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Welcoming Remarks

Chris Warrior
Head of Management Liability
Hiscox (UK)
2014 Conference Chair

Keynote Address

Dr. Kurt Karl
Chief Economist, Managing Director and Head of Economic Research & Consulting,
Swiss Re (Switzerland)

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Global economic and casualty insurance outlook

Dr Kurt Karl
Chief Economist, Swiss Re
Advisen Euro D&O Conference
London, November 2014

Today's agenda

- Global economic outlook
- Interest rate outlook
- Major economic risks
- Liability claims trends: emerging risks
- Conclusions

Global economic outlook

Global macro outlook: moderate growth, mild inflation and low – but rising – interest rates

Global growth will continue to gradually accelerate ✓

- The US expansion is supported by consumer spending, business investment and housing construction.
- Europe is growing, but just barely, because tight fiscal and credit conditions, as well as concerns about health of periphery's financial sector, are major constraints

Inflation risks are well contained for now ✓

- Central banks have the tools to control inflation, but they could potentially be constrained by the political need to reduce deficits.
- Deflation is a greater risk, particularly in Europe

Easy monetary conditions will continue through this year

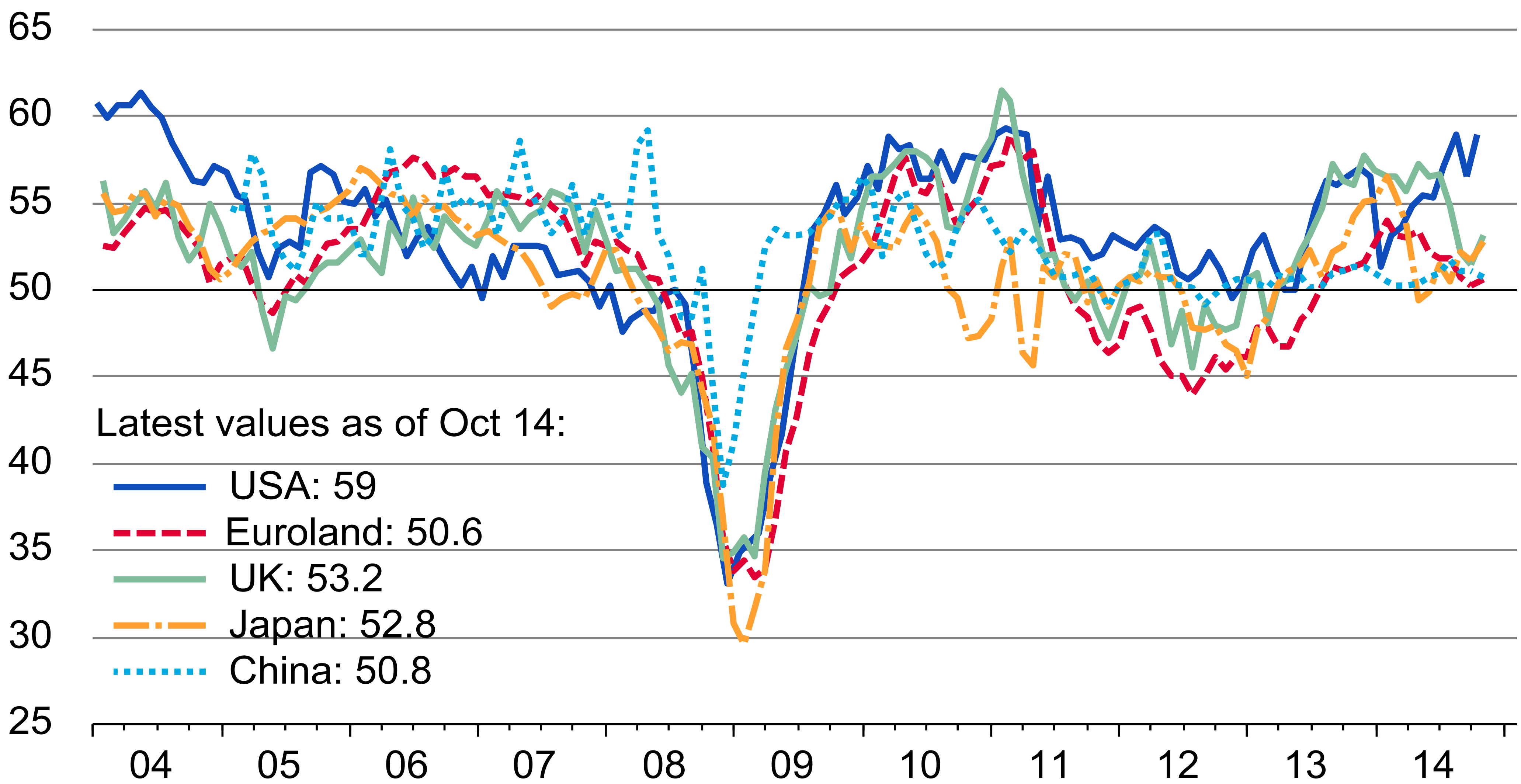
- This is likely to change over to monetary tightening next year in US and UK
- Yields on long-term government bonds will rise later this year and next.

The US and UK will likely start raising interest rates in 2015

- ECB will likely be later at raising rates – early 2017
- Investment returns will recover with a lag.

Manufacturing PMIs remain above the 50-threshold globally, but point to only modest growth in the Euro area

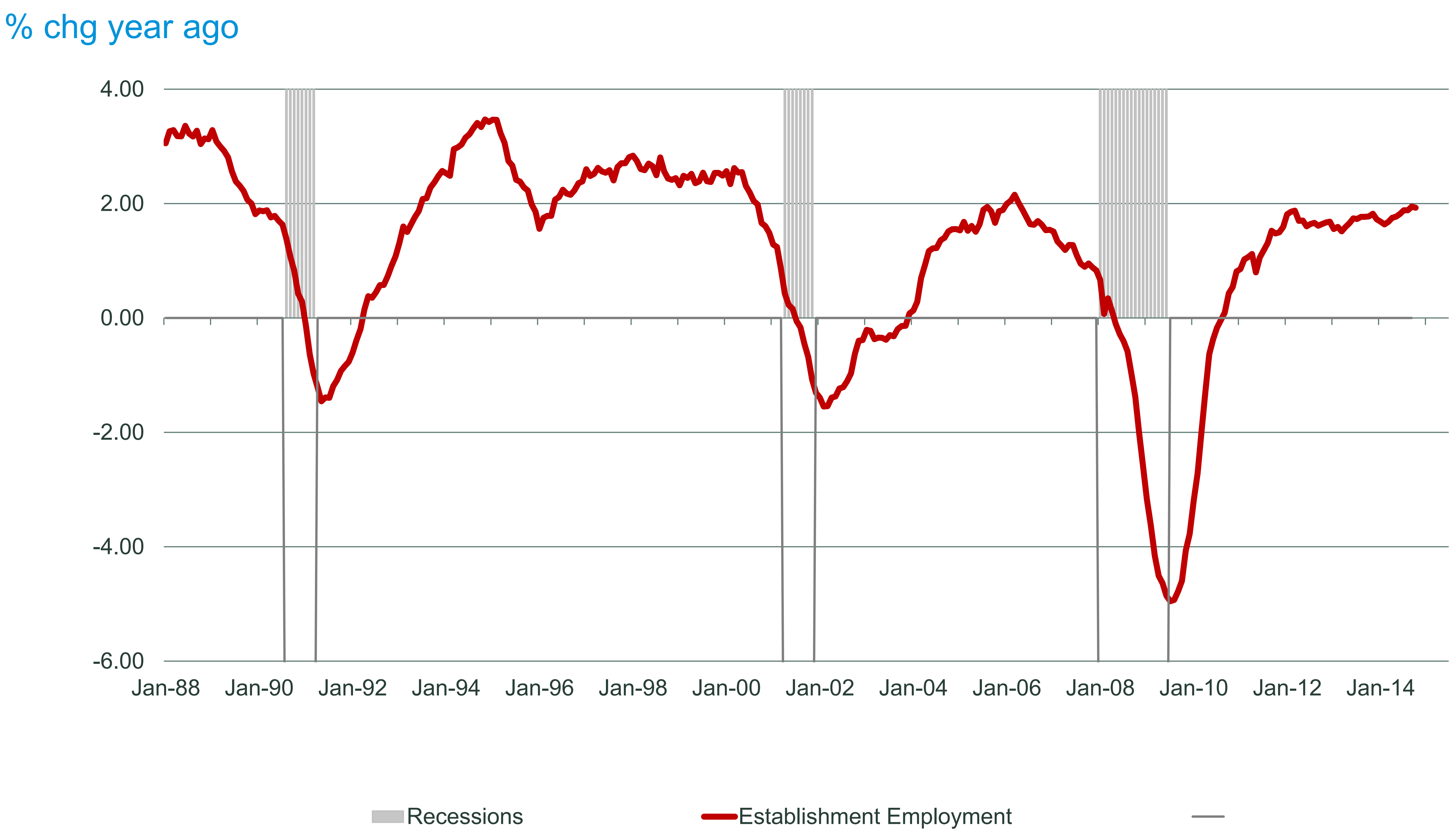
Purchasing Managers Indices, monthly data



PMIs are survey based indicators. Values above 50 indicate economic expansion, values below 50 contraction

Sources: Datastream, Bloomberg

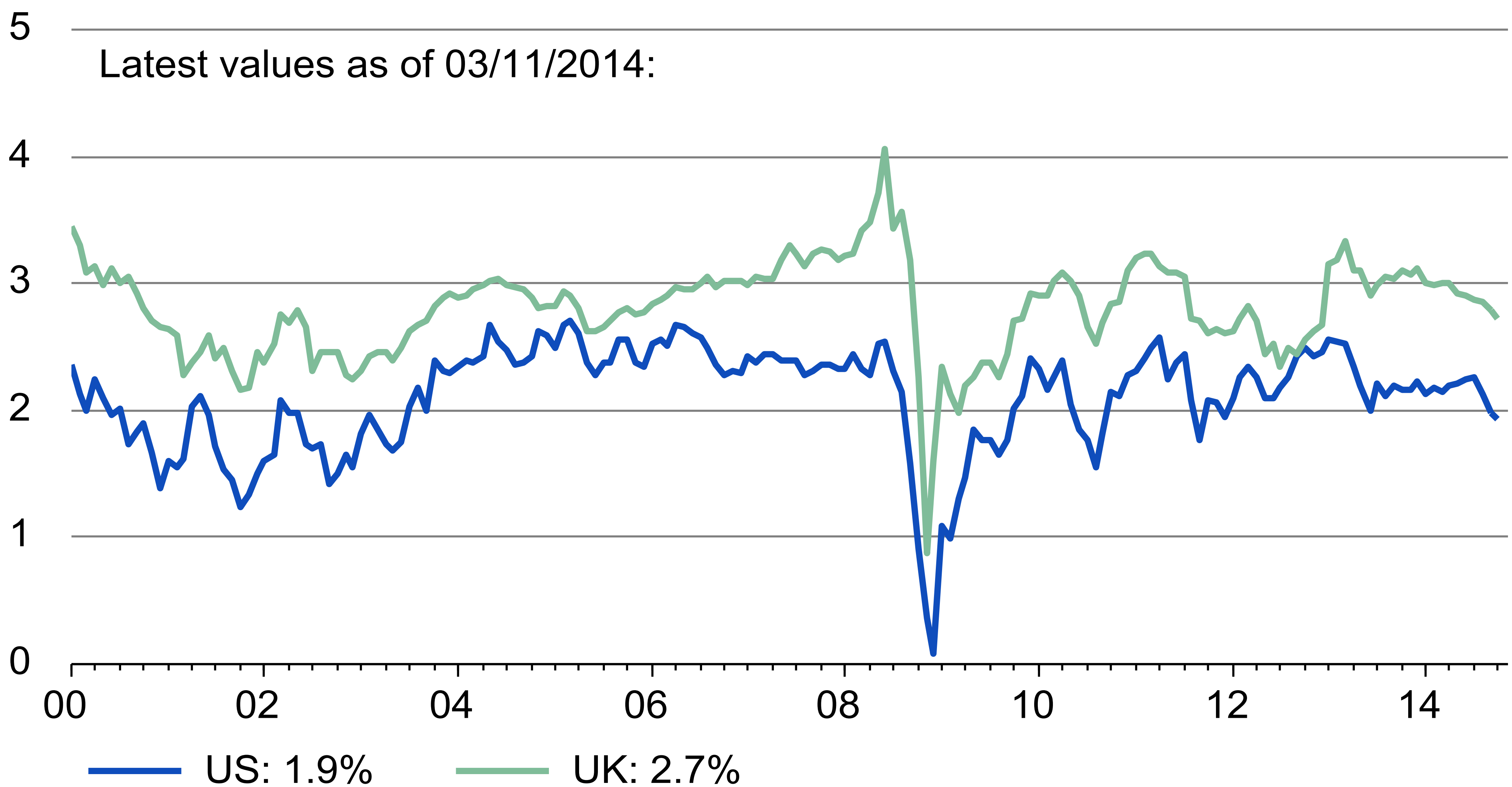
US employment growth remains solid



Source: Bureau of Labor Statistics, Federal Reserve, NBER, Bureau of Economic Analysis

