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Editor: Paul Richards

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The rules & recommendations, the GMRA and conciliation & arbitration: the cornerstones of ICMA's self-regulatory framework

Foreword by Thomas Hunziker, ICMA General Counsel

In an increasingly risk conscious world, the provision of guidance on the market standard agreements as well as the rules and recommendations which form part of the framework created by ICMA for the international capital market is crucial. For many years ICMA members have looked to ICMA's legal department for guidance on (i) the Global Master Repurchase Agreement (GMRA), (ii) the ICMA rules and recommendations for the secondary market, (iii) the IPMA Handbook for the primary market and (iv) ICMA's conciliation and arbitration proceedings.

Since the early 1990s ICMA has devoted considerable resources to developing a standard form master agreement for cross-border repo transactions. The first version of the GMRA was published in 1992 and was followed by a substantially revised version in 1995. The third version of the GMRA was published in October 2000. Since 1992 the GMRA has responded admirably to the challenges of the continuously evolving financial markets and is today the foremost agreement for documenting cross-border repo transactions. During the past years, a number of annexes to the GMRA have been developed to adapt the agreement to suit specific domestic markets and particular products. Most recently, and on the basis of a proposal from ICMA's European Repo Committee, ICMA's board agreed to fund a project to develop an annex to the GMRA which aims to permit specific corporate loans to be repo'd in England, France and Germany. It is a testament to the agreement that it has remained in its current form for nearly a decade. In order to ensure that the GMRA remains the market leader, the ICMA European Repo Committee recently put together a working group to review the 2000 version of the agreement. As part of this review, the working group is considering issues such as the definition of default, default valuation, valuation of suspended securities, contractual set off and cross default. The working

Thomas Hunziker

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group is also taking into consideration the amendments made to the Global Master Securities Lending Agreement (GMSLA) published by the International Securities Lending Association (ISLA) in 2009. The aim is to complete the review of the GMRA in time for the commencement of the annual GMRA legal opinion exercise for 2011 in order to ensure that the revised market standard agreement will be covered by the 2011 legal opinions.

ICMA is the sole association obtaining market standard legal opinions on the GMRA for the benefit of its members on an annual basis in currently nearly 70 jurisdictions worldwide. The opinions cover both the enforceability of the netting provisions of the GMRA as well as the validity of the GMRA as a whole. Furthermore, the opinions address the issue of recharacterisation risk (in respect of both the transfer of securities and the transfer of margin). The legal opinions assist ICMA members in fulfilling regulatory requirements for regulatory capital and large exposure purposes and more generally provide them with the legal foundation for their cross-border repo activities.

ICMA's rules and recommendations for the secondary market govern transactions between ICMA members involving international securities (as defined within the rules), unless specifically agreed otherwise. The rules and recommendations, which underwent a full review in 2008, provide members with a reliable and generally recognised framework defining principles of good market practice for trading debt and related securities.

The IPMA Handbook is the most widely used framework for the issuance of international debt and debt related instruments worldwide. The Handbook provides members with recommendations applicable to matters such as issues of debt instruments, offerings of equity and equity-linked debt issues, medium term note programmes and euro commercial paper. The Handbook also contains standard language and documentation (eg *pro forma* final terms) as well as guidance notes (eg on the provision of information and documentation to intermediaries).

ICMA's conciliation and arbitration proceedings are available to members and other interested parties with regard to disputes arising out of transactions in international securities regulated by ICMA as well as disputes between a member and the Association in respect of certain matters arising out of ICMA's statutes, by-laws, rules and recommendations. By employing expert market practitioners, these proceedings enable swift and cost efficient dispute resolution.

I hope that this overview of ICMA's self-regulatory framework highlights the role which the Association plays in promulgating standards of good market practice and promoting efficient and well functioning international capital markets. ICMA's legal helpdesk, available via email on legalhelpdesk@icmagroup.org or by telephone at +41 44 360 5239, is at your disposal should you have any questions.

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Message from ICMA's Chief Executive

Martin Scheck

As anticipated in my New Year message, 2010 is proving to be exceptionally busy in all areas for ICMA. From the point of view of market practice and regulatory policy work, there is more to deal with than ever before, and the current priorities and activities are highlighted in this publication.

Aside from this there are many other areas I would like to mention.

Communication with our members remains a key priority and this quarterly publication is just one of the many ways in which we communicate with our members – albeit an important one.

We followed up the last edition of the Quarterly Regulatory Policy and Market Practice Newsletter with a conference call open to all our members, and many of you dialed in and asked questions. We will be hosting a similar call after this publication and subsequent ones.

In addition we started a monthly review of activity at ICMA to ensure that members are up to date with what we are doing in all areas. The first edition was sent out in March. We hope that you find this useful and look forward to receiving any feedback.

I continue to spend a high proportion of my time visiting members, explaining the many services which ICMA provides. Almost invariably members are not aware of the full range and these meetings generally highlight a number of areas where members feel they can benefit further.

Our membership continues to grow, with twenty-two new members admitted so far this year. We are publishing the hard copy of the Members Register in time for distribution at the Annual General Meeting.

We have extended our successful ICMA Executive Education arrangements with the ICMA Centre based at the University of Reading for a further two years, and the suite of courses is now largely complete. We offer foundation level courses, core courses and specialist courses – available to members at subsidised rates – and the take up in 2010 is so far encouraging.

On the financial front we have finalised the accounts for 2009 and these will be presented at the AGM for approval – already the results of many of the efficiency measures we took last year are visible, with the remainder feeding through in the 2010 numbers.

As a final comment, the arrangements for our AGM and conference in Brussels on 26 to 28 May are largely complete and the invitations are out. The panels are arranged, the speakers confirmed and it really looks excellent – I urge you to attend if you possibly can.

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Capital market regulation in response to the crisis

In response to the recent international financial crisis, there are a large number of new regulatory and supervisory initiatives, especially in Europe, which will have an impact on the international capital market, and some of which may affect market efficiency. The purpose of this article is to provide an introductory assessment of the proposals for changes in: prudential regulation and supervision; the market structure; and the market infrastructure. It also sets out the implications for ICMA's work on behalf of our members as standard setter in the international capital market, and lists recent practical initiatives by ICMA (see box p6).

Prudential regulation and supervision

Two new institutions are being created at European level, prospectively from the beginning of next year, both of which will have an impact on the international capital market. First of all, at macro level, the European Systemic Risk Board (ESRB) is being established to provide early warning of systemic risks, in response to criticism that, before the recent crisis, warnings were either not made or not sufficiently heeded. The impact of early warnings by the ESRB on the international capital market needs to be considered very carefully. Much depends on the nature and target of the warnings. If they are general and not made public, there is a risk that they will not be taken sufficiently seriously by the intended recipients. But if (in the last resort) they are made public and are sufficiently specific, the risk is that publication will bring about the very events that the warnings are designed to prevent.

To help prevent another crisis, new capital and liquidity requirements are being proposed by the Basel Committee, which will have an impact in particular on systemically significant firms operating in the international capital market. More and higher quality capital, and higher liquidity, will be required; a leverage ratio will be introduced; a countercyclical capital framework is being designed to reduce, rather than increase, the incidence of economic shocks; and more capital will be required for counterparty credit risk exposures arising from derivatives, repos and securities financing activities. These measures raise two main concerns. The first is that, if implemented too soon, they risk reducing banks' ability to lend to finance the economic recovery. Second, an important related question is how to assess the aggregate impact of the different measures proposed: they may each look sensible, if taken separately, but still impose a larger burden on the financial system than intended, when taken in the aggregate.

New crisis management procedures are due be introduced, in case another crisis does occur, to help resolve it at minimum cost to the taxpayer. They are likely to give national authorities the powers: to intervene early; to encourage contingency planning by market participants; and to take steps to reduce contagion from a future bank failure. The key question is whether the new measures will help to resolve the problem of moral hazard which arises when financial institutions are "too important to fail". It is clear that moral hazard does not just relate to the size of financial institutions, but to their interconnectedness through the international capital market. The introduction of a resolution regime may help simplify the complex task of winding down banks operating across borders that become insolvent in the future, but it is unclear how well the regime would work in practice in a crisis, when time is of the essence. Use of contingency capital is another possibility, though untested in a crisis so far.

A related question being considered by the IMF at global level on behalf of the G20 is whether financial institutions that are "too important to fail" should be required to pay a levy for the implicit public support on offer from the financial authorities on behalf of the taxpayer: either *ex post* in compensation for the cost to the taxpayer arising from the recent crisis, or *ex ante* in preparation for the next one. Obtaining international agreement on cross-border resolution regimes and on levies may not be straightforward. But in the absence of international agreement, there is a risk of regulatory arbitrage.

Second, at micro level, the Committee of European Securities Regulators (CESR) will be replaced by the European Securities and Markets Authority (ESMA) from the beginning of next year with more powers – in particular, powers to arbitrate between national regulators so as to help create a Single EU Rulebook. In the case of new legislation, one way of tackling national differences in future is to make more use of regulations (which have direct effect in all EU Member States) rather than directives (which have to be transposed in each Member State into national law). But that still leaves the problem of conforming existing EU directives (eg the Prospectus Directive), which are currently implemented or interpreted in different ways in different Member States. And ESMA's powers will, initially at any rate, be quite limited.

Nor will ESMA's powers within the EU necessarily help prevent regulatory arbitrage between the EU and the US. There are a number of difficult issues to address: front running (eg in the case of the EU proposal on credit rating agencies, which ran ahead of the US, and where equivalence for third country ratings in the EU has still to be established); inconsistencies between the EU and US regimes (as feared in the case of the regimes planned for the clearing of over-the-counter (OTC) derivatives); and alleged discrimination (in the case of the proposed Alternative

Investment Fund Managers Directive, where access to the EU from third countries and a possible link between access and equivalent regulation has still to be resolved).

Besides the introduction of new regulations, it is clear that the authorities' approach to supervision is changing as a result of the crisis, both as regards financial institutions and markets. The new approach is more "intrusive" than the old one, particularly in countries which previously had a "light touch" regime, even though it was not called this. In the case of the UK Financial Services Authority (FSA), the new "intrusive" approach does not just involve assessing the systems and controls of firms it supervises, but second-guessing the management of supervised firms as well. Even though second-guessing is regarded by supervisors as necessary, it seems unlikely to be sufficient on its own. Much will depend on the quality of the management – and especially the management of risk – in supervised firms.

Market structure

In response to the crisis, the structure of the international capital market is coming under greater scrutiny from regulators in a number of ways:

- First, regulators are giving a much higher priority than before to market transparency. At first sight, transparency looks like a "free good", but actually it involves difficult trade-offs: for example, increasing transparency in OTC markets may damage liquidity. Some regulators now argue that liquidity itself may only be useful up to a certain point.
- Second, regulators appear to be promoting greater use of exchanges at the expense of OTC trading, whereas a level playing field between OTC and exchange trading is the best way of promoting competition.
- Third, OTC markets are to be regulated more heavily than before, particularly OTC derivatives. This raises the question whether the new requirements being introduced in the OTC derivatives markets – relating to central clearing, regulatory reporting and transparency – will eventually be extended to the OTC cash markets as well.
- Fourth, the perimeter of financial regulation is being broadened. Even though institutions (such as hedge funds) previously outside the perimeter of regulation were not one of the main causes of the recent crisis, it is proposed that they should be regulated in case they pose systemic risks in the future.
- Finally, regulators are giving more attention to the suitability of financial products: not just to protect investors; but also to promote the integrity of markets. The authorities are considering whether some types of transactions in financial instruments (eg naked short selling via credit default swaps) should be banned. But if the authorities suppress transactions in particular financial instruments, there is a risk of unintended consequences elsewhere, given the degree of integration in the international capital market.

Market infrastructure

A separate priority for the authorities in response to the recent crisis is to make the market infrastructure more resilient: for example, by encouraging liquid derivatives contracts to be cleared through central counterparties (CCPs). New EU legislation is expected to be proposed by the European Commission this summer. This raises several difficult issues:

- Use of CCPs reduces the risk between counterparties, but may have the effect of redistributing the risk across the system as a whole, and creating new financial institutions that are "too important to fail". Not all transactions can be cleared through CCPs but, in the case of those that can (eg liquid derivatives contracts), there are questions still to be resolved whether use of CCPs should be voluntary or mandatory, and if mandatory whether CCPs will be able to cope; whether CCPs should compete or become monopolies; and whether it matters where they should be located.
- If market participants are required to record transactions not cleared by a CCP in a trade repository, the confidentiality of market-sensitive data will also need to be safeguarded.

Implications for ICMA

This regulatory agenda has a number of implications for ICMA's work on behalf of our members as standard setter in the international capital market:

- First, we need to draw the authorities' attention to the practical implications of new measures which are likely to have an impact on the efficiency of the international capital market.
- Second, in setting standards in the international capital market, we need to ensure that these standards are consistent with the new regulatory measures proposed.
- And third, when standards are set, regulators have emphasised that they expect them to be implemented.

A summary of recent practical initiatives by ICMA on behalf of our members is set out in the box. The articles that follow in the rest of this Newsletter address in more detail the issues of current concern to our members and the ways in which we are helping to address them.

