

The State of Play in Post-Trading 2016

Post-Trading & T2S Forum 2016

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Daniele De Gennaro

Policy Adviser



The State of Play in Post-Trading 2016

1. Introduction

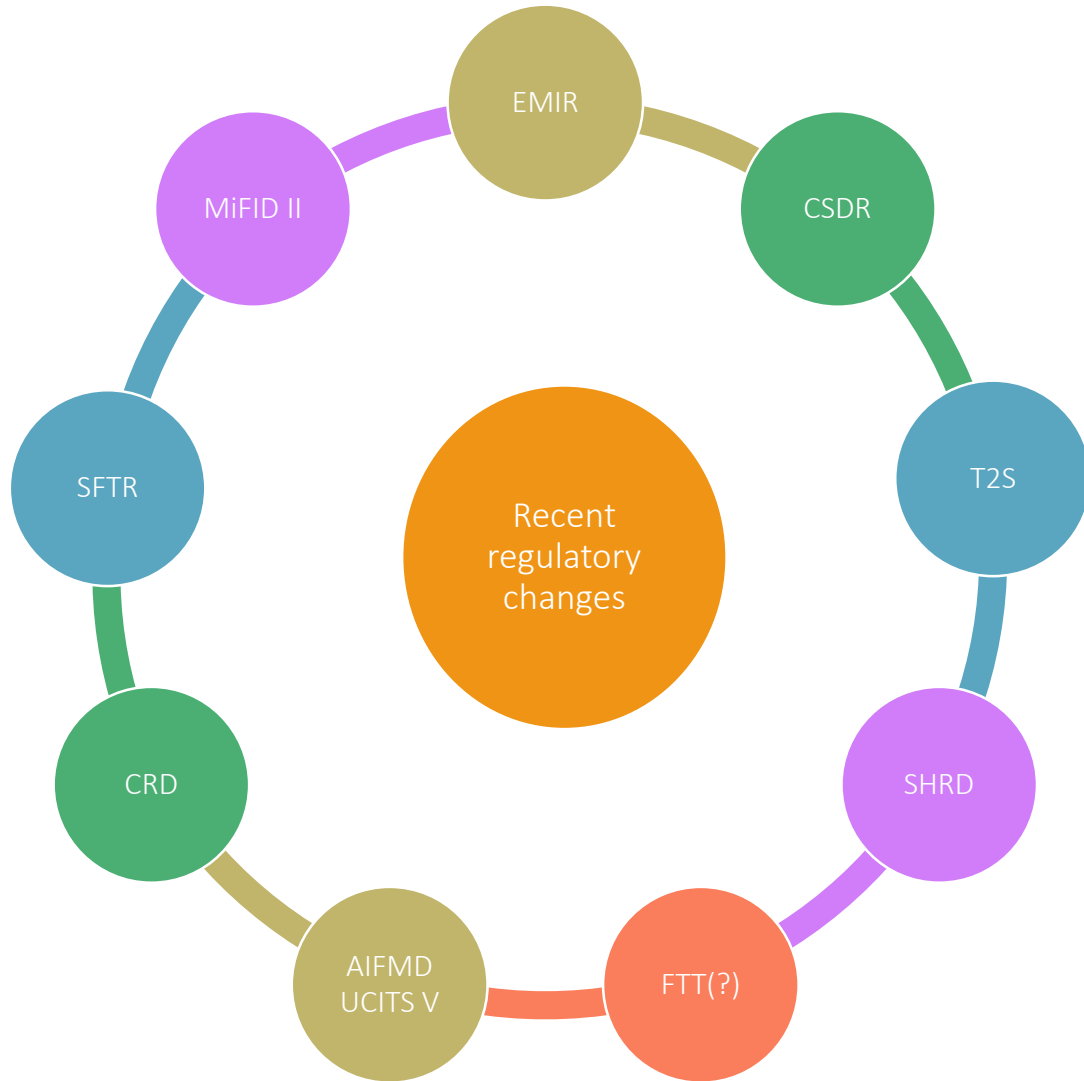
2. European Post-Trading Forum (EPTF)

3. European Regulatory Initiatives

4. Technological Revolution

5. ...looking at 2017

Post-crisis landscape for Post-Trade



- Recent regulatory reforms are forcing evolution of the post-trading services in many areas:
 - Increasing safety of the financial sector
 - Enhanced, more stringent supervision → ESAs
 - More transparency / Less privacy (?)
 - Higher regulatory compliance costs
 - Large investment costs for adaptations
 - Increased, enhanced role for CCPs and CSDs
 - Level playing field, open market access
 - Concentration of systemic risks in few FMIs
 - Controls & monitoring over implementation

- Evolving roles and profiles for all key stakeholders

Resulting in...

