International
Capital
Market
Association

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ICMA Response to FCA CP21/18 "Enhancing climate-related disclosures by standard listed companies and seeking views on ESG topics in capital markets"

The International Capital Market Association (ICMA) welcomes the opportunity to respond to FCA CP21/18.

ICMA is a membership association, headquartered in Switzerland, committed to serving the needs of its wide range of members. These include private and public sector issuers, financial intermediaries, asset managers and other investors, capital market infrastructure providers, central banks, law firms and others worldwide. ICMA currently has over 600 members located in 65 jurisdictions. See: www.icmagroup.org.

ICMA's response focuses on the aspects of CP 21/18 that are relevant to the international bond market. It is given on behalf of ICMA and its constituencies primarily in this case from the Executive Committee of the Principles (Green & Social Bond Principles, Sustainability Bond Guidelines and Sustainability-linked Bond Principles); the Legal and Documentation Committee (LDC); the Asset Management and Investors Council (AMIC) and the Corporate Issuer Forum (CIF).

The responses below were submitted via email to cp21-18@fca.org.uk

Yours faithfully,

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ICMA response to Chapter 3: Proposals to extend climate-related disclosure requirements to certain standard listed companies

> Q3: We welcome views from market participants on whether to apply TCFD-aligned disclosure rules to issuers of standard listed debt (and debt-like) securities, and how best to do this. In particular, we seek input on the following:
>
> a. What climate-related information from issuers
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> of these securities would market participants
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> find decision useful and how far would
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> these information needs be met by TCFD-aligned disclosures?
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> b. Do market participants' information needs differ according to the different types of issuer in LR 17?
>
> c. If you consider that we should apply TCFD-aligned disclosures rules to issuers of standard listed debt (and debt-like) securities, should some issuer types be excluded from the rule to deliver an effective and proportionate approach? If so, which types of issuers should be included/excluded and how can the scope best be defined?
>
> d. Are there any other matters we should take into consideration – eg, competitiveness, complexity of the application of the rule, burden on issuers in LR 17, or the feasibility to comply with any potential rules?

1. ICMA acknowledges the increasingly urgent climate crisis and the importance of the availability of TCFD-aligned disclosures for investors in general. We also note that issuers making climate-related disclosures are dependent on other entities' corresponding information (e.g. for Scope 3 GHG emissions disclosures), creating an overall need for a broad roll-out of climate-related disclosure requirements.

2. However, we also agree with the FCA's acknowledgment in the consultation paper that the TCFD's recommendations may not be an effective and proportionate framework for disclosures by certain types of debt issuer, as outlined below. We also query whether the extension of the TCFD-aligned disclosure rule to issuers of standard listed debt (and debt-like) securities would result in a significant increase in the availability of such disclosures because (a) following the extension of the requirements to issuers of standard listed equity and other initiatives, the types of issuers that would be impacted primarily are unlikely to be entities to whom TCFD disclosures are easily applicable and (b) it would be relatively straightforward for debt issuers to choose alternative listing venues should the Listing Rules become more onerous than such alternatives.

3. Because the UK will be applying TCFD-aligned disclosure rules to issuers of premium and standard listed equity, any extension of the rule to issuers of standard listed debt (and debt-like) securities is likely to impact primarily upon:

    a. Issuers for whom it may be impracticable to comply with TCFD-aligned disclosures, such as sovereigns, noting that TCFD recommendations are designed for financial and non-financial organisations.

