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## Minutes

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| <b>Minutes of the meeting of the REGULATED COVERED BONDS FORUM</b>  |
| <b>Held on 1 May 2013 - 15:00</b>   |
| <b>At FCA office, 25 The North Colonnade</b>  |
| <b>Present:</b>   |
| Carlos Molinas (CM) - FCA, Capital Markets<br>Stephanie Tetu (ST) - FCA, Capital Markets<br>John Wu (JW) - FCA, Capital Markets<br>Zuzana Rybarova (ZR) - FCA, Capital Markets<br>Gwendoline Choy (GC) – FCA, General Counsel<br>Barry King (BK) – FCA, OTC Derivatives and Post Trade Policy<br>Kasia Abendan (KA) – FCA, OTC Derivatives and Post Trade Policy<br><br>Ed Lidington (EL) - Banking and Credit, HM Treasury<br>Charles Gundy (CG) - Bank of England<br>James Kotomitis (JKo) - AFME<br>Luca Bertalot (LB) - ECBC<br>Annika Wahlberg (AW) - ICMA<br>Helen Roberts (HR) - NAPF<br><br>Chris Fielding (CF) - Executive Director, UK RCBC<br>Natalia Yakushev (NY) – The Royal Bank of Scotland<br>Graham Stanford (GS1) – The Royal bank of Scotland<br>Jared Zakrzewski (JZ) - Santander<br>Kayleigh Pender (KP) - Santander<br>Seena Patel (SP) - Clydesdale Bank<br>Tom Grant (TG) - Clydesdale Bank<br>Nicolas Walsh (NW) - Treasury, Leeds Building Society<br>Ruth Mawson (RM) - Treasury, Leeds Building Society<br>Gary Staines (GS2) - Head of Mortgage Backed Funding, Lloyds Banking Group)<br>Jon Katovsky (JKa) - Head of Secured Funding, The Co-operative Bank plc<br>Maria Klidona (MK) - Director, Capital Issuance and Securitisation, Barclays)<br>Mark Stubleby (MS) - Senior Funding, HSBC<br>Rob Collins (RC) – Head of Funding, Nationwide Building Society<br>Daren Murray (DM) - Head of Wholesale Funding, Yorkshire Building Society) |
| <b>Apologies:</b>   |
| Jane Lowe (IMA)<br>Andrew Turvey (Head of Liquidity Planning, Coventry Building Society)  |

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**Action**

1. **Welcome**

ST welcomed the attendees and introduced the agenda items.

2. **Market development**

Prior to the meeting GS2 had agreed to provide issuers with the market development update. He summarised that there is a general lack of issuance in the market (one year since last issuance) and a mismatch in supply/demand dynamics. In the past there was a lack of appetite from the issuers' side, now issuers are not willing to issue.

CG mentioned the short-dated SME covered bond issued by Commerzbank and asked if issuers knew of any planned SME-related issuances. RC confirmed that he was not aware of any.

**PRA/FCA in relation to RCB**

3.

JW provided an update on the RCB supervision operation model following rollout of legal cut-over ("LCO"). He summarised that while issuers prudential supervision fell under the PRA, the supervision of their RCB programme was the responsibility of the Markets Division within the FCA.

JW emphasised that a governance structure for supervising the RCB regime is in place and in cases of disagreement between the FCA and PRA there is a clear chain for escalating issues to internal governance committees such as the Executive Committee within the FCA and the Financial Policy Committee.

JW also updated on the supervisory work of the RCB team with its main piece being the periodic reviews of issuers. It was noted that the team will endeavour to arrange for a PRA representative to be present at the reviews, where possible.

ST noted that there was no change to the interaction between issuers and the RCB team in the new structure. The co-ordination and sharing of information are supported by the creation of memoranda of understanding between the FCA and PRA, and operating manuals for specialist areas to ensure that all issues are dealt with in timely manner. Notwithstanding this, issuers are expected to send directly to the RCB team any information relevant to the issuer's ability to fulfil its obligations under the RCB regime and not assume that the PRA would forward the information onto us. The information we would expect to receive includes any key changes to systems and controls, lines of defence, governance of the firm & management structure, as well as

any specific information related to RCB programmes.

4. **Loan Level Data provisions**

ST spoke about the requirement in the RCB sourcebook to publish loan level data in the form set out in RCB 3 Annex 7AD from the moment of new issuance. It was noted that the team had been made aware by one issuer of certain concerns in relation to the disclosure of certain fields of the template.

