KPMG

Supporting growth and ensuring care

Evolving Asset Management Regulation report

July 2020

kpmg.com/eamr2020

© 2020 KPMG International Cooperative ("KPMG International"), a Swiss entity. Member firms of the KPMG network of independent firms are affiliated with KPMG International. KPMG International provides no client services. No member firm has any authority to obligate or bind KPMG International or any other member firm vis-à-vis third parties, nor does KPMG International have any such authority to obligate or bind any member firm. All rights reserved.

Contents

Executive summary 2

Chapter 1
Pre-pandemic agendas bend but do not break 4

Chapter 2
Systemic risk thrown into sharp focus 6

Chapter 3
Operational resilience & technology: new priorities 12

Chapter 4
Duty of care is fast being codified 18

Chapter 5
Charges are viewed against performance 26

Chapter 6
Conduct and transparency in capital markets 30

Chapter 7
More regulators pick up the ESG baton 32

Chapter 8
New products and opportunities 40

Chapter 9
Some walls tumble down, others rise 46

EAMR abbreviations 52

Acknowledgments 52

© 2020 KPMG International Cooperative ("KPMG International"), a Swiss entity. Member firms of the KPMG network of independent firms are affiliated with KPMG International. KPMG International provides no client services. No member firm has any authority to obligate or bind KPMG International or any other member firm vis-à-vis third parties, nor does KPMG International have any such authority to obligate or bind any member firm. All rights reserved.

Executive summary

This is the tenth edition of EAMR[1] and the beginning of a new decade. In January 2020, we predicted that it would be a busy year on the regulatory front and would herald a challenging decade, with new legislation to implement or under development, and heightened supervisory expectations and scrutiny. That prediction is now set against the most challenging economic and operational backdrop in living memory.

The asset management industry is being called upon to support the recovery. **Regulators are seeking to encourage growth and are demanding that firms take greater care of their customers**. Broadly, regulatory agendas have not changed, only relative priorities and perspectives. All parties need to embrace the evolving new reality, including an increasingly digital society, changes to working practices, demands for sustainable finance and greater awareness of global interconnectedness.

The **regulatory response** to the COVID-19 pandemic initially focused on banks and capital markets, but asset managers were granted certain concessions, including the use of capital buffers, easing of reporting and disclosure requirements, changes to market position limits, and delays to implementation or consultation deadlines. New requirements included short selling bans in a handful of European countries, restraint in dividend distribution and remuneration, and increased reporting on the liquidity positions of open-ended funds.

To a large degree, asset managers and investment funds have proved **operationally resilient**, but regulators will consider what lessons should be learnt and will require firms to demonstrate they have learnt those lessons. Given that revenue is predominantly based on assets under management and asset values remain depressed, it may take some time for firms to restore their financial positions. This, coupled with changing investor demands, could lead to mergers, a re-focusing of businesses and changes to outsourcing practices.

[1]KPMG's Evolving Asset Management Regulation report

© 2020 KPMG International Cooperative ("KPMG International"), a Swiss entity. Member firms of the KPMG network of independent firms are affiliated with KPMG International. KPMG International provides no client services. No member firm has any authority to obligate or bind KPMG International or any other member firm vis-a-vis third parties, nor does KPMG International have any such authority to obligate or bind any member firm. All rights reserved.

In autumn 2019, regulators highlighted the persistently low interest rate environment as a key risk.[2] Subdued profitability poses challenges for firms and incentivizes search-for-yield strategies, giving rise to financial stability concerns. Recent events have brought efforts to manage **liquidity and leverage risk** into sharp relief. They have also re-ignited debates about whether certain trading practices or fund types contribute to systemic risk. Some policymakers suggest that computer-led trading strategies, short selling and certain types of investment funds exacerbate market volatility. Others think these things are not to blame and that they make it easier for everyone to buy and sell at more accurate prices. Global bodies concerned with systemic risk will debate these points well into the future, leading to further scrutiny of the sector.

The pandemic has accelerated moves to a digital society. Regulators are seeking to take advantage of **technology** to improve the efficiency of their own processes, while they grapple with the question whether rules designed for a paper-based world are still fit-for-purpose. They are keen to enable technology that makes investing simpler and cheaper for investors, but they wish to protect the investment ecosystem from technology that facilitates crime or can lead to poor investor choices. Will virtual board and stakeholder meetings (especially cross-border) be allowed to continue despite regulatory and fiscal concerns about substance? Will the opportunity be seized to convert static paper-based disclosure documents into dynamic online presentations that promote consumer understanding and engagement?

> “… not “can we?” but “should we?””

Strong governance and good conduct have long been regulatory imperatives, but firms’ **duty of care** is being re-articulated. Regulators are requiring firms always to put clients’ interests before their own and are asking questions about stewardship and “short-termism”. Firms must ask themselves not “can we?” but “should we?”. Regulators are threatening enforcement action if firms’ culture and conduct do not meet regulators’ and clients’ expectations.

The perennial search for better disclosures – especially **costs** – continues and there is a wider debate on value for investors. There are reviews of capital markets rules and increasing pressure on asset managers to transition to the new **risk-free rates**.

The pandemic has also highlighted that all business sectors are deeply interconnected across borders, that societies of all types and wealth levels are vulnerable, and that the planet and environment are under increasing strain. It has accentuated demands for climate-aware investing and the ethical treatment of individuals. **Sustainable finance** (or “ESG”) is a strategic issue that must be embraced across every aspect of firms’ business models, operations and communications. Consistency of definitions and data remain elusive, but regulation is spreading.

There are **opportunities** in the form of new fund vehicles, a loosening of rules on underlying assets, and increased opportunities in the retirement savings market. Regulations that prevent **cross-border** distribution, registration and foreign ownership are being eroded, and there is an easing of the extra-territorial impacts of national rules. On the other hand, regulatory and fiscal demands for firms to have “substance” in a jurisdiction have increased, and the UK’s departure from the EU – “Brexit” – has created new borders that the industry must navigate. Firms will have to navigate these developments, which may present both opportunities and challenges.

Questions for CEOs

- **Are we reviewing all aspects of our liquidity management framework and enhancing our stress testing scenarios?**
- **Are we reviewing our organization’s financial, operational and commercial resilience? Are we identifying what lessons need to be learnt and how we will evidence to regulators that we have learnt them?**
- **Does our duty of care take first place across our organization: at all levels, in all our activities and in all our business decisions?**
- **Are we challenging ourselves on the value we provide for our investors and whether our disclosures are transparent and meaningful?**
- **Are we preparing for the move to risk-free rates?**
- **Have we developed a robust ESG strategy? How are we implementing it in practice?**
- **Are we identifying and taking advantage of new product and market opportunities?**
- **Are we well-placed to navigate rising and falling borders, and the opportunities and challenges they will bring?**

[2]Source: ESAs Joint Committee Risk Report, Autumn 2019

© 2020 KPMG International Cooperative (“KPMG International”), a Swiss entity. Member firms of the KPMG network of independent firms are affiliated with KPMG International. KPMG International provides no client services. No member firm has any authority to obligate or bind KPMG International or any other member firm vis-à-vis third parties, nor does KPMG International have any such authority to obligate or bind any member firm. All rights reserved.

Chapter 1

Pre-pandemic agendas bend but do not break

Temporary measures introduced in response to the pandemic are being lifted. Dates for reporting, implementating new rules or responding to consultations, which had been delayed, are nearing again. The wider regulatory agenda continues, with changes to relative priorities but little reduction in regulatory outputs, including new rules and revised supervisory priorities.

The International Organization of Securities Commissions' (IOSCO's) re-prioritized 2020 work program[1] addresses areas of market-based finance that are most exposed to heightened volatility, constrained liquidity and the potential for pro-cyclicality, including investment funds. It will also examine investor protection, market integrity or conduct risks. Other planned work is delayed but not forgotten. This includes the growth of passive investing and exchange-traded funds (ETFs), potential conduct-related issues in index provision, the use of artificial intelligence (AI) and machine learning, industry access to market data and outsourcing to third-party service providers.

In January 2020, the **European** Commission adopted its work program of 43 actions, including in the areas of sustainable finance and technology.[2] Revisions in May 2020 due to the pandemic delayed some actions but did not change the agenda. The Council's agenda will include progressing "Capital Markets Union" and the long list of reviews of post-2008 crisis legislation. However, the longer-term impacts of the pandemic will remain front of mind and a radical prioritization and reduction of targets may be needed.

National supervisory pre-occupations

Robert Ophèle, AMF[3] chair said the **French** regulator would focus on identifying "*the far-reaching changes facing the asset management industry and their consequences for investor protection*". It will also be proactive on new technologies and their regulatory framework.[4] The Central Bank of **Ireland** (CBI) has

[1] Source: IOSCO, Media Release, 8 April 2020
[2] Source: European Commission 2020 Work Programme
[3] Autorité des Marchés Financiers
[4] Source: AMF, 2020 Priorities

© 2020 KPMG International Cooperative ("KPMG International"), a Swiss entity. Member firms of the KPMG network of independent firms are affiliated with KPMG International. KPMG International provides no client services. No member firm has any authority to obligate or bind KPMG International or any other member firm vis-a-vis third parties, nor does KPMG International have any such authority to obligate or bind any member firm. All rights reserved.

announced consumer and investor protection priorities for 2020, with a comprehensive review of the Consumer Protection Code to ensure it reflects the changing financial services landscape.[5] Firms will be impacted by the concluding review of the implementation of obligations on fund management companies' effectiveness.

In **Switzerland**, FINMA's[6] first Risk Monitor report of December 2019 said the most important risks facing supervised institutions were: the persistent low interest-rate environment; a possible real estate market correction; cyberattacks; a disorderly abolition of the inter-bank offered rates; money laundering; and increased impediments to cross-border market access, particularly in the EU.

The **Japanese** Financial Services Authority's (JFSA's) initiatives for user-oriented financial services in a new era include a Finance Digitalization Strategy, financial services to accommodate various needs, financial intermediation and stability, contributing to global policy discussion and building a global network, and reforming its own processes.

For **US** fund managers, the 2020 examination priorities of the Office of Compliance Inspections and Examinations of the SEC[7] reflect familiar themes, including the protection of retail investors; the adequacy and accuracy of disclosures concerning fees, services and expenses; the management and handling of conflicts of interest for SEC-registered investment advisers; and sales and trading practices and execution quality issues for broker-dealers. Other priorities include market infrastructure, information security and anti-money laundering programs, and there is a new section on private fund managers.

Communicating with stakeholders

To help the SEC ensure its approach to asset management meets the needs of investors and market participants, it launched an Asset Management Advisory Committee in late 2019. The committee is composed of third-party asset management professionals, representing the views of retail and institutional investors and of small and large funds.

In **Canada**, IIROC[8] plans to issue a Plain Language Rulebook by end-2020. The aim is to improve understanding of the rules by clearly stating their objective and rewriting them in plain language. It will focus on core requirements by moving non-essential rule details to guidance and eliminating obsolete, duplicative and unnecessary requirements, and will include navigational aids.

In April 2020, ESMA[9] updated its public statement on consultation practices, which sets out when, whom and how it consults. The statement contains no surprises but underlines the requirement on all regulators and supervisors to be fully transparent about their priorities and processes.

A Financial Services Regulatory Initiatives Forum of various **UK** financial services regulators has been created. HM Treasury said, "*The financial crisis showed how a fragmented regime can lead to significant risks being underestimated or missed altogether. Joined-up regulators are therefore essential to deliver financial stability, competition and effective consumer protection.*" The Forum issued its first grid of major regulatory initiatives in May 2020.[10]

> "Are current rules still fit-for-purpose?"

Grappling with technology

Rule-makers are grappling with how to adapt rules that were designed for a paper-based world. Are current rules still fit-for-purpose? Regulators are keen to enable technology that makes investing simpler and cheaper for investors, but they wish to protect the investment ecosystem from technology that facilitates crime or can lead to poor investor choices.

The **Dutch** National Bank says financial firms using AI should pay attention to the soundness, accountability, fairness, ethics, skills and transparency ("SAFEST") aspects of applications they develop.[11] Later in 2019, the AFM[12] consulted on principles regarding the design of digital advice to customers to make informed decisions, covering the use of products and services, distribution and information in a "choice" architecture. The Dutch Authority for Consumers and Markets has issued guidance on protection of the consumer in the online market, focusing on the use of behavioral manipulation and the prevention of unethical practices.

ESMA's Strategic Orientation for 2020-22 includes significant expansion of its digital communications by creating a more responsive, informative and user-friendly website. This includes enhancing its IT systems and data analysis capacity to create a data hub for **EU** securities markets. It will help ESMA to gather market intelligence, develop retail risk metrics and identify potential causes of investor harm.

The "*Plan de Actividades 2020*" sets out four priorities for CNMV[13] itself – digital transformation, sustainability, remote working by regulatory staff and boosting competitiveness of the **Spanish** market by speeding up its own processes. In **Ireland**, the CBI's priorities in FinTech and technological innovation include protection of consumer interests and the mitigation of financial crime.[14] It suggests a harmonized taxonomy of crypto-assets to ensure consistent regulation.

[5] Source: Central bank of Ireland, Press Release, 15 January 2020
[6] Financial Market Supervisory Authority
[7] Securities and Exchanges Commission
[8] Investment Industry Regulatory Organization of Canada
[9] European Securities and Markets Authority
[10] Source: Bank of England, 7 May 2020
[11] Source: DN Bulletin, 25 July 2019
[12] Autoriteit Financiële Markten
[13] Comisión Nacional del Mercado de Valores
[14] Source: Central Bank of Ireland, Speech by Gerry Cross, 14 May 2020

© 2020 KPMG International Cooperative ("KPMG International"), a Swiss entity. Member firms of the KPMG network of independent firms are affiliated with KPMG International. KPMG International provides no client services. No member firm has any authority to obligate or bind KPMG International or any other member firm vis-à-vis third parties, nor does KPMG International have any such authority to obligate or bind any member firm. All rights reserved.

Chapter 2

Systemic risk thrown into sharp focus

Sudden market falls and increased market volatility in response to the pandemic have re-ignited debates about whether certain trading practices or fund types contribute to systemic risk.

They have also brought policymakers' efforts to manage liquidity and leverage risk into sharp relief. However, the legacy of the financial crisis 12 years ago, smaller market crises since then and some liquidity issues among open-ended funds had refocused regulatory minds well beforehand.

Post-pandemic analyses will need to take into account the differences between apparently similar funds in different jurisdictions, the different rules to which managers are subject, the tools at their disposal, investor types and regulatory influences on investor behavior.

Debates about multipliers of market volatility

As the pandemic created turmoil in markets, most notably in March 2020, regulators around the world announced that they were determined to keep capital markets open and to co-ordinate efforts, in order to support the real economy through access to funding and the ability to hedge risks. Securities regulators were focused on the operational and financial resilience of market infrastructures, the operational capability of market users, information flow and consumer protection.

Policymakers and industry commentators began to question whether computer-led trading strategies, short selling and certain types of funds were exacerbating the problem. Other commentators, however, think these things are not to blame and that they make it easier for everyone to buy and sell at more accurate prices.

