Legal and Regulatory Updates

27/04/2020 – 01/05/2020

Key Highlights:

- FCA sends letter to CEOs on ensuring fair treatment of corporate customers preparing to raise equity finance.
- ESMA issues No Action Letter on the new ESG disclosure requirements under the Benchmarks Regulation.
- ECB announces new pandemic emergency longer-term refinancing operations.
- EU Technical Expert Group on Sustainable Finance publishes statement on sustainable recovery from the Covid-19 pandemic.
- Central Bank of Ireland releases statement on BPFI's extension of payment breaks.
- ICMA publishes an in-depth report on consolidated tape for greater post-trade transparency in the EU bond markets.
- ICMA publishes an update memorandum on the EU's sustainability disclosure regime.
- Please find below our Legal & Regulatory Update for the week commencing **27/04/2020**.
- This will be followed by our ELFA Briefings Reports, where we analyse some of the most important updates in more detail.

Bank of England (BoE)

27 April 2020: PRA releases statement on the regulatory treatment of the UK Coronavirus Business Interruption Loan Scheme (CBILS) and the UK Coronavirus Large Business Interruption Loan Scheme (CLBILS)

The PRA released a statement in response to HM Treasury's announced changes to the UK Coronavirus (Covid-19) business interruption loan schemes. This statement complements the government's announcement, and sets out the PRA's observations on whether the guarantees provided by the Secretary of State for Business, Energy and Industrial Strategy under the CBILS and CLBILS ('the schemes'), are eligible for recognition as unfunded credit risk mitigation (CRM) under the Capital Requirement Regulation ('the CRR').

The PRA explains that because of the current extraordinary circumstances, it will be challenging for many businesses to provide forecast financial information with a high degree of confidence to support firms' loan underwriting processes. Therefore, the PRA expects lenders to use their judgement on what information is required to make credit decisions. The PRA reminds Lenders that they should consider the range of information available to them including (but not limited to):

- the performance of the business prior to the Covid-19 outbreak;
- a view of how the loan will be repaid in due course, relying on judgement in the absence of financial forecast information; and
- the general prospects for the sector in which the business operates once the effects of the pandemic have receded.

27 April - 1 May 2020: Other publications

During the week, the BoE released the following publications that might be of interest to our readers:

- Supervisor-centred automation - the role of human-centred automation in judgement-centred prudential supervision, speech by James Proudman

Financial Conduct Authority (FCA)

27 April 2020: FCA's Statement on the UK Coronavirus Business Interruption Loan Scheme (CBILS) and the new Bounce Back loan scheme (BBL)

Similar to the BoE statement, the FCA published a statement, which sets out the FCA's approach to its regulation of firms in relation to the Government's CBILS and BBL schemes. The FCA recognises that the

Government's CBILS schemes need to be able to take fast and efficient lending decisions. Consequently, the FCA introduced some interim measures to facilitate the process.

28 April 2020: FCA's letter to CEOs on ensuring fair treatment of corporate customers preparing to raise equity finance

In this letter, the FCA is alarmed by credible reports that a small number of banks are failing to treat their corporate clients fairly when negotiating new or existing debt facilities. Therefore, the FCA is alerting the industry that it will be looking into these concerns further, and it won't hesitate to take action if it finds further evidence. More importantly, the FCA wants any practice of this nature to cease immediately. Such conduct could be a breach of FCA rules and Principles.

Please read our follow up report below for a comprehensive summary and analysis of the letter.

