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ICMA

EUROPEAN REPO COUNCIL

Minutes of the general meeting of the European Repo Council held on October 27, 2010, in Amsterdam

Location: Amsterdam RAI, hosted by Swift, as part of SIBOS
Amsterdam, the Netherlands

Time: 13:30 – 15:30

Presenting:

Mr. Godfried De Vidts, (ERC Chairman), ICAP Securities plc, London
Mr. Paul Bodart, (Co-Chair of the Harmonisation of Settlement Cycles Working Group), Bank of New York Mellon
Mr. Patrick Pearson, Head of Financial Markets Infrastructure Unit (Unit G"), European Commission
Mr. David Hiscock, ICMA Ltd., London
Ms. Lisa Cleary, ICMA, Zurich
Mr. Richard Comotto, ICMA Centre
Mr. Tony Platt, (Chair of ERC Operations Group), Morgan Stanley

The following member firms were represented at the meeting:

ABN AMRO Bank N.V., Amsterdam
Banco Santander, S.A., Madrid
Banca Bilbao Vizcaya Argentaria, S.A., Madrid (BBVA)
Caja de Ahorros y Pensiones de Barcelona (La Caixa), Barcelona
Caja de Madrid, Madrid
Confederatión Española de Cajas de Ahorros (CECA), Madrid
Citigroup Global Markets Limited, London
Commerzbank Aktiengesellschaft, Frankfurt
Commonwealth Bank of Australia, Sydney
Daiwa Capital Markets Europe Limited, London
Danske Bank A/S, Copenhagen
Deutsche Bank AG, Frankfurt
Eurex Repo GmbH, Frankfurt
EuroMTS Limited, London
Fortis Bank, Brussels
GESMOSA GBI Agencia de Valores, S.A., Madrid
ICAP Securities Limited, London
ING Bank N.V., Amsterdam
J.P. Morgan Securities Limited, London

Landesbank Baden-Württemberg, Stuttgart
Morgan Stanley & Co. International Plc, London
Nordea Bank Danmark A/S, Copenhagen
Royal Bank of Canada Europe Limited, London
Société Générale S.A., Paris
Unicredit Bank, Austria AG, Vienna

The following member firms were not represented at the meeting:

Aurel BGC, Paris
Banca IMI S.p.A., Milan
Bank Julius Bär & Co. AG, Zurich
Bank of Scotland plc, London
Banque et Caisse d'Epargne de l'Etat, Luxembourg
Barclays Capital Securities Limited, London
Bayerische Landesbank, Munich
BNP Paribas, Paris
Coöperatieve Centrale Raiffeisen-Boerenleenbank B.A. (trading as Rabobank International), London branch
Crédit Agricole Corporate and Investment Bank, Paris
Credit Suisse Securities (Europe) Limited, London
Dexia Bank Belgium NV/SA, Brussels
DZ Bank AG Deutsche Zentral-Genossenschaftsbank, Frankfurt
Goldman Sachs International, London
HSBC Bank plc, London
HSBC France, Paris
ING Belgium SA/NV, Brussels
IntesaSanpaolo S.p.A, Milan
Jefferies International Limited, London
KBC Bank N.V., Brussels
Kredietbank SA Luxembourgeoise
KBL European Private Bankers S.A., Luxembourg
Lloyds TSB Bank plc, London
Merrill Lynch International (trading as Bank of America Merrill Lynch), London
MF Global UK Limited, London
Mitsubishi UFJ Securities International plc, London
Mizuho International plc, London
Monte dei Paschi di Siena Capital Services Banca per le Imprese S.p.A., Siena
National Australia Bank, London
National Bank of Greece S.A., Athens
NATIXIS, Paris
NIBC Bank N.V., The Hague
Nomura International plc, London
Norddeutsche Landesbank Luxembourg SA, Luxembourg
Raiffeisen Zentralbank Österreich AG, Vienna
Royal Bank of Canada Europe Limited, London
The Royal Bank of Scotland plc, London
UBS AG, London Branch, London
UniCredit Bank AG, Munich
WestLB AG, Düsseldorf

