20 March 2025

Consultation CP24/30

A new product information framework for Consumer Composite Investments

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ICMA response

EXECUTIVE SUMMARY

*(1) It should be clearer that the **institutional space** (including unlisted bonds) continues to be excluded from the CCI regime's **investor scope**:*

(a) DISC 1A.1.3R is understood to apply where there are clear institutional-only warnings and no inconsistent conduct by the issuer manufacturer or connected parties (bearing in mind that an issuer preparing neither a product summary nor "core information disclosures" will amount to a de facto prohibition on UK retail distribution);

(b) DISC 1A.1.6R is inconsistent with this and should be amended (i) to have 'guidance' rather than 'rule' status, (ii) to delete the restriction to 'readily realisable securities' only and (iii) to apply its requirements on an alternative rather than a cumulative basis;

(c) the DISC sourcebook should also be explicitly limited to "retail market business", as it is understood to clearly exclude the institutional space (under its limb 2) and can extend scope clarity consistently across relevant regimes (CCI, Consumer Duty and hopefully also PROD / product governance).

*(2) Exclusion of the **mainstream (vanilla) space** from the CCI regime's **instrument scope** is insufficient and should be clearer:*

(a) DISC 1A.2 should be amended to address various specified uncertainties;

(b) the DISC sourcebook should be explicitly limited to "retail market business" also in this respect, as it is also understood to clearly exclude the vanilla space (under its limb 3) and can also extend scope clarity consistently across the relevant regimes.

*(3) Otherwise, (i) the **transitional period** should apply to any scope widening and to legislative references in legends and (ii) it could be made clearer (with guidance) that the **definition of manufacturer** for DISC excludes bond underwriting.*

1. **Introduction** – ICMA welcomes the opportunity to respond, from the perspective of the mainstream international bond markets (Eurobonds), to CP24/30. ICMA is responding to Questions 4, 5 and 7 on regime scope (mostly reiterating from prior materials on ICMA's *PRIIPs KIDs* webpage) and also to Questions 8 and 10.

Question 4: Do you have any comments on the scope of products included in the CCI regime?

2. **PRIIPs' asset management origins** – It is worth recalling that the PRIIPs KID regime originated within the asset management industry. This was further to a perception that UCITS were being unfairly penalised by being subject to the UCITS KIID when 'substitutable' instruments, notably such as retail structured products, were not and that the same kind of short-form disclosure should also apply there.

3. **PRIIPs KID concept inappropriate for mainstream (vanilla) debt securities** – The PRIIPs KID concept, understood as effectively an exhaustive 3-page evergreen prospectus containing all material information for an investment decision, is a prohibitive liability risk for bond issuers as it fundamentally undermines their certainty of funding for issuances that are individually in potentially existential size (several hundred million GBP/EUR etc or more). (And this is before even considering the KID's prescriptive content requirements.) See further explanation at #13-#15 in the September 2018 ICMA response to FCA's call for input on PRIIPs. In this respect, ICMA notes the proposed CCI regime maintains the substance of the PRIIPs regime short-form disclosure concept (as well as adding further elements of both organisational governance and product governance for manufacturers/distributors that are not FCA-authorised). The majority of issuances in the mainstream debt securities context do not currently prepare KIDs and are similarly unlikely to want to prepare a product summary. For this reason, ICMA is not commenting on the contents proposed for 'product summaries'.

4. **Historic failure to *clearly* exclude mainstream debt securities from instrument scope**

   (A) Whilst the general policy intention has aways seemingly been to exclude vanilla instruments from PRIIPs scope, ICMA has long argued that mainstream debt securities needed to be *more clearly* excluded. (See further #3-#4 in the September 2018 ICMA response.)

   (B) ICMA has at various times flagged its conceptual, principles-based suggestions relating to scope clarification – see further #7 in the September 2018 ICMA response (in terms of potential regulatory guidance) and at Q22 on pp.10-11 of the December 2021 ICMA response to ESMA's call for evidence on PRIIPs (in terms of potential legislative amendment – also reproduced in the box below for convenience).

