

**Sent by email**

To: Isabelle Vaillant, Director of Regulation, European Banking Authority; Luis del Olmo, Senior Policy Advisor on Liquidity Risk; Delphine Reymondon, Head of Liquidity, Leverage, Loss Absorbency and Capital Unit

**September 28, 2023**

**Re: Treatment of open-securities financing transactions under the Liquidity Coverage Ratio**

Dear Isabelle, Luis, and Delphine

On behalf of ICMA's European Repo and Collateral Council (ERCC) and the ERCC Prudential Working Group, we wanted to follow-up on our recent discussions regarding the October 2022 EBA Q&A on the [LCR treatment of open maturity reverse repos which can be terminated at any point in time](#).

Further to our meeting earlier this year we had a number of follow-up discussions with members, reflecting on possible ways to illustrate the likely impact of the EBA guidance. While a simple quantification of the impact has proven to be extremely difficult, given the complexity of the question and the lack of granular data, ERCC members (mainly EU regulated bank entities) are keen to reiterate two key points that we flagged in previous communications and provide some further background to support these, namely:

- (i) The contractual provisions governing the ability to close-out an open reverse repo; and
- (ii) The LCR treatment of open reverse repos in other jurisdictions.

The contractual right to close-out an open reverse repo

As the EBA will be aware, the vast majority of repurchase agreements (including open reverse repos) are executed under a Global Master Repurchase Agreement ([GMRA](#)).

Importantly, Paragraph 3 (d) & (e) of the GMRA set out unambiguously that either party can terminate an on-demand transaction upon simple notice to the other party:

*“(d) Termination of a Transaction will be effected, in the case of on demand Transactions, on the date specified for Termination in such demand, and, in the case of fixed term Transactions, on the date fixed for Termination.*

*“(e) In the case of on demand Transactions, demand for Termination shall be made by Buyer or Seller, by telephone or otherwise, and shall provide for Termination to occur after not less than the minimum period as is customarily required for the settlement or delivery of money or Equivalent Securities of the relevant kind.”*

In other words, from a contractual and legal perspective, an open-reverse repo can be considered to be the equivalent of a repo with a term equivalent to the earliest agreed termination date (which is usually T+1 in the case of European repo markets).

ERCC members contest the assertion that parties may be reluctant to terminate an open reverse repo due to reputational risks related to their counterparty. Open repos and reverse repos are utilized precisely for their flexibility and the ability for either party to terminate at short notice. This is particularly important in times of market stress, when the option to close-out open reverse repos is an important liquidity management consideration. In the case of funding transactions, this flexibility is also priced into open repo/reverse repo transactions, which will generally have less premia than fixed-term repo/reverse repo agreements, where the right to early termination is forgone.

While this is already well understood in the market, following further discussion with members it has been agreed to reflect these considerations more explicitly in the next iteration of the [ERCC Guide to Best Practice in the European Repo Market](#), the long-established and widely accepted best practice guide for European repo market practitioners. This is intended to highlight the contractual rights underlying established best practice.

#### The LCR treatment of open reverse repos in other jurisdictions

It is important to note that other jurisdictions with major financial markets do not take the same view as the EBA Q&A as regards the LCR treatment of open reverse repos. Most notably, the US prudential framework explicitly provides for open reverse repos to be treated as ‘overnight’ reverse repos for the purposes of LCR (and therefore counted as inflows), while in the UK, PRA guidelines on completing the maturity ladder are also taken as the basis for treating open reverse repos as ‘overnight’.

Given the importance of open repo/reverse repo in terms of the overall repo market structure (7.8% of outstandings according to the most recent [ERCC European Repo Market Survey](#))<sup>1</sup>, the EBA guidance diverging from other major regulators on this question will very likely undermine EU market competitiveness as firms look to transact open transactions through their non-EU entities.

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<sup>1</sup> Approximately €810bn notional value

Please see below for relevant UK and US regulatory guidance.

**UK**

**INSTRUCTIONS FOR COMPLETING PRA110**

**The instructions build on the EBA's instructions for completing the Maturity Ladder template of Annex XXII**

**<https://www.bankofengland.co.uk/-/media/boe/files/prudential-regulation/regulatory-reporting/banking/pr110-instructions.pdf>**

**12.** In order for institutions to apply a conservative approach in determining contractual maturities of flows, they shall ensure all of the following:

(d) open repos or reverse repos and similar transactions which can be terminated by either party on any day shall be reported in both the "overnight" and the "Of which: open" column 6010, unless the notice period is longer than one day in which case they shall be reported in the relevant time bucket according to the notice period.

**USA**

**Federal Register Vol 79, No 197, October 10, 2014**

**<https://www.occ.gov/news-issuances/federal-register/2014/79fr61440.pdf>**

**61479**

Another of the final rule's modifications of the proposed maturity determination requirements clarifies how a covered company should address certain outflows and inflows that do not have maturity dates, as these were not explicitly addressed in the proposed rule. Under the proposed rule, all nonmaturity inflows would have been excluded from the LCR. Under the final rule, transactions, except for operational deposits, subject to §1.32(h)(2), (h)(5), (j), or (k), or §1.33(d) or (f) that do not have maturity dates will be considered to have a maturity date on the first calendar day after the calculation date. This change will primarily affect certain transactions with financial sector entities. The maturity of these transactions is often referred to as "open." The agencies believe these transactions are similar to overnight deposits from financial institutions and for purposes of the LCR, are treating them the same. Therefore, for these types of "open" transactions with financial sector entities and other transactions subject to §1.32(h)(2), (h)(5), (j), or (k), or § 1.33(d) or (f) that do not have maturity dates and are not operational deposits, the final rule provides that for purposes of the LCR, the maturity date will be the first calendar day after the calculation date.

As discussed with the EBA previously, the outcome of the Q&A will not be an increase in EU regulated banks' LCR denominator, which is understood to be the objective of the Q&A, but rather it is likely to be a behavioural shift from using the convenience of open reverse-repos for funding transactions to rolling short-dated term reverse repos on a continuous basis. This not only increases the operational burden for both parties to the transaction, but it also heightens settlement risk. Alternatively, where possible, these transactions will migrate to banks' non-EU entities.

ICMA and its members would therefore ask that the EBA reconsider its response to [Q&A 2021\\_6163](#) to reflect more accurately the contractual and economic construct of open reverse repos, as well as to align the EU with the LCR treatment of other major international financial markets.

Kind regards,



Gareth Allen  
Managing Director, Global Head  
Investment and Execution – Group  
Treasury, UBS  
ERCC Chair



Alexander Westphal  
Director, ICMA  
Secretary to the ERCC