

The Financial Conduct Authority
12 Endeavour Square
London E20 1JN



(Submitted by e-mail to cp20-08@fca.org.uk)

1 October 2020

Dear Sir/Madam,

ICMA response to FCA Consultation Paper CP20/8* – *High-risk investments: Marketing speculative illiquid securities (including speculative mini-bonds) to retail investors***

The International Capital Market Association (ICMA)¹ welcomes the FCA's Consultation Paper and sets out its response to it in the annex to this letter.

ICMA is a not-for-profit membership association, headquartered in Switzerland, that serves the needs of its wide range of member firms in global capital markets. As at September 2020 it has around 600 members in more than 60 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. See: www.icmagroup.org.

This response is primarily drafted on behalf of ICMA's primary market constituency comprised of underwriters that lead-manage cross-border syndicated 'Eurobond' issuance transactions throughout Europe and beyond. This constituency deliberates principally through:

- the [ICMA Primary Market Practices Committee](#), which gathers the heads / senior members of such lead-managers' syndicate desks; and
- the [ICMA Legal and Documentation Committee](#), which gathers the heads / senior members of such lead-managers' legal documentation / transaction management teams.

ICMA would be pleased to discuss its response at the FCA's convenience.

Yours faithfully,

A handwritten signature in black ink, appearing to read 'R. Ewing', with a long, sweeping underline.

Ruari Ewing

Senior Director, Primary Markets
ruari.ewing@icmagroup.org
+44 20 7213 0316

¹ European Transparency Register #0223480577-59

Annex

1. **Introduction** – The Consultation Paper suggests, inter alia, extending the FCA’s existing “speculative illiquid securities” ban to illiquid “readily realisable securities” that are also debentures. This would *inter alia* cover securities admitted to a UK or EEA regulated market (with a Prospectus Regulation disclosure) where such securities (i) are “not regularly traded on or under the rules of such [an exchange]” and also (ii) are “speculative illiquid securities” (in ‘low/retail’ denominations under £100,000 and effectively involving third-party lending, investment or real property). Several comments arise in this respect, having read particularly #4.14.18-#4.14.21 of the Consultation Paper.
2. **Syndicated/flow bond markets distinct** – Though the general retail promotion of Eurobonds is in any case rare², the types of securities seemingly intended by the FCA’s proposed ban extension (being speculative re-investment structures) do not relate to the “syndicated/flow bond markets”, notably as envisaged in ICMA’s December 2017 draft paper *The MiFID II product governance (PG) regime - Retail bonds (admitted to trading on an EEA regulated market) - ‘ICMA2’*.³
3. **“Not regularly traded” clarification** –The expression “not regularly traded” is presumably intended to capture securities with no ‘natural’ market (for example notably where just the originator/issuer of the securities and/or connected parties make a price effectively as a service⁴) where indeed one would not wish “Admission [...] be used in promotions [...] to infer greater security and the prospect of a secondary market, although in practice there is still little or no liquidity” – rather than to capture merely infrequently traded securities (as many vanilla bonds have increasingly become as the market has become more ‘buy & hold’). One might query whether this should be clarified.
4. **Securities “expected to be admitted” consistency typo** – There seems to be typographical error regarding securities “expected to be admitted” (see text in box, with tentative suggested correction in red), with the FCA’s intent presumably being to carry over *mutatis mutandis*, as a consistency technicality, the investor protection afforded to ‘already admitted’ securities.

<< 4.14.19 R For the purposes of COBS 4.14.18R, and notwithstanding the exemption for readily realisable securities in COBS 4.14.20R(3)(c), a debenture is also a speculative illiquid security if:

(1) it meets the conditions set out in COBS 4.14.18R; and

(2) it: (a) is admitted to official listing on an exchange in the United Kingdom or an EEA State; and (b) is not regularly traded on or under the rules of such an exchange; or

(3) it: (a) is a newly issued debenture which can be reasonably expected to be admitted to official listing on an exchange in the United Kingdom or an EEA State; and (b) can >NOT< be reasonably expected to be regularly traded on or under the rules of such an exchange when it begins to be traded. >>

5. **Charity/municipal pass-through funding exemption** – One might query, in the context of 4.14.18 R (2)(a), whether third-party lending might perhaps inadvertently capture certain centralised pass-through arrangements such as charity bonds or municipal bonds, and so whether the exemption for social housing and SPV issuance might be widened.

² In terms of challenges to retail bond supply, see further ICMA’s CMU responses of April 2015 (<https://www.icmagroup.org/assets/documents/Regulatory/CMU/ICMA-CMU-GP-response-30-April-2015.pdf>) at #91-103 and of March 2017 (<https://www.icmagroup.org/assets/documents/Regulatory/CMU/ICMA-CMU-MTR-response-10.03.2017.pdf>) at #64.

³ See <https://www.icmagroup.org/assets/documents/Regulatory/Primary-Markets/PG-Gen-Retail-ICMA2-v8bis-CLEAN-230518.pdf>.

⁴ Perhaps the FCA might be able to verify this in the MiFID transaction reporting data it receives, even if trading desks intermediate the transactions concerned.

6. **Incidental/provisional cash ‘carry’ clarification** – One might query, in the context of 4.14.18 R (2)(b), and since “*specified investment*”⁵ nominally includes deposits and government / public sector securities, whether certain ‘mainstream’ uses of proceeds might inadvertently be captured (notably incidental/provisional cash ‘carry’⁶), and so whether it might be worthwhile clarifying this is not intended to be caught.
7. **Exchange rate scope risk** – On current exchange rates, £100,000 is €110,000 and therefore, an issuance in €100,000 ‘high/institutional’ denominations would be subject to ‘retail’ sub-£100,000 treatment. One might query therefore whether this might be addressed by defining ‘low/retail’ denomination as being below the lower of €100,000 or £100,000 (or the equivalent in another currency).
8. **Conclusion** – Presumably Eurobonds are perceived as simple investment products that the FCA would like to be available to retail investors generally (as per the FCA’s recent *Call For Input: The Consumer Investments Market*⁷). On this basis, the FCA would presumably not wish to add to the restrictive impact that other regulations have had (such as PRIIPs, especially given lack of clarity in relation to scope such as in the context of, notably, corporate bonds with make-whole clauses).

⁵ See <https://www.handbook.fca.org.uk/handbook/glossary/G1117.html>.

⁶ For example, where the proceeds of a bond issue are placed on deposit pending application (whether for “general corporate purposes”, under an ESG framework, etc.).

⁷ See <https://www.fca.org.uk/publication/call-for-input/consumer-investments-market.pdf>.