1. Opening of the meeting by the Chairman of the European Repo Committee

The Chairman, Mr. Godfried De Vidts, welcomed Council members, speakers, observers and guests and thanked Swift for hosting the ERC Council general meeting. He reminded attendees that Council meetings were held twice a year, and were an opportunity to report on developments in the repo market for the benefit of the members. He noted that at the last meeting of the ERC elections took place for the ERC Committee. Both Edward McAleer and Eduard Cia were re-confirmed as co-chairman. He thanked the members of ERC Committee for their confidence with his re-confirmation as chairman for the coming working year.

At the last Council meeting, one of the guest speakers was Mattias Levin of the European Commission who had talked about the preparations for the forthcoming European market infrastructure legislation. After the meeting, he had noted his surprise at the questions that had come from the audience. Therefore, it was appropriate for Patrick Pearson, head of the financial markets infrastructure unit from DG Markt to provide an update in this area to the Council.

The Chairman also noted the significant volume of public consultations. Given that regulatory reforms may be well intended, there was a risk of unintended consequences and so the ERC Committee was continuing to monitor the regulatory reform agenda. In this regard, a conference call with DG Markt had been arranged in the summer to discuss short selling and to clarify the ERC's position. Separately the Chairman and Eduard Cia met with Bafin to clarify the German short selling rules. The ERC responded to the Commission's consultation paper in July. The Chairman went on to note that the ERC White Paper was presented to both policy makers in Brussels and the CESR consultative panel in Paris. The CESR panel and regulators who attended had praised the report for the clarity of the issues covered in the document. The Chairman also said that at the end of July he had attended the IOSCO Technical Committee with industry stakeholders in Madrid. This was another opportunity to present the White Paper to a global regulatory audience.

At the last ERC Meeting in Brussels, Andy Strum published the CPSS report in September. The proposals in the paper, together with many other regulatory initiatives will re-design the repo markets. The ERC Committee will continue to watch these developments carefully and will respond, when needed.

One of the other major events in the last few months has been the long awaited endorsement from the Spanish banking community of the CCP model for Spanish Government bonds. The addition of Greek Government bonds to the CCP world will be a little trickier.

The SLRC had also asked if the ERC could extend the repo survey to include statistics on evergreen repos, but being conscious of the already heavy demand for data for this survey, we have decided to keep the survey unchanged. The Chairman asked members to note that the next survey would be on December 9. He also noted that with Estonia to shortly adopt the Euro, the general collateral list will be expanded to include Estonia.

Finally, the Chairman noted that there would continue to be a number of regulatory initiatives in the coming months and years that would impact the repo market, such as initiatives in the clearing and settlement area which would impact on CSDs and ICSD and the securities law directive. The ERC Committee welcomes feedback on any of these issues.

2. Approval of the minutes of the ERC Meeting held on Thursday, 18 March 2010, in Brussels

The minutes were unanimously approved without comment.

3. Update on Harmonisation of Settlement Cycles Working Group

Mr. Paul Bodart said that in 2001, the Giovannini Group had identified 15 barriers to create an effective single market in Europe. Barrier 6 related to the harmonisation of settlement cycles across Europe. Following on from the work of the Giovannini Group, the Commission set up the CESAME working group, but at the time, Barrier 6 was not a top priority.

