International
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Association

ICMA

EUROPEAN REPO COUNCIL

Minutes of the Annual General Meeting of the ICMA European Repo Council[1] held on October 14, 2015, in London

Location: Painters' Hall, 9 Little Trinity Lane, London, EC4V 2AD
Time: 3:00 pm – 5:30 pm

Presenting:
Mr. Brian Ruane, CEO of Broker Dealer Services at BNY Mellon
Mr. Godfried De Vidts (ERC Chairman), ICAP Securities Limited
Ms. Lalitha Colaco-Henry (ERC Secretary), ICMA
Mr. Andy Hill, ICMA
Mr. Nicholas Hamilton, (ERC Operations Group Chair), JP Morgan
Mr. Leland Goss, ICMA
Mr. David Hiscock, ICMA

Member firms represented at the meeting:
Please see Annex A.

1. Welcome by our host

Mr. Ruane welcomed everyone to the meeting and thanked ICMA and the Chairman for giving BNY Mellon the opportunity of hosting the European Repo Council (ERC) meeting. He noted that he had recently returned from the IMF meeting held in Lima, Peru where repo had been the focus of many discussions. At the same time, Broker Dealer Services at BNY Mellon is also at the centre of a very dynamic market.

Mr. Ruane noted that those people who had attended the pre-launch event, which had been held immediately before the start of the ERC general meeting, will have heard about a paper which BNY Mellon will shortly be publishing in conjunction with PwC Financial Services that examines the future of US tri-party repo markets.[2] The US tri-party reform initiative, sponsored by the Federal Reserve Bank of New York's Payments Risk Committee, has increased the safety and soundness of US repo

[1] On 4 December 2015, the name of the European Repo Council (ERC) was changed to the European Repo and Collateral Council (ERCC) and the name of the European Repo Committee was changed to the European Repo and Collateral Committee.

[2] The paper was subsequently published on 10 December and can be accessed here: https://www.bnymellon.com/us/en/our-thinking/the-future-of-wholesale-funding-markets.jsp?cid=37109343&rid=godfried.devidts@icap.com&etaid=10233839

markets. The US reforms served to reduce the need for secured intraday credit provided by the clearing banks. The reforms also improved trading transparency and decreased operations risk through improvements such as automated three-way deal matching. Looking to the future, repo markets will be directly affected by regulatory initiatives. At the same time, Global Systemically Important Banks (G-SIBs) are seeking balance sheet relief which they are finding by way of greater use of tri-party repo. The paper also considers whether any of the US tri-party market reforms, which sought to remedy some of the systemic risks inherent in the US repo market infrastructure, could be transferred to the European repo market. Mr. Ruane said that when the paper is released, he hoped to send it to all the attendees.

2. Opening Remarks by the Chairman of ICMA's European Repo Committee

The Chairman welcomed the audience to the semi-annual ICMA ERC General Meeting and thanked BNY Mellon for hosting the event. He went on to say that he almost didn't know where to start when preparing for this event. Two ERC Committee meetings had been held in September that were unusually long and yet still the Committee had not been able to finish the agenda. You could ask any of the Committee members how they felt after those meetings and the answer would be "depressed". Hopefully when we have finish today's meeting you will go back to your offices with a better feeling. We aim, as always, to give you as much information as we possibly can.

There are so many issues confronting the repo market (or Securities Financing Markets). But nobody should be surprised – we have been talking about this for a long time. In fact, I am almost tempted to say we told you so! The problem is that many regulatory and prudential measures, each very well intentioned and with its own merits, are now all coming together and acting to confirm what I had always feared – nobody has considered the effect of all these regulations taken together.

You may recall an ICMA study two years ago in October 2013 on avoiding counterproductive regulation in capital markets, which was about inconsistencies in the regulatory approach and the lack of what I called a helicopter overview. The European Parliament and the Commission, in the context of its Capital Markets Union (CMU) initiative, has now acknowledged that this is needed, but the damage has been done; and while some changes may be made they could well prove to be too little and too late. In my personal view, this has certainly not helped the real economy. Commissioner Hill's focus on growth and jobs is clearly the focus for the next five years but I believe that earlier recognition of the overreach in the regulatory "sausage machine" may have helped reduce the pain that is now plain to see.

In Dutch we say "te laat de put gevuld als het kalf verdronken is" which loosely translated in English is "it's too late to fill the hole in the ground after the calf drowned in it". In many of the issues that we will raise later in today's meeting our engagement with the legislators has been painful. As you know any regulatory initiative is part of a long process initiated by the Commission, afterwards discussed separately in the European Parliament and by the Council (the EU member states). Once each group has taken a position the three come together and produce Level 1. Afterwards, the regulators (ESMA, EBA, and EIOPA, together known as the ESA's) are asked to prepare Regulatory Technical Standards (RTS), called Level 2.

Many associations, banks, insurance companies, pension funds, asset managers etc. engage with the ESA's thorough consultations - industry and regulators try to bring a well-balanced and executable Level 2 together that, following a final blessing from the European Commission, results in timely implementation. Seems logical you might say. Except for the challenge in getting a successful delivery of the RTS, after what was often a political compromise in Level 1. Here Europe has a lot to

improve. Even when it is proven that the Level 1 text is incompatible with the Level 2 outcomes the legal text of Level 1 can no longer be changed. In a nutshell the Level 1 process is seen as without mistakes.

I am the first person to admit that sometimes I make mistakes. Politicians change their mind every time something jeopardises their next election; economists are always right as they say "on the one hand and on the other hand". But, when we come to legislation in Europe lawyers say it is impossible to change the law. Hence, I call upon this community to increase the pressure on our European legislative process to at least have something in hand to avoid misguided regulation that impacts the real economy - your mum and dad's pension, your income, the future of our children. In discussions I have had in Frankfurt I have mentioned that policymakers at large should sometimes come down to earth, listen to people and what goes on in the real economy. We have now been in a recession for approaching 10 years. Quantitative Easing (QE) is trying to increase inflation, and restart the economic engine in Europe. But in the meantime we have lost one, maybe two generations. Not enough jobs and not enough prosperity. And yes, maybe banks are to blame but let's be honest, not only the banks. If we want to reverse the misfortune of our younger generation and create jobs, the authorities need to recognise the crucial role that regulation plays, something I particularly like in the CMU project. Insufficient regulation was largely to blame for the last financial crisis, but the subsequent five years of overregulation also has a lot to do with the current environment.

