ICMA
International Capital Market Association

ICMA: GRID OF NEW FINANCIAL REGULATIONS AFFECTING THE CROSS-BORDER SECURITIES MARKETS

Working draft: 6 October 2017

Overall financial regulations	Page
1 EU Capital Requirements Directive (CRD) IV/Capital Requirements Regulation (CRR)	2
2 Basel III Leverage Ratio Framework	4
3 Basel III Net Stable Funding Ratio (NSFR)	5
4 EU Framework for Bank Recovery and Resolution	6
5 Shadow Banking	8
6 EU Regulation on Credit Rating Agencies (CRAs)	10
7 EU Financial Transaction Tax (FTT)	12
8 EU Structural Reforms in Banking	13
Primary and secondary markets	
9 EU Prospectus Regulation	14
10 EU Packaged Retail and Insurance-based Investment Products (PRIIPs)	15
11 EU Market Abuse Regulation	16
12 Bank of Italy Article 129 Regulation	17
13 EU Markets in Financial Instruments Directive (MiFID II)/Regulation (MiFIR): primary markets	18
14 EU Markets in Financial Instruments Directive (MiFID II)/Regulation (MiFIR): secondary markets	18
Asset management	
15 FSB/IOSCO Non-Bank Non-Insurer Global SIFIs	20
16 EU Regulation on Simple, Transparent and Standardised (STS) Securitisation	21
17 Covered bonds	22
18 EU Solvency II Directive	23
19 Undertakings in Collective Investment in Transferable Securities (UCITS)	24
20 EuVeCa/EuSEF	24
21 European Long-Term Investment Funds	25
22 Shareholder Rights Directive	26
Market infrastructure	
23 EU Regulation on OTC Derivatives, Central Counterparties and Trade Repositories (EMIR)	27
24 EU Regulation on a Framework for the Recovery and Resolution of CCPs (CCP RR)	29
25 EU Central Securities Depository Regulation (CSDR)	30
26 Indices Serving as Benchmarks	32

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Regulatory initiative	*Status*	*Scope and exemptions*	*Impact on the cross-border securities markets*	*Timing of next steps*
Overall financial regulations				
1 EU Capital Requirements Directive (CRD) IV/Capital Requirements Regulation (CRR)	The European Commission proposed CRD IV/CRR in July 2011. On 27 June 2013, final Acts of the CRD IV/CRR package were published in the *Official Journal* of the EU. The package, which transposes the new global standards on bank capital into EU law, entered into force on 17 July 2013. These rules apply from 1 January 2014 with full implementation on 1 January 2019. Important Commission Delegated Acts in relation to the LCR and the LR were adopted on 10 October 2014. On 23 November 2016, the European Commission announced the adoption of a comprehensive package of proposals to further strengthen the resilience of EU banks, through amendment of the rules on capital requirements and on bank recovery and resolution, which have been submitted to the	CRD IV and CRR are intended to apply only to credit institutions and investment firms.	*Description:* The rules set out in the Basel III agreement on bank capital and liquidity are to be implemented within the EU through the combination of a new Directive (CRD IV) and a new Regulation (CRR), the aim of which is to provide a Single Rulebook to ensure uniform application of Basel III in the EU. Measures are also included to set up a new governance framework giving supervisors new powers to monitor banks more closely and take action through possible sanctions when they spot risks. With the application of CRD IV/CRR requirements, banks and investment firms will need to comply with a strict set of capital, liquidity and leverage rules. Most notably, they will be required to hold 4.5% of Minimum Tier 1 Capital (with the total capital ratio remaining at 8%). Further substantial capital buffers (for capital conservation, as well as countercyclical and systemic risks) may be imposed by the Member States and through the European regulatory process. A Liquidity Coverage Ratio (LCR) will also be effective in 2015 at 60% and will	CRD IV/CRR package entered into force on 1 January 2014 with full implementation on 1 January 2019. Following the European Commission's CRDIV/CRR review proposal in November 2016, the EU legislative process is continuing.

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	European Parliament and to the Council for their consideration and adoption. Following the publication of the BCBS final standard in October 2016, the EBA published on 14 December 2016 its final report on the implementation and design of the minimum requirement for own funds and eligible liabilities (MREL). On 21 December 2016, the EBA published its third impact assessment report for the Liquidity Cover Ratio (LCR), together with a review of its phasing-in period. The report shows a constant improvement of the average LCR across EU banks since 2011. On 5 September 2017, the EBA published its final draft implementing technical standards (ITS) specifying templates and procedures that resolution authorities should follow when informing the EBA of the minimum requirement for own funds and eligible liabilities (MREL) that have been set for		then increase gradually to 100% by 2018. The measures to increase the resilience of EU institutions and enhance financial stability include: more risk-sensitive capital requirements; implementing methodologies that are able to reflect more accurately the actual risks to which banks are exposed; a binding leverage ratio; a binding NSFR; and a requirement for G-SIFIs to hold minimum levels of capital and other instruments which bear losses in resolution. This requirement – Total Loss Absorbing Capacity (TLAC) – will be integrated into the existing MREL system applicable to all EU banks. *Comment:* In order to comply, banks will need to raise substantial amounts of new capital or deleverage. Required holdings of liquid assets for LCR purposes will also drive banks to invest in and hold high quality paper in an environment in which the supply of such paper in the EU, in particular from SSAs, may become less available. (This concern is exacerbated by the ECB's significant QE programme initiated in March 2015.)	

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	institutions under their jurisdiction. These standards will enable the EBA to monitor the consistency of MREL implementation across the EU.			
2 Basel III Leverage Ratio Framework	In January 2014, the BCBS published the final outline for the Basel III Leverage Ratio Framework and Disclosure Requirements. In November 2015, the FSB issued the final Total Loss-Absorbing Capacity (TLAC) standard for global systemically important banks. This provides that Minimum TLAC must be at least 6% of the Basel III Leverage Ratio denominator as from 1 January 2019, and at least 6.75% as from 1 January 2022. At EU level, the CRDIV/CRR framework requires the Commission, based on EBA guidance, to prepare a report on the impact and effectiveness of the Leverage Ratio. The report may include, where appropriate, a legislative proposal to introduce the Leverage Ratio as a binding measure as of 2018.	The Basel III Leverage Ratio Framework follows the same scope of regulatory consolidation as is used for the risk-based capital framework, and which applies, on a consolidated basis, to internationally active banks, at every tier within a banking group, as well as any holding company that is the parent entity within a banking group.	*Description:* The Basel III Leverage Ratio is a simple, transparent, non-risk based ratio intended to act as a credible supplementary measure to the risk-based capital requirements. The leverage ratio is intended to: (a) restrict the build-up of leverage in the banking sector to avoid destabilising deleveraging processes that can damage the broader financial system and the economy; and (b) reinforce the risk-based requirements with a simple, non-risk based "backstop" measure. The Leverage Ratio is defined as Tier 1 capital (the capital measure) divided by on- and off-balance sheet exposures, derivatives exposures, and securities financing transactions (the exposure measure). The exposure measure is non-risk weighted, and does not allow for netting of loans and deposits. The intended minimum requirement for the ratio is 3%. *Comment:* The amended framework	Implementation began in January 2013 with bank-level reporting to national supervisors, and proceeded to public disclosure in January 2015. The BCBS will continue to monitor the impact of the disclosure requirements, with any further adjustments or calibration to be completed by 2017, and with a view to being enforceable from January 2018. At EU level, the European Commission's November 2016 proposals have been submitted to the European Parliament and Council for review and adoption.

