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ICMA

International Capital Market Association

In this issue:

Taking ICMA forward – priorities and initiatives

Foreword by Martin Scheck, Chief Executive, ICMA

Those of you who were with us at the ICMA AGM in Montreux in June this year will have heard our Chairman, Hans-Joerg Rudloff, announcing my appointment as Chief Executive of ICMA. I took on the role at the beginning of August, and wanted to take this opportunity to provide some initial observations, and to share my thoughts on taking ICMA forward.

In the July edition of the Regulatory Policy Newsletter, René Karsenti commented on the history of ICMA and its mission to promote best market practice in the international capital market. We are now in a situation where we have sold Xtrakter, which was the last "commercial" activity we owned, at the end of April, and as a result we are a pure trade association focused solely on ensuring we represent and serve – all – our members.

The diversity of our members, by type and geography is one of the key, and distinctive, strengths of the Association. We bring together the views of both buy and sell side of the international capital market and this provides the ability to consider the industry as a whole when setting standards of best market practice and when discussing views with regulators, central banks and policy makers.

In order to represent and serve our members optimally I believe we need to focus on three basic areas – efficiency, relevance and communication.

Martin Scheck

These last two turbulent years have been exceptionally challenging for our members, most of whom have as a result been heavily focused on efficiency and value, taking hard decisions as appropriate. One of my first priorities on joining has been to look at all of ICMA's processes and finances, to ensure we are efficient in all we do and are spending your membership subscriptions wisely. This review is largely complete and we will narrow the gap between income and expenditure dramatically in 2010 by reducing costs in all

Taking ICMA forward – priorities and initiatives - continued

areas – but importantly we do not expect to scale back our core services or activities at all.

As part of our focus on efficiency we remain committed to cooperating collaboratively with all other trade associations, with ICMA taking the lead on matters where we feel it makes sense for us to do so, and working with other associations where they are best placed to lead on a particular topic – we do not want to use the Association's scarce resources in "reinventing the wheel" or duplicating work which is already in progress.

Relevance is a major topic – it is critical that our members regard ICMA's work and services as being of real practical value to them in their day to day business. This may be in terms of reflecting their views in an attempt to influence forthcoming regulation, or in implementing standards of best market practice, or promoting standardised documentation, or providing access to the ICMA rules and recommendations, IPMA handbook, GMRA opinions, members register, legal helpdesk, conferences, education etc – or indeed any combination of the many services we provide.

I have spent a lot of my time since joining visiting members and listening to what they want from ICMA – and with the diverse membership there is wide variation in what package of services different members find most useful. Two things have become clear: firstly, not all members are aware of the breadth of our offering; and secondly, there are many participants in the capital market who are not members and are not aware of ICMA – we are reaching out to these institutions to see if they would like to consider membership. This brings me on to the third point – communication.

The issues currently faced by the financial industry are as challenging as anyone can remember. It is clear that the pendulum has swung decisively away from self-regulation to a regime imposed by national and international regulators: in addition, the recent turbulence has increased the pace of change in market practices which need to be assessed in the light of best practice. ICMA supports well thought out, measured regulation which improves the efficiency of the market, but there is much to do given the sheer volume of planned regulation in the pipeline, and the challenges in terms of market practice. All of this is in an environment of heightened political pressure and public opinion.

Hence it is critical that we have an increasingly interactive dialogue with all our members – we need to hear their concerns, understand their points of view, and be guided by them in our work in order to represent them effectively. We also need to make certain they are aware of all the services we offer. At the same time ICMA must redouble its efforts to keep the membership fully informed on changes in the guidelines on best practice; changes in standard documentation; changes to regulation – in short they need to be constantly aware of everything we are doing which is of relevance for them.

My first impressions in my new role have been very encouraging: whilst the need for an association such as ICMA has never been greater, the goodwill and support we have from our members is immense, the suite of services we provide is comprehensive and relevant, and the ICMA staff members highly committed. With a continued focus on efficiency, relevance and a heightened level of interaction with our members, ICMA is strongly placed to fulfil its core mission of developing and maintaining efficient, well functioning capital markets to the benefit of all market participants.

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

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How do international capital markets work best?

The international financial crisis following the failure of Lehman Brothers has led to questions about the function and purpose of the international capital markets. Why are they necessary? How do they work best? In what circumstances should they be regulated?

Why are capital markets necessary?

Capital markets provide an essential function by enabling capital to be allocated efficiently so that productive users obtain funds through the primary market at the lowest rate and investors earn the highest return. The secondary market provides liquidity (ie an exit), for which investors are prepared to pay by accepting lower rates of return in the primary market. And the secondary market also provides a vital signalling function for primary market pricing by bringing buyers and sellers together at an agreed price. There are different methods of price formation: eg on-exchange or over-the-counter (OTC). In some markets, notably those for the equity of large companies, the orders of buyers and sellers can be matched – investors provide each other with liquidity. In others (eg the fixed income OTC markets), market makers use their own capital to provide liquidity to sellers when there are no immediate buyers. But these methods of price formation are all designed to bring together providers and users, buyers and sellers, at an agreed price.

How do they work best?

Capital markets work best when there is:

- free and open competition among market participants on a level playing field;
- sufficient transparency to enable buyers to assess the financial instruments offered by sellers, so that the rewards match the risks;
- a resilient infrastructure for clearing and settling the financial transactions that result; within
- a mutually accepted legal framework.

Market participants themselves help capital markets to work well by using their practical experience to set standards of good market practice. In the case of ICMA's standards of good market practice in the international capital markets, self-regulation of this kind is voluntary. But if markets meet standards of good market practice voluntarily, there is less need for the authorities to impose new legislation in the form of mandatory regulations.

In the European Union, new regulations in the capital markets have still been necessary to remove obstacles to the creation of a single market in financial services across borders: eg in the primary market through the Prospectus Directive, Transparency Directive and Market Abuse Directive; and in the secondary market through the Markets in Financial Instruments Directive (MiFID). These regulations also impose requirements on the markets which set the boundaries for market practice in the future. In response to the international financial crisis, the regulatory boundaries are expected to change significantly, as set out in more detail in this Newsletter.

The crisis and the immediate response

During the crisis following the failure of Lehman Brothers, trust between market participants broke down and large parts of the market froze. Market participants were no longer willing to take normal credit risks on each other, except for very short periods. The lack of market liquidity contributed to the lack of confidence in the solvency of several market participants.

In these circumstances, the authorities had no option but to intervene on an unprecedented scale: by providing liquidity themselves (eg by purchasing financial assets and extending guarantees on interbank lending); and by injecting new capital (eg by taking shareholdings), where financial institutions needed more capital to survive and were not able to raise capital themselves. The exceptional – and internationally coordinated – action taken by the authorities helped safeguard the stability of the financial system. This was accompanied by substantial reductions in interest rates, followed by quantitative monetary easing, and by a substantial rise in fiscal deficits, in an attempt to reverse the economic downturn.

Over the past six months, there have been some preliminary signs that markets have stabilised, and an unprecedented volume of new debt has been issued in the international capital markets. In due course, the exceptional intervention by the authorities will need to be unwound. Deciding how and when to execute an exit strategy is clearly a very difficult problem for the authorities: exiting too early will risk aborting the economic recovery; exiting too late will risk reigniting inflation. As the exceptional measures are unwound, a particular issue for the authorities is how to restore a level playing field for competition. This means, for example, not giving way to protectionist pressure by preferring domestic over cross-border lending.