Removal of barriers or... creation of new ones?

"To support more efficient and resilient post-trading systems and collateral markets, the Commission will undertake a broader review on progress in removing Giovannini barriers to cross-border clearing and settlement, following the implementation of recent legislation and market infrastructure developments."

(CMU Action Plan – September 2015).



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15 years of EU efforts in Post-Trade

- European Post Trade Forum (EPTF) (2016- Present)
- European Post Trade Group (EPTG) (2012-2015)
- Expert Group on Market Infrastructures (EGMI) (2010-2011)
- CESAME 2 Group (2008-2010)
- Legal Certainty Group (2005-2008)
- CESAME Group (2004-2008)
- Tax Barriers Business Advisory Group (TBAG) (2010-2013)
- FISCO Group (2005-2007)
- Commission Communication and other documents
- Monitoring Group of the Code of Conduct (MOG)
- 2nd Giovannini Report (2003)
- 1st Giovannini Report (2001)

European Post Trade Forum (EPTF)

- Very ambitious plan for the EPTF
- The workplan of the EPTF divided in two phases:
 - Phase 1 (February 2016 – June 2016) focused on assessing current and upcoming post-trade landscape in the EU.
 - Phase 2 (July 2016 – February 2017) is currently assessing, leveraging on the results of Phase 1, the extent to which post-trade developments and regulatory reforms have addressed the Giovannini or other barriers.

EPTF Phase I

Three sub-groups were created

- Overview of the EU and global post-trade landscape and upcoming trends
- EU and global post-trade market practices
- EU and global regulatory post-trade framework

→ Developments in post-trading, including collateral markets, following the implementation of EU and national legislation on financial market infrastructures (e.g. EMIR, CSDR, MiFID II) and other relevant legislation, such as FCD and SFD.

→ Examine non-legislative development over the past 15 years, including the likely effects of emerging technologies (e.g. DLT) and changing market practices on efficiency and resilience of EU financial market infrastructures, as well as the impact of T2S

Phase 1 seeks to deliver an analysis based on factual/empirical information on the areas above, which are essential for the proper understanding of the post-trade landscape in the EU

Phase II

Objective: Assessing the progress in removing the progress on addressing market failures and removing barriers and bottlenecks that may present unnecessary obstacles to the realisation of the CMU:

- Assessment of progress in removing Giovannini barriers.
- **Definition and description of existing and emerging barriers and bottlenecks to an efficient CMU in post-trading:** (i) national differences (market practices, national laws); (ii) gaps and inconsistencies in EU or third countries' legislation or global guidelines, including divergent implementation of EU law; (iii) market structure and competition; (iv) technology.
- Insights on the nature of possible solutions.

Giovannini Reports: 15 Barriers for 15 Years

1. National differences in information technology and interfaces
2. National clearing and settlement restriction that require the use of multiple systems
3. Different national rules relating to corporate actions, beneficial ownership and custody
4. Absence of intra-day settlement finality
5. Practical impediments to remote access to national clearing and settlement systems
6. National differences in settlement periods
7. National differences in operating hours/settlement deadlines
8. National differences in securities issuance practice
9. National restrictions on the location of securities
10. National restrictions on the activity of primary dealers and market makers
11. Domestic withholding tax regulations serving to disadvantage foreign intermediaries
12. Transaction taxes collected through a functionality integrated into a local settlement system
13. The absence of an EU-wide framework for the treatment of interests in securities
14. National differences in the legal treatment of bilateral netting for financial transactions
15. Uneven application of national conflict of law rules

Giovannini Barriers

Work in Progress

- **GB 1:** National differences in information technology
- **GB 2 & 5:** Remaining obstacles and practical impediments to access to national clearing systems → **Removed**
- **GB 3:** Differences in national rules relating to corporate actions and beneficial ownership and custody
- **GB 4:** Absence of intraday settlement finality
- **GB 6:** National differences in settlement periods
- **GB 7:** Operating hours and settlement deadlines → **Removed**
- **GB 8 & 9:** Practical impediments to cross-border issuance and national restrictions on the location of securities
- **GB 10:** National restrictions on the activity of primary dealers and market makers → **Removed**