29 April 2020: Further statement from the RFRWG on the impact of Coronavirus on the timeline for firms' LIBOR transition plans

Further to the joint statement made on 25 March, the FCA, RFRWG, and the BoE released another statement stating that it remains the central assumption that firms cannot rely on LIBOR being published after the end of 2021. The authorities recognise that it will not be feasible to complete the transition away from LIBOR across all new sterling LIBOR linked loans by the original end-Q3 2020 target. There will likely be continued use of LIBOR-referencing loan products into Q4 2020 in particular, to maintain the smooth flow of credit to the real economy. Taking this into consideration the RFRWG recommends that:

- by the end of Q3 2020, lenders should be in a position to offer non-LIBOR linked products to their customers;
- after the end of Q3 2020, lenders, working with their borrowers, should include clear contractual arrangements in all new and re-financed LIBOR-referencing loan products to facilitate conversion ahead of end-2021, through pre-agreed conversion terms or an agreed process for renegotiation, to SONIA or other alternatives; and
- all new issuance of sterling LIBOR-referencing loan products that expire after the end of 2021 should cease by the end of Q1 2021.

1 May 2020: FCA seeks legal clarity on business interruption insurance and publishes a package of measures to help consumers and small businesses

The FCA announced that it intends to seek legal clarity on business interruption (BI) insurance to resolve doubt for businesses who are facing uncertainty on their claims. This is due to continuing and widespread concerns about the lack of clarity and certainty for some customers making business interruption claims, and the basis on which some firms are making decisions in relation to claims.

The FCA is also proposing a series of measures to support both consumers and businesses who hold insurance products and who are facing other issues as a result of coronavirus (Covid-19). The package of measures sets out the FCA's expectations that insurance firms should consider whether their products still offer value to customers in the current situation and whether they can be doing more for those suffering a financial impact because of coronavirus.

European Securities & Markets Authority (ESMA)

28 April 2020: ESMA publishes templates for quarterly non-equity systematic internaliser data

ESMA published the template for the publication of the quarterly non-equity SI data and clarified that the annual non-equity transparency calculations will be made available through the Financial Instrument Transparency System (FITRS) and its Registers starting on 15 July 2020.

29 April 2020: ESMA issues No Action Letter on the new ESG disclosure requirements under the Benchmarks Regulation

ESMA issued a No Action Letter to promote coordinated action by National Competent Authorities (NCAs) regarding the new environmental, social and governance (ESG) disclosure requirements for benchmark administrators under the Benchmarks Regulation (BMR). ESMA and NCAs are aware of the difficulties encountered by administrators in fulfilling the new requirements in the BMR on ESG-related disclosures for benchmarks, which came into force on the 30 April 2020, prior to the application of the related Delegated Acts. In the letter, ESMA is of the opinion that NCAs should not prioritise supervisory or enforcement action against administrators regarding these new requirements until the Delegated Acts apply. ESMA also issued an Opinion to the European Commission (EC) on the need for prompt adoption of the relevant Delegated Acts.

The new ESG-related disclosure requirements oblige benchmark administrators, by 30 April, to include:

- in their methodology document, an explanation of how the key elements of the methodology reflect ESG factors for each benchmark or family of benchmarks; and
- in their benchmark statement, an explanation of how ESG factors are reflected in each benchmark or family of benchmarks provided and published.

30 April 2020: ESMA publishes annual bond transparency calculations, systematic internalisers calculations and new bond liquidity data

ESMA has made available, under the Markets in Financial Instruments Directive (MiFID II) and Regulation (MiFIR):

- the annual transparency calculations of the large in scale (LIS) and size specific to the instruments (SSTI) thresholds for bonds;
- systematic internaliser calculations for equity, equity-like instruments and bonds; and
- new data for bonds subject to the pre-and post-trade requirements of MiFID II and MiFIR.

European Insurance & Occupational Pensions Authority (EIOPA)

30 April 2020: EIOPA revises its timetable for advice on Solvency II Review until end December 2020

EIOPA announced that it has, in close coordination with the European Commission, revised its timetable for advice on the 2020 Solvency II Review to December 2020, to take into account the importance of assessing the impact of the current Covid-19 situation on the Solvency II Review. The review had already been pushed back by two months from March in an effort to offer operational relief in reaction to the COVID-19 pandemic. The new timing will allow an update of the holistic impact assessment in view of the impact of the pandemic on the financial markets and insurance business and to take that impact into account in EIOPA's advice. EIOPA believes the new timing strikes a balance between the need to use the opportunity of reviewing the Solvency II directive and the need for the advice to reflect recent developments.

