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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.
Mandatory buy-in regime:
- Intended to apply to all transactions intended to settle on an EU/EEA CSD, including in-scope SFTs such as 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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