



I S M A

INTERNATIONAL SECURITIES MARKET ASSOCIATION

## **Minutes of the European Repo Council General Meeting held on February 10, 2003 in Frankfurt**

Location:               Dresdner Kleinwort Wasserstein  
                              Theodor-Heuss-Allee 44-46  
                              DE-60301 Frankfurt

Time:                    16.00 – 18.15

Date:                    Monday, February 10, 2003

### **1. Welcome by the Chairman of the European repo committee (ERC)**

The chairman opens the meeting by welcoming the council members in attendance, the observers as well as the guests and thanks Mr. Bacher and his firm for hosting today's meeting.

### **2. Approval of the minutes of the previous meeting**

The minutes of the European repo council general meeting held in Luxembourg on September 18, 2002, and dated October 24, 2002 are unanimously approved.

### **3. Update on events / information**

The chairman then updates the council on the issues addressed by the ERC since the last council meeting as follows:

#### **3.1 Clearing and settlement in the cross-border Euro-zone**

Due to the lack of an efficient infrastructure, clearing and settlement in the cross-border Euro-zone remains complicated and is not cost effective.

The ERC is in ongoing discussions with various custody banks and industry groups as well as with the European Commission with a view to furthering the process of finding adequate solutions meeting the market's needs in this respect.

### 3.2 CCP

In principle, the ERC welcomes the current trend towards the introduction of domestic CCPs such as the one recently established in Italy and that expected to be established in Spain in the near future.

However, the ERC is of the opinion that this strategy will not support the cross-border trading and settlement on European platforms.

The CC&G and Clearnet initiative is the first that combines the interests of the international community with those of the domestic players.

Nevertheless, the debate on central counterparty functions for bonds and equities is not concluded yet.

The European repo council will be updated on the further developments in this respect at its next meeting.

### 3.3 Contact group on euro securities issues (Cogesi)

At its last meeting which was chaired by the ECB, Cogesi addressed a code of conduct for the correspondent central banking model (CCBM) and a project called Central Securities Settlement Institution (CSSI) which was initiated by Iberclear, Monte Titoli, Crest, SIS and possibly Euroclear for the time being.

At the same meeting the Euribor-ACI Short Term European Paper Task Force paper (STEPS report) was also discussed.

The ACI step task force met in January to discuss the different comments they had received in this respect.

The document will be discussed in a much larger group in the coming months where different organisations will be able to contribute their comments to what finally should become a cross-border product for use by all relevant investors.

The ERC hopes to be able to present the final document to the council at its next meeting.

### 3.4 ERC/ECB meeting

At this afternoon's meeting between the ERC and officials of the ECB various topics related to the industry were discussed. One topic that was raised again was the shaping of deals into lots of maximum €50 million. This would allow a better handling of eventual fails and thereby contribute to a smoother settlement process. Since the shaping of deals into lots of maximum €50 million proves to be so difficult to be implemented as market practice on a voluntary basis, the ERC continues to seek the endorsement from official bodies, such as the ECB and the BoE, in this respect.

### 3.5 Real time settlement / bridge problem of ICSDs

The ERC chaired a meeting between the ICSDs and some central banks concerning the problems in connection with the settlement of German and other bond transactions over the bridge, which links Euroclear's and Clearstream Banking's systems.

The ERC understands that the two ICSDs have agreed to upgrade the bridge to allow for real time intra-day settlement by early 2004.

A respective press statement is expected to be released shortly by both ICSDs.

While the ERC is reasonably content with the way the bridge is currently working, the ERC will nevertheless continue to monitor the situation and clearly welcomes the initiative taken by the two ICSDs to upgrade the bridge. This change will profoundly change the council members' daily lives since it will allow overnight borrowing in most markets and thus enable firms to avoid excessive borrowing charges.

### 3.6 Cancellation of repo trades if a fail occurs

The ERC has received some disturbing reports about a number of recent cases where French firms had cancelled French tomnext repo transactions following delivery fails by their counterparties.

The ERC is concerned that this practise could spread around the European repo market and that if it is allowed to be continued it will ultimately destroy the market.

In a professional market place "a trade is a trade" and dealers should regard themselves bound to a deal once the price and any other key commercial terms have been agreed. There is no reason at all to cancel a trade when settlement fails, not even overnight trades.

