

**ICMA RESPONSE TO FCA CONSULTATION PAPER 21/21
PRIMARY MARKETS EFFECTIVENESS REVIEW¹**

Key points

- ICMA's response to the FCA's Primary Markets Effectiveness Review focuses primarily on the discussion of the purpose of the listing regime, which is the key area of the Review that concerns the primary international bond market.
- ICMA is not aware of particular concerns or issues with the current structure of the UK listing framework for debt and debt-like securities that impact upon issuers' choice of listing venue between London and elsewhere.
- To the extent that any changes are made to this framework, it will be very important that the changes are either neutral or positive for debt market participants.
- In particular, it will be important to ensure the continued availability of the quoted eurobond exemption from UK withholding tax and the ability for UK and overseas investors to be able to continue to invest in London-listed bonds within the terms of their investment mandates. With these points in mind, we suggest that the FCA explore whether it could streamline the way it regulates admission to listing with the way it regulates admission to trading on a UK regulated market.

Introduction

1. ICMA is responding to certain questions in Chapter 3, *Discussion of the purpose of the listing regime*, and Chapter 6, *Minimum market capitalisation*, in FCA Consultation Paper 21/21, *Primary Markets Effectiveness Review*, from the perspective of the primary international bond market.
2. We have no comments on the proposed minor changes to the Listing Rules, Disclosure Guidance and Transparency Rules and the Prospectus Regulation Rules set out in Chapter 9 of the consultation paper. The other aspects of the consultation paper do not appear to be relevant for primary international bond markets.

Chapter 3: Discussion of the purpose of the listing regime: general comments

3. As a general matter, ICMA is not aware of particular concerns or issues with the current structure of the UK listing framework for debt and debt-like securities that impact upon issuers' choice of listing venue between London and elsewhere. To the extent that any changes are made to this

¹ <https://www.fca.org.uk/publication/consultation/cp21-21.pdf>

framework, it will be very important that the changes are either neutral or positive for debt market participants.

4. The FCA notes in paragraph 3.16 that the primary topic discussed in Chapter 3 of the consultation paper is situations in which a choice exists for the listing of shares in commercial companies and it is not currently proposing changes for other securities that are listed in the standard segment. The FCA also acknowledges in paragraph 3.20 of the consultation paper that the different potential models for the UK listing regime set out in the consultation paper focus predominately on equity shares in commercial companies and that it will need to consider other types of securities in more detail when it decides how to take forward responses to the consultation. Given their equity focus and the indication that the FCA is currently not proposing changes for debt and debt-like securities, we do not have strong views on the different potential models set out by the FCA in Chapter 3 of the consultation paper. But we agree it will be necessary for the FCA to consider how they would work for debt and debt-like securities when it progresses its work in this area. For example, Model 2, which involves a single listing segment for UK listed companies and raising both eligibility and continuing obligations for all UK listed companies to that in the premium segment, would likely be problematic if applied to listings of debt and debt-like securities, for which standard segment requirements currently apply. We would be happy to engage with the FCA as it continues its work in this area.

Chapter 3: Discussion of the purpose of the listing regime: Other securities

Q12: How can the process for listing debt and debt-like securities be improved for issuers without jeopardising investor protection?

5. As a general matter, ICMA is not aware of particular concerns or issues with the current structure of the UK listing framework for debt and debt-like securities that impact upon bond issuers' choice of listing venue between London and elsewhere. However, please see our response to Q15 in which we suggest that the FCA explore whether it could streamline the way it regulates admission to listing with the way it regulates admission to trading on a UK regulated market.

Q13: Should there be a separate listing segment for debt and debt-like securities?

6. We are not aware that a lack of a separate listing segment for debt and debt-like securities is currently causing issues in practice. However, it is possible that a separate listing segment for debt and debt-like securities could be useful to allow more tailored requirements to be applied to listings of those securities. We cannot immediately identify any particular concerns that would arise from establishing a separate listing segment for debt and debt-like securities, assuming that the quoted eurobond exemption from UK withholding tax continued to be available for debt securities listed on such segment and the regulatory requirements associated with the separate segment were calibrated appropriately for debt and debt-like securities.