Giovannini Barriers

Work in Progress

- **GB 11:** Domestic withholding tax regulations serving to disadvantage foreign intermediaries
- **GB 12:** Transactional taxes collected through functionality integrated into local settlement system
- **GB 13:** Absence of EU-wide framework for treatment of interests in securities
- **GB 14:** National differences in legal treatment of financial transactions bilateral netting
- **GB 15:** Uneven application of national conflict of law rules

New barriers

- Registration rules and procedures – Asset segregation – Intermediaries – CSDR banking requirements – Weak protection of CCPs against default of clearing members – Data reporting and transparency requirements – Intraday liquidity and EU platform extra-T2S

Why this work matters?

The final report will be used as a basis to:

- Launch a wider stakeholder consultation
- Assess if other legislative initiatives are necessary

Legislative initiatives already finalised:

- Recovery & Resolution of CCPs → Published
- Insolvency law → Published

Legislative initiatives in the making:

- Legislative proposal on conflict of law → next year
- WHT procedures → next year
- Securities law?

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RECOVERY AND RESOLUTION OF CCPs



- EC proposal published on **23 November 2016**
- There are already high regulatory standards in place for EU CCPs → EMIR
- However, no EU wide rules are in place for the unlikely scenario where CCPs face severe distress or failure and therefore need to be recovered or resolved in an orderly manner.
- Proposal aims to put into place a recovery and resolution framework to CCPs which are systemically important for the financial system → This will ensure that the critical functions of CCPs are preserved while maintaining financial stability and helping to avoid the costs associated with the restructuring and the resolution of failing CCPs from falling on taxpayers.

RECOVERY AND RESOLUTION OF CCPs

Key takeaways of the proposal:

- The proposed rules set out **CCP-specific tools** that align with CCP's default management procedures and operating rules, particularly to determine how losses would be shared.
- **Preparation and prevention:** The proposal requires CCPs to draw up recovery plans which would include measures to overcome financial distress issues that exceed their default management resources and other requirements under EMIR.
- **Early intervention:** CCP supervisors will be granted specific authority to intervene in the operations of CCPs when their viability is at stake, to ensure that financial difficulties are addressed as soon as they arise and distress can be averted.
- **Resolution powers and tools:** In line with the guidance of the Financial Stability Board, a CCP will be placed in resolution when failing or likely to fail, when no private sector alternatives can avert failure, and when its failure could harm public interest and financial stability.
- **Cooperation between national authorities:** The proposal establishes so-called resolution colleges for each central counterparty, containing all the relevant authorities, including ESMA and the EBA.

State of Play:

EC adopted on 11 November 2016 a package of **six legislative acts**:

- Commission Delegated Act
- 3 Regulatory Technical Standards (RTS)
- 2 Implementing Technical Standards (ITS)

→ RTS on settlement discipline not yet published by the Commission

CSDR Workshops

- EBF hosted with other trade associations the first of a series of workshop on CSDR implementation, particularly Settlement Penalties and Buy-ins;

- List of items to be clarified by the Commission:
 - Scope of financial instruments subjects to buy-ins;
 - Communication of relevant information;
 - Definition of Extension Period;
 - Subject to buy-ins
 - Receipts on hold;
 - ...

Asset Segregation

- Segregation of client assets and related account structures is a topic deemed of high relevance by policymakers at
 - international level (e.g. by IOSCO's Principles regarding the Custody of Collective Investment Schemes' Assets),
 - at EU level (e.g. AIFMD, EMIR, CSDR, UCITS V, MiFID/MiFIR) and
 - at national level.

- Yet such regulatory focus in Europe lacks a comprehensive and consistent approach in terms of the nature of obligations falling on account providers and in terms of the scope of financial instruments and entities covered by segregation requirements

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DLT and their possible applications in the banking sector



Key findings

87%

Blockchain and distributed ledger technology will have an impact on the market for securities services.

78%

This technology will be actively used within the next six years.

