

International Capital Market Association

ICMA



ICMA European Repo Council General Meeting 14 October 2015



Welcome by our host

- Mr. Brian Ruane, CEO, Broker Dealer Services at BNY Mellon

Opening remarks

- **Mr. Godfried De Vidts**, Chairman on the ICMA ERC, Director of European Affairs ICAP

- ERC Committee meetings – depressing
- So many issues hitting the repo market...
- “te laat de put gevuld als het kalf verdronken is”
- Need for industry and regulators to work together to develop a well-balanced and executable level 2
- But... in many cases, the level 1 text is incompatible with the level 2 outcomes, due to political compromises made drafting level 1
- Regulation needs to recognise the crucial role it plays in underpinning the economic well-being of Europe and its impact on prosperity and jobs
- Repo should be seen as a solution
- Need to rectify where the legislation went a little too far

- French initiative that was begun in 2013 by the Banque de France and several major international banks
- a new way to create collateral that can be used in baskets for CCP clearing
- The ECB has amended its monetary policy implementation framework to allow for a new class of eligible assets - “ *non-marketable debt instruments backed by eligible credit claims (DECCs)*”
- a way to expand the eligible pool of collateral at a time when QE places increased pressure on the availability of government bonds

- The ICSDs have announced that Phase 1 to improve bridge settlement has been completed
- Improvement in cut-off times, especially in EUR, GBP and USD
 - Mandatory Against Payment – Early European and Asian currencies: 13:20 (improved by 20 mins);
 - Mandatory Against Payment – EUR, GBP, USD, CAD, MXN, ARS, PEN: 15:00 (improved by 2 hours);
 - Optional Against Payment – All currencies: 17:25 (improved by 2h 25m);
 - Free of Payment: 17:25 (improved by 4h 25m).
- Settlement turnaround time after 12:00 CET reduced to 35-90 minutes (previously 60-120 minutes)
- Extension of interoperability between the ICSDs at the end of the day until 18.30 CET

ICMA European Repo Council (ERC)

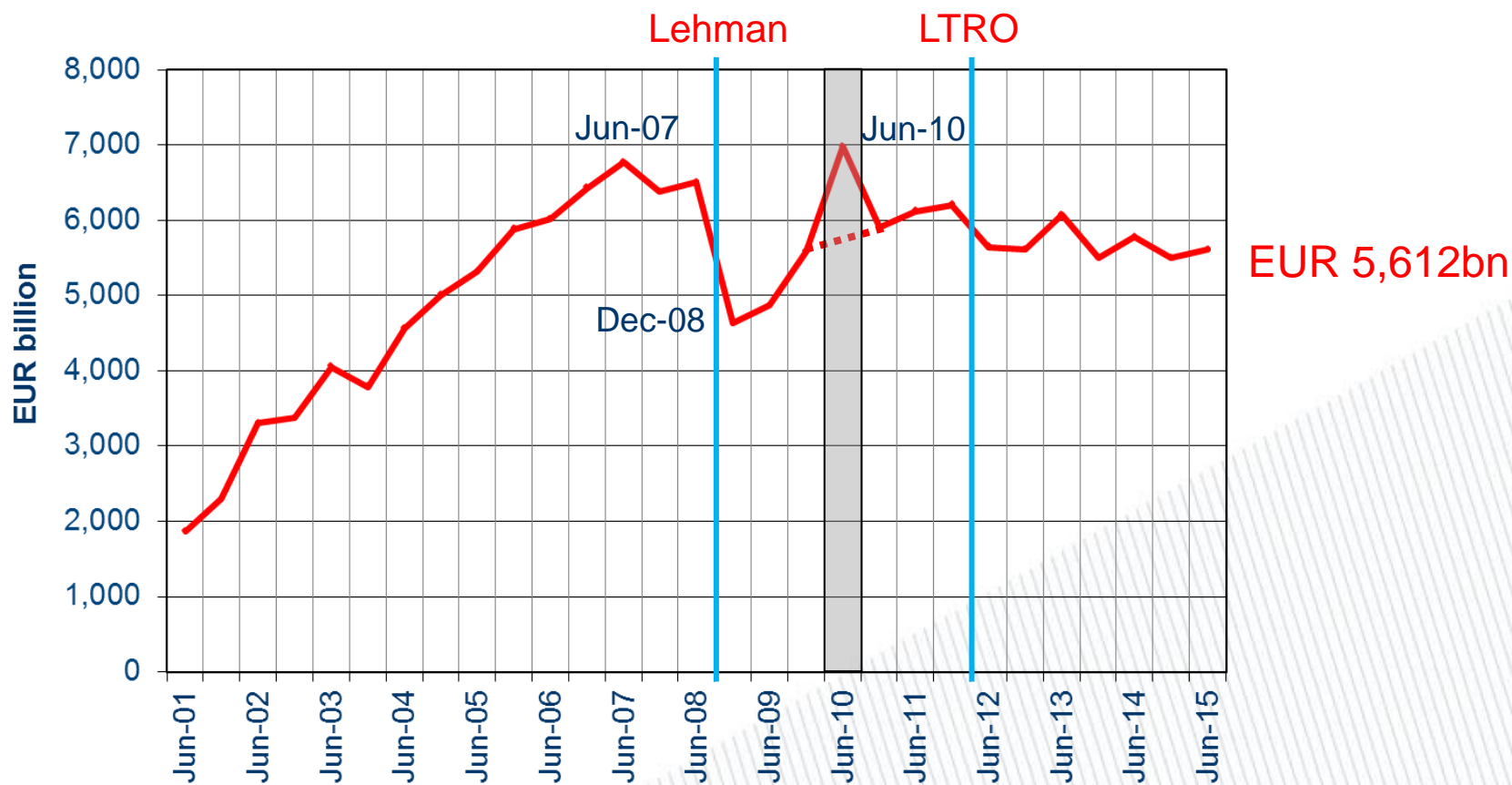
29th European repo market survey conducted in June 2015

- **Mr. Godfried De Vidts**, Chairman on the ICMA ERC, Director of European Affairs ICAP

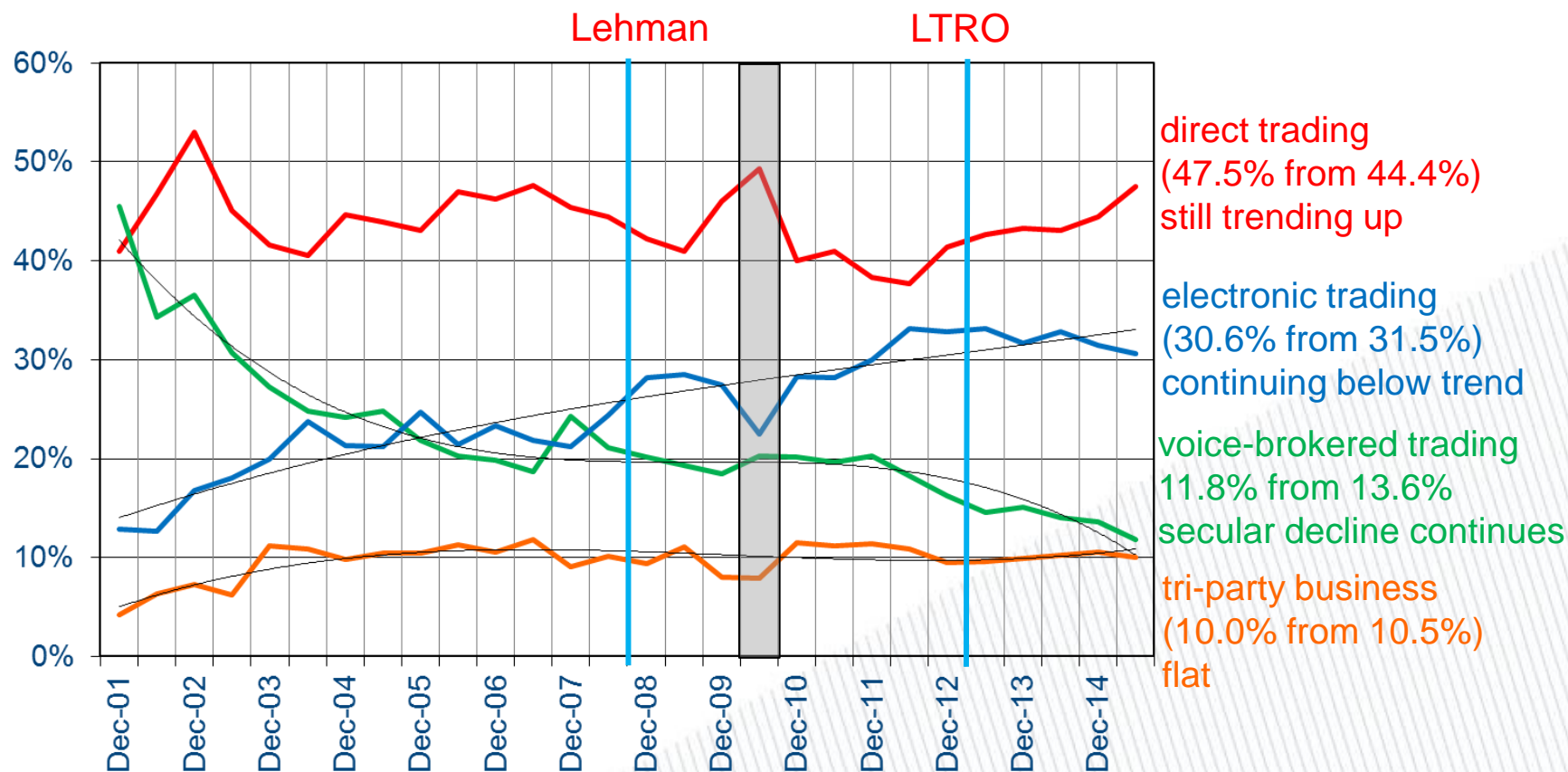
headline numbers: +2.0% from December, -2.9% YoY
constant sample: +4.7% from December, -3.7% YoY

▪ June 2015	EUR 5,612 billion
▪ December 2014	EUR 5,500 billion
▪ June 2014	EUR 5,782 billion
▪ December 2014	EUR 5,499 billion
▪ June 2013	EUR 6,076 billion
▪ December 2012	EUR 5,611 billion
▪ June 2012	EUR 5,647 billion
▪ December 2011	EUR 6,204 billion
▪ June 2011	EUR 6,124 billion
▪ December 2010	EUR 5,908 billion
▪ June 2010	EUR 6,979 billion
▪ December 2009	EUR 5,582 billion
▪ June 2009	EUR 4,868 billion