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	On 23 November 2016, the Commission put forward a binding Leverage Ratio, adopted amongst other measures to further strengthen the resilience of EU banks.		allows for netting of SFTs under certain criteria (principally cash payables and receivables with the same counterparty, for the same end-date of the transaction). While some provisions for netting remain unclear, it is expected that banks should be able to net most of their SFT exposure for reporting under the leverage ratio calculation. The amended framework also allows for the lowering of derivatives exposure in the calculation by reducing margin requirements (subject to certain criteria) and permitting netting for centrally cleared derivatives trades.	
3 Basel III Net Stable Funding Ratio	The original framework for the Net Stable Funding Ratio (NSFR) was first published by the Basel Committee on Banking Supervision (BCBS) in December 2010. Following on from the January 2014 consultation document, the BCBS published the final NSFR text on 31 October 2014. This retained the structure of the January 2014 consultative proposal. Frequently asked questions (FAQs) are issued	The Basel III NSFR framework follows the same scope of regulatory consolidation as is used for the risk-based capital framework, and which applies, on a consolidated basis, to internationally active banks, at every tier within a banking group, as well as any holding company that is the parent entity within a banking group.	*Description:* The NSFR requires banks to maintain a stable funding profile in relation to the composition of their assets and off-balance sheet activities. It is intended to limit over-reliance on short-term wholesale funding, encourage better assessment of funding risk across all on and off-balance sheet items, and promote funding stability. The NSFR is defined as the amount of available stable funding (ASF) relative to the amount of required stable funding (RSF). The ASF is defined as	The reporting process for the NSFR began in January 2012. The BCBS and various supervisory authorities will continue to monitor aspects of the NSFR through to the end of 2017. The NSFR, including any revisions, is intended to come into force from January 2018. Under the EU CRDIV/CRR framework, the EBA is tasked to further assess the need for a

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	periodically. At EU level, the CRDIV/CRR framework includes only a general requirement to ensure stable funding. Concrete NSFR requirements may be introduced after a specified observation period and further reviews to be prepared by EBA. On 23 November 2016, the European Commission proposed a binding net stable funding ratio (NSFR) to address the excessive reliance on short-term wholesale funding and to reduce long-term funding risk as part of its CRDIV/CRR review package.		the portion of capital and liabilities expected to be reliable over the time horizon considered by the NSFR, which extends to one year. The RSF calculation is a function of the liquidity characteristics and residual maturities of the various on- and off-balance sheet assets held by a specific institution. The ratio should be equal to at least 100% on an on-going basis. *Comment:* The key changes introduced in the final NSFR cover the required stable funding for short-term exposures to banks and other financial institutions; derivatives exposures; and assets posted as initial margin for derivatives contracts. In addition, the final NSFR recognises that, under strict conditions, certain asset and liability items are interdependent and can therefore be viewed as neutral in terms of the NSFR.	NSFR. The final EBA report published in December 2015 recommends the introduction of the NSFR in the EU. In November 2016, the proposal to introduce a binding net stable funding ratio (NSFR) was submitted to the European Parliament and Council for review and adoption through the regular EU legislative process.
4 EU Framework for Bank Recovery and Resolution (BRRD)	The deadline for transposition of the BRRD by Member States was 31 December 2014, with entry into force effective from 1 January 2015. Provisions relating to bail-in may be transposed by 1 January 2016. (Some jurisdictions, including the UK, did not take advantage of this extension and		*Description:* This initiative aims to: create a more effective and efficient crisis management framework; harmonise crisis management and resolution tools so that all Member States can effectively resolve ailing financial institutions without the need to call upon public funds; and advance towards a European administrative	The initial implementation of the Stay Protocol for SFTs took place on 12 November 2015, ahead of the G20 Summit in Antalya. On 23 November 2016, the proposed amendments to the BRRD have been submitted to the European Parliament and Council

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	implemented bail-in powers on 1 January 2015.) On 23 November 2016, the European Commission proposed changes to BRRD including amendments to BRRD Article 55, stating that resolution authorities can waive the requirement for a bail-in recognition clause if they determine certain conditions are met.		insolvency regime for European financial institutions. The Directive provides national authorities with common powers and instruments to pre-empt bank crises and resolve any financial institution in an orderly manner in the event of failure, whilst preserving essential bank operations and minimising taxpayers' exposure to losses. BRRD Article 55 also requires a contractual recognition of bail-in to be included in a very wide range of non-EEA law governed contracts that in-scope entities enter into. *Comment:* The inclusion of a statutory senior unsecured debt bail-in regime will be of particular significance for the cross-border securities markets and may lead to significant repricing. The broad scope of BRRD Article 55 has led to significant practical difficulties for many in-scope entities, but it is hoped that these concerns could be ameliorated pursuant to the current review of BRRD Article 55. *Resolution Stay Protocols for SFTs:* The BRRD enables resolution authorities to	for review and adoption.

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			temporarily suspend termination rights and impose stays which would override specific provisions of certain agreements to which a resolved entity is party, including the Global Master Repurchase Agreement (GMRA). Bank regulators under the direction of the FSB are now seeking a contractual solution – as with the ISDA swaps stay "protocol" implemented in 2014 – to securities financing transactions, including those documents under the GMRA, GMSLA, MRA and MSLA. In addition, regulations will be adopted in the "Home Authority" jurisdictions (UK, France, Germany, Japan, Switzerland and US) to support contractual solutions, requiring regulated entities to provide for contractual recognition of the Home Authorities' resolution regimes in given circumstances.	
5 Shadow Banking	On 29 August 2013, the Financial Stability Board (FSB) published recommendations to strengthen the oversight and regulation of the shadow banking system. On 14 October 2014, the FSB delivered recommendations on minimum haircuts for securities financing transactions (SFTs); and	The FSB has focused on five policy areas: (i) to mitigate the spill-over effect between the regular banking system and the shadow banking system; (ii) to reduce the susceptibility of MMFs to "runs"; (iii) to assess and align the incentives associated with securitisation; (iv) to dampen risks and pro-cyclical incentives	*Description of FSB recommendations:* The main impact on the cross-border securities markets is on securities lending and repos. The FSB's final policy recommendations include enhanced transparency, regulation of securities financing and improvements to market structure. Its consultative proposals include: minimum standards for calculating haircuts on	At global level, the FSB's final *Standards and Processes* regarding the collection and aggregation of global SFT data outline the projected implementation timeline. According to this timeline, the global data aggregator would become operational in 2017-2018, while the start of reporting

