Regulatory Policy Newsletter

ICMA
International Capital Market Association

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Editor: Paul Richards

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Secondary market practice and the EU legislative agenda

Foreword by Richard Britton, Senior Consultant, ICMA

If anyone thought that, with the coming into force of the Markets in Financial Instruments Directive (MiFID) in November 2007, they could return full-time to the day-to-day business of proprietary trading, executing clients' orders and managing clients' portfolios, they were soon disappointed. The financial market turmoil became a global economic crisis; liquidity, which had been predicted by many to return by the end of 2007, became more elusive than ever; the trust between counterparties on which the inter-professional markets depend vanished. As did the confidence and respect which had been growing between the industry and legislators and regulators in Europe from working together on MiFID, the Prospectus and Market Abuse Directives and the other elements of the European Commission's Financial Services Action Plan which had begun in 1999.

A key element of ICMA's activities on behalf of the membership is working with the authorities slowly and carefully to rebuild those broken relationships. Partly that will be achieved by demonstrating that our members act responsibly, and that they recognise and are ready to learn from the mistakes that were made. It will be neither quick nor easy. The industry's critics will scrutinise our every action for evidence of back-sliding and will not be hesitant in expressing hostile views. 2009 may have been a record year for primary market issuance, and some segments of the asset-backed markets are slowly re-opening, but it will not be business as normal. The legislative and regulatory juggernauts are picking up speed: for example, tougher capital rules are in prospect; and the Prospectus Directive is under active review. Changes here may result in a greater segregation of the retail and wholesale markets – not necessarily to the benefit of either.

Richard Britton

In July, the Committee of European Securities Regulators (CESR) reversed its 2007 position on transparency in the corporate bond market and recommended to the Commission that it consider the adoption of a mandatory trade transparency regime as part of its review of MiFID. In so doing

Secondary market practice and the EU legislative agenda - continued

CESR noted that "market forces seem to have failed to reach an adequate level of transparency and market participants seem not to have had the proper incentives to reach the optimal outcome". Given the nomination of a new Commissioner for the Internal Market (including financial services) from a country with a strong belief in the efficacy of highly transparent and centralized markets, this recommendation is likely to find support.

While CESR was careful not to promote the adoption of the US TRACE system, many of its members believe that an enhanced and harmonised European system "calibrated to meet the needs of the EU environment" should share many of the key characteristics of TRACE. The impact of TRACE on the US corporate bond market remains controversial, though its scope is currently being expanded. But broadly it appears that retail investors have benefited as spreads in small sizes have tightened, while large institutional investors have found that executions have become slower and less predictable as dealers have committed less capital for immediate execution. Instead they "work" orders over a period of time on a riskless principal or agency basis. Portfolio valuation is also said to have been improved, which is a desired outcome sought by many buy-side investors from any changes in Europe. The ability more accurately to value collateral would also be welcomed by repo market participants in Europe.

If the outcome of the renewed debate was to be real-time publication of trades (with delays for large trades) on the MiFID equity model, it would have several effects on market practice. While it may narrow spreads, it will also place heightened emphasis on compliance with the best execution rule and the Commission's opinion on its application to the OTC markets. In that opinion the Commission states that "… in ordinary circumstances, a retail client legitimately relies on the firm to protect his or her interests in relation to the pricing and other parameters of the transaction."

Meanwhile market infrastructure providers are beginning to move into the retail space. As always, regulatory change will alter the commercial dynamic of the market, providing threats and opportunities for ICMA's members and their clients.

The Commission has also stated, in the context of best execution, that wholesale market clients do not rely on dealers in the same way as retail clients. This position implicitly recognises the benefits of ICMA continuing to maintain its strong self-regulatory role in the wholesale market. Its Rules and Recommendations were recently reviewed and updated under the guidance of a working group of members to meet current requirements and will continue to evolve when necessary in response to market and regulatory developments.

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New Year message from ICMA's Chief Executive

Martin Scheck

2010 will be another challenging year, and we at ICMA anticipate being incredibly busy, given the work still needed to ensure that the markets operate efficiently; that standards of best market practice are enhanced, or at least maintained; and given the sheer volume of regulation that we can already foresee. We are all hoping for a continued market recovery throughout the year – and we also hope that the credibility of the financial services industry, and importantly its image, improve substantially in 2010.

Externally the landscape is changing – the new European regulatory framework is now becoming clear and the boundaries between EU regulation and national supervision will become more defined as we go through 2010. It is abundantly obvious that regulation is no longer light touch, self-regulation is out of favour for the time being, and supervision is to be much more intrusive than previously.

Internally ICMA is well placed to represent its members again this year. Our important market practice and regulatory policy committees are well attended by outstanding market experts from a wide range of our member firms. They provide invaluable input and guidance in setting best market practice and in our attempts to help the regulators create appropriate and practical regulation. There is a growing understanding from capital market participants that they need representation; that our market practice and regulatory policy work is important; and that it significantly impacts their day-to-day businesses. We are seeing more institutions joining ICMA and we closed 2009 with more than 350 members, a higher number than at the beginning of the year. We are also seeing a great deal more appetite from our members to really get involved and work with us actively on our committees, as well as increased momentum in the number of registrations on our education courses.

The fundamental tenets of relevance, efficiency and communication will continue to drive ICMA's activities in representing all our members in 2010

I wish all of you a prosperous, healthy and successful 2010.

Martin Scheck, Chief Executive, ICMA
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Summary of key themes in the Newsletter

There are several important themes for our members in this edition of the ICMA Newsletter:

The first is the large number of new regulatory initiatives in Europe of which members need to be aware. Many of these initiatives, such as proposals for supervision of securities and markets, crisis management and capital requirements, are a direct response to the international financial crisis.

Second, the structure of markets is under scrutiny from regulators. The Newsletter draws attention to: the impact of new liquidity proposals on the ECP market; the impact on the primary markets of changes in the Prospectus Directive in the EU and the US Tax Extenders Act; and European Commission proposals for OTC derivatives, which may also have implications for corporate bonds.

Third, the priorities for the asset management industry are changing: Robert Parker, Chairman of ICMA's Asset Management and Investors Council, and David Wright, Deputy Director General of DGMarkt in the Commission, give their views.

Fourth, steps are being taken to make the market infrastructure more resilient.

Finally, the Newsletter draws attention to the role of ICMA's AMTE Council in bringing the sell side and the buy side together, and to ICMA's global links through the International Council of Securities Associations.

The Newsletter draws on the work of ICMA's committees of market experts. Where relevant, articles provide electronic links to further information, and give contact points for questions from members. If you have suggestions for improvements in the Newsletter in future, please let us know.

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Systemic stability in the international capital market

At a time when many banks have been reluctant to make substantial new lending commitments to the private sector, the international capital market has played an important role in contributing to the recovery from the recent crisis: in the international bond market, there has been a large volume of new issues since March; and in the equity market, rights issues have helped to recapitalise banks and repay government support.

Questions for the authorities remain about the exit strategy from the crisis. Reversing monetary easing too soon will abort the recovery; too late will reignite inflation. Similarly, fiscal consolidation will be needed, particularly in countries where the growth in public debt is unsustainable. The questions are not whether fiscal consolidation should occur, but when and what form it should take.

While these questions relate to the exit from the recent crisis, attention is shifting to the longer term question of how to prevent the next crisis or, at least, to limit its extent. At the heart of the debate is how to ensure systemic stability by detecting, reducing and, if necessary, resolving systemic risk: ie the risk that the failure of one or more financial institutions undermines the stability of the financial system as a whole, as happened after the failure of Lehman Brothers.

Detecting systemic risk

Detecting systemic risk is to be addressed at global level by the Financial Stability Board (which also monitors the implementation of decisions taken by the Heads of Government of the G20), and at European level by the proposed new European Systemic Risk Board (ESRB). There needs to be a close relationship between the ESRB, on the macro-prudential side, and the three new European Supervisory Authorities (ESAs) – including the European Securities and Markets Authority – whose role is to ensure better supervision of financial institutions and markets, on the micro-prudential side. The ESRB's formal powers are limited, but it will be able to issue early risk warnings, whether to the Community as a whole, a Member State, an ESA or a national supervisor. If the risk warning is to be made public, the ESRB will need to be sure that the consequences of doing so will not bring about the very outcome that it is trying to avoid.

Reducing systemic risk

A number of steps are being taken to reduce systemic risk in future. None of them is straightforward, and they all need to be both proportionate and carefully coordinated internationally.

- One means of reducing systemic risk is to ensure that banks have enough liquidity and enough capital of sufficient quality, and in particular that they build up capital in good times that can be used in times of stress. The Basel Committee's recent proposals are intended as a step in this direction, when the international economy recovers. But that leaves a number of questions which are not straightforward to resolve: how to calibrate the amounts of liquidity and capital required; whether to introduce a leverage ratio; whether and how to differentiate between institutions which are more or less systemically significant; and how and when to vary capital requirements in future in response to the economic cycle. It is also important to remember that more stringent liquidity and capital requirements will only be effective if financial institutions exercise prudent risk management and good corporate governance.
- A separate step is being taken to reduce systemic risk by making the financial market infrastructure more resilient. In particular, the authorities want to encourage the clearing of standardised over-the-counter (OTC) derivatives contracts through central counterparties (CCPs). But it is not yet clear what is meant by "standardisation", and in particular what should be "standard" and what should be bespoke; nor whether clearing of "standardised" contracts through CCPs will be mandatory and, if it is, whether CCPs will be able to cope; nor whether the authorities regard CCPs as natural monopolies (in different sectors of the market) or whether they are expected to compete, and how far they need to be regulated (taking account of the non-binding ESCB-CESR recommendations of June 2009). And it remains to be established how far CCPs really do reduce risk in the financial system and how far they simply redistribute and mutualise it.
- More market transparency is another concern of regulators. But market transparency is not an absolute good; it involves trade-offs: for example, more transparency in financial markets may not prove to be useful if it disproportionately damages liquidity. In addition, when market participants provide market-sensitive data to regulators, they need to be confident that it will be properly safeguarded.

Resolving systemic risk

In response to the recent crisis, the authorities recognise that they need to improve crisis management in future: not just how to detect systemic risk at an earlier stage and reduce it as far as possible, but how to resolve systemic problems when they emerge; and, in particular, how to wind down complex insolvent institutions more quickly and in a more orderly and internationally consistent way than has proved practicable so far, in particular in the case of Lehman Brothers.