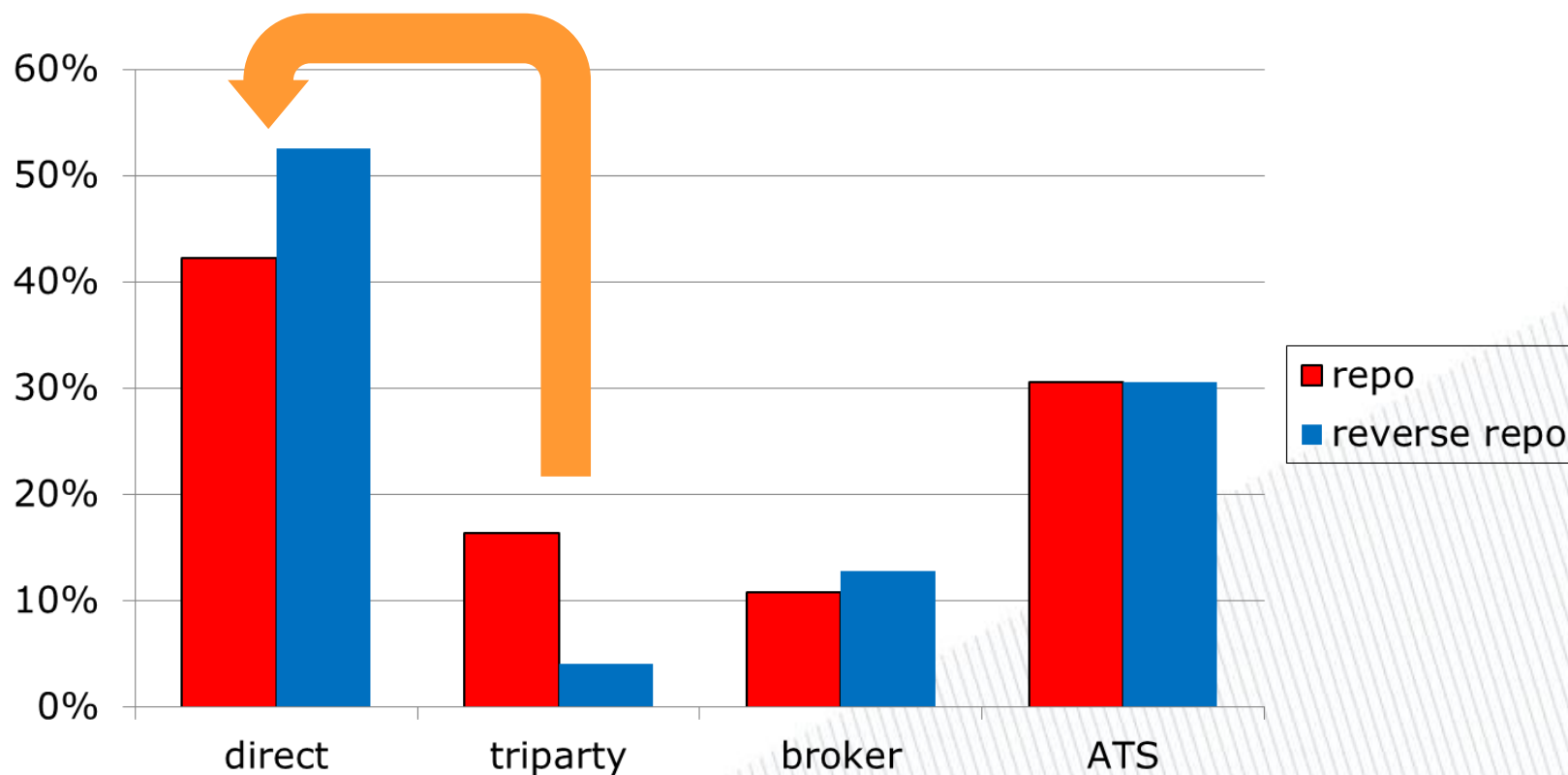
headline numbers: trend still slowly downwards



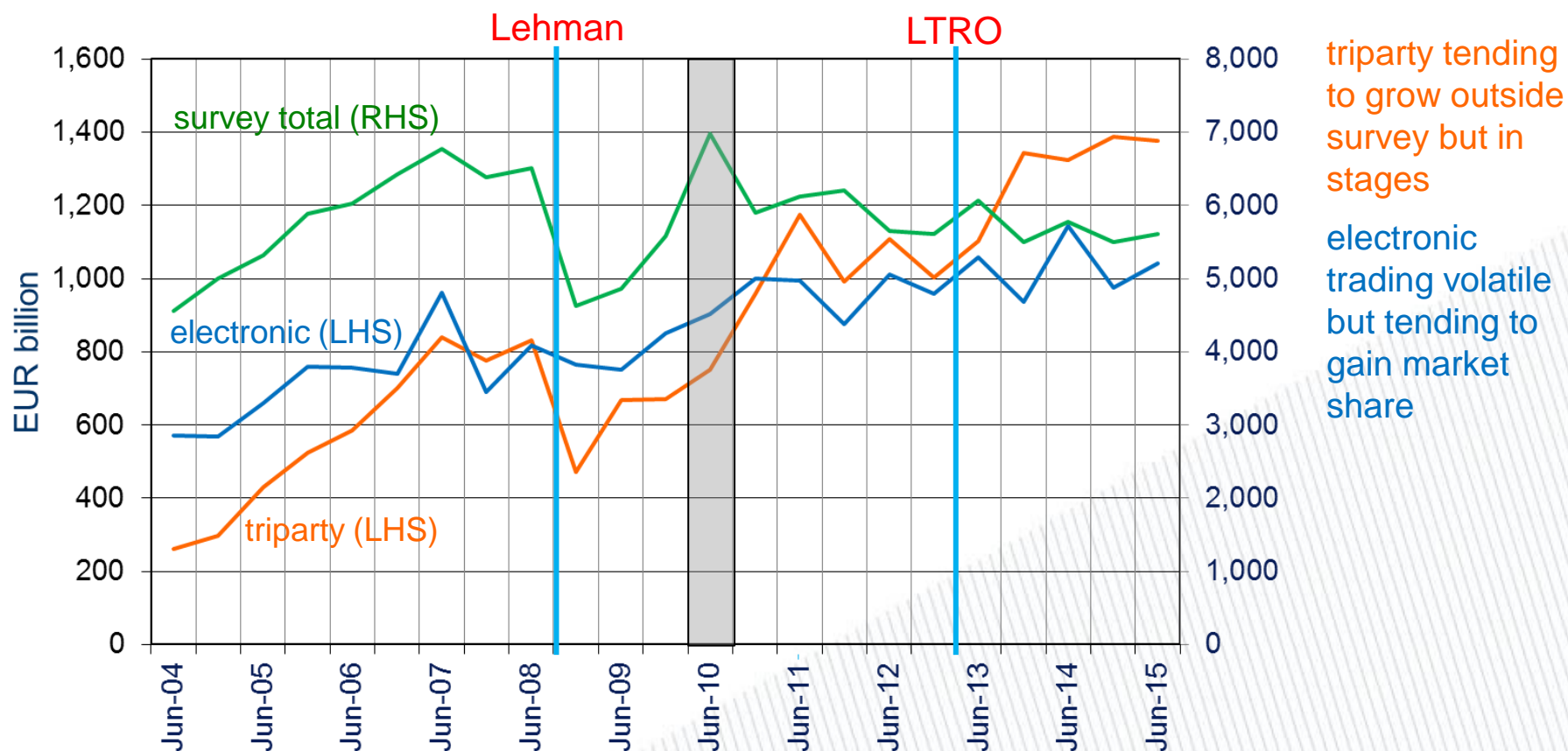
trading analysis: shift to direct trading continues



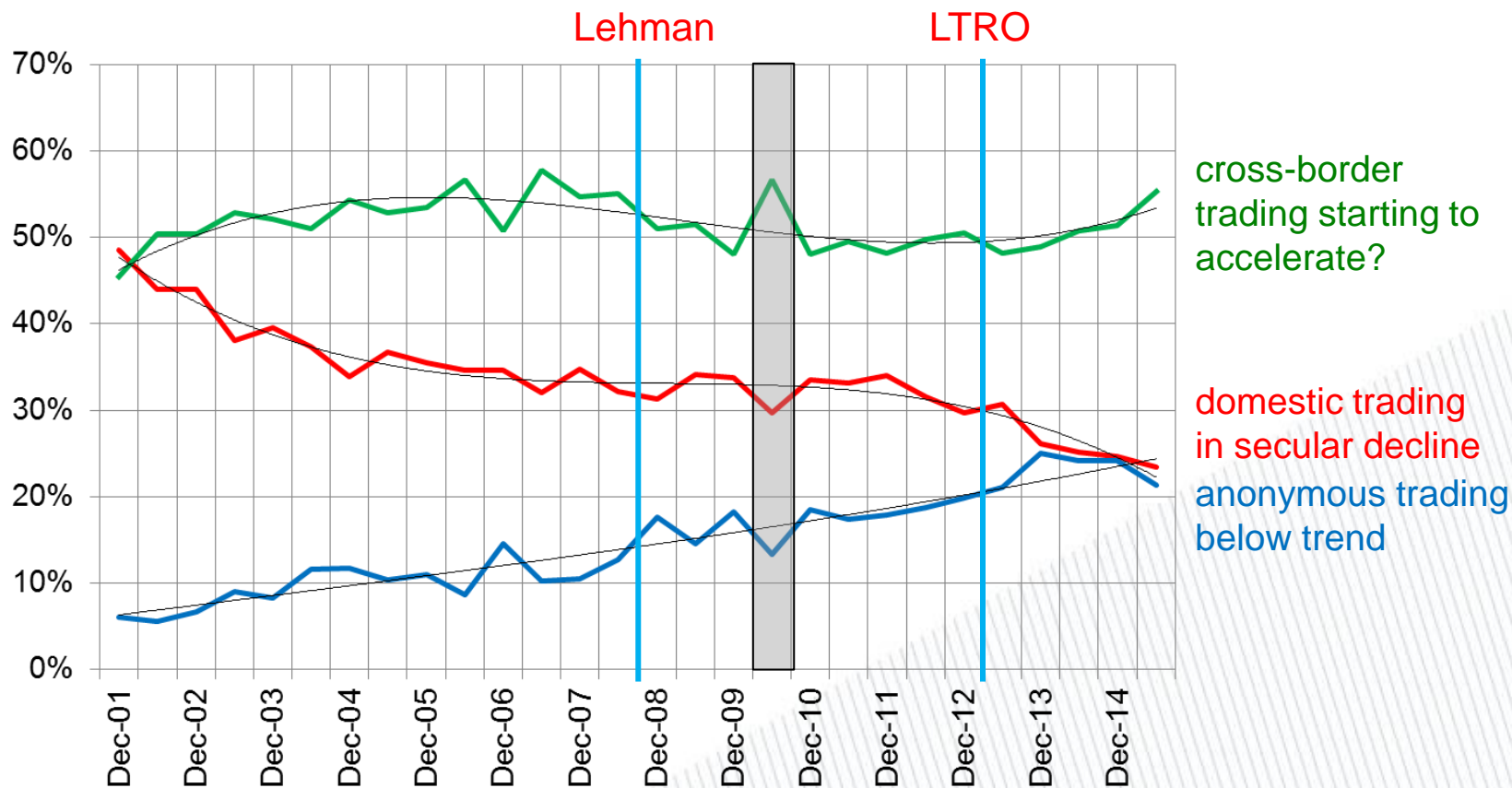
trading analysis: net flow of funds into direct trading