The future

Apart from exiting from the current crisis, the authorities are also concerned how best to prevent the next one. It is clear from the series of G20 Summits – most recently the G20 Summit in Pittsburgh – that more regulation will be introduced in an attempt to ensure the stability of the financial system in the longer term. In the European Union, a new European Systemic Risk Board will be created to oversee financial stability; and the three Level 3 Committees of national regulators, supervising the securities markets, banks, and insurance companies and pension funds, will be transformed into authorities, with limited powers over national regulators to create a Single European Rule Book. When the recovery has taken hold, banks will face higher capital requirements, both as to quality and amount, particularly on their trading activities; they will be required to hold more capital as a buffer in good times that can be drawn down in bad; and they will be required to hold more liquidity. The perimeter of financial regulation will also be broadened to include all significant market participants.

These new regulations will affect the climate in which the international capital markets in Europe operate in future. Other European measures will have a direct effect on the regulation of the international capital markets themselves. For example:

- In the primary markets, a review of the Prospectus Directive has just been announced; an early decision is expected whether to raise the 5% retention requirement on securitisations; and there is a debate about whether some financial products should be given health warnings (like medicines).
- In the secondary markets, a review of MiFID is due to be launched; there is pressure for more transparency; and questions have been raised about the liquidity and future role of OTC trading.
- Under the Alternative Investment Fund Managers Directive, which is currently being negotiated, hedge funds and other non-regulated investors in financial markets are being brought within the perimeter of regulation.
- In the financial infrastructure, a new clearing and settlement directive is expected next year; greater use will be made of central counterparties for standardised financial contracts; and there are moves increasingly to harmonise standard market documentation.

It is important that the new regulations proposed are designed to work with the grain of the international capital markets. In helping to make markets function well, ICMA's role is to represent its members' views on new regulations affecting the international capital markets, and to continue to set standards of good market practice, within the regulatory framework, across the international capital markets as a whole.

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Practical initiatives by ICMA

This box summarises a selection of practical initiatives by ICMA with, and on behalf of, members over the past three months. We:

- monitored 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 responded to consultations by regulators, working in cooperation with other trade associations wherever practicable;
- met the European Commission at a senior level, with chairs and representatives of our Regulatory Policy and Market Practices Committees, to discuss regulatory and market developments affecting both the buy side and the sell side;
- discussed market practice on order book allocations when new issues are substantially oversubscribed;
- began considering the issue of market guidance on exemptions from application of the Prospectus Directive regime in the case of low denomination (under €50,000) bonds, for which there has been a resurgence in demand;
- brought together buy-side and sell-side representatives to see whether they can agree on a market-led initiative to make the corporate bond market work more efficiently;
- met the UK Financial Services Authority to discuss the principles set out the in our report on *Managing client expectations;*
- wrote to the Commission enclosing our recent work on money market funds;
- held the inaugural meeting of our Covered Bond Investor Council;
- conducted a survey on the need for electronic trade confirmation in the over-the-counter (OTC) market;
- set up a Working Group reporting to the European Repo Committee to review the Global Master Repurchase Agreement (GMRA), taking account of the lessons from the international financial crisis; and
- participated in the European Financial Markets Lawyers Group symposium, chaired by the European Central Bank, on standard market documentation.

Regulatory implications of the G20 Summit in Pittsburgh

Following from the G20 Summits in Washington in November 2008 and in London in April, the G20 leaders held their latest Summit in Pittsburgh on 24-25 September. A key preparatory step for this Summit was a London meeting of Finance Ministers and Central Bank Governors, held on 4-5 September. The outcome of this meeting was a formal communiqué together with a declaration on further steps to strengthen the financial system and a progress report on the actions of the London and Washington G20 Summits. Whilst reporting substantial progress in delivering previously announced plans, the declaration states that "more needs to be done to maintain momentum, make the system more resilient and ensure a level playing field", including the following actions:

- clear and identifiable progress in 2009 on delivering a framework on corporate governance and compensation practices;
- stronger regulation and oversight for systemically important firms;
- rapid progress in developing stronger prudential regulation;
- tackling non-cooperative jurisdictions;
- consistent and coordinated implementation of international standards; and
- convergence towards a single set of high-quality, global, independent accounting standards.

The communiqué from the G20 leaders' Pittsburgh meeting included a broad range of commitments further to develop economic recovery from the crisis. Focusing on its regulatory aspects, the communiqué includes the G20 leaders' agreement to make sure the regulatory system for banks and other financial firms reins in the excesses that led to the crisis – they will not allow a return to banking as usual. They committed to act together to: raise capital standards; implement strong international compensation standards aimed at ending practices that lead to excessive risk-taking; improve the over-the-counter derivatives market; and create more powerful tools to hold large global firms to account for the risks they take. Standards for large global financial firms should be commensurate with the cost of their failure. For all these reforms, they have set for themselves strict and precise timetables.

The G20 leaders also agreed to reform the global architecture to meet the needs of the 21st century. They designated the G20 to be the premier forum for international economic cooperation. They have established the Financial Stability Board (FSB) to include major emerging economies and welcome its efforts to coordinate and monitor progress in strengthening financial regulation. On 25 September, the FSB published three reports submitted to the Summit: *Policy measures for improving financial regulation; Progress in implementing the London Summit recommendations for strengthening financial stability;* and *Implementation standards for the FSB principles for sound compensation practices.*

Building on their *Declaration on further steps to strengthen the financial system*, Finance Ministers and Central Bank Governors are called on to reach agreement on an international framework of reform in the following critical areas:

- *Building high-quality capital* and *mitigating pro-cyclicality:* Internationally agreed rules to improve both the quantity and quality of bank capital and to discourage excessive leverage are to be developed by end-2010. These rules will be phased in as financial conditions improve and economic recovery is assured, with the aim of implementation by end-2012. All major G20 financial centres commit to have adopted the Basel 2 Capital Framework by 2011.
- *Reforming compensation practices to support financial stability:* FSB standards aimed at aligning compensation with long-term value creation, not excessive risk-taking, are fully endorsed. Firms are called on to implement these sound compensation practices immediately, whilst the FSB is to monitor implementation and propose additional measures as required by March 2010. Supervisors should review firms' compensation policies and structures with institutional and systemic risk in mind and if necessary apply corrective measures, such as higher capital requirements.
- *Improving over-the-counter (OTC) derivatives markets:* All standardised OTC derivative contracts should be traded on exchanges or electronic trading platforms, where appropriate, and cleared through central counterparties by end-2012 at the latest. OTC derivative contracts should be reported to trade repositories. Non-centrally cleared contracts should be subject to higher capital requirements. The FSB will assess implementation and whether these changes are sufficient to improve transparency in the derivatives markets, mitigate systemic risk, and protect against market abuse.

Regulatory implications of the G20 Summit in Pittsburgh - continued

- *Addressing cross-border resolution plans and systemically important financial institutions by end-2010:* Systemically important financial firms should develop internationally consistent firm-specific contingency and resolution plans. G20 authorities should establish crisis management groups for the major cross-border firms and a legal framework for crisis intervention as well as improve information sharing in times of stress. Prudential standards for systemically important institutions should be commensurate with the costs of their failure, so the FSB should propose, by the end of October 2010, possible measures including more intensive supervision and specific additional capital, liquidity and other prudential requirements. On a related note, the *Report and recommendations of the Cross-border Bank Resolution Group* was issued by the Bank for International Settlements (BIS) on 17 September, and on 21 September the IMF issued a paper on the need for special resolution regimes for EU financial institutions.

