ICMA
International Capital Market Association

Primary Markets Policy
Markets Policy Department
Financial Conduct Authority
25 The North Colonnade
Canary Wharf
London E14 5HS

(Submitted by email to dp17-02@fca.org.uk)

12 May 2017

Dear Sirs,

FCA Review of the Effectiveness of Primary Markets: The UK Primary Markets Landscape Discussion Paper DP17/2[1]

The International Capital Market Association (ICMA) is responding to Section 5 (The listing of debt securities and debt MTFs) and Section 6 (Retail access to debt markets) of the above Discussion Paper.

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] https://www.fca.org.uk/publication/discussion/dp17-02.pdf
[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

RESPONSE TO SECTION 5: THE LISTING OF DEBT SECURITIES AND DEBT MTFs

Q5.1: Do you think there is an opportunity in the UK for a new wholesale bond MTF? If so, where is the opportunity and why? Please specify products, sectors and geographies.

1. Increasing listing options, and therefore flexibility, for debt issuers can help to make debt markets more efficient and is to be encouraged. The London Stock Exchange Group's launch of a new MTF for debt securities (the International Securities Market)[4] on 8 May 2017 is therefore positive.

2. In the light of the introduction of the International Securities Market, further action by the FCA in relation to a new wholesale bond MTF does not seem necessary.

3. However, it would be useful if the FCA could consider the introduction of a new segment of the regulated market to which only qualified investors have access. Such "qualified investor only" segment of the regulated market could be useful for debt issuers in the context of the new EU Prospectus Regulation[5] (which envisages that an alleviated disclosure regime and an exemption from the requirement to prepare a prospectus summary will be available to debt securities admitted to trading on such segments) and in the light of other EU regulatory regimes that are likely to encourage issuers to avoid distributing their debt securities to MiFID2 retail investors (e.g. the PRIIPs Regulation and MiFID2 product governance regime).

4. Depending on the details of how EU and UK law in this area applies post-Brexit, it is possible that such "qualified investor only" segment of the regulated market could also be useful for debt issuers who wish to admit their securities to trading in London and offer them in the EU on an exempt basis under the Prospectus Regulation (e.g. to qualified investors only) post-Brexit.

Q5.2: To what extent do you think investors understand the differences between MTFs and Regulated Markets, and the differing levels of investor protection which apply to them? Does your answer differ when considering different types of investor (e.g. retail versus wholesale)?

5. As noted above, there seems to be limited need for further action by the FCA in relation to a new wholesale bond MTF. Nevertheless, our thoughts on this question are set out below.

6. Our understanding from the ICMA Asset Management and Investors' Council is that institutional investors understand the differences between MTFs and regulated markets and the differing

[4] http://www.lseg.com/markets-products-and-services/our-markets/london-stock-exchange/fixed-income-markets/international-securities-market
http://www.londonstockexchange.com/traders-and-brokers/rules-regulations/change-and-updates/stock-exchange-notices/2017/n0417.pdf

[5] http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//NONSGML+TA+P8-TA-2017-0110+0+DOC+PDF+V0//EN

levels of investor protection which apply to them, but whether a bond is listed on a MTF or regulated market does not seem to affect most institutional investors' investment decision.

7. The position for retail investors may be different, as it seems unlikely that an ordinary retail investor would understand fully (or at all) the difference between a MTF and regulated market and the differing levels of investor protection which apply to them.

Q5.3: Do you believe a specialist wholesale bond MTF could be a commercially viable proposition without RSE status?

8. As noted above, there seems to be limited need for further action by the FCA in relation to a new wholesale bond MTF. Nevertheless, our thoughts on this question are set out below.

9. It seems likely that any new London MTF would need to allow securities listed on it to benefit from the quoted Eurobond exemption (QEE) in order to be a viable option for UK issuers, because UK issuers benefit from the QEE when listing debt securities on non-UK stock exchanges.

10. In addition, it would be important that the listing of debt securities on any new London MTF would not entail the imposition of UK withholding tax on payments made to international investors. Such investors require payments of interest on bonds issued in international markets to be made free and clear of any withholding tax by the issuer and its agents. If bonds were to pay interest net of withholding tax this would represent, as a minimum, a timing cost for investors. If the investor could claim a repayment of the withholding tax, or credit against its tax liabilities, this would take time. If repayment or credit was not available to an investor, any withholding tax would be an absolute cost for that investor, which could render its decision to invest uneconomic. It follows, therefore, that the imposition of any withholding tax on international debt securities would act as a serious disincentive to investors.

RESPONSE TO SECTION 6: RETAIL ACCESS TO DEBT MARKETS

Q6.1: Do you agree that there are forms of issuance which could be issued to retail investors from programme documentation without the need for the more intensive scrutiny from us that is set out in our existing guidance on retail bonds?

11. ICMA has long supported the development of retail vanilla bond markets. See, for example, ICMA's answer to Q19 on pages 16 – 19 of ICMA's response to the European Commission's Green Paper on Capital Markets Union.

12. It seems likely that the increased disclosure burdens for retail bonds introduced by the FCA would have encouraged some issuers seeking FCA approval for their prospectuses to prepare their debt issuance programmes on a "wholesale" basis, meaning those issuers would then not have been able to issue bonds in low denominations for retail investors.

13. However, changing the FCA's approach in this area is unlikely to result in increased levels of issuance of bonds directly to retail investors at this stage. This is due to several factors.

    a. It seems probable that the EU PRIIPs Regulation and MiFID2 product governance regime, which enter into force in January 2018, will discourage sell-side market participants from offering debt securities directly to retail investors.

    b. There are a number of other commercial and regulatory disincentives to issuing retail bonds, detailed in ICMA's answer to Q19 on pages 16 – 19 of ICMA's response to the European Commission's Green Paper on Capital Markets Union.

14. It therefore seems probable that, going forward, volumes of bonds issued directly to retail investors may be even more limited than at present, and retail investors are likely to need to access debt securities indirectly (e.g. through a fund, investment trust or discretionary manager). As such, FCA action in relation to its review of retail disclosure documents may not be viewed as a priority. Rather, the need to ensure that wholesale debt markets continue to function effectively and efficiently (and thereby allow retail investors to access debt securities *indirectly*), is likely to be very important.