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ICMA
International Capital Market Association

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The mission of ICMA is to promote resilient and well-functioning international and globally integrated cross-border debt securities markets, which are essential to fund sustainable economic growth and development.

ICMA is a membership association, headquartered in Switzerland, committed to serving the needs of its wide range of members. These include public and private sector issuers, financial intermediaries, asset managers and other investors, capital market infrastructure providers, central banks, law firms and others worldwide. ICMA currently has 612 members in 65 jurisdictions worldwide.

ICMA brings together members from all segments of the wholesale and retail debt securities markets, through regional and sectoral member committees, and focuses on a comprehensive range of market practice and regulatory issues which impact all aspects of international market functioning. ICMA prioritises three core areas – primary markets, secondary markets, repo and collateral: with two cross-cutting themes of sustainable finance and FinTech.

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Foreword

Hoping for stability ahead

by **Bryan Pascoe**

As we enter the new year, I would firstly like to reflect on the membership fee increase process we undertook in 2022 and the outcome. Undoubtedly this was a very significant undertaking for many of us at ICMA, in particular the membership team, but we were delighted with the very high overall participation by members and the very strong support for both fee increase proposals put forward. We also took many positives from the opportunity to engage extensively and in detail with members from all regions and types of organisation, understanding where members see most value in the Association but also more importantly what we can be doing differently or improve on. This is critical as we will only succeed if we evolve in our interaction with members and stakeholders whether it be on improving the effectiveness of our advocacy, shaping best practice, adjusting to market trends and structures, or helping to frame the adaptation of effective technology across the industry. Thanks to all our members for their input and involvement through this process.

I have been greatly encouraged by our membership growth in the course of the year, which currently stands at 612 from 65 jurisdictions. That represents a net increase of over 40 members once the suspension of our Russian members has been taken into consideration. This increase has been well-spread both geographically and by type of member with the reasons for joining spanning all our areas of activity. In what has proven to be a very challenging year on multiple fronts, this is again a very strong validation of the role that we play in the fixed income markets and our importance to the industry on both effective advocacy and standard setting, and certainly in providing a highly impactful networking framework through our broad-ranging events. On this front it was most rewarding for the APAC team to receive the award of Industry Association of the Year at the prestigious Regulation Asia Awards for Excellence 2022. The importance of ICMA's conventions and standards as pillars of the international debt markets and the Association's extensive work in supporting local and regional sustainable finance frameworks across APAC were cited as principal reasons for the award, which is further excellent validation of the work we do.

Looking forward into the year, we expect the intense regulatory activity to continue. With many of the key EU files coming to finalisation and then implementation, and with the UK having announced an ambitious programme of regulatory reform, it will be critical for the ICMA community to work together to reinforce messages of the importance of cohesion and harmonisation in protecting market structure, avoiding fragmentation and maintaining or improving liquidity provision where possible. Market resilience is certainly a key topic as we assess the potential risks ahead, and liquidity concerns have grown with several highly disruptive and unpredictable events in the course of the year. Recent reports and publications from the FSB and IOSCO have highlighted fragilities in bond market structure, and concerns around access to and provision of liquidity and the role played in the market by NBFIs. The objectives of all market players are certainly aligned to eradicate or smooth out the increasingly frequent so-called "Black Swan" events and we need to ensure that regulatory initiatives to solve for one set of issues do not create a "pop" elsewhere. To that end we will be bringing members from multiple ICMA committees together on a regular basis to consider key issues impacting market liquidity and resilience across all areas of the cash bond and repo markets to try to pre-empt risks and feed into the regulatory dialogue.

In terms of other priorities, one key focus will be to further build our position in the digitalisation and FinTech space and fine-tune the specific areas in which we can support substantive change in the industry. This was an important discussion point at the recent Board meeting at the end of November where strategy and priorities of what can best be delivered for members was discussed and agreed. Elsewhere, further integrating our already strong buy-side proposition will be an important focus. We have continued to see the importance and value of cross-industry participation in our advocacy this year, notably in the MiFIR transparency work but also increasingly in what we are doing in repo. Clearly with the focus on liquidity and resilience mentioned above, bringing together the skills and knowledge of our buy side and sell side is critical to provide a comprehensive consideration of all of the issues. Sustainability will continue to be a core and integrated element of our offering to members and interface with official stakeholders across all areas of activity and regions.

I would like to thank our Board members for their support and engagement throughout last year and in particular for their very active involvement and input in formulating and supporting the membership fee increase proposal. The Chairs of the Regional Committees and the Regional Committee members themselves were also highly visible and instrumental in this process, for which I am very grateful. Finally, I would like to thank all the ICMA staff for their great work in what was a challenging but very rewarding year. We look forward to better and more stable market conditions this year with most analysts predicting a firmer environment for fixed income. Let's hope they are right while remaining prepared for the worst given recent history! Best wishes to all for the year ahead.

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Monetary policy, financial stability and capital market resilience

by **Paul Richards**

Summary

Inflation rates in the US, EU and UK rose in 2022 to the highest levels for around 40 years. In the attempt to keep inflation under control and bring it back to target, central bank decisions to raise short-term interest rates had a significant impact in 2022 on international capital markets globally.[1] This assessment considers the background to central bank decisions to tighten monetary policy and the implications for financial stability and the resilience of capital markets. The focus of the assessment is on the pivotal role of three central banks: the Federal Reserve, the ECB and the Bank of England. While their objectives are broadly similar, it is important to recognise that there are significant differences in the conditions they face and the steps they need to take in response.

The objective of price stability

1 The US Federal Reserve, the European Central Bank (ECB) and the Bank of England all have operational independence for achieving target rates of inflation of around 2%.[2]

2 At Jackson Hole in August 2022, the Chairman of the Federal Reserve drew three lessons from the high and volatile rates of inflation during the 1970s and 1980s, and from the low and stable rates of inflation over the past 25 years:

- "central banks *can* and *should* take responsibility for delivering low and stable inflation";
- "the public's expectations about future inflation can play an important role in setting the path of inflation over time"; and
- "we must keep at it until the job is done".[3]

3 He defined price stability by reference to a former Federal Reserve Chairman: "For all practical purposes, price stability means that expected changes in the average price level are small enough and gradual enough that they do not materially enter business and household financial decisions."[4]

The rise in inflation

4 Given that the Federal Reserve, the ECB and the Bank of England all take responsibility for achieving target inflation rates of around 2%, why did inflation rates rise in 2022 well beyond this? One partial explanation is that the three central banks originally considered that price pressures were transitory, while it subsequently became clear that inflation would become persistent and entrenched unless they took decisive steps to tighten monetary policy rapidly. As they originally considered that inflationary pressures were

1. The IMF forecast global inflation to rise from 4.7% in 2021 to 8.8% in 2022, but to decline to 6.5% in 2023 and 4.1% in 2024: *World Economic Outlook,* October 2022.

2. See, for example, Andrew Bailey, Governor of the Bank of England: "Let me be quite clear. There are no ifs or buts in our commitment to the 2% inflation target. That's our job and that's what we will do.": *Bringing Inflation Back to the 2% Target, No Ifs No Buts":* Mansion House Financial and Professional Services Dinner, 19 July 2022.

3. Jerome Powell, Chair of the Board of Governors of the Federal Reserve System: *Monetary Policy and Price Stability:* Jackson Hole, Wyoming, 26 August 2022.

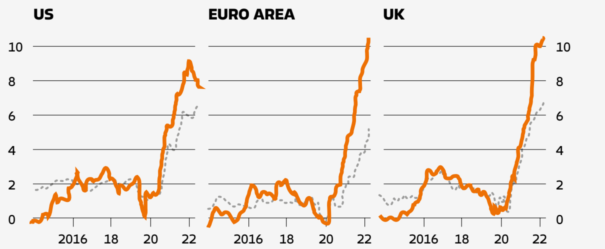
4. Alan Greenspan: Statement before the Committee on Banking, Housing and Urban Affairs, US Senate, 21 February 1989.

transitory, they did not raise short-term interest rates earlier, and they did not end quantitative easing earlier.[5]

5 But it is also clear that inflation in 2022 rose much higher than it would otherwise have done because of the impact of the Russian invasion of Ukraine, which led to a substantial rise in energy – and in particular gas – as well as food prices globally. It is notable that, in 2022, the impact of the war in Ukraine on the European economy was significantly greater than the US. The impact on inflation was exacerbated by shortages in supply and accompanied by a widespread reconfiguration of supply chains from "just in time" to "just in case".[6]

6 These supply constraints were accompanied by upward pressure on prices on the demand side. Following the unprecedented nature of the COVID-19 pandemic, when the authorities initially eased fiscal policy (eg through government support for furlough schemes and the equivalent), the economic recovery from the COVID-19 pandemic was more pronounced in some countries (eg the US) than others (eg the UK). But labour markets – particularly though not only in the US – remained comparatively tight.

Chart 1: Inflation in the US, euro area and UK: 2016-2022



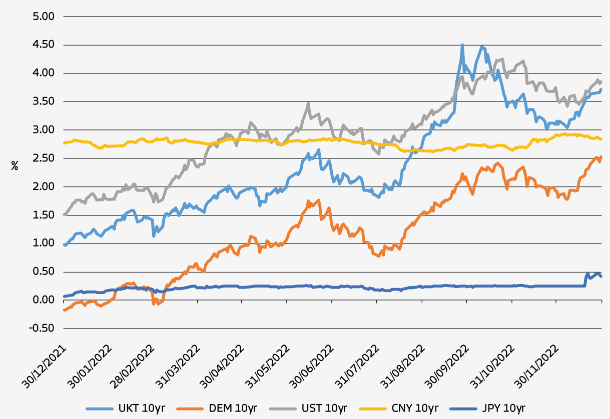
Note: Annual percentage change in CPI and core CPI (excluding food and energy, dotted line). Source: FT

The monetary policy response

7 Against this background, the Federal Reserve, the ECB and the Bank of England raised short-term interest rates forcefully in 2022, by 425 basis points, 250 basis points and 325 basis points respectively, to levels last reached in 2007-2008. While the pace of the rise in rates moderated from regular increases of 75 basis points to 50 basis points in December 2022, the three central banks signalled that, even when inflation peaked, further increases in short-term interest rates were likely to be needed in order to bring inflation back to target.[7]

8 The rise in short-term interest rates started from a very low base. At the beginning of 2022, bond yields were still negative in the case of a relatively wide range of G7 government bonds, and nominal interest rates were strongly negative in real terms. During 2022, in response to the rise in short-term interest rates, yields on 10-year US Treasuries rose by 230 basis points, German Bunds by 270 basis points and UK gilts by 270 basis points. In raising short-term interest rates, the three central banks were aware that tightening monetary policy takes time to work through the economy, and they recognised that it is a relatively blunt economic instrument. It affects demand as a whole, with a lag, but its impact on supply constraints is less clear.[8]

Chart 2: 10-year sovereign bond yields: end-2021 to end-2022



Source: ICMA analysis using Bloomberg data

5. Quantitative easing involves central bank purchases of government securities which increase the amount of cash in the market and have the effect of easing monetary conditions. Quantitative tightening involves the reverse.

6. Andrew Bailey, Governor of the Bank of England: "The Russian shock is now the largest contributor to UK inflation by some way. There is an economic cost to the war, and we all have to recognise that, but at the Bank it will not deflect us from setting monetary policy to bring inflation back to the 2% target: *Bringing Inflation Back to the 2% Target, No Ifs No Buts*": Mansion House Financial and Professional Services Dinner, 19 July 2022.

7. See, for example, Jerome Powell, Chairman of the Federal Reserve Board: "We have covered a lot of ground, and the full effects of our rapid tightening so far are yet to be felt. Even so, we have more work to do.": 14 December 2022. Christine Lagarde, President of the ECB: "The ECB is not pivoting. If you compare us to the Fed, we have more ground to cover.": 15 December 2022. The Bank of England: "Interest rates will still have to rise significantly at a steady pace to reach levels that are sufficiently restrictive to ensure a timely return of inflation.": 15 December 2022.

8.Jerome Powell, Chairman of the Federal Reserve: "There is clearly a job to do in moderating demand to better align with supply. We are committed to doing that job.": Jackson Hole speech, 26 August 2022.

9 Following a long period of quantitative easing (QE) involving central bank purchases of government securities in unprecedented amounts, the three central banks each needed during 2022 to judge whether and to what extent to introduce quantitative tightening (QT) through securities sales from the stock of securities on their balance sheets. While QT reinforces the message about the need to bring inflation under control, it also adds to funding requirements and risks raising government bond yields further. In addition, the rise in short-term interest rates led to a fall in the market value of the portfolios of government securities accumulated during QE by the three central banks on their balance sheets.

10 It is common ground that the authorities' fiscal policy stance has monetary policy consequences. If capital markets believe that fiscal policy is not sustainable, monetary policy needs to be tightened – through increases in short-term interest rates – by more than would otherwise be necessary in order to meet the inflation target.[9] Once capital markets believe that fiscal policy is sustainable, measured in particular by its impact on the level of public debt and the cost of debt interest, any premium previously required in government bond yields should begin to decline, though this takes time. In response to market pressure, the change in UK Government policy between two budgets, the first (so-called "mini" budget) at the end of September 2022 and the second in November, is an example of this.

11 For the Federal Reserve, the ECB and the Bank of England, finding the right balance between controlling inflation and preventing an economic recession is fraught with difficulty.[10] In the US in particular, bringing inflation back to target became a higher priority for the Federal Reserve in 2022 than preventing an economic recession. This was reflected in an inversion of the yield curve between short and long-dated government bonds. The rationale was that, if central banks failed to bring inflation back to target, the consequences would be more painful in economic terms in the long run. There would be a risk of a return to stagflation last experienced in the 1970s.[11]

12 Underlying the response by the three central banks to the rise in inflation is a concern about the risk to their own credibility if they do not succeed relatively quickly in bringing inflation back under control. The three central banks already face the risk of criticism for allowing inflation to rise substantially above target. But they now also face the risk of criticism if the rise in short-term interest rates needed to bring inflation under control leads directly to economic recession. Whatever the outcome, the operational independence of the three central banks is expected to come under closer political scrutiny. The Governor of the Bank of England said: "From the perspective of monetary policy, these times are the largest challenge to the monetary policy regime of inflation targeting that we have seen in the quarter century since the MPC was created in 1997."[12]

The implications of monetary policy for financial stability

13 To what extent does the rise in short-term interest rates needed to combat inflation complicate the task of the three central banks in ensuring financial stability? To some extent, this depends on whether the rise in short-term interest rates succeeds in bringing inflation back to target without causing a severe economic recession. But in 2022 the rise in short-term interest rates also affected the financial stability of markets in other ways:

14 First, as the Federal Reserve took the lead in raising short-term interest rates, starting earlier and moving more quickly than the ECB, the US dollar strengthened significantly in the foreign exchange market, at least until later in the year. Given the US dollar's wide international role, this had a particularly significant impact on inflation in many emerging market economies, some of which were already vulnerable owing to the impact of the COVID-19 pandemic. Their import prices and foreign debt stock denominated in US dollars increased in local currency terms, and their debt interest burden rose in response to the rise in US interest rates.

15 Second, the risk of market fragmentation is a concern in the euro area. This is partly because of regulatory divergence (eg between the EU under Capital Markets Union and the UK, whose Chancellor of the Exchequer launched a series of post-Brexit reforms in Edinburgh on 9 December 2022[13]). But it is also because of the differential impact of the rise in short-term euro interest rates within the euro area. For a time during 2022, the spread between core and peripheral euro rates widened appreciably, prompting the ECB to obtain approval to intervene in weak government bond markets, if necessary, to ensure that monetary

9. If governments cap energy prices to reduce headline rates of inflation, there is a cost in terms of increased government borrowing.

10. The IMF forecast that global growth will slow from 6.0% in 2021 to 3.2% in 2022 and 2.7% in 2023, including a US GDP contraction in the first half of 2022 and a euro area contraction in the second half of 2022: *World Economic Outlook,* October 2022.

11. Jerome Powell, Chairman of the Federal Reserve Board: "While higher interest rates, slower growth, and softer labour market conditions will bring down inflation, they will also bring some pain to households and businesses. These are the unfortunate costs of reducing inflation. But a failure to restore price stability would mean far greater pain." Jackson Hole speech, 26 August 2022.

12. Andrew Bailey, Governor of the Bank of England: Mansion House speech, 19 July 2022.

13. Jeremy Hunt, Chancellor of the Exchequer: *Financial Services: the Edinburgh Reforms,* HM Treasury, 9 December 2022.

policy could be transmitted effectively throughout the euro area.[14] The increase in sovereign bond yields also affected corporate bond yields, and led to a significant rise in the yield differential between corporate credit risks for high grade credits and for high yield credits, with access to the bond market for high yield credits becoming severely limited.

16 Third, the impact of rising gilt yields on liability-driven investment (LDI) is a particular concern for the UK authorities. Under LDI, defined benefit pension schemes hedge the inflation and interest rate risk of their liabilities to pensioners using leverage to free up capital to invest in high-quality securities that pay a premium over gilts, such as corporate bonds or asset-backed securities. While disposals of the schemes' assets take a period of time, margin (ie collateral) requirements on their hedges must be settled daily and mostly in cash. If the schemes' liquidity buffers are not sufficient, the schemes have no alternative but to sell gilts linked to the hedges.[15]

17 In the stressed market conditions after the UK Government's mini-budget in September 2022, the Bank of England described how "some LDI funds were creating an amplification mechanism in the long end of the gilt market through which price falls had the potential to trigger forced selling and thereby become self-reinforcing. Such a self-reinforcing price spiral would have resulted in even more severely disrupted gilt market functioning. And that would in turn have led to an excessive and sudden tightening of financing conditions for households and businesses. In response to this threat, the Bank of England intervened on financial stability grounds."[16]

18 The Bank of England's intervention highlighted an apparent tension between the quantitative tightening (QT) needed for monetary policy purposes, on the one side, and the need to purchase government securities to ease a critical threat to financial stability, on the other side. In response, the Bank of England made it clear that its intervention was not intended to steer market yields towards some particular level, as in the case of monetary policy, but rather it was intended to prevent them from being distorted by market disruption, so as to ensure financial stability. It is also important to note that, unlike QE, the Bank of England's financial stability operation was a short-term intervention.[17]

Financial stability and capital market resilience

19 Despite the rise in short-term interest rates, the stability of the banking system did not come under undue pressure in 2022. Following the regulatory steps taken in response to the global financial crisis in 2007-2009 and the sovereign debt crisis in the euro area in 2010-2012, banks in advanced economies are much better capitalised and regularly stress-tested. The ECB and the Bank of England now also stress-test banks on their ability to cope with the impact of climate change on their business. In addition, bank profit margins benefit from rising interest rates. This should stand them in better stead to absorb the impact of a rise in business bankruptcies and the impact of a rise in mortgage rates on the housing market.

20 Official concerns about financial stability are currently focused less on the stability of the banking system, and more on the role of non-bank financial intermediation (NBFI) and the impact of leverage. The authorities' aim is to ensure that NBFIs are sufficiently resilient and appropriately regulated.[18] The resilience of NBFIs initially became a priority for the authorities following the "dash for cash" at the start of the COVID-19 pandemic. Their concerns were highlighted again by the rise in short-term interest rates in 2022. In particular:

- In its report in October 2022, the IMF argues that "market liquidity metrics have worsened across asset classes, including in markets that are generally highly liquid and among standardised and exchange traded products. US Treasury bid-ask spreads have widened significantly, market depth has declined sharply and liquidity premiums have increased."[19]
- In its progress report in November 2022, the Financial Stability Board (FSB) focuses on the functioning and resilience of the NBFI ecosystem, which depends on the availability of liquidity and its effective intermediation under stressed market conditions. The FSB proposes

14. The ECB's transmission protection instrument (TPI) can be activated to counter unwarranted, disorderly market dynamics that pose a serious threat to the transmission of monetary policy across the euro area. A judgment will be needed on whether and if so when activation will be justified. The hope must be that the threat is sufficiently powerful that the TPI does not need to be used.

15. See Abdallah Nauphal, Chief Executive, Insight Investment: *LDI Strategy Has Left DB Pensions in Better Shape:* FT, 21 October 2022.

16. Sarah Breeden, Bank of England: *Risks from Leverage: How did a Small Corner of the Pensions Industry Threaten Financial Stability?* Allen & Overy, London, 7 November 2022.

17. See Andrew Bailey, Governor of the Bank of England: *Monetary Policy and Financial Stability Interventions in Difficult Times:* Washington, 15 October 2022.

18. See, for example, Francois Villeroy de Galhau, Governor of the Banque de France: "It is high time that we moved forward to enhance the regulatory framework for NBFI that will ensure better liquidity management on financial markets."

19. IMF: *Global Financial Stability Report,* October 2022.

two sets of policies to "reduce excessive spikes in the demand for liquidity by addressing the vulnerabilities that drive those spikes or by mitigating their financial stability impact". One set of policies focuses on addressing structural liquidity mismatch in open-ended funds and promoting greater inclusion and use of liquidity management tools, including by developing detailed guidance on the design and use of those tools. The second set comprises policy work to address procyclicality of margining in centrally cleared and non-centrally cleared derivatives and securities markets, including by enhancing transparency and the liquidity preparedness of market participants. On the supply side, the report draws attention to the need to increase the availability and use of central clearing for government bond cash and repo transactions; the use of all-to-all trading platforms; and measures to enhance the transparency of bond and repo markets.[20]

- An additional concern for the authorities in the fourth quarter of 2022 was the collapse of FTX following extreme volatility in crypto markets. While this did not have an immediate impact on the stability of the banking system, in particular because bank participation was in most cases limited, it did make a powerful case for appropriate regulation. The question is how best to achieve this while allowing important initiatives from the FinTech revolution to continue to develop, such as the development of central bank digital currencies (CBDCs) and the use of blockchain to make back-office systems more efficient. The Chair of the Financial Stability Board wrote to G20 Finance Ministers in October 2022 that "the appropriate regulation of crypto assets, based on the principle of "same activity, same risk, same regulation", will provide a strong basis for harnessing the potential benefits associated with this form of financial innovation while containing its risks."[21]

21 In considering further regulation of NBFIs, it is important that the authorities also consider the risk that focusing on the regulation of one particular product or another in the market ignores the impact on international capital markets as a whole. The market is interconnected, and an integrated approach is needed by the authorities. Regulating one particular part of the market may have unintended consequences elsewhere.

Conclusion

22 The dramatic rise in short-term interest rates in 2022 had a significant impact on international capital markets, where bond yields were previously at historically very low levels, and negative in the case of a relatively wide range of G7 government bonds. The rise in government bond yields also led to an increase in corporate bond yields, with the development of a significant yield differential between high grade credits and high yield credits, where market access became severely limited. The Federal Reserve, the ECB and the Bank of England are well aware that their decisions to raise short-term interest rates, which are necessary to bring inflation back under control, have important potential consequences, not only for the international economy, but also for financial stability. In taking regulatory steps to enhance the resilience of NBFIs in capital markets, they need to consider any unintended consequences across the market as a whole.