The international accounting bodies are called on to redouble their efforts to achieve a single set of high quality, global accounting standards within the context of their independent standard-setting process, and complete their convergence project by June 2011.

The commitment to fight non-cooperative jurisdictions is seen as having produced impressive results. The G20 leaders are committed to maintain the momentum in dealing with tax havens, money laundering, proceeds of corruption, terrorist financing, and prudential standards.

The G20 leaders also tasked the IMF to prepare a report for their next meeting on the range of options countries have adopted or are considering as to how the financial sector could make a fair and substantial contribution toward paying for any burdens associated with government interventions to repair the banking system.

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Development of an EU-wide system of financial supervision

In ICMA's July Newsletter, we reviewed the European Commission's 27 May Communication on *Financial supervision in Europe*. This was opened for public consultation until 15 July, and ICMA submitted its views, in one of the many responses. The June European Council meeting endorsed the new supervisory framework and called for the rapid adoption of the necessary legislative texts. Consequently, the Commission has announced legislative proposals, adopted on 23 September.

These proposals establish the first EU-wide system of supervision. Through the creation of a European Systemic Risk Board (ESRB) and through a European System of Financial Supervisors (ESFS), the Commission is taking steps to address the weaknesses and shortcomings of the current supervisory structure in Europe both at macro- and micro-prudential supervision levels.

The mission of the ESRB is to monitor and assess risks to the stability of the financial system as a whole – so called "macro-prudential supervision". The ESRB will have the capacity to address recommendations and warnings to EU Member States (including their national supervisors) and to the European Supervisory Authorities (ESAs), which will have to comply or else explain why they do not intend to do so. The ESRB will be composed primarily of the heads of the ECB, national central banks, ESAs and national supervisors. Its Chair will be elected by its General Board, which will act as its main decision making body. Given that the composition of the ESRB will be very high level, it will have both the support of a secretariat and of an Advisory Technical Committee (ATC). The ATC will bring applicable technical expertise on issues where it is needed.

The existence of an internal market in the EU and the increasing political and financial integration of the EU require an EU-level institution to supervise and monitor risks to the financial system. The ESRB will, of course, liaise closely with the new Financial Stability Board and with the other relevant international bodies, contributing to a stronger global framework for risk monitoring and more stable financial markets. This global network is intended to monitor systemic risks more effectively and detect potential crises earlier to be able to defuse them or, at the very least, mitigate their impact.

The ESFS, responsible for "micro-prudential supervision", will bring together national supervisors and the three new ESAs for the banking, securities and insurance and occupational pensions sectors. These new ESAs will be created by the transformation of the existing Level 3 Committees for the securities (CESR), banking (CEBS) and insurance and occupational pensions (CEIOPS) sectors into a European Securities and Markets Authority (ESMA), a European Banking Authority (EBA) and a European Insurance and Occupational Pensions Authority (EIOPA).

The proposal envisages that the new ESAs will take over all the functions of the existing Level 3 Committees, and in addition have certain extra competences, including the following:

- developing proposals for technical standards, respecting better regulation principles;
- resolving cases of disagreement between national supervisors, where legislation requires them to cooperate or to agree;
- contributing to ensuring consistent application of technical Community rules (including through peer reviews);
- the ESMA will exercise direct supervisory powers for Credit Rating Agencies; and
- a coordination role in emergency situations.

Domestic financial institutions in Europe will continue to be supervised by national supervisors, whilst colleges of supervisors will remain at the heart of supervision of cross-border financial groups in Europe and are being introduced for all such groups. The ESAs will complement these arrangements by ensuring that supervisory standards in the EU are of the highest quality for all institutions. They will further facilitate colleges by playing a role in distribution of information and can participate in colleges themselves. They will also provide a mechanism for ensuring that supervisory colleges are consistent for each cross-border group.

Consistent with the agreement reached by the European Council, the Regulations establishing the new ESAs clearly prohibit them from taking any decisions which impinge on the fiscal responsibilities of Member States. If any Member State considers that its fiscal responsibilities have been impinged upon, there is proposed to be a clear and robust procedure for deciding whether this is genuinely the case, with the Council taking a decision.

Together with the announcement of these proposals, the Commission has released:

- a legislative proposal for a Regulation on Community macro-prudential oversight of the financial system and establishing the ESRB;
- a legislative proposal for a decision entrusting the European Central Bank with specific tasks concerning the functioning of the ESRB;
- legislative proposals for Regulations establishing each of the ESMA, the EBA and the EIOPA;
- an impact assessment, with a separate executive summary; and
- two frequently asked questions papers – one covering the ESFS and the other the ESRB.

All these papers are posted on the Financial Services Committee architecture webpage. The main differences between the three proposed Regulations for establishing the ESAs concern the objectives of the ESAs, the scope of action, and the definitions, which are adapted to the specifics of the relevant sector and existing Community legislation. The Commission's five legislative proposals now pass to the Council and the Parliament for the co-decision adoption process. Further broad support was flagged at the informal ECOFIN meeting of 1 October, with the Council indicating its intent to reach agreements on both the ESRB and the ESFS by the 2 December ECOFIN Council meeting. Parliamentary discussions are also underway, but conclusions are not anticipated until 2010.

Additionally, a working paper accompanies the legislative proposals for creating the ESAs and outlines the possible changes that may be made in the relevant sectoral legislation. Areas in which amendments may be proposed fall broadly into the following categories:

- definition of the appropriate scope of technical standards as an additional tool for supervisory convergence and with a view towards developing a Single Rule Book;
- changes to the Credit Rating Agencies Regulation to allow the ESMA to exercise direct supervision of such entities;
- appropriate integration into the text of the possibility for the ESAs to settle disagreements in a balanced way in those areas where common decision making processes already exist in sectoral legislation; and

Development of an EU-wide system of financial supervision - continued

- general amendments which are common to most sectoral legislation and necessary for the directives to operate in the context of new ESAs: eg renaming the Level 3 Committees as the new ESAs and ensuring appropriate gateways for the exchange of information.

Based on this, the Commission will propose a further package of detailed legislative changes for the Council and Parliament by the end of October.

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Capital Requirements Directives

On 13 July, the European Commission put forward a further revision of EU rules on capital requirements for banks that is designed to tighten up the way in which banks assess the risks connected with their trading book; impose higher capital requirements for resecuritisations; increase market confidence through stronger disclosure requirements for securitisation exposures; and require banks to have sound remuneration practices that do not encourage or reward excessive risk-taking. Under the new rules, banks will be restricted in their investments in highly complex resecuritisations if they cannot demonstrate that they have fully understood the risks involved, while national supervisory authorities will review banks' remuneration policies and have the power to impose sanctions if the policies do not meet the new requirements. The proposal, which amends the existing Capital Requirements Directives (CRD), reflects consultation with Member States, banking supervisors and industry and has now passed to the European Parliament and the Council of Ministers for consideration.

Additionally, the Commission services invited views regarding further possible changes to the CRD. The proposed amendments relate to: through-the-cycle expected loss provisioning; specific incremental capital requirements for residential mortgages denominated in a foreign currency; and the removal of national options and discretions. Comments were required by 4 September.

