

Mr. David Cook  
Financial Services Authority  
25 The North Colonnade  
Canary Wharf

June 26, 2009

Dear Mr. Cook,

**Re: DP09/2: A regulatory response to the global banking crisis**

The International Capital Market Association (ICMA) is the self-regulatory organisation and trade association representing financial institutions active in the international capital markets. ICMA's members are located in 46 countries, including the world's main financial centres, and current membership is almost 400 firms. ICMA's market conventions and standards have been the pillars of the international debt market for over 40 years, providing the self regulatory framework of rules governing market practice which have facilitated the orderly functioning and growth of the market. ICMA actively promotes the efficiency and cost effectiveness of the capital markets by bringing together market participants including regulatory authorities and governments. See: [www.icmagroup.org](http://www.icmagroup.org).

With respect to the international architecture discussion in Chapter 9 of the DP, we wish to draw the FSA's attention to the comment letter we submitted to the European Commission on 7 April (<https://www.icmagroup.org/ICMAGroup/files/22/224dca57-9ba2-48fc-8e45-b2392a9a449e.pdf>). This responds to the consultation of interested parties launched by the Commission on 10 March, in respect of financial market supervision. It expresses ICMA's stance on relevant points from both the report of the high-level group on financial supervision in the EU chaired by Jacques de Larosière, of 25 February 2009, and the Commission's Communication of 4 March 2009, "Driving European Recovery". ICMA also intends to comment in response to the further consultation of interested parties launched by the Commission on 27 May, in respect of Financial Supervision in Europe. The ICMA views that will be expressed will in some cases restate and otherwise build upon those referenced above.

ICMA is also pleased to respond to Question 32 of the DP. Our response focuses on transparency for corporate bonds.

With respect to the market regulation section in Chapter 10, we welcome the FSA taking this opportunity to assess whether an enhancement to transparency in non-equity markets will (1) rebuild market confidence; (2) better protect investors in future; and (3) contribute to economic recovery. We agree that there is a very real risk that enhanced transparency could result in a further withdrawal of liquidity.

We agree with the statement “[e]nhanced transparency could contribute towards rebuilding confidence in a number of markets” and feel that it could also improve liquidity, facilitate better valuation and improve market integrity. We note that the remaining discussion in paragraphs 10.55 – 10.56 focuses solely on *post-trade transparency*. We question this sole focus. Trade transparency is just one of many regulatory tools that may help to restore confidence and improve liquidity. Greater issuer transparency, better access for investors across Europe to issuer information, and better issuance standardisation could also play a valuable role.

ICMA feel that industry needs to do more to investigate the relationship between well designed trading transparency on the one hand and liquidity, valuation and market confidence and integrity on the other. In particular, there needs to be a better understanding of the information needs of the buy-side and sell-side in order for them to effectively participate in the market. Therefore, ICMA is building a representative industry working group whose remit is to look at transparency, liquidity and related issues in the corporate bond market. The group will also look at CDS as necessary for a proper assessment of the corporate bond market. The group’s aim will be to see if the buy- and sell-sides can agree a market-led initiative to get the market working more efficiently. The buy-side members of the group will also be asked whether they can clearly articulate the different requirements and difficulties of retail vs. institutional asset managers, since we feel that too little focus has been devoted to this issue. We would be very happy to discuss our proposals with the FSA and will keep you informed of progress.

The DP sets out a number of factors to be taken into account in developing a framework. We agree that these are all important factors that should play a large role in the design of a framework. We also suggest that a further factor to be taken into account in developing a framework for corporate bonds is trade size. It is worth emphasizing that the average size of a bond trade tends to be substantially greater than that of an equity trade. Bond trade sizes between €1m and €2m are normal while trades in excess of €50m are common. Prior to the crisis, trades in excess of €100m were not infrequent. By contrast, European legislation defines the typical retail trade in equities as €7,500. Moreover, the data analysis sent to you previously shows that only 3,000 of the top bonds (by volume) traded at least once a day on average. Of the top 100 bonds by volume traded the highest trade count bond traded 10,000 times in the year whilst others traded only 6 times in the year. This contrasts significantly to liquidity levels in the equity market. Accordingly, information about larger bond trades should be permitted to be published on a delayed basis; the framework operating in a similar way to the delay framework allowed under the MiFID framework for larger equity trades.

Another factor to consider is the amount of data that market participants already provide to regulatory authorities across Europe, in the form of transaction reports. For any trade transparency framework to be successful, we would strongly argue that the data needs to be consolidated across Europe for it to be meaningful to market participants. Data from existing transaction reporting systems can be used but output should be modified so that

regulators publish aggregate information in line with the transparency framework which is suitable for the purposes specified. We also note that if regulatory transaction reports do not currently meet regulators' needs there should be a distinct effort to fix that issue.

We also agree that a transparency framework should differentiate between retail and wholesale investors. Particular emphasis should be given to enhancing transparency for retail investors. Wholesale market participants, on the other hand, already have access to significant quantities of trade transparency, including pricing data to assist with valuations.

A final factor to consider is the interplay between investor demands for greater trade transparency and FSA rules requiring asset managers (especially small fund managers) to mark daily valuations on fixed income products. As we have mentioned to you in the past, there are a number of reasons why the price of the last trade may not be a good indication of the value of a product (size of the trade, time lapse since the last trade etc.) and accordingly, we would strongly caution against introducing trade transparency to meet this specific concern. It is perhaps worth noting that FSA rules regarding daily valuations are stricter than those in other jurisdictions, such as Luxembourg. These rules exacerbate the problems faced by the buy-side and may be the reason why buy-side firms (and smaller firms in particular) are driven to call for greater trade transparency.

Finally, we note that the DP does not set out a case for how enhanced post-trade transparency could rebuild confidence. The FSA also seems to have already *decided* to impose an enhanced trade transparency regime i.e. it has decided on regulatory intervention despite having failed to clearly articulate the market failures and risks that it is seeking to address (contrary to the last sentence of DP paragraph 10.50). The principles of good regulation require first an identification of the market failures and/or the risks so that any framework (if such were to be considered necessary given existing trade transparency services) is properly tailored to address those failures and/or risks. We call upon the FSA to use the feedback statement to set out its thinking in this regard.

We welcome the FSA's continued commitment to work with the industry. We feel that industry can positively contribute by working closely with the FSA and CESR to achieve an effective result in this area.

If there is any way that we can be of assistance, please let us know.

Warm regards,



Lalitha Colaco-Henry  
Legal Advisor - Regulatory Policy