In order to update the holistic impact assessment, EIOPA will complement the ongoing information request with a collection of data with a reference date of 30 June 2020. That information request will be carried out from July to mid-September 2020.

30 April 2020: EIOPA publishes weekly information for relevant risk-free interest rate term structures and symmetric adjustment to equity risk - with reference to 27 April 2020

Due to COVID-19 outbreak, EIOPA announced that it will carry out extraordinary calculations on weekly basis to monitor the evolution of the relevant risk-free interest rate term structures (RFR) and the symmetric adjustment to equity risk (EDA). EIOPA is publishing this information in order to support insurance and reinsurance undertakings in the monitoring of their solvency and financial position. The information will be published weekly on a specific area of the website created for this purpose for both RFR and EDA named "Extraordinary weekly updates".

27 April - 1 May 2020: EIOPA Interviews

During the week, EIOPA conducted the following interview(s) that might be of interest to our readers:

- EIOPA's response to the Coronavirus crisis - Interview with Gabriel Bernardino, Chairman of the European Insurance and Occupational Pensions Authority

European Central Bank (ECB)

28 April 2020: ECB publishes April 2020 euro area bank lending survey

The ECB published its 2020 Q1 Euro Bank Lending Survey (BLS). The BLS provides information on bank lending conditions in the euro area. It supplements existing statistics with information on the supply of and demand for loans to enterprises and households. The BLS provides input to the assessment of monetary and economic developments carried out by the ECB Governing Council in the process of making its monetary policy decisions.

30 April 2020: ECB recalibrates targeted lending operations to further support real economy

The ECB decided on a number of modifications to the terms and conditions of its targeted longer-term refinancing operations (TLTRO III) in order to support further the provision of credit to households and firms in the face of the current economic disruption and heightened uncertainty.

Key points from the update are:

- interest rate on all targeted longer-term refinancing operations (TLTRO III) reduced by 25 basis points to -0.5% from June 2020 to June 2021;
- for banks meeting the lending threshold of 0% introduced on 12 March 2020, the interest rate can be as low as -1%; and
- the start of the lending assessment period has been brought forward to 1 March 2020.

30 April 2020: ECB announces new pandemic emergency longer-term refinancing operations

The ECB decided to conduct a new series of seven additional longer-term refinancing operations, called pandemic emergency longer-term refinancing operations (PELTROs). These operations will provide liquidity support to the euro area financial system and contribute to preserving the smooth functioning of money markets by providing an effective backstop after the expiry of the bridge longer-term refinancing operations (LTROs) that have been conducted since March 2020. Counterparties participating in PELTROs will be able to benefit from the collateral easing measures in place until the end of September 2021.

The PELTROs will be conducted as fixed rate tender procedures with full allotment. The operations will be offered at highly accommodative terms. The interest rate will be 25 basis points below the average rate applied in the Eurosystem's main refinancing operations (currently 0%) over the life of the respective PELTRO. The first operation will be announced on 19 May, allotted on 20 May and settled on 21 May 2020. The operations provide longer-term funding to counterparties with decreasing tenors, starting with a tenor of 16 months in the first operation and ending with a tenor of 8 months in the last operation.

27 April - 1 May 2020: ECB Blogs & Other Publications During the week, the ECB published the following blogs that might be of interest to our readers:

- Beyond monetary policy – protecting the continuity and safety of payments during the coronavirus crisis
- The monetary policy response to the pandemic emergency
- Alternative scenarios for the impact of the COVID-19 pandemic on economic activity in the euro area
- A framework to assess cross border spill over effects of macroprudential policies

European Commission

27 April 2020: EU Technical Expert Group on Sustainable Finance publishes statement on sustainable recovery from the Covid-19 pandemic

The EU Technical Expert Group on Sustainable Finance (TEG), established to advise the European Commission on implementation of the Action Plan on Financing Sustainable Growth, released a statement explaining that it believes that the Sustainable Taxonomy, EU Green Bond Standard, and Paris-Aligned and Climate Transition Benchmarks, can guide public and private sector plans for recovery from the Covid-19 pandemic, including the European Council's recently announced "Roadmap to Recovery" which, among other, aims to combine the recovery from the current crisis with the EU's Green Deal and green transition.

