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## An expanded role for ICMA in capital markets policy

When ISMA and IPMA merged last year to form ICMA, one of the significant results was the establishment of a new regulatory policy team based at the ICMA Ltd. offices in London. This important step marked a milestone in the Association's decision to enhance significantly its regulatory policy activities. I succeeded Cliff Dammers in February as the head of regulatory policy and have the challenging task of building on the valuable contribution to the functioning of the European capital markets made by my predecessors over many years. I am confident that, with the newly constituted team, including Paul Richards (ex Bank of England), Gregor Pozniak (ex Federation of European Securities Exchanges) and Ondrej Petr (a Czech capital markets lawyer), and with Richard Britton (ex ISMA) and Chris O'Malley (ex IPMA) continuing, we will develop the work of the Association in this area. The team is due to increase in size with further appointments expected in 2006.

### The ICMA approach

Improved communication with ICMA members, with regulatory authorities and with issuers and investors is essential to

delivering ICMA's primary objective of facilitating an efficient, fair and integrated European capital market. Our main communication tool will remain our committee structure, where various Market Practices Committees, the Legal and Documentation Committee and the new Regulatory Policy Committee will enable members to discuss market and regulatory developments and formulate an ICMA response, be it in the form of comment letters, changes to the ICMA (formerly IPMA) Handbook or changes to the ICMA (formerly ISMA) Rulebook.

ICMA will also continue to maintain a series of working groups, often including representatives of law firms and issuers, covering current topics. Active participation by market participants across Europe is strongly encouraged. We have already received support from the ICMA Regional Committees, who have nominated members of the Regulatory Policy Committee. We intend to hold more seminars and meetings across Europe, and to continue to cooperate with national trade associations and international organisations. The recent and well attended presentation in London on the Luxembourg implementation of the Prospectus Directive is a

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taste of things to come (see page 4).

Broad engagement and support from members and other market participants is particularly important to our advocacy efforts. Whether commenting to the European Commission or to CESR on European legislation such as MiFID, or informing and influencing national authorities on their implementation of measures such as the Prospectus Directive, our voice is the stronger the wider our constituency.

There is of course a range of important issues currently affecting our members, largely derived from the EU Financial Services Action Plan. Our immediate focus is implementation of the Prospectus Directive (see page 4) and MiFID (see below). We are also engaged in developing the legal and operational infrastructure of the capital market – the New Global Note project is a good example (see page 5).

I hope you find this newsletter helpful in identifying issues we are working on. We intend to publish it in electronic form initially once a quarter and to issue comment letters and updates as required on our website, [www.icma-group.org](http://www.icma-group.org). Please let me know at [regulatorypolicynews@icma-group.co.uk](mailto:regulatorypolicynews@icma-group.co.uk) if there are regulatory or market policy issues you would like us to address.

Please circulate the newsletter within your firm and email suggested recipients' email details to [regulatorypolicynews@icma-group.co.uk](mailto:regulatorypolicynews@icma-group.co.uk)

Nick Collier  
Head of Regulatory Policy

## MiFID

The Markets in Financial Instruments Directive (MiFID) will have a major impact on almost every element of business of ICMA member firms across Europe. New regulation will be imposed on areas as diverse as the management of conflicts of interest, outsourcing, suitability, risk warnings, classification of clients into retail and professional, transaction reporting to regulators, inducements and the publication of quotes and transactions by OTC equity dealers.

The high level (Level 1) Directive was agreed in 2004, but the pan-European implementing measures (Level 2) are still being negotiated between EU Member States, a process expected to be concluded by July. Between them the Level 1 and Level 2 measures will become the major constituents of the rulebooks of regulators in the EU and EEA. Between now and early 2007 legislators and regulators will be making the changes necessary to national law and rulebooks in order to give investment firms time to meet the implementation deadline of November 1, 2007. Some Member States have, however, already indicated that these deadlines are unrealistic and that delays are to be expected. At the same time the regulators, acting collectively in the Committee of European Securities Regulators (CESR), will be working on converging supervisory and regulatory practices, based on these measures (Level 3).

ICMA is urging the authorities in each Member State to consult fully with their industry, investors and issuers on how to develop efficient solutions which do not impose unnecessary costs on the capital markets.