© 2020 KPMG International Cooperative ("KPMG International"), a Swiss entity. Member firms of the KPMG network of independent firms are affiliated with KPMG International. KPMG International provides no client services. No member firm has any authority to obligate or bind KPMG International or any other member firm vis-à-vis third parties, nor does KPMG International have any such authority to obligate or bind any member firm. All rights reserved.

Short selling came under particular regulatory focus, especially in **Europe**. ESMA lowered the threshold for disclosing short positions and backed decisions by a handful of member states to ban short selling. It considered that "*the proposed measures are justified by current adverse events or developments which constitute a serious threat to market confidence and financial stability, and that they are appropriate and proportionate to address the existing threat to market confidence in those five markets*".

Most European countries did not introduce such a ban, though, including the UK. In a statement in March 2020, the FCA[1] said it was closely monitoring short-selling activity but had found "*no evidence that short selling has been the driver of recent market falls*". Aggregate net short-selling activity was low as a percentage of total market activity and had decreased in recent days, it said. It added that many investment and risk management strategies rely on the ability to take long and short positions, benefitting a wide range of ordinary investors. Short selling also helps with liquidity provision.

Another open question is the extent to which ETFs contribute to market volatility. Commentators have suggested that more research is needed to understand how ETFs might affect markets if both the underlying securities and the ETF shares are falling simultaneously – could this amplify losses? It has been noted, however, that during both the early pandemic sell-off and subsequent upward market moves, although significant gaps opened up between the share prices of bond ETFs and their underlying holdings, ETFs were generally able to rely on their own liquidity, rather than that of the underlying bonds.

The wider and long-standing debate about passively-managed versus actively-managed funds has also re-opened. Views remain mixed. Some market analysts report that the majority of active funds have continued to underperform their benchmarks, but others say that active equity funds have significantly outperformed broad markets during market downturns over the last 25 years. Regulators are also concerned about costs versus performance, as discussed in Chapter 5.

Money market funds, too, are under scrutiny. Many MMFs initially saw record inflows as investors dashed to cash, but some "low volatility net asset value" MMFs experienced difficulties. Central banks undertook a number of critical interventions in the money markets, providing additional funding facilities. In some jurisdictions, MMFs were not eligible for these facilities, but in other jurisdictions they could directly access central bank funding. The largest intervention was reported to have been undertaken by the **US** Federal Reserve Bank. Speaking to the *Financial Times* in May 2020, Paul Schott Stevens, ICI[2] President and CEO said the powerful psychological effect of the Fed's action was greater than its financial impact, noting that the amount of liquidity it had supplied to funds was less than half that of a similar facility in 2008.

> "a one-size-fits-all analysis can be misleading"

The investor base of MMFs varies considerably between jurisdictions, so a one-size-fits-all analysis can be misleading. Recent events demonstrate, though, the importance of rigorous stress testing. The AMF has called for **European** guidelines to be updated in the light of recent market developments.[3] The guidelines are based on 2019 data and will need to be "*thoroughly reviewed to take into account recent events affecting financial markets*", it said.

Liquidity undergoes real-world stress tests

Open-ended funds can encounter difficulties when redemptions suddenly increase, and large changes in asset valuations can lead to passive breaches in exposure limits. Some funds had to suspend dealing in spring 2020 in the face of high redemption requests and difficulties in selling assets in volatile and falling markets. At the time of writing, the number of such funds represented a small percentage of the total market – ESMA put the figure among **European** funds at about EUR 100 billion in March 2020. Nevertheless, any fund suspensions can have a significant impact on investors, which concerns managers and regulators.

Regulators are also concerned about potential systemic risk implications – that fund suspensions could cause a knock-on impact on the wider market. While markets remain volatile, regulators are requesting more, and more frequent, information from managers about the liquidity position of funds. Many regulators had already reviewed their liquidity management requirements against IOSCO's 2018 recommendations, or were in the process of doing so, and liquidity management was high on their agendas. Stress testing scenarios have joined the priority list and will be even more rigorous going forward.

In **Hong Kong (SAR), China** enforcement of the SFC[4] Fund Manager Code of Conduct is likely to be considerably more stringent. The Code requires asset managers to ensure that processes and controls, including tools and models, used to monitor liquidity risk are reviewed and enhanced on a fund-by-fund analysis. It prescribes six focus areas.

[1] Financial Conduct Authority
[2] Investment Company Institute
[3] Source: AMF, News Release, 5 May 2020
[4] Securities and Futures Commission

© 2020 KPMG International Cooperative ("KPMG International"), a Swiss entity. Member firms of the KPMG network of independent firms are affiliated with KPMG International. KPMG International provides no client services. No member firm has any authority to obligate or bind KPMG International or any other member firm vis-à-vis third parties, nor does KPMG International have any such authority to obligate or bind any member firm. All rights reserved.

Liquidity management – focus areas

Focus area 1:
Define the Framework and Policy for Liquiditity Risk Management including your organization's tolerance appetite for liquidity risk.

Focus area 2:
Assess and understand the liquidity profile of each fund; apply the right monitoring and measurement tools based on the fund's susceptibility to liquidity risk.

Focus area 3:
Perform a liquidity risk assessment to identify the key factors that drive liquidity risk (both idiosyncratic and market-wide factors).

Focus area 4:
Establish processes and procedures for liquidity monitoring and reporting, providing timely and accurate information to management team.

Focus area 5:
Link the liquidity risk factors to the liquidity risk management framework and determine limits and tools for liquidity management monitoring.

Focus area 6:
Implement specific, objective and realistic action plans that can be followed in case of breaches to established limits.

Based on ISOCO's recommendations and a thematic review of some management companies that identified good practices, the Securities Commission **Malaysia** issued revised Guidance Notes on liquidity risk management practices in open-ended funds in December 2019.

ESMA's September 2019 guidelines require **EU** fund managers to test the liquidity of fund portfolios against key stress events - the 2008 financial crisis and the European debt crisis of 2010 are mentioned, together with hypothetical scenarios such as macro-economic events or rising interest rates, but not pandemics. In January 2020, ESMA initiated a "common supervisory action", asking all national regulators to assess whether fund managers adhere to the UCITS[5] requirements in their day-to-day operations.

> "Stress testing scenarios have joined the priority list and will be even more rigorous going forward"

In **France**, the AMF issued questionnaires to fund managers and conducted some inspections that included liquidity management.[6] Its aim was to check whether UCITS portfolio managers complied with their obligations, in particular regarding processes, methodologies and data used, and governance and control arrangements. Firms' liquidity risk management systems were found generally to be complete and operational, but that stress tests simulating a crisis situation were not sufficiently operational.

The **Luxembourg** regulator, CSSF[7] issued Circular 19/733 in late 2019, setting out new liquidity obligations. The obligations fall into three pillars – design processes, day-to-day liquidity management and contingency planning. In response to ESMA's request, the CSSF asked a large sample of Luxembourg-domiciled fund managers to complete a questionnaire, by mid-March 2020, for all Luxembourg- and foreign-domiciled UCITS.

In April 2020, the CBI wrote to **Irish** funds outlining the expectation that effective liquidity management is in place, including appropriate liquidity management tools. Where necessary, fund documentation should be amended with notification to investors, giving sufficient time for investors to redeem prior to implementation of such change.

In its January 2020 Dear CEO letter, the FCA identified liquidity as a key area of focus, saying that effective liquidity management in funds is a central responsibility for any **UK** fund manager and remains their responsibility even if they delegate investment management. It reminded managers to take appropriate action to address any liquidity mismatch between the terms at which investors can redeem and timescales needed to liquidate assets.

Also in April 2020, the AFM said it was in close contact with **Dutch** fund managers regarding the impact of the pandemic on their businesses and was monitoring the extent to which funds and investors were affected. It urged fund managers to inform it and their investors if the managers started to use specific liquidity management tools, including in specie redemptions, gates and side pockets, or suspensions.

[5] Undertaking for collective investment in transferable securities
[6] Source: AMF, News Release, 24 April 2020
[7] Commission de Surveillance du Secteur Financier

© 2020 KPMG International Cooperative ("KPMG International"), a Swiss entity. Member firms of the KPMG network of independent firms are affiliated with KPMG International. KPMG International provides no client services. No member firm has any authority to obligate or bind KPMG International or any other member firm vis-à-vis third parties, nor does KPMG International have any such authority to obligate or bind any member firm. All rights reserved.

Liquidity testing for UCITS and alternative investment funds (AIFs) will be applicable in **Hungary** from September 2020. And the CNMV is introducing a new requirement to include liquidity warnings for **Spanish** funds that hold over 25 percent of their assets in high-yield debt.

Liquidity has become a major topic in the **Australian** wealth management market. About 90 percent of the "MySuper" market funds, which take most of the mandated superannuation contributions, are invested in diversified portfolios and have higher exposures to illiquid assets than retail platform funds. The MySuper funds have benefitted from solid net inflows and known retirement ages, so liquidity management was not a big concern. However, the pandemic led many savers to switch into cash. Also, the government enacted special measures enabling savers to access up to AUD 20,000 between April and September 2020. As a counter move, an emergency measure was introduced allowing superannuation funds to decrease the pension minimum payment required by law by 50 percent, helping to minimize the need for cash.

Pressures on asset valuation, fund pricing and safeguarding

High market volatility can create a variety of operational issues for fund managers, in additional to liquidity management concerns. Asset valuation is one. Otherwise highly-automated processes for liquid securities can require consider human intervention in order to ensure prices are as fair as possible. Valuations, fund pricing and asset safeguarding are all subject to changing rules.

In **Japan**, a report on net asset value (NAV) Calculation in October 2019 said that in order to ensure the accuracy of the NAV and the fairness of the calculation process, it should be based on global practices. Also, there should be a collaboration and checks system to ensure accuracy and ongoing monitoring to ensure fairness.

In April 2020, the **US** SEC proposed a rule that would establish a new framework for good faith determinations of fair value of fund assets.The rule spells out valuation practices for funds and oversight by the fund's board of directors. It includes requirements related to records, risk evaluation, methodology, policies, procedures and pricing services. The comment period closed in July 2020.

The CNMV now allows **Spanish** funds to use "swing pricing", to provide more flexibility to managers as part of liquidity management. Swing pricing is designed to protect existing investors from potential performance dilution caused by significant inflows or withdrawals. Investors seeking to invest or redeem effectively pay the cost to the fund of purchasing or selling assets. It can be especially useful in managing potential conflicts of interest among investors in stressed markets. Before using swing pricing, fund managers will have to publish a statement, and put

© 2020 KPMG International Cooperative ("KPMG International"), a Swiss entity. Member firms of the KPMG network of independent firms are affiliated with KPMG International. KPMG International provides no client services. No member firm has any authority to obligate or bind KPMG International or any other member firm vis-à-vis third parties, nor KPMG International has any such authority to obligate or bind any member firm. All rights reserved.

in place internal controls and procedures to ensure fair application and robust calculation of the swing factor.

Germany, too, has implemented changes to exiting rules, under which open-ended funds currently have only the ability to suspend redemptions in exceptional liquidity situations. In February 2020, the German parliament approved changes that will allow funds to use swing pricing and redemption gates to manage liquidity, bringing Germany into line with other major fund domiciles.

> "... managing potential conflicts of interest among investors in stressed markets"

In March 2020, BaFin[8] consulted on revisions to its requirements for fund depositaries. The proposal includes revisions relating to segregation of the fund's assets, recording of the justification for sub-custody by foreign entities, expansion of the legal responsibilities concerning (sub-) depositary contracts, that the depositary must be able to retrace the calculation of performance-based management fees, and that the depositary contract should set out when the fund manager can demand information. In large measure, the proposals are not expected to be operationally demanding, other than the need to review and revise contracts.

Leverage scrutiny turns to derivatives

As with liquidity, the shifting rules on leverage originate pre-pandemic, and are subject to change in 2021 and beyond. They also reflect the fact that regulators are allowing a wider range of investment funds and pension funds to use derivative instruments (see Chapter 8), and wish to ensure strong governance and reporting.

In the **US**, the SEC unanimously approved a three-part rule proposal relating to the use of derivatives and certain other transactions by open- and closed-ended funds and ETFs. It aims to update the current regulatory framework and impose consistent standards. It would permit eligible funds to engage in broadly defined derivatives transactions, provided they comply with specified conditions intended to protect investors, including:

- A derivatives risk management program, to manage the fund's derivatives risks and to segregate the functions associated with the program from the portfolio management of the fund, including risk identification and assessment, risk guidelines, stress testing, back-testing, internal reporting and escalation of material risks.
- A limit on the amount of leverage-related risk that the fund may obtain, which should not exceed 150 percent of the value-at-risk (VaR) of a designated reference index or, if an appropriate reference index cannot be identified, 15 percent of the fund's NAV. Compliance must be checked at least daily.
- Day-to-day compliance responsibility to be borne by a specified risk manager with a reporting duty to the board.
- The board to exercise specific and additional oversight responsibilities.

A streamlined set of requirements would apply to funds that use derivatives in a limited way – exposures less than 10 percent of NAV or derivatives used solely to hedge currency risks. "Leveraged/inverse investment vehicles" will be subject to alternative conditions.

The Monetary Authority of **Singapore** (MAS) required fund managers to report interest rate and credit derivatives contracts from October 2019. The scope of contracts to be reported will be extended from October 2020 to foreign exchange, equity and commodity derivatives contracts booked or traded in Singapore. The temporary relief for asset managers with annual aggregate gross notional derivatives contracts of less than SGD 8 billion has been repealed, but asset managers with under SGD 5 billion remain exempt.

The use of leverage in AIFs is high on the agenda in **Europe**. ESMA's second statistical report on the EU AIF market, published in January 2020, noted that the hedge fund sector had increased its use of leverage, but that large cash buffers offer some security. ESMA is now consulting until September 2020 on guidelines to encourage convergence among national regulators in assessing leverage risks in the AIF sector and in designing, calibrating and implementing leverage limits.

[8] Bundesanstalt für Finanzdienstleistungsaufsicht

© 2020 KPMG International Cooperative ("KPMG International"), a Swiss entity. Member firms of the KPMG network of independent firms are affiliated with KPMG International. KPMG International provides no client services. No member firm has any authority to obligate or bind KPMG International or any other member firm vis-à-vis third parties, nor does KPMG International have any such authority to obligate or bind any member firm. All rights reserved.

The guidelines include a common minimum set of indicators to be taken into account and set out the two-step assessment approach recommended by IOSCO in December 2019. Regulators in other jurisdictions are also considering IOSCO's recommendations.