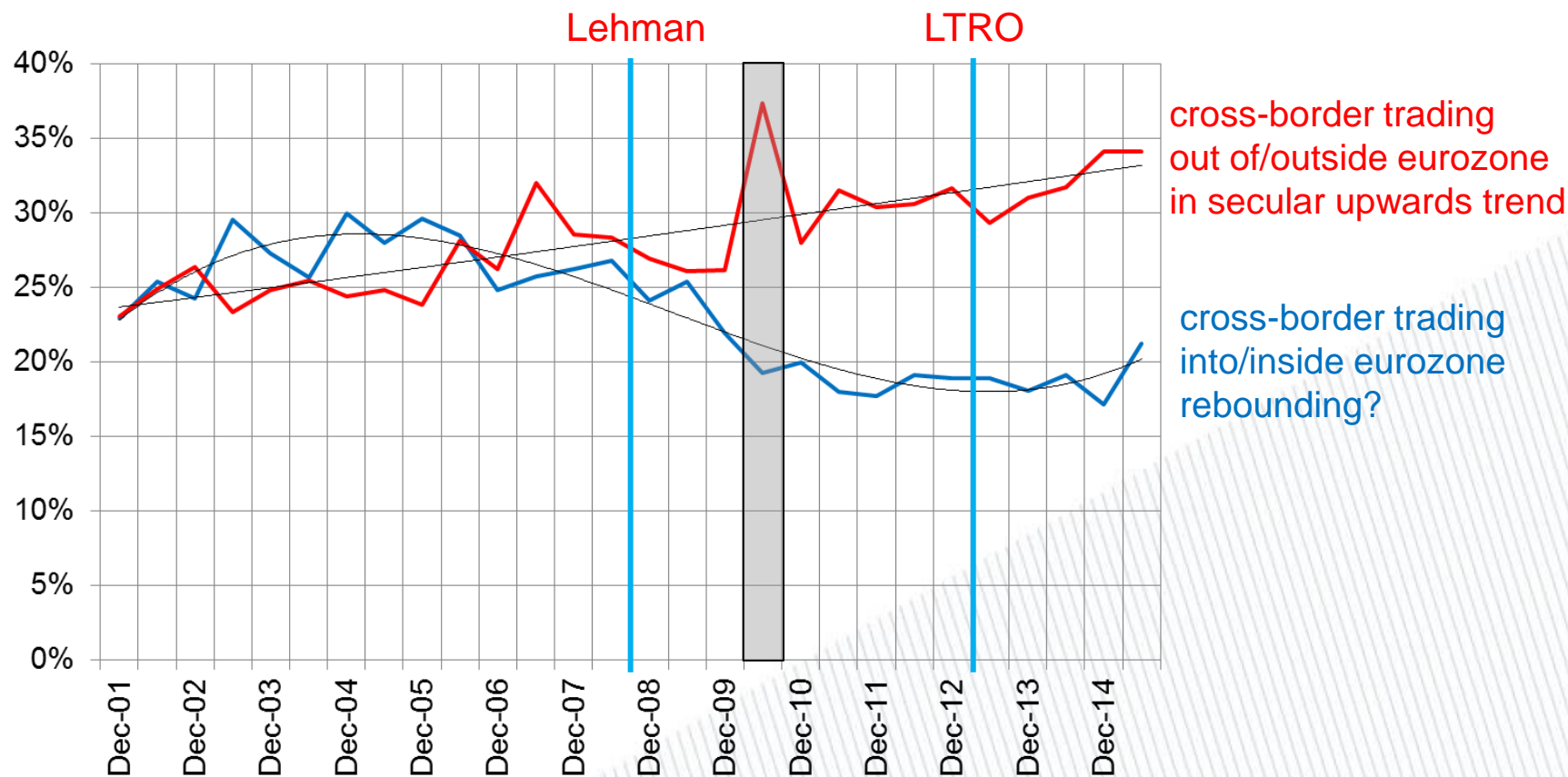
trading analysis (directly reported by providers)



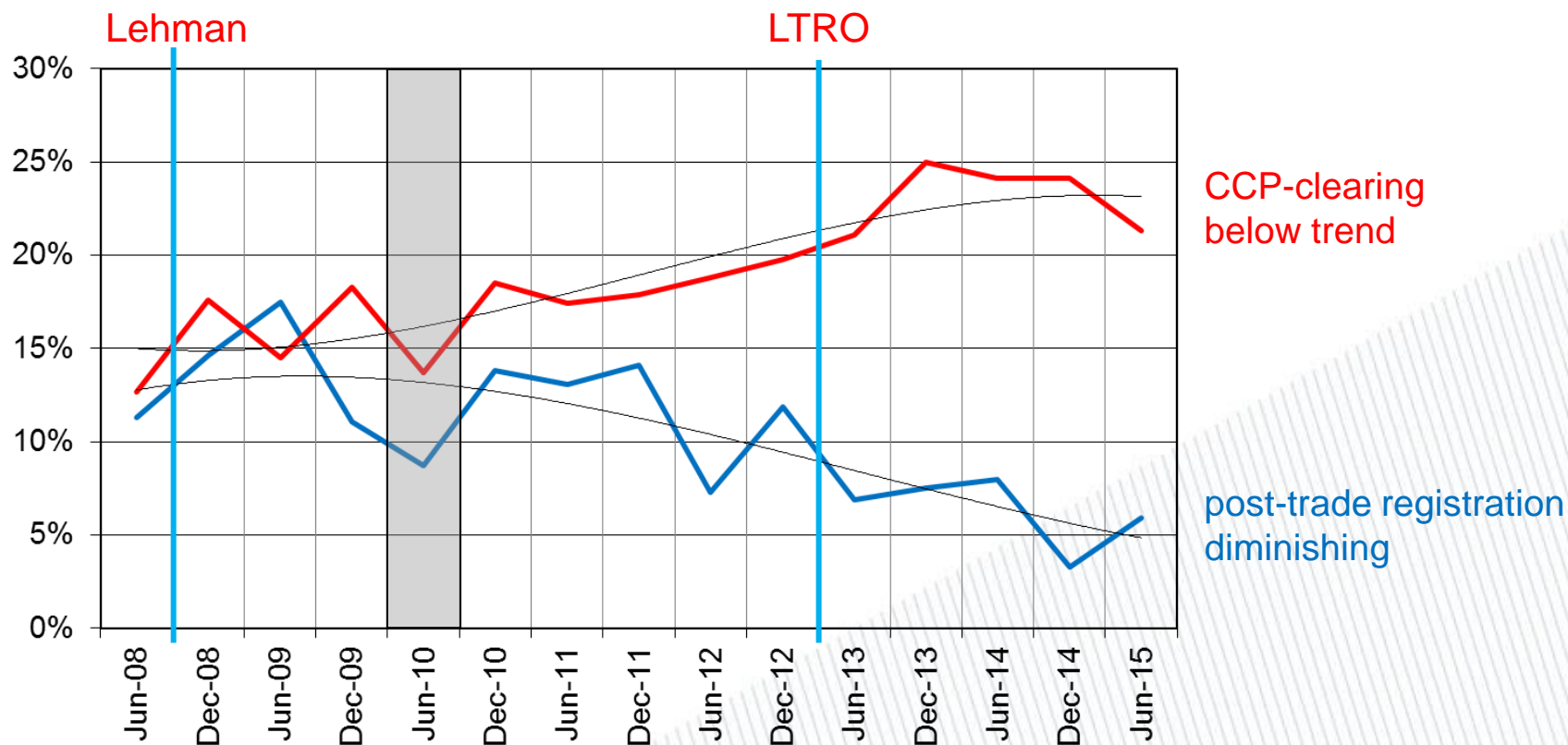
geographical analysis: shift to cross-border



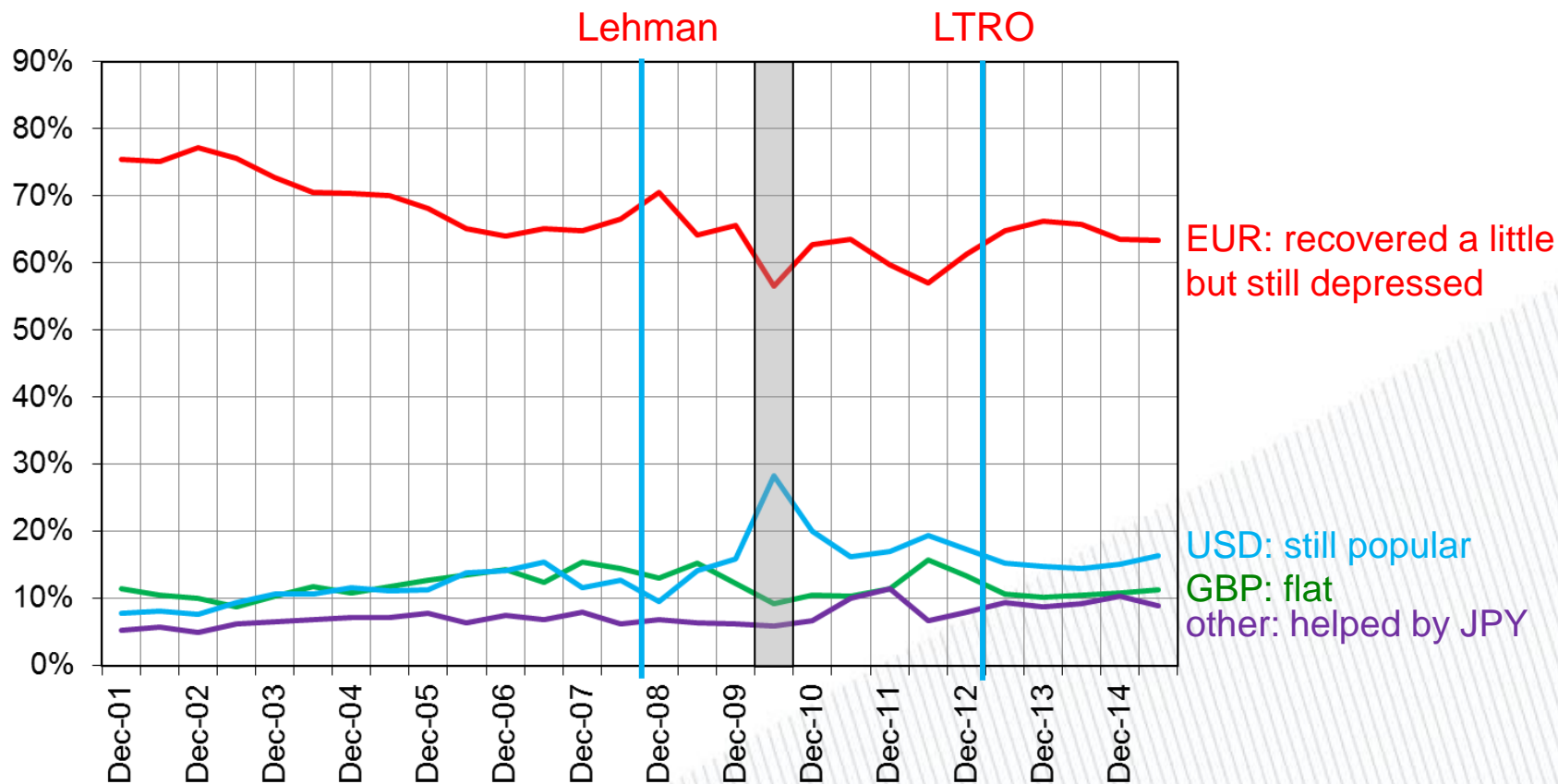
geographical analysis: shift into cross-border trading