   > << 'packaged retail investment product' or 'PRIP': // (a) means an investment[…], regardless of its legal form, (i) that intercedes between the retail investor and the markets through a process of packaging or wrapping together assets so as to create different exposures, provide different product features, or achieve different cost structures as compared with a direct holding and (ii) where the amount repayable to the retail investor is subject to fluctuations because of exposure to reference values (i.e. synthetic exposures created through proprietary benchmarks) or to the performance of one or more assets which are not directly purchased by the retail investor; // (b) does not mean investments of the direct kind that is achieved when buying or holding assets themselves; >>

   (C) However, EU regulatory clarification attempts have focused instead on selected instrument features that, though sometimes incrementally helpful, have fallen short overall (see at Q21 on p.10 of the December 2021 ICMA response and also #3(A)-(B) in the August 2023 ICMA feedback on the European Commission's RIS proposals).

   (D) The FCA's initial post-Brexit changes were similarly disappointing in this respect (notably bearing in mind UK regulatory 'nimbleness' expectations), with the substance of the formal rule in PS22/2 seeming narrower than the legacy October 2019 ESMA informal statement in some respects (though it was difficult to compare precisely) and not materially better overall (and see further #7-#13 in the September 2021 ICMA response to FCA CP21/23). (ICMA

subsequently understood that these initial changes might well be subject to further review as a part of wider post-Brexit changes to the UK's regulatory architecture and FCA's powers.)

5. **Current CCI proposals insufficient in this respect** – Subject perhaps to #(A)(4) below, the current proposals do not improve the position described in #4 above (and CP24/30 #3.4 explicitly acknowledges the prior provisions are generally being carried over). They seem however to bring additional uncertainty, in particular the concept and presentation of 'neutral' features (some of these seem to be so obvious that they should not need stating and doing so raises the question as to why certain other similarly obvious or potentially 'borderline' features are not included in this list).

   (A) **Sweep-up / 'other indirect investments'**

   (1) **Generally** – It is unclear whether DISC 1A.2.1R(h) is trying to address the concern in #4(A) above that mainstream debt securities should be more clearly excluded from instrument scope, so that the majority of syndicated debt securities would fall out of scope and only fall in scope if they fall in DISC 1A.2.1R(c) as they are not indirect investments (DISC 1A.2.1R(h) stating: *"any other investment where the returns are dependent on the performance or changes in the value of indirect investments"*).

   (2) **Related 'white' and 'neutral' list relevance** – In other places in CP24/30 where scope is discussed, it is clear that vanilla bonds are not the focus of the CCI regime. To the extent this is the intention, the exclusions in DISC 1A.2.3's 'white' list and the list of 'neutral' features in DISC 1A.2.4 are confusing – in terms of whether they only apply if the return on the debt security is dependent on the performance or change in the value of indirect investments (and are not otherwise relevant to CCI characterisation).

   (3) **'White' list / financial institution issuers** – DISC 1A.2.3's 'white' list exclusion is unclear in terms of an *"issuer's default risk [being] wholly or predominantly determined by the economic performance of the commercial or industrial activities of the issuer"* and the interpretation of *"lending, investment, and any other financial sector activities are not commercial or industrial activities"*. The intention is presumably not to capture all issues by financial institution issuers.

   (4) **'Neutral' list / make-whole clauses** – In the list of neutral features in DISC 1A.2.4, the further make-whole clause clarifications are incrementally helpful, albeit DISC 1A.2.4R(4)(a) is more restrictive than the EU MiFID make-whole clause definition proposed by the EU Council in EU RIS deliberations (at page 8 of June 2024 Council common position on amending the PRIIPs Regulation) that references only compensating net present value (and not limiting usage circumstances): *"a clause that aims to protect the investor by ensuring that, in the event of early redemption of a bond, the issuer is required to pay to the investor holding the bond an amount equal to the sum of the net present value of the remaining coupon payments expected until maturity and the principal amount of the bond to be redeemed"*.