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	opened a further consultation on haircuts for SFTs between non-banks. Subsequently, the final regulatory framework for haircuts on non-centrally cleared SFTs was published on 12 November 2015. On 18 November 2015, following public consultation, the FSB published its final *Standards and Processes for Global Securities Financing Data Collection and Aggregation*, defining the data elements for repos, securities lending and margin lending that national/regional authorities will be asked to report as aggregates to the FSB for financial stability purposes. On 23 February 2016, the FSB published consultation on *Possible Measures of Non-Cash Collateral Re-use.* Considering feedback to the consultation, the FSB published its final report on *Non-Cash Collateral Re-use: Measure and Metrics* on 25 January 2017. On the same day, the FSB also published a second related report on *Re-hypothecation and Collateral Re-use: Potential Financial Stability Issues, Market*	associated with securities financing transactions such as repos and securities lending that may exacerbate funding strains in times of market stress; and (v) to assess and mitigate systemic risks posed by other shadow banking entities and activities. The proposed EU SFT Regulation applies to counterparties to a SFT, UCITS, AIFMs and counterparties engaging in reuse of collateral. SFTs include: (i) repos and reverse repos, securities/ commodities lending and borrowing, buy-sell back or sell-buy back transactions and margin lending. "Re-use" is defined as the use by a receiving counterparty of financial instruments received as collateral in its own name and for its own account or for the account of another counterparty. Members of the ESCB and other Member State bodies performing similar functions and other EU public bodies charged with or intervening in the management of public debt and the BIS are exempt.	non-centrally cleared securities financing transactions; and haircut floors for non-centrally cleared securities financing transactions collateralised by non-government securities through which non-banks obtain leverage from regulated financial intermediaries. *Description of EU SFT Regulation:* The SFTR does not appear to impact on the ability of firms to enter into SFTs. Instead, it would impose a regulatory/administrative burden on firms to report SFTs to a trade repository. There would also be a burden from record-keeping for 5 years following the termination of the transaction. Similarly, for UCITS and AIFMs, there would be a regulatory/administrative burden to disclose the use they make of SFTs and other financing structures. *Comment:* It remains to be seen whether SFTR will provide the authorities with useful data on the build-up of risks. Much depends on (i) the technical work in fleshing out the requirements; and (ii) the ability of industry and supervisors to work together in understanding the aggregated, anonymised data.	from national authorities to the FSB is expected to start in 2018. Global reporting on collateral re-use based on the final *Measures and Metrics* is due to start in January 2020. At EU level, following the entry into force of the SFTR on 12 January 2016, ESMA initially had one year to agree necessary technical standards. Following two consultations, ESMA submitted the final draft RTS to the European Commission for review on 31 March 2017. Once the final SFTR RTS are adopted (expected in the fourth quarter of 2017), the new trade repository reporting requirements will apply from early 2019 after a further transition period. The requirements on re-use, however, already apply as of 13 July 2016.

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	Evolution and Regulatory Approaches. At EU level, on 4 September 2013, the European Commission published a Communication on *Shadow Banking*, and proposed a Regulation on Money Market Funds (MMFs). The Communication argued that securities financing transactions (SFTs) were a source of contagion, leverage and procyclicality during the crisis and needed to be monitored better. Following up this Communication, on 29 January 2014, the Commission published a draft Regulation on reporting and transparency of SFTs (SFTR). The final SFTR text was published in the *Official Journal* on 23 December 2015. The law entered into force on 12 January 2016.		The Regulation could, however, potentially make engaging in transactions involving reuse more costly, given requirements to obtain prior written consent and send to counterparties a document setting out the risks that may be involved. The SFTR does not introduce requirements for haircuts at this stage. Accordingly, these will follow in a subsequent legislative proposal. They will impact markets, albeit that the impact should be relatively manageable if the FSB's recommendations are adhered to.	
6 EU Regulation on Credit Rating Agencies (CRAs)	EU Regulation in force. New rules on third country ratings applied from 30 April 2012; and new stricter EU Regulation on CRAs came into force on 20 June 2013.	No exemptions have been identified. ESMA has been granted the exclusive responsibility for the registration and supervision of	*Description:* New rules impact when and how credit rating agencies may rate state debts and private firms' financial health. They allow agencies to issue unsolicited sovereign debt ratings only on set dates, and enable	The new EU CRA rules were published in the *Official Journal* on 31 May 2013 and entered into force on 20 June 2013. ESMA has been mandated as the

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	On 30 September 2014, the European Commission adopted Delegated Regulations setting out RTS required under the CRA Regulation. On 30 September 2015, ESMA delivered to the Commission its Final Technical Advice on competition, choice and conflicts of interest in the credit rating industry, following a consultation on this issue earlier in 2015. On 23 October 2015, the Commission published a report on the feasibility of an EU creditworthiness assessment for sovereign debt based on ESMA technical advice. On 1 December 2016, ESMA launched its new database, the European Rating Platform (ERP), to provide access to free, up-to-date information on credit ratings and rating outlooks on its website. On 31 March 2017, ESMA published the latest Q&A update on the implementation of the CRA Regulation.	credit rating agencies in the EU and maintains a list of all registered and certified CRAs. The latest update of the list was published by ESMA on 16 July 2017, and now contains 43 registered and 4 certified CRAs.	private investors to sue them for negligence. European supervisory authorities and the financial industry are also generally instructed to reduce reliance on external credit ratings. All available ratings will be published from June 2015 on a European Rating Platform. The Commission is due to report on the necessity to support new European agency(ies) to rate Member States, as well possibly as corporates and financial institutions. *Comment:* Sovereigns may benefit from the greater predictability of rating announcement timings. EU financial institutions, when using credit ratings for regulatory purposes, must pay particular attention to identify any non-EU-endorsed ratings among those credit ratings that are issued outside the EU.	single supervisor of Credit Rating Agencies within the EU, and in that role carries out policy work in relation to CRAs on an ongoing basis. ESMA maintains Q&As on the CRA Regulation (last updated in March 2017) and on an annual basis publishes market share calculations for all CRAs in the EU in line with its mandate under the CRA Regulation.

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7 EU Financial Transaction Tax (FTT)	The initial European Commission proposal for an EU FTT was published on 28 September 2011. Given the lack of wider support, a revised proposal was then published on 14 February 2013 but restricted to 11 participating Member States (Austria, Belgium, Estonia, France, Germany, Greece, Italy, Portugal, Slovakia, Slovenia and Spain). On 3 July 2013, the European Parliament adopted its position, for consultative purposes only, on an EU FTT, subject to some proposed amendments. On 6 May 2014, ECOFIN discussed the situation concerning the introduction of the FTT. The Presidency took note of a joint statement by Ministers of participating countries and confirmed that all relevant issues will continue to be examined by national experts. It noted the intention of participating countries to work on a progressive implementation of the FTT, focusing initially on the taxation of shares and some derivatives.	It was originally proposed that there should be an exemption for primary issuance (both sovereign and corporate) and for spot FX, and that the ECB and national central banks of Member States should be exempt. Exemptions are also envisaged for the European Financial Stability Facility/European Stability Mechanism; and relating to CCPs and (I) CSDs. The proposed Directive is now being discussed by Member States, with a view to its implementation under "enhanced cooperation". All 27 Member States may participate in the discussions on this proposal. However, only the Member States participating in enhanced cooperation will have a vote, and they must agree unanimously before it can be implemented. An important challenge to this proposal arose in the form of an EU Council legal opinion, dated 6 September 2013, the conclusion of which contradicts the legal validity of the scope of the Commission's FTT proposal, in particular contradicting the criterion for deemed establishment of an	*Description:* In September 2011, the Commission proposed that an FTT should be levied on all transactions on financial instruments between financial institutions when at least one party to the transaction is located in the EU. Transactions in bonds and shares would be taxed at a rate of 0.1%, and derivative contracts at a rate of 0.01%. A French FTT on equities, high frequency trading and certain CDS on sovereign debt was introduced on 1 August 2012, and other individual Member States are introducing similar measures. Proposed details of the FTT now to be implemented under enhanced cooperation were set out by the Commission on 14 February 2013. They closely reflect the Commission's original FTT proposal in terms of scope and objectives. Any changes serve one of two purposes: either to provide more legal clarity, where it was seen to be necessary, or to reinforce anti-abuse and anti-avoidance provisions, as the 11 participating Member States had requested. In its position adopted in July 2013,	The original proposal envisaged that the FTT Directive for the 11 Member States would enter into effect on 1 January 2014. Finance Ministers from the participating Member States have repeatedly failed to reach a consensus. Negotiations continue. However, the aim of agreeing on issues by mid-2017 was missed. Key points considered are the impact on the economy and the potential exemption of pension funds.