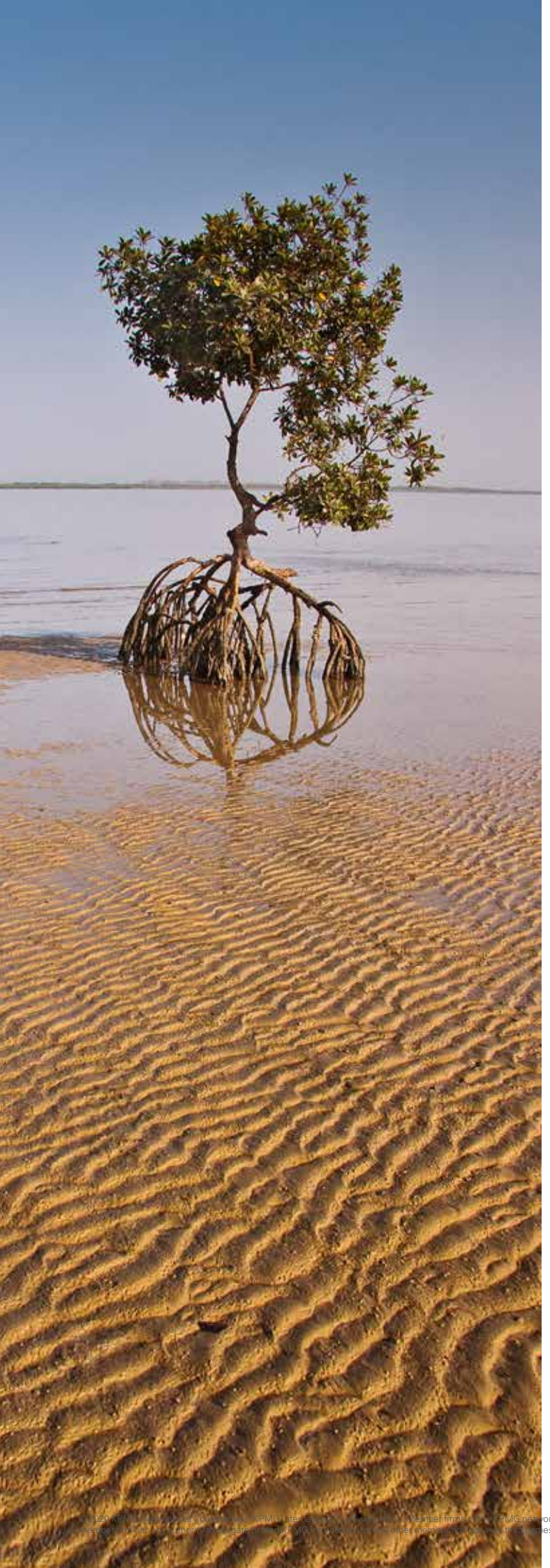
More generally, reporting by AIFs is under consideration as part of the review of AIFMD,[9] which the Commission has been working on for a couple of years. A number of aspects of the directive have been, or will be, reviewed and covered under new measures impacting both UCITS and AIFs (such as asset segregation, cross border distribution, leverage and liquidity management). KPMG's comprehensive study for the Commission on the operation of the AIFMD[10] identified the extensive AIFMD reporting requirements as a clear candidate for review. The Commission's 10-page report of June 2020 defers frequently to KPMG's findings. There will be a consultation in autumn 2020 followed by legislative proposals in 2021, but a fundamental overhaul of the directive in not expected.

> "... issues around the frameworks and procedures for calculating leverage"

Meanwhile, AMF has inspected the AIFMD reporting systems, controls and quality of reports of five **French** fund managers and has highlighted a range of shortcomings.[11] Data were missing from some reports. Three managers failed to submit special reports even though funds' leverage exceeded their NAV by at least three times, and one manager reported negative leverage, which is impossible by design. The AMF also highlighted issues around the frameworks and procedures for calculating leverage, managing liquidity, reporting and carrying out stress tests, and that a couple of firms did not make clear and accurate disclosures to investors.

[9] Alternative Investment Fund Managers Directive
[10] Source: European Commission, 10 January 2019
[11] Source: AMF, News Release, 24 April 2020

© 2020 KPMG International Cooperative ("KPMG International"), a Swiss entity. Member firms of the KPMG network of independent firms are affiliated with KPMG International. KPMG International provides no client services. No member firm has any authority to obligate or bind KPMG International or any other member firm vis-à-vis third parties, nor does KPMG International have any such authority to obligate or bind any member firm. All rights reserved.



Chapter 3

Operational resilience & technology: new priorities

Operational resilience has been a focus for banking and insurance regulators for some time, and the spotlight is now turning onto asset managers. The topic headers are similar across financial services, but the specifics need to reflect the fiduciary nature of asset managers.

Cybersecurity and anti-money laundering controls are not new issues, but social distancing measures introduced to curtail the pandemic have forced the industry towards greater use of technology and increased vulnerabilities.

Operational resilience is usually defined as the ability of an organization to adapt rapidly to changing environments. This includes both the resilience of systems and processes and more generally the ability of the organization to continue to operate its business in the event of disruptive events. **UK** regulators are taking a broader view, covering all risks to the provision of key business services and focusing increasingly on how the continuity of key business services could be preserved in the event of disruptions occurring. In **France**, the AMF takes a similarly broad view.

In January 2020, the Securities Commission **Malaysia** issued Guiding Principles for the approach to business continuity by capital market entities, to ensure timely continuity of critical services and the fulfilment of business obligations in the event of disruptions. The principles, developed in close consultation with the industry, highlight six focus areas: board and senior management responsibility; the importance of risk identification, particularly interdependency and concentration risks; risk-based recovery strategy; annual testing of business continuity protocols; comprehensive escalation procedures and communication plans in the event of major disruptions; and ongoing review of business continuity arrangements. Entities are encouraged to implement these principles, considering the nature, size and complexity of their business operations.

© 2020 KPMG International Cooperative ("KPMG International"). Member firms of the KPMG network of independent firms are affiliated with KPMG International. KPMG International provides no client services. No member firm has any authority to obligate or bind KPMG International or any other member firm vis-a-vis third parties, nor does KPMG International have any such authority to obligate or bind any member firm. All rights reserved.

In November 2019, the AFM published its findings from a survey of **Dutch** AIFMs, together with clarifications and good practices. It expects AIFMs:

- strictly to segregate (i.e. hierarchically and functionally) the "second line of defense" risk management compliance functions from first line of defense activities and each other
- adequately to assess continuity risks relating to outsourcing and to take adequate mitigating measures, including an outsourcing exit protocol, for example
- to have a thorough understanding of and sufficient oversight over the tasks and activities of the appointed depositary, including any outsourcing of custody activities to third parties
- to keep any conduct rules, procedures and measures up-to-date and effective, to ensure they are aligned with internal and external developments and are compliant with relevant laws and regulations

Focus on outsourcing

The AFM also conducted a more general assessment of the outsourcing activities of licensed entities, including several large investment firms. The main objective was to assess the dependencies of those entities to third-party service providers and whether they had implemented adequate control measures to monitor the providers' performance. The main conclusions were that firms had not in all cases identified their relationships with third-party service providers to be outsourcing relationships, and that many firms did not comply with the applicable outsourcing requirements, such as control measures.

In **Ireland**, the CBI emphasized in November 2019 the importance of high-quality, effective fund governance, with well-managed outsourcing and delegation, and an approach that ensures the interests of fund investors are enhanced and never compromised.[1] Separately, in March 2020, as part of its thematic inspection of Cybersecurity Risk Management in asset management firms, the CBI said that sufficient oversight of outsourced security operations centre services was not evidenced. There was an absence of formal agreements for such services, no performance reporting, no documented guidance for security analysts or no consideration for chain outsourcing. The CBI highlighted the importance of firms' ability to demonstrate that they are fully in control of all aspects of the business, irrespective of the level of outsourcing or their relationship with group companies.

The quest for cyber security

With large-scale working from home, firms have had to review, remind staff of and enforce cyber security policies, to guard against increased hacking and fraudulent activity against firms or their clients. Business continuity plans and alert systems have been tested. IT infrastructures have been strained in supporting increased use of digital communication applications and use of personal devices.

Onsite inspections by the CBI of **Irish** asset managers' key cyber security risk management practices found underdeveloped protections at some firms. The March 2020 report found that many of the weaknesses identified in its 2016 report still exist. Boards and senior management are not sufficiently prioritizing a strong culture of cyber security, and there were deficiencies in IT asset inventories. Firms' cyber security incident response and recovery plans also failed to meet required standards. In addition, while all firms reported on their cyber security risks, the quality and frequency of this reporting was said to be variable.

Overall, the CBI said that risk indicators used by asset managers concentrated too much on qualitative indicators at the expense of quantitative indicators. It said it would monitor a number of asset managers to ensure they are improving their cyber security resilience and minimizing the risks to themselves and the industry.

In **France**, the AMF conducted a thematic control in 2019 focusing on cyber governance and the integration of cyber risk into risk mapping. A new thematic campaign was launched in May 2020, which focuses on how cyber incidents are dealt with, how IT service providers are monitored and controlled, and penetration tests. The **Belgian** regulator launched a cyber security checklist for asset managers to complete and urged firms to increase their vigilance regarding these risks due to the major repercussions they could have on operational continuity.

> "the ability of an organization to adapt rapidly to changing environments"

The MAS issued a Notice on Cyber Hygiene, which sets out essential cyber security requirements for financial institutions in **Singapore**, including licensed and registered fund managers. Firms have until August 2020 to put the required measures into place. The Notice enforces key elements in the existing MAS Technology Risk Management Guidelines, including robust security for IT systems, timely updates to address system flaws, measures to prevent unauthorized access, and stronger user authentication for critical systems and systems to access customer information.

The Central Bank of **Bahrain** (CBB) introduced cyber security regulations that require all investment firms to establish clear ownership and management accountability for the risks associated with cyber-attacks. They must

[1] Source: CBI, Speech by Gerry Cross, 21 November 2019

© 2020 KPMG International Cooperative ("KPMG International"), a Swiss entity. Member firms of the KPMG network of independent firms are affiliated with KPMG International. KPMG International provides no client services. No member firm has any authority to obligate or bind KPMG International or any other member firm vis-à-vis third parties, nor does KPMG International have any such authority to obligate or bind any member firm. All rights reserved.

establish risk management processes commensurate with their size, nature of activities and risk profiles, and cybersecurity measures must be part of firms' IT security policies.

Firms are required immediately to report cyber-attacks that compromise customer information or disrupt critical services that affect their operations. Firms providing online services must test their systems against security breaches and verify the robustness of security controls twice a year, in June and December. These tests should be conducted by external independent security professionals, such as ethical hackers, who can provide penetration testing services and a vulnerability assessment.

In **Canada**, IIROC updated its 2015 Cybersecurity Best Practices Guide in early 2020. It also launched a new microsite devoted to the topic, as well as conducting a table-top exercise for small and medium-sized firms.

In **Germany**, the focus is on supervisory requirements for asset managers for IT. Based on the findings of previous years' IT audits, BaFin issued the "KAIT", which is legally binding for all licensed asset management companies. Firms must perform gap analyses, which are validated annually by auditors. BaFin said it would send out questionnaires to get an overview of firms' implementation, and KAIT-related special audits are planned for the second half of 2020.

> "tests should be conducted by external independent security professionals"

KAIT is not just for IT departments to consider – BaFin expects a deeper involvement of business units and that they own the risks. It takes a holistic approach to IT risk management, requiring a detailed and up-to-date overview of the entire information domain within a firm, including systems, processes and networks. It focuses on eight areas: strategy, governance, information risk management, information security management, user access management, projects and application development, operations and outsourcing, and other external procurement. However, the principles of proportionality regarding size, complexity, risk exposure and internationality are applied.

Enterprise resilience

Financial resilience

- Financial stress testing and forecasting
- Liquidity and financing
- Financial crisis response and contingency planning

Operational resilience

- Operational crisis management
- People
- Supply chain
- Technology and data
- Premises and property
- Cyber and fraud risk

Commercial resilience

- Markets, products and services
- Customer experience and behaviours

© 2020 KPMG International Cooperative ("KPMG International"), a Swiss entity. Member firms of the KPMG network of independent firms are affiliated with KPMG International. KPMG International provides no client services. No member firm has any authority to obligate or bind KPMG International or any other member firm vis-à-vis third parties, nor does KPMG International have any such authority to obligate or bind any member firm. All rights reserved.

If an asset manager outsources to a provider (whether within the same group, domestic or foreign), that provider must fulfil the regulation. So far, it appears that outsourcing of IT to France, the UK or the US does not fully meet the KAIT requirements.

In December 2019, the AFM published eleven information security principles: up-to-date information security policy; a governance structure that supports information security risk identification and risk assessment; people and culture; technology; operating processes; physical security; data security measures; incident management; information security in outsourcing relationships; and information security in the information chain. The AFM expects **Dutch** investment firms, fund managers and financial services providers to follow these principles by taking sufficient measures to identify and adequately monitor and manage information security risks in their operations.

Technology both enhances and complicates AML measures

Anti-money laundering (AML) and countering terrorist financing (CTF) measures have been a major focus across the world for many years. Technology has supported efforts to make the rules more effective, but it has also introduced new complexities and an even greater need for cross-border co-operation. In its Business Bulletin of March 2020, FATF[2] highlighted mitigating the ML/TF risks of virtual assets as a strategic initiative. It reported to the G20 in July 2020 on its analysis of ML/TF risks associated with so-called stablecoins and the application of the FATF Standards to them. It also published guidance on digital identity, which is intended to assist governments, regulated entities and other relevant stakeholders in determining how digital identification systems can be used to conduct certain elements of due diligence.

The **European** Banking Authority (which has AML/CTF responsibilities across all sectors) has issued guidelines on regulatory co-operation and information exchange, including a plan to establish supervisory colleges to enable a common approach and coordinated action. Recent high-profile cases involving EU banks show that, where firms operate in different countries, communication failures have led to serious and lengthy compliance failures.

The fifth EU Anti-Money Laundering Directive (AMLD V) had to be implemented by January 2020. The AMF has brought **French** branches of fund managers into the provisions. Its guidelines clarify that risks related to assets

[2] Financial Action Task Force

© 2020 KPMG International Cooperative ("KPMG International"), a Swiss entity. Member firms of the KPMG network of independent firms are affiliated with KPMG International. KPMG International provides no client services. No member firm has any authority to obligate or bind KPMG International or any other member firm vis-à-vis third parties, nor does KPMG International have any such authority to obligate or bind any member firm. All rights reserved.

and investments can in some cases be much greater than risks related to distribution. In **Italy**, the central bank has requested that investment firms perform a self-assessment of their AML risks.[3] In order to streamline the **Swedish** authorities' access to AML data, the tax agency created a digital platform. Firms must provide data and ensure that the information is directly and immediately available for search.

In **Luxembourg**, a new division was created, reporting directly to the CSSF's executive board. Its mission is to help the departments dealing with funds and fund managers to carry out their AML/CTF supervisory activities and to play a pivotal role in the communication with the industry. It is also in charge of the AML/CTF questionnaires sent annually to professionals in the investment industry. The CSSF is asking fund managers to use its IT tool "goAML" to report suspicious transactions as early as possible and to communicate with authorities via secure channels. The CBI's 2020 priorities include supervising compliance by **Irish** firms, including virtual asset service providers with AML requirements. It has been developing a supervisory engagement strategy in relation to such entities, which should be subject to intense supervision in 2020.

A report by MONEYVAL – the Council of Europe's AML body – noted that **Malta** had demonstrated a broad understanding of the vulnerabilities within its system, but that some important factors had been insufficiently analyzed and understood. It called on Malta to strengthen the practical application of its AML/CTF measures. Following an exercise by the Maltese authorities across all industries, asset management was identified as a high-risk sector. More assurance was sought from firms by the regulator over the protection of client assets and monies.