Long-term inflation expectations indicate neither high inflation nor deflation for US and UK

Break-even Inflation, 10yr Bonds, weekly data



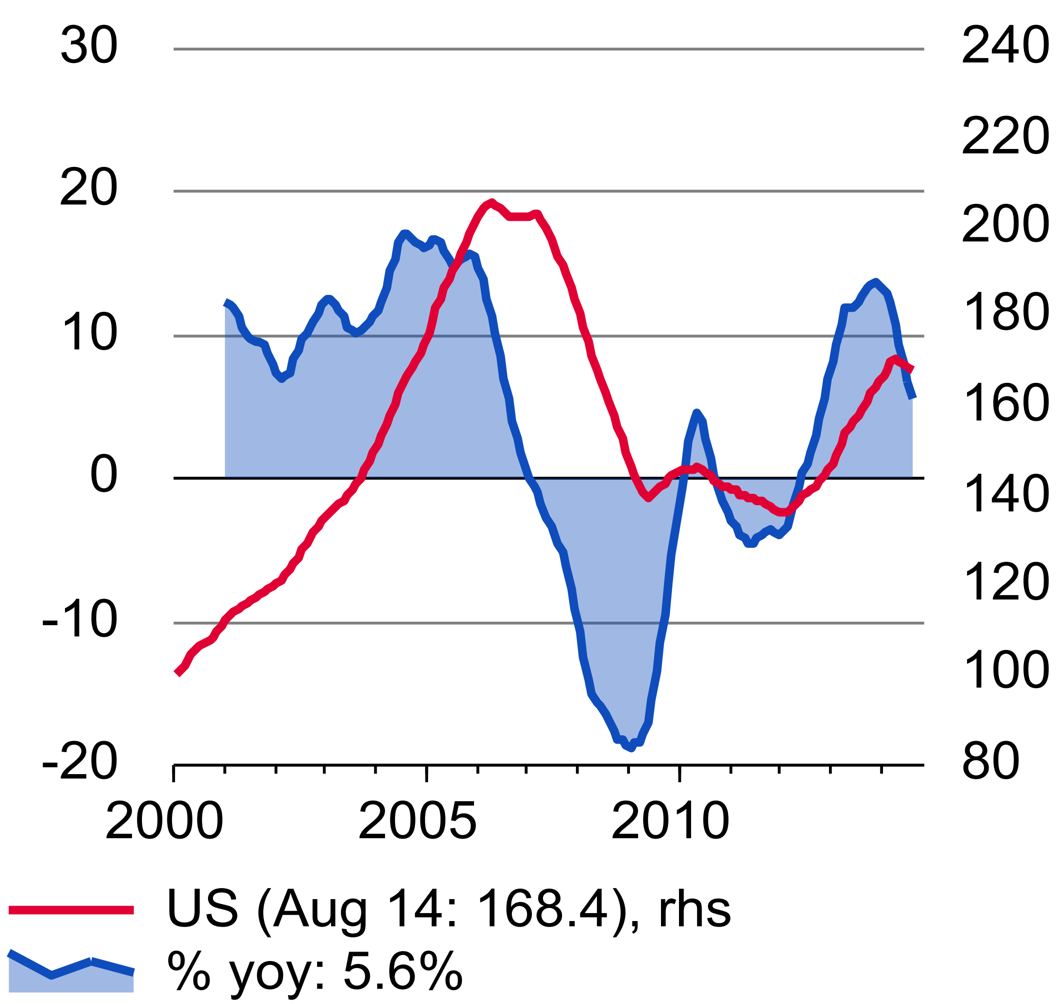
Break-even inflation is calculated as the difference between the nominal bond yield and the yield of an inflation-protected bond.

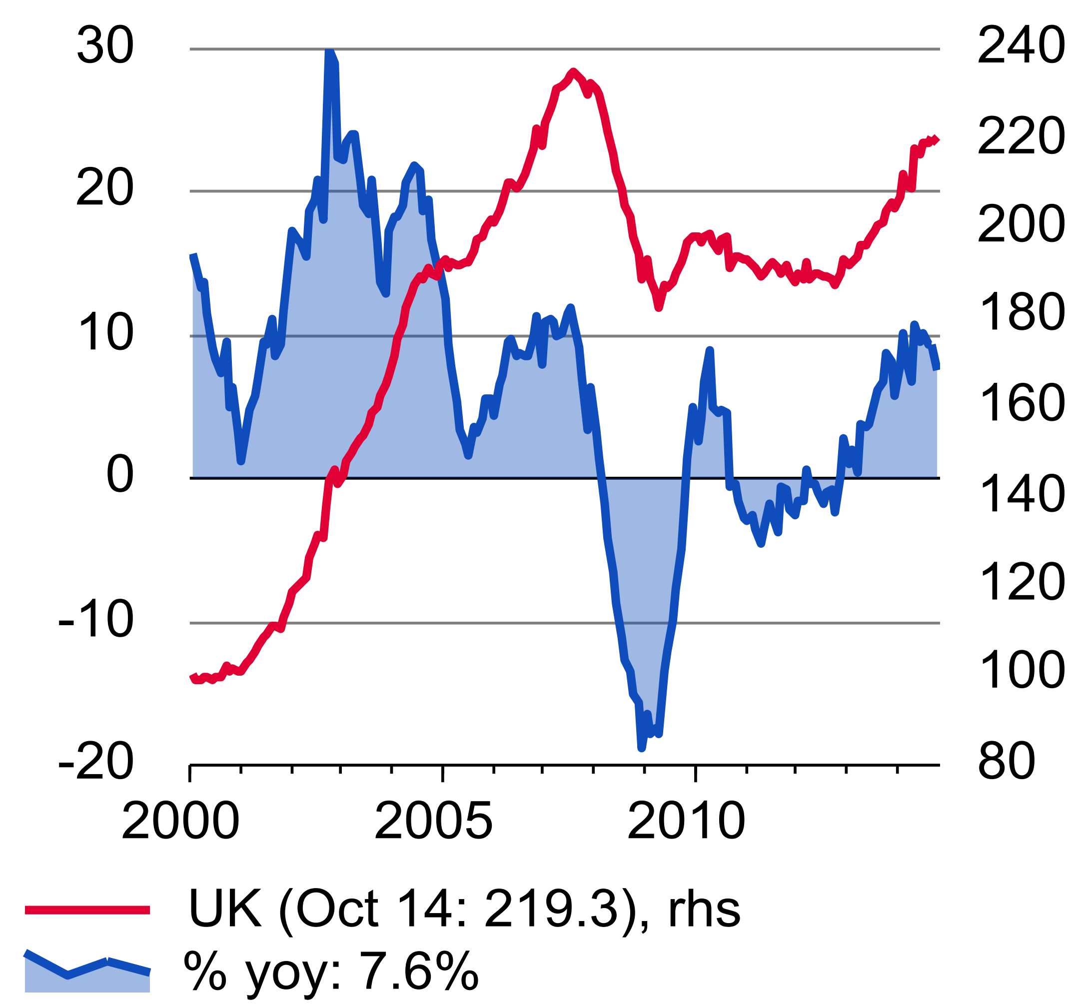
Note:
UK inflation-linked bonds refer to retail price inflation (RPI), which has historically been about 70 basis points higher than CPI inflation

Source: Bloomberg

US and UK housing prices have increased substantially since the end of the crisis