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	On 10 March 2016, Estonia sent a letter to the Council confirming officially its withdrawal from the FTT initiative, reducing the number of Member States participating in the initiative to 10.	institution (but the Commission published a legal opinion in support of its proposal). Interestingly, the legal analysis contained in this opinion also appears supportive of important points raised in the UK's separate legal challenge to the FTT. On 30 April 2014, the ECJ dismissed the UK's legal challenge against the authorisation of enhanced cooperation between the 11 EU FTT countries. The dismissal was on the grounds that the UK's challenge was premature and does not rule out further action once there is agreement on details of the form of the FTT to be adopted.	the European Parliament approved the Commission's proposal subject to certain proposed amendments (extending the scope of the FTT to cover spot FX, the introduction of the transfer of legal title principle, permanent reduced rates on repos, and an exemption for market makers). *Comment:* There is considerable opposition to the Commission's proposal for an EU FTT, including in some of the 10 Member States, as well as (eg) in the UK and US. If the Commission's proposal were not to be substantially changed, it would have a very substantial impact on all financial activity, particularly at the short end of the market.	
8 EU Structural Reforms in Banking	On 29 January 2014, the European Commission issued its proposed Regulation on *Structural Measures for Improving the Resilience of EU Credit Institutions* (SBR). The proposal follows the Final Report of the Liikanen Group on 2 October 2012, and a number of other official initiatives on similar issues, including the Vickers report in the UK and the Volcker	Around 130 of the largest banking groups in the EU are in scope.	*Description of the SBR:* The proposal (i) bans proprietary trading in financial instruments and commodities; (ii) gives supervisory power (and in some circumstances an obligation) to transfer high-risk trading activities (such as market making, complex derivatives and securitisation operations to separate legal entities within the group ("subsidiarisation"); and (iii) sets rules on economic, legal, governance and operational links between a separated trading entity	On 19 June 2015, the Council agreed a final position on the text. After a failed vote in the ECON Committee, the discussions in the Parliament are still ongoing. Once both institutions have agreed their respective positions, Council, Parliament and Commission will start trilogue negotiations to agree on the final text of the SBR.

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	Rule in the US. While the debate on the EU SBR continues, certain Member States (including Belgium, France, Germany and the UK) have proceeded with implementation of national level reforms.		and the rest of the banking group. *Comment on the SBR:* SBR should not directly affect the ability of banks to trade and manage matched books, particularly where this supports and hedges market making. Concerns may arise if repo is used to support more complex or "systemically risky" trading activities, such as securitisation, or if repo activity is seen as extending excessive leverage. *Description of the SFTR:* The proposal is intended to prevent banks from attempting to circumvent the rules set out in the SBR by shifting parts of their activities to the less regulated shadow banking sector. It does this by increasing the transparency of certain transactions outside the regulated banking sector.	
Primary and secondary markets				
9 EU Prospectus Regulation	A political agreement for a new Prospectus Regulation, intended to replace the current Prospectus Directive, was published on 16 December 2016.	Public offers and admissions to regulated market trading of securities in the EEA, with certain exemptions. EU sovereigns (and their regional/local authorities, their central banks and public	*Description:* The Prospectus Regulation is entirely "re-cast" from the Prospectus Directive. The more significant changes to the current regime include the new (i) universal registration document; (ii) simplified	ESMA launched public consultations on certain Level 2 measures in July 2017. The consultation period concluded on 28 September 2017. ICMA responded to the consultation.

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	The European Commission published on 28 February 2017 a request to ESMA for technical advice on Level 2 measures. The provisional version of the Prospectus Regulation was voted on by the European Parliament on 5 April 2017. The EU Council adopted the proposed Prospectus Regulation on 16 May 2017. The Prospectus Regulation was published in the *Official Journal* in June 2017 and entered into force on 20 July 2017. A staged approach to implementation is being adopted with the majority of provisions being applicable from 21 July 2019. A couple of provisions relating to exemptions from the requirement to publish a prospectus applied immediately from 20 July 2017.	international bodies of which they are members) will be exempt (as per the current Prospectus Directive).	disclosure regime for secondary issuances; (iii) EU growth prospectus; (iv) requirements for risk factor disclosure; and (v) prospectus summary requirements. The concept of a wholesale disclosure regime has been retained, and will be available to bonds with a minimum denomination of €100,000 (as per the current Prospectus Directive) and also bonds admitted to trading on a "qualified investor only" regulated market or segment thereof. *Comments:* The Level 1 political agreement includes a number of improvements from the original proposal published in December 2015. However, concerns remain with the new risk factor disclosure requirements, among other things. The likely impact of the new Prospectus Regulation will become clearer once the Level 2 process begins.	At Level 2, further consultations on separate topics will run during the course of the next 12 months, with 9 delegated acts, 10 regulatory technical standards, 4 implementing technical standards and 3 sets of guidelines still to be adopted (some of which are mandatory, while others are optional only). The mandatory acts must be adopted by the Commission by 21 January 2019.
10 EU Packaged Retail and Insurance-based Investment Products (PRIIPs)	On 9 December 2014, the final PRIIPs Regulation (EU/1286/2014) was published at Level 1 in the EU's *Official Journal*, followed by a minor *corrigendum* to the penultimate paragraph of Article 8 on 13 December 2014.	Retail offers of structured products, with FRNs probably out of scope. There is an implication that subordinated notes may be in scope. There was some talk of widening the scope to vanilla products, but that has not been	*Description:* Requirement for a (3 page) pre-contractual disclosure "key information document" (KID) to help retail investors understand and compare the key features and risks of the investment. The manufacturer will not incur civil liability solely on the	The PRIIPs Regulation is due to apply from 1 January 2018. The nominal end of the period for the Commission's exercise of delegated powers (subject to extension) is 29 December 2017.

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	On 31 March 2016, the ESAs published final draft Regulatory Technical Standards, which were adopted by the European Commission but were objected to by the European Parliament in September. This led to a delay to the date of application of the PRIIPs Regulation to 1 January 2018 (Regulation 2016/2340 of 14 December 2016.) On 3 April 2017, the EU Council formally confirmed its non-objection to the draft Regulatory Technical Standards on KIDs, which were published in the *Official Journal* on 12 April 2017.	adopted so far. There is an exemption for SSAs (by reference to Article 1.2(b) of the Prospectus Directive).	basis of the KID unless it is misleading, inaccurate or inconsistent with the legally binding documents or Art 8 of the Regulation (which mandates the content of the KID). The KID (if any) may become part of the Prospectus Regulation summary, when the Prospectus Regulation applies. Some grandfathering of UCITS.	31 December 2018 is the deadline for the Commission's review of the PRIIPs regime. The Regulatory Technical Standards on KIDs are due to apply from 1 January 2018. Article 14(2) will apply until 31 December 2019.
11 EU Market Abuse Regulation (MAR)	On 3 July 2016, the Market Abuse Regulation (MAR) regime replaced the previous Market Abuse Directive (MAD) regime.	Financial instruments traded on an EEA regulated market, a MTF, an OTF or OTC, and financial instruments linked to such financial instruments (eg CDS). Certain provisions also apply to (i) benchmarks, (ii) commodity derivatives and (iii) emissions allowances. There are certain exemptions for share buy-back programmes and	*Description:* MAR covers insider dealing and market manipulation. The scope of MAR is greater than that of MAD, which primarily applied to financial instruments traded on an EEA-regulated market. *Overall comment:* The main current concern relates to the new regime for market soundings, reportedly from investors. *Comment on the investment*	In application.