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Recent practical initiatives by ICMA

Regulatory response to the crisis

1 We are continuing to respond to consultations by regulators affecting the international capital market in response to the recent crisis, cooperating with other trade associations wherever we can.

2 We have taken the chairs and representatives of ICMA's Regulatory Policy and Market Practices Committees to see the European Central Bank to discuss the impact of the regulatory response to the crisis on the international capital market, and the proposals to set up a new European Systemic Risk Board to give early warning of systemic risks.

Short-term markets

3 ICMA's ECP Committee and European Repo Council (ERC) are each responding to applicable consultations by regulators, in particular on the definition of liquidity.

4 On the basis of a proposal from ICMA's ERC Committee, ICMA's Board has agreed to fund a project to develop an annex to the GMRA which aims to permit specific corporate loans to be repo'd in England, France and Germany.

Primary markets

5 Following discussions in the ICMA Legal & Documentation Committee, we have made representations to MEPs on the Economic and Monetary Affairs (ECON) Committee of the European Parliament on changes proposed to the Prospectus Directive.

6 We have brought together representatives of ICMA's sell-side and buy-side members to exchange views on order books and the allocation of new issues, and discussed standards for allocation policy in the ICMA Primary Market Practices Committee.

7 In consultation with the ICMA Primary Market Practices and Legal & Documentation Committees, we have agreed on three updates to the IPMA Handbook: (i) passive bookrunner access to the order book; (ii) the new safekeeping structure for registered notes; and (iii) exempt and non-exempt offers of sub-€50,000 denomination bonds in the European Economic Area under the Prospectus Directive.

8 We have begun the process of drafting guidance on buybacks for supranational and sovereign euro issuers in a Working Group of the ICMA Euro Debt Market (AMTE) Council.

9 ICMA has responded, jointly with other trade associations, to CESR's consultation on inducements.

Secondary market

10 Given the importance of the MiFID review, we have launched a secondary market electronic questionnaire for all our members – sell side, buy side and repo – on corporate bond market liquidity and transparency.

11 We have responded to a request by the Commission for information on the shorting of corporate bonds.

Asset management

12 ICMA's Asset Management and Investors Council has, at its quarterly meeting at the offices of ING in Amsterdam, held talks with the Chairman of the Dutch regulator (AFM).

13 ICMA's Private Banking Working Group, meeting most recently in Luxembourg, is considering how best to promote the case for the private banking industry in Europe.

Market infrastructure

14 ICMA's Euro Debt Market (AMTE) Council is discussing a possible code of conduct on electronic trade confirmation in the OTC market.

15 We are engaging, in consultation with ICMA's Legal & Documentation Committee, with the international central securities depositories (ICSDs) through the International Securities Market Advisory Group (ISMAG) on the ICSDs' proposal for a new contractual framework between issuers and ICSDs.

Note for ICMA members

A conference call to discuss with ICMA members issues raised in this Newsletter, and to answer members' questions, is due to take place at 11.00 am London time/12.00 noon CET on Thursday 22 April. For further information, please contact Allan Malvar at: allan.malvar@icmagroup.org

G20 financial reform update

As reported in the October edition of the ICMA Newsletter, the G20 leaders' September Summit meeting in Pittsburgh called on their Finance Ministers and Central Bank Governors to reach agreement on an international framework of reform. This provides the overall international roadmap against which G20 members are progressing their respective reform programmes.

Following from the G20 sherpas meeting in Ottawa in late March, the past, current, and future chairs of the G20 leaders' Summits issued a letter dated 29 March to their G20 colleagues. This is to emphasise the need to implement G20 commitments to ensure strong macroeconomic policy cooperation and to continue G20 regulatory reform to strengthen the international financial system.

In relation to the G20's commitments to address the weaknesses that led to the financial crisis, this states that: "There can be no let up in our commitment to:

- develop, by the end of this year, strong international rules on capital and liquidity so that banks have the level and quality of resources they need to cover the risks they take, supplemented by a fully harmonized leverage ratio as an element of the Basel framework. These new rules must be implemented as soon as financial conditions improve and the economic recovery is assured, with the aim of national implementation by end-2012. All major financial centres must also have adopted the Basel II framework by 2011;
- strengthen the infrastructure of key financial markets to enhance their resilience and reduce the risks of contagion. Standardised over-the-counter derivatives contracts should be traded on exchanges or electronic platforms, where appropriate, cleared through central clearing counterparties by 2012 at the latest, and reported to trade repositories;
- address together the remuneration practices that encourage short-term and excessive risk-taking by fully implementing the internationally agreed compensation standards as set out by the Financial Stability Board;
- move forward to create a framework to address cross-border resolutions of systemically important financial institutions. This should include establishing crisis management groups for major cross-border firms and resolution tools and frameworks that will reduce moral hazard. Prudential standards for systemically important institutions should be proportional with the costs of their failure; and
- honour our commitments to lead by example by implementing international standards and agreeing to undergo periodic peer reviews to evaluate our adherence to these standards. Achieving the ambitious peer review agenda that has been set for 2010 will be an important milestone."

Canada will host the 4th G20 Summit on 26-27 June, and Korea will then host the 5th G20 Summit on 11-12 November.

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Crisis management in the European banking sector

On 20 October, the European Commission adopted a *Communication on an EU Framework for Crisis Management in the Banking Sector.* The purpose of the Communication is to consult as widely as possible on a broad range of issues aimed at safeguarding financial stability and the continuity of banking services in a cross-border banking crisis. Council conclusions concerning this were published following the 2 December Ecofin meeting.

On 19 March, the European Commission hosted a very well attended high level one-day conference on the construction of a new crisis management framework in the banking sector. The conference provided an opportunity for the Commission to present the results of its recent public consultation and to set out its ideas on how to move forwards in this important policy area – the consultation; contributions; and summary results are all available. It also provided an opportunity for eminent speakers and panellists from different backgrounds to express their views about what should be done – speeches, presentations and video playback are all available (as is a related IMF working paper: *Crisis Management and Resolution for a European Banking System*).

Discussions highlighted how challenging it is to have to resolve problem cases, especially when (as is often the case) this must be done in a single weekend – this conflicts strongly with the complexity that characterises the diverse business of the largest firms (which it would currently be impossible to resolve in such timeframes, even in case all the activity were in a single legal entity and jurisdiction). It was noted that as improvements progress it may be necessary to explore limiting market access by reference to the adequacy of early intervention tools and resolution arrangements. Summing up, Jörgen Holmquist, Director General of DG MARKT, noted that this is a complex area where much work is still needed. This includes dealing with group and cross-border insolvency issues. A common set of early intervention tools is clearly needed, together with strong coordination. There appears to be much support for the idea of "polluter pays"; and there is a clear need to ensure both that shareholders suffer loss and that creditors suffer applicable haircuts, when restoration measures are affected. There was also strong support for the Insolvency Law Group of Experts (ILEG) that the Commission seeks to use to guide it through some of the legal issues that necessarily need to be addressed.

Consistently, on 18 March the Basel Committee issued its *Recommendations for Strengthening Cross-Border Bank Resolution Frameworks.* This report, which was first issued for consultation in September 2009, sets out 10 recommendations that fall into three categories:

- *strengthening national resolution powers and their cross-border implementation:* national authorities need to have powers to intervene sufficiently early and to ensure the continuity of critical functions;
- *firm-specific contingency planning:* banks, as well as key home and host authorities, should develop practical and credible plans to promote resiliency in periods of severe financial distress and to facilitate a rapid resolution should that be necessary. The plans should ensure access to relevant information in a crisis and assist the authorities' evaluation of resolution options. One of the main lessons from the crisis was that the enormous complexity of corporate structure makes resolutions difficult, costly and unpredictable; and
- *reducing contagion:* risk mitigation through mechanisms such as netting arrangements, collateralisation practices and the use of regulated central counterparties should be strengthened to limit the market impact of a bank failure.

Also, on 16 March, the European Parliament held a *Public Hearing on Cross-Border Crisis Management in the Banking Sector* (the programme for this meeting, together with the applicable presentations, is available); and subsequently held a meeting on *Financial regulation: How to cope better with future crises?*, which is reported in an article and in a linked press release. The related draft report of the European Parliament's *rapporteur*, Elisa Ferreira MEP, has also been published and is being debated.

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CRIS: financial regulation

A European Parliament decision of 7 October 2009 set up "CRIS", a special Committee on the Financial, Economic and Social Crisis, chaired by Wolf Klinz MEP.

In its initial hearing on 10 November CRIS examined the causes of the financial crisis and its consequences and challenges for the European Union.

On 25 February CRIS held a public hearing on financial regulation and supervision. Following an opening keynote address by Mr Christian Noyer, Governor of the Banque de France, the programme featured two panels (with related CRIS reports):

- To what extent did financial regulation and supervision fail in preventing the crisis?; and
- Which future model for Europe?, exploring the structure of EU financial regulation and supervision.

Other CRIS hearings have explored the spread of the crisis; its social impact; its impact on new Member States; and aspects of governance. CRIS's ongoing work is summarised in the newsletters that it has issued.

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Reforming European financial supervision: securities markets

On 23 September 2009, the European Commission adopted an important package of draft legislation to significantly strengthen the supervision of the financial sector in Europe. The legislation will create a new European Systemic Risk Board (ESRB) and it will also set up a European System of Financial Supervisors (ESFS). Dated 26 October, the Commission adopted additional related legislative proposals, in connection with the creation of the three new European Supervisory Authorities – the, so called, "Omnibus" Directive. The package (all of which is available on the Commission's *Financial Services Supervision and Committee Architecture* web page) has already been considered by the Council as particularly reflected in Ecofin conclusions and agreed Presidency compromise texts. The European Parliament's work on the package is progressing, in particular through its Economic and Monetary Affairs Committee (ECON) – which debated draft reports in its meeting on 22-23 February and again in its meeting on 22-23 March.

European Securities and Markets Authority (ESMA)

ICMA is particularly interested in the development of the ESMA which, as reported in the January edition of the ICMA Newsletter, is being formed through the transformation of the Committee of European Securities Regulators (CESR). In anticipation of this, on 19 January, CESR has already introduced a new working structure to deliver its many priorities from the outset of 2010. The Commission proposes that ESMA will take on all the tasks of CESR, but in addition has significantly increased responsibilities, defined legal powers and greater authority.

ECON's *rapporteur* for the proposed regulation establishing the ESMA is Sven Giegold MEP. Alongside reports on the other elements of the Commission's package, he has drafted a report which is now being debated, with the target of a vote on 4 May. *Inter alia*, this report:

- includes provisions to prohibit financial products when there is a risk to investor protection; orderly market functioning and integrity; or financial stability (Article 6);
- widens the scope of the ability to develop technical binding standards – but submits them to fuller public consultation and greater powers for the Parliament and Council over the Commission's powers to adopt such technical standards (Article 7);
- suggests the ESRB have the power to declare an emergency situation (Article 10);
- introduces provisions for the new European authorities (including ESMA) to act as the competent authority directing the national authorities' prudential supervision of "financial institutions with an EU dimension", while maintaining the role of national authorities for supervision of domestic firms (Article 12(a));
- proposes the establishment of a European Financial Protection Fund, to be financed by contributions from the industry – to protect depositors and institutions in crisis situations which threaten the stability of EU financial markets (Article 12(b)); and
- alters the safeguard provisions to refer to measures that "impinge directly" on Member States' fiscal responsibilities (rather than those that "impinge in any way") (Article 23).

This approach is broadly reflected in the draft report of ECON *rapporteur* José Manuel García-Margallo Y Marfil MEP relating to a European Banking Authority (EBA), though there is a bit more deviation when looking to the draft report of ECON *rapporteur* Peter Skinner MEP relating to a European Insurance and Occupational Pensions Authority (EIOPA).

These Parliamentary proposals contradict much of what has been agreed in the course of reaching the Council compromise positions. Political reality, as well as limitations on what is legally possible (the related draft report of the Committee on Legal Affairs (JURI) already highlights some different proposals – debated in its meetings on 22 March, 8 March and 27 January – as does a related ECB opinion) and practically workable, will inevitably lead to compromises – finally to be settled during "trialogue". It is planned that a second consideration of proposed Parliamentary amendments will be held in an extraordinary ECON meeting in Strasbourg on 22 April 2010, because of the extremely high number of amendments that have been tabled (over 1,500). The aim remains to reach agreement at first reading, allowing for the new arrangements to be up and running by no later than the start of 2011.

The "Omnibus" Directive

In order for the ESFS to work effectively, changes to applicable pieces of sectoral legislation are necessary (these must come into effect at the same time as the ESAs). The Omnibus

Directive proposal to achieve this amends key directives from the Financial Services Action Plan, with potential impact on the international capital markets (including the Market Abuse Directive; Markets in Financial Instruments Directive; Prospectus Directive; and Transparency Directive). Moreover, where appropriate, the Commission will make further proposals for amendments in subsequent omnibus directives.