What you are about to hear is not pretty, MiFID, CSDR, NSFR, SFTR, BRRD etc. As we are about to introduce these regulatory initiatives in our markets, the immediate impact is somehow hidden by very low interest rates. The ERC in its latest discussions with both the Bank of England and ECB made that clear. The recent repo survey that I will show you in a minute also hides the issues around the repo markets. That's why Mr. Andy Hill's latest study around illiquidity in the repo market is so timely. Repo has clearly suffered, but repo should also be seen as a solution. Today's meeting publicly introduces a forthcoming change in our name from the European Repo Council to the European Repo and Collateral Council (ERCC). Without a liquid, robust, well balanced legal and operational framework for repo – collateral cannot flow. And herein lays the danger of the current regulatory framework. Everything you look at is based on the increased use of collateral as protection - look at Dodd Frank and EMIR and mandatory clearing as established by the G20, requiring both initial margin and variation margin, and the liquidity coverage ratio (LCR). All falls if collateral fluidity is inhibited. So I call on the authorities to accept some reforms, or turn back some of the overreaching regulatory demands. Nobody needs to have a red face, but just reflect on what has been done and rectify those areas where the legislation went a little too far. We at the ERC stand ready to continue to engage with all authorities as the outcome is so crucial for Europe and beyond.

The Chairman went on to say that a few years ago the ERC had focused on developing credit claims for use as collateral but a lack of market interest meant that this project had been dropped. However there has subsequently been a Banque de France initiative that has received backing from the ECB. 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)". DECCs are seen as a way to expand the eligible pool of collateral at a time when QE places increased pressure on the availability of government bonds. While the ERC Committee has not actively looked at this issue for some time, if QE were to be extended then credit claims may be one way of increasing the pool of collateral.

Regarding improvements to the settlement bridge between the ICSDs, the Chairman said that the ICSDs had recently announced that Phase 1 to improve bridge settlement had been completed,

which should result in an improvement in cut-off times, especially in EUR, GBP and USD. Additionally, settlement turnaround time after 12:00 CET had been reduced to between 35 - 90 minutes where previously it had be as long as 120 minutes. It is hoped that the ICSDs will continue to work on improving the settlement bridge so that cut-off times can be extended to end of day soon.

As Mr. Comotto was unable to attend the meeting, the Chairman presented the results of the 29th semi-annual European repo market survey that had been conducted in June 2015. The headline figure showed that the total amount of outstandings in June was EUR 5,612 billion, up slightly from EUR 5,500 billion in December 2014. However, the headline figures since approximately June 2012 had shown that the market had been flat for some time, with a slight downwards trend.

The survey also showed that electronic trading was stable while the figures for tri-party had declined slightly – the share of tri-party repo and the outstanding value of tri-party repo both fell back. Notable was the jump in direct trading, largely at the expense of voice-brokers, and mainly in reverse repo. Electronic trading is also relatively smaller, although it has grown modestly in absolute terms. The share of anonymous electronic trading fell from 24.1% to 21.3% but the share of post-trade registration with CCPs jumped to 5.9% from 3.3%, so that overall CCP-cleared business more or less maintained its market share. Turning to the geographical analysis, there had been an increase in cross-border trading while domestic repo continued its long term decline, probably reflecting the restructuring of the European repo business in the face of regulatory and other challenges. The currency analysis showed that while EUR had recovered a little, it was still depressed while USD was still popular. Collateral analysis showed that German collateral had declined, but Italian and French collateral had increased slightly. As expected, Greek collateral was virtually zero. Government bonds had declined from 81.5% to 77.0%, possibly reflecting a focus on higher margin business, but also potentially a result of QE. The maturity analysis showed that trading in forwards is still buoyant. The next survey will be held on Wednesday 9th December 2015.

The Chairman also noted that some market participants had asked whether the ERC should continue to carrying out the survey given that both the ECB and the Bank of England are looking to gather repo data directly from firms. However, the authorities have asked ICMA to continue to produce the survey, as it is able to provide data in the context of a consistent data sample going back fifteen years.

3. Approval of the minutes of the ERC Annual General Meeting held on 18 May 2015, in Brussels

The Chairman asked if there were any comments on the minutes of the last ERC annual general meeting held on 18 May, 2015 in Brussels. No comments were raised and the minutes were unanimously approved.

4. Appointment to ICMA's International Repo Committee

Ms. Colaco-Henry said that under section 1000 of ICMA's rules the IRC Committee shall consist of two representatives of the ERC. The IRC Committee is currently composed of Mr. Godfried De Vidts, for a term of office expiring at the spring 2018 ERC AGM, and Mr. Andrew Wise, who has been appointed to the IRC Committee on an interim basis, given the retirement of the previous incumbent.

ICMA wrote to ERC members on September 10th informing them of the vacancy on the IRC Committee and asking Council members who are full ICMA members to put forward nominations.

The deadline for submitting nominations to the ICMA Secretariat was Friday, 2nd October. By close of business on Friday, 2nd October, ICMA had received a single nomination from Morgan Stanley nominating Mr. Ciaran O'Flynn to the IRC Committee. Accordingly, ICMA proposes that the ERC confirms Mr. O'Flynn's nomination to the IRC committee for a term to expire at the ERC's AGM in 2016. In the absence of any objections or abstentions from the ERC, Ms. Colaco-Henry concluded that the ERC had determined Mr. O'Flynn as nominee for appointment to the IRC Committee by ICMA's board.[3]

5. ICMA's European repo market study

Mr. Andy Hill said that the objective of the study was to paint a picture of where the repo market is, how it is evolving and the challenges and opportunities that it faces. It is not intended to be a policy paper or an industry whinge; rather it is supposed to be an empirical assessment of the repo market. To date, Mr. Hill has conducted over 40 interviews with the aim of conducting 50. He will also be obtaining data from trading platforms and from the semi-annual repo survey that is conducted by Mr. Comotto.

