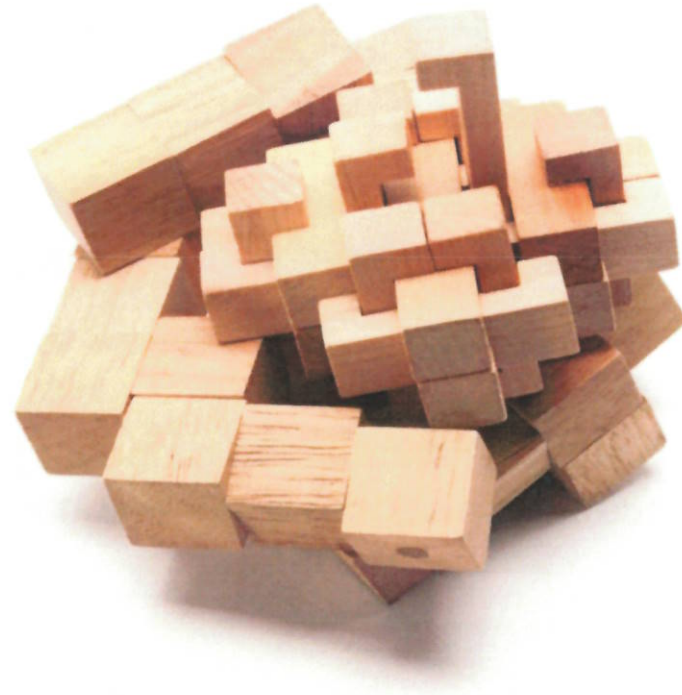


ALLEN & OVERY



EMMI Workshop

Developing a roadmap for further analysis

27 May 2016, Brussels

Variables to be considered - overview

I. Type of transaction

- Loans, capital market instruments, securitisation, derivatives and deposits

II. Type of documentation

- Market standard documents or bespoke documents
- Various versions of standard documents (legacy)

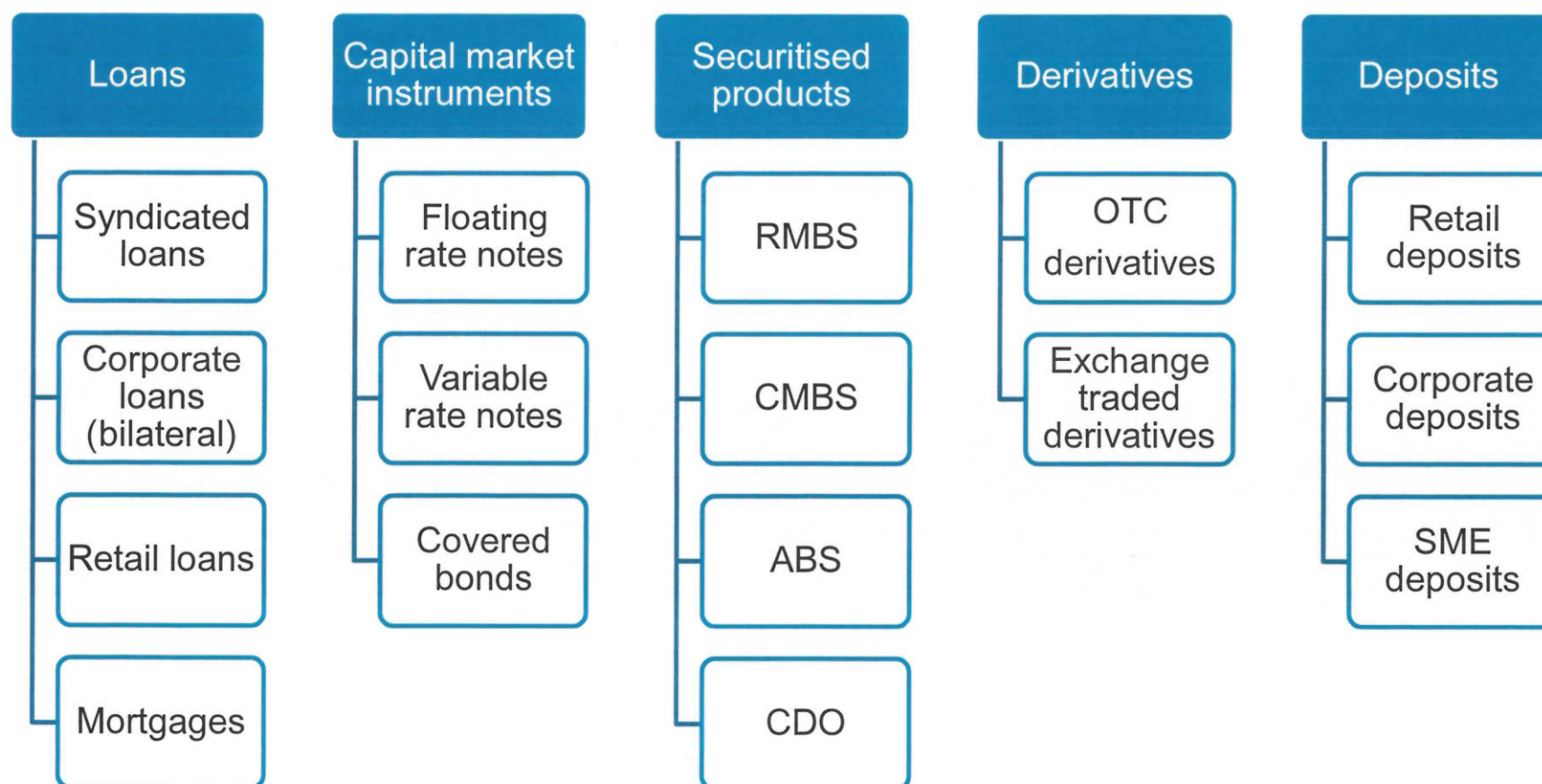
III. Governing law (and jurisdiction)