That leaves an outstanding question about moral hazard, and more specifically about the concept of "too important to fail". When is a financial institution "too important to fail"? It is clear that being "too important to fail" is not just a question of size, but also of interconnectedness across the market (as in the case of Lehman Brothers), and possibly also of timing: ie the failure of a bank is more likely to cause contagion if market conditions are already difficult. It is also clear that the concept of being "too important to fail" does not just relate to banks, but may include other financial institutions as well, such as insurance companies. In addition, there is a risk that, by building up the role of CCPs, we are creating new institutions that become "too important to fail". Whatever the long-term solution, it is worth noting that, in current market conditions, some small banks are still being rescued in practice, either through nationalisation or by sale to another and sounder bank in the private sector over a weekend.

If a failure does occur in future, the next question is where the losses should fall. It is clear that equity holders are first in line, and by contrast that small depositors will be protected fully by government guarantees (at a higher level than in the past). But it is less clear what in practice will be the position of other creditors, especially unsecured creditors in wholesale markets.

If further support for the financial sector is needed in future, an important unresolved issue is how the support is going to be financed. The support provided by government in the recent crisis has imposed an unprecedented burden on taxpayers, mainly in the form of a sharp increase in public debt. It remains to be decided whether further support in future will be financed solely by government, or whether financial institutions in the private sector will be expected to contribute (beyond the cost of keeping higher liquidity and capital buffers), and if so, how: eg through pre-funding all deposit guarantee schemes, or through some other proposal. Some proposals, like taxes on financial transactions, would not work unless they were implemented at a global level, and might have unintended consequences.

Finally, if the financial system is to remain stable in the longer term, the authorities need to ensure a level playing field for competition. That has proved difficult during the crisis, as some banks have needed government support while others have avoided it. Where government-supported banks have been encouraged to prefer domestic lending to cross-border lending, a level playing field needs to be restored as soon as possible. And in the securities markets, ensuring a level playing field between exchange-traded and OTC markets, and between different types of financial products, needs to continue to be a priority.

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Practical initiatives by ICMA

Recent practical initiatives by ICMA with, and on behalf of, our members include the following:

Regulatory response to the international financial crisis

1 We have continued to monitor the regulatory response to the international financial crisis, both at global and European level, focusing on new regulatory requirements affecting the international capital markets; and we have responded to consultations by regulators, working in cooperation with other trade associations wherever practicable.

2 We have submitted recommendations on the *Priorities in the international capital markets for the new European Commissioner,* in response to a request from the European Commission, having consulted our Board, our Committees and our members.

Short-term markets

3 Our ECP Committee has hosted the UK Financial Services Authority to understand its new liquidity regime and to assess the impact on the ECP market.

4 Our Board has agreed on a project to develop an ICMA annex – to the Global Master Repurchase Agreement – on credit claims.

Primary markets

5 We have discussed with the Commission improvements in the Prospectus Directive regime.

6 We have responded to the legislative initiative in the US Congress – to abolish the TEFRA exemption for bearer bonds and impose a 30% withholding tax on payments through certain non-compliant intermediaries – in conjunction with our Legal & Documentation and Primary Market Practices Committees and several leading law firms.

7 We have set up a Working Group of our AMTE Council to consider buybacks by issuers.

Secondary markets

8 We have participated on behalf of our members in a meeting organised by the Commission on transparency in non-equity markets.

Asset management

9 We have held meetings, involving our Asset Management and Investors Council, with the Chairman of the Committee of European Securities Regulators (CESR) and the Deputy Director General of DGMarkt in the Commission to discuss their new regulatory initiatives on the buy side.

10 Our Covered Bond Investor Council has met the European Covered Bond Council to collaborate on efforts, coordinated with the European Central Bank, to create a more robust covered bond market.

11 Our Private Banking Working Group, formed to bring together our private banking members in different European jurisdictions, has held its first meeting in Zurich to discuss cross-border issues that affect them.

Market infrastructure

12 We are discussing a possible code of conduct on electronic trade confirmation in the OTC market.

Market events

13 We have held another Primary Market Forum, this time at Linklaters, bringing together the sell side, buy side and law firms.

14 We have held one-day seminars in Munich, in conjunction with Bundesverband der Wertpapierfirmen an den deutschen Börsen e.V. (BWF), to consider the likely future shape of financial regulation; and in Helsinki, in conjunction with the Nordic Capital Market Forum, to review initiatives affecting the OTC markets and the financial market infrastructure.

15 Together with eight trade associations from the French market, we have organised a half-day conference in Paris which attracted more than 300 market professionals from the debt and forex markets.

European financial supervision: securities market aspects

As discussed in ICMA's October Newsletter, the European Commission has adopted an important package of draft legislation to strengthen significantly the supervision of the financial sector in Europe. The legislation will create a new European Systemic Risk Board (ESRB) and a European System of Financial Supervisors (ESFS), composed of national supervisors and three new European Supervisory Authorities (ESAs) for the banking, securities and insurance and occupational pensions sectors.

The package (all of which is available on the Commission's *Financial services supervision and committee architecture* webpage) has already been considered by the Council as particularly reflected in ECOFIN conclusions of 20 October and of 2 December. Negotiations are now under way with the European Parliament (which expressed cross-party concern following ECOFIN's December agreement), with a view to reaching agreement at first reading. The aim is for the new arrangements to be up and running by no later than the end of 2010.

Securities and markets supervision

The European Securities and Markets Authority (ESMA), which is being formed through the transformation of the Committee of European Securities Regulators (CESR), is going to be a key interlocutor for ICMA within the new European financial supervisory architecture. The Commission proposes that ESMA will take on all the tasks of CESR, but in addition have significantly increased responsibilities, defined legal powers and greater authority.

In the Commission's proposals, ESMA is to comprise: (i) a Board of Supervisors; (ii) a Management Board; (iii) a Chairperson; and (iv) an Executive Director.

- The Board of Supervisors is the main decision-making body. Decisions by the Board will be taken by simple majority, except for those pertaining to the setting of draft technical standards and guidelines and decisions in relation to the articles on financial provisions, where qualified majority voting will be used.
- The Management Board will ensure that the Authority carries out its mission and performs the tasks assigned to it. In particular, it will be responsible for preparing the Authority's work programme, adopting the rules of procedure, and play a central role in the adoption of its budget.
- ESMA will be represented by a full-time independent Chairperson, who will be responsible for preparing the work of the Board of Supervisors as well as chairing both the meetings of the Board of Supervisors and the Management Board. The day-to-day activities of ESMA will, however, be managed by an Executive Director, who will also be a full-time independent professional.

An appeal system will ensure that any natural or legal person, including national supervisory authorities, may in the first instance appeal to a Board of Appeal against a decision by ESMA to ensure the coherent application of Community rules, action in emergency situations, and the settlement of disagreements. The Board of Appeal will be a joint body of the three ESAs: ie it will deal with issues related to banking, insurance and securities. The Board of Appeal will have six members and six alternates with relevant knowledge and experience, excluding current staff of the national supervisory authorities or other involved national or Community institutions.

A safeguard clause is proposed in line with the ECOFIN/European Council conclusions of June 2009, which stress that, without prejudice to the application of Community law and recognising the potential or contingent liabilities that may be involved for Member States, decisions by the ESAs should not impinge on the fiscal responsibilities of the Member States. This clause ensures that, where a Member State considers that a decision taken under the emergency powers or in settlement of disagreements relating to the Regulation impinges on its fiscal responsibility, it may notify ESMA and the Commission that the national supervisory authority does not intend to implement ESMA's decision, clearly demonstrating how the decision by ESMA impinges on its fiscal responsibilities. Within a period of one month ESMA will inform the Member State as to whether it maintains its decision or whether it amends or revokes it. Where ESMA maintains its decision, the Member State may refer the matter to the Council and the decision of ESMA is suspended. The Council will, within two months, decide whether the decision should be maintained or revoked, acting by qualified majority. For ESMA decisions adopted under emergency powers, an expedited procedure applies.

Presidency compromise texts

Presidency compromise texts regarding the ESAs, developed responsive to Council discussions, anticipate changes to some of these proposed details. As usual there will not however be a settled position until "trialogue" (ie between the Commission, Council and Parliament in order to reach agreement) – which is currently hoped to be during the second quarter of 2010. As flagged in the introduction, this is likely to involve some tough negotiation – given that the European Parliament does not support the compromise reached in Council.

Changes reflected in the Presidency compromise texts include:

- limitation of the direct supervision powers of ESAs to the single case of a specific role that ESMA will take on in relation to Credit Rating Agencies;
- some clarification of the scope of the ESAs' power to form technical standards and less flexibility for the Commission to decide only partially to adopt ESA proposals;
- refinement of information-sharing arrangements with the ESRB and amongst supervisors, with greater focus on working through national supervisors;
- revision of special provisions applicable in "emergencies", which will be invoked upon a Council decision, rather than that of the Commission;
- restriction of the scope for ESAs to give opinions relating to mergers; and
- reformulation of the operation of the safeguard clause.

The "Omnibus" Directive

Alongside and forming part of an integral package with the Regulations establishing the ESAs, the Commission has proposed an "Omnibus" Directive. This is to make changes to applicable pieces of sectoral legislation as necessary to give effect to the ESFS. It proposes amendments to the following directives: Capital Requirements; Financial Conglomerates; Institutions for Occupational Retirement Provisions; Market Abuse; Markets in Financial Instruments; Prospectus; Settlement Finality; Transparency; Anti Money-Laundering; and Undertakings for Collective Investments in Transferable Securities. Moreover, where appropriate, the Commission will make further proposals for amendments to the Solvency II Directive – via a second omnibus directive anticipated in spring 2010 (and possibly more amending legislative proposals will follow).

It can immediately be seen that the Omnibus Directive addresses key directives from the Financial Services Action Plan, with potential impact on the international capital markets. These directives have been carefully developed during the course of the last decade and, given that they were in many cases carefully targeted outcomes from detailed deliberations, any amendments do need to be subject to thorough scrutiny.

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Crisis management in the banking sector

On 20 October, the Commission adopted a *Communication on an EU framework for crisis management in the banking sector*. The purpose of the Communication is to consult as widely as possible on a broad range of issues aimed at safeguarding financial stability and the continuity of banking services in a cross-border banking crisis. The Communication sets out questions on the tools that the Commission considers would be necessary for an EU crisis management framework. These tools range from "early intervention" action by banking supervisors aimed at correcting irregularities at banks, to bank resolution measures which involve the reorganisation of ailing banks, to insolvency frameworks under which failed banks are wound up.