Similarly to the position with the proposed establishment of the ESAs, a related Presidency compromise text has been published (updated version); and the Parliament has received the draft report of ECON *rapporteur* Antolín Sánchez Presedo MEP which is now being debated, with the target of a vote on 4 May. Once again, the related draft JURI report already highlights some different proposals to inform the debate; and a related ECB opinion has been published.

The ECON proposals consider that the main objectives of technical standards are a consistent harmonisation of financial regulation and its consistent application through supervisory approaches and practices. Technical supervisory rules are necessary tools to reach harmonisation of European supervision. Harmonisation and common implementation shall be the ultimate objectives, with application remaining the way to reach this common objective. The proposals therefore favour a twofold use and control of technical standards, not focusing on technical aspects of standards but rather on their aim and use. Proposed changes are aimed at clearly defining the role of ESAs.

Continued commitment to the timely completion of this whole reform package is reflected in the conclusions of the European Council meeting of 25-26 March, which state that: "This requires that the EU make rapid progress on all these issues internally. In particular, work on the new European supervisory framework needs to be concluded in time for the European Systemic Risk Board and the three European Supervisory Authorities to begin work in early 2011."

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Capital Requirements Directive

The 3rd revision of the Capital Requirements Directive (CRD) was adopted by the European Commission on 13 July 2009. The main elements of this proposal are:

- the introduction of explicit rules and appropriate supervisory measures and sanctions regarding remuneration policies, in particular bonuses, to prevent policies that encourage unacceptable risk;
- reinforced capital requirements for items in the trading book; and
- upgraded capital requirements for re-securitisations.

The European Parliament's ECON Committee has recently made available its related draft report. Whilst broadly supportive, this proposing measures to strengthen the remuneration provisions and ensure Parliamentary oversight of the Basel process.

On 26 February, the European Commission launched a public consultation on further possible changes to the CRD aimed at strengthening the resilience of the banking sector and the financial system as a whole. The proposed changes, known as CRD IV, following two earlier Commission proposals amending the CRD, relate to seven specific policy areas, most of which reflect commitments made by G20 leaders at Summits in London and Pittsburgh during 2009.

All interested stakeholders are invited to reply to the consultation by 16 April 2010, indicating what impact the potential changes would have on their activities. The results will feed into a legislative proposal scheduled for the second half of 2010.

The seven areas of potential action are as follows:

- *Liquidity standards:* Introducing liquidity standards that include a liquidity coverage ratio requirement underpinned by a longer-term structural liquidity ratio.
- *Definition of capital:* Raising the quality, consistency and transparency of the capital base.
- *Leverage ratio:* Introducing a leverage ratio as a supplementary measure to the Basel II risk-based framework based on appropriate review and calibration.
- *Counterparty credit risk:* Strengthening the capital requirements for counterparty credit risk exposures arising from derivatives, repos and securities financing activities.
- *Countercyclical measures:* A countercyclical capital framework will contribute to a more stable banking system, which will help dampen, instead of amplify, economic and financial shocks.
- *Systemically important financial institutions:* The Commission is consulting on appropriate measures to deal with the risk posed by such institutions.

- *Single rule book in banking:* The Commission is consulting on areas where more stringent requirements might be necessary. In addition, the Commission is consulting on the appropriate prudential treatment of real estate lending. This is part of the Commission's commitment to create a single rule book in Europe.

The possible changes set out in the consultation document are closely aligned with the forthcoming amendments to the Basel II framework and the introduction of a global liquidity standard that are currently being drawn up by the Basel Committee on Banking Supervision. On 26 April, the Commission will host a public hearing on further possible changes to the Capital Requirements Directive (CRD IV). The event will be open to all stakeholders who have responded to the respective Commission services staff working document.

The Committee of European Banking Supervisors (CEBS) is conducting a quantitative impact study (QIS) in parallel and in cooperation with the exercise performed by the Basel Committee on Banking Supervision (BCBS). The deadline for data submissions by participating banks is Friday 30 April.

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Credit Rating Agencies (CRAs) Regulation

The EU's CRA Regulation entered into force on the twentieth day following its publication, that being 7 December 2009. Article 41 governs entry into force, whilst Article 40 governs transitional provisions. EU-authorised financial institutions should note the key date of 7 December 2010, from which their use of credit ratings will be constrained in accordance with Article 4(1). CESR's work on CRAs continues through its CRA Standing Committee, which includes a series of discussions with the related "consultative group". In particular Article 21 calls upon CESR to issue guidance on various items, in relation to some of which it consulted in 2009 (as reported in the January edition of the ICMA Newsletter).

A key concern, reflected in ICMA's earlier consultation feedback, is the question of how the endorsement mechanism is going to operate. This mechanism allows that an EU authorised CRA can, subject to satisfaction of the applicable conditions (some of which only apply as from 7 June 2011), "endorse" the work of its non-EU affiliates. It had been anticipated that this would allow the global agencies to effectively "self-certify" that the work being done by their groups outside the EU was subject to standards "as stringent as" those in the EU. However the Commission has determined that self enforcement will not be possible and CESR's guidance will adopt this stance. In order to satisfy the endorsement condition laid down in Article 4.3(b), the requirements "as stringent as" those set out in Articles 6 to 12 may only be established in law or regulation of that non-EU country. Whilst this stops short of requiring an "equivalence" ruling (as is required in the case of Article 5.1(b) for "Certification" of ratings), it is clear that CESR expects those CRAs wishing to endorse to first present their competent authority with evidence that suitable third country requirements exist (this will be taken as given in case there happens to be an equivalence ruling in place for the applicable country or will have to follow the same basic template as would have been used in determining equivalence).

Under a mandate from the Commission, CESR is working on equivalence assessments for the US, Canada and Japan; and a mandate has been added to do so for Australia. CESR aims to submit its responsive views to the Commission in April (Australia: September), following which the Commission will prepare any applicable equivalence proposals for formal EU approval, with the intention of having these done in time to fit with the key date of 7 December. Assuming these equivalence rulings prove to be affirmative, it should be the case that the major CRAs then proceed to endorse ratings from these jurisdictions. There must however be a significant question mark over their ability and/or willingness to do so in respect of ratings from other third countries – the burden on them, of demonstrating that there are requirements established in the applicable law or regulation that satisfy the "as stringent as" test, may simply prove too great. An important related detail concerns how it will be determined as to where a rating emanates from – this is still work-in-progress (hopefully to be clarified in May) but may follow the location of the lead analyst.

It is also helpful to review the FAQ issued by CESR on 8 March – CESR intends issuing further clarifications of this sort. To ensure alignment with the new CRA Regulation regime, on 11 March the Committee of European Banking Supervisors (CEBS) published its consultation paper (CP37) – on the review of its Guidelines on the Recognition of External Credit Assessment Institutions (ECAIs). Finally, note that the European Commission proposes to bring forward a revised version of the CRA Regulation (to be prepared for next year), to give effect to necessary procedural changes that will follow from the formation of the anticipated European Securities and Markets Authority (the transformed CESR).

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Euro Commercial Paper (ECP) market

Money market funds are key investors for ECP. Various official changes, directly impacting money market funds, continue to progress.

Dated 20 October 2009, CESR launched a consultation on a common definition of European money market funds. This proposed a split into short term and longer term funds and is similar to proposals that the Institutional Money Market Funds Association (IMMFA) put forward with the European Fund and Asset Management Association (EFAMA). CESR has posted the responses it received on its website, including the short one submitted by the ICMA ECP Committee. Finalisation of CESR's work is expected by the end of the second quarter with a one year period for transition. The product of CESR's work will be a standard European guideline, rather than a regulation, and it will be for Member State authorities to put any necessary local rules in place to ensure compliance.

As reported in the January edition of the ICMA Newsletter, on 14 December 2009, IMMFA announced changes to its Code of Practice, to come into force from 1 January.

On 27 January, the US Securities and Exchange Commission (SEC) also announced its approved Money Market Fund reforms. Note that the SEC will continue to pursue more fundamental changes to the structure of money market funds to further protect them from the risk of runs. Among those possible reforms are:

- a floating NAV, rather than the stable $1.00 net asset value (NAV) prevalent today;
- mandatory redemptions-in-kind for large redemptions (such as by institutional investors);
- "real time" disclosure of shadow NAV;
- a private liquidity facility to provide liquidity to money market funds in times of stress;
- a possible "two-tiered" system of money market funds, with a stable NAV only for money market funds subject to greater risk-limiting conditions and possible liquidity facility requirements; and
- several other options being discussed with the President's Working Group.

Large exposures requirements are designed to act as a backstop regime and to mitigate the impact on an institution of the failure of a counterparty. On 11 December 2009 CEBS *published its Guidelines on the Revised Large Exposures Regime,* relating to changes introduced to the EU Capital Adequacy Directives effective at the end of this year – and responsive to which any necessary Member State transposition should trigger applicable national level changes (by 31 October).

These CEBS guidelines cover two particular points, both of which are of interest for the ICMA ECP Committee. First, they seek to provide clarity on the concept of interconnection, in particular when control issues or economic dependence should lead to the grouping of clients. In particular they describe the possible connection of clients through a common main source of funding, which may lead to future differences in the way funding arrangements are made (to try and limit such connections). Second, they discuss asset-backed securities (ABS), where ideally the underlying assets of a scheme should be taken into account when calculating exposures for large exposures' purposes. At the other extreme, this is to be incentivised by treating all ABS exposures which cannot be looked through as being an aggregate exposure to a single counterparty.

Liquidity is also the subject of further new official pronouncements.

On 9 December 2009, the Committee of European Banking Supervisors (CEBS) published new *Guidelines on Liquidity Buffers and Survival Periods*; and on 17 December 2009 the Basel Committee on Banking Supervision published consultative *Proposals to Strengthen the Resilience of the Banking Sector* – including a consultative document on an *International Framework for Liquidity Risk Measurement, Standards and Monitoring*. A key question for the ICMA ECP Committee relates to the definition of liquidity.

The CEBS guidelines, intended for application by 30 June, consider applying stress scenarios, considering at least a one month survival period and one week requirements, in determining adequate liquidity buffers – to be comprised of cash and core assets that are both central bank eligible and highly liquid in private markets.

The Basel Committee consultation (paragraph 29) calls for assessment of "both a narrow definition of liquid assets comprised of cash, central bank reserves and high quality sovereign paper, as well as a somewhat broader definition which could also include a proportion of high quality corporate bonds and/or covered bonds". Comments on this consultation are required by 16 April and it is proposed that the ICMA ECP Committee should respond, promoting ECP as a liquid asset – in context of the debate about the broader definition of liquid assets – in order to continue to promote recognition of the quality of the market. It is acknowledged that it is not possible to say there is always a bid for ECP, but this is also the case with other asset classes under discussion. It is noted that the European Commission's 26 February consultation paper, regarding further possible changes to the Capital Requirement Directive (CRD IV), raises broadly equivalent points.

The Financial Services Authority (FSA) published its enhanced liquidity regime in October 2009. This introduced both tougher qualitative and quantitative standards for firms. At that stage the FSA said that it would not tighten quantitative standards before economic recovery is assured given that all firms were experiencing a market-wide stress. On 8 March the FSA announced its view that it would be premature to increase liquidity requirements across the industry at the current time. This position will be reviewed later on in the year with a further announcement in the fourth quarter. Meanwhile, the FSA is continuing to work with firms that are most affected by the new regime and is also actively contributing to the international debate on liquidity.

Central banks' financing requirements continue to evolve. On 17 March, the Bank of England published a consultative paper entitled *Extending Eligible Collateral in the Discount Window Facility and Information Transparency for Asset-Backed Securitisations.* The first part of this seeks market participants' views on further widening the range of collateral in the Discount Window Facility (DWF): specifically, a proposal to accept as eligible collateral portfolios of loans. The second part of it seeks views on the Bank's initiative to require greater transparency in relation to structured products (ABSs and covered bonds) as part of the eligibility criteria for instruments accepted in all of its operations, including the extended-collateral long-term repo operations, the Special Liquidity Scheme while it is outstanding, and the DWF. The deadline for comments is 30 April 2010.

Similarly, on 23 December 2009, the ECB launched a public consultation regarding the establishment of loan-by-loan information requirements for asset-backed securities (ABSs) in the Eurosystem collateral framework. ABSs form an important part of the collateral that counterparties post in Eurosystem credit operations. The loan-level information should enhance transparency and would contribute to making more informed risk assessments of ABSs and restoring confidence in the securitisation markets. The deadline for comments on this consultation is 26 February. In the first instance this should lead to new official disclosure requirements for RMBS. It should also be noted that, as of 1 March, the second-best rule and the requirement to have at least two ratings will be applied to all ABSs, regardless of their date of issue (as announced on 20 November 2009).

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European repo market

Large exposures: On 10 December 2009, the UK Financial Services Authority (FSA) published a consultation paper (CP09/29): *Strengthening Capital Standards 3.* These proposals aim at ensuring the financial soundness of firms by strengthening the prudential regime. The FSA plans to issue feedback to this consultation together with a policy statement confirming the final rules later on in 2010 – the rules must come into effect on 1 January 2011.

