

## **Minutes of the ERCC Committee meeting held on 2 November in London Hosted by Blackrock**

Present:	Mr. Godfried De Vidts	BrokerTec (ERCC Chairman)
	Mr. Dan Bremer	BAML
	Ms. Emma Cooper	Blackrock
	Mr. Eugene McGrory	BNP Paribas
	Mr. Andreas Biewald	Commerzbank
	Mr. Michel Semaan	Crédit Agricole
	Mr. Romain Dumas	Credit Suisse
	Mr. Ronan Rowley	Deutsche Bank
	Mr. Johan Evenepoel	Euroclear Bank
	Mr. Nicola Danese	JP Morgan
	Mr. Tom Wells	Morgan Stanley
	Mr. Sylvain Bojic	Société Générale
	Mr. Gareth Allen	UBS Limited
	Mr. Harald Baensch	UniCredit Bank
	Mr. Adam Bate	Morgan Stanley (ERCC Ops Co-Chair)
	Mr. Jonathan Lee	JP Morgan (ERCC SFTR TF Chair)
	Mr. Richard Comotto	ICMA Centre
	Ms. Lisa Cleary	ICMA
	Mr. David Hiscock	ICMA
	Mr. Leeland Goss	ICMA
	Mr. Alexander Westphal	ICMA (ERCC Secretary)
Guests:	Mr. Tim McLeod	Blackrock
	Mr. Carey Evans	Blackrock
On the phone:	Mr. Michael Manna	Barclays
	Mr. Grigorios Markouizos	Citigroup (ERCC Vice Chair)
	Mr. Richard Hochreutiner	Swiss Reinsurance
Apologies:	Mr. Jean-Michel Meyer	HSBC
	Mr. Paul Van De Moosdijk	PGGM
	Mr. Eduard Cia	UniCredit Bank (ERCC Vice Chair)

### **Welcome**

The Chairman welcomed members to this sixth Committee meeting of the year and thanked Blackrock for hosting the meeting.

### **1) Minutes from previous meetings**

Members approved the minutes of the last Committee meeting held on 12 September 2017 in London without further changes.

### **2) Preparations for the upcoming ERCC General Meeting**

The Chairman looked ahead to the upcoming [ERCC General Meeting](#) to be held on 14 November in Brussels. He explained that the format of the meeting differs from previous editions. There will be two high level keynote addresses from the IMF and the ECB, complemented by two panel discussions, involving industry representatives, regulators and academics. The objective will be to address some of the persistent myths about repo and explain its critical importance for financial markets and the economy more broadly. *[Post-meeting note: Presentations and photos from the event are available on the ICMA [website](#).]*

In this context, the ERCC is undertaking further work in collaboration with the buy-side members of the Committee to look at repo from the perspective of the different buy-side firms. As part of this initiative, Blackrock is currently working on a White Paper about the Repo Market and its broader impacts for end users. Carey Evans, of Blackrock's government relations and public policy team in Brussels, joined the meeting by video conference to give a short update on the status and content of the paper. He explained that the idea for the paper emerged over summer. The background has been the increasing focus on repo markets being impacted by several pieces of regulation without being directly targeted. Discussions with policy makers on this topic so far have shown a lack of basic knowledge about the role and the importance of repo markets, which the White Paper aims to address. The paper will answer three main questions: (i) What is repo and why is it important? (ii) What are the conditions in the European repo market and why? (iii) How to address the issues faced by the market? The drafting process has been somewhat delayed, in particular as they found it challenging to obtain meaningful data to support the analysis, but the paper is now well developed and should be published over the next weeks. The White Paper will be a good basis for launching further discussions with policy makers in the course of 2018 and in collaboration with the ERCC.

### **3) Discussion of buy-side market structure topics**

Tim McLeod of Blackrock's market structure team joined the meeting to present Blackrock's perspective on two issues: (i) ongoing work to create legal documentation for pledge based securities lending, and (ii) the prospects for buy-side CCP-clearing. Blackrock is very supportive of ISLA's work on pledge documentation, which gained momentum earlier this year. They think that developing industry standard documentation is the right way forward, also as an important message to regulators that the industry is aligned and follows an organised and consistent approach. The key ambition is to create robust documentation that offers the same level of protection as title transfer currently does, which is again something that is important for regulators to understand. On the repo

side work is less advanced and comes from a slightly different angle. Blackrock has spent time getting comfortable that this is a viable model that they can use, given potential legal constraints for UCITS funds. Other members agreed with Mr. McLeod's assessment and commented that it will be important to align messages on this topic in order to avoid any negative repercussions for the title transfer concept which remains a crucial foundation of both the securities lending and the repo market.

