**79TH meeting of the european financial markets lawyers group**

AGENDA

**Friday, 3 June 2022**

**10:00 – 15:45**

**Venue:**

**European Central Bank and Webex**

**Sonnemannstrasse 20 (Main building)**

**60314 Frankfurt am Main**

**Room GH C2.03**

**Invited speakers**:

Frederick Quenzer, Assistant General Counsel, ISDA

Mark New, Senior Counsel Americas, ISDA

1. **Introduction by the Chair (5’) 10:00 – 10:05**
2. **Non – bank lending (30’) 10:05 – 10:35**

**Presenter:** Dimitris Tsibanoulis (Tsibanoulis and Partners)

**Background:** Non-bank lending remains largely un-harmonised across the EU since there is no common European legal framework for financial institutions, not being credit institutions or credit institutions’ subsidiaries. Diverging measures are adopted at national level, which are likely to cause distortions of competition, resulting from differences in investor protection measures. The European Banking Authority (EBA) on 4 May 2022 published a Report on non-bank lending (see linked here: [Report](https://www.eba.europa.eu/eba-provides-its-advice-eu-commission-non-bank-lending)) in response to the European Commission’s February 2021 Call for Advice on this topic. The EBA has identified the risks related to provision of credit by non-bank lenders and put forward some proposals aiming at addressing these risks in the areas of supervision, consumer protection, anti-money laundering and countering the financing of terrorism (AML/CFT), macro and micro-prudential risks.

**Action point:** To be decided at the meeting.

**Documentation:** Presentation.

1. **Review of the EU Macroprudential Framework (30’) 10:35 – 11:05**

**Presenter:** Holger Hartenfels (Freshfields Bruckhaus Deringer)

**Background:** Art. 513 of Regulation (EU) No 575/2013 (CRR) requires the Commission to review whether the macroprudential rules contained in the CRR and in the Directive 2013/36/EU (CRD) (together the EU Macroprudential Framework) are sufficient to mitigate systemic risks in sectors, regions and Member States. The Commission shall, by not later than 31st December 2022 report to the European Parliament and to the Council on its assessment and, where appropriate, submit a legislative proposal to the European Parliament and to the Council.

On 8th July 2021, in preparation for its report to the European Parliament and to the Council the Commission published a call for advice, inviting the European Banking Authority (EBA), the European Systemic Risk Board (ESRB) and the European Central Bank (ECB) to assist the Commission in its review of the EU Macroprudential Framework. In its response dated 19th March 2022, the ECB proposed to strengthen the features of Additional Tier 1 (AT1) instruments. In its response dated 31st March 2022 the European Systemic Risk Board proposed to modify the new leverage ratio buffer to the effect that it can be met only with the same type of capital as the risk-weighted capital buffers. This would mean that global systemically important banks (G-SII), which have to comply with the leverage ratio buffer starting in 2023 could not use AT1 instruments (as it is currently provided, cf. Art. 92(1a) CRR).

The EFMLG will exchange views on the impact of the proposed amendments on AT1 instruments.

**Action point:** To be decided at the meeting.

**Documentation:** Presentation.

1. **Sustainable finance matters**
   1. **Sustainable finance updates (35’) 11:05 – 11:40**

**Presenters:** Suzy Vandewiele (BNP Paribas Fortis)/Holger Hartenfels (Freshfields), Inigo Arruga Oleaga (ECB)

**Background:** Information point on several matters connected to the EFMLG contribution to the ESMA consultation on investor sustainability preferences and other sustainability matters.

* **Potential postponement of CSRD**: the European Parliament (EP) is proposing a one-year delay of the CSRD compared to the original Commission proposal (therefore asking all large companies to disclose according to the new rules and standards as of 2024). Potential limitation of the CSRD’s scope: as there is need for information on ESG aspects from entities not covered by CSRD, the EP could further limit its scope.
* **EIOPA Guidelines on relations with clients on ESG investments**: potential increased difficulties for compliance when compared with the ESMA guidelines.
* **Duty of care of credit institutions on ESG**.
* **Discussion Paper of the EBA on the role of environmental risks in the prudential framework for credit institutions and investment firms.** The Paper explores whether and how environmental risks are to be incorporated into the Pillar 1 prudential framework. It launches the discussion on the potential incorporation of a forward-looking perspective in the prudential framework. It also stresses the importance of collecting relevant and reliable information on environmental risks and their impact on institutions’ financial losses. The consultation runs until 2 August 2022.