House prices, index (right axis) and %-change yoy (left axis), monthly data

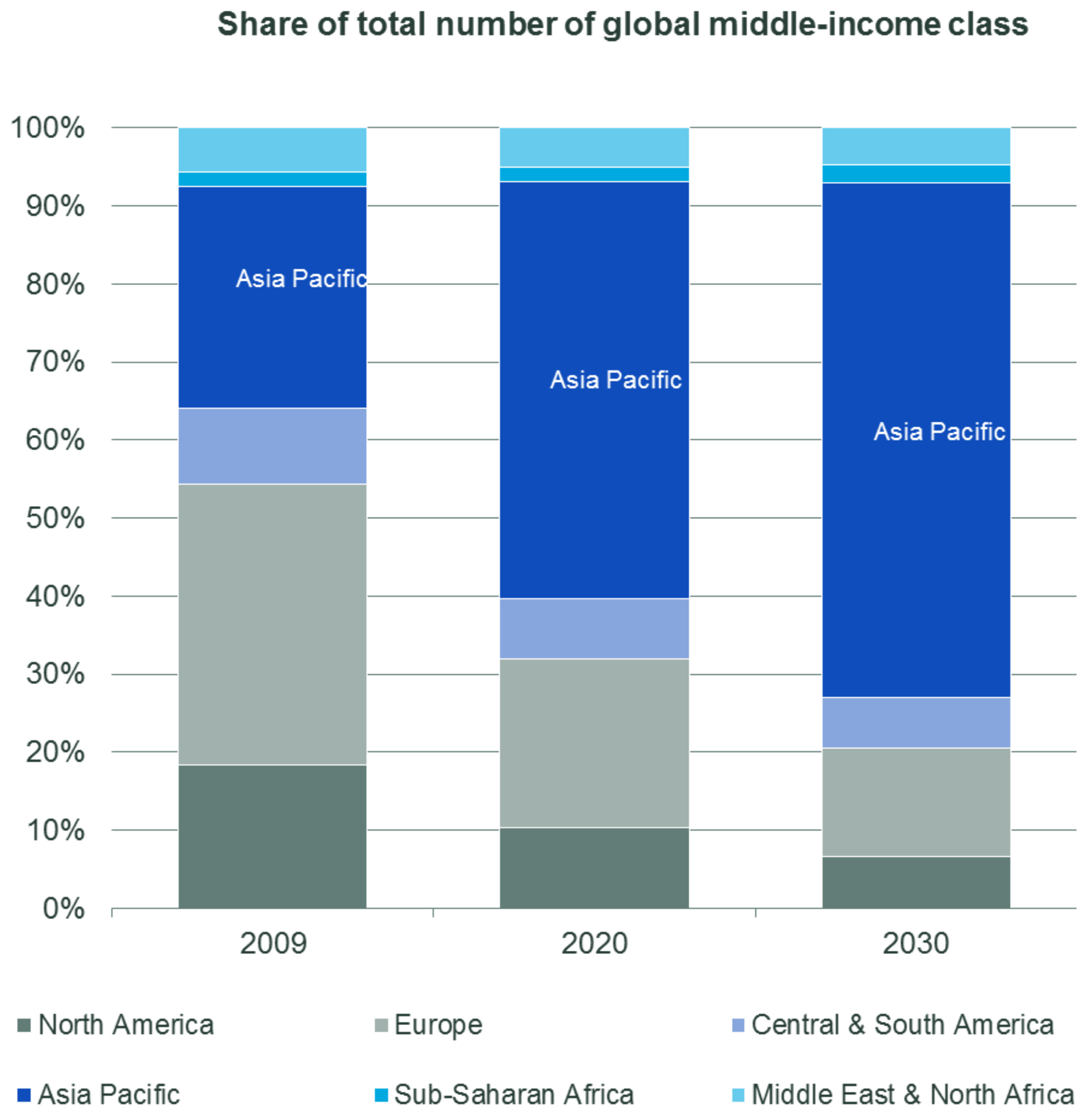


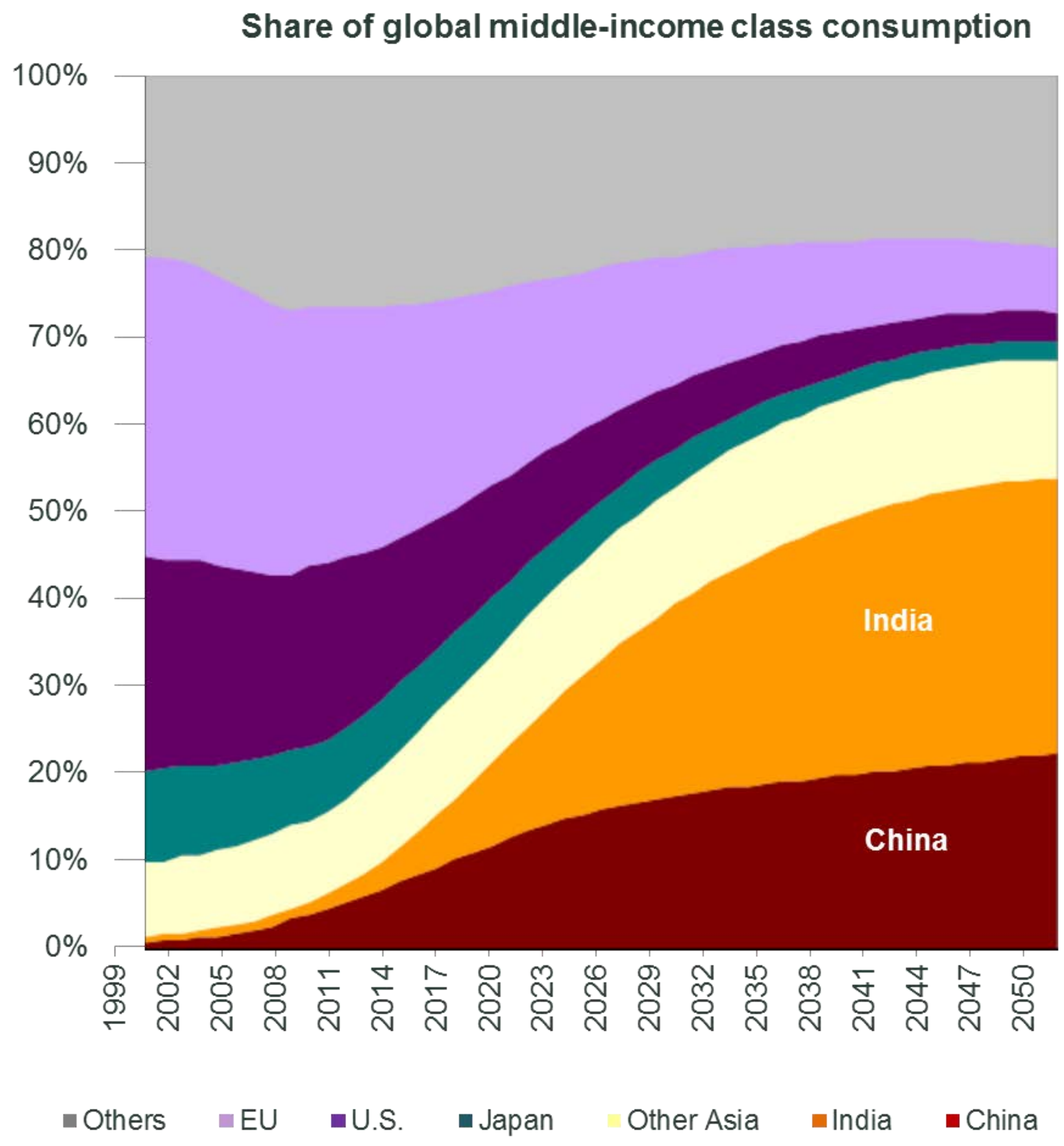


For the US the seasonally adjusted S&P/Case-Shiller 20-city composite index is shown. For the UK we show the Halifax all houses price index.

Source: Datastream

The rise of Asia's middle-income class will be the fuel for growth in Asia





Note: (1) Middle-income class: households with daily expenditures between USD10 and USD100 per person in 2005 PPP US dollars. (2) Consumption is the national income accounts measure of total household consumption expenditure in 2005 PPP US dollars.
Source: Swiss Re Economic Research & Consulting, OECD

Interest rate outlook

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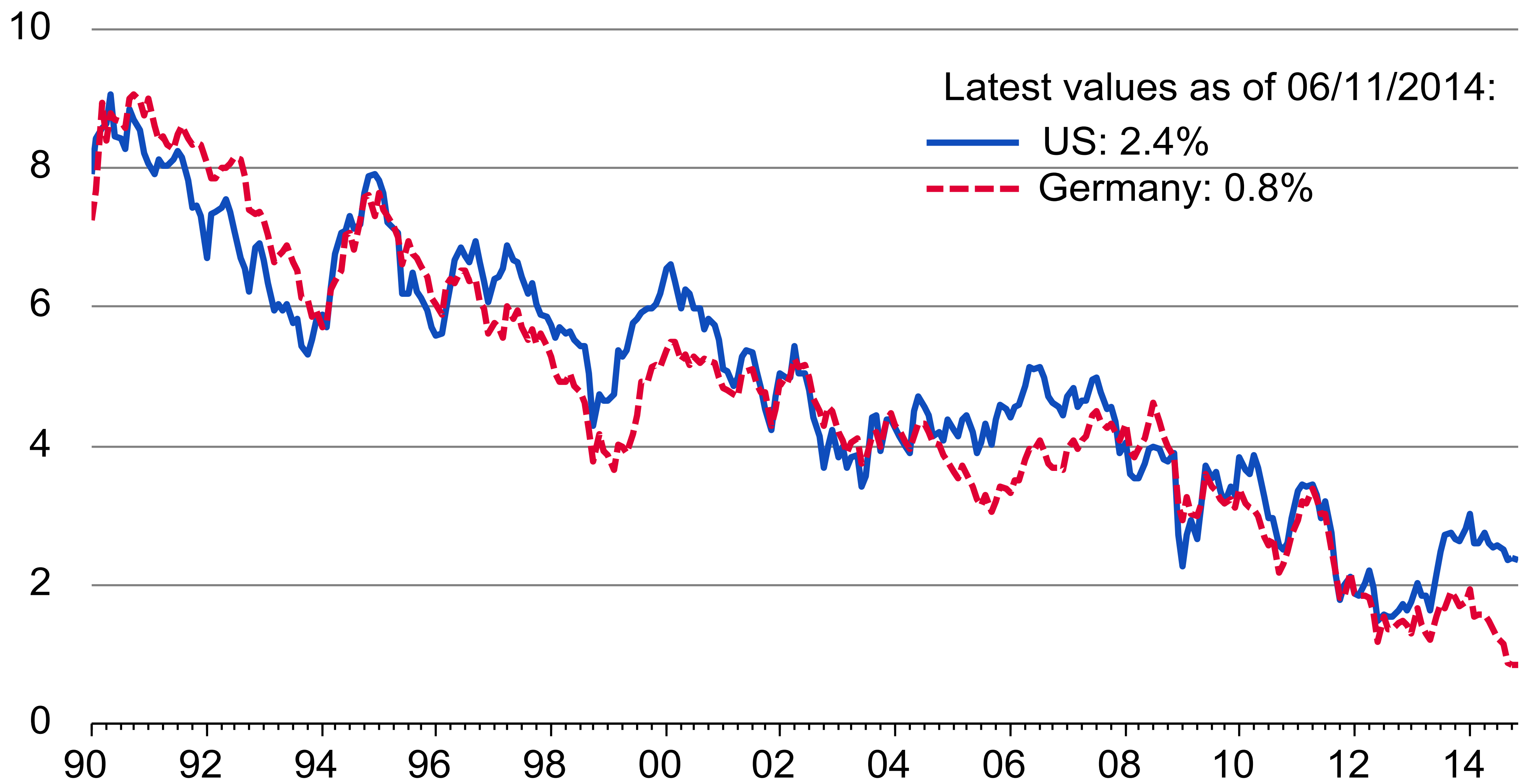
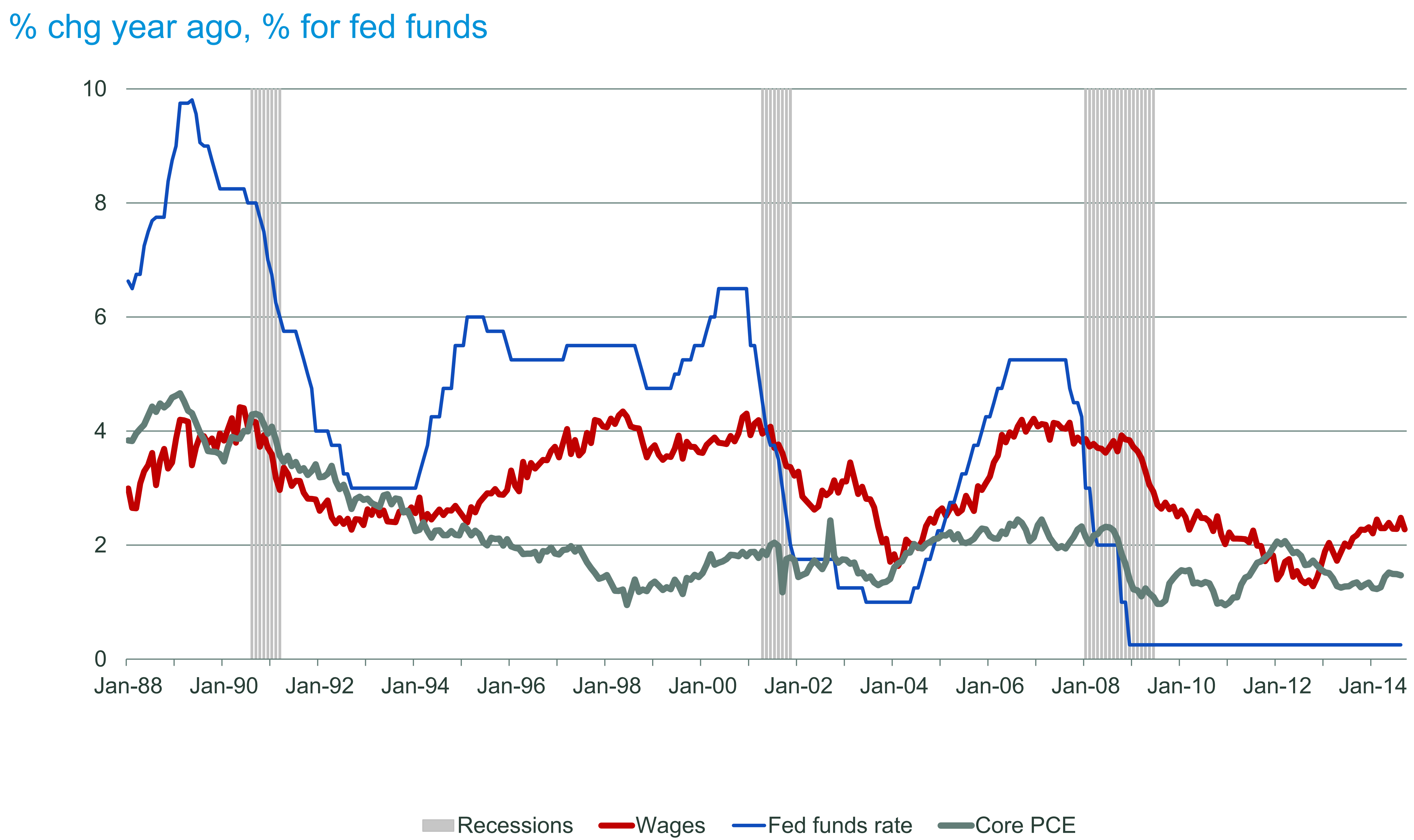
Yields have recently risen in US on end of QE and fallen in Germany due to a potential start of QE