TEG explains that the private sector has a clear role in ensuing access to finance in a sustainable recovery. Corporate and investor strategies that only maintain existing approaches and environmental performance levels, and do not clearly align with environmental objectives, are accumulating financial risk and contributing to a future climate related social disruption. Therefore, private sector plans must be transparent and clear on their alignment with the environmental and social objectives to increase the effective targeting of public recovery measures.

The TEG explains that it has developed three tools that can guide both government and private sector plans right away:

1. The Sustainable Taxonomy provides a framework for future recovery measures. It shows the environmental performance and minimum social standards that are necessary for economic activities to reach the climate and environmental goals, including climate neutrality by 2050 and ambitious 2030 targets. The Taxonomy is particularly relevant for new investments, that are needed to transition the economy, showing how and where to cut carbon emissions, build climate resilience, optimise supply chains towards sustainability and to stimulate jobs.
2. The Green Bond Standard (GBS) presents a best practice model, the elements of which can be applied by all bond issuers to explain how their funding contributes to the wider sustainability strategy and resulting environmental and social impacts of the issuer. The framework of the GBS can also be applied to increase transparency of social impact and outcomes of finance.
3. The Paris-Aligned and Climate Transition Benchmarks are tools to support allocation of a large amount of private capital towards climate transition. They do so by aligning investors' portfolio selection with climate change objectives, particularly the IPCC's 1.5-degree Celsius trajectory.

Central Bank of Ireland (CBI)

30 April 2020: Central Bank of Ireland releases statement on BPFI's extension of payment breaks

Following the BPFI's (Banking and Payments Federation of Ireland) decision to extend available payment breaks from three to six months for affected borrowers, the Central Bank of Ireland (CBI) released a statement explaining that it is working with lenders to ensure that extensions to COVID-19 related payment breaks operate in borrowers' best interests. Payment breaks give customers the opportunity to postpone or reduce their repayments on their mortgage, personal or business loans, providing breathing space for borrowers from the severe income shock many households and businesses are experiencing. According to the CBI, a payment break of six months will not specifically be identified on the borrower's credit report recorded on the Central Bank Credit Register (CCR).

At the end of the agreed payment break, the CBI expects borrowers who can return to full repayments to be given the option to either repay the loan within the remaining term or extend the term of the loan, noting that borrower circumstances and the appropriateness of each option may differ. For those borrowers who may choose to exit the payment break arrangements at any stage, the CBI expects lenders to ensure appropriate sustainable solutions, including forbearance, are available and to engage with borrowers as appropriate. The CBI also expects lenders to prudently assess the level of distress in their loan books and for this to be reflected in provisioning levels, notwithstanding that provisions may not yet be taken at an individual borrower level.

Commission de Surveillance du Secteur Financier (CSSF)

30 April 2020: Circular CSSF 20/741 'Adoption of the Guidelines of the European Banking Authority on legislative and non-legislative moratoria on loan repayments applied in the light of the COVID-19 crisis (EBA/GL/2020/02)'

The CSSF published a circular explaining that it complies with and applies the Guidelines of the European Banking Authority (EBA) on legislative and non-legislative moratoria on loan repayments applied in the light of the COVID-19 crisis (EBA/GL/2020/02) (the Guidelines). Consequently, the CSSF has integrated the Guidelines into its administrative practice and regulatory approach with a view to promote supervisory convergence in this field at European level. All entities that have adhered to general payment moratoria that are effectively in place by 30 June 2020 and that are willing to benefit from the EBA/GL/2020/02 shall duly comply with them.

