International
Capital
Market
Association

Mr. Steven Maijoor
Chair
European Securities & Markets Authority (ESMA)
CS 60747
103 rue de Grenelle
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France

3 March 2017

Dear Steven,

Notification of changes to the ICMA buy-in procedures

I am pleased to inform you of changes being made to the International Capital Market Association (ICMA)[1] rules and recommendations for the secondary market, specifically related to the buy-in and sell-out procedures.

ICMA's rules and recommendations for the secondary market apply to transactions in international securities – an international security is defined as a security intended to be traded on an international, cross-border basis (i.e. between parties in different countries) and capable of settlement through an international central securities depository or equivalent. The ICMA buy-in and sell-out procedures provide ICMA members with an efficient remedy to deal with settlement fails, and are widely utilised by both buy-side and sell-side firms active in the international bond markets. For many years, the ICMA 'buy-in rules' have provided a reliable and market standard remedy for managing settlement risk, being available to both liquidity takers and liquidity providers in the international, non-centrally-cleared bond markets.

The changes to the ICMA buy-in and sell-out procedures follow an extensive consultation of ICMA's membership to ensure that the rules provide an effective and efficient remedy available to fixed income market participants. This is consistent with ICMA's mission of promoting resilient and well-functioning international debt capital markets, and reflects a more challenged trading environment in the bond markets, particularly with respect to corporate bonds, high yield, and emerging markets, where the ICMA buy-in rules are most widely utilised. It is ICMA's belief that resilient and well-functioning capital markets play a vital role in linking savings and investment to facilitate economic growth and jobs.

[1] ICMA is a membership association, committed to serving the needs of its wide range of members representing both the buy side and sell side of the industry. Its membership includes issuers, intermediaries, investors and capital market infrastructure providers. ICMA currently has over 500 members located in approximately 60 countries worldwide.

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A full outline of the changes to the rules can be found in the circular annexed to this letter. However, the notable enhancements are with respect to the flexibility of the buy-in (and sell-out) procedures: allowing the initiating party to determine the timeline of the buy-in process, as well as eliminating the necessity to appoint a buy-in agent. The decision as to when to initiate the buy-in or sell-out process, naturally, remains at the discretion of the failed-to party.

In the process of consulting our members on the practicability and efficacy of the ICMA buy-in and sell-out procedures, a number of concerns were raised with respect to the proposed mandatory buy-in regime under the CSD-Regulation, currently anticipated to come into force sometime in 2019. What becomes increasingly apparent is that the proposed CSDR buy-in regime is not only deeply unpopular with market participants (both liquidity takers and liquidity providers), but there is a broad belief that such an initiative cannot be implemented, monitored, and enforced in an efficient or effective manner without causing severe disruption to market efficiency and stability. More significantly, such a rigid and mandated regime will increase the market risk of liquidity takers, while providing a deterrent to liquidity providers and intermediaries.

On behalf of its extensive and diverse membership, ICMA urges the European Commission to consider carefully these concerns as it looks to implement the proposed mandatory buy-in regime. While ICMA fully supports an effective and harmonised buy-in process for the European capital markets, and is willing to work closely with the Commission, ESMA, and national authorities to achieve this objective, it is our firm belief that the proposed buy-in regime outlined in CSDR will not only fail to achieve its intended outcome, but will undermine the more pressing objectives of the Capital Markets Union initiative of achieving integrated, stable, and resilient capital markets to facilitate economic growth and jobs.

We remain at your disposal to discuss further the changes to the ICMA buy-in procedure, the feedback from the consultation, and the widespread concerns related to the CSDR buy-in regime.

Yours sincerely,

Martin Scheck
Chief Executive

Enc. ICMA Circular No 2 of March 1 2017 re buy-in and sell-out

c.c. Olivier Guersent, EC, Director General, DG FISMA
John Berrigan, EC, Deputy Director General, DG FISMA