10yr government bond yields, monthly data



Source: Datastream

Wage gains, Core PCE and Fed funds rate: Wage and core PCE inflation are rising slowly



Source: Bureau of Labor Statistics, Federal Reserve, NBER, Bureau of Economic Analysis

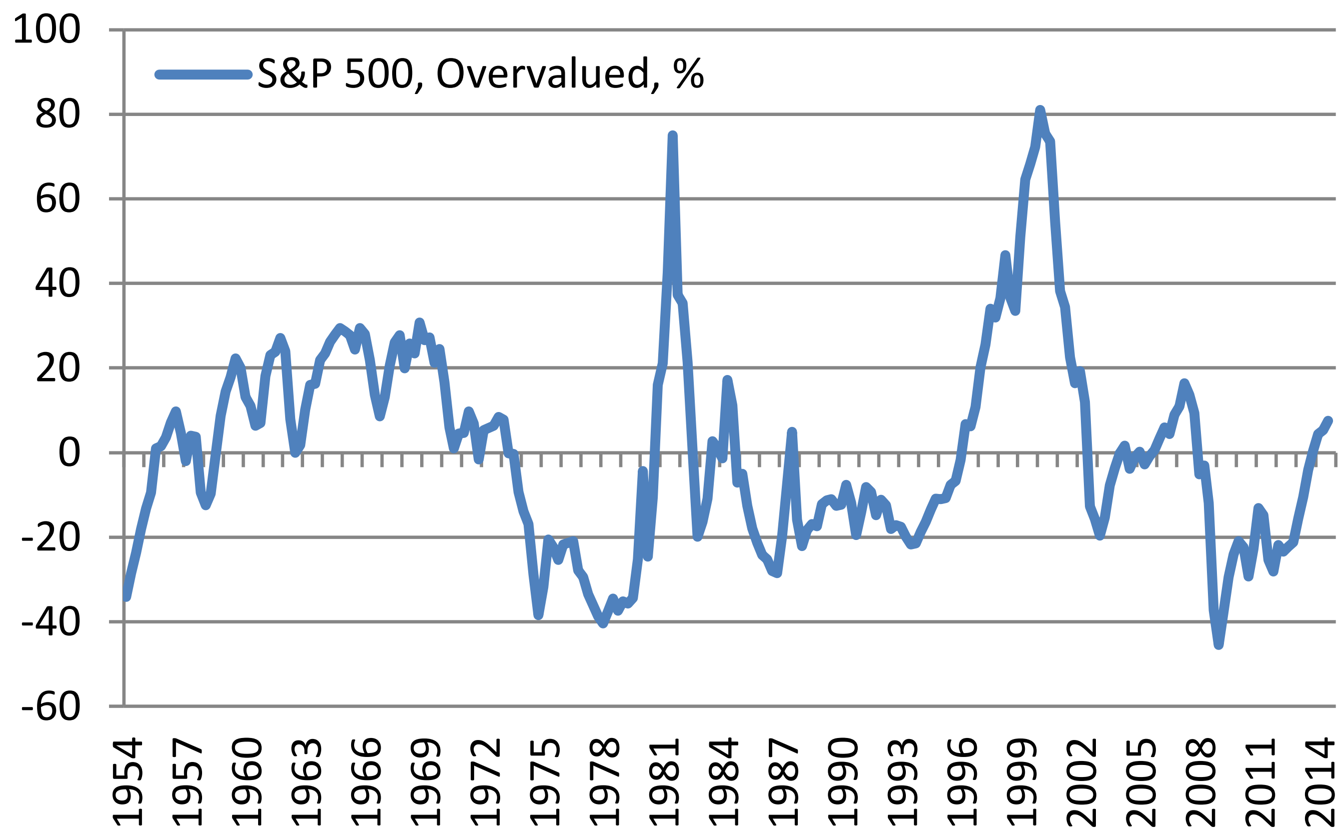
Diverging global monetary policies

Central bank interest rates	Easy monetary conditions will continue this year. Expect tightening by the US Fed and BoE mid next year. The ECB will be on hold throughout 2015 and 2016 and government bond purchases (QE) are increasingly likely. US fed funds rate to 1.25% by end-2015. First hike in June?
Government bond yields	US government bond yields will increase as growth accelerates and in anticipation of Fed rate hikes. European yields should remain relatively low. US and UK 10-yr government bond yields to 3.5% by end-2015.
Inflation	Inflation risks are currently well contained. Central banks have the tools to control inflation, but they could potentially be constrained by the political need to reduce deficits (eg Japan). In the Eurozone, deflation risks are increasing.

Major economic risks

Economic risks

Are we facing an equity bubble? – Probably at least two years away



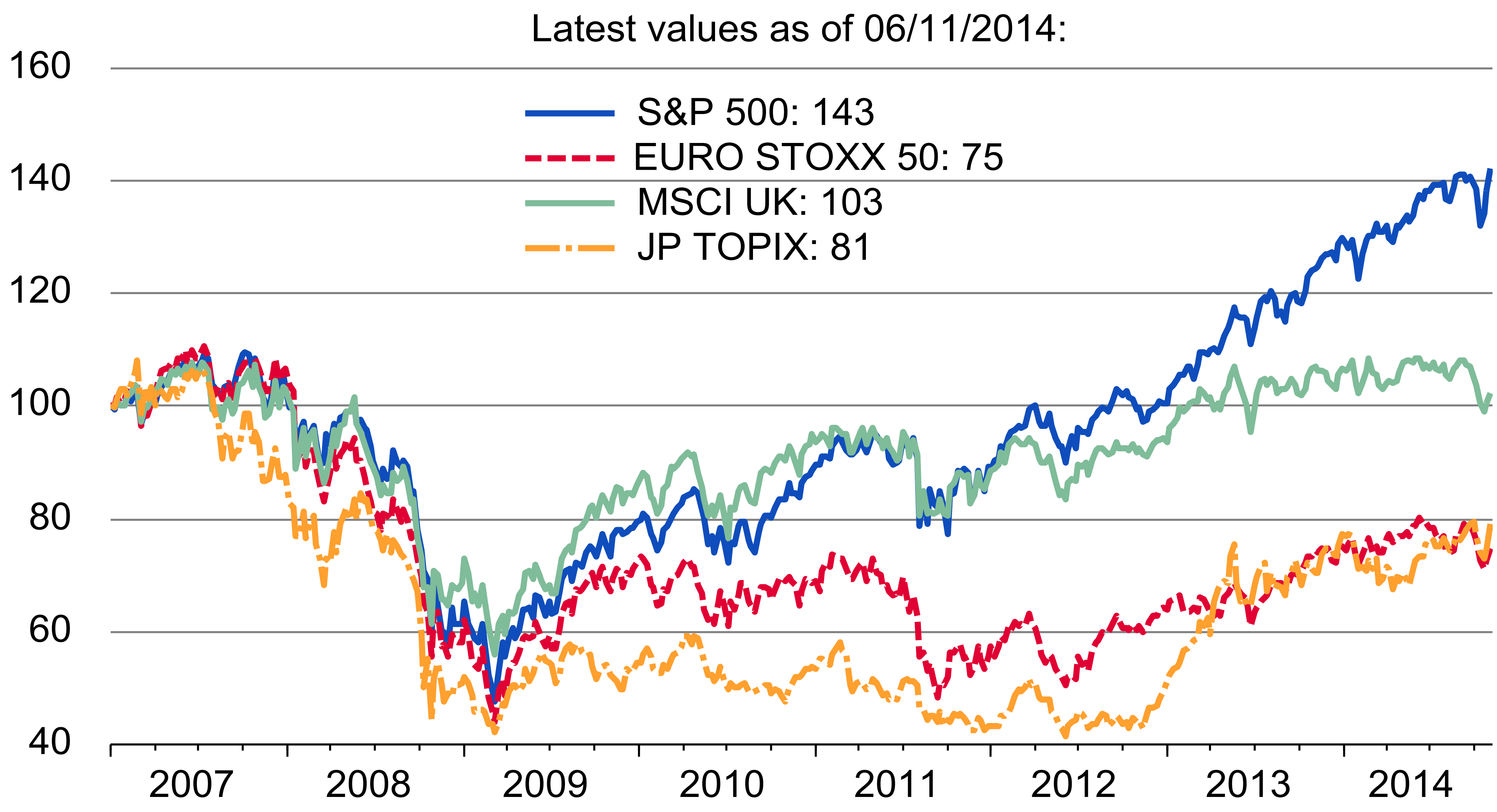
Source: Swiss Re Economic Research & Consulting
Note: The model indicates the expected level of S&P 500, given nominal GDP and interest rates

Risk of an asset bubble bursting

- Extremely loose monetary policy in advanced economy causes asset bubbles, which then burst.
- The US equity markets are not particularly overvalued, compared to history.
- Graph shows where the S&P 500 would be given the current level of nominal GDP and interest rates. It was 7.5% overvalued in Q3 2015.
- Typically, periods of over- and under-valuation are prolonged. For example, the overvaluation of the 1990s lasted 7 years, while the recent undervaluation lasted 6.5 years.
- Probability: 5% in short-term, but rising over time

Equity markets have been supported by expansionary monetary policies

Equity indices (Jan 07 = 100), weekly data



Source: Datastream

Eurozone risk: the economic recovery remains weak and fragile

Economic activity

- The Eurozone emerged from recession in Q2 2013 but growth has been fitful
- The recovery remains uneven: While growth is accelerating in Spain, Italy remains in recession, France continues to stagnate and Germany has recently lost momentum.
- Ongoing deleveraging (private and public), tight credit conditions in the periphery and structural hurdles are preventing a robust recovery

Markets

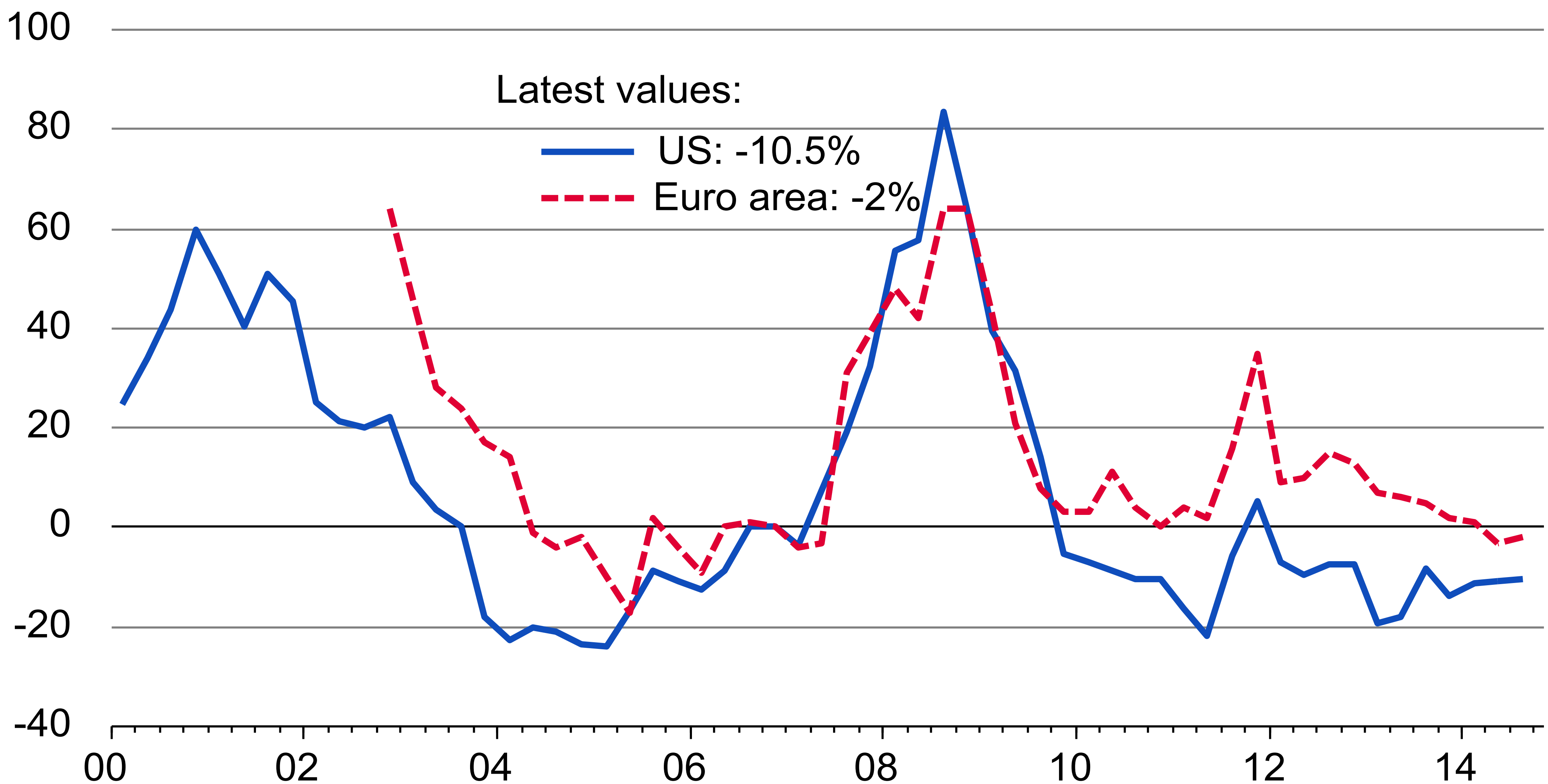
- DJ Eurostoxx is up more than 50% since early June 2012
- Peripheral sovereign yield spreads have narrowed significantly since mid-2012, supported by ECB monetary easing