The ERC expects that this issue will be resolved once real time intra-day settlement has been introduced. Although fails will continue to occur their number is likely to substantially decrease in the months ahead, particularly when action is taken as recommended in the Giovannini report.

### 3.7 Professional repo seminar

ISMA's ERC, in co-operation with ACI and Fortis Bank, organised and held a first professional repo seminar in Brussels in November 2002. The event was a huge success and attracted some 270 delegates. In due course a similar seminar is intended to be held at a different venue and council members will be informed accordingly.

The chairman stresses that education is important and very much necessary in the market.

### 3.8 Eurepo

The ERC is of the opinion that the introduction of this daily reference rate for secured funding has already proved to be a timely move that will help to develop the markets further.

### 3.9 Securities lending and repo committee (SLRC)

The ERC is represented on the SLRC by Mr. Dunn, who regularly attends the committee's meetings at the Bank of England.

One topic discussed by the SLRC is the practise of short selling. The UK Financial Services Authority (FSA) recently held a round table on this topic that allowed a useful and productive exchange of views between all relevant parties, including corporate share issuers, hedge funds and market intermediaries.

Representatives of issuers felt that greater disclosure of short selling was desirable from an investor relations perspective. Some representatives of intermediaries were more sceptical about the need for, and the practicalities of, greater disclosure requirements. Nobody called for short selling to be banned and only a few favoured regulation, e.g. "tick regime".

Interested parties were invited to provide the FSA with their feedback to a respective discussion paper by the end of January 2003.

The FSA may publish a consultation paper depending on the nature of the responses to the discussion paper.

If necessary, the ERC will address this issue at the next meeting.

The chairman has also been in discussions with the SLRC regarding the shaping of deals into € 50 million lots. A respective presentation will be given at the next meeting.

### 3.10 Undocumented trades

The ERC observed that still too many banks trade on an undocumented basis. The chairman cautions that this practice will be penalised upon “Basle 2” becoming effective.

In this context the chairman points out that ISMA continues to promote the use of the GMRA as the standard repo documentation worldwide.

In this respect, the ERC is also looking into expanding the use of the GMRA to some of the accession countries.

### 3.11 Interaction between ISMA’s buy-in rules and the mini close-out provisions of the GMRA

Some members of the ERC raised concerns about the interaction (procedures and timing) between the buy-in provisions of ISMA’s rules and recommendations and the mini close-out provisions of the GMRA.

At its most recent meeting, the ERC concluded that this mismatch is undesirable and outlined three possible solutions:

- amendment of ISMA’s buy-in rules to make them consistent with the mini close-out provisions of the GMRA; or
- amendment of the mini close-out provisions of the GMRA to make them consistent with ISMA’s buy-in rules; or
- inclusion of an express provision in ISMA’s buy-in rules enabling the buyer to recover from a defaulting seller costs incurred as a result of the failure.

The ERC’s preferred solution was for ISMA to make its buy-in rules consistent with the mini close-out provisions of the GMRA from a timing perspective.

ISMA’s market practices committee (MPC) concluded at its last meeting that the current minimum time period of 12 business days between a failure to deliver and the execution of a buy-in under ISMA’s buy-in rules should be shortened to five business days.

In terms of procedure, the secretariat of ISMA was requested to submit the concept of shortening the time period for review and endorsement by both the European repo council as well as the committee of reporting dealers (CRD).

If this concept is indeed supported by the European repo council and the CRD, the MPC will discuss the relevant details at its next meeting and formally propose to the board of ISMA that the relevant time periods in ISMA's buy-in and sell-out rules be shortened accordingly effective July 1, 2003.

The chairman then raises the question whether the council has any objections to ISMA shortening the current minimum time period of 12 business days between a failure to deliver and the execution of a buy-in in its buy-in rules to five business days.

No objections are being raised.

Subsequently, the chairman concludes his report by introducing Ms. Avsar of ISMA to the council as the permanent secretary to the ERC, and by requesting her to update the council on the GMRA related legal matters.

#### **4. Update on GMRA related legal matters**

##### **4.1 Equities annex to the GMRA**

Ms. Avsar informs the council that the revised equities annex to the GMRA was recently endorsed by the ERC's equities working group, the ERC as well as TBMA. The revised equities annex will be published on ISMA's website [www.isma.org](http://www.isma.org) in the course of this week.