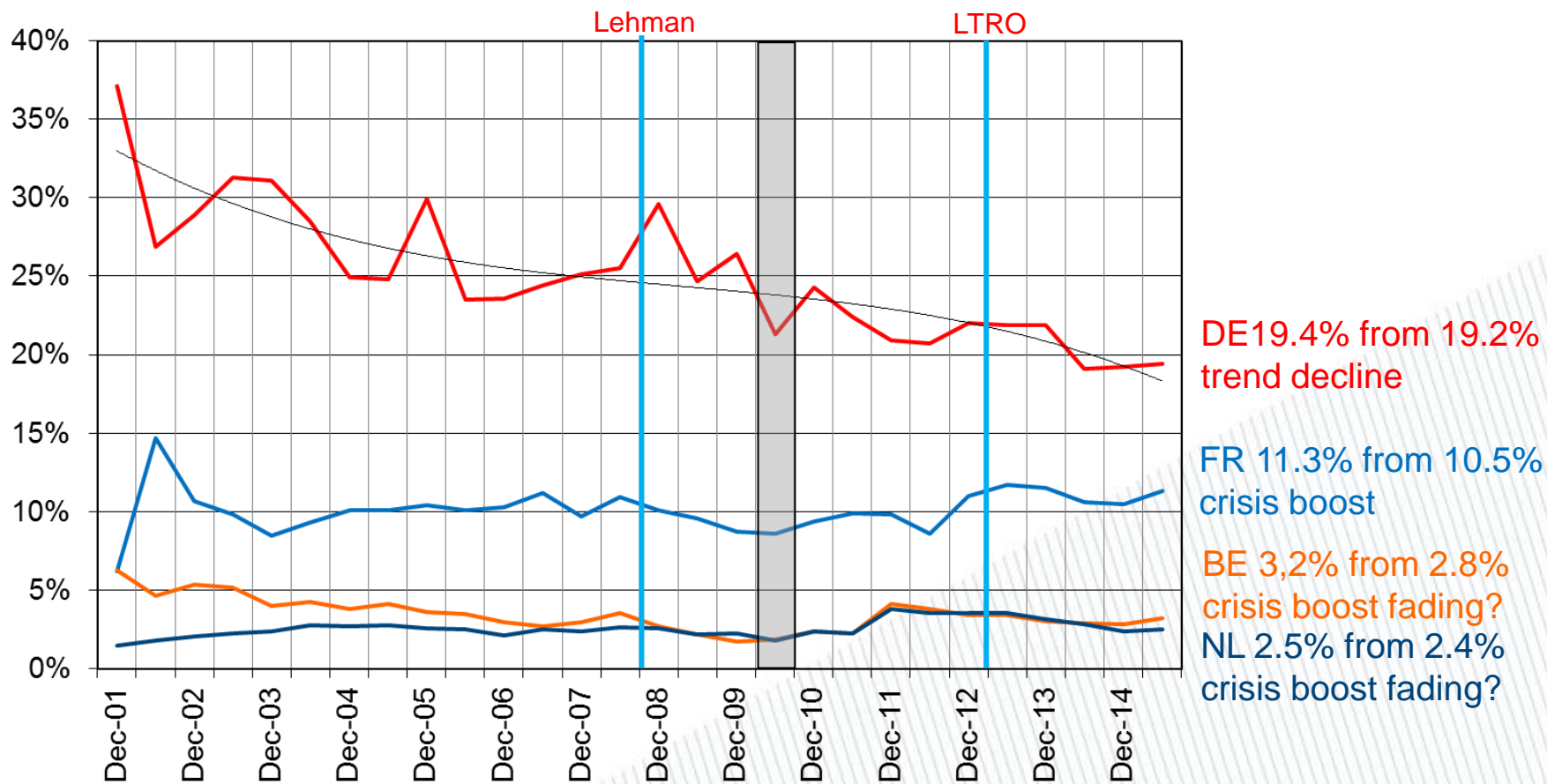
business cleared across CCP: outstandings stalled



