

ICMA

Secondary Market Practices Committee

Agenda: May 3 2018, London

Meeting of the ICMA SMPC
Thursday, May 3 2018

Host: Citi

Time: 14.30-17.00 UK

Venue: Citi, 33 Canada Square, London, E14 5LB

Co-chairs: Sonali Das Theisen, *Citi*
Yann Couellan, *BNP Paribas AM*

Secretary: [Andy Hill](#) (ICMA)

Contacts: [Mathilde Babel](#) (ICMA) and [Hannah Joyce](#) (Citi)

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Agenda

Co- Chairs' welcome

Introduction and welcome from the Co-chairs

1) Electronic Trading Council update [Liz Callaghan, ICMA & Secretary to the ETC to introduce]

The inaugural meeting of the ETC took place on April 18. SMPC members will be provided with an update on the scope and remit of this new secondary market forum, as well as the agenda and key discussion points of the first meeting, and follow-up action points.

2) MiFID II/R post-implementation [Co-chairs to introduce]

What are the key issues facing members post-implementation, and what should ICMA be doing in response to this? Are there any pressing advocacy priorities for the SMPC or its MiFID Working Group?

3) **Trading suspensions** [David Zahari of Morgan Stanley to introduce]

MiFID II Articles 32/52 provide that if a bond is suspended from trading on a regulated market, MTF or OTF, for reasons of suspected market abuse, a takeover bid, or no-disclosure of inside information about the issuer or bond, the relevant NCA must require all RMs, MTFs, OTFs and **systematic internalisers** under its jurisdiction also to suspend trading in that bond. This creates potential problems for investors seeking to source liquidity for bonds that become stressed or subject to certain corporate actions. How should ICMA raise awareness of this issue with regulators?

See Annex I

4) **CSDR Mandatory Buy-ins** [Andy Hill, ICMA to introduce]

The Commission has indicated that after more than two years, the RTS for CSDR Mandatory buy-ins will finally be approved in the coming months, with a likely implementation date of H2 2020. What should be ICMA's approach to:

- (a) Renewing our advocacy effort with a view to amending the mandatory buy-in provision?
- (b) Updating the ICMA buy-in rules, both to ensure regulatory compliance, but also to address some of the deficiencies in the regulation?

5) **Benchmark reform** [Paul Richards, ICMA to introduce]

ICMA is heavily involved in the official working groups for benchmark reform in both the UK and Eurozone (Paul Richards chairs the Bond Market Sub-Group of the BoE and FCA's RFR Working Group). What are the latest developments, and what are the implications for FRN markets, both in terms of new issuance and legacy issues?

6) **Secondary Market Rules and Recommendations** [Andy Hill, ICMA, to introduce]

- Rule 405/407 (interest claims). Following feedback from members, the proposal is to add a recommendation that claimants should be able to evidence any claim on request (consistent with the SMR&Rs FAQ). Do members agree?
- The SMPC has asked members to provide views on updating the Rules to cover certain special situations, such as bail-in. What are SMPC members' views on how the rules should apply in these situations?

See Annex II & III

7) ECB Corporate Sector Purchase Programme

We are now into month 24 of the CSPP, with over €130bn of accumulated purchases to date. Are we seeing any stresses in the market, and if so, is this in particular sectors or maturities? Would it be worth inviting the ECB to the next SMPC?

8) Brexit [Co-chairs to introduce]

From a secondary market trading perspective, what are the key considerations and concerns arising from Brexit? Should the SMPC be doing anything at this point?

9) Any other business

The ICMA Secondary Market Practices Committee is an open forum for sell-side and buy-side member firms active in the international, cross-border secondary bond markets. Through open dialogue and engagement, as well as through its subsidiary working groups and work-streams, it seeks to be the representative body of the international, cross-border secondary bond markets: addressing practical issues directly relevant to market practitioners; standardising market best practice; disseminating relevant market information; and promoting the best interests of efficient and liquid markets.

Annex I: MiFID II Article 52 - Suspension and removal of financial instruments from trading on a regulated market

1. Without prejudice to the right of the competent authority under [Article 69\(2\)](#) to demand suspension or removal of a financial instrument from trading, a market operator may suspend or remove from trading a financial instrument which no longer complies with the rules of the regulated market unless such suspension or removal would be likely to cause significant damage to the investors' interests or the orderly functioning of the market.

2. Member States shall require that a market operator that suspends or removes from trading a financial instrument also suspends or removes the derivatives as referred to in points (4) to (10) of [Section C of Annex I](#) that relate or are referenced to that financial instrument where necessary to support the objectives of the suspension or removal of the underlying financial instrument. The market operator shall make public its decision on the suspension or removal of the financial instrument and of any related derivative and communicate the relevant decisions to its competent authority.

The competent authority, in whose jurisdiction the suspension or removal originated, shall require that other regulated markets, MTFs, OTFs and systematic internalisers, which fall under its jurisdiction and trade the same financial instrument or derivatives as referred to in points (4) to (10) of [Section C of Annex I](#) to this Directive that relate or are referenced to that financial instrument, also suspend or remove that financial instrument or derivatives from trading, where the suspension or removal is due to suspected market abuse, a take-over bid or the non-disclosure of inside information about the issuer or financial instrument infringing Articles 7 and 17 of [Regulation \(EU\) No. 596/2014](#) except where such suspension or removal could cause significant damage to the investors' interests or the orderly functioning of the market.