The Commission's consultation lasts for three months to 20 January 2010 and will be followed by a public hearing to present the results and set out the Commission's intentions. The Commission's consultative Communication adopts a broad-ranging approach to the complex and interlinked issues surrounding crisis management:

- Under *early intervention* (ie when the ailing institution is still a going concern and when supervisory intervention can still remedy the situation), the Communication considers the need for new supervisory tools, possibilities to transfer assets between different legal entities and across borders within a group, and the feasibility of wind-down plans.
- Under *bank resolution*, consideration is given to the need for new restructuring tools and a framework to support

their use in a cross-border context. Views are also sought on how the challenges facing stakeholders in banks – such as shareholders and creditors – could best be addressed in an EU crisis management framework, especially with respect to changes to insolvency and company law.

- The important question of how bank resolution measures need to be *financed* is raised with a clear preference for private sector solutions, but recognising that inevitably burden sharing between Member States needs to be addressed.
- Under *insolvency*, consideration is given to the need to harmonise existing insolvency procedures in order to facilitate the winding up and reorganisation of cross-border banking groups.

At this stage, the Commission is consulting stakeholders (eg public authorities including finance ministries, company law and insolvency experts, the banking industry, bank customers, shareholders and creditors) before coming forward with concrete policies and proposals.

The 2 December ECOFIN Council includes related conclusions on financial stability arrangements and crisis management:

- With respect to the EU regulatory framework for cross-border crisis management, Council agreed a series of orientations for further Commission work in the short-to-medium term and invites the Commission to report back to Council by spring 2010, presenting concrete policy proposals.
- Council welcomed the work of the Economic and Financial Committee (EFC) on how the EU-wide policy coordination framework for financial stability could be further enhanced in the short-to-medium term, agreed a series of parameters that the EU policy coordination framework should have to be credible and effective in operational terms and invited the EFC to continue its work and present concrete proposals to the Council in spring 2010.

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Capital requirements

On 15 October, the Basel Committee on Banking Supervision (BCBS) issued the results of its recent *Trading book quantitative impact study* (QIS), which assesses the impact of the revisions to the 1996 rules governing trading book capital. These revisions, which were originally published by the Committee in January 2009, were subsequently adopted in July. Excluding the so-called correlation trading portfolio, the study concludes that the changes to the market risk framework will increase average trading book capital requirements by two to three times their current levels, although the Committee noted significant dispersion around this average. Based on the results of the study, the Committee decided to maintain the original calibration as proposed in its January consultative package and as adopted in July.

Changes to the Capital Requirements Directives (CRD) are being developed by the Commission that parallel the revisions in Basel requirements and will make their application mandatory for EU credit institutions and investment firms. The CRD phase III revisions are not, though, limited to trading book proposals. Further proposals, also based on Basel work, affecting both capital and liquidity are expected in 2010.

Applying the Basel QIS findings to publicly available ECB data on bank capital held, unofficially it has been estimated that Tier 1 capital requirements for euro area banks alone could rise by €216 billion – which is approximately 2% of euro area GDP. The total impact across all impacted EU firms, and allowing for those elements not covered by the QIS, will be significantly greater. Given the significance of these impacts, it is vital that further QIS work is completed and that the timing of adoption of new requirements is carefully phased in response to the state of the economic recovery. Aggregate impacts of the changes should be considered in reaching final conclusions on the correct calibration for changes.

On 17 December, the BCBS issued for consultation a package of proposals to strengthen global capital and liquidity regulations with the goal of promoting a more resilient banking sector. The key elements of the BCBS proposals are:

- first, the quality, consistency, and transparency of the capital base will be raised;
- second, the risk coverage of the capital framework will be strengthened;
- third, the Committee will introduce a leverage ratio as a supplementary measure;
- fourth, the Committee is introducing a series of measures to promote the build-up of capital buffers in good times that can be drawn upon in periods of stress; and
- fifth, the Committee is introducing a global minimum liquidity standard for internationally active banks.

Capital requirements - continued

The Committee is also reviewing the need for additional capital, liquidity or other supervisory measures to reduce the externalities created by systemically important institutions.

Impact assessment will be carried out in the first half of 2010. On the basis of this assessment, the Committee will then review the regulatory minimum level of capital and the reforms proposed in the document to arrive at an appropriately calibrated total level and quality of capital. The fully calibrated set of standards will be developed by the end of 2010 to be phased in as financial conditions improve and the economic recovery is assured, with the aim of implementation by end-2012. Consultative responses should be submitted by 16 April.

Also on 17 December, the Committee of European Banking Supervisors (CEBS) published a consultation paper, in response to Article 63a(6) of the revised CRD – that requires CEBS to elaborate guidelines for the convergence of supervisory practices with regard to the instruments referred to in Article 57(a). (Article 57(a) sets out which instruments – apart from reserves and retained earnings – are eligible for inclusion in an institution's original own funds as capital). Further, on 10 December, CEBS published its implementation guidelines on hybrid capital instruments – again in response to Article 63a(6), but with regard to the instruments referred to in Article 57(ca).

Recent CEBS consultations also include revised guidelines on stress testing (14 December); and draft guidelines on concentration risk (11 December). Other recent CEBS publications include guidelines on the revised large exposures regime (11 December); and guidelines on liquidity buffers (9 December). Additionally, on 9 December CEBS hosted a public roundtable to foster convergence in the application of Pillar 3 requirements.

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Credit Rating Agencies Regulation

Publication in the *Official Journal* of the *EU Regulation on Credit Rating Agencies (CRAs)* occurred on 17 November. The Regulation entered into force on the twentieth day following its publication (ie on 7 December 2009). Further it follows that 7 September 2010 is the deadline for CRAs to comply and register in the EU; 7 December 2010 is the date from which authorised EU financial institutions may only use EU-registered ratings for regulatory purposes; and 7 June 2011 is the date from which additional conditionality applies to endorsed third country ratings.

Article 21 calls upon CESR to issue guidance on various items. A related consultation was already running. This covered: guidance on the registration process; functioning of colleges; the mediation protocol; and information, including for the application for certification and for the assessment of CRAs' systemic importance. ICMA has participated in the CESR consultative group that has worked on developing these consultation papers and submitted a short response paper, prepared in collaboration with the Association for Financial Markets in Europe (AFME) (the responses received can be viewed on CESR's website).

There are three main issues which ICMA considers it crucial for CESR to take into account as fully as possible in developing its guidance, so as to limit the potential disruption to market stability that could arise from: regional fragmentation in the use of ratings; significant impact on firms' capital requirements; and/or legal and practical uncertainty:

- Effective and streamlined decision-making by all CESR members, both among themselves and with members of CEBS responsible for assessment of External Credit Assessment Institutions, is vital. Market participants need CESR members to maintain the workability of current arrangements, and to work towards the promulgation of consistent judgments.
- The endorsement regime needs to be deployed in a way that enables firms to maintain existing use of third country ratings without unnecessary disruption to regulatory capital, and without putting markets and liquidity provision under undue stress.
- Given that the Regulation was carefully drafted to provide for well controlled use of worldwide ratings without significant and unnecessary disruption to their regulatory use, it is vital not to seek to apply gold-plating interpretations, for example relating to endorsement, that are not consistent with the legislative text.

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CESR's 2010 work programme

On 3 November, CESR published its *Work programme for 2010*, along with an annex table. Concurrently, the CEBS also published its *Work programme*, as did the Committee of European Insurance and Occupational Pensions Supervisors (CEIOPS). Collectively CESR, CEBS and CEIOPS are known as the three Level 3 (3L3) Committees and, alongside their individual publications, there is also the *Joint work programme of the 3L3 Committees*. Given the integral role that CESR has in supervision of the international capital markets in Europe, its work is of particular interest for ICMA. Accordingly, we have highlighted below the key elements of CESR's 2010 programme and their relevance for ICMA's own.

Keeping in mind the particular and exceptional market conditions and the responses given by the G20, CESR will have three paramount priorities in the year 2010:

- the transformation into ESMA;
- the organisational aspects and the content of a regulatory and supervisory regime for credit rating agencies; and
- work streams related to OTC markets.

Concerning the latter of these, namely OTC markets, CESR's work will be focusing on five areas:

- *Responding to Commission mandates in relation to the Markets in Financial Instruments Directive (MiFID) review of 2010 related to OTC markets:* CESR is expecting to contribute to the Commission's 2010 MiFID review. That review is likely to cover also specific issues related to OTC markets.
- *Market abuse through OTC derivatives:* As part of the operational work of CESR-Pol, CESR members will share their supervisory experiences on market abuse involving OTC derivatives in order to contribute to members' possibilities to detect and investigate market abuse through these instruments.
- *Central storage of data ("warehouse"):* After publication of the CESR consultation paper on trade repositories in the EU, CESR will continue to develop its policy in this area on the basis of the feedback received and the work conducted in other important international fora (eg the Committee on Payment and Settlement Systems (CPSS)-International Organization of Securities Commissions (IOSCO); and the OTC Derivatives Regulators' Forum).
- *Suspicious transaction reports:* CESR continues to work on raising market participants' awareness on the importance of their obligation under the Market Abuse Directive to send suspicious transaction reports (STRs) to the regulators, with particular focus on OTC derivatives. CESR will also aim at developing a harmonised format for STRs in OTC derivatives.
- *Working Group on Derivatives:* After the expiry of the 31 July 2009 deadline for the migration of credit default swap (CDS) clearing onto central counterparties (CCPs), the Commission's Working Group on Derivatives (with representation of CESR) will continue to take account of progress made by market participants in the CDS clearing when formulating its policy orientations for OTC derivatives in general.

In the light of the global nature of market activities in this area, international consistency is one key aspect that will have constantly to be borne in mind and solutions will have to be found at the corresponding level. In particular, this will imply close contacts with IOSCO and the US authorities.

Also, particularly with respect to trade transparency and product disclosure, any regulatory and supervisory measures will have to be flexible in order to accompany the desirable evolutionary nature of contemporary financial markets.

During 2010, ICMA will be focusing particularly on the MiFID review and other elements of this OTC work that impact on the cash bond and repo markets, whilst continuing to note complementary work that ISDA leads on the derivatives' market aspects.

