

FICC Markets Standards Board  
63 St Mary Axe  
London EC3A 8AA

(Submitted by e-mail to Email: [standards@fmsb.com](mailto:standards@fmsb.com))



31 August 2018

Dear Sirs,

**FMSB: Information & Confidentiality for the Fixed Income and Commodities markets / Statement of Good Practice – Transparency Draft**

The International Capital Market Association (ICMA) welcomes the opportunity to provide comments on the proposed Statement of Good Practice.

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's comments are given 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<sup>1</sup>, which gathers the heads and senior members of the syndicate desks of 50 ICMA member banks, and ICMA's Legal and Documentation Committee<sup>2</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.

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

Yours faithfully,

A handwritten signature in black ink, appearing to read "R. Ewing", with a large, sweeping flourish at the end.

**Ruari Ewing**

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<sup>1</sup> <http://www.icmagroup.org/About-ICMA/icma-councils-and-committees/Primary-Market-Practices-Sub-committee/>.

<sup>2</sup> <http://www.icmagroup.org/About-ICMA/icma-councils-and-committees/Legal-and-Documentation-Sub-committee/>.

**Annex**  
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**Comments**

1. Generally, much of the proposed Statement of Good Practice seems to replicate common sense or concepts already enshrined in law or regulation. This replication renders it challenging to identify and assess any aspects in the proposed Statement that are distinct or intended to be so.
2. A few specific comments are set out below.
3. In I-2 and I-3 respectively, the statements that:
  - (a) firms not considering/changing their practices in light of FMSB SGPs (not being FMSB Standards) *“will not [...] create any presumption or implication that a firm has failed to meet its regulatory or other obligations or that it has been negligent”*; and
  - (b) *“FMSB Standards and SGPs do not impose legal or regulatory obligations on FMSB members”*,are both helpful indications of FMSB intention but whether this is actually so in practice is not within FMSB’s gift.
4. In III-1.1, it is not entirely clear whether SGP1’s initial reference to not sharing information is external-only (as in III-2.3(ii) and III-4), rather than internal-only (as in III-3) or both.
5. In III-1.1, defining confidential information as any non-public information, rather than just client or 3<sup>rd</sup> party non-public information, seems counter-intuitive and addressing own trading positions in III-2.3(v) would be unnecessary otherwise. The related ‘consent’ exceptions should presumably also apply not just in relation to clients but also to 3<sup>rd</sup> parties. From a regulatory perspective, it is worth noting that information merely being non-public does not necessarily make it confidential information, let alone inside information.
6. In III-2.4, example 4 seems to involve opinion and not be factual only.
7. In III-4.1, it is stated that *“Where traders are competitors, they must act and behave independently”*. It is worth noting in this respect that bond syndicate desks, once they have been mandated by their issuer client to work together as a syndicate, act and behave in concert and no longer act as competitors.
8. In III-5.3(i), it is stated albeit *“in general terms”* that *“where information is in the public domain, providing it has not be made public by a market participant, that market participant is not required to treat the information as Confidential Information.”* It is worth noting, in respect to the proviso, that bond syndicate desks frequently make previously non-public information public (notably in new issue announcements) and do not themselves treat that information as confidential thereafter.