The CSSF explains that the Guidelines aim to clarify the following points in the context of the COVID-19 pandemic: (i) the criteria that payment moratoria have to fulfil not to trigger forbearance classification as defined in Article 47b CRR; (ii) the application of the prudential requirements in the context of these moratoria; and (iii) ensuring the consistent treatment of such measures in the calculation of own funds requirements. Paragraph 10 of the Guidelines sets out the eligibility conditions for general moratoria. In order to allow an effective monitoring of the effects of the COVID-19 pandemic and the application of response measures, the CSSF explains that credit institutions are required to collect specific information on exposures where the moratorium has been applied in accordance with paragraph 19 of the Guidelines and to provide relevant information as set out in paragraph 17 of the Guidelines to the CSSF. The CSSF will communicate on the detailed content and format of these specific reporting obligations in coordination with the EBA. Furthermore, credit institutions are expected to make use of general payment moratoria in a transparent manner. Specific disclosure requirements to the public will also be published at a later point in time by the EBA.

30 April 2020: Global situation of undertakings for collective investment at the end of March 2020

The CSSF published its report on the global situation of undertakings for collective investment at the end of March 2020. According to the report, as at 31 March 2020, total net assets of undertakings for collective investment, including UCIs subject to the 2010 Law, specialised investment funds and SICARs, amounted to EUR 4,149.916 billion compared to EUR 4,668.713 billion as at 29 February 2020, i.e. an 11.11% decrease over one month. Over the last twelve months, the volume of net assets decreased by 4.61%. The report contains further information specific to the different categories of UCIs.

International Capital Market Association (ICMA)

29 April 2020: ICMA publishes an in-depth report on consolidated tape for greater post-trade transparency in the EU bond markets

ICMA announced that it has published its report into the considerations surrounding the establishment of an EU consolidated tape (CT) for bond markets. This report was produced in response to a request from the European Commission's DG-FISMA for a bespoke study assessing the feasibility of implementing a consolidated tape for EU post-trade raw bond data. The report explains that the goal of the bond market CT is to improve transparency, assist decision-making and provide market insights to end-investors, large or small. In its current state, post-trade data is fragmented across the different APAs with inconsistent presentation formats and differing modes of machine readability. Additionally, inadequate data quality poses a further challenge to the data that is currently available, and there is also a noticeable unlevel playing field with respect to access to raw post-trade bond data.

Therefore, ICMA argues that the adoption of the appropriate bond market CT would benefit the whole market, by providing a centralised, high quality, affordable, trustworthy data source, offering a comprehensive market view. This would bring immediate benefits to the professional bond market and could also benefit the retail sector more widely. To this end, the report attempts to address a number of fundamental questions relating to the context, relevance, comparability, scope, design, and governance of a potential consolidate tape. Please read our follow up report below for a comprehensive summary and analysis of the report.

30 April 2020: ICMA publishes an update memorandum on the EU's sustainability disclosure regime

ICMA published an update memorandum on the EU's sustainability disclosure regime. The memorandum seeks to provide the market with an initial comprehensive and practical overview of the new and amended EU legislation introducing significant sustainability and ESG related disclosure requirements, which will impact all participants in the European capital markets. ICMA will aim to regularly review and update this document in line with future developments.

As stated in the memorandum, the key points to retain are:

- The Disclosure Regulation aims to provide more transparency to end-investors on whether and how the buyside and financial advisers take into account ESG aspects.
- The Taxonomy Regulation creates obligations for large firms already subject to the Non-Financial Reporting Directive (NFRD) to disclose against the Taxonomy.
- The existing NFRD will most likely be revised after an ongoing consultation to better facilitate disclosures required from asset managers and pension providers under the Disclosure Regulation.
- Under the Low Carbon Benchmark Regulation, benchmark providers will have to disclose whether and how they take ESG factors into account.
- New ESMA guidelines mean that credit rating agencies have to disclose when considering ESG factors.