The ICMA European Repo Council (ERC) responded concerning one specific aspect of this FSA consultation paper. The ERC expressed the belief that exposures to central counterparties (CCPs) should be exempt from the 25% large exposure limit, so long as the applicable central counterparty complies with the stricter CPSS/IOSCO (and/or ESCB/CESR) recommendations for CCPs. In the ERC's view, failure to adopt such an approach in the treatment of large exposures to CCPs would undermine the incentive effect that is otherwise being pursued.

More broadly, and given the markedly increased significance of CCPs as reforms are promoted to incentivise and/or require their greater usage, the ERC is now being asked questions concerning the treatment of CCPs for large exposure reporting requirements (as applicable in accordance with the European Capital Adequacy Directives 2006/48/EC and 2006/49/EC). The ERC is discussing this topic with Eurex Clearing and LCH.Clearnet. This includes exploring certainty and consistency of treatment. Ongoing evolution of requirements will be tracked and further feedback provided as clarity of current and prospective treatments is obtained.

Liquidity: On 17 December 2009, consultative proposals to strengthen the resilience of the banking sector were announced by the Basel Committee. The Basel Committee's consultative documents include *Proposals to Introduce* *a Global Minimum Liquidity Standard* for internationally active banks (it is noted that the European Commission's 26 February consultation paper, regarding further possible changes to the Capital Requirement Directive (CRD IV), raises broadly equivalent points).

Two separate but complementary liquidity risk standards are proposed:

Liquidity Coverage Ratio: This ratio identifies the amount of unencumbered, high quality liquid assets an institution holds that can be used to offset the net cash outflows it would encounter under an acute short-term stress scenario specified by supervisors. The specified scenario entails both institution-specific and systemic shocks built upon actual circumstances experienced in the global financial crisis. The scenario entails:

- a significant downgrade of the institution's public credit rating;
- a partial loss of deposits;
- a loss of unsecured wholesale funding;
- a significant increase in secured funding haircuts; and
- increases in derivative collateral calls and substantial calls on contractual and non-contractual off-balance sheet exposures, including committed credit and liquidity facilities.

As part of this metric, banks are also required to provide a list of contingent liabilities (both contractual and non-contractual) and their related triggers.

Net Stable Funding Ratio (NSF): This ratio measures the amount of longer-term, stable sources of funding employed by an institution relative to the liquidity profiles of the assets funded and the potential for contingent calls on funding liquidity arising from off-balance sheet commitments and obligations. The standard requires a minimum amount of funding that is expected to be stable over a one year time horizon based on liquidity risk factors assigned to assets and off-balance sheet liquidity exposures. The NSF ratio is intended to promote longer-term structural funding of banks' balance sheets, off-balance sheet exposures and capital markets activities.

Comments on the consultative documents should be submitted by 16 April and ERC plans to submit a response (which may also be used in respect of the Commission's broadly parallel consultation on CRD IV, launched on 26 February). These new liquidity risk standards will significantly impact funding. Much more emphasis is being placed on deposits and long-term funding, which are seen as "stable". Far greater demands to hold high quality liquid assets as a buffer also arise – government securities will form the basis of bank liquidity buffers. These buffer holdings will tie up significant volumes of such securities and overall repo markets will be significantly impacted.

In particular the ERC proposes that the approach to the identification of "liquid assets" should proceed via a simple test: is the asset accepted as collateral for repos eligible for CCP clearing (by a CCP that fully conforms to the applicable standards promulgated by CPSS/IOSCO)? In the ERC's view, in case of such assets the availability of repo through such robust infrastructure provides as good an assurance of liquidity as it is going to be possible to obtain. The necessary risk management controls and procedures that will be satisfied before an asset is accepted into such CCP clearing arrangements provide assurance with regards to the adequacy of liquidity, which will underpin market confidence. This equally provides a sound and objective basis for formulation of the regulatory approach.

Leverage: On 17 December 2009 consultative proposals to strengthen the resilience of the banking sector were announced by the Basel Committee. The Basel Committee's consultative documents include *Proposals to Strengthen Global Capital Regulations* for internationally active banks (again it is noted that the European Commission's 26 February consultation paper, regarding further possible changes to the Capital Requirement Directive (CRD IV), raises broadly equivalent points).

One element within this package is a proposal to introduce a leverage ratio as a supplementary measure to the Basel II risk-based framework, with a view to migrating to a Pillar 1 treatment based on appropriate review and calibration. This is intended to help contain the build-up of excessive leverage in the banking system, introduce additional safeguards against attempts to game the risk based requirements, and help address model risk. To ensure comparability, the details of the leverage ratio will be harmonised internationally, fully adjusting for any remaining differences in accounting. The ratio will be calibrated so that it serves as a credible supplementary measure to the risk-based requirements, taking into account the forthcoming changes to the Basel II framework.

In particular the Basel proposal states:

- "The design of a leverage ratio requires a definition of capital (the capital measure) and a definition of total exposure (the total exposure or assets measure). The key elements of the [Basel] Committee's proposal are listed below and summarised in the table in the Annex to this section."

- "Netting is not allowed (this applies to both regulatory and accounting netting for derivatives, repo style transactions and the netting of loans and deposits)."
- "Repo style transactions are a form of secured funding and therefore an important source of balance sheet leverage that should be included in the leverage ratio. The [Basel] Committee proposes to include repo style transactions following the accounting measure of exposure but to disallow netting. By disallowing netting, the proposal deals with issues associated with international consistency in accounting standards, and also captures the leverage embedded in such transactions."
- "The [Basel] Committee will also assess the impact of applying regulatory netting rules (based on the Basel II framework) as an alternative to the no-netting approach. This approach will also achieve international consistency."

Assuming that the proposal will lead to a significant leverage limit, the ERC is most concerned about the disallowance of repo netting. The ERC's experience has been that the growth of repo has not been inspired by a desire to boost leverage, but rather as an important risk management tool, allowing lenders – rather than only having the ability to lend on an unsecured basis – to mitigate their risk by engaging in secured financing. The availability of netting is an important risk management tool, which has been carefully developed in the repo market over many years. It is only available in case significant conditions are satisfied; and is underpinned by legally robust arrangements – largely delivered through the GMRA and its supporting legal opinions. Given its concerns, the ERC is responding accordingly to this consultation.

Investment bank resolution – As announced, HM Treasury published proposals on 16 December 2009 to strengthen the UK's ability to deal with any future failure of an investment bank. This follows from a consultation exercise conducted earlier in 2009 and builds on the steps the British Government took in the 2009 Banking Act to resolve failing retail banks.

Questions raised included the following: "Do you have views on the difficulties that repo market transactions could pose for the insolvency of an investment firm, affecting value recovered for creditors? If this is a concern, what kind of policy action could the Government consider to address it?"

Focussed on this particular question, ERC submitted a response. In brief – secured lending is becoming increasingly important; the GMRA provides a sound legal basis for transactions; the rights of secured creditors need to be respected; and unsecured creditors are already adequately protected. The improvement of resolution mechanisms will be an action step in many countries' response to the financial crisis and it is important to ensure that this does not weaken the repo market.

Procyclicality: On 23 March, the Committee on the Global Financial System (CGFS) published a report entitled *The Role of Margin Requirements and Haircuts in Procyclicality,* prepared by a Study Group chaired by David Longworth, Deputy Governor of the Bank of Canada. The report reviews the system-wide impact of haircut-setting and margining practices in securities financing and over-the-counter derivatives transactions during the financial crisis. Based on that experience, it explores complementary policy options for reducing the procyclical effects of those practices on financial markets.

The report recommends several enhancements to market practices to dampen the build-up of leverage in good times and soften the system-wide effects during a market downturn. Complementing those options, it also recommends considering measures that involve countercyclical variations in margins and haircuts, and enforcing higher and relatively stable through-the-cycle haircuts for securities financing transactions.

The ERC is closely studying this report and will carefully explore its potentially significant ramifications. The introduction of prescriptive measures, disrupting certain ways in which risks are managed will have a rather negative impact on the repo market (and security lending). The ERC wishes to ensure that untended consequences do not flow from measures that aim to achieve the desired policy objective of greater market stability.

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18th ERC European repo survey

The ICMA European Repo Council (ERC) published the results of its 18th semi-annual survey of the European repo market on 18 March. The survey set the baseline figure for market size at €5,582 billion, representing an increase of 14.7% on the figure of €4,868 billion for the previous survey in June 2009. The survey is based on returns received from 58 financial institutions in Europe, and is a snapshot of the volume of repo trades outstanding on a single day in December 2009.

Key findings of the survey include the following:

- *Electronic repo trading:* the overall market share of electronic trading of repo fell back slightly to 27.5% from a high of 28.5% in June 2009, reflecting the fact that growth in this sector did not keep up with the growth in the overall market, much of which was in forward-start repo which is relatively little traded electronically. Market share of anonymous electronic trading jumped from 14.5% in June to 18.3% in December 2009.
- *Collateral:* the share of government bonds used as collateral for repo transactions fell to 76% from 81.2% in the previous survey; this was largely due to a reduction in the use of UK Government bonds as collateral to 7.7% of the total business in the latest survey from 12.8% in June 2009.
- *Forward repo:* the market share of forward repo (repo which settles in a longer time frame than next day settlement) increased to a record share of 11.3%.
- *Undocumented buy-sell backs:* the level of undocumented repo transactions has dropped to a low of 2.9%.

A copy of the 18th ICMA ERC European repo survey can be downloaded from ICMA's website at: www.icmagroup.org

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Publication of ICMA's 2010 GMRA Legal Opinions

For many years, ICMA has obtained and annually updated Legal Opinions on the Global Master Repurchase Agreement (1995 & 2000 versions, as well as the 1995 version as amended by the Amendment Agreement to the 1995 version) from numerous jurisdictions worldwide. In 2009, ICMA obtained and updated legal opinions in 63[1] jurisdictions. In 2010, ICMA has obtained update opinions in 62[2] jurisdictions. The 2010 ICMA GMRA Opinions (including, in each case, a clean version and, where available, a blacklined version that tracks the amendments made to the 2009 opinion) are available to members[3] on ICMA's website.

The 2010 ICMA GMRA Opinions cover both the enforceability of the netting provisions of the GMRA as well as the validity of the GMRA as a whole. Furthermore, the 2010 ICMA GMRA Opinions address the issue of recharacterisation risk (in respect of both the transfer of securities and the transfer of margin).

While all 2010 ICMA GMRA Opinions cover, as a minimum, companies, banks and securities dealers, the opinions for nearly 30 jurisdictions additionally cover insurance companies, hedge funds and mutual funds as parties to the GMRA. Each 2010 ICMA GMRA Opinion covers the central/national bank of the relevant jurisdiction as a party to the GMRA, where these exist[4]. In addition, the 2010 ICMA GMRA Opinion for Germany also covers the European Central Bank. Finally, the 2010 ICMA GMRA Opinions for some jurisdictions also cover some named sovereign wealth funds and supranationals.

Both the UK Financial Services Authority (FSA) and the German Financial Supervisory Authority (BaFin) recognise the effect of netting provisions for regulatory capital and large exposure requirements provided, inter alia, that a reasoned legal opinion has been obtained to the effect that, in the event of a legal challenge, the relevant courts and administrative authorities would find that, where a counterparty fails owing to default, bankruptcy, liquidation or any other similar circumstance, the regulated firm's claims and obligations pursuant to the GMRA would be limited to a net sum under the law of the relevant jurisdiction(s), and meet certain other requirements. The opinions which ICMA makes available to its members assist them in fulfilling these regulatory requirements.

Members should ensure that the specific opinions on which they seek to rely extend to their particular circumstances. Members must satisfy themselves as to the strength of the opinions and the effect of the assumptions and qualifications contained therein.

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[1] The United Arab Emirates opinion covers Abu Dhabi, Ajman, Dubai, Fujarah, Ras al-Khaimah, Sharjah and Umm al-Quwain.
[2] Following feedback from the ICMA European Repo Committee, ICMA has not updated the opinion for Iceland, published in October 2009.
[3] Whilst associate members of ICMA will continue to have access to the opinions, the opinions are no longer addressed to associate members and therefore they will not automatically be able to rely on the opinions.
[4] The 2010 ICMA GMRA Opinion for Spain does not cover the Bank of Spain.

US Hiring Incentives to Restore Employment Act of 2010

On 18 March, the Hiring Incentives to Restore Employment Act of 2010 (HIRE) was signed into law (as P.L. 111-147) by President Obama. HIRE takes forward, with only a few minor additional amendments, the US tax provisions that were previously included in the draft "Foreign Account Tax Compliance Act of 2009" and, in subsequently amended form, in the draft "Tax Extenders Act of 2009" discussed in the January edition (at page 14) of this Newsletter. The final version of the HIRE text should be available in due course on the US Government Printing Office's *111th Congress Authenticated Public and Private Laws webpage.*

The notable additional (and helpful) amendments are to: (i) grant the US Treasury power to specify that clearing systems in addition to "dematerialised" systems be treated as book-entry systems for US tax purposes; and (ii) extend the grandfathering provisions to the proceeds of sale of the obligations concerned (previously only payments thereunder were grandfathered). Consequently:

- existing bond issues will be unaffected;
- new bond issues by non-US issuers are likely to be unaffected;
- new bond issues by US issuers prior to 19 March 2012 will be unaffected; and
- new bond issues by US issuers from 19 March 2012 will be subject to a new regime – see below.