As regards CCPs, Mr. McLeod commented that while a very interesting concept for a buy-side getting into a CCP is a major undertaking. Bank demand for buy-side participation in cleared SFTs has slightly decreased over the past 12 months. However, initiatives to encourage buy-side participation continue to move forward and significant volumes are likely to start building up by 2019, also encouraged by the wider regulatory agenda, including SFTR. In repo markets, CCP-clearing is already well established in a dealer-to-dealer context. The main challenge for buy-sides in this context is around pricing, as margins currently look quite thin in a sponsored access model. Blackrock continues to assess CCPs as one alternative route to market and thus part of their overall strategy to ensure sufficient access to liquidity in all scenarios. This is another area where regulation is an important factor, given that some rules indirectly restrict buy-side access to CCPs contrary to the overall ambition by regulators to encourage CCP-clearing and electronic trading.

#### **4) CCP clearing and balance sheet netting in T2S**

The Chairman introduced a discussion on balance sheet netting in T2S, following up on the discussion at the previous Committee meeting and a subsequent conference call with (a group of) Committee members. Following the call, a draft letter has been prepared by the Secretariat asking the ECB for an opinion on balance sheet netting opportunities in T2S. The letter was circulated to Committee members ahead of the meeting. Mr. Hiscock briefly explained the underlying issue explained in the letter. The key question to the ECB is whether T2S as a newly created single settlement platform in Europe can be considered a single 'settlement institution' for IFRS purposes, one of the key conditions that need to be satisfied in order to allow for balance sheet netting.

Members discussed the content of the letter as well as the approach taken and agreed in principle that this matter should be raised directly with the ECB. The Secretariat asked members to send any final comments on the letter by 10 November. In the absence of any major comments the letter will be submitted on a confidential basis to the ECB.

#### **5) Regulation**

##### **a) SFTR**

Jonathan Lee, Chair of the ERCC Ops SFTR Task Force, updated members on the latest developments in relation to the EU SFT Regulation (SFTR) and the work of the ERCC's SFTR Task Force.

On 17 October, ESMA shared with the ERCC a draft of the detailed validation rules for review and feedback. The rules contain the reporting logic to be applied by Trade Repositories (TRs) when receiving and accepting trade reports and are an important component of the broader reporting

framework. The Task Force is currently reviewing the tables shared by ESMA and has already identified a number of issues with the proposals. The final list of comments will be submitted to ESMA by the deadline on 14 November.

One of the key challenges with SFTR reporting will be the reconciliation of the various fields. Given the double-sided nature of the reporting regime, TRs are expected to match reports (within and across TR) based on a list of fields specified by ESMA and defined tolerances. The Task Force is undertaking a couple of initiatives to address this challenge early to avoid unnecessary operational burden with manual corrections of unmatched reports. First, to achieve the level of consistency required for SFTR reporting it is expected that a much higher level of electronic affirmation and matching will be necessary. The vendors offering the relevant matching platforms and other reporting solutions will thus play an important role in the implementation. The Task Force is therefore planning to engage more closely, although in a strictly neutral way, with the relevant providers. As a first step, the Group is currently setting up a series of bilateral interviews with each of the vendors. This will help identify those vendors with a repo-specific offering which would subsequently be invited to join the Task Force on a non-commercial basis. Second, complementary to the vendor discussions the Task Force is also undertaking its own preparatory work to facilitate reconciliation. In late May, a bilateral reconciliation exercise was launched, encouraging dealers to exchange on a bilateral basis trade data and attempt to match all data fields that are currently available. The objective is to identify the most important gaps in the current process which will have to be overcome before SFTR go-live.

In terms of the overall SFTR timeline, Mr. Lee explained that the final draft RTS containing the detailed reporting rules were published by ESMA in March 2017 and are currently under review by the Commission. While the initial expectation was that these would be adopted within 6 months, it has now become clear that this process will take significantly longer. According to the latest estimates the rules should be finalised around Q2 2018 with another year for firms to prepare before the reporting regime goes live (i.e. around Q2 2019).

