13 January 2020

**ESAs' Joint Consultation Paper concerning amendments to the PRIIPs KID**

**-**

**ICMA response content – Primary market aspects** *(distinct from buy-side aspects under Q.43)*

***Please make your introductory comments below, if any:***

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 January 2020 it has more than 585 members in 62 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. European Transparency Register #0223480577-59. See: www.icmagroup.org.

ICMA's response to this consultation is exclusively focusing on introductory comments and question 43.

Introductory comments are drafted on behalf of ICMA's primary market constituency comprised of banks that lead-manage syndicated debt securities issues throughout Europe. This constituency deliberates principally through:

- the ICMA Primary Market Practices Committee, which gathers the heads and senior members of the syndicate desks of a number of ICMA member banks active in lead-managing syndicated debt securities issues in Europe; and
- the ICMA Legal and Documentation Committee, which gathers the heads and senior members of the legal transaction management teams of a number of ICMA member banks active in lead-managing syndicated debt securities issues in Europe.

**1. Vanilla bonds / No response on KID content** – The ESAs stated, in their July 2018 letter to the European Commission (JC-2018-21), that *"the ESAs' draft regulatory technical standards were prepared on [the] basis"* that *"the intention of the Regulation, as clearly expressed in Recitals 6 and 7 of the Regulation, [is] to address packaged or wrapped products rather than assets which are held directly, such as shares and non-structured bonds"*. ICMA is consequently not responding to the specific questions in this consultation about the PRIIPs Delegated Regulation (that was based on the ESAs' draft regulatory technical standards), on the basis (and in the absence of any contrary indication) that this consultation has similarly not been prepared in view of such vanilla bonds.

**2. Vanilla bonds / scope still problematic** – Notwithstanding the above, PRIIPs' product scope has remained a major concern in the vanilla bond markets as outlined in the above ESAs' letter and in ICMA's September 2018 response to a UK FCA Call for Input. The 24 October Joint ESA Supervisory Statement (JC-2019-64) is a helpful step in the right direction to reassure the markets that vanilla bonds are indeed out of scope of the PRIIPs Regulation. However, differing views and so uncertainty endure in the market as to what may be interpreted as 'packaged' or not, with significant ongoing reluctance to make vanilla bonds directly available to EEA retail investors. In this respect, the value of supervisory statements may not only be limited substantively (by the extent of their wording) but also technically (by potentially addressing to an extent liability to regulatory enforcement under administrative law but having no scope to address liability to investors under civil law). Should the European Commission feel that EEA retail investors should be generally able to directly invest in vanilla bonds, then it would need to ensure the PRIIPs legislation itself is clearly understood to exclude vanilla bonds (though there are also other disincentives to retail supply notably under the Prospectus Regulation and MiFID product governance). ICMA would be happy to assist in developing workable options for the European Commission to achieve this, including (if it so wishes) without having to adopt any view on individual product features.