    b. Issuers to whom it may be inappropriate to apply such a rule, such as special purpose vehicles (SPV) issuers in securitisation structures. Environmental disclosures for securitisations is an important and complex topic, where the most relevant environmental information will relate to the underlying assets/obligors and certain counterparties involved rather than the SPV issuer itself. We note that certain SPV issuers in scope of the UK Securitisation Regulation or the EU Securitisation Regulation regimes are already subject in some cases to disclosure requirements on environmental performance. HM Treasury in a recent call for evidence on the review of the UK Securitisation Regulation regime is considering where it might be appropriate to enhance environmental impact information. Under the EU Securitisation Regulation, as amended, new technical standards on sustainability reporting for certain securitisations designated as "simple, transparent and standardised" will be developed shortly. Wider reforms aimed at introducing an EU sustainable securitisation framework are also on the way. We consider the UK and EU Securitisation Regulation regimes to be the appropriate regulatory vehicles to deal with environmental disclosures for securitisation SPVs, and it would seem inappropriate to impose potentially overlapping and conflicting requirements through a TCFD Listing Rule applicable to issuers of debt and debt-like securities without drawing any distinction between securitisation SPV issuers and issuers that are *operating* entities and which may have already voluntarily adopted TCFD reporting. ICMA is agnostic as to the competitiveness of listing venues but notes that imposing such additional requirements on EU or UK securitisation SPVs via the Listing Rules would create disincentives for listing in London. For further information on the question of environmental disclosures for securitisations, the FCA may wish to see: ICMA Asset Management and Investors Council (AMIC) Statement on sustainability disclosure for securitisation, March 2021; AMIC's Discussion paper on ESG KPIs for Auto-loans/leases, May 2021; and Q35 – Q40 of the AFME / UK Finance response to HM Treasury's call for evidence on the review of the UK Securitisation Regulation.

c. Issuers with shares admitted to listing or trading overseas that may be subject to the sustainability reporting regimes of: (i) their jurisdiction of incorporation; (ii) the listing or trading venue of their shares; or (iii) the UK Government proposals for mandatory climate-related financial disclosures by publicly quoted companies, large private companies and LLPs. The introduction of TCFD-aligned disclosure rules for these issuers triggered by listing their debt securities in London could represent an additional, potentially misaligned, requirement to such similar regimes. As stated above, ICMA is agnostic as to the competitiveness of listing venues, but we note that this has the potential to diminish the attractiveness of London as a listing venue. It would likely be very easy for issuers of new debt securities to choose an overseas listing or trading venue rather than London, or an MTF where the FCA's Listing Rules do not apply.

4. Taken together, it seems unlikely that any extension of the requirement for TCFD-aligned disclosures to issuers of standard listed debt (and debt-like) securities would result in a significant increase in the availability of such disclosures. On the other hand, any such extension could potentially impact upon the attractiveness of London as a listing venue for debt securities.

5. The FCA notes in paragraph 3.25 of the consultation paper that, for some issuers, prospectus disclosures may be more relevant and decision-useful to investors than annual entity-level disclosures under the four pillars of the TCFD's recommendations – especially where listed debt securities have short maturities. As outlined above, we agree that the TCFD's recommendations may not be appropriate or relevant for certain types of issuer. The UK Prospectus Regulation requires debt issuers to disclose the information that is necessary for an investment decision in debt securities in their prospectuses. In line with the FCA's Primary Market Technical Note TN.801.1, this is already interpreted as requiring disclosure of climate and other ESG-related information to the extent that it is financially material (which, in a debt context, is interpreted as meaning material to the credit of the issuer or relevant to the use of proceeds, the terms of a sustainability-linked bond or the issuer's principal activities). In light of this, we do not consider that any changes would be required to the UK Prospectus Regulation regime in lieu of extending the application of the Listing Rule on TCFD-aligned disclosures rule to issuers of standard listed debt (and debt-like) securities.

6. As a general matter, we also note that periodic disclosure made in annual reports is updated regularly and so seems likely to be a more effective vehicle for climate-related disclosures than the prospectus, which is only correct as at its date and is not updated throughout the life of the security.

7. To the extent that the FCA were to extend a TCFD "comply or explain" Listing Rule to issuers of standard listed debt (and debt like) securities, it would seem that the purpose of this would be to encourage adequate transparency of and access to information in the UK financial markets generally, and it would not imply that all such information is material for investment decisions in debt securities. It is worth highlighting that the UK liability standard for prospectus disclosure is higher than for other types of disclosures (e.g. annual reports). In light of this, we anticipate that there would be significant concerns if the current prospectus requirements (which are clear and well-understood) were widened to include certain climate-related disclosure that may not otherwise be considered material to an investment decision in the debt or debt-like security, and which is more difficult to verify to prospectus standard due to, for example, its forward looking nature, reliance on third parties and/or other data challenges.

Q6. Do you agree that we should update the Technical Note 801.1 to reflect the proposed new rule and associated guidance in this CP?

