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Assessment of Market Practice and Regulatory Policy

ICMA
International Capital Market Association

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ICMA represents a broad range of capital market interests including global investment banks and smaller regional banks, as well as asset managers, exchanges, central banks, law firms and other professional advisers. It has 468 member firms located in 54 countries. ICMA's market conventions and standards have been the pillars of the international debt market for almost 50 years, providing the framework of rules governing market practice which facilitate the orderly functioning of the market. ICMA actively promotes the efficiency and cost effectiveness of the capital markets by bringing together market participants including regulatory authorities and governments.

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Reforming collateral markets

Don't throw the baby out with the bathwater!

Foreword by Godfried De Vidts

It would be a surprise for anyone in financial markets not to have noticed the huge amount of securities and prudential regulation since the crisis. So far, however, nobody has attempted to draw these streams together and look at the cumulative effect on the financial markets, never mind the fixed income market (composed of cash bonds and repos).

In an October 2013 report, ICMA highlighted inconsistencies building up as a consequence of the many silo-developed regulatory initiatives. Many then known initiatives were mentioned, but not all the ingredients had then been recognised. An ICMA group met late in 2013 and quite quickly concluded that collateral was the glue that ultimately would bind all the ingredients together. It was a kind of magical problem solver. Collateral is now used to provide margins for OTC derivatives. Basel liquidity rules have a direct impact on the use and availability of collateral. MiFID II/MiFIR will see ESMA decide what collateral is liquid or illiquid; and CSDR requires an equivalent calibration. The FSB's shadow banking work recommends haircuts on certain collateral, and the SFTR looks at the use of collateral.

Globally there is plenty of collateral, but locally problems may occur. What is clear is that the repo market remains the key channel to transmit collateral from where it is to where and when it is needed, at the right price, in the right currency. The ICMA ERC's collateral fluidity study, released in April 2014, highlights challenges from regulatory initiatives that could curtail, or enhance, the liquidity of all types of collateral. In fact Europe's settlement system did perform up to expectations throughout the crisis, but some of the intrusive proposals from policy makers put this at risk.

Market participants and the central bank community realise the potential damage if we inhibit the fluid, unencumbered movement of collateral. Fixed income cash markets have already suffered a major setback as market making activities have all but stopped as the holding of trading securities is now punitive from a capital point of view; and banks' proprietary trading is to be curtailed responsive to Liikanen. We have had two recent experiences where the lack of market making shows the increased volatility in the fixed income market. Publication of an ICMA study into corporate bond market liquidity, in November, gives a good idea of why we can expect more of the same.

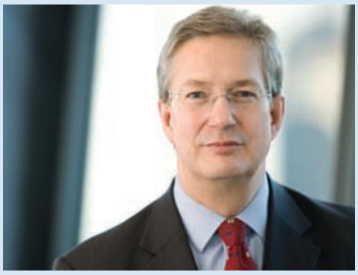
The danger market participants now face is that the cumulative effect of collateral demands may produce temporary shortages of a wide range of securities. As the intrusive nature of many regulatory initiatives begins to bite, market participants are anxiously holding onto their stock – with valuable securities locked away in LCR and CCP margins. Buy-side participants, also mandated to collateralise derivatives, are hesitant to on-lend securities which they may need in the short term. Add in the danger of mandatory buy-in under CSDR and we see the emergence of systemic risk of a nature that very few policy makers ever realised.

The central bank community, particularly the ECB, has embarked on easing of monetary policy to quick start the economy after this profound, long financial crisis; and the new European Commission is embarking on a European Capital Markets Union project. However, some of the regulatory proposals go directly against such positive initiatives and reduce the flow of collateral.

As Europe's post-trade infrastructure is being rebuilt through major public-sector initiatives, we should also embrace new private initiatives which will make markets safer, whilst also reducing excessive demand for collateral. Cumulatively these will make some of the more intrusive measures excessive (eg in CSDR) and require a fresh look. The ICMA ERC is actively pursuing a more structured and potentially mandatory obligation for affirmation/confirmation and instruction of settlements. This should be complemented with the right, identifiable message type, as envisaged by SWIFT. The ECB abolished the repatriation rule in May and has accepted collateral flows through triparty since September. Shortening of settlement cycles to T+2 happened on 6 October. The biggest IT project coming to a head is the phasing in of T2S between 2015 and 2017. EMU has created one currency for the majority of EU Member States, but we are still in the process of creating a euro harmonised back office.

Burkhard Balz, MEP, recently called for a deep and comprehensive cumulative impact assessment, to be conducted early in 2015. This is encouraging and exactly what ICMA identified, more than a year ago, as being vitally needed. Let us not throw the baby out with the bathwater, but gently nurture it with well thought out and widely discussed measures. This will guarantee that collateral will flow, so Europe's real economy can reap the benefits of the many hard years of work by all actors. The goal is not to curtail financial services, rather to make them better and at the service of European citizens.

Godfried De Vidts is Director of European Affairs for ICAP plc, a member of the ICMA Board and Chairman of ICMA's European Repo Council (ERC) and the ERC Committee.



Chief Executive's review of the year

by Martin Scheck

As the year draws to a close, this is a good moment to review ICMA's activities in 2014, and consider priorities for 2015.

The core of the association lies in our market practice and regulatory policy work. In this we have remained focused on issues raised within our market practice committees, councils and working groups and also by our regional committees. Many thanks to all of you (well over 500 individuals) who work with us on these committees: your input has been invaluable. It underpins ICMA's credibility in setting market standards and in our interactions with regulators and other public officials.

In the primary debt markets demand still outstrips supply and this imbalance creates tension when there are simply too few bonds to go round. We have run a number of roundtables in various European centres, engaging with all member constituencies, specifically to discuss new issue processes and identify where adjustments to market practice may be helpful. A highlight was the well attended Primary Market Forum held in November. The market is coming under increased regulatory scrutiny – for example the UK's *Fair and Effective Markets Review* (FEMR) consultation to which we are currently responding, and the far reaching MiFID II/MiFIR consultation submitted in August. We expect the level of regulatory scrutiny to increase. The review of the ICMA Primary Market Handbook is nearing completion and this major piece of work will be finalised early in the New Year.

Our three issuer forums are thriving and are unique in their area. They bring together major corporate issuers, financial institution issuers, and sovereign, supranational and agency borrowers. The forums provide these issuer groups with their own discussion platform, and the opportunity to interact as a group with investors to exchange information. They also provide a platform to respond to relevant proposed new regulation and interact with senior regulators. The FEMR, where one of the questions relates specifically to issuing patterns for corporate issuers, is a good current example.

We have been pleased to see that the work we have undertaken on sovereign contract reform is now being adopted globally by the market – a number of recent sovereign issues have incorporated ICMA's revised collective action and *pari passu* clauses which we finalised in the autumn. This followed extensive consultation with members, other associations, and government treasuries on a global basis. It has been encouraging to see these important structural changes endorsed by the IMF and also the G20.

Many of you will have read our recently published study of secondary liquidity in the European corporate bond market. Led by our Secondary Market Practices Committee, this is the result of extensive interviews with members analysing the state of trading in secondary markets and commenting on the many initiatives and ideas to improve liquidity. Coupled with the response on MiFID referred to earlier and a significant focus on the post-trade space, it really has been a year of intense activity for our secondary markets team.

In the complex and fragmented post-trade world our work on the CSDR deserves a special mention – not merely the move from T+3 to T+2 but the issues around "mandatory buy-in" of securities. We have worked constructively with a range of other associations to formulate a cross-industry view for the authorities and have organised presentations in a number of major European financial centres to alert members to the potential damaging impact of this measure.

Repo and collateral issues remained a key theme in 2014. The regulatory threats to the repo market are numerous. We have devoted time and energy to analysing these threats and familiarising the market and relevant authorities with them so they are in a position to assess the potential damage to the repo market. Damage to the repo market impacts the market's ability to move collateral around the financial system and ultimately to intermediate capital productively. The work has been led by our European Repo Council. Through them we have contributed to repo market development with education programmes, conferences, roundtables, a number of authoritative research papers, the semi-annual repo survey, the launch of the *ICMA Guide to Best Practice in the European Repo Markets*, as well as ensuring that the GMRA remains up-to-date and providing the underlying opinions to ICMA members.

The role of the buy side in the capital markets was also a dominant theme in 2014, and the range of projects with our buy-side members continued to expand. Through our Asset Management and Investors Council we have focused *inter alia* on market-based finance (the "shadow banking" agenda), covered bond transparency, bail-in and encumbrance, secondary market liquidity, securitisation, infrastructure financing, and wealth management issues. The breadth of topics we are addressing with our buy-side members is substantial and continues to expand, and we have needed to increase our staffing simply to cope. We have specifically involved the buy side actively in our responses to – and interactions with – regulators, and brought them together with other groups of members, such as issuers, to discuss market practice issues in detail. We held two large-scale and well attended AMIC Council conferences in Zurich and London in 2014.

Two new initiatives have developed well over the past year. ICMA was appointed in April to run the Secretariat for a cross-industry initiative called the Green Bond Principles. This is a voluntary set of guidelines for the issuance and management of green bonds, an exciting and fast-growing component of the Socially Responsible Investment sector. We are also leading a cross-industry coalition of trade associations and market participants to create a pan-European private placement market, and expect the *Pan-European Corporate Private Placement Market Guide* to be published early in the New Year.

Interacting with regulators is critical for ICMA and its members, and 2014 saw the formation of a new European Parliament and Commission. This has provided ICMA with an opportunity to build new relationships, and we held a roundtable for MEPs and other officials in the European Parliament at the end of September. Subsequently we have augmented this with workshops on specific product topics. In addition, we are engaging with the new Commission. We have also continued to work closely with central banks and national regulators. ICMA staff members are involved in a number of their key committees.

Moving away from the market practice and regulatory policy initiatives, I am pleased to say that our membership continues to grow. We have admitted over 40 new institutions as members since this time last year. Geographically, our initiative in Hong Kong develops well, with increasing momentum in the region. We have established a working group with our Chinese MOU partner, NAFMII, to help develop Chinese domestic markets. This working group was endorsed at the highest level by both the UK and Chinese Governments at their most recent annual economic financial dialogue. Elsewhere, all our regional committees are active and provide strong input to ICMA as well as developing an attractive and relevant agenda of meetings and events within each region.

In 2014 we started the ICMA Women's Network and held a very successful inaugural meeting. In 2015 we will be forming the ICMA Future Leaders Committee to ensure more active involvement of the younger generation.

Our education activities have been running at a fast pace in 2014 – over 600 participants attended our executive education courses. We run education classes all over the world, just as we do for the many events we hold for members – seminars, roundtables, conferences and the series of high profile ICMA Capital Market Lectures. These events are a critical component of our activities: they allow our members to interact personally with ICMA staff, other market participants, regulators and other officials, and ensure that we share information and facilitate active and relevant discussion. The Berlin AGM was a great success and the organisation of the Amsterdam AGM and Conference on 3-5 June 2015 is well under way.

Looking forward what can you expect? All the areas referred to above are important and in many cases essential components on ensuring that the markets can fulfil their function. We envisage that our work in all these areas will continue intensively throughout 2015 and well beyond.

We are greatly encouraged also by the change of emphasis, such that the regulatory agenda is now also focused on economic growth. In particular we welcome the launch in Europe of the Capital Markets Union initiative by the European Commission. This signifies that regulators and politicians understand just how important the capital markets are within the European financial infrastructure and to the economy as a whole. The initiative goes to the core of ICMA's mission to make the capital markets work better.

It only remains to thank you all for your support in 2014 and to wish you a successful and healthy 2015.

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Capital Markets Union: a Discussion Paper

Quarterly Assessment by Paul Richards

Summary

Capital Markets Union should be designed to broaden and deepen EU capital markets so that they can play a full part in financing economic recovery in the EU, alongside bank finance. There are three complementary ways of achieving this: better regulation of EU capital markets; supervisory convergence between national jurisdictions within the EU; and the development of the EU capital markets themselves. The Eurobond market, whose development ICMA has encouraged for nearly 50 years, is a good example. A practical agenda for Capital Markets Union would involve: the review of existing EU legislation affecting capital markets; the removal of remaining cross-border barriers to capital markets; and the promotion of underdeveloped sectors in the EU capital markets, such as pan-European private placements, securitisations with clear and simple structures, and long-term finance for infrastructure projects across the EU.

Introduction

1 The Mission Letter from the President of the European Commission to the new Commissioner for Financial Stability, Financial Services and Capital Markets Union asks him to focus on "bringing about a well regulated and integrated Capital Markets Union, encompassing all Member States, by 2019, with a view to maximising the benefits of capital markets and non-bank financial institutions for the real economy". Capital Markets Union is intended to cut the cost of raising capital in the EU, notably for small and medium-sized enterprises (SMEs); help reduce the very high dependence in the EU on bank funding; and increase the attractiveness of the EU as a place to invest.

2 It is not yet clear what the new European Commission will propose on Capital Markets Union, nor what the political reaction will be in the European Parliament and the European Council. But it is not too early for the International Capital Market Association to contribute to the debate on the technical issues that arise. This preliminary contribution, which takes the form of a Discussion Paper, addresses Capital Markets Union in three main ways:

- What is wrong with the EU that Capital Markets Union could help fix?
- What does Capital Markets Union mean and what form should it take?
- What would be a practical agenda for achieving Capital Markets Union?

What is wrong with the EU that Capital Markets Union could help fix?

3 First, growth in the real economy in Europe has been very limited since the crisis and unemployment is still very high, particularly in parts of the euro area, while inflation in the euro area remains significantly below target. Financial stability is needed to underpin sustainable economic growth and, since the crisis, the authorities have taken steps to strengthen financial stability in an attempt to prevent another crisis in future. But the political and social consequences of a prolonged period in Europe without economic growth may themselves carry risks for financial stability. Without sacrificing financial stability, there needs to be a shift in emphasis in Europe from ensuring financial

“The political and social consequences of a prolonged period in Europe without economic growth may themselves carry risks for financial stability.

stability to restoring growth. The authorities have a critical role to play in restoring growth through monetary and fiscal policy and structural reform. There needs to be sufficient demand in the European economy for investors in capital markets to supply. It is important to consider the prospect of Capital Markets Union in this broader macroeconomic context.

4 Second, banks in the EU have been deleveraging their balance sheets following the crisis and in response to the new regulatory requirements implemented by the authorities. Although large corporates have built up substantial cash balances, many small and medium-sized companies need access to bank funding and find that this is difficult to raise and comparatively expensive when available. The Asset Quality Review and accompanying stress test of 130 banks, conducted by the ECB and the EBA, have been designed to help restore confidence in the euro-area banking system, and bank financing remains critically important for economic recovery. But the need to complement bank finance with more non-bank finance through the capital markets in the EU is greater than ever. While corporate issuers and investors in the capital markets have a direct impact on the real economy, banks themselves also have an important role to play in developing the capital markets by acting as intermediaries between corporate issuers and investors (eg as lead managers of new issues and as dealers in the secondary markets).

5 Third, capital markets in the EU are not as broad or as deep as in the US. While the EU should not seek uncritically to copy the different culture for financing in the US, there may be lessons for the EU to learn from US experience:

- Investors in debt capital markets provide a much smaller proportion of funding for companies in the EU (20%-30%, depending on the definition) than investors in debt capital markets in the US (70%-80%).
- In some respects, capital markets in the EU are still fragmented across national borders (eg in cases in which capital is trapped within national boundaries); and there is still a “home” (ie national) bias among investors (eg in purchasing and holding their national sovereign debt). In the ECB’s view, if EU capital markets were more integrated, that would also facilitate the implementation of monetary policy.
- Some capital market products – like private placements, securitisations with clear and simple structures and long-term finance for infrastructure projects – are not as well developed in the EU as in the US. In the EU, covered bonds and commercial paper are largely based in national markets.
- In addition, in both the EU and the US, secondary market liquidity in corporate debt has declined sharply since the beginning of the crisis and has continued to deteriorate.

6 Fourth, capital markets in the EU need to be globally competitive. If EU capital markets are not globally competitive, there is always a risk that the market firms which help to finance them will transfer new investment, or parts of their existing operations, out of the EU to the US or Asia. Conversely, a globally competitive EU capital market will attract investment from elsewhere. This global dimension needs to be taken into account when new measures are being considered within the EU. Third country equivalence – between the EU, America and Asia – matters.

7 Finally, however, it is important to be realistic about what Capital Markets Union can achieve, at any rate in the short term:

- The international capital market is better suited to large and medium-sized companies than small enterprises. Large companies generally have access to the international capital markets already. While all companies should benefit from a reduction in the cost of capital, medium-sized companies are likely to be the main potential beneficiaries: the equivalent across the EU of the Mittelstand in Germany.

“Capital markets in the EU are not as broad or as deep as in the US.

- The EU has a Single Market which is largely integrated already. It will not be easy to build on the Single Market in a way that encourages growth. A great deal will depend on the form which Capital Markets Union takes.

Key drivers towards Capital Markets Union

The key drivers which provide a framework for making progress towards Capital Markets Union can be summarised as follows:

Growth: The authorities have a critical role to play in restoring real economic growth and employment, particularly in the euro area, through monetary and fiscal policy and structural reform. It is important to consider the prospect of Capital Markets Union in this broader macroeconomic context.

Regulation: Banks in the EU have been deleveraging their balance sheets following the crisis and in response to the new regulatory requirements implemented by the authorities. The need to complement bank finance with more non-bank finance through the capital markets in the EU is greater than ever.

Culture: Capital markets in the EU are not as broad or as deep as in the US. While the EU should not seek uncritically to copy the different culture for financing in the US, there may be lessons for the EU to learn from US experience.

Competitiveness: A globally competitive EU capital market will attract investment from elsewhere. This global dimension needs to be taken into account when new measures are being considered within the EU.

Timing: It is important to be realistic about what Capital Markets Union can achieve, at any rate in the short term.

“The purpose of Capital Markets Union is to encourage economic growth.

What does Capital Markets Union mean and what form should it take?

(i) Differences between Capital Markets Union and Banking Union

8 It is clear that Capital Markets Union is not the same as Banking Union. One reason for this is that Capital Markets Union is intended to relate to the EU as a whole, whereas Banking Union relates to the euro area, leaving other EU countries with the option – but not an obligation – to opt in. It is important that, if Capital Markets Union is to be well designed, it should relate to the EU as a whole, just as the Single Market relates to the EU as a whole. Otherwise there is a risk of fragmentation between the euro area and the rest of the EU.

9 The other reason is that the purpose of Capital Markets Union is not the same as Banking Union. Banking Union involves both supervision and, when necessary, resolution of banks: the first step involved the implementation on 4 November 2014 of the Single Supervisory Mechanism, overseen by the ECB, preceded by results of the ECB’s Asset Quality Review and the stress test by the ECB and EBA of 130 banks in the euro area; and the second step involves the implementation of the Single Resolution Mechanism to resolve failing banks. Banking Union is intended to break the link between national banks and their sovereigns. During the crisis, the interdependence between them threatened the future of the euro area. It is still not clear whether the firewall set up by Banking Union would be sufficient to contain the risk of contagion in the event of a euro exit. But if Banking Union works well, it will help restore market confidence. By contrast, the purpose of Capital Markets Union is both more limited and different: to encourage economic growth. In particular, resolution of failing banks does not apply in the same way to capital markets.

(ii) Different elements contributing to Capital Markets Union

10 While Capital Markets Union and Banking Union are not the same, that leaves open the question of what Capital Markets Union *should* involve. Building on the existing Single EU Market, there appear to be three different elements: regulation of capital markets; supervision of capital markets; and the development of the capital markets themselves. For Capital Markets Union to work well, these three different elements need to be combined in the right way.

(a) Regulation of capital markets

11 Should Capital Markets Union involve more regulation? A great deal of capital market regulation – both prudential regulation and conduct of business regulation – has been introduced in the EU already. The original EU Financial Services Action Plan was left incomplete when the crisis struck. But since the crisis, the Single EU Rulebook has in response introduced capital market regulation which is much more intrusive and wider in scope (eg through CRD IV, MiFID II and EMIR). A significant number of EU legislative measures, begun under the previous European Parliament, remain to be implemented during the mandate of the new European Parliament. The Commission has estimated that over 400 Delegated and Implementing Acts (eg relating to MiFID II, Solvency II, BRRD and CRD IV) remain to be adopted.

12 The President of the new European Commission has decided to put its most senior Vice President in charge of "better regulation". This gives an opportunity for the authorities to take stock, not only by assessing the impact of individual regulatory measures, but also by assessing their cumulative impact on capital markets as a whole. It also requires a change of culture within the Commission: away from assessing individual performance on the basis of the number of new regulatory measures passed into law; and towards assessing their effectiveness under the "better regulation" agenda. The main tests should be whether regulatory measures improve efficiency, liquidity and stability, and whether they help to integrate capital markets or whether they have unintended consequences. A proper assessment of the impact of regulatory measures on capital markets would help determine whether the right balance has been struck between reducing risk and encouraging growth. Where new regulatory initiatives are undertaken, the capital markets are looking for more certainty about what is proposed and why it is needed: new initiatives should be proportional; and they should be consistent across the EU as a whole and internationally.

> **A good example is the Eurobond market, whose development ICMA has encouraged for nearly 50 years.**

(b) Supervision of capital markets

13 Should Capital Markets Union involve giving an EU institution more powers for closer supervision of the capital markets? For example, should the EU establish the equivalent of the SEC in the US, with binding mediation powers over national regulators as a first step? There is also an outstanding question about whether to eliminate the potential overlap between the role of the three existing European Supervisory Authorities (ESAs), the supervisory role of the ECB, the European Systemic Risk Board (ESRB) and the proposed Single Resolution Board for resolving failing banks.

14 But the recent European Commission review of the European Securities and Markets Authority (ESMA) and the other two ESAs has not proposed radical changes, though it pre-dates the commitment to Capital Markets Union. ESMA already has some direct supervisory powers (eg over Credit Rating Agencies and Trade Repositories). More use is already being made of EU Regulations (eg EMIR, CSDR, MiFIR and MAR), which apply directly in all 28 Member States, instead of Directives, which have to be transposed into national law. Closer supervisory convergence (ie consistent application of the same rules using similar approaches and with the same outcomes) between national regulators in the 28 EU Member States is both important and possible without a further transfer of supervisory powers from national level to EU level. And the Commission has indicated that it wishes to "make full use of the current supervisory framework to improve supervisory convergence."

15 There is also a limit on the extent to which supervisory powers can be centralised further without a change in the EU Treaty. A Treaty change does not appear to be politically practicable, at least for the time being. Nor is it clear why more centralised supervisory powers would help maximise the benefits of capital markets for the real economy. Consequently, there is a strong case that the EU principle of subsidiarity should apply.

(c) Development of capital markets

16 The third element is the development of the capital markets themselves. A good example is the Eurobond market, whose development ICMA has encouraged for nearly 50 years, covering international bond issuance, trading, investment and infrastructure. Capital Markets Union should broaden and deepen EU capital markets – debt and equity securities, derivatives and repo markets, and collateral management – so that they can play a full part in financing economic recovery in the EU, alongside bank finance. This should also help to improve access to – and reduce the cost of – finance for companies, including SMEs, which are estimated to create more than 70% of jobs in Europe.

What would be a practical agenda for achieving Capital Markets Union?

17 A practical agenda for achieving Capital Markets Union needs to combine these three different elements in a way that works with the grain of the capital markets: better regulation; supervisory convergence; and the development of the capital markets themselves. This should involve: reviewing existing EU legislation affecting capital markets; removing remaining cross-border barriers to capital markets; and promoting capital market products which are relatively undeveloped in the EU so far:

(i) Review of existing EU legislation

18 First, a review of existing EU legislation affecting the capital markets should be designed to ensure that market participants critical to the development of capital markets are not prevented by inconsistencies in EU legislation, or its unintended consequences, from doing so. For example:

- *Penalties on financial institutions* have become disproportionately so large that there is a risk that the penalties – in the form of fines – have the unintended effect of undermining the viability of the financial institutions concerned. Where penalties are justified, they should focus on the individuals responsible rather than on shareholders as a whole.
- *Bank structural reform* should be designed in such a way as not to discourage secondary market trading, which would risk reducing growth by disrupting markets.
- *Capital requirements* under CRD IV and Solvency II should not have the unintended consequence of making it prohibitively expensive to invest in securitisations.
- *Solvency requirements* on insurance companies under Solvency II should encourage long-term financing rather than having the opposite effect.
- *The proposed Financial Transaction Tax* should not be implemented in its original form, as it would drive financial services business out of the markets affected by making them less competitive.

19 These changes would all be consistent with "better regulation". And more generally, care is needed to ensure that EU regulations not only take account of EU requirements, but are also consistent with those in North America and Asia within the G20 framework so to maintain the EU's global competitiveness.

(ii) Removal of cross-border barriers

20 Second, the removal of the remaining cross-border barriers to capital markets within the EU would be designed to complete relevant parts of the EU Financial Services Action Plan, which was interrupted by the crisis, and to ensure that EU legislation is implemented at national level in a consistent way. Many of these barriers have in the past proved politically difficult to remove. For example:

- *Market infrastructure:* Some of the Giovannini barriers relating to the financial market infrastructure have still not been removed: despite progress on TARGET2-Securities and the CSD Regulation, the remaining barriers are mainly barriers in the public sector. Settling a cross-border securities transaction in Europe has been estimated to cost at least ten times as much as in the US. But it is worth noting that Eurobonds have been settled across borders through the international CSDs without difficulty for many years.
- *Collateral:* Changes in financial regulation risk impeding the functioning of the European repo market, which is the primary channel for the circulation of collateral. Inhibiting collateral fluidity has potential systemic implications for capital markets.
- *Securities law:* It has proved politically difficult to agree on an EU securities law to remove market uncertainty, for example by clarifying ownership of collateral across borders. Different national regimes relating to the provision of security and guarantees often cause potential cross-border transactions to fail.
- *Insolvency law:* There are significant differences between national insolvency laws in the EU, which complicate an assessment of recovery rate planning when investing across borders in sub-investment grade corporate debt. In some cases, the rights of preferential creditors differ substantially; and there are also different prescriptions for the filing and verification of claims. A "29th" pan-European regime might help by-pass differences between national insolvency laws, but resolution of the problem has proved politically intractable in the past.
- *Withholding tax:* National regimes on withholding tax differ, though unanimity would be required among the 28 Member States to harmonise them.
- *Public filings:* There is as yet no EU equivalent offering the functionality of the US EDGAR: ie a central EU repository for filings of public information by companies (though the European Electronic Access Point that is being developed to link EU Member States' OAM central storage mechanisms may be a start).
- *Credit information:* There are no common, reliable and affordable standards yet for credit information about SMEs across borders.