In 2019, the **Dutch** AFM announced an assessment of compliance with the Money Laundering and Terrorist Financing (Prevention) Act by fund managers and investment firms. It emphasized the need for company-wide risk analyses but found that most investigated institutions were not yet fully organized. It expects all investment institutions and companies to put their procedures and measures in order about risk assessment and the policy to counter the risks. Firms should ensure:

- The risks are not too generally formulated and focus on the nature and the size of the institution
- The risk assessment addresses all risk factors related to the type of client, product, service, transactions, delivery channel, and countries or geographic areas
- The risks are realistically estimated and are not, without reason, estimated at "low"
- The policy has been elaborated in terms of clear, easily accessible procedures, for example for client risk classification, continuous monitoring and audits relating to politically exposed persons and sanctions
- The policies and procedures contain a clear description and assignment of tasks, powers and responsibilities within the company

> "... will not hesitate to take regulatory action"

The revised JFSA AML/CTF guidelines pointed out **Japanese** firms' deficiencies relating to risk identification and evaluation, and customer management. In **Hong Kong (SAR), China** the SFC issued a statement reminding listed companies of the need to disclose fully the identities of the counterparties to corporate transactions in any communications. The circular also provides guidance for asset managers considering transactions or arrangements for private funds and discretionary accounts. It singles out special purpose vehicles as being especially used to conceal ownership. It also states that it will not hesitate to take regulatory action against asset managers which fail to detect dubious arrangements or facilitate improper conduct due to inadequacies in their controls.

The MAS updated its Guide to Digital Token Offerings after the **Singapore** Payment Services Act 2019 required providers and intermediaries dealing in digital payment tokens or facilitating the exchange of digital payment tokens to be licensed and regulated under the Act for AML/CTF purposes. In addition, institutions operating a primary platform for digital tokens may be carrying on business in one or more regulated activities under the Securities and Futures Act, including fund management, and may also need to hold a capital markets services license.

The CBB launched the new national Electronic Know Your Client (eKYC) Project in collaboration with the **Bahrain** Information and eGovernment Authority. It is believed to be the first of its kind in the Arab World targeting financial services providers. It provides an electronic platform and a database for firms to authenticate the identities of their clients and to validate information before offering financial services. The project also aspires to help FinTech companies to launch products and services.

[3] Source: Banca d'Italia, description of Supervisory Tasks, undated website

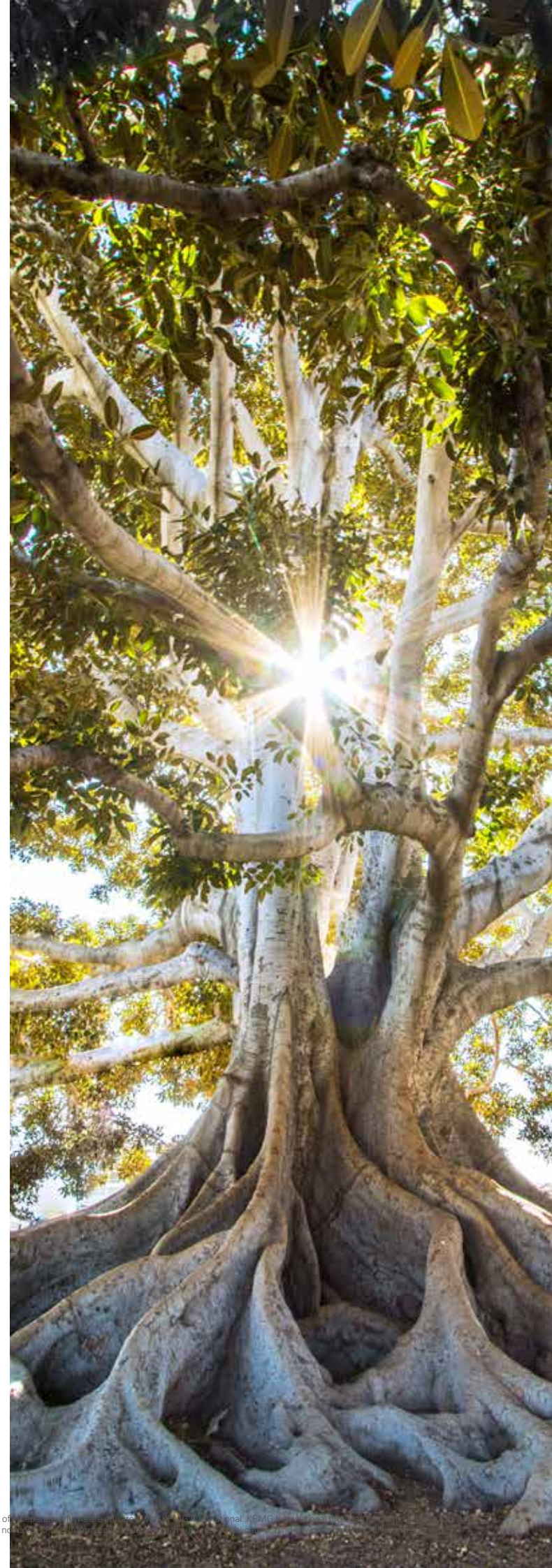
© 2020 KPMG International Cooperative ("KPMG International"), a Swiss entity. Member firms of the KPMG network of independent firms are affiliated with KPMG International. KPMG International provides no client services. No member firm has any authority to obligate or bind KPMG International or any other member firm vis-à-vis third parties, nor does KPMG International have any such authority to obligate or bind any member firm. All rights reserved.

Guernsey, **Jersey** and the **Isle of Man** jointly announced they would set up publicly-accessible registers of company beneficial ownership. The Crown Dependencies will work collaboratively with the EU in 2021 on connecting these registers of beneficial ownership with those in EU member states, so they can be scrutinized by law enforcement authorities and financial intelligence units. The registers may be open to financial services firms and other businesses to perform due diligence on customers or counterparties, but not until a year after the EU's planned review of AMLD V, which is scheduled for January 2022.

Financial resilience

This is one part of the wider enterprise resilience piece. Prudential requirements for asset managers do not change often, while regulators focus on conduct. New requirements are being introduced in the **EU** in June 2021, from when asset managers will no longer be subject to rules designed for banks. The main elements of the regime have broadly been welcomed by the industry, but that are some points of detail that could give rise to implementation issues.

Ahead of these new rules, the **Dutch** National Bank assessed the quality of "common equity tier 1" capital at small and medium fund managers and investment firms in the third quarter of 2019. It published the results in April 2020. They covered various aspects, including firms not seeking permission to withdraw capital instruments, the treatment of capital for which a loan has been taken, reporting errors, and inappropriate or insufficiently detailed wording in articles of association. The regulator expected firms to take measures to come into compliance.



© 2020 KPMG International Cooperative ("KPMG International"), a Swiss entity. Member firms of the KPMG network of [illegible] KPMG International. KPMG [illegible] member firm has any authority to obligate or bind KPMG International or any other member firm vis-à-vis third parties, no [illegible]

Chapter 4

Duty of care is fast being codified

Asset managers must ask themselves not "can we?" but "should we?" This pro-client message, conceived in Australia, is rapidly spreading. Regulators are demanding that investment firms and distributors put clients' interests before themselves and are increasingly explicit about duty of care. This is a major adjustment from the post-financial crisis era, which focused on piecemeal reform of the broken pieces of the regulatory system.

The approach differs across jurisdictions – some are taking a prescriptive approach, while others are sticking to principles – but all regulators are threatening enforcement action if firms' culture and conduct do not meet regulators' and clients' expectations.

Regulators are asking questions about stewardship and "short-termism", and new rules for distributors could impact the selection of investment funds.

Not "Can we?", but "Should we?"

In **Australia**, a report by the Royal Commission in 2019 has resulted in a raft of measures enshrining duty of care towards customers by firms and the restoring of public trust in financial institutions as the guiding principle for regulators. The report's tagline "Should we?" has become a mantra for financial firms. Decisions taken in boardrooms and at middle management levels must now center on doing the right thing, making the right products and marketing them to the right people.

This principle was buttressed by a new accountability regime. In January 2020, the Australian government proposed the Financial Accountability Regime (FAR), to replace the Banking Executive Accountability Regime and to extend accountability provisions to all entities regulated

© 2020 KPMG International Cooperative ("KPMG International"), a Swiss entity. Member firms of the KPMG network of independent firms are affiliated with KPMG International. KPMG International provides no client services. No member firm has any authority to obligate or bind KPMG International or any other member firm vis-a-vis third parties, nor does KPMG International have any such authority to obligate or bind any member firm. All rights reserved.

by APRA,[1] potentially including asset managers and pension funds. It is intended to come into effect by end-2020. Accountable persons will include, but not be limited to, those who have senior executive responsibility for:

- Management of a significant business division
- Internal and external management of the dispute resolution function
- Management of client or member remediation programs
- Service provision and maintenance (i.e. product responsibility)
- Setting of incentives, including incentives for staff and outward facing-incentives such as loyalty programs
- Breach reporting

Accountable persons will be required to act with honesty and integrity, due skill, care and diligence. They must deal with the regulators in an open, constructive and co-operative way and take reasonable steps in carrying out responsibilities to ensure the prudential standing and reputation of the business they work for are not adversely affected. They must also take reasonable steps to ensure that the entity complies with its licensing obligations, which cuts across existing collective responsibilities of boards and governance committees.

The introduction of senior executive responsibility for end-to-end management of a given product or product group has also been proposed. This includes all steps relating to a product – design, delivery, maintenance, and any necessary remediation of customers. It appears that the timing will run parallel with the Product Design and Distribution Obligations, which had a mandatory compliance date of April 2021 (now extended by six months) and which will also cover product responsibility. The regulation seeks to ensure that financial products are designed and marketed appropriately. The rules will capture all asset managers and distributors of financial products, including superannuation funds.

Data protection is also a major issue in Australia, highlighted by the introduction of FAR, which demands that firms become data stewards. A new Consumer Data Rights regime will roll out from July 2020, giving individuals rights to access their personal information and data on specific products and services. Data portability is intended to stimulate competition and create new opportunities, starting with the banking sector. Reforms to the Privacy Act are also being considered.

In **Singapore**, the scope of the MAS Guidelines on Individual Accountability and Conduct was originally proposed to include licensed fund managers and the proposal has been extended also to include registered fund managers. The rules will strengthen the oversight of employees in material risk functions and embed standards of conduct among employees. Senior Managers with responsibility for the management of functions that are core to operations must be clearly identified, they must be fit and proper for their roles, and they must be held responsible for the actions of their staff. The governance framework must support senior managers and reporting relationships should be transparent.

> “... required to act with honesty and integrity, due skill, care and diligence”

High level principles include standards of honesty and integrity, due care and diligence, fair dealing (treating customers fairly), management of conflicts of interest, competence and continuous development, adequate risk management, and compliance with the applicable laws and regulations. Incentive structures must consider risk and control objectives, as well as feedback from human resources, compliance, risk management and internal audit. There should be a consequence management system, including transparent investigation and disciplinary procedures, and a formalized whistleblowing channel. Finally, engagement with key stakeholders, including investors, must ensure transparent and timely communication of relevant material information.

The CBI reminded **Irish** firms of the upcoming Individual Accountability Regime.[2] In preparation, firms should ensure that they are fully compliant with the existing Fitness and Probity Requirements and consider the additional Pre-Approved Controlled Functions that have been proposed, including a Chief Information Officer. In the **UK**, the Senior Managers and Certification Regime (SMCR) was extended to most FCA-authorized solo-regulated firms, including asset and fund managers, in December 2019. The regime sets a new standard of personal conduct, and aims to reduce harm to consumers, strengthen market integrity and encourage the positive transformation of the industry’s culture. In a separate move, the FCA now requires fund company boards to include enough independent directors.

The FCA is also reviewing retail investor exposure to alternative investment products. Its letter to alternative asset managers in January 2020 underlined that where firms allow investors to nominate themselves as “professional”, the FCA expects firms properly to assess a client’s knowledge and experience and to refrain from re-categorizing a retail client if they do not meet the threshold.

[1]Australian Prudential Regulatory Authority
[2]Source: CBI, Speech by Derville Rowland, 2 May 2019

© 2020 KPMG International Cooperative (“KPMG International”), a Swiss entity. Member firms of the KPMG network of independent firms are affiliated with KPMG International. KPMG International provides no client services. No member firm has any authority to obligate or bind KPMG International or any other member firm vis-à-vis third parties, nor does KPMG International have any such authority to obligate or bind any member firm. All rights reserved.

More generally, the regulator is focused on purpose as a key driver of healthy culture. In its 2019/2020 business plan, the FCA said it is *"interested in promoting healthy cultures where the driving purpose leads people … to do the right thing competently and to speak up and to listen to others".* In March 2020, Discussion Paper 20/1 explored the role of purpose in driving a healthy, sustainable culture. It included a collection of essays from industry leaders, professional bodies and culture experts. Meanwhile, an FCA paper on fair treatment of vulnerable customers requires firms to ensure that customers are treated appropriately and consistently, that staff training and competence are improved, and that the company's policy pervades the firm's operations.

In October 2019, the **Canadian** Securities Administrators (CSA) introduced the final version of the client-focused reforms. Measures relating to conflicts of interest take effect at end-2020, and the remaining changes at end-2021. The rules put the onus on investment firms and advisors to ensure clients' interests come first when determining suitable investments. The rules also clarify the service investors can expect from investment firms, introducing new obligations on registrants and codifying best practices.

> "material conflicts must be addressed in the best interest of the client"

Specifically, firms must increase the information they gather on clients and products. Firms must obtain information about clients' personal circumstances and risk profile, as opposed to just risk tolerance as in the past. There is a minimum frequency for reviewing that information and an expectation to facilitate meaningful conversations with clients, asking probing questions and identifying inconsistent information. Client and product information must be used, particularly when recommending investments that are "illiquid or highly risky". A key change is around suitability and the assessment and impact of costs on client returns.

Conflict of interest reforms demand that *"material conflicts must be addressed in the best interest of the client",* meaning firms must ensure they have the right documentation in areas such as referral arrangements, sales practices, compensation arrangements and incentive practices. Firms must also review the titles of staff to ensure they are appropriate and not misleading for clients – for example, making them appear more senior.

Based on the recommendations of a Working Group and inputs from public consultation, SEBI[3] has reviewed the framework for regulation of portfolio managers in **India**. In addition to new regulations that come into effect from May 2020, SEBI has mandated certain guidelines for portfolio managers with respect to fees and charges, on-boarding of clients, investment approach, periodic reporting (including performance reporting), disclosures and supervision of distributors.

The SEC has proposed revisions to its advertising and solicitation rules. The advertising rules control how advisers in the **US** post testimonials, endorsements and third-party ratings on social media. With a view to accommodating unknown future changes in communication, the proposed amendments would replace the current rule's broadly drawn limitations with principles-based provisions. The proposed approach would also permit the use of testimonials, endorsements and third-party ratings, subject to certain conditions, and would include tailored requirements for the presentation of performance results based on an advertisement's intended audience.