The regulatory policy team at ICMA continues to work with other international and

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national associations, most notably in the UK, Scandinavia and Spain, on securing an efficient and practical outcome. There are now only a small number of issues on the Level 2 text on which we seek further change. Overall we believe that the text provides a practical way forward, although the cost implications are still to be accurately assessed. For some firms in some jurisdictions they may be substantial. Members may need to reassess their business models in the light of these new costs.

Our attention has therefore begun to refocus on assisting the membership in implementation and in particular on identifying problems which may arise in the execution of cross border business, perhaps due to inconsistent or incompatible decisions taken by individual national regulators. We will seek to work with ICMA's Regional Committees and with national associations on these issues in the coming months. The section below on MiFID Connect gives an outline of a UK-oriented project in which ICMA is taking a leading role.

[http://europa.eu.int/comm/internal\\_market/securities/isd/mifid2\\_en.htm](http://europa.eu.int/comm/internal_market/securities/isd/mifid2_en.htm)

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### MiFID Connect

Implementation of MiFID by November 1, 2007, will involve a substantial amount of preparation for ICMA member firms. To help reduce the workload for member firms, ICMA has joined with a number of other buy- and sell-side associations in a joint project (MiFID Connect) to take a common approach to implementation of MiFID in the UK.

The project is overseen by a Steering Committee of the associations involved and by a

Senior Practitioner Advisory Committee. Clifford Chance is acting as the international law firm for the project. The UK authorities have indicated a willingness to engage in dialogue with the group. MiFID Connect will draft guidance for investment firms on implementation issues (e.g. "best execution", "managing conflicts of interest", "appropriateness and suitability"), which will be reviewed by committees of the trade associations and market practitioners. ICMA will consult its Regulatory Policy and Legal and Documentation Committees. MiFID Connect plans also to produce specimen customer-facing documentation; hold implementation courses and conferences; produce a comprehensive MiFID Survival Guide for members; and issue regular updates for members.

MiFID Connect is primarily concerned with the implementation of MiFID in the UK. But MiFID will apply across the rest of the EU. We will seek to use our UK experience to add value for member firms in the rest of Europe, and indeed globally. As was recently agreed with the Chairs of the Regional Committees, we may be able to assist, for example, by comparing and contrasting experience of MiFID implementation in the UK with experience in other Member States, in co-operation with the Regional Committees and member firms operating in those countries.

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### Bond market transparency

From November 1, 2007, MiFID will impose obligations on an OTC dealer in exchange-listed shares, whose business brings it within the Directive's definition of a *systematic internaliser*, to make continuous and public firm quotes where those shares are defined as *liquid* by the Directive (Article 27). All

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OTC trades in shares must be published, generally close to real time but with scaled delays for large trades (Article 28). By November 2007, the Commission must report to the European Parliament and Council on the possible extension of the pre- and post-trade transparency provisions of MiFID to bonds and derivatives (Article 65). Although the Commission has stated that it has an open mind on the issue, several Member States are likely to demand this extension to bonds.

ICMA's position is that transparency is not an end in itself but a tool, which has its place in an efficient and well-informed market. It also argues that Europe's bond markets offer substantial commercially driven transparency, particularly pre-trade, and the proponents of statutorily mandated transparency have an obligation to demonstrate that there is a market failure which the industry is unable or unwilling to correct.

ICMA and several associations from the buy- and sell-side have funded major independent research projects on European government and corporate bond markets designed to answer several questions, including:

- Do European bond markets deliver efficient outcomes?
- To the extent that outcomes are not efficient, could improved pre- and/or post-trade transparency improve bond market efficiency?
- To what extent will increased transparency occur as part of the natural evolution of bond markets?
- To what extent can market participants be encouraged to develop their own solutions and what can only be achieved by direct regulatory intervention?

ICMA has an open mind on the results, which are due to be published at the end of May, but they are likely to provide an important reference point for ICMA's lobbying efforts in Brussels and across Europe on this issue during 2006/07.

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### Implementation of the Prospectus Directive

The adoption of the Prospectus Directive was a major step towards an integrated European capital market. But almost a year since its implementation date, there is still uncertainty about its interpretation and application in a number of areas, such as: the delineation between the final terms and supplementary prospectus; scope of the right of investors to withdraw their acceptances; and the extent to which it is possible to rely on a prospectus in the case of "cascade" distribution. ICMA runs several working groups of member firms and law firms dedicated to addressing these and related issues.