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ECP impact of liquidity rules

Liquidity is the subject of a new regime announced by the UK Financial Services Authority (FSA) on 5 October. The new qualitative requirements apply as from 1 December 2009 for all firms within the scope of the new liquidity regime. For large UK banks and building societies the new quantitative requirements will start to apply from 1 June 2010; for other banks and building societies from 1 October 2010; and for branches and investment firms from 1 November 2010. The introduction of the quantitative aspects of the regime will build from an initial floor over an adjustment period of several years. The FSA will not seek to tighten quantitative standards before economic recovery is assured and therefore plans for the flight path to full implementation to be flexible. The final calibration of requirements is yet to be fixed and will take account of international agreements that the FSA is working towards in the Basel Committee. The FSA's aim is to set an example of high standards, to help lead international debate towards an agreed position on the setting of liquidity requirements. In this context it is noted that on 9 December the Committee of European Banking Supervisors (CEBS) announced the release of its *Guidelines on liquidity buffers*, and on 17 December the Basel Committee on Banking Supervision, as part of its *Proposals for strengthening the resilience of the banking sector*, released its consultation on an *International framework for liquidity risk measurement, standards and monitoring*.

For euro commercial paper (ECP), one direct impact of the new FSA rules is that there will be an increased cost to holding any trading portfolios, as any paper with less than three months to maturity will attract liquidity reserve requirements. For impacted ECP issuers the effects will be felt through the significantly changed cost-benefit of short-term versus longer-term funding and of wholesale versus retail funding. Issuers' funding requirements will also include any applicable assets held in conduits or special purpose entities, with exposures to multi-seller conduits measured based on undrawn funding commitments. The authorities appreciate that increased funding costs are a consequence of tighter liquidity requirements, which will in turn raise the cost of credit and lead to deleveraging; and already increased long-term debt issuance levels have been seen. Money fund inflows will come under pressure as they will face stronger competition from retail deposits, since the latter are a favoured source of funding in the new regime.

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ECP and money market funds

Money market funds are key investors for ECP. They are being directly impacted by various new requirements. A recent example is CESR's consultation paper of 20 October, *A common definition of European money market funds*. There is much in this consultation paper with which ICMA's ECP Committee agrees, including that it is helpful to establish a common EU definition of money market funds. There are, however, two specific points relating to the detail of the proposed definition that the ECP Committee has commented on in its response. The ECP Committee believes that investor interests are best served if they have the widest possible access to assets with appropriate risk profiles. Limiting choices can mean less diversification, more concentration, fewer yield opportunities and more risk.

On 14 December, the Institutional Money Market Funds Association (IMMFA) announced changes to its *Code of practice*, to come into force from 1 January 2010. New provisions include the following:

- *Credit risk management:* IMMFA-compliant funds must have a weighted average final maturity (WAFM) of not more than 120 days. Funds must respect agencies' AAA-rating criteria.
- *Interest rate risk management:* Funds must have a weighted average maturity (WAM) of not more than 60 days. Individual securities must have a final maturity of 397 days (non-governments)/762 days (governments).
- *Liquidity risk management:* Funds must maintain a minimum of 5% in overnight securities and 20% in securities maturing within one week. Funds must follow a board-approved liquidity policy. Fund providers must manage shareholder concentration.
- *Disclosure to investors:* Funds must disclose their WAM, WAFM, liquidity ladder and performance data monthly. Funds must make available the percentage held by the top ten shareholders upon request.

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Asset-backed commercial paper

Asset-backed commercial paper (ABCP) has been a valuable traditional tool for financing banking assets, and ICMA's ECP Committee continues to support traditional ABCP conduits. In this vein, a short letter was sent to the International Organization of Securities Commissions (IOSCO) in November concerning ABCP considerations relevant to the consultation report of the Technical Committee of IOSCO on *Transparency of structured finance products*. This draws attention to the ECP Committee's previous input to IOSCO on this topic, as well as to equivalent input provided to CESR. It then highlights the fact that, with regard to ABCP, the Committee of European Securities Regulators (CESR) came to the specific conclusion that "… additional post-trade transparency is not one of the pressing topics for participants in these markets. Therefore CESR does not currently see a need for a post-trade transparency regime for ABCPs." It is therefore proposed that it would be helpful if IOSCO could also highlight a similar conclusion, thereby promoting a consistency of approach between that being pursued in the EU and the rest of the international market.

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Credit claims and the GMRA

ICMA has recently embarked on a project to develop an ICMA annex to the Global Master Repurchase Agreement (GMRA) which would enable credit claims to be repo'd under the agreement. The aim of the project is to expand the range of available collateral for day-to-day use by banks seeking to fund their business short term in the interbank markets.

For the purposes of the annex, credit claims would essentially be corporate loans. A loan would only be eligible for repo under the "GMRA Loan Repo System Annex" where the parties to the loan agree to prescribed "clearing system loan rules".

The feasibility of establishing a loan repo system will need to be considered on a jurisdiction-by-jurisdiction basis due to differences in registration requirements, standard loan documentation, confidentiality issues, applicable legislation, etc. The project will initially focus on France, Germany and the UK.

The project, supported by ICMA's European Repo Committee, involves other market participants such as Euroclear, Clearstream and SWIFT. Other interested parties include the Loan Market Association and the ECB.

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Prospectus Directive review

The European Commission's proposal to amend to the Prospectus Directive (covered in the October edition of the ICMA Newsletter) has been subject to initial discussion amongst Member State delegations within the European Council. Though no agreed common position for Council amendment of the proposal has been published so far, a Swedish Presidency compromise text (the latest of several) was published on 11 December. An accompanying formal memorandum from the Council's secretariat (together with a 16 December addendum on the need to account for changes consequential to the recently ratified Lisbon Treaty) notes a "broad measure of agreement" and requests that this latest (and "final") Presidency compromise text serve as the basis for negotiating an agreed position with the European Parliament.

The European Parliament's ECON Committee has appointed Dr Wolf Klinz MEP as *rapporteur* to prepare an initial report on the Commission's proposal. The report is anticipated to be presented to the ECON Committee in late January, with Parliamentary deliberation expected to continue into late April. In addition to the European Parliament, opinions are due from the ECB and the European Economic and Social Committee.

Following discussions with its members, ICMA has been working to raise awareness of concerns regarding many of the amendments to the Prospectus Directive that have been proposed. The most salient of these concerns relate to:

- requiring the summary to include "key information" – on a comparable basis and with standalone liability (ie regardless of the rest of the prospectus);
- increasing the €50,000 thresholds to €100,000;
- requiring that issuer consent for third parties to use its prospectus be explicitly stated in the prospectus itself;
- further limiting the scope of final terms – notably through setting out an indicative list of items within scope;
- extending prospectus validity beyond 12 months; and granting excessive powers to the Commission to subsequently amend the Prospectus Directive.

ICMA has also expressed concerns regarding:

- ensuring that appropriate consequential amendments are made to the Transparency Directive, notably as to grandfathering; and
- exempting issues that are already admitted to trading (and subject to the Transparency and Market Abuse Directives) from the obligation to publish a prospectus.

Over the past few months ICMA representatives have met representatives of the European Commission, representatives of several Member State delegations to the European Council and several MEPs and their representatives. ICMA intends to continue such meetings as the review develops.

Pending any amendments to the Prospectus Directive regime taking effect, ICMA is further considering the complexities surrounding offers of low denomination (sub-€50,000) bonds in Prospectus Directive-exempt circumstances (including the possibility of publishing some relevant considerations in this respect).

Separately, ICMA continues to participate in the Commission's *Packaged Retail Investment Products (PRIPS) initiative* through the Joint Association Committee, which made a submission to the Commission following participation in a Commission workshop on 22 October.

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US Tax Extenders Act of 2009[1]

Proposals were introduced into the US Congress in late October as the Foreign Account Tax Compliance Act of 2009 (FATCA) broadly to: (i) repeal the TEFRA exemptions relating to bonds in bearer rather than registered form (with substantial resulting fiscal sanctions, namely a 1% per annum excise tax, a 30% withholding tax and non-deductibility of interest for corporation tax); and (ii) require intermediaries effecting US source payments to enter into more substantial reporting agreements with the US Internal Revenue Service (backed by a 30% withholding tax sanction). The proposals also included some worrying ambiguities as to grandfathering in the latter case.

Following substantial industry input, including initial and follow-up submissions by ICMA, the proposals were re-introduced in amended form as part of the Tax Extenders Act of 2009 (TEA), adopted by the House of Representatives on 9 December and referred to the Senate. The Senate's diary is substantially taken up with other matters (healthcare notably), but it is anticipated the Senate will do its utmost to

1 *Previously the "Foreign Account Tax Compliance Act of 2009".*

consider the Bill quickly since it also contains provisions to renew various tax exemptions (unrelated to the international bond markets) that are due to expire at year end. The principal Senate and House members are understood to have previously conferred over the FATCA elements of the TEA Bill. Once approved by Congress, Presidential signature (and resulting enactment into law) is expected to follow swiftly as President Obama previously expressed his support for FATCA.

Under the TEA:

- *the intermediary limb:* (i) only applies to US source payments from January 2013; (ii) grandfathers (until maturity) obligations issued within two years following enactment; and (iii) grants certain implementation powers to the US Treasury; and
- *the TEFRA limb:* (i) grandfathers (until maturity) obligations issued within two years following enactment; (ii) maintains the TEFRA exemptions for foreign-targeted bearer bonds; and (iii) provides that bearer bonds held in dematerialised book-entry systems are deemed to be in registered form for US tax purposes.

So, subject to any amendment of the TEA Bill prior to enactment: (i) existing issues will be unaffected; (ii) new issues by non-US issuers will be unaffected; and (iii) new issues by US issuers will be unaffected for two years.

ICMA will continue to be involved in this matter, notably in terms of: (i) any amendments to the TEA Bill; (ii) the extent to which global notes deposited with Euroclear/Clearstream as ICSDs are covered by the dematerialised book-entry system provision; and (iii) further implementing action by the US Treasury and Internal Revenue Service.

Separately, ICMA is continuing to track developments relating to the *Loi de finances rectificative pour 2009 (n° 2009-1674)* enacted following debate by the French Government to the Assemblée nationale and the Sénat (the two Houses of the French Parliament), which includes a provision, *Lutter contre les paradis fiscaux*, to amend the French tax code in relation to tax havens.

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MiFID inducements

On 22 December, ICMA submitted a joint response to the Committee of European Securities Regulators' (CESR's) consultation paper on *Inducements: good and poor practices* in the context of the Markets in Financial Instruments Directive (MiFID). ICMA's input focused on underwriting fees, noting various complexities that might be helpful to national regulators when considering the application of MiFID's Article 26 to specific cases.