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Regulatory initiative	*Status*	*Scope and exemptions*	*Impact on the cross-border securities markets*	*Timing of next steps*
		stabilisation. There are exclusions for monetary and public debt management activities and climate policy activities.	*recommendations under MAR:* Both the buy side and sell side will be affected by the investment recommendations under MAR, which relate to "information recommending or suggesting an investment strategy, explicitly or implicitly, concerning one or several financial instruments or the issuers, including any opinion as to the present or future value or price of such instruments, intended for distribution channels or for the public." ICMA has published a detailed Q&A on the ICMA website.	
12 Bank of Italy Article 129 Regulation	Reporting requirements for certain new bond issues were introduced by the Bank of Italy on 25 August 2015 and subsequently amended on 10 August 2016, pursuant to Article 129 of Legislative Decree no. 385 of 1 September 1993, as amended. The rules took effect for Italian issuers in October 2016 and for underwriters in January 2017. On 7 April 2017, the Bank of Italy updated its FAQs, Instruction Manual and reporting platform, following feedback from ICMA.	In-scope securities (including vanilla bonds, convertibles, exchangeables, securitisation and structured products) placed in Italy and in-scope securities issued by Italian entities. There is an exemption for government bonds, among other things.	*Description:* Underwriters are required to report various information fields relating to the characteristics and distribution in Italy of in-scope financial instruments issued by non-Italian issuers within the twentieth day following the issue date via the Bank of Italy's Infostat platform. The updated platform is available for reporting, and provides for greater flexibility in reporting in particular in relation to syndicated bonds using the pot system. The Bank of Italy has also requested revision of elements of historic reporting from 1 January to 7 April 2017 in accordance with the	No further steps are anticipated.

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			updated platform. *Comments:* Owing to the extent of the reporting requirements and method by which information can be reported, underwriters are facing very significant costs in complying with the requirements.	
13 EU Markets in Financial Instruments Directive (MiFID II)/Regulation: primary markets	See item 14 below	See item 14 below	*Comments:* There is a potential impact on primary market underwriters, arising from: (i) product governance rules for "manufacturers" (which include underwriters) and distributors; (ii) allocation justification recording rules (there are specific "conflict of interest" rules for underwriting and placing activities); and (iii) other areas (inducements, best execution, transaction/trade reporting, costs and charges).	ICMA is discussing the implications, if any, with members of its Primary Market Practices Committee and Legal & Documentation Committee.
14 EU Markets in Financial Instruments Directive (MiFID II)/Regulation (MiFIR): secondary markets	The European Commission's proposals on MiFID II/MiFIR were published on 20 October 2011. The final texts were passed into law in April 2014 and published in the *Official Journal* on 12 June 2014. In May 2014, ESMA published a Discussion Paper and a Consultation Paper on the related		*Description of the new MiFID II market structure:* *Multilateral Trading Facility (MTF):* A multilateral system, operated by an investment firm or a market operator, which brings together multiple third-party buying and selling interests in financial instruments. *Organised Trading Facility (OTF):* A	The European Commission proposed on 10 February 2016 to delay the full implementation timeline by one year. Parliament and Council subsequently approved the proposed delay to the MiFID II start date. The new MiFID II start date is 3 January 2018. The earliest mandatory deadline

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	Regulatory Technical Standards and Implementing Technical Standards. Responses were due on 1 August 2014. ESMA subsequently published its final Technical Advice to the Commission on 19 December 2014. On the same day, ESMA published a second Consultation Paper with the draft RTS and ITS. ICMA responded to this consultation by the due date on 2 March 2015. ESMA submitted the final draft RTS and ITS by the end of September 2015 to the Commission for endorsement. Subsequently, most of the draft RTS and ITS were adopted by the Commission between May and July 2016.		multilateral system which is not a Regulated Market or an MTF and in which multiple third-party buying and selling instruments in bonds are brought together. Unlike RMs and MTFs, operators of OTFs will have discretion as to how to execute orders, subject to pre-transparency and best execution obligations. *Systematic Internaliser (SI) regime*: An investment firm that deals on its own account by executing client orders outside a trading venue, with the purpose of ensuring that the internalisation of order flow by investment firms does not undermine the efficiency of price formation on RMs, MTFs and OTFs. In short, SIs extend transparency obligations into the OTC space. On 5 April and 31 May 2017, ESMA published a set of Q&A updates clarifying the characteristics of, and differences between, OTFs and SIs. An OTF and a SI cannot be operated by the same legal entity. *Comments:* New pre- and post-trade mandated transparency requirements for non-equity securities are expected to have an impact on market	on which firms must comply with the SI regime, when necessary, is 1 September 2018, though MiFID II and MiFIR apply from 3 January 2018. However, ESMA stresses that investment firms can opt in to the SI regime for all financial instruments from 3 January 2018. The Commission has also proposed a four-year phase-in process for transparency requirements in respect of bonds for average daily trades and SSTI percentiles. Further Q&As are expected to be published by ESMA on a regular basis.

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			structure: (i) increasing the use of agency trading models, as well as an increase in electronic trading/automation; and (ii) decreasing the use of market making. IT complexity is proving challenging, given the existing timelines, for a smooth and effective implementation of MiFID II/MiFIR. This is the primary reason for the change in the implementation timetable from 2017 to 2018.	
Asset management				
15 FSB/IOSCO Non-Bank Non-Insurer Global SIFIs	On 8 January 2014, FSB and IOSCO published a consultation on: *Assessment Methodologies for Identifying Non-Bank Non-Insurer Global Systemically Important Financial Institutions (NBNI G-SIFIs).* Following much criticism of the FSB/IOSCO approach, a second consultation was launched on 4 March 2015. After the second consultation, the FSB and IOSCO announced in the summer of 2015 that the work on	While the consultation proposes specific methodologies for the identification of NBNI G-SIFIs, it does not designate any specific entities as systemically important or propose any policy measures that would apply to NBNI G-SIFIs. The second consultation proposed a revised framework to designate NBNI G-SIFIs. The second consultation proposes to identify systemically risky investment funds and, separately, systemically risky asset management companies.	*Description:* At the Seoul Summit in 2010, the G20 endorsed the *FSB Framework for Reducing the Systemic and Moral Hazard Risks posed by SIFIs.* The assessment methodologies to identify G-SIFIs need to reflect the nature and degree of risk they post to the global financial system. To date, methodologies have been developed for global systemically important banks and insurers. Following the universally critical reaction to the second consultation, FSB and IOSCO announced that they would focus on activities as opposed	ICMA Asset Management Investors Council (AMIC) responded to the FSB consultation on asset management activities by the deadline of 21 September 2016. <u>AMIC also responded to the CIS liquidity risk management guidelines consultation on 18 September 2017.</u> <u>IOSCO is expected to consult in the first quarter 2018 on leverage risk and calculation in investment funds.</u>

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	designation of G-SIFIs will be delayed until more work is done on activities rather than entities. On 12 January 2017, the FSB published policy recommendations to address structural vulnerabilities from asset management activities. On 6 July 2017, IOSCO launched consultations on (i) *CIS Liquidity Risk Management Recommendations;* and (ii) *Consultation Report on Open-ended Fund Liquidity and Risk Management – Good Practices and Issues for Consideration.*	Some of the policy recommendations on asset management activities will be operationalised by IOSCO. For example, IOSCO has been asked to complete its work on liquidity risk management recommendations by the end of 2017.	to entities, evidenced by the 12 January 2017 policy recommendations and July 2017 consultation on liquidity risk management guidelines.	
16 EU Regulation on Simple, Transparent and Standardised (STS) Securitisation	The European Commission launched a proposal for a Regulation establishing simple, transparent, standardised (STS) securitisation on 30 September 2015. On 8 December 2016, the European Parliament's Economic and Monetary and Affairs Committee (ECON) agreed compromise amendments to the proposed new Securitisation Regulation.	The proposal establishes over 50 criteria for defining STS securitisation, designed as a high quality, simple packaging technique with the aim of reviving securitisation as a funding tool and an investment class. The negotiators agreed to set the risk retention requirement at 5%, in accordance with existing international standards and in line with the Council's negotiating position. Other elements agreed	The AMIC has been very active in supporting the development of high quality securitisation. There is a consensus across the industry about the need to establish this new type of securitisation. The most important benefit to investors would be revised capital requirements for holders of STS securitisation. The European Parliament's text would have a significant negative impact on all securitisation issuance and investment in the EU.	The agreed text on STS Securitisation must now be rubber stamped and published in the *Office Journal.* The Regulation will apply from 1 January 2019. There is a final issue in the STS text relating to the treatment of legacy transactions involving self-certified mortgages. A fix is being discussed for the plenary adoption of the Regulation in October 2017.

