FCA retail protection: speculative illiquid securities

In December 2020, the UK FCA published Policy Statement PS20/15 High-Risk Investments: Marketing Speculative Illiquid Securities (including Speculative Mini-Bonds) to Retail Investors, including its finalised rules in this respect (FCA 2020/74: Conduct of Business (Speculative Illiquid Securities) Instrument 2020).

This followed ICMA’s 1 October 2020 response to the FCA’s preceding consultation reported in the 2020 Fourth Quarter edition of this Quarterly Report (on page 38).

In the Policy Statement, the FCA addressed the scope issues that ICMA raised relating to the initially proposed rules:

(a) distinguishing the “syndicated/flow bond markets” and clarifying the meaning of “not regularly traded” – FCA kept the rule drafting unchanged, noting (i) the existence of any market makers as a consideration in the determination of whether a bond is regularly traded; and (ii) the potential for specific waivers where appropriate;

(b) ensuring consistency in relation to securities “expected to be admitted” to trading – FCA amended the rule drafting to address this issue;

(c) exempting charity/municipal passthrough funding – FCA kept the rule drafting unchanged, noting (i) such cases may still involve high risk and (ii) the potential for specific waivers where appropriate;

(d) clarifying incidental/provisional cash “carry” as unaffected – FCA amended the rule drafting to address this issue; and

(e) avoiding exchange rate risk – FCA kept the rule drafting broadly unchanged, noting the high value exemption threshold is defined as £100,000 in sterling (or its equivalent) even though this differs from the Prospectus Regulation’s €100,000 threshold in euro.

Distinctly, ICMA did not respond to the FCA’s September 2020 call for input, The Consumer Investments Market, given the many other calls on industry during the fourth quarter of 2020.

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