   (5) **'Neutral' list / Interest rate steps** – The status of interest rate steps is unclear, given the deletion of the fixed rate step reference from what is now DISC 1A.2.4R(1) and the prior contrast with the absence of a similar floating rate step reference. The FCA would presumably not deem an interest rate step to cause a bond to be deemed a CCI as, for example, this could result in sustainability-linked bonds being deemed CCIs. (Note that the "non-complex listed corporate bond" concept proposed in FCA CP25/2 explicitly allows for a stepped coupon, albeit strangely only in a fixed rate context.)

   (B) **'Fluctuation-linked'** / **IBORs** – In relation to what is deemed in scope by virtue of DISC 1A.2.1R(c), as set out in DISC 1A.2.2, the exclusions in DISC 1A.2.2(2) do not specifically extend

to capture IBOR floating rates notably such as EURIBOR (given the insertion of explicit RFR references).

(C) **Drafting structure** – Trying to navigate the multi-layered, different and overlapping rules, definitions, lists, features and concepts in the proposals is challenging and does not seem to reflect the FCA's intention to address areas of complexity, duplication, confusion or over-prescription. Even with specific technical adjustments to address the uncertainties in #(A)-(B) above, the complex drafting may dissuade many stakeholders from engaging with instrument scope – preferring to continue avoiding UK retail investors as the simpler approach.

6. **Consumer Duty approach clear**

(A) In contrast, the delineation adopted in the context of the Consumer Duty's scope limitation (notably in PRIN 3.2.6R) to "retail market business" has been understood to clearly exclude the vanilla space under the definition's limb 3 (see #2 in the October 2024 ICMA response to FCA's call for input following the Consumer Duty) – and has been previously mooted by ICMA for potential use also in the context of the CCI regime (see introduction #(2)(b) in the March 2023 ICMA response to FCA DP22/6 and #4 in the January 2024 ICMA feedback to HMT on the near-final CCI SI).

(B) In relation to scope of instruments, limb 3(b) of the "retail market business" exemption notably relates to the bonds being traded or intended to be traded on an RIE or trading venue operated by a regulated market, that does not involve any actual or potential liability for the investor that exceeds the cost of acquiring the instrument and does not incorporate a clause, condition or trigger that could fundamentally alter the nature or risk of the investment or pay out profile and is not a structured finance product.

(C) Adopting the Consumer Duty's delineation would (i) deliver a sufficiently clear exclusion (contrasting with the current CCI proposals as noted in #5(C) above), (ii) be convenient for consistency across regimes (as referencing an existing aspect of the FCA Handbook) and thus (iii) build further stakeholder clarity through consistency of exclusion across the various Handbook regimes (CCI, Consumer Duty and hopefully also PROD / MiFID product governance).

7. **Necessary amendments** – ICMA consequently considers:

(a) DISC 1A.2 should be amended to address the uncertainties outlined in #5(A)-(B) above (ICMA would be happy to assist with technical drafting); and

(b) the DISC sourcebook should be explicitly limited to "retail market business".[1]

Question 5: Do you have any comments on our proposed scope clarifications? Are there any other areas where it would be helpful to clarify the application of the CCI regime?

8. See #5-#7 above in response to Question 4.

Question 7: Do you agree with our definition for when a CCI is not a retail product and therefore out of scope? If not, please explain why.

9. **Historic comfort with "made available" concept as an institutional investor exemption** – ICMA previously noted (see e.g. January 2024 ICMA feedback at #6(A)) that broadly speaking, stakeholders under the legacy PRIIPs regime were comfortable that, combined with appropriate warning legends, the avoidance by issuer-connected parties (notably the issuer's new issuance

[1] Further to the March 2025 ICMA response to FCA CP25/2 (regarding Question 5), an additional point to consider would be to also specifically exempt "non-complex listed corporate bonds" (if FCA adopts that concept) from both product governance and CCI.

underwriters) of retail-specific marketing and of direct retail access facilitation (such as admission to a direct retail trading platform) should not reasonably have been seen as 'making available'. (This also bearing in mind that the absence of a KID amounts to a statutory prohibition on retail sales, by anyone, of in-scope instruments.)