#### **b) BRRD - Proposed revision of moratorium powers**

David Hiscock explained that the legislative discussions in Council and Parliament in relation to the proposed review of the BRRD are ongoing and recalled a letter sent to the Commission in early July setting out the ERCC's concerns with the proposed new moratorium powers. Since then, this particular point has also been raised by other industry stakeholders, most recently in a joint AFME-EBF letter sent to the relevant policy makers on 4 October. There seems to be some momentum in the European Parliament to address the concerns. In particular, the latest ECON draft report includes proposals to reduce the proposed moratorium period. However, the issue is not settled yet and discussions continue.

### c) MiFID II/R and repo

As the implementation date of MiFID II approaches, the Secretariat continues to receive queries as to the applicability of certain requirements to repo. David Hiscock provided a brief overview of the key issues:

Regarding **best execution**, ESMA confirmed that the requirements set out in RTS 27 do not apply to repo, but clarified at the same time that repo is in scope for the RTS 28 requirements. In this context, it is also worth noting that even where best execution reporting is not required, the general principles of best execution still apply to repo. More generally, Mr. Hiscock recalled that the assumption for repo is that it is in scope of a given MiFID II/R provision, unless explicitly exempted.

Another MiFID II issue that is still pending is the applicability of **order record-keeping** requirements. In July 2017 the ERCC submitted a letter to ESMA to request clarification on this question, but has not yet received a response. Members commented that the problem is not the requirement to keep records of orders which firms generally already do today, but rather to ensure that this is done systematically and in accordance with the format prescribed by MiFID II which will require significant changes. *[Post-meeting note: On 10 November 2017, ESMA clarified in the latest [update](#) to the Q&As on MiFID II investor protection rules that order record-keeping requirements do apply to SFTs.]*

The Guide Working Group is currently assessing how MiFID II requirements in relation to **trade confirmations** may impact repo market practices set out in the Guide.

Mr. Hiscock recalled the **prohibition of title transfer repo with retail counterparties**, which raises issues in certain jurisdictions. This has been most recently reiterated by Danish market participants.

Finally, members briefly discussed the application of the **costs and charges** provisions to repo. As repo is expected to be in scope for the related requirements, it was suggested that there might be a case for seeking cross-industry agreement on contents and format of the information to be provided, which are likely to differ widely across firms.

### d) CRD IV review, including large exposures and NSFR

**(i) Large exposures:** David Hiscock highlighted some concerns with proposed changes to the large exposure rules introduced as part of the CRD IV/ CRR review. The issue was raised by a member firm and flagged to Committee members in an email sent out on 13 October. Mr. Hiscock explained the background of the proposals. Current rules require firms to calculate their counterparty exposures which are subject to defined limits. Exposure to a given counterparty can be mitigated by taking collateral. However, according to the proposed new rules, where this is done, firms need to replace the counterparty exposure with a potential exposure to the issuer of the collateral, which would in turn be subject to certain large exposure limits and reporting obligations. Mr. Hiscock explained that generally where government bonds are used as collateral there is no exposure limit. However, firms

would still have to calculate and report the exposure to the relevant issuer, which might create operational problems, e.g. in the case of tri-party repo. Mr. Hiscock invited members to provide feedback on the proposals, but also to reflect whether this issue falls into the remit of the ERCC or whether we should leave it to other associations with a particular focus on prudential rules, such as AFME, to raise it with policy makers. Members briefly discussed the proposals commenting that the type of (contingent – second order) exposure to an issuer was very different in nature from the first order exposure to a counterparty and should be clearly distinguished. More generally, members decided that the question was not a priority for the ERCC and that we should leave it to AFME and other relevant groups to advocate this point.

**(ii) NSFR:** Members had a brief discussion on NSFR. There has been some movement recently in Basel in relation to the derivatives exposure add-on. However, this did not affect the treatment of repo which continues to be problematic. As regards the asymmetry between repo and reverse repo, Mr. Hiscock recalled that the initial Commission proposal was a step in the right direction as it reduced the asymmetry, but also stressed that this issue is not settled yet as discussions continue. As regards the NSFR timeline, Mr. Hiscock explained that the proposal is currently discussed within Council and Parliament but that it is still very hard to see when the process can be concluded, in particular as the NSFR proposals are only a small part of a much broader package of proposed changes to CRD IV/CRR. It seems that co-legislators continue to consider early 2019 as target date for the application of NSFR.