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Market Abuse Directive insider dealing case

On 6 October, the UK's Financial Services Authority (FSA) issued final notices censuring Darren Morton and Christopher Parry, issuing a formal press release the following day. The notices are a clear reminder of the full application of the Market Abuse Directive's (MAD's) insider dealing provisions to the bond markets. They follow on from the FSA's September 2008 publication of a final notice in relation to Steven Harrison and its publication of articles in editions 21 (July 2007) and 27 (June 2008) of its *Market Watch* Newsletter. ICMA itself published in March Recommendation 1.30 to its members addressing just the particular aspect of potential coordination of market soundings by lead-managers (see the April edition of the ICMA Newsletter). At a more technical level, the Morton/Parry notices seem to indicate that the price sensitivity limb of the insider prohibitions may be of limited relevance, with the main focus being just on whether an investor might trade on the basis of the information received. The 13 August judgment (and more particularly the 17 July and 13 August memorandum opinion and orders) in the ongoing Mark Cuban case in the US is also of interest.

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Safety and resilience of OTC derivatives markets

In the October edition of the ICMA Newsletter, we reported on the Commission consultation and conference on *Ensuring efficient, safe and sound derivatives markets*. The Commission has now published a summary of responses to that consultation. Of note are those responses that concerned:

- *trade repositories:* Responses were unanimous that any information which could be detrimental to the market or to one of the participants should not be disclosed to the public. Disclosure of aggregate data would be the way to avoid this happening.
- *transparency of trading:* A majority of stakeholders opposed a uniform extension of MiFID-style transparency rules, especially for pre-trade information and for specific markets like interest rate, forex and commodities markets, on the grounds that it would damage liquidity. In particular, respondents felt that Markets in Financial Instruments Directive (MiFID)-type transparency rules, especially pre-trade, are less relevant for derivatives because of the specificities of those markets. Respondents also indicated that any new transparency measure should go through a thorough cost-benefit analysis and be adapted to different asset classes and markets.

Commission Communication

At the end of October, the Commission also published a Communication setting out proposals to strengthen the safety of derivatives markets. In line with the G20 Pittsburgh statement, the Commission will bring forward legislative proposals, accompanied by a "thorough" impact assessment, in 2010. The Commission has indicated that it intends to develop the technical details in cooperation with its G20 partners, the Financial Stability Board and the US, in particular, in order to ensure a coherent global implementation thus avoiding regulatory arbitrage. The following points are of note:

- The Commission considers that there needs to be a "paradigm shift" away from the traditional view of derivatives as professional-only financial instruments (and thus deserving of light-touch regulatory treatment) towards an approach where legislation allows the market to price risks properly. This can be achieved by shifting derivatives markets from predominantly OTC bilateral to more centralised clearing and trading.
- *Central clearing:* Central counterparty (CCP) clearing has been identified as the main tool to manage counterparty risks. The Commission intends to make it mandatory to clear standardised derivatives through CCPs, in line with proposals in the US and other G20 partners. Non-standardised contracts will be subject to more in-depth oversight by supervisors.
- *Bilateral clearing:* Not all derivatives can be centrally cleared (some products are too customised while others are not liquid enough) and thus will remain bilaterally cleared with counterparties exchanging collateral to cover their exposure. The Commission will:
  - require financial firms to post initial margin (specific to counterparty characteristics) and variation margin – which will be an incentive to use CCPs;
  - impose higher capital requirements on non-centrally cleared contracts.
- *Operational risk:* The Commission will assess whether to re-work the Capital Requirements Directives' operational risk approach to encourage standardisation of contracts and electronic processing. It will also try to progress the work of the Derivatives Working Group in the area of legal and process standardisation.
- *Transparency:* The Commission considers that lack of transparency of prices, transactions and positions has hindered: (i) regulators from efficiently monitoring systemic risk and market abuse; and (ii) market participants from accessing reliable prices, assessing risks, valuing positions and checking best execution. Therefore, the Commission will propose legislation:
  - that would make it mandatory to report all transactions to *trade repositories*, and that would also contain information on all on-exchange trades and trades cleared through a CCP. This would give regulators a complete overview of the derivatives market. It is worth noting that the Commission would not require a trade repository to be located in Europe as long as European regulators have "unfettered access" to stored information.
  - regarding *trading on organised markets:* Reference is made to the G20 statement: "all standardised OTC derivative contracts should be traded on exchanges or electronic trading platforms, where appropriate". The Communication then states: "In the EU, this *implies* ensuring that eligible trades for exchange-trading take place on organised trading venues, as defined

by MiFID." *(Emphasis added.)* This is very curious wording. The Communication nevertheless states that the Commission will "ensure trading of standardised contracts on organised trading venues under MiFID."

– *pre- and post-trade transparency:* The Communication states : "Harmonising pre- and post-trade transparency requirements for the publication of trades and associated prices and volumes across the various organised venues needs to be carefully considered, also in the case of OTC markets. It will be key to avoid loopholes in the framework of trading venues. … The increased transparency obligations will need to be measured so as to mitigate any excessive negative side-effects on liquidity and disproportionate administrative costs." The Commission will consider transparency requirements for all derivatives "and possibly also other non-equity markets" as part of the MiFID review next year.

- *Market integrity and oversight:* The Commission will seek to extend the Market Abuse Directive to OTC derivatives. Additionally, the Commission will propose legislation under MiFID to give regulators the power to set position limits to counter disproportionate price movements or concentrations of speculative positions.
- *Costs* should be carried by those who directly enjoy the economic benefit from using derivatives – this includes non-financial institutions. The Commission expects that these costs will decrease over time – the more widely central market infrastructures are used, the lower the costs per user will be.

Council conclusions

Following from the ECOFIN meeting of 2 December, the Council published its conclusions on the Commission's Communication and the Commission's report on *The Code of Conduct on clearing and settlement: three years of experience.* Of note:

- The Council welcomes the "paradigm shift" in the approach towards derivatives markets suggested by the Commission and the related future actions it has proposed.
- The Council agrees on the promoting of clearing for clearing-eligible derivatives by means of one or more CCPs, also recognising that there are strong reasons for some CCPs being located in Europe. Certain OTC derivatives contracts will remain necessary consequently requiring proper collateralisation for bilateral clearing, and will be subject to higher capital charges than centrally cleared trades.
- The Council agrees with mandating reporting of transactions to trade repositories, to be then provided to regulators – with European regulators and central banks having unfettered access to complete global information – and with appropriate enhancement of pre-and post-trade transparency requirements.
- On clearing and settlement, the Council notes progress, in particular as regards cash equity CCP clearing, and agrees that further steps need to be taken to address the issues related to risk and regulatory barriers that have been highlighted by the Code of Conduct. The Council notes ongoing work aiming at increasing legal certainty of the holding and transaction of securities and invites the Commission to present its draft legislation on securities law as soon as possible.

Implications for corporate bonds

- The "paradigm shift" could be applied equally to the corporate bond market.
- The collateral proposals in the case of bilateral clearing have implications, particularly for repo.
- The transparency proposals could have a clear read-across to the corporate bond market. The wording does not rule this out (though it does not necessarily rule it in, either).

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Dialogue between Robert Parker and David Wright

ICMA's Asset Management and Investors Council (AMIC) has been in existence for nearly two years, providing the industry with a forum to discuss market trends and regulatory issues. On the eve of its second birthday, Robert Parker (RP), AMIC Chairman, and David Wright (DW), Deputy Director-General of DG Markt at the European Commission, take stock of key market and regulatory trends in the asset management industry. Nathalie Aubry, Secretary of the AMIC, reports.

Buy-side representation

RP: "My view is that historically the sell side of our industry has been very active and pretty intelligent in communicating and working with regulators. When you look at the buy side of our industry, they are reasonably good and well resourced nationally. However, coordination at European and international levels could be improved. We took the view in early 2008 that it was time to create a European asset management representative body that would bring together different parts of a diverse industry under one roof."

DW: "I think everyone has to search their souls in this crisis. It is true that the sell side has been better organised in terms of representation. It is fair to say that the buy side of the market has been, just, less powerful. It is also more dispersed. However, when you get a European directive, buy-side representative groups come into play, are very effective and work very well with the European institutions. And if we are looking at what regulation is coming out in the next two or three years, there are a couple of pieces where the buy side should really give its views. Let's say derivatives. Both the United States and the European Union are of the view that these markets are opaque, basically unregulated in parts, and we encourage these products to move onto exchanges. This is not to say that there is no space for OTC derivatives but there will be a higher capital charge attached to them. This is one area where the buy-side views are very important. Another example is MiFID and here there is a huge set of issues about how transparent should markets be, should there be post-trade transparency and what are we going to do about dark pools."

"Another point I would make is that moving forward over the next five years, under Commissioner Barnier's future mandate, I am sure there will be a real wish to better identify consumers' interests which are also often close to the buy-side interest. I think this is a regulatory trend and you can see what we have done with the new stakeholder group composition within the new European authorities, it is much more open. It is not just representatives of the industry; it is "stakeholders" in its widest definition."

Consumer protection and trust

RP: "If you look at the industry 10 or 15 years ago, it was dominated by large institutional funds. So our business throughout the 1980s and the 1990s was about treating large pension funds as one client and the same for insurance companies. It is very obvious what is happening in the industry, for instance the growth area that is defined contribution (DC) pensions. DC essentially means that your client base is made up of individuals, as opposed to the large defined benefit funds. You are also seeing the investing of savings into mutual funds or mutual fund products with a life insurance wrapper. So the days where the asset management industry had large institutions as clients to manage is changing to "retailisation". This is a very powerful trend."

DW: "One of the problems with the crisis is that individuals do not trust the industry. We have seen the demise of many actors that did not read the risk warnings. We are going to change that. But the ordinary consumer: who can he or she trust now? I suppose you can trust the banks up to the point that your deposits should be safe now that we moved the deposit guarantee to €100,000. That covers 90% plus of the deposits. But in terms of investments, who do you trust? I think this a fundamental issue."

RP: "I totally agree. But I would break trust down into a number of sub-components. The first element of trust is what I call the "Madoff factor", the risk of someone running away with your money. Hopefully working with large asset managers, large banks and large insurance companies should give some comfort, although this is not always a guarantee. Trust factor no. 2 is where you are managing your asset management products to ensure that the client has complete transparency over projected risks and performance of the products. But also there is the expected performance: how much can one rely on historic data on the performance of an asset class? And finally there is liquidity trust because people assumed they bought a liquid investment that they could sell on quickly, which they could not do in the crisis".

DW: "And I would add that, if you take the equity market, anyone who invested in the index-tracked equity market about 10 years ago would now be at a standstill or have negative return. So this is a long-term trust problem. I think most people can understand equities. I am not sure they understand what bonds are, although some do. So, we have here a major asset class that is giving negative returns over a long period. And it is a worry."