She then briefly describes the main changes to the previous version of the annex as follows:

Paragraph 5(c) of the GMRA (as inserted by paragraph 3(b) of the equities annex) has been amended to make clear that the indemnity given by the buyer or transferee of margin under that paragraph extends to the amount of income that would have been paid to the seller of transferor had is been the holder on the securities on the relevant income payment date.

Paragraph 4(a) of the annex has been amended to provide that a party is required to notify the other party of notice of a corporate action within a reasonable time after the date on which a holder of the securities

would in the normal course have received notice, rather than as soon as practicable but within two business days.

Paragraph 4(b) of the annex had been amended to provide that a buyer or transferee of margin securities has no obligation to arrange for the exercise of any voting rights that may arise in respect of equities which have been purchased under a repo or provided as margin.

#### 4.2 Guidance notes for the use of the GMRA with Spanish debt securities / Spanish legal opinion

Ms. Avsar reports that following the recent enactment of the new financial law in Spain, ISMA and TBMA have obtained a draft of the Spanish legal opinion on the GMRA.

The draft opinion is currently being reviewed by the ISMA/TBMA joint opinion committee.

The final Spanish opinion is intended to be published together with the 2003 update opinions at the end of March.

Following discussion between ISMA and TBMA and based on advice from outside counsel it has been decided that while there is no need for a Spanish annex to the GMRA, there is nevertheless a need for guidance notes for the use of the GMRA with Spanish debt securities.

The Spanish guidance notes are in the process of being produced.

A respective draft of the guidance notes has been prepared by Freshfields that is currently the subject of further discussions with Freshfields, the ERC and TBMA.

#### 4.3 Opinion seeking and update exercise 2003

Ms. Avsar then updates the council on ISMA's opinion seeking and updating exercise for this year which is intended to be concluded at the end of March.

She specifies that update legal opinions are being sought in more than 30 jurisdictions worldwide and that in a number of these jurisdictions the exercise is being conducted jointly with TBMA.

The opinions again cover both the enforceability of the netting provisions of the GMRA and the validity of the GMRA as a whole. In addition, they cover the re-characterization risk (both in respect of the transfer of securities and in respect of the transfer of margin).

In most jurisdictions there will not be any substantive changes.

#### 4.4 Polish legal opinion

Ms. Avsar reports that ISMA and TBMA have decided to delay the finalization of this opinion until the new Polish bankruptcy law has come into force. This is expected for summer 2003.

#### 4.5 Greece

Finally, Ms. Avsar reports that ISMA and TBMA are currently in the process of establishing with Greek counsel whether and in the affirmative with which qualifications (if any), a legal opinion on the enforceability and validity of the GMRA can be obtained for Greece.

The JOC has requested ISMA and TBMA to request local counsel to provide a preliminary analysis in this respect. Based on this analysis the JOC will then make its recommendation to ISMA and TBMA.

The ERC has already requested ISMA to obtain a Greek legal opinion irrespective of the JOC's recommendation.

### 5. Unified trading days in the Euro-zone

The chairman informs the council about his recent respective presentation to the Brouhns committee. A copy of the presentation is attached to these minutes (attachment 1). In principle, all debt agencies agree that the markets should be open on target days.

The chairman is requested to give the presentation to a group of the European Commission in relation to equity markets/stock exchanges that should also be open on target days.

### 6. Cross-border collateral pool task force

Mr. Twilhaar of ABN AMRO Bank N.V. gives a slide presentation on the management of payment liquidity in global markets. A copy of the presentation is attached to these minutes (attachment 2).

### 7. Update on the recent developments in Japanese repo market

Mr. Bessho of the Bank of Japan updates the council about the recent developments in the Japanese repo market. A copy of Mr. Bessho's report is attached to these minutes (attachment 3).

**8. ECB changes in tender**

The chairman refers to the press release published by the European Central Bank (ECB) on January 23, 2003 concerning the measures to improve the efficiency of the operational framework for monetary policy. The press release is available on the ECB's website ([www.ecb.int](http://www.ecb.int)).

**9. 4<sup>th</sup> European repo market survey**

Mr. Comotto updates the council on the preliminary results of the 4<sup>th</sup> European repo market survey which was conducted by the ISMA Centre at the University of Reading in the UK.

