

ICMA Buy-in & Sell-out Rules: Proposed revisions for CSDR

PEP buy-in

The ICMA Pre-extension Period (PEP) buy-in is intended to be used any time from ISD+1 (as now) up until the end of the relevant extension period. The PEP buy-in provides a contractual settlement remedy available prior to a CSDR mandatory buy-in. The application of the PEP is entirely discretionary. The PEP buy-in could also be used in the case of out of scope of CSDR (with no time constraints on initiating or completion).

Feature	Proposal	Consultation Considerations & Question	Current rules ref	RTS ref
Notification period	<p>The initiating party can initiate the PEP buy-in from the business day following the intended settlement date (ISD+1). The notification period (ie the time until the date on which the PEP buy-in execution can first be attempted) should be no shorter than 3 days, and no longer than 4 days.</p> <p>In the case of a transaction in-scope of CSDR, this is based on the assumption that the relevant extension period is minimum 7 days [ie not a liquid equity].</p> <p>This would mean execution of the buy-in would begin on ISD+4 or ISD+5.</p>	<p>Should the PEP buy-in notification period be 3 or 4 business days following the ISD?</p> <p>Does this allow enough time for other considerations (including the possibility of negotiating an alternative remedy)?</p>	451.3.2	N/A
Details included in the PEP buy-in notice	<p>These should include:</p> <ul style="list-style-type: none"> The buyer's intention to close out the contract by means of a PEP buy-in. 	<p>What additional information, if any should be included?</p>	451.3/451.4	N/A

	<ul style="list-style-type: none"> • The date when the PEP buy-in will be executed. • Full details of the failing contract and the principal amount of the bonds to be bought in. • Whether it is a pass-on situation. • Notification that the transaction is in scope of a CSDR buy-in following the end of the extension period (on XX date). • 			
Timing of the PEP buy-in notice	The PEP buy-in notice should be issued by 10am London time on the relevant date.	<p>Should the cut-off time for serving the buy-in notice remain the same as now?</p> <p>In the case of transactions in scope of CSDR, the date on which the PEP buy-in notice is issued should allow enough time for the buy-in to be executed before the end of the relevant extension period, taking into consideration the minimum notification period (and potentially a final day to negotiate an alternative remedy).</p>	451.2	N/A
Buy-in agent	No requirement to appoint a buy-in agent for the PEP buy-in process.	<p>Currently the following requirements and limitations apply to the purchasing party. Should these remain?</p> <p><i>“the buyer shall, acting in good faith, purchase on the</i></p>	454.1/454.2	N/A

		<p><i>buy-in day, in the best available market for guaranteed delivery on the normal value date, all or any part of the securities. In executing the buy in, the buyer shall take into account such factors as price, cost and size of the trade and the liquidity of the market.</i></p> <p><i>“The buyer initiating the buy-in may not effect the buy-in using securities held for its own account or that of an affiliate, either directly or through an intermediary.</i></p> <p><i>" Affiliate" shall mean an entity directly or indirectly controlling, being controlled by, or under common control with the buyer (e.g., parent, subsidiary, branch, main office).</i></p>		
Partial deliveries	While the PEP buy-in notice is in force, the selling party may deliver part or all of the outstanding securities up until the day before the PEP buy-in execution date, on providing sufficient written notice to the buyer of their intention to make delivery.	Note that any residual partial amount will likely be subject to the CSDR buy-in requirement at the end of the extension period.	456	N/A

