

20 October 2021

ICMA RESPONSE TO FCA CONSULTATION PAPER 21/24 DIVERSITY AND INCLUSION ON COMPANY BOARDS AND EXECUTIVE COMMITTEES¹

Introduction

1. The International Capital Market Association (ICMA) is responding to one aspect of the FCA's [Consultation Paper 21/24](#) on diversity and inclusion on company boards and executive committees from the perspective of the international bond markets, namely the scope of the proposed change to the FCA Listing Rules to require certain companies to disclose publicly in their annual financial report whether they meet specific board diversity targets relating to gender and ethnicity on a 'comply or explain' basis.
2. ICMA is a not-for-profit membership association, headquartered in Zurich, with offices in London, Paris, Brussels and Hong Kong, committed to serving the needs of its wide range of member firms active in the international debt capital markets. ICMA currently has more than 600 members active in all segments of the sell-side and buy-side international debt capital markets in over 60 jurisdictions. See www.icmagroup.org.
3. In developing this response, ICMA has consulted the ESG working group of the [ICMA Legal & Documentation Committee](#).

Question 3: Do you agree with the proposed scope of who would be required to report under the new Listing Rules proposals, and those we have excluded (eg issuers of listed debt)? If you disagree, please explain why.

4. We agree that it is sensible to exclude issuers of listed debt securities from the proposed Listing Rule.
5. ICMA acknowledges the importance of D&I on company boards and executive committees and supports initiatives that bring greater attention to this critical issue. Given the importance of this topic, it is appropriate that the FCA is considering actions that could contribute to greater D&I on company boards and executive committees. As a general matter, disclosure requirements that increase transparency for investors can be a helpful tool to meet this and other environmental, social and governance-related objectives. However, this tool needs to be used in a proportionate

¹ <https://www.fca.org.uk/publication/consultation/cp21-24.pdf>

and coherent manner given the cost to real economy users of financial markets of additional disclosure requirements. To achieve this, it is important to consider the purpose of disclosures, their intended audience and the connected issue of what remedies and liabilities should arise if disclosure is not made, or is not fit for purpose. This was acknowledged in the [Climate Financial Risk Forum Disclosures Guide 2020](#)².

6. It seems that the purpose of the proposed new Listing Rule on D&I disclosure is to achieve increased transparency for investors on the diversity of companies' boards and executive committees, particularly those who are directly engaged in the stewardship of companies in which they invest³. This aligns with what appears to be the overall policy objective of increasing D&I on company boards. In light of this, it is indeed unnecessary to apply the Listing Rule to issuers of listed debt securities because:
 - a. Unlike equity securities, debt securities do not provide investors with voting rights in the company. This means that whilst equity investors could use the information provided under the new Listing Rule to inform their stewardship and the exercise of their voting rights which could ultimately lead to greater diversity on corporate boards, this would not be relevant for debt investors as they have no such voting rights.
 - b. Many issuers of standard listed debt and debt-like securities will already be caught by the proposed Listing Rule for equity issuers. With respect to "debt-only issuers", it would seem appropriate that the equity rules are not expanded to them as they are primarily (a) non-corporate entities such as sovereigns, (b) SPV issuers for whom board diversity is unlikely to be an appropriate consideration or (c) issuers with shares admitted to listing or trading overseas that may already be subject to D&I requirements stemming from the listing or trading venue of their shares.
7. The FCA notes that its approach for the proposed Listing Rule on D&I disclosures is aligned with its approach for climate-related financial disclosures in [FCA CP 21/18](#)⁴. ICMA's [response](#) to FCA CP 21/18 was also aligned with this response.

ICMA contact

Charlotte Bellamy

Charlotte.Bellamy@icmagroup.org

² See Annex 1, The UK legal frameworks for disclosure.

³ Paragraphs 4.15 and 4.16 of the [consultation paper](#).

⁴ Paragraph 4.17 of the [consultation paper](#)