At the global level, the BIS announced on 7 September that the Group of Central Bank Governors and Heads of Supervision had agreed a comprehensive set of measures to strengthen the regulation, supervision and risk management of the banking sector. These include measures to:

- raise the quality, consistency and transparency of the Tier 1 capital base;
- introduce a leverage ratio as a supplementary measure;
- introduce a minimum global standard for funding liquidity;
- introduce a framework for countercyclical capital buffers above the minimum required; and
- issue recommendations to reduce the systemic risk associated with the resolution of cross-border banks.

The Basel Committee will issue concrete proposals on these measures by the end of this year. It will carry out an impact assessment at the beginning of next year, with calibration of the new requirements to be completed by end-2010. Appropriate implementation standards will be developed to ensure a phase-in of these new measures that does not impede the recovery of the real economy.

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Capital – are we expecting too much?

Personal view

Clifford Smout

For many years, major international banks have been subject to international capital standards, drawn up after painstaking negotiations in the Basel Committee. Such has been the focus on capital that some claim this work has been at the expense of other important areas, such as liquidity.

Despite this, the rules on capital are now to be radically overhauled. Consider what is in prospect.

- Much tougher rules on market risk – arguably many of the problems stemmed from allowing relatively illiquid and credit-intensive positions to be included in the trading rather than banking book.
- More stringent rules on the quality of capital – to reflect the fact that not all capital instruments allow a bank to continue trading, rather than absorb loss in a liquidation.
- Setting capital requirements that are based on the cycle, to reinforce the role of capital as a shock absorber. There is also a heightened interest in valuation issues, for instance in illiquid markets.
- Supplementing these arrangements with a leverage ratio, including off balance-sheet items, which is not risk-based.
- Considering whether large or complex firms, whose failure would have the greatest impact, should have higher capital requirements than firms that are equally likely to fail, but with less of an effect on the system as a whole.
- Reconsidering the level of capital more generally – was the Basel minimum of 8% the right number when it was set in the mid-1980s? Given the increasing volatility of markets, and the use of market values in accounts, does this remain the case?

All this is against a background where, 11 years after negotiations began, Basel 2 is still not fully implemented in the United States.

So what are regulators now expecting from a capital rule?

- That it should be more stringent, in terms both of amount and quality (even if some changes are delayed until macroeconomic conditions improve).
- That it should aim to underpin capital levels not only at each bank, but across the system as a whole, for instance by taking the economic cycle into account. But the technical challenges in doing so, in a way that properly takes account of the interaction between national systems and the global economy, are huge.
- That it should be simple – for instance with less reliance on value-at-risk modelling, and more on leverage ratios. But Basel 1 was simple – and as such was seen as penalising some transactions unfairly while levying relatively little capital on certain risky positions. And any attempt to produce "simple" rules for a partially-hedged trading book with several hundred positions is unlikely to be successful, without some use of mathematical techniques.

More generally, there is a risk that expectations of what capital rules can deliver are being set too high. It is understandable that policy makers should try to make the system less cyclical, and to overlay estimates of current volatility with ones based on history. But the results are unlikely to be either simple or foolproof.

More fundamentally, there is a trade-off. Banks need to hold sufficient capital to be resilient against most shocks while at the same time carrying out their essential function in the form of supplying credit to the economy. Both goals matter, particularly in the case of the larger firms, and the resulting trade-off is likely to mean that some risk of failure remains.

It is therefore of crucial importance that policy makers continue to address these issues by strengthening market infrastructure and the arrangements to deal with failing organisations. Moreover, we should be realistic about what capital regulation can achieve. Otherwise, in the words of Jaime Caruana (ex-chairman of the Basel Committee and now General Manager for the BIS), "there is a tendency to think that capital regulation can do it all, with the serious risk of overburdening it".

Clifford Smout
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Prospectus Directive review

On 24 September, the European Commission published its long awaited legislative proposal to amend the Prospectus Directive (PD). The proposal was accompanied by a press release, *Frequently asked questions* and an 84 page impact assessment. ICMA's March response to a Commission consultation paper on the working of the PD was discussed in the April edition of this Newsletter.

The proposal seems to address some housekeeping points raised in the March response, notably in terms of:

- aligning the PD's qualified investor definition with the Markets in Financial Instruments Directive (MiFID) regime;
- abolishing the home Member State choice restriction for very low denomination (under €1,000) securities;
- abolishing the annual update requirement; and
- harmonising the duration of investor withdrawal periods to exactly two days (subject to extension at issuers' discretion).

Concerning retail cascades, the proposal seems effectively to formalise the existing *de facto* position previously noted in December 2007 by the Committee of European Securities Regulators (CESR). CESR's *Frequently asked questions regarding prospectuses* (question 56 in the current 9th updated version published on 16 September) concluded that intermediaries reselling securities on a PD non-exempt basis must either (i) use the issuer's initial prospectus (if the issuer consents) or (ii) publish their own prospectus. Retail cascades were the aspect addressed at most length (under section 2.2) in the March response, which argued that in practice the first alternative would only be available in limited circumstances and the second alternative did not really make sense. It is unclear what effect the proposal would have on the *status quo* if adopted as currently drafted.

Surprisingly, the Commission also proposed (citing the needs of retail investors) that prospectus summaries include "key" information to enable informed investment decisions in a way allowing comparability with other investment products, with civil liability attaching where this is not the case. The PD currently:

- requires that approved prospectuses contain, in an easily analysable and comprehensible form, all information necessary to enable investors to make an informed investment decision;
- requires that summaries: (i) must, in brief and non-technical language, convey the essential characteristics and risks associated with the securities; (ii) should be read as an introduction to the prospectus as a whole; and (iii) only give rise to civil liability if misleading, inaccurate or inconsistent when read together with the other parts of the prospectus.

Concerns have been expressed in the past as to the tension between imposing an absolute issuer disclosure requirement combined with absolute issuer liability for non-compliance, and then imposing restrictions on the disclosure format. In this last respect, the Commission commented that summaries should no longer be restricted to a predetermined number of words.

Other suggested changes in the Commission's proposal include, *inter alia:*

- abolishing disclosure requirements concerning Member State guarantors (on the basis that they publish abundant information on their financial positions);
- extending the longstop prospectus validity period from 12 to 24 months (perhaps most relevant where an issuer considers there has been no significant financial or other change to its position requiring publication of a supplement to the prospectus);
- ending investor withdrawal rights on the earlier of closing of the offer and admission to trading on a regulated market;
- requiring home Member State competent authorities to notify the certificate of approval to issuers at the same time as they notify it to host Member State competent authorities;
- subjecting rights issues and issuers with smaller market capitalisations to a proportionate disclosure regime (while maintaining a high level of investor protection); and
- harmonising, as between companies listed on EU regulated markets and companies listed outside the EU or on EU exchange-regulated markets, application of the PD exemption concerning offers to employees.

Prospectus Directive review - continued

In order to develop a fuller understanding of the Commission's proposal and consider any further action, ICMA will be conducting a thorough analysis of its detailed drafting and, once available, of further proposals for amendment to the PD Regulation that the Commission has indicated will be also required. The proposal will now be considered by the European Parliament and by the European Council. Entry into force of any amendments to the PD in the second half of 2010 would mean amendments to national law being required by the second half of 2011.