#### **e) CCP Recovery and Resolution/ location policy**

The legislative process is also ongoing in relation to the CCP Recovery and Resolution proposal. ISDA recently submitted a whole set of comments to the relevant policy makers, which helpfully included concerns in relation to variation margin haircutting for repo, flagged previously by the ERCC. Related to CCP R&R, discussions also continue regarding the proposals on CCP location policy, as part of the EMIR review. While politically sensitive in the context of Brexit, Mr. Hiscock recalled that ICMA and the ERCC continue to take a neutral stance on this topic and to passively follow the debate. Members mentioned a recent FT article on this issue which for the first time clearly distinguished repo considerations from the concerns around derivatives clearing.

#### **f) Haircuts**

Mr. Hiscock mentioned a recent [report](#) by the Commission on haircuts published on 19 October as part of their SFTR mandate. The report is generally a positive development as it follows the recommendations set out in a previous report by ESMA, EBA and ESRB by concluding that there is no need for further regulatory action in relation to haircuts at this stage.

#### **6) Legal update**

Lisa Cleary updated members on recent legal developments.

The yearly update process for the GMRA legal opinions is under way. It is proposed to extend the coverage of the 2018 opinions to three new jurisdictions (Argentina, Mauritius and Romania), however, only covering the 2000 and 2011 versions of the GMRA. Other 2018 legal opinions will continue to cover the 1995 GMRA, but it is suggested to fully discontinue coverage of this for all opinions in the following round of updates (i.e. April 2019). This would give firms at least one year to prepare for the transition. The Guide Working Group strongly supports this proposal. It was agreed that the Committee should endorse this decision, unless any substantiated written objections are received by the time of the next Committee meeting (13 December 2017). If approved by the Committee, the decision will be formally announced at the ERCC AGM in March 2018.

Ms. Cleary also updated members on the latest developments in relation to standard documentation for repo pledge structures. The proposal was discussed at the latest meeting of the ICMA Board on 29 September. The Board was generally supportive, but requested clarification on two issues: (i) The selection process for the law firm mandated to work on the legal documentation, which should be sufficiently competitive to help limit the costs of the project, and (ii) Existing legal restrictions that might prevent certain buy-side firms, in particular UCITS funds, to use the new legal structure, and if such restrictions might undermine the business case for the proposal. Following the meeting, the latter question has been further analysed and discussed. Mr. Hiscock explained that this is a complex issue. There are indeed legal restrictions for UCITS funds to enter into pledge arrangements, but it seems that these would not necessarily apply in the case of the legal structure that is being considered by the ERCC. Irrespective of this question, Mr. Hiscock asked members to confirm whether a restriction for UCITS funds, if applicable, would undermine the business case to develop such documentation. Members expressed the view that there are still sufficient use cases to justify the proposal, even in case UCITS funds would not be able to use the structure. It was also suggested that initial concerns might have been based on the assumption that the new pledge structure was intended to replace GMRA repo, which is however clearly not the case, as the new structure will simply provide an alternative route to market without diluting the title transfer based GMRA framework in any way. It was also mentioned that ISLA is already undertaking some complementary work with policy makers to encourage changes to the restrictive legal framework for buy-side firms.

## **7) Benchmarks**

Andreas Biewald reported back from a meeting on benchmarks organised by Bundesfinanzagentur in Germany which he attended on behalf of the ERCC. At the meeting he presented the latest update from the EMMI work on a secured benchmark which sparked a lot of interest. Participants were impressed by the high volumes covered by the EMMI benchmark (EUR 240 billion on average), but also asked questions related to the (lack of) representativeness of the benchmark. With reference to ongoing work by the ECB on the planned reform of EONIA, Mr. Biewald commented that in his view there was sufficient room in the market for two benchmarks (an unsecured and a secured one). Another issue that was discussed at some length at the Bundesfinanzagentur meeting was the

upcoming transition in Switzerland from TOIS to SARON reference rates which should be monitored closely as it will set an interesting precedent for other markets. In relation to the ongoing EMMI work on a new euro O/N secured benchmark, Mr. Biewald remarked that this seems to have reached the final phase now. The relevant infrastructures are still on board, despite some outstanding questions around the appropriate compensation for the data provision. Overall, he was positive that the EMMI initiative will introduce a useful new secured benchmark which given its high underlying volume and the well-defined scope should reach a level of robustness which alternative benchmarks will struggle to provide. He encouraged Committee members to support and promote the work that is being undertaken by EMMI to create a secured euro benchmark.