However, in 2008 – 2009, CESAME 2 re-examined Barrier 6 and decided it should be re-prioritised for two reasons. First, CESAME had done considerable work to harmonise corporate actions but this has brought with it a recognition that there is a need to harmonise settlement cycles. Second, the introduction of T2S will similarly require the harmonisation of settlement cycles. Therefore, CESAME 2 has set up a Working Group to consider the harmonisation of settlement cycles. There are 25 people on the Working Group representing the different layers of the industry and the different European markets. At the first meeting, it was agreed that harmonisation of settlement cycles was critical, that the work should apply to a broader range of instruments than just equities and that T+1 was not possible. After performing a lot of background analysis, the Working Group recommended to the CESAME 2 meeting on March 2nd a move to T+2. The Working Group identified that one of the clear benefits of T+2 would be to reduce counterparty risk. However, the implications of such a move are that it forces people to do in two days what they currently do in three or more days. The concern is that any reduction in the settlement cycle to two days should not create a significant back office problem, particularly for buy-side and retail participants. The Commission has asked the Working Group to analyse what actions should be taken to minimise the operational impact of a shortened settlement cycle, and to document why a move to T+1 is not possible and why harmonisation of settlement cycles is so critical. Such documentation is needed to assist the Commission in its work to prepare the regulatory impact assessments that will accompany any legislative proposals. The Working Group is looking at ways to improve trade affirmations/confirmations, pre-settlement matching, settlement process to minimise fails (eg securities lending) and post-settlement market discipline (eg buy-in and penalties).

The Working Group has also started to approach non-EU jurisdictions in other time zones, such as DTCC in the US. There are two reasons for this approach, if Europe moves to T+2: (1) what could be the impact, if any, in other parts of the world; and (2) what would other markets do. In 2001 in the US, SIA had looked at the possibility of a move to T+1 but had abandoned the idea. However, the DTCC, the SEC and SIFMA are now actively looking at T+2. Japanese government bonds will also settle T+2 starting in January 2011.

The Working Group has a deadline of December 2010 to develop recommendations for what needs to be done to facilitate a move to T+2 and minimise the operational impacts. T2S will be implemented in September 2014. Accordingly, the move to T+2 must be adopted before T2S. The move to T+2 will be adopted by way of a phased approach. Finally, Mr. Bodart said that the Working Group recognised that the repo markets work differently and that this was being taking into account by the Group.

4. Keynote Speech by Patrick Pearson, Head of Financial Markets Infrastructure Unit

Topic: The impact of the proposed European Market Infrastructure Regulation (EMIR) on the repo market

Mr. Pearson noted that the regulatory community and the Commission has been undertaking an unprecedented and complete regulatory overhaul. The level of determination currently being displayed by politicians and regulators to overhaul the regulatory framework is unique. The regulatory agenda being pursued was essentially focused on where the money flows at the time of crisis and money flows are equated with 'risks' in the system. Regulators and politicians have taken the view that these risks must be managed and regulated much better than they were prior to 2007. The perception is that the period 2007 – 2009 tested the free market almost to destruction and stringent regulation was needed to correct the failures. However, there are two major weaknesses of regulation. First, regulation responds to problems and second, it suffers from the law of unintended consequences. Regarding the latter, it was important to properly understand the potential consequences. For example, the Dodd-Frank Act had resulted from a hugely political debate that not many had been able to follow and the result was a complex piece of legislation. It will take time to understand its full impact. The EU and the Commission adopted a different approach to regulatory reform – which is to consult with the industry in order to minimise the law of unintended consequences as much as possible. However, if regulators do not get the regulatory framework 'right', then market participants will pay the cost. It is very difficult to change legislation quickly once it has been implemented as the legislative process is lengthy, while it is difficult to reverse 'mistakes'. Often, firms suffer from regulatory fatigue.

Turning to the subject of repos, Mr. Pearson noted that an understanding of tri-party repo doubtless is extremely specialised and not many fully understand tri-party repo. Many have pointed to the systemic risk of the US tri-party repo market, which relied on two banks to underwrite the individual counterparty risk of the whole market, which was not sustainable in the long term. This has led to a robust debate in the US, but not in Europe. Instead, market practitioners have tried to initiate debate with, for example, the publication of the ERC's White Paper ("excellent"), which highlighted the regulatory issues. The White Paper identified: settlement problems; the lack of connectivity between ICSDs; and issues that go beyond the 'Giovannini' Barriers. However, efficiency arguments will not spur a regulatory response. Instead, the attention of politicians is on safety and stability. The Commission services will consider the problems raised in the ERC White Paper, as well as others in the clearing and settlement area. Mr. Paul Bodart had already outlined the process of moving to T+2, which will be taken forward. The Commission services are working on a draft regulatory initiative for CSDs and ICSDs which will be introduced next summer. This regulatory initiative may also impact on costs for the industry.