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	On 30 May 2017, the EU Council Presidency reached agreement with European Parliament representatives on the STS Securitisation Regulation.	are: the creation of a data repository system for securities transactions and a light-touch authorisation process for third parties that assist in verifying compliance with STS securitisation requirements. The proposals to introduce investor name give-up were also dropped in the final text, to the market's relief.	The European Commission has not yet issued its proposal to amend the Solvency II Delegated Act for securitisation calibration, but it is expected imminently. The agreed text has less of a negative impact than previously expected. However, the text features no third country provisions, which will make it difficult for EU investors to invest in non-EU securitisation in the future.	
17 Covered bonds	The European Commission issued a consultation paper on covered bonds in the EU in September 2015. The EBA published a report on 20 December 2016 on covered bonds which includes recommendations on how to harmonise covered bond frameworks in the EU. The European Commission announced, in the CMU Mid-Term Review, that a legislative proposal for an EU framework for covered bonds will be put forward in the first quarter of 2018.	The EBA's proposal consists of three steps: (i) a new covered bond framework; (ii) amendments to the CRR provisions on covered bonds (and possibly also Solvency II); (iii) voluntary convergence of national frameworks. The focus of the European Commission is on the first step: a minimum harmonisation of EU covered bond frameworks.	While covered bond frameworks are fragmented in the EU, covered bonds remain a successful asset class with high levels of issuance and demand among investors. If the European Commission pursues the harmonisation of covered bond frameworks, there may be scope for more cross-border investment, but investors are keen that covered bonds continue to reflect national differences of their issuers. A possible benefit of a European Directive is that it would drive non-European legislation for covered bonds and issuers in those countries to issue covered bonds.	The European Commission is expected to issue a proposal for a Directive on the harmonisation of covered bonds in the first quarter of 2018.

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18 EU Solvency II Directive	On 21 March 2012, the European Parliament's vote on Omnibus II was passed. ECON's report was published on 28 March 2012. On 11 March 2014, the European Parliament adopted the Omnibus II Directive, which completes the Solvency II Directive and finalises the new framework for insurance regulation and supervision in the EU. The Directive was published in the *Official Journal* as Directive 2014/51/EC on 16 April 2014. On 10 October 2014, the Commission launched draft Delegated Acts. In January 2015, the European Parliament and Council approved the Delegated Acts. The Commission has indicated that further changes to Solvency II will be introduced as part of the Capital Markets Union framework, including revised calibrations for securitisation, a new asset class for infrastructure and benefits for assets held in illiquid funds (ELTIFs). In the context of this review, the Commission sent two calls for technical advice to EIOPA	The Directive relates to the insurance industry, but will also have an impact on asset managers in the context of revised asset allocation policies and reporting requirements. Omnibus II makes the powers of EIOPA operational via changes to the Solvency II Directive. It also includes substantive changes in the Solvency II regime on EIOPA's role: in ensuring harmonised technical approaches for the calculation of technical provisions and capital requirements; on supervisory convergence; and in settling disagreements between national supervisors. Omnibus II also clarifies the treatment of insurance products with long-term guarantees in order to mitigate the effects of artificial volatility.	*Description:* The Directive aims to establish a revised set of EU-wide capital requirements and risk management standards that will replace the current solvency requirements. Pillar 1 consists of quantitative requirements (eg the amount of capital an insurer should hold). Pillar 2 sets out requirements for governance and risk management of insurers. Pillar 3 focuses on disclosure and transparency requirements. The Directive foresees no regulatory capital requirement for sovereign debt issued by countries of the European Economic Area (EEA). *Comment:* The Directive will have a large impact on investment managers' data systems, as reporting will increase, be more detailed, complex and be required more frequently. Moreover, the Directive will guide investment priorities through its calibrations of risk weightings for assets like private placement or securitisation. This is why there is a great deal of attention on the final calibration of the solvency requirements for such asset classes in the Capital Markets Union debate.	The new Solvency II Directive has applied since 1 January 2016. The Commission proposal on STS securitisation *(see item 20 below)* and changes to bank capital rules have been published, but calibrations to Solvency II are still outstanding. The Commission has indicated that a proposal will be launched when the STS proposal is close to political agreement in trilogue.

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	on 18 July 2016 and 22 February 2017.			
19 Undertakings in Collective Investment in Transferable Securities (UCITS)	On 3 July 2012, the European Commission published a proposal for a UCITS V Directive. The publication of the draft UCITS V Directive was closely followed by the publication on 26 July 2012 of a further consultation documents on UCITS issues, which is widely known as "UCITS VI".	UCITS are passportable open-ended vehicles with the sole objective of raising capital from the public and collectively investing in various financial instruments.	*Description:* UCITS V covered: (i) eligibility to act as a depositary; (ii) criteria for delegating custody; (iii) liability for the loss of financial instruments held in custody; (iv) the remuneration of UCITS managers; and (v) sanctions for breaches of the UCITS Directive. The consultation on UCITS VI covers: (i) eligible assets in which UCITS can invest; (ii) efficient portfolio management techniques; (iii) the question of a depositary passport; (iv) money market funds; (v) long-term investments. UCITS VI is not expected to be high on the Commission agenda in the near future.	Implementation of the UCITS V Directive into national law was due to be completed by 18 March 2016. There is no indication as to when UCITS VI will be introduced, and it is no longer clear whether a UCITS VI legislative proposal will be published at all, as the more pressing issues referenced in UCITS VI have been, or are in the process of being, addressed via other measures.
20 EuVeCa/EuSEF	On 14 July 2016, the European Commission published a proposal to amend Regulations on European venture capital funds (EuVeCa) and European social entrepreneurship funds (EuSEF). On 12 September, the ECB published its opinion on the Commission proposal.	The European Venture Capital Funds (EuVeCa) Regulation covers a subcategory of alternative investment schemes that focus on start-ups and early stage companies. The European Social Entrepreneurship Funds (EuSEF) Regulation covers alternative investment schemes that focus on	Despite being introduced in 2013, few EuVeCa or EuSEF funds have been launched, which has led to the review by the European Commission in 2016. Fund providers note that provisions introduced in the original Regulations (eg on funds of funds) restrict the attractiveness of these funds. It remains to be seen whether the	The legislative procedure for the review of the EuVeCa and EuSEF Regulations was concluded on 30 May 2017. The agreement will be submitted to be formally approved over the coming months and then published in the *Official Journal.*

