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## **Response to Discussion Paper DP 08/3: Transparency as a Regulatory Tool**

Dear Ms. Raffé

The International Capital Market Association (**ICMA**) is pleased to respond to the FSA Discussion Paper DP 08/3: Transparency as a Regulatory Tool (the DP).

ICMA is the self-regulatory organisation and trade association representing constituents and practitioners in the international capital markets, with a pan-European focus. ICMA's members are located in 46 countries across the globe, including all the world's main financial centres, and currently number some 400 firms in total.

We welcome the opportunity to engage in discussion with the FSA on the use of transparency as a regulatory tool. We also welcome the concept underlying the draft Code of Practice on Regulatory Transparency (Code) – i.e. that a Code can inform, in a consistent and principled manner, the way in which the FSA will consider using transparency as a regulatory tool. However, we have concerns about not only the Statement of Intent but also the Principles that make up the Code. More fundamentally, we have serious reservations about the way in which the Code is applied to various examples as set out in Chapter 6 and the possible implications for wholesale participants and markets.

### **Concerns regarding the Code**

Taken as a whole, we note that the draft seems considerably removed from not only the FSA's statutory objectives but also some of the principles of good regulation set out in section 2(3) of FSMA.<sup>1</sup> Of particular concern is the focus on "the public interest" especially when the FSA is tasked with the objective of protecting "consumers" as defined in s. 138 of FSMA. Disclosure of information may be in "the public interest" but may not serve the market well. For example, disclosure of information about a failing institution may be of interest to the public but may be damaging to the market. In particular, we note that principle 2, which sets out what is meant by "harm" to the public interest does not include risks to market confidence.

The Code, as it is applied to some of the examples in Chapter 6, seems almost to "override" the FSA's statutory objectives. For example, the proposal to publish complaints data does not appear to take s. 5(2) of FSMA into account – which requires the FSA to have regard to (a) differing degrees of risk involved in different kinds of investment or other transaction and (b) differing degrees of experience and

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<sup>1</sup> For example, Principle 3 mentions economy, efficiency and effectiveness, but proportionality, innovation and competitiveness are missing.