



**ICMA**

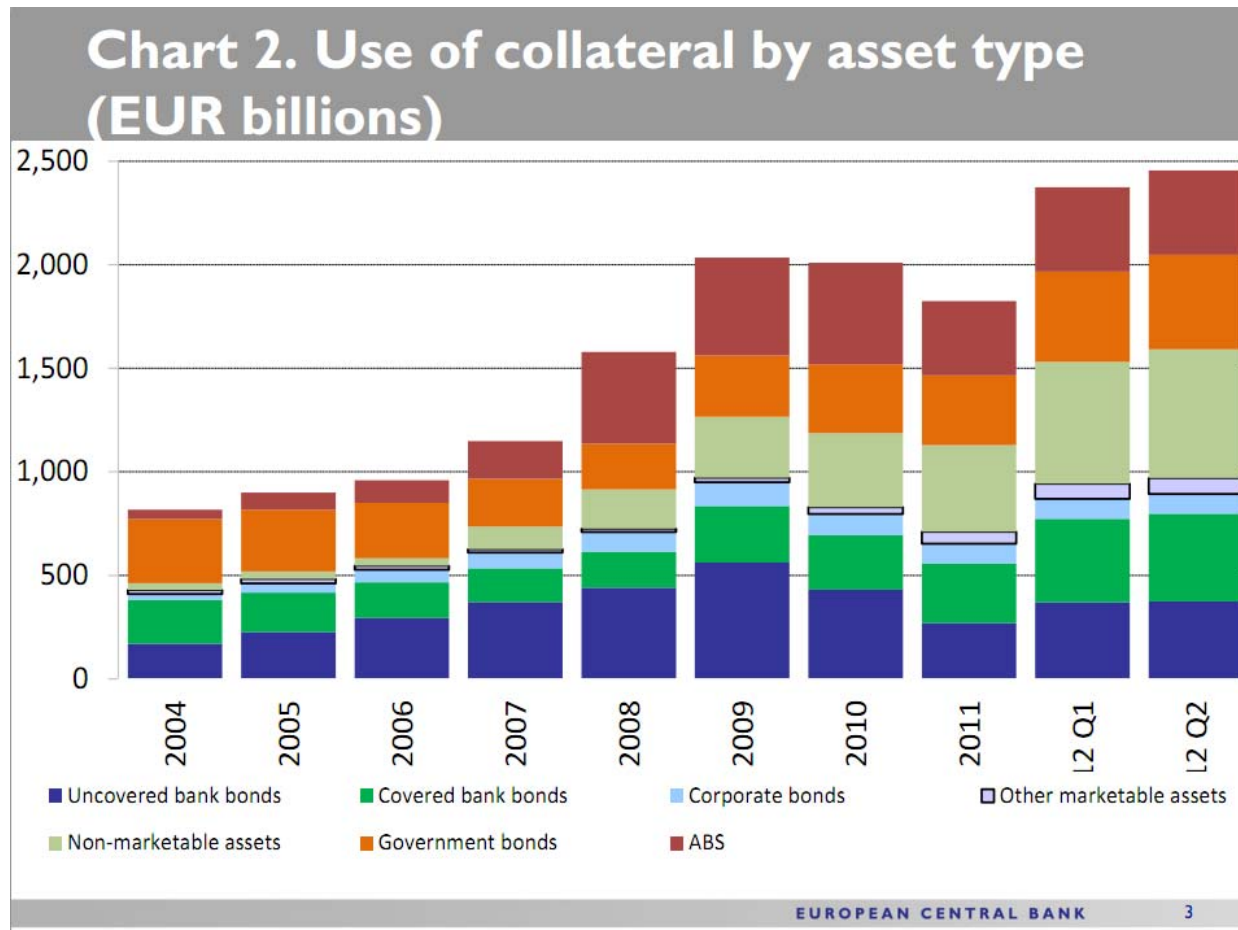
International Capital Market Association

# **ICMA ERC: Establishing a Loan Repo System**

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## Use of collateral by asset type (non-marketable assets inc. credit claims)



- Loans under English, French and German Law
- Belgium and Luxembourg law of clearing systems
- Borrower/obligor in same jurisdiction as governing law of loan
- New loans only –freedom to choose terms
- Syndicated or bilateral

- Clearing Systems to administer the transfer of loans between buyers and sellers. For this to work a borrower must appoint a person with access to the Clearing System (or the Clearing System itself) as its agent.
- Any notice required to be given to borrowers/obligors in order to perfect an assignment as a matter of law would be generated by the system and delivered to the borrower's agent.
- This structure preserves the legal nature of loans and the relationship of borrower and lender.

- **English loans** likely to be suitable for use as collateral in repos because the requirement under English law for notice of a transfer to be given to the borrower/obligor in order to effect a legal assignment of rights can be met by delivery of a system generated notice to the borrower's agent and it is possible to adapt the terms of English loans to permit their transfer through the Clearing Systems. As yet there is no requirement in the UK for sellers/buyers of corporate loans to hold regulatory permissions.
- **German loans** likely to be suitable for use as collateral in repos because there is no requirement under German law for notice of a transfer to be given to a borrower/obligor and it is possible to adapt their terms to permit the transfer to be administered through the Clearing Systems. Eligible buyers (and sellers) of German loans are generally required to hold a banking licence or an appropriate BaFIN exemption.
- Although some helpful exemptions exist, **French loans** likely to be *unsuitable* for use as collateral in repos without a change of law in view of the requirement to notify assignments of credit claims by court bailiff. French loans must be fully drawn. Eligible buyers in France must hold a banking licence.

