

**Minutes of the European Repo Committee meeting held on 2 October, 2015 in Munich**

Present:	Mr. Michael Manna Mr. Eugene McGrory Mr. Grigorios Markouizos Mr. Andreas Biewald Mr. Romain Dumas Mr. Tony Baldwin Mr. Andy Wise Mr. Sylvain Bojic Mr. Gareth Allen Mr. Eduard Cia	Barclays BNP Paribas Citigroup (Vice Chair) Commerzbank Credit Suisse Daiwa Capital Markets Morgan Stanley Société Générale UBS Limited UniCredit Bank (Vice Chair)
On the phone:	Mr. Godfried De Vidts Mr. Daniel Bremer Mr. Francois-Xavier Bouillet Mr. Andrea Masciovecchio Mr. Jean-Michel Meyer Mr. Nicola Danese Mr. Richard Hochreutiner Ms. Lisa Cleary	ICAP (Chairman) Bank of America Merrill Lynch Goldman Sachs Intesa SanPaolo HSBC J.P. Morgan Swiss Re ICMA
Also Present:	Mr. Harald Bänsch Mr. David Hiscock Mr. Richard Comotto Ms. Lalitha Colaco Henry	UniCredit Bank ICMA ICMA Centre ICMA (Secretary)
Apologies:	Mr. Ronan Rowley Mr. Michel Semaan Mr. Nicholas Hamilton Mr. Andy Hill	Deutsche Bank  J.P. Morgan (ERC Ops Group Chair) ICMA

**Welcome by the Vice-Chairmen**

Mr. Cia warmly welcomed the Committee to UniCredit in Munich. He noted that the meeting was the first since 1999 where the Chairman had not been in attendance (though he had dialled in) and he was wished a speedy recovery. Mr. Hiscock thanked Mr. Cia for hosting the meeting, saying the he and the Committee were delighted to be back in Munich. He also brought to the Committee's attention the significant amount of work that is being done by the ERC Operations

Group and urged the need for Operations Group colleagues to receive as much support as possible from their respective front office colleagues.

### **1. Minutes and feedback from the previous meeting**

The draft minutes of the last ERC Committee meeting, held on 16 September in Frankfurt, were unanimously approved subject to two minor amendments. The amended minutes will be published on the ICMA website.

Committee members discussed their impressions of the last meeting with the ECB, which most felt had been successful. It was noted that meetings with the ECB are invaluable, as the ECB also discusses various regulatory developments with the European Commission and ESMA.

### **2. BRRD and extension of the ISDA resolution stay protocol to SFTs**

Ms. Cleary updated the committee on a number of issues relating to the BRRD, noting that a meeting with the Bank of England had been scheduled for the week of 5 October, at which a number of Committee members will be in attendance. The meeting will focus on the market impact of resolution stays and the effect on liquidity of the use of the discretionary power to temporarily suspend payment and delivery obligations as set out in Article 69 of the BRRD.

In discussion regarding the operation of resolution stays it was noted that the stay applies to a party's right to close out, though that party would continue to be able to sell the underlying collateral as they own it under the TTCA of the GMRA. However, from a risk management perspective, there is a risk that you would sell at a lower price and then potentially also have to buy back at a higher price to meet delivery obligations at the Repurchase Date.

Ms. Cleary also noted that she had recently spoken with German counsel who had advised that an amendment has now been made to the German legislation that implements the BRRD, providing improved safeguards for netting in the context of bail in. Accordingly German counsel is drawing up an annex to the legal opinion which will be made available to members shortly. It remains to be seen whether Austria will similarly make amendments to their legislation. More worrying are reports that there may be a similar problem with netting in France. The concern is that the industry might have to seek an amendment in every jurisdiction in Europe in order to preserve netting rights in the context of bail in. The Committee suggested that it may be worth discussing this issue with the ECB to see if the ECB is able to act as interlocutor with the various EU member states before national implementing legislation is passed. The Chairman requested that Ms. Cleary draft a technical letter to be sent to the Commission and the ECB highlighting the issue. Such a letter could also be sent to the European Financial Market Lawyers Group (EFMLG).

### **3. CSDR**

Mr. Hiscock said that ESMA had published its much-awaited Regulatory Technical Standards (RTS) for the CSDR on 29 September. However, the RTS associated with mandatory buy-ins, on which ESMA had consulted in the summer, had not been included in the September publication and are expected to be published in November instead. It is anticipated that, in relation to mandatory buy-ins, ESMA will adopt a variant of its preferred Option 2 – a trading level/CSD participant level hybrid model, even though there had been very little appetite for this model amongst market participants. ESMA's November publication will be eagerly awaited. ESMA has also recommended

a 24 month delay for the implementation of settlement discipline, including mandatory buy-ins, which would mean an effective date sometime in January 2018 – after the roll-out of T2S has been completed. However, the Commission is not required to accept ESMA's recommendation of a 24 month delay.