Risks

- If the economic recovery falters, the risk of prolonged deflation will become significant
- Reform fatigue (possibly encouraged by further monetary easing)
- The ECB's Asset Quality Review was encouraging – no major surprised and only EUR 6 bn extra capital needed
- Deflation in the periphery could depress private demand and increase debt burdens
- Probability of prolonged weak growth and deflation: 20%

Banks' lending conditions continue to ease in the US and are now easing in Euro area also

FED Loan & ECB bank lending survey, net % of domestic respondents tightening standards

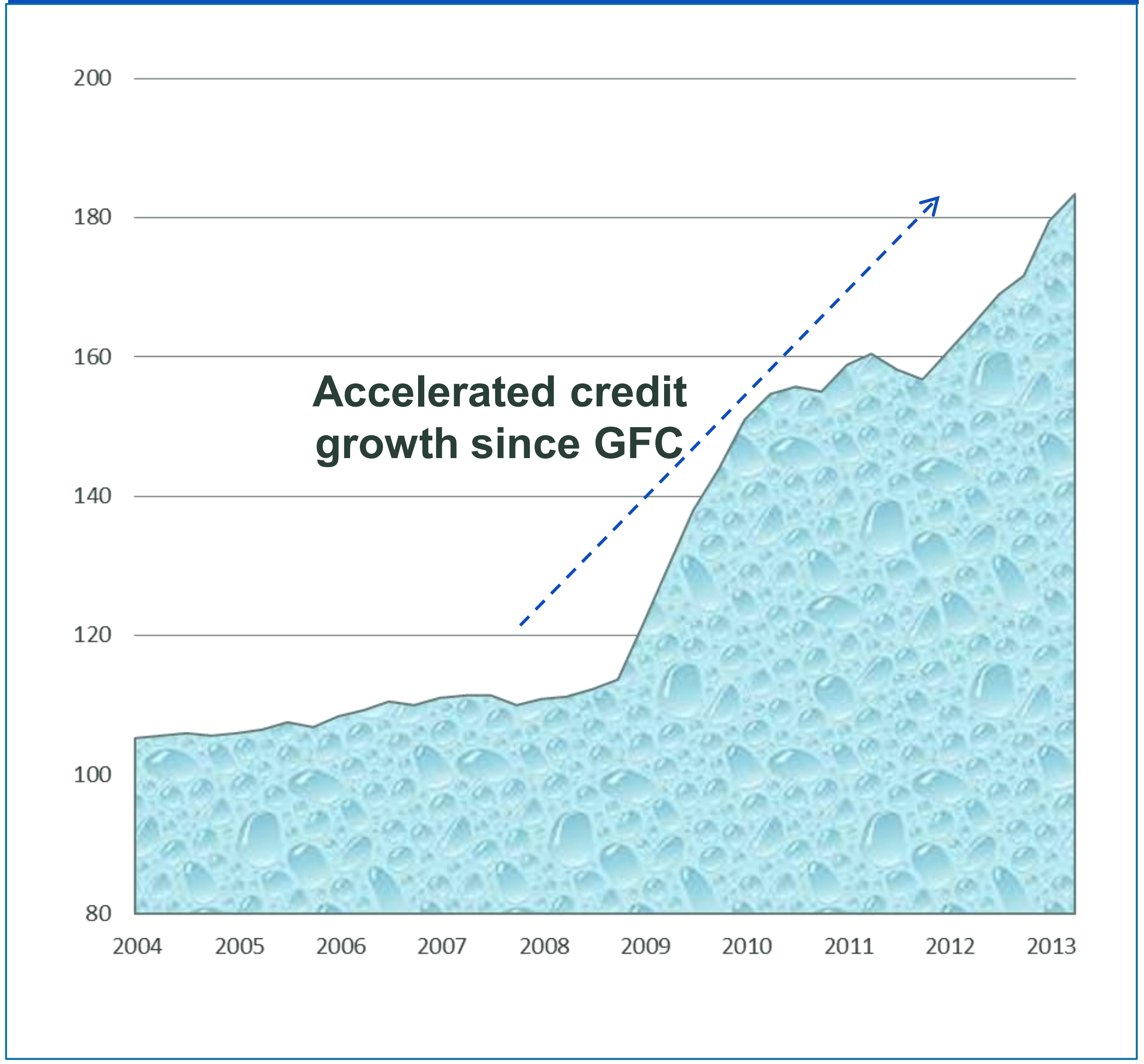


(Positive values indicate a tightening, negative values a loosening of banks' lending standards.
The US series refers to commercial & industrial loans, while the Euro area data relates to commercial lending.)

Source: Datastream

China: controlling credit risk and reining in debts are at the top of policymakers' agendas

Stock of broad credits as % of China's GDP



Note: Broad credits comprises bank loans, entrusted loans, trust loans, acceptance bills and corporate bonds; GFC = Global Financial Crisis
Source: IMF, Swiss Re Economic Research & Consulting

- Credit has been growing rapidly in China since 2009 in particular through shadow banking activities (eg trusted loans and entrusted loans)
- Credit expansion has slowed tangibly since early 2014, as a result of more determined measures by policymakers to reduce financial market risk
- The share of bank loan in total social Financing (TSF) bounced back to 59.3% in May 2014, from a low of 54.8% in end-2013. Trusted loan shrank to 4% of total TSF, from 10.7% in end-2013.
- Risk of Chinese hard-landing is15% and could be triggered by:
  – Sharp drop in construction activity due to aggressive policy tightening
  – Disorderly onshore defaults raising concerns about the ability of corporations and local provincial government to refinance their maturing debts
  – Collapse in external demand

Liability claims trends: emerging risks

based on sigma 4/2014

Swiss Re

Summary

- Profitability in liability insurance has been higher than expected in recent years, with weak economic growth helping to maintain a benign claims environment.
- New risks, social changes and economic activity will increase claims severity, boosting demand for liability insurance.
- Premium growth will come mostly from the large, mature liability markets.
- Demand for liability insurance will rise as claims growth increases.
- Capital strength and underwriting expertise are key to protect against commoditization of casualty line business.
- Insurers use product and process innovation and quantitative analysis to improve underwriting quality and better understand new risks.
- New risks include: cyber risk, hydrofracking and the potential for risk accumulation stemming from a variety of risks – nanotechnology, property risks with casualty claims, the food processing chain, etc.

How big are the markets?

		Premiums & GDP (USD billions)			Percentage Shares	
Rank		Liability	Total Non-Life	GDP	Liability/ Total Non-Life	Liability/ GDP
1	US	84.0	531.2	16'802	15.8%	0.50%
2	UK	9.9	99.2	2'521	10.0%	0.39%
3	Germany	7.8	90.4	3'713	8.7%	0.21%
4	France	6.8	83.1	2'750	8.2%	0.25%
5	Japan	6.0	81.0	4'964	7.3%	0.12%
6	Canada	5.2	50.5	1'823	10.3%	0.29%
7	Italy	5.0	47.6	2'073	10.6%	0.24%
8	Australia	4.8	32.7	1'506	14.8%	0.32%
9	China	3.5	105.5	9'345	3.3%	0.04%
10	Spain	2.2	31.0	1'361	7.0%	0.16%
	Top 10	135	1'150	46'900	11.8%	0.29%
	World	**160**	**1'550**	**61'700**	**10.3%**	**0.26%**

With premium income of USD 160 billion in 2013, liability insurance accounted for 10% of global non-life premiums, or 23% of global commercial lines premiums.

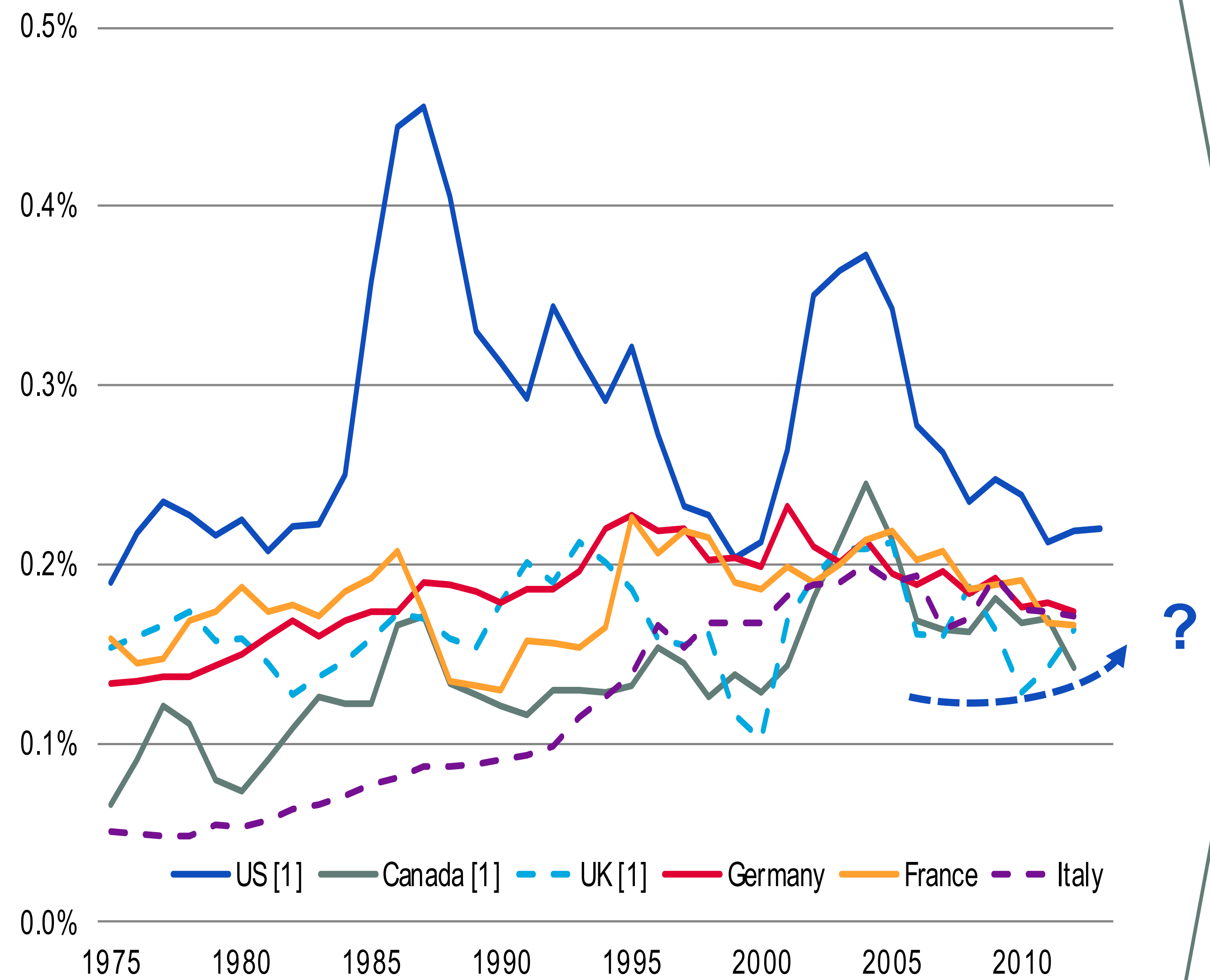
Claims growth -the economic drivers

Long-run growth trends in liability claims prior to the financial crisis: 1975 - 2007

- Liability claims have **grown faster than the general economy** (measured by GDP).
  - Prior to the financial crisis (1975-2007), general liability claims rose roughly 1% for every 1% rise in GDP in the UK and France and 1.4% in Canada and Italy. The US and Germany ranked in between.
  - This was, of course, also substantially faster than CPI inflation, for example, in US, general liability claims rose 1.9% for every 1% rise in CPI.
- Multi-year trends in claims growth are **correlated with**
  - **Medical expenditure growth (highly)** in the US.
  - **Consumer price and wage inflation** in European countries.

