

Marta Alonso  
UKLA Department, Financial Conduct Authority  
25 The North Colonnade  
Canary Wharf  
London E14 5HS

(Submitted by email to [primarymarketbulletin@fca.org.uk](mailto:primarymarketbulletin@fca.org.uk))

8 June 2016

Dear Ms Alonso

**Financial Conduct Authority (FCA) Primary Market Bulletin No. 14<sup>1</sup> - UKLA/TN/634.1 - Financial information on guarantors in debt prospectuses and requests for omission<sup>2</sup>**

The International Capital Market Association (ICMA) welcomes the opportunity to engage with the FCA in relation to the above and sets out its remarks in the Annex to this letter.

Representing a broad range of capital market interests including banks, asset managers, exchanges, central banks, law firms and other professional advisers, ICMA's market conventions and standards have been the pillars of the international debt market for almost 50 years. See: [www.icmagroup.org](http://www.icmagroup.org).

ICMA is responding in relation to its primary market constituency that lead-manages syndicated, vanilla debt securities issues throughout Europe on behalf of corporate borrowers. This constituency deliberates principally through ICMA's Primary Market Practices Committee<sup>3</sup>, which gathers the heads and senior members of the syndicate desks of 48 ICMA member banks, and ICMA's Legal and Documentation Committee<sup>4</sup>, which gathers the heads and senior members of the legal transaction management teams of 21 ICMA member banks, in each case active in lead-managing syndicated debt securities issues in Europe.

Please do not hesitate to contact me if you wish to discuss our remarks.

Yours sincerely,

A handwritten signature in black ink that reads "C. Bellamy".

**Charlotte Bellamy**

Director - Primary Markets

[Charlotte.Bellamy@icmagroup.org](mailto:Charlotte.Bellamy@icmagroup.org)

+44 20 7213 0340

---

<sup>1</sup> <https://www.fca.org.uk/static/documents/ukla/primary-market-bulletin-14.pdf>

<sup>2</sup> <http://www.fca.org.uk/static/documents/ukla/knowledge-base/tn-634-1-consultation.pdf>

<sup>3</sup> More information is available [here](#).

<sup>4</sup> More information is available [here](#).

## ANNEX

1. ICMA welcomes the FCA's proposed approach to give more clarity in relation to the circumstances in which it may be willing to waive the requirement to include guarantors' financial information in prospectuses. The proposed guidance will be helpful for issuers and other transaction parties in their consideration of the structure of debt issues and programmes and in approaching the FCA in relation to such waivers.
2. There are a handful of minor areas in which further clarification may be useful, as described below.
  - a) The first factor listed in the proposed Technical Note in relation to the FCA's decision regarding a waiver for guarantors' financial information is that the guarantees are full and unconditional and on a joint and several basis. It would be helpful if the FCA could consider whether it is possible to acknowledge any applicable legal or jurisdictional limitations on the ability for companies to issue guarantees on a joint and several basis. If this is possible, the first bullet point in the Technical Note could be amended to read "the guarantees are full and unconditional and are on a joint and several basis (subject to any legal or jurisdictional limitations)".
  - b) Similarly, the 80% metric listed in the third bullet point in the proposed Technical Note may be difficult for some issuers to fulfil due to possible legal restrictions on subsidiaries to give guarantees in certain jurisdictions. While the Technical Note appears to suggest that the suggested metrics are not rigid, it would be helpful if the FCA could provide additional clarity on whether it would apply a more flexible approach where there are legal restrictions on an issuers' subsidiaries providing guarantees under the relevant national law. Such additional clarity could be provided in footnote 1, for example.
  - c) It is helpful that the FCA has noted it will consider a request for the omission of an issuer's financial accounts where the issuer benefits from a 'downstream' guarantee from a parent entity whose consolidated accounts substantially reflect the financial position of the issuer. It would be helpful for market participants (and perhaps also for the FCA, in ensuring the enquiries it receives are appropriately tailored), if the FCA were able to provide more guidance on the circumstances in which such waiver might be granted.
3. We also highlight that certainty and consistency in any transaction process is a key concern for market participants. It would therefore be helpful if market participants are able to rely on any guidance provided by the FCA during the prospectus review process (assuming there is no change in the issuance structure or situation relating to any relevant entities) in relation to the granting of a waiver as being definitive. This would ensure transactions are not delayed due to the FCA's approach in relation to a particular waiver changing during the prospectus review process.
4. Overall, the FCA's proposed Technical Note, as well as other new initiatives outlined in the FCA's Debt Market Forum report, are helpful and welcome.