- Directive 2009/44/EC dated 6 May 2009 amending Directive 98/26/EC on settlement finality in payment and securities settlement systems and Directive 2002/47/EC on financial collateral arrangements as regards linked systems and credit claims
- Directive puts repo of credit claims on similar footing to repo of securities
- Main provisions:
  - extends settlement finality to “credit claims” (i.e. loans)
  - no clawback on insolvency for transfers through Clearing Systems
  - “credit claims” treated as “financial collateral” that can be appropriated to satisfy a debt without formality/court proceedings
  - no registration requirements (BUT no mandatory exception from formalities connected with ensuring enforceability of transfers as against borrower/obligor under loans)

- Creation of a single database and interface for registration and immobilisation of credit claims: Xloan
  
- Scope
  - Interbank financing Transactions
  - Central Bank pledges
  - Triparty collateralisation
  
- Functionality
  - Asset registration
  - Asset and party identification
  - Asset maintenance (positions & reference data)
  - Asset immobilisation



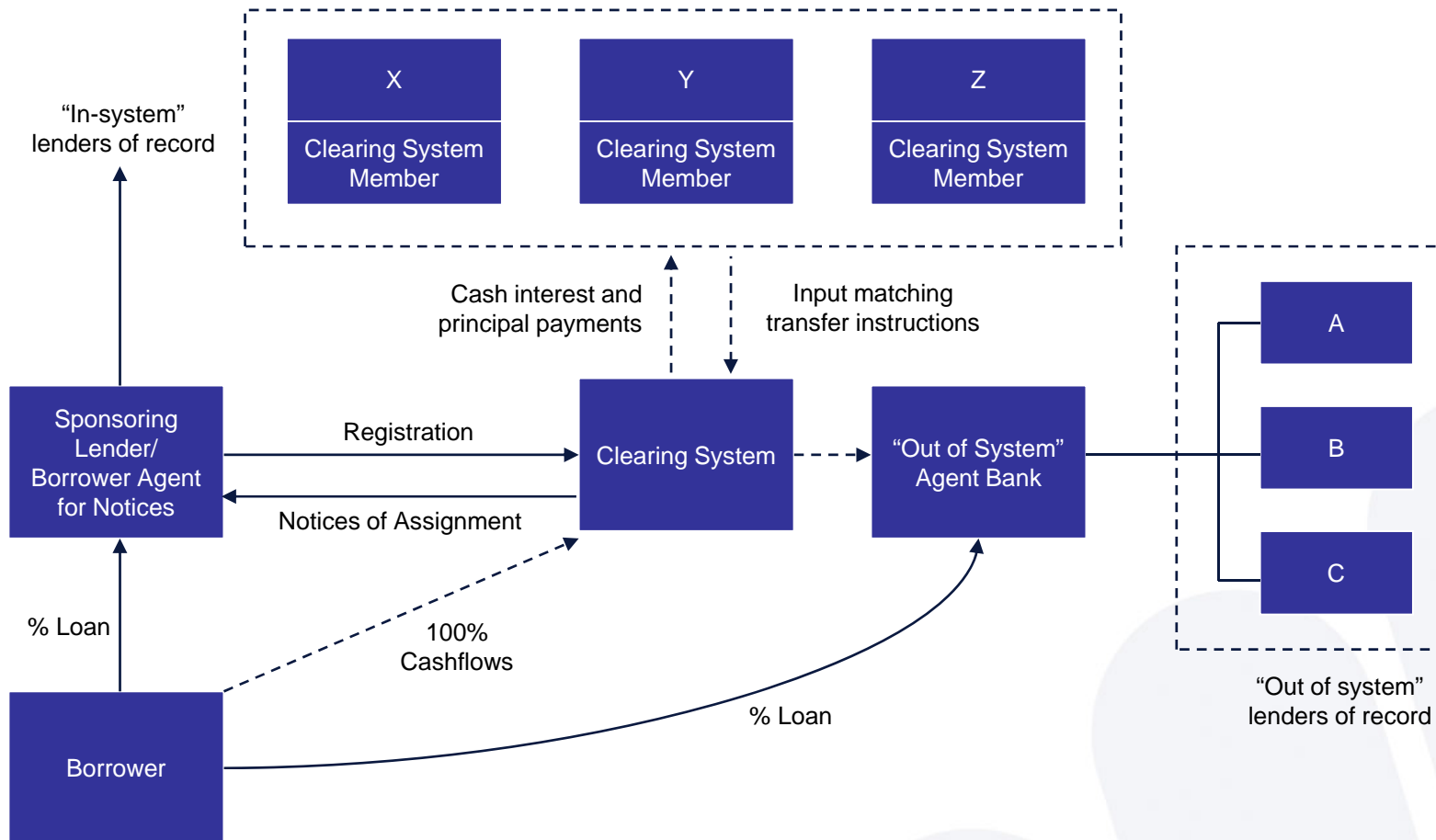
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# Operation: Requirements

- Control- an adequate contractual and operational framework is to be put in place with lenders/agents to ensure the existence of assets used as repo collateral and the accuracy of their specifications
- Central Banks- to ensure liquidity and efficient operations, Central Banks should operate on the same platform
- Valuation- robust loan price data needs to be available for the valuation of the repo collateral
- Substitution capacity- mechanisms to avoid usage of loans as repo collateral in consent situations etc.





- Discussion of commercial issues with borrowers:
  - the rules for moving Repo Eligible loans onto and off the loan repo system;
  - the eligibility of parties to act as a repo counterparty buyer under the loan repo system;
  - the rules relating to transfers of loans through the loan repo system;
  - the treatment of confidential information, amendments and voting.
- Consolidate market buy in i.e. bring Loan Market Association members together with ERC members - ongoing
- Prepare draft legal documentation for market review.
- Develop operational framework and loan system rulebook.