	Any partial delivery should not render the outstanding balance to be bought-in an untradeable amount.			
Completion of the PEP buy-in	The PEP buy-in is considered to be successfully completed immediately on the successful execution of the buy-in.	<p>At this point the settlement instructions for the original transaction would be expected to be canceled.</p> <p>This is different to the CSDR buy-in, where completion is based on successful settlement. Does the fact that the PEP buy-in and CSDR buy-in have different requirements for the timing of canceling the original settlement instructions create operational or process challenges?</p>	457	N/A
Guaranteed delivery	<p>The PEP buy-in should be executed for guaranteed delivery. This helps to protect both the seller and buyer in the original transaction, and means that the buy-in can be completed on execution (rather than settlement).</p> <p>In the event that the PEP buy-in settlement fails, the original buyer has recourse under Rule 180 whereby they can elect to cancel the PEP buy-in and to claim from the PEP buy-in seller any consequential losses resulting from the fail.</p>	<p>This should provide a level of protection for both the seller and the buyer as they will have certainty of outcome.</p> <p>In the event of the buy-in settlement failing, should the buy-in automatically be canceled? And should the buyer be able to claim the seller into the buy-in for any</p>	454.1 / Section 180	N/A

		consequential losses resulting from the fail?		
Duration of the PEP buy-in	<p>In the event that a PEP buy-in cannot be completed on the buy-in date specified in the PEP buy-in notice, the buyer may complete the buy-in of the securities on any subsequent business day until completed or until such time the parties agree to an alternative remedy.</p> <p>In the case of transactions in scope of CSDR, the latest PEP buy-in execution date will be ISD+7 (or one day before, in the case of negotiating an alternative remedy). [This must be specified on the PEP buy-in notice.]</p>		454.4	N/A
Alternative remedy	<p>It is recommended that the parties allow a final day (the last day of the relevant extension period) to negotiate cash settlement, or an alternative remedy, in the event that the PEP buy-in is not wholly or partially completed sooner.</p>	<p>Should there be a recommendation that parties allow a final day to negotiate cash settlement before the end of the extension period?</p> <p>It should be noted that negotiating an alternative remedy may not be possible in the case of a pass-on situation, since this would ultimately need to be agreed by all the parties in the chain.</p>	454.4	N/A
Confirmation of the of the PEP buy-in execution	<p>The buyer shall notify the seller, in writing, of the successful execution of the PEP buy-in, in part or in full, including the quantity purchased and the execution price, without undue delay.</p>	<p>Given the compressed timeline when the PEP buy-in is applied to in-scope transactions, is the execution</p>	457	N/A

	In the event of multiple executions, this shall apply in the case of each individual execution.	notification timing sufficiently clear?		
Settling the PEP buy-in	<p>The money differences between the original transaction and the PEP buy-in transaction, taking into consideration possible costs and interest coupon dates, shall be settled between the buyer and seller without undue delay.</p> <p>This difference is payable in either direction between the seller and the buyer.</p>	Note that the ability to settle the payment in either direction is different to what is specified in the CSDR buy-in.	458	N/A
Pass-on situations	A pass-on situation exists where the seller is in turn a buyer of all or part of a corresponding amount of securities from a third party and passes on a buy-in notice in respect of those securities to that third party.		451.1.4	N/A
PEP pass-on notice	<p>In a pass-on situation, the initial PEP buy-in or pass-on notice should be passed-on to the relevant party or parties without undue delay, including the details of the trade against which the pass-on is being served.</p> <p>The timing for the buy-in execution specified in the original PEP buy-in notice, cannot be changed in a pass-on situation.</p>	<p>Currently the ICMA Buy-in Rules used the terminology of “immediate” for notifications. Is there a preference for terminology?</p> <p>(“immediate” or “without undue delay”?)</p> <p>Does this require greater definition (ie a specific deadline)?</p>	451.5	N/A

Notification of the PEP buy-in execution	In a pass-on situation, notification of the PEP buy-in execution shall be passed on along the chain to all parties in that chain without undue delay.		457	N/A
Settling the PEP pass-on	The relevant PEP buy-in execution price (including any related costs) is used to settle the entire pass-on chain, and parties should settle the differences between each other without undue delay. These differences are payable in either direction between the seller and the buyer.	The ability to settle the differential in either direction is critical to enable a pass-on mechanism, but does not exist in the CSDR buy-in requirements.	457/458	N/A
Notification at the end of the extension period	In the case of transactions in scope of CSDR, it may be that part or all of the PEP buy-in cannot be completed by the end of the extension period. It may be helpful for the buyer to notify the seller of this at the end of the extension period (so confirming the end of the PEP process). In a pass-on situation, this notification would be passed along the chain.	Should it be required that where part or all of the PEP buy-in cannot be completed by the end of the relevant extension period, the buyer notifies the seller that the PEP buy-in process has ended? Or should notification at the start of the PEP buy-in be sufficient?	N/A	N/A
Progressing to a CSDR buy-in	In the case of transactions in scope of CSDR, if the buy-in has not been successfully executed, cash settled, or remedied by another means by the end of the final day of the relevant extension period, (to the extent that the original trade instructions are canceled), the PEP buy-in process will cease at this point and the CSDR buy-in process will begin the following day.		N/A	N/A