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	On 13 December 2016, the rapporteur in the ECON Committee of the European Parliament proposed amendments to the amendment by the Commission. On 30 May 2017, the EU Council Presidency reached agreement with European Parliament representatives on amendments to rules on EuSEFs and EuVeCas.	social enterprises. These are companies that are set up with the explicit aim to have a positive social impact and address social objectives, rather than only maximising profit. The Regulations (once applied) will make these funds available to fund managers of all sizes and expand the range of companies that the funds can invest in. They will also make the cross-border marketing of such funds cheaper and easier.	Regulations will lead to more use of these fund structures.	
21 European Long-Term Investment Funds	On 26 June 2013, the European Commission launched a proposal for a Regulation on European Long-Term Investment Funds (ELTIFs). The European Parliament and Council agreed the text in December 2014. The Council and European Parliament agreed on the text, and the Regulation was published in the *Official Journal* on 19 May 2015. ESMA published its final report and draft RTS on 8 June 2016, with the exception of RTS on cost disclosure information which	ELTIFs are designed to be illiquid fund structures with passport rights to capture more long-term finance and to improve non-bank financing of infrastructure and corporate assets. While the original proposal allowed retail access to ELTIFs, the co-legislators restricted full retail access due to the illiquidity of the product.	It is unclear yet what the impact could be, but there is some interest in capturing illiquid assets in a standardised fund format. Once the proposal is agreed it remains to be seen what the uptake of this new fund format will be. In theory, ELTIFs could fill a gap for illiquid assets that is not satisfied by AIFs in AIFMD. There are hopes that it could prove an intermediate fund structure to attract a broader range of investors to invest in infrastructure and private placements.	The proposal was formally adopted and published in the *Official Journal* on 19 May 2015. The European Commission must still endorse the RTS with the exception of the cost disclosure information, which has not yet been delivered by ESMA. Once the PRIIPs KID RTS are agreed, ESMA will deliver the ELTIF RTS on cost disclosure as well, which will need to be separately endorsed by the Commission.

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	must be included in the ELTIF's prospectus. This has been delayed to align the ELTIF cost disclosure information with the PRIIPs key information document (KID).			
22 Shareholder Rights Directive	On 12 December 2012, the European Commission announced an Action Plan. On 9 April 2014, the European Commission presented a proposal for the revision of the Shareholder Rights Directive, a Recommendation on corporate governance reporting and a proposal for a Directive on single-member private limited liability companies. On 9 December 2016, the European Parliament and Council agreed in trilogue on the final text of the Shareholders Rights Directive. On 3 April 2017, the Council officially adopted the Directive, paving the way for publication in the *Official Journal.*	The Commission Action Plan seeks to modernise company law and corporate governance. The new Directive establishes specific requirements to encourage long term shareholder engagement and increase transparency.	The Shareholder Rights Directive is intended to address certain shortcomings in corporate governance relating to the behaviour of companies and their boards, shareholders (institutional investors and asset managers), intermediaries and proxy advisors (ie firms providing services to shareholders, notably voting advice). Under the agreed new rules, institutional investors will be required, on a "comply-or-explain basis", to develop and disclose a policy on how they intend to engage with investee companies. Other requirements include the right for shareholders to vote on the remuneration policy for a company's directors. Member States will be able to decide whether such votes are binding.	Following publication of the Shareholders Rights Directive in the *Official Journal,* Member States will have two years to implement the provisions.

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Market infrastructure				
23 EU Regulation on OTC Derivatives, Central Counterparties and Trade Repositories (EMIR)	Following the G20 commitments in 2009 on OTC derivatives, on 15 September 2010 the European Commission presented its proposal on EMIR. The text was passed into law in July 2012 and entered into force on 16 August 2012. A first set of technical standards was adopted by the Commission on 19 December 2012. Subsequently, further implementing measures have been adopted by the Commission and entered into force. On 13 August 2015, ESMA published three review reports on how different aspects of EMIR have been functioning. The reports cover the use of OTC derivatives by non-financial counterparties (NFCs), pro-cyclicality and segregation and portability for CCPs. On 9 March 2016, the three ESAs published their final draft technical standards on margin	Members of the European System of Central Banks, public bodies charged with or intervening in the management of the public debt and the Bank for International Settlements will not be subject to the clearing, reporting or bilateral risk mitigation obligations in order to avoid limiting their powers to intervene to stabilise the market, if and when required. Contracts by non-financial firms below a "clearing threshold" will not have to be cleared through a CCP. "Commercial and treasury hedging activities", ie when these firms use OTC derivatives to hedge risks related to their activities, will be subtracted from the firm's overall position, which means that they will not count towards the threshold set for the clearing obligation. These activities do not need to be cleared. When setting these thresholds, ESMA will have to take into account the systemic relevance of the sum of net position and exposures by counterparty per class of	*Description:* Under EMIR, eligible OTC derivatives contracts need to be cleared through CCPs. All derivatives contracts have to be reported to trade repositories (TRs), which have to publish aggregate positions by class of derivatives. ESMA is responsible for TR registration and supervision and for the identification of contracts eligible for mandatory clearing. Both the Commission and ESMA have made available on their respective websites extensive FAQs on EMIR which are regularly updated. In parallel, at a global level work is ongoing on margin requirements for non-cleared derivatives. On 2 September 2013, the BCBS and IOSCO jointly released the final framework for margin requirements for non-centrally cleared derivatives. On 28 January 2015, IOSCO published the final report, *Risk Mitigation Standards for Non-Centrally Cleared OTC Derivatives,* which sets out nine standards aimed at mitigating the risks	The proposal of 4 May 2017 is under review by the European Parliament and Council as part of the regular legislative process. On 13 June 2017, the European Commission put forward a second set of amendments to EMIR, focused on a more robust supervision of central counterparties (CCPs). The proposal introduces a more pan-European approach to the supervision of EU CCPs, to ensure further supervisory convergence and closer cooperation between supervisory authorities and central banks responsible for EU currencies. On 20 September 2017, the European Commission put forward an amendment of its previously adopted EMIR II proposal with respect to the proposed supervision of CCPs within ESMA. The EU legislative process is continuing.

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	requirements for non-CCP cleared derivatives, following two joint consultations. These standards aim to implement the global framework developed by the BCBS and IOSCO. On 27 July 2016, the European Commission endorsed the first draft RTS on margin requirements for non-CCP cleared derivatives published by the three ESAs with amendments. The ESAs subsequently issued an opinion rejecting some of these amendments. On 4 October 2016, the Commission adopted a final set of rules which was published in the *Official Journal* on 15 December 2016. A corrigendum with regard to the phase-in provision was published on 20 January 2017. On 21 May 2015, the Commission launched a consultation on a general review of EMIR. Considering feedback received in response to the consultation, the Commission published its final report on 23 November 2016.	derivatives (ie looking at how much overall risk they pose to the system). On 12 July 2013, the European Commission agreed on a Delegated Regulation on the list of exempted entities under EMIR. On 5 June 2015, the Commission adopted a Delegated Regulation which grants pension funds a further two-year exemption (as from August 2015) from central clearing requirements for their OTC derivative transactions. On 14 November, ESMA published its final report, regarding the amended application of the clearing obligation that financial counterparties with a limited volume of activity in OTC derivatives need to comply with under EMIR. On 16 December 2016, the European Commission determined that a number of countries have equivalent regulatory regimes for CCPs to the EU. Also, it was established that the rules governing certain financial markets	in the non-centrally cleared OTC derivatives markets. On 18 March 2015, the BCBS and IOSCO announced a delay in the implementation of the requirements. Relative to the 2013 framework, the revisions delay the beginning of the phase-in period for collecting and posting initial margin on non-centrally cleared trades from 1 December 2015 to 1 September 2016. The revisions also institute a six-month phase-in of the requirement to exchange variation margin, beginning on 1 September 2016. On 23 February 2017, IOSCO called on all concerned parties to comply with variation margin requirements by the set deadlines. However, in light of difficulties faced by certain financial firms, IOSCO recommended that its members “should consider taking appropriate measures available to them to ensure fair and orderly markets” during an initial period. While only three jurisdictions (Canada, Japan and the US) implemented the margining requirements as planned on 1 September 2016, 14 jurisdictions have comprehensive margin	