The results of the survey will be published on ISMA's website ([www.isma.org](http://www.isma.org)) at the beginning of March.

**10. Elections to the European repo committee**

The chairman then introduces the following 21 candidates who stand for election for the 19 vacancies on the ERC:

Ulf Bacher	Dresdner Bank AG, Frankfurt
Antony Baldwin	Daiwa Securities SMBC Europe Ltd., London
Jean Begonin	Credit Suisse First Boston (Europe) Limited, London
Stefano Bellani	J. P. Morgan Europe Ltd., London
Eduard Cia	Bayerische Hypo- und Vereinsbank AG, Munich
Clarice Calderoni	UniCredit Banca Mobiliare S.p.A., Milan
Godfried De Vidts	Fortis Bank, Brussels
Cameron Dunn	Merrill Lynch International (MLI), London
Johan Evenepoel	Dexia Bank Belgium NV/AS, Brussels

Oscar Huettner	Barclays Capital Securities Limited, London
Andrew Lubin	Deutsche Bank AG, London
Andrea Masciovecchio	IntesaBci S.p.A., Milan
Grigorios Markouizos	Salomon Brothers International Ltd., London
Edward McAleer	Morgan Stanley & Co. International Ltd., London
Michael Murray	Confederación Española de Cajas de Ahorros (CECA), Madrid
David McClean	Nomura International plc, London
Mark Painting	Goldman Sachs International, London
Pierre Renom	BNP Paribas, London Branch
Ashraf Rizvi	UBS AG, London Branch
Rudolf Sellinger	Bank Austria Creditanstalt, Vienna
Nicolas Truong	Société Générale S.A., Paris

Subsequently, Ms. Avsar explains the election procedure pursuant to rule 1014 of ISMA's rules and recommendations and refers the council to the detailed instructions on the ballot form, a copy of which was distributed to the representative of each council member following the introduction of the candidates by the chairman.

In a first secret ballot, 18 candidates are elected and two candidates (Mr. Evenepoel and Mr. McClean) obtain the same number of votes. As there are no corresponding vacancies, a second secret ballot is held between Messrs. Evenepoel and McClean for the remaining place.

Mr. McClean is elected.

The chairman then announces the new composition of the European repo committee as follows:

Ulf Bacher	Dresdner Bank AG, Frankfurt
Jean Begonin	Credit Suisse First Boston (Europe) Limited, London
Stefano Bellani	J. P. Morgan Europe Ltd., London
Eduard Cia	Bayerische Hypo- und Vereinsbank AG, Munich
Clarice Calderoni	UniCredit Banca Mobiliare S.p.A., Milan
Godfried De Vidts	Fortis Bank, Brussels
Cameron Dunn	Merrill Lynch International (MLI), London
Oscar Huettner	Barclays Capital Securities Limited, London
Andrew Lubin	Deutsche Bank AG, London
Andrea Masciovecchio	IntesaBci S.p.A., Milan
Grigorios Markouizos	Salomon Brothers International Ltd., London
Edward McAleer	Morgan Stanley & Co. International Ltd., London
Michael Murray	Confederación Española de Cajas de Ahorros (CECA), Madrid
David McClean	Nomura International plc, London
Mark Painting	Goldman Sachs International, London
Pierre Renom	BNP Paribas, London Branch
Ashraf Rizvi	UBS AG, London Branch
Rudolf Sellinger	Bank Austria Creditanstalt, Vienna

Nicolas Truong

Société Générale S.A., Paris

**11. Market regulation – results of the Giovannini report II**

Mr. Berrigan, Head of Unit, DG Ecofin, European Commission, Brussels reports on the results of the Giovannini report II that is intended to be published at the end of March 2003.

**12. Presentation of the collateral initiative by SWIFT**

Ms. Forcat of SWIFT gives her presentation entitled: "Taking advantage of automation and standardisation in securities financing". A copy of the presentation is attached to these minutes (attachment 4).

**13. Any other business**

No comments are being made.

**14. Next general meeting**

The next general meeting of the European repo council will be held in Luxembourg on Thursday, September 25, 2003.

Council members will be advised of the exact venue and commencement time in due course.

March 10, 2003  
PA/ys

The Chairman:

The Secretary:



Godfried De Vidts



Peri Avsar

Attachments