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20. Financial Stability Board: *Progress Report to the G20 on Enhancing the Resilience of Non-Bank Financial Intermediation,* 10 November 2022.

21. Klaas Knot, Chair of the Financial Stability Board: letter to G20 Finance Ministers and Central Bank Governors, 3 October 2022.

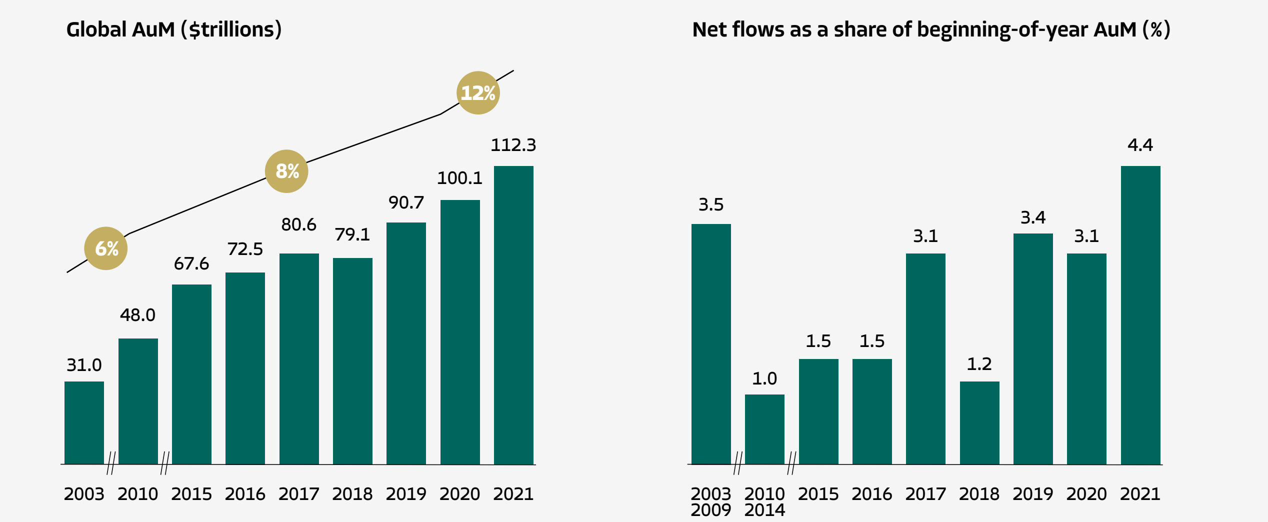
Global trends and the implications for global asset management

by **Massimiliano Castelli**

The asset management industry has experienced a prolonged period of strong growth: according to Boston Consulting Group, over the last 20 years (2001-2021), global assets under management have increased by 7% every year. In 2021, growth was even higher with a record 12%. What is most remarkable about this period is that this positive growth has happened uninterrupted despite some major shocks hitting the global economy: the Global Financial Crisis in 2008 and COVID-19 in 2020-21. Thanks to very low interest rates and massive monetary policy stimulus, equity prices and the prices of other risky assets have always recovered strongly after these negative shocks, thus providing a boost to the funds managed by asset managers. By 2021-end, global assets under management reached USD112.3 trillion, a staggering quadrupling when compared to 2003.

In 2022 we entered a new regime. As inflation rose to levels not seen since the 1980s, the era of low interest rates came rapidly to an end. In order to bring inflation under control, central banks in both advanced and emerging economies – with some notable exceptions, eg China and Japan – have sharply increased interest rates. Furthermore, central banks in advanced economies have started or are going to start soon to reduce their balance sheets thus reducing the liquidity in the global financial system. These radically changed financial market conditions have changed the outlook for asset prices: from a prolonged period of ever rising asset prices supported by low interest rates and ample liquidity, we are moving to a period that is going to be more volatile and uncertain in terms of asset price growth. 2022 will end with a significant drop in assets under management

Growth of assets under management and net flows



Source: Boston Consulting Group, 2022

for the industry and the outlook over the next years remains uncertain as central banks will no longer be in a position to provide any significant support given the still high inflation rate.

The strong growth in assets under management experienced over the last two decades has also been enhanced by a supportive geopolitical environment. The level of international cooperation has been very strong during this period and reached its peak in 2008 when global powers united in their response to the Global Financial Crisis, avoiding a prolonged post-crisis period of economic stagnation through a coordinated policy response and laying the foundations for a more stable financial system via an upgrade of the regulatory framework for financial institutions. This positive political environment started to weaken already in the middle of the last decade with Brexit and the rise of trade protectionism in the US following the election of Trump as US President. The lack of any meaningful globally coordinated response to the COVID-19 crisis represents a significant departure from the spirit of international cooperation that emerged in the aftermath of the Global Financial Crisis. The recent events surrounding Ukraine and rising tensions between China and the US have further increased geopolitical volatility: deglobalization and the fragmentation of the global economy are now considered a very possible scenario over the next years.

What are the implications of this uncertain economic, financial and geopolitical environment for asset management? Whilst some short-end setbacks appear almost unavoidable given the still highly uncertain path for the global economy, one should not lose sight of the fact that some of the key trends shaping asset management are likely to remain intact in the future.

The process of digital transformation has just started and is set to continue and to accelerate over the next years. New technologies have a "structural" impact on asset managers as they touch on all the aspects of their operations: client experience improvement, operational efficiency and alpha generation. The technologies that can contribute directly to alpha generation are AI and data management and analytics. These technologies have the potential to make alpha generation cheaper than in the past, thus contributing to active investment strategies becoming relatively more competitive vis-à-vis passive strategies. This bodes well for a further growth in active strategies, a trend that will also be supported by a changing economic and financial environment characterized by higher volatility and more heterogeneity in performance across region and asset classes.

Despite some recent setbacks, sustainability appears to be an irreversible trend and demand among investors for sustainable investment strategies remains strong. As the war in Ukraine erupted, there was a widespread fear that the policy focus on renewables might shift towards energy security, thus slowing down the energy transition. This has not happened and we see growing political capital being put on the climate change challenge; the US and Asia also appear to be catching up with Europe in this area. Demand for sustainable strategies remains strong despite some recent market moves playing against ESG performance – eg tech stocks underperforming energy stocks – which reflect changed preferences among investors. Asset management plays an important role in the mobilization of funds towards sustainability: further improvements in the regulatory framework and better data and analytics will provide further impetus to this trend in the years to come.

Another key trend that has shaped asset management over the last years has been the increasing allocation to alternative asset classes. This trend has been driven by multiple factors, but the so-called search-for-yield amid a low level of interest rates has been a very powerful one. As we move into a new regime characterized by higher interest rates, will this trend fade away? Whilst a slow-down in the short term appears likely as investors remain risk averse amid macro uncertainty, over the medium- to long-term the trend is likely to continue for several reasons. First of all, many institutional investors are likely to prefer alternative asset classes over public markets as the outlook for the latter remains uncertain. Secondly, some of these alternative asset classes – for instance infrastructure and real estate – are a hedge again inflation. Thirdly, many of the investment opportunities created by the mega trends shaping the global economy – eg digitization, sustainability – can often be better captured in the alternative space (eg PE, venture capital, private lending, etc). Finally, digitization and the more widespread use of blockchain technology in the future is likely to "democratize" alternative asset classes, thus making them accessible to a wider range of investors including smaller ones.

The above-mentioned trends will continue driving the growth of the global asset management industry over the long term. What are the risks which could eventually have a negative impact on these rosy growth prospects? Geopolitical tensions remain high and could escalate further in the future, particularly with regards to the relationship between China and the US. The global economy could eventually shift towards fully-fledged deglobalization and this would lead to regional fragmentation, international disorder and in general more unilateral political and regulatory decisions including rising barriers to cross-border capital movements. Such a scenario would have a negative impact as it would imply higher operational costs for global asset managers and potentially more fragmentation in their regulatory framework. We believe that such a negative scenario has a low but still non-negligible probability and the potential for stabilization to be more likely.

Massimiliano Castelli is Co-Chairman, ICMA Asset Management and Investors Council (AMIC) and AMIC Committee, and Managing Director, Head of Strategy & Advice, Global Sovereign Markets, UBS.

European prospectus disclosure for green, social and sustainability bonds

By **Charlotte Bellamy**

Introduction

1 This article discusses current European market practice for prospectus disclosure in new green, social and sustainability (GSS) bonds (also known as "use of proceeds" bonds) issued in accordance with Regulation S, as well as related considerations and practices. The European market for GSS bonds is predominantly a wholesale market involving institutional (as opposed to retail) investors.

2 This article focuses on prospectus disclosure related to the sustainable element of the instrument (ie the intended use of proceeds), rather than disclosure related to the sustainability of the issuer. ICMA previously summarised considerations for disclosure relating to the sustainability of the issuer in new bond issue prospectuses in an article in the Q3 2021 ICMA Quarterly Report.

3 For sustainability-linked bonds (SLBs), the sustainability element of the instrument is embedded in the terms and conditions. Whilst some of the background and considerations in this article may be relevant for SLBs, they are not the focus of this article.

Overview of the current regime

4 The sustainable bond market (including GSS bonds and SLBs) has grown rapidly in recent years and now stands at around €2.4 trillion. In 2021, around 98% of sustainable bond issuance aligned with the Green Bond Principles, Social Bond Principles, Sustainability Bond Guidelines and Sustainability-Linked Bond Principles administered by ICMA (the "Principles")[1]. The Principles are market-based standards and guidance. They have been, and continue to be, developed over time with the input of a wide range of market participants and stakeholders.

5 The well-developed European regulatory regime for new bond issue disclosure (primarily the EU Prospectus Regulation and UK Prospectus Regime) applies to sustainable bonds in the same way as other types of bonds. There are currently no specific legal requirements relating to prospectus disclosure for sustainable bonds in Europe[2].

6 In the EU, the AFM and AMF published a position paper on green, social and sustainability bonds in 2019, which included a draft annex to the EU Prospectus Regulation detailing specific disclosure requirements for such bonds. The AFM and AMF's proposals have not been incorporated into the EU Prospectus Regulation, although Recital 7 of Regulation (EU) 2021/337 calls on the European Commission to assess whether it is appropriate to integrate sustainability-related information in the EU Prospectus Regulation. In addition, attention has turned to the EU Green Bond Standard, which is currently being debated by the EU co-legislators. It is anticipated that the EU Green Bond Standard will be a voluntary label applicable to green bonds where the net proceeds are applied to EU Taxonomy-aligned projects, and that some issuers will continue to align their green bonds with the Green Bond Principles only.

7 In the UK, the FCA indicated in Feedback Statement FS 22/4 in June 2022 that it would *not* be developing a UK green bond standard in the immediate future but that it would monitor developments and potentially reconsider, subject to the UK Government's policy, the case to develop a UK standard for GSS bonds in the wider context of the revision of the UK Prospectus Regulation. Alongside the Feedback Statement,

1. ICMA analysis based on Environmental Finance Bond Data. See Principles Infographic, 2021.

2. ICMA is also not aware of any such legislation outside of Europe.

the FCA published Primary Market Bulletin 41 in which it encouraged issuers of GSS bonds to consider voluntarily applying or adopting relevant industry standards such as the Principles.

The Principles

8 The Green Bond Principles state:

"The cornerstone of a Green Bond is the utilisation of the proceeds[3] of the bond for eligible Green Projects, which should be appropriately described in the legal documentation of the security."

"Issuers should explain the alignment of their Green Bond or Green Bond programme with the four core components of the GBP (ie Use of Proceeds, Process for Project Evaluation and Selection, Management of Proceeds and Reporting) in a Green Bond Framework or in their legal documentation. Such Green Bond Framework and/or legal documentation should be available in a readily accessible format to investors."

9 Similar provisions apply to social bonds and sustainability bonds pursuant to the Social Bond Principles and Sustainability-Bond Guidelines.

Current market practice for GSS bond disclosure in Europe

10 *Frameworks:* As envisaged by the Principles, many issuers have developed documents known as "Frameworks". The precise content of Frameworks varies, but typically they will explain how the issuer intends to align its green, social or sustainability bond issuance with the Principles. Frameworks might also contain information related to the issuer's sustainability strategy. Some Frameworks have been developed to apply across a range of sustainable financial instruments (including for example GSS loans and sustainability-linked bonds and loans), and so will contain information related to those various financial instruments and not just GSS bonds. As discussed below, Frameworks are typically not incorporated by reference into prospectuses[4] for GSS bonds.

11 *Use of proceeds statement and hyperlinks:* In prospectuses for GSS bonds, many issuers will state that they intend to allocate an amount equivalent to the net proceeds from the issuance to finance and/or refinance, in whole or in part, eligible projects in accordance with their Framework. The prospectus will often include a hyperlink to the webpage where their Framework and related materials (eg the Second Party Opinion (SPO)) can be found, or direct hyperlinks to the Framework and SPO. For prospectuses prepared in accordance with the EU Prospectus Regulation or UK Prospectus Regime, it is a requirement that where a prospectus contains hyperlinks to information that is not incorporated by reference into the prospectus it shall include a statement to the effect that such information does not form part of the prospectus[5] and has not been scrutinised or approved by the competent authority[6].

12 *Framework and SPO do not form part of the prospectus:* There is typically an express statement that the Framework does not form part of the prospectus (and, as mentioned above, this is required in respect of prospectuses prepared in accordance with the EU Prospectus Regulation or UK Prospectus Regime). This approach reflects the more informal nature of the Framework compared with the prospectus as the legal offering document. The same approach is typically taken in relation to the SPO, which is prepared by an SPO provider and also does not form part of the prospectus.

13 *Summary relating to eligible projects:* Some issuers choose to add to the prospectus disclosure described above by including a summary of the eligible projects set out in the Framework, or a summary of the categories or themes of eligible projects[7] set out in the Framework.

14 In the context of debt issuance programmes, these summaries would be included in the base prospectus. In addition, the form of final terms/pricing supplement might envisage that more specific information on the eligible projects relevant to individual issuances will be provided at the time of a drawdown. This is permissible under the EU Prospectus Regulation and UK Prospectus Regime because use of proceeds information is classified as "Category C" information (meaning it can be disclosed in final terms at the time of a drawdown rather than needing to be included in the base prospectus).

15 Summary information relating to eligible projects in prospectuses and base prospectuses may also be accompanied by statements that it is indicative and may change from time to time; or that the summary reflects the Framework as at the date of the prospectus and the Framework and SPO can be amended, supplemented or replaced from time to time.

16 *"Four pillar" disclosure:* Some issuers also choose to disclose a concise summary of how they intend to comply with all four pillars of the Principles, namely:

3. The Green Bond Definition contained in the Green Bond Principles refers to "the proceeds *or an equivalent amount…*" (emphasis added).

4. References to prospectuses also include base prospectuses and final terms/pricing supplements.

5. This statement is usually included in the "Use of Proceeds" section of the prospectus where the Framework is referenced.

6. This statement is usually included at the front of the prospectus with other important information.

7. The Green Bond Principles give examples of eligible Green Project categories such as renewable energy. Similarly, the Social Bond Principles give examples of eligible Social Project categories such as providing and/or promoting affordable basic infrastructure.

- *Use of proceeds:* a brief, factual description of the eligible projects or categories or themes of eligible projects.
- *Project selection:* a brief, factual description of how the issuer will determine which eligible projects should receive allocations
- *Management of proceeds:* a brief, factual description of how the issuer will manage the proceeds.
- *Reporting:* a brief, factual description of how the issuer expects to report to the market.

17 Currently, issuers that include four pillar disclosure in their prospectuses will typically also still include hyperlinks to access the Framework and SPO on the basis that these documents provide additional context in relation to the issuer's sustainability strategy. As described above, the prospectus will typically state that the Framework and SPO do not form part of the prospectus (and, as mentioned in paragraph 11 above, this is required in respect of prospectuses prepared in accordance with the EU Prospectus Regulation or UK Prospectus regime). The caveats described in paragraph 15 above may also be given.

18 *Risk factors:* Prospectuses for GSS bonds will typically include one or more risk factors relating to GSS bonds, explaining that GSS bonds may not meet investor expectations or requirements and the risks associated with that. Specifically, risk factors may relate to there being: (a) no formal definition of what constitutes a "green" or "social" security; (b) no assurance that eligible projects will be completed or meet their objectives; (c) no assurance of the suitability or reliability of any second party opinion; (d) no assurance that the GSS bonds will be admitted to trading on any dedicated sustainable (or similar) segment of any stock exchange or market, or that any admission obtained will be maintained; (e) no events of default related to failure of the issuer to apply an amount equivalent to the net proceeds to finance and/or refinance any eligible projects; and, in some cases, (f) that the Framework and/or SPO may be amended, supplemented or replaced from time to time (as mentioned in paragraph 15 above).

19 *Dealer/underwriter/trustee role disclosure:* Prospectuses may also include disclosure relating to the role of the dealers/underwriters/trustee (where applicable), explaining that they are not responsible for any sustainability assessment, the application of the net proceeds (or equivalent amount) or the impact, or monitoring of, such use of net proceeds (or equivalent amount), among other things. This disclosure is usually included towards the beginning of the prospectus with other important notices and information.

Considerations related to GSS bond disclosure in prospectuses

20 As with other prospectus disclosure, all use of proceeds-related disclosure must be accurate, not misleading and meet relevant regulatory requirements.

21 Some market participants have historically preferred to limit detailed use of proceeds-related disclosure in prospectuses on the basis that it is forward-looking and may be difficult to verify. Because many issuers will issue GSS bonds under a debt issuance programme, there has also been a concern that disclosure of detailed use of proceeds information included in a base prospectus would lead to a need to supplement the base prospectus if the information changes, which could potentially delay a new bond issue. This concern is heightened in more volatile market conditions. Another related concern is that detailed disclosure of eligible projects could give rise to a misperception that the information will be valid for the life of the bond, when in fact eligible projects may change as a result of shifts in the issuer's business or climate science, for example.

22 However, some market participants consider that carefully calibrated four pillar disclosure (as described above) is a sensible approach that reflects investors' interest in how the issuer intends to use the proceeds for green and/or social projects and otherwise align with the Principles. They consider that such disclosure should not give rise to undue liability concerns for issuers or underwriters provided that the disclosure is factual and can be verified. In addition, they note that the risk of potential delays to new issues as a result of needing to supplement the prospectus can be reduced by careful drafting and setting the four pillar disclosure at a relatively high level. Similarly, careful drafting and keeping the disclosure at a high level, including appropriate caveats and continuing to reference and include a hyperlink to access the issuer's Framework can help to avoid misperceptions that the disclosure regarding eligible projects will remain valid for the life of the bond.

23 Another consideration is that any information included in the prospectus will be subject to a representation and warranty regarding the accuracy of the prospectus that issuers typically provide to dealers/managers in contractual agreements.

Deal announcements and other marketing materials

24 As outlined in ICMA's previous article, it is possible for sustainability (and indeed other) information to be included in marketing materials but not in the prospectus where such information is not required under the general prospectus disclosure test in the EU or UK Prospectus Regulation. This means that the issuer and underwriters might conclude that it is appropriate to include in marketing materials certain additional information that is not necessary for an investment decision (and so is not included in the prospectus) but provides more background, context or detail on the information contained in the prospectus. However, as is the case with any review of marketing materials against prospectus disclosure, a judgment call will need to be made in relation to the overall "consistency" of the marketing materials with the prospectus.

25 Related to this, a key concern for market participants is the need to minimise the risk of greenwashing that could arise if the information conveyed in marketing materials is more extensive than the disclosure that is included in the prospectus and is not checked to the standard required for prospectus disclosure. In order to minimise this risk, it is considered advisable to avoid including in marketing materials considerable additional ESG-related disclosure that is not included in the prospectus because it is not necessary for an investment decision, in particular where the information is difficult to verify to the standard required for prospectus disclosure.

26 For GSS bonds, different approaches have been seen in relation to the inclusion of hyperlinks to Frameworks and SPOs in marketing materials and deal announcements. Some deal announcements have included hyperlinks to access the Framework or SPO with a disclaimer stating that those documents do not constitute or form part of the offer except to the extent that they are expressly included or incorporated by reference in the prospectus. For many market participants, it is preferable to include only a hyperlink to the prospectus in deal announcements and not the Framework and SPO. This means that investors are directed to the official offer document in which they can find the information that is necessary for their investment decision. Investors are then also able to consider additional publicly available information that is relevant to their individual preferences, as desired, but such additional information does not form part of the official offering documentation and prospectus liability does not attach to it.

27 In relation to Frameworks specifically, the UK FCA noted in June 2022 in its Primary Market Bulletin 41 that where a Framework forms part of a communication that relates to an offer or admission of securities, it is likely to be an advertisement for the purposes of the prospectus regime, and so must comply with the UK Prospectus Regulation and the UK Prospectus RTS Regulation. Such compliance would include ensuring that the information contained in the advertisement is accurate, not misleading and consistent with the prospectus; and complying with certain other requirements such as making advertisements clearly recognisable as such and including a hyperlink to access the prospectus.

Underwriter due diligence

28 As outlined in the ICMA Primary Market Handbook, the appropriate level of due diligence to be performed by underwriters in the context of each issue should be considered carefully[8]. It is impossible to prescribe whether or what due diligence procedures would be appropriate in the circumstances of each issue, and procedures will vary greatly from issue to issue (depending, for example, on the type of securities being issued, the rights attached to those securities and the nature of the issuer and its business)[9]. An underwriter's institutional knowledge of the issuer obtained through its off-deal, ongoing interactions with the issuer will also be relevant.

29 This principle applies in the context of GSS bond issues in the same way as other types of bond issue. Due diligence is a fundamental risk management tool for underwriters and, in the context of sustainable bond issuance (including GSS bond issues), considered by many to be the most effective means of reducing greenwashing risks.

30 Bank underwriters are therefore considering carefully the appropriate sustainability-related due diligence questions to ask (in relation to both the issuer and the bonds to be issued) at the time of programme establishments and updates, new issues of sustainable bonds and other types of new bond issues. Practices in this area are evolving. Such evolution is expected to continue as understanding of, and attitudes to, sustainability issues develop over time (for example as climate science develops) and as the legislative and regulatory backdrop evolves (for instance under the forthcoming EU Corporate Sustainability Due Diligence Directive, the European Supervisory Authorities' work on greenwashing[10] and the UK FCA's proposed general "anti-greenwashing" rule[11]).