The aim is that the results of the study will be published on 18 November. In the meantime, on the basis of the interviews already conducted, a number of themes have emerged. First, it was noted that Basle III has been a game changer. Nothing has changed the market like Basle III and in particular the leverage ratio (LR) which will impose the binding constraints on the business. The LR has already affected US and UK and banks and it is starting to impact the European and Asian banks. US banks were forced to adopt the LR very early, with the UK following suit and subsequent adoption by European and Asian banks. Because of this staggered implementation approach, an uneven playing field was created, which has been recognised by both banks and the buy-side. However, as more banks are adopting LR, the playing field is starting to level out. In addition, different banks have been applying the true cost to their trading books in different ways, which in turn changes the way banks provide liquidity. Netting is becoming increasingly important as are long-term financing structures. Given the current monetary policy being adopted by central banks, it is difficult to judge the impact of Basel III on repo as QE is acting as a shock absorber.

Another theme arising from the study was that banks are changing their business models. Business is being driven by banks' financing and liquidity requirements. Fewer risks are being taken, whether through repo or other money market products. Banks are also becoming more selective of client business and only where it adds overall value to the bank. They are trying to become more client flow orientated and less reliant on the interbank market. This can be seen in the repo survey data. Balance sheet optimisation is becoming a crucial metric. Collateral upgrade trades are gaining momentum, including the increasing use of securities lending. Total return swaps are also being used more with more trades done under the GMSLA rather than the GMRA. Businesses are increasingly integrating or coordinating their various liquidity and collateral business hubs such as treasury, equity finance, securities lending and Credit Support Agreement (CSA) trading.

Client relationships have also dramatically evolved. The repo business is becoming less commoditised and standardised and more negotiable. Banks and clients are increasingly working together as partners to find tailored financing solutions to suit both their liquidity and financing needs. Banks are allocating balance sheet to favoured clients based on holistic profitability of the client across different products and services. Clients that only use repo are increasingly being cut-off

[3] On 4 December 2015, the ICMA Board duly appointed Mr. O'Flynn as one of the two ERC representatives on the IRC Committee for a term of office to expire at the ERC's annual general meeting in 2016.

as they offer little or no added value. Attempts by banks to court non-financial clients are being driven by the Net Stable Funding Ratio (NSFR). When the NSFR comes into effect, all reverse-repos with non-banks with a maturity of under one year will require the provision of stable funding against 50% of the value of the reverse-repo. When talking about corporate treasuries, cash balances tend to be quite erratic.

Turning to buy-side perspectives, Mr. Hill said that he had had a number of interviews with both leveraged asset and real money asset buy-side firms. Buy-side firms were finding that it was becoming harder to place cash, especially for shorter terms and they were often being turned away especially in relation to High Quality Liquid Assets (HQLA). However, the buy-side also recognises the need to be increasingly flexible in order to coincide with the liquidity needs of the banks. This has meant that buy-side firms now need to have recourse to eight to ten brokers instead of the four to five brokers that they might have used in the past. At the moment, they have not yet seen an impact on pricing. They have mixed views on client central clearing depending on whether they are a leveraged or real money firm. There is openness to the idea of buy-side firms transacting with other buy-side firms though the bank intermediary role is still seen as vital. Real money firms who only do a marginal amount of securities lending are increasingly starting to consider whether they should exit the market entirely because they view the regulatory burdens and risks as being too high. This is a worrying development.

Turning to the impact of monetary policy, Mr. Hill said that QE has not had that much of an obvious impact on collateral squeezes but market participants expressed concern about what will happen in the longer term should QE be extended, especially in relation to German and French government collateral. There was also some theorising that extending QE might result in the end of GC markets. Excess cash is causing problems – "cash is trash". Market participants would rather place money with the ECB rather than use repo.

On the issue of innovation, market participants see that netting optimisation solutions are becoming key. Increasingly, market participants are using standardised "break-dates" on term trades. They are also using longer-term funding structures such as evergreens and extendables to meet their liquidity buffers. HQLA baskets are increasingly composed of more standardised baskets. The market is also exploring buy-side options for CCPs such as member sponsorship and buy-side to buy-side solutions such as agency broking models. Disconcertingly, a common refrain among the interviews was that regulation is a cause of fear and that market participants do not want to innovate as the risks are too great. There is also a lot of concern over future regulation. NSFR could cause repo to become a funding utility. There are worries that it will be impossible to manage risks under the CSDR mandatory buy-in regime which in turn will deter lending. While the cash markets will bear the main brunt of the CSDR mandatory buy-in regime, there will be a knock-on impact on the repo market. Market participants also saw the SFTR and other reporting initiatives as being overly costly as the various initiatives are not aligned. They are also not convinced that regulators know what they are looking for. BRRD stays and bail-in provisions were seen as increasing risks and having implications for netting. The Basle Committee's fundamental review of the trading book (FRTB) is likely to have far-reaching implications for trading activities and may result in forced decentralisation of liquidity and collateral management. There are also concerns that there is no end in sight for regulatory initiatives which makes it difficult to develop business models.