Liability claims are expected to accelerate

This will erode reserves and boost demand

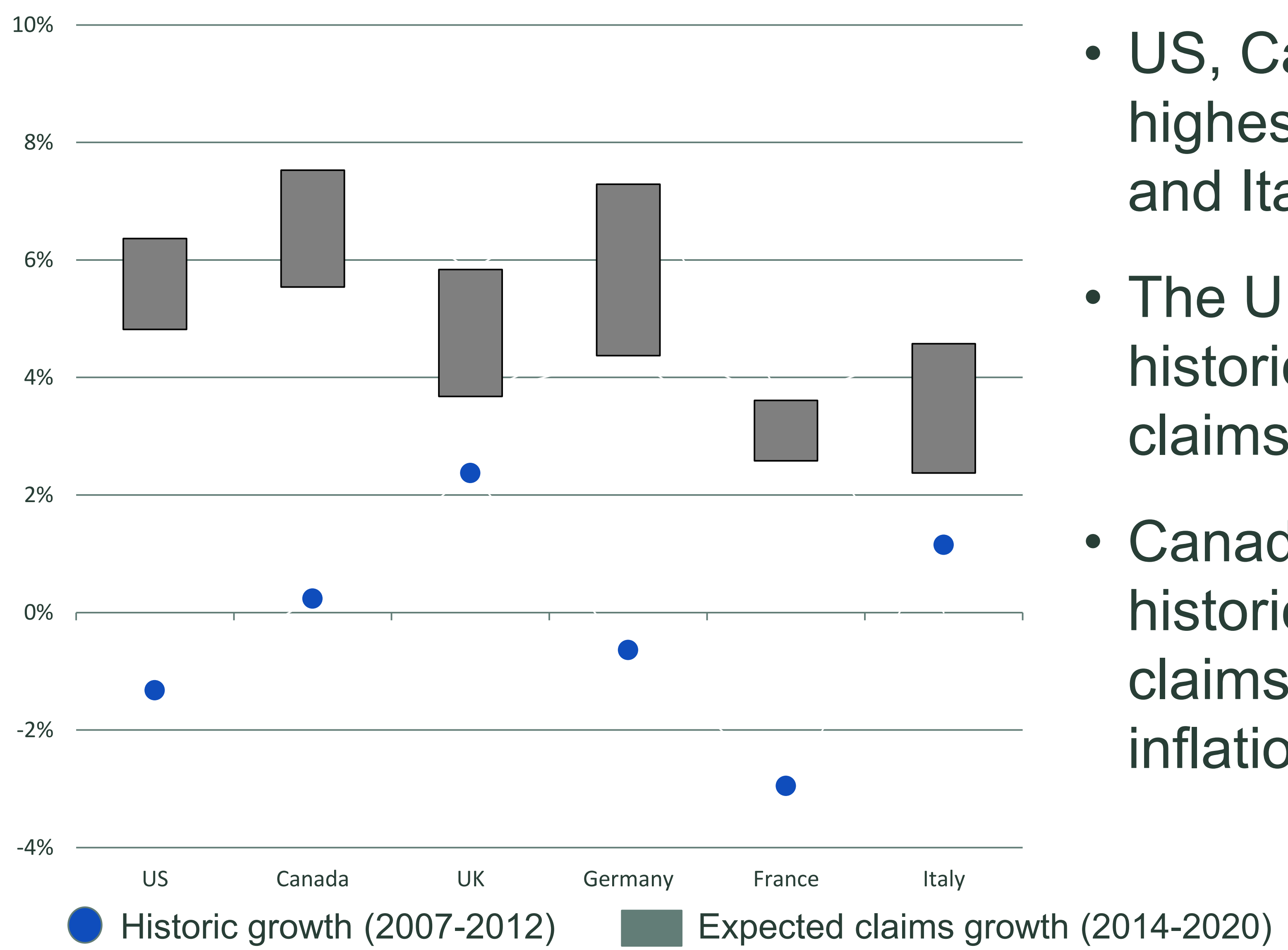


Source: Swiss Re Economic Research & Consulting

- Traditionally, liability claims grow faster than GDP.
- The decline in claims began in 2004 and was revealed by a turn in the reserves cycle. Improved safety reduced the frequency of claims.
- After 2008, underlying claims trends slowed down due to the global recession.
- Economic drivers of claims costs have begun to accelerate in the US and some other countries.
- Claims trends are likely to rise with stronger economic growth pushing up medical and wage inflation.

Range of expected claims growth based on historic economic relationships

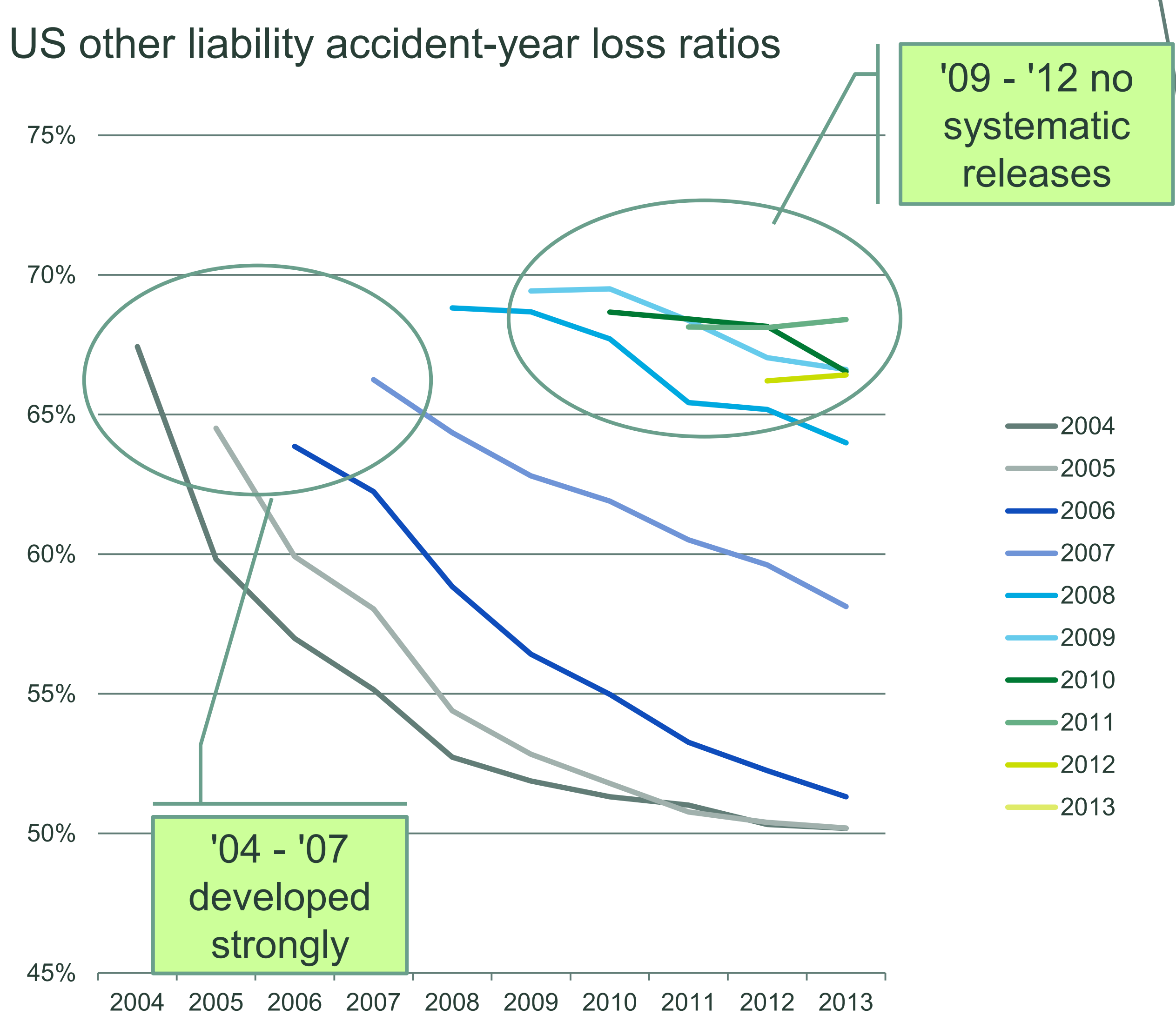
Range of expected claims growth (2014-20) vs historic growth (2007-12)



- US, Canada, and the UK have the highest GDP forecasts; France and Italy the lowest.
- The UK and France have historically shown low growth of claims in relation to GDP.
- Canada and Germany have historically high correlations of claims growth to wage and CPI inflation.

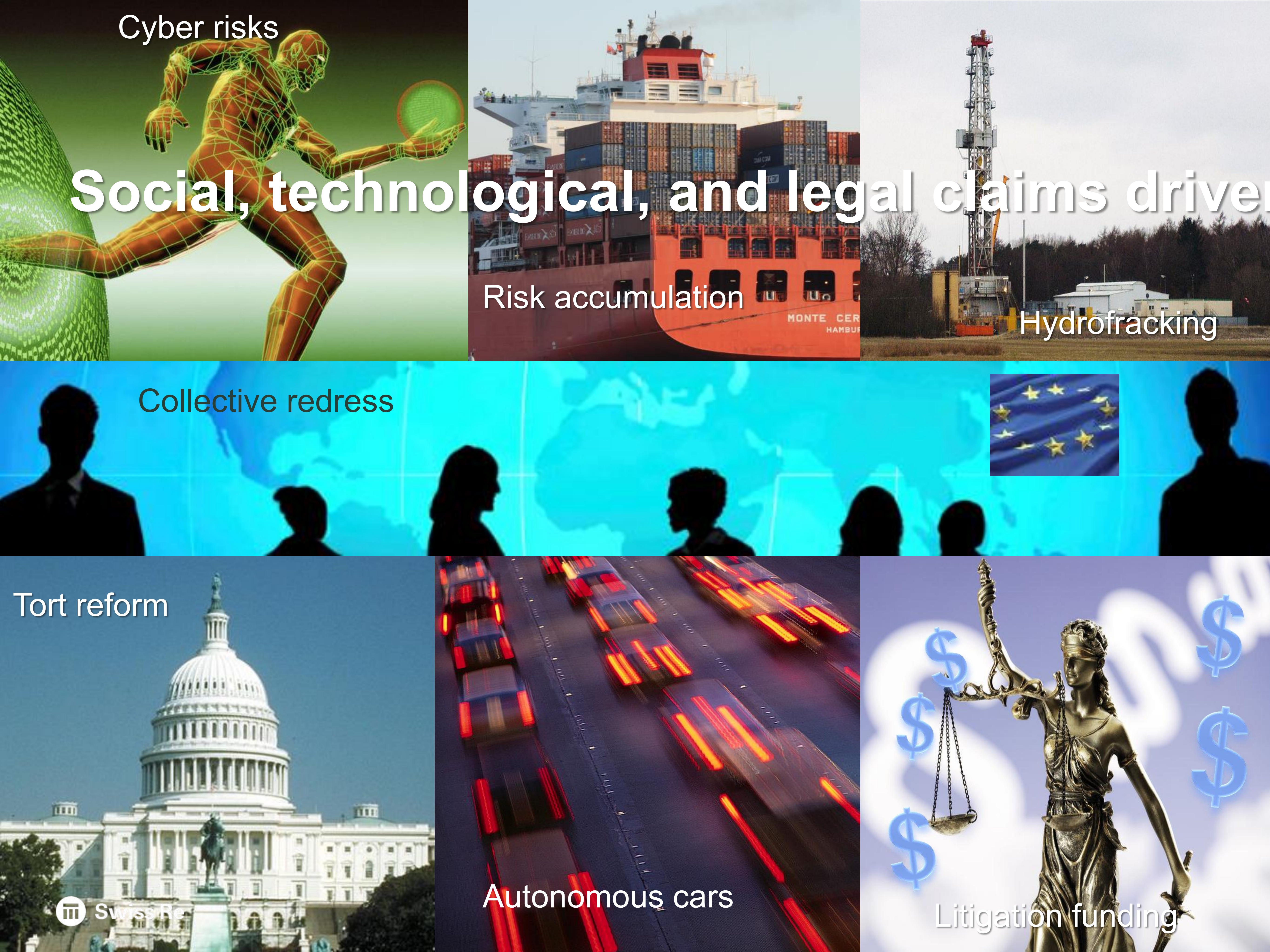
Loss reserves are less redundant

More recent accident years could develop negatively if claim costs accelerate



Sources: SNL, Economic Research & Consulting

- The '04 through '07 underwriting years resulted in large reserves releases over time.
- Recent underwriting years ('09 – '12) had higher initial loss ratios and did not develop systematically.
- The years since '09 account for about 80% of the non-legacy reserves on the balance sheets.
- The pattern of falling loss ratios has been slowing. Future aggregate reserves changes may turn negative.


