

DG Financial Stability, Financial Services and Capital Markets Union  
Directorate General Justice and Consumers  
European Commission  
B-1049 Brussels

*(Submitted via online questionnaire)*

30 June 2017

Dear Sirs,

**European Commission consultation: Conflict of laws rules for third party effects of transactions in securities and claims - Consultation document dated 7 April 2017**

The International Capital Market Association (ICMA), Register of Interest Representatives identification number 0223480577-59 is pleased to respond to the above consultation.

Representing a broad range of capital market interests including banks, asset managers, exchanges, central banks, law firms and other professional advisers, ICMA's market conventions and standards have been the pillars of the international debt market for almost 50 years. See: [www.icmagroup.org](http://www.icmagroup.org).

ICMA is responding in relation to its primary market constituency that lead-manages syndicated debt securities issues throughout Europe. This constituency deliberates principally through ICMA's Primary Market Practices Committee<sup>1</sup>, which gathers the heads and senior members of the syndicate desks of 51 ICMA member banks, and ICMA's Legal and Documentation Committee<sup>2</sup>, which gathers the heads and senior members of the legal transaction management teams of 21 ICMA member banks, in each case active in lead-managing syndicated debt securities issues in Europe.

The ICMA welcomes the Capital Markets Union and the removal of obstacles to cross-border investment such as legal uncertainty surrounding securities ownership.

From the bond issuer's perspective, ICMA would like to emphasise a few points generally to bear in mind when developing any proposed legislative initiative to create legal certainty over which national law shall apply to securities ownership in relation to bonds held in global form and deposited with the two international central securities depositaries (ICSDs), Euroclear and Clearstream, Luxembourg. The following statements are expressed from an English law perspective, but are indicative of accepted market practice in the debt capital markets.

1. The legal 'owner' of the bond (i.e. the person able to give good discharge to the issuer for payment of its debt) is, and should remain, the registered holder or bearer of the global bond – namely, as the case may be (depending on the form of the bonds), the ICSDs' 'common depositary', the ICSDs' 'common safekeeper' or one of the ICSDs.

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<sup>1</sup> <http://www.icmagroup.org/About-ICMA/icma-councils-and-committees/Primary-Market-Practices-Sub-committee/>.

<sup>2</sup> <http://www.icmagroup.org/About-ICMA/icma-councils-and-committees/Legal-and-Documentation-Sub-committee/>.

2. Notices given to investors are, and should remain, validly delivered if they are delivered in accordance with the contractual terms and conditions of the bonds. These often provide that, whilst the bonds are in 'global' form, such notices are to be delivered, as the case may be, to the ICSDs, the relevant common depositary or the relevant 'common safekeeper'.
3. Different investors hold through custody chains that vary in length and structure. Accordingly, the issuer and the contractual terms of the bonds should not be, as a primary matter, affected by conflicts of laws issues or ownership disputes between the ICSDs' direct participants or other parties in the custody chain that are outside the issuer's knowledge and control. This may be particularly relevant in any consideration of 'equal treatment' of investors.

We would be pleased to discuss it with you at your convenience.

Yours faithfully,



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