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ERCC Legal Update



■ GMRA Legal Opinion Updates

- Phased approach in 2019
 - Non EU jurisdictions - April 2019
 - EU jurisdictions – by end 2019 (exc. England)
- Normal schedule in 2020
 - Opinions published in April 2020
 - Interim updates as required
- Amended coverage
 - Opinions no longer cover the GMRA 1995
 - Opinions continue to cover GMRA 1995 as amended by the Amendment Agreement or GMRA 1995 as amended by the [ICMA 2011 GMRA Protocol](#)
- Opinions address enforceability of netting provisions and recharacterisation risk.
- Basic counterparty coverage (companies, banks and securities dealers) and extended counterparty coverage (also includes insurance companies, hedge funds and mutual funds).
- Opinions available at: <http://www.icmagroup.org/legal>

SFTR

- Reuse requirements:
 - Article 15 includes a requirement to inform a collateral provider of ‘the risks and consequences’ of granting consent to a right of use or entering into a title transfer collateral arrangement.
 - ICMA ISLA AFME and ISDA published a [generic information statement](#) to assist members in satisfying this disclosure requirement.
 - Reuse requirements applied from 13 July 2016.

- Reporting requirements:
 - SFTR requires certain parties who enter SFTs to report such transactions to a trade repository.
 - Cross association group (ICMA ISLA ISDA FIA AFME) developing a [Master Regulatory Reporting Agreement \(MRRA\)](#) to document voluntary delegating and mandatory reporting arrangements between parties subject to SFTR (and EMIR). Publication in December 2020.

CSDR

- Mandatory buy-in regime:
 - Intended to apply to all transactions intended to settle on an EU/EEA CSD, including **in-scope** SFTs such repo and securities lending transactions.
 - Exemption for SFTs with maturities less than 30 days.
 - Comes into force Feb 2021.

- Contractual requirements:
 - Article 25 of the CSDR RTS requires that participants establish contractual arrangements to ensure that the buy-in regime is enforceable in all relevant jurisdictions.
 - ICMA working on (i) a CSDR SD Annex to the GMRA; and (ii) updates to ICMA Rules and Recommendations for the Secondary Market (OTC cash trades)
 - Scope of work: Regulatory compliance vs Commercial enhancements
 - Contractual mechanism: Standalone agreement/protocol/other (TBC)

- Other ICMA work
 - FAQ on GMRA & Brexit
 - ERCC project- secured loan agreement
 - Legal tech- negotiation platforms
 - New markets- Argentina (opinion pending), Zambia, Ghana, etc.

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