The proposed amendments to the cash solicitation rule would expand the current rule to cover solicitation arrangements involving all forms of compensation, rather than only cash, subject to a new low threshold. Other aspects of the rule would also be updated, such as who is disqualified from soliciting. Again, the amendments are intended to reflect advances in technology, the expectations of investors seeking advisory services, regulatory changes and the evolution of industry practices.

The expansion of the proposed rules to private funds has raised concerns. The SEC acknowledges that certain defined terms and investor categories are applied differently between various provisions of the securities laws and that there are redundancies where existing provisions of the securities laws may be applicable to the concerns addressed by the proposed advertising and solicitation rules.

The SEC also issued a request for comment by May 2020 on misleading fund names. It intends to modify the rule adopted in 2001 as an investor protection measure to ensure that investors are not misled or deceived by a fund's name.

A review of MiFID II/MiFIR[4] by the **European** Commission is underway. It includes assessment of whether retail investor protection rules, particularly those related to disclosure, suitability assessment and inducements, are working as intended and how they affect the decision-making of retail investors (see also Chapters 5 and 6). The

[3]Securities and Exchange Board of India
[4]Markets in Financial Instruments Directive, revised/ Markets in Financial Instruments Regulation

© 2020 KPMG International Cooperative ("KPMG International"), a Swiss entity. Member firms of the KPMG network of independent firms are affiliated with KPMG International. KPMG International provides no client services. No member firm has any authority to obligate or bind KPMG International or any other member firm vis-à-vis third parties, nor does KPMG International have any such authority to obligate or bind any member firm. All rights reserved.

Commission has also commissioned a study of whether rules across retail investment products are effective, relevant, efficient and coherent, and whether they have EU added value. The study will highlight possible shortcomings in the retail investment distribution, suitability assessment and disclosure processes, and demonstrate how they affect retail client understanding and investment decisions. It is not expected to report before late 2021, well after the Commission is due to report on MiFID II.

Meanwhile, **Switzerland** has introduced two pieces of legislation – FinSA[5] and FinIA[6] – to strengthen consumer protection and create a level playing field for financial institutions and instruments. They are closely aligned with MiFID II/MiFIR. FinSA regulates the provision of financial services and offerings of financial instruments. FinIA sets out the licensing requirements for regulated financial institutions other than banks, including fund management companies. Independent asset managers are now subject to FINMA authorization and to rules on capital, risk management and internal controls, with a two-year transition.

Other client advisors, including those marketing or offering funds in the Swiss market, are subject to a registration requirement and new conduct rules. These also apply to non-Swiss individuals providing financial services in Switzerland and not being under prudential supervision. With respect to fund distribution, the registration duty replaces the fund distributor license. Clarifications from FINMA are expected soon.

In **South Africa**, the regulator is taking a more active stance to supervision and enforcement. In December 2019 it issued a second discussion document on investment related matters. It sought input on four key focus areas: general investments landscape; the different activities performed under a discretionary investment mandate; categorization of investment advisers within a retail distribution review framework; and implications for remuneration and charging structures.

Regulators turn to enforcement and penalties

Regulators are also introducing increased censure and penalties. **China**'s updated Securities Law became effective in March 2020 and imposes strong penalties for misconduct. The penalty for insider trading is now up to ten times the illegal profit made and the maximum fine for illegal information disclosure is set at CNY 10 million. The Law also strengthens information disclosure requirements and clarifies the responsibilities of directors, supervisors and senior executives.

[5]Financial Services Act
[6]Financial Institutions Act

© 2020 KPMG International Cooperative ("KPMG International"), a Swiss entity. Member firms of the KPMG network of independent firms are affiliated with KPMG International. KPMG International provides no client services. No member firm has any authority to obligate or bind KPMG International or any other member firm vis-à-vis third parties, nor does KPMG International have any such authority to obligate or bind any member firm. All rights reserved.

Significant reforms were passed in 2019 to **Australia**'s whistleblower laws. Public companies, large proprietary companies and corporate trustees of superannuation entities regulated by APRA were required to have a Whistleblower Policy in place by January 2020 and to make it known to staff. Also, the Australian Law Reform Commission was asked to undertake a comprehensive review of the corporate criminal responsibility regime, with a focus on effective laws to hold corporations to account for criminal misconduct. The Commission proposed reforms in November 2019 and reported to the Attorney General in April 2020. At the time of writing, the report had not yet been made public.

In **Hong Kong (SAR), China** the SFC Manager-In-Charge Regime has been in effect for over two years. The MAS has signaled that, in the wake of Australia's report on misconduct in the financial services industry, changing culture and governance is now the centerpiece of regulatory efforts in **Singapore**. And in a letter in January 2020, the FCA said that **UK** asset managers are failing to provide consistent good value for retail investors and that strong action for offenders could be expected. Standards of governance *"generally fall below our expectations"* and investment in technology and operational resilience is *"inadequate,"* it said. There are also changes to the definition of securities, catching some private equity managers.

The CBI wrote to **Irish** asset managers in January 2020 detailing the findings of its thematic review into wholesale market conduct risk. The central theme of the findings was that firms may not have been adequately identifying the market conduct risk to which they were exposed. Inadequate market conduct risk frameworks, governance of market conduct risks and failure to identify the risk of market abuse were also highlighted in the letter. Firms were reminded of the CBI's expectations and informed that supervisory work in 2020 will include considerable focus in this area. CEOs were required to present the letter to their boards and ensure any misalignments with their internal frameworks and practices are addressed, or regulatory action could follow.

Stewardship versus short-termism

With effect from April 2020, mutual funds and all categories of alternative funds in **India** are required to follow the Stewardship Code for institutional investors in relation to their investment in listed equities. The code comprises six principles:

1. To formulate a comprehensive policy on the discharge of stewardship responsibilities, publicly disclose it, and review and update it periodically
2. To have and publicly disclose a clear policy on how conflicts of interest are managed
3. To monitor investee companies

© 2020 KPMG International Cooperative ("KPMG International"), a Swiss entity. Member firms of the KPMG network of independent firms are affiliated with KPMG International. KPMG International provides no client services. No member firm has any authority to obligate or bind KPMG International or any other member firm vis-à-vis third parties, nor does KPMG International have any such authority to obligate or bind any member firm. All rights reserved.

4. To have and publicly disclose a clear policy on intervention in investee companies, including on collaboration with other institutional investors where required
5. To have a clear policy on voting and disclose voting activity
6. To report periodically on stewardship activities

In the **US**, proxy voting has been under scrutiny. In September 2019, the SEC released detailed interpretive guidance relating to investment advisers' fiduciary duties. Investment advisers regularly are faced with an array of decisions regarding voting of equity securities on behalf of their clients, whether those clients are individual investors, funds or other institutional investors. The SEC says that to satisfy its fiduciary duty in making any voting determination, the investment adviser must make the determination in the best interest of the client and must not place the investment adviser's own interests ahead of the interests of the client. Where the investment adviser uses a third-party proxy voting service (either for ease of administration or in order to manage a potential conflict of interest), the investment adviser retains its fiduciary responsibility to its clients.

The guidance covers a wide range of matters, including terms to include in advisory agreements, and how to demonstrate that voting determinations comply with the firm's policy and are made in clients' best interest. It also covers considerations when choosing to retain a third-party proxy advisory firm, including evaluation of the service and steps to take if errors or omissions come to light.

The European Commission believes that *"many companies still focus too much on short-term financial performance."* In early 2019, it asked the European Supervisory Authorities (ESAs) to investigate sources of short-termism to provide advice on areas that regulators should address. The ESAs reported in December 2019 that they had found no or little evidence of short-termism, but nevertheless recommended some actions.

ESMA reported that while investors consider a long-term investment horizon to be longer than six years, the most common time horizon for general business activities was less than five years and that investment research had a short-term focus. ESMA recommended that the Commission should monitor whether the integration of sustainability risks and factors by insurance companies, asset managers and investment firms would help to focus on long-term risks in investment research. It said its ongoing work on MiFID II rules on payment for research was relevant to this. Further, in February 2020, it said

> "short-term pressures and leadership changes lead to poor culture"

that the misalignment of investment horizons and the remuneration of fund managers and executives could be a potential source of undue short-termism.

One of the essays in the FCA's March 2020 discussion paper (see above) said that short-term pressures and leadership changes lead to poor culture at **UK** asset managers. CFA UK chief executive officer, Will Goodhart, the essay's author, said that a focus on achieving quarterly, annual or even three-year goals can undermine the overall purpose of an organization. Leadership, reward, and managing people and governance are drivers of healthy culture, he said.

Spotlight falls on distributors and financial advisers

In addition to the various reforms that impact both investment firms and distributors, there are some rules that apply specifically to distributors, especially financial advisers. In **Switzerland**, for instance, financial advisors (including non-Swiss providers that are not subject to prudential supervision) are now subject to a registration requirement with the local register of advisors under FinSA. In order to be registered, financial advisers must have knowledge of the rules of conduct, possess the requisite expertise, have proper professional liability insurance or equivalent financial guarantees, and are affiliated with an ombudsman. The rules include key requirements related to suitability and appropriateness of advice, general information duties, and the duty to provide key information documents and prospectuses (see also Chapter 5).

The **US** SEC approved "Reg BI" in June 2019 and has issued frequently asked questions. It came into effect in June 2020, but the SEC has said that, given the pandemic, its initial examinations will focus on "good faith". The rule relates to retail clients and to wealthy individuals deemed as sophisticated investors. It establishes a new standard of conduct, beyond existing suitability obligations, for broker-dealers to act in the best interest of their retail customers when making a recommendation relating to any securities transaction or investment strategy involving securities, including explicit or implicit hold recommendations.

© 2020 KPMG International Cooperative ("KPMG International"), a Swiss entity. Member firms of the KPMG network of independent firms are affiliated with KPMG International. KPMG International provides no client services. No member firm has any authority to obligate or bind KPMG International or any other member firm vis-à-vis third parties, nor does KPMG International have any such authority to obligate or bind any member firm. All rights reserved.

There are four specified obligations:

- to provide certain disclosure before or at the time of the recommendation
- to exercise reasonable diligence, care and skill in making the recommendation
- to establish, maintain and enforce written policies and procedures reasonably designed to address conflicts of interest
- to establish enforcement policies to ensure compliance

Conflicts of interest could include retrocession fees, share class fees, and recommendations of index mutual funds versus ETFs. The rule could therefore impact firms' selection of funds with higher management charges.

Additionally, firms are required to deliver a client relationship summary ("Form CRS") to clients at the beginning of their relationship, providing summarized information about services, fees and costs, conflicts of interest, legal standard of conduct, and whether or not the firm and its financial professionals have disciplinary history. Layered disclosures are permitted so that clients can more easily access additional information about these topics.

The Reg BI initiative followed a year of active rulemaking by the SEC, during which it increased its enforcement actions and made particular efforts to shield retail investors from poor practice via the share class selection disclosure initiative, regulation on initial coin offerings and digital assets, and the use of technology to investigate unlawful trading.

> "... to strengthen conduct by investment advice firms and to protect the interest of investors seeking their advice"

In **France**, the AMF continues to enhance the national regime applicable to financial investment advisers. It has clarified that the conduct of business rules with which they must comply when assessing suitability of products distributed are analogous to those applying to providers of investment advice under MiFID II and that ESMA's suitability guidelines apply.

In December 2019, SEBI wrote to all **Indian** investment advisers, mandating them to complete a client risk profile, based on information provided to them, and to obtain client consent. Investment advisers are also restricted from providing free trials for any products/services to prospective clients. SEBI's intention is to strengthen conduct by investment advice firms and to protect the interest of investors seeking their advice. In January 2020, it launched a wide-ranging review of the regulatory framework for investment advisers, with a two-week response period.

Australia is clamping down on the "hawking" of financial products. Investment advisers can no longer make unwanted and unsolicited approaches to offer financial products to retail clients.[7]

Use of technology in distribution

The CBB issued a second volume of its regulations on digital advice in 2019. Specialized FinTech firms in **Bahrain** can obtain a license to provide digital financial advice. The new rules focus on providing safeguards and controls governing the use of algorithms or artificial intelligence, embedded in the software programs used in the digital advice tools. Firms must implement a testing strategy for algorithms to detect errors, biases or unauthorized access. They are not allowed to outsource key processes and management of client-facing tools.

In **Brazil**, online distribution platforms have been attracting many investors and the list of managers on the platforms is fast expanding, too. The regulator proposed through public hearing notice SDM 03/2019 to change the terms of its license for retail distribution platforms, including the exclusivity of retail agents, but is first seeking to establish the level and types of fees being levied by various platforms. Also, distributors are to be banned from providing investment advice to platform users.

The FCA further warned **UK** fund platforms in February 2020 to manage potential conflicts of interest over recommended fund lists. It said that best-buy lists must be constructed impartially and *"manage conflicts [such as] preference for funds offering discounts over formal and objective criteria, lack of independence of research teams and associated governance."*

A month earlier, it wrote to financial advisers about how they promote products, the need for sufficient professional indemnity insurance to compensate consumers, and the rising tide of pensions and investment scams. It emphasized that firms should ensure that advice is suitable, costs and charges are disclosed clearly, and they act in the best interests of clients. Conflicts of interest must be identified and, where they cannot be prevented, disclosed and managed. Since December 2019, financial advisers have been required to comply with the SMCR.

[7]Source: Government of Australia, Exposure Draft, 1 July 2020

© 2020 KPMG International Cooperative ("KPMG International"), a Swiss entity. Member firms of the KPMG network of independent firms are affiliated with KPMG International. KPMG International provides no client services. No member firm has any authority to obligate or bind KPMG International or any other member firm vis-à-vis third parties, nor does KPMG International have any such authority to obligate or bind any member firm. All rights reserved.

Regulatory focus extends to pension fund trustees and advisers

In contrast to moves around the globe to permit pension funds and retirement products to hold a wider range of assets (see Chapter 8), regulators are introducing more rules for pension trustees and advisers. In the **UK**, for example, the FCA is still concerned about the personal pension marketplace and has adopted a three-pronged approach.

To address concerns that recommendations by advisers over defined benefit (DB) pension transfers are not of an acceptable standard, it proposes in CP19/25 to remove contingency charging and introduce "abridged" advice. Advisers must ask the client to consider transferring the proceeds of a DB pension into the client's existing workplace pension to minimize costs and negate the need for ongoing advice charges. There will be more onus on firms to demonstrate that a client understands the risks and engages with the advice.

In its feedback statement on non-workplace pensions, the FCA said it wanted to understand whether consumers can make informed decisions about pensions and whether non-workplace pension products deliver value for money. It found that a lack of consumer engagement, combined with complex and confusing products and charges, led to a lack of competitive pressure and significantly different charges over a product's lifetime. It suggested a range of potential measures to reduce charge complexity, to promote charge transparency and to consider how charges can be opened to external scrutiny.

Following its "retirement outcomes review", the FCA set out final rules for implementation by February 2021, including mandatory "investment pathways" for consumers taking drawdown without advice, ensuring that consumers entering drawdown hold mainly cash only if they take an active decision to do so, and firms to make annual disclosures on all costs and charges.