The new regime will:

- require intermediaries effecting US source payments to enter into more substantial reporting agreements with the US Internal Revenue Service concerning accounts of US customers (backed by a 30% withholding tax sanction applicable from January 2013); and
- repeal (except for non-US issuers seeking to avoid the US excise tax on bearer debt) the Tax Equity and Fiscal Responsibility Act (TEFRA) exemptions relating to bonds in bearer form (with substantial resulting fiscal sanctions on bearer bonds of US issuers, namely loss of the portfolio interest exemption from 30% withholding tax and non-deductibility of interest for corporation tax) – however, bonds held in a dematerialised book-entry system, or other system specified by the US Treasury, will be deemed to be in registered form for US tax purposes.

In respect of the "intermediaries" limb of the new regime, ICMA will continue working to support the US Treasury's establishment, sufficiently ahead of the 2013 deadline, of workable implementing procedures. These should, *inter alia,* enable the ultimate investors to have certainty as to the status of their intermediated holding chain (or at least enable each downstream holder to have certainty as to the status of his or her immediate upstream intermediary).

In respect of the "TEFRA repeal" limb of the new regime, and in order to avoid the related sanctions, US issuers will only be able to issue bonds from 19 March 2012 that are either (ii) in registered form or (ii) in bearer form held in a dematerialised book-entry system or other system specified by the US Treasury. Either way, the bonds will be treated as registered for US tax purposes and so subject to the related certification requirements (such as under forms W8). ICMA will continue working to secure US Treasury confirmation that bonds deposited in the two international central securities depositories, Euroclear and Cleastream, are to be treated as being held in a book-entry system. ICMA will also be considering if any consequential amendments will be necessary to Eurobond documentation and practices.

Separately, ICMA is tracking certain developments relating to the Japanese withholding tax regime and further information will be disseminated once available.

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Prospectus Directive review

As anticipated in the in the January edition (at page 14) of this Newsletter, the *rapporteur* of the Economic and Monetary Affairs (ECON) Committee of the European Parliament, Dr Wolf Klinz MEP, presented his draft report on 11 January. Further MEP amendments to the draft were subsequently tabled, as was the opinion of the Parliament's JURI Committee. The amendments were voted in ECON on 23 March and the adopted report has been published.

In related developments, the Council general approach has been published, as have been the ECB opinion and the European Economic and Social Committee opinion.

Now that all three primary EU institutions – Commission, Council and Parliament – have produced formal positions, they are expected to enter into reconciliation "trialogue" discussions from mid-April, with a plenary Parliament vote on the outcome in May. ICMA has already participated in discussions with various MEPs concerning the dynamics of the primary bond markets. It will seek to continue to engage with all three EU institutions in the context of the trialogue discussions.

The latest developments regarding the "Omnibus Directive" (discussed above under the *Regulatory response to the crisis*) are also relevant to the Prospectus Directive.

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Allocations Roundtable

ICMA has historically fostered various discussions concerning bookbuilding, including in relation to transaction pre-sounding, order inflation, oversubscription and allocations.

The financial crisis has most recently brought fresh challenges to the primary debt markets, as heavily increased investor demand and numbers (following the reduced appeal of other asset classes) correlated with increased, but cautious, issuer offerings. Some investors expressed concern that they seemed unable to secure their desired allocations, whilst syndicates noted a changed and so less transparent investor landscape. The dynamics involved are complex and involve syndicates walking a fine line in trying to satisfy true, rather than apparent, investor demand – more art than science and something that has basically functioned despite the extraordinary market conditions.

ICMA's Primary Market Practices Committee has been carefully monitoring developments in this area and some of its representatives participated in an informal Roundtable with several buy-side parties in January.

With a view to mitigating the concerns expressed, various potential changes to particular practices have been raised – including: provision for minimum and/or maximum order sizes; announcement of transactions in advance of books opening; no announcement on order book size prior to books closing; earlier or later book closure; books being made "subject"; some form of minimum order protection; *pro rata* write downs; direct investor subscription; higher pricing; reserved or capped allocations (based on geography or investor type); allocation exclusivity to confirmed non-inflating accounts; and disclosure of the extent to which transactions are presold. These options are not clear cut as they also bring various disadvantages.

Several other mitigating factors have arisen in the meantime: the prevalence of pre-sounding seems to have reduced since the height of the crisis in the first half of 2009; syndicates have met and come to know better many of the newer investors (and those with changed profiles) that were less familiar to them; and many syndicates have been adapting their bookbuilding technologies to enable the use of clearer and shared investor identifiers. Ultimately, it may be that these challenges are solved mainly by the markets' return to normality (with investors re-diversifying into other asset classes and issuers relaxing their heightened caution in the face of a stabler outlook).

ICMA's Primary Market Practices Committee will continue to consider developments in this area and a further Roundtable discussion is being contemplated before the summer.

Members of ICMA's Primary Market Practices Committee at its February meeting. From L-R. Kate Craven (Barclays Capital), Ruari Ewing (ICMA, Secretary), Juan Blasco Fernández (BBVA), Terry Shanahan (Société Générale), Marco Baldini (Bank of America Merrill Lynch), Martin Egan (BNP Paribas, Chairman), Hugh Carter (Commerzbank), Dennis Kelleher (Mitsubishi UFJ)

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IPMA Handbook: three updates

ICMA has published three new additions to the IPMA Handbook:

- *Recommendation 1.31* on passive bookrunner access to order books;
- *Guidance Note 19* on changes to legal documentation for the new safekeeping structure for registered notes; and
- *Guidance Note 20* on Prospectus Directive considerations for exempt offers and non-exempt offers of sub-€50,000 denomination bonds in the European Economic Area.

These additions are available to ICMA members and IPMA Handbook online subscribers on the IPMA Handbook login webpage. Soft copies have been circulated to IPMA Handbook hard copy subscribers and hard copies will be circulated in due course.

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Personal view: A European Common Debt Programme: scope and purpose? by René Karsenti

René Karsenti

A fully integrated Common Euro Bond Programme for all euro zone states has remained so far a theoretical concept which would be difficult to implement without a clear political will, particularly from the largest euro states. In the current environment, with deteriorating fiscal situations and increasing imbalances between European economies, the concept merits a closer review, particularly if a first step involves a limited pilot scheme for a Common Euro Debt instrument to be implemented rapidly and in a pragmatic way.

Various academic and industry studies and proposals have been published recently[5].

The main potential benefits relating to a Common Euro Debt instrument have been highlighted as to:

- reduce the cost of borrowing for participating euro zone sovereign issuers by lessening the existing fragmentation in issuance while enhancing liquidity;
- create highly rated, liquid debt instruments attracting international investors willing to diversify their portfolios; and
- develop further the euro as a leading currency by creating a large global market providing advantages in terms of depth and liquidity similar to US Treasuries.

The main issues in the design of any common instrument would be to:

- address the fiscal liability among the different states;
- address the level of participation of each country to the common issuance;
- avoid potential additional funding cost for current benchmark issuers, Germany and France.

A Common Euro Bond Programme would be issued by a new European Debt Agency, or preferably as a first step through an existing specialised European structure, such as the EIB or the EU (DG ECFIN), as agent for such a programme. Each euro government would participate in the Programme and guarantee it on the basis of its equity shares in the EIB or ECB; the proceeds of the bonds would normally be on-lent to each government using the same weights and with pre-agreed conditionality.

I also believe that only a small limited programme of bonds should be initially tested. I would suggest to limit it to short maturity debt instruments, either notes of say 2 or 3 years to maturity, and/or government bills of less than 1 year. It could also concern inflation-linked bonds. That maturity/category segment is more likely to attract a wide range of investors seeking highly liquid, high quality products. The market will be informed that debt with maturities longer than 2 or 3 years would continue to be issued by the respective member states. The programme will aim at replacing existing issuance by euro zone states for such maturities, although states would be free to issue separately (part of) their borrowings for such maturities. Therefore the size of the programme will depend on the choices of individual states.

Regarding the offering yield/coupon of such a Common Euro Debt Issuance Programme, some proposals assume that the market will require a coupon/yield at the weighted average of the yields offered by individual states. Rather, I believe that the yield of such a highly liquid Common Euro Debt instrument could converge to the lowest yield among euro state borrowers, as it replaces gradually the existing individual government benchmarks. That would also assume that the credit risk is negligible with a low probability of a default (particularly if such Common Debt is designed as ranking senior to individual government bonds). Indeed, it can be argued as a reference that the US or Canadian bills or notes are commanding a yield lower than any US state or any Canadian province would achieve if it borrowed directly in the market.

Third, each individual state's cost of funding from the Common Debt Programme should be priced on its direct market funding alternative to avoid the "free riding" for lower rated countries. The benefit for such a government would be easier access to a larger diversified group of investors without external consideration of single country credit change perception. Therefore, if we assume that the Common Debt would achieve a lower cost than the weighted average yield of its components, such saving for the overall debt Programme could be used for setting a "default provision" for the Programme, thus enhancing further the safety of such bonds.

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[5] *Common Euro Bonds: Necessary, Wise or to be Avoided?* by Paul De Grauwe and Wim Mioesen, University of Leuven, May 2009; Jacques Delpla, various articles, France; Edmond Alphandery, *A European Debt Agency*, Le Figaro, 11 February 2010; *Pour un Eurobond*, Frederic Bonnevay, Institut Montaigne, February 2010; *Towards a Common European T-Bill*, EPDA, March 2009.

ICMA bond market survey

In December 2008, the Committee of European Securities Regulators (CESR) published a paper on post-trade transparency in the corporate bond markets (amongst others), in the light of the financial crisis post-Lehmans. The paper highlighted: (i) the sharp contraction of liquidity in the corporate bond market for both wholesale and retail participants; (ii) widening bid-offer spreads and reduction of market depth; and (iii) lack of post-trade information "across the board" which raised the question of whether there is a potential asymmetry of information. For these reasons CESR felt it would be useful to consider whether greater post-trade transparency would restore market liquidity (in both crisis and normal trading conditions).

In July 2009, CESR concluded that, since market-led initiatives had provided insufficient levels of transparency and that an increased level of post-trade transparency would benefit the market, a mandatory post-trade transparency regime for corporate bonds should be adopted as soon as practicable. However, given the way the corporate bond market works, CESR's argumentation appeared to be incompletely developed. First, CESR placed an overwhelming emphasis on *post-trade* transparency. From discussions with members, we understand that members are concerned with pre-trade transparency. It would be helpful to understand if this is the case and what the concerns are. Second, CESR relies on three arguments in favour of greater post-trade transparency:

- *Valuation:* buy-side and repo need end-of-day valuations to meet their regulatory requirements. But data for 2008 showed that some of the 100 most liquid bonds (by volume traded) only traded six times that year. Moreover www.bondmarketprices.com and Xtrakter already provide end-of-day prices. Accordingly, how beneficial would additional post-trade transparency be to buy-side/ repo in respect of valuations, especially in distressed market conditions where trade prices may reflect forced transaction prices; or in particularly illiquid market conditions, where trade prices may not reflect the fair value of an instrument?
- CESR states that *liquidity* may improve with greater post-trade transparency, but does not explain how. CESR accepts that the sharply reduced liquidity in secondary trading of corporate bonds was not caused by a lack of post-trade information. Logically, an increase in post-trade information will not address issues that significantly contributed to the reduction of liquidity during the crisis (ie the deteriorating macro and micro economic outlook).
- *Improved price-formation process:* greater post-trade transparency may improve the price-formation process. However, logically, the price-formation process may be far better improved by focusing on pre-trade transparency.

As part of the Markets in Financial Instruments Directive (MiFID) review, the European Commission will re-examine post-trade transparency of corporate bond markets. However, the Commission is concerned that it has insufficient information about buy-side concerns, especially from mid-size and smaller buy-side firms.

ICMA has had discussions with some buy-side firms who have indicated that they are most concerned with valuation and possibly pre-trade transparency. Accordingly, we feel it is vital to explore this issue more fully with all our members so that we can present a fully informed view to the Commission. We need to be able to articulate our requirements clearly, otherwise the industry risks a framework that is calibrated in a way that few in the industry would welcome or that would be of limited benefit to those segments of the industry it is designed to assist. Therefore, we are asking buy-side, sell-side and repo market participants (amongst others) to complete a survey so that we can identify areas of common interest to all. We would strongly urge all bond market participants to complete our survey, which can be accessed here.

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OTC derivatives: regulatory developments

In the latter part of 2009, the Commission published its Communication, calling for a "paradigm shift", to be achieved largely by moving derivatives markets from predominantly OTC bilateral to more centralised clearing and trading. In December the Council published its broadly supportive conclusions on the Commission's Communication. The European Parliament is now making its voice heard on the subject, with its Committee on Economic and Monetary Affairs (ECON) giving consideration to the draft report of *rapporteur* Werner Langen MEP (amendments will be considered on 27 April; with a planned vote in ECON on 4 May).