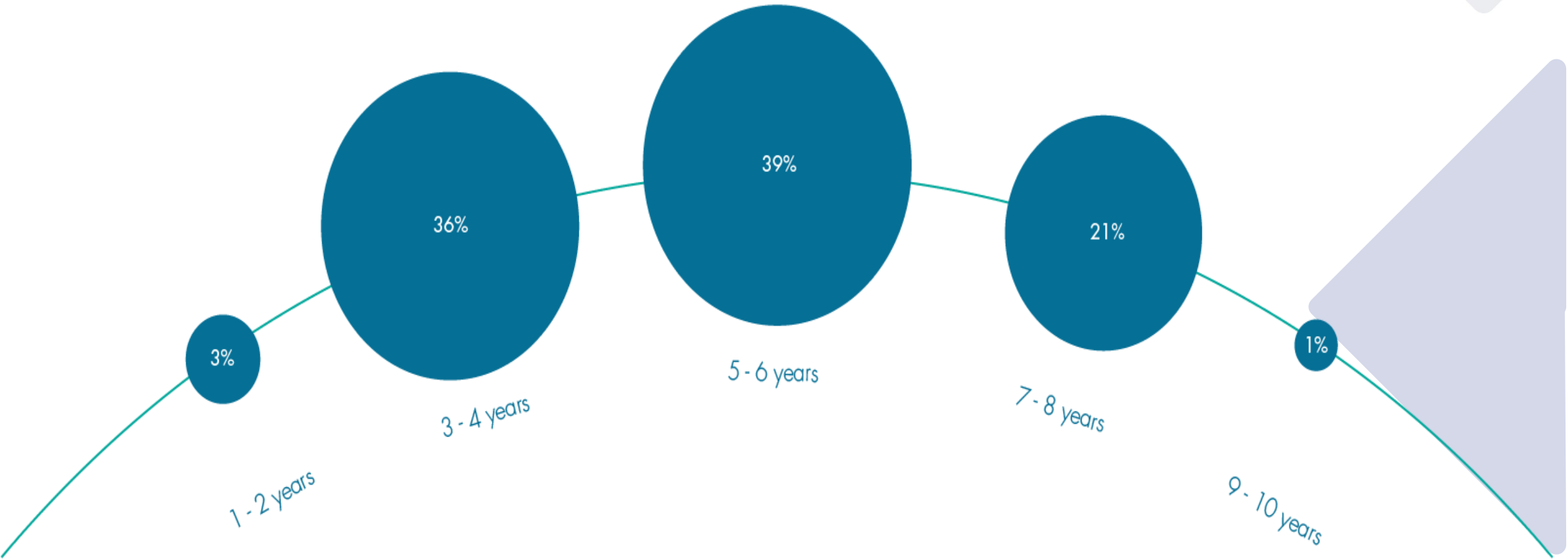
38%

Blockchain could reduce the cost of providing securities services by more than 20%.