8. We agree that it would be sensible to update Technical Note 801.1 to reflect the outcome of this consultation. As a general matter, market participants are familiar and comfortable with the contents of Technical Note 801.1, particularly in the area of prospectus disclosure, and so we would caution against significant substantive changes outside the subject matter of the results of this consultation paper.

9. However, there may be certain minor, technical updates that the FCA might wish to make following the end of the Brexit transition period. For instance, in relation to text that says "*EU legislation (which will continue to apply in the UK after the end of the transition period)*" it would now make more sense to refer (for example) to "*retained EU law that currently applies*". The FCA might also wish to amend the references to ESMA's guidance to refer to relevant FCA guidance, in conjunction with the FCA's consultation within Primary Market Bulletin 34.

Q7: Do you agree with our encouraging listed companies to consider the SASB metrics for their sector when making their disclosures against the TCFD's recommended disclosures, as appropriate? If not, please explain.

10. Investors and issuers have long shared the problem of an absence of a mutually acceptable market standard to improve communication on ESG performance. We acknowledge that the SASB metrics are seen to be aligned with the TCFD, and that they are generally supported by investors. From an issuer's point of view, the uniform approach to sustainability reporting provided by the SASB metrics is helpful, while allowing issuers the flexibility to determine which of the SASB recommendations are relevant to them and how to report on them. The SASB Materiality Map is a particularly useful resource.

11. While we agree with encouraging listed companies *to consider* the SASB metrics for their sector when making their TCFD disclosures, it is important to acknowledge that currently, some issuers adhere to different metrics for making disclosures, such as the GRI metrics. In this regard, we highlight the proposed collaboration between SASB and GRI (which will "*demonstrate how some companies have used both sets of standards together and the lessons that can be shared*"[1]) and would recommend monitoring the outcome of this collaboration on the metrics adopted by issuers.

12. It is also important to acknowledge the IFRS Foundation's work on an international reporting standard on sustainability. It will be important for issuers that use SASB metrics that they can confidently aim to follow them without fear of them being superseded.

[1] Promoting Clarity and Compatibility in the Sustainability Landscape - SASB

13. Finally, if TCFD-aligned disclosure rules *were* to extend to all issuers of standard listed debt (and debt-like) securities (as to which, see our response to Q3 above), we question how listed companies would be encouraged to consider the SASB metrics, if not via the Listing Rules themselves.

Q8: Do you agree with our approach to maintain a 'comply or explain' compliance basis until such time as a common international reporting standard has been published and adopted in the UK? If not, what alternative approach would you prefer, and why?

14. Issuers may prefer a 'comply or explain' requirement until there is a common international reporting standard, after which time a move to a mandatory compliance basis would make sense. However, our buyside constituency has underlined the importance of the near-term availability of TCFD reporting especially in light of the product disclosure requirements considered by the FCA CP21/18 (i.e. core KPIs). Please also see our response to Q3 in relation to specific considerations for issuers of listed debt and debt-like securities.

ICMA response to Chapter 4: Discussion topics on ESG integration in UK capital markets

Q12: If future changes were considered in relation to the UK prospectus regime, we would welcome views on also taking the opportunity to introduce specific requirements in relation to UoP bond frameworks and their sustainability characteristics?

15. Both ICMA's Legal and Documentation Committee and ICMA's Corporate Issuer Forum consider that it is not necessary or desirable to introduce new requirements for UoP bonds into the UK Prospectus Regulation at this point in time.

16. It is not considered to be necessary because prospectus disclosure for UoP bonds listed and offered in the UK already follows a relatively consistent approach. ICMA analysis of Environmental Finance data found that 97% of sustainable bonds issued globally in 2020 referenced the Green Bond Principles, the Social Bond Principles, the Sustainability Bond Guidelines or the Sustainability-Linked Bond Principles.

17. It is also not considered to be desirable because, absent an appropriately developed and regulated regime for green / social / sustainability bond framework verification, issuers and underwriters may not feel comfortable with certain disclosure requirements (eg related to UoP-bond frameworks), and so mandatory disclosure requirements under the UK Prospectus Regulation could be a disincentive to issuing UoP bonds (or at least admitting them to trading on the London Stock Exchange's Main Market). This is because much of the information in UoP bond frameworks is inherently forward-looking and difficult to verify to the standard required for prospectus disclosure.