The last area covered in the interviews concerned the future of the market. Market participants expect further consolidation and lower volumes. They also expect the interbank market to continue to contract, with a focus on client funding instead. In addition, there is a view that some banks will remain active market makers but others will retrench to the minimum liquidity and collateral management. Almost everyone thinks that the widening of bid-ask spreads is inevitable. Current

bid-ask spreads are being subsidised by the banks' other businesses, but this will have to end at some point. Buy-side central clearing for larger clients is also seen as inevitable. While there are currently more client-to client solutions, most businesses will still be reliant on bank matched-books. There will also be further consolidation of internal bank liquidity and collateral management hubs. Finally, Mr. Hill noted that there is real concern over repo and bond market functioning after QE has been unwound. Market participants feel that when QE comes to an end all the cumulative impacts of regulation will be felt and the real cracks will appear.

6. ERC Operations Group update

Mr. Nicholas Hamilton said that there had been a large number of issues that had been scrutinised by the ERC Operations Group since the last ERC meeting and he thanked all the members of the Operations Group for their efforts. The operational elements that underlie the repo market can be quite mechanical, but they are nevertheless critical. A fundamental aim of the Group has been to provide as great a level of efficiency as possible to the processing of repo transactions. There are 18 members of the Operations Group, with himself and Mr. Sanjiv Ingle chairing the Group. There are also three working groups: (i) Trade Matching and Affirmation (TMA), led by Mr. Adam Bate; (ii) Target 2 Securities (T2S) led by Mr. Rob Mason and (iii) regulatory reporting led by Mr. Jonathan Lee. Of these three working groups, the T2S group is currently in a passive state, monitoring the progress of CSDs migrating to the T2S platform. There are still some issues to be worked out with the current wave and the performance metrics from the next two months will give the industry a better idea of how the transition has gone. However, the Operations Group is looking at what messages can be learnt from wave one so that they can be fed back to the ECB in advance of wave two. The Operations Group has also been looking to develop confirmation standards. Currently there is no single standard repo confirmation used by the market and work is taking place to determine the extent to which the Operations Group could develop a market standard. The Operations Group has also been working with Mr. Richard Comotto to update the ERC Guide to Best Practice in the European repo market.

The work of the TMA Working Group is also progressing well, led by Adam Bate and Sanjiv Ingle. TMA is becoming increasingly linked with SFTR Reporting requirements. Additional demands which will require increasing accuracy and granularity arise from the ECB's Money Market Statistical Reporting Regulation (MMSR) and the Bank of England's Sterling Money Market Data Collection (SMMD) program which will require trade level reporting starting in early 2016. These initiatives could increase pressure on the market to match trades on trade date (T) itself. Additionally, there is work on the development of EU trade level reporting to a trade repository with an implementation date and FSB global aggregated position level reporting by competent authorities both to take effect potentially during 2017. So far, the Working Group is clear what the key attributes of reporting to the trade repository will be and the Group are agnostic towards which system to use. The ERC Operations Group product template has a mix of mandatory and optional fields which will evolve over time as requirements are finalised in the reporting regulations.

The TMA Working Group has also been looking to develop TMA Best Practice in the form of a template which will be published alongside a glossary. The TMA template has been discussed with the vendor community and in time, it will be shared with ISLA for Securities Lending transactions, especially in relation to life cycle discussions. There is a push to have automated repo matching replace current legal confirmation requirements in Europe.

In addition to the demands being imposed by the ECB trade level reporting requirements, and the SFTR requirements which will require the adoption of Legal Entity Identifiers, Unique Trade

Identifiers and Unique Product Identifiers, the Working Group is also looking at booking conventions, deal rate quotations and collateral haircuts. Underpinning all of this work is the need to improve transmission standards for the repo product and delineate repo from cash trades. Mr. Alexander Westphal has been developing a paper on reporting and identification of the critical path for SFTR – joining the dots. The background to this work is that there are various regulatory initiatives under way to foster transparency in SFT markets, namely SFTR, CSDR, the ECB's MMSR, the Bank of England's SMMD program etc. These regulatory initiatives will collectively have a substantial impact on the way SFTs are processed today. Accordingly, the ERC Operations Group has been working towards "joining the dots" in order to understand the regulatory requirements and identify any inconsistencies, analyse the impacts on the post-trade processing of SFTs and work towards developing an efficient model to manage the changes, such as standardised procedures, templates and messaging formats. The Group held a "joining the dots" seminar in April 2015 and continues to work on the TMA template.[4] An updated version of the regulatory overview paper was published on the ICMA websitewith further work planned to develop a more dynamic view of the impact of regulatory initiatives on repo lifecycle and the relevant actors involved. This work will take the form of flow diagrams and impact analysis. It is hoped that the ERC Operations Group will be able to publish all of this work soon.[5]

7. Legal update

Mr. Leland Goss said that work on the Bank Recovery and Resolution Directive (BRRD) had been a major project for ICMA. As part of the efforts to end the problem of "to big to fail" and facilitate the orderly resolution of G-SIBs, the G-20 and FSB determined to empower Bank Resolution Authorities in certain circumstances to impose a temporary "pause" on close out and termination rights under certain agreements including the GMRA. Part of this requires affected banks and their counterparties to provide for contractual recognition of Special Resolution Regimes and stays of termination rights to ensure extra-territorial coverage. The solution has been to develop a protocol for SFT's that can be added as an Annex to the ISDA Resolution Stay Protocol, which covers swaps and OTC derivatives, and to which the 18 largest G-SIBs (G-18) adhered to last year. This work took place over the summer and has now been completed.[6] The G-18 will adhere to the SFT Stay Protocol Annex at the end of next month, which will provide for recognition with respect to existing as well as new SFT master agreements. This will be accompanied by an announcement by the FSB at next month's G-20 meeting in Antalya. Other markets participants – other banks and the buy side - are expected to also adhere as regulations are implemented in 2015-16. Banks and the buy side have different and some conflicting interests. The protocol architecture has recently taken on even further complexity in order to accommodate fiduciary and other issues facing the buy side. With the BRRD's implementation in stages across different jurisdictions over the coming months we may see further issues arise particularly with the mechanics for adherence by the wider market which have become increasingly complicated. This has been a major project for ICMA, working closely with ISLA, SIFMA, bank supervisors and firms.