Cyber risks
Social, technological, and legal claims driver
Risk accumulation
Hydrofracking
Collective redress
Tort reform
Autonomous cars
Litigation funding

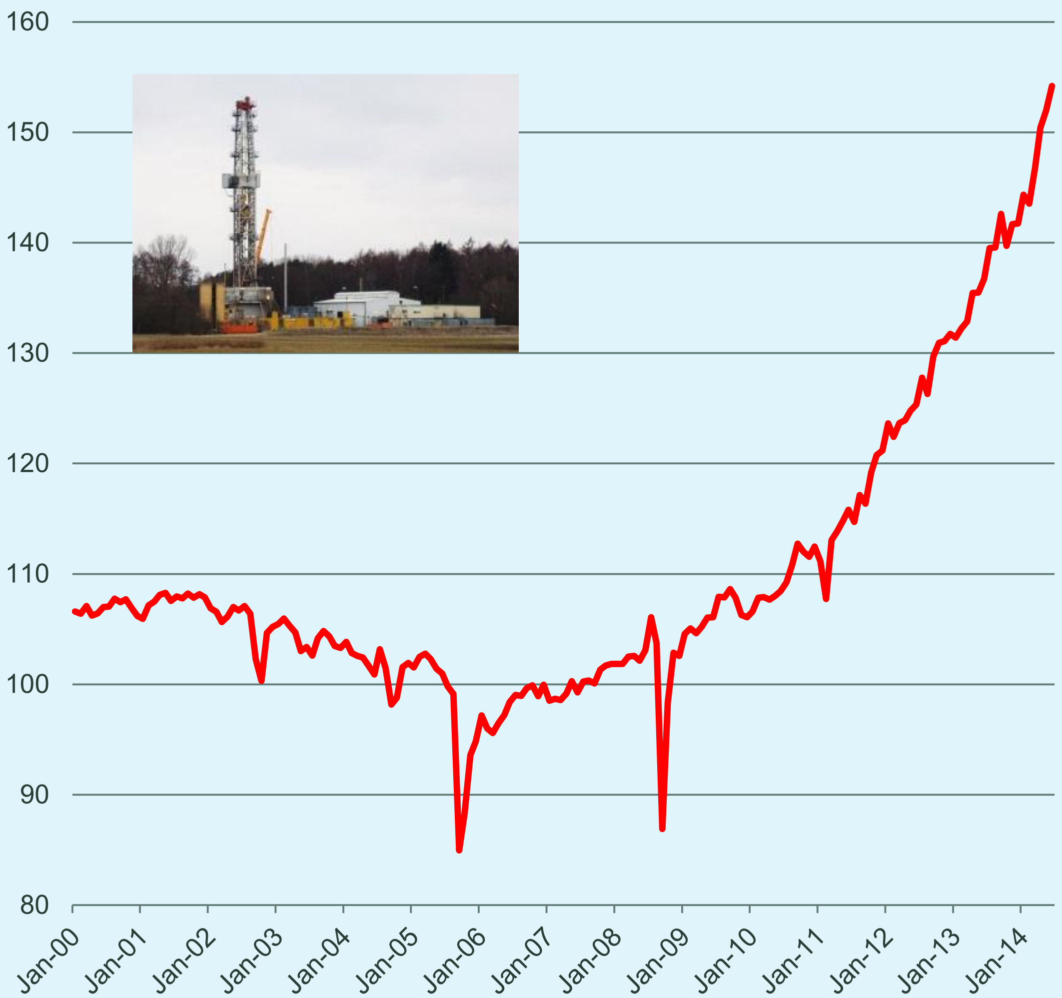
Selected social and legal claims drivers

Beyond the economic drivers, there are emerging liability trends which are rooted in either changing exposures or the development of the legal (tort) system.

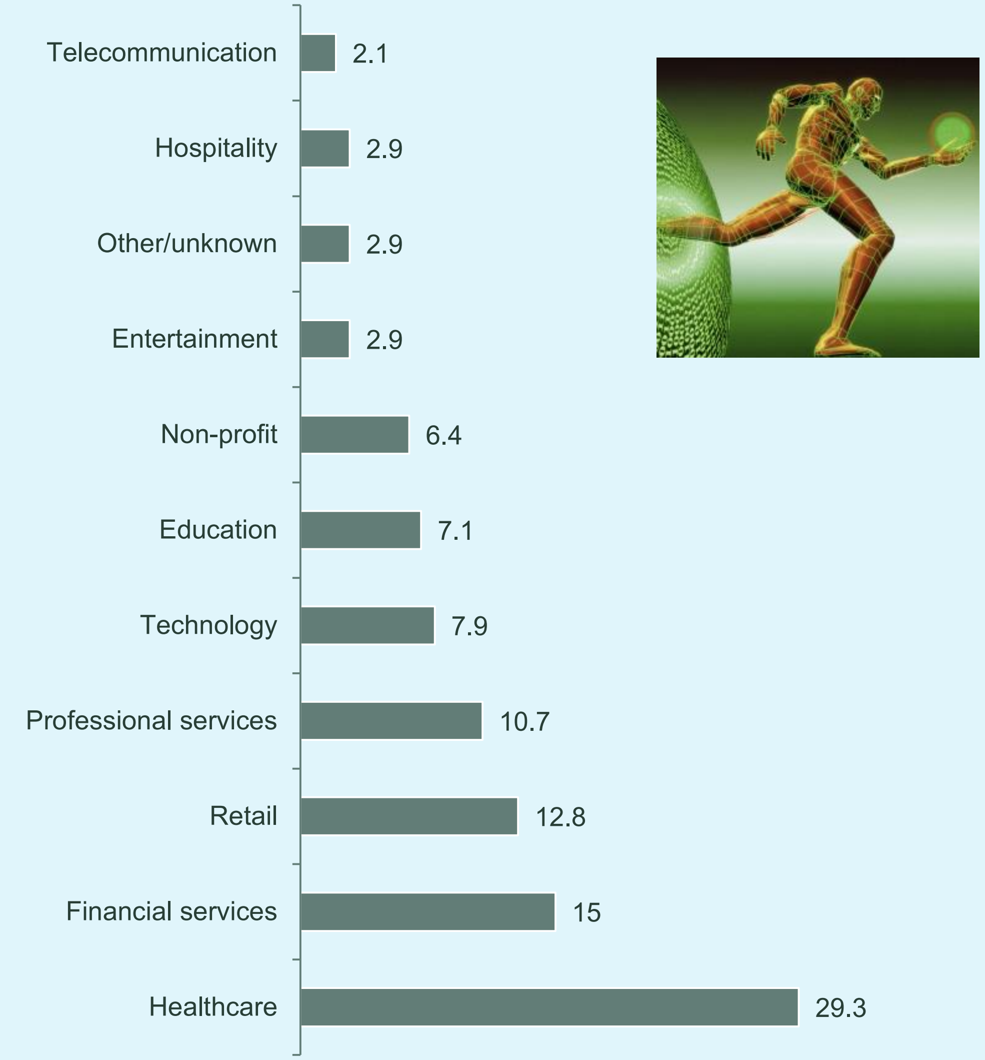
1. Risk accumulation is a growing threat to insurers.
2. Hydrofracking: drilling and risk awareness are expanding.
3. Cyber risks are complex and spread rapidly.
4. Autonomous cars: legal issues lag technological progress.
5. The effects of tort reform in the US and Australia are unclear.
6. Third-party litigation funding is spreading.
7. The scope of collective redress in Europe is growing.

Cyber risk and emerging technologies, such as hydrofracking, may become more prominent in liability

US oil and gas production
Volume index (1997=100)



Number of cyber claims worldwide (2013)
By industry, % of total claims



Strategic implications for insurers (1/2)

Product innovation is necessary to adapt policies to technological and regulatory changes.

- Cyber, environmental and nanotechnology risks require new products and specialized underwriting.
- Technological developments will facilitate product innovation in liability insurance.

Underwriting quality is key

- Successful insurers have outperformed through underwriting expertise.
- Availability and quality of data is a key challenge for liability underwriting.
- Insurers must monitor and assess emerging risks that could lead to casualty risk accumulation.
- Predictive modelling is critical for improving underwriting quality in liability insurance.

Strategic implications for insurers (2/2)

Behavioural biases in underwriting – implications for insurers

- Understanding the most common cognitive biases may help underwriters to counter the potential negative results. This is particularly relevant for liability underwriting, given the issues of parameter uncertainty and asymmetric information.

Big Data, predictive modelling, and forward-looking modelling

- The use of Big Data and predictive modelling in commercial lines is increasing.
- Analytics applications can also be employed in fraud detection, in identifying drivers of unexpected claims development, and more.
- The use of Big Data can expand insurability.
- With product innovation, insurers can continue to adapt insurability to the changing risk landscape.

Conclusions

Conclusions

- Economic outlook
  - Globally, growth is accelerating modestly and this will be pushing up long-term interest rates, but improved investment returns for insurers will arrive with a lag
  - Though an increase in inflation is unlikely in the near term, the central banks will need to raise rates in the near future to avoid a wage-price spiral – US and UK – early in 2015; ECB and BoJ – no time soon
  - Key risk is stagnation and deflation in Euro area
- Underwriting expertise is a key competitive advantage, while a lack of underwriting experience can hinder new entrants.
- With product innovation, insurers can stretch the boundaries of insurability to meet the demands of the changing risk landscape.
- International strength is important to support clients in a global economy.
- Strong capitalization is an essential part of the value proposition to insurance buyers, particularly for the long-tail casualty lines.
- Prospects improving for premium growth and pricing

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D&O Market Overview

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The Eurozone Economy and its Impact on D&O Exposures

The Eurozone Economy and its Impact on D&O Exposures

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The Eurozone Economy and its Impact on D&O Exposures

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Developments in European Collective Actions

Developments in European Collective Actions

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Collective Redress in the EU with a focus on D&O

Advisen Conference, London, 19th November 2014

Introduction and Agenda

Agenda

- What is the current status of collective actions in Europe?
  - What is happening in the European arena both at European Commission level and at some EU Member States level?
- Why do we not see more collective actions?
  - Some important differences from the US system
- What activity do we know about on a collective basis involving D&Os?
  - D&O collective claims activity in Europe
- The future for D&O collective actions in Europe
  - Any concerns that some of all of the less desirable aspects of the US class actions could be creeping into Europe?