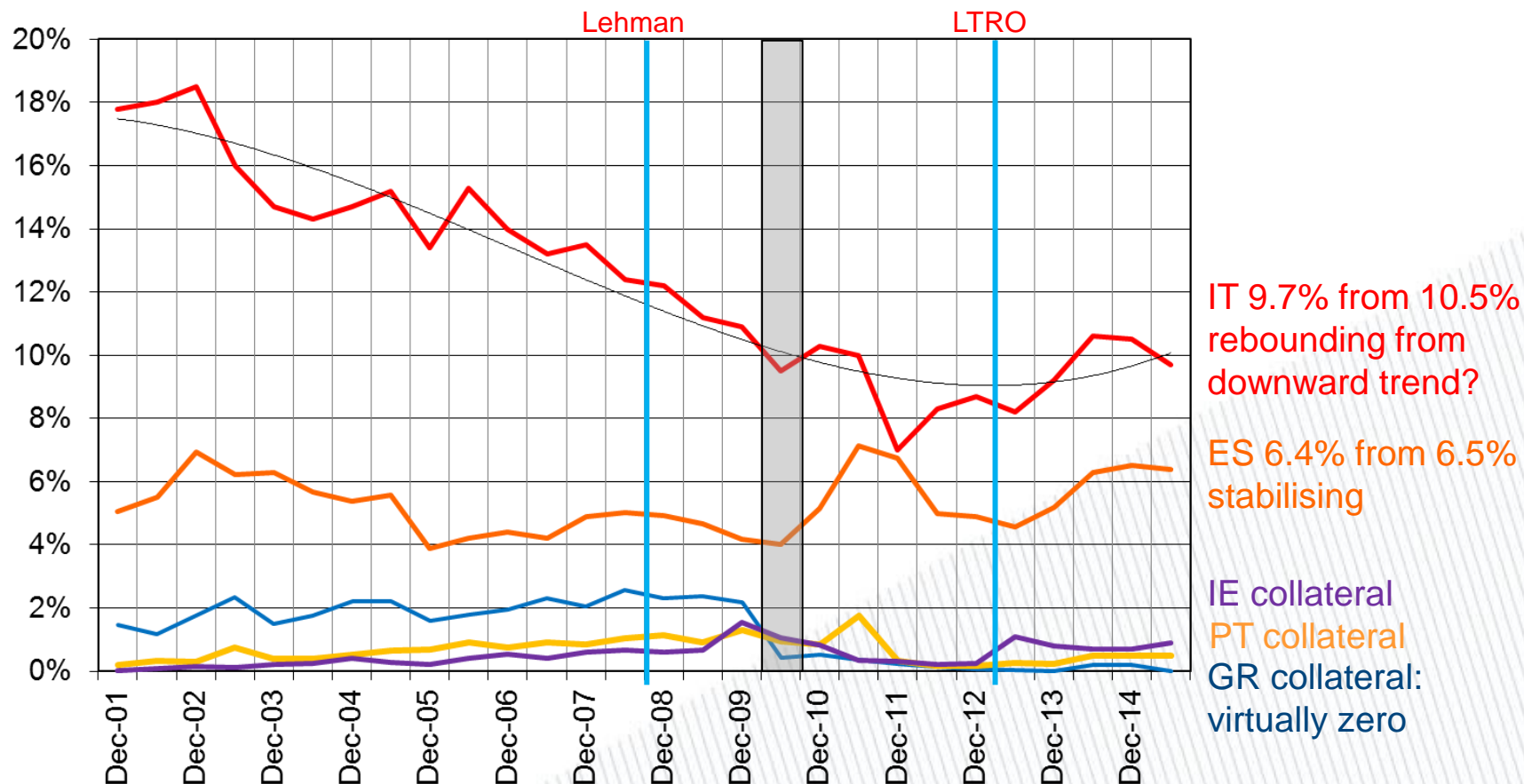
currency analysis



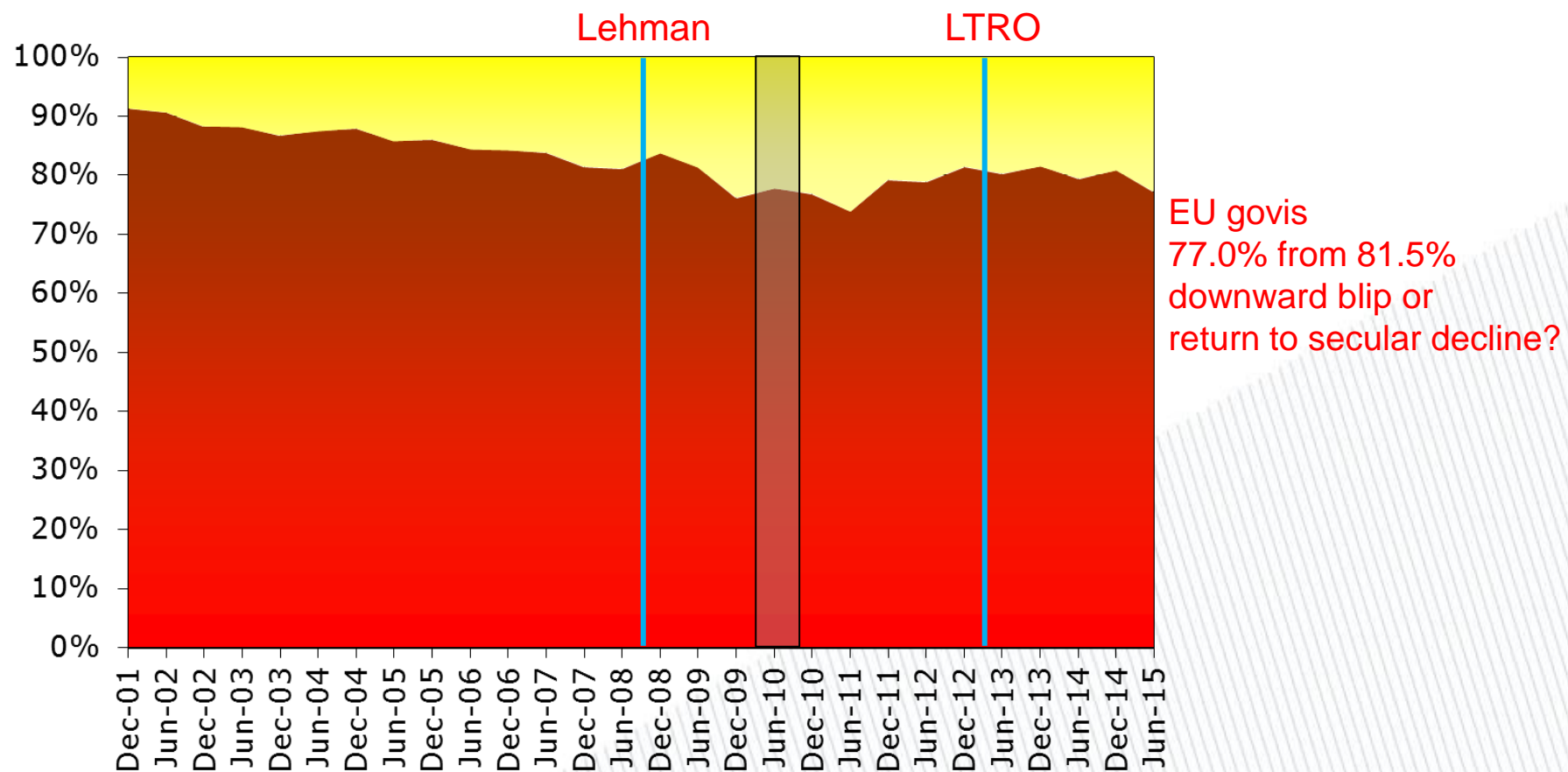
collateral analysis: core eurozone



collateral analysis: peripheral eurozone

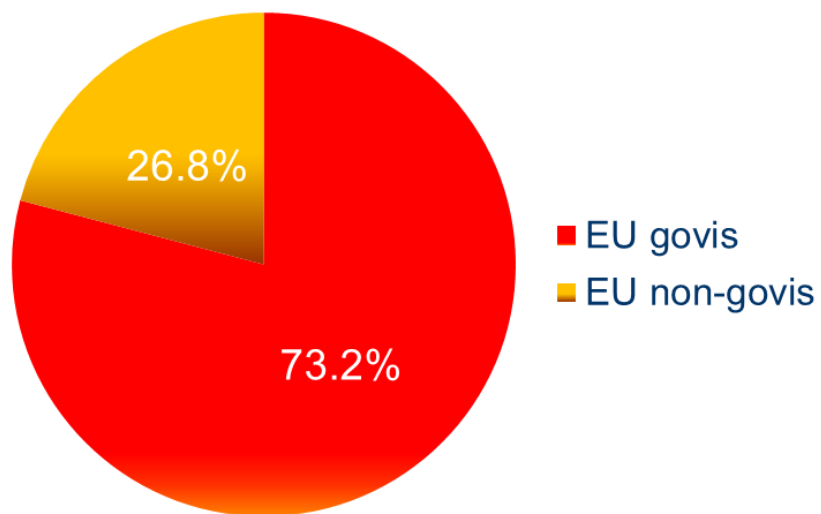


collateral analysis



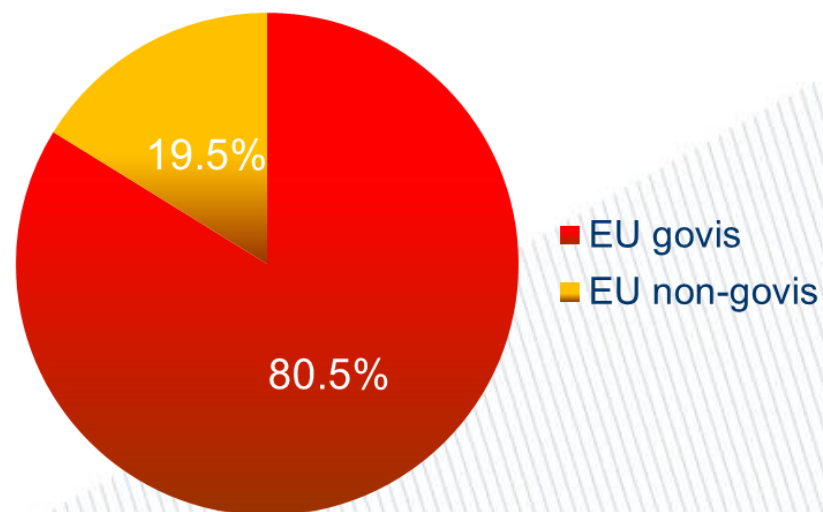
collateral analysis

repo



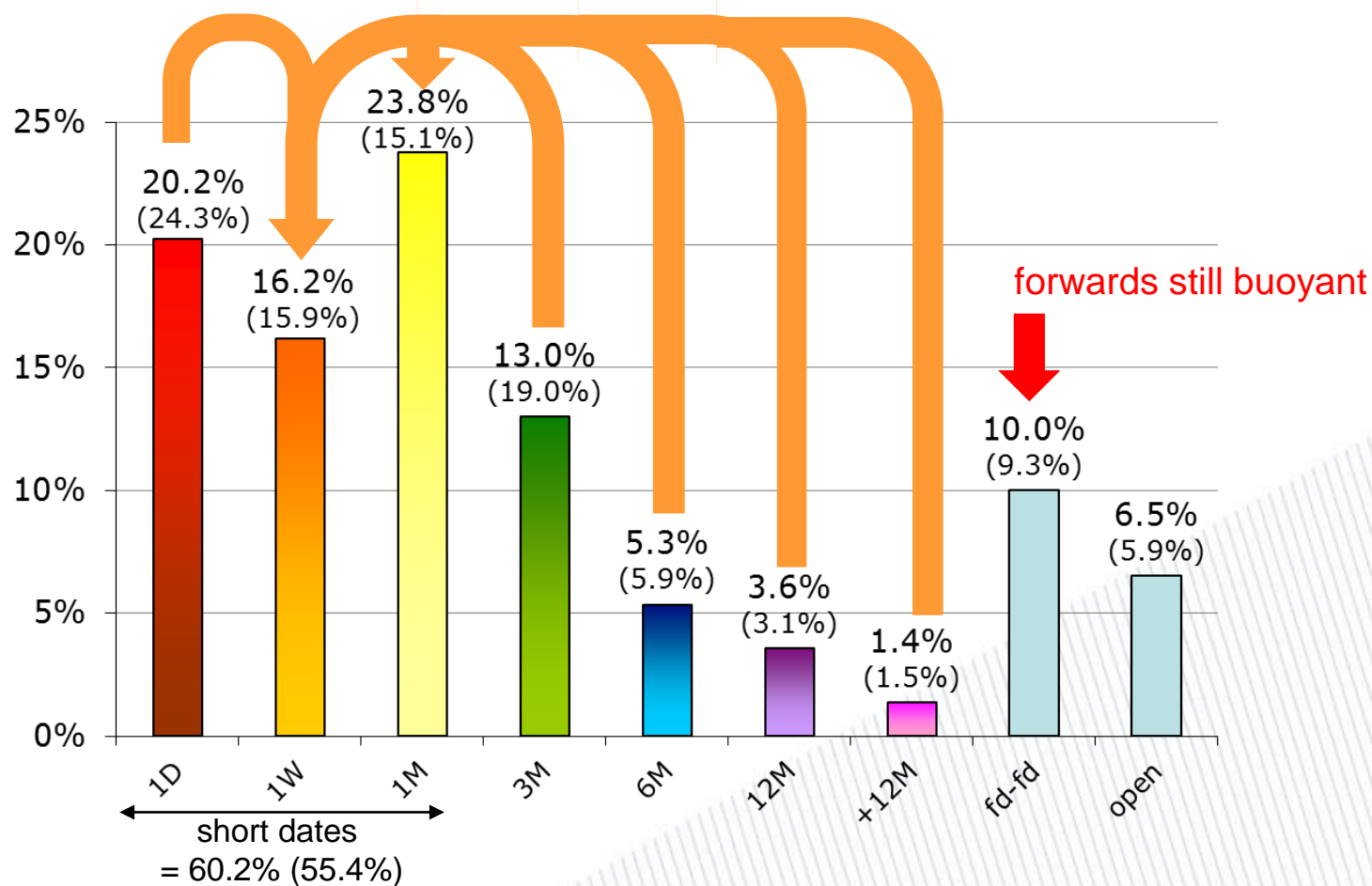
net borrowing v credit

reverse repo

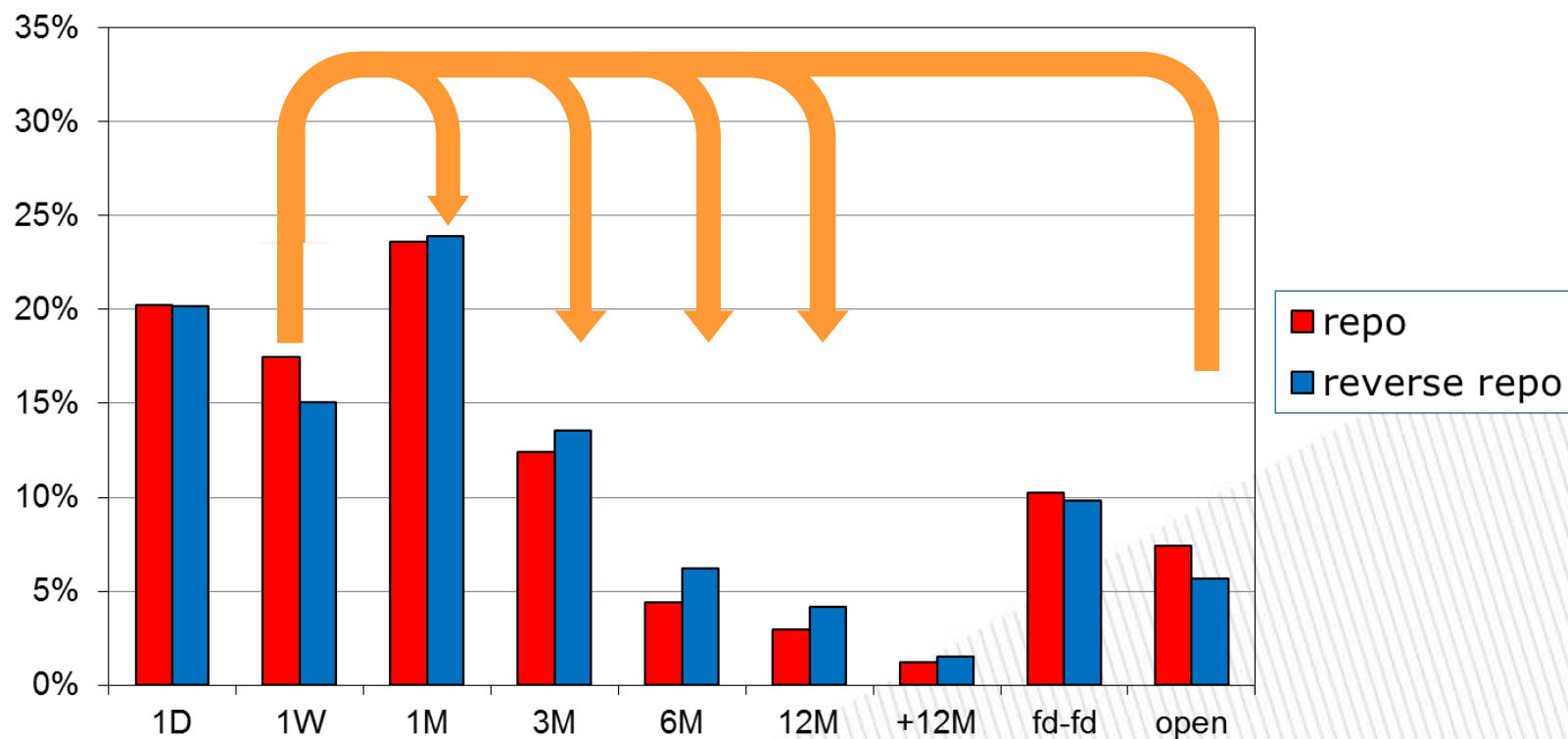


net lending v govis

maturity analysis: gross flows into longer short-dates



maturity analysis: net flows to longer terms



next survey

Wednesday, 9th December 2015

Approval of the minutes of ICMA's ERC Annual General Meeting held on May 18, 2015 in Brussels

- **Mr. Godfried De Vidts**, Chairman, ICMA's European Repo Committee

Appointment to ICMA's International Repo Committee

- **Ms. Lalitha Colaco-Henry** , Director – Market Practice and Regulatory Policy, ICMA

The current state and future evolution of the European Repo Market: an ICMA study

Report preview

- **Mr. Andy Hill**, Director, Market Practice and Regulatory Policy, ICMA

The study

- Objective: to paint a detailed picture of how the European Repo Market is evolving in response to various regulatory initiatives and monetary policy
- Largely qualitative, based on multiple interviews with market practitioners: bank repo desks, buy-side participants (levered and real money), inter-dealer brokers, trading platforms, triparty agents, clearing houses, agency lenders
- 45-50 interviews (nearing end of process)
- Will also include market data and analytics
- Expect to publish final report in mid November