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	On 4 May 2017, further to the publication of the final review in November 2016, the European Commission put forward a legislative proposal to amend EMIR. The proposal introduces more proportionate rules for corporates, refocuses the scope of the clearing obligation for financial counterparties and allows for more time to develop clearing solutions for pension funds, amongst other things.	can be deemed equivalent to those in the EU. On 23 February 2017, the ESAs published a joint statement confirming that EMIR requirements for exchange variation margin on OTC derivatives would be applicable from 1 March 2017.	requirements in place as of end-June 2017, according to the FSB's 12th progress report. *Comment:* The shift of standardised OTC derivatives into CCPs, allied with changing capital requirements for OTC counterparty credit exposure, will significantly increase margin requirements. This is expected to have an impact on collateral management policies, and also to increase the level of demand from market participants to hold high quality (eg SSA) assets.	
24 EU Regulation on a Framework for the Recovery and Resolution of CCPs (CCP RR)	On 28 November 2016, the European Commission proposed new EU rules for the recovery and resolution of CCPs, in the form of a draft Regulation subject to approval and adoption by the European Parliament and the EU Council. On 21 April 2017, ESMA issued an opinion on the European Commission's proposal. In particular, ESMA proposes to introduce additional requirements regarding NRAs' recovery plans in order to ensure a higher level of convergence, while providing the	These proposed rules for CCPs set out provisions comparable to those for banks in the BRRD (for further details on BRRD, see also 4 above) and are based on international standards – but, as CCPs are very different businesses to banks, this proposal contains CCP-specific tools that better align with CCPs' default management procedures and operating rules, especially to determine how losses would be shared. The proposed rules require CCPs and authorities to prepare for problems occurring, intervene early to avert a problem, and step in when things have gone wrong.	Much of the debate thus far has focused on the importance of CCPs for the clearing of derivatives, as now mandated for certain contracts in order to reduce bilateral counterparty exposures. Yet, in Europe CCPs are also used for a very significant proportion of repo business and CCPs are themselves significant participants in repo markets. As such it is essential that the implications of this proposed new EU Regulation are suitably considered from repo and collateral perspectives.	The European Parliament and the EU Council must first determine their respective positions on the European Commission's proposal, which is expected to take most of 2017; and then trilogue negotiations will be held to agree on the final CCP RR text.

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	necessary flexibility to CCPs to select those recovery tools which best fit their business.			
25 EU Central Securities Depository Regulation (CSDR)	The CSDR was passed into law in September 2014. On 28 September 2015, ESMA submitted most of the Level 2 Regulatory Technical Standards (RTS) and Implementing Technical Standards (ITS) to the Commission for adoption. This did not include the publication of the draft RTS on settlement discipline, including buy-ins, which were submitted on 1 February 2016, following an additional consultation. On 11 November 2016, the Commission adopted most of the final draft RTS, with the exception of the RTS on settlement discipline. <u>On 10 March 2017, the final RTS were published in the *Official Journal.* This included the RTS for the parameters for the calculation of cash penalties for settlement fails and the operations of CSDs in host Member States, but again not the RTS on settlement</u>	The CSDR applies to Central Securities Depositories (CSDs) in the European Economic Area (EEA), but also includes a number of provisions with a wider market impact.	*Description:* The CSDR is designed to introduce common EU standards for securities settlement and for the CSDs so as to increase the safety and efficiency of cross-border transactions, including settlement discipline. Improving competition between the various participants is also an objective. In terms of market level impact, the pertinent elements of the CSDR relate to settlement discipline, and the harmonisation of the settlement cycle. On the latter, the proposal provides that all securities traded on regulated markets, MTFs and OTFs should be settled no later than T+2. In order to improve settlement efficiency, all CSDs will have to introduce a strict regime for settlement discipline which provides for: (i) the monitoring of participant settlement efficiency; (ii) daily cash penalties and redistribution for settlement fails; (iii) a mandatory buy-in regime whereby the failing participant is automatically bought in after failing for 7 days (or 4 days in the case of liquid equities); or (iv) where a	<u>While most of the draft Level 2 standards entered into force on 30 March 2017, the RTS on settlement discipline are currently still under review.</u> As regards settlement discipline, ESMA recommended that the rules should enter into force 24 months after publication in the *Official Journal.* This delay has yet to be accepted by the Commission.

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	discipline.		buy-in is not possible, cash compensation settled between the failing and receiving counterparties based on a pre-agreed or market-based reference price (where this is higher than the price at which the trade was done). *Comment: T+2:* The European market adopted the requirement for T+2 settlement in October 2014, ahead of the CSDR's enforcement date of January 2015. To ensure market efficiency and harmonisation, T+2 has been adopted for both OTC and on-venue trades (and is reflected in the ICMA Rules and Recommendations). One unfortunate unintended consequence of the CSDR is the restriction of trading forward-starting SFTs on trading venues. Whether this requirement will be enforced in practice will depend on the interpretation of national competent authorities. *Settlement discipline:* There is broad recognition among market participants that the inclusion of mandatory buy-ins as part of settlement discipline is problematic. Not only will it be challenging to implement with respect	

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			to the Level 1 text, but it is expected to have a severe and far-reaching negative impact on secondary bond and financing market pricing and liquidity. In terms of SFT markets, there is an exemption for short-dated SFTs with a term up to 30 business days.	
26 Indices Serving as Benchmarks	On 17 July 2013, IOSCO published the final report on *Principles for Financial Benchmarks* with guidelines for governance and accountability, as well as for benchmark quality and methodology. At EU level, in December 2015, Council and European Parliament reached an agreement on the final text of the Benchmark Regulation, which was subsequently formally adopted, published in the *Official Journal* and entered into force on 30 June 2016. On 12 August 2016, the Commission adopted an implementing decision to establish a list of "critical" benchmarks for the purpose of the Benchmark Regulation, with		*Comment:* Public authorities have made clear that markets must move away from the use of IBORs, based to some extent on judgment, to the use of robust benchmarks based on actual transactions. The transition prompts two key questions for bond markets. First, what to do about existing bonds which reference IBORs and, second, what alternative to adopt for use in future issues which would otherwise have referenced IBORs. Officially selected RFRs may come to be used in place of IBORs, but it is as yet unclear whether this will be the markets' approach or if other alternatives will be preferred.	Following the adoption of the final law by both Parliament and Council, the text was published in the *Official Journal* and entered into force on 30 June 2016. Duly taking into consideration ESMA's technical advice, the European Commission has prepared the final technical standards for benchmarks, which will apply from 1 January 2018. The final texts adopted by the European Commission were published as Delegated Regulations on 29 September and 3 October 2017. The UK FCA has set a deadline of the end of 2021, after which it will no longer persuade or compel banks to submit data for LIBOR.

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	EURIBOR being the first to be added to this list. EONIA was added to the list on 29 June 2017. On 21 September 2017, the ECB announced that it will start providing an overnight unsecured index before 2020. This widens the set of options for the choice of alternative risk-free rates (RFRs) for the euro area and is in line with the recommendation of the Market Participants Group of the Financial Stability Board Official Sector Steering Group (FSB OSSG) to identify and adopt one or more RFRs in each main currency area. In the UK, SONIA has already been selected as the new RFR, and in the US an as yet unpublished broad Treasuries repo financing rate has been chosen.			

Notes: For more detail on these regulatory initiatives, please see the ICMA Quarterly Report (for the Third Quarter of 2017: Issue 46): http://www.icmagroup.org

Market Practice and Regulatory Policy Department
ICMA
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