[4] The TMA template was subsequently published on 8 December 2015 alongside a glossary of terms. They can be accessed via: http://www.icmagroup.org/Regulatory-Policy-and-Market-Practice/short-term-markets/Repo-Markets/repo0/trade-matching-and-affirmation-of-repo-standardised-icma-template/

[5] The flow diagrams were subsequently published on 8 December 2015. Both the regulatory overview paper and the slides are available here: http://www.icmagroup.org/Regulatory-Policy-and-Market-Practice/short-term-markets/Repo-Markets/icma-european-repo-market-reports-and-white-papers/the-future-challenges-in-repo-post-trade-processing/

[6] See: http://www.icmagroup.org/resources/resolution-stays/

Turning to the ICMA GMRA 1995 Legal Opinions, Mr. Goss said that last year, the ERC Committee had agreed to cease legal opinion support for the 1995 GMRA in an effort to accelerate upgrading of existing counterparties to the 2011 GMRA Protocol. The 2011 GMRA has a number of advantageous legal and risk management protections for firms. While several members have been making strides to make this change-over, a number of firms have not been able to do so and have expressed concern that the cessation of the legal opinion support from next year would be problematic for them. Following consideration at a recent ERC Committee meeting, it was therefore decided that – due to other priorities - the market was not ready to take this step. Accordingly, the legal opinions will continue to be updated and support the 1995 GMRA for the time being. However, ICMA continues to strongly encourage adoption of the 2011 GMRA Protocol.

Regarding the annual legal opinion updates, Mr. Goss said that in Germany there had recently been some positive news, with a statutory amendment being made to the implementation of the BRRD to improve the clarity of netting treatment. Members will, of course, need to judge the efficiency for themselves, but German counsel are working on drafting a supplement to the Germany legal opinion to reflect these developments which should be available shortly.[7] Additionally, due to popular demand, ICMA has now published a new legal opinion for Malaysia. ICMA was able to find satisfactory legal certainty and commissioned this opinion on the basis of new legislation in Malaysia. The legal opinion can be found on the ICMA web site in the section listing all the legal opinions that ICMA makes available.

Mr. Goss also said that in May the ERC Committee decided to recognise collateral as an important and integral part of repo activity. This was discussed and endorsed by the ICMA board in September. Under ICMA's rules, Council members will be sent a notice of the proposed new name and related criteria for membership of the Council. The proposal will become effective after 30 days unless objections in writing are made by not less than one third of all members of the Council.

The Chairman noted that under the SFTR there are certain specifications regarding the reuse of collateral. If the securities financing transaction is carried out pursuant to a Title Transfer Collateral Arrangement (TTCA) then the collateral can be reused. However, it is to be noted that the 1995 GMRA is 20 years old and that all firms should make every effort to switch to the 2011 GMRA.

Ms. Colaco-Henry said that the ERC Committee decided at the start of this year to move to electronic voting in advance of the 2016 ERC AGM. In order to facilitate the move to electronic voting, ERC members will be asked to provide contact details for a named repo contact and to keep those details up-to date. Essentially, the named repo contact will be analogous to the ICMA Principal Delegate at each firm, but will be specific to repo. The ICMA Principal Delegate is the nominated individual within a member firm with whom ICMA principally communicates in an official capacity. For example, membership invoices, notification about the ICMA Annual General Meeting and legal announcements are sent in the first place to the principal delegate. In a similar way, the named repo contact will be the nominated individual within an ERC firm with whom ICMA will communicate regarding annual elections to the ERC Committee. Accordingly, it will be important for each ERC firm to ensure that they keep ICMA informed of any changes to the details of their named repo contact.

Going forward, elections to the Committee will continue to be held annually. The Committee has also decided to keep the number of Committee members at 19. However, under the current system elections are held by way of paper ballot at the Annual General Meeting, the date of which varies from year to year. In some years the AGM has been held in January while in other years it has been

[7] Subsequently published on the ICMA website on 17 November 2015.

held as late as May. For example, this year, the AGM took place on 18th of May whereas next year's AGM will be held on 27th of January. Accordingly, those Committee members elected at the 2016 AGM will only hold their seats for 8 months before the next election. Going forward, elections from 2016 onwards will be held at the same time every year. This means that Committee members will hold their seats for one-year terms. But, it also means that there will no longer be a link between the AGM and the elections to the Committee.

The electronic ballot process that we will adopt is as follows. An email will be sent in late November or early December to the ERC and also to the wider repo distribution list calling for nominations to the Committee. As is the case currently, only employees of Council members who are full members of ICMA will be able to put their names forward for election. The deadline for submitting nominations will be a date in early January. One week after that date (i.e. mid-January) an email will be sent to the named repo contacts at all Council member firms sending them the list of candidates, which will also be published on the ICMA website. The email will also notify the named repo contacts that the voting period has opened. Named repo contacts will then have three weeks in which to email their ballot preferences to the ERC Secretariat. Only emails from named repo contacts will be counted. As with the current system, electronic ballots will have to indicate a minimum of 10 names up to a maximum of 19 names otherwise the ballot will be treated as spoiled. It is worth noting that because the voting period is three weeks long there will no longer be a need for proxy voting. Once the voting period has closed, the ERC Secretariat will count the ballots and will then email the results to the named repo contacts and also the wider ERC distribution list. The results will also be published on the ICMA website. ICMA will keep the individual ballots confidential. The way each firm votes will not be shared with any of the candidates or with other Council firms.

So how do we get from here to there? We will shortly be sending an email to ERC members asking them to notify us of the details of their named repo contact. We also have to consider the requisite amendments to section 1000 of the bylaws, which need to be amended in order for electronic voting to be implemented. Mr. Goss has just outlined the process for amending section 1000 in the context of changing the name of the ERC to the European Repo and Collateral Council. Accordingly, it makes sense to carry out the necessary consultation on both topics at the same time.