18. It may be appropriate to re-visit the question of prospectus requirements for green bonds when an appropriate regulatory regime for green / social / sustainability bond framework verification is established. Please see our response to Q. 15, in which we support a dialogue on the introduction of such a regime.

19. Alternatively, a simple requirement for issuers to state in their UoP bond prospectuses whether or not they intend to comply with a particular market-based standard for such instruments (such as the Green Bond Principles, Social Bond Principles or Sustainability Bond Guidelines) and, if so, to specify that market-based standard in the prospectus could be a pragmatic approach that helps investors to understand whether and which standard the issuer intends to adopt whilst allowing the UoP bond market to continue to develop and flourish in an agile, market-led manner. Please also see our

response to Q.14, in which we explain how the approach for UoP bonds envisaged in the Principles has been developed through cross-market consensus and represents an appropriate balance between the needs of issuers and investors in this market.

Q13: Should the FCA explore supporting the UoP bond market by recognising existing standards (eg, ICMA Principles), potentially through our recognition of industry codes criteria and process?

20. The Green and Social Bond Principles (GBP & SBP) as well as the Sustainability Bond Guidelines (SBG, for a mix of green and social projects) and the Sustainability-linked Bond Principles (SLBP) have become the de-facto global standards, underpinning the sustainable bonds market for both UoP and general corporate purpose bonds. The Principles, as they are referred to all together, are voluntary process guidelines that provide guidance to SSAs, corporates and financial institutions when issuing sustainable bonds. They also provide investors with the core components of a sustainable bond and the steps that bonds labelled as "green", "social", "sustainability" or "sustainability-linked" should have ideally followed and show alignment to in a bond framework.

21. The Principles are created by a market led initiative (the Executive Committee) consisting of 24 organizations comprising an equal distribution between issuers, investors and underwriters with 8 representatives from each category. They are frequently updated in response to market developments on the basis of a consultation of members and observers (approx. 400 firms globally).

22. Additional Q&A and guidance documents are also frequently published in order to help the market understand and work with the Principles. A good example would be the Climate Transition Finance Handbook, released in December 2020, which can be used in conjunction with all the Principles and provides further guidance to issuers aiming to transition and communicate their Paris-aligned transition strategies. The latest edition of the GBP and SBP (June 2021) has added two key recommendations for heightened transparency: (1) a bond framework and (2) and external review. It also encourages issuers to disclose any taxonomies, green standards or certifications referenced in their project selection. The Principles and related guidance documents are all publicly available to all market participants (not just ICMA members) on the ICMA website. The UK government's green financing framework for its upcoming issuance of green gilts, published in June 2021, is aligned to the latest version of the GBP and also makes reference to the planned UK Taxonomy.

23. Sustainable bonds are increasingly listed on stock exchanges such as the London Stock Exchange's dedicated Sustainable Bond Market (SBM) and part of bond indices such as the Bloomberg Barclays MSCI Green Bond Indices, to name a few, all of which have their own rules in place which often add another layer to the basic requirement of a bond's alignment with the Principles.

24. Our understanding of the FCA industry codes and related processes is that they are intended for unregulated markets in order to prevent any misconduct and that typically standard setters would approach the FCA before drafting any codes. In the case of the Principles, based on the above, we do not think that there is any need for the FCA to get involved for the purpose of tackling any serious misconduct in the UoP bond market. Also, FCA recognition would have to be applied to existing standards which would be slightly different to the current process.

25. In our opinion, the FCA would nonetheless add value to the market through regulatory recognition of the Principles including all of its constituents (GBP, SBP, SBG, SLBP), not just the ones for UoP bonds.

26. We would therefore very much welcome a dialogue with the FCA to further understand the benefits and implications of having the Principles recognised. We would especially like to further clarify (i) the renewal process for the 3 year recognition (also in case of updates to the Principles); (ii) supervision; and (iii) implications under the SM&CR regime.

Q14: We would also welcome views on more ambitious measures the FCA could consider, for example to require that the central elements of UoP bonds be reflected in contractual agreements and set out in the prospectus.