In **Australia**, there are major changes to licensing for APRA-regulated superannuation trustees.[8] A "superannuation trustee service" license is to be introduced in 2021, which will apply financial service license obligations to a broader range of trustee activities. In addition, trustees of a regulated superannuation fund will not be permitted to debit personal advice fees (for on payment to an adviser) without the members' prior consent.

Questions the Board should be asking

[8]Source: Government of Australia, Exposure Draft, 1 July 2020

© 2020 KPMG International Cooperative ("KPMG International"), a Swiss entity. Member firms of the KPMG network of independent firms are affiliated with KPMG International. KPMG International provides no client services. No member firm has any authority to obligate or bind KPMG International or any other member firm vis-à-vis third parties, nor does KPMG International have any such authority to obligate or bind any member firm. All rights reserved.

Chapter 5

Charges are viewed against performance

Costs and charges are viewed as a major part of firms' duty of care. Costs, and their implication for long-term returns, are not widely understood by retail investors. For this reason, rules are proliferating worldwide. And within Europe, the MiFID II review has re-opened the "inducements" debate.

The perennial search for better disclosures continues, especially in the areas of costs and performance. The "closet tracking" debate rumbles on and there are new guidelines on performance fees. There is a wider debate on value for investors. Regulation on costs are changing industry dynamics – but for the better?

The inducements debate re-opens and spreads

MiFID II demands that all costs and charges must be disclosed on both an ex-ante and an ex-post basis, showing what was charged over the past year. The rules came into force in January 2018, but there are still teething problems that are only part-way to being resolved and different interpretations across the EU. We reported in EAMR 2019 that some parts of MiFID II had come under fire for being poorly conceived. In August 2019, the **German** Federal Ministry of Finance proposed changes aimed at the different information requirements about costs, the obligation to record telephone calls and the need to distinguish between professional and retail investors' needs.

In **Poland**, MiFID II implementation led to considerable discussion on how to interpret the rules on management fees and inducements. Firms are concerned about "gold plating" measures, including prescription over how fees are paid and caps on fees. The Minister of Finance introduced maximum management fees, which apply to managers of UCITS and specialized open-ended investment funds. The maximum permissible management fee is 3 percent of the fund NAV, falling to 2 percent by January 2022.

© 2020 KPMG International Cooperative ("KPMG International"), a Swiss entity. Member firms of the KPMG network of independent firms are affiliated with KPMG International. KPMG International provides no client services. No member firm has any authority to obligate or bind KPMG International or any other member firm vis-a-vis third parties, nor does KPMG International have any such authority to obligate or bind any member firm. All rights reserved.

The MiFID II review has re-opened the debate about a total ban on commissions, as exist in the **Netherlands** and the **UK**. In its advice to the Commission in April 2020, ESMA found that the rules have not had the positive impact intended or encouraged the development of independent financial advice, but noted that a total ban would have different impacts between member states and that there should first be a review of the impact of the current inducements regime on distribution.

ESMA supports the current requirements for individualized cost disclosures (on the basis that previous generic disclosures did not provide enough information for clients) and that inducements should be presented as service costs. It argues against a new category of "semi-professional" clients but favors reconsideration of the criteria for opting up to professional status and flexibility for professional investors to opt out of certain disclosures.

In 2018 and 2019, the AFM assessed the implementation of MiFID II cost transparency, product governance and commission rules by ten investment firms, fund managers and banks in the **Netherlands**. The AFM's overall conclusion was that firms fail to comply adequately with these requirements. It provided some tools for firms to enhance their services in this respect.

The new **Swiss** FinSA rules include the duty to provide key information documents and prospectuses. It introduces the "basic information sheet" (BIB) for all financial instruments offered to retail clients. The BIB must contain information for investors to be able to make well-founded investment decisions and to compare various financial instruments with each other. Non-Swiss collective investment schemes may use an equivalent document to the Swiss BIB, but only the EU PRIIP KID (see below) is regarded as equivalent so far.

In **Australia**, the removal of conflicted remuneration is mandated from January 2021, impacting grandfathered commissions, volume-related benefits and payments from fund managers to platforms and product providers.

PRIIP KID saga – season 4

For the fourth year, EAMR reports on the **EU** PRIIP KID.[1] Designed as a simple document to give investors a clear view of the key features of an investment product, it has proved anything but simple. The industry has consistently argued that the underlying methodologies and prescribed presentations for performance and costs are flawed.

Disruption in the capital markets due to the pandemic exacerbated those concerns. The risk indicators of many UCITS rose sharply due to market volatility, triggering requirements to update KIIDs[2] and leaving managers with the difficult question how to balance compliance with the regulations versus making disclosures that are not misleading. Similarly, the mandated performance scenarios in the PRIIP KID were of increasing concern for AIF managers.

> "... re-opened the debate about a total ban on commissions"

Changes to KIIDs and KIDs are not only an operational burden, they can have significant implications for distributors that have sold, marketed or selected certain funds based on the risk indicators and performance disclosures. The regulatory documents leave little or no room for additional and meaningful narrative to aid investors' understanding. However, after its latest round of consumer testing, the European Commission reported in February 2020 that it was broadly happy with the way the PRIIP KID works: *"The results show that the design of the KID can play an important role in aiding consumers' understanding of the features of the retail investment products and in contributing to better informed financial decision-making."*

The ESAs consulted until January 2020 on revisions to certain aspects of the Level 2 rules and the changes needed to the UCITS KIID to bring it into line with the PRIIP KID when the temporary exemption runs out at end-2021. Industry feedback was that the proposals would make the rules even more complex. The Alternative Investment Management Association (AIMA), the European Fund and Asset Management Association (EFAMA) and four other European federations argued that the ESAs' approach to amending the KID would not meet the Regulation's aim of providing information that is fair, clear and not misleading.

At the time of writing, the ESAs had not formally submitted their recommendations to the Commission, which is understood to believe that the current proposals go beyond the ESAs' Level 2 remit. MEPs,[3] too, have expressed concerns that the proposals are drifting too far from what they had originally envisaged. Meanwhile, consumer advocates Better Finance and AGE Europe wrote to the Commission and MEPs welcoming the ESAs' efforts and warning that a rejection of the proposed amendments would have *"highly detrimental consequences"* for EU savers.

[1]Packaged retail investment and insurance-based products, key information document
[2]Key investor information document
[3]Member of the European Parliament

© 2020 KPMG International Cooperative ("KPMG International"), a Swiss entity. Member firms of the KPMG network of independent firms are affiliated with KPMG International. KPMG International provides no client services. No member firm has any authority to obligate or bind KPMG International or any other member firm vis-à-vis third parties, nor does KPMG International have any such authority to obligate or bind any member firm. All rights reserved.

This debate comes after the Commission delayed review of the Level 1 rules, mandated by the Regulation by end-2019. It is now indicating that the review will be postponed further and will be part of the wider strategic review mentioned in Chapter 4. Unless the temporary exemption is again extended, UCITS will have to produce the PRIIP KID before the debate is concluded.

Disparate rules on performance fees may converge

ESMA issued final guidelines on performance fees in UCITS and certain AIFs in April 2020. It said supervisory convergence on performance fees is essential to ensure a level playing field in the **EU** to prevent the risk of regulatory arbitrage and inconsistent levels of investor protection. The guidelines are not binding, but national regulators are required either to apply them or to explain why they have not.

The industry broadly agreed that a degree of standardization was appropriate and with many of the proposed guidelines, but was concerned by the proposal that funds should not reset high watermarks (HWMs) unless the new mark exceeds the previous one, or if the fund undergoes a significant structural change. AIMA said, *"A permanent HWM mechanism or a three to five-year reset period can lead to increased risk exposure, especially if the fund's share price is well below the HWM. This could actually lead to misalignment with the fund's investment objectives, incentivizing the management company to take excess risk to recoup prior losses."*

EFAMA agreed, saying discretion should be left to fund companies: *"Management companies should be allowed to set reset periods as they deem appropriate to their underlying investment strategy, the fund's risk profile, the portfolio's underlying asset classes, [and] the typical investor profile."* The CFA Institute, however, said it was not in favor of arbitrary resets, which could undermine the integrity and purpose of the HWM.

ESMA's final guidelines included a list of "consistency indicators" to be applied to performance fees based on a benchmark, that excess performance should be calculated net of all costs, that performance fees can be payable if the fund outperforms its benchmark but has an overall negative performance, and additional guidance for new share classes. These additional wordings did not satisfy all. The **French** asset management trade body said the guidelines still went too far in imposing one model based on a five-year reference period and warned that fund managers may move from performance fees to higher fixed fees.

Following reviews by the CBI into performance fees in **Irish** UCITS, guidance on performance fees were codified in the 2019 Central Bank UCITS Regulations. This allows for future action to be taken against firms for breaches of performance fee requirements. The CBI strongly supports a common approach to performance fees across Europe.[4]

The guidelines do not require national regulators to impose a cap on performance fees, but neither do they prevent them from doing so. ESMA found that five national regulators – in **Estonia, Finland, Germany, Italy** and **Romania** – demanded caps but did not set a precise maximum fee. In Germany, for example, BaFin caps charges as a proportion of the assets of a fund. The aim of the guidelines is to encourage supervisory convergence, but if national regulators impose different and additional requirements, this could create a barrier to cross border distribution.

Meanwhile in **India**, as part of its initiatives to streamline disclosure standards in the growing alternative funds market, SEBI introduced in February 2020 new disclosure standards that include mandatory performance benchmarking and provisions for additional customized performance reporting.

Closet tracking debate rumbles on

Also covered in the previous four editions of EAMR is "closet tracking". The CBI's thematic review uncovered irregularities in the practices of 182 **Irish** funds, including misleading investor communications and high active fees for market-tracking funds. It said all Irish funds must consider the accuracy of their fund documents on an ongoing basis and ensure that any updates to documentation were completed by end-March 2020. Notably, it said that fund boards must consider if the fund remains a viable and suitable investment for investors and if fees charged are appropriate for the targeted level of outperformance. Hitherto, assessment of performance was generally seen as an investor task, not that of fund boards.

In February 2020, the Supreme Court of **Norway** upheld a legal decision that found an asset manager guilty of closet tracking. Responding to the announcement, Better Finance said that regulators in the *"main EU fund domiciles where Better Finance found most evidence of suspicious funds have so far failed to take any meaningful action to protect investors against this practice."*[5]

[4]Source: CBI, Speech by Gerry Cross, 21 November 2019
[5]Source: Better Finance, Press Release, 3 March 2020

© 2020 KPMG International Cooperative ("KPMG International"), a Swiss entity. Member firms of the KPMG network of independent firms are affiliated with KPMG International. KPMG International provides no client services. No member firm has any authority to obligate or bind KPMG International or any other member firm vis-à-vis third parties, nor does KPMG International have any such authority to obligate or bind any member firm. All rights reserved.

The quest to define value

The issue of value was first broached in the 2017 asset management market study, after which the FCA obliged **UK** fund managers to conduct "value assessments" on authorized retail funds. It prescribed a list of seven non-exhaustive criteria. Firms must test each criterion and reach an overall conclusion for each share class of a fund. For instance, are fees for the share class justified in the context of overall value delivered?

As might be expected of a new and not clearly delineated process, the methods and conclusions reached by fund managers so far have been disparate. Some firms have issued publicly-available reports, some have not. Where information has been made available, sometimes it is succinctly presented within a separate section, but in other cases it is buried within large annual reports. Only some firms have presented a strong rationale for their assessments of value and a few have announced fee reductions or taken other steps to improve value.

The FCA has encouraged fund boards to challenge managers over the value they deliver to retail clients, going beyond a passive monitoring approach to the seven criteria and engaging in an ongoing value assessment process. It wants to see evidence of analysis, challenge and debate.

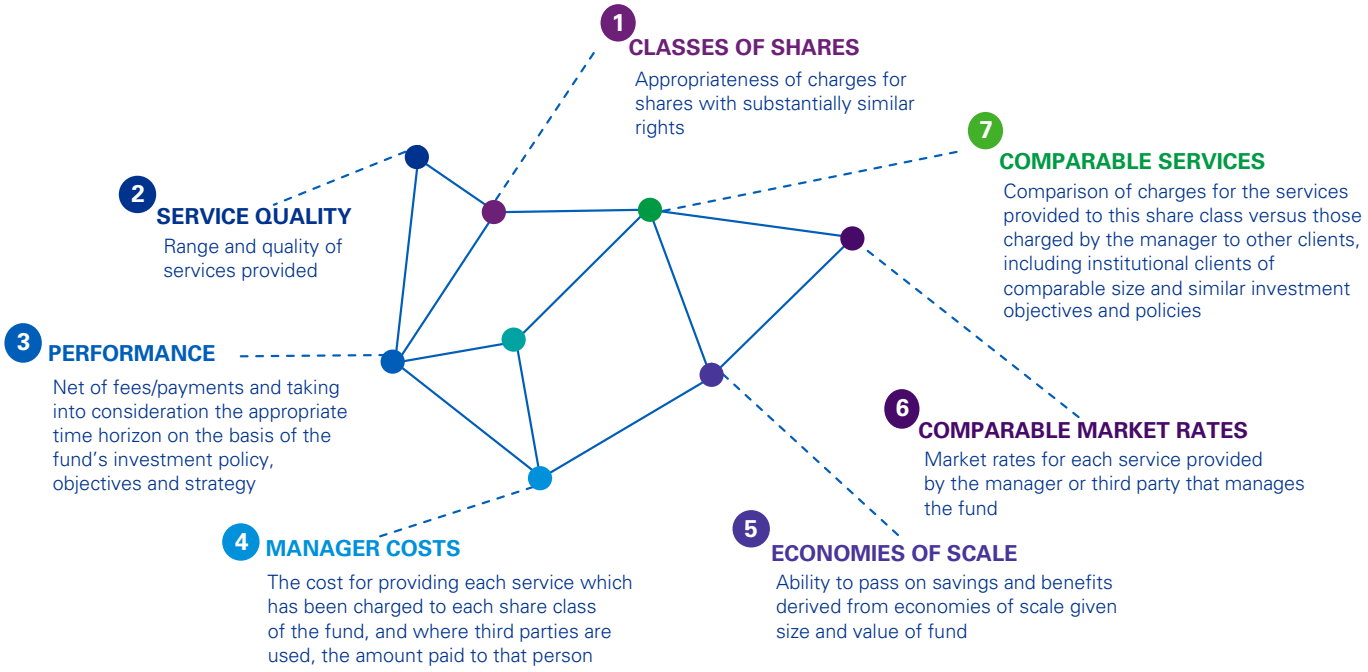
The value debate has been picked up by **EU** regulators. ESMA noted in April 2020 that retail investors are still on average paying 40 percent higher than institutional investors. It opined that passive funds may offer better value to retail investors than active strategies but noted that retail investors are more invested into active funds.

Regulation changes industry dynamics

There are signs that regulatory action on charges is leading to change in some jurisdictions. An ICI report of March 2020 showed that **US** mutual fund expense ratios have fallen significantly in the last two decades. Expense ratios for equity funds averaged 0.52 percent in 2019, half the 1996 average. Over the same period, bond fund expense ratios fell from 0.84 percent to 0.48 percent. The fall in fees comes, the report argued, in the wake of investor demand which, in turn, stems from regulation that separates advice fees from fund fees. With advice now charged separately, investors are gravitating towards funds with lower fee structures.