Conclusion

31 Market practice and views on prospectus disclosure for GSS bonds and related matters is evolving. For now, there is no specific regulation on these matters in the EU or UK, but this may change. ICMA members will continue to discuss market practice as well as monitoring and engaging with policy makers and regulators on relevant regulatory developments.

Charlotte Bellamy worked for ICMA from May 2013 to December 2022. She is now a member of Bank of America's EMEA Legal Banking & Markets Regulatory Reform Team.

8. ICMA Primary Market Handbook, Recommendation 3.3.

9. ICMA Primary Market Handbook, Item 3.4.

10. See the European Commission Request for Input, May 2022, and the European Supervisory Authorities' Call for Evidence, November 2022.

11. See Chapter 6 of CP22/20 on Sustainability Disclosure Requirements (SDR) and investment labels.

FCA consultation on synthetic US dollar LIBOR

by **Katie Kelly**

With clarity emerging on the cessation of sterling and Japanese yen LIBOR during 2022, attention has turned squarely to US dollar LIBOR, as to which the FCA consulted (CP 22/11) the market on remaining exposures in June.

In November, the FCA released a consultation on synthetic US dollar LIBOR (CP 22/21), in which it is stated that there is a case for requiring publication of 1-, 3- and 6-month US dollar LIBOR settings to continue for a short period of time using a synthetic, unrepresentative methodology, on the basis that it appears likely that there will be material amounts of legacy contracts at the end of June 2023[1] which either do not contain fallbacks, or have inappropriate fallbacks and cannot practicably be transitioned. However, the FCA considers it likely that a deadline of the end of September 2024 should allow the majority of the population of non-US law governed legacy contracts to transition away from US dollar LIBOR or reach maturity, and therefore secure an orderly transition.

The FCA is therefore seeking views by way of CP 22/21 on its proposal to require publication of the 1-, 3- and 6-month US dollar LIBOR rates on a "synthetic" basis until the end of September 2024. Helpfully, it also proposes that legacy use of any synthetic US dollar LIBOR settings would be permitted in all contracts, except cleared derivatives.

CP 22/21 also invites views on a proposed methodology for synthetic US dollar LIBOR, being the sum of the CME Term SOFR Reference Rate plus the ISDA fixed spread adjustment for the corresponding settings, ie for the 1-, 3-, and 6-month US dollar LIBOR settings, respectively. Each of the settings is intended to continue to be published at or around 11:55 a.m. London time on each applicable London business day.

ICMA responded to CP 22/21 on 20 December 2022, ahead of the FCA's deadline on 6 January 2023.

Now that the pathway for final LIBOR transition is more fully understood, there is likely to be much more activity in 2023 with preparations for the cessation of all sterling LIBOR tenors by March 2024, and the proposed cessation of US dollar LIBOR by the end of September 2024. ICMA will continue to inform members of developments, including its response to CP 22/21, on the benchmarks area of its website.

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1. This is the date on which is it proposed that panel bank US dollar LIBOR is scheduled to permanently cease.

Gender inclusivity in financial markets: a South African perspective

Mosidi Sibaya, Lead Legal Counsel at the South African Reserve Bank, interviewed by **Andy Hill**

***Mosidi Sibaya,** Lead Legal Counsel at the South African Reserve Bank, speaks with **Andy Hill,** ICMA's Deputy Head of Market Practice and Regulatory Policy, about changing attitudes with respect to the role of women in finance, overcoming adversity, and the importance of female champions. Mosidi is the regional representative for ICMA's Women's Network in South Africa.*

During your time in financial markets in South Africa, what changes have you seen with respect to gender inclusivity, and are you positive about the direction of travel?

In recent years, the South African financial markets have become more open to gender inclusivity. The South African Constitution prohibits unfair discrimination on the basis of gender, race, sex and sexual orientation, amongst other criteria. This notwithstanding, there are still fewer women occupying senior positions than are our male counterparts.

Although women have made important strides, and their numbers have steadily increased, there is still room for improvement to facilitate broader inclusivity of persons of other genders in this traditionally male-dominated field. Widespread support and an "all hands on deck" approach is essential to achieving this.

What do you think has led to a potential change in mindset with respect to gender inclusivity, and what more can be done to achieve greater representation, particularly in senior and C-suite roles?

I believe that as soon as the differing style of female leadership is recognised as being equally effective in achieving success, the more the industry will start to trust women in leadership roles. For example, I have observed that females generally lead with more empathy. This should not be viewed as a weakness, but rather as a unique skill that is beneficial to employee wellness, and thus beneficial to any particular organisation.

You are an example of a woman who has successfully followed her dreams. Have there been times when you have had to face and overcome adversity as you attempted to realise your full potential?

For the greater part of my youth, I faced my fair share of adversity. Being poor relative to my peers, by way of example. Poverty creates an obstacle to education and can prevent one from realising one's full potential, if one allows it. Regardless of the challenges I faced, I was raised by an army of hard-working, resilient females who fought to give me a better life. I see much of myself in them and am very grateful for the values they instilled in me. They motivated me to work hard and to strive for better, and that has got me to where I am today.

How important is it to have visible and relatable female role models and mentors in finance?

Role models and mentors demonstrate the endless possibilities that exist. It is essential for young females to see what they can be by observing leaders they can look up to. Mentors can also help young female professionals to navigate the complex world of finance. I have been fortunate enough to have had many mentors and role models, both male and female, throughout my career. They helped me to decide on the type of professional I wanted to become, and so played a key part in shaping my career.

I also find great personal pleasure when I share my skills and experience and help to upskill young talent: something that is very close to my heart. In this regard, leading by example and remaining accessible opens the door to engagement and creates a platform for dialogue.

Who are the women that have inspired you?

I have been blessed with phenomenal women in my life, both personally and professionally. These include previous and current leaders, usually older, more successful women whom I have worked under, who have shown me what excellence means, who have pushed me when I thought I could not go any further, and who exemplified true resilience even under difficult circumstances. These are women who fully believed in themselves and who taught me to do the same.

What have you sacrificed, personally or professionally, at various stages of your career, and what lessons has this provided?

What stands out to me the most, throughout my career, is the frequent trade-off between family and career that women have to make, compared to our male counterparts. Deciding when to start a family, for example, is usually a more challenging decision for females than males, as invariably we have a lot more to lose. Often, at some point in our career, deciding one way or the other will involve sacrificing some of our aspirations.

What is your dream for gender inclusivity in the South African financial industry, and what does this look like five years from now?

Women in traditionally male dominated fields are often subtly marginalised and excluded, and sometimes even sexually objectified. This means that often they have to work harder than their male counterparts simply to get a foot in the door. I would like to see women being heard and appreciated more for their unique talents and contribution.

In my experience, I have also frequently observed women viewing one another as competitors, while men generally tend to be more mutually supportive. This creates further barriers and obstacles for aspiring females, and I want to change that. I would like to see women develop much more of a camaraderie, uplifting and supporting one other. In the words of Helen Keller, "Alone we can do so little; together we can do so much."

What role can ICMA's IWN play in helping to realise this dream?

Any network of leaders, who champion the advancement and interests of women in the industry, is hugely beneficial and goes a long way towards promoting gender inclusivity and breaking down the barriers that prevent the achievement of that goal.

What advice would you give to young women forging their own careers?

My advice would be to give it their all and to stay committed. I would encourage them not to shy away from challenges, because adversity builds character. Always try, and either succeed or fail forward with confidence.

Also, to be driven by their own personal goals and ambitions, and not by other people's opinions of who they are or how their careers should develop..

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Summary of practical initiatives by ICMA

The purpose of this section of the ICMA Quarterly Report is to summarise recent and current practical initiatives by ICMA with – and on behalf of – members.

Primary markets

1 The ICMA Public Sector Issuer Forum met on 13 October 2022 at the World Bank in Washington in the margins of the World Bank/IMF annual meetings.

2 ICMA has worked with members on the practical aspects of implementing the Hong Kong SFC Code of Conduct requirements, which took effect on 5 August 2022.

3 ICMA has worked with members on the practical implications for product governance stemming from the ESG amendments to MiFID which took effect in November 2022 and on a related response to ESMA's consultation on revising its product governance guidelines.

4 ICMA has continued to engage with members and policy makers in relation to proposals to reform the listing regimes in the EU and UK, including proposed reforms to the EU and UK prospectus regimes, to the EU market abuse regime and to the UK PRIIPs regime.

5 ICMA has added one item, and revised another, of *Other ICMA Primary Market Documentation* relating to the Hong Kong SFC Code of Conduct for Bookbuilding and Placing.

6 ICMA has published an article on prospectus disclosure and related considerations for green, social and sustainability bonds and engaged with relevant official sector contacts on this issue.

7 ICMA has distributed a survey from the Commercial Paper Transparency Taskforce on where and how greater transparency in the commercial paper and certificate of deposit markets can be achieved. ICMA may follow up the results of the survey with more in-depth interviews.

8 ICMA's Common Data Dictionary Working Group has held regular meetings to build a consensus on key bond information with the objective of promoting STP and interoperability within the primary issuance process.

9 ICMA held its European Primary Market Forum (PMF) on 8 November 2022. This year's PMF featured discussions on developments in sustainable finance, DLT bonds, market innovation and regulation in FinTech, an update from the ICMA Legal & Documentation Committee and current conditions and dynamics in new issue execution.

Secondary markets

10 Following the successful outcome of ICMA's campaign, supported by the industry, in opposing mandatory buy-ins under the CSDR, and ICMA's response to the European Commission's consultation on its proposed revisions to the CSDR, the ECB published its Opinion on 28 July. The ECB's Opinion is consistent with ICMA's position. ICMA is currently engaging with the European Council and European Parliament in a bid to remove MBIs completely.

11 ICMA is continuing to engage with the EU authorities on thresholds and variables set out in the *ICMA Proposal for a New Post-Trade Transparency Regime for the EU Corporate Bond Market*. In addition, and in parallel with its corporate bond advocacy efforts, ICMA has launched a Transparency Taskforce with the aim of creating a sovereign bond transparency framework. These proposals will support an appropriate EU bond market transparency regime framework for both corporate and sovereign EU bond markets through the vehicle for transparency: the bond consolidated tape.

12 In October 2022, ICMA published its first semi-annual report detailing secondary bond market data, which is based on MiFID II/R public trade reporting. The data is compiled using the Propellant software solution.

Repo and collateral markets

13 ICMA is in the process of setting up a Global Repo and Collateral Forum (GRCF) which will complement the European Repo and Collateral Council. The inaugural meeting will be held in February 2023.

14 As part of its broader initiative to support settlement efficiency in Europe, ICMA has launched a member survey on the topic which is hoped to provide an up-to-date picture on progress to date.

15 ICMA is actively engaged in three key EU repo-related advocacy points: first, the proposed punitive RWA weightings for short-term SFTs with non-bank counterparties under CRR3, where a number of MEPs have supported ICMA's recommended amendment; second, the ability for EU regulated money market funds to access repo clearing in third country CCPs; and third, an unhelpful Q&A by the EBA on the treatment of open reverse repos under LCR.

16 ICMA has held a series of repo buy-side workshops to discuss different uses and relative importance of the repo market, challenges in accessing the repo market and possible alternatives, and potential solutions to improve access.

17 ICMA has written to the ECB to raise concerns about the ongoing challenges facing the repo and short-term markets related to persistent excess liquidity and collateral scarcity, and is working on a report to reflect on the market conditions around year-end.

18 On 26 October, ICMA published a paper which sets out observations and high-level categorisation relating to sustainability in the repo market.

19 Phase 2 of the ICMA GMRA clause library project to digitise market standard agreements was launched in September 2022 and is due to be completed in Q1 2023.

Sustainable finance

20 Recent and current practical initiatives by ICMA on sustainable finance are summarised in the Sustainable Finance section of this Quarterly Report.

Asset management

21 ICMA's AMIC is engaging with MEPs on the impact of the proposed Alternative Investment Fund Managers Directive (AIFMD) amendments. Specific priority topics for AMIC include delegation, liquidity management tools, loan originating funds and supervisory reporting. The European Parliament is expected to reach agreement on the text in early 2023, which would then be followed by the Trialogue negotiations.

FinTech and digitalisation

22 Phase 2 of the ICMA project on the Common Domain Model for repo and bonds is due to be completed in Q1 2023. The aim is to support market participants to streamline and automate trading and post-trade processing of open repos, floating-rate repos and associated lifecycle events. Following the RFP launched in May 2022, ICMA, ISDA and ISLA jointly appointed the FinTech Open Source Foundation (FINOS) to provide a repository for the CDM.

23 ICMA's DLT/Blockchain Bonds Working Group released an FAQ document on *DLT and Blockchain in Bond Markets* in September 2022.

24 Following ICMA's response to the ECB's questionnaire in relation to wholesale central bank digital currency, ICMA participated in a virtual meeting with the ECB and other respondents on 8 September 2022. Separately, ICMA responded to other consultations by HM Treasury and the BCBS.

Transition from LIBOR to risk-free rates

25 On 20 December 2022, ICMA responded to FCA CP 22/21 on *Synthetic US Dollar LIBOR.*

Key ICMA regulatory policy messages

by **Julia Rodkiewicz**

ICMA is engaged with a wide range of policy makers and regulators in cooperation with our members. Our key messages and information for the regulatory and policy initiatives on which we are most actively engaged are summarised below. Information on other regulatory and policy initiatives on which ICMA is focusing can be found elsewhere in this Quarterly Report.

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EU Central Securities Depositories Regulation (mandatory buy-in regime)

- **Regulatory initiative:** Review of the EU Central Securities Depositories Regulation (CSDR).
- **Key issues:** Settlement discipline (SD), including revised mandatory buy-in (MBI) proposal.
- **Key messages:** ICMA cautions against imposing an MBI regime, particularly for bond markets. Penalties should first be allowed time to run and possibly be recalibrated. In parallel, other measures to improve settlement efficiency should be exhausted in the first instance (either market-based or regulatory, eg auto partialling, auto borrowing and lending facilities). If MBIs are implemented, this should be through market regulation, not post- trade regulation. The Level 1 CSDR text should exempt Securities Financing Transactions (SFTs) from the buy-in process.
- **Legislative stage:** The European Commission's (EC) CSDR review proposal of March 2022 is now being debated by the European Parliament (EP) (draft report and amendments) and the Council of EU Member States (the Council's position) with a view to agreeing on a final text, in the first half of 2023 at the earliest. In July 2022, the ECB published its opinion on the EC's CSDR review proposals, favourably suggesting among other things to discard the application of the MBI provisions altogether.
- **UK related developments:** In 2020, UK HM Treasury (HMT) elected not to implement the EU's settlement discipline regime, including MBIs. As part of the Edinburgh Reforms, announced on 9 December 2022, the UK Government launched the Accelerated Settlement Taskforce to, *inter alia*, evaluate current settlement discipline and examine potential reforms in the UK.
- **ICMA engagement and materials:** Meetings with the EC, EP and Council representatives. ICMA published its feedback on the EC proposal in May 2022 and a briefing note in September 2022.

Contacts: Andy Hill and Alexander Westphal.

Working Group/Lead Committee: CSDR-SD Working Group/Secondary Market Practices Committee (SMPC).

More information: The Secondary Markets section of this Quarterly Report and ICMA's dedicated webpage.

EU MiFIR and UK Wholesale Markets Review

- **Regulatory initiatives:**
  - EU Review of the Markets in Financial Instruments Regulation (MiFIR) and certain elements of Markets in Financial Instruments Directive (MiFID).
  - UK Wholesale Markets Review (WMR).

- **Key issues:** Pre- and post-trade transparency and consolidated tape for bond markets, SFT reporting.

- **Key messages:** ICMA members would like to see the introduction of an effective, appropriately calibrated and dynamic post-trade transparency regime for all bonds, including corporate and sovereign bonds. In particular, large and extra-large illiquid trades should benefit from delayed publication of both price and size to prevent undue risk to counterparties involved. Once deferrals have expired, all bond trades should be published in a centralised place (a single-source bond consolidated tape) on a trade-by-trade-basis. Regarding pre-trade transparency, the current obligations are ineffective and potentially counterproductive and should be removed. Separately, ICMA is advocating for all SFTs to be exempted from EU MiFIR transaction reporting because the MiFIR regime does not cater for the specific nature of SFTs and is inconsistent with SFT Regulation (SFTR). In the UK, SFTs with the Bank of England have been removed from the scope of UK MiFIR reporting.

- **Legislative stage:**
  - EU: The EC's MiFIR review proposal of November 2021 is now being debated by the EP (draft report on MiFIR and MiFID, with additional draft amendments to MiFIR part 1 and part 2 and MiFID) and the Council (MiFIR and MiFID positions) with a view to agreeing a final text in 2023. On 1 June 2022, the ECB issued an opinion on the MiFIR transparency proposals, which argues for the SFT reporting requirement to be revoked among other things.

  - UK: The Financial Services and Markets Bill (FSMB), published in July 2022, will introduce powers for HM Treasury to repeal the current UK MiFIR (as well as other retained EU financial services regulation) and introduce a new regime in line with the March 2022 outcome of HM Treasury's July 2021 WMR consultation. In some areas, including UK MiFIR, the FSMB amends the current legislative framework, for example to simplify the fixed income transparency regime. As part of the Edinburgh Reforms, HM Treasury is also committing, alongside the UK Financial Conduct Authority (FCA), to having a regulatory regime in place by 2024 to support a consolidated tape for market data.

- **ICMA engagement and materials:** Meetings with representatives of the EU institutions and relevant UK policy makers. ICMA published a position paper on post-trade transparency for corporate bonds in December 2021, feedback to the EC's proposal in March 2022 and its response to the WMR consultation in September 2021.

Contacts: Elizabeth Callaghan, Andy Hill and, on MiFIR/SFTR reporting, Alexander Westphal.

Working Group/Lead Committee: MiFID II/R Working Group (MWG) Transparency Taskforce/ Secondary Market Practices Committee (SMPC).

More information: The Secondary Markets section of the Q4 2022 ICMA Quarterly Report, pages 37-38.

EU Alternative Investment Fund Managers Directive

- **Regulatory initiative:** Review of EU Alternative Investment Fund Managers Directive (AIFMD).
- **Key issues:** AIFMD: Liquidity management tools, delegation, loan originating funds and reporting.
- **Key messages:** AIFMD: ICMA's Asset Management and Investors Council (AMIC) in general welcomes the EC's targeted review of the AIFMD and supports the Council's and EP's proposals for recognising the critical risk management responsibilities that should remain with Alternative Investment Fund (AIF) managers. However, there are several outstanding concerns regarding delegation, shareholder loans, leverage cap limits for loan originating AIFs and proposals for duplicating existing UCITS reporting requirements. AMIC views the draft EP proposals, published in the summer of 2022, on a delegation equivalence regime, leveraged buy-out (LBO) operations, performance fees and undue costs, securities lending and ESG references as duplicative of other existing conduct, disclosure and sustainable finance rules.
- **Legislative stage:** EC's AIFMD review proposal of November 2021 is now being debated by the EP (AIFMD draft report and draft amendments available here and here) and the Council (AIFMD position) with a view to reaching an agreement towards the end of 2023.
- **ICMA engagement and materials:** Meetings with representatives of the EC, EP and Council. ICMA AMIC's response to the EC's proposals on AIFMD was published in January 2021.

Contacts: Nicolette Moser and Irene Rey.

Working Group/Lead Committee: AMIC Risk Management Working Group/AMIC Committee.

More information: The Asset Management section of this Quarterly Report.

EU Green Bond Standard

- **Regulatory initiative:** EU Regulation on European Green Bonds (EU GBS) proposal.
- **Key issues**: The nature of the standard (voluntary vs. mandatory), extension of scope to other sustainable bonds, additional and entity-level transparency requirements, liability risks and legal costs, taxonomy alignment and usability, grandfathering, and external reviewers.
- **Key messages:** ICMA expresses strong support for a voluntary standard and full grandfathering of Technical Screening Criteria alignment to maintain the stability of the EU GBS designation. There are concerns regarding (i) mandatory requirements for all green use of proceeds bonds and environmental sustainability-linked bonds (which duplicate entity-level requirements under other EU sustainable finance regulation and create implementation challenges), (ii) increased legal liability and costs creating significant disincentives for issuers, (iii) Taxonomy usability issues, (iv) unintended barriers to financing of Taxonomy-aligned CapEx plans.
- **Legislative stage:** The EC's EU GBS proposed text of July 2021 is now being debated by the EP (report) and the Council (position) with a view to reaching an agreement on a final text possibly in early 2023.

- **Recent ICMA engagement and materials:** Meetings with representatives of the above-mentioned EU institutions. On 13 December 2022, ICMA released a statement with the Executive Committee of the Principles to express their concerns and recommendations, in particular on the extension of the Taxonomy disclosures to all green use-of-proceeds bonds. On 12 December 2022, ICMA also co-signed a joint statement on EU GBS with EuropeanIssuers and FESE, focused on the extension of mandatory requirements to other sustainable bonds and requirement of EU Prospectus Regulation compliant prospectus for the use of EU GBS label.

Contacts: Nicholas Pfaff and Ozgur Altun.

More information: The Sustainable Finance section of this Quarterly Report.

EU and UK Prospectus Regimes

- **Regulatory initiatives:**
  - EU Listing Act package, which includes proposed changes to the EU Prospectus Regulation (as well as other legislation).
  - UK Prospectus Regime review.

- **Key issue:** Appropriately calibrated EU and UK prospectus regimes allowing smooth and efficient cross-border bond issuance in Europe.

- **Key messages:** Wholesale bond markets in Europe function reasonably efficiently under the current EU and UK Prospectus Regulations, and this must be preserved. In relation to retail bond markets and SME bond markets, regulation is only one factor among various other commercial and market drivers. Constructing an appropriate regulatory regime would require a holistic consideration of various regulatory tools and incentives.

- **Legislative stage:**
  - EU: The EC adopted a proposal for a Listing Act Regulation on 7 December 2022 following its consultation of November 2021. It also published a proposal to repeal the EU Listing Directive and make certain other changes to rules relating to listing securities in the EU.

  - UK: The FSMB will introduce powers for HM Treasury to repeal the current UK Prospectus Regulation and introduce a new regime in line with the outcome of HM Treasury's consultation on the UK Prospectus Regulation. As part of the Edinburgh Reforms, the UK Government published on 9 December 2022 a Draft Statutory Instrument - Admissions to Trading and Public Offer Regime which demonstrates how these new powers will be used.

- **ICMA engagement and materials**: In addition to bilateral engagement with relevant policy makers and regulators, ICMA, together with Allen & Overy LLP, is holding an event to discuss the forthcoming changes to the EU and UK prospectus and listings regimes and related regulatory developments on 7 February 2023. Speakers include the EC, ESMA, several EU regulators, HM Treasury and the FCA.

Contact: Ruari Ewing.

Working Group/Lead Committee: Prospectus Regulation Working Group/Legal & Documentation Committee.