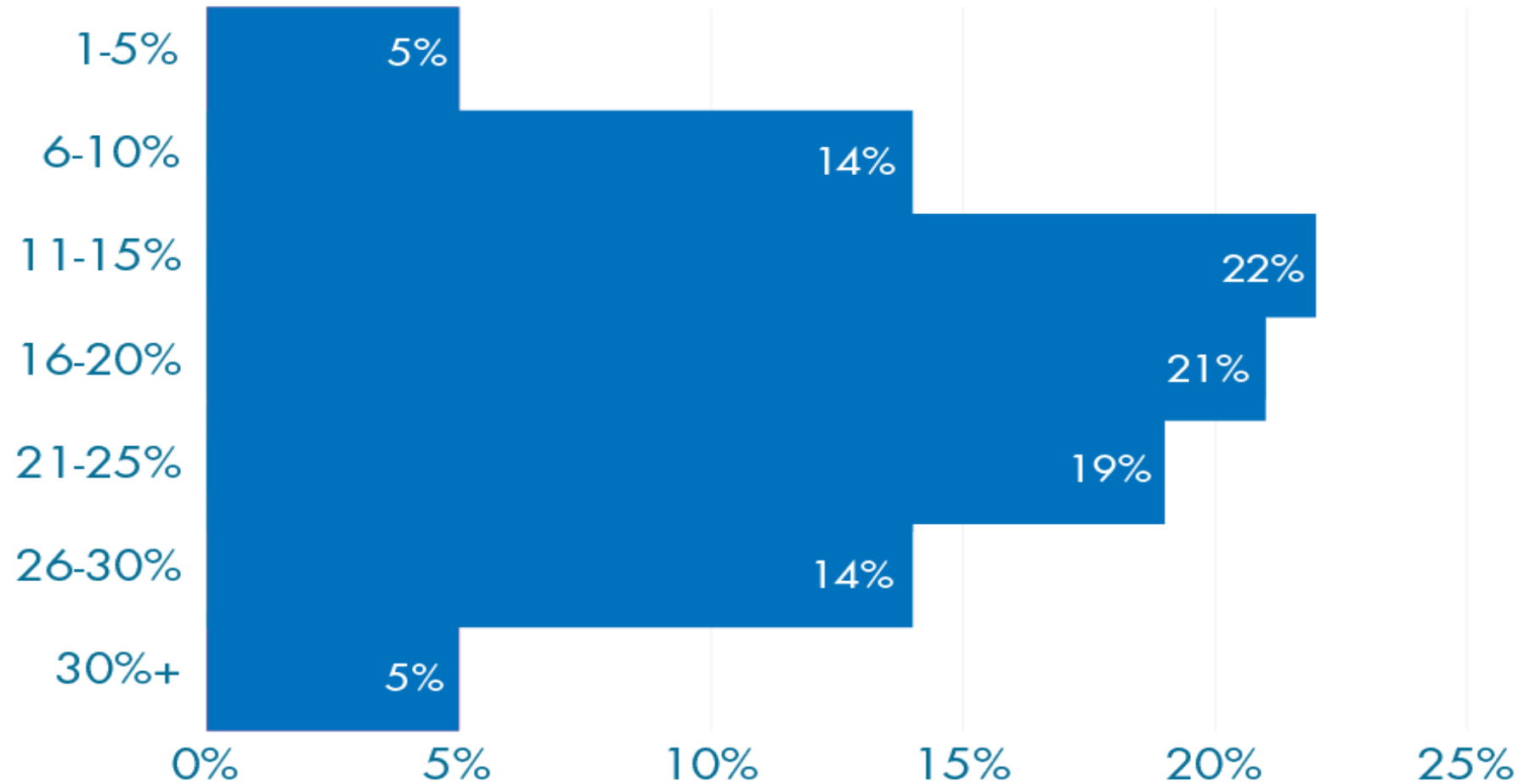
48%*

Systems failure (and subsequent market disruption) is the most important risk that blockchain technologies could reduce.

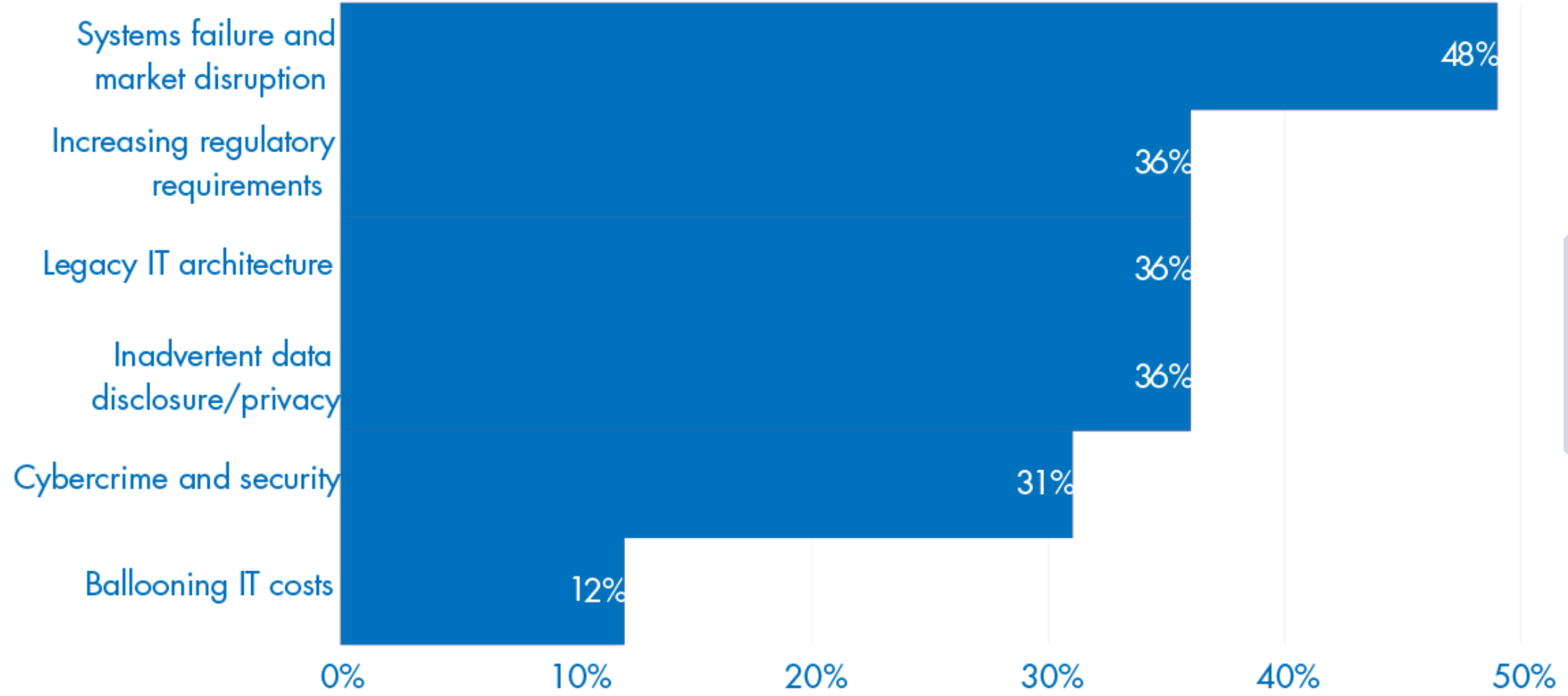
How many years do you think it will be before this technology will be actively used by market participants?