27. In responding to this question, we would firstly like to emphasise that the Principles are created by the market for the market (by cross-market consensus) which equally includes both investors and issuers. In 2014, the first UoP Bonds Principles, the GBP, were developed with guidance from issuers, investors and environmental groups and serve as voluntary guidelines on recommended processes for the development and issuance of Green Bonds. Since 2014, the GBP have become the leading framework globally for issuance of Green (UoP) Bonds. In recent years, the SBP have been added for Social (UoP) Bonds. Both the GBP and SBP encourage transparency, disclosure and integrity in the development of the UoP Bonds market. Issuers, underwriters and investors adopt the Principles to ensure that UoP bond issuance and related bond programmes are managed in a transparent and responsible manner, as well as reflect best practices.

28. Neither the GBP nor the SBP envisage that the central elements of UoP bonds need to be reflected in contractual agreements. We consider that any such requirement would be a significant disincentive to the issuance of UoP bonds for the reasons set out below.

Arguments against requiring that the central elements of UoP bonds be reflected in contractual agreements

29. Any contractual obligation would need to be sufficiently precise and detailed in order to be effective, meaning it would likely need to set out (among other things) precisely how the issuer will use the proceeds, the relevant timeframe(s) and what would happen if the proceeds exceeded the value of the eligible projects. Requiring the central elements of UoP bonds to be contractual in nature (e.g. through a covenant and an associated event of default provision or redemption right) and therefore set out in the prospectus[2] would be a significant deterrent for issuers seeking to issue UoP bonds, as explained below.

A. <u>The costs and risks to issuers under existing market practice serve as significant incentives to use the proceeds as intended</u>
Most, if not all, self-declared UoP bonds issuers have to dedicate significant time and resource (including financial) commitments in order to be able to issue a UoP bond. Most issuers will also access capital markets for other forms of funding, and failure to meet investor expectations could have significant reputational repercussions. Issuers will not only be concerned to avoid the poor press that is most often associated with negative investor views on their UoP issuance, but would also be concerned about the potential negative impact it could have on their ESG rating and access to bond markets (and therefore their cost of funding in the future). This means that issuing UoP bonds already comes with significant costs and reputational risks that serve as a significant incentive to use the proceeds in the intended manner.

- **Requiring the central elements of UoP bonds to be contractual in nature therefore seems unnecessary when one considers the significant reputational repercussions that issuers face under the current approach, which serve as very strong incentives to use the proceeds in the manner intended. We are also not aware of any malpractice to date.**

B. <u>It seems unlikely that issuers would be prepared to accept the very significant risks associated with a use of proceeds-related event of default</u>
The risks associated with a use of proceeds-related event of default are very significant for an issuer. In particular, it is possible that an event of default under a UoP bond could trigger cross-defaults across their other financings putting the issuer's entire business at risk.

[2] In the European bond market, terms and conditions of bonds are typically set out in full in the bond prospectus.

While the benefits of issuing sustainable bonds may include both attracting a larger investor base and galvanising the issuer's organisation to coordinate its policies, strategies and disclosures in relation to environmental considerations, some issuers do not get a noticeable pricing benefit for UoP issuance compared with their other bond issuance; and any outperformance of UoP bonds is uncertain and wholly dependent on supply and demand dynamics.

- **The very significant risks associated with a use of proceeds-related event of default seem unlikely to be outweighed by the commercial advantages of issuing UoP bonds and so any regulatory requirement for a use of proceeds-related event of default is likely to be a significant deterrent to sustainable bonds issuance**.

C. <u>Eligible projects may become impaired or delayed for reasons beyond an issuer's control (e.g. regulatory changes in the relevant jurisdiction)</u>
The risk of projects being impaired or delayed applies for both UoP bonds where the proceeds are intended to be used for a single project and for UoP bonds where the proceeds are intended to be used to finance a portfolio of smaller projects, all of which are subject to the same risks. For this reason, it is also not possible for an issuer to state in its prospectus (or indeed any other document) that it "will" use the proceeds in a certain manner.