More information: The Primary Markets section of this Quarterly Report and ICMA's Prospectuses webpage.

UK PRIIPs regime

- **Regulatory initiative:** UK proposals to repeal and replace the UK's Packaged Retail Investment and Insurance Products (PRIIPs) disclosure regime.
- **Key issue:** How retail investors can make informed investment decisions.
- **Key messages:** There seem to be significant limitations to disclosure as a retail investor protection tool:

  - full (long-form) disclosure is necessary to satisfy the substantive requirement that all material information be disclosed but will not be read by typical retail investors;

  - short-form disclosure may not necessarily be read either and is often misunderstood.

  Consequently, long disclosure is necessary as a public transparency preliminary (and perhaps of use for a minority of retail investors) and should be complemented (for the majority of retail investors) by suitably regulated and supervised intermediation.
- **Legislative stage:** As part of the Edinburgh Reforms, the UK Government is consulting on repealing the UK PRIIPs legislation and leaving the FCA to regulate on retail disclosure. In parallel, the FCA is consulting on various aspects of a future disclosure framework.
- **Related EU developments:** The EC is reportedly considering a review of the EU PRIIPs regime, as part of the expected Retail Investment Strategy, possibly to be published in the first half of 2023.
- **ICMA engagement and materials**: Various ICMA position papers and other materials can be found on ICMA's PRIIPs KIDs webpage and its Retail Access to Bond Markets webpage.
- **Contact:** Ruari Ewing.

Working Group/Lead Committee: PRIIPs/MiFID II Product Governance Working Group.

More information: The Primary Markets section of this Quarterly Report.

EU MAR market sounding regime

- **Regulatory initiative:** EU Listing Act package, including proposed changes to the EU Market Abuse Regulation (MAR).
- **Key issue:** An appropriately calibrated market sounding regime helping borrowers to avoid undermining market confidence and resilience by launching and then cancelling bond issues due to terms that do not fit market dynamics.
- **Key messages:** The incidence of market sounding is substantially reduced since the introduction of the MAR sounding regime in 2016, as the provisions were felt to be too onerous (especially to the extent they were held out as mandatory even when sounding information that is not inside information). The regime should at least be confirmed as a just providing a safe harbour for sharing inside information within its defined limits.

- **Legislative stage:** The EC adopted a proposed Listing Act Regulation, including amendments to the MAR sounding regime, on 7 December 2022 following its consultation of November 2021.
- **ICMA engagement and materials**: Various ICMA position responses and other papers can be found on ICMA's Market Abuse Regulation (MAR) - Primary Market Aspects webpage.
- **Contact:** Ruari Ewing.

Working Group/Lead Committee: Primary Market Compliance Forum.

More information: The Primary Markets section of this Quarterly Report.

EU Capital Requirement Regulation 3

- **Regulatory initiative:** Review of the EU Capital Requirements Regulation (CRR), the so-called CRR3 proposal, which is a part of a broader review of EU prudential rules for banks.
- **Key issue:** Capital treatment of Securities Financing Transactions (SFTs).
- **Key message:** ICMA advocates for the recognition of the short-term nature of SFT transactions in risk weighted assets (RWA) calculation under the standardised approach with respect to banks' counterparty credit risk exposures to non-banks.
- **Legislative stage:** The EC's CRR3 proposal of October 2021 is now being debated by the EP (draft report and draft amendments) and the Council with a view to agreeing on a final text, possibly in 2023.
- **ICMA engagement:** Outreach to key representatives in the Council and EP. ICMA published a briefing note in July 2022.

Contacts: Andy Hill and Alexander Westphal.

Working Group/Lead Committee: European Repo and Collateral Committee (ERCC).

More information: The Repo and Collateral Markets section of this Quarterly Report.

Wholesale Central Bank Digital Currency (wCBDC) consultation

- **Regulatory initiative:** European Central Bank (ECB) consultation on the potential use of new technologies such as Distributed Ledger Technology (DLT) for wholesale central bank money settlement.
- **Key issue:** Whether to introduce a wholesale digital euro (CBDC) for wholesale payments, securities settlement and collateral management or use the existing TARGET platform via a so-called "trigger solution".
- **Key message:** ICMA advocates for a wholesale digital euro (CBDC) to support next-level automation, more efficient securities settlement and post-trade processing and increase the attractiveness of capital markets.
- **Policy development stage:** Following the consultation and a stakeholder meeting in September 2022, the ECB is considering next steps. On a related note, following its call for evidence in April 2022, the EC is planning to adopt a legislative proposal on a retail digital euro for the EU in the second quarter of 2023.
- **ICMA engagement and materials:** ICMA responded to the ECB consultation in June 2022, published a one-page viewpoint on wholesale CBDC and participated in an ECB stakeholder meeting in September 2022. ICMA also published FAQs on DLT and blockchain in bond markets in September 2022. ICMA continues to engage with the ECB and relevant stakeholders on the topic of DLT and wholesale CBDC in the EU and beyond.

Contacts: Georgina Jarratt, Gabriel Callsen and Rowan Varrall.

Working Group/Lead Committee: DLT Bonds Working Group.

EU and UK Money Market Funds Regulations

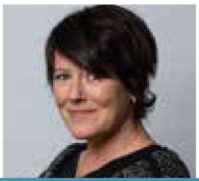
- **Regulatory initiatives:**
  - EU: Review of the EU Money Market Funds (MMF) Regulation.
  - UK: Review of the UK Money Market Funds (MMF) Regulation.
- **Key issues:** MMF market and fund composition, measures to enhance resilience and EU MMFs' access to third country repo clearing.
- **Key messages:**
  - ICMA highlights the unintended consequences of changes to the composition of certain MMF structures. In addition, ICMA suggests a shift of focus towards strengthening the efficiency and resilience of the underlying market, noting ICMA's The European Commercial Paper and Certificates of Deposit Market White Paper of September 2021.
  - ICMA also raises member concerns related to a provision in the EU and UK MMF Regulations which restricts the ability of regulated MMFs to access third-country CCPs for transacting cleared repo. ICMA suggests that authorities discuss reciprocal arrangements for repo clearing access for MMFs with their relevant international counterparts.
- **Legislative stage:**
  - EU: Following the EC's consultation of April 2022, its report is expected in 2023 at the earliest.
  - UK: A consultation may be released following the joint FCA and Bank of England *Discussion Paper on the Resilience of MMFs* in May 2022.

- **International context**: On 10 November 2022, the Financial Stability Board (FSB) published a progress report on its work to enhance the resilience of non-bank financial intermediation (NBFI), presenting its main findings to date as well as a number of recommendations. The report discusses, *inter alia*, the FSB's intention to conduct a stock-taking exercise by the end of 2023 on its jurisdictions' adopted and planned measures on Money Market Funds (MMFs).
- **ICMA engagement and recent materials:** Outreach to key representatives in EC, Council and EP. ICMA responded to the EC's consultation in May 2022. ICMA responded to the FCA and Bank of England Discussion Paper in July 2022.

Contacts: Katie Kelly, Nicolette Moser and Irene Rey and, on repo clearing, Andy Hill and Alexander Westphal.

Working Group/Lead Committee: AMIC Risk Management Working Group/AMIC Committee.

Primary Markets

by **Ruari Ewing and Katie Kelly**

ICMA Legal & Documentation Committee: 10 memorable years

By Charlotte Bellamy

It has been a privilege to work for ICMA and serve as Secretary to ICMA's Legal & Documentation Committee for almost a decade, working alongside Ruari Ewing, Leonie Scott and other ICMA colleagues.

The Committee or "LDC" gathers together the Heads of the Debt Capital Markets (DCM) Legal and Transaction Management teams in the most active underwriting banks in Europe. It is chaired by David Hopkins of NatWest Markets and is the hub of a broader primary markets legal community. It has close ties with other ICMA primary markets committees and groups. On a regional basis, the Committee is connected with its counterpart group in Asia Pacific and discussions are held in other geographic regions such as MENA. There are also several working groups looking at specific topics or themes.

Over the past 10 years or so, the Committee has dealt with significant regulatory change flowing from the Global Financial Crisis, including revisions to EU MAR, MiFID, BRRD, the Prospectus Regime and more. In each case, the LDC community engaged with relevant EU policy makers and regulators, carefully considered and discussed adjustments to market practice and developed standard language where necessary. The UK's decision to withdraw from the EU led to a significant exercise to consider the various implications and re-work ICMA standard language for the various Brexit stages. Post-Brexit, we are now engaging with two key regulatory regimes: one in the EU and one in the UK. A significant issue ahead is the impact that divergence between these two regimes could have on the cross-border issuance of bonds on a pan-European basis.

In addition to a constant stream of regulatory developments, the LDC's focus on sustainable bonds has increased. The Committee's first discussion of green bonds took place in 2013 and touched on many of the issues that continue to concern members today, including documentation approaches and managing underwriters' risks. Looking ahead, we anticipate increased engagement with policy makers and regulators, reflective of the maturity of the sustainable bond market in Europe.

Digitalisation has also become a focus. The Committee is currently sharing information and hearing from experts in banks and law firms about innovations in primary markets, particularly in relation to bonds issued using distributed ledger technology. Some members are also engaged in ICMA initiatives such as the Common Data Dictionary.

At a more general level, the Committee continues to maintain ICMA's Primary Market Handbook and other ICMA standard language for primary markets. Much of this work would not be possible without expert input from law firms. The Committee's Principal Law Firm Representative is Amanda Thomas of Allen & Overy, who delivers exceptional guidance and support. Prior to his retirement in 2021, Lachlan Burn of Linklaters made a very significant contribution spanning several decades. We are also fortunate that Julia Machin of Clifford Chance and Catherine Wade of Linklaters contribute actively to the Committee's work, in addition to the broader teams at Allen & Overy, Clifford Chance and Linklaters. The Committee also values the strong relationships it has with other market participants including paying agents, ICSDs, stock exchanges and audit firms.

I have been very fortunate to work with some of the most talented and dedicated debt capital markets lawyers and practitioners over the past 10 years. By bringing these exceptional individuals together, ICMA has helped to maintain efficient markets for new cross-border bond issues. I am grateful to have been part of that effort and look forward to seeing this work taken forward.

Charlotte Bellamy worked for ICMA from May 2013 to December 2022. She is now a member of Bank of America's EMEA Legal Banking & Markets Regulatory Reform Team.

The EU and UK prospectus regimes

In December 2022, just two days apart, the EU and UK each announced proposed changes to their prospectus regimes. These proposals are important for many ICMA members active in primary markets because they affect when and how an issuer must draw up a prospectus for a new issue of bonds, as well as other related considerations such as advertisements for new bond issues.

The EU Listing Act

The EU announced its proposals to reform the EU Prospectus Regulation on 7 December as part of a package of proposals known as the "Listing Act". This announcement came as part of a broader package of measures put forward under the Capital Markets Union initiative that included proposals relating to clearing and corporate insolvency.

The stated intention of the Listing Act is to make EU public capital markets more attractive for companies and to facilitate access to capital for SMEs. The package includes:

- a proposed Listing Act Regulation setting out amendments to the EU Prospectus Regulation, EU MAR and EU MiFIR;
- proposals to amend EU MiFID II and repeal the Listing Directive; and
- a proposed new Directive on multiple-vote share structures in companies that seek admission to trading of shares on an SME growth market.

The European Commission also published an impact assessment, a summary of the impact assessment and a factsheet.

These proposals were preceded by a consultation to which ICMA responded in February 2022. Based on our initial assessment, it is pleasing to see that some of the suggestions put forward by ICMA for small adjustments to the EU Prospectus Regulation have been considered and reflected in the European Commission's proposals.

The next step in the legislative process is for the European Parliament and Council to consider the European Commission's proposals. There is also an opportunity for market participants and others to provide feedback to the European Commission's proposals via the European Commission's website.

The UK Prospectus Regime

In the UK, the Chancellor announced the "Edinburgh Reforms" of UK financial services on 9 December. This included over 30 regulatory reforms to the UK financial services regulatory regime put forward to "help turbocharge growth and deliver a smarter and home-grown regulatory framework for the UK that is both agile and proportionate".

As part of these reforms, the UK Government published a Draft Statutory Instrument - Admissions to Trading and Public Offer Regime and associated Policy Note. The Draft Statutory Instrument demonstrates how new powers to repeal and replace retained EU law being taken forward in the Financial Services and Markets Bill will be used to replace the existing UK Prospectus Regime with a new regulatory framework.

ICMA understands that the drafting, design and format of this Statutory Instrument are not final and will continue to develop before the legislation is laid before Parliament. We also understand that the UK Prospectus Regime will be among the first set of rules to be reformed using the new powers in the Financial Services and Markets Bill; and that the UK Government is committed to delivering these reforms and will do so as soon as possible following the Bill's Royal Assent. This means that the Statutory Instrument is likely to be laid in H1 2023.

As described in a previous ICMA Quarterly Report article, the direction of travel towards a more flexible regime outlined in the outcome of the UK Prospectus Regime Review is broadly welcome. However, much of the detailed provisions are due to be developed by the FCA, and so it is difficult to comment on the precise impact for debt capital market participants at this stage.

Next steps for ICMA

The ICMA Legal & Documentation Committee and its Prospectus Regulation Working Group will be considering the proposed adjustments to the EU and UK prospectus regimes carefully and engaging with relevant policy makers and regulators on behalf of members as the legislative processes in the EU and UK progress.

ICMA, together with Allen & Overy, is holding a European Primary Bond Markets Regulation Conference to discuss the forthcoming changes to the EU and UK prospectus and listings regimes and related regulatory developments in London on 7 February 2023. The speakers include the European Commission, ESMA, various EU national regulators, HM Treasury, the FCA, major stock exchanges and leading market practitioners.

Charlotte Bellamy worked for ICMA from May 2013 to December 2022. She is now a member of Bank of America's EMEA Legal Banking & Markets Regulatory Reform Team.

MiFID II product governance

ICMA originally set out the "ICMA1" (all bonds/professionals-only) and "ICMA2" (simple listed bonds/retail-inclusive) approaches to MiFID product governance (PG) as a proportionate application of the PG regime, to preserve European companies' ability to raise capital funding in the international bond markets.

On 5 October 2022, ICMA published amended ICMA1 Schedule 1 and amended ICMA2 Schedule 1 (relating to target market assessment) to reflect:

- ESG-related changes to MiFID Level 2 legislation (Delegated Directive EU/2021/1269 adopted materially in line with ESMA's

April 2019 final advice and its December 2018 draft advice that ICMA commented on as reported on page 30 of the Second Quarter 2019 edition of this Quarterly Report); and

- aspects arising from ESMA's July 2022 consultation on its PG guidelines.

The ICMA1 and ICMA2 approaches remain otherwise unchanged (notably in terms of target market definition legends). At the same time, ICMA published an ICMA proposed approach to sustainability-related amendments to the PG regime that sets out related reasoning.

Then, on 7 October 2022 (and as anticipated in a footnote to page 36 of the Third Quarter 2022 edition of this Quarterly Report), ICMA responded to ESMA's July 2022 consultation on its PG guidelines. The response noted:

- the above ICMA1 and ICMA2 amendments and related reasoning;
- that the PG regime nonetheless remains conceptually flawed regarding commoditised funding products such as Eurobonds;
- that such products should be out of PG scope altogether;
- alternatively, that any partial alleviations to the PG regime could (i) exempt "non-complex" bonds, (ii) exempt the professional investor context and/or (iii) limit manufacturer review obligations to the primary market context;
- the make-whole clause and eligible counterparty provisions of the Capital Markets Recovery Package (reported in various prior editions of this this Quarterly Report) are not expected to have any useful impact in terms of alleviation; and
- that recognising in ESMA's PG guidelines (in the context of sustainability-related objectives) an additional alternative to the three set out in Article 2(7) of the MiFID II Delegated Regulation EU/2017/565 (see August 2022 consolidated version) is welcome.

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Transparency in commercial paper markets

As reported in this Quarterly Report Q4 2022, it has been suggested that transparency in the underlying structure of the European commercial paper market is relatively fragmented and uneven. In view of this, ICMA has established a Commercial Paper Transparency Taskforce (the Taskforce) to identify whether, how and where greater transparency in commercial paper can be achieved, and to consider how any particular solution could be modelled, funded and function.

Differing perspectives were put forward by the Taskforce in an initial meeting, which have led to a survey on transparency being compiled, by which the Taskforce hopes to elicit a broad consensus from the commercial paper community, and to identify consistent messaging to inform its next steps.

The survey focuses on current levels of transparency of commercial paper market data, in terms of availability, access and sources. It then considers what data is reported, and importantly, what is not reported, and the relative benefits and consequences of requiring further transparency, in particular on pricing of primary issuance. Finally, the survey touches upon the harmonisation of different markets and whether a deferral regime (similar to bonds) would be helpful.

The deadline for completion of the survey is close of business on 13 January 2023. The results of the survey will be anonymised, so respondents are under no obligation to provide contact details, although they are encouraged to agree to a more in-depth follow-up discussion. Further details of the Taskforce's work will be reported in the Quarterly Report as it progresses.

@ **Contact: Katie Kelly**
katie.kelly@icmagroup.org

Other EU and UK primary market developments

Hong Kong SFC Code of Conduct for Bookbuilding and Placing

In November 2022, ICMA shared two further template documents to facilitate members' compliance with Chapter 21 (on bookbuilding and placing) of the Hong Kong Code of Conduct for Persons Licensed by or Registered with the Securities and Futures Commission: (i) a revised draft Investor Code Compliance Communication (CICCC) setting out offer documentation wording; and (ii) draft Onboarding Questions to Determine Scope. These are available to ICMA members and ICMA Primary Market Handbook subscribers, together with earlier template documents, on ICMA's *Other ICMA Primary Market Documentation* webpage.

EU MAR soundings

On 7 December 2022, the European Commission published a package of proposals related to the Capital Markets Union, covering clearing, insolvency and listing. In this last respect, the proposals include a draft "Listing Act" Regulation to amend, *inter alia*, the sounding regime under the Market Abuse Regulation (MAR). This includes changes to definition of sounding and to confirm the sounding regime as a voluntary safe harbour. The Commission has opened its proposals to comments on its Listing Act webpage, until eight weeks after the proposals have been made available in all EU languages. ICMA will confer with its Primary Market Compliance Forum with a view to commenting within that timeframe.

UK PRIIPs regime

On 9 December 2022, the UK Government published its post-Brexit *Edinburgh Reforms*, including a consultation on the UK's Packaged Retail Investment and Insurance Products (PRIIPs) regime and retail disclosure. This notably suggests a repeal of the existing UK PRIIPs regime legislation, with the UK Financial Conduct Authority (FCA) to decide on future retail disclosure regulation. Then on 13 December 2022, the FCA published a related discussion paper looking at various aspects of a future disclosure framework. It looks notably at who should be responsible for producing disclosure, whether regulation of disclosure content should be relatively flexible or prescriptive and whether the format of disclosure could be modular, layered and/or interactive. ICMA will confer with its PRIIPs/MiFID II Product Governance Working Group with a view to reverting by the applicable deadlines (of 3 and 7 March 2023 respectively).

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Common data dictionary for primary bond markets

ICMA and its primary market constituents have been building consensus for representing key bond information to promote automation and reduce the risk of fragmentation across the issuance process.

The Common Data Dictionary (CDD) Working Group over eight sessions has achieved key milestones of (i) determining scope of the initial use case, building consensus on CDD field representation, and (iii) presenting the output in a machine-readable format.

The initial output covers key economics, dates, and other information typically included within a term sheet for vanilla bonds, in a machine-readable format.

The CDD Working Group is in the process of moving from agreed representation toward machine-readability, ahead of publication. All members are welcome to join the working group and engage with further development of the CDD. Further information is available on the CDD factsheet and working group webpage. Please contact us if you would like to join.

@ **Contact: Rowan Varrall**
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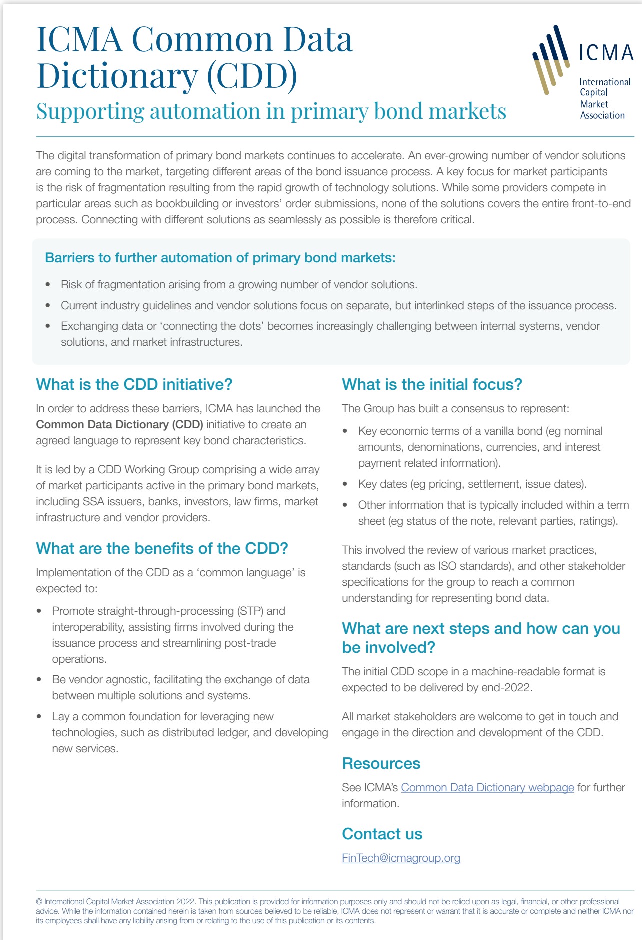

ICMA Common Data Dictionary (CDD)

Supporting automation in primary bond markets

ICMA
International Capital Market Association

The digital transformation of primary bond markets continues to accelerate. An ever-growing number of vendor solutions are coming to the market, targeting different areas of the bond issuance process. A key focus for market participants is the risk of fragmentation resulting from the rapid growth of technology solutions. While some providers compete in particular areas such as bookbuilding or investors' order submissions, none of the solutions covers the entire front-to-end process. Connecting with different solutions as seamlessly as possible is therefore critical.

Barriers to further automation of primary bond markets:

- Risk of fragmentation arising from a growing number of vendor solutions.
- Current industry guidelines and vendor solutions focus on separate, but interlinked steps of the issuance process.
- Exchanging data or 'connecting the dots' becomes increasingly challenging between internal systems, vendor solutions, and market infrastructures.

What is the CDD initiative?

In order to address these barriers, ICMA has launched the **Common Data Dictionary (CDD)** initiative to create an agreed language to represent key bond characteristics.