Finally, Mr. Pearson noted that it is clear that if the market will not give short term finance to broker dealers, then the tax payer may ultimately have to step in to fill this gap. This will spur a wider and deeper debate.

Mr. Eduard Cia stated that market participants have been trying to talk to regulators since the 1990s but politicians just continue with their agenda without paying attention to what the industry is saying. In reply, Mr. Pearson noted that the politics are driven by a desire to appeal to constituents, but this may not in all cases result in the best outcome for all. In the US, timing had been right to discuss market reform, but in Europe the right occasion may actually be the present given, for example, the difficulties there have been with a certain EU Member State's government bonds. The issues in this area may be the way to engage constructively with the regulatory community on the basis of safety and stability.

5. Regulatory Issues

Mr. David Hiscock said that the ERC Committee had been very busy since the last ERC Council meeting and that given the agenda being set by regulators it looked like the coming months would continue in a similar vein.

In June, the Commission published a consultation paper on Derivatives and Market Infrastructures to which the ERC Committee submitted a response. Many elements of the contemplated regulation impact more broadly than just OTC derivatives, such as central counterparty clearing. In September, the Commission followed up by publishing its proposed European Market Infrastructure Regulation (EMIR). This is in the form of a Regulation which will not need to be transposed into national law. EMIR is foreseen to be fully effective as of 2013. Of particular note is Article 47(1) of the proposed Regulation which concerns the use of central bank money to settle. The ERC Committee are concerned that this provision is not properly articulated. An amendment is needed making clearer how this links to settlement, which is itself to be the subject of a forthcoming legislative proposal.

On an important related note, the CPSS published its paper "Strengthening Repo Clearing and Settlement Arrangements" in September. Some of the issues identified by the CPSS relate to issues raised in the ERC's White Paper. Mr. Hiscock urged market participants to review the CPSS paper carefully as it identifies several issues, related to clearing and settlement arrangements for repos, which could impact on the resilience of repo markets. The paper outlines options and measures to address these issued, but market participants are tasked with developing specific proposed measures, working collaboratively with regulators and central banks.

Another issue concerning CCPs that the ERC Committee has followed closely is the joint CPSS and IOSCO consultation on the international standards for CCPs. Given that increased CCP usage has the effect of concentrating risk in CCPs, it is vital that they are sufficiently robust. The ERC Committee responded to the joint CPSS/IOSCO consultation (published in May), particularly flagging the ERC's concerns regarding implications for non-derivatives CCPs; the appropriate usage of robust CCPs; and the adequacy of collateral. This all feeds into CPSS/IOSCO's broader review of international standards for financial market infrastructures, on which more will be heard in early 2011.

A further issue related to the consolidation of business into the CCPs is the treatment of large exposures. Regulatory reforms are currently being contemplated that incentivise, and in some cases require, greater use of CCPs. At the last ERC Council meeting, it was noted that the FSA had published consultation paper CP 09/29 "Strengthening Capital Standards". The ERC responded to that consultation by seeking clarification regarding the treatment of large exposures to CCPs. From feedback provided in a further FSA CP (10/17), it now appears that the FSA (and CEBS in a related paper) are affirming that, where possible, large exposures to CCPs will benefit from exceptional treatments – so long as the CCP in question meets applicable standards.

A further regulatory development was the June consultation, by the Commission, on short selling. The ERC Committee responded to this consultation by submitting the ERC's White Paper. In September, the Commission then published a draft legislative proposal, which largely involves the articulation of a disclosure regime. This draft Regulation needs careful thought and scrutiny, including for instance with respect to its proposal that "Persons entering into short sales of shares or sovereign debt must, at the time of the sale, have borrowed (or arranged to) the instruments ready to settle". However, Article 13 has particularly attracted attention as it places the onus on the trading venue or CCP to buy-in the relevant securities to ensure delivery for settlement in the case of fails. The view of the ERC Committee is that trading venues are not the appropriate level for the

buy-in of securities. ICMA has discussed possible actions with other associations to seek an amendment of this article.