RP: "It is a worry, but no one can control the market. But one has to ask the question whether volatility results in poor investor confidence in the equity market, which will then drive them out of the domestic or European equity markets and towards investing in other products which are even more difficult to understand. Moreover the volatility is a worry because the less the investor understands the volatility, the less he understands the market, and the more likely he is to leave the equity market."

DW: "I think the only long-term solution to this is transparency. But I also think that people have to be taught the basics of finance at an early stage. At the same time governments will not to be able to give people a guaranteed high level of pension in the future for an ageing population. So people will need to be more independent and need the financial toolbox to take decisions."

A pan-European pension scheme?

DW: "We feel that the basic set of rules such as for UCITS has worked. We do have products that do circulate around the EU. We have effectively the global standard here which is valuable. And in Asia or Latin America they want that UCITS stamp. Now one thing that this crisis has resulted in is that in the EU as a whole government debt has gone up and with an ageing population, the so-called "silver revolution", this is totally unsustainable for pension schemes. One of the evident questions that will come out here is: can we, or should we, build in Europe pension funds which allow workers to basically move across borders, work in different countries and not trap capital? And if you want the free flow of goods, capital, services and people, and especially people, you will have to solve that problem. I think developing safe, long term pan-European pension funds is one of the biggest challenges that we have in Europe and here the industry has a huge role to play. And I think that we have a precedent with UCITS. It would be a huge development that would be a benefit for us in the long term. But that will require a very deep level of supervisory and regulatory cooperation, because it is one thing to have UCITS not being properly managed, and I do not think it is the case – we may have had the odd example – but if we have issues in the pension area you have a deep set of problems here. This is an interesting area where the industry as a whole, working with us and the new Commissioner, has quite an exciting opportunity."

RP: "I think it comes back to trust, and to encourage people to save money for their pension they have to be able to trust the products they invest in as well as understanding them so that they are confident that the pot of money will be available there for them. And as you rightly say there must be a geographical flexibility. If I am British and I want to retire in Spain, what is my access to my pension? That mobility is in fact critical. There has been a lot of work done on the mobility of mutual funds and there is still a huge amount to be done on pension funds. And with the demographics it is even more critical."

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Covered Bond Investor Council

Following from its inaugural meeting in July the Covered Bond Investor Council (CBIC) established two Working Groups: a Liquidity Working Group, managed by Claus Tofte Nielsen; and a Transparency Working Group, managed by Andreas Denger and John Maskell.

Both Working Groups are undertaking active efforts to define, develop and further their respective agendas. The Liquidity Working Group is examining a draft discussion paper, which tries to analyse the currently prevailing liquidity situation in the covered bond market and how liquidity could be organised and improved in the future. Meanwhile the Transparency Working Group has its attention focused on a review of a draft standardised list of data elements, which should be considered as the minimum requirements for covered bond transparency.

A process of mutual collaboration and information exchange has been established with the European Covered Bond Council (ECBC), which represents over 95% of covered bond issuers in the EU. The most recent discussion took place during ECBC's 2 December Steering Committee meeting in Stockholm. ECBC shared further insight on work they are engaged in to help improve the market and there was a good dialogue with the ECB which, as a major market participant – through collateral-taking and recent direct investment – has a significant shared interest in promoting steps to create a more robust market. ECBC and CBIC affirmed their respective intent to build upon their collaboration.

Additionally, CBIC continues its own active dialogue with the official sector, in particular having provided inputs to an informal seminar for regulators and supervisors on Regulated Covered Bonds – run by the ECB, the UK Financial Services Authority and De Nederlandsche Bank – on 5 and 6 November in Amsterdam. The CBIC will also be considering the impact of the changes in the Standard and Poor's rating methodology published in December 2009.

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Alternative Investment Fund Managers Directive

There have been a number of developments relating to the proposed Alternative Investment Fund Managers (AIFM) Directive since the October edition of the ICMA Newsletter:

- On 13 November, the Swedish Presidency published its compromise proposal containing revised text of the AIFM Directive.
- On 26 November, the European Parliament has published a draft report by Jean-Paul Gauzès, *rapporteur* to the Parliament's ECON Committee, on the proposed AIFM Directive.
- The European Parliament Directorate-General for Internal Policies commissioned a report on *The impact of the AIFM Directive*. The report was prepared by Europe Economics.
- The Swedish Presidency also published a progress report on the proposed AIFM Directive in December.

In its progress report, the Presidency notes the following key outstanding issues:

- whether the tasks of the depository could be given to others in addition to credit institutions and investment firms;
- issues relating to the use of different types of valuers to different business models, the frequency of valuation for different types of funds and, in particular, the independence of the valuer;
- whether one should apply the same kind of detailed remuneration rules as agreed in the context of the latest revision of the Capital Requirements Directives for the banking sector, or seek rules better adapted to alternative investment fund managers, especially as regards carried interest; and
- concerns relating to ensuring a level-playing field between marketing of EU and non-EU funds in the EU.

Amongst other things, the report calls on the Permanent Representatives' Committee to invite the incoming Spanish Presidency to pursue contacts with the European Parliament with a view to reaching an agreement with the Parliament at first reading.

As for the next steps, we are still expecting:

- comments from the ECON Committee (22-23 February 2010);
- conclusions of the discussions between the European Commission, European Parliament, European Council;
- the vote in plenary of the European Parliament and vote of the ECOFIN to approve the final version of the Directive (July 2010).

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Withholding tax relief

On 19 October, the Commission adopted a *Recommendation on withholding tax relief procedures* that outlines how EU Member States could make it easier for investors resident in one Member State to claim entitlement to relief from withholding tax on securities income (mainly dividends and interest) received from another Member State. The Recommendation also suggests measures to eliminate tax barriers for the securities investment activities of financial institutions.

The Recommendation – the first one in the tax area since 1993 – is based on the (2006-2007) reports of the EU Clearing and Settlement Fiscal Compliance Experts' Group (FISCO) to address Giovannini barriers 11 and 12. It follows from extensive stakeholders' consultation, and discussions with the industry and Member States' tax administrations.

The Recommendation provides guidance on how to ensure that procedures to verify entitlement to tax relief do not hinder the functioning of the Single Market. In particular it:

- encourages Member States to apply at source, rather than by refund, any withholding tax relief applicable to securities' income under double taxation treaties or domestic law – where not feasible, quick and standardised refund procedures should be in place;
- encourages Member States to accept alternative proofs of investors' entitlement to tax relief;
- suggests how Member States can involve financial intermediaries in making claims on behalf of investors and, in particular, how the procedures could operate, where there is a chain of financial intermediaries in different Member States, between the issuer of the securities and a beneficiary;
- encourages greater Member States' acceptance of electronic rather than paper information; and
- invites Member States to make greater use of existing channels for exchange of information between them and encourages the exploration of new channels.

This issue is also related to the EU Savings Taxation Directive. In June 2000 (Feira meeting) it was agreed that a transitional arrangement would be put in place for three Member States (Austria, Luxembourg and Belgium), during which period these Member States would not be obliged to provide information on interest payments. The period was not to end until Switzerland, Andorra, Liechtenstein, Monaco and San Marino could guarantee effective and comprehensive exchange of information in interest payments. At the ECOFIN meeting on 2 December, it was expected that both the scope of the Directive and exchange of information would be discussed. However, the issue was removed from the agenda and will be handed over to the Spanish Presidency.

ICMA's newly established Private Banking Working Group is concerned with new regulatory developments in this context.

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Private Banking Working Group

The AMIC effectively endorsed the creation of a pan-European cross-border Private Banking Working Group at its September quarterly meeting. The Working Group met for the first time in November in Zurich. Its Chairman is Charles Hamer, of Credit Agricole Asset Management in Luxembourg. The Working Group is primarily interested in high-level issues (eg trends in the private banking industry, the EU Savings Taxation Directive and client confidentiality), and it is envisaged that technical groups may be set up at a later stage.

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Dismantling the Giovannini barriers

Two influential reports on clearing and settlement, prepared by the Giovannini group (published in 2001 and 2003), identified 15 barriers which made cross-border investment more costly and potentially less safe than it should be. These barriers are classified into three types: industry, legal and fiscal barriers. Since 2004, the Commission has been working together with the industry to remove these barriers – the European Commission's Clearing and Settlement Advisory and Monitoring Expert Group (the CESAME Group) was established to guide this effort. In November 2008, CESAME issued a comprehensive report on its four years of work. CESAME's work has been continued by its successor, the CESAME2 Group, established in summer 2008, which most recently met to review progress on 20 October and will next meet on 2 March 2010.

So far, it can be said that there has been noticeable progress on dismantling industry barriers. Effectively, industry barrier 8 (securities number issuance) has been successfully dismantled; and very good progress has been achieved on industry barriers 4 and 7 (settlement finality and settlement deadlines) – but further issues in this area have been identified (now treated as "barrier 16"). Standard setting for removing industry barriers 1 (IT interfaces) and 3 (corporate actions) has advanced substantially, but implementation will have to be monitored closely. Barrier 6 (standard settlement periods) – which was initially deemed less important – is currently being addressed by the industry. Also, public sector barrier 14 (on netting) and barrier 5 (remote access) have been dismantled. As a result, the Commission considers that there will be substantial improvements in 2010.

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Proposal for a Securities Law Directive

In its report of 2008, entitled *Second advice*, the Legal Certainty Group (LCG) put forward detailed solutions to legal barriers related to the cross-border holding and settlement of securities, in order to lead to an improved and harmonised legal framework for holding and settlement of securities through intermediaries and for the processing of corporate actions (barrier 13). Supplementing the work of CESAME, *Second advice* contains a blueprint for future legal obligations of account providers in the context of the processing of corporate actions (barrier 3). Furthermore, the report explains how to give issuers free choice between European central securities depositories (barrier 9). Taking up the LCG's 15 recommendations, the Commission started preparatory work, including a public consultation (which closed on 11 June, having drawn 99 responses), aiming at a proposal for a Securities Law Directive, due by the first quarter of 2010.

Geneva Securities Convention: From 5 to 9 October 2009, a diplomatic conference took place in Geneva, at the invitation of the Government of Switzerland and under the auspices of the International Institute for the Unification of Private Law (UNIDROIT). On 9 October, the conference adopted the *UNIDROIT Convention on substantive rules for intermediated securities* (the Geneva Securities Convention). On the same day, the Final Act was signed by 37 States and the European Commission, and the Convention itself by Bangladesh. The Geneva Securities Convention overlaps with a substantive part of the projected Securities Law Directive; and they are compatible – opening the possibility for considerably increasing the safety of the international securities' legal framework.