It is led by a CDD Working Group comprising a wide array of market participants active in the primary bond markets, including SSA issuers, banks, investors, law firms, market infrastructure and vendor providers.

What are the benefits of the CDD?

Implementation of the CDD as a 'common language' is expected to:

- Promote straight-through-processing (STP) and interoperability, assisting firms involved during the issuance process and streamlining post-trade operations.
- Be vendor agnostic, facilitating the exchange of data between multiple solutions and systems.
- Lay a common foundation for leveraging new technologies, such as distributed ledger, and developing new services.

What is the initial focus?

The Group has built a consensus to represent:

- Key economic terms of a vanilla bond (eg nominal amounts, denominations, currencies, and interest payment related information).
- Key dates (eg pricing, settlement, issue dates).
- Other information that is typically included within a term sheet (eg status of the note, relevant parties, ratings).

This involved the review of various market practices, standards (such as ISO standards), and other stakeholder specifications for the group to reach a common understanding for representing bond data.

What are next steps and how can you be involved?

The initial CDD scope in a machine-readable format is expected to be delivered by end-2022.

All market stakeholders are welcome to get in touch and engage in the direction and development of the CDD.

Resources

See ICMA's Common Data Dictionary webpage for further information.

Contact us

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Secondary Markets


by **Andy Hill and Elizabeth Callaghan**

CSDR mandatory buy-ins

Summary

The EU's problematic, and potentially unimplementable, mandatory buy-in regime looks set to remain.

They think it's all over

Following the last-minute reprieve in late 2021, when co-legislators found a creative legal means to suspend the February 2022 application of the EU's CSDR mandatory buy-in (MBI) regime, and ESMA's subsequent suspension of the provisions for three years, the industry hoped that this was the window to end MBIs once and for all. And the reasoning for this was sound. It was now widely appreciated that an MBI regime, which would increase the risk borne by market makers, securities lenders, and other liquidity providers, would be detrimental to market liquidity. Analysis of the potential impact of an MBI requirement during the COVID-induced market turmoil of early 2020 highlighted the procyclical risks for market stability. Successful implementation would require a contractual repapering exercise on an unprecedented global scale. And important elements of the regulatory buy-in process simply would not work.[1] Better, most market participants thought, to consign the whole notion of MBIs to the regulatory scrapheap.[2]

It was also noted that in many markets, such as the bond markets, effective contractual buy-in mechanisms already existed. Furthermore, the industry was making huge strides in optimising settlement efficiency and processes, including the introduction of market best practices. And if the natural cost of settlement fails was not incentive enough, the CSDR penalty mechanism, live from February 2022, provided another reason for firms to put their post-trade house in order.

The Commission's proposal: MBIs v 2.0

The European Commission's March 2022 proposal for the CSDR Refit, however, held on to the possibility of MBIs, subject to a "two step approach". This would mean that MBIs would not automatically apply across all EU markets, but rather their introduction would be based on an assessment of settlement efficiency rates in different securities and transaction types. In other words, it would be a last resort if penalties, and various industry-led initiatives, did not achieve a desirable level of settlement efficiency.

The Commission's proposal also attempted to address some of the flaws in the original Regulation, most notably allowing for the payment of the buy-in price differential to be made symmetrically between the buyer and seller, depending on whether the buy-in price is higher or lower than the original transaction price. This is critical in maintaining the economics of the original "bargain" (ie the contract entered into between seller and buyer) and avoids random economic outcomes resulting from the buy-in process. This also meant that the Commission could introduce the possibility of a pass-on mechanism, limiting the number of buy-ins potentially triggered by a single settlement fail. However, a number of other shortcomings in the buy-in design were left unaddressed.

1. Many of these "challenges" are discussed in ICMA's February 2022 response to the European Commission's targeted consultation on the CSDR review.

2. The ECB took a similar view when it published its opinion of the Commission's proposal for the CSDR Refit in October 2022.

Over to the European Council

In the second half of 2022, the European Council, under the Czech Presidency, had been discussing the Commission's proposal. ICMA suspected that support for retaining the MBI regime was lukewarm at best, while a number of Council members were actively pro removing it completely. However, once discussions were under way, the direction of travel appears to have taken an unlikely and unfortunate turn.

During the discussion process, any opposition to MBIs seems to have been won over, and ICMA suspects that the final Council position advocates the Commission's two-step approach, albeit with less explicit criteria for its application. ICMA also has reason to believe that the final Council position advocates the reintroduction of asymmetrical payments of the buy-in and cash compensation differential, even though this was originally the result of a drafting error in the Level 1 (and subsequently corrected in the Commission's proposal). It is not clear whether this is the outcome of differing opinions on the contractual point of ownership in a securities transaction (execution versus settlement), or a misunderstanding of the economics of buy-ins. The fact that the Council position also explicitly supports the possibility for pass-ons (a logical inconsistency with asymmetrical differential payments) certainly suggests confusion.

More positively, the Council recommends the exemption of securities financing transactions from the scope of MBIs (something also favoured by the ECB), although this would still be subject to further guidance from ESMA in the Level 2.

As for other aspects of the MBI design, including prescribed timelines (ICMA believes that the Council may be proposing a uniform six-day extension period, after which buy-ins must be initiated), and the curious notion of automatic cash compensation (see further on), it is expected that these will remain largely intact in the Council's proposal.

Now for the Parliament

In early 2023, the European Parliament is expected to agree its position on the CSDR Refit ahead of the Trialogue discussions with the Council (where ICMA also expects the Commission to play an active role). The rapporteur's draft report of the European Parliament's Committee on Economic and Monetary Affairs, considers regulation-driven mandatory MBIs as a significant interference in the execution of securities transactions and the functioning of securities markets, and suggests discarding the CSDR MBI regime in its entirety. ICMA, and the industry at large, would view this as a positive opening position.

ICMA continues to engage with the authorities more broadly to highlight the reasons why MBIs were not implemented in 2022, and to stress that the underlying rationale for this has not changed. ICMA is also keen to stress that focus on maintaining MBIs in the Regulation seems to be at the expense of considering alternative, more targeted interventions to support settlement efficiency, while pointing out that no other major financial market has such provisions, even as a last resort (the UK dropped MBIs at the first available opportunity).

However, ICMA remains concerned that any desire to remove MBIs from EU regulation is likely to face significant opposition from the Commission and some Member States.

The practical reality of MBIs

Even if MBIs remain, it would seem unlikely that they would ever be applied. The two-step approach appears to be a vehicle for keeping the shadow of MBIs looming over EU financial markets, without necessarily the intent ever to employ them, with the associated consequences for market liquidity and stability. However, there are enough flaws in their design to ensure that even if there was a will to roll-out MBIs, the regime would unlikely work in reality.

First, while buy-ins are market transactions, between market counterparties, CSDR does not directly regulate these entities. CSDR regulates CSDs, CCPs, and their participants, and the Level 1 text still states that it is these which are required to initiate and undertake the buy-in process. Application and enforceability are therefore contingent on contractual arrangements between EU CSDs and their participants and the eventual market counterparties that are expected to initiate the buy-in; many of whom will be regulated under non-EU jurisdictions. Given that the Regulation expects these parties to enter into a transaction that may not necessarily be in their best interest, nor that of their clients, seems to be asking a lot.

Secondly, CSDR requires that if the buy-in cannot be executed[3] successfully, then the fail must be remedied by "cash compensation" (ie cash settlement). This requires a reference price in order to determine the current market value of the securities, which forms the basis of the cash settlement between the parties. Which raises an important dilemma. If the purchasing party has spent two weeks or more unsuccessfully looking for a tradeable market price in the security, it is reasonable to assume that there will be no readily available, or agreeable, reference price. This seems to be a critical oversight in the Regulation, and something that is likely to leave a significant number of buy-ins unresolved. ICMA originally raised this issue with the Commission and ESMA in 2020, but it remains largely unacknowledged in current discussions.

3. The current Level 2 diverges again from market buy-ins, making the successful completion of the buy-in contingent on successful settlement, not execution. There is no concept of guaranteed delivery in the Regulation. This creates additional, and largely unhedgeable, market risk for the bought-in party.

Finally, the reintroduction of the payment asymmetry is also likely to create significant issues, particularly where market participants attempt to rectify this through contractual arrangements, leading to legal uncertainty and the potential for disputes (as well as gaming). This asymmetry also compounds the market risks faced by liquidity providers and securities lenders,[4] as well as rendering any pass-on mechanism ineffective: respectively with implications for market liquidity and stability.

Conclusion

While ICMA, and others, will continue to engage with regulators and policy makers to explain the overwhelming rationale for removing MBIs from EU regulation, it would seem that the political tide may be too strong, and that the spectre of the regime will hang over EU financial markets and its stakeholders for some time to come. Perhaps the only solace is that it is extremely unlikely that they will ever be applied. Partly because the impact on EU markets would be so devastating that this would far outweigh any perceivable benefit. But also because, as currently devised, MBIs would be largely unimplementable. Whether maintaining MBIs is justifiable will therefore remain open to question.

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ICMA's Secondary Market Rules & Recommendations

In December 2022, ICMA updated its Secondary Market Rules & Recommendations to incorporate a number of updates over recent years.

The Secondary Market Rules & Recommendations ("the Rules") apply to all transactions conducted by members as buyer or seller, in either a principal or agency capacity in international securities.[5] The Rules cover a range of secondary market practices, including calculating coupon accruals, trading defaulted securities, interest claims for settlement fails, and, perhaps most famously, the process for issuing and executing buy-ins.

The latest version of the Rules includes the recently approved best practice recommendations to support settlement efficiency, which provides guidelines for shaping bond transactions into maximum lot sizes, partialing trades, and using CSD auto-borrow and lending programmes. It also incorporates the 2017 revisions to the Buy-in and Sell-out Rules.

The Rules apply automatically between ICMA members. Firms also elect to apply the Rules with their counterparts by incorporation through reference in their general terms of business.

The ICMA Buy-in Rules

The ICMA Buy-in Rules are a longstanding and integral risk management tool used in the international bond markets in the event of settlement fails.

At the discretion of the non-failing purchaser, it is possible to issue a buy-in notice anytime following the intended settlement date of the failing transaction. Important features of the buy-in include: flexibility in the buy-in notice period (between four and ten business days); symmetrical settlement of the buy-in price differential (ensuring economic restoration of the original trade contract); no requirement to appoint a buy-in agent (subject to certain best execution criteria); completion on execution of the buy-in for guaranteed delivery (allowing the selling party to manage their market risk); and, importantly, a pass-on mechanism that allows a single buy-in to settle an entire failing transaction chain.[6] In the event that a buy-in cannot successfully be executed, the parties have the ability to negotiate cash settlement. The reason why this is negotiated, rather than automatic, is due to the fact that it would otherwise be difficult, if not impossible, to establish a reference price independently. The Buy-in Rules apply purely to trading parties that are principal to the transaction. They are mirrored with equivalent Sell-out Rules in the event that the settlement fail is the fault of the purchasing party.

The ICMA Buy-in Rules are continuously reviewed and regularly updated to reflect the structure and dynamics of the international bond markets, and to serve the risk management requirements of investors, market makers, and other trading entities.

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4. The exemption of SFTs does not resolve this issue: it is the contingency of the settlement of onward sales on the settlement of a recalled loan of the securities that is the source of market risk.

5. The Rules do not apply in the case of the syndication or allotment process in primary markets, repurchase agreements under the Global Master Repurchase Agreement or similar master agreements, transactions subject to the rules of an exchange. Nothing contained in the Rules shall discharge a member.

6. It is important to note that a pass-on mechanism is contingent on symmetrical payments of the buy-in price differential (ie all parties remain economically whole with respect to the original contractual terms of the transactions entered into).

How bond dealers can infer market sensitive information from a price

One of the topics being discussed in the context of a proposed new transparency regime for EU bond markets is whether it could be possible to make the price publicly available following a transaction, while deferring details around the size of the trade in order to protect the liquidity provider. However, with respect to market transparency, the price alone is loaded with useful information for market participants.

In bond markets it is relatively easy for a dealer to infer useful information from the reported print of a trade, even where the volume of the transaction is deferred or masked. Visibility of the price alone can be extremely informative, providing useful insights both about the direction of the trade (with respect to the liquidity provider) and a sense of the relative size of the transaction. The sooner a dealer gets to see these price prints, the quicker they can take advantage of this information.

From a market participant perspective, if they see the price of the reported trade they can begin to build a picture of the underlying trade. The fact that the size is deferred already tells them that this is probably a larger than median trade for the security. If they now compare the price to where the market was quoted at the time of the trade (bids and offers) they can determine whether the trade created a new risk position. If the price is within the bid-offer spread, it is most likely that the trade was against a dealer "axe": ie a trader is selling out of an existing long position or buying back a short position. This means that the trade is probably closing out an existing risk position. Or the trade could be between two buy sides. However, if the price is skewed, either to the "left" or "right" of the bid-offer spread, it is reasonable to assume that this is the creation of a new risk position. If the price is lower than the quoted bids, then it is likely that this is a dealer going long (client selling). And if the price is higher than the quoted offers, this probably means that a dealer is going short (client buying). What is more, the further the price is from the quoted bids or offers, the larger the size of the transaction is likely to be.

Based on this very useful information, market participants will now adjust their pricing for the security. If they can infer that a dealer has gone long a relatively large position, they will move their price lower as they anticipate that the position will need to be sold back into the market at some point. Similarly, if they can assess that there is a new large short in the market, they will move their price higher. This, of course, will be to the detriment of the liquidity provider who is now trying to exit their position at a worse price than would otherwise have been achieved. And this is based purely on the publication of a transacted price.

When a market maker takes a position onto their trading books (long or short), they will immediately look to hedge the various risk components and maintain and manage these hedges until they are able to trade out of the position. For example, in the case of corporate bonds, the market maker will hedge the interest rate risk and potentially also the credit risk. Hedging could be at the individual trade level, or it could be at the book (portfolio) level. A simple example would be where a dealer buys a corporate bond onto their book from a client. They will hedge the interest rate risk, say by selling a duration weighted amount of a similar maturity sovereign bond, and they may choose to hedge their credit risk by buying a delta weighted amount of a credit default swap. However, they cannot hedge the "idiosyncratic risk" that is specific to the underlying security, and that will impact its value relative to any hedges.

Information leakage with regard to market positioning is a key source of idiosyncratic risk, which is why deferrals for publicizing both price and volume for certain transactions are necessary to protect liquidity providers.

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Non-bank financial intermediaries and market liquidity

ICMA is to roll out a cross-Committee Taskforce focused on bond market resilience and liquidity.

Following the COVID-induced market turmoil of early 2020, global regulators have been highly focused on fixed income market liquidity and resilience as part of a broader remit to identify risks related to the non-bank financial intermediation (NBFI) ecosystem. This has included analysis undertaken by IOSCO's Financial Stability Engagement Group (FSEG) on corporate bond market micro-structures and participant behaviour (see IOSCO 2022), analysis of sovereign bond market liquidity by the FSB (see FSB 2022), as well as attention on the structure and functioning of money market funds and short-term markets (see IOSCO 2020). While a lot of this work attempts to identify potential vulnerabilities in underlying markets, it largely seems to be intended to inform the regulation of NBFIs, in particular open-ended bond funds (OEFs) and money market funds (MMFs).

Liquidity in fixed income markets is at the core of ICMA's work. This is reflected in ICMA's engagement with IOSCO in its work on corporate bond markets, both directly through the Secondary Market Practices Committee (SMPC), and indirectly through the IOSCO Affiliate Members Consultative Committee (AMCC). As well as focusing on corporate bond markets, ICMA remains heavily engaged in repo market conditions and functioning through its European Repo and Collateral Committee (ERCC), and also the liquidity and structure of short-term markets through its Commercial

Paper and Certificates of Deposit Committee (CPC). Meanwhile, ICMA's Asset Management and Investors Council (AMIC) continues to monitor fund liquidity risks and the efficacy of liquidity management tools.

At a meeting of ICMA's Committee of the Regional Representatives (CRR) in December 2022, it was suggested that ICMA leverage its various initiatives related to fixed income market structure and liquidity, to take a more holistic market view, looking also at the inter-dependencies of different markets, in order to identify potential risks and vulnerabilities. This would include an analysis of the impacts and interplay of prudential, market, and fund regulation. This multi-dimensional perspective is intended to inform recommendations to improve overall market resilience and liquidity.

Accordingly, ICMA intends to roll out a Bond Market Liquidity Taskforce in early 2023 to drive this initiative. The Taskforce will be made up of interested ICMA members, representing sovereign, corporate, short-term, or repo markets, including sell side, buy side, and relevant financial market infrastructures.

Any members interested in actively participating in the Taskforce should contact Andy Hill of ICMA, who is coordinating this initiative.

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Review of ICE Liquidity Tracker

ICMA and ICE Data Services are conducting a periodic review of the ICE Liquidity Tracker, including its methodology, universe of underlying instruments and market scope. The purpose is to ensure the liquidity assessments remain accurate and continue to provide meaningful insights for members in light of evolving market and regulatory developments. Please get in touch if you would like to share feedback or suggestions.

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Repo and Collateral Markets

by **Andy Hill, Alexander Westphal and Zhan Chen**

The repo market at 2022 year-end

This month, ICMA's ERCC will publish its now traditional annual review of how the repo market performed over the recent end of the year.

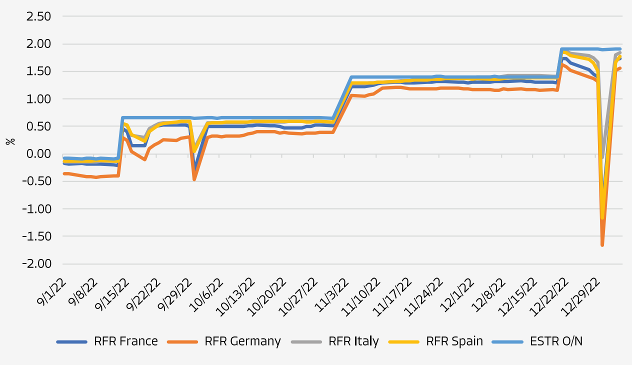
Year-end repo market pricing and liquidity are generally a focus of market attention, with the euro market proving itself particularly vulnerable to significant dislocations in recent years. The 2022 euro "turn" was being discussed as early as the summer, with underlying concerns related to the ongoing situation of excess liquidity in the banking system, scarcity in some collateral (notably German Government bonds), seasonal curbs on repo market making capacity (mainly due to various regulatory reporting requirements), and, a new twist, the ECB moving interest rates higher, taking its deposit rate above zero-percent (which is also the cap for certain reserves held at the central bank). By late September, the implied repo rate for German collateral over the three-day turn was somewhere between ESTR-800 basis points and ESTR-1,000 basis points,[1] prompting many stakeholders to raise concerns publicly as well as with the ECB.

As the report will show, pricing over year-end improved significantly in the weeks leading up to the date. On 28 December (the spot date for year-end) German collateral (both general collateral and specific collateral) averaged around ESTR-350 basis points (with some specials trading wider than ESTR-400 basis points), French collateral around ESTR-290 basis points, and Italian collateral around ESTR-195 basis points. Perhaps the biggest surprise was Spanish collateral, which had become trickier to source going into December, and which averaged around ESTR-300 basis points over the turn.

There are several potential factors that helped to contain the extent of the year-end repo market price dislocation. These include the October announcement of the Deutsche Finanzagentur that it would make available on repo an additional €54 billion of German Government bonds, across 18 ISINs, the increase in the ECB's borrowing facility against cash from €150 billion to €250 billion, and the large repayment of the Targeted Long-Term Refinancing Operation on 21 December (€447.5 billion). In the case of the TLTRO, this did not in itself put much government bond collateral back into the market, but it has helped to reduce the amount of excess liquidity (which has reduced by some £1 trillion since September). The fact that positioning for year-end began as early as August also needs to be considered.

The ERCC report will provide more detailed commentary and analysis of the repo market year-end, including the sterling, dollar, and yen markets.

Repo Funds Rate by issuer collateral type



Source: ICMA analysis using CME Data

1. The Euro Short-Term Rate (or ESTR) is the average rate at which a group of financial institutions will lend to each other, on an uncollateralised basis, for one-day.

ICMA letter to ECB on repo market conditions

On 25 October 2022, ICMA wrote to the ECB expressing industry concerns about current conditions in the euro area repo and money markets, and the risk that rising dysfunction in the market could imperil the transmission of monetary policy. The letter is co-signed by ICMA's dedicated constituencies representing the repo and collateral markets, the commercial paper and certificates of deposit market, the secondary bond markets, as well as the asset manager and investor community.

The letter acknowledges policy initiatives adopted by other central banks intended to manage the disequilibrium of excess liquidity and collateral scarcity and to ensure the smooth transmission of monetary policy. Improving the capacity of banks to intermediate in repo and money markets (as well as bond and derivatives markets more broadly) could also help to contribute to market stability and resilience.

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CRR3: treatment of RWA weightings for SFTs

The ICMA European Repo and Collateral Council (ERCC) remains focused on a critical element in the European Commission's Banking Package related to the capital risk weighting of SFTs in CRR3. One of the key provisions of the Final Basel III framework is a more granular but less sensitive recalibration of the credit risk (CR) weighting calculations under the Standardised Approach (SA). This is particularly punitive in the case of SFTs since it does not recognise the relatively short-term nature of SFTs in the case of exposures to non-banks. Accordingly, this results in the risk weighted asset (RWA) computations for SFTs with many key market participants under the SA being multiples of those calculated under banks' Internal Model Approach (IMA). This contrasts with the treatment of short-term SFT exposures to banks for which Final Basel III recognises their lower risk. Furthermore, this detrimental treatment will also impact banks relying on the IMA with the introduction of the Output Floor (intended to align more closely the SA and IMA). There is no explanation as to why short-term exposures with non-banks are treated less favourably.

The ERCC has shared and discussed a position paper widely with Member States and MEPs as both the Council and Parliament look to finalise their positions on the EU Banking Package. The ERCC recommends the introduction of a maturity adjustment under the SA-CR for short-term SFTs. This would be consistent with other aspects of CRR2 and CRR3 that take into account maturity sensitivities in the SA.

The Council has proposed that the new calibration remain, but that the EBA, in close collaboration with ESMA, report to the Commission by the end of 2025 an assessment of whether a recalibration of the associated risk weights in the Standardised Approach is appropriate, given the associated risks with respect to short term maturities, specifically for residual maturities below one year. On the basis of this report, the Commission could propose legislative changes by the end of 2027.

Originally, a number of MEPs seemed to side with the ERCC's position of a more proportionate RWA calibration for short-dated SFTs for non-banks. However, it would now appear that the Parliament is aligning more closely with the Council's proposal.

ICMA and the ERCC will remain engaged with regulators and policy makers on this important issue, not least in light of the observed challenges and price dislocations in the EU repo market, which are also covered in this Quarterly Report.

