

Financial Regulation Strategy
HM Treasury
1 Horse Guards Road
London
SW1A 2HQ

(by e-mail to financial.reform@hmtreasury.gsi.gov.uk)

17 December 2010

Dear Sirs,

Follow-up to ICMA response to HMT consultation cm7874: "A new approach to financial regulation: judgement, focus and stability"

The International Capital Market Association ("ICMA") is writing further to its response¹ to HM Treasury's above consultation and the Government's conclusions following its consideration of the responses to that consultation. We assume that the next stage of the process will be to prepare the necessary amendments to the legislation to effect the changes to the regulatory arrangements.

One of the cornerstones of the legislation will, of course, be the statutory duties that are imposed on the various bodies that will result from the regulatory reorganisation. We are particularly concerned that the duties set for the Consumer Protection and Markets Authority are designed in a way that enables it to act both as a consumer champion and as a balanced regulator of non-consumer markets, such as the wholesale non-equity markets.

Consumer protection is clearly a fundamentally important part of the regulatory agenda. However, large parts of the international markets that are based in the United Kingdom do not involve retail investors. Some of the markets (such as the London Stock Exchange's Professional Securities Market) are restricted to professional investors. Large numbers of non-equity securities are only issued in denominations that put them outside the reach of retail investors or are sold in ways that prevent them being offered to retail investors.

These wholesale markets are fundamentally important to the institutional investor community and for the real economy. Pension funds, for example, need the widest possible range of investment opportunity if they are to meet the challenges of providing retirement income for a growing community of ageing individuals, who will be living ever longer post-retirement. Insurance companies need to be able to build up a diversified investment portfolio to provide them with funds with which to meet claims as and when they arise. Commercial companies need to be able to hedge increasingly complex commercial risks (such as volatility in the prices of vital or scarce raw materials) through the use of financial products.

The concerns of a regulator in these wholesale markets are very different from those of a consumer champion. This fact is rightly recognised in much of the European Union's (and therefore the United Kingdom's) regulatory structure and business conduct rules for the financial markets; and it therefore follows that the distinction should be clearly drawn in setting out the duties that are imposed on the CPMA. It would be a serious mistake if, either in terms of duties or in terms of allocation of resources within the CPMA, consumer protection were allowed to dominate. It should be possible to set out duties that sit comfortably side by side, one set relating to consumer protection and the other to wholesale market regulation.

Such an arrangement would also be desirable, in that it would reflect the division in duties that is clearly reflected in European legislation. If the European balance between consumer and wholesale market regulation is not properly reflected in the duties imposed on the CPMA, it will be much more difficult for the CPMA to discharge its duties as the UK's representative in the European Securities and Markets Authority. Too much emphasis on consumer protection at the expense of wholesale markets, either in terms of duties or resource, will skew the focus of the UK's European voice, with

¹ <http://www.icmagroup.org/ICMAGroup/files/7f/7f7fb4aa-3b11-400a-b3f7-5b923654453d.pdf>.

wholesale market regulation suffering as a result. And it should be understood in this context that the markets that are hosted by the UK are unlike those in most other EU member states, particularly in the size and diversity of their wholesale element. If international wholesale markets are not properly represented by the CPMA in ESMA and other debates, it is difficult to know who will represent them. Some products, such as shares, are arguably both wholesale and retail products. However, it would be highly regrettable if an undue emphasis on consumer protection in the statutory duties imposed on the CPMA made share issues more difficult or costly. Many companies will need to raise share capital in the coming months and years; and there appears to us to be no need to add to the regulatory requirements for such issues, either in terms of initial disclosure in the prospectus or in terms of conduct of business rules or secondary market arrangements. Share issues have been one aspect of the markets that has worked well throughout the recent financial turmoil. The consumer protection duty should, therefore, be tempered by a requirement to take into account other factors, such as the need to encourage issuers to use the markets, the need to ensure a supply of investment opportunities for investors and the need to provide an efficient source of capital to the real economy at competitive cost.

Finally, whilst we understand the importance of consumer protection, even in the retail markets (and particularly in the wholesale markets) other factors such as due consideration of the international competitiveness of the UK's markets and the need to foster innovation are also important and must not be driven out of the regulator's mind by an over-emphasis on consumer protection. In a world without currency controls, investors who are deprived of opportunity through excessive and inappropriate regulations in one market will easily find what they need in other markets. If those markets are not only outside the UK, but outside the EU also, investors will have to rely on whatever protection is afforded to them in the place where they buy their investments. In other words, too much inappropriate regulation within the UK caused by an imbalance in the CPMA in favour of consumer protection could well result in less, rather than more, protection for the UK's investors; and could result in that investment funding the real economy of other countries, rather than those of the UK or the EU.

We would be pleased to discuss the above with you at your convenience.

ICMA is a unique self regulatory organisation and an influential voice for the global capital market. It represents a broad range of capital market interests including global investment banks and smaller regional banks, as well as 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 over 40 years. See: www.icmagroup.org.

This letter has been prepared on behalf of ICMA's primary market constituency that lead-manages syndicated bond issues throughout Europe. This constituency deliberates principally through ICMA's Primary Market Practices Sub-committee², which gathers the heads and senior members of the syndicate desks of 21 ICMA member banks, and ICMA's Legal and Documentation Sub-committee³, which gathers the heads and senior members of the legal transaction management teams of 19 ICMA member banks, in each case active in lead-managing syndicated bond issues in Europe.

Yours faithfully,



Ruari Ewing

Advisor - Primary Markets
ruari.ewing@icmagroup.org
+44 20 7213 0316

² <http://www.icmagroup.org/About-ICMA/ICMAs-Committees/Primary-Market-Practices-Sub-committee.aspx>.

³ <http://www.icmagroup.org/About-ICMA/ICMAs-Committees/Legal-and-Documentation-Sub-committee.aspx>.