At the turn of the year Basel published proposals concerning capital and liquidity; and the European Commission conducted a parallel consultation on how these measures should be embedded in European legislation. The ERC Committee has followed these consultations closely, looking particularly at the liquidity buffer proposals. Basel's 26 July and 12 September press releases concerned calibration and timing of the proposals. Of particular importance for the ERC are the proposals regarding the leverage ratio and regulatory netting. Basel has announced that the calculation of the leverage ratio, against a 3% Tier 1 minimum, would apply Basle II netting for all OTC derivatives (including credit derivatives). It was also announced that for the liquidity coverage ratio there will be an observation period from 2011, for authorities to collect data and determine whether the calibration is correct before full implementation from the start of 2015.

The MiFID review has also been continuing apace, though much of the emphasis remains focused on the application of MiFID to equity markets. However, there has been considerable debate about the extent to which the equity provisions in MiFID (especially pre and post-trade transparency) should be extended to non-equity instruments. We expect the Commission consultation will be released next month and legislative proposals will be published in April next year.

HM Treasury has also published proposals regarding a resolution regime for failing investment firms. This follows from an earlier consultation exercise. Finally, on October 20th the Commission's "EU framework for crisis management in the financial sector" was published for debate. Of particular note is the proposed provision for a temporary stay on the right to close out netting. The ERC will also need to consider carefully the forthcoming netting directive.

6. Update on legal framework

Ms. Lisa Cleary noted that she would focus on: (1) the review of the GMRA 2000; (2) the Credit claims annex to the GMRA; and (3) the 2011 combined legal opinion exercise

Ms. Cleary said that the global master repurchase agreement has for many years been the foremost agreement for documenting cross border repo transactions. In order to ensure it remains as such, in late 2009, ICMA's ERC committee put together a working group to consider whether any amendments were necessary to the 2000 version of the agreement. Over the last year the working group, which is made up of legal practitioners as well as market participants, has considered various factors, including:

1. Lessons learned from the financial crisis;
2. Amendments made to other master agreements e.g. the GMSLA – a revised version was published earlier this year; & the MRA which is currently under review.
3. Bilateral feedback of GMRA users- gleaned from queries to ICMA's legal helpdesk and from our discussion with ERC member firms; and
4. The recommendations of the European Financial Markets Lawyers Group (EFMLG).

To give a flavour of the specific amendments being considered, Ms. Clearly noted that proposals have included the following:

1. If elected, clause 10(a)(ii) of the GMRA treats a failure to deliver purchased securities on the purchase date or deliver equivalent securities on the repurchase dates as an event of

default. Discussion on this clause debated the merits of hardwiring this clause into the body of the GMRA. The merits of doing so relating to risk mitigation can be counterbalanced with the dangers of creating systemic risk where operational failures occur. The conclusion of the working group is that this should remain an elective clause.