21 *Retail investment* in the real economy is particularly important, at a time when the need for retirement provision in the EU is expected to grow strongly. But harnessing

the potential from retail savings for investment in capital markets across the EU is currently complicated by a number of disincentives: eg complex prospectus rules and the high minimum denomination threshold in the Prospectus Directive; and different national rules for access to retail markets. There is also a "home" (ie national) bias among investors, particularly in the case of smaller issues by less well known issuers. The removal of cross-border barriers under the Capital Markets Union initiative may in time help to address this.

(iii) Promotion of capital market products

22 Third, positive steps should be taken by the authorities, with the support of the private sector, to help promote – and encourage innovation in – undeveloped sectors in EU capital markets, without new EU legislation wherever possible, and without giving preference to any one asset class over another. In particular:

23 *Pan-European private placements:* the EU market is still undeveloped in comparison with the US, but ICMA is taking the lead in coordinating a Pan-European Private Placement Working Group: both the French and UK authorities have observer status on the Working Group. The UK authorities announced on 3 December 2014 a new targeted exemption from withholding tax for interest on private placements. And on 9 December, ECOFIN welcomed "the potential benefits from market-led initiatives, with a view to establishing reference standards underpinning a common framework for private placements".

24 *Securitisations with clear and simple structures:*

- The ECB considers that the ABS market could act as an important channel for lending to SMEs. Default rates on European ABS (0.6% to 1.5% on average) are much lower than in the US (9.3% to 18.4%). European ABS for SMEs have default rates of 0.1%. But the securitisation market is not standardised and it is subject to heavy capital charges.
- The ECB and the Bank of England have made a number of proposals for better functioning of the European securitisation market. The European Commission has recently adopted Delegated Acts on Solvency II and the CRR to encourage securitisations (though conditions set by regulatory technical standards on the Liquidity Coverage Ratio may also need to be addressed).
- The ECB's new programme of private sector asset purchases – including senior tranches of securitisations and covered bonds – is intended to help revive the market, as well as the euro-area economy. However, given the limited size of these private sector markets, there is a risk of reducing liquidity by crowding out private sector investors. This could also be the case if the ECB programme is extended to purchases of corporate bonds. If there is agreement in the ECB to extend the programme to sovereign bonds, one of the questions that would arise is whether the ECB would have preferred creditor status or not.

25 *Long-term finance for infrastructure projects across the EU:*

- On 26 November 2014, the European Commission announced an Investment Plan involving the creation of a new European Fund for Strategic Investments (EFSI), guaranteed with public money to mobilise at least €315 billion of additional investment in a pipeline of EU infrastructure projects over the period from 2015 to 2017. EU legislation is due to be adopted in June 2015. The EFSI is to be set up in partnership with the EIB, with a guarantee of €16 billion from the EU budget, combined with €5 billion committed by the EIB, and a projected multiplier of 1:15 in the form of total investment in the economy. (For every €1 provided by the EFSI, the assumption is that €3 of project financing will be provided in the form of subordinated debt; and for every €1 of subordinated debt, €5 of total investment.) It is intended that the proceeds should be invested for the long term in infrastructure, notably broadband and energy networks, as well as transport infrastructure, education, research and innovation, and renewable energy (€240 billion) and in SMEs and mid-cap companies (€75 billion). The success of the Investment Plan will depend on whether it is possible to identify and agree on a pipeline of credible infrastructure projects, and whether the assumptions about investment are realistic. It is also important that EFSI guarantees are not used up on infrastructure projects which can be financed in the private sector without them, as that would limit the scope for funding the rest of the Investment Plan.
- The Commission's proposed Regulation to create European Long-Term Investment Funds (ELTIFs) is also intended to help mobilise funding for infrastructure projects by investing in illiquid assets. Political agreement on the proposal was reached in the European Parliament and Council on 26 November.
- While the Commission and the EIB play an important role in financing infrastructure in the public sector, ICMA is cooperating with other trade associations to help bring together different initiatives in the private sector.

26 *Covered bonds:* The Commission may consider the feasibility of developing a pan-European framework for covered bond issuance, alongside existing national regimes, some of long standing. ICMA has been working through its Covered Bond Investor Council on improving standards of covered bond transparency.

A roadmap for Capital Markets Union

The European Commission is due to consult stakeholders through a Green Paper on Capital Markets Union in the first quarter of 2015, with an Action Plan in the third quarter of 2015. Capital Markets Union is due to be delivered by 2019. There are limits to what can be achieved quickly. But progress towards Capital Market Union can be made more quickly in some workstreams than in others:

First of all, the Commission is already preparing to adopt over 400 Delegated and Implementing Acts to help complete the Single EU Rulebook. Supervisory convergence between the 28 Member States should help ensure consistent implementation within ESMA's existing powers.

Second, consistent with the Commission's "better regulation" agenda, the removal of the remaining cross-border barriers affecting capital markets in the EU is likely to depend on whether the Commission can persuade the 28 Member States to cooperate in removing them. But capital market practitioners may be able to help by identifying the remaining barriers in the necessary detail.

Third, work is already under way on developing underdeveloped capital market products at EU level, including pan-European private placements, securitisations with clear and simple structures, long-term financing of infrastructure projects, and covered bonds. In some but not necessarily in all cases, progress can be made without new EU legislation.

Finally, there is a series of issues which have historically proved politically intractable. They are likely to take longer to resolve, and would require EU legislation, including insolvency law, securities law, and tax issues (eg on providing more favourable tax treatment for equities) which would require unanimity among the 28 Member States.

"The test will be the contribution that Capital Markets Union makes to financing economic growth.

Conclusion

27 The definition of Capital Markets Union is not itself important. What is important is to encourage capital market finance for the real economy, alongside bank finance: not only in the debt and equity securities, derivatives and repo markets, but also by diversifying sources of finance for the real economy generally. Capital market and bank financing should be complementary. The question should be: what can be done by the authorities and by the private sector together to encourage the development of broad and deep capital markets in Europe? And the test will be the contribution that Capital Markets Union makes to the real economy in Europe and in particular to financing economic growth.

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Practical initiatives by ICMA

There are a large number of practical initiatives on which ICMA is currently, or has recently been, engaged with, and on behalf of, members. These include[1]:

Capital markets generally

1 *Fair and Effective Markets Review:* ICMA is responding to the UK authorities' Consultation Paper on the *Fair and Effective Markets Review*.

2 *Capital Markets Union:* ICMA has begun work on Capital Markets Union, and met the European Commission on 16 December 2014 in Brussels to discuss this.

Short-term markets

3 *Securities financing transactions:* ICMA held a training session on securities financing transactions (SFTs), jointly with ISLA, in the European Parliament on 7 November 2014.

4 *CSDR:* The ICMA European Repo Council has actively helped to shape market views on the market discipline provisions in the CSDR on mandatory buy-ins and penalties, and has adapted its guide to best practice in response to the shift of cash markets to settlement on T+2 (ie trade date plus two business days).

5 *TARGET2-Securities:* The European Repo Council commissioned Rule Financial to conduct an industry-wide survey to assess market preparedness for, and attitudes towards, TARGET2-Securities (T2S). The results of the survey, and an industry model setting out how cash bond and repo trading will translate into the T2S environment, were presented to members via a webinar on 10 November and a presentation to the European Repo Council General Meeting on 19 November.

6 *Secured benchmarks:* In anticipation of the discontinuation of the Eurepo index, which was announced on 3 November, members of the European Repo Council have been providing technical input to discussions with the EMMI on the development of an alternative, robust, secured benchmark for euro markets.

Primary markets

7 *Primary market responses to regulators:* In consultation with the ICMA Primary Market Practices Committee and ICMA Legal and Documentation Committee, ICMA has submitted a number of responses to regulators, including: on 6 October 2014, a response to the UK FCA *Wholesale Competition Review*; on 15 October, a response to the ESMA Consultation Paper on draft Technical Standards for the Market Abuse Regulation; and on 19 December, a response to the ESMA Consultation Paper on prospectus-related issues under the Omnibus II Directive. ICMA is also expecting to respond to the UK FCA Consultation Paper on restrictions on the retail distribution of regulatory capital instruments.

8 *Primary Market Forum:* ICMA held the 8th Primary Market Forum at Clifford Chance on 12 November.

9 *Primary Market Handbook:* The overall review and revision of the ICMA Primary Market Handbook is nearing completion.

10 *Public Sector Issuer Forum:* A meeting of the Public Sector Issuer Forum was held in Washington on 9 October at the World Bank with the IMF and the US Treasury.

11 *Green Bond Principles:* There was a substantial response to the ICMA consultation on whether changes to the Green Bond Principles, which are intended to encourage transparency, disclosure and integrity in the green bond market, would be appropriate. Meetings of the Green Bond Executive Committee were held in Washington on 9 October and in New York on 10 December.

Secondary markets

12 *ICMA secondary market liquidity study:* The ICMA study on *The Current State and Future Evolution of the European Investment Grade Corporate Bond Secondary Market* has been completed and widely circulated, and is available on the ICMA website. A teleconference has been held for members, and seminars are planned.

13 *T+2 changeover:* Following ICMA's statement on 20 May 2014, and consistent with the CSDR, the standard settlement cycle set out in the ICMA Secondary Market Rules and Recommendations changed from T+3 to T+2 unless otherwise agreed, with effect from 6 October. The changeover went as planned. ICMA held members teleconferences before and after the changeover to check that there were no teething problems.

14 *Mandatory buy-ins:* ICMA held a number of seminars on the CSDR, focusing on the problems arising from mandatory buy-ins.

15 *MiFID II Level 2:* ICMA is preparing to respond to the latest ESMA Consultation Paper on MiFID II Level 2.

Asset management

16 *Pan-European private placements:* ICMA made a presentation to the EU Financial Services Committee, which reports to ECOFIN, on the work of the Pan-European Private Placement Working Group on 19 November 2014.

17 *Securitisation:* The ICMA Securitisation Working Group on the buy side has now been launched.

18 *Infrastructure finance:* ICMA continues to work with AFME and the Infrastructure Working Group on a guide to infrastructure finance. The Working Group has expanded to include other groups with an interest in infrastructure finance, and has invited the EIB, the European Financial Services Roundtable and the City of London IRSG to participate.

19 *Bail-in:* On behalf of the Bail-in Working Group, ICMA has submitted a response to the FSB's consultation on cross-border recognition of action on resolution, and is considering responses to a number of EBA and FSB consultations which are due in early 2015.

Other meetings with central banks and regulators

20 *ECB:* Together with the Chairs of key Market Practice and Regulatory Policy Committees, ICMA visited the European Central Bank in Frankfurt on 6 October 2014 for discussions.

21 *ICMA Capital Market Lectures:* Mario Nava from the European Commission gave an ICMA Capital Market Lecture in Brussels on 5 November.

22 *Bank of England:* Together with Chairs and senior representatives of key Market Practice and Regulatory Policy Committees, ICMA held a meeting at the Bank of England on 3 December with Chris Salmon, Executive Director, Markets, to discuss developments in the international capital markets.

Other points to note

23 *ICMA Women's Network:* The first ICMA Women's Network event, *Starting Out,* was held in London on 26 November 2014.

1. ICMA responses to consultations by regulators are available on the ICMA website.

by David Hiscock

Regulatory Response to the Crisis

G20 financial regulatory reforms

IOSCO

On 1 October 2014, IOSCO opened its Annual Conference public sessions, focusing on the themes of enforcement, corporate governance, long-term financing for economic growth, and investor protection and education as drivers of investor confidence. The public conference comes at the conclusion of IOSCO's private meetings in which members furthered their work to build robust and well-regulated global financial markets aimed at promoting sustainable long-term economic growth in all parts of the world. During the meeting the IOSCO Board furthered a number of key initiatives from the perspective of securities regulators. These include:

- steps to finalize the methodologies for identifying non-bank non-insurance SIFIs in the market intermediary and asset management space;
- work with the BCBS to support the development of sustainable securitisation markets as an important source of funding for the real economy;
- taking forward the work on credible deterrence through the development of effective enforcement regimes;
- examining how markets can play their role as a source of financing for small and medium-sized enterprises (SMEs) and for infrastructure;
- continuing work to develop a tool kit of regulatory measures to address cross-border issues, with a consultation paper to be published later this year.

Board members agreed for IOSCO to carry out work on the voluntary termination of collective investment schemes and to examine the products offered by credit rating agencies other than issuer or subscriber-paid credit ratings; and the Board also advanced a cross-sectoral initiative to address cyber risks in financial markets and agreed to further work aimed at improving the identification of emerging risks. Members agreed to continue to work on a new enhanced IOSCO Multilateral MOU, to make it an even more effective instrument by factoring in the use of technology and other recent developments. Greg Medcraft, of ASIC, was re-elected as Chairman of the IOSCO Board.

The Board issued two research reports during its meeting that support its policy work on emerging risks and long-term financing:

- *Securities Markets Risk Outlook 2014-2015*, which focuses on identifying potential risks in the securities markets. This Outlook has been prepared during a transformative period for global financial markets. As the initial impact of the 2008 financial crisis recedes, securities markets are an increasingly important financing channel for the economy. At the same time, innovation is re-entering the markets, while accommodative monetary policies continue to bolster securities markets. Consequently, the identification and analysis of the build-up of systemic risk in securities markets is of growing significance. The Outlook is divided into two parts: part I describes selected global trends and potential vulnerabilities in securities market; and part II identifies the potential systemic risks in or related to securities markets – these potential systemic risks are (i) the search for yield and the return of leverage in the financial system; (ii) search for yield and volatility affecting emerging markets; (iii) risks in central clearing; (iv) the increased use of collateral and risk transfer; and (v) governance and culture of financial firms.
- *Market-Based Long-Term Financing Solutions for SMEs and Infrastructure*, which describes practical and innovative market-based solutions to facilitate capital raising for SMEs and infrastructure. This note describes innovative structures and products in equity capital markets, debt capital markets, securitization and pooled investment vehicles that provide practical solutions to broadly recognized challenges for financing of SMEs and infrastructure projects. It also provides key takeaways from each example and identifies themes common to the innovations. The market-based financing solutions described in the note cover many jurisdictions across a wide geographical region, while several case studies reference cross-border activities and/or have regional reach.

> The BCBS issued the final endorsed standard for the Net Stable Funding Ratio (NSFR), which will become a minimum standard by 1 January 2018.

On 3 October 2014, the BCBS published its Seventh Progress Report on adoption of the Basel regulatory framework, providing a high-level view of BCBS members' progress in adopting Basel II, Basel 2.5 and Basel III standards as of end-September 2014. The Report, which focuses on the status of domestic rule-making processes to ensure that the Basel standards are transformed into national law or regulation according to the internationally agreed timeframes, includes the status of adoption of the risk-based capital standards, the standards for global and domestic SIBs, the Basel III leverage ratio and the LCR.

On 15 October 2014, the FSB reissued the *Key Attributes of Effective Resolution Regimes for Financial Institutions* incorporating guidance on their application to non-bank financial institutions and on arrangements for information sharing that support the effective resolution of cross-border financial institutions. Four new annexes to the Key Attributes, developed by the FSB in conjunction with relevant standard-setting bodies (CPMI; IAIS and IOSCO), set out guidance covering:

- resolution of Financial Market Infrastructures (FMIs), including CCPs, and resolution of systemically important FMI participants;
- resolution of insurers;
- client asset protection in resolution; and
- information sharing for resolution purposes.

Allied to the first of these new annexes, the CPMI and IOSCO published a Report entitled *Recovery of Financial Market Infrastructures*.

On 31 October 2014, the BCBS issued the final endorsed standard for the Net Stable Funding Ratio (NSFR), which will become a minimum standard by 1 January 2018. The final NSFR retains the structure of the January 2014 consultative proposal. The key changes introduced in the final standard cover the required stable funding for short-term exposures to banks and other financial institutions; derivatives exposures; and assets posted as initial margin for derivative contracts. In addition, the final standard recognises that, under strict conditions, certain asset and liability items are interdependent and can therefore be viewed as neutral in terms of the NSFR.

Allied to this finalised NSFR standard, on 9 December 2014, the BCBS issued for consultation (comments by 6 March 2015) the *NSFR Disclosure Standards*. To promote the consistency and usability of disclosures related to the NSFR, the BCBS has agreed that internationally active banks across BCBS member jurisdictions will be required to publish their NSFRs according to a common template. Consistent with the implementation of the NSFR standard, supervisors will give effect to these disclosure requirements, and banks will be required to comply with them from the date of the first reporting period after 1 January 2018.

On 6 November 2014, the FSB published an updated list of G-SIBs, in conjunction with which the BCBS released some supporting information. This information includes a technical summary which further explains the methodology and the denominators used to calculate the scores for banks in the end-2013 exercise and the cut-off score that was used to identify the updated list of G-SIBs. Also provided are the thresholds used to allocate G-SIBs to buckets for the purposes of calculating the specific higher loss absorbency (HLA) requirements for each institution, as well as links to the disclosures of the G-SIBs designated in 2014. The HLA requirements will be phased in from 1 January 2016, based on the end-2013 results, with the full amount of the requirement in effect by 1 January 2019, consistent with the implementation schedule for the capital conservation buffer.

IMFC

The communiqué of the 30th meeting of the IMFC, Chaired by Tharman Shanmugaratnam, Deputy Prime Minister of Singapore and Minister for Finance, was published in the form of an 11 October 2014 press release; and covers points on the global economy; ensuring robust, durable and inclusive growth; fiscal policy; monetary policy; policy cooperation and coherence; IMF lending and surveillance; and governance. Amongst other things, the communiqué includes statements that:

- increasing the resilience of the financial system remains a priority in all countries, including through well-designed micro- and macro-prudential measures in the context of prolonged monetary accommodation and excessive risk-taking in some asset markets;
- global financial regulatory reforms should be implemented promptly and consistently, including addressing too-big-to-fail problems through capital requirements and effective resolution regimes, aligning cross-border application of over-the-counter derivative rules, and mitigating potential financial stability risks emanating from shadow banking;
- we support the IMF's ongoing work on international taxation and revenue mobilization, including to address tax evasion and tax avoidance and enhance fiscal transparency, in close cooperation with relevant international bodies; and
- we welcome the work on modified *pari passu* clauses and strengthened collective action clauses, and call on the IMF, its member countries, and the private sector to actively promote their use in new international sovereign bond issuances.

Documents related to this IMFC meeting and statements given on the occasion of the meeting are available, along with a list of attendees. The next IMFC meeting will be on 17-18 April 2015.

This IMFC meeting took place alongside the Annual Meetings of the Boards of Governors of the IMF and the Boards of Governors of the World Bank Group, in Washington, D.C., on 10-12 October 2014. In a keynote speech at the plenary session of the IMF-World Bank 2014 Meetings, *The IMF at 70: Making the Right Choices—Yesterday, Today, and Tomorrow*, IMF head Christine Lagarde outlined three collective choices to be made:

- First, how do we achieve the growth and jobs needed to advance prosperity and ensure social harmony? This is the choice between acceleration and stagnation.
- Second, how do we make this interconnected world a more inclusive, safer place for all of us to thrive? This is the choice between stability and fragility.
- Third, how do we strengthen cooperation and multilateralism, instead of isolationism and insularity? This is the choice between solidarity and seclusion.

Whilst commenting further on the second of these, she said: "The degree of financial integration has jumped tenfold since the IMF was founded. In the two decades before the crisis, international bank lending as a share of world GDP rose by 250%. This interconnectedness offers great benefits allowing more people to access global financial networks. But it also comes with a dark side: it makes financial crises more likely to occur, and more virulent when they do occur. 2008 was a stark reminder of this. Ultimately, we need to be able to garner the good and banish the bad. We need to be proactive, not passive." She then went on to say: "That means we need the right tools and policies. If financial markets are more challenging, then policies must be more powerful, and regulators and supervisors must be better equipped. The bottom line? We must complete the financial sector reform agenda, and we must continue to update it as financial minds are creative and fertile in seeking out new loopholes. We have made good progress, especially on banking regulation. Yet we still need to overcome the too-important-to-fail problem. We need better rules for non-banks, better monitoring of shadow banks, and better safety and transparency over derivatives. We need to strengthen macroprudential safeguards. And let's be candid: we need to see a change in culture and behaviour." Under her comments on the third of the above choices, she also highlighted three areas where progress is vital: first, cooperation to come to an agreement on the cross-border resolution of megabanks; second, the need to go further in making it more difficult to shift taxes from one country to another simply for profit; and third action on current account imbalances.

On 10 November 2014, the FSB issued for public consultation (for comment by 2 February 2015) policy proposals consisting of a set of principles and a detailed term sheet on the adequacy of loss-absorbing and recapitalisation capacity of G-SIBs. The proposals were developed in consultation with the BCBS and will, once finalised, form a new minimum standard for Total Loss-Absorbing Capacity (TLAC). The new TLAC standard should provide home and host authorities with confidence that G-SIBs have sufficient capacity to absorb losses, both before and during resolution, and enable resolution authorities to implement a resolution strategy that minimises any impact on financial stability and ensures the continuity of critical economic functions. TLAC adequacy will need to take account of individual G-SIBs' recovery and resolution plans, their systemic footprints, business models, risk profiles and organisational structures. The principles and term sheet therefore provide guidance for home and host authorities on how to determine a firm-specific Pillar 2 TLAC requirement in addition to the common Pillar 1 TLAC minimum. The calibration and composition of firm-specific TLAC requirements should be determined in consultation with Crisis Management Groups and subject to review in the FSB's Resolvability Assessment Process (RAP). In early 2015, the FSB will, with the participation of the BCBS and the BIS, undertake comprehensive impact assessment studies to inform the calibration of the Pillar 1 element of the TLAC requirement for all G-SIBs. The TLAC proposals will be finalised by the time of the Turkey G20 Leaders' Summit in 2015, taking account of the results of this consultation and of the impact assessments.

G20

On 14 November 2014, the FSB published the following documents delivered to G20 Leaders for the Brisbane Summit:

- A letter from the FSB Chair to the G20 Leaders, reporting on progress in financial reforms and highlighting the major issues for the attention of Leaders, with an attached dashboard summarising the status of implementation by FSB member jurisdictions on priority reform areas. In this letter the Chair makes four points: (i) the job of agreeing measures to fix the fault lines that caused the global financial crisis is now substantially complete; (ii) the endorsement by Leaders of proposals to end too-big-to-fail in the banking sector will be a watershed; (iii) as it enters the next phase of financial reform, the FSB will adjust focus towards addressing new and constantly evolving risks and vulnerabilities (eg strengthening cyber resilience, in relation to which the CPMI has published the Report *Cyber Resilience in Financial Market Infrastructures*); and (iv) the FSB seeks the support of G20 Leaders to promote a system based on mutual trust and cooperation to help maintain an open global financial system.

- A Report to the G20 on the FSB's review of the structure of its representation. This Report seeks G20 endorsement of measures that seek in particular to strengthen the voice of emerging market and developing economies (EMDEs) in the FSB while also preserving the effectiveness of its decision-making process. Other measures are directed at strengthening and broadening engagement of a wider range of authorities in the work of the FSB and to widen the pool of expertise available, including that of EMDEs and securities market regulators. (The FSB has also published *Monitoring the Effects of Agreed Regulatory Reforms on EMDEs* and the BCBS has published a working paper, *Impact and Implementation Challenges of the Basel Framework for EMDEs*).

- A Progress Report setting out the FSB's approach to transforming shadow banking into resilient market-based financing to date, and a roadmap for further work in 2015 that has been presented to the G20 for endorsement. (The FSB has also published a consultation on *Standards and Processes for Global Securities Financing Data Collection and Aggregation* and its *Global Shadow Banking Monitoring Report 2014*).

- A comprehensive Overview Report on progress in the implementation of the financial reforms in order to strengthen financial stability. (The FSB also recently published its *Eighth Progress Report on Implementation of OTC Derivatives Market Reforms*).

The following additional reports on financial reforms submitted to the G20 Brisbane Summit were published:

- An FSB Consultative Document on the *Adequacy of Loss-Absorbing Capacity of Global Systemically Important Banks in Resolution*;

- An FSB Consultative Document on the *Cross-Border Recognition of Resolution Action;*

- An FSB Report on progress in *Reform of Resolution Regimes and Resolution Planning for Global Systemically Important Financial Institutions*;

- Reports by the BCBS on *Measures to Reduce Risk-Weighted Asset Variability and on Basel III Implementation* (the BCBS also published the findings of a review of its members' *Implementation of National Discretions within the Basel Capital Framework*);

- A Report by the International Association of Insurance Supervisors on the *Basic Capital Requirements for Global Systemically Important Insurers*; and
- A Report by the Over-The-Counter Derivatives Regulators Group on *Cross-Border Implementation Issues*.

A communiqué was issued following the G20 Leaders' Brisbane Summit, held on 15-16 November 2014. Under the sub-heading of "Building a stronger, more resilient global economy", this states that: "We have delivered key aspects of the core commitments we made in response to the financial crisis." It then states that: "We welcome the FSB proposal requiring global systemically important banks to hold additional loss absorbing capacity that would further protect taxpayers if these banks fail. Progress has been made in delivering the shadow banking framework and we endorse an updated roadmap for further work." The communiqué goes on to state: "But critical work remains to build a stronger, more resilient financial system. The task now is to finalise remaining elements of our policy framework and fully implement agreed financial regulatory reforms, while remaining alert to new risks. We call on regulatory authorities to make further concrete progress in swiftly implementing the agreed G20 derivatives reforms. We encourage jurisdictions to defer to each other when it is justified, in line with the St. Petersburg Declaration. We welcome the FSB's plans to report on the implementation and effects of these reforms, and the FSB's future priorities. We welcome the progress made to strengthen the orderliness and predictability of the sovereign debt restructuring process."