The Commission Communication indicated that future policy actions will:

- *reduce counterparty risk by:* (i) proposing legislation to establish common safety, regulatory and operational standards for central counterparties (CCPs); (ii) improving collateralisation of bilaterally-cleared contracts; (iii) substantially raising capital charges for bilaterally-cleared as compared with CCP-cleared transactions; and on top of this (iv) mandating CCP-clearing for standardised contracts;
- *reduce operational risk* by promoting standardisation of the legal terms of contracts and of contract-processing;
- *increase transparency by:* (i) mandating market participants to record positions and all transactions not cleared by a CCP in trade repositories; (ii) regulating and supervising trade repositories; (iii) mandating trading of standardised derivatives on exchanges and other organised trading venues; and (iv) increasing transparency of trading as part of the review of the MiFID for all derivatives markets including for commodity derivatives; and
- *enhance market integrity and oversight* by clarifying and extending the scope of market manipulation as set out in the Market Abuse Directive (MAD) to derivatives and by giving regulators the possibility to set position limits.

In order to advance these policy actions, the Commission has made clear its intention to bring forward legislative proposals in 2010, which will include:

- *a cross-cutting market infrastructure regulation:* to create a framework for the authorisation and operation of clearing houses, repositories and, possibly, central securities depositories;
- *further amendments to the Capital Requirements Directive:* to create incentives for the use of centrally cleared contracts; and
- *revisions to MiFID,* in response to the proposed MiFID review.

Meanwhile in the US debate continues on how to formulate the best measures to address the equivalent set of concerns. There is a real and serious concern that, despite the broad recognition that derivatives markets are global and the G20 impetus for coordinated action, the final detail of measures agreed in the US will prove inconsistent with the approach adopted by the EU.

On 14 January, the Federal Reserve Bank of New York hosted a further meeting of major market participants and their domestic and international supervisors to discuss efforts to improve the infrastructure supporting the over-the-counter (OTC) derivatives market. Market participants provided an update on developments in the OTC derivatives market and agreed to further improvements to support the overall goals of reducing risk and increasing transparency, including: expanding central clearing for interest rate and credit derivatives; expanding regulatory reporting on OTC derivatives transactions; and improving risk management for non-cleared derivatives transactions.

On 1 March, the Federal Reserve Bank of New York welcomed the further letter released by market participants outlining new commitments to bring greater transparency and standardization OTC derivatives markets, implement collateral management best practices and further expand the use of central clearing in the credit and interest rate derivatives markets.

Major commitments by the market participants include:

- *market transparency:* the market participants will provide regulators with data and analysis to help evaluate how greater price transparency in the OTC derivatives markets might improve financial stability;
- *central clearing:* the market participants will expand central clearing in both the credit and interest rate derivatives markets through expanding the range of supported products and effecting broader market participation in clearing;
- *standardization:* the market participants will work with supervisors to evaluate the levels of standardization in credit, equity, and interest rate derivatives products and processing and to prioritize the areas which would benefit from greater standardization; and
- *collateral management:* following the development of best practices in collateralizing bilateral OTC derivative trades, the market participants have committed to implement these best practices to help reduce counterparty credit risk.

ISDA, which facilitated the draft of the document with experts from its Credit, Rates and Equity Steering Committees, issued an associated press release.

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Cassiopeia corporate bond platform

In June 2009, in order to implement the guidelines agreed on by successive meetings of the G20, the High Level Committee chaired by Madame Christine Lagarde, French Minister for Economy, Industry and Employment, requested Paris-Europlace to set up working groups to elaborate proposals for enhancing the organization and operating model of the capital market. Under the aegis of Paris-Europlace, an Issuers Group chaired by Madame Stéphane Pallez, Deputy Chief Financial Officer, France Telecom, was created and tasked a Sub-Group led by M. Sylvain de Forges, Head of Financial Risk Management at Veolia Environment, with defining proposals for improving the liquidity of the euro-denominated corporate bond secondary market.

This Working Group, which invited representatives from a wide variety of French and international market participants to take part in its work, held a series of meetings, and benefited from suggestions or proposals from a broad range of sources. The result is a list of operating and organizational principles, as well as a description of services that trading platform for debt instruments could usefully provide.

The Cassiopeia Expression of Needs presents this list, as a basis for consultation. After summarising opinions and comments received (by 9 April), the Working Group will ask any interested market companies to present the platforms that they plan to implement in order to host transactions in these securities. The Cassiopeia Committee will compare the submissions offered by such platforms with the needs expressed by the Working Group, and will publish the results.

The Cassiopeia Expression of Needs document describes operating principles and needs, and defines the characteristics of a European-wide "corporate" secondary bond market, open to all types of bonds, regardless of their legal nature, and independently of their place of issue. The desired market characteristics are focused on the following principles:

- The market may be a MTF subject to market abuse legislation, whose activity is the trading of euro-denominated corporate bonds.
- It should include a clearing house with a central counterparty, guaranteeing the successful completion of trades.
- The market will have pre- and post-trade transparency rules and rules applying to reporting, to the market, to the regulator and for internal control and issuer information purposes.
- The entity that will be chosen should be willing to manage its market according to governance principles involving users.
- The platform should be open to any regulated institution in Europe, on an all-to-all basis.

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The asset management industry in 2010: the AMIC Chairman's view

Every year, I set out for ICMA Asset Management and Investors Council (AMIC) meetings my analysis of how the asset management industry will develop over the next one to two years and where the opportunities and traps are. Below you will find the major themes of my analysis.

Improvements in credit markets

After the underperformance of credit funds in 2008, the credit rally from November 2008 until March 2010 resulted in strong performance and investor inflows into credit products, not just in investment grade but also into emerging debt, high yield and the loan markets. There was a significant improvement in liquidity in credit markets.

Investors preference for asset products versus bank risk

After the problems of 2007/08, client distrust of structured products remains intense, particularly when the underlying economic risks are opaque and/or valuations are difficult to price. Given client losses, there is likely to be intolerance of any sovereign with debt/issuance problems and sectors which are being forced to deleverage and/or equity sectors where there is significant spare capacity. G7 government bonds are unlikely to attract client demand, given low yield levels and fear over credit downgrades at a time of major issuance. The fastest growing sectors will be the mutual fund industry, exchange-traded funds and life insurance linked-programmes.

After the early 2010 sell-off, client demand should rebuild for emerging equities in Asia, Latin America and some central and eastern European countries. Demand for emerging currencies, particularly the high yielders and emerging debt will remain strong. Demand will remain strong for asset allocation advice and multi asset class products, although the trend towards fiduciary management is likely to reverse given poor track records which have failed client expectations.

Scale considerations and structural changes

Within the life insurance industry, the small and mid-sized companies will outsource asset management and focus on distribution, while the larger life companies will become increasingly dominant in the asset management industry.

Within pension funds, one clear trend in certain markets (eg the UK, Netherlands and Germany) will be larger pension funds offering asset management and fiduciary services to smaller funds.

The growth of independent firms will accelerate and, with the exception of France, bank asset management firms will lose market share.

Within independent firms, the regulatory costs of setting-up new businesses will be high and the themes will be consolidation with an increase in M&A activity, funding/minority ownership from banks and private equity and a slow increase in initial public offerings.

Although hedge fund start-ups will remain difficult, the larger successful funds will attract inflows, with the most attractive strategies being long/short equity, emerging markets, convertibles and non-correlated areas.

Impact of regulatory pressure

Despite regulatory pressures, the growth rates in private banking and family offices will remain strong, with demand for absolute return products (including hedge funds), thematic products and at the margin private equity.

Even if the Volcker plan and the proposed EU rules on Alternative Investment Fund Managers are diluted, the overall trends in alternative funds will be lower leverage, more capital being provided by end investors rather than banks and more transparent fees, process and risk management.

Robert Parker
Senior Adviser, Credit Suisse
Chair of ICMA Asset Management and Investors Council (AMIC)

EU Savings Taxation Directive

Under Article 18 of the EU Savings Taxation Directive (Directive 2003/48/EC) (EU STD), the European Commission has to report to the Council on the operation of the Directive every three years and propose any amendments to the Directive that may be required in order to ensure effective taxation of savings income. In November 2008, the Commission adopted an amending proposal to the Directive, with a view to closing existing loopholes and better preventing tax evasion. The proposal extends the scope of the Directive to income equivalent to interest obtained through investments in some innovative financial products as well as in certain life insurance products. The intention of the Directive remains the same: to eliminate or reduce circumvention and evasion of the payment of tax by private investors on their cross-border income.

The AMIC Private Banking Working Group is a cross-border group that considers regulatory developments affecting the private banking industry. One of its priorities is to consider the changes in the EU Savings Taxation Directive and ensure that its effects on the private banking industry are understood.

The Chairman of the Working Group, Charles Hamer (CH), Chief Executive of Crédit Agricole, Luxembourg, explains to Nathalie Aubry (NOA), Secretary of the AMIC, the EU Savings Taxation Directive and its impact.

NOA: What is the EU STD?

CH: The EU STD is in effect an agreement between the EU Member States to exchange information with each other about customers who earn savings income in one EU Member State but reside in another (the automatic exchange of information option). Whilst automatic exchange of information is the ultimate objective of the EU STD, two EU Member States (Austria and Luxembourg) have opted to apply alternative arrangements during a transitional period – the withholding tax option. The EU STD came into effect in June 2005.

NOA: How does the EU STD work today?

CH: The Directive can be applied in two ways:

- *through the exchange of information:* "Automatic exchange of information" means that, for example, if a resident of France holds a bank account in Germany, the German bank will give the German tax authorities details of the customer and the interest payments. The German tax authorities will pass these on to the French tax authorities. They can compare the amount of income declared by that person with the information provided under the EU STD.
- *through withholding tax:* Rather than using automatic exchange of information, two EU Member States – namely, Austria and Luxembourg – have opted to apply withholding tax instead. (Belgium has opted for the automatic exchange of information, starting in 2011.) This means that banks automatically withhold tax from interest paid to people resident in other EU Member States. But no information is provided to the tax authorities in either Member State. It is the bank's responsibility to pay the withholding tax. Under this system, the customer must also be offered automatic exchange of information or a certificate from his or her local authority giving the source that the interest payment comes from.

NOA: What are the main changes to the current legislation included in the EU STD proposal?

CH: I noted two main changes in the November 2008 Commission proposal to an amending Council Directive, namely: broadening the definition of interest income; and the automatic exchange of information.

Specifically, the Commission proposes to extend the scope to cover interest and substantially equivalent income deriving from securities similar or equivalent to savings products already covered, a broader range of collective investment funds and low risk, interest-based, life insurance contracts.

The Directive and Agreements lay down the details of the information that paying agents must report to tax authorities, such as the identity and residence of the beneficial owner, the amount of the interest payment and the identification of the debt claim giving rise to the interest. With regard to the information to be reported by one Member State to another, the Council in 2002 agreed on a standard format that Member States would use to exchange information with each other on interest payments made to individual savers.

Communication of the information in this standard format would be automatic and would take place at least once a year. The format reflects the information requirements contained in the proposed Directive, as regards the identity and residence of a beneficial owner and details of the payments made to him. Meetings with Member States are continuing to resolve the points of detail in relation to this format.

NOA: How do these changes affect the private banking industry?

CH: For the private banking industry in Europe, confidentiality remains today a major open issue. OECD rules based on exchange of information on demand, decided in London at the G20 on 2 April 2009, are putting in place a new level playing field among the international cross-border financial centres, and the involved players will try their very best to efficiently adapt to this new framework. The fact that all these financial centres worked diligently in order to get out of the OECD grey list, demonstrates the obvious high level of commitment towards putting in place a tax compliant environment.

The industry understands also that the European Savings Taxation Directive has to be reviewed and adapted, in order to collect taxes in a more comprehensive way within this given framework, and the industry is ready to address this new challenge linked to this revision.

But the private banking industry strongly believes that client and financial privacy has to remain a core value of the so-called international cross-border financial centres like Switzerland, Luxembourg or Singapore, just to mention the most important ones. Some studies support these conclusions. The pressure exercised by the EU on Luxembourg and Austria, to force these countries to move into a system of automatic exchange of information, could potentially have very perverse side effects for the EU, as the international cross-border business based in the EU could move to other places outside the EU, for example Singapore.

NOA: The AMIC set up a cross-border Private Banking Working Group in November 2009. As Chairman of the Working Group, what do you think the next steps are for the industry?

CH: The ICMA Private Banking Working Group is considering different possibilities in presenting the industry to the regulatory authorities.

The Working Group is currently drafting a Private Banking Charter which is inspired by the Wolfsberg Group principles to which private banks could opt in. The Charter would follow three main themes: integrity, transparency and efficiency. The Charter will be drafted with the help of the members' compliance departments and encourage major private banks to adhere to some principles when interacting with clients. I hope the Working Group will be able to agree upon the Charter at the next Working Group meeting in May.

