11 September 2026

FCA Consultation Paper CP26/23
Consumer Duty - scope and proportionality
–
ICMA response

EXECUTIVE SUMMARY

(A) The exclusions for institutional bond activity (under the *"non-retail financial instrument"* definition, notably re. minimum denomination) and for listed retail bonds (pursuant to an exception to the *"retail market business"* definition) have been critical – and their substantive retention is crucial and welcome.

(B) It is also crucial that the incremental qualification to the minimum denomination exclusion, as applying re. each end investor, indeed be interpreted such that the upstream firm must be 'acting in concert' with the downstream arrangements in question.

1. **Eurobond perspective** – ICMA welcomes the opportunity to respond, from the perspective of the mainstream international bond markets (Eurobonds), to FCA's Consultation Paper CP26/23 *Consumer Duty - scope and proportionality*.
2. **Status quo recap** – The Duty has long included two clear exclusions that have been critical to the functioning of the Eurobond markets (as noted in a 2Q2023 ICMA Quarterly Report article):
   (a) institutional bond activity, pursuant to the *"non-retail financial instrument"* definition (notably in its paragraph (2) regarding a £50,000 minimum denomination); and
   (b) listed retail bonds, pursuant to an exception to the *"retail market business"* definition (in its paragraph (3)).
3. **Consultation proposal** – Regarding the two exclusions in #2 above, the Consultation Paper seemingly proposes:
   (a) ***Substantive retention*** – to mainly just move the exclusions, from the glossary of definitions (c.f. draft changes relating to *"retail market business"* and *"non-retail financial instrument"* at p.4 of the Consultation's Appendix 2 / 92nd page overall), into the PRIN sourcebook (see draft PRIN 3A.1.2(3)-(4)R at pp.28-29 of the Consultation's Appendix 2 / 116th-117th pages overall); but also
   (b) ***'Non-aggregation' qualification*** – to add, regarding institutional bond activity, an incremental qualification to the minimum denomination/investment exclusion as only applying *"in respect of each end investor, without aggregation across platform service providers or other nominee arrangements"* (with some related narrative commentary at #6.8-9 on p.47 of the

Consultation, notably envisaging *"firms … selling investment funds to retail customers via a platform and the minimum investment is aggregated in order to reach the £50,000 threshold"*).

4. **Substantive retention welcome** – The Consultation Paper's substantive maintenance of the existing exclusions (in #3(a) above) is crucial and welcome.

5. **'Non-aggregation' qualification only where 'acting in concert'** – The 'non-aggregation' qualification in #3(b) above references the context of platform *"service providers"* and other nominee *"arrangements*". This suggests, rightly, that the upstream firm must be 'acting in concert' with the downstream arrangements in order to thus fall outside the minimum denomination/investment exclusion that is relevant to institutional bond activity. It is crucial that the 'non-aggregation' qualification be interpreted in this way: the minimum denomination/investment exclusion would have no value if unrelated (and likely unknown) third party actions could nullify it - as well as seemingly breaching principles of natural justice. (ICMA March 2026 comments on fractionalisation responding to FCA Discussion Paper DP25/3 *Expanding Consumer Access to Investments* noted, in that particular fractionalisation context, unconnected third parties being liable for their own actions - without prejudice to entities involved in the creation of the underlying instrument to the extent not acting in concert.)

Contact:
Ruari Ewing
Senior Director, Market Practice and Regulatory Policy
Direct line: +44 20 7213 0316