Moving on to the topic of tax, the communiqué then states that: "We are taking actions to ensure the fairness of the international tax system and to secure countries' revenue bases. Profits should be taxed where economic activities deriving the profits are performed and where value is created. We welcome the significant progress on the G20/OECD Base Erosion and Profit Shifting (BEPS) Action Plan to modernise international tax rules. We are committed to finalising this work in 2015"; and that: "To prevent cross-border tax evasion, we endorse the global Common Reporting Standard for the automatic exchange of tax information (AEOI) on a reciprocal basis. We will begin to exchange information automatically with each other and with other countries by 2017 or end-2018, subject to completing necessary legislative procedures."

Under the sub-heading of "Acting together to lift growth and create jobs", the communiqué states that: "We endorse the Global Infrastructure Initiative, a multi-year work programme to lift quality public and private infrastructure investment"; and that: "We are working to facilitate long-term financing from institutional investors and to encourage market sources of finance, including transparent securitisation, particularly for small and medium-sized enterprises." It also goes on to state that: "We reaffirm our longstanding standstill and rollback commitments to resist protectionism."

In addition, under the sub-heading of "Strengthening global institutions", the communiqué states that: "We welcome the increased representation of emerging economies on the FSB and other actions to maintain its effectiveness. We are committed to maintaining a strong, quota-based and adequately resourced IMF." Finally, it is noted that the next G20 Leaders' Summit, under Turkey's G20 Presidency, will be in Antalya on 15-16 November 2015. Links to a wide range of statements and documents are annexed to the communiqué.

Turkey assumed the G20 Presidency on 1 December 2014 and its Presidency priorities were announced. The Turkish Presidency will be building on the agenda of previous Presidencies and ensuring a seamless continuity in the G20, while introducing new elements to ensure decisive collective action to provide inclusive and robust growth. Three pillars of the 2015 agenda will be (i) strengthening the global recovery and lifting the potential; (ii) enhancing resilience; and (iii) buttressing sustainability. Considering financial regulation the aim will be to finalise the new regulatory framework and ensure timely, full and consistent implementation. Furthermore, work will focus on analysing regulatory outcomes and effects with a view to driving potential improvement areas and addressing unintended consequences, if any. Subsequently, on 11-12 December 2014, the first G20 Finance and Central Bank Deputies meeting under the Turkish G20 Presidency was held in Istanbul, Turkey, kicking off discussions on the 2015 agenda and work programme of the G20 Finance Track and laying foundations for policy discussions during the year ahead. The next such meeting will take place on 8-9 February 2015, followed by a G20 Finance Ministers and Central Bank Governors meeting on 9-10 February 2015 in Istanbul.

> We are working to facilitate long-term financing from institutional investors and to encourage market sources of finance.

On 25 November 2014, IOSCO published the Consultation Report (for comment on or before 23 February 2015) of the IOSCO Task Force on Cross-Border Regulation, which identifies and describes cross-border regulatory tools and challenges. The Consultation Report describes three cross-border regulatory tools that have been used, or are under consideration, by IOSCO members to help address the challenges they face in protecting investors, maintaining market quality and reducing systemic risk. These tools can be broadly classified into three main types: National Treatment, Recognition, and Passporting. They provide the basis for developing a cross-border regulatory toolkit and common terminology describing potential options for IOSCO members to consult when considering cross-border regulations. The Report also includes a detailed discussion of the key challenges and experiences faced by regulators in implementing cross-border securities regulations, including how their national rules will apply to global financial markets and interact with foreign rules and international standards. To build on work performed to date by IOSCO's Task Force, the Consultation Report aims to gather further views on experiences and understanding in connection with the use of the cross-border regulatory tools and on other cross-border issues from a broad range of stakeholders, such as members of the securities industry, representative trade bodies, market professionals, academics, regulators, self-regulatory organisations, and policy makers.

On 11 December 2014, the BCBS and IOSCO released a Consultative Document (for comment by 13 February 2015) on *Criteria for Identifying Simple, Transparent and Comparable Securitisations*. The purpose of these criteria is to identify – and to assist the financial industry's development of – simple, transparent and comparable (STC) securitisations structures, as well as to help parties involved in a securitisation transaction evaluate the risks of a particular securitisation as part of their due diligence on securitisations. The 14 proposed STC criteria have been mapped to key types of risk in the securitisation process: (i) generic criteria relating to the underlying asset pool (asset risk); (ii) transparency around the securitisation structure (structural risk); and (iii) governance of key parties to the securitisation process (fiduciary and servicer risk). The proposed approach is a modular one, so the 14 proposed STC criteria may be supplemented or expanded (eg with criteria related to credit risk of the underlying securitised assets) based on specific needs and applications, such as investor mandates, regulatory applications or central bank collateral frameworks. The implementation of such criteria, including its potential impact on regulation, is not within the scope of this consultation.

Also on 11 December 2014, the BCBS issued *Revisions to the Securitisation Framework*, which will come into effect in January 2018. These revisions aim to address a number of shortcomings in the Basel II securitisation framework and to strengthen the capital standards for securitisation exposures. The most significant revisions with respect to the Basel II securitisation framework relate to changes in: (i) the hierarchy of approaches – reducing reliance on external ratings; and simplifying and limiting the number of approaches; (ii) the risk drivers used in each approach – with additional risk drivers, notably an explicit adjustment to take account of the maturity of a securitisation's tranche, being introduced; and (iii) the amount of regulatory capital banks must hold for exposures to securitisations (ie the framework's calibration) – including amendments that smooth the impact of maturity on capital charges, along with a number of technical enhancements and clarifications. These final requirements have incorporated feedback from two rounds of consultation (in December 2012 and December 2013) as well as two quantitative impact studies that helped inform the policy deliberations. In 2015, the BCBS will consider how to incorporate STC securitisation criteria (as now being consulted on by the BCBS and IOSCO) into the securitisation capital framework.

On 11 December 2014, the Board of IOSCO published, for members' comment by 30 January 2015, an IOSCO 2020 Consultation Report, *IOSCO's Strategic Direction 2015 to 2020*. This Consultation Report provides background on the IOSCO 2020 project and the work undertaken by the IOSCO 2020 Review Working Group. It also proposes a mission, goals, priorities and action plans to 2020 and identifies resourcing needs, before then setting out options to fund the proposed action plans. A final report will be prepared after consideration of members' comments.

On 19 December 2014, the BCBS issued a Consultative Paper (for comment by 20 February 2015) on outstanding issues for its fundamental review of the trading book capital standards. This Consultative Paper sets out a limited set of revisions to the BCBS's proposed market risk framework, which was published in October 2013. Following a review of earlier comments received and further analysis, the BCBS notes concerns expressed about the implementation challenges posed by certain elements of the new framework. To address these challenges, this further Consultative Paper outlines several refinements in three broad areas: (i) a specified treatment of internal risk transfers of equity risk and interest rate risk between the banking book and the trading book, to supplement the existing treatment of internal transfers of credit risk; (ii) a revised standardised approach that uses as inputs changes in the value of an instrument based on sensitivity to underlying risk factors; and (iii) a simpler method for incorporating the concept of liquidity horizons in the internal models approach.

Also on 19 December 2014, the FSB published *Global Adherence to Regulatory and Supervisory Standards on International Cooperation and Information Exchange: Status Update*. This 4th annual update describes the status of adherence to international cooperation standards for banking, securities and insurance regulation and supervision for 60 jurisdictions. It also includes an updated toolbox of measures for promoting the implementation of these standards and announces the expansion of the evaluation process to six new jurisdictions: Kuwait, Macao, Nigeria, Panama, Peru and Qatar.

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European financial regulatory reforms

On 1 October 2014, ESMA published its Work Programme for 2015, which is in line with ESMA's 2013-2015 Multi-Annual Work Programme. In the overall ESMA Work Programme the legislative tasks related to ESMA's convergence and Single Rulebook objectives are not addressed in great detail and a more detailed regulatory work programme, setting out a full list of the technical standards, technical advice and guidelines and recommendations that ESMA will produce within the year, is to be adopted by the Board of Supervisors in the first quarter of 2015. Rather, the Work Programme presents explanations around ESMA's main planned activities for 2015, as well as the budget and staff required to fulfil the tasks. It is based on a budget of €38,639,000 and a staff base of 202 people as per the budget approved by ESMA's Board of Supervisors on 6 February 2014 and subsequently submitted to the EU institutions; but at the time of drafting the Work Programme, the budget prepared by the European Commission and sent to the EU Council and Parliament for ESMA in 2015 is only for €33,627,920 and 186 people. Hence, in order to prepare for the eventuality that ESMA will receive fewer posts than planned for in the Work Programme, Annex 5 contains a list of the areas of work that ESMA would be unable to accomplish in 2015 with reduced resources.

Progress against the Work Programme is monitored on a regular basis by ESMA's Management Board – ESMA has a list of Key Performance Indicators (KPIs) which are annexed to this report and links between the activities and the KPIs are indicated (KPIs are not yet in place for all activities of the Work Programme, but it is intended to continue to develop KPIs in the coming years so that they cover all ESMA's activities). In this 2015 Work Programme activities (areas of work) are presented under each of ESMA's four operational objectives (convergence; risk monitoring and analysis; Single Rulebook; and supervision), which are designed to achieve ESMA's three strategic objectives (investor protection; financial stability; and market functioning).

On 10 October 2014, the Joint Committee of the ESAs published its Work Programme for the upcoming year. In 2015, the Joint Committee will continue to give a high priority to the areas of consumer protection (in particular the work on PRIIPS) and cross-sectoral risk analysis. Further it will continue to pursue the regulatory work already underway in areas such as financial conglomerates, anti-money laundering and CRAs. The Joint Committee will also continue to monitor legislative and regulatory developments in 2015 both at the European and international level, and ensure appropriate follow-up.

On 5 December 2014, the BCBS published a Report, conducted under its Regulatory Consistency Assessment Programme (RCAP), assessing the implementation of the Basel capital framework in the nine EU Member States that are BCBS members. The assessment was based on the EU's CRR and CRD IV; and took account of relevant rules in place at the Member State level. It concluded that eight of the 14 components are compliant with all minimum provisions of the relevant BCBS standards; and another four of the components were assessed as "largely compliant". One component – the Internal Ratings-based (IRB) approach for credit risk – was assessed "materially non-compliant" and pertained primarily to the treatment of exposures to SMEs, corporates and sovereigns. Finally, one component was found to be "non-compliant" – this relates to the EU's counterparty credit risk framework, which provides an exemption from the BCBS framework's credit valuation adjustment (CVA) capital charge for certain derivatives exposures.

Responsive to the publication of this Report, the European Commission published a statement welcoming the RCAP in the context of seeking to ensure coherent implementation across member jurisdictions. It is noted that the EU has taken a particularly ambitious approach by opting to apply a Single Rulebook, based on standards designed for large internationally active banks, to all of its 8,000 banks – which has necessarily required some adaptations in the law and a degree of additional flexibility for supervisors to reflect local specificities. Attention is also drawn to the fact that all 20 EU banks that participated in the RCAP are capitalised far above the required regulatory minima, even when correcting for regulatory differences identified in the RCAP. In addition it is highlighted that certain matters raised by the RCAP Report are a matter of interpretation. The Commission also recalls that the final shaping of the EU law is done by the European Parliament and the Council – who have deliberately introduced some adaptations in order to avoid negative repercussions of the new capital standards on economic growth, ensure that SMEs can continue to access bank credit and contribute to growth and employment in the real economy; and draws attention to the fact that, at its meeting on 22-23 September 2014, the BCBS has itself now decided to introduce major changes to the requirements for CVA risk.

ESFS Review

Following from the ECOFIN meeting, on 7 November 2014, Council conclusions on the ESFS Review were published. Overall, the Council:

- welcomes the Commission reports, published on 8 August 2014, on the operation of the ESAs and on the mission and organisation of the ESRB; and
- agrees with the Commission that overall the ESAs and ESRB have performed well and that there is no need for a major overhaul of the ESFS, whilst targeted adaptations should be considered to improve, in particular, the ESAs' performance, governance and financing, whereas the ESRB might warrant a more significant evolution of its role, notably taking into account the emergence of new actors in the field of macroprudential oversight. That notwithstanding, the Council considers that a possible, deeper reform would need to be prepared well in advance also on the basis of experience accumulated on the new institutional setting following the establishment of the SSM and the SRM.

With regard to the ESAs, the Council welcomes the Commission's suggestions for short-term improvements; stresses the need for further reflection with regard to medium to long-term changes; acknowledges the value of existing provisions on binding mediation as an incentive for proper cooperation of the competent authorities concerned; and recognises the fact that funding arrangements are possibly a more pressing issue than other medium-term matters and may necessitate further reflection, with a view to ensuring stable, sustainable and sufficient funding of the ESAs.

With regard to the ESRB, the Council supports the Commission's recommendations for short-term improvements; and underlines that caution should be taken when considering more structural changes. Finally, with regard to the ESFS as a whole, the Council recognises the need, within the context of achieving stronger EU coordination, for appropriate involvement of the European supervisory framework in the work of relevant international bodies; underlines that before considering any medium to long-term improvements to the supervisory framework, it is necessary to understand the impact of the SSM, the SRM and the Banking Union at large; and invites accordingly the EFC and the FSC, in cooperation with the Commission, to monitor the implementation of the aforementioned short-term improvements, to progress reflections on longer-term enhancements of the ESFS and to report back by end-2016 at the time of the next review of the ESFS.

The press release following from the ECOFIN Council meeting, held in Brussels on 9 December 2014, states that the main results were as follows:

- The Council approved two important measures contributing to EU efforts to prevent tax fraud and tax avoidance.

(i) It agreed on a common anti-abuse clause to be included in the EU's Parent-Subsidiary Directive as part of efforts to clamp down on corporate tax avoidance. This will require governments to refrain from granting the benefits of the Directive to arrangements put in place purely to obtain a tax advantage.

(ii) The Council adopted a Directive extending the mandatory automatic exchange of information between tax authorities in order to prevent tax evasion and fraud by individual taxpayers. The Directive is aimed at remedying situations where a taxpayer seeks to hide capital abroad or assets on which tax is due. It takes into account a global standard developed by the OECD and endorsed by the G20.

- The Council agreed on a draft Regulation calculating the contributions to be paid by banks to the EU's Single Resolution Fund. The Fund is being set up under a Single Resolution Mechanism that has been set up to ensure the orderly resolution of failing banks.
- Ministers took stock of progress on measures to create durable conditions for sustained growth and job creation in the EU. The Council adopted conclusions on finance for growth and the long-term financing of the European economy.
- The Council discussed a proposed action plan on investment, as well as the work of a task force set up to identify potentially viable investment projects. The Commission's €315 billion investment plan foresees the creation of a European Fund for Strategic Investments in 2015. The Fund's role will be to provide risk-bearing capacity that can unlock investments in energy, broadband and transport infrastructure, education, research and innovation, renewable energy and energy efficiency, and to back risk finance for SMEs.

On 12 December 2014, the European Commission adopted its first "equivalence" decision for the purposes of credit risk weighting under the CRR, establishing a list of third countries whose supervisory and regulatory arrangements the EU considers equivalent. This decision is the first step in an ongoing programme which will regularly review the equivalence of other third countries (this exercise will be carried out over the coming years with the assistance of the EBA). For those third countries which are recognised as equivalent, EU banks can apply preferential risk weights to relevant exposures to entities located in those countries. Following assessment, the supervisory and regulatory arrangements of the following countries and territories – accounting for over 90% of European credit institutions' non-EU exposures – were found equivalent for the respective categories of exposure:

- For exposures to credit institutions: Australia, Brazil, Canada, China, Guernsey, Hong Kong, India, the Isle of Man, Japan, Jersey, Mexico, the Principality of Monaco, Saudi Arabia, Switzerland, Singapore, South Africa and the USA.
- For exposures to investment firms: Australia, Brazil, Canada, China, Saudi Arabia, Singapore, Mexico, South Africa and the USA.
- For exposures to exchanges: Brazil, Canada, China, India, Japan, Mexico, Saudi Arabia, Singapore, South Africa and the USA.

On 16 December 2014, the European Commission adopted its Work Programme for 2015 – setting out the actions the Commission intends to take over the next 12 months. The Commission's 2015 Work Programme sets out 23 new initiatives proposed by the Juncker Commission, following the Political Guidelines presented to the European Parliament; and 80 existing proposals which the Commission proposes to withdraw or amend for political or technical reasons. The 23 initiatives the Commission is politically committed to delivering in 2015 represent a 12-month "to do list" focused on the "big things" like jobs, growth and investment, in line with the ten priorities of President Juncker's Political Guidelines.

Focusing on financial services-oriented items, the list of 23 initiatives includes: #1, The Investment Plan for Europe: Legislative Follow-up; #9, Capital Markets Union; and #10, Framework for resolution of financial institutions other than banks. Also of potential interest are #12, Deepening Economic and Monetary Union Package; #13, Proposal for a Directive with a view to providing for compulsory exchange of information in respect of cross-border rulings; and #14, Action Plan on efforts to combat tax evasion and tax fraud, including a Communication on a renewed approach for corporate taxation in the Single Market in the light of global developments. The list of 80 withdrawals includes just one financial services oriented item: #48, COM/2010/0371: 2010/0199/COD Proposal for a Directive amending Directive 97/9/EC on investor compensation schemes. Additionally, in the "Annex III – REFIT Actions", there are two financial services-oriented items: #41, Prospectus Directive; and #42, International accounting standards.

On 19 December 2014, the European Council adopted two Implementing Acts to supplement the SRM:

- A decision appointing the Chairperson (Elke König), Vice-Chairperson (Timo Löyttyniemi) and four other full-time members of the Single Resolution Board. The term of office of the first Chairperson appointed after entry into force of the SRM regulation is three years, renewable once for a period of five years; whilst the term of office of the Vice-Chairperson and the four other full-time members is five years.
- A Regulation determining the contributions to be paid by banks to the EU's Single Resolution Fund (SRF). This follows on from the Commission's, 21 October 2014, adoption of *Detailed Rules on Contributions of Banks to Resolution Funds*). The SRM is being set up to ensure the orderly resolution of failing banks and will be applicable from 1 January 2016. The SRF will be built up over a period of eight years to reach a target level of at least 1% of the amount of covered deposits of all credit institutions authorised in all the participating Member States. Banks will have to make annual fund contributions, calculated on the basis of their risk adjusted liabilities, excluding own funds and covered deposits. For Member States participating in the Banking Union, the National Resolution Funds set up under the BRRD as of 1 January 2015 will be replaced by the SRF as of 1 January 2016.

Also on 19 December 2014, the EBA published final draft RTS on resolution planning and final Guidelines on measures to reduce or remove impediments to resolvability. These are part of the EBA's work to promote a consistent and coherent approach to bank resolution across the EU and specify contents of resolution plans for EU institutions, as well as the criteria for the resolvability assessment. Common EU standards in these areas are essential to facilitate effective cooperation and joint decisions between resolution authorities.

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Credit Rating Agencies

On 7 November 2014, ESMA announced its certification of HR Ratings de México, S.A. de C.V. (which is headquartered in Mexico and subject to registration, supervision and enforcement by the Mexican Comisión Nacional Bancaria y de Valores) to operate as a CRA in the EU; on 24 November 2014 ESMA announced its approval of Moody's Investors Service EMEA Limited (based in the UK, this is the seventh entity in the Moody's Investors Service group to be registered as an EU CRA) as a CRA; and on 12 December 2014, ESMA announced its certification of Egan-Jones Ratings Co. (which is headquartered in Pennsylvania, USA and subject to registration, supervision and enforcement as an NRSRO by the US SEC) to operate as a CRA in the EU. The names of these CRAs have been added to ESMA's list of registered and certified CRAs.

On 16 December 2014, ESMA published a Report on the findings of its investigation into the way CRAs conduct surveillance of their structured finance (SF) credit ratings. The investigation, which took place between October 2013 and September 2014, was prompted by the continued relevance of SF products and the high outstanding volume in issuance; and focused on the four largest CRAs providing credit ratings on these SF instruments in the EU: DBRS

Ratings, Fitch Ratings, Moody's Investors Services and Standard & Poor's (which account for almost 100% of the total outstanding credit ratings on EU SF instruments). ESMA identified a number of shortcomings in several areas affecting the surveillance of SF ratings and also identified weaknesses on the level of disclosure and transparency which could be detrimental to investor protection. ESMA has requested that CRAs put in place the remedial action plans to solve the individual concerns identified and will follow up with each of the CRAs subject to this investigation.

On 18 December 2014, the European Commission adopted a Report addressed to the European Parliament and the Council on the exercise of the delegated powers under the Regulation on CRAs. This Report concludes that the Commission has exercised its delegated powers correctly and in a timely manner to ensure that the necessary provisions were in place for ESMA to carry out its tasks fully as supervisor of CRAs in the EU; and that, going forward, the Commission considers that the delegation of power should be retained.

On 22 December 2014, ESMA published a Report indicating EU-registered CRAs' total market shares and the types of credit ratings issued. For the purpose of this exercise, EU registered CRAs' total market shares have been calculated by reference to the annual turnover from credit rating activities and ancillary services at group level during the calendar year 2013. ESMA's list of the types of credit ratings – corporate (including non-financial, financial, and insurance); sovereign; structured finance; and covered bond – is based upon those ratings issued by each registered CRA in 2014.

Also on 22 December 2014, the BCBS released a Consultative Document (for comment by 27 March 2015) on *Revisions to the Standardised Approach for Credit Risk*. The proposed revisions seek to strengthen the existing regulatory capital standard in several ways, including: (i) reduced reliance on external credit ratings; (ii) enhanced granularity and risk sensitivity; (iii) updated risk-weight calibrations (which for this consultation are indicative and will be further informed based on the results of a quantitative impact study); (iv) more comparability with the internal ratings-based approach with respect to the definition and treatment of similar exposures; and (v) better clarity on the application of the standards. The BCBS is considering replacing references to external ratings, as used in the current standardised approach, with a limited number of risk drivers (which vary based on the particular type of exposure and have been selected on the basis that they are simple, intuitive, readily available and capable of explaining risk across jurisdictions) that provide a meaningful differentiation for risk.

On 23 December 2014, the Joint Committee of the European Supervisory Authorities (EBA, EIOPA and ESMA) published a Discussion Paper (for comment by 27 February 2015) on the use of credit ratings by financial intermediaries in the EU. This presents a set of questions to banks and other financial institutions and intermediaries concerning their reliance on credit ratings in their contractual practice: that is, outside of the cases in which reliance on ratings is required by the existing regulatory framework. The questions are also addressed to national supervisors. The Joint Committee will use the replies, together with an independent study, to present in the second quarter of 2015 a first draft of possible alternatives to credit ratings.

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OTC (derivatives) regulatory developments

On 1 October 2014, ESMA issued final draft Regulatory Technical Standards (RTS) for the central clearing of Interest Rate Swaps (IRS), which it was required to develop under EMIR. The following four IRS classes will be subject to central clearing: (i) basis swaps denominated

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The BCBS is considering replacing references to external ratings with a limited number of risk drivers.

> The Commission's amendments concern postponing the starting date of the frontloading requirement.

in EUR, GBP, JPY, USD; (ii) fixed-to-float swaps denominated in EUR, GBP, JPY, USD; (iii) forward rate agreements denominated in EUR, GBP, USD; and (iv) overnight index swaps denominated in EUR, GBP, USD. Counterparties will have to start central clearing of IRS after the entry-into-force of ESMA's RTS in accordance with the following phase-in periods: (i) clearing members – six months after; (ii) financial counterparties and other alternative investment funds (AIFs) – 12 months after; (iii) financial counterparties and other AIFs with a low level of activity in un-cleared derivatives – 18 months after; and (iv) non-financial counterparties – three years after. In order to properly capture systemic risk, the counterparties included in the first two categories will also have to frontload those IRS contracts they have concluded between the date of publication of the RTS in the *Official Journal* and the respective starting date of the clearing obligation.

Subsequently, on 18 December 2014, the European Commission sent a letter informing ESMA that it intends to endorse with amendments the draft RTS on the clearing obligation for interest rate derivatives. The Commission's amendments concern postponing the starting date of the frontloading requirement; clarifying the calculation of the threshold for investment funds; and excluding non-EU intragroup transactions from the scope of the clearing obligation. ESMA has a period of up to six weeks in which to amend the draft RTS on the basis of the Commission's proposed amendments and to then resubmit it in the form of a formal opinion to the Commission.

Also on 1 October 2014, ESMA published a Consultation Paper seeking stakeholders' views (by 6 November 2014) on the RTS that ESMA is required to draft under Article 5(2) "Clearing Obligation Procedure" of EMIR, for the clearing of foreign-exchange non-deliverable forwards. This Consultation Paper follows the publication in July 2013 of a Discussion Paper on the clearing obligation under EMIR, the publication of the first Consultation Papers on the clearing obligation on interest rate classes and credit classes, and the publication of the Final Report on the clearing obligation on interest rate classes. The input from stakeholders will help ESMA in finalising the relevant technical standards to be drafted and submitted to the European Commission for endorsement in the form of Commission Regulations.

On 3 October 2014, the BCBS published an *Assessment of Incentives to Clear Centrally*, prepared utilising a stylised framework for examining the main financial costs of central clearing compared to trading OTC derivatives contracts on a bilateral basis. The results of the quantitative analysis indicate that clearing member banks (ie those institutions that clear directly with CCPs) have incentives to clear centrally. Central clearing incentives for market participants that clear indirectly (ie that are not directly clearing members of a CCP but clear through an intermediary that is a clearing member of a CCP) are less obvious and could not be comprehensively analysed on the basis of the data received in the quantitative analysis – so after the reforms have been introduced, some indirect clearers may have incentives to clear centrally, while others may not. (It is noted, however, that it is clearing members who account for the bulk of derivatives trading).