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The EBA Q&A on LCR and open reverse repo

On 30 September 2022, the EBA published a Q&A [Question ID 2021-6163] in response to a question about the LCR treatment of open maturity reverse repos. The EBA has answered: "reverse repos with open maturity not formally called for within the 30-day horizon and contingent on the option for the reporting institution of the reverse-repo to trigger the liquidity inflow, shall not be considered as inflows in the LCR."

This conflicts with the general treatment of open SFTs as rolling short-term SFTs, based on the relevant notification period of the transaction (which in most cases is 24 or 48 hours, and which is the contractual right of both parties), and which is also consistent with previous EBA guidance.

The ERCC, anticipating such a possible interpretation of the Regulation, wrote to the EBA and ECB in January 2022. The industry concern is that the likely outcome of this guidance would be for the market to switch to rolling short-term SFTs, in place of open trades, resulting in significant additional costs and operational inefficiencies for market users, with a likely increase in settlement fails, while having no impact on the overall LCR calculation.

In December 2022, ICMA discussed the industry concerns with the EBA. The EBA explained the rationale for its guidance, which is based on: (i) the assumption that, where a loan is subject to a call, under stressed conditions there is a risk that the lender may elect not to execute the option to recall the loan (eg for reputational reasons); and (ii) the fact the Regulation does not provide for any exceptions in the treatment of contingent inflows/outflows. The EBA further suggested that where the reverse repo is against HQLA, the lending (reversing) party has the ability to include the HQLA in their LCR calculation, which could be seen as an advantage.

Given the likely switch away from using open reverse repos in the EU prompted by this Q&A, the EBA has agreed to a follow-up discussion with the ERCC and its members in early 2023.

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ICMA's Global Repo and Collateral Forum

As reported in more detail in a feature article in the previous edition of the Quarterly Report, ICMA is in the process of launching a new forum for members to discuss repo and collateral developments from a global perspective, ICMA's Global Repo and Collateral Forum (GRCF). ICMA members around the world with an interest in cross-border repo are warmly invited to join the GRCF. The initial response from members has been very positive with around 150 members who have already signed up for the new group. We are very keen to hear members' views and ideas on the structure, format and agenda of the GRCF, so please do not hesitate to get in touch. The inaugural (virtual) meeting of the GRCF is due to be held in mid-February 2023. The exact date and time will be announced shortly.

To sign up for the GRCF, please send us a quick **email** and we will add you to the distribution list.

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Settlement efficiency

As part of ICMA's focused initiative to help improve settlement efficiency in Europe, on 30 November 2022, the ERCC launched a second member survey on the topic which it is hoped will provide an updated picture and take stock of progress made to date. A particular focus remains on best practices and usage of the three settlement optimisation tools that have been identified in previous discussions as most impactful, namely (i) shaping, (ii) auto-partialling and (iii) auto-borrowing. Feedback provided by members in response to the survey will be an important element in our further discussions related to settlement efficiency, as well as our ongoing advocacy in relation to CSDR. It will also feed into a second short discussion paper which aims to provide a status update on the work.

The short ERCC survey consists of 14 questions and members are invited to complete the survey online by 11 January 2023. In order to avoid duplication, we ask members to coordinate their response through their ERCC Named Repo Contact (please contact us and we can direct you to the right person).

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Repo and sustainability

On 26 October 2022, ICMA published a paper which sets out observations and categorisations relating to sustainability in the repo market. This publication followed up on a market consultation undertaken by ICMA in 2021 and was prepared based on input from ICMA's Repo & Sustainability Taskforce, a joint working group with representatives from both the European Repo and Collateral Council (ERCC) and the Executive Committee of the Green, Social, Sustainability and Sustainability-Linked Bond Principles. The paper reflects on recent market developments and looks at the different intersections between repo and sustainable finance. In addition, the report includes a number of observations on current market practices which could be used as a basis for developing future guidance.

Along with the Taskforce members, ICMA will continue to monitor closely the market evolution as well as any forthcoming regulations with the aim to encourage standardisation of terminology and sustainability approaches within the repo market.

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Repo market surveys

European Repo Market Survey: On 31 October 2022, ICMA released the results of its 43rd Semi-Annual Survey of the European Repo Market. The survey, which measures the amount of repo business outstanding on 8 June 2022, from the returns of 56 financial institutions, sets the baseline figure for European market size at a record high of EUR9,680 billion, up by 5.2% from EUR9,198 billion in the December 2021 survey and an increase of 10.9% since June 2021.

Asia Repo Market Survey: On 1 December 2022, the ERCC and ASIFMA's Secured Funding Markets Committee jointly released the Asia-Pacific Repo Market Survey for the first half of 2022, covering trading activities in Asia-Pacific ex-Japan. Cooperation with ASIFMA started in June 2016 to extend the ICMA's Semi-Annual Survey of the European Repo Market to the Asia-Pacific (APAC) region, with the addition of a number of questions in the ICMA's European survey to provide greater granularity about APAC repo executed in Europe.

The ex-Japan APAC survey reported USD310.9 billion in outstanding value of repos and reverse repos and an average daily turnover of USD43 billion, compared with USD260.1 billion (+19.5%) and USD29 billion per day (+48.3%) in 2021. Average deal size fell to USD47 million from USD56 million in 2021. The ex-Japan APAC survey sample remained a net cash lender and therefore a net borrower of securities in terms of outstanding value. However, this was by a smaller margin than in 2021 (53.2% of outstanding value was in reverse repo, compared with 57.6% in 2021). In terms of turnover, the sample became a marginal net lender of securities (50.9% of turnover was in repo, compared with 51.2% in 2021), implying maturity transformation by the sample, with the average term of securities lending being shorter than the average term of securities borrowing and net securities lending running off faster than net securities borrowing.

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Legal updates for the repo market

Digitising legal documentation for repo market efficiency: ICMA GMRA Clause Taxonomy and Library Project has reached the halfway mark, having moved onto the consolidation stage of the project. Continuing the great work from Phase I, Phase II is working on collating negotiated business outcomes and producing related model wording for all remaining provisions of the GMRA, as well as non-standard provisions commonly used by members.

Legal Working Group: Members are encouraged to have their legal colleagues participate in the ICMA Repo Legal Working Group (previously called the ERCC Legal Working Group). If you would like to discuss joining the group or its work, please contact Deena Seoudy.

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ICMA repo events

On 26 October 2022, ICMA and the United Arab Emirates Financial Markets Association (UAE FMA) hosted a joint conference to discuss the dynamics and developments in the international repo markets: a lens on the MENA region. With over 110 registrations, the afternoon event was well attended and provided a good opportunity for local and international market participants to exchange views on the role of repo and collateral in the wider financial market and related opportunities for the MENA region. The agenda featured a combination of updates by ICMA experts as well as interactive panel sessions with local market practitioners to discuss opportunities and challenges for repo in the MENA region. In the margins of the event, ICMA and the UAE FMA formalised their collaboration, signing a cooperation agreement and conferring reciprocal membership of each other's associations.

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Sustainable Finance

by **Nicholas Pfaff, Valérie Guillaumin, Simone Utermarck, Ozgur Altun, Yanqing Jia** and **Stanislav Egorov**





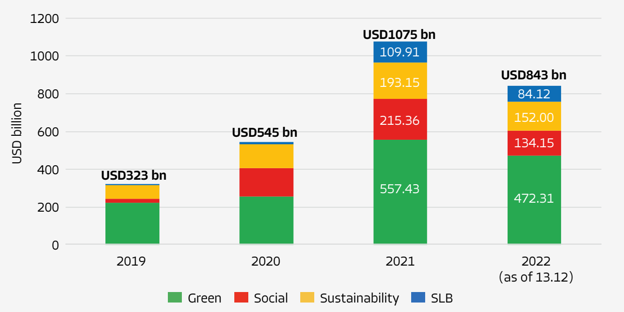

Introduction

Following a summary of issuance activity in the sustainable bond market, we share our takeaways on COP27. We then provide an important update on the programmes of the Working Groups and Taskforces of the Principles. On the regulatory front, we describe the FCA's consultation on Sustainability Disclosure Requirements (SDR) and investment labels, and report on the launch of the Working Group on ESG Data and Ratings Code of Conduct which the FCA has convened and for which ICMA will jointly provide the Secretariat. We also comment on the latest news concerning the ongoing Trialogue on the future EU Green Bond Standard and summarise other international regulatory developments.

Sustainable bond market update

As on 13 December, the total 2022 sustainable bond issuance topped USD840 billion, representing a 22% decline, but resisting better than overall bond issuance which decreased by 24% year-on-year. The decline in sustainable bond issuance was driven especially by social bond sales down by 40% and marked by the end of large COVID-19 related issuance from European SSA issuers. In comparison, green, sustainability and sustainability-linked bond sales declined by 15%, 21% and 24% respectively in 2022.

Sustainable bond issuance per category (USD billion)



Source: ICMA based on Bloomberg Data – as of 13 December 2022

SSA issuance reached USD344 billion (vs USD463 billion over the same period in 2021, representing a 25% decline) and accounted for 41% of the total sustainable bond market in 2022. Q4 highlights include the European Commission's EUR6.5 billion 15-year social bond and EUR6 billion 10-year green bond. As of today, over EUR36 billion has been issued under the Commission's NGEU Green Bond programme of up to EUR250 billion by the end of 2026.

Uruguay sold its first sustainability-linked bond (SLB), a USD1.5 billion 12-year. It became the first bond of such type to include a possibility of either a step-up or a step-down mechanism, which depends on whether Uruguay overachieves its greenhouse gas emissions intensity as a share of GDP and maintenance/increase of native forest area targets. In addition, Saudi Arabia's Public Investment Fund (PIF), raised USD3 billion from its inaugural triple tranche green bond sale (USD1.25 billion 5-year, USD1.25 billion 10-year and USD500 million 100-year). Switzerland and New Zealand were amongst the issuers who entered the sustainable bond market for the first time by issuing green bonds, CHF766 million (USD825 million) 6-year and NZD3.0 billion (USD2 billion) 11.5-year respectively. Lastly, CADES continued growing its substantial social bond portfolio by selling EUR5 billion 5-year and USD4 billion 3-year social bonds.

Sustainable bond issuance in the financial sector declined by 11% year-on-year to USD244 billion. Despite the overall market decline, several new issuers have entered the market over the past quarter. Examples include Hong Kong Mortgage

Corporation's dual tranche transaction comprising HKD8 billion 2-year and CNH3 billion 3-year social bonds and Dubai Islamic Bank's USD750 billion 5-year, sustainability sukuk. Lastly, Intesa Sanpaolo completed its first social bond transaction (EUR750 million 8-year).

Corporate sustainable bond sales surpassed USD255 billion (vs. USD311 billion over the same period in 2021, an 18% decline) and represent 30% of the total sustainable bond sales in 2022. In Q4 Enel continued expanding its SLB portfolio by completing a multi-tranche USD4 billion deal, bringing Enel's total SLB portfolio value to USD29.5 billion as the largest SLB issuer. In addition, utility companies such as EDF and Iberdrola returned to the sustainable bond market by issuing a EUR1.25 billion 12-year and raising EUR1.5 billion in a dual tranche transaction respectively (EUR750 million 6-year and 10-year).

S ICMA takeaways from COP27

The latest annual Conference of the Parties, or COP27, took place in Sharm El Sheikh, Egypt from 6-18 November 2022. It was billed as the "Implementation COP" featuring the four main topics of Climate Mitigation, Climate Adaptation, Finance and Loss and Damage. An agreement on the latter one, in the end, emerged as the breakthrough achievement of COP27, while during the Conference it became clear that finance really is the common factor to achieve the other three topics as well as a key enabling factor for delivering the transition to a sustainable economy.

One of the most prominent themes in Egypt was finance for developing countries. For decades climate-vulnerable countries have been calling for compensation for the damage caused by historical emissions of rich nations. During COP26 a dedicated agency to work out a path forward had been established which at COP27 led to finally achieving an agreement to provide "loss and damage" funding for vulnerable countries hit hard by climate disasters. While this was hailed as a big success, it is not clear yet how the money should be provided and where it should come from. Otherwise, on points already made last year, the long-standing promise to mobilise USD100 billion a year in climate finance by 2020 has still not been fulfilled, and funding available for adaptation is still only USD20 billion.

Arguably, a step backwards was made on the goal of "*pursuing efforts to limit the temperature increase to 1.5°C above pre-industrial levels*" (Article 2 of the Paris Agreement) as some countries tried to renege on the 1.5°C goal, and to abolish the ratchet. Although they failed, a resolution to cause emissions to peak by 2025 was taken out. Other disappointing results were related to fossil fuels. The final COP27 text contained a provision to boost "low-emissions energy" which could also be interpreted to mean gas and thus sparked interest from many African countries with large reserves to exploit. After Glasgow's successful commitment to phase down the use of unabated coal, still no commitment to phase down all fossil fuels was made, and final texts therefore largely reiterate Glasgow wording but go no further.

A big topic at COP27 was the type of financial assistance provided to the developing world by multilateral development banks and international financial institutions, as loans provided to them for climate mitigation and adaptation often exacerbate an already difficult situation. In what should be one solution to that topic, a UK-convened private sector working group including ICMA, presented new climate resilient debt clauses (CRDCs) which can defer a country's debt repayments in the event of a pre-defined, severe climate shock or natural disaster. As such, CRDCs are envisaged to facilitate sovereign debt relief and financial stability.

With ICMA providing the Secretariat to the Principles for Sustainable Bonds, we were interested to hear about a new initiative launched by Egypt's COP27 Presidency and the United Nations Economic Commission to address African economies negatively affected by climate hazards and disaster recovery costs. The "Reducing the Cost of Green and Sustainable Borrowing" initiative will issue green, social and sustainability (GSS) bonds to fill the financial gaps and will "allow African states to borrow at an affordable rate, mobilise more green funding, and attract private capital".

Despite the apparent importance of finance, there was again just one day dedicated to climate finance. Finance Day on 9 November 2022 mostly saw updates on initiatives that had been announced at the previous COP. One came from Mark Carney's Glasgow Financial Alliance for Net Zero (GFANZ) which presented its publication of voluntary guidance to support all financial institutions in their net-zero transition planning. The framework focuses on enabling four aspects of transition finance:

- the climate solutions (ie the technologies and products) that will enable the economy to decarbonise;
- business models already aligned with a science-based pathway to achieve net zero;
- companies with credible transition plans who are in the process of aligning with a science-based decarbonisation pathway; and
- managed phase out of high-emitting assets that will be stranded in the transition to net zero.

In addition, the Alliance said that it planned, by autumn 2023, to have an open-source database to help assess transition plans and progress and increase transparency.

Another body that had been formed during COP26 was the International Sustainability Standards Board (ISSB). At COP27 it set out its implementation roadmap, including a new global Partnership Framework with more than 20 partner organisations including the Global Reporting Initiative (GRI). The Framework is designed to support preparers, investors and other capital market stakeholders to use IFRS

Sustainability Disclosure Standards. Importantly it also talked about international cooperation such as working with the European Commission and the European Financial Reporting Advisory Group (EFRAG) and alignment with key initiatives such as the Carbon Disclosure Project (CDP).

The UK Transition Plan Taskforce (TPT), which had been announced at COP26 by the UK Chancellor to develop the gold standard for private sector climate transition plans, at COP27 introduced its Disclosure Framework and Implementation Guidance, both of which it is also consulting on until 28 February 2023. ICMA had responded to the TPT's call for evidence in July 2022.

Other topics of Finance Day were the new UN expert group set up by UN Secretary-General, António Guterres. Adding to the recent raft of policy initiatives in this area, the high-level expert group on the net-zero emissions commitments of non-state entities aims to tackle greenwashing. Ten recommendations, outlined in its report, detail what businesses, investors, cities, and regions need to consider through each stage of their progress towards achieving net-zero ambitions and addressing the climate crisis.

The Climate Data Steering Committee (CDSC) created by French President Emmanuel Macron and Michael Bloomberg in June 2022 published an RFP on plans for a Net Zero Data Public Utility where finance firms will be able to access climate data.

Underlining the growing regulatory interest in voluntary carbon markets, the International Organization of Securities Commissions (IOSCO) issued consultation papers on both the voluntary carbon markets and compliance carbon markets.

Finally, with increasing recognition of the importance of the social element of climate transition, COP27 saw the European Commission together with the International Labour Organization (ILO) hosting the first ever Just Transition Pavilion. And, in another first, a new work programme and annual ministerial meeting on just transition was agreed.

Update on the Working Groups and Taskforces of the Principles

With the objective of (i) continually enhancing the efficiency and accuracy of the guidance provided by the Green Bond, Social Bond and Sustainability-Linked Bond Principles (the Principles) and (ii) increasing the outreach and participation of the Members and Observers, the Executive Committee of the Principles determines on a yearly basis the number and purpose of the working groups based on its priorities. Each working group or taskforce is coordinated by a member of the Executive Committee and reports to this committee. For 2022/23, the following working groups (WG) have been set up:

- Impact Reporting: The remit of this working group is to focus on the efficient conveyance of information reflecting the environmental benefits of the assets funded by Green Bonds that are aligned with the Green Bond Principles. This group will seek to further agreement on the best practice for disclosure, both quantitative and qualitative, on the "impact" resulting from Green Bond investments. The group will assess the current practice of impact reporting against the suggested metrics in the *Handbook - Harmonised-Framework-for-Impact-Reporting*, making adjustments where appropriate. The group will also review the core recommendations of the Handbook and amend where appropriate.
- Social Bonds: The aim is to (i) promote Social Bonds with investors, issuers and policy makers, including review and response to proposed Social Bond Market regulations, standards and taxonomies; (ii) explore market impediments and develop guidance on key market concepts; (iii) review and refine the Social Bond Principles and other related documents including impact reporting as needed.
- Climate Transition Finance**:** The main objective is to promote climate transition as a theme under the Principles. It will continue to provide market participants with information and education around recommended disclosures to foster credibility of an issuer's climate change-related commitments and practices in order to raise finance. To that end the working group will continue to develop guidance (*The Climate Transition Finance Handbook)* and tools (*The Methodologies Registry*) to assist issuers from GHG emissions intensive industries access sustainable capital markets.
- Sustainability-Linked Bonds**:** The aim is to (i) appreciate whether the Sustainability-Linked Bond Principles (SLBP) need to be adjusted or completed with additional guidance (eg on use of multiple KPIs, role of arrangers, guidance for sovereign SLBs, alternative to coupon step-up mechanisms, legal matters, coordination & consistency with other WGs etc); (ii) provide best practices guidance on reporting for SLB issuers and investors; and (iii) continue to identify relevant KPIs and calculation methodologies to be made available on the website (Illustrative KPIs Registry).
- Taskforce on Secured Sustainable Bonds**:** The aim is to (i) look at implementation/queries that may need elaboration of further Q&As related to Secured Green Bonds; (ii) further explore sustainability-linked approach; (iii) review some outstanding product questions that might need further clarification, notably to focus more on what disclosure is required from investors.

In addition to their respective terms of reference, the Executive Committee has also requested the four working groups to consider whether and how to provide guidance on requirements for a "just transition". Since it is a cross-cutting theme, a dedicated coordination team has been established to ensure consistency among the working groups' outcomes. Finally, it should be noted that two taskforces have been established jointly with two of ICMA's other key constituencies:

- ICMA's Repo and Sustainability Taskforce comprises representatives from the ICMA's European Repo and Collateral Council (ERCC) and from Members and Observers of the Principles. The overall objective of the Taskforce is to provide advice and promote dialogue around repo and sustainable finance. The aim is to (i) monitor, discuss and assess any existing or upcoming market and regulatory initiatives, (ii) coordinate and liaise with the ERCC Committee and the Executive Committee of the Principles and (iii) develop and publish joint guidance and market best practice if needed.

- ICMA's Sustainable Commercial Paper Taskforce comprises representatives from the ICMA's Commercial Paper Committee and from Members and Observers of the Principles. It aims, among other things, to help the development and growth of the sustainable commercial paper (CP) market by facilitating minimum standards for key categories of sustainable CP issuance, including issuance frameworks, programmes, documentation, structures, reporting, external reviews and transparency and sharing and reflecting best practice in the form of initial guidance for sustainable CP issuance.

The FCA's consultation on Sustainability Disclosure Requirements and investment labels

On 25 October 2022, the Financial Conduct Authority (FCA) published a consultation paper (CP 22/20) on *Sustainability Disclosure Requirements (SDR) and Investment Labels*. The SDR was first announced by the Chancellor in his Mansion House speech in November 2021. It is central to delivering Phase 1 ("Informing Investors and Consumers") of the UK Government's strategy on greening the financial system as set out in its policy paper on *Greening Finance: A Roadmap to Sustainable Investing*. More concretely, the FCA is proposing new rules to help retail investors (consumers) navigate an increasingly complex investment product landscape, protect them from greenwashing, and rebuild trust.

The proposal covers the following areas:

- Three sustainable investment labels respectively for "Sustainable Focus", "Sustainable Improvers" and "Sustainable Impact".

- Consumer-facing disclosures complementing the labels.

- Detailed disclosures targeted at a wider audience, namely (i) pre-contractual disclosures (eg in the fund prospectus) covering the sustainability-related features of investment products; (ii) ongoing sustainability-related performance information including key sustainability-related performance indicators and metrics, in a sustainability product report; and (iii) a sustainability entity report covering how firms are managing sustainability-related risks and opportunities.

- Naming and marketing rules restricting the use of certain sustainability-related terms in product names and marketing materials unless the product uses a sustainable investment label.

- Requirements for distributors to ensure that product-level information (including the labels) is made available to consumers.

- A general "anti-greenwashing" rule applied to all regulated firms.

Specifically, the fund labels aim to distinguish products based on (i) intentionality and (ii) how the fund may plausibly achieve a positive outcome for environmental or social sustainability. This is important as it means that funds which include assets that focus on so-called "ESG integration", ie the consideration of ESG risks, opportunities and impacts that may be material to the future financial performance, or funds that employ strategies such as "exclusion/negative screening" or basic "ESG tilts" would not qualify as sustainable investments because of the lack of positive outcome.

In order to help classify funds according to the labels, the CP mentions various initiatives that are part of the UK's SDR. For example, the FCA intends to build its requirements in line with the development of international sustainability-related reporting standards by the International Sustainability Standards Board (ISSB) and the recommendations of the Task Force on Climate-related Financial Disclosures (TCFD). For products with a sustainable focus, the FCA notes that a taxonomy – such as the UK Green Taxonomy, once developed – could be one way of demonstrating that assets meet a credible standard of sustainability. In the transition category, the sustainable improvers, metrics disclosed as part of a transition plan under the Government's Transition Plan Taskforce (TPT), once finalised and implemented, could form part of key performance indicators (KPIs) used by firms to measure improvement. Furthermore, investor stewardship plays a role in all three labels, especially the engagement with assets in the transition label "Sustainable Improvers".