- English law, New York law or other national laws

IV. Type of counterparty

- Financial institutions, corporates, individuals

I. Type of transaction



I. Type of transaction

Previous overview is not exhaustive, also various other types of transactions to be taken into account

- Money market instruments
- Securities lending
- Repo transactions and reverse repo
- Capital leases
- Trade finance
- Commercial leases
- Subordinated debt

II. Type of documentation



III. Governing law

Governing law

- English law
- New York law
- National European laws
- Foreign non-European laws

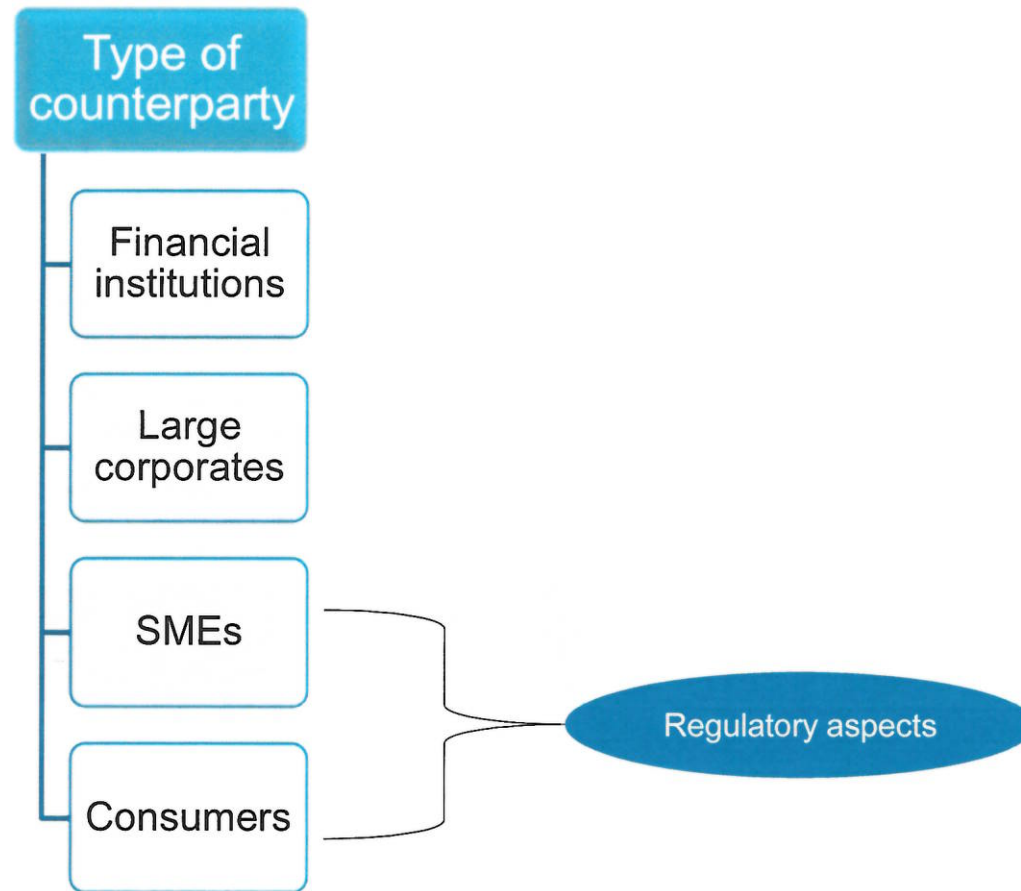
Jurisdiction

- England and Wales
- New York
- National courts
- Foreign non-European courts
- Arbitration clauses