Chapter 3: Discussion of the purpose of the listing regime: Removing duplication between admission to the Official List and admission to a trading venue

Q15: Do issuers consider the process of admitting further issues to both the FCA and the trading venue to be burdensome?

7. The *process* of admitting new bond issues and further bond issues to both the FCA and the London Stock Exchange is generally not considered to be burdensome. However, we consider that the bifurcation of the admission to listing and admission to trading on a UK regulated market and the two different sets of rules could benefit from streamlining in order to make the overall regime more straightforward to understand and apply for bond market participants.
8. As the FCA identifies in paragraph 3.43, most regulatory obligations that apply to bonds admitted to a UK regulated market stem from admission to that UK regulated market rather than admission to the UK listing regime. While most of the regulatory obligations that apply to issuers admitted to the UK listing regime do not cause a significant burden, the fact that there are two different regimes and two different rulebooks that such issuers have to navigate and comply with (both the Listing Rules for admission/continuing obligations for the UK listing regime and the Prospectus Regulation Rules/DTRs for admission/continuing obligations for a UK regulated market) does cause complexity and duplication and this is of itself a burden.
9. For example, the way that Listing Rules 17.3.4 to 17.3.6 (annual accounts) interact with DTR4 (periodic financial information) is confusing and it is not clear why there should be two parallel sets of rules on continuing financial disclosure. And it seems illogical that the rules on disclosure of rights attached to securities (in LR 17.3.9C) and early redemptions (in LR 17.3.12) should be in a different place from the other rules that govern the circumstances in which an issuer must notify noteholders in DTR 6.1.
10. The only bond issuers that are subject to the Listing Rules but are not directly subject to the DTRs² are those issuers that are admitted to the London Stock Exchange's Professional Securities Market (PSM) and it is not clear if the original reason that this MTF was established still applies. As a matter of issuer preference, it has also been overtaken by the London Stock Exchange's International Securities Market (ISM) as UK MTF of choice for bond issuers.
11. From the perspective of bond investors, our understanding is that they are unlikely to place significant (or any) value upon the separate regimes applicable to the admission processes for the Official List and London trading venues from a substantive perspective. We understand their key concern is rather admission to trading to a reputable trading venue and the transparency and standards associated with that. Please see below in relation to the wording of investment mandates.
12. We would therefore suggest that the FCA explore whether it could streamline the way it regulates admission to listing with the way it regulates admission to trading on a UK regulated market by combining and streamlining their related rulebooks for debt and debt-like securities, including the currently scattered continuing obligation requirements.
13. It is possible that some investors' investment mandates may be written in a restrictive way requiring a "listing" (for legacy reasons). It would therefore be helpful for any streamlined

² Subject to certain exemptions, for example the exemptions from the rules on annual financial reports and/or half-yearly financial reports contained in DTR 4.4.

rulebook to make reference to both listing and admission to trading in order to avoid any unintended consequences for investors (including non-UK investors) that may not update their investment mandates regularly.

14. In addition, as noted above, in considering any changes to the current framework, it will be important to ensure that the quoted eurobond exemption from UK withholding tax continues to be available in the way it is now.

Q17: Are there any legal, regulatory or tax requirements that are connected with further issues being admitted to the Official List, that could not be maintained by further issues being admitted to a trading venue?

15. Please see our reference to the quoted eurobond exemption from UK withholding tax in our response to Q15 above.

Chapter 6: Minimum market capitalisation

Q24. Do you consider that the current level of market capitalisation for listed debt remains appropriate? Please give reasons for your answer.

16. We agree with the FCA's assessment that the concerns related to market capitalisation in the equity capital markets would not seem to apply in the context of debt listings and so there is no need for any change to the requirements for market capitalisation for listed debt.