Overall, the proposal is different to the EU's Sustainable Finance Disclosure Regulation (SFDR)'s Article 6, 8 and 9 classifications, which relate to disclosure requirements and are not intended to be used as product labels. The FCA also underlines that there is no hierarchy between its proposed labels, which contrasts with SFDR where Article 9 funds were perceived to be more attractive. As a result, asset managers initially rushed into marketing their funds as Article 9 products, only to currently reclassify many of them following clarification from the European Commission (EC) in June 2022 that Article 9 funds should only contain 100% "sustainable investments" as defined by Article 2 (17) in the SFDR.

With the proposals in the October CP focusing only on funds and portfolio management based in the UK, ICMA members outside the UK should note that there will be a follow-up CP on how the same proposals may be applied in respect of overseas funds.

FCA Working Group on ESG Data and Ratings Code of Conduct

On 22 November 2022, we announced that ICMA was appointed by the UK Financial Conduct Authority (FCA) to jointly provide the Secretariat with the International Regulatory Strategy Group (IRSG) and convene a Working Group to develop a Code of Conduct for ESG data and rating providers.

As financial services firms integrate sustainability into their activities and expand their ESG-focussed products, they are increasingly reliant on third party ESG data and rating services. While potential regulatory oversight is being considered, the FCA is encouraging industry participants to develop and follow a voluntary Code of Conduct.

The ESG Data and Ratings Working Group (DRWG) which is chaired by M&G and Moody's with LSEG and Slaughter & May as vice chairs brings together stakeholders such as ratings and data providers, asset managers, asset owners, corporate rated entities, NGOs, academics and other organisations. More information can be found on the ICMA website.

The group had its inaugural meeting in London on 8 December 2022 where important points like the scope of the Code and a project timeline were discussed. The DRWG will be meeting in person once every month with virtual sub-group meetings on specific topics in between. The current timeline envisages a draft Code to be published in Q2 2023. The market will then be given the opportunity to provide feedback through a public consultation before a final Code is due to be published in Q3/Q4 2023.

Following IOSCO's recommendations related to ESG ratings and data product providers made in November 2021, Japan's FSA was the first regulator to convene a group to draft a Code, a final version of which has been published in December 2022 following a consultation.

Update on the EU Green Bond Standard

The Trialogue on the EU Green Bond Standard did not conclude in December 2022 as planned under the Czech Presidency but will continue under the Swedish Presidency in 2023. On 13 December, ICMA with the Executive Committee of the Principles released a statement expressing views, concerns, and recommendations on the developments related the EU GBS.

Most notably, our concerns relate to the proposed extension of scope of the EU GBS to capture all green bonds and environmental SLBs. The extension is a departure from the original intention to create a voluntary gold standard and may have unintended consequences on the EU's leadership position on sustainable bonds market activity, listing of sustainable bonds in the EU, and more globally, in relation to the EU's policy objective to further mainstream sustainable finance. Additional costs and complexities could deter sustainable bond issuances, setting back the additional transparency they currently provide and/or cause market migration.

At the heart of the debate is a proposed mandatory requirement for all green use-of-proceeds bonds to disclose EU Taxonomy alignment. While the Green Bond Principles have encouraged disclosure of Taxonomy alignment since June 2021, this should remain incentive-based driven by investor demand, especially due to the current usability problems of the EU Taxonomy.

The recent extensive report from the EU Platform on Sustainable Finance and our earlier paper, *Ensuring the Usability of the EU Taxonomy*, explain comprehensively these usability issues. In any case, we recommended that any mandatory Taxonomy obligation should be subject to the resolution of usability with a two-year grace period. For this purpose, we recommended prioritising flexibility for the DNSH and MS assessments including via reliance on issuer-level disclosures.

On the grandfathering issue, we reiterated our recommendation for full grandfathering until the maturity against the changes in the Taxonomy and emphasised the need for no forced reallocation for already allocated proceeds in any case. More broadly, we cautioned against the risk of creating overcomplexity in the mechanics of the grandfathering regime across different regulations.

Lastly, we stated that introducing additional legal liability regarding the use of the EU GBS label is unnecessary, while the wording related to the role of external reviewers should be adjusted as they may not be able to provide "compliance" analysis, but rather an alignment assessment.

Besides this most recent statement, ICMA's previous publications on the EU GBS are: (i) a paper providing an updated analysis on the Trialogue negotiating positions of the European Parliament and the Council in June 2022; (ii) a commentary on the EP rapporteur's proposed amendments in January 2022; and (iii) a paper providing an analysis on the European Commission's original proposal in July 2021.

Other international regulatory developments

With ICMA's technical support and advice, the ASEAN Capital Market Forum issued in October 2022 the *ASEAN Sustainability-Linked Bond Standards*, aligned with the SLBP. The ASEAN SLB Standards, newly added to the suite of sustainable bond standards for the region, provide more specific guidance and requirements for local issuers, including requiring public accessibility to information on the five core components throughout the tenure of the ASEAN SLB, encouraging more frequent reporting and transparency on reporting timeline, mandating external review of the bond framework, etc.

Following the consultation draft in December 2021, to which ICMA submitted a response in March 2022, SC Malaysia finalised *the Principles-based Sustainable and Responsible Investment Taxonomy for the Malaysian Capital Market* in December 2022. Voluntary in nature, it provides qualitative guiding principles for market participants to classify economic activities that contribute to environmental and/or social objectives. According to the environmental component of the taxonomy, an economic activity can be classified as green, amber or red, using a sector-agnostic decision tree with questions around substantial contribution, DNSH, and remedial efforts to mitigate harm.

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Asset Management


by **Nicolette Moser and Irene Rey**

What is AIFMD?

Following the Global Financial Crisis of 2007-2009, the EU decided to regulate the alternative investment industry for better supervision and monitoring of potential weaknesses and vulnerabilities in unregulated funds that could lead to significant systemic risks. This policy response resulted in the Alternative Investment Fund Managers Directive (AIFMD), which was adopted in June 2011 and implemented by EU Member States on 22 July 2013. The main objectives of the AIFMD are to regulate Alternative Investment Fund Managers (AIFMs) and the distribution of Alternative Investment Funds (AIFs) in order to protect investors and avoid the systemic risk that AIFs may cause on financial markets. The AIFMD creates a harmonised legislative framework for AIFMs, which are described as legal persons (company or other legal entity) that manage AIFs, by performing at least portfolio or risk management functions. The EU AIF universe reached EUR7.2 trillion as of Q3 2022[1]. These funds include all non-UCITS funds, namely funds of funds, real estate funds, hedge funds, private equity funds and "other AIFs" (fixed income, equity strategies and mixed funds).

Since its implementation in 2013, the Directive has been fine-tuned on an ongoing basis via Level 2, 3 and 4 measures which have resulted in a robust and effective framework. The unprecedented market stress caused by the COVID-19 pandemic put the post-Global Financial Crisis frameworks to the test, triggering widespread use of Liquidity Management Tools (LMTs) and putting increased scrutiny on the AIFMD ahead of its scheduled review. In August 2020, ESMA made recommendations to the European Commission ahead of the scheduled AIFMD review. AMIC published a thought piece on these recommendations explaining that many of the concerns expressed could be dealt with by the supervisory authorities by making use of their existing powers.

The European Commission published its proposal (to amend Level 1) in the case of both the AIFMD and UCITS Directives at the end of November 2021 so as better to harmonise and align their requirements. As a result, this joint Directive review is very significant as it ultimately impacts the entire EUR18.95 trillion[2] EU fund industry. The negotiations are currently with the European Parliament. (The Council reached its position in June 2022.) Trialogues (between European Commission, Council and Parliament) are expected to start at some point in the first half of 2023 with the earliest possible agreement being reached in the second part of 2023.

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EU sustainable finance regulatory developments for asset managers

This article summarises some key developments for asset managers.

ESAs' Q&A on SFDR Delegated Regulation

On 17 November 2022, the Joint Committee of the European Supervisory Authorities (ESAs) published detailed Questions and Answers (Q&A) in response to questions posed by the European Commission on the Sustainable Finance Disclosures Regulation (SFDR) Delegated Regulation. The SFDR Delegated Regulations, also known as Regulatory Technical Standards (RTS), apply from 1 January 2023 and are relevant when

1. "EFAMA Quarterly Statistical Release Q3 2022" Quarterly Statistical Release Q3 2022.pdf (efama.org)
2. "EFAMA Quarterly Statistical Release Q3 2022" Quarterly Statistical Release Q3 2022.pdf (efama.org)

disclosing sustainability-related information under the SFDR. This Q&A provides SFDR RTS interpretation as well as practical examples, spans 34 pages and includes detailed questions and answers, calculated examples, decision trees and tables of guidance. The Q&A covers:

(i) Current value of all investments in Principal Adverse Impacts (PAI), and Taxonomy-aligned disclosures.

(ii) PAI disclosures.

(iii) Financial product disclosures.

(iv) Multi-option products.

(v) Taxonomy-aligned investment disclosures.

(vi) Financial advisers and execution-only Financial Market Participants (FMPs).

There are several areas of particular interest:

- In respect of the application of PAIs, including for the purpose of the "do no significant harm" (DNSH) condition of sustainable investments, ESAs recognise that not all metrics are directly applicable at use-of-proceeds level and therefore may provide implementation flexibility to FMPs to adjust PAIs or selectively apply them at entity-level.
- In the case of green use-of-proceeds bonds, ESAs have explained that the Taxonomy-alignment should be determined by looking at the alignment of the use-of-proceeds and not at the Taxonomy-alignment of the issuer at an entity-level.
- Importantly, ESAs have clarified how to apply the concept of "equivalent information" referred to under Art.17(2)(b) of the SFDR Delegated Regulation. The concept refers to how FMPs might address the Taxonomy data gaps, either by obtaining the data directly from investees or from third parties if disclosures from investees are not publicly available. ESAs have adopted a conservative approach, indicating, amongst other things, that assessment of substantial contribution should rely on actual data (except in cases referred to in Recital 21 of the Taxonomy Regulation) and controversy-based approaches for the DNSH assessment are discouraged. Relying only on compliance with local environmental laws would not result in DNSH compliance. In addition, equivalent information should have the same content and granularity as the actual information would provide.

The Q&A provides some helpful guidance but many questions remain outstanding. The European Commission has indicated that it intends to publish a set of Q&As on the SFDR in early 2023.

ESMA consultation on Guidelines on Fund Names

On 18 November 2022, ESMA released a consultation paper on *Guidelines for Use of ESG, or Sustainability-related Terms in Fund Names.* The increasing demand for funds that incorporate ESG factors has led to concerns in ESMA that, without the effective application of existing criteria for sustainability such as the EU Taxonomy, this may give rise to "greenwashing", especially for funds labelled as "green" or " socially sustainable". It is ESMA's view that fund names are a powerful marketing tool and, in order not to mislead investors, ESG and sustainability-related terms in fund names should be supported in a material way by evidence of sustainability characteristics or objectives that are reflected fairly and consistently in a fund's investment objective and policy.

ESMA is particularly seeking stakeholder feedback on the introduction of guidelines on fund names and quantitative thresholds for the minimum proportion of investments sufficient to support the ESG or sustainability-related term in fund names, including:

- a quantitative threshold (80%) for the use of ESG-related words;
- an additional threshold (50%) for the use of "sustainable" or any sustainability-related term only, as part of the 80% threshold;
- application of minimum safeguards to all investments for funds using such terms (exclusion criteria);
- additional considerations for specific types of funds (index and impact funds).

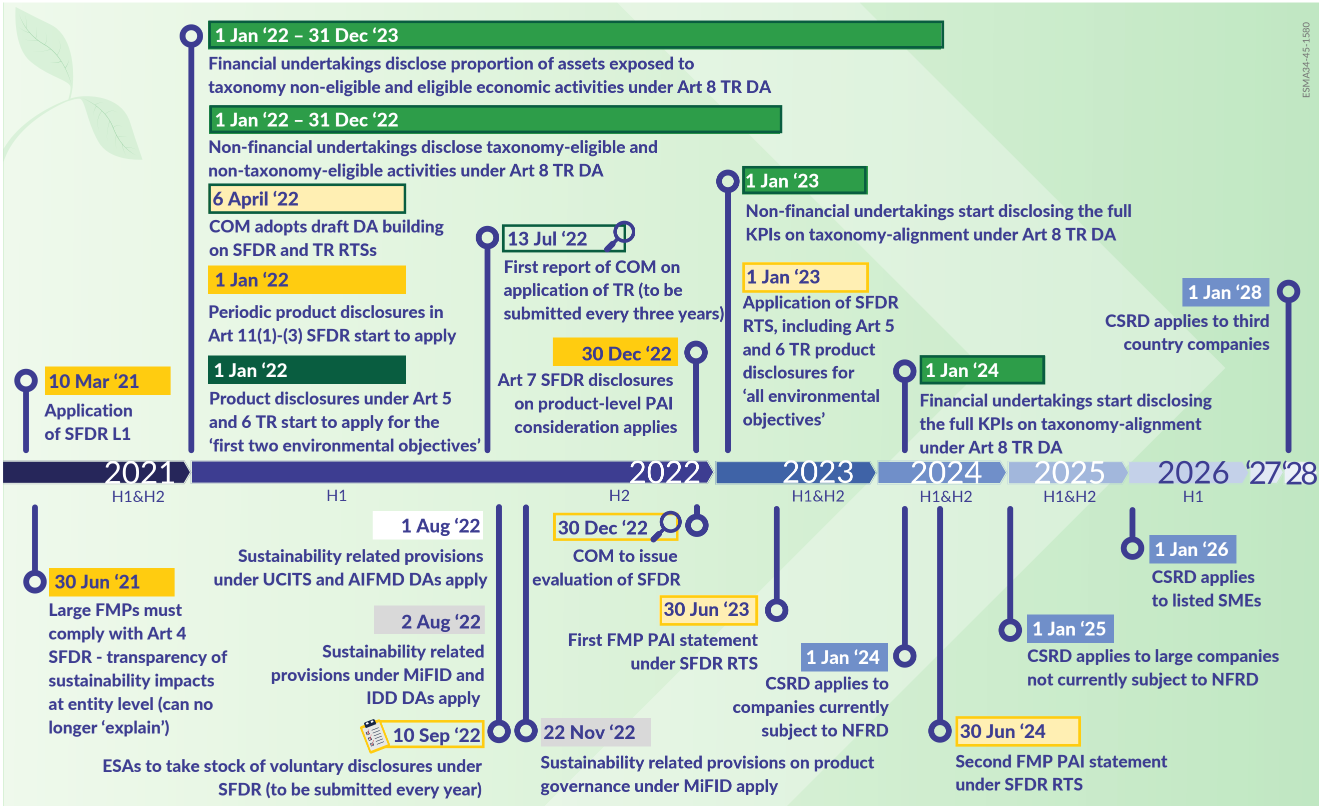
Feedback is also sought on a proposal to promote supervisory convergence in the assessment by National Competent Authorities on the use of ESG or sustainability-related terms in fund names. The consultation closes on 20 February 2023.

ESMA proposes that the draft guidelines would become applicable from three months after the publication with a transitional period of six months for those funds launched prior to the application date to comply with the guidelines.

On 26 September 2022, ESMA has updated its helpful infographic below, which summarises the timeline of key measures under existing legislation: Sustainable Finance: implementation timeline (europa.eu)

Sustainable Finance
Implementation timeline for SFDR | TR | CSRD | MiFID | IDD | UCITS | AIFMD

Last updated: 26 September 2022



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FinTech and Digitalisation



by **Georgina Jarratt, Gabriel Callsen and Rowan Varrall**

ICMA FinTech Advisory Committee

Following the establishment of the Common Data Dictionary Working Group, DLT Bonds Working Group and CDM SteerCo for phase 2 throughout the second quarter of 2022, ICMA's FinTech Advisory Committee (FinAC) reconvened on 22 September and 30 November 2022. The purpose of the meetings was to review the status of key deliverables, exchange views on wholesale CBDC, discuss FinTech developments in Asia-Pacific and ICMA's engagement in the region as well as ICMA's global strategy on FinTech and digitalisation going forward.

In September, the BIS Innovation Hub presented the key findings of its report on *Using CBDCs across Borders: Lessons from Practical Experiments*, published in June 2022. The report draws insights from different cross-border initiatives (Inthanon LionRock2, mBridge, Jura and Dunbar) involving central banks in Asia-Pacific, South Africa and Europe, amongst other private sector stakeholders.

The ability to automate hitherto cumbersome processes and reduce costs through smart contracts, for example in relation to settlement or coupon payments, is one on the main advantages of a CBDC for securities markets. The use of shared DLT platforms could lead to more integrated capital markets across borders. However, clear governance arrangements are required in light of different interoperability and access models. Issuance of DLT-based assets is subject to national laws and regulation which often diverge across different jurisdictions and which are not necessarily adapted to a "tokenised world".

While the different projects explored the technical feasibility of cross-border CBDC arrangements to inform the G20 programme for enhancing cross-border payments, designs also need to explore viability taking into account policy, legal, governance and economic issues before they are implemented.

FinAC members exchanged views on the implications for cross-border capital markets and future direction of travel in light of ICMA's response to the ECB and members' strong support for a wholesale digital euro.

Further information is available on ICMA's FinTech webpage.

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CDM for repo and bonds

Phase 2 of ICMA's CDM project for repo and bonds is due to be concluded in the first quarter of 2023, enabling market stakeholders to automate repo trade processing and facilitate reporting. As a reminder, the CDM is essentially a common language across repo and securities lending, bond and derivatives trade processing based on collaboration between ICMA, ISDA and ISLA.

Throughout the last quarter of 2022 the project's focus was on finalising the technical programming of repo structures and processes into the CDM. ICMA continued to work with REGnosys, a technology firm, to represent unambiguously lifecycle events and processes such as changes of a repo (interest) rate, closing and re-opening of a position, and shaping (ie splitting a large trade into smaller sizes for settlement purposes), amongst others.

Following the appointment of the FinTech Open Source Foundation (FINOS) to provide a repository for the CDM, ICMA, ISDA and ISLA jointly participated in the FINOS Open Source in Finance Forum (OSFF) on 8 December in New York. The purpose was to announce the launch of the CDM under the FINOS open-source framework. Transferring the CDM to FINOS and establishing an appropriate governance framework is due to be completed in early 2023.

Looking ahead, ICMA's focus is to promote adoption of the CDM, incorporate provisions from the GMRA clause library as a foundation for smart contracts, and explore synergies between ICMA's Common Data Dictionary for primary bond markets and the CDM to support issuance, trading and settlement of DLT bonds.

ICMA, ISDA and ISLA are planning to hold a joint CDM showcase event on 21 February 2023 in London, featuring live implementation for both transaction management and regulatory reporting, as well as ongoing projects. To learn more or become involved, member firms are encouraged to get in touch. Further information can be found on ICMA's CDM webpage.

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ICMA DLT Bonds Working Group and Q&As

Following publication of the *FAQs on DLT and Blockchain in Bond Markets* in September, ICMA's DLT Bonds Working Group reconvened in November 2022. The purpose was to take stock of existing approaches for issuance, trading, settlement and distribution of DLT bonds, discuss potential market guidance and review additional Q&As to be contributed to the above-mentioned FAQs in Q1 2023.

As a reminder, the Working Group brings together a broad range of stakeholders across the value chain of capital markets, including public sector and private sector issuers, investors, banks, central banks, market infrastructure providers and law firms across Europe, North America, the MENA region and Asia-Pacific.

Looking ahead, ICMA's DLT Bonds Working Group will continue to support the development of the nascent segment of DLT bond markets, engage with regulators, raise market awareness and clarify some of the fundamental questions on DLT and wholesale CBDC in capital markets.

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Bank of England Data Standards Committee

ICMA is pleased to continue participating in the Bank of England's Data Standards Committee, which was set up under the Bank of England's and FCA's joint Transformation Plan for Data Collection from the UK financial sector in 2021. Following phase 1 of the programme, Gabriel Callsen has been re-appointed to the Data Standards Committee for phase 2, launched in September 2022.

Phase 2 use cases of the Transformation Plan include a Strategic Review of Prudential Data Collection (SRPDC) and Incident, Outsourcing and Third-Party Reporting (IOREP), amongst others.

The Data Standards Committee is a forum for stakeholders including reporting firms, trade bodies and relevant standard setting bodies to discuss issues and propose solutions in the area of data standards. Further information can be found on the Bank of England's Transforming Data Collection webpage.

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FinTech regulatory developments

BCBS: Prudential treatment of cryptoasset exposures

On 16 December 2022, the BCBS published the prudential treatment of banks' exposures to cryptoassets, including tokenised traditional assets, stablecoins and unbacked cryptoassets. In June 2022, the BCBS issued its second consultation on the prudential treatment of banks' exposures to cryptoassets. After considering the feedback from stakeholders to the consultation, the Committee has now finalised its prudential standard, which has been endorsed by the Committee's oversight body, the Group of Governors and Heads of Supervision. This document sets out the final standard which the Committee has agreed to implement by 1 January 2025.

ESMA: Guidelines on standard forms, formats and templates to apply for permission to operate a DLT Market Infrastructure

On 15 December 2022, ESMA published a *Final Report including Guidelines on Standard Templates, Forms and Formats to Apply for Permission to Operate a DLT Market infrastructure*. These Guidelines include templates to be used by market participants to apply for specific permission to operate any type of DLT market infrastructure (DLT MI) under the DLT Pilot Regulation (DLTR), namely: a DLT MTF, a DLT settlement system or a DLT trading and settlement system. They also include templates for the applicant DLT MIs to request limited exemptions from specific requirements under MiFIR, MiFID II or CSDR, provided they comply with certain conditions. Instructions on how to submit this information should be published by the National Competent Authorities on their website.

OECD: Environmental impact of digital assets

On 2 December 2022, the OECD released a report on the *Environmental Impact of Digital Assets: Crypto-Asset Mining and DLT Consensus Mechanisms*. Crypto-asset markets are rapidly developing, yet the infrastructure supporting mainstream crypto-assets, such as the Bitcoin, use an enormous amount of energy. This paper explores the growing environmental impact of crypto-assets due to increasing institutional and retail investors participation in these markets. The use of energy-intensive transaction validation through proof-of-work consensus mechanisms and the corresponding carbon footprint create climate transition risks for market participants. Policy considerations and action are necessary given the carbon footprint and associated climate transition risks of certain digital assets when combined with negative externalities extending to the wider society.