1 May 2020: ICMA brief - Knowing your TLTROs from your PELTROs

ICMA published a short summary on the new PELTRO programme announced by the ECB on the 30th of April 2020, and how it sits alongside other ECB programmes. As explained above, the PELTRO programme effectively provides banks with cheap 1-and- a-bit-year repo funding (until September 2021) at a rate of -0.25%.

ICMA believes that the programme is not so much targeted at stimulating lending into the 'real economy' but more so at offering support for the short-term euro sovereign funding. ICMA explains that the programme essentially provides a 'cash-and-carry' arbitrage for banks who can buy short-dated t-bills and bonds that yield above -0.25% (so essentially the lower credit periphery issuers) and fund them cheaply through the PELTRO.
While the PELTROs should help to support short-term financing for the peripheries, ICMA is of the belief that the programme does not quite deliver when it comes to settling nerves about longer-term borrowing costs and sustainability, where an expansion of the PEPP would have been helpful. ICMA mentions briefly that it might be potentially necessary for the ECB to use the OMT (Outright Monetary Transactions), which allows it to do whatever it takes to support the eurozone. According to ICMA, the longer the EU dawdles on its projected Recovery Fund, the more necessary it may become.

27 April - 1 May 2020: ICMA Podcasts

During the week, ICMA released the following podcasts that might be of interest to our readers:

- COVID-19: Practical implications for European primary debt capital markets - a view from A&O ICMA spoke to Amanda Thomas and Jennifer Cresswell of Allen & Overy LLP to get their perspective on the practical implications of COVID-19 for European primary debt capital markets, covering a wide range of issues from central bank asset purchase programmes to challenges around financial information, its preparation and publication, as well as the implications of remote working for executing documents, due diligence, disclosure, risk factors and more.
- COVID-19: How central banks are supporting the economy in this crisis Christophe Rieger, Head of Interest Rate & Credit Research at Commerzbank, spoke to ICMA about the different, and bold, measures taken by the central bank community as well as the fiscal responses from governments in mitigating and containing the economic fallout from the COVID-19 pandemic.
- COVID-19 ICMA Asset Management & Investors Council weekly market update with Robert Parker Robert Parker, Chairman of ICMA Asset Management and Investors Council, reviewed the market events of the last week in the context of the COVID-19 pandemic, with a specific focus on potential further actions by the ECB and the Federal Reserve, the EU fiscal stimulus, and the asset management industry.

Report 1. Summary Document – FCA's letter to CEOs on ensuring fair treatment of corporate customers preparing to raise equity finance – 28th of April 2020

In this letter, the FCA is alarmed by credible reports that a small number of banks are failing to treat their corporate clients fairly when negotiating new or existing debt facilities.

Particularly, the FCA is concerned by the following practice:

- It was reported to the FCA that some banks may have used their lending relationship to exert pressure on corporate clients to secure roles on equity mandates that the issuer would not otherwise appoint them to. Some of these roles may be 'in name only', with few or no additional services being provided in exchange for a share of the fee pool.

The FCA is concerned that tying clients to take additional services, or demanding fees for services not provided is not in the best interests of those clients, distorts competition, undermines market confidence and calls into question firms' and individuals' integrity. This conduct is also likely to increase overall transaction costs for corporates trying to raise money in these difficult circumstances.

Next Steps:

Therefore, the FCA is alerting the industry that it will be looking into these concerns further, and it won't hesitate to take action if it finds further evidence. More importantly, the FCA wants any practice of this nature to cease immediately. Such conduct could be a breach of FCA rules and Principles.

Furthermore, the FCA is reminding firms to fulfil their obligations under the Market Abuse Regulation (MAR) concerning the identification, handling and disclosure of inside information received in connection with the renegotiation of a corporate client's existing facilities. This includes details of a potential equity capital markets transaction. Depending on the circumstances, sharing such information within a lending bank may be inconsistent with that bank's obligations under MAR.