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AIFM Directive developments

February 2010

The House of Lords European Union Committee published a report on the proposed Alternative Investment Fund Managers (AIFM) Directive that calls on the European Commission to ensure that any proposal is consistent with global arrangements. The report states that unless the Directive is compatible with a global regulatory approach it will "seriously damage the EU and UK economies" and stresses that the UK should not agree with the Directive unless it is compatible with equivalent legislation in third countries and, in particular, the United States. The report warns against measures that would make EU AIFMs less globally competitive and advises that EU investors should continue to be able to invest in non-EU funds, a situation that the current proposals may prevent.

The Spanish Presidency has issued its first compromise text for the AIFM Directive, using as its starting point the previous compromise text by the Swedish Presidency. The new text proposes that an AIFM be registered in its home Member State and provide competent authorities with relevant information regarding the main instruments in which it is trading, markets of which it is a member or where it actively trades, as well as the principal exposures and concentrations of each AIF it manages. It also proposes a depository be liable for the losses that the AIFM, the AIF and investors suffer as a result of the funds' failure to perform its obligations. The Presidency also proposes changes to the remuneration, transparency and conduct of business sections of the proposal.

The Economic and Monetary Affairs Committee (ECON) of the European Parliament discussed on 24 February the 1,669 amendments to the Commission's proposal, centred on the themes of the treatment of: third countries; leverage; short selling; and proportionality. Conservative groups within the Committee called for greater differentiation between different types of funds, and warned of the dangers of prohibiting investment in non-EU funds. Other groups within the Committee focused on the need to end speculation and to this end it seems that the Greek fiscal situation has provided yet another dimension to the AIFM debate.

The FSA published the conclusions of two surveys of 50 of the largest hedge fund managers that managed assets of over £300 billion representing 20% of the global industry, as well as all of the top prime broking divisions within the investment banks. (One survey covers hedge funds and the other covers hedge funds as counterparties.)

The surveys conclude (data as of 31 October 2009):

- Major hedge funds do not pose a potentially destabilising credit counterparty risk across the surveyed banks.
- There is a relatively low level of leverage, and the level of risk from hedge funds is contained.
- There is no clear evidence that any individual fund poses a significant systemic risk to the financial system.

The intention is to repeat these two surveys at six monthly intervals and build a time series of data that will help the FSA monitor trends in hedge funds as they relate to systemic risk.

March 2010

EU Finance Ministers were due to discuss the Directive at the 16 March Ecofin meeting but it was removed from the agenda before the meeting, reportedly after the personal intervention of the British Prime Minister, Gordon Brown. It appears that the British Government's concerns relate to the same issues we have been highlighting – the possible protectionist consequences of the "third country" marketing provisions.

One of the reasons why the Directive became such a key issue ahead of the Ecofin meeting was the intervention by US Treasury Secretary Timothy Geithner on the subject. He wrote a letter dated 1 March to Michel Barnier, the EU's Internal Market Commissioner, expressing concern about the proposals within the Directive that would "discriminate against US firms and deny them access to the EU market that they currently have" (similar concerns as those expressed by the UK authorities).

Next steps

The next formal meeting of Ecofin is now not until 18 May, and it is likely that the Spanish Presidency will seek an agreement then.

However, before that, there will be two developments which could influence the direction the debate on the Directive takes. The first is that G20 Finance Ministers will meet in Washington DC on 23-25 April. It is likely that hedge fund regulation will be discussed then, although this has not been confirmed as an agenda item. The second is that there will be a UK General Election on 6 May.

Following ECON's second discussion on the 1,669 amendments made by MEPs to the Directive, the *rapporteur*, Jean-Paul Gauzès MEP, is working with his colleagues and with the shadow *rapporteurs* on a series of compromise amendments.

Final vote

Despite recent postponements of proceedings in Council and Parliament, the timetable for a vote in plenary session in July remains in place as shown in the draft timeline prepared by AIMA.

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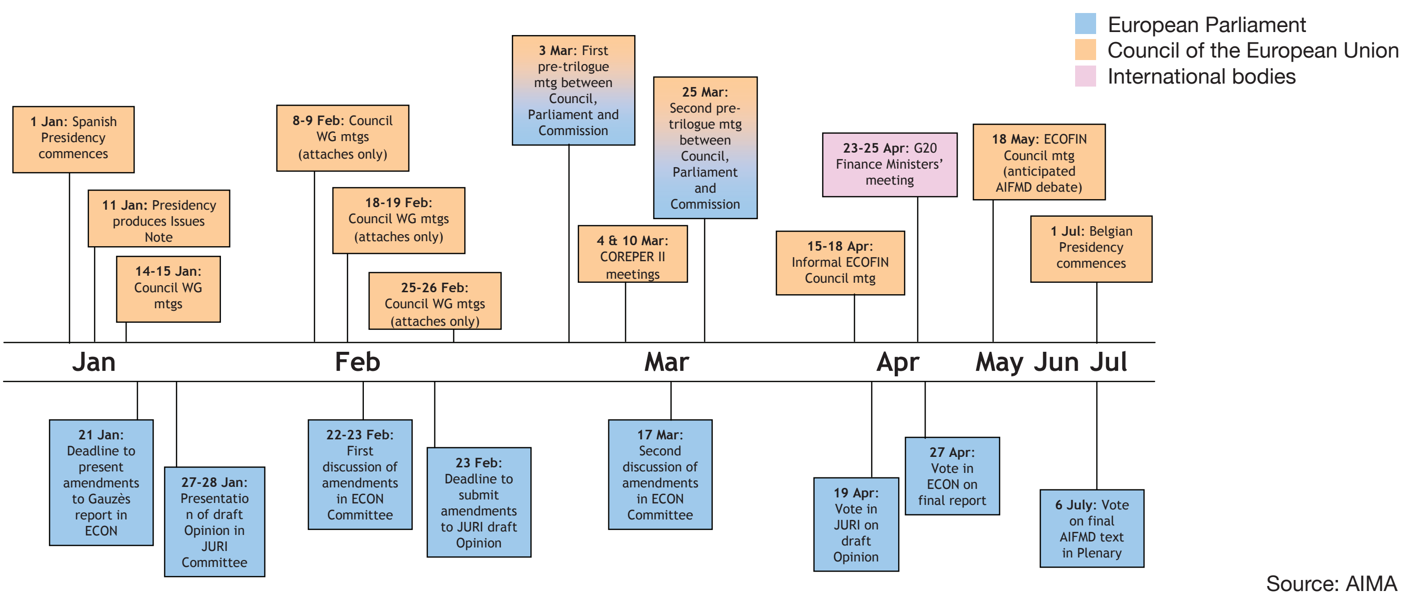
AIFMD - draft timeline for 2010: European Parliament and European Council



Source: AIMA

ICMA Covered Bond Investor Council

The ICMA Covered Bond Investor Council (CBIC) has published a statement on the shadow bookbuilding process where the CBIC urges issuers and their lead managers to return to using the traditional bookbuilding process rather than the shadow bookbuilding process. The CBIC recommends the adoption of a longer fixed timeframe during which books would be open rather than the over-hasty closing of books.

The CBIC is also considering a covered bonds labelling project that should be approved by the European Covered Bond Council (ECBC) at its March plenary session. CBIC members, Claus Nielsen and John Maskell, have participated in panels of the plenary to provide a much needed investors' viewpoint to the discussions. The next step of the project is the implementation phase. A register of covered bond programmes will be set up where programmes, according to pre-defined criteria, can qualify for labelling. Some of the criteria may affect the asset pools, however most covered bonds will probably qualify for the labelling. At the ECBC plenary, the labelling project was perceived as a positive step to ring fence the product against ABS products or programmes that would include less high quality assets.

The CBIC is also monitoring legislative initiatives in the area of covered bonds, including preparatory work by HM Treasury and the FSA on the revision of the UK covered bond regulated framework: this will be open for consultation later in the year. Some countries are expected to introduce new legislation, such as Canada.

Another project of the CBIC involves the redefinition of jumbo covered bonds. This is a continuing project. The topics under discussion are: a commitment of a minimum number of market makers to quote the bond; post-trade transparency involving investors in price discovery; and exclusive market maker/turnover statistics to be available for issuers.

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Corporate governance: what role for investors?

In his written answers to the European Parliament ahead of his hearing, Commissioner Barnier mentioned that he "will present a report on governance in financial establishments which will contain proposals for remedying the weaknesses revealed by the crisis".

An AMIC Working Group has been set up to discuss the role of investors in corporate governance – including the latest developments such as the Walker Review, the FSA CP 10/03 on effective corporate governance, the Institutional Shareholders Committee (ISC) Code and the intention of the new European Commissioner to present a report on that very topic. The AMIC Corporate Governance Working Group as well as Council members have considered carefully the ISC Code on the responsibilities of institutional investors published in November 2009. The AMIC welcomes any initiative to codify the engagement of institutional investors.

In this context, ICMA organised at the beginning of February a Roundtable with Sir David Walker to discuss his recommendations on corporate governance in the UK banking industry. During the Roundtable some important topics were discussed, for instance the fundamental issue of the principal-agent model, as fund managers are not the ultimate owners of the assets, and are not necessarily given guidance by the owners. In addition, participants in the Roundtable discussed the issue of shareholders acting collectively.

When discussing the ISC Code, the AMIC Working Group has considered key themes that will be discussed further with the ISC:

- *The place of the Code amongst all the proposals on the topics of corporate governance.*
- *How to strengthen shareholder engagement in corporate governance beyond general statements of encouragement and exhortation:* This ties in with the discussion at the Walker Roundtable, and with subsequent comments by Lord Myners, in which he stressed that shareholders have not only rights but also duties. In the light of this, and while the Working Group recognised that enforcement (legal or otherwise) of shareholder participation was unlikely to be possible, there was concern that the proposed statements in the ISC Code would mainly appeal to those already minded to fulfil their social obligations and would have little traction on those who have to date been content to allow others to make the running.

- *The problem of definition between activist shareholders and participating shareholders:* Participating shareholders accordingly are defined as those who vote their shares, engage with management on their actions and policies and will also on occasion speak up publicly about disagreements with management. However, acting in concert with other shareholders to change company policy, ousting the board of management and engaging in law suits etc can only be required in *extremis* and certainly should not be a requirement of a code. The preferred action from a client perspective would mostly be to sell the shares. The view of the Working Group is that no Code should encourage shareholders to become activist.

- Commissioner Barnier suggested in his hearing before the European Parliament that he expected to produce a *report on governance in financial establishments*, adding a European dimension to the debate. The AMIC Working Group hopes to discuss the relevance of the Code for industry initiatives in other jurisdictions.

The Working Group will be meeting the ISC to further discuss these questions, and also hopes to bringer a wider European view to this debate.

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AMIC: recent events

21 January 2010: CBIC statement release about shadow bookbuilding process
The full statement is available here.

2 February: ICMA Roundtable with Sir David Walker
John Nugee, AMIC member, participated in a Roundtable with Sir David Walker to discuss the recommendations as regards corporate governance in financial institutions.

February: Private Banking Working Group meeting
The Working Group met in Luxembourg to discuss progress on the EU Savings Taxation Directive following the ECOFIN meeting held in January.

February: Corporate Governance Working Group meeting
The Working Group met in London to discuss how the AMIC will take forward the issues related to corporate governance and the role of investors.

24 February: US Treasury meeting
The US Treasury sent a high-level team to London to discuss how investors see markets, especially fixed income markets. A meeting was organised with representatives of AMIC.

2 March: ICMA meeting with the ECB
An ICMA delegation met the ECB at its offices in Frankfurt. Bob Parker, Chairman of the AMIC, and Claus Nielsen, CBIC Chairman, both attended the meeting.

11 March: AMIC Dinner with Angelien Kemna
The guest at AMIC's dinner in Amsterdam was Angelien Kemna, CIO of APG, who spoke about the future of the Dutch and European pension fund industry.

12 March: AMIC meeting with AFM Chairman
Hans Hoogevorst, Chairman of the AFM, and his colleagues from the asset management departments discussed with the AMIC the main regulatory challenges which will have an impact on the asset management industry.

March: Paris meetings
Representatives of the AMIC had meetings with: Patrice Bergé-Vincent, who is head of the asset management department at the French regulator (AMF) and is also involved in IOSCO's work on asset management; and CESR's investment management team (Richard Stobo and Clement Boidard).

26 March: ECBC plenary in Amsterdam
Claus Nielsen, CBIC Chairman, and John Maskell, CBIC member discussed the investors' point of view at the ECBC plenary session.

June 2010: Next AMIC dinner and meeting (in London)

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Dismantling the Giovannini Barriers

The CESAME2 Group is to follow up the work of the well-known CESAME Group (the European Commission's Clearing & Settlement Advisory and Monitoring Expert Group), whose mandate expired on 16 June 2008. CESAME2 is to carry the momentum built by CESAME in order to achieve the goal of a barrier-free Single European Market for clearing and settlement of securities transactions.

The CESAME2 Group is composed of 30 high-level representatives of various, mainly private-sector, bodies involved in post trading, along with observers from public authorities. Its most recent meeting took place in Brussels on 2 March. After an update on current legislative initiatives, the meeting focussed on discussions related to certain of the Giovannini Barriers: in particular (a) public barrier 11 (taxation issues); (b) industry barrier 6 (settlement cycles); (c) industry barrier 1 (IT and interfaces); and (d) industry barrier 3 (general meetings and corporate actions). There were then presentations on netting; the effects of high frequency trading for clearing and settlement; and updating on TARGET2 Securities (T2S). Before closing, the Commission discussed the possible need to refresh the group, also taking account of developments affecting other similar groups (such as the MOG). The next meeting is pencilled in for 14 June.