10. **FCA initial post-Brexit approach too narrow (but just 'guidance')** – ICMA noted (#14-#18 in the September 2021 ICMA response) the FCA's initial post-Brexit proposals to be too narrow (in terms of cumulating the eligible investor and minimum denomination requirements and in terms of inconsistency with the prospectus regime in this respect). PS22/2's adoption of these proposals was therefore disappointing – but having just 'guidance' (rather than 'rule') status, ICMA anticipated industry might continue to rely on the above legacy reasoning around non-availability that it had been quite comfortable with. (ICMA subsequently understood that these initial changes might well anyway be subject to further review as a part of wider post-Brexit changes to the UK's regulatory architecture and FCA's powers.)

11. **Overall CCI application ('distributable' to UK retail) consistent with historic comfort** – DISC 1A.1.3R is understood to apply where there are appropriate institutional-only legends and no inconsistent conduct (i.e. retail-specific marketing and direct retail access facilitation) by the issuer manufacturer or connected parties (bearing in mind that an issuer preparing neither a product summary nor "core information disclosures" will amount to a de facto prohibition on UK retail distribution). This is consistent with the position in #9 above.

12. **Detailed CCI proposals mostly inconsistent** – The detailed proposals (in DISC 1A.1.6R) are however mostly inconsistent (excepting #(A) below) with the position in #11 above.

    (A) **£50,000 minimum** – In DISC 1A.1.6R, the minimum investment test is proposed to be calibrated at £50,000, which is consistent with other FCA regimes (the Consumer Duty and the pre-POATRs prospectus regime) and (given forex dynamics) the EU's €100,000 prospectus threshold – and so is helpful. (In terms of the change from a minimum 'denomination' test to a minimum 'investment' test, it is quite possible some issuers may find it simpler to nonetheless retain a minimum denomination in this respect – and the Consumer Duty's "retail market business" approach references £50,000 as *"a minimum denomination or otherwise a minimum investment"*.)

    (B) **Cumulative requirements** – Maintaining the cumulative nature of the eligible investor and minimum investment requirements is unhelpful, inconsistent with the alignment across the other FCA regimes (prospectus and Consumer Duty) and, combined with the proposed change from 'guidance' to 'rule' status, makes the institutional investor exemption much more rigid than previously (and more so than in the EU's PRIIPs regime).

    (C) Readily realisable securities – Furthermore, limiting exemption scope just to the defined concept of 'readily realisable securities' (RRS) is additionally and inappropriately restrictive – as even unlisted institutional issuances should not be subject to KID-like short-form disclosure (and the definition's intricacy otherwise complicates ex-ante certainty in terms of its listing and ambiguous 'regularly traded' elements). ICMA understands FCA's intention in this respect (inter alia noting CP24/30 #3.19) was merely to reference RRS as a convenient proxy to help identify instruments subject to secondary trading where the institutional exemption might therefore be needed due to an issuer's consequent lack of control over subsequent on-sales (and thus over whether instruments "may be distributed" to UK retail). However, listing is not a pre-condition to secondary trading (though it helps) – unlisted bonds are nominally capable of being on-sold (being 'transferable securities' and thus negotiable).

13. **Consumer Duty approach again clear** – In contrast, the delineation adopted in the context of the Consumer Duty's scope limitation (notably in PRIN 3.2.6R) to "retail market business" has been understood to clearly exclude the institutional space under the definition's limb 2 by reference to "non-retail financial instrument"[2] (see #2 in the October 2024 ICMA response) – and has been previously mooted by ICMA for potential use also in the context of the CCI regime (see introduction #(2)(a) in the March 2023 ICMA response). Adopting the Consumer Duty's delineation would again (i) deliver a sufficiently clear exclusion, (ii) be convenient for consistency across regimes (as referencing an existing aspect of the FCA Handbook) and thus (iii) build further stakeholder clarity through consistency of exclusion across the various Handbook regimes (CCI, Consumer Duty and hopefully also PROD / MiFID product governance).