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

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ICMA's Legal & Documentation Committee

ICMA's Legal & Documentation Committee brings together the heads and senior members of the legal transaction management teams of 19 ICMA member banks active in lead-managing syndicated bond issues in Europe. It also includes one senior lawyer of long standing. The Committee meets about eight times a year to consider issues arising (such as the operation of the Prospectus Directive) and works closely with other ICMA committees, particularly the Primary Market Practices Committee.

Some members of the Committee are seen in the photo below before a recent meeting.

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Back row – Julia Pearce (Nomura), Bert Suer (UBS), Michael Furmans (Unicredit), Bruce Duncan (Citi), Eoghainn Calder (Goldman Sachs, standing in for Tim Grayson), Nicola Busbridge (HSBC) and Norbert Haun (Commerzbank); and

Front row – Ruari Ewing (ICMA, Secretary), Kate Craven (Barclays Capital, Chair), Annet Tamminga (JPMorgan), Benedict Foster (BNP Paribas), Marc Develter (Société Générale), Lachlan Burn (Linklaters), Annerose Schulte (Deutsche Bank) and Paul Richards (ICMA, Head of Regulatory Policy).

OTC derivatives and post-trading infrastructure

Both the European Commission and the European Central Bank (ECB) have been examining over-the-counter (OTC) derivative markets. While the focus of the two bodies of work has been slightly different, they are nevertheless tending towards very similar conclusions.

At the beginning of July, the European Commission issued (i) a formal Communication on *Ensuring efficient, safe and sound derivatives markets*, (ii) an associated staff working paper and (iii) a consultation document examining possible initiatives to enhance the resilience of OTC derivative markets. The Commission Communication looks at the role played by derivatives in the financial crisis and the benefits and risks of derivative markets, and assesses how risks can be reduced. In summary, this indicates that it is perhaps right to conclude that the problem has been primarily one of information about derivative positions, rather than with derivatives *per se*, and much of the concern is thus about transparency. There is recognition that bilateral OTC markets satisfy a "demand for flexible and bespoke derivative contracts to manage specific, non-standard risks", but it is suggested that the cost of this may be outweighed by "an *a priori* societal preference for transparent trading venues, as public and standardised as possible for the purpose of risk assessment and price determination". Taking into account the wide diversity of OTC derivative markets, the Communication outlines the tools to ensure that they do not harm financial stability. These tools, which can be combined with each other, are: standardisation; central data repositories; central counterparty (CCP) clearing; and trade execution on public trading venues.

The ECB report, published in early September, argues in a similar vein that: "The financial market turbulence illustrated that the absence of adequate post-trading infrastructure contributes to weaknesses in operational and counterparty risk management, as well as to a lack of transparency and oversight in OTC derivatives markets, with negative implications for overall financial market functioning and financial stability." It also states that because (i) there was a lack of information about where risks related to OTC derivatives arose and were distributed through the financial system, and (ii) the OTC derivatives markets are so large and closely linked to the cash markets, the derivatives markets seem to have acted as a contagion channel during the crisis. The ECB report sets out two main policy implications. First, given the importance of adequate post-trading infrastructure for the safe, efficient and transparent functioning of OTC derivatives markets and the particular systemic relevance of these markets for the euro area, there is a strong Eurosystem interest in further developing this infrastructure, especially in the euro area. At the present juncture, a key priority is the effective implementation of CCPs for credit default swaps (CDS) within the euro area. Second, the development of post-trading infrastructure for OTC derivative markets should be accompanied by enhanced cross-border cooperation among authorities. Such cooperation should aim to achieve a consistent regulatory framework for different infrastructures, a comprehensive analysis of the risks in this systemically relevant industry, and adequate oversight arrangements in line with the systemic implications of OTC post-trading infrastructure and related service providers for different jurisdictions and currencies.

On a related issue, the Committee of European Securities Regulators (CESR) has just launched a consultation on *Trade repositories in the European Union* (with a closing date of 6 November for responses). The consultation focuses on seeking views on establishing one or more trade repositories for OTC derivatives. It suggests that information on OTC trades may be needed by different public and private entities and asks for views on what kind of information should be available to regulators, market participants and the public. It also asks for views on whether there should be a single global trade repository or whether there should be a separate European trade repository. It is worth noting that the consultation states that CESR "does not want to impose trading of all CDS, nor other OTC instruments in general, on regulated markets".

Following the Commission's public consultation (which ended on 31 August), the Commission hosted a related Brussels conference on *Derivatives in crisis: safeguarding financial stability* on 25 September. The consultation itself drew 111 responses, the majority of which are publicly available. The conference attracted an audience in excess of 400 and featured keynote speeches from the Commission and the Chairman of the Commodity Futures Trading Commission (CFTC), as well as commentary from a wide range of experienced market participants and observers. Taking into account the consultation feedback, the Commission will draw operational conclusions before the end of its current mandate and present appropriate initiatives, including legislative proposals as necessary, before the end of the year to increase transparency and ensure financial stability. In considering the various documents and speeches, also including the related elements of the G20 discussions described elsewhere in this Newsletter, it seems clear that there will be a proposal for EU legislation on OTC derivatives in 2010. It is also prudent to assume, across all derivatives, a continued push for: more use of CCP clearing;

more standardisation; more transparency, including through trade repositories; and more use of exchanges. Whilst this is all consistent with the direction indicated in the Commission's Communication, the recently completed consultation will lead to some refinements, which may particularly include attempts to allay the concerns of corporate end-users.

Whilst these documents focus on derivative markets, with no specific reference to extending the proposals to OTC cash markets, the Commission Communication does make the apparently general statement that: "Overall, OTC markets are much riskier than regulated trading venues, as the former are more opaque and counterparty relations more complex." Also, the staff working paper states that: "By their nature, OTC markets are markets for professional investors and are thus not directly accessible to the general public. As professional investors were deemed sophisticated enough to manage the risks inherent in the OTC market, the latter has been accorded fairly light regulatory treatment. However, the recent financial crisis has illustrated that professional investors not always understand the risks they face and the consequences of those. ... Furthermore, even if not directly accessible to the general public, the instruments traded in the OTC market may ultimately affect retail investors through other products or via professional investors. ... It would appear that during this crisis the hit taken by regulated markets due to trouble on OTC markets was substantial". ICMA is paying particular attention to the interaction of these efforts with any necessary steps to enhance the robustness of the OTC corporate bond market. In this vein, ICMA submitted a brief response addressing the generally phrased consultation question 21 – "Should MiFID-type pre- and post-trade transparency rules be extended to non-equities products? Are there other means to ensure transparency?"

It is worth noting that, across the Atlantic, on 11 August the US Treasury announced proposed legislation, under which the OTC derivative markets will be comprehensively regulated for the first time. The legislation will provide for regulation and transparency for all OTC derivative transactions; strong prudential and business conduct regulation of all OTC derivative dealers and other major participants in the OTC derivative markets; and improved regulatory and enforcement tools to prevent manipulation, fraud, and other abuses in these markets.

Other developments related to the central counterparty clearing of credit default swaps are addressed in a separate short article in the financial infrastructure section of this Newsletter.

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Bond market transparency

As set out in the July edition of this Newsletter, ICMA has been building a representative industry working group with a remit to look at transparency, liquidity and related issues in the corporate bond market. The aim of such a group, made up of both buy-side and sell-side firms, is to see whether the buy and sell sides can agree a market-led initiative to make the market work more efficiently.