8. Central Securities Depositories Regulation settlement discipline

Mr. Andy Hill said that in August 2014, CSDR Level 1, which included provisions regarding settlement discipline and mandatory buy-ins passed into law. In December 2014, ESMA issued a consultation paper on CSDR Level 2 RTS. ICMA responded to that consultation. The response focused on settlement discipline in particular and highlighted that the draft RTS contained a number of flaws and problems. The response also advocated an extended delay in implementation and suggested that the penalty regime should include a compensation element. Finally, the response suggested that penalty rates should be harmonised and care should be taken when setting penalty rates because the wrong type of behaviours would be incentivised if they were set too high or low.

Since December 2014, ICMA has had a number of meetings with ESMA, who has admitted that it is struggling with drawing up the final RTS as it recognises that the Level 1 text is flawed. In June 2015, ESMA published a follow-up consultation on the operation of the buy-in process which sought views on three options. ICMA responded to this consultation as well. In September ESMA published Draft Level 2 RTS for the CSDR but omitted the standards for the buy-in process. We expect that ESMA will publish draft RTS for buy-ins in November. Going forward, the RTS are expected to be finalised and passed into law in January 2016. 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. However, the Commission is not required to accept ESMA's recommendation of a 24 month delay.

Turning to the detail of mandatory buy-ins, Mr. Hill said that it was unlikely that the Level 1 Regulation will be changed. Eventual Level 2 RTS are likely to be consistent with the Level 1 Regulation. There is still no definition of what a buy-in is or its purpose. Buy-ins are likely to be set at a CSD participant level rather than at the trading counterparty level or a hybrid of these two variants. The draft RTS is also silent on the flaw in Level 1 related to the direction of payment of the price differential. The review of the CSDR is not due until 2019, so the market will have to live with the regulation until then. Meanwhile, the CMU consultation on the cumulative impact of regulation may consider some of the CSDR issues, but the effective date for settlement discipline, including mandatory buy-ins, may not be till January 2018.

The provisions regarding cash penalties, on the other hand, will likely take effect in two years' time. ESMA published technical advice under the CSDR for the European Commission in August 2015 that included details on the proposed system of cash penalties for settlement fails. The technical advice provides that the penalties are to be applied by the CSDs and ICSDs. The penalty is to be paid by the failing counterparty to the failed-to counterparty. However, the penalties will be based on a standard daily reference price for each instrument, which may create an incentive to fail in certain circumstances. In determining penalties, ESMA considered the relative liquidity of various asset classes as well as relative borrowing rates. It felt that the more liquid the market, the higher the penalty should be. For less liquid markets, the penalty should be set at a lower level in order not to damage liquidity in the market further. Notably the daily penalty fee for corporate bonds had been set at 0.20 bps whereas the daily penalty fee for government bonds and munis was set at 0.10 bps.

The Chairman said that one notable point he had raised at COGESI was the fact that the penalty for corporate bonds had been set at a higher level than that set for government bonds, which is an oddity given that corporate bonds help to finance the economy. He also noted that the ERC Committee is having discussions about how to make the markets work more efficiently. To this end, thought was being given to the introduction of a penalty system for repo fails, to be introduced ahead of the CSDR. Accordingly, the Committee will engage with the European Central Securities Depositories Association (ECSDA) and the European Association of CCP Clearing Houses (EACH) to develop a solution ahead of the introduction of the CSDR mandatory buy-in regime.

9. Regulatory Update

Mr. David Hiscock said that he would be talking about the regulatory soup of acronyms.A lot of regulations have been brought to the financial markets which impact on SFTs but the SFTR is directly targeted at SFTs. The SFTR aims to bring transparency to the SFT market. In January 2014, the Commission published a proposal for a regulation providing a set of measures aimed at enhancing regulators' and investors' understanding of SFTs. This was followed, in June 2015, with political agreement being reached on the Commission's proposed regulation. Based on the political agreement, work on the technical finalisation of SFTR is nearing conclusion, ahead of a final process of endorsement by the European Council and Parliament. Once finalised and published in the Official Journal (OJ), the timeline for the SFTR's applicability will start to run, with ESMA charged to develop Regulatory Technical Standards (RTS). In the meantime, both market participants and regulators need to prepare in advance for the introduction of the SFTR. We anticipate that this will be a challenging project to prepare for given the timelines that we will have to work towards.

What: the SFTR defines "SFT" to mean a repurchase transaction, a securities or commodities lending and securities or commodities borrowing transaction, a buy-sell back transaction or a sell-buy back transaction or a margin lending transaction.

Who: the SFTR applies to:

- a counterparty to a SFT that is established: (1) in the EU (including 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 (including all its branches); or (2) in a third country, if the reuse is effected by an EU branch; or (3) 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.

This will be difficult for global firms to work out. Some reuse by third country firms will be covered if they have acquired an asset in a collateral arrangement.

When: the SFTR requires SFTs to be reported to trade repositories by no later than the working day following the conclusion, modification or termination of the transaction. However, there is some debate on what "concluded" means. It is probable that "concluded" means traded.

Mr. Hiscock also said that the minimum reporting requirements set out in Level 1 are quite prescriptive, requiring the following minimum information to be reported:

- the parties to the SFT (and, where different, the beneficiary);
- the principal amount, currency and market segment;
- the type, quality, and value of the underlying collateral, the method used to provide the collateral, any haircut, and any substitutions;
- whether collateral is available for reuse (which is concerning) and, where it is distinguishable from other assets, whether it has been reused;
- the repurchase rate, lending fee or margin lending rate; and
- value date, maturity date, and first callable date.

Depending on the SFT, details shall also be included on the cash collateral reinvestment and securities or commodities being lent or borrowed

ESMA is required to draft RTS detailing the reports to trade repositories required for each type of SFT and the possibility of reporting position level collateral data. Additionally, ESMA is asked to draft Implementing Technical Standards specifying the format and frequency of SFT reports to the trade repositories, including ISINs, Legal Entity Identifiers (LEIs) and unique trade identifiers (UTIs). Notably, the UTIs are to be attached to a report for every transaction, with the details still to be finalised. However, the FSB are about to publish a report on the collection of data from regulatory authorities globally. Specifically, the FSB are interested in position data. However, the SFTR requires transaction data. Therefore, we anticipate that there may well be further requirements for reporting position data.