- **Taken together, it seems very unlikely that an issuer would be prepared to accept the risks associated with having an event of default arise for failure to use the proceeds in the precise manner and within the timeframe envisaged at the time of issuance.**

D. <u>The risk of investor detriment arising from the current "intentions based" approach and associated market practice for prospectus disclosure is considered to be limited.</u>
Current market practice typically involves the issuer providing a link to its green bond or other relevant framework document in the base prospectus. The framework is available to investors before the bond is issued and sets out, among other things, the issuer's eligible projects and what will happen in the event that the proceeds exceed the value of the eligible projects. This may be accompanied by an investor presentation and investor meetings before the bond is issued at which investors will be able to ask questions. All disclosure, including the base prospectus, will be clear on the intentions-based nature of the use of proceeds for UoP bonds.
We are not aware of any concerns with this current market practice or the concept of an "intentions based" approach and, as noted above, we are not aware of any malpractice to date. We believe investors' concerns are more likely to be centred on whether the eligible projects are sufficiently environmentally or socially beneficial for their own subjective requirements, which is not a concern that a contractual obligation would address. Notwithstanding this, to the extent that an investor is not comfortable with the "intentions based" approach (either generally or in a particular context), there are other options available such as Sustainability-linked Bonds (SLBs).
We also note that there may well be no financial loss for investors as a result of the issuer not using the proceeds in the manner intended, in particular in the case of "buy and hold" investors (which are especially prevalent in the UoP bond market) where there is no negative new issue premium.

- **We therefore do not consider that this is an area for regulatory intervention, but rather a matter for market participants in striking the right commercial bargain for them.**

E. <u>Investors may already have claims for misrepresentation providing them with a right of redress</u>
Depending on the precise facts and circumstances, it is possible that investors could have claims for misrepresentation on a statutory basis, tortious basis or both under existing market practice. As noted above, we are not aware of any malpractice to date giving rise to such claims.

F. <u>Making UoP a contractual obligation in the prospectus could result in the UK having a competitive disadvantage compared to other jurisdictions</u>

Finally, we are not aware of any other jurisdiction currently requiring the central elements of UoP bonds to be contractual in nature and set out in the prospectus. An FCA requirement applying to, for example, UoP bond prospectuses approved by the FCA therefore seems likely to diminish the attractiveness of listing UoP bonds on the London Stock Exchange's Main Market and making UK Prospectus Regulation non-exempt public offers of UoP bonds in the UK.

30. Setting aside the suggestion of a contractual provision regarding use of proceeds, another measure that could be considered is a requirement for a UoP bond issuer to make a public announcement if it does not use the proceeds as originally intended and laid out in the bond framework. This disclosure should contain an explanation of the reasons (which might be beyond an issuer's control) and be made ideally on the front page of an allocation report or at least in online presentations and the Sustainability Report. This is an area, however, that could be added to the already existing requirement under the Principles for allocation reporting which is aimed at creating transparency for investors on how proceeds are being used.

Q15: We would welcome views on the potential harm set out above [The role of verifiers and SPO providers] and what, if any, actions the FCA or the Treasury should consider.

31. External reviews can take different forms, second party opinions (SPOs) being the most basic and popular one. In recent years, it has become standard market practice for issuers to get an external review (mostly SPO) with their sustainable bond issuance mainly because most investors want the additional reassurance one can bring, especially in emerging markets. External reviews have therefore also been added as a key recommendation in the 2021 version of the Green and Social Bond Principles (GBP and SBP) for UoP bonds.

32. With the sustainable bonds market having proliferated in recent years and transition becoming a bigger theme, in addition to the UoP Principles, the Sustainability-linked Bond Principles (SLBP) for general corporate purpose bonds have been released which are more complex to assess than UoP bonds. With the SLBP, verification is also a core component, not just a key recommendation.

33. ICMA's Guidelines for External Reviewers provide voluntary guidance relating to professional and ethical standards for external reviewers, as well as to the organisation, content and disclosure for their reports. Despite these guidelines and additional Q&As and guidance on transition finance, impact reporting etc. having been published, it has become ever more challenging for external reviewers to evaluate the details of sustainable bonds such as the alignment with the Principles and increasingly the EU Taxonomy (in the future also the UK Taxonomy), whether KPIs are ambitious enough, whether a transition strategy is credible etc.

34. We would therefore support a dialogue with the FCA on initiatives that might be undertaken to support the role of external reviewers and thus the integrity of the sustainable bonds market. It will be important to bear in mind that the market for external reviewers of sustainable bonds is a cross-border market and attention needs to be paid to preserve a level playing field. Global cooperation among relevant authorities on supervision of external reviewers is important, and it is encouraging to see IOSCO focusing on this area.