The current uncertainty is not so much a product of the language of the Prospectus Directive itself, as of its uneven implementation and interpretation in different Member States. To address this situation, ICMA strives to provide discussion platforms where industry, regulators and professionals from the key European jurisdictions can discuss their concerns.

Following a successful seminar involving the UK FSA, ICMA hosted in March a seminar on the application, in Luxembourg, of the Prospectus Directive with the participation of the Commission de Surveillance du Secteur Financier (CSSF). Senior officials of CSSF, Luxembourg securities lawyers and a listing

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agent described the current EU and local regulatory framework for public offers and listings in Luxembourg, the division of responsibilities between CSSF and the Luxembourg Stock Exchange and procedures and timelines for approval of prospectuses by CSSF. The seminar helped the industry to understand better both regulation and practice in Luxembourg, which remains a key listing venue for international securities, and share their experience and concerns with CSSF. ICMA is working on further seminars covering topical issues in other jurisdictions.

More recently, we held a series of meetings with investment firms, trade associations and the regulator in Italy. Their purpose was not only to gain better insight into issues currently facing the Italian securities markets, but also to promote the idea of cross-country dialogue about their experience with the implementation and application of the Prospectus Directive and other EU legislation.

[www.icma-group.org/content/news1/icma-cssf\\_seminar.html](http://www.icma-group.org/content/news1/icma-cssf_seminar.html)

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### New Global Note

Following a recommendation from the Eurosystem, the New Global Note (NGN) structure for the issuance, processing and safekeeping of international bearer debt securities will be introduced from June 30, 2006. This will involve new documentation requirements, new issue closing procedures and legal relationships for international fixed income securities issued in bearer form that are deposited in Euroclear and Clearstream (the ICSDs). Bearer debt securities issued after the implementation date and intended to be eligible as Eurosystem collateral will have to use the new documentation and be

held in custody in the ICSDs. International debt securities issued before a specified date using the existing, Classical Global Note (CGN), structure will be "grandfathered".

The characteristics of the NGN structure are the same as the existing CGN, except that:

- the NGN applies only to debt securities in bearer form;
- the ICSDs' records, rather than physical annotations on the global note itself, are used to determine the outstanding amount of the issue;
- the NGN is safekept by a Common Safekeeper (CSK) and serviced by a Common Service Provider; and
- NGNs that are transmitted electronically to the CSK must be effectuated by the CSK following an authorisation from the issuer.

The NGN structure applies only to securities issued through the ICSDs (i.e. for which the ICSDs are the place of primary deposit), not to securities issued through national CSDs.

To start a market awareness campaign, the NGN brochure, accompanied by a list of Frequently Asked Questions and other marketing material, was posted on the ICMA website in January, and is being kept up to date. The NGN legal pack, drafted by Allen & Overy, has now also been posted on the ICMA website. The legal pack includes: the New Global Note templates; the effectuation and disposal authorisation; the Issuer-ICSDs agreement; and suggested amendments to agency agreements, trust deeds, offering circulars and other documentation.

[www.icma-group.org/content/Advocacy/new\\_global\\_note\\_structure.html](http://www.icma-group.org/content/Advocacy/new_global_note_structure.html)

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### **Other regulatory policy news**

#### ***Clearing and settlement***

The Commission is due to make a decision by the summer whether to propose a Directive on clearing and settlement. ICMA is concerned that any proposals, unless very focused, could endanger the well-functioning post-trade arrangements that exist in the international bond markets. The major problems in European cross-border clearing and settlement have been identified in the cross-border trading of equities – and, although there are still efficiencies to be achieved in the repo markets, it is unlikely that legislation could efficiently address them.

#### ***UCITS implementing measures***

CESR has given its final advice to the Commission on the clarification of definitions concerning eligible assets for investments of UCITS. On March 1, ICMA wrote to the Commission on behalf of 15 members of our Euro Commercial Paper Committee on two particular points arising from CESR's advice. On March 20, the Commission published as a Working Document a draft of the implementing measures.

*For ICMA's letter*

[www.icma-group.org/content/Advocacy/euro\\_commercial\\_paper/euro\\_commercial\\_paper.html](http://www.icma-group.org/content/Advocacy/euro_commercial_paper/euro_commercial_paper.html)

*For the Commission's Working Document:*

[http://europa.eu.int/comm/internal\\_market/securities/docs/ucits/esc\\_13\\_2006\\_en.pdf](http://europa.eu.int/comm/internal_market/securities/docs/ucits/esc_13_2006_en.pdf)

#### ***Prospectuses: complex financial history***

The Commission has published a draft of an amendment to the Level 2 Prospectus Regulation concerning the inclusion of historical financial information in prospectuses in the case of issuers with "a complex financial history" (e.g. mergers, significant acquisitions or spin-offs, changes in the accounting year).

