

Consultation on the ICMA Secondary Market Rules & Recommendations governing Buy-ins¹ September 5th 2016

Background

At its meeting of May 17th 2016, the ICMA Secondary Market Practices Committee (SMPC)² agreed to launch a consultation of ICMA members on proposed enhancements to ICMA's Buy-in rules (including Sell-outs). The decision to review and potentially enhance the Buy-in rules was in response to increasing concerns raised by members about the efficiency of the buy-in process, and feedback suggesting that it was becoming increasingly difficult to execute buy-ins, largely as a result of more challenged secondary market conditions and a growing reluctance of dealers to act as buy-in agents.

Based on informal feedback from members, ICMA has decided to focus on two key aspects of the buy-in process to improve the efficiency and flexibility:

- ***The requirement of a buy-in agent***
Given the difficulty in finding willing buy-in agents, it may be more efficient for the initiating party to execute the buy-in themselves, negating the need for buy-in agents. The buy-in could be executed in the OTC market, or through an auction process on a regulated electronic platform.
- ***Flexibility in the timing of the buy-in***
It has been pointed out that the current five-day notification of the buy-in execution is unnecessarily rigid, and that flexibility to determine a longer period between the buy-in notice and the buy-in execution would be a welcomed enhancement.

The consultation also covers a number of other issues, or potential areas for enhancement, as well as asking for members' suggestions for possible additional revisions.

¹ And 'Sell-outs'

² The ICMA IG Corporate Bond **Secondary Market Practices Committee** (SMPC) is an open forum for sell-side and buy-side member firms active in the European investment grade corporate bond secondary market. 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 European corporate bond secondary market: addressing practical issues directly relevant to market practitioners; standardizing market best practice; disseminating relevant market information; and promoting the best interests of an efficient and liquid market. The SMPC is also the key ICMA body for reviewing, maintaining, and updating the ICMA **Secondary Market Rules and Recommendations**.

The proposals for consideration

Buy-in agents

Rule 453 specifies the procedure for appointing a buy-in agent to execute the buy-in. However, it has been noted that it is becoming increasingly difficult to find firms willing to act as buy-in agents, and that in many cases this can prevent the execution of a buy-in. **It is therefore proposed that buy-in agents are no longer a requirement**, and that the non-defaulting party initiating the buy-in can execute the buy-in on their own behalf.

In executing the buy-in, the non-defaulting initiating party will be expected to take all reasonable steps to ensure that the buy-in is executed in the best available market for guaranteed delivery.

Buy-in auctions

It is proposed that the updated Rules provide that a buy-in can be executed through an auction mechanism including on a regulated trading venue, so long as the process is consistent with the ICMA Rules.

Time to the buy-in

Currently, Rule 451.3.2 specifies that the buy-in should be executed five business days following the date of the buy-in notice. It has been noted that in some instances it may be desirable for the non-defaulting party to select a different execution date for the buy-in (for example, in order to execute the buy-in through an auction process which may have a set date).

It is generally felt that a buy-in timeline shorter than five days could be problematic, particularly where the buy-in notice is being passed along a chain.

It is therefore proposed that the Rules are updated to allow for flexibility in the timing of the buy-in execution after notice, for **between five and twenty business days**. This timeline will be determined by the non-defaulting party initiating the buy-in, and will remain consistent throughout the buy-in chain and any related pass-ons.

Partial Delivery

Rule 456 allows for partial delivery of securities before the execution of the buy-in. Given that some bonds have minimum trading sizes, it is proposed that any partial delivery cannot be of an amount that would render the outstanding portion of securities to be bought-in as an un-tradeable amount.

Sell-outs

It is proposed that the same amendments to the Buy-in Rules be applied to the Sell-out Rules, including those covering timings, sell-out agents, pass-ons, and the possibility of executing a sell-out by means of an auction mechanism (including on a regulated trading venue).

Other possible considerations

ICMA will also provide the opportunity for members to suggest other potential areas for review and revision. One possible revision of discussion is the ability for the buy-in process to be settled by means of a cash compensation remedy in the event that the buy-in is not successfully executed.

CSD-Regulation³

CSDR, which was passed into law in August 2014, introduces a harmonized buy-in regime across the EU. The regulatory technical standards for CSDR buy-ins are yet to be finalized, and it is not expected that they will come into force any time before 2018 (although the possibility of an earlier implementation remains). Once implemented, this is expected to supersede the ICMA Buy-in Rules in case of trades that are in scope of the EU regulation. Meanwhile, it is important that the ICMA Buy-in Rules continue to serve as an efficient and practical remedy available to participants in the cross-border bond markets in the event of settlement fails.

Methodology and timing of the consultation

The consultation will be circulated among the ICMA membership in the form of an electronic survey. The window for responses will be between **September 5th and October 15th 2016**. There is no restriction on the number of individual responses per firm; however, all respondents will be required provide their full name, title, and the capacity in which they are responding (e.g. 'Head of Emerging Market Trading, EMEA').

The results of the consultation will be shared with the membership in October 2016, on a non-attributed, aggregated, and anonymized basis. This is intended to provide members with the opportunity to give additional feedback and comments before any revisions are put to the SMPC for their approval.

³ [ESMA Final Report on CSDR RTS on Settlement Discipline](#)