Meanwhile, regulation on costs in some countries is limiting the investment opportunities for defined contribution (DC) pension schemes and is reducing their attractiveness to savers, the CFA Institute reported in March 2020. The report cited that the **Norwegian** regulator demands that the scheme operator pays asset management fees and does not pass them on to scheme members. In the **UK**, the total expense ratio of DC default schemes is capped at 0.75 percent a year, with the possibility that transaction costs may have to fall inside the cap, too. Such rules have increased incentives for low-cost passive investments, at the expense of investments in active funds and in private markets, says the report.

FCA criteria for value



© 2020 KPMG International Cooperative ("KPMG International"), a Swiss entity. Member firms of the KPMG network of independent firms are affiliated with KPMG International. KPMG International provides no client services. No member firm has any authority to obligate or bind KPMG International or any other member firm vis-à-vis third parties, nor does KPMG International have any such authority to obligate or bind any member firm. All rights reserved.

Chapter 6

Conduct and transparency in capital markets

Regulators around the globe are urging asset managers to prepare for the move from inter-bank offered rates (IBORs) to the new risk-free rates (RFRs). European rules on payments for investment research, market transparency and market abuse are under review. And there are further rules on crypto-assets.

Preparing for life after IBORs

Regulators remain determined that the industry should move in an orderly manner from current IBORs to new RFRs by end-2021. RFRs have been created in response to conduct issues around the governance of IBORs, especially after the 2008 financial crisis, when bank traders were found to have colluded in the setting of rates to suit their own positions. There are also new rules for benchmark administrators. Initially, regulators focused on banks, but recent comments have been directed at asset managers and asset owners, urging them to prepare. Transition to the new RFRs is not a simple matter. IBORs are used as reference rates in many types of derivative and other contracts.

Europe reviews its capital markets rules

The European Commission kicked of the scheduled review of MiFID II/MiFIR by asking ESMA for input on various topics. ESMA consulted in 2019 and early 2020, and reported to the Commission on some aspects in the first half of 2020, but extended some deadlines to give industry longer to respond.

Topics covered in the review include various matters relating to the functioning of the capital markets – such as the pre- and post-trade transparency regime, "systematic internalisers", algorithmic trading, the derivatives trading obligation and SME[1] growth markets. Other topics of keen interest for asset managers are the rules on disclosures and "inducements" (see also Chapters 4 and 5). These include rules on investment research, on which regulators

[1] Small- and medium-sized enterprises

© 2020 KPMG International Cooperative ("KPMG International"), a Swiss entity. Member firms of the KPMG network of independent firms are affiliated with KPMG International. KPMG International provides no client services. No member firm has any authority to obligate or bind KPMG International with respect to the clients of any member firm vis-a-vis third parties, nor does KPMG International have any such authority to obligate or bind any member firm. All rights reserved.

have mixed views. In September 2019, the FCA said that the rules have improved accountability for research and execution costs in the **UK** and that there has been no material reduction in research coverage, even for SMEs.

In contrast, the AMF published in January 2020 its views on necessary changes to the investment research rules, having previously expressed concerns about the effects of the current rules in the **French** market. Its concerns include the rise of issuer-sponsored research, the decline in independent research, and the potential impact of cuts in asset managers' research budgets on the coverage of SMEs. AMF's recommendations include:

- links between issuers and researchers should be disclosed
- the concept of "reasonable commercial basis" should be introduced to avoid inducement via low prices
- the treatment of "corporate access" should be clarified
- independent research should not be subject to the rules unless there is a conflict of interest
- the principle of proportionality should be introduced to boost coverage of SMEs

ESMA found that MiFID II had failed to cut the cost of stock market data for asset managers and other users. It recommended that a real-time "consolidated tape" of equity prices be established – as has long-existed in the **US**. EU trading venues and data providers would be required to contribute prices to a pan-European feed, and asset managers should also contribute to the funding costs, said ESMA. Given the technical complexity of the project, it will take some time to get off the ground.

ESMA also consulted on the Market Abuse Regulation. The review covers a large range of issues, including the possible inclusion of spot FX contracts and collective investment undertakings, the definition of market abuse and delayed disclosure of inside information in different cases.

In **Switzerland**, for public offers of securities or the admission of securities to trading on a stock exchange, prospectuses must be reviewed and approved by one of the specially licensed prospectus review bodies. The publication of approved prospectuses will be mandatory from December 2020.

Other regulators focus on crypto-assets

In January 2020, **Malaysian** Guidelines on Digital Assets set out registration requirements for platforms and for issuers seeking to raise funds through digital token offerings.

Moving to RFRs: where to start?

Initial impact assessment – modelling and systems analysis by all business units of: operational, legal and conduct risks; functional, economic and client impacts; and regional timings.

Strategic Planning – based on economic impacts to existing portfolios and the potential business opportunities: establish client communication and negotiation workflows; review contract structure; and evaluate profitability, cash-flows and hedging risk.

Governance and client outreach – develop internal governance processes to approve changes to policies, systems, processes and controls; educate client-facing staff to guide clients transparently and fairly through the process.

Contract identification – leveraging technology if possible, identify all products and business lines, including expected fall-backs, and the bilateral negotiations likely to be in scope.

IBOR exposures and risk management – measure exposure by maturities beyond 2021, grouped by fund, portfolio and counterparty.

In the **UAE**, the Abu Dhabi Global Market (ADGM) regulator amended its rules in February 2020 for the authorization and supervision of virtual assets (previously referred to as crypto-assets). The rules for operating a crypto-asset business now sit under the ADGM's Regulated Activities regime – which encompasses custody, multilateral trading facilities and investment trading – and better reflect the nature of the underlying activities in managing virtual assets.

This move follows a similar development in **Bahrain** in 2019, when the CBB introduced a crypto-assets module under its Capital Markets Rulebook, aimed at minimizing risks, particularly of financial crime and illegal use of crypto-assets. The rules cover licensing requirements and conditions, minimum capital requirements, measures to safeguard client or customer interests, technology standards and cyber security risk management requirements.

© 2020 KPMG International Cooperative ("KPMG International"), a Swiss entity. Member firms of the KPMG network of independent firms are affiliated with KPMG International. KPMG International provides no client services. No member firm has any authority to obligate or bind KPMG International or any other member firm vis-à-vis third parties, nor does KPMG International have any such authority to obligate or bind any member firm. All rights reserved.

Chapter 7

More regulators pick up the ESG baton

We noted in EAMR 2019 that voices around the globe were demanding climate-aware investing and carbon reduction, the ethical treatment of employees, customers and other stakeholders, and well-managed companies.

The pandemic has accentuated those trends. It has highlighted that all business sectors are deeply interconnected across borders, that societies of all types and wealth levels are vulnerable, and that the environment is under increasing strain. Labor inequality and human rights are to the fore.

Investor demand remains the key driver of change, worldwide, but regulators are catching up. The regulatory initiative that started in the EU is now spreading, worldwide. Consistency of definitions and data remain elusive, though.

Corporates and standard setters respond

Corporates are responding to asset owners and activist investors, by improving their ESG (environmental, societal, governance) disclosures and credentials. Accountancy bodies and standard setters have joined forces to strive for consistency in financial and non-financial reporting.

The global Task Force on Climate-related Financial Disclosures (TCFD) was established in December 2015 and tasked with monitoring and making recommendations on risks to the global financial system. Its June 2019 status report delivered a robust message: disclosures have increased since 2016, but are still insufficient for investors.

© 2020 KPMG International Cooperative ("KPMG International"), a Swiss entity. Member firms of the KPMG network of independent firms are affiliated with KPMG International. KPMG International provides no client services. No member firm has any authority to obligate or bind KPMG International or any other member firm vis-a-vis third parties, nor does KPMG International have any such authority to obligate or bind any member firm. All rights reserved.

Michael Bloomberg, TCFD Chair said, *"Today's disclosures remain far from the scale the markets need to channel investment to sustainable and resilient solutions, opportunities, and business models."*

Earlier, in a speech in April 2019, the Chair of the International Accounting Standards Board, Hans Hoogervorst observed *"there are simply too many standards and initiatives in the space of sustainability reporting. This leads to a lot of confusion among users and companies themselves."* Various initiatives are underway, seeking to address these concerns. The TCFD's recommendations are being incorporated into local binding requirements. In September 2019, participants in the Better Alignment Project of the Corporate Reporting Dialogue reported high levels of alignment between their reporting frameworks.

The **European** Commission is reviewing the Non-Financial Reporting Directive to ensure a minimum level of comparability, relevance and reliability of current ESG disclosures. ESMA has called for general principles and disclosures to be specified, for non-financial statements in companies' annual reports to be subject to assurance and for consistency with the Transparency Directive.

In addition to reporting requirements, listing rules and stewardship codes are being enhanced with explicit references to climate-change related financial disclosures. For example, **Chinese** listed companies have been mandated to make environmental disclosures from this year and the SFC found that most **Hong Kong**-registered asset management firms were in favor of strengthening ESG disclosure rules for listed companies, as proposed by the Stock Exchange in May 2019.

> "... need for shared regulations and guidelines to channel capital effectively"

The **UK** Financial Reporting Council's revised Stewardship Code, which took effect from January 2020, includes new expectations about how investment and stewardship is integrated, including ESG matters. A revised **Japanese** Stewardship Code was issued in March 2020. It emphasizes engagement on issues related to sustainability. It includes disclosure of the reasons for voting decisions, disclosure of proxy advisory processes, direct and proactive engagement with investee companies, and stewardship activities aiming for the medium- to long-term increase of corporate value and the sustainable growth of companies.

Details, definitions and data

Such surging demand for responsible investments is critical to help meet the Paris Agreement and the UN Sustainable Development Goals, but it also speaks to the need for shared regulations and guidelines to channel capital effectively.

Asset managers are at the center of this challenge but face diverse approaches and inconsistent definitions of sustainability concepts by asset owners, jurisdictions, business sectors, and professional or industry standard-setting bodies. It is therefore difficult to determine the data required to set comparable targets, monitor investments, and measure and compare performance against peers, let alone across the financial services sector, industries, and national or regional borders.

Asset managers must perform this in-depth data collection to satisfy their own corporate reporting requirements, to conduct appropriate investment and risk management decisions, and to make disclosures to clients and fund investors. The challenge is compounded by the fact that, for a typical asset manager that invests in multiple asset classes, industries and geographies, there are various ESG considerations, which depend on underlying data for informed and accurate decision-making.

Aiming for global regulation

IOSCO's April 2020 report indicated a *"broad acknowledgment among regulators, industry participants and other parties that climate-related risks can be material to firms' business operations and investors' decisions"* but raised concerns over the diverse range of sustainability standards. Firms may be subject to different regulatory regimes or participate in multiple initiatives, which can have inconsistent objectives and requirements.

IOSCO warned that the *"wide variety of regulatory regimes and initiatives .... may prevent stakeholders from fully understanding the risks and opportunities that sustainable business activities entail."* The diverse and voluntary nature of ESG disclosure frameworks risks reducing the reliability and usefulness of those disclosures. The report found a lack of a common understanding of what is meant by sustainable investments and sustainability risks, highlighting the challenges around taxonomies and the lack of agreed globally-accepted definitions. This risks confusion for regulators, firms and investors, and could aggravate the issues of "cherry picking" of frameworks and "greenwashing".[7]

IOSCO has established a board-level task force on sustainable finance, to play a driving role in global efforts to address these issues. The task force's work includes improving sustainability-related disclosures

© 2020 KPMG International Cooperative ("KPMG International"), a Swiss entity. Member firms of the KPMG network of independent firms are affiliated with KPMG International. KPMG International provides no client services. No member firm has any authority to obligate or bind KPMG International or any other member firm vis-à-vis third parties, nor does KPMG International have any such authority to obligate or bind any member firm. All rights reserved.

made by issuers and asset managers, and collaborating with other international organizations and regulators to avoid duplicative efforts and to coordinate supervisory approaches.

The EU ramps up green rules

Concerns about climate change took top place in the new **European** Commission President, Ursula von der Leyen's agenda. The Commission issued a strategy document, followed by its Sustainable Europe Investment Plan, and consulted until July 2020 on a renewed Sustainable Finance Strategy, which includes that climate and environmental risks should be fully managed and integrated into financial institutions, and that social risks should be considered where relevant.

The Commission proposes that asset and fund managers should be required, as part of their fiduciary duty, to consider whether their investments are having a negative impact on the environment or society, across all portfolios and funds. The industry has expressed concerns that this would remove choice for investors and contradict a manager's fiduciary duty to those clients.

The proposals would go further than the Sustainable Finance Disclosure Regulation (SFDR), which must be implemented on dates ranging from March 2021 to end-2022 and is one part of a wider package of new rules. The SFDR applies to asset managers, managers of UCITS and all forms of AIFs, insurance companies that provide insurance-based investment products, occupational pension funds, personal pension providers and financial advisers (that have more than three employees).

It requires disclosures about whether and how ESG factors are integrated into investment decisions, and by end-2022, whether and how adverse impacts are considered. These disclosures must be included in pre-contractual documents, periodic reports and on firms' websites. Also, firms must include in their remuneration policies an explanation of how the policies are consistent with the integration of sustainability risks and publish the policies on their websites.

The ESAs are consulting until September 2020 on Level 2 rules to underpin the SFDR, focusing on "E" and "G". The proposals include mandatory indicators that firms should always consider as principal adverse impacts (such as greenhouse gas emissions and lack of adherence to fundamental labor conventions), together with a non-exhaustive set of indicators that might be helpful in identifying, assessing and prioritizing additional principal adverse impacts. The draft definition of fossil fuels was criticized by MEPs for excluding oil and gas.

Phase 1

Develop ESG strategy

- Define the strategic approach and ambition level
- Analyze market trends and regulatory landscape
- Track and predict the ESG expectations of asset owners
- Conduct peer review and benchmarking
- Analyze gaps between your current and desired approaches to ESG

Phase 2

Implement ESG strategy

- Prepare an ESG roadmap
- Design your ESG governance structure
- Prepare action plans and key performance indicators (KPIs)
- Implement principles and approaches across asset classes, funds and mandates
- Incorporate ESG principles into operational processes
- Educate and train your people

Phase 3

Monitor and report on performance

- Assess reporting needs and requirements
- Implement effective data collection and reporting systems

Phase 4

Review processes and disclosures

- Review ESG processes and KPIs
- Review ESG policy statements and governance
- Stress test investment portfolios
- Review risk assessment processes
- Assess reporting

© 2020 KPMG International Cooperative ("KPMG International"), a Swiss entity. Member firms of the KPMG network of independent firms are affiliated with KPMG International. KPMG International provides no client services. No member firm has any authority to obligate or bind KPMG International or any other member firm vis-à-vis third parties, nor does KPMG International have any such authority to obligate or bind any member firm. All rights reserved.

The ESAs will draw up a mandatory reporting template and specify where firms should place disclosures on their websites. Integration of ESG factors into investment processes will not be sufficient to describe a product as promoting environmental or social characteristics, but only where selection criteria for underlying assets apply on a binding basis.