2. In relation to the default provisions of the GMRA, a number of revisions have been considered. Two examples are:
    i. The appointment of certain officials will trigger an event of default in the GMRA, as in the other master agreements. It is a challenge to find appropriate wording which adequately covers concepts across a variety of jurisdictions. Whilst most master agreements contain 'catch all' wording, including the GMRA 2000, it is proposed that the revised standard will include references to 'conservators' and 'custodians' in order to harmonise with the language used in other master agreements.
    ii. Further, it is proposed that the definition of 'Act of Insolvency' in the GMRA is amended to incorporate an additional event, i.e. 'a secured party taking possession of, or carrying out other enforcement measures in relation to, all or substantially all assets of such party, provided the relevant process is not dismissed, discharged, stayed or restrained within [30] days'. This broadens the definition to align with the ISDA master agreement.
3. At the March ERC meeting, Ms. Cleary had reported that the GMRA review working group were considering whether to alter the mechanics of the agreement such that the requirement to serve a notice of default prior to an event being deemed an event of default (as is currently the case under the GMRA 2000) would be removed in place of an ISDA style approach whereby the agreement treats the fact pattern as the event of default and requires that the non-defaulting party sends a notice designating an early termination date to the defaulting party. The recommendation of the working group is that the ISDA style approach is more intuitive and should be adopted.
4. One of the most contentious issues discussed within the working group is the introduction of a cross default clause. Arguments relating to risk mitigation are pitched again arguments that such a clause undermines the strengths of the agreement as repos are typically short term and adequately collateralised. If such a clause was to be incorporated into the agreement it would be as an elective clause and the art will be in drafting something palatable in terms of scope and application. Discussions are ongoing.

With regard to next steps, the aim is to publish the opinion by the end of the year and in time for the commencement of the 2011 GMRA legal opinion exercise. The working group had presented a draft agreement reflecting their discussions to the ERC committee at its meeting on 22 September, with a request that the committee provide their feedback on the commercial viability of the proposed changes. The working group will spend the coming weeks considering this feedback and will present their final draft recommendations to the committee at its next meeting at the end of next month. Ms. Cleary undertook to continue to provide the Council with updates on the progress of the review.

Regarding the credit claims annex to the GMRA, as reported at the March meeting, the aim of the credit claims project is to add to the range of available collateral by establishing a system for repo-ing credit claims under the GMRA for day-to-day use by banks seeking to fund their business short term in the interbank markets. ICMA has completed a legal feasibility study which supports the development of this product under English and German law and is also closely following developments in French law in this context. Legally, the basic proposal is as follows - once a loan is immobilised in the central clearing system, legal title to a loan will be transferred exclusively by means of matching 'buy' and 'sell' orders entered into the clearing system. Payments under the loan will be made through the clearing system which will hold the definitive evidence of legal title. Ms. Cleary noted that the implementation of the above mentioned directives will ensure settlement

finality in relation to credit claims and it remains important to monitor such implementation. The main points of nexus are that 'credit claims' will be treated as financial collateral so that repos of credit claims should benefit from the same protections as apply to repos of securities as *title transfer collateral arrangements*. The legal foundations have been laid (so far as they can be at this stage) so this project now focuses on commercial and technical considerations. ICMA are actively liaising with the Loan Market Association on the commercial considerations (particularly from the perspective of the borrowing community), whilst the ICSDs consider the technical demands of the proposed legal framework. The ERC will be kept informed of all progress.

Finally, Ms. Cleary noted that the 2011 legal opinion update will shortly commence with updates of the 2010 legal opinions being obtained in over 60 jurisdictions. Of significance this year is that the 2011 legal opinions will incorporate coverage of the new standard GMRA. Alongside guidance notes and the planned protocol, it is hoped that such inclusion will encourage uptake of the new standard agreement in the market.

7. Update from Richard Comotto

Mr. Richard Comotto said that the June survey indicated that the repo market had reached almost €7 trillion, which was comparable to the market's pre-crisis levels. It was clear from the latest survey that some banks were pulling ahead of their competitors and accordingly there was a significant concentration of business in the market - the top ten banks now account for 69% of business. This means that the aggregate results are much more sensitive than in the past to the activities of individual banks. The survey was based on 50 respondents, which was fewer than in previous surveys, but this was probably due to mergers etc.

The counterparty analysis showed that direct business amounted to almost 50% of the market. Much of the expansion in the market is attributable to direct business. Triparty business has kept pace with market growth. Voice brokers did well as a result of the crisis. The survey also showed that clearing through CCPs of both electronic and non-electronic business had become quite significant.