As a first tangible step, a meeting with participants from both the buy side and the sell side took place in September. The discussion focused primarily on valuation issues and the extent to which post-trade transparency can assist buy-side firms in valuing their portfolios. In particular, unit trusts and funds are required by FSA rules to carry out end-of-day valuations. Best execution requirements also play a role in driving the buy-side need for accurate valuations. However, particularly where trade volume levels are low, price indications provided by various market providers can be quite far away from actual executable quotes. While greater post-trade transparency could provide useful data points, it is not a panacea since relatively few bonds trade on a daily basis. ICMA, together with those sell-side members engaged in the discussion, are considering how best to develop a post-trade transparency framework that could assist the buy side given its legitimate practical concerns.

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Credit default swaps and counterparty risk

At the end of August, the European Central Bank (ECB) published a report that highlights the continuing dangers of credit default swaps (CDS) to the stability of the financial system. The report sets out four main concerns:

- the CDS market remains highly concentrated in the hands of a small group of dealers. This concentration has increased liquidity risk in the event of another dealer failure;
- the CDS market is very interconnected, with dealers being tied to each other through chains of over-the-counter (OTC) derivatives contracts, which results in increased contagion risk;
- CDSs are widely and increasingly used as price indicators for other markets, including loan, credit, and equity markets. In the cash bond market, investors are increasingly using CDSs as an indicator for their investment decisions;
- there was a significant widening in sovereign CDS spreads in March 2009, which could have implications for the credit ratings of sovereign governments.

The report argues that further research is needed for financial stability monitoring purposes. One area suggested for further research is the role of CDSs in corporate and EU government bond markets.

It is notable that the report briefly addresses bond market liquidity:

"The market may also have relatively limited liquidity at issuance and little to none a few months after issuance. ... Investors in the cash bond market tend to be "buy and hold" investors, and the issuance size for corporate bonds means that liquidity is limited in secondary trading. Corporate bond markets are, by nature, primary markets. In Europe, around 200,000 corporate bonds are listed. Market sources indicate that only around 100 are traded more than once a day, and only around 50 are traded more than twice a day. This limited primary and secondary market liquidity makes it more difficult for market participants to take an alternative view. For example, the limited liquidity makes it more difficult to short credit issues directly via the repo market. The task of finding a bond issuance of a significant size to borrow in exchange for the repo rate fee and then sell on for cash to another investor is difficult. It also exposes the short investor to basis risk if the repo rate changes. As most repos tend to be short-term (overnight to several weeks), this further limits the ability to short cash bonds over extended periods." *(page 60 and footnote 44)*

While the report mentions the CESR consultation paper on non-equities market transparency, it expresses no opinion on whether there should be greater/mandatory transparency in the corporate bond market.

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Current regulatory considerations for ECP Committee

ICMA's Euro Commercial Paper (ECP) Committee comprises the heads and senior members of the ECP teams of those ICMA member banks who are the main dealers in the ECP market. The ECP Committee sets and maintains ECP market standards and meets regularly to discuss those issues pertinent to the ongoing effective operation of the ECP market. Recent discussions have focussed on current regulatory considerations under two key topics:

Money market funds

Money market funds are key investors for ECP. A number of different regulatory proposals are currently being worked on which will directly impact money market funds.

- In the US, money market funds are already governed by Rule 2a-7, but the Securities and Exchange Commission (SEC) has just been consulting on new proposed revisions to this Rule;
- In Europe, the European Fund and Asset Management Association (EFAMA) and Institutional Money Market Funds Association (IMMFA) are promoting new definitions to clarify what the "money market fund" label should include; and
- In France, the Autorité des Marchés Financiers (AMF) has clarified its position, all as further described in the asset management section of this Newsletter; and
- In the UK, the Association of British Insurers (ABI) is introducing a new retail funds "sector" (backed by the FSA), which precludes investments in commercial paper.

The ICMA ECP Committee is monitoring these developments to understand any implications for the appetite of money market funds to invest in commercial paper. In particular, close collaboration is being maintained with IMMFA to provide insight on its efforts and other European developments.

Asset-backed commercial paper

Asset-backed commercial paper (ABCP) has been a traditional tool for financing banking assets. ABCP conduits have a limited purpose and clearly defined rules as to the type, concentration, and credit quality of assets purchased. Traditional ABCP conduits benefit from 100% bank backstop liquidity, which serves as a fallback if the conduit does not roll over maturing commercial paper. ABCP conduits can also benefit from varying forms of credit protection, including asset-specific support/insurance, programme wide enhancement, and over-collateralisation.

To the best of the ECP Committee's knowledge, it remains true that no investor has suffered defaulted ECP or US commercial paper. During the international financial crisis, defaults came from Structured Investment Vehicles ("SIVs"), which did not have 100% backstops. SIVs relied on the sale of assets to repay non-rolling commercial paper, which was not possible in distressed markets. SIVs are a different product, which is no longer marketed.

Nevertheless, ABCP falls within the broad definition of asset-backed securities and/or securitisation and is therefore impacted by any proposals that bear more broadly upon those markets or products.

- The Basel Committee has published new rules impacting securitised instrument holdings in trading books and penalising "resecuritisations", with many ABCP structures caught within the definition of "resecuritisation";
- The European Commission is working on changes to the Capital Requirements Directives, broadly aligned with Basel, and has already finalised a 25% large exposure rule (effective end-2010) that may bear upon the market; and
- The Committee of European Securities Regulators (CESR) has decided against mandating post-trade transparency for ABCP, though the International Organization of Securities Commissions (IOSCO) has recently issued a further consultation paper on this issue. It remains to be seen how the Commission will respond to CESR's recommendations.

The ICMA ECP Committee continues its proactive efforts to highlight the benefits of traditional ABCP conduits, which have an important role to play in real economy financing.

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European developments in the market infrastructure

The European Repo Committee (ERC), with the help of the ERC Operations Group, is looking at the technical development of the TARGET2 Securities (T2S) project. Most notably the management of fails is being considered carefully. The ERC is of the view that T2S will harmonise national practices, even though, from a legal perspective, national central securities depositories (CSDs) remain in control of management of fails mechanisms. The question was also raised at the T2S Advisory Group held on 23 September. In T2S the issue of avoiding cross-matching of trade instructions will also be considered.

The Monitoring Group (MOG) met in early July:

- There will be a review of the Code of Conduct at the end of 2009. The report to be prepared by the Commission is due to be drafted by the end of October.
- The Oxera report on *Monitoring prices, costs and volumes of trading and post-trading services* was published in mid-July.
- DG Competition is currently examining whether there is sufficient access to post-trade facilities such as central counterparties (CCPs) and sufficient competition between them.
- The MOG is also looking into the issues linked to trading of government bonds and other non-equities, including neighbouring markets, such as the clearing and settlement of non-equities.

The next MOG will take place on 29 October.

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European repo market survey

ICMA's European Repo Council released the results of its 17th semi-annual survey of the European repo market in September. The survey, a snapshot of the volume of repo trades outstanding on a single day in June 2009, based on returns received from 61 financial institutions, sets the baseline figure for market size at €4,868 billion, slightly up from the figure of €4,633 billion for the previous survey in December but substantially down from the June 2008 figure of €6,504 billion.

The overall figure points to activity in the repo market stabilising in the wake of the Lehman's insolvency and the subsequent deleveraging by banks. However, underlying the aggregate figures showing a modest recovery in the sector, the survey paints a mixed picture, with individual institutions in very different situations. A number are still deleveraging by substantial amounts, while others are demonstrating a greater appetite for risk. Mergers between institutions continue to be a factor in limiting the capacity of the repo market for growth.