By what percentage do you think blockchain technologies could reduce the overall cost of providing securities services?

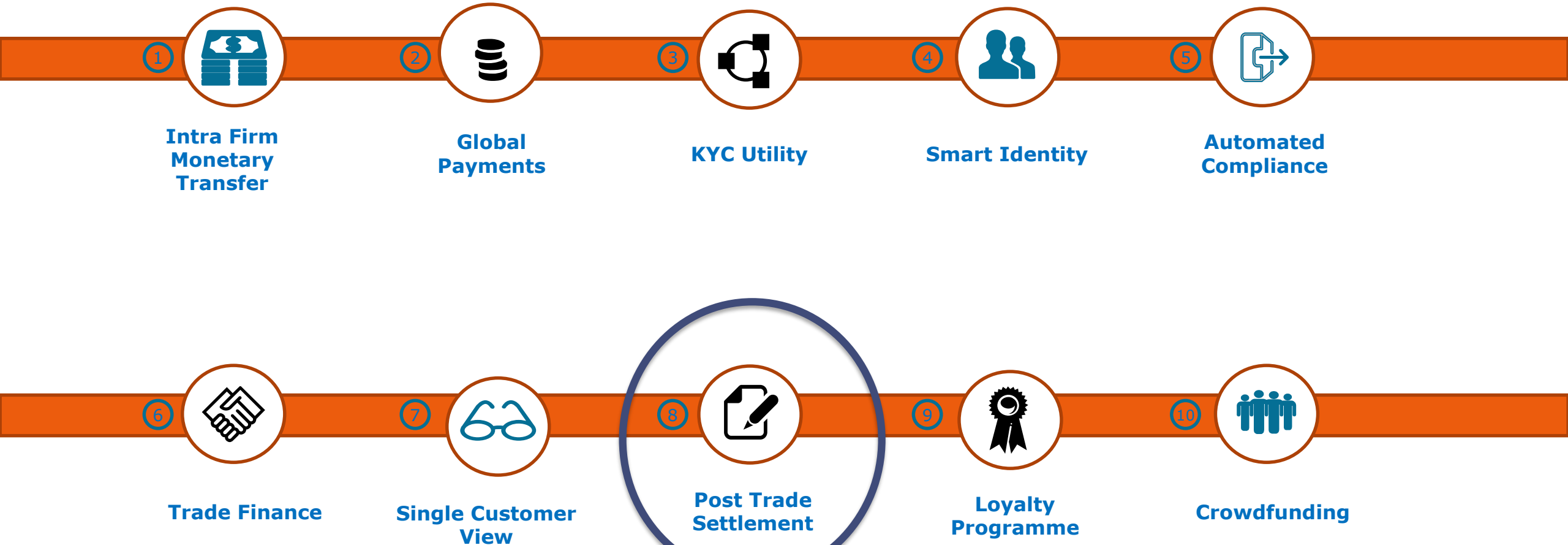


What IT risks do you think blockchain technologies would be most likely to help with?



