

PRIORITIES IN THE INTERNATIONAL CAPITAL MARKETS FOR THE NEW EUROPEAN COMMISSIONER

Introduction

Over the past 40 years, the International Capital Market Association (ICMA) has made a significant contribution to the development of the international capital markets. ICMA promotes efficient and well functioning markets by bringing together the buy side and the sell side, on a pan-European basis, and representing the interests of the markets as whole.

The purpose of this paper, which has been prepared in consultation with ICMA's Regulatory Policy and Market Practices Committees of market experts in response to the European Commission's request, is to recommend priorities in the international capital markets for the new European Commissioner, taking into account the lessons from the international financial crisis. The paper focuses specifically on priorities relating to the operation in the EU of the international capital markets *as a whole* rather than to the requirements, such as those for capital and liquidity, relating to *individual* financial institutions.

We recommend that the Commissioner should:

Regulatory response to the international financial crisis

- Put in place the proposed new EU supervisory framework, incorporating the European Systemic Risk Board and the European System of Financial Supervisors, as soon as possible.
- Ensure that new legislative measures introduced in the EU in response to the international financial crisis are consistent with one another, within a clear over-arching framework (as in the case of the Financial Services Action Plan), and that they are also consistent with those agreed globally by the G20.
- In conjunction with the Competition Commissioner, prevent a return to national protectionism in the EU, for example by resisting the pressure among national governments to encourage domestic, to the exclusion of cross-border, lending.
- Examine to what extent an equitable long-term solution can be found to the problem of how national authorities, in particular in the euro area (where there is the added complexity of a single central bank while national ministries of finance are the effective lenders of last resort), should share the financial burden between them, if they have to rescue systemically significant financial institutions operating across national borders.

Single Market

- Ensure that the international capital markets throughout the European Economic Area (EEA) are fully integrated through development of a "Single Market Rulebook" and through the exercise of powers to ensure consistent implementation of EU legislation in different Member States, providing a level playing field for competition between market participants.

- Clarify the division of responsibilities between the role of the proposed new European Securities and Markets Authority (e.g. in relation to binding technical standards), on the one side, and the continuing role of the national supervisory authorities, on the other; and keep under review the quality of the outcome.
- Re-engage with the new US Administration on the development of a harmonised EU/US market; and pursue other initiatives for third country access to capital markets, particularly in the case of key emerging markets such as Brazil, Russia, India and China.

Primary markets

- Limit changes in the new Financial Services Action Plan (FSAP) regime governed by the Prospectus, Transparency and Market Abuse Directives to emergency repairs, given that market participants have just finished making a major effort to adjust to the new regime.

Secondary markets

- As one of the emergency repairs referred to above, terminate application of the Prospectus Directive from the time of listing (after which disclosure is covered under the Transparency and Market Abuse Directives), thus ensuring a better fit between the FSAP regime and the retail cascade¹ dynamic that operates in the international capital markets.
- In undertaking the proposed MiFID review, take account of the differences between the equity and debt markets, and only require additional post-trade transparency in the wholesale debt markets if it can be shown that the benefits would outweigh the risk of a resulting reduction in market liquidity; and ensure that input to the review is sought from the full range of market participants, including issuers and investors.
- In assessing the implementation of MiFID, ensure that, across the whole of the EEA, all trading venues are able to compete on an equal footing with respect to the European secondary market for government bonds.
- Taking into account differences between markets, prevent mandatory market making requirements, or other overly onerous provisions, from being imposed where that would simply lead to many firms permanently exiting the market.
- In drafting new regulations, ensure that unintended consequences are avoided whenever possible: e.g. requirements relating to securitisation should not unintentionally restrict economically desirable flows in asset-backed commercial paper.

¹ A “retail cascade” is one of the prevailing methods of distributing debt securities to retail investors. It involves the issuer selling the securities to investment banks underwriting the issue who, in turn, sell them to retail distributors, thereby creating a distribution chain. Over a period of time ranging from several days to several months (frequently extending beyond the issue date of the securities), the retail distributors, usually acting independently from the issuer, then sell the securities to their retail investor clients at prices that may vary from sale to sale, reflecting market conditions at the time – effectively secondary market sales. In contrast, equity securities are often distributed by the issuer or the underwriting banks directly to retail investors as part of the initial offering.

Asset management

- Work with all sectors of the asset management industry, including institutional investors and private banks, in maintaining market confidence (eg transparency, liquidity and integrity).
- Revisit the proposed Alternative Investment Fund Managers Directive, in the light of the advice received from asset managers and others, to ensure that, as well as strengthening the oversight and regulation of the sector, it also promotes a level playing field and avoids the risk of financial protectionism.
- Encourage improved corporate governance through greater participation by shareholders in the direction of the companies in which they invest.
- Discuss with the asset management industry issues relating to reporting data and the valuation of illiquid assets.
- Consider the proposals put forward by the industry for standardising the definition of money market funds so that investors can distinguish more clearly between them.

Financial infrastructure

- In bringing forward new EU legislation on clearing and settlement, ensure that post-trade European infrastructure service providers can compete in a harmonised and therefore low-risk operational, legal and regulatory environment, to offer innovative, low cost services to all users on a non-discriminatory basis.
- Following the work of the Giovannini group, consider ways to increase the efficiency of the post-trading infrastructure – especially through elimination of the outstanding barriers imposed by national governments.
- When endeavouring to make the capital markets safer (e.g. by encouraging central counterparty netting and straight-through-processing), focus on standardised financial products, but do not discriminate against bespoke financial products, so as to preserve investor choice and the ability of financial intermediaries to innovate.
- Monitor any rapid growth in new financial products so as to guard against the emergence of new systemic risks.

Better regulation

- Introduce new regulations only when they can clearly be justified on the grounds that they will improve the efficiency and resilience of the market and that the benefits significantly outweigh the costs; and undertake full consultation sufficiently in advance with all market participants.
- Check that any new legislation does not damage EU competitiveness, nor discourage innovation.
- Avoid “gold-plating”, wherever possible.

- Maintain a level playing field between the euro area and the rest of the EEA; the EEA and the rest of the world; and across market sectors.

Role of self-regulation

- Within the regulatory framework, encourage the market to continue to play a role in promoting orderly and efficient markets through self-regulation by setting standards of good market practice whose implementation can properly be monitored.

Market input

- Continue to consult the market on the specific lessons to be learned from the international financial crisis.
- Continue to consult the market on new proposals, but also take direct advice from committees of true market experts (i.e. experienced, active participants in the relevant markets) involving the buy side and the sell side together, so as to provide both original input and an independent check on the advice which the Commission receives from the regulators in the three new European Supervisory Authorities (ESAs); and ensure that the ESAs themselves set up balanced user committees.
- Encourage market participants to improve their methods of collecting, collating, aggregating and disseminating appropriate information on systemic risk, both within the EEA and globally; and coordinate with the European Systemic Risk Board, the Financial Stability Board and the IMF, as well as with market participants themselves and their trade associations.
- Increase the number of market practitioners working in DGMarkt so as to ensure better understanding of financial markets by current staff members.



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