On 11 October 2014, the FSB welcomed the announcement by ISDA of the agreement of a Protocol to the ISDA Master Agreement, as an important step to improve the effectiveness of cross-border resolution actions. The Protocol will take effect from January 1 2015; and will govern both new and existing trades between adhering parties. Under this Protocol, counterparties agree to the cross-border enforceability of temporary stays on early termination and cross-default rights in OTC bilateral derivatives contracts. As part of this announcement, an initial set of 18 G-SIBs and other large dealer banks committed to execute the Protocol by the time of the Brisbane G20 Summit in November 2014 (which they duly did). The FSB called on all G-SIBs and other firms with significant derivatives exposures to adhere to the Protocol by the end of 2015 and to ensure that the derivatives and similar financial contracts that they enter into include appropriate contractual language that gives effect to stays in resolution on a cross-border basis. FSB members have committed to support this adoption process through the necessary regulatory or supervisory action.

On 28 October 2014, IOSCO released an update of its information repository for central clearing requirements for OTC derivatives, which provides regulators and market participants with consolidated information on the clearing requirements of different jurisdictions. The repository sets out central clearing requirements on a product-by-product level, and any exemptions from them. IOSCO first made the repository public in August 2014 and the information in the repository will be updated quarterly.

On 30 October 2014, the first "equivalence" decisions for CCP regulatory regimes were adopted by the European Commission – covering the regulatory regimes of CCPs in Australia, Hong Kong, Japan and Singapore. CCPs in these third country jurisdictions will be able to obtain recognition in the EU, and can therefore be used by market participants to clear standardised OTC derivatives as required by EU legislation, whilst remaining subject solely to the regulation and supervision of their home jurisdiction. Although rules may differ in the detail, international regulators are pursuing the same objectives to promote financial stability by promoting the use of CCPs that are subject to robust prudential requirements.

On 7 November 2014, the Report of the OTC Derivatives Regulators Group (ODRG) to G20 Leaders on *Cross-Border Implementation Issues* was published. In this report, the ODRG updates the G20 Leaders on how it has addressed or intends to address identified cross-border issues since the St. Petersburg Summit, as well as on continuing areas of focus for the ODRG, including further progress made bilaterally and in other fora. This report consolidates for the G20 Leaders the substance of previous reports made during 2014 to the G20 Finance Ministers and Central Bank Governors.

On 10 November 2014, ESMA published a Consultation Paper (for comment by 13 February 2015) on the revision of the RTS and Implementing Technical Standards (ITS) in relation to EMIR. The ESMA RTS/ITS deal with the obligation of counterparties and CCPs to report to trade repositories (TRs). Since the entry into force of the RTS and ITS, ESMA has worked on ensuring their consistent application: and practical implementation of EMIR reporting showed some shortcomings and highlighted particular instances for improvements so that the EMIR reports better fulfil their objectives. ESMA revised standards propose to clarify the interpretation of the data fields needed for the reporting to TRs and the most appropriate way of populating them.

On 17 November 2014, IOSCO published the Consultation Report (for comment by 15 February 2015), *Post-Trade Transparency in the Credit Default Swaps Market*, which seeks to analyse the potential impact of mandatory post-trade transparency in the CDS market. IOSCO reached a preliminary conclusion that the data does not suggest that the introduction of mandatory post-trade transparency in certain CDS markets in the US had a substantial effect on market risk exposure or market activity for those CDS products. IOSCO preliminarily believes that greater post-trade transparency in the CDS market would be valuable to market participants and other market observers, and encourages each of its members to take steps to enhance post-trade transparency in the CDS market in its jurisdiction.

On 4 December 2014, ESMA, the Australian Securities and Investments Commission and the Reserve Bank of Australia announced their conclusion of a Memorandum of Understanding (MOU), effective as of 27 November 2014. This MOU establishes cooperation arrangements between the signatory authorities regarding CCPs that are established in Australia and have applied for recognition under EMIR. ESMA is working closely with other third-country authorities on similar cooperation arrangements.

On 11 December 2014, the European Commission adopted an Implementing Act that will extend the transitional period for capital requirements for EU banking groups' exposures to CCPs under the CRR. The CRR introduced a capital requirement for the exposures of EU banks and their subsidiaries to a CCP, with the size of the requirement depending on whether a CCP is labelled as "qualifying" or not (charges for exposures to non-qualifying CCPs are higher). In order for a CCP to be considered a qualifying CCP, it has to be either authorised (for those established in the EU) or recognised (for those established outside the EU) in accordance with the rules laid down in EMIR. Since the process of authorisation and recognition takes time, the CRR provides a transitional period during which these higher requirements will not be applied, to ensure a level playing field for EU CCPs. This transitional period was set to expire on 15 December 2014, but since the authorisation and recognition processes for existing CCPs serving EU markets will not be fully completed by that

> Further reflection will be necessary on the taxation principles to be applied for the FTT.

date, the Commission has adopted an Implementing Act that will now extend the transitional phase to 15 June 2015.

ESMA is maintaining a list of CCPs that have been authorised to offer services and activities in the EU, in accordance with EMIR. ESMA updated the list to include: OMIClear - C.C., S.A., on 31 October 2014; and Holland Clearing House B.V., on 12 December. There are now 15 CCPs authorised under EMIR (EMIR requires EU-based CCPs to be registered and non-EU CCPs to be recognised in the EU). ESMA is also maintaining the related public register of cleared derivative classes. ESMA is also publishing Questions & Answers regarding the implementation of EMIR, an updated version of which was made available on 24 October 2014.

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Financial Transaction Tax

Dated October 2014, an EY Report (i) reviews the collection mechanisms of certain existing FTTs; (ii) considers the challenges which EU FTT poses with regard to collection models and data requirements; (iii) explores how and whether these challenges could be overcome; (iv) assesses the pros and cons of a range of theoretical collection models; and (iv) provides a view on what an overall collection approach might look like if an EU FTT is adopted as proposed by the European Commission in early 2013. The collection approaches considered have to deal with significant collection and enforcement challenges under the proposed EU FTT Directive which can be addressed to various degrees. There is no one clear path to follow, but considering decentralised and centralised approaches to collection, EY believes that the latter are likely to be the preferred types at least for some asset classes, provided the challenges identified can be adequately overcome.

The press release following from the ECOFIN Council meeting, held in Brussels on 7 November 2014, provides a short official update regarding the ongoing work on FTT. The Council discussed the proposal aimed at introducing FTT in 11 Member States through the "enhanced cooperation" procedure, with the Presidency reporting on work carried out so far and the Council discussing outstanding issues. The Presidency indicated that work would be intensified to enable an agreement in the near future, with the aim of implementing a first phase of the FTT from 1 January 2016. It noted that the participating Member States agree that transactions in shares of companies listed on stock exchanges should be subject to the FTT. However, further work is required on derivatives to be subject to the FTT.

In the press release following from the ECOFIN Council meeting, held in Brussels on 9 December 2014, it is reported that the Council discussed developments concerning the proposal aimed at introducing a Financial Transaction Tax in 11 Member States through "enhanced cooperation". The Presidency reported on progress made during its term, setting out its views on the possible further handling of the dossier by the next presidency (Latvia in 1H 2015; and to be followed by Luxembourg in 2H 2015). The Presidency noted:

- Progress has been made on the scope of the FTT for transactions in shares, whilst the taxation of transactions in derivatives remains a key open question. As a result of work on identifying the categories of derivatives to be subject to the FTT during a first phase, a better understanding of some critical issues has been achieved.

- Further reflection will be necessary on the taxation principles to be applied for the FTT (residence principle, issuance principle).
- Further work is needed on the mechanism to be used for collecting the FTT.

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Financial benchmarks

On 20 October 2014, ICE Benchmark Administration (IBA) published a Position Paper on the Evolution of ICE LIBOR. Having taken over the administration of LIBOR in February 2014, IBA has established rigorous oversight and surveillance mechanisms for LIBOR and the Position Paper sets out IBA's key findings so far on the administration of LIBOR; a summary of recent improvements to the LIBOR administration process; and proposals for consultation (for comment by 19 December 2014) on further enhancements to the LIBOR submission process.

In the new European Parliament, the *rapporteur* in relation to the European Commission's 18 September 2013 proposal, for an EU Regulation on indices used as benchmarks in financial instruments and financial contracts, is Cora van Nieuwenhuizen (ALDE, Netherlands). On 11 November 2014, the European Parliament's Economic and Monetary Affairs Committee (ECON), held a public hearing on the reform of global benchmarks legislation. At this event the *rapporteur*, shadow *rapporteurs* and MEPs, put questions to public and private stakeholders (IOSCO, ECB, benchmark administrators), in order to gather input for drafting the ECON report. A draft ECON Report was subsequently published on 11 December 2014. Matters particularly considered by ECON include scope; determination of critical benchmarks; proportionality and transparency; and third country provisions. Amendments will be proposed during January 2015 and then considered during February 2015, ahead of an ECON vote on adoption of the final report in early March.

On 18 December 2014, a Presidency Progress Report was published in respect of work on the Commission's proposal for an EU Regulation on indices used as benchmarks in financial instruments and financial contracts; in respect of which the most recent Presidency compromise text was published on 8 December 2014. The Progress Report indicates that, after the last meeting of the Working Party on 12 December 2014, the Italian Presidency considers that a number of the issues which have been debated are recognised as settled by the vast majority of Member States. Nevertheless, it appears that further debate is necessary before seeking guidance at political level as to the options to be followed regarding the following issues: (a) critical benchmarks – definition and implications; and (b) Colleges of Supervisors – ESMA binding mediation. The incoming Latvian Presidency will carry the work forward.

On 22 December 2014, in response to an early recommendation from the *Fair and Effective Markets Review* (as discussed in issue 35 of ICMA Quarterly Report), the UK Government announced that the legislation covering LIBOR will be extended to the following seven major benchmarks: (i) Sterling Overnight Index Average (SONIA); (ii) Repurchase Overnight Index Average (RONIA); (iii) ISDAFIX; (iv) WM/Reuters (WMR) London 4 pm Closing Spot Rate; (v) London Gold Fixing (soon to be replaced by the LBMA Gold Price); (vi) LBMA Silver Price; and (vii) ICE Brent Index. The UK Financial Conduct Authority (FCA) announced that it is to regulate these seven additional benchmarks in the fixed income, commodity and currency markets from 1 April 2015; extending its initial regulation of LIBOR, as introduced by HM Treasury in 2013. The FCA's associated Consultation Paper, CP14/32 (for comment by 30 January 2015), seeks views on how its generic approach to regulating benchmarks could be applied beyond LIBOR to other benchmark administrators (and benchmark submitters as appropriate).

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It appears that further debate is necessary before seeking guidance at political level as to the options to be followed.

Short-Term Markets

by David Hiscock

European repo market

On 7 October 2014, the BCBS issued FAQs on the Basel III leverage ratio. This document sets out the first set of FAQs that relate to the Basel III leverage ratio framework, which was itself published by the BCBS in January 2014. The FAQs are grouped according to different relevant areas, which are in the order: (i) criteria for the recognition of cash variation margin associated with derivative exposures; (ii) centrally cleared client derivative exposures; (iii) netting of SFTs; (iv) the treatment of netting of SFTs and derivatives under a cross-product netting agreement; and (v) the exposure measure under the additional treatment for credit derivatives. Whilst this new BCBS publication does help on an ICMA ERC question regarding netting (see at Q3: Netting of SFTs), it fails to say anything about questions the ICMA ERC has raised about forward-starting SFTs and open or callable SFTs.

On 10 October 2014, as part of a package of measures, the European Commission released details of a Delegated Act which establishes a common definition of the leverage ratio for EU banks, which will be the basis for publishing the leverage ratio from the beginning of 2015 onwards. The Delegated Act does not introduce a binding leverage ratio, as a decision on whether or not to introduce a binding leverage ratio will only be made in 2016. The Delegated Act amending the methodology for calculating banks' leverage ratio will enhance the uniform understanding of the components of the leverage ratio; and aims to align the leverage ratio as currently included in the Capital Requirements Regulation (CRR) with the internationally agreed leverage ratio so that there is an international level playing field and true global comparability. On 16 December 2014, EBA launched a consequent consultation (for comment by 27 January 2015) on Implementing Technical Standards amending the Commission's Implementing Regulation on supervisory reporting.

Of particular note, the main changes compared with the current CRR definition of the leverage ratio include a clarification that for SFTs collateral received cannot be used to reduce the exposure value of the said SFTs, but that cash receivables and payables of SFTs with the same counterparty can be netted, subject to strict criteria. Specifically, Article 429b (at page 14 of the Delegated Act) provides a specific treatment of the exposure value of cash receivables and cash payables of SFTs (both on- and off-balance sheet), including:

- the criteria for netting cash receivables and payables for repo and reverse repo transactions with the same counterparty;
- the "add-on" measure for SFTs with a counterparty; and
- the treatment of the "add-on" measure when a bank is acting as an agent.

This Commission documentation also clarifies the treatment of open repos, which are repos that can be terminated at any day subject to an agreed recall notice period (often 2 to 3 days) and are economically comparable to US, rolled-over, overnight repos. (It is noted that approximately 13% of repos in the EU are "open"). The Commission supports the view that European open repos should be considered equivalent to having an explicit maturity equal to the recall notice period and the "same explicit final settlement date" should be deemed to be met. This would mean that such transactions are eligible for the netting of cash receivables and payables of repurchase transactions and reverse repurchase transactions with the same counterparty.

On 14 October 2014, the FSB published its

Regulatory Framework for haircuts on non-centrally cleared SFTs. This Framework is a key part of the FSB's policy recommendations to address shadow banking risks in relation to SFTs and takes into account public responses received on the consultative proposals issued on 29 August 2013 as well as the results of a two-stage QIS. The Framework aims to limit the build-up of excessive leverage outside the banking system and to help reduce the procyclicality of that leverage. It consists of:

(i) qualitative standards for methodologies used by market participants that provide securities financing to calculate haircuts on the collateral received; and

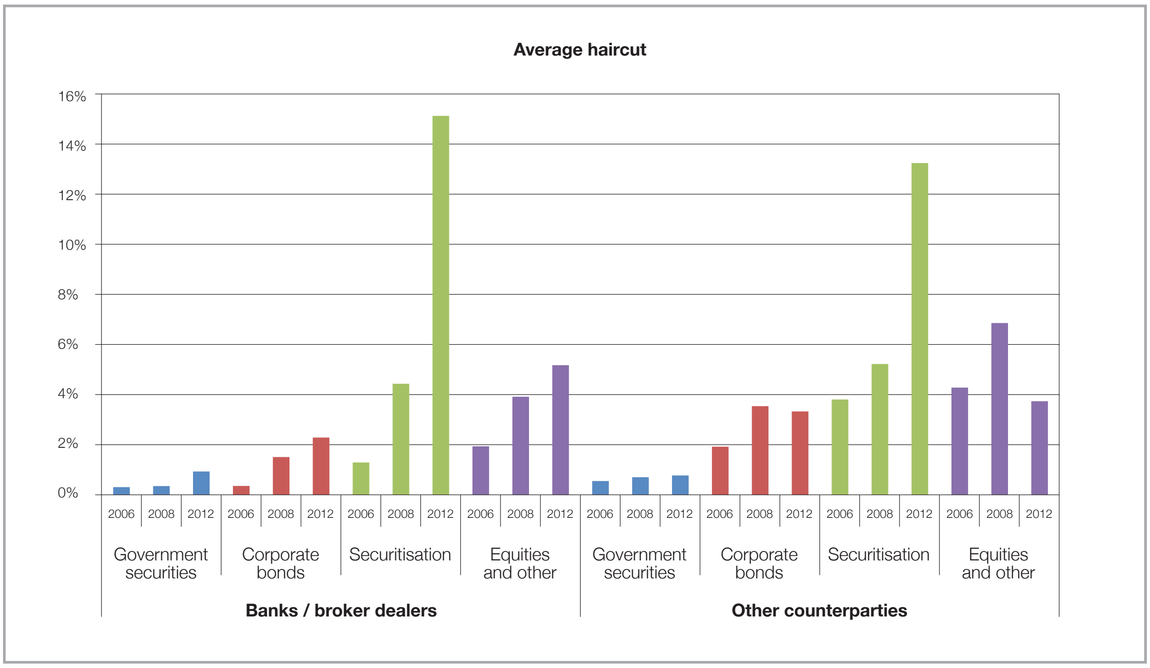
(ii) numerical haircut floors that will apply to non-centrally cleared SFTs in which financing against collateral other than government securities is provided to entities other than banks and broker-dealers (referred to for simplicity as "non-banks").

In revising the Framework, the FSB has decided to raise the levels of numerical haircut floors based on the QIS results, existing market and central bank haircuts, and data on historical price volatility of different asset classes.

The FSB has also decided to propose applying the numerical haircut floors to non-bank to non-bank transactions so as to ensure shadow banking activities are fully covered, to reduce the risk of regulatory arbitrage, and to maintain a level-playing field. A consultative proposal in this regard, for comment by 15 December 2014, was set out in Annex 4 of the Framework document. The FSB will complete its work on the application of numerical haircut floors to non-bank to non-bank transactions and set out details of how it will monitor implementation by the second quarter of 2015.

Annex 1 of the Framework document lays out the implementation dates for the FSB's policy recommendations for shadow banking risks in securities lending and repos (Recommendations 1-11 were finalised and published in the FSB's August 2013 Report, whilst Recommendations 12-16 are those finalised in this new Framework document).

In addition to the Framework document, the FSB also published a background document entitled *Procyclicality of Haircuts: Evidence from the QIS1*. This clearly illustrates (as can be seen in the following extracted chart) that the biggest increases in average haircut levels during the financial crisis related to that sub-set of repos where securitisation assets were being used as the collateral. As can be seen from the semi-annual *ICMA European Repo Market Survey Reports*, in the European repo market there was little use of such collateral in repos, with the majority of repos being based upon government securities – which showed quite minor changes in average haircuts.



On 31 October 2014, the BCBS issued the final endorsed standard for the Net Stable Funding Ratio (NSFR), which will become a minimum standard by 1 January 2018. The final NSFR retains the structure of the January 2014 consultative proposal, but the key changes introduced in the final published standard include the required stable funding for short-term exposures to banks and other financial institutions; to some extent responsive to the key concern, regarding asymmetry of treatment, expressed in the ICMA ERC's earlier consultation response. Specific language in relation to encumbered assets is included in paragraph 31; and then paragraphs 32 and 33 specifically concern SFTs – with the latter helpfully confirming that SFTs may be measured net, following the same netting approach as detailed in the BCBS leverage ratio calculation. In addition, the final standard recognises that, under strict conditions, certain asset and liability items are interdependent and can therefore be viewed as neutral in terms of the NSFR. Work to more fully understand the detailed meaning and the implications for repos of this finalised text is ongoing.

On 3 November 2014, the European Money Markets Institute (EMMI) and the ICMA ERC announced the discontinuation of the Eurepo index, with the last publication date for the index being 31 December 2014. The decision to discontinue responded to concerns from the contributing banks and came only after consultation with major stakeholders, who confirmed that the use of the Eurepo index in financial instruments and contracts was very limited – allowing that discontinuation could take place without a major impact on the market. EMMI is currently working, with technical support from the ICMA ERC, on the development of a new transactions-based repo index, which it expects to be able to present to the main stakeholders in 2015.

On 13 November 2014, the FSB published for public consultation (for comment by 12 February 2015) its Report, *Standards and Processes for Global Securities Financing Data Collection and Aggregation*. The proposed standards and processes are based on the policy recommendations in the FSB Report, *Policy Framework for Addressing Shadow Banking Risks in Securities Lending and Repos,* that was published in August 2013. The FSB recommended national/regional authorities to collect appropriate data on securities financing markets to detect financial stability risks and develop policy responses, and to provide the total national/regional data for these markets to the FSB for aggregation in order to assess global trends in financial stability.

The proposed standards and processes in the Consultative Document define 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. The document also describes data architecture issues related to the data collection and transmission from the reporting entity to the national/regional authority and then from the national/regional to the global level. To ensure the consistency among national/regional data collections, the quality of global aggregates and the efficiency of the reporting framework, six recommendations to national/regional authorities are proposed. Furthermore, the potential uses of the aggregated data are discussed and the next steps for the completion of the initiative are outlined. The FSB will complete its work on developing standards and processes by the end of 2015, based on the public consultation findings and further discussion with market participants. By then, the FSB will also develop an implementation timeline for the global data collection and aggregation. After that, the publication of relevant aggregates on the global securities financing markets to improve market transparency will be considered.

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ECP market

MMFs: A Presidency compromise text on the proposal for an EU MMF Regulation (MMFR), dated 17 December 2014, was published, reflecting ongoing evolution in the European Council's deliberation of the European Commission's original proposal, of 4 September 2013. This particular text includes significantly improved language in respect of the provision allowing MMFs to invest in ABCP (although it is important to note that this is an ongoing debate and the Council's text may well evolve further). Rather than the very limited permission to invest in ABCP where the underlying assets are "exclusively composed of short-term debt instruments that have been issued by corporates in the course of their business activity, such as trade receivables", the revised language (Recital 23 and Article 10) contemplates (in principle, much more flexibly) allowing investment in ABCP "provided that their respective instruments are liquid and that the underlying debt is of high credit quality" (as defined in a Delegated Act, yet to be developed). Paragraph 8 of the associated Presidency progress report indicates that broad consensus was reached on this new version of Article 10. ICMA will continue

> Key changes include the required stable funding for short-term exposures to banks and other financial institutions.

to closely follow the development of the MMFR, both in the European Council and in the European Parliament, which most recently debated a draft report on the file on 1 December 2014.

In the new European Parliament, the *rapporteur* in relation to the European Commission's proposal, for EU Regulation of MMFs, is Neena Gill (S&D, UK). In order to gather input for drafting the ECON report, the *rapporteur* has had an intensive dialogue with a cross-section of stakeholders and organised a roundtable on 4 November, which was well attended by MEPs, regulators, investors and the fund industry. A draft ECON report was subsequently published on 26 November 2014. Whilst recognising the importance of the Commission's proposal, the *rapporteur* still notes significant scope for improvement regarding the tackling of liquidity and maturity transformation and in making MMFs more stable, without putting into danger their important short term financing role for the real economy. In the *rapporteur's* opinion, both CNAV and VNAV funds should have the same regulatory treatment, with the exception of the capital buffer for VNAV funds.

ABCP: On 30 September 2014, the European Commission adopted a Regulatory Technical Standard (RTS), to implement provisions of the Regulation on CRAs. This RTS specifies the content, frequency and presentation of the information that the issuer, the originator and the sponsor of a structured finance instrument (including ABCP) established in the EU will jointly need to disclose on a website that will be set up by ESMA. It is intended that this will improve investors' ability to make an informed assessment of the risks related to such complex financial instruments; and this disclosure obligation aims in particular at reducing investors' dependence and reliance on credit ratings and reinforcing competition between CRAs. The text of this RTS is supplemented by applicable annexes.

On 30 May 2014, the Bank of England and the European Central Bank (ECB) published a Discussion Paper that explained the case for a better functioning securitisation market in the EU and outlined a range of options that authorities could support to revitalise the market. A broad range of market participants and stakeholders responded to the Discussion Paper. These responses have been synthesised into a short note published on 13 October 2014 (full responses have also been published where permitted). The synthesis includes a number of mentions of ABCP, as respondents have, consistent with the stance also publicly discussed by ICMA (see in this section of Issue 35 of ICMA Quarterly Report), argued that there ought also to be a review of rules which may unduly impede the use of this valuable financing option.

On 14 October 2014, the EBA launched a Public Consultation (for comment by 14 January 2015) on its Discussion Paper on simple, standard and transparent securitisations. This work is the initial response of EBA to the European Commission's call for advice on identifying a prudentially sound securitisation market and its regulatory treatment, aimed at widening long-term funding opportunities for the European economy. Disappointingly, although not surprisingly given the focus on long-term funding opportunities, it is clearly stated that the criteria proposed in this Discussion Paper refer to term securitisations only; and therefore (whilst the CRR definition of securitisation has a wider scope that encompasses ABCP) ABCP are excluded from the scope of these criteria.

On 11 December 2014, the BCBS and IOSCO released a Consultative Document (for comment by 13 February 2015) on *Criteria for Identifying Simple, Transparent and Comparable Securitisations*. The purpose of these criteria is to identify – and to assist the financial industry's development of – simple, transparent and comparable (STC) securitisations structures, as well as to help parties involved in a securitisation transaction evaluate the risks of a particular securitisation as part of their due diligence on securitisations. Considering further areas for review the consultation raises the topic of short-term securitisation (eg ABCP) markets, which (as the

“Short-term securitisation markets are a key part of securitisation markets and provide an important source of funding to the real economy.

BCBS and IOSCO work thus far has focused on term securitisations) are out of the scope of the current STC criteria. It is noted, however, that short-term securitisation markets are a key part of securitisation markets and provide an important source of funding to the real economy; and reported that, following declines prompted by the financial crisis, the remaining ABCP structures that now make up the vast majority of the ABCP market are multi-seller conduits that invest in the traditional asset classes, such as auto, trade and credit card receivables, equipment leases and consumer loans. The BCBS and IOSCO are requesting comment on these markets and criteria for these markets.

On 11 December 2014, the BCBS issued *Revisions to the Securitisation Framework*, which will come into effect in January 2018. These revisions aim to address a number of shortcomings in the Basel II securitisation framework and to strengthen the capital standards for securitisation exposures. The most significant revisions with respect to the Basel II securitisation framework relate to changes in (i) the hierarchy of approaches – reducing reliance on external ratings; and simplifying and limiting the number of approaches; (ii) the risk drivers used in each approach – with additional risk drivers, notably an explicit adjustment to take account of the maturity of a securitisation's tranche, being introduced; and (iii) the amount of regulatory capital banks must hold for exposures to securitisations (ie the framework's calibration) – including amendments that smooth the impact of maturity on capital charges, along with a number of technical enhancements and clarifications. These final requirements have incorporated feedback from two rounds of consultation (in December 2012 and December 2013) as well as two quantitative impact studies that helped inform the policy deliberations. In 2015, the BCBS will consider how to incorporate STC securitisation criteria (as being consulted on by the BCBS and IOSCO) into the securitisation capital framework.

On 22 December 2014, the EBA published an opinion on how to improve the well-functioning of the securitisation market. The opinion is based on a detailed report, which assesses compliance by Competent Authorities with securitisation risk retention, due diligence and disclosure requirements. While expressing support for the provisions laid down in the CRR, the EBA is making a series of recommendations to ensure increased transparency, legal certainty of compliance with the retention rules as well as prevention of any potential regulatory arbitrage. The report also assesses the application and effectiveness of such requirements in light of the international developments. Neither the report nor the opinion makes any specific references to short-term securitisations.