CSDR buy-in

The ICMA CSDR buy-in is imposed by CSDR but contractually implemented via the ICMA Rulebook. It is intended to be used in the case of transactions in scope of CSDR at the end of the relevant extension period, and is intended to align with the CSDR buy-in provisions [save for some commercial enhancements].

Feature	Proposal	Consultation Considerations & Question?	Current rules ref	RTS ref
Pre-advice	<p>In the case of a PEP buy-in issued against a trade in scope of CSDR, the notice will contain a conditional notice indicating that unless it is not wholly or partially bought in via a PEP buy-in, it will be subject to a CSDR MBI as of XX date (following the end of the relevant extension period).</p> <p>Where there is no preceding PEP buy-in, it is Recommended that a pre-advice notice be issued by the buyer to the seller, before the end of the extension period, stating that the details of the original trade, the fact that it is In scope of a CSDR buy-in, and the date at which the CSDR buy-in will be initiated.</p>	<p>Should this be a Recommendation, and should there be recommended timing for issuing the pre-advice?</p> <p>[Cross-reference with AFME proposed best practice]</p>	N/A	N/A
CSDR Buy-in notice	The buyer shall issue the seller with the Buy-in Agent Appointment Notice on appointing the buy-in agent, on the business day following the end of the relevant extension period.		451.2	31(1)
Details included in the CSDR buy-in notice	<p>These should include:</p> <ul style="list-style-type: none"> The buyer's requirement to close out the 	What additional information, if any should be included?	451.3/451.4	31(1)

	<p>contract by means of a CSDR buy-in (with reference to CSDR).</p> <ul style="list-style-type: none"> • The date by which the buy-in should be executed. • The execution date of the buy-in (if known). • The identity of the buy-in agent. • Full details of the failing contract and the principal amount of the bonds to be bought in. 	Note that not all of the information specified is required in the regulation?		
Settlement instructions	On receipt of the CSDR buy-in notice, the seller shall ensure that the settlement instructions relating to the failing settlement are put on hold.		N/A	31(2)
Partial deliveries	<p>Following the receipt of the CSDR buy-in notice, the seller may only deliver securities (in part or full) to the buy-in agent, where the buy-in agent gives its prior consent.</p> <p>Any partial delivery should not render the outstanding balance to be bought-in an untradeable amount.</p>		456	31(3)
Completion of the CSDR buy-in	<p>The CSDR buy-in is completed on successful settlement of the buy-in ().</p> <p>Accordingly, there is no requirement (or recommendation) for guaranteed delivery.</p> <p>The settlement instructions for the original trade should be canceled by the end of the same day.</p>	Note that this is different to the PEP buy-in, which requires guaranteed delivery and is completed on successful execution.	457	31(11)