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Monitoring Group

At the Monitoring Group (MOG) meeting at the end of October, the Commission reported on its 20 October Communication on derivatives, which proposes, *inter alia*, that legislation relating to central counterparties (CCPs) will be proposed by mid-2010 (see above). Although the 2006 Code of Conduct is seen to be working, the view has been taken that its effectiveness can be enhanced through targeted legislative measures. The Commission believes that the MOG should continue to meet – the next date planned is 16 February 2010.

ECOFIN agreed on 2 December that further steps need to be taken to address the issues related to risk and regulatory barriers that have been highlighted by the Code of Conduct. ECOFIN has invited the new Commission to continue work with the industry to resolve remaining challenges as regards price transparency and comparability, commercial and operational barriers to links and access and service unbundling in the post-trade sector.

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The ECB's TARGET2-Securities project

The ECB's TARGET2-Securities (T2S) project will be a single technical platform which will allow central securities depositories (CSDs) and national central banks to provide borderless and neutral securities settlement services in central bank money in Europe: borderless, because it will handle cross-border transactions and domestic ones in the same way and at the same price; neutral, because it will operate under the same conditions for all CSDs in Europe. The Eurosystem's T2S development work is being led by the "4CB" (composed of the Deutsche Bundesbank, Banque de France, Banca d'Italia and the Banco de España).

In its autumn update, the ECB reports the following major achievements:

- *Finalisation of the general functional specifications (GFS):* Behind T2S lies an extensive amount of technical documentation, developed by the 4CB in cooperation with the ECB's T2S team. At its meeting of 12 and 13 November 2009, the T2S Programme Board (the executive body established to manage the project on a daily basis and to prepare strategic and policy decisions) approved the final version of the T2S GFS and work already began on producing the first version of the next key technical document: *The user detailed functional specifications.*
- *T2S programme plan:* During the summer, the ECB and the 4CB consolidated their project plans to create a single programme plan covering all of the major activities to be completed. This consolidated programme plan confirms the T2S go-live date as June 2013.
- *Keeping market stakeholders up to date:* The T2S homepage has been re-designed and enriched, including a "spotlight" section with continuously updated points of interest to keep readers informed.
- *CSD support for T2S:* During September, confirmation was received from VPS (the Norwegian CSD) and Norges Bank that they intend to join T2S, not only for settlement in euro but also for settlement in Norwegian krone. VPS will sign the Memorandum of Understanding with the Eurosystem and join the other 27 CSDs that already did so in July 2009. Thus, a total of five currencies are expected to be settled in T2S – the euro, Danish krone, Lithuanian litas, Swedish krona and Norwegian krone.

The Advisory Group (AG), which is an advisory body that reports directly to the ECB's decision-making bodies on the T2S project, met on 9-10 December for its latest progress review and the Programme Board met on 17-18 December.

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The ECB's Contact Group on Euro Securities Infrastructures

The ECB's Contact Group on Euro Securities Infrastructures (COGESI) is one of a handful of market contact groups established by the ECB. COGESI addresses issues and developments relevant for the euro securities settlement industry and of common interest for the Eurosystem, market infrastructures and market participants – including developments in the fields of collateral and liquidity management, infrastructural developments, issues related to regulation, standards and legal framework, and post-trading activities in general. Of particular interest for the ECB is to receive feedback from market participants and infrastructures on the Eurosystem collateral framework and on initiatives related to euro securities clearing and settlement integration. COGESI's most recent bi-annual meeting was held on 17 November. Its agenda covered:

- *interoperability between CCPs:* a discussion on possible means to facilitate CCP interoperability, particularly concerning the proposal of EuroCCP to establish a CCP interoperability convention;
- *work involving the Committee on Payment and Settlement Systems (CPSS) and the International Organization of Securities Commissions (IOSCO) on standards:* an update on current work concerning the application of the 2004 *Recommendations for central counterparties* to clearing arrangements for OTC derivatives and developing some high-level considerations for trade repositories;
- *market initiatives in OTC bond markets:* a presentation on ICAP's *My treasury*, one of the existing market solutions for the confirmation matching of OTC trades on corporate bonds;
- *harmonisation in the use of credit claims:* an update on the progress made by the dedicated group, organised by ICMA, on the harmonisation in the use of credit claims as collateral;

- *harmonisation of collateral practices:* further collateral practices harmonisation would be useful for cross-border use of collateral in general, and Collateral Central Bank Management (CCBM2) in particular – whilst it is unlikely that this will be achieved before CCBM2 starts, there is debate over agreement on an action plan to foster this and how to organise the work; and
- *trade confirmation matching: a country case:* a presentation by the Association Française des Professionnels des Titres (AFTI) of work launched on French market trade confirmation matching.

A subsequent *ad hoc* COGESI meeting took place on 14 December. This involved a discussion with market participants on the issue of interoperability between international CSDs and CCPs, with respect to access to triparty collateral services. Different options were proposed, also taking into account further potential developments to achieve integration with the CCBM2 and T2S projects.

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The governance of financial market infrastructure

A new report from Ruben Lee of the Oxford Finance Group, entitled *The governance of financial market infrastructure*, will be published on 19 January. It covers the efficient, safe and sound operation of the financial system's infrastructure, including exchanges, central counterparties and central securities depositories. Copies of the report will be available free of charge from Oxford Finance Group on publication.

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Electronic trade confirmations

Last summer, the AMTE Council of ICMA conducted a survey on electronic trade confirmations (as reported in the July edition of the ICMA Newsletter). The results of the survey highlighted the issues raised in the OTC market when a trade is not confirmed and matched as soon as the trade is concluded, and the need for a reliable electronic trade confirmation system used across the market.

The AMTE Council has now set up an Electronic Trade Confirmation Working Group, chaired by Patrice Brault of Viel Tradition, with three objectives:

- setting market practice to improve the OTC confirmation process so as to reduce the operational risk which might arise between the trade date and the settlement date;
- obtaining, for the electronic matching of OTC trades, a legal and regulatory status as enforceable as for faxes; and
- promoting electronic matching as a solution to capture OTC trades in central counterparties, and thus reduce counterparty risk.

The Working Group aims to reach a consensus on a "code of conduct" limited to fixed income products, which will make recommendations on good market practice on issues such as the need for standardisation of the confirmation process, the interoperability between various platforms, the enforceability of electronic confirmations and approval by regulators.

The Working Group will report to the AMTE Council. Market participants interested in contributing to the Working Group should contact Nelly Cotelle, Secretary of the AMTE Council.

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European EDGAR

Further to the article in the *July edition of the ICMA Newsletter* CESR has now published a *Call for Evidence* (CfE) regarding next steps in developing a "European EDGAR" – ie a central repository of all financial and other information of issuers admitted to trading on a regulated market throughout Europe.

The Transparency Directive (TD) requires that regulated information disseminated by an issuer, whose securities are admitted to trading on a regulated market, be filed with the officially appointed mechanism for the central storage of regulated information (OAM). CESR has been asked by the Commission to report, by September 2010, on the possible future development of the network of OAMs (ie the development of the European "equivalent" of the Securities and Exchange Commission's (SEC's) EDGAR database).

In preparing the report, CESR's Transparency Group is exploring the issues surrounding the use, by issuers, of a standard reporting format for financial reports. A standard reporting format would enable automated processing of financial information, which would facilitate the searching for and comparative analysis of financial information. One possibility, in considering a standard reporting format, is XBRL (eXtensible Business Reporting Language), which has already been mandated in a number of countries (such as the phased roll-out in the US by the SEC).

The Transparency Group has decided to launch a Call for Evidence (CfE) in order to gather the necessary information from market participants and interested parties. This is partly, it seems, because the responses to the SEC's public consultation in the US expressed doubts on: (i) the usefulness of XBRL data for investors; (ii) the accuracy and reliability of XBRL data; and (iii) the ability of smaller issuers to meet the disclosure obligations. Additionally, the TD, the TD Level 2 Implementing Directive and the relevant Commission Recommendation do not require the use of a single file format for the dissemination or filing of regulated information.

The CfE asked 9 questions focusing on whether respondents feel there should be a standard reporting format, whether that format should be XBRL, what costs and benefits would ensue, etc. The deadline for responses was 30 November. It is worth noting that the CfE was limited solely to assessing whether financial information should be filed using a standard reporting format such as XBRL, which was slightly disappointing. We had hoped that it would additionally seek views on what form the network of OAMs should take and how the network should be developed.

ICMA submitted a short response to the CfE stating that we consider there should be such a standard reporting format and that XBRL could potentially be an appropriate format to use. However, we also note that use of a standard reporting format is just one of the many issues still to be considered in mapping out the future development of the European network of officially appointed mechanisms for the central storage of regulated information.

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New Safekeeping Structure for notes in registered form

Following the July 2006 introduction of the New Global Note (NGN) relevant to securities in bearer form (see ICMA's NGN webpage for further information), a New Safekeeping Structure (NSS) relevant to securities in registered form will be introduced on 30 June 2010 as an available alternative to the existing "classic" safekeeping structure. The NSS will be mandatory for securities issued from 1 October 2010 that seek ECB eligibility. Dedicated NSS webpages have been created by each of Euroclear and Clearstream and ICMA will shortly be publishing a note concerning consequential changes to legal documentation.

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ICMA's Euro Debt Market Council (the AMTE Council)

René Karsenti

The Euro Debt Market Association (AMTE) was created in July 2002 to address the specific concerns of different constituencies in the euro debt markets. Those eligible for membership include institutions active in euro debt markets: issuers, financial intermediaries, investors as well as financial services providers. There are currently approximately 50 members and observers.

Since March 2009, AMTE has been functioning as a Council within ICMA and been renamed "AMTE Council". This is a logical development given ICMA's and the AMTE Council's common interests and objectives in the European capital markets, and allows the AMTE Council to benefit from the work done elsewhere in ICMA and increase scope whilst eliminating duplication.

Like AMTE in the past, the AMTE Council pursues the primary objective to facilitate the development of the depth, liquidity, transparency and innovative nature of the euro debt markets. The Council provides an international forum in which professional market participants, including issuers, intermediaries and investors, come together to make practical recommendations for best practice in euro fixed income and derivatives markets, covering both primary and secondary market operations. The Council aims to be a centre of expertise and an honest broker for all practitioners and constituencies in enhancing the functioning of euro debt markets. The Council addresses specific market issues through individually constituted working groups of its members and facilitates communication between market participants on the buy and sell side of the industry including European government debt management offices (DMOs) and the regulatory authorities at national and European level.

Since its creation, AMTE has supported working groups dedicated to the harmonisation/standardisation of euro debt markets; promoted innovative euro debt products; improved the unification of euro debt markets; supported SME financing using securitisation techniques; discussed bond market transparency in Europe; and is currently putting together a comparative survey of European government bond issuance for retail customers.