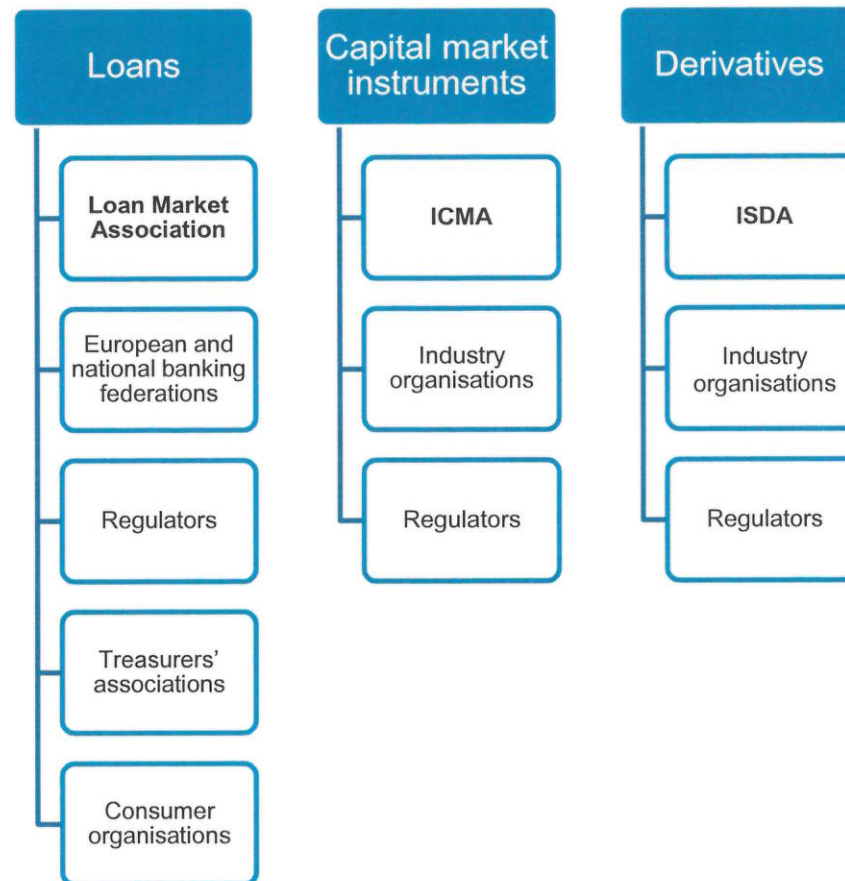
Public policy

- Law of/forum in jurisdiction of the issuer/borrower
- Law of/forum in jurisdiction outside the jurisdiction of the issuer/borrower
- Consider regulatory overlay and regulatory intervention

IV. Type of counterparty



Stakeholders



Closer look at certain transactions

1) Loans

2) Derivatives

3) Debt Securities

1) Closer look – loans (in general)

Governing law of loans varies across jurisdiction

However, across most jurisdictions syndicated loans incorporate **Loan Market Association (LMA)** market standard terms

In addition, many bilateral commercial loans and commercial mortgages will be drafted to replicate key LMA market standard terms

1) Closer look – loans - LMA

Type of standard documentation	Governing law
LMA Facility Agreement	English law
French Law LMA Multicurrency Term and Revolving Facilities Agreement (English)	French law
German Law LMA Multicurrency Term and Revolving Facility Agreement	German law
Spanish Law LMA Multicurrency Term and Revolving Facility Agreement (in Spanish)	Spanish law
LMA Standard Terms & Conditions for Par & Distressed Trade Transactions (Bank Debt/Claims).	English law

2) Closer look – consumer loans

Relevancy of national law (limited harmonisation)

Impact national regulators

Impact of other stakeholders

2) Closer look – OTC derivatives

Trade body Jurisdiction	Document	Governing law
ISDA	2002 ISDA Master Agreement (Multicurrency – Cross Border)	English/NY law
ISDA	1992 ISDA Master Agreement (Multicurrency – Cross Border)	English/NY law
ISDA	2006 ISDA Definitions	English/NY law
ISDA	Annex to the 2000 ISDA Definitions (June 2000 version)	English/NY law
Bankenverband	German Master Agreement for Financial Derivatives Transactions (<i>Deutscher Rahmenvertrag für Finanztermingeschäfte – DRV</i>)	German law
Swiss Bankers Association	Swiss Master Agreement for Over-The-Counter (OTC) derivative instruments (<i>Schweizer Rahmenvertrag für OTC-Derivate</i>)	Swiss law
[Fédération bancaire française]	French Framework Agreement (<i>Convention cadre FBF relative aux opérations sur instruments financiers à terme</i>)	French law]

2) Closer look – OTC derivatives

- There are a number of other master agreements not listed above which do not include a standard EURIBOR clause although, in some cases they incorporate by reference the 2006 ISDA definitions

2) Closer look – traded/cleared derivatives

– Need to consider rulebooks in respect of specific instruments

3) Closer look – debt securities

Trade body	Document	Governing law
ICMA	ICMA Standard Form of Multicurrency Bearer Permanent Global Note	Law of underlying documentation
ICMA	ICMA pro forma Final Terms - (wholesale)	Law of underlying documentation
ICMA	ICMA pro forma Final Terms - (wholesale)	Law of underlying documentation

Developing framework for review

Product profile

- Derivatives, loans, bonds, other products

Doctrinal features of the governing law

- Contractual construction and fall back
- Frustration
- Implied terms

Mitigation

- Market led approach
- Transition hypothesis

Regulation

- Existing regulatory overlay
- Regulatory intervention

Questions?

These are presentation slides only. The information within these slides does not constitute definitive advice and should not be used as the basis for giving definitive advice without checking the primary sources.

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