The SFTR also provides for transparency towards investors, especially in relation to UCITs and alternative investment firms. Article 14 of the SFTR sets out that management companies of UCITS, UCITS investment companies and AIFMs shall inform investors on the use they make of SFTs and total return swaps. This information is to be included in their half-yearly and/or annual reports. Article 13 of the SFTR provides that 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. There are also a couple of tasks identified for ESMA, but notably, these tasks are not mandatory.

Article 15 of the SFTR governs reuse and defines "reuse" to mean the use 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. Notably, the SFTR definition differs from the FSB definition, which defines reuse as any use of securities delivered in one transaction in order to collateralise another transaction.

Under SFTR a right of counterparties to reuse financial instruments received as collateral shall be subject to two conditions. First, the providing counterparty must be 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, ISLA and AFME are in discussions with Clifford Chance to develop a standard form of words to use for this. There is not a lot of time to complete this task and accordingly, it will require early focus. Second, the providing counterparty must have granted its prior express consent, as evidenced by the signature in writing or in a legally equivalent manner, of the providing counterparty to a SCA, the terms of which provide a right of use; or have expressly agreed to provide collateral by way of a TTCA, which includes the use of GMRA. Furthermore, any exercise by counterparties of their right to reuse shall be subject to two conditions. First, the reuse must be undertaken in accordance with the terms of the collateral arrangement and second, the financial instruments received under a collateral arrangement must be transferred from the account of the providing counterparty. This second condition regarding transfer will need some consideration.

Article 12 governs the transparency and availability of trade repository date. It requires that trade repositories shall regularly publish aggregate positions by type of SFT reported to them. Additionally, trade repositories are to collect and maintain the details of SFTs; and ensure that certain regulatory entities, such as the ESAs and the ESCB, have direct and immediate access to these details to enable them to fulfil their respective responsibilities and mandates.

Turning to timing, Mr. Hiscock said that the SFTR enters force on the 20th day following its publication in the EU's OJ, which is likely to be late in 2015. It will apply immediately with a few exceptions. The reporting obligation in Article 4(1) will enter into force after a period of time measured from the date of entry into force of the applicable Delegated Act. The Delegated Act will reflect the technical standards drawn up by ESMA. We anticipate that ESMA produce these in late 2016 and that they will be published in the OJ in early 2017. There will then be twelve months – thus early 2018 - before banks will have to start reporting (with later dates applicable for other types of entities). The other significant exception concerns Article 15 (transparency of reuse), which applies six months after the SFTR's entry into force and it will apply to collateral arrangements existing at the date of entry into force.

There are also a number of other regulatory initiatives that concern transparency and reporting such as the ECB's MMSR, the Bank of England's SMMD program, the FSB initiative on SFT data collection and aggregation, and to a limited extent, the MiFIR transaction reporting regime. More details on the various initiatives are available in a recently published ICMA paper Regulatory initiatives on the identification and reporting of SFT transactions: An overview[8]

[8] Alternatively, see: http://www.icmagroup.org/Regulatory-Policy-and-Market-Practice/short-term-markets/Repo-Markets/icma-european-repo-market-reports-and-white-papers/the-future-challenges-in-repo-post-trade-processing/

NSFR - On 31 October 2014, the BCBS issued the final standard for the NSFR, which will become a minimum standard by 1 January 2018. While the BCBS' standard is an agreed international standard, it nevertheless needs to be implemented in various national and regional rules. We will be carefully monitoring the way in which the NSFR is implemented in Europe in the Capital Requirements Regulation (CRR). Currently the CRR contains "Stable Funding" provisions, but these are far less stringent than what the NSFR will require. The EBA is required to report to the Commission by the end of 2015 regarding the technical details that should be adopted to establish the NSFR into EU law. To this end the EBA was holding a hearing on 15 October which Mr. Hiscock and others were due to attend. The Commission will then be required to submit an EU NSFR legislative proposal by the end 2016 – so that an enacted version will be in place in time for application from 2018.

The NSFR is defined as the amount of available stable funding (ASF) relative to the amount of required stable funding (RSF). The ASF is defined as the portion of capital and liabilities expected to be reliable over the time horizon considered by the NSFR, which extends to one year. The RSF calculation is a function of the liquidity characteristics and residual maturities of the various on- and off-balance sheet assets held by a specific institution. The ratio should be equal to at least 100% on an on-going basis. 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 and collateral. However, there is a certain amount of asymmetry depending on the type of counterparty and the residual maturity of the transaction. What is clear is that banks will be required to hold long-term "stable" funding against short-term reverse repo assets which will increase business costs. Accordingly, there will be a strong incentive for banks to carefully tailor their business profile given how the rules treat different residual maturities, counterparty types and collaterals. The availability of netting will also be essential to mitigate the impact of NSFR.

BRRD – The BRRD stay provisions have already been written into the law. Under Article 71 of the BRRD, resolution authorities have the power to temporarily suspend 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. This does not dramatically change your risk profile from what it is today. However greater risk arises since, under Article 69, resolution authorities also have the power to suspend any payment or delivery obligations pursuant to any contract to which an institution under resolution is a party. Nevertheless, when taking action under either Article 71 or 69, resolution authorities must "have regard to the impact the exercise of that power might have on the orderly functioning of the financial markets". In addition, Article 69 contains a complicating asymmetry as it contains an exemption such that the power to suspend any payment or delivery obligations will not apply to payment and delivery obligations owed to designated payment and securities settlement systems (or their operators), central counterparties, and central banks.

