

HM Treasury: *PRIPs and UK Retail Disclosure – A consultation*

ICMA response

General – ICMA is responding to this consultation from the perspective of the primary international debt capital markets (over USD 6 trillion raised in bond funding for companies in 2022¹) and welcomes the opportunity to engage with UK authorities on the PRIIPs regime. ICMA agrees with the broad direction of travel outlined in this consultation in terms of the repeal of the PRIIPs regime, with the expectation that bonds do not need to be covered by the replacement disclosure regime being developed by the FCA and will be unambiguously excluded from its scope (ICMA is separately responding to the FCA’s *Future Disclosure Framework* Discussion Paper DP22/6). This is because the PRIIPs regime has been highly problematic in the bond markets and materially contributed to bond issuers being disincentivised from making bonds available to retail investors.

The PRIIPs Regulation

Q1: Do you agree with the description of the various problems with the PRIIPs Regulation as stated above? Are there any other aspects of the regulation that you would like to raise as the government moves beyond PRIIPs into a new retail disclosure regime?

Short form disclosure cannot include all material information for an investment decision (let alone on a prescriptive basis) and is at high risk of misleading by omission if this is the stated purpose – and indeed the related civil liability risks have been prohibitive for issuers. (Short form disclosure has also had high misunderstanding rates among retail investors.) The European Commission, regarding the EU regime, sought to compare ‘substitute’ products, but then arguably mis-calibrated what is substitutable – unsurprisingly perhaps as many things can be substitutable narrowly though not generally. Prescriptive metrics (such as performance scenarios and summary risk indicators) have been heavily criticised as being actively misleading.

A new direction for retail disclosure

Q2: Do you agree with the principles set out in paragraph 3.2? If not, please explain.

Whilst ICMA welcomes the opportunity to understand the UK Government’s guiding principles for this new regime (and noting the shortcomings of short form disclosure noted above), ICMA would need to consider the detailed rules once consulted on to understand how such principles have been interpreted into requirements for firms under such new retail disclosure regime. ICMA agrees that short form disclosure with prescriptive/inflexible requirements can be unhelpful and can be difficult to align with the objective of producing information that empowers investors to make well-informed decisions.

¹ ION Analytics / Dealogic [DCM Highlights: FY22](#).

Q3: Do you agree that retail disclosure should aim to ensure that an investor is empowered to make well-informed decisions related to the product that they are purchasing, rather than focusing on comparability? If not, please explain.

ICMA agrees with the HMT premise that disclosing for comparability, in particular given the wide range of products potentially captured, is very difficult to achieve in a way that is meaningful for investors. Furthermore, short form disclosure has material limitations in terms of ‘well informing’ in relation to a single product (as noted under Q1) – let alone in terms of then distinctly comparing multiple products.

Q4: Do you agree that disclosure requirements should be flexible, with prescriptive requirements for format and structure only when deemed necessary by the FCA? If not, please explain.

Prescriptive disclosure should be left for application only if and when deemed necessary by FCA and should not be entrenched up front in statutory legislation.

Q5: Are you content with the decision to resolve the UCITS interaction through empowering the FCA to determine a future retail disclosure regime, as discussed above?

No comments from a debt capital markets perspective.

A new direction: Delivery

Q6: Do you agree that there is no need to maintain any PRIIPs-related retail disclosure elements in legislation? If not, please explain.

From a debt capital markets perspective, there is arguably no need to maintain any PRIIPs-related retail disclosure elements anywhere, but any such requirements should be more proportionately situated in subsidiary FCA rulemaking.

Q7: Upon revocation of the PRIIPs Regulation, do you agree with the government’s view that the FCA will not require any new additional powers to deliver a retail disclosure regime in line with the objectives stated in Chapter Five? If not, please explain.

No response.

Wider retail investment and disclosure issues

Q8: Are there any wider obstacles that prevent or discourage firms from offering investment products from different jurisdictions to UK retail investors, and what actions would you suggest that the government take on this issue?

The Prospectus Regulation’s more complex requirement for disclosure to retail investors has been a fetter. Whilst long form disclosure is unlikely to be engaged with by most retail investors, it is a necessary background preliminary for transparency. In this respect the UK’s current replacement of the prospectus regime could materially help by providing for the current wholesale disclosure standard to be of general application.

The international nature of the bond markets means that, aside the narrowly UK domestic context (of intrinsically limited size), retail bond supply will remain curtailed by overseas regulations disincentivising retail supply (e.g. the EU’s PRIIPs regime).

There have also been many logistical/commercial frictions in offering bonds to retail investors rather than institutional investors – but these are not UK-specific and again with less obvious scope for government intervention.

Q9: Do you have any views on digital disclosure, and in particular to what degree do you think a less prescriptive disclosure regime will facilitate innovative disclosure formats going forward?

No response.

Q10: Do you have views on other priorities for retail disclosure reform that the government and FCA should consider in future? Similarly, are there other challenges or trends in retail disclosure that regulators and policymakers should consider?

As a general matter, government and FCA should be clear, on a holistic basis, as to how retail investor engagement could realistically work in practice (for example in terms of investors looking to some form of regulated and supervised intermediation² instead of making their own independent disclosure-based decisions on investing in individual bonds) – and then calibrate regulation to deliver that outcome.

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² Such as discretionary management, investment advice or indirectly through bond funds – on the basis of wholesale disclosure.