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ICMA

News from the International Capital Market Association (ICMA)
Dreikönigstrasse 8, CH-8002 Zurich
www.icmagroup.org
Please see foot of release for contact details

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ICMA to update its buy-in rules to support implementation of EU CSDR mandatory buy-in provisions

The International Capital Market Association (ICMA) will amend its *Buy-in Rules* to support the implementation of the EU Central Securities Depositories Regulation (CSDR) mandatory buy-in provisions. ICMA Buy-in Rules are part of its Secondary Market Rules & Recommendations which are widely relied upon by ICMA members in the international bond markets. The ICMA Rules apply automatically to trades in international securities between ICMA members.

The CSDR buy-in provisions, which are due to come into force in September 2020 (although they may be delayed until November 2020 for technical reasons) create a mandatory obligation for trading parties to execute buy-ins against counterparties who fail to settle their trades within a required period. The regulatory technical standards also lay out a prescriptive process and timeline for the buy-in. The requirements will apply to trades that are intended to settle on EU ICSDs and CSDs.

While the contractual framework and best practice for buy-ins in the international bond markets for many years have been provided by the ICMA Buy-in Rules, the CSDR introduces new regulatory requirements. The ICMA Buy-in Rules will be updated to support implementation of the CSDR buy-in requirements in the international bond markets. ICMA is also exploring contractual provisions to address the asymmetric treatment to the settlement of the executed buy-in or cash compensation differential and the absence of a pass-on mechanism in the regulation. ICMA remains in discussion with the EU regulatory authorities on these and other matters.

Martin Scheck, ICMA Chief Executive, stated, *“Participants in the international bond markets have relied upon the ICMA Buy-in Rules to manage their settlement risk for decades. The introduction of the CSDR mandatory buy-in regime creates some problematic anomalies and another level of complexity, however, we expect the ICMA Buy-in Rules to continue to provide a contractual framework and best practice for executing buy-ins, while also addressing some of the issues presented by the regulation.”*

ICMA intends to consult with members in early 2020 on the proposed revisions to its Buy-in Rules.

Later this month, ICMA will publish an updated impact study quantifying the effects of the CSDR mandatory buy-in requirements on European bond markets. As well as highlighting the extent of market awareness of and preparedness for the regulatory requirements, the study illustrates the expected impact on market pricing and liquidity across a range of fixed income asset classes.

More information and resources on mandatory buy-ins and the CSDR Settlement Discipline provisions can be found on the ICMA website.

For more information please contact: pressoffice@icmagroup.org

What is a buy-in?
Essentially, in the event of a settlement fail, conventional, non-centrally cleared bond market buy-in mechanisms provide a buyer of securities the contractual right to source the securities elsewhere (usually for guaranteed delivery), cancel the original trade, and settle between the two original counterparties any differences arising from the net costs of the original transaction and the buy-in transaction. A key feature of conventional, non-cleared bond market buy-in mechanisms, such as those provided under the ICMA Buy-in Rules, is that the economics of the original transaction are preserved, and that neither party is inadvertently disadvantaged or advantaged as a result of the buy-in. It has to be remembered that standard buy-ins are not a 'penalty mechanism', they are a contractual remedy to provide for physical settlement of a trade. They are also executed at the discretion of the failed-to entity, as a right and not an obligation. Additionally, conventional buy-in mechanisms are usually mirrored by sell-out mechanisms which provide the seller of securities with a contractual remedy if settlement fails through the fault of the buyer.

International Capital Market Association (ICMA)
ICMA is the trade association for the international capital market with over 580 member firms from 62 countries, including issuers, banks, asset managers, central banks, infrastructure providers and law firms. It performs a crucial central role in the market by providing industry-driven standards and recommendations for issuance, trading and settlement in international fixed income and related instruments. ICMA liaises closely with regulatory and governmental authorities, both at the national and supranational level, to help to ensure that financial regulation promotes the efficiency and cost effectiveness of the capital market.
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