

FCA Quarterly Consultation No 51 / CP26/8 (Chapter 5 - *Clarificatory amendments to PRM*)

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ICMA response

EXECUTIVE SUMMARY

Regarding, from the Eurobond perspective, proposed PRM sourcebook clarifications:

- (1) overlapping requirements on **timing of final terms' publication** is confusing, and so the proposed cross-reference removal seems sensible;
 - (2) **protected forward-looking statements** may be repeated, and so the proposed allowance of just one instance of the content-specific accompanying statement (that can then be signposted to) seems sensible;
 - (3) restricting **amendments via supplement** to “fungible” new securities has been perceived as stricter, and so the proposed reversion to the historic restriction (to “manifestly the same” new securities) is welcome;
 - (4) the **supplement notification** obligation does not carve-out the wholesale context and so the proposed alignment with the (correct) disapplication of withdrawal rights in this context is sensible; and
 - (5) the **'max 150-person' concept** was historically as an ‘across the board’ exemption (neither withdrawal rights nor the obligation to notify supplements applied), which endures under the EU’s Prospectus Regulation regime.
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1. ICMA welcomes the opportunity to respond, from the perspective of the mainstream international bond markets (Eurobonds), to FCA’s [Quarterly Consultation No 51 / CP26/8](#) – regarding Chapter 5’s proposed clarifications to the [Admission to Trading on a Regulated Market \(PRM\) sourcebook](#). (ICMA understands various law firms active in the Eurobond markets also intend to respond directly, notably on some of CP26/8’s more technical questions.)

FTs / Publication

Question 5.2: Do you agree with our proposed change to the drafting of PRM 2.3.9R(1)? If not, please explain why.

2. Agreed. It is a bit confusing to have overlapping requirements on timing of final terms (FTs) publication – between PRM 2.3.9R(1)’s own requirement for final terms to be made available to the public “*as soon as practicable upon a PRM offer and, where possible, before the beginning of the offer or admission to trading*” and its additional cross-reference to PRM 9.5.3R’s requirement for public availability “*at a reasonable time in advance of the admission to trading [...] and [...] no later than [...] admission to trading [...]*”. In practice FTs are filed and become publicly available by admission to trading. Removing the initial cross-reference to PRM 9.5.3R, by starting the cross-reference list with the subsequent PRM 9.5.4R (on publication method), consequently seems sensible.

PFLS / Content-specific accompanying statement

Question 5.3: Do you agree with our proposal to amend PRM 8.2.3R to provide flexibility for the placement of the content-specific accompanying statement? If not, please explain why.

3. Agreed. A particular protected forward-looking statement (PFLS) may indeed be repeated several times – and further repeating the content-specific accompanying statement each time does feel disproportionately complicating. So it seems sensible to allow just one instance of the content-specific accompanying statement (whether in a dedicated section or not) that can then be signposted to in the other cases.

Supplements / Amending Ts&Cs and forms of FTs

Question 5.7: Do you agree with our proposal to amend PRM 10.1.9R(1) and (2) by replacing the word ‘fungible’ with the words ‘manifestly the same’? If not, please explain why.

4. Agreed. PRM 10.1.9R’s residual restriction on amendments that can be effected via a supplement, to where new securities would be “fungible” with securities that could have been issued prior to such amendment, has been perceived as stricter than the historic approach (used in the August 2020 Technical Note TN 605.3) that required new securities to be “manifestly the same”. The current approach has been seen as potentially significantly restricting ABS / structured product flexibility, and so a reversion to the historic approach is welcome. (Consequential amendments will presumably follow regarding related references in the FCA’s [Knowledge Base](#), notably in [Primary Market Technical Note TN / 605.5](#).)

Supplements / Informing investors about potential withdrawal rights

Question 5.8: Do you agree with our proposal to amend PRM 10.1.16R and PRM 10.1.17R so they apply in the same circumstances as PRM 10.1.14R? If not, please explain why.

5. Agreed. The current obligation to notify supplements (in PRM 10.1.16R and 10.1.17R) does not carve-out the wholesale offer context (POATRs Sched.1 #1-5/12), which seems inconsistent with PRM 10.1.14R that (correctly) disapplies withdrawal rights to such offers and so the proposed alignment is sensible.

Question 5.9: Do you agree that offers made reliant on the exemption set out in paragraph (3) of Schedule 1 to the POATRs should be exempt from the requirements of PRM 10.1.14R, PRM 10.1.16R, and 10.1.17R, even though such offers are made to persons who are not qualified investors? If so, please explain why.

6. Historically, under the legacy Prospectus Regulation regime, the ‘max 150-person’ exempt offer concept (that is currently referenced under POATRs Sched.1 #3) was applied as an ‘across the board’ exemption (similarly to the other forms of exempt offer). In this respect, neither withdrawal rights nor the obligation to notify supplements applied. This continues to be the case under the EU’s Prospectus Regulation regime.

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