[http://europa.eu.int/comm/internal\\_market/securities/prospectus/index\\_en.htm](http://europa.eu.int/comm/internal_market/securities/prospectus/index_en.htm)

#### ***Transparency Directive implementing measures***

The Commission is shortly expected to publish a revised draft of the Directive implementing the Transparency Directive in relation to: choice of home Member State; half-yearly financial reports; notifications of acquisitions and disposals of major holdings; dissemination of regulated informa-

tion; and equivalence of third country issuers.

*For the Commission:*

[http://europa.eu.int/comm/internal\\_market/securities/transparency/index\\_en.htm](http://europa.eu.int/comm/internal_market/securities/transparency/index_en.htm)

*For ICMA's response to the Commission:*

[www.icma-group.org/Content/Advocacy/eu\\_transparency\\_directive/eu\\_transparency\\_directive.html](http://www.icma-group.org/Content/Advocacy/eu_transparency_directive/eu_transparency_directive.html)

#### ***Storage and filing of regulated information***

On March 31, the CESR consultation on storage and filing of regulated information under the Transparency Directive closed. CESR had invited comments on its proposal for a network of interconnected national storages of regulated information, enabling smooth electronic filing, storage and viewing of the regulated information. ICMA participated at the public hearing on March 2 and submitted a response. CESR is expected to issue its opinion to the Commission in June 2006.

*For ICMA's response:*

[www.icma-group.org/Content/Advocacy/eu\\_transparency\\_directive/eu\\_transparency\\_directive.html](http://www.icma-group.org/Content/Advocacy/eu_transparency_directive/eu_transparency_directive.html)

*For CESR:*

[http://www.cesr-eu.org/index.php?page=consultation\\_details&id=71](http://www.cesr-eu.org/index.php?page=consultation_details&id=71)

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### ***Equivalence of third-country accounting standards***

A recent Memorandum of Understanding between the US FASB and the IASB on a work programme for convergence between US GAAP and IFRS represents an important step towards mutual recognition, currently scheduled to be achieved by 2009. The Commission intends to propose postponing the decision on the possible equivalence of US (and other) GAAP with IFRS by up to two years (also to 2009) to bring the two timetables for equivalence into line.

### ***Company law information***

*2<sup>nd</sup> Company Law Directive:* The European Parliament has passed its report on the 2<sup>nd</sup> Company Law Directive, simplifying the 1976 Directive on the formation, maintenance and alteration of companies' capital.

[http://europa.eu.int/comm/internal\\_market/company/capital/index\\_en.htm](http://europa.eu.int/comm/internal_market/company/capital/index_en.htm)

*4<sup>th</sup> & 7<sup>th</sup> Company Law Directives:* Work on the amendments to the 4<sup>th</sup> & 7<sup>th</sup> Company Law Directives (collective board responsibility, related party transactions, disclosure of off-balance sheet arrangements, corporate governance

statement) has effectively been completed.

[http://europa.eu.int/comm/internal\\_market/company/board/index\\_en.htm](http://europa.eu.int/comm/internal_market/company/board/index_en.htm)

*Shareholders' rights:* The Commission proposal for a Directive on shareholders' rights is being discussed in Council and the European Parliament.

[http://europa.eu.int/comm/internal\\_market/company/shareholders/index\\_en.htm](http://europa.eu.int/comm/internal_market/company/shareholders/index_en.htm)

*Company Law and Corporate Governance Action Plan:* On May 3, the Commission will hold a public hearing on its December 2005 consultation on Phase 2 of its Company Law and Corporate Governance Action Plan.

[http://europa.eu.int/comm/internal\\_market/company/consultation/index\\_en.htm](http://europa.eu.int/comm/internal_market/company/consultation/index_en.htm)

### ***M&A in the financial sector***

The Commission has asked for industry's views on how to improve the approval process by supervisors of acquisitions in the banking and insurance sectors. The deadline for responses is April 19. An online questionnaire and background information is available.

