

ICMA CSDR-SD Working Group & Cross-industry CSDR Working Group

**Meeting/call on Mandatory buy-ins
January 23rd 2020**

Meeting notes

1) Cross-industry pass-on proposal

- The Group was updated that a small AFME/ICMA delegation would meet with ESMA in Paris on January 27 to present and discuss the cross-industry pass-on proposal. ESMA had already been sent the latest draft of the proposal ahead of the meeting.
- It was suggested that it was important for the delegation to stress the importance of a flexible pass-on mechanism that is not limited to transactions with the same intended settlement date (ISD),
- It was also noted that it would be important to ensure that ESMA are comfortable with concept of a pass-on mechanism first, before addressing some of the more complex considerations, such as transaction chains with multiple ISDs. Hence the structure of the proposal document, with the two approaches (based on liquid equities and all other securities).
- The group also discussed the fact that while ESMA are responsible for publishing Level 3 guidance, the European Commission is very much central to the process, given the particularly prescriptive nature of the Level 1 provisions. This seemed to explain the long timelines, and extensive follow-up work, related to the CSDR-SD Q&A process.

2) CSDR Legal workstream update

- The ICMA Legal Working Group is currently working with ISLA and external counsel to draft the supporting Annex for the GMRA (and in parallel, the GMSLA) for CSDR mandatory buy-ins. The current deadline for this work is mid-March.
- The LWG has raised a number of commercially orientated questions that require input from SFT trading desks and operations functions, and it was suggested that CSDR-SD WG members focused on SFT-related issues liaise with their LWG counterparts.
- The LWG will also look to address the legal enforceability of the ICMA Buy-in Rules which will be revised to support implementation of the CSDR buy-in provisions in cash bond markets.
- The ICMA LWG is working closely with the relevant legal workstreams of AFME and ISLA.

3) Overview and updates on key ICMA CSDR-SD priorities

- The Group was informed that the most likely timing for any Level 3 guidance with respect to clarifying the possibility to settle the buy-in and cash compensation price differential payments symmetrically would now be late March (following the March 25 ESMA Board of Supervisors meeting).
- There was strong support for ICMA consulting on the necessary revisions to its Buy-in Rules as soon as possible, rather than waiting for further clarification from ESMA on various issues.
- The Group was reminded that the first meeting of the Cash Compensation Best Practice workstream would take place on January 29.
- A question was raised as to when we could expect official clarification of the widely anticipated delay to the go-live date, given that before such time firms would have to work to the currently scheduled September 2020 date. AFME explained that a new Delegated Act should be published in the next two weeks, which would contain the new date for enforcement – expected to be early 2021. Following the Commission’s publication of the DA there would be a non-objection period for the Parliament and Council to reject this (thought to be two months).
- A question was raised as to whether margin movements were considered in or out of scope of buy-ins, and whether this warranted ESMA Q&A to clarify that margin was out of scope. It was pointed out that AFME were preparing a Q&A on scope, which included a proposed exemption for margin. Given the potentially significant repapering that would be associated with margin being in scope, it was suggested that AFME run the wording of the Q&A past the various association legal working groups. AFME agreed to share the draft Q&A with the relevant associations and working groups and informed the Group that they were looking to develop the argument for exempting margin, potentially with specific use cases.

4) AFME CSDR WG priorities and workstreams

- AFME updated the Group on their key CSDR-SD priorities, noting that they were working closely with ICMA, ISLA, AGC, and others:
 - The parameters of the buy-in agent, and what is meant by ‘conflicts of interest’
 - CSDs and the implementation of cash penalties (including an AFME CSD survey)
 - CCPs: identification of a potential risk areas for clearing members
 - Drafting a series of Q&As on a range of niche topics where the regulation requires further clarification
 - Legal Working Group: working with external counsel to provide model wording that can be used in firms’ terms of business or contractual arrangements in line with the requirements specified in Articles 2 and 25 of the RTS.
 - Advocacy: AFME has held the pen on a joint industry letter (also signed by ICMA, ISLA, AGC, and others) highlighting concerns about the potential market impacts of the buy-in regime. The letter was sent to the European Commission today and would be public from tomorrow.

- In terms of gaps in priorities, it was suggested that the associations would need to establish a technical enhancement for settlement instructions to identify transaction types at a granular enough level to determine eligibility for the buy-in requirements. This would be particularly pertinent in the case of the SFTs.

5) Update on SFT issues

- ICMA updated on the ICMA/ISLA survey of firms' treatment of open (and open-like) SFTs. There was good input, with almost 30 responses across repo and SL, and the responses were largely consistent in terms of how treat open and open-like trades from a risk and regulatory capital/liquidity perspective. Even more importantly, some respondents pointed to regulatory guidelines to support their treatment of these trades. After sharing the data with ISLA, the associations will look to share the collated results with ESMA as soon as next week.
- ICMA noted that the previously requested exemption for basket trades had been put on hold, but that it was still necessary to get back to ESMA with a detailed justification for a carve-out.
- ICMA also suggested that it would be necessary to develop market best practice for applying buy-ins to SFTs, which would need to be done in cooperation with ISLA to ensure consistency between repo and SL markets and also in parallel to the legal work with respect to the GMRA/GMSLA.
- ISLA updated the Group that it was still pushing forward its work on auto-partialling to support settlement efficiency, and that this was largely complementary to the work being undertaken by AFME, and that they would look to coordinate, possibly leveraging off AFME's CSD survey. ISLA agreed to keep the Group updated as this work developed.
- A question was raised about fails arising from novations, where trades are reallocated to a new entity, and the case for an exemption from SD provisions. It was felt that this particular scenario needed further exploration with a view to discussing it in a future meeting. It was also not clear whether this was a broader consideration than just SFTs.
- ICMA suggested coordinating with ISLA to hold an SFT specific meeting/call in the next week or so, focusing on key outstanding issues for Level 3 guidance and best practice. It would also be an opportunity to address the SFT-related commercial questions raised by LWG.

6) Workplan

- It was agreed that ICMA would aim to organize regular biweekly meetings/calls of the main CSDR-SD WG, with more regular meetings as required, or on an ad hoc basis to deal with specific issues or deliverables.