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CSDR Level 2: repo market

On 18 December, ESMA published the Consultation Package for the Regulatory Technical Standards (at Level 2) of the European Central Securities Depositories Regulation (CSDR). A key consideration from the perspective of the short-term markets will be the potential impact of settlement discipline (mandatory buy-ins and cash penalties for fails) on securities financing transactions and European repo market liquidity.

Under the Level 1 text, the start-leg of securities financing transactions (SFTs) will be subject to mandatory buy-ins in the event of a fail, unless the timeframes of the transaction and the related buy-in would render the buy-in ineffective. A critical question in the Level 2 consultation relates to the type of operations and their timeframe that would render a buy-in ineffective.

It is the firm opinion of the ICMA ERC that a buy-in against a failing start-leg of any SFT is not the appropriate remedy, regardless of the timeframe of the transaction, and in previous communications with the European Commission and ESMA it has been strongly suggested that all SFTs with a maturity of less than 12 months be exempt from mandatory buy-ins to avoid fragmenting liquidity in the European repo and securities lending markets. If only very short-dated SFTs are exempt from mandatory buy-ins, which the Level 1 text seems to imply, then this is likely to have the detrimental impact of bifurcating the repo and lending markets into exempt (very short-term) and non-exempt liquidity pools, with very different demand and supply skews for both. There will be increased demand for non-exempt, term SFTs, in order to mitigate increased buy-in risks for borrowers, while supply will shift to very short-term, exempt SFTs, to avoid buy-in risk to lenders.

This view will be reaffirmed in the expected ICMA response to the consultation, and members who are involved in the European repo or securities lending markets are encouraged to engage in the response process to help protect the effective functioning and liquidity of these markets.

Further details of the CSDR Consultation Papers and process can be found in the Secondary Market section of this Quarterly Report.

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A buy-in against a failing start-leg of any SFT is not the appropriate remedy, regardless of the timeframe of the transaction.

T+2 and repo platforms

The Central Securities Depositories Regulation (CSDR) provides that for transactions in transferable securities, money-market instruments, units in collective investment undertakings and emission allowances, settling on EEA CSDs, and transacted on trading venues (as defined by MiFID), the intended settlement date shall be no later than on the second business day after the trading takes place (ie T+2). The exception is where transactions are negotiated privately and subsequently executed on a trading venue. T+2 was broadly implemented by the market in October 2014, pre-empting its legal enforcement from January 2015.

What had not been anticipated was that the definition of transferable securities would include securities financing transactions. A significant number of interbank repo transactions are executed on electronic trading platforms (around 33% of all repo transactions according to the most recent ICMA European Repo Market Survey). Given that SFTs, by their very nature as a funding instrument, have no standardised settlement date, it is quite normal, and indeed important, to be able to execute SFTs which have start-dates beyond the conventional securities settlement convention. This allows users of the SFT market to manage better future funding requirements, and which is becoming ever more important as repo market liquidity diminishes around regulatory reporting dates.

However, it would seem that CSDR will inadvertently restrict the ability of repo market users to execute repo transactions with start-dates beyond T+2 on in-scope electronic platforms (although these trades can still be executed in the OTC market). Given the regulatory push for greater transparency and more electronification of the European securities markets, this is clearly an unintended and counterproductive consequence of the T+2 Regulation. It also raises concern about the inflexibility of the regulatory process in Europe as a whole, particularly where Regulations result in unanticipated and unintended adverse outcomes.

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Primary Markets

by Ruari Ewing and Charlotte Bellamy

Prospectus Directive

ESMA Consultation Paper on prospectus-related aspects under Omnibus II Directive

On 19 December 2014, ICMA responded to the ESMA Consultation Paper on proposed RTS on incorporation by reference, approval of the prospectus, publication of the prospectus and advertisements. ESMA was mandated to prepare these RTS under the Omnibus II Directive, with the purpose of ensuring "consistent harmonisation" in these areas. However, there is in fact very little market uncertainty in the areas that the proposed RTS cover and practice in those areas is already relatively consistent. It is therefore not clear that RTS in these areas is strictly required. Unnecessary legislation, even if it is straightforward and workable in practice (which in some cases the proposed RTS is not), should be avoided as it represents an unnecessary cost to market participants with little or no benefit to market users. It is also inconsistent with the objective of the PD Amending Directive to reduce administrative burdens on companies. For this reason, ESMA's decision not to draw up RTS in one area (regarding the conditions in accordance with which time limits may be adjusted) is welcome, and ESMA could possibly have taken the same approach in other areas.

Another high-level point is that many aspects of the RTS replace or change the Prospectus Regulation currently in force. It is worth considering whether RTS that replace or contradict provisions in a Level 2 measure currently in force (the Prospectus Regulation 809/2004) go beyond the mandate of ensuring "consistent harmonisation", and even whether such RTS can be enacted in light of the principles of the Meroni doctrine (which limits the extent to which EU institutions may delegate their tasks to regulatory agencies).

The ICMA response to the consultation makes a number of detailed points in relation to the proposed RTS. An area of particular focus is the RTS on incorporation by reference, which has been based on a very narrow interpretation of the Level 1 regime and is likely to have significant cost and practical implications for issuers who will no longer be able to incorporate certain information by reference into their prospectuses. This has resulted in proposed RTS that cut across some fundamental principles of the Level 1 regime, might result in less information being made available to investors and will have significant cost implications for certain issuers who are no longer able to incorporate information by reference into their prospectuses (such as financial statements of issuers who only issue debt securities with a denomination of at least €100,000 and information filed pursuant to third country or domestic legislation). ICMA suggests in its response a purposive interpretation of the relevant PD provisions, which would allow the RTS to be consistent with Level 1 principles.

There are also concerns that the proposed RTS: (i) require unnecessary procedural steps that issuers would need to take in relation to the prospectus approval process; (ii) suggest that the issuer maintain a hyperlink to its prospectus for 12 months, even if the prospectus is not up-to-date; (iii)appear to require that final terms be published in the same way as the base prospectus (which will be impractical or illogical in

There is in fact very little market uncertainty in the areas that the proposed RTS cover.

some cases); and (iv) misplace emphasis on advertisements by including a broad obligation on issuers to keep their advertisements updated at all times, even where they were correct at the date of publication. These points, and others, are addressed in the ICMA response to the Consultation Paper.

More generally, some serious practical concerns arise from the proposed RTS which strengthen the argument for a centralised, pan-EU filing system (a "European EDGAR") for all securities subject to the PD, TD and MAR, which would alleviate many of the issues that arise (including under this consultation) from the currently fragmented approach.

UKLA Technical Note on non-equity prospectuses aimed at retail investors

Separately, the UK FCA has published a Technical Note on non-equity prospectuses aimed at retail investors, which sets out the UKLA's requirements for prospectuses to be "easily analysable and comprehensible" for retail investors. The UKLA has largely taken on board the comments made by ICMA in its response to the UKLA's Guidance Consultation 13/6 (as reported in a previous edition of this Quarterly Report) in relation to the application of this Technical Note, which is welcome. As such, the FCA's final position is to distinguish between (i) prospectuses for securities with low denominations offered to retail investors, which will be required to comply with the provisions in the Technical Note and (ii) prospectuses for securities with low denominations offered purely at qualified investors, which may continue to be drafted in line with existing practice unless the securities are to be admitted to trading on a retail-specific regulated market (such as the London Stock Exchange's ORB). This principled approach means that the administrative and cost burden of amending the prospectus to meet the new requirements will only need to be incurred by issuers who are actually offering securities to retail investors, which is helpful.

Under the provisions of the Technical Note, if an issuer wishes to offer its securities to retail investors, its prospectus will: (a) need to use language that is appropriate for retail investors (for example, by moderating the use of defined terms, technical language and market jargon); (b) include "sign-posting" or other tools to aid navigation of the prospectus; (c) describe an investor's return without using complicated technical jargon or complex mathematical formulae (and perhaps use examples to explain complex pay-outs); (d) perhaps need to include FAQs; and (e) in the case of non-plain vanilla unsecured and unsubordinated bonds, present information relating to the bondholder protection and rights in a default scenario using a clear narrative or a diagram with accompanying text. People drafting prospectuses will of course need to balance these requirements with the need to ensure accuracy and precision. In this regard, it is particularly helpful that the new requirements do not apply to the terms and conditions section of the prospectus.

The new requirements will apply to all prospectuses submitted for approval by the UKLA from the date the Technical Note was published (27 November 2014). Issuers with valid base prospectuses will continue to be able to issue low denomination notes without needing to update their base prospectus specifically for this Technical Note, but they will need to amend their prospectus to comply with the Technical Note when they come to update their programme, if they wish to continue to offer securities to retail investors or list on a retail-specific market such as ORB.

ESMA Q&A on prospectuses

An updated version of the ESMA Q&A on prospectuses was published on 22 October 2014. The notable points from an institutional, vanilla debt capital markets perspective appear to be: (i) new Q&A 93, which clarifies what should be included under the summary requirements for selected key financial information for Annexes IX and XI (which themselves do not require disclosure of selected financial information); and (ii) perhaps more notably, new Q&A 94, which states that "the assumption is" that not all the risks included in the risk factor section of the prospectus should be included in the summary, but only those considered by the issuer as "key" risks. There is also a confirmation that, in certain circumstances, the title of the risk factor may satisfy the summary requirements.

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UK FCA restriction on the retail distribution of CoCos

As reported in the last edition of this Quarterly Report, the UK FCA announced in August 2014 a temporary marketing restriction (TMR) on the promotion of contingent convertible instruments (CoCos) to certain retail investors in the EEA from 1 October 2014. Since the TMR came in to force, market participants on both the buy and sell side (and in the primary market and secondary market space) have been getting to grips with the "reasonable steps" they will need to take to comply with the TMR. Market practice now appears to be bedding down, with FCA-authorised firms putting in place a number of measures to ensure compliance, notably: (i) undertaking due diligence on their relevant counterparties to ensure they understand and will comply with the TMR; (ii) including specific wording related to the TMR in prospectuses and other documentation for transactions; (iii) sending communications relating to the TMR to investors in a primary issuance and counterparties in the secondary market space. New issues also continue to be issued in high minimum denominations.

The FCA published a Consultation Paper in November 2014, consulting on permanent rules to replace the TMR when it expires on 1 October 2015. The proposed permanent rules (PMR) relate to CoCos, CoCo funds and mutual society shares. ICMA intends to respond to those parts of the Consultation Paper that relate to CoCos and CoCo funds in time for the deadline at the end of January 2015. The FCA's approach to the PMR for CoCos and CoCo funds is, unsurprisingly, very similar to the TMR.

There are some useful clarifications in the Consultation Paper relating to:

- the scope of products that are caught by the definition of "CoCo" in the PMR and TMR, in respect of which the FCA has clarified that the definition is only intended to catch securities where the contractual terms provide for writing down or conversion of the principal upon the occurrence of a "going concern" trigger event set with reference to the issuer's common equity Tier 1 capital ratio; and
- the FCA's expectations of issuers or underwriters working with non-UK distributors selling securities to consumers elsewhere in the EEA. In this respect, the FCA states that "a measure of flexibility" is envisaged under the TMR. Under the proposed PMR, additional exemptions for individuals in an EEA State other than the UK who meet requirements which are "broadly equivalent" to the UK-based exemptions have been included.

While these clarifications are helpful, the drafting of the PMR itself could be improved in order to better address these points, and ICMA intends to suggest some technical drafting improvements in its response to the consultation.

There are, however, a few concerning aspects to the Consultation Paper:

- There is an unhelpful blending of two distinct points in the Consultation Paper and the PMR. First, there is the actual marketing restriction and the various exemptions. Second, there appear to be statements relating to suitability of CoCos for retail investors, stating that CoCos are only suitable for a specific sub-set of investors within the sophisticated investor exemptions. This second aspect relates to financial intermediaries' suitability assessments under MiFID, rather than the restriction itself. However, the two aspects have been mixed together in the Consultation Paper, with the implication that the exemptions are now narrower than they would appear on their face.
- Another unhelpful aspect of the PMR is the detailed rules on record keeping, which appear to have been drafted with smaller financial intermediaries' businesses in mind, and do not reflect the realities of large FCA-authorised firms' businesses.
- There is some uncertainty as to exactly what is restricted in relation to "CoCo funds" (which, broadly speaking, is defined as a fund that invests wholly or predominantly in CoCos). On the face of the PMR, it would appear that promotion of securities *issued* by a CoCo fund is restricted. However, there is also an implication that promotion of securities to a CoCo fund *as an investor* is restricted. This latter approach is problematic, because firms promoting securities will not know whether the fund to which they are promoting falls within the definition of "CoCo fund" or not.

ICMA currently intends to include all of these points in its response, as well as some other points of detail relating to the drafting of the Consultation Paper and the PMR.

By way of final, high-level observation, it is worth noting that the FCA is not the only regulator focusing on the retail distribution of regulatory capital instruments. ESMA, the German BaFin, the Danish FSA and the Hong Kong SFC (and possibly others) have also issued statements on this topic. If other regulators were to impose product intervention rules in the way the FCA has done, then market participants could face conflicting or inconsistent rules in different jurisdictions, which would be very unhelpful in cross-border offerings of affected securities. It is hoped that this will be avoided.

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Market Abuse Regulation

Summary

ICMA's October response to ESMA's Level 2 consultation sought to clarify:

- the proposed stabilisation safe harbour (notably in relation to which regulators should be reported to, who is responsible for discharging the safe harbour procedural requirements and the conditions applicable to overallotments); and
- the proposed soundings safe harbour (notably in terms of applicability to inside information only and inappropriateness of purported bilateral "cleansing" requirements).

On 15 October, ICMA submitted its response to ESMA's consultation on Level 2 measures under the new MAR that will replace the EU's existing MAD regime from 3 July 2016. (ESMA subsequently published over 60 non-confidential responses.) The ICMA response focused on stabilisation and market soundings as the two aspects of specific relevance to just the new issue process. Whilst the consultation proposals were much improved compared to some of the options floated in the preceding Discussion Paper (as to which see further the Second Quarter 2014 edition of this Quarterly Report), some specific concerns and general inconsistencies remained. An overriding concern remains to ensure that stabilisation and sounding, which are both key tools for orderly and stable markets, remain useable in practice – particularly beyond the current long-running bull market in bonds.

In relation to *stabilisation*, the main focus was around clarifying *which regulators should be reported to* – the regulator of any MAR-scope trading venue on which stabilisation is actually conducted (with OTC stabilisation reporting presumably being direct to ESMA) or the regulator(s) of any MAR-scope trading venue(s) to which the securities concerned are otherwise linked (in terms of trading, admission or request for admission). A related aspect was to highlight the *implications of multiple reporting*, potentially to all EU regulators to the extent any uncertainties persist (notably in terms of lead managers undertaking stabilisation being unaware of what MTFs and particularly OTFs securities are traded on), and help ease that process, should it arise. In terms of *who is responsible for discharging* the safe harbour procedural requirements, the response also proposed *extending the role of the "stabilisation coordinator"* from the pre-stabilisation notice (as suggested in the consultation) to the post-stabilisation notice and regulatory reporting. In relation to *overallotment* (ancillary stabilisation), the response sought to limit public disclosure to just the existence, size and usage conditions of any overallotment facility and not to confusingly reference disclosure for distinct stabilisation purchases. *Otherwise*, the response restated prior (i) suggestions that pre-stabilisation notice timing be pushed back to pricing and (ii) concerns around the 5% overallotment cap. It also noted as both unnecessary and burdensome the proposed (i) requiring of reams of MiFID II information to be included in regulatory reporting and (ii) restricting stabilisation purchases following any sales.

Stabilisation: the implications

It is worth recalling that, if primary investors see bond prices falling/yields increasing in the immediate after-market (usually the "grey" market between pricing and settlement of the new issue), such investors might not unreasonably conclude that they could have obtained higher yields had they waited to make their investment in secondary trading rather than participating in the primary offer. Who would then participate in issuers' primary offers? Because such a conclusion would compromise issuers' future ability to access the markets for their funding needs, lead managers need to be able to deploy effective tools to mitigate the risk of such price falls/yield increases. A key tool is stabilisation: lead managers buying back bonds in the after-market in order to try to support the price.

However lead managers face two challenges in this respect. First is ensuring their stabilisation is not considered abusive manipulation (notably under MAD). Second is substantial cost: holding the bonds bought back on inventory is expensive (particularly with the current tightening of bank capital requirements), but stabilisation trades are executed on the lead managers' own account and related costs are not billable to the issuer client concerned.

Lead managers have sought to mitigate their cost exposures by sharing them through the mechanism of the ICMA Agreement Among Managers (AAM). Interestingly, when recently elaborating AAM caps on such cost-sharing by lead managers that are not also actively running the transaction order book, it was felt that stabilisation profits are too small and rare to justify resourcing the elaboration of an equivalent cap on profit-sharing. What can really mitigate lead managers' cost exposure is overallotment: allocating more bonds in a new issue transaction than the issuer will actually deliver (effectively going "short"). This guarantees lead managers will not have to keep on inventory the bonds they buy back in the grey market since those trades will settle at the same time as the primary issue and the buy-backs will effectively cancel out the overallotment short.

Unfortunately the MAD stabilisation safe harbour caps overallotment at 5% of the issue size – significantly short of what is usually needed to effectively impact secondary markets prices and so achieve a stable after-market. Lead managers face a dilemma: they can stabilise effectively within the MAD safe harbour at substantial cost to themselves; they can stabilise effectively outside the MAD safe harbour (hoping their stabilisation will not be characterised by regulators as otherwise abusive) at limited cost to themselves; or they can choose not to stabilise. It should not be surprising therefore that investors periodically complain of transactions not being "supported" by lead managers in the after-market.

Being able to conduct effective soundings, by improving the transaction's pricing and general fit to market demand, substantially mitigates the risk of bond prices falling/yields increasing in the immediate after-market – but there are challenges here also.

In relation to *soundings*, the response mainly sought to re-emphasise the scope of the sounding procedures as applicable only to the extent of providing a safe harbour where there is disclosure of inside information (rather than as standalone obligations). Creating an additional forecasting obligation in relation to cleansing was also flagged as valueless, burdensome and inconsistent with the provisions of MAR itself. Distinctly the response emphasised regulation needs to recognise that much information is "treated as" inside in light of widening and nonsensical regulatory enforcement interpretations of the definition of inside information. The response also sought to minimise potentially confusing duplication between various legislative provisions and to highlight certain other inconsistencies (including the need to recognise established information barriers between "private" and "public" sides within sounding entities).

Soundings: the implications

It is worth noting that an inability to sound effectively may result in issuers and lead managers: (i) pricing too aggressively (with a likely sell-off in the immediate after-market and a need for stabilisation that or may not be forthcoming as noted above); (ii) pricing too cautiously and generously (with issuers suffering in relation to their cost of funding); (iii) increasing and widening the public pricing iterations (a longer and more strenuous process for all, including investors); (iv) abandoning funding transactions (with real-economy implications) or launching them outside the EEA.

Some may consider that too few investors will accept soundings if stricter obligations are not imposed by MAR on sounders, but the converse risk of stricter obligations is that there will be few soundings for investors to even consider refusing. The risk of refusal is diminishing to an extent as the larger and more sophisticated investors nominate segregated "gatekeepers" and, especially, their own dedicated "syndicate" desks that participate in new issues but do not manage underlying funds (and so do not suffer from trading restrictions).

ESMA is expected to submit by 3 July 2015 its draft Technical Standards to the European Commission for its review and then adoption by the 3 July 2016 deadline when MAR's Level 1 provisions are due to come into force.

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PRIIPs

Summary

Legislative progress continues on the forthcoming Packaged Retail and Insurance-Based Investment Products (PRIIPs) regime, with official publication of the PRIIPs Regulation and of a Discussion Paper on implementing measures – notably concerning potential options in terms of KID reviews and KID presentation of costs and of risk and reward.

On 17 November 2014, the three European Supervisory Authorities (ESAs), that include ESMA, published a Level 2 Discussion Paper (DP) on Key Information Documents (KIDs) for Packaged Retail and Insurance-based Investment Products (PRIIPs). Shortly thereafter, on 9 December 2014, the final PRIIPs Regulation (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. The ESAs also published on 18 November 2014 a call for expressions of interest (to be received by 15 December 2014) in joining a consultative Expert Group (for the PRIIPs Sub-Group of the ESAs' Sub-Committee on Consumer Protection and Financial Innovation).

Final PRIIPs Regulation: The final PRIIPs Regulation seems substantively unchanged from the post-trilogue version published by the European Council on 3 April 2014 and commented on in the Third Quarter 2014 edition of this Quarterly Report. Aside what seem to be multiple primarily stylistic changes, the main points of note seem to be in terms of the timings applicable to the legislative process:

- 29 December 2014: coming into force of the final PRIIPs Regulation;
- 30 December 2014: start of period for the European Commission's exercise of delegated powers;
- 31 December 2015: deadline for delivery to European Commission of draft RTS on KID delivery and reviews;
- 31 March 2016: deadline for delivery to European Commission of draft RTS on risk and reward indicators and costs;
- 31 December 2016: deadline for enactment of national administrative sanctions and *coming into application* of the final PRIIPs Regulation;
- 29 December 2017: nominal end of period for the European Commission's exercise of delegated powers (subject to tacit extension);
- 31 December 2018: deadline for European Commission's review of the PRIIPs regime; and
- 31 December 2019: end of UCITS exemption from scope.

DP in general: The DP examines, *inter alia*, potential options in terms of risk and reward indicators (including performance scenarios), costs and KID reviews. The DP outlines pros and cons of the various alternatives, often noting the challenges (given the heterogeneity of PRIIPs) in selecting an approach that is (i) easily comprehensible, (ii) enables comparison with other products and (iii) is not misleading to investors. In respect of the first limb, consumer testing would indeed seem to be crucial (presumably testing accuracy of understanding rather than merely noting superficial preferences), though accuracy should take precedence over simplicity as a regulatory priority. Concerning comparability, prior commentary has noted the need for this to be sensibly limited to comparing like with like – eg two apples or two pears (but not

> **It follows that the KID *cannot* contain sufficient information to allow consumers to make an informed investment decision.**

comparing an apple and a pear as apples and pears should rather be compared generically). In terms of the last limb, it is concerning that many of the options discussed in the DP involve assumptions, estimates and/or a past performance basis that seem unlikely to be apparent on the face of the KID and so (regardless of any reasonable basis) could well be misleading to investors (not forgetting the mantra – acknowledged in the DP – that past performance is no guide to future return). The DP interestingly notes that a "measure that is overly sophisticated in relation to […] accuracy […] could be seen as disproportionate". One may wish more thought had been given to all this during the Level 1 process. The DP also considers interaction with other EU legislation, examining MiFID II, Solvency II, the Insurance Mediation Directive, the UCITS Directive, the AIFMD and the Distance Marketing Directive for Financial Services – but strangely ignoring the Prospectus Directive.

Liability: It is worth bearing in mind that the PRIIPs Regulation's Article 11 does *not* limit civil liability where the KID is (i) misleading, (ii) inaccurate, (iii) inconsistent with the relevant parts of legally binding pre-contractual and contractual documents, or (iv) inconsistent with the requirements laid down in Article 8 (on detailed KID content requirements). This gives particular salience to the KID's purpose (in terms of potential damage causation) and the meaning of the "key" qualifier that is embedded throughout the PRIIPs regime (regarding information, risks, etc.) and considered further below.

KID purpose: The DP recognises that "the KID should have a clear behavioural purpose for the retail investor". It has been recognised at various times that the KID itself, which is limited to three pages in length, cannot be exhaustive. It follows that the KID *cannot* contain sufficient information to allow consumers to make an informed investment decision. (That would be the role of the prospectus, which is required under the Prospectus Directive to contain "all information [...] necessary to enable investors to make an informed assessment".) The DP notes the KID's purpose is set out in the prescribed legend to be included in the KID: "to *help* [the investor] understand the [PRIIP] and to *help* [the investor] compare it with other products" (emphasis added). Incidentally, the DP also notes "the KID should be understood by the retail investors with the assumption that the consumer may not have an adviser, distributor or seller on hand to explain the information".

Key information/templates: The DP notes the need for specific "Key Questions" to help construct the KID. The concept of prescribing what information is "key" through specific questions is an interesting one, as there is no generally accepted conceptual definition of what "key" information is as a sub-set of the established concept of information that is "material" to an informed investment decision. The DP also notes that the use of prescribed KID templates might provide legal certainty for manufacturers, but queries whether this might also reduce the extent to which manufacturers take responsibility for developing the KID (as well as reducing innovation), suggesting that certain templates could operate as non-compulsory safe harbours. A relevant consideration might be the level of detail of any such templates. (The DP notes in this respect the relevance of the ESAs' substantive conclusions in respect of individual information items.)

Risk and reward indicators: In terms of risk indicators, the DP focuses for convenience more on visual presentation than on methodological substance (which will subject to subsequent distinct consultation). The ESAs consider that risk factors can be reduced to three main types of risk:

- market risk (the risk of changes in PRIIP value due to movements in the value of the underlying assets or reference values);
- credit risk (risk of loss arising from a PRIIP obligor´s failure to meet some/all its contractual obligations, having accounted for seniority and any collateralisation); and
- liquidity risk (the absence of a sufficiently active market on which a PRIIP can be traded or of equivalent arrangements).

In terms of quantitative risk measures, the DP notes there may be no fully accepted and already standardised methodologies, whilst, for qualitative measures, a combination of factors might be envisaged, given that single factor qualitative measures may not be sufficiently effective or indicative. Several of the possible measures cited seem to be short term and ultimately based on past performance (volatility/VaR-related) or relatively subjective. The DP considers the aggregation of distinct risk measures (as a way of simplifying presentation), but it is unclear what non-misleading basis might be used for such aggregation. The possibility of a single indicator which shows more than one dimension is raised, but a radar graph is not specifically contemplated. Narratives are noted as a way of explaining what an indicator shows and how to use it (including covering the risks not included or aggregated in the risk indicator) – however it is unclear how that would fit with the KID's length limitations of three sides of A4 paper. In terms of performance scenarios, the DP notes these could be based on hypothetical situations or on data (historical or modelled) and considers two, three and five scenario options. The DP also notes the potential relevance of accounting for costs information in the context of performance scenarios and consequential consistency between the two sets of measures (eg in terms of investor time horizon).