Overview

- Impacts of Basel III
- Changing business models
- Evolving client relationships
- The buy-side perspective
- Impacts of monetary policy
- Innovation and solutions
- Concerns over future regulation
- The future of the market

Impacts of Basel III

- SLR/ LR has become the binding constraints on business for US and UK banks, and is starting to impact European and Asian banks
- LCR seems to be the prominent metric for European banks, but LR starting to become a focus.
- US Banks adapted first, followed by UK banks. European banks slower to adopt LR, creating an un-level playing field, but now starting to level.
- Applying true cost of balance sheet restrictive to business
- Netting is becoming critical, as are longer-term financing structures
- Difficult to gauge true impact/cost of Basel III due to simultaneous unconventional monetary policy (i.e. bank balance sheets contracting dramatically, while CB balance sheets expanding)

Changing business models

- Business being driven by banks' financing and liquidity requirements
- Less risk taking, whether through repo or other MM products
- Becoming more selective of client business, and only where adds overall value to the bank
- Trying to become more client flow based, and less reliant on the interbank market.
- Balance sheet optimization critical (net vs gross balance sheet)
- Collateral upgrade trades gaining traction (including more use of SL)
- More use of Total Return Swaps.
- Business becoming closer, or integrating, various liquidity and collateral business hubs, including treasury, equity finance, securities lending, and CSA trading

Evolving client relationships

- Repo becoming less commoditized and more negotiable
- Banks and clients working together ('partners') find tailored financing solutions to suit both their liquidity and financing needs
- Banks allocating balance sheet to favored clients based on holistic profitability of the client across different products and services
- Clients that only use repo, and not other products/services, being cut-off
- Attempts to court non-financial clients (with a view to NSFR), but limited scope

Buy-side perspectives

- Becoming harder to place cash, especially for shorter terms
- Require greater flexibility to coincide with banks' axes or liquidity needs
- Need more bank relationships to be able to fulfil repo needs
- Not yet seeing impact in pricing, more in reduced liquidity/flexibility
- Mixed views on client central clearing (leveraged vs real money)
- Open to buy-side to buy-side transacting, but bank intermediation role still vital
- Where lending securities a marginal business, may stop where regulatory burden/risks too high

Impacts of monetary policy

- As yet not seeing too much impact: there was some term positioning of German specials ahead of PSPP, but then cheapened.
- Longer term, more concerns, particularly if QE is extended/accelerated. Expected to put pressure on German and French government collateral, and may see end of GC markets.
- Excess cash is causing problems ('cash is trash'). Nobody wants short-term unsecured, and with GC rates on the DR floor, cheaper to place money at the ECB.

Innovation and solutions

- Netting optimization solutions becoming key (e.g. standardized 'break-dates' on term trades)
- Longer-term funding structures also critical (ever-greens, extendables, etc.)
- More collateral vs collateral (SL rather than repo)
- HQLA baskets/triparty
- Exploring buy-side options for CCPs (member sponsorship)
- Buy-side-to-buy-side solutions (including agency broking models)
- Some report disincentivized from innovating or entering new markets

Concerns over future regulation

- Concerns about NFSR ('could be the game changer')
- CSDR mandatory buy-ins (impossible to manage risk), and will deter lending
- SFTR and reporting initiatives – additional cost and not convinced that regulators know what they are looking for
- BRRD stays and bail-in provisions (increased risks/netting implications)
- FRTB (forced decentralization of liquidity and collateral management)
- Some concerns that there is no end in sight for regulation, so difficult to plan business models

The future of the market

- Expect further consolidation and lower volumes
- Expect interbank market to continue to contract, with focus on key client business
- Expect some banks to remain active market-makers, but others to retrench to the minimum liquidity and collateral management
- Widening of bid-ask spreads inevitable
- Buy-side central-clearing (for larger clients) inevitable
- More client-to-client solutions, but most business will still be reliant on bank matched-books
- Further consolidation of internal bank liquidity and collateral management hubs ('de-silofication')
- Concern over repo and bond market functioning after unwind of QE

ICMA European Repo & Collateral Council Operations Committee General meeting

- **Mr. Nicholas Hamilton**, Executive Director - EMEA Fixed Income Middle Office, J.P. Morgan Securities plc, Chairman of the ERC Operations Group

European Repo Council Operations Committee structure

- Sub committee of ICMA European Repo Council (sell/buy side repo traders)
- European Repo Operations Committee Structure:

18 members: Chairs Nicholas Hamilton (JPM) & Sanjiv Ingle (Soc Gen)

- 3 working groups:
 - Trade Matching & Affirmation – Adam Bate (MS) - Active
 - Target 2 Securities - Rob Mason (RBS) - Passive
 - Regulatory reporting - Jonathan Lee (JPM) - Active
- 2 focus groups:
 - Confirmations standards - David Laredo (Danske)
 - Ongoing review of The Guide to Repo best practice – Richard Comotto (ICMA centre)

Repo post Trade - Key themes

The Campaign to “join the dots”



TMA Working Group – 2015 Update/Next Steps

2015 Update

- TMA becoming increasingly linked with SFT Reporting requirements
 - Key regulatory requirements include:
 - ECB & BOE Trade level reporting (from April 2016): Could increase T0 pressure to match on T.
 - EU Trade level reporting to Trade Repository (TBC during 2017): Detail re granularity TBC.
 - FSB global aggregated Position level reporting by local competent authorities (TBC during 2017).
- ICMA TMA Best Practice
 - Included all sectors of the Industry (ICSDs/CCPs/Vendor).
 - Focused on bringing together message requirements for Reporting with TMA.
 - Single consolidated Repo matching template that accounts for CSDR/SFTR/Confirmations.

2015 Next Steps

- Aim to publish as Best Practice with appropriate Glossary: 15 Oct
- Establish the Best Practice template as the Base requirement for the Vendor community.
- Expand template to include Bond Borrow.
- Share Best Practice with ISLA for Securities Lending transactions.
- Push to have Automated Repo Matching replace current legal confirmation requirements in EMEA.

European SFT Reporting Operational Challenges

- ECB requirements coming into force in April 2016 are likely to put pressure on non-Euro area firms to affirm and lock down their trades facing major € players on Trade Date. The pressures will grow as the reportable universe grows in 2017.
- Trade matching / electronic affirmation to meet SFTR will also need to facilitate the adoption of Legal Entity Identifiers (LEIs), Unique Trade Identifiers (UTIs) and Unique Product Identifiers (UPIs).
- Booking conventions, deal rate quotation, collateral haircuts and other key economic and non-economic fields should also be subject to new messaging standards to ensure accurate, consistent, aggregated reporting.
- We feel Industry should use this opportunity to significantly improve risk capture on trade date, introduce transaction lifecycle efficiencies through great automation and to focus on capping and reducing cost per trade.
- Assess the need for detailed technical standards at product level for efficient and consistent transmission

Addendum:

- 1. ICMA Working paper summary**
- 2. TMA Template**

Background:

- Various regulatory initiatives under way to foster transparency in SFT markets (SFTR, CSDR, ECB MMSR, BoE data collection etc.)
- These will have a substantial impact on the way SFTs are processed today
- ICMA ERC Operations Group is working towards “joining the dots”

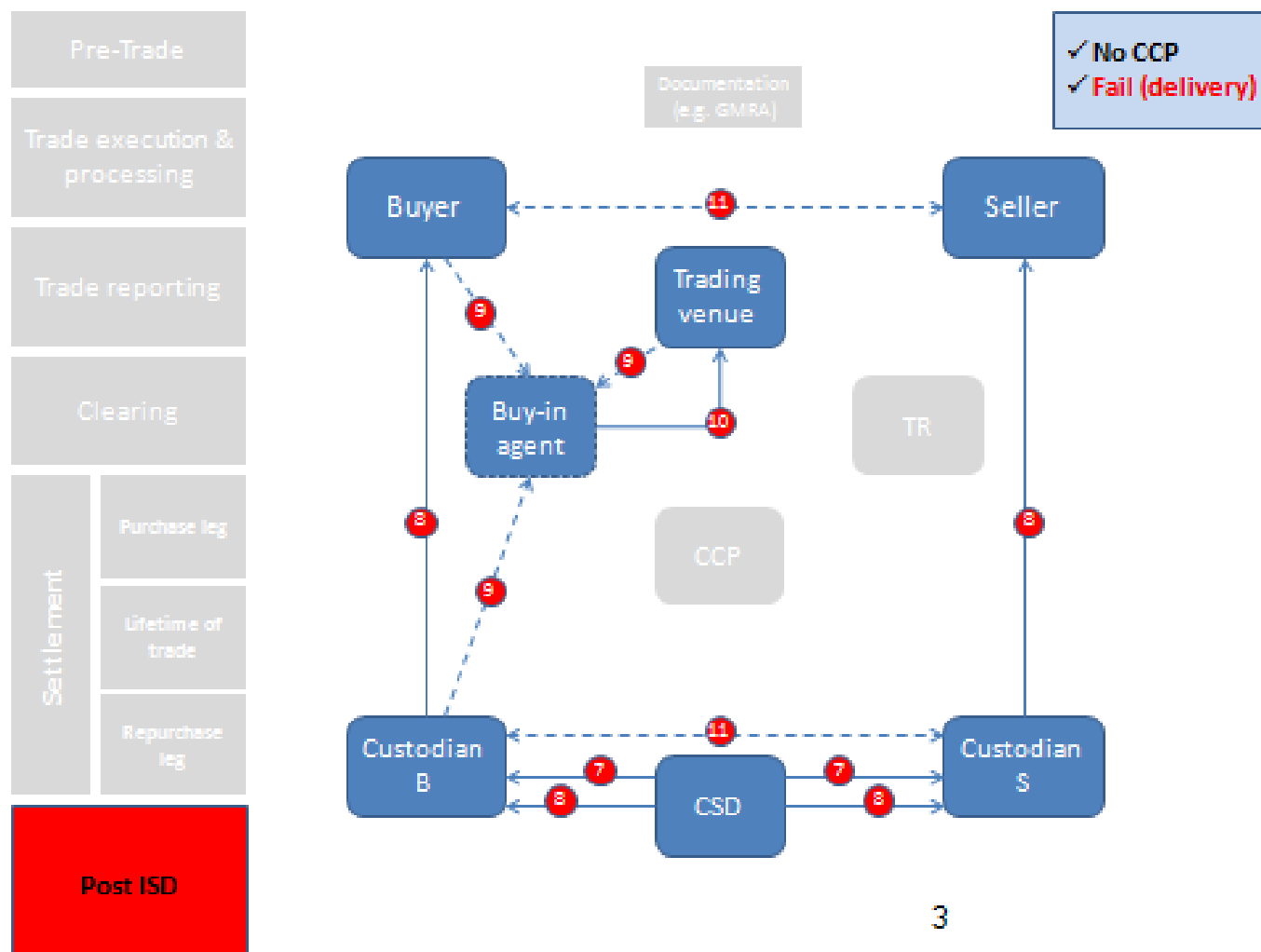
Objectives:

- (1) Understand the regulatory requirements and identify any inconsistencies
- (2) Analyse the impacts on the post-trade processing of SFTs
- (3) Involve all relevant industry players and work towards an efficient operating model to manage the changes (standardised procedures, templates, messaging formats)