In the *ECB Euro money market survey 2009*, also published in September, it was noted that the secured market showed resilience, with turnover increasing by 5% following last year's decline and remained the largest segment of the euro money market.

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Review of the GMRA 2000

Whilst the Global Master Repurchase Agreement (GMRA) responded well to the challenges of the financial crisis, in order to ensure that the agreement continues to fulfil the needs of the market ICMA's European Repo Committee has put together a Working Group to consider whether any amendments are necessary to the 2000 version of the Agreement.

The Working Group, consisting of both market practitioners as well as legal professionals, has established a list of issues which it will focus on in its review. In addition to these, the review will take into account the changes made in the recently published 2009 Global Master Securities Lending Agreement (GMSLA), in order to maintain consistency between the agreements, where possible. Further information will be made available as the review progresses.

The GMRA 1995 and 2000 were also reviewed at a symposium on *Standard market documentation: lessons to be drawn from the financial turmoil*, chaired by the ECB and held under the auspices of the European Financial Markets Lawyers Group (EFMLG), on 15 September. The EFMLG provided a comparative analysis of five issues arising from the financial turmoil relating to standard market documentation in: the GMRA 1995 and 2000; GMSLA 1995, 2000 and 2009; ISDA 1992 and 2002; and the European Master Agreement 2001 and 2004. The EFMLG is expected to publish a report based on the symposium.

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Alternative Investment Fund Managers Directive

The Swedish Presidency of the European Council has published an issues note on the European Commission's proposed Alternative Investment Fund Managers (AIFM) Directive. The note deals with issues, among others, relating to: the scope of the AIFM Directive; capital; valuation; depositary; delegation; leverage; obligations for alternative investment fund managers managing alternative investment funds which acquire controlling influence in companies; third country issues; and supervision.

In the European Parliament, French MEP Jean-Paul Gauzes has been appointed rapporteur for the AIFM Directive. The rapporteur has produced a working document on the proposal. The paper outlines the main areas for consideration together with a limited commentary on the critical areas for amendment. These include the Directive's scope and authorisation of managers, marketing of funds and relations with third countries, depositaries and valuators, leverage, reporting obligations, supervision, the Lamfalussy procedure and interaction and consistency with other legislative texts.

ICMA's Asset Management and Investors Council (AMIC) was given an update on the AIFM Directive by the Alternative Investment Management Association (AIMA) at its last meeting held on 14 September, and will continue carefully to monitor progress.

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Money market funds

The AMIC has presented its work on money market funds to the Commission, following a meeting with DGMarkt in July.

In the AMIC's view, the issue of money market funds needs careful attention, taking account of the risk-averse approach taken by investors, and the prospects of low or even negative returns in some cases for clients. Recent events have highlighted that investors should be made aware of the quality of the investments and should not worry about differences between rating agencies. The AMIC noted the EFAMA/IMMFA recommendation for a European classification and definition of money market funds. The two objectives set out in this recommendation – ie (i) defining clear-cut rules that investment funds would need to respect to be allocated to carry the label "money market" and (ii) defining rules in a way that clearly inform investors about the risk characteristics of money market funds – are consistent with the AMIC's own recommendations for these instruments. In its letter to David Wright, the AMIC encouraged the Commission to consider carefully this practical recommendation as it would provide a first step towards standardisation of the definition of money market funds and for considering a clearer identification of different types of money market funds.

The AMF published in September the findings of its work aimed at substantially tightening its own classification criteria for "euro money market" funds. In parallel, CESR recently began a work programme with the goal of establishing Europe-wide criteria for collective investment schemes wishing to be classified as "euro money market" funds. The conclusions of the AMF will form the basis of the position it will advocate within CESR.

Money market funds were also discussed within the ECB's Money Market Contact Group, which held a meeting on 1 September.

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Private banking

ICMA has a significant number of private banking members across Europe. The private banking industry has been going through changes of great importance, and the AMIC hopes that it will be able to help.

The AMIC meeting in September discussed with the private banks represented on the Council the possibility of setting up a Working Group on a cross-border basis, to discuss common pan-European issues. The aim is to avoid duplicating work that is being done by other trade associations, most notably national ones. Some of these issues could relate to the call for more transparency, investor protection or how to address a fragmented regulatory landscape.

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ICMA Conference 2009,Challenges of private banking in a global market with Gianluca Bisognani, Head of Private Banking, UBI Banca Group; Stefan Bichsel, Member of the Executive Board, Banque Cantonale Vaudoise; Stefan Kräuchi, Member of the Executive Board, Clariden Leu; Charles Hamer, Chairman, Private Banking Group, Association des Banques et Banquiers, Luxembourg and Chief Executive Officer, Crédit Agricole, Luxembourg; Paul Richards, Head of Regulatory Policy, ICMA.

Covered Bond Investor Council

In ICMA's April Newsletter, we reported on the launch of the Covered Bond Investor Council (CBIC). Over recent months the covered bond market has been looking quite healthy. It is true to say that the ECB's purchase programme for covered bonds, where they have now bought €18 billion of bonds – against an announced programme of up to €60 billion, has been important, but this is not the only driver. Covered bonds are regarded as a fundamentally secure product.

CBIC is itself also showing healthy development. A critical mass of members and observers exists, though we still target 2-3 more key investors. On 27 July, CBIC held its first physical meeting in London, with a majority of members in attendance. Discussions were held on transparency and on liquidity. Then presentations were received from each of EuroMTS, Bloomberg and Eurex, regarding their respective systems offerings. The meeting concluded with a liquidity roundtable discussion, held collaboratively with a strong delegation from the European Covered Bond Council (ECBC). Following the meeting, two working groups have been established: a Liquidity Working Group, managed by Claus Tofte Nielsen; and a Transparency Working Group, managed by Andreas Denger and John Maskell. Further discussion with ECBC took place during its 16 September plenary meeting in Copenhagen, at which a number of CBIC members were in attendance.

Additionally, CBIC has spoken with all the rating agencies concerning their respective stances on covered bonds, including convening a conference call with Fitch; and a number of members have responded to an approach from the UK FSA for input on how to improve the UK covered bond market.

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EU central counterparty for credit default swaps

In response to the European Commission's call for central clearing of credit default swaps (CDS), ten major dealers committed to clear CDS on European reference entities, and indices based on these entities, through one or more central counterparties (CCPs) established and regulated in the European Union by 31 July 2009. The Commission set up a Working Group, involving dealers, the buy side (eg banks, insurance companies and funds), CCPs and supervisors, to monitor the orderly roll-out of this commitment. As the deadline approached, preparatory work included ISDA's launch of the *"Small bang protocol" and restructuring supplement*, to allow for the incorporation of auction settlement terms following a restructuring credit event into standard CDS documentation.

On 31 July, the Commission issued a press release affirming that the deadline had been met, with two European CCPs (ICE Clear and Eurex Clearing) having obtained the necessary regulatory approvals and started offering their services. On 2 October, ICE Clear issued a press release confirming that, since its launch on 29 July, ICE Clear Europe has cleared €377 billion ($552 billion) in notional value, with open interest of €42 billion ($61 billion); that ICE Clear Europe currently has 13 CDS clearing members; and that ICE Clear Europe expects to introduce clearing for single-name CDS contracts in October 2009. Meanwhile Eurex Credit Clear, which started production on 27 July, announced on 28 August that it had become the first CCP worldwide to clear a single name CDS – with notional value of €5 million and based on RWE. Work to enable buy-side participation in CDS clearing is ongoing.