Costs: The DP considers various elements around identifying direct and indirect costs. Though indirect (embedded) costs are specified in the PRIIPs Regulation, it would seem unclear what value investors will place on these since their natural focus will presumably be on their net return. The cost of investment advice is explicitly acknowledged as something the KID cannot capture, as it is paid for separately by the investor and may not be known by the PRIIP manufacturer. This would seem to be equally true for any third party cost relating to an investment, for example custody or trading services. The DP acknowledges there is no guarantee that two manufacturers would agree on the costs of a product. It raises the possibility of cost being the difference between (i) the amount received by the manufacturer and (ii) the liability the manufacturer records on its balance sheet (loosely termed "fair value" though no intrinsic fairness seems to be involved).

KID review, revision and republication: The DP considers distinct periodic assessments and, where "change is *materially* important enough to require a revision" (emphasis added) punctual reviews of KIDs. In the latter case, it remains to be seen whether there will be any cross-over from the "significance" test for Prospectus Directive supplements (linked in turn to the underlying prospectus "materiality" test). The DP suggests situations in which an investor might be informed of a changed KID could include "where there is a *significant* change – such as a reclassification of the risk of the product, or a *major* change in its likely costs, or in its objectives and how they are to be achieved" (emphasis added). Again, any Prospectus Directive cross-over remains to be seen. Otherwise, concerning PRIIPs with limited offer periods, the DP notes that "the continued updating of *all* sections of the KID *may* not be relevant" (emphasis added) but that secondary trading would also be a relevant consideration (with KID updates at least where secondary trading involves the issuer). The DP acknowledges the KID's design as pre-contractual information and so queries the extent to which it might be used to inform investors of changes.

Other Sections of the KID: The DP notes that under the "How can I complain?" section, information should be included both about the manufacturer and distributor. It is however acknowledged that the manufacturer may not know who the distributor is and so may not be able to include specific related information, with a possible solution mused to be the inclusion of generic information or a reference to where further information can be found. Otherwise aspects covered in the DP are title, explanatory statement, identity, comprehension alert; "What is this product?" (PRIIPs type classification, objectives, consumer types, insurance benefits, term); "What happens if [the PRIIP manufacturer] is unable to pay out?" (investor compensation/guarantee schemes); "How long should I hold it and can I take money out early?" (penalties); other relevant information (information on other official documents with website links permitted). The DP also considers products offering many options (likely to be of limited potential relevance to the Eurobond markets). Regarding KID delivery being "in good time", the DP notes the potential relevance of Recital 83 of MiFID II.

ICMA engagement: ICMA is working to respond by the DP's 17 February deadline:

- in respect of retail structured products, through the Joint Associations Committee on retail structured products; and
- possibly also in respect of "vanilla" Eurobonds, directly (see further the Third Quarter 2014 edition of this Quarterly Report in relation to the extent to which Eurobonds are, or may in future come, within the scope of the PRIIPs regime).

Next steps: The DP is expected to be followed by:

- in the spring, a more technical ESAs' Discussion Paper (on more complex aspects of the RTS such as on the methodology for calculation of the summary risk indicator);
- until August, a European Commission consumer testing exercise (initiated in the autumn of 2014);
- prior to the summer (estimated), a specific Consultation Paper on the review, revision and republication of KIDs;
- prior to the summer (estimated), a specific Consultation Paper on the timing of delivery of KIDs;
- in the autumn, a Consultation Paper on draft RTS, setting out the ESAs' conclusions (hopefully with a feedback statement);
- at some stage, an impact assessment (building on that prepared in support of the original legislative proposal) to accompany the draft RTS being submitted to the European Commission (for which stakeholders views and data are welcome).

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MiFID II Level 2: underwriting and placing

On 19 December 2014, ESMA published its Final Report on its Technical Advice to the European Commission on MiFID II and MiFIR (together with an Annex on data gathering for investor protection topics). Underwriting and placing are covered on pages 84-95 of the Final Report and pages 14-15 and page 24 of the data gathering Annex. This follows ICMA's August 2014 response to ESMA's May 2014 Consultation Paper (commented on in the Fourth Quarter 2014 edition of this Quarterly Report).

The Final Report sets out ESMA's final advice concerning underwriting and placing and also some ESMA feedback following the consultation responses received. In its feedback, ESMA *inter alia*:

- acknowledges that market practices may vary depending on the financial instrument concerned but (in the absence of any distinction between shares/equity securities and bonds/debt securities) does not consider that the advice is tailored only to equity/IPO markets;
- addresses certain self-placement aspects raised by ESMA's Securities and Markets Stakeholder Group;
- agrees that the roles of underwriter and corporate finance adviser are distinct;
- agrees to limit the provision of information, concerning the involvement of corporate finance advisory staff in pricing and allotment, to just the functions concerned (rather than the actual individuals involved), but considers a *specific* conflict management disclosure requirement is relevant in the context of underwriting and placing regardless of MiFID's *general* conflict management disclosure provisions;
- in relation to pricing, (a) declines to be prescriptive (and further clarify) the provisions on (i) not promoting a firm's or other clients' interests and (ii) controlling investor-facing staff involvement (aside a slight nuancing); but (b) agrees to clarify the issuer's role by noting that firms "recommend" (rather than "determine") pricing;
- considers worthwhile the inclusion of specific requirements on hedging and stabilisation disclosure, regardless of such disclosure being, respectively, established market practice or regulated under the EU's market abuse rules;
- considers "pure underwriting fees" should not be subject to the MiFID requirements on inducements paid by third parties, but that fees received in situations where the investment firm also places the financial instruments to its investment clients must comply with the inducements requirements;
- rejects the notion that issuers' decisions to mandate lead managers do not depend on lead managers' individual allocation policies with these being quite standard – on the basis that regulators' experience is that "firms [have been] unable to show clear allocation policies and produce justification for their allocation recommendations in *all* cases" (emphasis added);
- agrees to clarify that (i) refraining from lending is not implied in all cases and (ii) client information sharing between areas of the firm remains subject to information barriers set up to manage the flow and use of confidential information;
- agrees to clarify that keeping a "complete audit trail" is to keep records of the "material" steps only, but emphasises that final allocation records be for each investment client (as regulator experience is that "firms have often been unable to articulate the reasoning behind allocation recommendations"); and
- agrees to clarify that keeping records of all "potential" conflicts apply only to actual services provided.

The final advice set out in the Final Report broadly reflects this. A couple of specific amendments worth noting further are:

- that the requirement for a lead manager to invite issuer participation in allocation discussions to account for its interests can be "for example by obtaining the issuer client's agreement to its proposed allocation per type of client for the transaction in accordance with the allocation policy"; and
- a new specific provision on disclosure to retail investors concerning bank capital instruments.

The data gathering Annex notes that 41 stakeholders responded regarding the extent to which they currently "complied" with ESMA's draft advice, with the percentage of "not compliant" answers (17%) being higher than for other items covered in the data gathering exercise. In terms of anticipated process changes, there were between 16 and 47 respondents (varying between the 14 areas of potential change), with one-off changes to compliance procedures/policies and training being where the most respondents (25%-26%) anticipated "significant changes". Overall, 36%-94% of respondents anticipated "no change", 0%-38% anticipated "minor changes" and 5%-26% anticipated "significant changes". However, the Annex noted that, after product governance and record keeping, underwriting and placing is the area of the draft advice considered as the most challenging to implement (with 21% of respondents respectively expecting very challenging implementation).

The Commission is expected to consider ESMA's final advice on underwriting and placing when adopting Delegated Acts for which it is empowered under Article 23(4) of MiFID II.

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ICMA Corporate Issuer Forum

by Katie Kelly

The ICMA Corporate Issuer Forum (CIF) convened three times in 2014, in all cases with high attendance and lively participation. The CIF welcomed Telia Sonera, GE and Volkswagen as new members of the CIF, and we look forward to their continued participation in 2015.

A number of key themes emerged for the CIF in 2014. In January, the Chair of the ICMA Asset Management and Investors Council gave a buy-side perspective of infrastructure and long-term finance, including investor trends, appetite, investment challenges and potential solutions, and concluded that there is a healthy appetite for investment in infrastructure finance. Data presented suggested that spending on infrastructure is likely to become a major priority on a global scale, particularly in the fields of energy, transport and water systems.

Anglo American hosted the next CIF meeting in May, at which representatives of BlackRock and PIMCO were invited to take part in an interactive question and answer session, which gave the investors the opportunity to share their perspectives on non deal-specific issues such as the drivers for investment decisions, efficiencies in new issues processes and syndication matters, investor relations and secondary market liquidity. As well as opening the direct channels of communication in a meaningful way between the sell side and the buy side, it also gave the CIF members and the investors an invaluable insight into, and opportunity to exchange views on, their respective issuance/investment processes and preferences.

The CIF meeting in September, hosted by British American Tobacco, focused on regulation which is currently impacting the primary debt markets, and the impact that the CIF can have with respect to influencing its evolution. In this regard, issues that were flagged include credit exposure to banks under the Bank Recovery and Resolution Directive, EMIR, MiFID, securities financing proposals relating to repo, the regulation of Money Market Funds, sanctions and money laundering issues and Capital Markets Union, and we expect to have a very productive year ahead exploring these regulatory, as well as other, themes with the members.

We are grateful for the continued enthusiasm of the CIF members, and are also appreciative of the guests who took the time to attend and present at the meetings in 2014.

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Green bond initiative

by Nicholas Pfaff

The Executive Committee of the Green Bond Principles (GBP Excom) – a group of 18 key institutions (issuers, intermediaries and investors) in the green bond (GB) market – has been actively preparing the annual update of the GBP following the first annual consultation of members that took place during August and September 2014. As announced, a summary of this poll (which gathered 35 detailed answers) was presented to GBP members and observers during a conference call on 24 October 2014 which was extremely well attended. This call was also the opportunity for a briefing more generally on the meetings and the work of the GBP Excom, as well as plans for the Annual General Meeting (see below).

With input from the consultation and the active support of the ICMA Secretariat, the GBP Excom has been making good progress on the update of the text of the GBP thanks to the focus of a dedicated drafting group as well as *ad hoc* groups on specific topics. This work was reviewed at the latest meeting of the GBP Excom which took place in New York during December following the RI Americas 2014 conference. This meeting was also the opportunity for an in depth dialogue with CERES' Investor Network on Climate Risk (INCR), which brings together a group of 100 institutional investors committed to addressing climate risk and sustainability issues. CERES has been closely involved with the GBP since its original constitution and one of the first organisations to join as member.

The Secretariat will organise a member and observer call to be scheduled in January 2015 on the same format as the initial one in October 2014. During the call a briefing will be provided on the GBP Excom's work and the status of the 2015 GBP update. It will also provide details on the organisation of the GBP AGM. It is already possible to announce that this AGM will take place in London on Friday 27 March in London in the UK. Beyond the formal proceedings, this will be the occasion to organise a half-day conference that will aim to present and highlight the evolution of the GBP, as well as wider issues related to developments of the GB market.

Concerning developments in the GB market, issuance stands at the time of writing in December 2014 at approximately US$ 35 billion with end-year transactions that may further increase this total. The year-to-date number of US$ 35 billion represents an impressive threefold increase over 2013, confirming the rapid progress of the GB market towards the mainstream.

Widely recognized as the best practice issuance standard of the GB market designed to promote transparency and integrity, the GBP continues to expand its membership which as of December 2014 stands at 73 members and 29 observers. More than half of members are banks, with other members divided almost equally between investors and issuers. Observers are largely composed of service providers (especially ratings and opinion providers) followed by NGOs.

As a reminder, members are organisations that are directly involved in actual GB transactions, while observers represent the wider GB community and stakeholders. The full list of GBP members and observers can be found on ICMA's website, together with joining information. ICMA has provided the Secretariat of the GBP since April 2014.

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Secondary Markets

by Andy Hill

ICMA Report on European corporate bond secondary market liquidity

In November, ICMA published the Report, *The Current State and Future Evolution of the European Investment Grade Corporate Bond Secondary Market: Perspectives from the Market*. The study on which the report is based is the result of increasing concern that the secondary markets for European credit bonds have become critically impaired and no longer able to function effectively or efficiently. This impairment is largely attributed to the unintended consequences of banking regulation and extraordinary monetary policy, and raises further concerns about increased market volatility, frozen capital markets, risks to economic growth, and the prospect of another financial crisis. The study focuses primarily on the European investment grade non-financial and financial corporate bond secondary market.

An initiative of the ICMA Secondary Market Practices Committee (SMPC), the study is largely qualitative and is based on 38 interviews held between July and October 2014, engaging 34 different firms and 47 individual participants, including broker-dealers, institutional investors, trading platforms, and corporate issuers.

The report has received a significant amount of interest and media coverage and has helped to prompt discussion on bond market liquidity among both market participants and regulators. It is hoped that the study's findings will help promote more focused discussion among market providers, users, and regulators to help identify potential solutions to ensure a healthy, efficient, and liquid European corporate bond market.

The executive summary of the Report is published here:

- While liquidity has clearly eroded post-crisis, mainly as a result of stricter capital requirements for market-makers and unusually benign market conditions, the story is more nuanced than simply the end of liquidity. There are arguments to suggest that the levels of market depth and liquidity experienced between 2002 and 2007 were largely the result of banks mispricing balance sheet and risk, and overtrading in cash bonds being driven by the Credit Default Swap (CDS) and structured product markets.
- Bank broker-dealers are responding to the impacts of regulation by changing their models. As a result of more discerning capital allocation within the banks, there is a shift to running smaller inventory, but increasing turnover. Firms are attempting to become more client-focused, particularly through the use of technology, while working client orders on an agency basis rather than making markets. Smaller players are becoming more involved in the space, focusing on niche sectors, and again leveraging technology to reach a broader client base.

- The electronification of the credit market is making an impact in Europe, and most, if not all, expect this trend to continue. However, while the general view is that technology has an important role to play, not least in enhancing data management in terms of identifying potential holders or buyers of bonds, as well as improving connectivity across the market, this is still not a substitute for liquidity.
- Corporate issuers are aware of the decrease in liquidity in secondary corporate bond markets, not least since this is key in pricing primary issuance. But the degree of concern is varied as to the likely impact this could have on their future issuance and capital structure, or their potential role in improving liquidity, and is largely dependent on their issuance profile.
- There is a high level of concern from both sell side and buy side regarding new regulation, not least MiFID II. While many see improved transparency as a good thing, there is a worry that too much transparency could cause market liquidity to deteriorate further. There is suspicion that regulation confuses transparency and liquidity, which are not the same thing.
- There is also concern about the regulatory process in Europe, which, compared to the US, is viewed as less consultative and less circumspect to the possibility of unintended consequences.
- A commonly held view is that a correction to the credit rally is inevitable and is likely to be severe. Some see the lack of liquidity in the secondary markets as exacerbating any correction, while others are more concerned about how a non-functional secondary market could impede any return to normality.
- A number of market-led solutions to the potential liquidity crisis are discussed as a result of the various interviews, including greater utilisation of e-commerce and e-trading, more developed cross-market connectivity, and changes in issuance practice. However, it is widely accepted that these initiatives cannot replace the role of market-making nor compensate for inimical regulation.
- If the challenges facing the corporate bond secondary markets are to be addressed and solutions found, this will require the constructive and coordinated effort of all stakeholders: market-makers, investment managers, trading platforms and intermediaries, the issuers, and the various regulatory bodies and authorities.

A briefing call on the Report for members was held on 3 December 2014, and a recording of the call can be accessed on the website. ICMA is planning a number of regional events related to the study, which will be held in early 2015. Members will be kept informed of relevant events and dates via e-mail and the website..

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ICMA Secondary Market Practices Committee terms of reference

In December 2014, the ICMA Secondary Market Practices Committee (SMPC) approved new Terms of Reference for the Committee to reassert its focus on European corporate bond market trading-related issues. The new Terms of Reference provide that the Committee be reformatted, its mandate and scope be more clearly defined, and its membership reviewed, to reflect better the trading-related interests and market practices of the European corporate bond secondary market.

The SMPC seeks to be the representative body of the European corporate bond secondary market through addressing practical issues directly relevant to market practitioners; standardising market best practice; disseminating relevant market information; and promoting the best interests of an efficient and liquid market.

Under the new Terms of Reference, its four key functions are:

- agreeing best practice for the corporate bond secondary market;
- maintaining and developing the ICMA Rules and Recommendations for the secondary market to ensure that they remain relevant and consistent with regulatory requirements;
- leading initiatives to improve corporate bond secondary market liquidity and efficiency;
- providing a forum for discussing the likely impact of relevant regulation on secondary market practices, and for consolidating input and feedback in the regulatory consultation process.

The main workstream priorities of the SMPC for 2015 have been identified as:

- a review of the ICMA Secondary Market Rules and Recommendations;
- the development of an auction mechanism to clear-up aged fails and avoid buy-ins;

- the assimilation and dissemination of relevant market data;
- informing ICMA's response to the Consultation Papers on both MiFID II and CSDR.

The SMPC is composed of core members and auxiliary members. The core members are senior European corporate bond traders from member firms, including both from the sell side (broker-dealers) and from the buy side (execution desks). Core membership is limited to one representative from each member firm. Auxiliary members are market experts from member firms who participate in relevant sub-committee Working Groups. These include operational experts and representatives of infrastructure and other services providers. There is no restriction on the number of auxiliary members from an individual member firm. The Committee is chaired by Asif Godall (Global Head of Traded Credit, HSBC).

The SMPC welcomes and encourages new, active members from both sell-side and buy-side member firms. If you wish to become a member, or participate in the various work-streams, please contact the SMPC Secretary, Andy Hill.

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MiFID II Level 2: secondary markets

Summary

This article reports on recent developments on MiFID II Level 2 and outlines important next steps, including the urgent requirement for a thorough and well-evidenced response to the latest Consultation Paper from the European Securities and Markets Authority (ESMA). It focuses on the linked themes of liquidity and transparency, best execution and market structure.

Introduction

In the Quarterly Reports for the Third Quarter and Fourth Quarter of 2014, we looked at the previous consultation package and summarised ICMA's responses to the Consultation Paper and the Discussion Paper. The latest Consultation Paper, which was published on ESMA's website on 19 December 2014, covers much of the ground in the Discussion Paper issued in early summer. However, it is expanded to cover Regulatory Technical Standards, Implementing Technical Standards and ESMA's Technical Advice to the European Commission. The deadline for responses to the Consultation Paper is 2 March 2015.

In order to serve the objective of enhanced transparency and seeking to improve the functioning of financial markets, MiFID II imposes new pre- and post-trade transparency obligations on non-equities markets. These markets operate today without mandatory transparency. MiFID II extends the scope of the transparency obligations dramatically. While MiFID I applied to shares only, MiFID II encompasses classes of non-equities, such as: ETFs, depositary receipts, certificates, structured finance products, emission allowances and of course bonds. For all market participants this is widely expected to lead to an evolutionary change in how these markets operate going forward.

MiFID II also acknowledges that appropriate transparency does not necessarily mean full transparency. In this respect, MiFID II/MiFIR has provisions in place to attempt to calibrate the new transparency rules through thresholds.

It is the role of ESMA to implement the Level 1 text and adequately to define the various liquidity parameters and thresholds. ESMA is well aware of the challenges that the non-equities extension of transparency requirements represent for market participants. ESMA has communicated that its policy decisions will be based on analysis of concrete data and by holding extensive consultations with all stakeholders.

Recent developments

ESMA received 700 responses to the earlier consultative package, comprising some 18,000 pages of material. At that time, ESMA presented a preliminary analysis of the bond market based on a sample of more than 73,000 instruments. In view of the feedback received, ESMA has performed a second data exercise which tackles both the analysis of market liquidity and the determination of large in scale (LIS) and size specific to the instrument (SSTI) thresholds. ESMA has broadened its analysis to include most types of non-equity instruments. In addition to the parameters provided by the Level 1 text, ESMA has taken into consideration other intrinsic characteristics of the different asset classes and individual instruments. ESMA recognises that the liquidity of an instrument can be driven by a variety of factors, including issuance size, currency, maturity, credit quality, seasonality, and the presence of

> MiFID II/MiFIR has provisions in place to attempt to calibrate the new transparency rules through thresholds.

market makers. ESMA also recognises that the correct calibration of liquidity thresholds is critical in order to provide investors with the right balance between transparency and protection. Importantly, real-time transparency obligations will apply only for those instruments that are considered liquid, whereas illiquid ones – generally speaking – may be exempted from pre-trade transparency obligations and can benefit also from post-trade deferred publication. The correct calibration of liquidity thresholds is fundamental. In particular, thresholds provide protection from adverse market impact in the context of pre-trade transparency and encourage the provision of liquidity by allowing (post-trade) deferred publication.

Turning to best execution, ESMA has conducted a peer review of the supervision of the current best execution requirements. It seems this peer review work has proven very useful in identifying different approaches to supervision among national competent authorities (NCAs). The report concludes that there is room to improve the level of convergence amongst NCAs in their supervisory practices and oversight of best execution and that a more active monitoring of compliance with best execution through inspection seems desirable. Best execution will now be more “evidence-based”. For example, Investment firms which execute client orders will have to summarise and make public on an annual basis (for each class of financial instrument) their top five execution venues. Furthermore, investment firms will also have to modify their existing best execution policies so they can clearly explain, in a way that can be easily understood by clients and in sufficient detail, the process of execution. All of this culminates in an obligation to execute orders “on terms most favourable to the client”.

The best execution obligations will be an important driver and facilitator of “smarter broking” initiatives which are currently being developed to help meet both the regulatory requirements and the business needs of investors, who are facing markets in which liquidity is increasingly hard to source.

MiFID II has also introduced a new type of execution venue to the market structure framework which is currently an MTF, RM or SI. The new execution venue is an Organised Trading Facility (OTF). With MiFID II, all OTFs and MTFs operating in the EU will be required to document and explain their respective services (voice, electronic or hybrid), including unique identifying codes. In addition, OTFs and MTFs will be required to comply with all pre- and post-trade obligations pertaining to applicable financial instruments traded and the trading functionality of the relevant OTF or MTF. This will include any applicable waivers (pre or post). OTFs are distinguished from MTFs by the use of discretion. In order to ensure efficient processing of information on an OTF, ESMA will require OTF data in an electronic format.

The experience of EMIR implementation demonstrates that rushed implementation of imperfectly developed data component requirements is very expensive to repair – after the event. Data quality is crucial. Early engagement with detailed data requirements will become vital. A common, clear understanding of well-developed requirements is a condition for success.

Implementing legislation will further define what constitutes a “reasonable commercial basis” to make the regime effective. It is important to get this right as market data costs are an increasing source of concern amongst the trading community. Bringing about agreement within groups with different commercial interests is likely to require considerable effort and may prove hard to achieve.

Next steps

The immediate focus for ICMA in the first quarter of 2015 will be to develop an effective, co-ordinated and robust response to the ESMA Consultation Paper, drawing on the experience and expertise of our buy-side and sell-side technical working group members, along with other associations as we did in the previous round of consultation. In particular, as the debate increasingly focuses on detailed technical requirements, more market practitioner expertise will be required.

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CSDR Level 2: secondary markets

On 18 December 2014, ESMA published the Consultation Package for the Regulatory Technical Standards (at Level 2) of the European Central Securities Depositories Regulation (CSDR). The Package consists of: a Consultation Paper on *Technical Standards under CSDR*; a Consultation Paper on Technical Advice under the CSDR to support the European Commission Delegated Acts related to *Penalties on Fails* and *Substantial Importance of CSDs*; and a Consultation Paper on *Guidelines on the Access to a CCP or a Trading Venue by a CSD*. The deadline for responses is 19 February 2015.

The key topics covered in the consultation are:

- settlement discipline (including mandatory buy-ins and cash penalties for fails);
- CSD authorisation, supervision, and recognition;
- CSD requirements;
- access and links to CSDs; and
- internalised settlement.

The primary area of focus for ICMA, and which is likely to have the most direct impact on European capital markets, is settlement discipline. In the lead up to the consultation, ICMA has been very active in raising awareness of the potential trading level impacts of CSDR, in particular the provision for mandatory buy-ins, which could have significant detrimental outcomes for bond and repo market liquidity. ICMA has also been highly engaged in cross-industry discussions to help agree the optimal technical standards for settlement discipline requirements under CSDR, in order to minimise the potential negative impacts of mandatory buy-ins and to maximise the potential benefits of a well-designed penalty/compensation system for settlement fails.

On 26 November, ICMA and AFME were co-signatories to a letter to ESMA that outlines some considerations intended to help in developing the Regulatory Technical Standards and Technical Advice for the European Commission for an effective system for cash penalties. Key recommendations are that any system should be relatively simple, that it should be harmonized across all settlement systems, and that it should provide a compensation mechanism as well as a penalty mechanism.

Over the coming weeks, ICMA will be looking to engage with its members in composing its response to the Consultation Papers, as well as coordinating with AFME and other key industry representative bodies, particularly on the critical issue of settlement discipline.

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> The provision for mandatory buy-ins could have significant detrimental outcomes for bond and repo market liquidity.

Asset Management

by Patrik Karlsson

Systemic risk and asset management

As outlined in the previous Quarterly Report, ICMA Asset Management and Investors Council (AMIC) members have now set up a Market Finance Working Group that will examine the systemic risk of asset managers and will continue AMIC's contribution to the international debate on this issue.

Following their January 2014 consultation, the FSB and IOSCO considered the feedback they received and are expected to issue a second consultation early in 2015. The second consultation is expected to focus on activities, as opposed to size. The first consultation was heavily criticised by industry for linking size with risk without considering other factors. FSB officials have recognised that size alone is not a sufficient indicator of potential risk to the system, but that size will continue to be one of many factors. The activities that will be the focus of the second consultation are likely to include leverage and securities financing transactions.

Furthermore, the US FSOC recently opened a consultation on systemic risk in US asset managers. This work is expected to drive the thinking at the FSB and IOSCO level. The FSOC is asking whether asset management products and activities may pose potential risks to the US financial system in the areas of liquidity and redemptions, leverage, operational functions, and resolution, or in other areas subject to feedback.

