicts/inconsistencies within the new financial regulatory framework and their consequences on, among other topics, **capital fluidity**

## □ Why is collateral fluidity an issue ?

- Increase of capital needs driven by Basel III liquidity buffers
- Regulatory forces exerting downward pressure on the supply of acceptable collateral
- In other words : **Supply goes down while Demand goes up.**

## □ “Unencumbered Assets” (UA) definition

- Encumbered assets no longer meet liquidity buffers or margin requirements thus reducing the supply of High Quality Liquid Assets.
- Need to identify UA to determine what can/can't be qualified as “**acceptable collateral**”



## II. Defining Unencumbered Assets

### Overview of existing Unencumbered Assets definitions

Regulatory source	Definition
<b>EU DEFINITION</b> Directive 2009/111/EC Article 1 §40 (c)(16) Amendments to Directive 2006/48/EC	« Credit institutions shall distinguish between pledged and unencumbered assets that are <b>available at all times</b> »
<b>BCBS DEFINITION</b> <i>Principles for Sound Liquidity Risk Management and Supervision</i>	« A bank should have the ability to calculate all of its collateral positions, including assets currently pledged relative to the amount of security required and <b>unencumbered assets available to be pledged.</b> »
<b>FINMA DEFINITION (Swiss Financial Market Supervisory Authority)</b> Paper on data collection for the LCR for Basel III implementation	« <b>Free of legal, regulatory, contractual or other restrictions on the ability of the bank to liquidate, sell, transfer, or assign the asset</b> ”



### III. Where to from there ?

#### How can the EFMLG support ICMA's initiative ?

❑ Common criteria between the definitions : **the availability of the asset**

- MUST NOT be **pledged in any way** to secure, collateralize, or credit-enhance any transaction
- MUST NOT be designated to **cover operational costs** (such as rents and salaries)
- Consistent with ICMA of **asset encumbrance** “**all assets pledged that cannot be freely withdrawn**”

❑ Hints for discussion to “flesh out” the definition of UA:

- The question of « **legal title transfer** » as a criteria for unencumbrance ?
- **Repo and stock-loan transactions** : accounting treatment misleading
- **Example** : assets the bank received as collateral in reverse repo and securities financing transactions can be considered as part of the stock if they are held at the bank, have not been rehypothecated, and are legally and contractually available for the bank's use.