The currency analysis showed a jump in the share of dollar trading with a fall back in the share of sterling. The collateral analysis showed a significant jump in "other OECD" collateral. This appears to have been an exceptional change. The maturity analysis showed 55.3% of business in short dates, smaller than in the past. Also important to note is the much broader range of maturities than is present in the US markets. Moreover, in the European markets the amount of short-dated repo is now declining as the market is normalising. Of triparty business, 65% is in short dates compared to, 90% of electronic business which is in short dates.

The rate analysis shows that open business suffered during the crisis but has now recovered slightly. Floating business has also improved slightly. The next survey will take place on Wednesday December 9.

Turning to the White Paper, Mr. Comotto thanked Mr. Pearson for his kind words about the paper and noted that the aim of the paper was to clarify, for regulators and politicians, some of the issues for the market. Particular focus had been given to the major barriers to interconnectivity in Europe and Greek, Spanish and Italian settlement issues. A map of best practice has been produced by market users, which the ERC felt would allow for efficient settlement.

In Italy, the principal issue was the dramatic rise in the number of delivery fails on transactions cleared through the international CCP (LCH.Clearnet) but not at the domestic CCP (CC&G), which raised the question of whether this was a market or infrastructure problem. The White Paper identified a number of barriers to interconnectivity. For example, the RTGS and daytime batch process in the CSD's dual settlement system are largely independent. Unsettled instructions are passed from the overnight batch-processing cycle into the RTGS, where they remain. They are not recycled back into the next overnight batch-processing cycle and so a situation is created where a repo will fail with one leg in the batch process and the other leg in the RTGS. Moreover, there is no way for users to fix problems in RTGS. Additionally, there is concentration of settlement in the overnight batch-process. While this concentration is seen as a sign of settlement efficiency by the CSD, some users argue that it reflects the difficulties posed by the RTGS process. An additional issue in Italy was confusion between the role of the CCP and the CSD, as it appeared that the CSD was doing the netting calculations for the CCP. Since the White Paper, there has been significant progress in Italy. The CSD has announced that it intends to make fundamental changes to the settlement system which should address many of the issues highlighted in the White Paper. Already, there has been some harmonisation of shaping amounts, which may have resulted in some improvement in the level of fails. Moreover, we understand that the daytime RTGS process is to be abolished so that only RTGS will operate during the day. This change will allow for continuity and recycling of instructions. Moreover, a bilateral facility will be introduced for users to cancel unsettled instructions in RTGS. The CSD has also said that it will introduce a facility to match instructions at the level of each client and not just for the clearing member or direct participant which will mean that there will no longer be a need for phone pre-matching. However, we need to see the detail of the proposals to work out the extent to which these alterations will resolve the outstanding issues. It is also worth mentioning that clarification has also been given regarding the role of CCPs and CSDs. Both do netting calculations, but the CSD does it only for settlement purposes, while the risk management calculations are firmly under the control of the CCP.

It was noted in the White Paper that in Spain, settlement is concentrated around 1:00pm which constrains the ability of users to address unsettled transactions or to re-use securities for same-day value. Concerns had also been raised regarding the finality of the overnight batch-processing cycle which ends at 20:00 on S – 1, which was seen as very late. Additionally, there is a prohibition on fails by members of the CSD, though the CSD prefers the term "strict settlement discipline". Since the publication of the White Paper, finality of settlement has been advanced to midnight. Active discussions are ongoing and it is expected that further progress will follow. Regarding the Spanish CCP, concerns had been raised in the White Paper about how the CCP would act in a default situation. It has now been made clear that the CCP would not withdraw in the event of default and Mr. Comotto accepted that a mistake had been made which arose from the unusual way in which MEFFClear operates, in particular, the fact that MEFFClear differs fundamentally from the majority of other CCPs, in nor performing multilateral netting, i.e. it is not a central **clearing** counterparty, but rather a central counterparty. In the event of a default by a client of a member, the member would be solely responsible for any loss resulting from the closing out of the client's position. In the event of a default by a member, recourse would be first to the initial margin posted by the defaulting member, second to the member's individual clearing fund (which is a fixed sum of collateral posted by each member and called the "General Guarantee") and third to the equity of MEFFClear. However, in anticipation of new EU legislation, a mutual default fund is to be introduced in parallel with changes to the structure of MEFF. In addition, a share of MEFF's equity will be carved out to form a dedicated "MEFF Fund". Under the new structure, recourse will be to (1) the defaulting member's initial margin; (2) the defaulting member's contribution to the new mutual default fund; (3) the defaulting member's individual clearing fund; (4) the new MEFF Fund for the segment suffering the default (repo, equity derivatives or energy derivatives); (5) the rest of the default fund for the segment suffering the default; (6) MEFF Equity.