The Current Position in Europe

Recent Action by the European Commission and some Member States

Collective redress
Situation in the EU

2 February 2012	Resolution European Parliament
11 June 2013	"Commission Recommendation on Common Principles in Member States"

Key common principles (non-binding)

1. Ensuring a high level of consumer protection
2. Coherent and consistent European concept; national concepts too different
3. Safeguarding against abuse; no collective actions similar to US-class actions
4. Constitution of the claimant party by "opt-in" principle, opposite to US "Opt-out system"
5. Prohibition of punitive damages
6. Each class member must prove their own damage
7. Reimbursement of legal costs of the winning party ("Loser-pays principle")
8. Avoidance of "Forum Shopping": The law of the member state shall be applied where the majority of the claimants (class members) have their home residence
9. Implement means of alternative dispute resolution (ADR): non-mandatory

Collective redress
Situation in the EU

- **Recommendation** establishes a common model for collective litigation in "mass harm situations" across the EU
- Recommendation, however, **not binding**. In other words: Member States are not legally bound to do anything
- However, it is suggested that Member States will follow the Recommendation, even if not mandatory
- Models of the 19/28 Member States already having implemented collective litigation in one or the other form are substantially different. **Very limited degree of EU-level co-ordination** in respect of collective actions
- It may be several years after the communication of the proposed principles for impacts to be seen. **Public attention** to collective actions **may fuel more litigation**
- **Representative claimant** – individual, public body or NGO
- Differences in collective action proceedings in Europe will foster the fight between local Member State jurisdictions over the best place to bring collective actions, this especially applies to consumer collective litigation

  → Possible door opener for **forum shopping**

Some EU national collective action laws
Origins and sectors

State	Origin
England & Wales GLO 1999	Medicinal Products
Spain 2000	Adulterated Rape Seed Oil
Germany KapMug 2005	Deutsche Telekom
Netherlands 2005	DES medical product
Italy 2010 to 2012	Parmalat
France 2014	France Telecom, Mediator, PIP
Belgium 2014	Explosions, Collisions, Bankruptcy
Lithuania 2015	Failed Banks

Collective redress
Situation in the EU

France

"Action de groupe" bill enacted on 17 March 2014 and validated by the French Constitutional Council (FCC)

- Only "approved consumer defence associations" have standing in respect of class actions
- Claims must be based on either breach of contract or breach of law, in respect of goods and services. Class actions also possible to pursue remedies in case of anti-trust violations
- Opt-in mechanism
- Class action system excludes losses arising out of bodily injury, moral hazard and environmental damage
- Sectors most at risk: financial services and sectors supplying services and tangible goods (e.g. telephone, electricity, gas & water) **but** the scope of class action is very likely to be widened. Draft law aiming to extend class actions to "environmental and health issues"

Collective redress
Situation in the EU

Belgium

Class action Act came into force on 1st September 2014

- The procedure is non-retroactive and available to certified consumer associations only and is designed to protect consumer rights only, i.e. natural persons who are acting for purposes unrelated to their trade, business, craft or profession
- Regime governed by an opt-in/opt-out system. Bill also includes mandatory ADR in the settlement phase and a compulsory pre-approval of the case by an "Admissibility Committee" (Commission de Recevabilité)
- Evidence of a causal link required between damage and wrongful act
- The bill covers laws related to products safety, competition and price developments, market practices and consumer protection, financial services and products, intellectual property, e-commerce, pharmaceuticals, transport, construction of new buildings, insurance etc. All other possible claims, e.g. claims based on extra contractual ground for breach of general duties fall outside the scope of the Act
- Claimants such as undertakings, shareholders or employees would not be able to utilise this new legislation to bring a collective action against directors

Why don't we see more collective actions?

- Some major differences between the US class action system and what we typically see in Europe

Why so little activity?

- Since the *Morrison* decision barred actions involving most "foreign cubed" investors from seeking redress under the US securities laws, many predicted a move to a favourable venue in Europe
- There is some activity ongoing (which I will cover shortly) but overall, there is still a relative dearth of securities-related litigation in Europe.
- Why is this?
- Three major reasons:
  - Fundamental differences in the use of the Courts and public bodies
  - Legislators looking to introduce collective redress are very careful to avoid the negatives of US class actions and safeguards are put in place, which may have the effect of limiting litigation
  - The legislation governing the liabilities of directors and who would receive any compensation is also fundamentally different – compensation typically goes to the company not an individual shareholder

Collective redress
EU collective redress versus US class actions

Important issues	EC Recommendation	US class action
Loser pays rule	Yes	No
Contingency fee	Limited use	Yes
Free opt-in system	Yes	Yes
Free opt-out system	Yes, usually…	Yes
Punitive damage	In principle no	Yes
Jury trials	No	Yes
Third party funding	Limited use	Yes
Compensation of the victim	Limited to the compensatory damage	Not limited to compensatory damage
Forum shopping	Occasional cases	Yes

What collective activity have we seen/are we seeing in Europe?

What has happened on the ground?
Has the reality realised the potential or fears?

State	Current situation
Spain	Collective procedure under 2000 Civil Procedure Law revision. Only a handful of cases in 12 years.
Sweden	Class Actions Law 2003. Reportedly 12 class actions filed. Many against the government. 2011, class action brought by the Consumer Ombudsman on behalf or approx. 2,100 customers against a power supplier over a breach of the supply agreement.
Finland	Class Action Law 2007, only for consumer disputes, only brought by the Consumer Ombudsman. First case 2010 for misleading information against a construction company, heard by the Consumer Disputes Board.
Norway	Class Action Law 2008. The main rule is opt in, but opt out can apply in some cases. To Nov 2011, 38 cases were registered. There were 22 rulings: 13 were approved and 9 denied. The largest case involved 3,500 claimants (the smallest 6). There is a range of types: building contractors, breach of confidentiality by MoJ itself, shareholders, franchising against the tax authorities.
Denmark	Class Action Law 2007 (opt-in). First case judgment in 2012, a shareholders association re share redemption scheme in Bank Trelleborg. Two other class cases approved, and two pending as at March 2012. Mainly re financial investment issues.
Portugal	1995 Law with two proceedings that are exercisable by citizens and qualifying associations, opt-out. Only 3 cases. The most celebrated was settled by Portugal Telecom in 1999, by giving free calls.
England	Ancient but restricted representative action procedure. Group Litigation Order (GLO) procedure. 75 GLO since 2000, but use of GLO procedure appears to be declining. 2012 proposal for opt-out class action re competition

What has happened on the ground?
Has the reality realised the potential or fears?

State	Current situation
Scotland	No class actions law. Succession of large oil rig disaster cases. Vioxx litigation 2009.
Germany	No general class action law (indeed, strong opposition). Deutsche Telekom case involving 15,000 individual investors, copycat of U.S. settlement, led to passing of Capital Investors Law (KapMuG) 2005. But the case was dismissed 2012. (Likely to be revived)
Austria	Consumer association VKI has brought consumer representative case with (German) third party funding, eg contaminated water supply, real estate investment, and holiday food poisoning.
Ireland	No class action procedure: long debate. Mass litigation in individual cases over soldiers' deafness.
Bulgaria	Class Action Law 2008. A tobacco case failed.
Lithuania	Litigation in 2010 re failed banks, led to Class Action Law proposal 2012.
Poland	Class Action Law 2010 – From Jan to Aug 2011 there were 42 applications for class actions (18 were admitted). Types vary: banking services, mortgages, public authorities' failure to prevent flooding, contamination in a hospital. No mediation.
Netherlands	Preferred forum for resolving mass claims. Various successful settlement of large cases, eg ▪ DES (DES vs. drug manufacturers) ▪ Dexia (investment product purchasers vs. bank) ▪ Shell Petroleum (shareholders alleging securities fraud related to restatement of petroleum reserves by Royal Dutch Shell) ▪ Vedior (shareholders alleging securities fraud related to M&A) ▪ Converium: extra-territorial controversy

The Netherlands – the new US for securities class actions?

- Some commentators hailed the use of the Collective Settlement of Mass Damage Claims Act (known as the WCAM) to resolve the *Royal Dutch Shell* case in the Netherlands as a sign that the Dutch bar was setting itself up as the new home for securities suits
- The Act was used again in 2010 when the *Converium* suit was resolved and indeed by that stage the *Morrison* decision's impact was being felt: the court mentioned *Morrison* in its rationale.
- Since then, though, I haven't personally seen a massive lot of activity, other than the *Fortis* case (although perhaps not public)
- This could be because under Dutch law, only court-approved representative organisations can pursue a securities class action on behalf of investors and they cannot seek damages in court. The Dutch court may only certify the class and decide whether to approve an out-of-court settlement between the parties. This 'representative action' system, therefore, appears to limit the number of successful settlements in the Netherlands.

Stichting claim against Fortis Directors

- In 2011, Stichting Investor Claims Against Fortis, a Foundation for investors filed a claim in the Utrecht Court against Fortis on behalf of 140 institutional investors and more than 2,000 individual investors
- Interestingly Stichting was formed by two US lawfirms following the dismissal of the US Securities class action against Fortis Directors in the US
- The claims alleges that the former Directors of Fortis misled investors regarding its purchase of ABN Amro and is estimated to be in the order of €1.5bn
- While Stichting is unable to claim damages against Fortis, it will be allowed to do so if the Dutch Court rules in their favour in the declaratory action suit.
- Stichting will seek to utilise the findings of a 2010 investigation by the Enterprise Chamber of Amsterdam which criticised Fortis and concluded that Fortis materially misled investors
- As far as I know, this matter is still proceeding

Royal Bank of Scotland case in England

- Another claim launched outside of the US following dismissal of a securities class action in the US
- In 2013, 4 former directors of RBS (and RBS itself) were sued in the High Court in London in relation to alleged breaches of duty under s90 of the Financial Services and Markets Act 2000 regarding alleged misleading statements in and omissions from listing particulars or prospectuses
- It appears that there are more than 12,000 investors represented by 4 law firms – UK and US firms and the claim is for more than £4bn
- Litigation Funders are involved for Plaintiffs, having also secured insurance cover for adverse costs orders and the case is proceeding via GLO
- If successful, may pave the way for further collective actions by shareholders against Directors, but Claimants maybe deterred by possibility of adverse costs order (and by changes to ATE insurance/success fee recoverability)

Deutsche Telekom etc in Germany - The KapMug

The KapMug (Capital Market Investors' Model Proceedings)

- Originally implemented in 2005to deal with large number of litigations in Germany in relation to Deutsche Telekom IPO it was due to expire in October 2012
- The KapMug has recently been expanded to allow actions against not just those who provided false or misleading capital market information but also where such information has been used in the sale and distribution of financial products
- The new KapMug also allows registration of interest in proceedings without having to actually take part
- It is expected that many Plaintiffs will find the new procedure appealing and indeed that the stalled Deutsche Telekom case will be revived

What will the future hold?

- Should Directors expect more collective actions against them?

Should Directors (and their insurers) expect more collective actions involving Directors?

- Since the *Morrison* decision shifted activity regarding non-US shareholders away from the US courts, there have been pockets of activity in Europe especially in the Netherlands and in England
- Expect regulatory scrutiny to continue in general and with it, more actions by regulators, where they have the powers, to order compensation for victims – seen in Denmark and UK in particular
- The expectation is that mediation or other forms of ADR, perhaps involving Ombudsmen will continue to fill the gap that class actions have not yet moved to fill in Europe
- That said, we do still expect a level of forum shopping by Plaintiffs, where they can leverage more favourable legislation
- Generally thought, the negative aspects of US-style class actions seem unlikely to creep into European collective actions

Key messages

1. Push towards collective redress / class action in every EU country
2. Possibility that historical position will continue i.e. not too much litigation will continue
3. But clear risk that mass litigation might take off in some individual countries and that the appetite to pursue Directors will grow perhaps via social media/due to fewer auditors claims
4. Foresee forum shopping

ANY QUESTIONS?

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David Bradford
President, Research & Editorial division,
Advisen (US)
Moderator

The Risk Management Perspective on D&O and Management Liability

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It’s Getting Personal: The Growing Focus on Individual Accountability

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Executive Director, FINEX Global
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It’s Getting Personal: The Growing Focus on Individual Accountability

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