There had been some discussion about drafting a cross-industry letter regarding the difficulties posed by Level 1 of the CSDR, but progress on the letter has stalled because of legal advice given by AFME's lawyers. Accordingly, more work is needed to take this project forward.

The Chairman noted that even with a two-year delay, the mandatory buy-in regime will still be imposed on the market. Mr. Hiscock added that there will be a review of the Level 1 text in a couple of years at which time it may be possible to have the mandatory buy-in provisions amended. However, in the meantime, it is worth thinking of real examples of how mandatory buy-ins will impact the market and start thinking about how to structure the case against mandatory buy-ins so that the market is prepared well in advance of any legislative review. It was also noted that in the US, the Treasury Market Practices Group (TMPG) imposes a penalty for failed repos which has resulted in a significant reduction in the level of fails. It was suggested that the Committee should consider advocating the use of a similar fails penalty to incentivising the industry to improve. It was agreed that Committee members would try to set up a meeting with Mr. Hill in the coming weeks to further consider appropriate next steps. The Chairman added that an additional way of improving fails in Europe would be to increase the pressure on the ICSDs to further improve the settlement bridge.

#### **4. NSFR**

Mr. Hiscock said that the EBA is holding a public hearing on 15 October seeking input on the calibration and impact of the NSFR, in relation to which it is required to provide a report to the Commission. In particular, attendees have been asked to provide "an analysis of the impact of NSFR on the volume and liquidity of financial markets at the EU level, with a particular focus on markets for ... securities financing transactions". The EBA report on NSFR must be submitted to the Commission by the end of this year, after which the Commission will prepare a legislative proposal for a European NSFR regulation by 31 December 2016 which should come into effect in 2018. Mr. Hiscock reminded the Committee of Mr. Hill's comments at the last Committee meeting, to the effect that market participants regard NSFR as a potential "game changer". Therefore, the EBA public hearing will be an important meeting for market participants and they should be well prepared to present cogent arguments regarding the calibration of the NSFR.

The Committee agreed that the calibration of NSFR should exclude FIN 41 netted trades where the end dates are the same. However, it was also noted that the EBA has made it clear that they are looking for an impact analysis based on solid data. This has been done for derivatives in an ISDA working group which has estimated that for derivatives, the NSFR will have a EUR12-15 billion impact in terms of annual cost. The ISDA work is very granular. Live data has been provided by 12 banks that represent about 45% of the whole of the global derivative markets. On the basis of the data provided, the working group has estimated that the NSFR would trigger the need for EUR312 billion of additional funding, just for the 12 banks concerned. Extrapolated to the whole industry, this would amount to in excess of EUR767 billion. It is estimated that there is a need for 150 – 200 bps to be absorbed by the financial services industry or passed on to clients.

It was agreed that Committee members would find out who within their firms will be attending the public hearing and that they would prepare accordingly for the hearing and pass on relevant

details to Mr. Hiscock by Friday, 9 October. Mr. Hiscock also said that he would provide feedback to the Committee after the hearing.

## 5. SFTR

Mr. Hiscock said that, a delegation from ISLA and ICMA met with ESMA working level staff on 18 September for an education session on SFTs. It was a helpful initial session and it was agreed that ICMA and ISLA will stay in touch with the ESMA staff, who will be writing the SFTR technical standards. It is hoped that, by holding these educational sessions with ESMA staff, the drafting of the RTS will be smoother.

Mr. Hiscock went on to say that the European System of Central Banks (ESCB) has started investigating the development of a central ESCB SFT Data Store which will be used to collect, store and analyse SFT data. The data will be obtained from trade repositories and will be made available to EU central banks, ESMA and other relevant EU regulators; but not to the market more generally. It is anticipated that there will be a degree of enrichment to make the data more informative. In support of this project, the ECB has created an advisory group to obtain information from a broad range of market participants on SFTs, market practices and market standards. Mr. Richard Comotto and Mr. Jonathan Lee from the ERC Operations Group are members of this group which held its inaugural meeting on 16 September. The advisory group is not involved in any regulatory process linked to the SFTR or to the drafting of the RTS, but nevertheless, the ESCB must collaborate with ESMA and information shared with the ESCB by way of the advisory group should be seen as an opportunity to create better infrastructure. Mr. Comotto said that the ESCB has said that the data store project is constrained by the SFTR and the Money Market Statistical Regulation. The ESCB is also keen to use FpML, since they are familiar with it from their existing work on derivatives. They have asked for insight into (a) re-use and interconnectedness, and (b) a collateral velocity measure. The second meeting of the advisory group is the week of 5 October with current plans for a final meeting in February.