ST clarified that the fields of the form were to be completed on a 'comply or explain' basis and that it was issuers' responsibility to decide whether to disclose all data in full or provide an explanation if they considered there was a justifiable reason why they should not comply in full.

If issuers have strong concerns over disclosing data contemplated by certain fields in full, we expect that they disclose the next best available information (this could be a proxy, or information expressed as a range/next level up in terms of granularity) and provide an explanation for doing this. The team strongly encouraged issuers to consider this point and ensure themselves that they either 'comply or explain'.

CF asked whether investors found loan level data useful. ST reported that while some investors may analyse the data at a high level due to staff constraints, others have said they were actively 'crunching' the data before deciding to invest.

AW reported the CBIC welcomed loan level data but noted that investors' concern was to be able to compare "like with like" and limited loan level data was available in many other jurisdictions.

**Update on EMIR**

5.

KA and BK from the OTC Derivatives and Post Trade Policy team provided an update on the EMIR legislation. The discussion started around reporting requirements and how to avoid dual reporting of the same transaction leg, e.g. by the buy-side counterparty and a broker. BK confirmed that the legal responsibility for reporting lies with the counterparty entering into the OTC transaction, but such counterparty could delegate the reporting to be done on its behalf to another entity. JZ enquired about the sanctions for failing the EMIR reporting requirement. BK confirmed that these are set by HMT and consist of censures and fines.

The discussion then moved on to the clearing obligations and margin requirements in relation to covered bonds. One participant referred to a 'safe harbour' for RCBs under EMIR, however the OTC Derivatives and Post Trade

Policy team confirmed that there was no such clear 'safe harbour' available to RCBs. Another participant indicated the possibility of differentiated treatment for RCBs under EMIR and highlighted the provision under the EMIR Regulations of a recital for ESMA to conduct further work in this area in the form of binding technical standards.

It was noted that ESMA is yet to consider the specific nature of OTC derivative contracts which are concluded with covered bond arrangements when setting the clearing obligation, and the protection against counterparty risk provided by such arrangements when setting the bilateral margin requirements for non-cleared contracts under EMIR.

Notwithstanding the above, the OTC Derivatives and Post Trade Policy team clarified that more stringent reporting and operational risk management requirements (e.g. more frequent portfolio reconciliations and trade confirmations) would still apply if covered bond LLPs exceed the clearing threshold set out in EMIR technical standards, the calculation of which is based on the non-hedging derivatives activity of non-financial entities within the consolidated group.

Following the meeting, the RCB team confirmed to participants via e-mail that with respect to the clearing obligation, the EMIR legislation (recital 16) currently contemplates that ESMA should take into account the specific nature of OTC derivative contracts which are concluded with covered bond issuers or with cover pools for covered bonds. With respect to the margin requirement, recital 24 of the legislation contemplates that ESMA should also take into account the fact that preferential claims given to covered bond issuers counterparties on the covered bond issuer's assets provides equivalent protection against counterparty credit risk. The RCB team also strongly encouraged participants to engage with ESMA on this issue, and subsequently pointed them to ESMA's discussion paper on OTC Derivatives published on 12 July 2013.

Lastly, participants discussed the reference point in time from which the timely confirmation deadline applied in relation to swap confirmations in covered bond programmes. The issue raised by one participant was that it would be practically very challenging to meet the confirmation deadline of T+2 if "T" is meant to be the pricing date of the swap; the reason being that swap confirmations in covered bond programmes are not finalised and enforceable before the closing date of the trade. MK added that only something highly unexpected occurring between pricing and closing date would impede the trade. KA and BK pointed out that under EMIR, the timely confirmation deadline is counted from the reference point in time when the transaction is executed.

6. **AOB**

ST noted the feedback received from annual reviews in relation to the RCBC

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Asset Capability Model used by issuers in their stress testing. The team was notified by some issuers that they had to amend their version of the model to better reflect the risk profile of their programme. Some issuers also mentioned that additional flexible functionalities in the model would be helpful. Based on this constructive feedback, the team noted that it may be an appropriate time for issuers to convene via the RCBC and co-ordinate efforts in refining the model.

ST also noted some confusion over the source of the model observed in their review of e.g. governance committees and senior management information packs. The team clarified that the model was owned by the RCBC and did not come from, nor was it approved by, the FSA/FCA. If changes are made, the RCB team wishes to be notified but the ownership of the model lies with issuers via the RCBC. It is therefore their responsibility to ensure that the model remains fit for purpose.

AW noted of the public hearing on asset encumbrance taking place at the EBA on the following day.

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