<p>Notification of the execution of the CSDR buy-in</p>	<p>While it is not a regulatory requirement, It is recommended that the buyer provides notice of successful execution of the buy-in, in part or in full (without undue delay).</p> <p>The notification should include the quantity purchased and the execution price.</p>	<p>This is to allow the seller the option to manage their market risk between execution and settlement.</p> <p>Should immediate notification of the execution of the buy-in to the seller be an automatic requirement of the Rules in the case of the CSDR buy-in, or merely a recommendation?</p> <p>Note that this is not a requirement of the regulation.</p>	<p>457</p>	<p>N/A</p>
<p>Notification of the settlement of the CSDR buy-in</p>	<p>The buyer should notify the seller on settlement of the buy-in. It is proposed that this be done without undue delay to minimize the market risk of the seller to the original transaction.</p> <p>The notification should include the quantity settled and the execution price.</p>	<p>Note that immediate notification to the seller is not a requirement of the regulation, which is more focused on notifying the relevant CSD.</p>	<p>N/A</p>	<p>31(4)</p>
<p>Settling the CSDR buy-in</p>	<p>The money differences between the original transaction and the CSDR buy-in transaction, taking into consideration possible costs and interest coupon dates, shall be settled between the buyer and seller without undue delay (and no later than two business days after the end of the buy-in or deferral period).</p> <p>This difference is payable in either direction between the seller and the buyer [subject to further regulatory clarification]</p>		<p>458</p>	<p>31(13)/35</p>

Notification of the deferral	<p>Following the end of the [initial/first] CSDR buy-in period, in the event that part or all of the buy-in has been unsuccessful, should the buyer elect to defer part or all of the CSDR buy-in, they should notify the seller in writing.</p> <p>Details in the deferral notice should include:</p> <ul style="list-style-type: none"> • The buyer’s intention to defer the buy-in • The date by which the deferred buy-in should be executed. • The execution date of the deferred buy-in (if known). • The identity of the buy-in agent. • Full details of the failing contract and the principal amount of the bonds still to be bought in. 	<p>What additional information, if any should be included, if any, and what information should be excluded?</p> <p>Note that not all of the information specified is required in the regulation?</p>	<p>N/A</p>	<p>38</p>
Settlement failure of the CSDR buy-in	<p>It is proposed that in the event of the settlement failure of the CSDR buy-in, that buy-in transaction is automatically canceled and the CSDR buy-in be considered unsuccessful.</p> <p>Where the seller into the CSDR buy-in can offer partial settlement, the buyer should accept partial delivery of the buy-in.</p> <p>The buy-in process would then go to deferral or cash compensation.</p>		<p>Section 180</p>	<p>31(6)</p>
Cash compensation	<p>It is proposed that where part or all of the CSDR buy-in goes to cash compensation, either at the end of the extension period or the deferral period,</p>	<p>Is there scope for the ICMA CSDR Buy-in Rules to specify</p>	<p>454.4</p>	<p>32</p>

	<p>the cash compensation amount be determined by the relevant process outlined in Article 32 of the RTS, or by any other methodology approved by the relevant regulatory authority [and agreed by the parties].</p> <p>This price differential element of the cash compensation is payable in either direction between the seller and the buyer, depending on whether the cash compensation reference price is higher or lower than the original transaction price [subject to further regulatory clarification].</p> <p>The cash compensation amount should be paid between the seller and buyer no later than two business days at the end of the initial CSDR buy-in period or deferral period.</p>	<p>ore reference an agreed methodology?</p>		
Pass-on mechanism: for inclusion subject to regulatory guidance				
Pass-on situations	<p>[Subject to further regulatory clarification]</p> <p>A pass-on situation may exist where the seller is in turn a buyer of all or part of a corresponding amount of securities from a third party and passes on a buy-in notice in respect of those securities to that third party.</p>		451.1.4	N/A
Confirming a pass-on situation	<p>Where a party has a matched failing receipt and delivery of the same security and believes that a potential pass-on situation exists, subject to</p>	<p>Should parties be required to confirm a pass-on situation earlier than the last day of the extension period?</p>	N/A	N/A