To ensure compliance, the FCA is advising firms active in the equity and lending markets to:

- Review their current systems and controls to ensure that they are appropriate for ensuring the proper treatment of clients, the identification and mitigation of conflicts of interest, and the handling of inside information. This review should consider the increased volumes expected to see in equity capital markets, and the concerns that have been raised by the FCA.

Finally, the FCA will be contacting firms to speak to the relevant senior managers who have had both a lending relationship and equity role with any of the issuers who have recently raised significant equity capital. The FCA wants to understand how those firms ensured clients were treated fairly and inside information was handled appropriately.

Report 2. Summary Document – EU consolidated tape for bond markets – 29th of April 2020

This report has been prepared by ICMA in response to a request from the European Commission's DG-FISMA for considerations related to the establishment of a post-trade consolidated tape (CT) for the European bond markets. It is based on input from a broad spectrum of ICMA's members, representing sell-side, buy-side, trading venues, and data providers active in the European fixed income secondary markets. The report attempts to address a number of fundamental questions relating to the context, relevance, comparability, scope, design, and governance of a potential consolidate tape. It is hoped that this report will provide a useful reference point for the ongoing discussions around the creation of a consolidated tape for European bond markets and a representative reflection of the views of market participants, in particular the eventual users of such a tape.

Background

Greater transparency in OTC bond markets and other "non-equity" asset classes is one of the key objectives of MiFID II and MiFIR. Comprehensive transparency requirements were introduced through MiFID II, MiFIR and related legislative acts which entered into force on 3 January 2018. Accordingly, market participants and trading venues have published post-trade data on executed bond and other non-equity transactions through Approved Publication Arrangements (APAs), a reporting entity created for the sole purpose of trade reporting (i.e. the public dissemination of transaction details).

However, in bond markets, MiFID II has yet fully to achieve its objective of creating greater transparency. A key reason for this is held to be the lack of a central database, which aggregates the various post-trade data sources into a single view: also referred to as a "consolidated tape". Instead, post-trade data is fragmented across the different APAs with inconsistent presentation formats and differing modes of machine readability. In addition, insufficient data quality poses a further challenge.

The concept of a consolidated tape originates from equity markets in the US and dates back to the late 1970s. The purpose of the consolidated tape was to provide an aggregate view of trade and quote information of equities in real time across stock exchanges. In US fixed income markets, a consolidated tape was set up in 2002 in the form of the Trade Reporting and Compliance Engine (TRACE) which is operated by FINRA (the Financial Industry Regulatory Authority is an independent, nongovernmental organization that writes and enforces the rules governing registered brokers and broker-dealer firms in the United States) to disseminate transaction data for a diverse range of debt instruments in real-time.

In Europe, the Capital Markets Union (CMU) recognises the importance of a consolidated tape for financial markets under MiFID II, which should increase the attractiveness of the EU capital markets as investment destinations. In its report of October 2019, the Next CMU High-Level Group recommends the establishment of a single Consolidated Tape facility. The creation of a CT is also a recommendation of the European Commission's Expert Group on Corporate Bonds, and the promotion of transparency of trading information is a principle of IOSCO.

However, efforts to develop a consolidated tape have been unsuccessful in the past due to concerns around the high costs for its development in a restrictive regulatory environment with a lack of clear commercial benefits, despite widespread demand from market participants in both equities and bond markets. MiFID II laid out requirements for the voluntary establishment of consolidated tape providers (CTPs), thereby paving the way for multiple rather than a single CTP. Furthermore, the fact that MiFID II does not mandate the submission of transaction data to CTPs, as is the case in the US, is considered to be a key hindrance for the emergence of a consolidated tape. In other words, there is no commercial incentive for potential CTPs to acquire the post-trade data, nor for APAs to provide the post-trade data to a CTP.

