ICMA
International
Capital
Market
Association

European Securities and Markets Authority (ESMA)
103 rue de Grenelle
75007 Paris, France

(Submitted online at www.esma.europa.eu)

4 January 2017

Dear Sirs,

Consultation Paper ESMA/2016/1436 - Draft guidelines on MiFID II product governance requirements

The International Capital Market Association (ICMA)[1] is responding to the above.

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.

ICMA is responding in relation to its primary market constituency that lead-manages syndicated debt securities issues throughout Europe. This constituency deliberates principally through ICMA's Primary Market Practices Committee[2], which gathers the heads and senior members of the syndicate desks of 51 ICMA member banks, and ICMA's Legal and Documentation Committee[3], 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.

We set out our response in the Annex to this letter and would be pleased to discuss it with you at your convenience.

Yours faithfully,

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[1] European Transparency Register #0223480577-59
[2] http://www.icmagroup.org/About-ICMA/icma-councils-and-committees/Primary-Market-Practices-Sub-committee/.
[3] http://www.icmagroup.org/About-ICMA/icma-councils-and-committees/Legal-and-Documentation-Sub-committee/.

Annex
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Response

1. We welcome the frequent acknowledgement that the product governance regime should be applied proportionately. This will be particularly important in relation to the wholesale debt markets, which provide significant funding to the real economies of Member States and an approach based on proportionality is consistent with the objectives of Capital Markets Union, which is in part to facilitate such funding, rather than to add unnecessary regulatory burdens to it.

2. In the context of debt capital market issuance, we believe that this can be achieved by designing arrangements to limit distribution to professional investors, who are appropriate target investors for all types of debt capital market securities. Those arrangements would need detailed consideration, but would include primary market selling restrictions, legends warning of the investor base limitations and other reasonable procedures aimed at preventing distribution to retail investors in the secondary market. Such arrangements would also represent a consistent approach across the MiFID II, PRIIPs and Prospectus regimes.

3. Given the nature and effect of these arrangements, they should, without more, satisfy both the initial and the on-going requirements of the product governance regime and enable the wholesale debt markets to continue to operate, for the benefit of issuers and professional investors alike, without excessive additional burden or cost. Incidentally in this respect, new debt issues are already often targeted, in practice, to professional investors only as 'end clients' on a 'buy & hold' expectation (though this would not be inconsistent per se with a subsequent secondary market resale by an investor, for example to rebalance its portfolio over time).

4. Turning to the retail markets, if the nature of the securities being issued makes them suitable for all investors, that fact alone might justify a simple product governance regime, involving merely identification of the product as satisfying appropriate criteria. So, for example, a proportional application of the regime might allow distributors to identify the entire market as target investors of certain "plain vanilla" bonds.