Mr. Hiscock said that there are complicated issues regarding re-use. When the ERC met the FSB in late August, there was a discussion about re-use – with the FSB focussed on understanding the evolution of collateral velocity. The FSB want to collect data at an international level which provides information on position data on a settled basis. However, ESMA are looking at requiring the reporting of transaction data on a trade by trade basis. Additionally, the FSB defines re-use as any use of securities delivered [as collateral] in one transaction in order to collateralise another transaction. However, the SFTR defines re-use to mean the use [in any manner] by a receiving counterparty, in its own name and on its own account or on the account of another counterparty, including any natural person, of financial instruments received under a collateral arrangement. GFMA have been working on a draft paper looking at re-use, but it is different to ICMA's thinking on the subject and accordingly staff are in discussions with GFMA.

It was noted that a significant focus for US regulators is resolution planning, especially in relation to collateral and how collateral flows through firms. This focus may be driving European regulators to focus on reuse under title transfer collateral arrangements (TTCA). However, NSFR also distinguishes between SFT and other funding and therefore, market participants will need to be able to distinguish between them in order to properly calculate their funding requirements.

It was also noted that the FSB is looking at collateral velocity and re-use. ESMA, on the other hand, is looking more at interconnectedness, which is a different issue. Interconnectedness concerns the extent to which parties are connected through chains of re-use. Arguably collateral

velocity and interconnectedness should be measured differently: collateral velocity by reference to deliveries in and out whereas interconnectedness should be measured by net positions between banks. The Committee agreed that more practical-based thinking is needed to assist the FSB and ESMA on these issues.

Mr. Hiscock also said that work was continuing on risk disclosures. Article 15 of the SFTR requires that in order to be able to re-use securities, a collateral receiver must have disclosed to its counterparty the risks of re-use. Initially, there had been some thought that the GMRA could possibly already be used for this purpose. However, it has now been decided that it will be necessary to produce a separate, generic risk disclosure document. ICMA, together with ISLA and AFME, are working with Clifford Chance and Committee firms to produce a generic template. The risk notification requirement comes into force six months after the effective date of the SFTR, i.e. towards the middle of next year. However, the SFTR requirement to report to trade repositories will not come into force for some time. ESMA are drafting RTS and reporting is expected to start in 2018. However, in the meantime, MiFIR rules will come into force including for buying and selling bonds. ESMA's recently published final report on MiFID II/MiFIR RTS provides that if a transaction is a SFT which is or would be transaction reported to a trade repository under the SFTR then it will not have to additionally be transaction reported under MiFIR. However, not all SFTs need to be transaction reported under the SFTR, such as SFTs where the counterparty is a central bank. Accordingly, it would currently appear that such SFTs will have to be transaction reported under MiFIR.

Turning to pre- and post-trade transparency, Mr. Hiscock said that the requirements will depend on the location of the trading. For post-trade transparency MiFID II/MiFIR make a distinction between trading on a venue (regulated market, MTF or OTF), trading OTC and using a Systematic Internaliser. Also important to note is that repo is not exempt from pre-trade transparency if it is traded on a venue such as an electronic platform. Repo market participants will also have to consider the best execution provisions as some of these relate to repos as well. It was agreed that the ICMA Secretariat will provide a full briefing on MiFID II and MiFIR at the next Committee meeting.

## **6. AOB and upcoming dates**

Ms. Cleary said that some time ago the Committee had taken a decision to discontinue coverage of the GMRA 1995 in the ICMA legal opinions from April 2016. However, some firms are saying that they will face an enormous challenge to meet this deadline given the burden they are currently facing from impending regulatory changes. It was agreed that coverage of the GMRA 1995 be extended in the legal opinions for at least a further year and that the Committee would discuss further before deciding when to discontinue coverage.

Future **European Repo Committee meetings** have been scheduled as follows:

- (1) **10 November** – 14:30 – 17:30 GMT hosted by ICMA in London (23 College Hill, London, EC4R 2RP);
- (2) **2 December** – 15:00 – 18:00 GMT, hosted by ICAP in London (2 Broadgate, London, EC2M 7UR) followed by Christmas drinks.

Other Repo dates:

- **European Repo Council Annual General Meeting - 27 January 2016, 4:30 – 7:30 CET**, hosted by Clearstream in the margins of their annual Global Securities Financing Conference in Luxembourg.

The Chairman:

The Secretary:

Godfried De Vidts  
10 November 2015

Lalitha Colaco-Henry