1 October 2020

ICMA RESPONSE TO FCA CONSULTATION PAPER CP20/3 ON PROPOSALS TO ENHANCE CLIMATE-RELATED DISCLOSURES BY LISTED ISSUERS AND CLARIFICATION OF EXISTING DISCLOSURE OBLIGATIONS

The following response was submitted to the FCA's consultation paper CP20/3 on proposals to enhance climate-related disclosures by listed issuers and clarification of existing disclosure obligations on behalf of the ICMA Legal & Documentation Committee using the FCA's online response form.

Introduction

ICMA is a not-for-profit membership association, with offices in Zurich, London, Paris and Hong Kong, that serves the needs of its wide range of member firms in global capital markets. As of March 2020, ICMA has around 600 members in 62 countries. Among its members are private and public sector issuers, banks and securities houses, asset managers and other investors, capital market infrastructure providers, central banks, law firms and others. Through its committees, ICMA brings together members from all sectors of the wholesale and retail debt securities markets to inform its work on regulatory and market practice issues, which impact all aspects of international market functioning. ICMA prioritises four core fixed income market areas – primary; secondary; repo and collateral; and green, social and sustainable.

This response is submitted on behalf of the ICMA Legal & Documentation Committee, which gathers the heads and senior members of the legal and transaction management teams of ICMA member banks active in lead-managing syndicated bond issues in Europe.

Given ICMA's focus on fixed income markets, we are responding only to Question 19 of the consultation paper, which asks whether we agree with the guidance provided in the draft Technical Note set out in Appendix 2 to the consultation paper, and whether there are any changes we would suggest.

Response

As a general comment, disclosures in relation to ESG matters, including climate change, are the subject of ever increasing focus from both authorities and market participants and so the FCA's draft Technical Note serves as a useful reminder of the contexts in which such disclosure could be relevant.

One aspect that the FCA may wish to consider is expanding its discussion of the need to consider disclosure of climate-related and ESG-related risks in prospectuses by highlighting that such risks will be material to an investment in non-equity securities if they affect the ability of the issuer/guarantor to fulfil their obligations under the securities (i.e. to pay interest and repay the principal amount).

This would reflect the central concern of investors in non-equity securities, which is the credit of the issuer/guarantor (i.e. will they get their money back at maturity and be paid interest in the meantime). Note that this is different to the concerns of investors in equity securities, which relate among other things to whether their investment will grow over time.

This is reflected in Article 6 of the Prospectus Regulation, which recognises that the "necessary information" to be disclosed in a prospectus may vary depending on, among other things, the type of securities. It is also reflected in the detailed prospectus disclosure requirements set out in the annexes to Commission Delegated Regulation (EU) 2019/980. For non-equity securities, the issuer is required to disclose "a description of [risks] ***that may affect the issuer's ability to fulfil its obligations under the securities***…". This qualifier does not appear in the equivalent equity risk factor requirements.

As such, the FCA may wish to consider referencing the distinction between disclosure requirements for equity and non-equity securities in its Technical Note and the fact that the interpretation of "material" could differ depending on the type of the security. In a non-equity context, climate and other ESG-related risks will be "material" (and therefore should be disclosed) if they may affect the issuer's or guarantor's ability to fulfil its obligations under the securities, as reflected in the Prospectus Regulation regime.

The FCA may wish to consider highlighting these points in: (a) the third paragraph of the introductory section, which notes that climate and other ESG-related risks may be "financially material" to many issuers; and (b) the section related to Article 6 of the Prospectus Regulation, which notes that information on climate change or other ESG-related matters may be material in certain circumstances.