These working groups have made various recommendations to increase harmonisation of the European bond market, for example, through the development of pan-European electronic platforms for fixed income products available to retail investors and the introduction of incentive schemes designed to boost retail distribution of public debt via banking networks.

Since its first meeting in March 2009 in Paris under ICMA's auspices, the AMTE Council's composition has been broadened with the participation of additional DMOs and new ICMA members, and the range of the issues which it addresses is being reviewed and prioritised. In particular, to ensure efficiency, the Council selects its work themes with the aim of contributing without duplication to the work carried out by other entities whether within or outside ICMA. The Council continues to work, when needed, with other associations or institutions, for example the Thomsen Group and other associations, such as ACI, and the European Primary Dealers Association (EPDA).

Some new important projects are coming to fruition, such as the creation of a Government, Agency and Supranational Bond Working Group. Its first meeting took place in November. Indeed as a council of market practitioners, the Council has also much to contribute to the effective and efficient functioning of government debt markets in Europe from a practical standpoint. Its efforts in the area of government and government-guaranteed debt have assumed an even greater importance with the substantial increase in government debt and government-guaranteed issuance in Europe. It is well placed to work on the development and adoption of best market practice in response to the changing demands of the environment.

Another Working Group, dedicated to the trading confirmation matching issues as stated in the survey made during August, has also been put in place. This Working Group will draft a code of conduct and will work on reaching a consensus among all the market participants.

The AMTE Council's Secretariat has also been appointed as the Secretariat of the European Financial Market Federation (EFMF). As such, it prepares the meetings and their minutes and ensures the follow-up of the actions.

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French Market Committee

One of the important functions of the AMTE Council is to provide support for the French Primary Dealers – Spécialistes en Valeurs du Trésor (SVTs) – Market Committee, which is responsible for the allocation of financial instruments issued by the French State to market participants.

The purpose of this Committee is to draw up rules reflecting the SVTs' commitment to maintain executable prices, as stated in the SVT Charter signed with the Agence France Trésor (AFT), in a competitive environment which is now open to all trading platforms fulfilling objective eligibility criteria. The Committee, composed of the SVTs, monitors SVTs' compliance with their market duties. The AMTE Council's Secretariat provides necessary operational support to the Committee.

Two platforms are now trading and monitoring the SVTs quotation obligations, the AMTE Council's Secretariat is the interface/link between the platforms, the AFT and the SVTs. In addition to the monthly allocations, the AMTE Council's Secretariat sends various notifications to the SVTs, forwards the monthly and daily reports to the AFT, and the warning notices to any defaulting SVTs.

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Paris seminar for debt and cash professionals

Together with eight trade associations from the French market, ICMA organised a half-day conference in Paris on 10 December which attracted more than 300 market professionals from the debt and forex markets.

Apart from ICMA, the other associations involved in organising the event were: the Association du Forex et des Trésoriers de Banque (ACI France AFTB), the Association Française des Trésoriers d'Entreprise (AFTE), the Association Française de la Gestion Financière (AFG), the Comité de Normalisation Obligataire (CNO), the Association Française des Investisseurs Institutionnels (AF2I), Paris Europlace, the Association Française des Professionnels des Titres (AFTI) and the Association Française des Marchés Financiers pour les professionnels de la bourse et de la finance.

The seminar was introduced by the French Finance Minister, Madame Christine Lagarde. A contribution by economists followed on the recent financial crisis. Professional market participants, representing issuers, banks, market infrastructures and regulators participated in panel discussions on the role of monetary indices, the evolution of clearing and liquidity in the secondary bond market. The concluding speech was by Jacques de Larosière, author of the eponymous report.

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International Council of Securities Associations

ICMA has for many years been a member of the International Council of Securities Associations (ICSA), which is the global forum for trade associations and self-regulatory organisations whose members are active in the capital market, particularly those that are active in the securities market. René Karsenti, President of ICMA, is currently the Chairman of ICSA.

Founded in 1988, in the wake of the global stock market crisis of the previous year, ICSA's primary objective is to encourage the sound growth of the international capital market by promoting:

- international convergence, standardisation and/or mutual recognition of regulations affecting firms active in national and/or international capital markets; and
- mutual understanding and the exchange of information among ICSA members.

ICSA is a unique organisation in that it brings together both trade associations and self-regulatory organisations that represent and/or regulate firms active in the securities market. ICSA members are located throughout the world, including in most developed economies as well as in a number of advanced emerging market economies. In almost all cases, ICSA members represent and/or regulate all securities firms located within their jurisdictions, including firms that are active internationally as well as firms that are active only within their individual domestic markets. ICSA members express, therefore, the views of many different types of firms, ranging from those with a purely domestic focus to those with a completely global focus, from many different jurisdictions.

In order to realise its objective of promoting international convergence or standardisation of regulations, over the past several years ICSA has developed close consultative relationships with a number of international standard setters. In particular, ICSA is involved in a consultative dialogue with the International Organization of Securities Commissions (IOSCO), which is the global standard setter for the securities industry. The dialogue with IOSCO includes meetings with the members of IOSCO's Technical Committee, which is composed of securities market regulators from countries with the largest and most developed financial markets, as well as meetings with IOSCO's individual Standing Committees, which carry out most of IOSCO's work. ICSA also participates in a consultative dialogue with the Financial Action Task Force (FATF), which is responsible for setting international anti-money laundering standards, and is working to develop consultative relationships with the Basel Committee and the Financial Stability Board. Through these relationships ICSA seeks to ensure that the views of industry participants are addressed on a variety of issues.

In addition, ICSA has established a number of standing committees and working groups which focus on specific regulatory or market-related issues. These committees and working groups provide a forum for ICSA members to exchange views on important issues that affect their member firms and serve as a vehicle for ICSA members to formulate and advance common views. They also give ICSA members the ability to learn at first hand about developments in other jurisdictions in a very cost-effective manner.

Although most of ICSA's work is done through the internet, ICSA members also meet twice a year. The membership meetings, which are usually attended by the chief executive and other senior executives of each ICSA member, represent a unique opportunity for representatives of the world's leading trade associations and self-regulatory organisations for the securities industry to meet with their counterparts from other jurisdictions. These gatherings provide ICSA members with the opportunity to broaden their network of contacts in the international financial community and to exchange views with ICSA members from other jurisdictions on major issues affecting their member firms. The relationships formed at these meetings, in turn, help to establish the basis for future alliances and joint projects.

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ICMA conferences

2010 Economic Summit and New Year's Event Brussels, 21 January 2010

This conference, organised by ACI Belgium, ICMA and the International Equity Dealers Association (IEDA), will take place at the Brussels Stock Exchange. Four prominent Chief Economists from major financial institutions will be guest speakers: Veronique Riches-Flores, Société Générale, Paris; Guillaume Menuet, Bank of America Merrill Lynch, London; Patrick Arthus, Natixis, Paris; and Sean Sheplay, Credit Suisse, London. They will give their brief outlook on exchange rates and the bond and equity markets for 2010, followed by a panel discussion moderated by Peter Vandenhoute, Chief Economist at ING.

Participation in the event is free for ICMA members.

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A lunchtime round table discussion with Sir David Walker - London, 2 February 2010

The capital markets and the banks that operate within them have come under immense scrutiny. Many things can and should be changed as we contemplate the future shape of the industry. Increased government oversight, tighter governance and new rules for compensation in an industry saved from itself by state guarantees and financial injections, point to a different approach in the new decade. The greatest challenge, moreover, may be to regain public trust in the banking industry.

Sir David Walker (Senior Advisor to Morgan Stanley) has written a set of recommendations on corporate governance standards as they apply to the UK banking industry that was submitted to the UK Government in November 2009. He has agreed to share his thoughts and impressions with ICMA members and lead a debate on the outlook for the markets and how we learn intelligently from the experience of the past two years.

ICMA members are invited to join Sir David Walker and other senior representatives from financial institutions and regulators at a lunchtime roundtable discussion in the City.

Contact: events@icmagroup.org

ICMA GMRA Workshop Zurich, 23-24 February 2010

The collapse of Lehman Brothers confirmed the critical importance of robust legal agreements in securing rights to collateral and in netting exposures to defaulting counterparties. The need for adequate documentation is now being reinforced by the tightening of market regulations and the structural post-crisis shift from unsecured financing into repo and other secured instruments.

The *de facto* standard for documenting international repo transactions and the basis for many standard domestic agreements is the Global Master Repurchase Agreement (GMRA). This timely two-day workshop, delivered by ICMA, reviews the general legal issues underlying repo documentation, examines the structure and operation of the GMRA, and considers the practicalities of implementing the standard agreement, having first provided a firm foundation by explaining the special operational and institutional nature of the instrument being documented, its typical usage in the market and the risks that are created.

Contact: events@icmagroup.org

German Law Society Conference London, 15-16 March 2010

ICMA, together with Commerzbank, will be supporting a conference hosted by the German Banking and Capital Markets Group of the German Law Society (ARGE) in cooperation with the UK Law Society in London.

The conference, which will primarily address German lawyers, will look into the differences between the English and German systems in areas such as banking regulation and other banking responsibilities, liability law, misconduct and issuer liability, amongst others.

Contact: events@icmagroup.org

ICMA conferences - continued

European Repo Council Annual General Meeting Brussels, 18 March 2010

The next ERC Annual General Meeting will be held in Brussels and hosted by Euroclear in the context of its Collateral Solutions Conference, which will take place on 18 and 19 March.

Elections to the ERC Committee will be held at this event.

Contact: events@icmagroup.org

ICMA AGM and Conference Brussels, 26-28 May 2010

Registration will open in early February for the 2010 ICMA AGM and Conference in Brussels. A full range of sponsorship opportunities is available; please contact the events team at ICMA to discuss the possibilities.

Contact: events@icmagroup.org

Summary of forthcoming educational courses

Financial Markets Foundation Course (FMFC)
22-24 February 2010
London

Financial Markets Foundation Course (FMFC)
1-3 March 2010
Luxembourg

Operations Certificate Programme (OCP)
21-27 March 2010
Brussels

International Fixed Income and Derivatives (IFID) Certificate Programme
25 April-1 May 2010
Sitges, Barcelona

Primary Market Certificate (PMC) London
17-21 May 2010
London

ICMA welcomes feedback and comments on the issues raised in the Regulatory Policy Newsletter.

Please e-mail:
regulatorypolicynews@icmagroup.org
or alternatively the ICMA contact whose e-mail address is given at the end of the relevant article.

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