The AMIC Market Finance Working Group has held a preliminary discussion on the general environment of systemic risk in the investment sector. The Working Group has deliberately decided not to use the term "shadow banking", in order to promote non-bank financing as a sound financing technique and avoiding any negative association with systemic risk.

There is agreement in the Working Group that the AMIC should:

- promote the benefits of market-based finance
- consider where the actual risks may lie; and
- in the longer term, think about positive examples of how regulation could help the market finance industry grow.

The Working Group has decided that existing ICMA work on liquidity could be useful for further analysis. However, the Working Group is not currently planning to consider further the impact of money market fund reform.

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Securitisation and the buy side

The AMIC Securitisation Working Group held its first meeting following the decision by the AMIC Executive Committee to look more closely at this asset class. The Securitisation Working Group discussed in general terms what investors seek from securitisation and what potential elements could be useful in standardised

The second consultation is expected to focus on activities, as opposed to size.

securitisation vehicles being considered by regulators.

Securitisation continues to be viewed by the authorities globally as a key funding tool for the real economy. The new EU Financial Services Commissioner, Lord Hill, has listed securitisation as one of the areas for the new College of Commissioners to focus on in its work on creating Capital Markets Union.

In other developments, the EBA launched a Discussion Paper in October 2014 on criteria to identify standard, simple and transparent (SST) securitisation for capital relief under CRD IV. The EBA has proposed 25 criteria which a vehicle would have to fulfil in order to be considered as an SST-compliant vehicle that could later qualify for capital relief. The AMIC Securitisation Working Group has been assessing industry views on the EBA consultation and will consider further steps before the deadline for responses (15 January 2015). One of the major investor concerns will be to ensure that any changes to the capital framework for banks are carried over to the capital rules for investors, in particular the insurance framework (Solvency II).

In December 2014, the BCBS and IOSCO released a Consultative Document on *Criteria for Identifying Simple, Transparent and Comparable Securitisations* (STC). The purpose of these criteria is to identify and to assist the financial industry's development of STC securitisation structures, as well as to help parties involved in a securitisation transaction evaluate the risks of a particular securitisation as part of their due diligence on securitisations.

The BCBS and IOSCO paper proposes 14 STC criteria which have been mapped to key types of risk in the securitisation process. BCBS and IOSCO do not consider any potential impact – from implementing this framework – on prudential regulation, but this was referred to in a separate release by the BCBS, *Revisions to the Securitisation Framework*, which will come into effect in January 2018. These revisions aim to address a number of shortcomings in the Basel II securitisation framework. In 2015, the BCBS will consider how to incorporate STC securitisation criteria into the securitisation capital framework.

The AMIC Securitisation Working Group will consider the BCBS/IOSCO consultation in the first quarter of 2015 in cooperation with the investors represented in the IMA. AMIC will be keen to ensure that there is international consistency between the BCBS/IOSCO work and the EBA's work on defining criteria to identify these standardised securitisations.

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Covered bond transparency

The ICMA Covered Bond Investor Council (CBIC) has continued to assess the transparency of covered bond issuance following the publication of its report this summer on transparency in the covered bond market. The CBIC is considering further work among its members to identify criteria for static data that would be useful about cover pools, and whether it would be useful to have a central place (a repository) for this data for investor use.

The CBIC has also been monitoring the effect of the ECB Covered Bond Purchase Programme (CBPP3) on investors in covered bonds. The CBIC Secretary participated in a meeting of the European Covered Bond Council (ECBC) with the ECB to discuss the purchase programme. It is still too early to draw definitive conclusions (CBPP3 will run for two years), but there is concern that the positive effect that the programme has had on issuance could eventually be outweighed by potential crowding out of the investor base.

The CBIC has also been following another development. An issuing bank has initiated a process to convert all of its outstanding covered bonds from hard bullets to soft bullets. Investors who vote in favour of this change will receive a fee of 0.05% but, if passed, the conversion will be binding on all investors. In the initial vote, 75% of investors must vote but, assuming this quorum is not met, there will be a subsequent vote where the quorum is 25% of investors.

To the CBIC's knowledge, this is the first attempt to introduce the change on existing securities. Issuers are in some ways incentivised to switch to soft bullet structures (*inter alia* it allows them to hold less collateral) and, if this exchange goes ahead, it could be pursued by other issuers in the future.

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This market is being designed particularly to benefit medium-sized and unrated companies.

Pan-European private placement initiative

The Pan-European Private Placement Working Group (PEPP WG) welcomed in December the new exemption from withholding tax for interest on private placements contained in HM Treasury's Autumn Statement (released on 3 December 2014). This new exemption removes a significant barrier to the development of the private placement market in the UK, as issuers would otherwise most likely have had to compensate investors for withholding tax imposed on UK private placement transactions. The UK exemption, as well as existing dispositions in jurisdictions like France or as recently introduced in Italy, may encourage other European countries where withholding taxes would create barriers for private placements to consider comparable adjustments.

Earlier, in November, representatives of the PEPP WG met the Financial Services Committee (FSC) of the European Council on 19 November 2014 in order to present the activities of the group in support of the emergence of a pan-European private placement market, to highlight this market's role as an important additional source of term financing for medium-sized European companies, and its contribution to progress towards a Capital Markets Union. The subsequent meeting of the ECOFIN Council held in Brussels on 9 December welcomed in its press release such market-led efforts to develop a pan-European private placement market.

Looking to the New Year, substantial progress has been made towards the finalisation of standardised transaction documentation by both the Loan Market Association (LMA) and the French Euro PP WG. This documentation is designed to be complementary, and targeted at different market participants. It is currently expected that both sets of documents will be finalised and released by early 2015.

This will be followed by the publication by the PEPP WG of a *European Guide to Best Practice for the Pan-European Private Placement Market* that will identify core issuers and investors, define best practices and the role of intermediaries, while providing standard summary terms for discussion between borrowers and investors. The launch will follow ongoing wide market consultation, as well as coordination with the official sector. The Guide is designed to be regularly updated as the PEPP market develops and evolves.

The PEPP WG was born out of a need to bring together the various separate working groups with an interest in private placements under one umbrella group, with a view to develop a pan-European private placement market. This market is being designed particularly to benefit medium-sized and unrated companies by providing long-term debt funding which may not otherwise be available to them from the loan or bond markets. It may serve in this way as an intermediary and preparatory stage for these companies before they gain access to the public debt markets; and will also be able to accommodate larger corporate issuers as the case may be. The market will be aimed at institutional investors with a buy-to-hold strategy, and not at the retail market.

The PEPP WG is coordinated by ICMA, and further comprises the Association for Financial Markets in Europe (AFME); the European Private Placement Association (EU PPA); the French Euro Private Placement (Euro PP) Working Group; the Investment Management Association (IMA); the Loan Market Association (LMA); TheCityUK; representatives from major institutional investors (including Delta Lloyd, Fédéris Gestion d'Actifs, KBC Group, LGIM, M&G Investments, Natixis Asset Management); observers from the official sector (including the Banque de France, the French Trésor and HM Treasury); and the participation of major law firms, including Allen & Overy LLP, Ashurst, CMS Bureau Francis Lefebvre, Herbert Smith Freehills, Kramer Levin, Linklaters, Slaughter & May, Simmons & Simmons and White & Case.

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With the EBA having released a number of consultations under the BRRD, the output of the ICMA Bail-in Working Group continues to intensify.

Bail-in

The Financial Stability Board (FSB) released a Consultative Document on 29 September 2014 on *Cross-border Recognition of Resolution Action*. The Consultative Document builds upon the FSB's September 2013 Report on *Progress and Next Steps Towards Ending Too Big to Fail*, which identified uncertainties about the cross-border effectiveness of resolution measures as an important impediment to cross-border resolution under the Bank Recovery and Resolution Directive (BRRD).

ICMA responded in terms that the Consultative Document goes some way to addressing the uncertainties highlighted in the Progress Report. ICMA further surmised that imposing bail-in by legislation is not necessarily in itself effective where the bail-inable debt is governed by the laws of a third country. Therefore, harmonisation of appropriate legislation at an international level may be the most effective tool in ensuring the enforcement of the bail-in regime. ICMA stated that it is encouraged by the FSB's continued efforts to develop a coherent international approach to take account of this in finalising any proposal and considers that a hybrid approach to legislation at an international level, coupled with contractual recognition, which demonstrates intention between the parties, may ensure a more consistent and effective imposition of the bail-in regime.

The FSB released a further Consultative Document on 10 November 2014 on *Adequacy of Loss-absorbing Capacity of Global Systemically Important Banks in Resolution*, consisting of two parts. The first part is a set of principles on the loss-absorbing and recapitalisation capacity of Global Systemically Important Banks (G-SIBs) in resolution, which elaborate on the premise set out in the Progress Report that G-SIBs must have sufficient loss-absorbing and recapitalisation capacity available in resolution to implement an orderly resolution that minimizes any impact on financial stability, ensures the continuity of critical functions and avoids exposing taxpayers to loss. The second part is a detailed term sheet on Total Loss-Absorbing Capacity (TLAC), which is a concrete proposal for implementing the principles in the form of an internationally agreed standard for G-SIBs.

The EBA has also released a number of consultations as part of a series of regulatory mandates under the BRRD, among them:

- draft Regulatory Technical Standards (RTS) on contractual recognition of bail-in;
- guidelines on the treatment of shareholders when applying the bail-in tool or the write down or conversion of capital instruments, which clarify the circumstances guiding the choice between cancellation and severe dilution of existing shares (or other instruments of ownership) when applying the bail-in tool or the write down or conversion of capital instruments power under BRRD;
- guidelines on when and how different conversion rates from debt to equity should be set for different types of liability;
- draft RTS on valuation in recovery and resolution which provide a common structure for decisions made by resolution authorities and independent valuers and promote a consistent application of methodologies for such valuations across the EU; as well as
- draft RTS specifying the criteria to set the minimum requirement for own funds and eligible liabilities (MREL).

In reviewing these consultations with a view to responding by the given deadlines, the output of the ICMA Bail-in Working Group continues to intensify.

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Market Infrastructure

by David Hiscock

Market infrastructure developments

ECB: Contact Group on Euro Securities Infrastructures (COGESI)

A meeting of COGESI was held in Frankfurt on 26 November 2014, but no papers have as yet been published.

ECB: Money Market Contact Group (MMCG)

A regular quarterly meeting of the MMCG was held in Frankfurt on 21 November 2014. The agenda included (1) review of the latest market developments and other topics of relevance; (2) market functioning and technical adjustments in market practices in the negative rate environment; (3) an update of regulatory developments and impact on banks' regulatory compliance; (4) an update on structural reforms in the Spanish banking system and a European comparison; and (5) update on the developments in T2S.

ECB: Bond Market Contact Group (BMCG)

The BMCG's eighth meeting took place in Frankfurt on 21 October 2014. Alongside the summary of discussions seven presentations from the meeting are available: "Item 1 – Bond market outlook"; "Item 2.1 – Collateral issues of relevance for the functioning of bond markets – bank perspective"; Item 2.2 – Collateral issues of relevance for the functioning of the bond markets – investor perspective"; "Item 2.3 – Recent Developments to the Collateral Framework"; "Item 3 - Systemic risk"; "Item 4.1 – Best practice framework – US fixed income markets"; and "Item 4.2 – Best Practice framework – EGB Market".

ECB: TARGET2-Securities (T2S)

CSDs may establish restriction rules in T2S to activate certain controls or to support their service offering and the way in which restriction rules are implemented may impact cross-border transactions in T2S. On 20 November 2014, it was highlighted that the T2S Wave 1 CSDs have now decided on the restriction rules they will implement in T2S. The Cross-Border Market Practices Sub-Group (XMAP) – which met on 16 October 2014 – identifies potential obstacles to cross-border securities settlement and assesses possible workarounds. The XMAP Catalogue of Restriction Rules describes these rules, why they are set up and the possible cross-border impact. The catalogue will be updated in the future when other CSDs have stabilised their restriction rules.

A T2S Info Session was held in Frankfurt on 5 December 2014. In addition to the project update, the info session featured a panel discussion, with representatives of issuers, investors, banks and CSDs, on how T2S will change the post-trade landscape – following up on the latest T2S Special Series paper, *T2S from Issuer to Investor*. Representatives from Clearstream and OeKB also presented the services they plan to offer; and finally, the outcome of the XMAP analysis of the impact of the CSD restriction rules on wave 1 CSDs was also presented.

The weekend of 22 and 23 November 2014 marked an important achievement on the path to the launch of T2S, with the successful completion of the rehearsal migration weekend for wave 1 participants. Staff from the ECB and the 4CB as well as from the national central banks and wave 1 CSDs worked hard to achieve this milestone; and the rehearsal was a big success, with plenty of lessons learned on how to improve the next rounds of migration testing even further.

Dated 28 November 2014, the Final Report on non-functional tests was published. This covers various aspects of business continuity, security and performance. Subsequently, dated 17 December 2014, an updated version of T2S General Functional Specifications (T2S General Functional Specifications (GFS) v 5.0) was published. This document explains how the T2S platform reflects the requirements of the CSDs and market participants.

The Directly Connected Parties Group (DCPG) – composed of representatives of directly connected parties (DCPs), CSDs, central banks and the T2S Programme Office – met on 16 November and 11 December; with the agendas and summaries of these meetings being published. The DCPG is also maintaining a register of its open issues.

The T2S Advisory Group (AG), which provides advice to the Eurosystem on T2S-related issues, met on 26-27 November 2014. The agenda for this meeting included T2S Programme Status; DCP issues; access to securities valuation data for auto-collateralisation purposes in T2S; participation of migrated CSDs in TARGET2; reporting and debriefing – regarding meetings of governance bodies, the Change Review Group (CRG) and the Operations Managers Group (OMG); and T2S Harmonisation work stream.

Dated October 2014, *Insights on the use of Business Application Header BAH* was added to the T2S knowledge based repository. Subsequently, dated November 2014, *Insights on Matching Fields from a Message Perspective* and *Insights on Conditional Securities Delivery (COSD) in T2S*; and, dated December 2014, *Who Needs to Conduct Eurosystem Certification Tests?* and *T2S: Intra, Cross- and External-CSD Settlement Configuration* were added.

The publication of a new issue of T2S OnLine was announced on 18 December 2014. In his editorial, Jean-Michel Godeffroy, Chairman of the T2S Board, bids farewell and stresses that continuity in the T2S programme will be ensured despite his departure. Marc Bayle, Director General Market Infrastructure and Payments, provides an insight into the current status of the T2S programme; and also discusses the new European regulatory environment with Olivier Guersent, Deputy Director General of the European Commission's DG Financial Stability, Financial Services and Capital Markets Union. Mehdi Manaa discusses his new role as T2S Programme Manager and there is a report on how preparations for T2S operations are progressing. Another article explains more about how T2S affects issuers and investors.

Global Legal Entity Identifier System (GLEIS)

As reported in Issue 31 of ICMA Quarterly Report, a note published by the LEI ROC, dated 27 July 2013 (updated 24 August 2014), establishes the principles that should be observed by the Local Operating Units (LOUs) participating in the Interim GLEIS as pre-LOUs. Adding to earlier cases, ROC notes of 9 October 2014, and 20 October announced the endorsement of further pre-LOUs in accordance with the process described in Annex 1 of the principles. There is a list of the ROC endorsed GLEIS pre-LOUs (operational) and also a broader list of four digit prefixes allocated to sponsored pre-LOUs.

On 10 November 2014, the LEI ROC sought comments (by 30 November) on a draft list of codes to harmonise the way business registries and other

An important achievement on the path to the launch of T2S, with the successful completion of the rehearsal migration weekend.

registration authorities are referred to in the GLEIS. This list includes a code that should facilitate the use of this information, for instance for retrieving additional information on the entity recorded by these business registries or registration authorities, and more generally matching the LEI with other databases using the identifier of the legal entity in the business registry or other registration authority. The list includes business registries and other registration authorities to the best of the knowledge of ROC members. This list is not intended as an endorsement of the quality of these sources, but as a pure naming convention.

> Extreme events may challenge the ability of FMIs to recover within two hours following the detection of a cyber attack.

BIS: Committee on Payments and Market Infrastructures (CPMI)

On 15 October 2014, the CPMI and IOSCO issued a Report entitled *Recovery of Financial Market Infrastructures*, which provides guidance to financial market infrastructures (FMIs) such as CCPs on how to develop plans to enable them to recover from threats to their viability and financial strength that might prevent them from continuing to provide critical services to their participants and the markets they serve. It also provides guidance to relevant authorities in carrying out their responsibilities associated with the development and implementation of recovery plans. The report supplements the *Principles for Financial Market Infrastructures*, the international standards for FMIs published by the CPSS and IOSCO in April 2012. It does not create additional standards for FMIs but does provide guidance on how FMIs can observe the requirements laid down in the PFMI that they have effective recovery plans. The report is also consistent with the FSB's *Key Attributes of Effective Resolution Regimes for Financial Institutions*, which was reissued on the same day.

On 11 November 2014, the CPMI issued the Report, *Cyber Resilience in Financial Market Infrastructures*, which examines some of the evolving practices and concepts that FMIs are considering and applying in their approaches to enhance cyber resilience. The report notes that cyber resilience is increasingly becoming a top priority within FMIs, although the CPMI's analysis, which was supported by industry interviews, shows that there are differences as to the form and maturity of FMIs' approaches to cyber resilience. The report has found that extreme events may challenge the ability of FMIs to recover within two hours following the detection of a cyber attack and to complete settlement by the end of the day of the disruption (a key element of the operational risk management requirements laid out in the CPMI-IOSCO Principles for FMIs. The report concludes that one of the distinctive features of FMIs is their interconnectedness and, hence, disruptions in one FMI may spread to a multitude of other connected entities. Furthermore, cyber threats tend to be cross-jurisdictional in nature, posing challenges for risk mitigation efforts conducted solely at national or single-institution level. These factors underline the necessity for cooperation and communication between FMIs, central banks and other regulators on cyber resilience matters.

On 23 December 2014, the CPMI and IOSCO published the *Assessment Methodology for the Oversight Expectations Applicable to Critical Service Providers*. The PFMI, published in April 2012, include an annex on the oversight expectations applicable to critical service providers (Annex F). The operational reliability of an FMI may be dependent on the continuous and adequate functioning of third-party service providers that are critical to an FMI's operations, such as information technology and messaging providers. Although an FMI remains ultimately responsible for its operational reliability, a regulator, supervisor or overseer of an FMI may use Annex F to establish expectations specifically targeted at critical service providers. This new final document (previously issued for consultation in December 2013) establishes an assessment methodology and provides guidance for authorities in assessing an FMI's critical service providers against the oversight expectations set out in Annex F. This assessment methodology also provides guidance to critical service providers in complying with the oversight expectations.

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TARGET2-Securities

As was reported in Issue 34 of the ICMA Quarterly Report, the ICMA ERC commissioned Rule Financial to work jointly with the ERC Operations Group to carry out a body of work comprising a market survey and a target industry operating model.

The TARGET2-Securities (T2S) electronic market survey that was carried out in July 2014 sought to assess the level of market preparedness for, and industry attitudes towards, T2S. Respondents to the survey came from a broad cross-section of the market, with nearly half from sell-side institutions whilst the remainder came from buy-side institutions and infrastructure providers. Survey respondents also represented a good cross-section of business functions.

The survey found that most people were aware of T2S, with over 75% of respondents agreeing or strongly agreeing that they were aware of the implications of T2S and less than 20% believing that doing nothing in preparation for T2S was a viable option. More than 80% of respondents felt that T2S would have a significant impact on their organisation, with the sell side generally at the higher end of the impact scale, whilst the buy side sat more in the middle. This view of impact varied by business function, with operations being most positive about the impact, whilst funding groups were quite positive and network management groups were more neutral. From a front-office perspective, both repo trading and cash trading groups were overall positive in their view of the impact of T2S, with repo traders seeing more potential benefits – which is likely to be a reflection of increased liquidity collateral, via more efficient settlement and the harmonisation of settlement deadlines.

The majority of respondents reported that their firms had plans and initiatives under way in response to T2S, with many reviewing their network management and custodian arrangements and taking steps to train staff. Interestingly, 10% of respondents reported having no measures in place to deal with the changes that T2S will bring. The majority of the organisational changes that firms have been making in preparation for T2S are in the payments and cash management areas (62%), whilst lower activity in settlements is likely to stem from the decision by many participants to remain indirectly connected using existing providers. However, a significant minority of institutions (29%) indicated that they would review this decision within two years. Many respondents felt that T2S would impact positively on collateral pooling, increased liquidity, triparty interoperability and decrease the number of agent banks.

A target industry operation model (iTOM) was also developed to allow a better understanding of how the cash and repo markets will interact with the T2S platform. The starting point of the iTOM was to look at post-trade mechanics as they are today. The current settlement landscape for cross-border trades can be complex and involve a myriad of parties. These involve different message formats and timings, numerous instructions, connectivity to multiple CSDs, multiple cash accounts and fragmentation of collateral inventory. Going forward, T2S will allow for the removal of many of the instructions in today's settlement landscape (ie instructions passing through the chain to issuer CSDs) to be replaced with connectivity to a single settlement location (ie T2S) operating according to a single set of settlement rules. T2S will also allow linkage to one dedicated cash account and the opportunity for a single securities account consolidating collateral inventory and improving collateral liquidity. The conclusion is that T2S will improve settlement efficiency, timeliness and remove complexity. However, T2S will not improve repo end-leg settlement, nor lifecycle events, and therefore represents a missed opportunity for repo.

Recommendations for future development are: (i) to introduce transaction type usage in T2S (repo, cash, buy/sell back, triparty etc), to provide the ability to track beneficial owners, to better manage corporate actions and so that T2S has the functionality to act as a repository for repo trade data; (ii) to introduce a common repo ID to link repo "on" and "off" legs, to ensure all firms can explicitly track closure of multi-leg trades; and (iii) to provide a central interest calculation facility, to reduce the risk of exceptions between parties on multi-leg trades at off-leg settlement and reduce failed trades.

A webinar was delivered on 10 November, a replay of which can be accessed via the ICMA website. A presentation was also made at the general meeting of the European Repo Council on 19 November. The presentation, together with the minutes of the meeting, are also on the ICMA website.

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Macroprudential Risk

by David Hiscock

According to the IMF's latest *Global Financial Stability Report* (GFSR), released on 8 October 2014, policy makers should encourage economic risk taking, whilst keeping financial excess under control. It is noted that stability risks are shifting to shadow banks; there is a need to revamp bank business models to support growth; and rising liquidity risks in credit markets need to be addressed. The GFSR finds that, six years after the start of the crisis, the global economic recovery continues to rely heavily on accommodative monetary policies, which remain critical in supporting advanced economies by encouraging economic risk taking, in the form of increased real spending by households and greater willingness to invest and hire by businesses. However, prolonged monetary ease may also encourage excessive financial risk taking. The GFSR includes specific chapters entitled: (1) Improving the Balance Between Financial and Economic Risk Taking; (2) Shadow Banking Around the Globe: How Large, and How Risky?; and (3) Risk Taking By Banks: The Role of Governance and Executive Pay. Alongside the GFSR, the IMF published its latest *Fiscal Monitor* and *World Economic Outlook;* and also published a *Triennial Surveillance Review.*

Published on 10 October 2014, IOSCO's *Securities Market Risk Outlook 2014-15* (the Outlook) is the second publication in an annual series of Outlooks that aim to identify and assess potential systemic risks from securities markets. The Outlook is a forward-looking report focusing narrowly on issues relevant to securities markets and whether these may be, or could become, a threat to the financial system as a whole. This Outlook synthesises a number of inputs including: data collection and analysis; construction of quantitative systemic risk indicators; market intelligence interviews for major financial centres; risk roundtables with members of industry and regulators; a survey of experts on emerging risks; analysis from academia and the regulatory community; and risk reports and presentations by experts.

This Outlook has been written during a transformative period for global financial markets. As the initial impacts of the 2008 financial crisis recede, securities markets continue to become an increasingly important financing channel for the real economy. In addition, innovation is re-entering the markets, especially in debt and structured finance markets. Such innovation can help foster competition and new options for financing, wealth creation and diversification but also can introduce risks to the markets. Part II of this Outlook identifies the following potential systemic risks in or related to securities markets:

- the search for yield and the return of leverage in the financial system (Chapter 1);
- search for yield and capital flows to emerging markets (Chapter 2);
- risks of central counterparties (Chapter 3);
- the increased use of collateral and risk transfer (Chapter 4); and

> Securities markets continue to become an increasingly important financing channel for the real economy.

- governance and culture of [listed] financial firms (Chapter 5).

Allocating Macroprudential Powers is a report from the ESRB's Advisory Scientific Committee, published on 5 November 2014. Given that various approaches have been adopted within the EU, this report explores the implications of different choices in the allocation of macroprudential powers from both a positive and a normative viewpoint. Specifically, it addresses the following questions:

- What are the likely effects of alternative allocations of macro-prudential power? In light of these likely effects, to which authority should it be attributed?
- How does this choice affect the interaction between macroprudential policy and monetary policy?
- How do the answers to these questions differ (i) in countries with monetary sovereignty, (ii) in a monetary union such as the euro area, and (iii) in the EU, which comprises both?

The *Staff Guidance Note on Macroprudential Policy*, prepared by IMF staff and completed on November 6, 2014, was issued to the IMF Executive Board for information; together with a *Staff Supplement on Detailed Guidance on Instruments* and a *Staff Supplement on Considerations for Low Income Countries*. This note provides guidance to facilitate the IMF staff's advice on macroprudential policy in the IMF's surveillance work. It elaborates on the principles set out in the *Key Aspects of Macroprudential Policy*, taking into account the work of international standard setters as well as the evolving country experience with macroprudential policy.

On 13-14 November 2014, the Sveriges Riksbank and the IMF jointly hosted the conference, *Macroprudential Policy: Implementation and Interaction with other Policies*, in Stockholm. This conference brought together representatives of national authorities and international organizations to share their knowledge and experience in the evolving field of macroprudential policy. The conference was divided into four working sessions, where different aspects of macroprudential policy were discussed: (i) framework for monitoring systemic risk; (ii) the interplay between macroprudential and other policies; (iii) when to take action and overcoming inaction bias; and (iv) effectiveness of macroprudential policies.