Nonetheless, it is important to take note of ESMA's recent announcement "ESMA recommends real-time consolidated tape for Equity". In this update, ESMA published a first review report on the development of prices for market data and on the consolidated tape for equity. This seems to open the way for an EU bond consolidated tape.
Benefits of an EU post-trade bond consolidated tape:

The goal of the bond CT, as perceived by Taskforce members, is to improve transparency, assist decision-making and provide market insights to end-investors, large or small. Adoption of the appropriate structure would benefit the whole market, by providing a centralised, high quality, affordable, trustworthy data source, offering a comprehensive market view. This would bring immediate benefits to the professional bond market but could also benefit the retail sector more widely. A bond consolidated tape would provide an overview of the bond market (taking into account deferrals) with raw (un-enriched) post-trade data which is available to the public, both professional and retail clients.

The potential benefits are:

- Levelling the playing field with respect to access to information
- Promoting market resilience
- Promoting competition
- Improved fund valuations
- Facilitating more accurate assessments of execution quality
- More accurate pricing of derivatives
- Informed decision making
- Facilitating automation
- Supporting the CMU

ICMA Recommendations

The ICMA Consolidated Tape Taskforce recommends considering borrowing a number of elements from TRACE, in particular: (i) Analysis on market liquidity prior to and following any introduction of CT, in order to understand impact on bond markets; (ii) Gradual roll-out of CT by (sub)asset class; (iii) Uniformity of reporting requirements and publication of technical specifications; (iv) Analysis of data to maintain robust data quality standards prior to public dissemination of data; (v) Testing and phase-in procedures for introduction of changes (such as new reporting fields); (vi) Communication and consultation with stakeholders to validate changes on a technical level.

ICMA recommends that the CTP contract should be awarded for no less than five years. This is to allow whoever is awarded the contract, to have sufficient time to recoup any development costs. In addition, the firm awarded the contract should have robust conflict-of-interest rules in place to assess whether its policies, procedures and corporate governance structure ensure independence of the CTP and the avoidance of conflicts of interest. Day-to-day CT costs to industry participants should be kept to a minimum. The view of ICMA is that ESMA should have oversight of the CTP contract and monitor for any breach of contract, and that supervision should start as of January of 2022 or as soon as the CTP commences service. ESMA would also work closely with industry participants (buy-sides, sell-sides trading venues, data providers and retail) who are best positioned to advise with collective market functioning expertise and stewardship.

In order to determine the best governance model for the CTP and CT operation, ICMA believes it is necessary to assess the likelihood of the CTP becoming a successful 'going concern'. This involves assessing potential funding, stewardship, management structure and IT operation models. The Taskforce sets out a number of potential models for CTP governance along with the perceived positives and negatives of each model and a view from Taskforce members as to the percentage chance of success for the governance model or combination of models.

These potential models are:

- A limited company, working with ESMA in a close public- private partnership with outsourced IT operations, could take out a loan to be paid back on a cost recovery basis from user fees, to provide a CTP.
- ESMA could govern through an SRO data entity mechanism while recovering costs through subscription/membership fees to provide a CTP.
- ESMA could work with the industry (stewarding day- to- day operations) but have overall governance, recovering costs through NCA increased contributions, to provide a CTP.
- APAs could converge on technical standards and a single business model, recovering costs through industry accepted user fees, in order to work together to provide a CTP.

Finally, ICMA states that clear concise and unambiguous instructions for individual MiFID II reporting fields are needed. Reference codes that are used also must be absolutely correct. Currently, data fields in MiFID II are open to ambiguous interpretation, leading to, incorrect data downstream in many instances. For a consolidated tape to be useful, more concise instructions, followed correctly by reporting parties, will need to be implemented.

Regulators & Associations Monitored

1. **FCA**
2. **BoE**
3. **The Pensions Regulator**
4. **ESMA**
5. **EBA**
6. **EIOPA**
7. **ECB**
8. **European Commission**
9. **CSSF**
10. **FINMA**
11. **CBI**
12. **ICMA**
13. **IOSCO**
14. **FSB**