The BRRD also contains a bail-in tool, set out in Article 44. This provision ought not to be a problem, but the way the BRRD is being implemented in certain EU jurisdictions is causing concerns over netting rights, as discussed by Mr. Goss earlier.

MiFID II and 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. The original MiFID, which came into force in 2007, primarily focussed on equities markets. However, the regime is being extended to cover non-equities markets. As repos are typically comprised of trades in fixed income securities, they are impacted by this extension of MiFID. While

the Level 1 text was agreed in 2014, work is still on-going to finalise the associated technical standards.

Both pre- and post-trade transparency requirements will apply to the trading of SFTs on a trading venue such as a Regulated Market, a Multilateral Trading Facility or an OTF. To avoid confusion in post-trade reporting from trading venues, SFT trades will be flagged as "non-price forming trades" so that they can be distinguished from cash trades. There is no pre-trade requirement and post-trade transparency will not be applied for SFTs traded OTC.

In determining the level of pre- and post-trade transparency, a key metric that has been discussed with ESMA at length is the extent to which instruments are liquid or not. ESMA has said in its recently released final RTS, submitted to the European Commission, that it will assess liquidity instrument by instrument i.e. adopting IBIA rather than the Class of Financial Instruments Approach (COFIA). This should result in a more accurate assessment of liquidity than COFIA but there will still be significant inaccuracies and misclassifications because bond liquidity changes continually and cannot be determined solely on the basis of easily observable characteristics. There is a concern that this will deter market making in such instruments, which in turn will have a knock-on impact on the repo markets.

However, MiFID and MiFIR also impact directly on SFTs. We are still reviewing the final RTSs to assess the actual impact. However, at the moment, we understand that repo activity will not count when determining if a firm's activity in a security qualifies it as a systematic internaliser (SI). There is also a best-execution requirement. Investment firms must publish annual information on the identity of execution venues and on the quality of execution, with SFTs required to be reported separately from client order flow in non-SFTs. MiFIR also requires transaction reporting. However, ESMA has proposed that this be dis-applied in the case of SFTs, where these are (or will be) reportable to a trade repository under the SFTR. However, this leaves an issue with those SFTs that are specifically exempted from SFTR trade repository reporting, such as repos where the counterparty is a member of the ESCB. We will be discussing this further, as this requirement appears to be inappropriate.

Base erosion and profit shifting – The OECD published its final package of recommendations to reform the international tax system on 5 October 2015. The Base erosion and profit shifting (BEPS) provisions are intended to address the issue of global corporations that pay virtually no tax because of the way they shift their profit across boders. Certain SFTs are specifically targeted in the BEPS provisions.

The OECD proposals need to be adopted into domestic law and we are broadly hopeful that the EU provisions will be narrow and appropriately targeted. However, there will likely be a piecemeal adoption by various countries over different timeframes, and some countries may not take any action at all.

The Chairman thanked Mr. Hiscock for his comprehensive overview of regulatory developments affecting the repo markets.

10. Any other business and next meetings

The Chairman said tha t he had received a request from an ERC member asking the Committee to look at the possibility of developing standard dates (IMM style) for term GC trading in order to facilitate repo netting and thus optimise banks' balance sheets. The Committee will be discussing

this topic at the next Committee meeting and the Chairman will report back at the next ERC meeting.

It was noted that the presentations would be available on the ICMA website shortly, followed by the draft minutes in due course. The Chairman thanked BNY Mellon once again for hosting the meeting, and the ICMA staff for their efforts in putting together the event.

The Chairman said that the next ERC AGM will be held on 27 January 2016, 4:30 – 7:30 CET, hosted by Clearstream in the margins of their annual Global Securities Financing Conference in Luxembourg. He also reminded the audience not to miss the first electronic vote in January.

The Chairman:	The Secretary:
Godfried De Vidts	Lalitha Colaco-Henry

Annex A

The following member firms were represented at the meeting:

ABN AMRO Bank N.V., Amsterdam
Ahorro Corporación Financiera, S.V., S.A., Madrid
Aviva Investors Global Services Limited, London
Banco Bilbao Vizcaya Argentaria, S.A., Madrid
Banco Santander, S.A., Madrid
Bank of Scotland plc, London
Barclays Capital Securities Limited, London
Bayerische Landesbank, Munich
Belfius Bank & Insurance, Brussels
BlackRock Investment Management (UK) Limited, London
BNP Paribas, Paris
BNP Paribas Fortis, Brussels
Cecabank, S.A., Madrid
Citigroup Global Markets Limited, London
Commerzbank Aktiengesellschaft, Frankfurt
Commonwealth Bank of Australia, Sydney
Crédit Agricole Corporate and Investment Bank, Paris
Credit Suisse Securities (Europe) Limited, London
Daiwa Capital Markets Europe Limited, London
Danske Bank A/S, Copenhagen
Deutsche Bank AG, Frankfurt
DNB BANK ASA, Oslo
EquiLend LLC, New York
Eurex Repo GmbH, Frankfurt
EuroMTS Limited, London
Goldman Sachs International, London
HSBC Bank plc, London
HSBC France, Paris
ICAP Securities Limited, London
ING Bank N.V., Amsterdam
ING Belgium SA/NV, Brussels
IntesaSanpaolo S.p.A, Milan
J.P. Morgan Securities plc, London
Jefferies International Limited, London
Landesbank Baden-Württemberg, Stuttgart
LCH.Clearnet Limited, London
Lloyds Bank plc, London
Macquarie Bank Limited, London
Merrill Lynch International (trading as Bank of America Merrill Lynch), London
Mitsubishi UFJ Securities International plc, London
Morgan Stanley & Co. International PLC, London
National Australia Bank, London
NATIXIS, Paris
Nomura International plc, London
Otkritie Capital International Limited, London
RBC Europe Limited, London
SIX SIS AG
Société Générale S.A., Paris
The Bank of New York Mellon

The Royal Bank of Scotland plc, London
Trax
UBS Limited, London
UniCredit Bank AG, Munich