Deliverables:

- ICMA’s “joining the dots” seminar in April 2015 and ongoing work on the TMA template
- Regulatory overview paper recently published on the [website](#).
- Further work is under way to develop a more dynamic view on the impact on the repo lifecycle and the relevant actors involved (flow diagrams and impact analysis)

Reporting and identification of SFTs: “Joining the dots”



Reporting and identification of SFTs: “Joining the dots”

#	Process	Relevant changes and reference
7	Provide access to information on fails, incl. daily penalty calculation	<ul style="list-style-type: none"> • CSDR: CSD to provide participants real-time access to information on fails, penalties and buy-ins (timeframe, cash compensations etc) [p.12] • CSDR: CSD to publish aggregate information on settlement efficiency [p.12]
8	Charge/ credit penalties (monthly billing)	<ul style="list-style-type: none"> • CSDR provisions on late settlement penalties [p.11]
9	Initiate buy-in process and appoint buy-in agent (tbc)	<ul style="list-style-type: none"> • CSDR provisions on mandatory buy-ins, including SFT exemption [p.12] • SFT exemption requires at instruction level: Identification of repos (“transaction type field”), leg, terms (maturity etc) • TMA initiative to support compliance [see TMA template] + market practices need to be developed for SIs • For each instrument, the applicable buy-in timeframe needs to be determined and communicated • Responsibility for the appointment of buy-in agent will depend on the final RTS (3 options)
10	Buy-in execution	<ul style="list-style-type: none"> • CSDR provisions on mandatory buy-ins [p.12]
11	Cash compensation (tbc)	<ul style="list-style-type: none"> • CSDR provisions on mandatory buy-ins, including SFT exemption [p.12] • If buy-in is not possible or fails • Responsibility/ liability depends on final RTS (3 options)

TMA Working Group – Template

CATEGORY	NAME OF MATCHING FIELD	MANDATORY OR OPTIONAL
<u>Transaction Details</u>	Transaction Type	M
	Direction	M
	DvP	M
	Open / Term	M
<u>Economic Details</u>	Trade Date	M
	Purchase Date	M
	Re-Purchase Date	M
	Nominal	M
	Security ID	M
	Contractual Currency	M
	Trade Price	M
	Rate Type	M
	Repo Rate	M
	Rate Index	M
	Rate Spread	M
	Day Count Fraction	M
	Net Onside Amount	M
	Net Off-side Amount	M
<u>Allocation and Settlement Details</u>	Securities Settlement System	M
	Counterparty Name	M
	Legal Entity ID	M
	Buyer Settlement Details 1 - Local Agent BIC Code	M
	Buyer Settlement Details 2 - Local Agent Account Number	M
	Buyer Settlement Details 3 - Beneficiary / Custodian BIC Code	M
	Seller Settlement Details 1 - Local Agent BIC Code	M
	Seller Settlement Details 2 - Local Agent Account Number	M
	Seller Settlement Details 3 - Beneficiary / Custodian BIC Code	M

CATEGORY	NAME OF MATCHING FIELD	MANDATORY OR OPTIONAL
<u>Transaction Details</u>	Agreement Type	O
	Reference	O
	Trading Venue	O
	Clearing location	O
<u>Economic Details</u>	Security Description	O
	Fx Rate	O
	Haircut	O
	Haircut % Rate	O
	Initial Margin	O
	Initial Margin % Rate	O
	Days to Put/Call	O
	Call Period	O
	Termination/Extension features	O
<u>Allocation and Settlement Details</u>	Legal Entity ID	O
	Buyer Settlement Details 4 - Beneficiary / Custodian account number	O
	Seller Settlement Details 4 - Beneficiary / Custodian Account number	O

Legal update

Mr. Leland Goss, Managing Director, General Counsel, ICMA will provide a legal update that will highlight a number of issues including:

- extension of ISDA's Resolution Stay Protocol to repos and securities lending; and
- adherence to the GMRA Protocol and the cessation of the GMRA 1995 legal opinion.
- amendments to section 1000 of the ICMA Rulebook to expand the remit of ICMA's European Repo Council to include collateral.

Bank Resolution Stays

- SFT Annex to the ISDA Stay Protocol Now Ready
- 18 Largest G-SIBs (G18) to adhere to the SFT Stay Protocol Annex by November 2015
 - Retroactive and universal in application
 - Announcement by the FSB at the November G-20 Meeting
- Regulations requiring wider recognition to be proposed/implemented 2015-16 (PRA consultation published in May):
 - Other banks
 - Buy side

ICMA GMRA 1995 Legal Opinions

- Legal opinions will continue to cover the GMRA 1995
- Regulatory desire to see the market using the most up to date version of standard market documentation
 - 2011 GMRA Protocol
 - Improved default provisions:
 - Methodology for calling an event of default
 - Procedure for closing out transactions and determining the amounts payable
 - Introduces a set off provision
 - Introduces a definition of Euro
 - Replaces references to LIBOR
- ICMA continue to encourage adoption of the 2011 GMRA Protocol

Legal opinion updates

- Interim memo to the GMRA legal opinion for Germany
- ICMA publishing a GMRA legal opinion for Malaysia following enacted legislation

ERC – Change of Name to European Repo and Collateral Council

- 18 May ERC Committee decision to recognise collateral as an important and integral part of repo activity
- Notice to be sent to ERC members proposing amendments to adopt new name and eligibility criteria for this

Contact details:

- ICMA Legal and Regulatory Helpdesk
 - legalhelpdesk@icmagroup.org
 - regulatoryhelpdesk@icmagroup.org
 - +44 20 7213 0341

Legal Update

- **Ms. Lalitha Colaco-Henry** , Director – Market Practice and Regulatory Policy, ICMA will discuss the amendments to section 1000 to allow for electronic voting.

Electronic Voting

- Named repo contact vs. ICMA Principal Delegate
- Process

Request for candidates	late November/early December
Deadline for submitting names of candidates	early January
List of candidates announced and electronic voting period is opened	mid-January
Electronic voting period is closed	early February
Names of new Committee members announced	

- Next steps

CSDR Settlement Discipline: briefing

- **Mr. Andy Hill**, Director, Market Practice and Regulatory Policy, ICMA

CSDR: time-line and implementation

- Aug 2014: CSDR (Level 1) passed into law
- Dec 2014- Feb 2015: ESMA Consultation Paper on CSDR Level 2 RTS
- Jun – Aug 2015: ESMA follow-up Consultation Paper on RTS for Operation of the Buy-in Process
- Aug 2015: ESMA published Technical Advice on cash penalties
- Sep 2015: ESMA published Draft Level 2 RTS for CSDR, **with the exception of the buy-in process**. ESMA also recommended a 24 month delay for the implementation of Settlement Discipline (including mandatory buy-ins)
- **Nov 2015: Draft RTS for buy-ins expected**
- **Jan 2016: RTS expected to be finalized and passed into law**
- **Jan 2018: mandatory buy-ins and cash penalties expected to be implemented**

Mandatory Buy-ins

- Level 1 regulation unlikely to be changed
- Eventual Level2 RTS are likely to be consistent with the Level 1:
 - Still no definition of what a by-in is or its purpose
 - Mandatory
 - CSD participant level, rather than trading counterparty level (or a hybrid)
 - Likely to involve trading venues
 - Silent on flaw in the Level 1 related to direction of payment of price differential
- Review of CSDR not due until 2019
- Meanwhile: CMU Consultation on cumulative impact of regulation (January 2016)
- Other avenues?

Cash Penalties

- In August, ESMA published Technical Advice under CSDR for the EC, including details on the proposed system of cash penalties for settlement fails:
 - Penalties to be applied by (I)CSD
 - Paid by the failing counterparty, and received by the failed-to counterparty (intermediaries in chain both penalized and compensated)
 - Penalties to be based on standard daily reference price for each instrument
 - In determining penalties, ESMA considered relative liquidity of various asset classes, as well as relative borrowing rates. The aim is to have penalty rates that strongly incentivize borrowing of instruments.
 - Request for mandate to review rates on ad hoc basis in line with changing market conditions.

Asset class	Daily penalty fee	Annualized equivalent rate
Liquid shares	1.0bp	2.50%
Illiquid shares, ETFs, others	0.5bp	1.25%
SME growth markets	0.25bp	0.62%
Corporate bonds	0.20bp	0.50%
SME bonds	0.15bp	0.37%
Government bonds & munis	0.10bp	0.25%

Regulatory update

Mr. David Hiscock will provide a brief update on other relevant regulatory developments.

- Further information outlining the range of regulatory and market practice issues that ICMA is currently involved in can be found in the latest edition of the [ICMA Quarterly Report](#).

Today's serving of regulatory alphabet soup

- CSDR (as just covered by Andy)
- SFTR
- NSFR
- BRRD
- MiFID/MiFIR
- BEPS

EU SFT Regulation

- Introduction to the EU SFT Regulation (“SFTR”)
 - How does SFTR define what are SFTs?
 - Who does SFTR apply to?
 - When must SFTs be reported to TRs?
- Key transparency provisions of SFTR
 - Transparency of SFTs
 - Transparency towards investors
 - Transparency of reuse
 - TR data transparency & availability
- Timing for the application of SFTR

Introduction – bringing transparency to SFTs

- Bringing transparency to SFTs: the EU legislative process
 - On 29 January 2014, the European Commission adopted a proposal for a regulation providing a set of measures aiming to enhance regulators' and investors' understanding of SFTs
 - On 17 June 2015, the European Commission issued a press release welcoming political agreement on its SFTR proposal
 - Based upon this political agreement work on the technical finalisation of SFTR is nearing conclusion, ahead of a final process of endorsement by the Council and the Parliament
 - Once finalised and published the timeline for SFTR's applicability starts to run, with ESMA charged to develop several supporting regulatory standards and market participants required to ensure they are ready to satisfy their respectively applicable requirements

EU SFTR: introduction – what, who & when?