35. The FCA should also take note of the recent proposal for an EU Green Bond Standard which was preceded by a market consultation in which a large majority of respondents expressed their support for a regulatory regime for external reviewers under ESMA's supervision, with many asking for a proportionate regime. This indicates that most stakeholders would mostly favour the option of a targeted supervisory regime. To that end, it might be helpful that many of the companies currently providing the majority of SPOs in the market are either credit rating agencies and thus regulated by ESMA or belong to a regulated parent company.

36. Finally, regarding the concern about the issuer-pays model for external reviews: having issuers pay means that SPOs can be offered for free to investors. For that reason, credit rating agencies (CRAs) also moved from an investors-pay (subscription) to an issuer-pays model a couple of decades ago. CRAs' credit rating methodologies are publicly available and credit analysts are available to speak to institutional investors in order to explain the quantitative and qualitative parts that go into a credit rating. Perhaps a similar approach would provide more confidence in external reviews to investors.

Q16: Should the FCA, alongside the Treasury, consider the development and creation of a UK bond standard, starting with green bonds?

37. Reaching the goals of the Paris Agreement, including the UK's goal to be net zero by 2050, will require significant investment from the private sector, a big part of which will be enabled by the sustainable bonds market. This market has grown exponentially over the last decade with issuance reaching nearly 630bn USD in August 2021, and total outstanding volume now at 1.9tr USD. The Principles being descriptive, rather than prescriptive have been a major contributor to this. ICMA analysis found that in 2020, 97% of sustainable bonds issued globally, have been aligned to the Principles – GBP, SBP, SBG as well as the new SLBP (data based on Environmental Finance).

38. Looking at that success of the sustainable bonds market, very much helped by the voluntary nature of the Principles and related guidance, we think that the FCA/Treasury should refrain from creating a UK Bond Standard. This could lead to market fragmentation and we would see it as more important for the FCA/Treasury to focus on the further development of the broader market instead. We see the City of London playing a particularly important role in the international context by facilitating the issuance of UoP bonds and SLBs aligned with the Principles.

39. ICMA is a member of the UK Government's Stakeholder Discussion Forum on its plans for issuance of green gilts and in frequent dialogue with the UK Green Finance Institute and the Impact Investing Institute. We would welcome an exchange with the FCA on how the UK could further support the development of the sustainable bonds market, including through market education and potential recognition of the Principles (see our request for dialogue under Q13).

Q17: Do you agree with how we have characterised the challenges and potential harms arising from the role played by ESG data and rating providers? If not, please explain what other challenges or harms might arise?

40. As a general matter, we agree with the characterisation of the challenges and potential harms arising from the role played by ESG data and rating providers in the consultation paper. In particular, we agree with the FCA's assessment that divergence is not inherently undesirable, as long as there is appropriate transparency on the methodologies and that these are robust. We consider that heterogeneous ESG ratings are acceptable when they are justified by different approaches and methodological choices, and we think it is important that the ability for ESG data providers to innovate should be preserved. But differences are problematic when they stem from diverging evaluations of core KPIs that should not be subject to interpretation (e.g. carbon emissions, United Nations Global Compact violators).

41. The heterogeneity of ESG ratings forces asset managers to work with several ESG data providers in order to work out the credible average performance of an issuer. From an asset manager's perspective, this situation is far from ideal as it is both costly and approximate. Implementing a standardised and globally recognised disclosure regime for issuers such as TCFD, as proposed by the FCA, will contribute to address the issue by converging the evaluation of issuers against core climate-related KPIs. Please see our response to Q3 in relation to specific considerations for an extension of the Listing Rule on TCFD-aligned disclosures to issuers of debt and debt-like securities.

42. We also agree that a regulatory focus on transparency, governance and management of conflicts of interest could help to address some of the challenges and potential harms identified by the FCA; and that global alignment in this area would be beneficial.

Q21: What other ESG topics do you consider that we should be prioritising to support our strategic objective? Please explain.

43. The FCA might wish to be aware that issuers have raised concerns with the significant data challenges associated with climate-related disclosures and the potential liability and enforcement consequences that could arise. Those issuers note that at least one SEC Commissioner is advocating a specific safe harbour for climate information that the SEC may require to be disclosed as a result of its current climate disclosure rule making project. They suggest that authorities in the UK and Europe should also consider this. ICMA intends to discuss this issue further with members and would also be happy to discuss this matter with the UK authorities.