Mr. Comotto also said that since the White Paper was published, LCH.Clearnet Ltd. has started offering CCP services in Spain and MEFFClear had seen its business revive, but it has become clear that there are tax issues which affect LCH.Clearnet that need to be sorted out. Nevertheless this represents dramatic progress.

The Chairman said that in respect of Greece, he had had discussions with the Bank of Greece and the Greek Ministry of Finance. It had been agreed that a delegation from the ERC, ERC Ops Group and the EPDA would participate in a brainstorm with officials from the Bank of Greece and the Greek Ministry of Finance to look at all the issues in the Greek market and how best to resolve them. It is anticipated that this discussion will take place in December or January.

Mr. Comotto finally turned to the issue of the Repo Code of Conduct. He noted that the aim was to consolidate existing guidelines, taking the opportunity to update them and demonstrating to regulators that the industry took self-regulation seriously. It would be necessary to consider how the new code would sit with the codes issued by other bodies.

8. ERC Operations Group – update

The Chairman said that since the last meeting, Mr. Ian Chicken, the Chair of the ERC Ops Group had stepped down. The Chairman thanked Mr. Chicken for all his work in the role and introduced Mr. Tony Platt as the new Chair.

Mr. Platt noted that business areas and operations areas are dependent on each other and there needs to be a true partnership between the two. Going forward, he would like to increase the membership of ERC Ops Group. However, in this regard, he was also hoping to add diversity to the membership of the ERC Ops Group (for example, to include equity financing specialists) and to increase the frequency of meetings. By doing so, it was hoped that the discussions of ERC Ops Group would be more comprehensive.

Mr. Platt said that the ERC Ops Group had looked at triparty interoperability. The ICSDs have together proposed a model which appears encouraging. ERC Ops Group is looking forward to the opportunity to review the proposal in detail. There is a need to ensure interoperability between settlement systems to support real time substitutions and recalls. A considerable amount of work has been done to develop the Bridge, but further improvements are still needed as it is not capable of supporting tri-party interoperability at the present time.

The ERC Ops Group had also spent considerable time on the ERC White Paper, particularly in relation to elaborating on the settlement regimes in various domestic markets.

Mr. Platt also spoke about repo trade matching. Drivers for progressing the trade matching agenda include the harmonisation of settlement cycles and the move to T+2, operational risk, particularly on term and open repo transactions and increased transparency of funding flows for enhanced intra day credit management. Mr. Platt added that the funding business areas can expect some degree of interest from regulators in respect of the trade matching function as a control point, as the industry has already seen in other product areas. There are multiple potential providers in this area. Ideally, from a funding flow confirmation and forecasting perspective the industry would see a concentration of matching on a small number of preferred providers rather than witness and support the adoption of multiple platforms across the region.

Looking forward to 2011, the ERC Ops Group will continue to pursue the issues already identified focusing on stability and security.

9. Any other business

No other business was raised.

10. Next meetings

The Chairman noted that the 6th International Repo and Securities Lending Conference would take place from December 14 to 15 in Moscow. This Conference is being organised by NSMA, with the support of ICMA. This annual Conference brings together participants from the Russian financial market and international bankers and investors to consider the key trends in the financial markets over the past year and to discuss prospects for the year to come, with specific reference to Russian financial markets.

The Chairman also noted that the next Annual General Meeting of the European Repo Council is to be hosted by JP Morgan on March 10th in London.