[http://europa.eu.int/comm/internal\\_market/finances/cross-sector/consultation\\_en.htm](http://europa.eu.int/comm/internal_market/finances/cross-sector/consultation_en.htm)

### ***Rating agencies***

In line with advice received from CESR, the Commission has announced that it will not regulate rating agencies as long as a system of self-regulation, in line with the IOSCO Code of Conduct, yields appropriate results. CESR has established a platform for a regular regulatory dialogue with rating agencies in which Moody's, S&P, Fitch-IBCA and Dominion have already agreed to take part.

*For the Commission:*

[http://europa.eu.int/comm/internal\\_market/securities/agencies/index\\_en.htm](http://europa.eu.int/comm/internal_market/securities/agencies/index_en.htm)

*For IOSCO:*

<http://www.iosco.org/library/pubdocs/pdf/IOSCOPD180.pdf>

### ***Expert groups on investment funds***

The Commission has set up two expert groups to look into possible improvements of the EU framework for investment funds. One will consider market efficiency; the other will consider alternative investment funds (non-UCITS funds, hedge funds, private equity funds and REITs).

[http://europa.eu.int/comm/internal\\_market/securities/ucits/index\\_en.htm](http://europa.eu.int/comm/internal_market/securities/ucits/index_en.htm)

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### ***Lamfalussy process***

The Inter-Institutional Monitoring Group for the Lamfalussy Process has published its fourth report. ICMA contributed to a joint association response, supporting the Lamfalussy process as such, but emphasising the need for thorough market failure analysis and impact assessment before any new legislation is proposed; and more flexibility in implementation deadlines.

[http://europa.eu.int/comm/internal\\_market/finances/committees/index\\_en.htm](http://europa.eu.int/comm/internal_market/finances/committees/index_en.htm)

### ***FSAP evaluation***

The Commission published an evaluation of the Financial Services Action Plan (FSAP) in December and invited comments. ICMA participated in a joint industry association response, which welcomes the Commission's intention in 2006/08 to assess the effectiveness and economic impact of FSAP measures.

[http://europa.eu.int/comm/internal\\_market/finances/actionplan/index\\_en.htm](http://europa.eu.int/comm/internal_market/finances/actionplan/index_en.htm)

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### ***Co-operation between trade associations***

ICMA takes the view that intensified co-operation and co-ordination between trade associations is required to deal successfully with the many challenges that are facing financial markets.

With this aim in mind, in November last year ICMA, with the European Securities Foundation, set up the European Financial Markets Federation to shape the future structure and form of closer co-operation between European financial markets trade associations.

Similarly in January ICMA, with The Bond Market Association (TBMA) and the International Swaps and Derivatives Association (ISDA), announced the formation of the Global Capital Markets Board (GCMB) providing a forum for exchange of ideas and co-ordination between the three associations to identify and respond to issues of common concern relating to global capital markets. The GCMB will meet for the first time on April 6.

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### **ICMA AGM and Conference, Athens, May 31-June 2, 2006**

ICMA is holding its first AGM under its new identity in Athens at the beginning of June. The event offers ICMA members the opportunity to be involved in the affairs of the Association and to meet other market participants from around the world.

The conference proceedings on Friday feature Gerhard Schroeder, the former Chancellor of Germany, as the headline speaker.

Registration is open to participants from all ICMA's member firms. Full registration details and a detailed programme can be found on our website at:

[www.icma-group.org/agm2006/registration.html](http://www.icma-group.org/agm2006/registration.html)

Or call the ICMA Membership Department on: +41 44 363 4222

### **ICMA Primary Market Certificate**

The ICMA Primary Market Certificate programme (formerly the IPMA diploma) is a qualification for those involved in the primary debt markets. The course is particularly beneficial to newcomers to the syndicate and origination desks in banks, and to those whose work relates to these areas. The next course will run in London from June 19 – 23, 2006. Full details and a registration form are available at:

[http://www.icma-group.org/content/educational/icma\\_diploma\\_formerly.html](http://www.icma-group.org/content/educational/icma_diploma_formerly.html)

### **Events diary**

ICMA representatives will be speaking at the following events:

9<sup>th</sup> Annual Conference of the Association of Futures Markets, Istanbul, April 6-7, 2006

Towards more efficient capital markets, The 10th European Financial Markets Convention, Zurich, June 8-9, 2006

Euromoney Borrowers and Investors Forum, London, June 20-22, 2006

Tradetech Fixed Income, Paris, July 10, 2006

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