Monitoring Group of the Code of Conduct on Clearing and Settlement

On 7 November 2006, trading and post-trading infrastructures signed the Code of Conduct on Clearing and Settlement. The Code aims to enhance transparency and increase competition in the post-trading sector. To monitor implementation of the Code, the Commission has set up the Monitoring Group of the Code of Conduct on Clearing and Settlement (MOG). The MOG consists of representatives from Internal Market and Services DG (MARKT), Economic and Financial Affairs DG (ECFIN) and Competition DG (COMP) as well as the European Central Bank (ECB) and the Committee of European Securities Regulators (CESR).

Having previously met on 29 October 2009, the MOG was scheduled to meet again on 16 February – but this date was subsequently shifted to 15 March. The meeting was chaired by Patrick Pearson – DG MARKT Head of Unit G2 (Financial Markets Infrastructure). By way of introduction, it was affirmed that the Commission proposes to bring forward a Securities Law Directive (SLD) and European Market Infrastructure Legislation (EMIL) – in both cases pre-summer. EMIL will cover clearing (including central counterparties (CCPs)), trade information warehouses (TIWs) and, potentially central securities depositories (CSDs – including the two international CSDs). The aim is to submit EMIL to the College of Commissioners in June, preceded by a May public consultation (to meet the better regulation commitment).

A brief presentation then followed which broadly affirmed that the price transparency and the service unbundling and accounting separation elements of the Code of Conduct are now implemented and just subject to ongoing maintenance. Access and interoperability remains the component where more progress is particularly needed. The Commission noted that, though EMIL is in the first instance to deal with systemic risk concerns, it is exploring EMIL's potential to also improve market efficiency – superseding certain elements of the Code (though it is not simple to determine the best approach to follow). All agree that the Code has fallen short on interoperability and almost all agree that the *status quo* is not acceptable.

The UK FSA and De Nederlandsche Bank then discussed the joint regulators' announcement on interoperability of 12 February – this was widely reported although not formally released. In brief, this takes the view that interoperability creates new bilateral intra-CCP risk and that there must therefore be incremental collateral to mitigate this. Risk standards will need to accommodate this stance, so for instance it is being considered in the CPSS/IOSCO work on CCP standards.

Before closing, the Commission solicited thoughts on the future of the MOG. There may be a case to form MOG2, with a refreshed mandate – picking up those bits of the Code work that remain and new issues relating to EMIL and its related technical standards – or to form a new merged market expert group with CESAME2.

European Commission proposal for a Securities Law Directive

The Commission services' current approach in preparing a Securities Law Directive (SLD) is described in a discussion paper prepared for the Member States working group. It is intended that this future Directive should regulate the legal framework governing:

- he holding and disposition of securities held through securities accounts in its substantive law aspects;
- the holding and disposition of securities held through securities accounts regarding conflict-of-laws;
- the processing of rights flowing from securities held through securities accounts; and
- possibly, the access to central securities depositories by issuers of securities.

This builds on the Commission's summary of responses to its 2009 consultation (ICMA contributed a short high level letter of comment to that process). The contemplated timetable for this proposal is:

- March-April 2010: Second public consultation;
- July 2010: Adoption by the Commission; and transfer to the European legislator;
- Mid-2011: Finalisation of the legislative procedure;
- End-2012: Finalisation of transposition into Member States' law.

ECB Contact Group on Euro Securities Infrastructures (COGESI)

On 14 December, there was an ad hoc meeting of COGESI on triparty collateral services. This was convened so that participants could discuss:

- the current situation within the area of triparty collateral services;
- issues related to the lack of interoperability; and
- possible developments to address the resulting lack of level playing field.

It was noted that the interoperability issue comprises four main aspects:

- interoperability between ICSDs (at the collateral settlement level);
- interoperability between ICSDs and CCPs;
- interoperability with the Eurosystem collateral pool (ie integration of triparty facilities with CCBM2); and
- interoperability with other non-ICSD providers of triparty collateral facilities (ie Bank of New York Mellon and JPMorgan Chase).

The discussion focussed on a conceptual interoperability model for triparty collateral facilities, as discussed by the two ICSDs. It was acknowledged that the conceptual model for interoperability between ICSDs and CCPs, based on interoperability at settlement level and CCPs' direct access to both ICSDs, is desirable in the longer term – also taking into consideration the development of CCBM2 and T2S. However, as an immediate step, further effort is being made to facilitate equal access for both ICSDs to the individual CCP solutions in Europe, allowing for full use of the respective liquidity pools.

The next regular COGESI meeting is scheduled for 4 May.

TARGET2 Securities (T2S)

T2S will be a single technical platform which will allow central securities depositories (CSDs) and national central banks to provide borderless and neutral securities settlement services in central bank money in Europe: borderless, because it will handle cross-border transactions and domestic ones in the same way and at the same price; neutral, because it will operate under the same conditions for all CSDs in Europe.

In late January, the ECB published its T2S winter update. In the editorial Jean-Michel Godeffroy, Chairman of the T2S Programme Board, explains the delay in the initial go-live date of the T2S project (detailed work to define the revised timeline is in hand). He also reports on progress, including the freezing of the *User Requirements Document* and the approval of the eligibility rules for the participation of CSDs in T2S.

In the project update article the ECB reports on recent progress:

- In November 2009 the *General Functional Specifications* and the *General Technical Design* were approved by the T2S Programme Board and published on the T2S homepage.
- Following the careful analysis of the Advisory Group, the Governing Council endorsed the migration by CSD approach because it allows a better balance of project costs and risks than the migration by security approach.
- To ensure that the participating CSDs do not pose a risk for other CSDs and their users; and prevent free-riding behaviour in T2S, which would be to the detriment of other CSDs and of the European financial markets in general, the Governing Council adopted five eligibility criteria for CSDs in T2S.

The Advisory Group (AG), which is an advisory body that reports directly to the ECB's decision-making bodies on the T2S project, met in Frankfurt on 10-11 March (and next meets in Vienna on 1-2 June) for its latest progress review; and the last meeting of the Programme Board was held on 17-18 December 2009. The most recent T2S info session was held on 24 March at the FBF in Paris.

CPSS-IOSCO review of standards

As announced on 2 February, the Committee on Payment and Settlement Systems (CPSS) and the Technical Committee of the International Organization of Securities Commissions (IOSCO) have launched a comprehensive review of their existing standards for financial market infrastructures such as payment systems, securities settlement systems and central counterparties. There are three sets of standards involved, namely:

- the 2001 core principles for systemically important payment systems;
- the 2001/2 recommendations for securities settlement systems; and
- the 2004 recommendations for central counterparties.

The review will be led by representatives of the central banks that are members of the CPSS and those of the securities regulators that are members of the IOSCO Technical Committee. The International Monetary Fund and the World Bank are also participating in the review. The review is part of the Financial Stability Board's work to reduce the risks that arise from interconnectedness in the financial system. The aim is to issue a draft of all the revised standards for public consultation by early 2011.

Separately, as announced in the 20 July 2009 press release, the CPSS and the Technical Committee of IOSCO are already in the process of providing guidance on how the 2004 Recommendations for central counterparties should be applied to CCPs handling OTC derivatives. The guidance will also cover other relevant infrastructures handling OTC derivatives such as trade repositories. This aspect of the work has been put on a fast track because of the new CCPs for OTC derivatives and trade repositories that have recently started, or are about to start, operating. A consultative document on the guidance will be issued within the next few months. This new guidance will not entail amendments to the existing recommendations for CCPs but will of course be incorporated into the general review of the standards that has now begun.

On 10 March, the FSB launched an initiative to encourage the adherence of all countries and jurisdictions to international financial standards, including by identifying non-cooperative jurisdictions and assisting them to improve their adherence. The initial focus of the initiative is on adherence to international cooperation and information exchange standards in the financial regulatory and supervisory area. With respect to the IOSCO *Objectives and Principles of Securities Regulation*, this latest FSB initiative particularly considers compliance with the three Principles for the Enforcement of Securities Regulation and the three Principles for Cooperation in Regulation.

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ICSA AGM, 9-13 May, Istanbul

The International Council of Securities Associations (ICSA) will be holding its 23rd Annual General Meeting in Istanbul. A comprehensive discussion programme on the theme *Global Financial Regulation in the Aftermath of the Crisis* will feature contributions from speakers including: Ali Babacan, State Minister and Deputy Prime Minister, Republic of Turkey; Greg Tanzer, Secretary General, IOSCO; Carlo Comporti, Secretary General, Committee of European Securities Regulators; and Hüseyin Erkan, Chairman, Istanbul Stock Exchange and Chairman, Federation of Euro-Asian Stock Exchanges. The event is open to ICSA members and invited observers.

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ICMA AGM and Conference, 26-28 May, Brussels

The 42nd ICMA AGM and Conference will be held at Square in Brussels from 26 to 28 May 2010.

Registration for the conference is open to all ICMA members (ICMA member firms are entitled to send up to 3 delegates completely free of charge) and also to other capital market participants involved in trading, settlement, debt issuance, asset management, compliance and regulatory affairs.

The conference will bring together leading industry figures, central bankers and regulators to address major themes which concern both the buy and sell sides of the market, with particular emphasis on regulatory developments. The programme includes sessions on: the European Securities and Markets Authority and the Single Rule Book; the future of OTC markets; asset management post the crisis; and the resilience of the market infrastructure.

We are delighted that we will be welcoming the Prime Minister of Belgium, Yves Leterme, who will address delegates at the Palais de la Bourse on the evening of Wednesday, 26 May.

Contact: membership@icmagroup.org

ICMA Professional Repo & Collateral Management Course, 29-30 Sept, Frankfurt

The ICMA European Repo Council will present its 2010 Professional Repo and Collateral Management Course in Frankfurt on 29 and 30 September. This industry-run course caters to the needs of professional repo market participants and is provided at subsidised rates to ICMA members, underlining the association's commitment to education and the development of this financing product.

The course, which has run successfully for almost 10 years, features a blend of presentations from experienced practitioners who are actively involved in the repo market on day to day basis, together with a sound theoretical explanation of the principles involved in this type of financing from ICMA Centre academics. As well as covering the fundamentals of the repo product, the course will address the uses of repo and collateral by central banks, the impact of the crisis on the repo market and the latest developments in clearing and settlement.

Registration will open at the end of April.

Contact: events@icmagroup.org

Summary of forthcoming ICMA Executive Education courses

The full schedule of 2010 ICMA Executive Education courses is available from the ICMA website.

Introductory programmes

Financial Markets Foundation Course (FMFC)
10-12 May, Copenhagen

Securities Operations Foundation Course (SOFC)
9-11 June, Brussels

Intermediate programmes

International Fixed Income and Derivatives (IFID) Certificate Programme (Residential courses)

25 April-1 May, Sitges, Barcelona

22-28 August, Seoul

Specialist programmes

Securities Lending & Borrowing
22-23 April, London

Securitisation - Understanding the Mechanics
26-27 April, London

Investment Funds Administration
10-11 May, London

Primary Market Certificate (PMC) Bahrain
9-13 May, Bahrain

Global Custody
17-18 May, Brussels

Primary Market Certificate (PMC) London
17-21 May, London

Corporate Actions
2-3 June, London

Credit Default Swaps (CDS) - An Introduction
21 June, London

Commodities - An Introduction
22 June, London

Commodities - Investment Solutions
23-24 June, London

Commodities - Trading Strategies
25 June, London

New ICMA members

ICMA has welcomed 22 new member firms in the first quarter of 2010.

Alfa Bank, Open Joint-Stock Company, Moscow

Anglo Irish Bank Corporation, Dublin

Australia and New Zealand Banking Group Limited, London

Banco Votorantim S/A - Nassau Branch, Nassau

BBM Bank Limited, Nassau

BrokerCreditService (Cyprus) Limited, Limassol

Crédit Agricole Luxembourg, Luxembourg

De Nederlandsche Bank, Amsterdam

Dealogic Limited, London

Deutsche Asset Management (UK) Limited, London

Deutsche Bundesbank, Frankfurt

Eurasian Development Bank, Almaty

EBS Building Society, Dublin

HSBC Private Bank (Suisse) SA, Geneva

Irish Life & Permanent PLC, Dublin

Irish Stock Exchange, Dublin

Johannesburg Stock Exchange Limited, Sandown

Landwirtschaftliche Rentenbank, Frankfurt am Main

Nordic Capital Markets Forum, Copenhagen

Swiss Reinsurance Company Ltd, Zurich

The Alternative Investment Management Association Limited (AIMA), London

Wells Fargo Securities International Limited, London

Contact: membership@icmagroup.org

ICMA welcomes feedback and comments on the issues raised in the Regulatory Policy Newsletter.

Please e-mail:
regulatorypolicynews@icmagroup.org
or alternatively the ICMA contact whose e-mail address is given at the end of the relevant article.

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