**Documentation:** Presentations

**Action point:** EFMLG Members are invited to share information on the above points and on the following ones: progress of the EU green bond standard legislative file, progress on ecolabel, definition of the ‘notion of ‘sustainable (investing)’.

* 1. **ESAs’ Joint Consultation Paper on Sustainability Disclosures for STS Securitisations (30’) 11:40 - 12:10**

**Presenter**: Inigo Arruga Oleaga (ECB)

**Background**: The European Supervisory Authorities (ESAs) are seeking comments on a consultation paper setting out the proposed Regulatory Technical Standards on content, methodologies and presentation of disclosures pursuant to Article 22(4) and 26d(4) of Regulation (EU) 2017/2402 (Securitisation Regulation). The ESAs invite comments **by 2 July 2022**.

**Action point:** Point for discussion. Eventual written contribution of the EFMLG if an EFMLG member drives the EFMLG contribution.

**Documentation:**  ESAs consultation paper (linked here: [ESAs consultation paper](https://www.esma.europa.eu/press-news/consultations/joint-consultation-paper-sustainability-disclosures-sts-securitisations)) and presentation.

1. **Targeted consultation on open finance framework and data sharing in the financial sector (20’) 12:10 – 12:30**

**Presenter:** Joost Elsenburg (ING)

**Background:** The European Commission’s digital finance strategy and the retail payments strategy announced the launch of a comprehensive review of the application and impact of PSD2, which should include an overall assessment of whether it is still fit for purpose, taking into account market developments. The consultation will inform the Commission on the application and impact of PSD2 and on the views on Open Finance, taking into consideration, among others, developments in the payment market, payment user needs and the need for possible amendments. The consultation’s deadline is 5 July 2022.

**Action point:** To be decided at the meeting

**Documentation:** Presentation

*Lunch break – 1 hour 30 minutes*

1. **ESMA final report on certain aspects relating to retail investor protection (25’) 14:00 – 14:25**

**Presenter:** Ignacio Ollero and Belén Alonso (BBVA)

**Background:** The EFMLG contributed to the ESMA consultation on the draft guidelines on investor preferences but sustainability preferences do not play practically any role in this ESMA report on retail investor protection. The EFMLG will discuss ESMA’s final report.

**Action point:** To be decided at the meeting.

**Documentation:** Presentation

1. **Call for advice on the review of the PRIIPs Regulation (20’) 14:25 – 14:45**

**Presenter:** Ignacio Ollero (BBVA)

**Background:** On 27 July 2021 the European Commission requested the ESAs’ advice on PRIIPs. Following this request, the ESAs gave their technical advice and suggested a significant number of changes to the PRIIPs Regulation and encouraged the co-legislators to consider a broad review of the PRIIPs framework. A general overview of these proposals will be presented and include among others the supervision, content, structure, accessibility and provision of the KID, the scope of PRIIPs and approaches to take into account different types of products.

**Action point:** To be decided at the meeting.

**Documentation:** Presentation.

1. **SFTs under ISDA Master Agreements (30’) 14:45 – 15:15**

**Presenter:** Frederick Quenzer, Mark New (ISDA)

**Background:** SFT Definitions and related SFT Schedule Provisions have been drafted to allow for Securities Financing Transactions (SFTs), both stock loans and repurchase transactions, to be documented under an ISDA Master Agreement. This presents parties with an opportunity to document derivatives and SFTs under a single netting agreement, while respecting key economic and operational differences between products. Frederick Quenzer and Mark New from ISDA will present ISDA’s ongoing project in that field to the EFMLG.

**Action point:** For information.

**Documentation:** Presentation.

**9. Information points/AOB (30’) 15:15 – 15:45**

* Update on Article 55 BRRD (Julia Bayon Pedraza – Santander)
* Brief discussion on topics for the EFMLG regarding EBA’s guidelines on resolvability (Holger Hartenfels – Freshfields)

**Action point:** To be decided at the meeting.