- EU SFTR defines "SFT" to mean:
 - repurchase transaction; securities or commodities lending and securities or commodities borrowing; buy-sell back transaction or sell-buy back transaction; or margin lending transaction
- Applies to:
 - a counterparty to a SFT that is established: (1) in the EU (incl. all its branches); or (2) in a third country, if the SFT is concluded by an EU branch;
 - management companies of UCITS and UCITS investment companies; and managers of AIFs";
 - a counterparty engaging in reuse that is established: (1) in the EU (incl. all its branches); or (2) in a third country, if the reuse is effected by an EU branch; or if the reuse concerns financial instruments provided under a collateral arrangement by a counterparty established in the EU or an EU branch of a counterparty established in a third country
- Requires SFTs to be reported to TRs
 - by no later than the working day following the conclusion, modification or termination of the transaction

EU SFTR: transparency of SFTs (Art. 4)

- Key Level 1 Provisions:
 - Prescriptive list of minimum reporting elements for all SFTs including:-
 - parties to the SFT (and, where different, the beneficiary)
 - principal amount, currency and market segment
 - collateral (type, quality, and value), method used to provide, haircut, and any substitutions
 - whether collateral is available for reuse and, where it is distinguishable from other assets, whether it has been reused
 - repurchase rate, lending fee or margin lending rate
 - value date; maturity date; & first callable date
 - Depending on the SFT, details shall also be included on the following:
 - cash collateral reinvestment; and securities or commodities being lent or borrowed
- Level 2 References – ESMA shall:
 - draft RTS detailing the reports to TRs required for each type of SFT and ... shall provide for the possibility of reporting position level collateral data
 - draft ITS specifying the format & frequency of SFT reports to TRs – including LEIs, ISINs & UTIs

EU SFT: transparency towards investors (Arts. 13 & 14)

- Key Level 1 Provisions:
 - Art. 14: Management companies of UCITS, UCITS investment companies and AIFMs shall inform investors on the use they make of SFTs and total return swaps
 - UCITS management companies or investment companies shall include this information as part of their half-yearly and annual reports; and AIFMs shall include this information in the annual report
 - the information shall include the data provided for in SFTR Annex Section A
 - Art. 13: UCITS prospectuses and AIFMs disclosure documents and prospectuses shall specify the SFT and total return swaps which they are authorised to use and include a clear statement that these techniques are used
 - the information shall include the data provided for in SFTR Annex Section B
- Level 2 References – ESMA may:
 - taking into account existing requirements under UCITS and AIFM Directives as well as evolving market practices, develop draft RTS further specifying the content of SFTR Annex Section A
 - taking into account existing requirements under UCITS and AIFM Directives, develop draft RTS further specifying the content of SFTR Annex Section B in order to reflect evolving market practices or to ensure uniform disclosure of data – ESMA shall take into account the need to allow for a sufficient time for application of these standards

EU SFTR: transparency of reuse (Art. 15)

- Key Level 1 Provisions:
 - SFTR defines "reuse" to mean:
 - the use by a receiving counterparty ("cpty"), in its own name and on its own account or on the account of another cpty, including any natural person, of financial instruments received under a collateral arrangement
 - Any right of cpty to reuse financial instruments received as collateral shall be subject to at least all the following conditions:
 - the providing cpty has been duly informed in writing by the receiver of the risks and consequences that may be involved (a) in granting consent to a right of use of collateral provided under a SCA; or (b) concluding a TTCA
 - *ICMA is collaborating with other trade associations to develop suitable risk disclosure language to use for this*
 - the providing cpty has granted its prior express consent, as evidenced by the signature in writing or in a legally equivalent manner, of the providing cpty to a SCA, the terms of which provide a right of use; or has expressly agreed to provide collateral by way of a TTCA
 - Any exercise by cpty of their right to reuse shall be subject to at least all the following conditions:
 - reuse is undertaken in accordance with the terms of the collateral arrangement;
 - the financial instruments received under a collateral arrangement are transferred from the account of the providing cpty

EU SFTR: TR data transparency & availability (Art. 12)

- Key Level 1 Provisions – A TR shall:
 - regularly publish aggregate positions by type of SFT reported to it
 - collect & maintain the details of SFTs; and ensure that the following entities have direct & immediate access to these details to enable them to fulfil their respective responsibilities & mandates:
 - a) ESMA;
 - b) ESRB;
 - c) competent authority supervising the trading venues of the reported contracts;
 - d) relevant members of the ESCB, including the ECB in carrying out its tasks within a SSM;
 - e) relevant authorities of a third country in which it has been determined that there is an “equivalent” TR regime;
 - f) supervisory authorities designated under the EU Directive on takeover bids;
 - g) relevant EU securities and market authorities whose respective supervisory responsibilities and mandates cover transactions, markets, participants and assets which fall within the scope of SFTR;
 - h) Agency for the Cooperation of Energy Regulators;
 - i) resolution authorities designated under BRRD;
 - j) the Single Resolution Board (re the SRM);
 - k) EBA;
 - l) EIOPA;
 - m) authorities referred to in Article 16(1)

EU SFTR: timing (Art. 28)

- SFTR enters into force on the 20th day following that of its publication in the EU OJ
 - this is thought likely to be on a date late in 2015
- SFTR applies from the date of its entry into force, with the exception of:
 - the reporting obligation referred to in Article 4(1), which shall enter into force after a period of time measured from the date of entry into force of the applicable Delegated Act, as adopted by the Commission, as follows:
 - 12 months after for credit institutions (banks) and investment firms;
 - 15 months after for CCPs and CSDs;
 - 18 months after for insurers, reinsurers, UCITS, AIFMs and IORPs; and
 - 21 months after for non-financial counterparties
 - Article 13, which shall apply from 12 months after SFTR's entry into force
 - Article 14, which for UCITS and AIFMs constituted before the date of entry into force of SFTR shall apply from 18 months after SFTR's entry into force
 - Article 15, which shall apply from 6 months after SFTR's entry into force; and shall apply to collateral arrangements existing at the date of entry into force

Other SFT reporting initiatives

- Whilst SFTR takes centre stage in the EU's regulation of SFT transparency, there are several other SFT reporting initiatives to be aware of
 - ECB: Money Market Statistical Reporting Regulation (MMSR)
 - Bank of England: Sterling money market data collection
 - FSB initiative on SFT data collection and aggregation
 - MiFIR transaction reporting regime (to a limited extent)
- IOSCO work on UTIs & UPIs and the evolving Global LEI System will be relevant in this context
- Impacts from ECB's TARGET2-Securities (T2S) & settlement discipline in the EU CSDR need to be integrated
- More details on all of this are available in a newly published ICMA paper ["Regulatory initiatives on the identification and reporting of SFT transactions: An overview"](#), which is available from the ICMA website

Net stable funding requirements

- BCBS – Net Stable Funding Ratio (NSFR)
 - On 31 October 2014, the BCBS issued the final endorsed standard for the NSFR, which will become a minimum standard by 1 January 2018
 - This sets the text of an agreed international standard, but it remains to be seen exactly what language appears in applicable national/regional rules which firms must actually comply with
- EU CRR – NSFR related provisions
 - Currently CRR Article 413 “Stable Funding” applies – “Institutions shall ensure that long term obligations are adequately met with a diversity of stable funding instruments under both normal and stressed conditions”
 - CRR Part 6, “Title III” (Articles 427 & 428) sets out the types of items providing stable funding (ie ASF) and the types of items requiring stable funding (ie RSF) – but these are simply reporting obligations at this stage
 - Article 510 “Net Stable Funding Requirements” requires EBA to report to the Commission by end 2015 on the details which should be adopted to establish NSFR requirements in EU law – EBA hearing on 15 October
 - The Commission is then required to submit an EU NSFR legislative proposal by end 2016 – so that an enacted version will be in place in time for application from 2018

Net stable funding requirements – key details

- BCBS – Net Stable Funding Ratio (NSFR)
 - Repos generate ASF, the proportion being dependent on residual maturity and counterparty type
 - Reverse repos generate RSF, the proportion being dependent on residual maturity, counterparty type & collateral
 - For residual maturities ≥ 6 months repo ASF & reverse repo RSF proportions are symmetric (50% / 100% \geq 1 year)
 - For residual maturities < 6 months repo ASF & reverse repo RSF proportions are:
 - Symmetric for counterparty: Sovereigns & PSEs (50%); Non-Financial Corporates (50%); and Central Banks (0%)
 - Asymmetric for counterparty: Retail & Small Business Customers (0% ASF v. 50% RSF); and
 - Asymmetric for counterparty: Banks & Other Financial Institutions (0% ASF v. 10% RSF / 15% RSF)
 - lower 10% RSF applies for “Level 1” collateral and 15% RSF for other collateral asset types
 - Requirement to hold long-term “stable” funding against short-term reverse repo assets increases business costs
 - Strong incentive to carefully adapt business profile taking account of how the rules treat different residual maturities, counterparty types & collaterals
 - Availability of netting (as in the BCBS leverage ratio rules) is essential to mitigate impact

BRRD elements of specific concern for the repo market

- Resolution stays (RSP – as discussed in the legal update)
 - BRRD stay provision is Article 71 – “Power to temporarily suspend termination rights”
 - Power to suspend the termination rights of any party to a contract with an institution under resolution
 - Provided that the payment and delivery obligations and the provision of collateral continue to be performed
 - But there is also BRRD Article 69 – “Power to suspend certain obligations”
 - Power to suspend any payment or delivery obligations pursuant to any contract to which an institution under resolution is a party
 - Shall not apply to payment and delivery obligations owed to designated payment and securities settlement systems (or their operators), central counterparties, and central banks
 - For both of Articles 71 & 69: “authorities shall have regard to the impact the exercise of that power might have on the orderly functioning of the financial markets”
- Bail-in
 - BRRD Article 44 sets out “Scope of bail-in tool” – exclusions include “secured liabilities”
 - Any unsecured amount will be subject to bail-in – problems relating to netting (as discussed in the legal update)
 - By 01.01.16, Article 55 requires a contractual recognition of bail-in clause in a very wide range of non-EU law governed contracts

Revised Markets in Financial Instruments Directive (MiFID) & new Regulation (MiFIR)

- MiFID governs the provision of investment services in financial instruments by banks and investment firms and the operation of traditional stock exchanges and alternative trading venues
- MiFID was focussed on equities markets, but is now being extended to full cover non-equities markets
 - As repos are typically comprised of trades in fixed income securities, they are impacted by this extension of MiFID
- This new EU legislation was agreed in 2014, but work to finalise required implementation standards is ongoing
 - Whilst there still needs to be more detailed work to fully clarify details, ICMA understands that ESMA proposes that:
 - For SFTs both pre- and post-trade transparency requirements will apply to on venue (RM, MTF, OTF) trading of SFTs
 - To avoid confusion in post-trade reporting from trading venues, SFT trades will be flagged as “non-price forming trades”
 - For SFTs traded OTC there is no pre-trade requirement and post-trade transparency will not be applied
 - Repo activity will not count when determining if a firm’s activity in a security qualifies it as a systematic internaliser (SI)
 - Where they are fulfilling client orders investment firms must publish annual information on the identity of execution venues and on the quality of execution – with SFTs required to be separately reported from client order flow in non-SFTs
 - MiFIR also requires transaction reporting: ESMA proposes that this be dis-applied in the case of SFTs, where these are (or will be) reportable to a TR under the SFTR – but this leaves an issue with SFTs specifically exempted from SFTR TR reporting

New international tax rules to end tax base erosion and artificial profits shifting

- On 5 October 2015, the OECD published the final package of recommendations to reform the international tax system – the "BEPS" Project – which represents a dramatic change to the international tax system
- For the repo market, the most directly relevant component of this package is BEPS Action 2 "Neutralising the Effects of Hybrid Mismatch Arrangements"
 - These proposals apply in very broad circumstances, particularly in situations involving "hybrid financial instruments" between "related parties"
 - There will be particular impact on participants in the repo market, as the proposed hybrid rules are specifically designed to capture these types of transactions by treating repos as "financial instruments", and there are often variances in how repo transactions are treated across jurisdictions thus giving rise to "hybrid" mismatches
- The OECD proposals need to be adopted into domestic law before they apply
 - There will likely be a piecemeal adoption by various countries over different timeframes, and some countries are unlikely to take any action at all

Thank you, Ladies and Gentlemen

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- ICMA quarterly report provides detailed updates on these matters and ICMA's broader work
<http://www.icmagroup.org/Regulatory-Policy-and-Market-Practice/Regulatory-Policy-Newsletter>

Any other business and next meetings

- The next ERC General Meeting will be held on Wednesday, 27 January from 4:30 – 7:30 CET, hosted by Clearstream, in the margins of their annual Global Securities Financing conference in Luxembourg.