CPMI and IOSCO: Implementation monitoring of the PFMI: Level 3 assessment on financial market infrastructures' cyber resilience

On 29 November 2022, CPMI and IOSCO published a report on *Implementation Monitoring of the PFMI: Level 3 Assessment on Financial Market Infrastructures' Cyber Resilience*. The report finds reasonably high adoption of the guidance on cyber resilience for financial market infrastructures ("Cyber Guidance") by FMIs. A serious issue of concern relates to a small number of FMIs not fully meeting expectations regarding the development of cyber response and recovery plans to meet the two-hour recovery time objective (2hRTO). The four additional issues of concern relate to shortcomings in established response and recovery plans to meet the 2hRTO under extreme cyber-attack scenarios; lack of cyber resilience testing after major system changes; lack of comprehensive scenario-based testing; and inadequate involvement of relevant stakeholders in testing. These findings highlight clear challenges for FMIs' cyber resilience that should be addressed with the highest priority.

Council of the EU: Adoption of Digital Operational Resilience Act (DORA)

On 28 November 2022, the Council of the EU formally adopted the Digital Operational Resilience Act (DORA) with the aim of strengthening the IT security of financial entities. DORA sets uniform requirements for the security of network and information systems of companies and organisations operating in the financial sector as well as critical third parties which provide ICT-related services to them, such as cloud platforms or data analytics services. These requirements are homogenous across all EU Member States. Aspects that require national transposition will be passed into law by each EU Member State. At the same time, the relevant European Supervisory Authorities (ESAs), such as EBA, ESMA and EIOPA will develop technical standards for all financial services institutions to abide by, from banking to insurance to asset management.

Council of the EU: Adoption of new Directive on security of network and information systems (NIS2)

On 28 November 2022, the Council of the EU adopted legislation for a high common level of cybersecurity across the Union, to further improve the resilience and incident response capacities of both the public and private sector and the EU as a whole. The new Directive, called "NIS2", will replace the current Directive on security of network and information systems (the NIS Directive). NIS2 will set the baseline for cybersecurity risk management measures and reporting obligations across all sectors that are covered by the Directive, such as energy, transport, health and digital infrastructure. The Directive will be published in the *Official Journal of the European Union* and will enter into force on the 20th day following this publication. Member States will have 21 months from the entry into force of the Directive in which to incorporate the provisions into their national law.

BIS: Central bank digital currencies in Africa

On 24 November 2022, the BIS published a paper on *Central Bank Digital Currencies in Africa* based on a survey to central banks. The paper analyses the development, motivations and concerns of CBDCs in Africa relative to other emerging and developing regions. The interest of African central banks in CBDCs has shot up in recent times. While all of those surveyed are analysing CBDCs, only a few have projects at advanced stages (pilot or live). Some countries, in particular in East and West Africa, stand out as promoting fast payment systems through mobile money, but half of the surveyed central banks think that CBDCs can provide a superior solution. Central banks in Africa also place more emphasis on financial inclusion. These factors could foster CBDC issuance and favour adoption. At the same time, they are more worried than other regions about cyber security risks and cross-border spillovers and are also concerned about high operational burdens.

BIS: Crypto trading and Bitcoin prices: evidence from a new database of retail adoption

On 14 November 2022, the BIS published a report on *Crypto Trading and Bitcoin Prices: Evidence from a New Database of Retail Adoption*. Prices for cryptocurrencies have undergone multiple boom-bust cycles, together with ongoing entry by retail investors. To investigate the drivers of crypto adoption, the authors assemble a novel database (made available with this paper) on retail use of crypto exchange apps at daily frequency for 95 countries over 2015–2022. They show that a rising Bitcoin price is followed by the entry of new users. About 40% of these new users are men under 35, commonly identified as the most "risk-seeking" segment of the population. Overall, back of the envelope calculations suggest that around three-quarters of users have lost money on their Bitcoin investments.

BIS: The case for convenience: how CBDC design choices impact monetary policy pass-through

On 7 November 2022, the BIS released a report on *The Case for Convenience: How CBDC Design Choices Impact Monetary Policy Pass-Through*. Banks of different sizes respond differently to interest on reserves (IOR) policy. For low IOR rates, large banks are non-responsive to IOR rate changes, leading to weak pass-through of IOR rate changes to deposit rates. In these circumstances, a central bank digital currency (CBDC) may be used to provide competitive pressure to drive up deposit rates and improve monetary policy transmission. The authors explore the implications of two design features: interest rate and convenience value. Increasing the CBDC interest rate past a point where it becomes a binding floor, increases deposit rates but leads to greater inequality of market shares in both deposit and lending markets and can reduce the responsiveness of deposit rates to changes in the IOR rate. In contrast, increasing convenience, from sufficiently high levels, increases deposit rates, causes market shares to converge and can increase the responsiveness of deposit rates to changes in the IOR rate.

ECB: Cold hard (digital) cash: the economics of central bank digital currency

On 31 October 2022, the ECB published its Research Bulletin (No. 100) on *Cold Hard (Digital) Cash: the Economics of Central Bank Digital Currency*. Central banks around the world are exploring the case for central bank digital currency (CBDC) – essentially a digital version of cash. In this article, the authors provide an overview of the economics of CBDC (Ahnert et al., 2022a). First, they outline the economic forces that shape the rise of digital money and motivate the current debate. They then look at the implications for monetary policy and financial stability before discussing policy issues and challenges. Finally, they highlight several areas where their understanding of digital money could be improved by further research.

IMF: Digital money and central banks' balance sheet

On 28 October 2022, the IMF issued a working paper on *Digital Money and Central Banks' Balance Sheet*. Digital money is a logical step in a process of continuous technological advancement in payment systems. In response, central banks are reviewing their conduct of monetary operations in light of the new shape of financial markets and systems. The impact of digital money will depend on the type of money substitution by digital money. The paper straddles several cases where substitution of CiC (currency in circulation) and bank deposits may take place via digital money such as CBDC or other e-money, and how it would impact the central bank balance sheet. Remuneration of CBDC, if aligned to a new objective, could potentially amplify the effect on the interest rate channel of monetary policy.

BIS FSI: BigTech regulation: in search of a new framework

On 3 October 2022, the BIS Financial Stability Institute published a paper on *BigTech Regulation: in Search of a New Framework*. Technological innovation in the market for financial services has given rise to new products, new delivery channels and, most importantly, new providers, such as big techs. In the case of big techs, most of the risks arise from their ability to leverage on a common infrastructure – notably large amounts of client data – that helps them gain a competitive advantage in a wide variety of non-financial and financial services and create substantial network externalities. Two specific regulatory approaches for big techs could then be considered and to some extent combined. The first is segregation, which is a structural approach that seeks to minimise risks arising from group interdependencies between financial and non-financial activities by imposing specific ring-fencing rules. An alternative approach to segregation is inclusion, which consists in creating a new regulatory category for big tech groups with significant financial activities.

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ICMA FinTech Newsletter

FinTech Newsletters in the last quarter of 2022 noted updates to ICMA's FinTech regulatory roadmap, highlighting relevant developments over the coming years, and recent DLT guidance, legislative initiatives, and publication updates covered by the DLT regulatory directory. Announcements of DLT-based bond issuances, intraday repo transactions, new tokenisation platforms and digital payment infrastructures continue to accelerate and are tracked under ICMA's New FinTech applications webpage.

To receive future editions of the Newsletter, please subscribe or update your mailing preferences and select FinTech.

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2023

ICMA Capital Market Research

ICMA Capital Market Research

Observations and Categorisation relating to Sustainability in the Repo Market
Published: 26 October 2022
Author: Zhan Chen, ICMA

ICMA Report: European Secondary Bond Market Data (H1 2022)
Published: 24 October 2022
Author: Andy Hill, ICMA. First semi-annual report, produced in collaboration with Propellant digital

Frequently Asked Questions on DLT and Blockchain in Bond Markets
Published: 22 September 2022
Author: Gabriel Callsen, ICMA

ICMA Strategy Paper: GMRA Clause Taxonomy & Library Project
Published: 25 May 2022
Authors: Lisa Cleary, ICMA, assisted by D2 Legal Technology (D2L)

ICMA Guide to Asia Repo Markets
Published: 3 May 2022 (latest chapter covering Vietnam)
Author: Richard Comotto

The Asian International Bond Markets: Development and Trends (Second edition)
Published: 24 March 2022
Authors: Andy Hill, Mushtaq Kapasi, and Yanqing Jia, ICMA, with support from the Hong Kong Monetary Authority

Ensuring the Usability of the EU Taxonomy
Published: 14 February 2022
Authors: Nicholas Pfaff and Ozgur Altun, ICMA

Optimising Settlement Efficiency: An ERCC Discussion Paper
Published: 1 February 2022
Author: Alexander Westphal, ICMA

ICMA ERCC Briefing Note: The European Repo Market at 2021 Year-End
Published: 17 January 2022
Author: Andy Hill, ICMA

ICMA Position Paper: Proposal for a New Post-Trade Transparency Regime for the EU Corporate Bond Market
Published: 8 December 2021
Author: Elizabeth Callaghan, ICMA

Bonds to Bridge the Gender Gap: A Practitioner's Guide to Using Sustainable Debt for Gender Equality
Published: 16 November 2021
Author: ICMA/UN Women/IFC Joint Report

ICMA CPC White Paper: The European Commercial Paper and Certificates of Deposit Market
Published: 29 September 2021
Author: Andy Hill, ICMA

The First Year of SFTR Public Data on Repo
Published: 28 September 2021
Author: Richard Comotto

Investing in China's Interbank Bond Market: A Handbook
Published: September 2021
Authors: Ricco Zhang and Yanqing Jia, ICMA; Jianjian Yang and Fangzhu Li, NAFMII

The Sustainability Disclosure Regime of the European Union
Published: 22 September 2021
Authors: Nicholas Pfaff, Simone Utermarck, Arthur Carabia, and Ozgur Altun, ICMA

ICMA ERCC Consultation on the Role of Repo in Green and Sustainable Finance: Summary Report
Published: 20 September 2021
Author: Zhan Chen, ICMA

Guide to Tough Legacy Bonds in Asia-Pacific
Published: 25 May 2021
Authors: Mushtaq Kapasi and Katie Kelly, ICMA; Justin Kesheneff and Dennis To, Bloomberg

Overview and Recommendations for Sustainable Finance Taxonomies
Published: 18 May 2021
Authors: Nicholas Pfaff, Ozgur Altun, and Yanqing Jia, ICMA

ICMA AMIC Discussion Paper: ESG KPIs for Auto-loans/leases ABS
Published: 17 May 2021
Author: Arthur Carabia, ICMA

Industry Guide to Definitions and Best Practice for Bond Pricing Distribution
Published: 17 May 2021
Author: Elizabeth Callaghan, ICMA

ICMA ERCC Consultation Paper: Green and Sustainable Finance: What is the Role of the Repo Market?
Published: 22 April 2021
Author: Zhan Chen, ICMA

The Asian International Bond Markets: Development and Trends
Published: 3 March 2021
Authors: Andy Hill, Mushtaq Kapasi, Yanqing Jia, and Keiko Nakada, ICMA, supported by the Hong Kong Monetary Authority (HKMA)

The Internationalization of the China Corporate Bond Market
Published: 14 January 2021
Authors: Andy Hill and Yanqing Jia, ICMA

ICMA ERCC Briefing Note: The European Repo Market at 2020 Year-End
Published: 13 January 2021
Author: Andy Hill, ICMA

ICMA Events and Education

ICMA Events

In 2022, almost 4,500 delegates joined our global events offering, where we discussed key themes in the international debt capital markets. Over the course of the year, we delivered almost 40 events on a range of topics, including: Asia's RFR bond markets, digital transformation, sustainability and data management in capital markets; Taxonomy regulation and sustainable finance alongside webinars on topics of diversity, equity and inclusion (DEI); as well as regionally - focused events looking at market developments across Europe, MENA and Asia.

Highlight: European Primary Market Forum

The 2022 ICMA European Primary Market Forum was held in London on 8 November and kindly hosted by Linklaters. The event, opened by our Chief Executive, Bryan Pascoe, attracted almost 200 issuers, investors, underwriting banks and other market participants to consider how sustainability, technology and macroeconomic developments are impacting primary bond markets in Europe. *In 2023, the event will once again be held in London. Details will be announced in due course.*

ICMA's events in early 2023

Further details available at **www.icmagroup.org/events**

20 to 22 January, Zermatt	**ICMA Switzerland & Liechtenstein region's annual Winter event**
7 February, London	**European Primary Bond Markets Regulation Conference**
16 February, Singapore	**APAC Primary Market Forum**
21 February, London	**ICMA, ISLA and ISDA joint CDM (Common Domain Model) Showcase**
9 March, Amsterdam	**Secondary Market Forum**

More to be announced. Contact: **events@icmagroup.org**

Flagship events where registration opens in Feb.

Please contact **Shannelle Rose** to discuss sponsorship of these and other future ICMA events.

ICMA Webinars & Podcasts

Recordings of a selection of our events are available on the ICMA website. In addition, we continue to produce a range of podcasts featuring important stakeholders in the market, discussing their views on a variety of issues relating to capital markets. With more than 260 podcasts and an impressive 107,100 downloads to date from across the globe, the ICMA Podcast series remains a valued service for the market.

ICMA Education and Training livestream courses 2023

LEVEL	COURSE	LIVESTREAMED SESSIONS	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
FOUNDATION	Financial Markets Foundation Qualification	5 x 3.5h		4-12 Apr						16-24 Oct		
FOUNDATION	Introduction to Primary Markets Qualification	5 x 3.5h		19-27 Apr						2-10 Oct		
FOUNDATION	Introduction to Bond Markets Qualification	5 x 3.5h		12-21 Apr						30 Oct - 7 Nov		
FOUNDATION	Introduction to Securities Operations Qualification	5 x 3.5h	20-28 Mar						12-19 Sep			
FOUNDATION	Introduction to Repo	4 x 3.5h		17-25 Apr						23-31 Oct		
FOUNDATION	Introduction to Sustainable Bonds **(NEW)**	3 x 3.5h	27-29 Mar						25-27 Sep			
FOUNDATION	Introduction to the Buyside **(NEW)**	1 x 3.5h		03 Apr								
FOUNDATION	Introduction to Market Infrastructure **(NEW)**	1 x 3.5h	Details coming soon						20-Sep			
ADVANCED	Primary Market Certificate	10 x 3.5h			3-24 May						20-24 Nov*	
ADVANCED	Fixed Income Certificate	10 x 3.5h				5-26 June				16-20 Oct*		
ADVANCED	Operations Certificate Programme	10 x 3.5h		26 Apr - 17 May					25-29 Sep*			
ADVANCED	Sustainable Bonds Certificate	8 x 3h				7-22 June					6-9 Nov*	
SPECIALIST	Understanding the Swap Markets	4 x 3.5h									9-14 Nov	
SPECIALIST	Fintech - Digital Assets **(NEW)**	2 x 3.5h	Details coming soon							5-6 Oct		
SPECIALIST	Repo and Securities Lending Under the GMRA and GMSLA **(NEW)**	3 x 3.5h	Details coming soon						20-22 Sep			
SPECIALIST	Fintech in the Capital Markets **(NEW)**	4 x 3.5h	Details coming soon						21-29 Sep			
SPECIALIST	Bond Syndication for Compliance & Middle Office	2 x 3.5h				1-2 June					2-3 Nov	
SPECIALIST	Introduction to Securitisation	4 x 3.5h							14-19 Sep			
SPECIALIST	Fixed Income Portfolio Management & Construction	6 x 3.5h				14-21 June					29 Nov - 6 Dec	
SPECIALIST	Inflation-Linked Bonds & Derivatives	4 x 3.5h			8-16 May							
SPECIALIST	Corporate Actions - An Introduction	4 x 3.5h								5-10 Oct		
SPECIALIST	Corporate Actions - Operational Challenges	4 x 3.5h								19-27 Oct		
SPECIALIST	Collateral Management	4 x 3.5h	13-17 Mar							16-21 Nov		
SPECIALIST	Securities Lending	4 x 3.5h		17-25 Apr						12-20 Oct		
SPECIALIST	Understanding the GMRA	5 x 3.5h			9-10 May*					25 Oct - 3 Nov		

* The course session is delivered in-person and will run over fewer sessions. Please contact **education@icmagroup.org** for more details.

Glossary

ABCP	Asset-Backed Commercial Paper
ABS	Asset-Backed Securities
ADB	Asian Development Bank
AFME	Association for Financial Markets in Europe
AI	Artificial intelligence
AIFMD	Alternative Investment Fund Managers Directive
AMF	Autorité des marchés financiers
AMIC	ICMA Asset Management and Investors Council
AMI-SeCo	Advisory Group on Market Infrastructure for Securities and Collateral
APA	Approved publication arrangements
APP	ECB Asset Purchase Programme
ASEAN	Association of Southeast Asian Nations
AUM	Assets under management
BCBS	Basel Committee on Banking Supervision
BIS	Bank for International Settlements
BMCG	ECB Bond Market Contact Group
BMR	EU Benchmarks Regulation
bp	Basis points
BRRD	Bank Recovery and Resolution Directive
CAC	Collective action clause
CBDC	Central bank digital currency
CBIC	ICMA Covered Bond Investor Council
CBIRC	China Banking and Insurance Regulatory Commission
CCBM2	Collateral Central Bank Management
CCP	Central counterparty
CDM	Common Domain Model
CDS	Credit default swap
CIF	ICMA Corporate Issuer Forum
CMU	Capital Markets Union
CoCo	Contingent convertible
COREPER	Committee of Permanent Representatives (in the EU)
CPC	ICMA Commercial Paper Committee
CPMI	Committee on Payments and Market Infrastructures
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
CSPP	Corporate Sector Purchase Programme
CSRC	China Securities Regulatory Commission
CT	Consolidated tape
DCM	Debt Capital Markets
DEI	Diversity, equity and inclusion
DLT	Distributed ledger technology
DMO	Debt Management Office
DNSH	Do no significant harm
DVP	Delivery-versus-payment
EACH	European Association of CCP Clearing Houses
EBA	European Banking Authority
EBRD	European Bank for Reconstruction and Redevelopment
EC	European Commission
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
EDDI	European Distribution of Debt Instruments
EDGAR	US Electronic Data Gathering, Analysis and Retrieval
EEA	European Economic Area
EFAMA	European Fund and Asset Management Association
EFC	Economic and Financial Committee (of the EU)
EFTA	European Free Trade Area
EGMI	European Group on Market Infrastructures
EIB	European Investment Bank
EIOPA	European Insurance and Occupational Pensions Authority
ELTIFs	European Long-Term Investment Funds
EMDE	Emerging market and developing economies
EMIR	European Market Infrastructure Regulation
EMTN	Euro Medium-Term Note
EMU	Economic and Monetary Union
EP	European Parliament
ERCC	ICMA European Repo and Collateral Council
ESAP	European single access point
ESAs	European Supervisory Authorities
ESCB	European System of Central Banks
ESFS	European System of Financial Supervision
ESG	Environmental, social and governance
ESM	European Stability Mechanism
ESMA	European Securities and Markets Authority
ESRB	European Systemic Risk Board
ETF	Exchange-traded fund
ETP	Electronic trading platform
EU27	European Union minus the UK
ESTER	Euro Short-Term Rate
ETD	Exchange-traded derivatives
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
FCA	UK Financial Conduct Authority
FEMR	Fair and Effective Markets Review
FICC	Fixed income, currency and commodity markets
FIIF	ICMA Financial Institution Issuer Forum
FMI	Financial market infrastructure
FMSB	FICC Markets Standards Board
FPC	UK Financial Policy Committee
FRN	Floating-rate note
FRTB	Fundamental Review of the Trading Book
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
GBP	Green Bond Principles
GDP	Gross Domestic Product
GFMA	Global Financial Markets Association
GHOS	Group of Central Bank Governors and Heads of Supervision
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
HKMA	Hong Kong Monetary Authority
HMRC	HM Revenue and Customs
HMT	HM Treasury
HQLA	High Quality Liquid Assets
HY	High yield
IAIS	International Association of Insurance Supervisors
IASB	International Accounting Standards Board
IBA	ICE Benchmark Administration
ICMA	International Capital Market Association
ICSA	International Council of Securities Associations
ICSDs	International Central Securities Depositories
IFRS	International Financial Reporting Standards
IG	Investment grade
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
ISSB	International Sustainability Standards Board
ITS	Implementing Technical Standards
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
MAR	Market Abuse Regulation
MEP	Member of the European Parliament
MiFID	Markets in Financial Instruments Directive
MiFID II/R	Revision of MiFID (including MiFIR)
MiFIR	Markets in Financial Instruments Regulation
ML	Machine learning
MMF	Money market fund
MOU	Memorandum of Understanding
MREL	Minimum requirement for own funds and eligible liabilities
MTF	Multilateral Trading Facility
NAFMII	National Association of Financial Market Institutional Investors
NAV	Net asset value
NBFI	Non-bank financial intermediary
NCA	National competent authority
NCB	National central bank
NPL	Non-performing loan
NSFR	Net Stable Funding Ratio (or Requirement)
OJ	Official Journal of the European Union
OMTs	Outright Monetary Transactions
OTC	Over-the-counter
OTF	Organised Trading Facility
PBOC	People's Bank of China
PCS	Prime Collateralised Securities
PEPP	Pandemic Emergency Purchase Programme
PMPC	ICMA Primary Market Practices Committee
PRA	UK Prudential Regulation Authority
PRIIPs	Packaged Retail and Insurance-Based Investment Products
PSIF	Public Sector Issuer Forum
QE	Quantitative easing
QIS	Quantitative impact study
QMV	Qualified majority voting
RFQ	Request for quote
RFRs	Near risk-free reference rates
RM	Regulated Market
RMB	Chinese renminbi
RMO	Recognised Market Operator (in Singapore)
RPC	ICMA Regulatory Policy Committee
RSP	Retail structured products
RTS	Regulatory Technical Standards
RWA	Risk-weighted asset
SBBS	Sovereign bond-backed securities
SEC	US Securities and Exchange Commission
SFC	Securities and Futures Commission
SFT	Securities financing transaction
SGP	Stability and Growth Pact
SI	Systematic Internaliser
SLB	Sustainability-Linked Bond
SMEs	Small and medium-sized enterprises
SMPC	ICMA Secondary Market Practices Committee
SMSG	Securities and Markets Stakeholder Group (of ESMA)
SARON	Swiss Average Rate Overnight
SOFR	Secured Overnight Financing Rate
SONIA	Sterling Overnight Index Average
SPV	Special purpose vehicle
SRF	Single Resolution Fund
SRM	Single Resolution Mechanism
SRO	Self-regulatory organisation
SSAs	Sovereigns, supranationals and agencies
SSM	Single Supervisory Mechanism
SSR	EU Short Selling Regulation
STS	Simple, transparent and standardised
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
TMA	Trade matching and affirmation
TONA	Tokyo Overnight Average rate
TR	Trade repository
VNAV	Variable net asset value

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