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**ICMA response to BEIS consultation *Restoring trust in audit and corporate governance***

The International Capital Market Association (ICMA) welcomes the above consultation and sets out its response to it in the annex to this letter.

ICMA promotes well-functioning cross-border capital markets, which are essential to fund sustainable economic growth. It is a not-for-profit membership association with offices in Zurich, London, Paris, Brussels, and Hong Kong, serving around 600 member firms in 60 countries. Among its members are private and official sector issuers, banks, broker-dealers, asset managers, pension funds, insurance companies, market infrastructure providers, central banks & law firms. It provides industry-driven standards and recommendations, prioritising four core fixed income market areas: primary, secondary, repo & collateral and sustainable finance. ICMA works with regulatory and governmental authorities, helping to ensure that financial regulation supports stable and efficient capital markets.  
[www.icmagroup.org](http://www.icmagroup.org)

This response is primarily drafted on behalf of ICMA's primary market constituency comprised of underwriters that lead-manage cross-border syndicated bond issuance transactions throughout Europe and beyond. This constituency deliberates principally through:

- the [ICMA Primary Market Practices Committee](#), which gathers the heads / senior members of lead-managers' syndicate desks; and
- the [ICMA Legal and Documentation Committee](#), which gathers the heads / senior members of lead-managers' legal documentation / transaction management teams.

We would be pleased to discuss the ICMA response at your convenience.

Yours faithfully,



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<b>Annex</b>
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64. Do you have any further comments on how the operational separation proposals should be designed, codified (in legislation and regulatory rules), and enforced in order to achieve the intended outcome of incentivising higher audit quality?

1. **Background context** – The underwriters of a new bond issues by a company are subject to certain obligations (under regulation / civil law principles) relating to transaction disclosure made to investors, which are relevant from an investor protection perspective. Underwriters undertake due diligence in this respect. Whilst the appropriate level of due diligence to be performed in the context of each issue should be considered carefully, it is impossible to prescribe whether or what due diligence procedures would be appropriate in the circumstances of each issue, and procedures will vary greatly from issue to issue (depending, for example, on the type of securities being issued, the rights attached to those securities and the nature of the issuer and its business). However, such due diligence may involve the company’s auditor firm giving comfort relating to the issuer’s financial disclosure (with one potential comfort letter template being set out in the [ICMA Primary Market Handbook](#) that is available to ICMA members and to Handbook subscribers<sup>1</sup>).
2. **Potential concern** – Any legislation that prevents audit firms from using their ring-fenced audit team for comfort letter work would seem likely to result in significantly higher transactions diligence cost for new bond issues, as non-ring-fenced teams would need to undertake additional work to duplicate the knowledge and understanding that already resides within the ring-fenced audit team due to their audit work.<sup>2</sup> Such higher transaction cost would seem disproportionate in not having any bearing on the improvement of audit quality.
3. **Current proposals** – In this respect, it is reassuring that there seems to be nothing currently in the consultation proposals (Section 8.2 notably) to suggest that ring-fenced audit teams cannot continue to deliver comfort letters:
  - (a) the rules relating to non-audit services sit within the FRC’s Ethical Standard (ES) that allow (but do not require) audit-related work to be led from the audit side of the ringfence (with specialist capital markets support from transaction service staff); and
  - (b) the consultation does not include any proposals that would immediately impact on the ES.
4. **Subsidiary rule-making** – However, it is likely that any placing of the current principles on a statutory footing (e.g. the 25% cap on permitted non-audit services by the audit side of the fence) would be left to subsidiary rule making (secondary legislation and/or ARGAs rule-making powers under a Companies Act enabling provision). The considerations set out in #2 above should therefore be borne in mind in the context of any such subsidiary rule making.

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<sup>1</sup> ICMA would be glad to provide Handbook access to BEIS if so requested.

<sup>2</sup> There at least seems to be no regulatory prohibition on the non-ring-fenced side of an audit firm delivering a comfort letter (excepting perhaps in the US SAS72 context).