14. **Portfolio/discretionary managers not 'retail' insufficiently clear** – ICMA previously also recalled (January 2024 ICMA feedback at #6(B)) that staff from the European Supervisory Authorities (ESAs) confirmed (see slide 2 of the July 2016 ESAs' presentation) that portfolio managers (who act on a discretionary basis) are not retail clients, which was consistent with both a plain reading of the professional client concept under MiFID II and the PRIIPs regime policy intent (focusing on decision-making by retail investors themselves). DISC 2A.3.5R purports to specifically exempt distributors, when dealing with a discretionary investment manager acting on behalf of a retail investor, from proactive checks for up-to-date product summaries and from the provisions about being at an "appropriate stage" and with a "durable medium". These discrete exemptions might seem to suggest that dealing with such discretionary managers will be otherwise subject to the CCI regime, which could require detailed analysis as to what (if any) new implications arise and (in the absence of such analysis) inhibit offerings to such discretionary managers. ICMA however understands FCA's intention in this respect is to maintain the same scope in this area as PRIIPs by exempting discretionary managers from the requirements to be provided with a product summary. In this respect, one would expect the exemption for distributors set out in DISC 2A3.5 to apply similarly to issuer manufacturers.

15. **Necessary amendments** – ICMA consequently considers:
    (a) DISC 1A.1.6R should be amended:
        (i) to have 'guidance' rather than 'rule' status;
        (ii) to delete the scope limitation to "readily realisable securities" only (i.e. deleting the "readily realisable security" reference in DISC 1A.1.6R);
        (iii) to apply its requirements on an alternative rather than a cumulative basis ("and" being changed to "or" at the end of DISC 1A.1.6R(2));
    (b) DISC 1A.1.4R(1) (referencing COBs 3) should explicitly acknowledge discretionary managers as not being retail investors for the purposes of the DISC sourcebook;
    (c) DISC 2A.3.5R should consequently be deleted as superfluous; and
    (d) the DISC sourcebook should be explicitly limited to "retail market business".

Question 8: Do you agree with our proposed transitional provisions for moving to the CCI regime? If not, please explain why

16. **Transitional period to apply to any scope widening and to legislative references in legends** – ICMA looks forward to seeing the consultation on draft transitional provisions, particularly in relation to scope. FCA mentions it intends the CCI regime to come into force when its Policy Statement is published or shortly after but with a substantial transitional period, allowing firms to

[2] Which includes alternative tests rather than a cumulative test, contrasting with the current CCI proposals as noted in #12(B) above.

use existing PRIIPs KIDs and UCITs KIIS for 18 months. However, the transitional period should apply to the changes relating to any widening of which instruments will be in scope and to any existing legislative references used in legends to prohibit sales to retail (although this may be less of a concern if the changes in #7 and #15 above in responses to Questions 4 and 7 are adopted).

Question 10: Do you agree with our approach, including how responsibility is allocated across the distribution chain? If not, please explain why, and how you think responsibilities should be allocated.

17. **Responsibility for continuing short-form disclosure / coherence with regulated financial promotions** – ICMA previously noted (January 2024 ICMA feedback at #7) that the legacy PRIIPs regime was mis-calibrated in making KID production an issuer manufacturer responsibility and that such responsibility should arise instead at the point of sale and be discharged either there or in concert with the issuer. In this respect, the FCA's proposals seem to enable a 'distributor' (not defined as necessarily having any connection with the issuer manufacturer) to opt to prepare a product summary, albeit only to the extent the issuer manufacturer prepares "core information disclosures" (DISC 2A.2.4R(2)). Though otherwise leaving it as an issuer manufacturer document by default, the proposals are however also explicit that retail distribution is prohibited if no product summary is available (DISC 2A.3.1R and 3.1.2G(3)). These last two aspects are consistent with the positions in #9 and #11 above in response to Question 7.

18. **'Manufacturer' of an instrument is its issuer** – The January 2024 ICMA response commented (at #5) on the 'manufacturer' of an instrument undoubtedly being its issuer under legacy PRIIPs and on narrowing the definition in the draft CCI SI in this respect. The final SI then (in its Regulation 5) dropped the reference to "underwriting" that had previously appeared in the near-final draft (at Regulation 2). In this respect, it could be made clearer (with guidance) that the FCA Handbook definition of manufacturer for DISC excludes bond underwriting.

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