In a separate announcement on 11 August, ISDA announced the launch of CDS Marketplace, a new website developed by ISDA in order to provide information on the CDS market. The Depository Trust & Clearing Corporation (DTCC), Markit and Moody's provided support in construction of the website by providing information, data and statistics. ISDA plans continuously to review and enhance the site in the months ahead.

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OTC derivative market reforms

The authorities have been further elaborating their OTC derivative market reform plans, as described in more detail in the secondary markets section of this Newsletter. Other recent related developments worthy of note include:

13 July: New York Fed welcomes CDS central counterparty legal analysis;

20 July: Announcement of CPSS-IOSCO working group on the review of the recommendations for central counterparties;

22 July: CESR launches consultation on classification and identification of OTC derivative instruments for the purpose of the exchange of transaction reports amongst CESR members;

1 August: IMF releases a working paper, *Counterparty risk, impact on collateral flows and role for central counterparties;*

4 September: IOSCO issues final regulatory recommendations on securitisation and CDS market;

8 September: New York Fed announces that: *Market participants commit to expand central clearing for OTC derivatives;*

15 September: CFTC and UK FSA sign a new memorandum of understanding (MOU) to enhance supervision of cross-border clearing organisations; and

24 September: New York Fed announces: *A global framework for regulatory cooperation on OTC derivative CCPs and trade repositories.*

ICMA conferences

2nd bwf/ICMA Annual Capital Markets Conference, Munich, 14 October 2009

This one-day seminar in Munich, a joint initiative from Bundesverband der Wertpapierfirmen an den deutschen Börsen e.V. (bwf) and ICMA, brings together industry practitioners and regulators to consider the likely future shape of financial regulation, the supervision of financial institutions and the stability and efficiency of the financial system as a whole.

It will feature high level participation from the BaFIN and from the European Commission, who will discuss the latest EU regulatory initiatives and their implementation with particular reference to the German viewpoint. Furthermore, a BaFIN representative will discuss the most relevant changes recently made to the German Risk-Management-Framework ("MARisk").

The current status of MiFID implementation in Europe and its impact on both the buy and sell side of the industry since its introduction 18 months ago will also be discussed.

Participation in the event is free for ICMA and bwf members.

Contact: events@icmagroup.org

European Repo Council General Meeting, London, 15 October 2009

The next European Repo Council General meeting will be held in London on 15 October 2009 at the Four Seasons in Canary Wharf. The meeting will be hosted by Clearstream Luxembourg and will take place in the afternoon starting with a one hour introduction and update by Clearstream, followed by the ERC General Meeting. Topics and speakers will include:

Klaus Loeber, European Central Bank, who will speak on the lessons from the turmoil;

Christian Krohn, SIFMA, who will speak on CSDs' interconnectivity;

Christian Hawkesby, Bank of England, who will give an update on the work of the SLRC.

After the meeting a cocktail reception will take place to allow for further discussion and networking. Attendance is subject to registration.

Contact: events@icmagroup.org

ICMA/NCMF Joint Seminar, Helsinki, 3 November 2009

Developing secure foundations for 21st century capital markets – a review of initiatives impacting financial market infrastructure and OTC markets.

The regulatory response to market turmoil of the past 12 months is still evolving. However, it is clear that there will be a wholly new approach by the authorities to financial regulation, the supervision of financial institutions and the stability of the financial system as a whole. This one-day seminar in Helsinki will bring together market experts, regulators and infrastructure providers to address the latest developments in financial market infrastructure and the OTC markets, both in the Nordic region and in a broader European context. It will seek to illuminate not only detailed measures that the market can expect but also outstanding issues that remain to be resolved.

This seminar is presented as a joint initiative from the Nordic Capital Markets Forum and ICMA with the support of Pohjola Bank. Participation is entirely free of charge.

Contact: events@icmagroup.org

ICMA Primary Market Forum, London, 12 November 2009

Following the 2007 and 2008 editions, this year's ICMA Primary Market Forum will bring together the international fixed income community, including borrowers, arranging banks, investors and law firms, to debate the business issues and regulatory developments affecting the issuance of international debt.

The Forum will focus on what securities will best meet the capital requirements facing financial institutions, on how retail and non-retail low denomination issues work under the Prospectus Directive and in light of the European Commission's April Communication on packaged retail investment products (PRIPs), as well as on current prospects for the corporate and SSA funding markets.

The Forum will take place in London on the afternoon of 12 November and is open to ICMA members and (subject to a participation fee) also to non-members. The event will be of interest to compliance officers, lawyers, syndication teams, borrowers, issuers and investors in the global capital markets. Attendance is subject to registration.

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The ICMA GMRA Workshop, London, 3-4 December 2009

This new, 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.

The course faculty includes: ICMA's associate counsel, an experienced financial markets lawyer, a practising documentation professional and an acknowledged repo market expert from the ICMA Centre at Reading University.

The ICMA GMRA Workshop is an accredited course under the Solicitors Regulation Authority (formerly The Law Society's) CPD Scheme. Solicitors may claim 14 hours CPD credit for their attendance on the whole course.

Contact: events@icmagroup.org

First Meeting of Debt and Cash Professionals, Paris, 10 December 2009

ICMA, together with 7 trade associations from the French markets, will be presenting a half-day seminar for financial market professionals in Paris.

The event will feature a contribution from French Finance Minister, Madame Christine Lagarde and also from the well known historian and economist, Nicolas Bavarez, and from Alain Minc, one of France's leading thinkers and an advisor to various governments.

Professional market participants, including issuers, banks and regulators, will be represented on panel discussions covering: the role of indices; the evolution of clearing; and liquidity in the secondary bond markets.

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Save the date – ICMA AGM and Conference 2010

The 2010 ICMA AGM and Conference will take place in Brussels at Square, the newly opened meeting venue in the centre of the city, from Wednesday 26 May to Friday 28 May. The two-day conference programme is currently being planned and we welcome suggestions from ICMA members on the topics that should be covered.

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Education courses

ICMA Executive Education is teaming up with Thomson Reuters in offering three specialist courses in the last quarter of 2009 at the Thomson Reuters premises in Canary Wharf, London: Commodities – An Introduction, 6 November 2009; Technical Analysis, 24-25 November 2009; and Corporate Actions, 10-11 December 2009.

In line with Brussels' growing reputation as a "settlements centre", ICMA Executive Education will be holding its Operations Certificate Programme at Dolce La Hulpe on 21-27 May 2010. In addition, two new specialist courses have been launched which will also take place at the Dolce La Hulpe venue located just outside Brussels: Collateral Management, 10-11 November 2009 Operational Risk Fundamentals, 15 December 2009.

For more information on ICMA Executive Education courses, please visit the education section of the ICMA website at www.icmagroup.org or e-mail mike.kirkman@icmagroup.org

Summary of forthcoming educational courses

Primary Market Certificate Programme (PMC)
25-29 October 2009
Bahrain

International Fixed Income and Derivatives (IFID) Certificate Programme
25-31 October 2009
Sitges, Barcelona

Commodities - An Introduction
6 November 2009
London

Collateral Management
10-11 November 2009
Brussels

Primary Market Certificate Programme (PMC)
16-20 November 2009
London

Technical Analysis - An Introduction
24-25 November 2009
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