#### **8) ERCC Repo Guide to Best Practice**

Sylvain Bojic presented the latest set of amendments to the ERCC Guide to Best Practice which have been agreed in the Guide Working Group, approved by the ERCC Operations Group and circulated to Committee members ahead of the meeting. It was agreed to give members one more week for final review of the proposals before they are deemed approved and can subsequently be published on the ICMA website.

Members thanked Mr. Bojic, Mr. Comotto and other members of the Working Group for their engagement and good work and reiterated the importance of the ERCC Guide for the market. The Guide is used extensively by firms, a fact that is illustrated by the growing number of queries related to the Guide received by ICMA and the active discussions in the Guide Working Group. Besides providing useful practical guidance for market participants, the Guide is also seen as an important facilitator and reference point in GMRA negotiations with new counterparties. Finally, there is also increasing awareness among regulators. For example, although not officially endorsing the Guide, the UK Money Markets Code includes a strong reference to the Guide. The Guide has also been replicated in other jurisdictions, including in Asia and Australia.

#### **9) ERCC Operations Group update**

Adam Bate, Co-chair of the ERCC Operations Group, provided an update on the latest ERCC Ops initiatives. The Group last met on 30 October. A strong focus remains on regulation, in particular SFTR and the work undertaken by the Task Force led by Mr. Lee. Another priority is the ongoing work launched by the ECB under the umbrella of the AMI-SeCo to drive harmonisation in collateral management and to facilitate the establishment of a single Eurosystem Collateral Management System (ECMS) to replace the currently fragmented framework. A dedicated Task Force on Collateral Management Harmonisation (CMH-TF) has been created with five sub-streams focusing on the following issues: (i) triparty; (ii) corporate actions, non-EUR collateral management, taxation forms; (iii) bilateral collateral management and margining; (iv) fee and billing processes, reporting, cut-off times; (v) collateral dynamic and static data. The ERCC Ops Group is closely involved in this work and is collaborating with ISLA on this file. Mr. Bate commented on the key issues from his perspective, stressing the importance of a standardisation of messaging and static data both of

which are expected to drive many of the other aspects of the agenda. It is also hoped that the work can achieve some progress in relation to corporate actions processing, an area which still causes a lot of frictions. As regards the timeline, the aim is to conclude the first phase of the work by the end of the year with a prioritisation of the different harmonisation activities, with more work to follow in 2018 to further define and implement these proposals.

Mr. Bate also updated members on the work of the ERCC Ops FinTech Working Group which has nearly concluded its work on a detailed mapping exercise of FinTech solutions available in collateral management operations. The mapping will be published within the next two weeks.

The Chairman highlighted the Commission's ongoing Post-Trade consultation published on 23 August as a follow-up to the work of the European Post-Trade Forum (EPTF). He commented that the consultation paper itself was rather disappointing as very high level and asked members to encourage their firms to respond to the consultation to reiterate the important messages included in the EPTF report and ensure an appropriate prioritisation of the issues. The ERCC Ops Group is working on a response to be submitted by the deadline of 15 November.

#### **10) AOB and further dates:**

Ms. Cleary reminded members of the first repo-specific event of the ICMA Women's Network, being held that evening at the ICMA offices.

Mr. Comotto noted that the reference date for the next Repo Survey would be on 6 December. Alongside the European Repo Survey, firms are also encouraged to contribute to the second Asian Repo Survey which will be conducted in parallel.

Elections for the ERCC Committee will be held early in 2018, with the call for nominations to be published in December, shortly after the next ERCC Committee meeting which has been scheduled as follows:

- **13 December, 14:00 – 17:00 (London time):** ERCC Committee meeting in London, hosted by Crédit Suisse, followed by end of year drinks

The ERCC Chairman:

The ERCC Secretary:

Godfried De Vidts

Alexander Westphal