	<p>regulatory guidance, they should notify both parties to confirm that a pass-on situation exists.</p> <p>They should do this no later than the final day of the relevant extension period.</p>	Should this confirmation be in the form of a formal pre-advice?		
Appointing the buy-in agent in a pass-on situation	<p>Where a party is in a pass-on situation, they are not required to appoint the buy-in agent, as this will be effected by the final buyer in the chain. Instead they should wait to receive the buy-in or pass-on notice and pass this on to their failing seller.</p>		451.5	31(1)
Pass-on notice	<p>In a pass-on situation, the initial buy-in or pass-on notice should be passed-on to the relevant party or parties without undue delay, including the details of the trade against which the pass-on is being served.</p> <p>The details of the original buy-in notice, including the timing for the buy-in execution, cannot be changed in a pass-on situation.</p>		451.5	31(1)
Notification of the CSDR buy-in execution in a pass-on situation	<p>It is proposed that in a pass-on situation, notification of the buy-in execution shall be passed on along the chain to all parties in that chain without undue delay.</p> <p>This will allow the failing seller at the start of the chain to manage their market risk between buy-in execution and settlement.</p>		457	N/A
Notification of the CSDR buy-in	<p>It is proposed that in a pass-on situation, notification of successful settlement of the buy-in</p>		N/A	31(4)

settlement in a pass-on situation	shall be passed on along the chain to all parties in that chain without undue delay.			
Notification of deferral of the buy-in in a pass-on situation	It is proposed that in a pass-on situation, notification of the buyer's decision to defer part or all of the buy-in shall be passed on along the chain to all parties in that chain without undue delay.		N/A	38
Settling the pass-on	<p>The relevant CSDR buy-in execution price (including any related costs) is used to settle the entire pass-on chain, and parties should settle the differences between each other by no later than two business days after the end of the buy-in or deferral period.</p> <p>These differences are payable in either direction between the seller and the buyer.</p>		457/458	31(13)/ 35
Cash compensation in a pass-on situation	<p>Where part or all of the CSDR buy-in results in cash compensation, the relevant reference price is used to settle the entire pass-on chain, and parties should settle the differences between each other by no later than two business days after the end of the buy-in or deferral period.</p> <p>This price differential element of the cash compensation is payable in either direction between the seller and the buyer, depending on whether the cash compensation reference price is higher or lower than the original transaction price [subject to further regulatory clarification].</p>		454.4	32

ICMA Sell-out Rules

Feature	Proposal	Consultation Considerations & Question	Current rules ref	RTS ref
ICMA Sell-out Rules to mirror PEP Buy-in Rules with indefinite timeline for application	A Sell-out mechanism, similar to buy-ins, is an important remedy in the case of settlement fails. ICMA's Sell-out Rules should be maintained, and as much as possible mirror the features of the PEP Buy-in Rules, but without the rigidity of the CSDR-driven compressed timelines.	Is there any reason why the Sell-out Rules should not mirror the PEP Buy-in Rules, but with an indefinite timeline for application?	Section 480	N/A

Scope of the ICMA Buy-in and Sell-out Rules

Feature	Proposal	Consultation Question?	Current rules ref	RTS ref
<p>Trading parties</p>	<p>The ICMA Rules apply automatically between ICMA members, or between members and non-members or non-members and non-members by express agreement.</p> <p>Where a transaction is subject to the rules of an exchange, its rules shall apply. In all other cases, the Association’s rules shall apply.</p> <p>Nothing contained in the Association’s rules and recommendations shall be construed as discharging the member from complying with the applicable local laws and regulations when concluding a transaction.</p> <p><i>Note that the revised ICMA Buy-in and Sell-out Rules will be made publicly available.</i></p>	<p>What is current market practice for applying the ICMA Rules?</p> <p>Is it by reliance on automatic application through ICMA membership, or by incorporation into the terms of business by reference?</p>	<p>2</p>	<p>25</p>
<p>Transaction scope</p>	<p>The ICMA Rules apply to all transactions in international securities. An international security is 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.</p> <p>Historically the Rules have been applied to transactions in bonds (including SSA, corporates, high yield, emerging markets, and convertibles).</p>	<p>How do members feel about scope? Should this be limited to bonds or could it be widened to include other instruments?</p>	<p>2</p>	<p>25</p>

	Accordingly, the Rules have been designed very much with this in mind. Should parties agree to extend the application of the Rules to transactions in international securities other than bonds, they should be mindful of this.			
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