Each notified competent authority shall communicate its decision to ESMA and other competent authorities, including an explanation if the decision was not to suspend or remove from trading the financial instrument or derivatives as referred to in points (4) to (10) of [Section C of Annex I](#) that relate or are referenced to that financial instrument.

The competent authority shall immediately make public and communicate to ESMA and the competent authorities of the other Member States such a decision.

The notified competent authorities of the other Member States shall require that regulated markets, other MTFs, other OTFs and systematic internalisers, which fall under their jurisdiction and trade the same financial instrument or derivatives referred to in points (4) to (10) of [Section C of Annex I](#) to this Directive that relate or are referenced to that financial instrument, also suspend or remove that financial instrument or derivatives from trading, where the suspension or removal is due to suspected market abuse, a take-over bid or the non-disclosure of inside information about the issuer or financial instrument infringing Articles 7 and 17 of [Regulation \(EU\) No 596/2014](#) except where such suspension or

removal could cause significant damage to the investors' interests or the orderly functioning of the market.

This paragraph applies also when the suspension from trading of a financial instrument or derivatives as referred to in points (4) to (10) of [Section C of Annex I](#) that relate or are referenced to that financial instrument is lifted.

The notification procedure referred to in this paragraph shall also apply in the case where the decision to suspend or remove from trading a financial instrument or derivatives as referred to in points (4) to (10) of [Section C of Annex I](#) that relate or are referenced to that financial instrument is taken by the competent authority pursuant to points (m) and (n) of [Article 69\(2\)](#).

In order to ensure that the obligation to suspend or remove from trading such derivatives is applied proportionately, ESMA shall develop draft regulatory technical standards to further specify the cases in which the connection between a derivative relating or referenced to a financial instrument suspended or removed from trading and the original financial instrument implies that the derivative are also to be suspended or removed from trading, in order to achieve the objective of the suspension or removal of the underlying financial instrument.

ESMA shall submit those draft regulatory technical standards to the Commission by 3 July 2015.

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of [Regulation \(EU\) No 1095/2010](#).

3. ESMA shall develop draft implementing technical standards to determine the format and timing of the communications and publications referred to in paragraph 2.

ESMA shall submit those draft implementing technical standards to the Commission by 3 January 2016.

Power is conferred on the Commission to adopt the implementing technical standards referred to in the first subparagraph in accordance with Article 15 of [Regulation \(EU\) No 1095/2010](#).

4. The Commission shall be empowered to adopt delegated acts in accordance with [Article 89](#) to specify the list of circumstances constituting significant damage to the investors' interests and the orderly functioning of the market referred to in paragraphs 1 and 2.

Annex II: ICMA SMR&Rs - extract from Section 400 (interest claims)

Rule 405 Interest claim against buyer

Where the buyer or its clearing agent has caused the failure of settlement, the seller shall have the right to claim from the buyer loss of interest on the net amount of the transaction from the date of presentation of the securities until the date that settlement takes place.

Rule 407 Claim against seller

Where the seller or its clearing agent has caused the failure of settlement, either for one or several of the reasons stated in rule 401 or because the securities were not presented on time for settlement to take place on the value date, the buyer shall have the right to claim from the seller the loss resulting from the funds payable by the buyer in exchange for the securities being subject to a negative interest rate from the date of presentation of such funds until the date that settlement takes place or a buy-in in accordance with Section 450 in respect of the transaction concerned, taking into consideration any partial deliveries, is completed.

Recommendation to rules 405 and 407

If the amount of a claim in accordance with rule 405 or rule 407 is less than US \$ 100 or the equivalent in other currencies per transaction, no claim shall be made by the seller or buyer.

No claims in accordance with rule 405 or rule 407 shall be made after the lapse of thirty calendar days from the date when the transaction was actually settled or a buy-in in accordance with Section 450 in respect of the transaction concerned was completed.

Annex III: ICMA SMR&Rs consultation – *special situations*

As part of ICMA’s ongoing review of the Secondary Market Rules & Recommendation (the ‘Rule Book’), to ensure that they remain relevant and consistent with regulatory initiatives and market practice, we would like to ask for your thoughts and possible recommendations with respect to ‘Special Situations’. In particular, the event of a corporate action, restructuring, or bail-in that occurs after the trade but before settlement of the securities.

By way of the example, we provide the following scenarios for your consideration:

1) Issuer default or bail-in post trade date, but before intended settlement date

A purchaser and a seller enter into a transaction. After the trade is agreed, but before the intended settlement date, the securities are subject to a bail-in and are written down. Settlement cannot take place since the securities no longer exist.

How should the seller and buyer settle the transaction?

2) Issuer default or bail-in post intended settlement date

A purchaser and a seller enter into a transaction. The trade does not settle on the intended settlement date. The securities subsequently are subject to a bail-in and are written down after the intended settlement date, but before physical settlement. Settlement cannot take place since the securities no longer exist.

How should the seller and buyer settle the transaction?

3) Corporate action post intended settlement date

A purchaser and a seller enter into a transaction. The trade does not settle on the intended settlement date. The securities subsequently are subject to a corporate action, such as an exchange offer, while the trade is still failing.

What should be the obligations of the failing counterparty to the purchaser in this scenario?

1-3 above may or may not also involve a suspension of trading.

Are there any other scenarios or special situations that may occur between trade date and settlement (including delayed settlement) that you anticipate?