On 14 November 2014, ESMA published its *Risk Dashboard for the Third Quarter of 2014*, which assess the risks associated to European financial markets looking into liquidity, market, contagion and credit risks. The Risk Dashboard finds that in 3Q 2014 EU systemic stress indicators increased, after experiencing a calm 2Q 2014. Contagion risk grew; liquidity and market risk remained on high levels, with potential for further increases ahead; and credit risk receded, though remaining at a high level. Overall, market sentiment continued to be at odds with sluggish economic fundamentals and guarded expectations. An environment of ultra-low interest rates supported markets and preserved the current hunt-for-yield behaviour of investors. However, markets recognised resulting new balance sheet risks, as risk spreads increased, equity valuation moderated and expectations for future short-term interest rates fanned out. Due to these offsetting forces liquidity risk and market risk remained stable, preserving the risk of critical market corrections for the future. The systemic impact of such corrections could be exacerbated by liquidity bottlenecks, such as might arise from structural factors such as thin dealer markets or rising collateral requirements.

Mario Draghi, in his capacity as Chair of the ESRB, appeared before the European Parliament's ECON Committee on 17 November 2014. He opened by noting that European authorities have worked hard to rebuild confidence in the banking system. These efforts culminated in the EU-wide stress test coordinated by EBA and the comprehensive assessment of significant banks conducted by the ECB; with the ESRB making an important contribution and planning further related work. He reported that the ESRB is also examining the systemic implications of so-called "misconduct risk" in the banking sector, which is creating uncertainty about the business model, solvency and profitability of banks; and which can damage confidence, vital for the proper functioning of the financial system, in financial markets and institutions.

Mario Draghi then moved to discuss the operationalisation of macro-prudential policy in the banking sector. First, he noted that, in June 2014, the ESRB issued a recommendation on how to set countercyclical capital buffer rates; and that the first countries have notified the ESRB of the introduction of a countercyclical capital buffer rate – this stands at 1% in Sweden and at 0% in the Czech Republic, Slovakia and the United Kingdom. Second, he reported that the ESRB has reviewed a recommendation addressed to Member States aimed at creating a common framework for national macroprudential authorities; encouraged those Member States where the implementation process has been lagging behind to step up their efforts; and observed that, across the EU, different institutional models have been used. He highlighted that, over the past year, Member States have actively made use of the new macroprudential framework, with the ESRB having taken a close look at around 30 national macroprudential measures.

Financial Stability Risks: Old and New, is a presentation given by Hyun Song Shin, Economic Adviser and Head of Research of the BIS, at the Brookings Institution, Washington DC, on 4 December 2014. He observes that "what happens in financial markets does not always stay in financial markets; financial disruptions have real economic impact." Understanding of crisis propagation is heavily influenced by the experience of the 2008 crisis – watchwords being credit growth, leverage, maturity mismatch, complexity and "too big to fail". While these factors are still relevant, it does not follow that future bouts of financial disruption must follow the same mechanism as in the past. Yet accountability exercises tend to focus on known past weaknesses rather than asking where the new dangers are. Two factors are crucial in understanding current risks to financial stability: (a) the shift in the pattern of financial intermediation from banks to capital markets, especially through the issuance of corporate bonds by emerging market firms; and (b) the role of the US$ as the global unit of account in debt contracts, whereby borrowers borrow in dollars and lenders lend in dollars irrespective of whether the borrower or lender is located in the US.

> **Corrections could be exacerbated by liquidity bottlenecks, such as might arise from structural factors such as thin dealer markets or rising collateral requirements.**

Published on 11 December 2014, *An Overview of Macroprudential Policy Tools* is an IMF staff working paper. This paper notes that macroprudential policies have become part of the policy paradigm in emerging markets and advanced countries alike, but knowledge on these tools is still limited. Macroprudential policies ought to be motivated by market failures and externalities, but these can be hard to identify; and can also interact with various other policies, such as monetary and microprudential, raising coordination issues. Some countries, especially emerging markets, have used these tools and analyses suggest that some can reduce procyclicality and crisis risks. Yet, much remains to be studied, including tools' costs; how to best adapt tools to country circumstances; and preferred institutional designs. As such, policy makers should move carefully in adopting tools.

On 11 December 2014, EBA published the periodical update to its Risk Dashboard summarising the main risks and vulnerabilities in the EU banking sector on the basis of the evolution of key risk indicators from 53 banks across the EU in the first and second quarter of 2014. This edition of the risk dashboard is the first to have own funds' positions and requirements data that is based on the supervisory reporting standards from COREP, the Common Reporting framework for financial institutions across the EU, and includes an annex on aggregate risk parameters that brings enhanced transparency on EU banks' and allows comparison across countries and geographical areas. Data in this edition of the EBA Dashboard confirms the positive trend in EU banks' capital positions, which – driven by capital issuances ahead of the stress test and asset quality review exercises – reached the highest level since 2009. The levels of non-performing loans remained stable, but still at very high levels; and profitability levels have been volatile. The EBA dashboard also shows that shifts in balance sheets' structure continue.

On 16 December 2014, the EBA issued its final Guidelines defining the criteria that EU competent authorities will use to identify institutions that are systemically important either at EU or Member State level – so-called "other systemically important institutions" (O-SIIs). These Guidelines aim at setting uniform parameters at EU level while taking into account specificities of Member States' individual banking sectors, so as to achieve an appropriate degree of convergence in the identification process as well as at ensuring a comparable, clear and transparent assessment of systemically important institutions in the EU.

The General Board of the ESRB held its 16th regular meeting, in Frankfurt, on 18 December 2014. The General Board discussed risks and vulnerabilities in the financial system, including that an extended period of low interest rates could have side effects for financial stability risks, as asset valuations are more likely to become stretched and subject to sudden spikes in volatility in the context of a global search for yield. The General Board also took note of the results of the EBA and EIOPA 2014 EU-wide stress tests; considered progress made in the implementation of EMIR requirements regarding, among other things, CCPs; and approved a report (to be published towards the end of January 2015) on the regulatory treatment of sovereign exposures. In addition, the General Board discussed the macroprudential implications of the number and scale of misconduct cases at EU banks; decided to publish a call for expressions of interest for 12 external experts to be appointed as members of the ESRB's Advisory Scientific Committee; and agreed that the tenth issue of the ESRB's *Risk Dashboard* would be published on 5 January 2015.

On 19 December 2014, the EBA published its sixth Semi-Annual Report on risks and vulnerabilities of the EU banking sector. The report highlights that throughout 2014, European banks have continued to take advantage of favourable market conditions to raise capital in preparation for the asset quality reviews and the 2014 EU-wide stress test. The average common equity Tier 1 ratio for the largest European banks reached 11.8% in June 2014, the highest level since 2009 and broadly in line with the largest US banks. The Report informs that market sentiment and confidence is improving, however, it also warns that the signs of recovery remain modest and fragile and that weak macroeconomic conditions can further affect credit quality. The heavy debt overhang, the potential impact of conduct-related issues, and the sustainability of business models and profitability remain sources of concerns.

Published on 22 December 2014, *A Simple Macroprudential Liquidity Buffer* is an IMF staff working paper, in which a mechanism is proposed that aims to reduce the risk of a banking sector liquidity crisis — which is a quintessentially systemic event and thus the object of macroprudential policy — and moderate the effects of a crisis should one occur. The instrument would give banks more incentive to build up buffers of systemically liquid assets as a proportion of their total liabilities, yet these buffers would be usable in times of stress. The modalities of the instrument are considered with a view to making it effective, efficient, and robust.

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ICMA in Asia-Pacific

by Mushtaq Kapasi

Introduction

Since launching its Asia-Pacific representative office in Hong Kong in 2013, ICMA has continued to strengthen ties with members, regulators, central banks, intermediaries, and infrastructure providers in the region.

During ICMA's recent discussions in Asia, three common themes have emerged: (i) financial liberalisation, particularly in China; (ii) growth in intra-regional investment and cooperation; (iii) demand for new products to finance infrastructure development and trade. ICMA's own efforts to develop efficient, liquid and well-governed cross-border capital markets across the Asia-Pacific region reflect these trends.

In Asia, as in other regions, ICMA's main focus will continue to be on international debt capital markets and repo. ICMA has promoted fruitful dialogue between Asia and Europe on emerging reforms and standard practices in both regions, and is active in international efforts to avoid regulations that have unintended or contradictory consequences across borders into Asia.

Asian primary markets

ICMA has established a forum of Asia debt syndicate managers from leading global and regional underwriters. The subjects covered have included investor meetings, order book transparency, pricing iterations, allocations, stabilisation, retail distribution, and the dynamics and risks of a growing market. Complementing the syndicate forum, ICMA more recently established a forum of Asian legal, documentation, and transaction managers, with an emphasis on regulations, compliance, contracts and disclosure. Discussions have echoed to some extent many of the topics arising in the ICMA Primary Market Practices Committee and the ICMA Legal and Documentation Committee, but have also shed a light on some areas where Asian perspectives and dynamics differ.

Overall, the ongoing revisions to the ICMA Primary Market Handbook (PMH) are being closely watched by Asian market professionals. The PMH covers internationally syndicated primary debt capital markets offerings, generally excluding high-yield and equity-linked transactions. Although the PMH often does not apply to US dollar-denominated transactions, in Asia the distinctions among G3 issuances are more fluid, and many of the principles and standard provisions of the PMH are followed in cross-border transactions denominated not only in euro, but also in Japanese yen and US dollars. In addition, many of the long-standing principles and standard clauses of the PMH have been borrowed and adapted to local Asian capital markets.

Also, ICMA has had extensive dialogue with China's National Association of Financial Market Institutional Investors (NAFMII) to aid in the development of standards in the onshore interbank bond market as this market continues to grow in volume, attract new entrants, and diversify its products. In particular, as part of the UK-China Economic and Financial Dialogue, ICMA and NAFMII have established a private sector working group bringing together experts from financial institutions in London and China to share expertise on processes, market access and practices, and the associated market infrastructure.

Repo

The repo markets in Asia, both local and cross-border, are growing quickly, but remain relatively small and disjointed due to the variety of regulatory regimes and market dynamics. The adoption of international practices and increased use of standard documentation would improve secondary market liquidity, collateral risk, and transparency. Asian repo market participants recognise ICMA's leadership in global market knowledge, regulatory expertise, legal opinions and contracts. ICMA has organised a number of GMRA and repo workshops in different centres across Asia designed to assist market participants to better understand the instrument and related documentation. The *ICMA ERC Guide to Best Practice in the European Repo Market* has been recognised as a useful model for market conventions in the cross-border Asian repo markets, and work is under way, in cooperation with regional associations, to adapt the *Guide* to Asia and its various domestic markets.

ICMA has worked closely with NAFMII over the last two years on repo as NAFMII created its own master agreement for the domestic China market, involving both pledge and true sale. ICMA has also led the development of GMRA legal opinions for many Asia-Pacific countries. However, work remains to be done to improve the relevant regulatory regimes and judicial procedures to enable more efficient markets. ICMA has renewed dialogue with national regulators to assist them in the development of regulations, infrastructure, and standard documentation relevant to repo in their domestic markets.

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diary

ICMA organises over 100 market-related events each year attended by members and non-members. For full details see www.icmagroup.org

ICMA Women's Network: *Starting Out*

Wednesday 26 November saw the inaugural event of the newly formed ICMA Women's Network. Titled *Starting Out,* the aim was to introduce the ICMA Women's Network via an interactive event, focusing on issues women are facing across our industry, with a particular emphasis on those who are in the earlier stages of their careers.

As the leader session for the afternoon, we were delighted to be able to invite Angela Clist (Allen & Overy), Kate Craven (formerly Barclays) and Margaret Rowe (formerly Fidelity Worldwide Investment) as our panellists. Guided by Camille McKelvey (TRAX), the panel discussed a variety of topics including: their career pathways to their current positions; what tips and techniques have (and have not) worked for them; changes they have had to make to progress their careers; managing the work/life balance; and what insights they would like to give their younger selves.

The panel was followed by a lively round of Q&A which expanded on many of the themes touched upon in the prior session.

The final part of the afternoon was a "structured" networking session hosted by a selection of senior industry figures. The concept of the "structured" element to the networking was designed to ensure that those of us who are a little shyer about introducing ourselves to others are given a less intimidating environment in which to do so. Small tables with groups of approximately five people each had table "hosts" to help introductions and to start the conversation flowing. Pre-prepared questions (as well as wine and nibbles) were also available at each table in case the conversation dried up during the allotted time, but it was extremely gratifying to see that this was not an issue at all. Indeed many of the groups were involved in such enthusiastic discussions that they had to be coaxed into moving to the next table – something we shall bear in mind for future events!

The afternoon rounded off with informal drinks where delegates were encouraged to mingle, chat with the panellists and table hosts and further develop contacts made during the sessions.

We were delighted with the positive response the event received and for the constructive comments provided as to potential future areas to explore. A number of attendees would like future events to look at career development in general, and also to have different business areas represented on panels, while others were pleased to see a selection of men in attendance and suggested that we include a male representative on further panel discussions. Other themes for future events included running a skills workshop and discussions relating to styles of leadership, female board quotas and the gender pay gap. We will bear all the feedback in mind in planning our next event.

Many thanks to all of you who attended, to our panellists and table hosts and particularly to those of you who provided feedback on the afternoon. We hope you agree that there certainly seems to be a lot of material for our future calendar, and we are excited by the enthusiasm shown by all of you on our first outing! Please do continue to spread the word to colleagues (male and female) who you think might be interested in joining the Network and we look forward to posting details of our next event.

Jacqueline Steven,
Bank of America Merrill Lynch

ICMA Women's Network

Networking. Progression. Support.

@ICMAWomensNet

Join us on Linked In

Email us: icmawomensnetwork@icmagroup.org


Networking. Progression. Support.

diary

ICMA Capital Market Lecture Series 2015

The 2015 ICMA Capital Market Lecture season will again feature senior industry figures, including regulators, government officials and central bankers, speaking in the major financial centres of Europe. The lectures are an opportunity for ICMA members to hear directly from the policy makers and commentators who are shaping the financial markets of the future:

27 JAN

Ignazio Angeloni, Member of the Supervisory Board , European Central Bank, Frankfurt, 27 January

25 FEB

Elizabeth Corley, Chief Executive Officer, Allianz Global Investors GmbH, London, 25 February

24 MAR

Anne Leclercq, Director of Treasury and Capital Markets, Belgian Debt Agency, Brussels, 24 March

31 MAR

Sir Nigel Wicks, Chairman, British Bankers Association, London, 31 March

ICMA Capital Market Lectures are open to ICMA members only.

22 JAN

Annual ICMA and NCMF Joint Seminar: Bond Markets – New Products, New Challenges, Helsinki, 22 January

The annual seminar will review developments in the global and Nordic capital markets over the past 12 months. Discussions on new funding options will feature SRI investing and green bonds which have come into the mainstream during 2014, together with progress on infrastructure bonds and efforts to create a single European private placement market.

Register

11 FEB

Japan Securities Summit, London, 11 February

The 2015 Japan Securities Summit will take place in London, co-organized by Japan Securities Dealers Association (JSDA) and ICMA. Distinguished speakers and commentators will discuss the major challenges facing Japan including the growth strategy and fiscal consolidation and provide their insights on Japan's potential and its securities market's roles to ensure future sustainable growth.

Register

ICMA EVENTS AND COURSES

03 MAR

The 7th Annual bwf and ICMA Capital Markets Conference, Frankfurt, 3 March

The 7th Annual Capital Markets Conference, organised jointly with Bundesverband der Wertpapierfirmen e.V. (bwf) will include discussions on the latest proposals for regulatory and structural changes in the European securities market as well as updates on green bonds and current challenges facing the secondary capital markets.

Register

09-11 MAR

ICMA Workshop: Global Master Agreements for Repo and Securities Lending, London, 9-11 March

The workshop offers a detailed review and comparison of both legal agreements and their application, including coverage of the GMRA 2011, together with case studies, building on a rigorous introduction into the operational and basic legal characteristics of the repo and securities lending markets, and insights into key features of the market such as triparty repo and the use of CCP, as well as accounting and tax treatment.

Register

17-18 MAR

ICMA Professional Repo and Collateral Management Course, Frankfurt, 17-18 March

This industry-run course caters to the needs of professional repo market participants and is provided at subsidised rates to ICMA members, underlining the association's commitment to education and the development of this financing product. Although designed for new repo market practitioners, the breadth and depth of the course attracts a wide range of delegates, including legal, compliance, accounting and operations staff, analysts, staff from market infrastructures, rating agencies, regulators, central bankers and others.

Register

16 APR

ICMA Workshop: Bond Syndication Practices for Compliance Professionals and Other Non-Bankers, London, 16 April

This workshop aims to give compliance professionalsan in-depth and thorough understanding of the current practices that are involved in launching a deal in the international debt capital market. it explains precisely how the deal is done, starting with first steps in the pre-launch process – looking at the pitch book, the mandate, the roadshow and the prospectus – through syndication, including book building and allocation, up to and including the final public launch of the issue. The interaction of current regulation (including the Market Abuse Directive and the Prospectus Directive) with the process is considered.

Register

06-07 MAY

The ICMA CBIC and *The Covered Bond Report* Conference, Frankfurt, 6-7 May

The agenda for the one day conference will be drawn up by key members of the ICMA Covered Bond Investor Council (CBIC) and *The Covered Bond Report*, and it will explore those issues that are at the top of the investor base's agenda. Panel discussions will include improved transparency in the market as well as looking at new structures, and recent regulatory developments. The winners of *The Covered Bond Report Awards for Excellence* will be announced on the eve of the event, at the pre-conference reception.

Register

Save the date for these events in 2015

Les 6èmes Rencontres des Professionnels des Marchés de la Dette et du Change, Paris, 5 February

ICMA Asset Management and Investors Council Meeting, Amsterdam, 29 April

ICMA European Repo Council AGM, Brussels, 18 May

ICMA Annual General Meeting and Conference 2015, Amsterdam, 3-5 June

Registration opens in February

ICMA Executive Education courses in 2015

Register now for these ICMA Executive Education courses in the first half of 2015. See the ICMA website for the full 2015 course schedule.

Part I: Introductory Programmes

Financial Markets Foundation Course (FMFC)
London: 6-8 May 2015
Luxembourg: 10-12 June 2015

Securities Operations Foundation Course (SOFC)
London: 25-27 February 2015
Brussels: 11-13 March 2015

Part II: Intermediate Programmes

Fixed Income Certificate
Barcelona: 19-25 April 2015

Operations Certificate Programme (OCP)
Brussels: 22-28 March 2015

Primary Market Certificate (PMC)
London: 18-22 May 2015

Part III: Specialist Programmes

Collateral Management
London: 28-29 April 2015

Corporate Actions – An Introduction
London: 12-13 May 2015

Corporate Actions – Operational Challenges
London: 14-15 May 2015

ICMA Guide to Best Practice in the European Repo Market
London: 31 March 2015

ICMA Executive Education – Skills Courses

Mastering Mandates
London: 12-13 March

Contact: education@icmagroup.org

GLOSSARY

ABCP	Asset-Backed Commercial Paper
ABS	Asset-Backed Securities
ADB	Asian Development Bank
AFME	Association for Financial Markets in Europe
AIFMD	Alternative Investment Fund Managers Directive
AMF	Autorité des marchés financiers
AMIC	ICMA Asset Management and Investors Council
ASEAN	Association of Southeast Asian Nations
BBA	British Bankers' Association
BCBS	Basel Committee on Banking Supervision
BIS	Bank for International Settlements
BMCG	ECB Bond Market Contact Group
BRRD	Bank Recovery and Resolution Directive
CAC	Collective action clause
CBIC	ICMA Covered Bond Investor Council
CCBM2	Collateral Central Bank Management
CCP	Central counterparty
CDS	Credit default swap
CFTC	US Commodity Futures Trading Commission
CGFS	Committee on the Global Financial System
CICF	Collateral Initiatives Coordination Forum
CIF	ICMA Corporate Issuer Forum
CNAV	Constant net asset value
CoCo	Contingent convertible
COGESI	Contact Group on Euro Securities Infrastructures
COREPER	Committee of Permanent Representatives (in the EU)
CPSS	Committee on Payments and Settlement Systems
CRA	Credit Rating Agency
CRD	Capital Requirements Directive
CRR	Capital Requirements Regulation
CSD	Central Securities Depository
CSDR	Central Securities Depositories Regulation
DMO	Debt Management Office
D-SIBs	Domestic systemically important banks
DVP	Delivery-versus-payment
EACH	European Association of CCP Clearing Houses
EBA	European Banking Authority
EBRD	European Bank for Reconstruction and Redevelopment
ECB	European Central Bank
ECJ	European Court of Justice
ECOFIN	Economic and Financial Affairs Council (of the EU)
ECON	Economic and Monetary Affairs Committee of the European Parliament
ECP	Euro Commercial Paper
ECPC	ICMA Euro Commercial Paper Committee
EDGAR	US Electronic Data Gathering, A nalysis and Retrieval
EEA	European Economic Area
EFAMA	European Fund and Asset Management Association
EFC	Economic and Financial Committee (of the EU)
EFSF	European Financial Stability Facility
EFSI	European Fund for Strategic Investments
EGMI	European Group on Market Infrastructures
EIB	European Investment Bank
EIOPA	European Insurance and Occupational Pensions Authority
ELTIFs	European Long-Term Investment Funds
EMIR	European Market Infrastructure Regulation
EMTN	Euro Medium-Term Note
EMU	Economic and Monetary Union
ERC	ICMA European Repo Council
ESA	European Supervisory Authority
ESFS	European System of Financial Supervision
ESMA	European Securities and Markets Authority
ESM	European Stability Mechanism
ESRB	European Systemic Risk Board
ETF	Exchange-traded fund
EURIBOR	Euro Interbank Offered Rate
Eurosystem	ECB and participating national central banks in the euro area
FAQ	Frequently Asked Question
FASB	Financial Accounting Standards Board
FATCA	US Foreign Account Tax Compliance Act
FATF	Financial Action Task Force
FCA	UK Financial Conduct Authority
FEMR	*Fair and Effective Markets Review*
FIIF	ICMA Financial Institution Issuer Forum
FMI	Financial market infrastructure
FPC	UK Financial Policy Committee
FRN	Floating-rate note
FSB	Financial Stability Board
FSC	Financial Services Committee (of the EU)
FSOC	Financial Stability Oversight Council (of the US)
FTT	Financial Transaction Tax
G20	Group of Twenty
GDP	Gross Domestic Product
GMRA	Global Master Repurchase Agreement
G-SIBs	Global systemically important banks
G-SIFIs	Global systemically important financial institutions
G-SIIs	Global systemically important insurers
HFT	High frequency trading
HMT	HM Treasury
IAIS	International Association of Insurance Supervisors
IASB	International Accounting Standards Board
ICMA	International Capital Market Association
ICSA	International Council of Securities Associations
ICSDs	International Central Securities Depositaries
IFRS	International Financial Reporting Standards
IIF	Institute of International Finance
IMMFA	International Money Market Funds Association
IMF	International Monetary Fund
IMFC	International Monetary and Financial Committee
IOSCO	International Organization of Securities Commissions
IRS	Interest rate swap
ISDA	International Swaps and Derivatives Association
ISLA	International Securities Lending Association
ITS	Implementing Technical Standards
KfW	Kreditanstalt für Wiederaufbau
KID	Key Information Document
KPI	Key Performance Indicator
LCR	Liquidity Coverage Ratio (or Requirement)
L&DC	ICMA Legal & Documentation Committee
LEI	Legal entity identifier
LIBOR	London Interbank Offered Rate
LTRO	Longer-Term Refinancing Operation
MAD	Market Abuse Directive
MAR	Market Abuse Regulation
MEP	Member of the European Parliament
MiFID	Markets in Financial Instruments Directive
MiFID II	Revision of MiFID
MiFIR	Markets in Financial Instruments Regulation
MMCG	ECB Money Market Contact Group
MMF	Money market fund
MOU	Memorandum of Understanding
MTF	Multilateral Trading Facility
NAFMII	National Association of Financial Market Institutional Investors
NAV	Net asset value
NCA	National Competent Authority
NSFR	Net Stable Funding Ratio (or Requirement)
OAM	Officially Appointed Mechanism
OTC	Over-the-counter
OTF	Organised Trading Facility
OJ	*Official Journal of the European Union*
OMTs	Outright Monetary Transactions
ORB	London Stock Exchange Order book for Retail Bonds
PD	Prospectus Directive
PD II	Amended Prospectus Directive
PMPC	ICMA Primary Market Practices Committee
PRA	UK Prudential Regulation Authority
PRIIPs	Packaged Retail and Insurance-Based Investment Products
PSI	Private Sector Involvement
PSIF	Public Sector Issuer Forum
QIS	Quantitative impact study
QMV	Qualified majority voting
RFQ	Request for quote
RM	Regulated Market
RMB	Chinese renminbi
ROC	Regulatory Oversight Committee of the Global Legal Entity Identifier System
RPC	ICMA Regulatory Policy Committee
RSP	Retail structured products
RTS	Regulatory Technical Standards
SEC	US Securities and Exchange Commission
SFT	Securities financing transaction
SGP	Stability and Growth Pact
SI	Systematic Internaliser
SLL	Securities Law Legislation
SMEs	Small and medium-sized enterprises
SMPC	ICMA Secondary Market Practices Committee
SPV	Special purpose vehicle
SRM	Single Resolution Mechanism
SRO	Self-regulatory organisation
SSAs	Sovereigns, supranationals and agencies
SSM	Single Supervisory Mechanism
SSR	EU Short Selling Regulation
T+2	Trade date plus two business days
T2S	TARGET2-Securities
TD	EU Transparency Directive
TFEU	Treaty on the Functioning of the European Union
TLAC	Total Loss-Absorbing Capacity
TRs	Trade repositories
UKLA	UK Listing Authority
VNAV	Variable net asset value

ICMA welcomes feedback and comments on the issues raised in the Quarterly Report. Please e-mail: regulatorypolicynews@icmagroup.org or alternatively the ICMA contact whose e-mail address is given at the end of the relevant article.

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