TOP 10 BANKING USE CASES

Blockchain technology can be used in a broad range of areas. We have short listed a few:



ESMA Discussion Paper on DLT Applied to Securities Markets



- ESMA demonstrated proactive engagement on DLT, shifting its attention from virtual currencies to the actual technology underpinning them.
- Following a call for evidence in April 2015, ESMA issued a discussion paper in June 2016 providing a preliminary analysis on the possible impacts of DLT on securities markets, particularly focusing on post-trading activities.
- ESMA sought feedback from stakeholders on the use of DLT for securities markets, its potential benefits as well as the risks and challenges it poses to assess whether or not a tailored regulatory response to DLT use is needed.
- EBF responded to the consultation in September 2016 by providing a comprehensive response.


At EU level: Commission Task Force on Financial Technology (TFFT)

On November 14, the European Commission formally announced the setting up of a Fintech Task Force, to shape its response to the effects of digital innovation in the banking sector.

The TFFT will seek to engage with outside experts and stakeholders with the objective of formulating tailored policy-oriented recommendations and propose concrete measures in the course of 2017.

Whilst FTTF composition/structure is still unclear...

There could be 6 area of focus:

- Regulatory and innovation
- **DLT** 
- Cybersecurity and operational risks
- Data policy and data flows
- Platform and ultimate services
- Quantitative economic analysis

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The “Rise” of the Post-Trade Services

Previously seen as an **unfashionable** world, the market for post-trade services has come of age and is now viewed as an opportunity

Regulation has made the use of post-trade service providers a **necessity** for many market participants that would never have considered using them in the past.

Regulations that address weaknesses in global market infrastructure and counterparty risk mitigation have led to new client requirements and are **bolstering demand** for post-trade services

What's next?

Further harmonisation

- Widening the scope of the Giovannini Barriers (inclusion of collateral management, trade reporting, derivatives risk profiling, etc). Many of them have been dismantled. What's left?
- A lot has been done on the settlement side, while not much on the asset servicing and WHT processing

Further regulatory convergence

- Recovery & Resolution Plans for FMI (CPMI-IOSCO Principles)
- Securities law
- Legal certainty / conflict of laws

Call for evidence

Post-trading industry identified several issues. How will these be handled? Monitoring of implementation programs?
"Better Regulation"?

Disruptive technology

- Application of the distributed ledger technology and related innovations to the Post-Trading Services area

Brexit and Post-Trade implications



- 43 years after joining the EU, the UK's capital markets are deeply interconnected with those of the 27 other member states → The decision for the UK to leave the EU will have a **substantial impact on the financial services** industry, as on every other aspect of British society.
- Six months after UK's Referendum of 23 June, the UK government has provided very little in the way of government policy.
- Moreover, no matter what the UK government proposals will be when Article 50 is invoked to set the separation process in motion, none of us has any firm idea of what the 27 EU member-states will put on the table as counter-proposals...

... Nor does any one of us know what the outcome of the negotiations will be...

...Or the timetable.

Brexit and Post-Trade implications



- How this will affect post-trade infrastructures and custody providers working or based in the UK? With such massive uncertainty, speculation is rife, but also futile.
- Will the regulatory regime edge away from the EU model as the UK strikes out on its own, with an even more distinctive capital markets identity?
- Will negotiations between the UK and its neighbours take the direction of “relative independence” or “intimate collaboration?”
- What about the passporting? Transaction regime?
- In addition to the EU-UK negotiations there is an overarching global policy reforms framework (G20, BCBS, IOSCO, etc)

UK-based central securities depositories, clearing houses, trade repositories, banks providing custody services are not going to get the answers to these questions anytime soon...



Thank you for your attention!

Daniele De Gennaro

Policy Adviser – Financial Markets and Business Finance

+ 32 2 508 37 67

+32 486 49 02 97

d.degennaro@ebf.eu

@DeGennaroD



European Banking Federation
Avenue des Arts 56, B-1000
Brussels

European Transparency Register ID
number: 4722660838-23.

+32 (0)2 508 37 11 |
info@ebf-fbe.eu | @EBF_FBE

www.ebf-fbe.eu