> EU ecolabel for retail financial products

The proposals are prescriptive and will present significant challenges for firms, especially in current operating conditions, but there is no indication that implementation will be delayed. The ESAs recognize, though, that firms will face several practical difficulties:

- lack of data, especially on principal adverse impacts
- that Level 2 rules under the Taxonomy Regulation are still under discussion (see below)
- fitting the additional disclosures into products with length-constrained pre-contractual information documents
- for portfolio managers with separately-managed accounts, balancing the website disclosure requirements with client privacy and data protection rules
- smaller firms may struggle with compliance costs, due to lack of economies of scale

In 2021, the ESAs will draft rules on social issues – the "S". Meanwhile, three other parts to the current legislative package will be implemented. The Taxonomy Regulation establishes a pan-European classification system to identify which economic activities are environmentally sustainable. The Regulation is, in effect, the dictionary for firms when implementing the requirements of other regulations, such as the SFDR. The Commission will later expand the scope of the Taxonomy Regulation to identify socially sustainable activities.

The amended Benchmark Regulation creates two new categories of benchmark: low-carbon benchmarks and positive carbon impact benchmarks. Administrators of benchmarks with ESG objectives must provide an explanation of how the key elements of the methodology reflect the ESG factors. The final part of the current package are rules to require distributors to enquire of and take into account clients' ESG wishes when undertaking suitability assessments and classifying investment products.

There is more to come. The Commission is working on an EU ecolabel for retail financial products and on mandatory standards for "green" bonds. The Second Technical Report of the Commission's Joint Research Centre proposed mandatory criteria for determining whether retail financial products can use the ecolabel, which it tested against the 400 or so existing funds that are currently advertised as green or sustainable:

- bond funds should be at least 70 percent-invested in bonds that comply with the future Green Bond Standard
- equity funds should be subject to a "three-pocket" approach, which distinguishes companies investing principally in green activities
- mixed funds should apply the above two criteria to the underlying assets
- funds of funds should be at least 90 percent-invested in funds that have been awarded the ecolabel
- feeder funds must be invested in a master that has been awarded the label
- the use of derivatives should be in line with the fund's environmental investment policy

EU countries nail their own colors to the green mast

Ever since the "COP 21" meeting in Paris in late 2015, **France** has been at the front of the pack for rule-making. In 2020, it adopted measures to prevent what it calls "ESG-washing", defined as broader than greenwashing. The AMF believes a principles-based approach is no longer suitable and now requires managers' communications on funds for which ESG factors are central – through names of funds, KIIDs/KIDs or prospectuses – to comply with a set of standards and thresholds.

The new investor information "doctrine" was unveiled in March 2020 to help investors – particularly non-professional investors – understand sustainable funds. It requires consistency between what is said within marketing material and what is done in terms of ESG portfolio management. Measurable objectives for sustainability criteria must be included in regulatory documents. Only funds making a "significant commitment" to sustainability themes – measured by reference to the quantitative thresholds of the French SRI (socially responsible investment) label – can present sustainability as a central element of product communication or in the fund name.

© 2020 KPMG International Cooperative ("KPMG International"), a Swiss entity. Member firms of the KPMG network of independent firms are affiliated with KPMG International. KPMG International provides no client services. No member firm has any authority to obligate or bind KPMG International or any other member firm vis-à-vis third parties, nor does KPMG International have any such authority to obligate or bind any member firm. All rights reserved.

The doctrine applied with immediate effect to new funds, modified funds or foreign-domiciled funds registered for sale in France. For products already on sale, the naming, marketing documentation and KIID must be updated by end-November 2020. The AMF may later address issues such as the quality and relevance of the non-financial data used or the measurement of the potential impacts of the strategies implemented.

As part of its new #Supervision 2022 strategy, the AMF inspected five management companies to assess their SRI management systems. Its July 2019 report found the firms' current practices to be lacking in certain areas and reminded all managers of the AMF's requirements.

In **Germany**, BaFin conducted a consultation from September to November 2019 on sustainability risks. It subsequently made non-binding recommendations, making clear that supervised companies are free in the choice of their approaches and methods in handling sustainability risk. It issued a sustainability leaflet as a guide to good practice but indicated it could become binding. The leaflet effectively translates recommendations by the Network for Greening the Financial System to integrate climate-related risks into supervision and to underline regulatory expectations of minimum requirements for risk management. The leaflet emphasizes that sustainability risks are not an independent risk, but factors or drivers of well-known risk types such as credit risk, liquidity risk and market risk.

The **Dutch** AFM signaled in its Trend Monitor 2020 the transition to a sustainable economy and society. It identified certain risks in sustainable finance: a green bubble (more demand than supply) and the associated greenwashing and misuse. It said it will act against parties trying to mislead investors. A focus of the regulator is the availability and quality of information in the entire sustainable financing chain. It seeks a careful and transparent integration of sustainability in the asset management sector. Managers of funds providing sustainable solutions must closely monitor these developments and take this theme into account when providing information.

In October 2019, the **Polish** government adopted the Capital Market Development Strategy. The strategy was drafted with support of the European Bank for Research and Development and the European Commission and is part of wider plans to encourage Poland's economic development and turn the country into a regional economic leader. Among planned activities is a sustainable financing initiative.

© 2020 KPMG International Cooperative ("KPMG International"), a Swiss entity. Member firms of the KPMG network of independent firms are affiliated with KPMG International. KPMG International provides no client services. No member firm has any authority to obligate or bind KPMG International or any other member firm vis-à-vis third parties, nor does KPMG International have any such authority to obligate or bind any member firm. All rights reserved.

In speeches outlining its regulatory focus in 2020, the CBI has mentioned sustainable finance and ESG as a regulatory trend.[1] It is focused on climate change for a number of reasons, including risks related to the ongoing soundness and stability of **Irish** financial firms, a substantial conduct perspective which should be considered as part of the transition to financing a sustainable economy, and risks to consumer and investor protection arise from the "greenwashing" of financial products.

ESG rules spread around Europe…

Switzerland is working on a total revision of its CO2 Act and created a working group of government departments and financial regulators to assess measures to be taken. The Federal Council decided there was sufficient legal basis for all financial market players to be obliged to take into account all material ESG risks and that consideration of climate risks in supervisory law could also be strengthened by more specific regulation. Implementation of such requirements is seen as paramount for the competitiveness of the Swiss financial services sector. The government, regulator and industry are drawing up recommendations. Topics covered will include governance, risk management, investment policy and strategy, implementation of ESG criteria in the investment process, monitoring, transparency and reporting.

The federal government is providing methodologies and tools for the 2020 climate compatibility test. The test is conducted on a voluntary, anonymous basis and is free of charge. It is open to asset managers for the first time, including managers of real estate funds. The data entry phase ran from March to May 2020. Individual test reports are expected to be sent to test participants in September 2020, and a report on the aggregated, anonymized data will be published at the same time.

The FCA said in March 2020 it was considering how it could enhance environmental disclosure requirements for **UK** asset managers. Given that the EU rules mentioned above do not apply until March 2021 at the earliest, the UK will not be obliged to implement them. The FCA is considering a comply-or-explain regime rather than rules, but it has encouraged firms to take steps to improve their disclosures and reporting.

The FCA's Business Plan 2020/21 includes climate change as a cross-sectoral priority. It recognizes that all sectors need to adapt to manage the physical and transition risks that climate change poses. Initiatives in Q1 2020 included final rules to facilitate investment in patient capital opportunities, further analysis on greenwashing, and more engagement with other regulators and industry groups to explore collaboration opportunities.

Following the development of the Green Fund designation in 2018, the Guernsey Financial Services Commission intends to endorse the EU Taxonomy Regulation as an additional permitted standard for adoption by a Guernsey Green Fund.[2] Also, in June 2020, "We are Guernsey" issued Green Private Equity Principles. The principles, which are voluntary and written largely from a general partner perspective but also applicable to limited partners, are based on a two-pillar framework: "process" (governance, culture and transparency); and "portfolio" (risk assessment, assets, taxonomy, measurement and reporting).

…and further afield

New Zealand and **Singapore** will join the International Platform on Sustainable Finance, which was launched in October 2019 and is supported by a number of global and European bodies. The two countries join existing members **Argentina, Canada, Chile, China, India, Indonesia, Morocco, Norway** and **Switzerland**. The forum facilitates exchanges and coordinates efforts on initiatives, such as taxonomies, standards and labels, and disclosures.

In **Australia**, APRA wrote to all regulated institutions outlining its plans to develop a prudential practice guide focused on climate-related financial risks, as well as a climate change vulnerability assessment. In addition, it said it would update its superannuation guide on investment governance, which will include information relating to ESG investments.

The Australian Securities and Investments Council (ASIC) considered how risk appetite statements were being used to assist boards in overseeing and monitoring non-financial risk. It observed that risk appetite and metrics for such risks were immature compared to those for financial risks.[3] The regulator said management was operating outside board approved risk appetites for non-financial risk for months or years at a time and that risk metrics often failed to provide a representative sample to the board of the level of exposure. Furthermore, board engagement was not always evident. Material information about non-financial risk was often buried in dense board packs and reporting often did not identify a clear hierarchy or prioritization. Undocumented board sessions and informal meetings between directors created asymmetric information at board level.

From March to September 2019, the SFC conducted an industry-wide survey to understand how and to what extent asset management firms and institutional asset owners in **Hong Kong (SAR), China** consider ESG risks, particularly those relating to climate change. The report, published in December 2019, found that 65 percent of the asset management firms did not have any oversight measures in place. Although 660 firms reported they

[1]Source: CBI, Speech by Derville Rowland, 15 January 2020

[2]Source: GFSC, News Release, 31 January 2020

[3]Source: ASIC, Corporate Governance Taskforce Report, October 2019

© 2020 KPMG International Cooperative ("KPMG International"), a Swiss entity. Member firms of the KPMG network of independent firms are affiliated with KPMG International. KPMG International provides no client services. No member firm has any authority to obligate or bind KPMG International or any other member firm vis-à-vis third parties, nor does KPMG International have any such authority to obligate or bind any member firm. All rights reserved.

consider ESG factors, 68 percent of them said information about their own ESG practices was not available. Most of the asset owners surveyed indicated that asset managers do not engage with them to understand their ESG investment preferences. The survey also highlighted differences between locally-owned and foreign-owned firms.

The SFC therefore intends to target three outcomes in the near term:

1. Set expectations of asset management firms in areas such as governance and oversight, investment management, risk management and disclosure, focusing on environmental risks with an emphasis on climate change
2. Provide practical guidance, best practices and training in collaboration with the industry and relevant stakeholders to enhance the capacity of asset management firms to meet those expectations
3. Establish an industry group to exchange views between the SFC and experts in environmental and climate risks, and sustainable finance

These outcomes will complement the actions already taken by the SFC under its Strategic Framework for Green Finance. Its April 2019 circular provided guidance to make disclosures by SFC-authorized green funds more transparent and comparable. A central database of these funds has since gone live on the SFC's website.

In **China**, the banking and insurance regulator told financial institutions in January 2020 that they should establish and improve their environmental and social risk management system, incorporating ESG requirements into their credit processes and strengthening the disclosure of ESG information to stakeholders. It further encouraged financial institutions to establish their own green finance business departments.

The MAS announced in November 2019 that it had set up a USD 2 billion Green Investments Program to accelerate the growth of **Singapore**'s green finance ecosystem and to try to generate long-term sustainable returns for the MAS's investment portfolio. Under the program, funds will be mandated to asset managers that are committed to drive regional green efforts and to contribute to the MAS's other green finance initiatives, which include developing green markets and managing environmental risks.

ESG efforts in **Japan** have been boosted by the country's flagship GPIF pension fund, which has invested over USD 500 million in green bonds issued by the global and regional issuers, such as the World Bank. The governor of the **Malaysian** central bank announced in September 2019 that the bank would work with the industry to implement the TCFD disclosure recommendations. It also called on venture capital and private equity firms to create innovative investment solutions.

In **Brazil**, ESG is moving center stage for many participants in the asset management industry, especially for private equity firms, wealth managers and multi-family offices. The regulator plans to create a new category of funds under the FIDC[4] umbrella, specifically for ESG investments. FIDC are widely used in Brazilian credit markets and by international investors and hedge funds.

US CFTC Commissioner Rostin Behnam said in February 2020[5] that the Climate Related Financial Market Risk Subcommittee, which was established in November 2019, would produce policy recommendations by summer 2020. He went on to say that *"Climate change is a risk management challenge that presents uncertain and potentially severe consequences over time."* However, SEC chairman, Jay Clayton has expressed concerns that imposing a uniform, mandatory disclosure framework for ESG disclosures runs the risks of sacrificing what may be the more relevant, company-specific disclosure for the potential for greater comparability across companies.[6]

Diversity no longer a niche issue

Within the ESG panoply, diversity is also a hot topic. Good diversity practices are viewed as risk-reducing for both investment firms and investment funds. To date, disclosure of diversity policies or reporting of pay information is mainly voluntary and often spear-headed by industry associations. However, regulation has been introduced in a small but growing number of jurisdictions. The recovery phase of the pandemic is likely to raise additional equality and potential discrimination issues. As firms re-introduce office working, there will be specific issues to consider, such as access by disabled staff, treatment of expectant mothers or staff with medical conditions, parenting considerations and, if relevant, the selecting of personnel to be laid off.

Back in 2015, the SEC and five other federal financial agencies published a standard on the assessment of diversity policies. **US** regulated entities, including asset managers, are asked, voluntarily, to publish their diversity policies, practices, and workforce data. The SEC is reported to be seeking to improve the response rate. Meanwhile, in February 2020, the Institutional Limited Partners Association published a "road map" of best practices that private equity firms and their investors can use to improve diversity and inclusion.

In **Ireland**, the CBI has highlighted the importance of diversity and inclusion to the culture and resilience of financial services firms.[7] It will continue to place a spotlight on diversity in the financial services sector. In a speech at an Investment Association event in June 2019,

[4]Fundo de Investimento em Direitos Creditórios
[5]Source: CFTC, Speech, 14 February 2020
[6]Source: SEC, Speech, 7 November 2019
[7]Source: CBI, Speech by Governor Gabriel Makhlouf, 10 March 2020

© 2020 KPMG International Cooperative ("KPMG International"), a Swiss entity. Member firms of the KPMG network of independent firms are affiliated with KPMG International. KPMG International provides no client services. No member firm has any authority to obligate or bind KPMG International or any other member firm vis-à-vis third parties, nor does KPMG International have any such authority to obligate or bind any member firm. All rights reserved.

the **UK** FCA threatened not to approve the appointment of white male senior managers if there is not sufficient diversity in a regulated firm's leadership team. The FCA had previously made clear that the SMCR (see Chapter 4) aims not only to hold individuals accountable but also to change firms' culture, including by increasing diversity.

The Investment Association's June 2019 report, "Black Voices: Building black representation in investment management", published in conjunction with #talkaboutblack, showcased the experiences of black professionals working in the UK industry and black students considering these careers. The report found that less than one percent of investment managers are black. It recommended steps that firms can take to create more diverse and inclusive workplaces, including documenting experiences and opinions of black professionals, and providing training to reduce unconscious bias. The report also references the lack of data and clear targets for ethnic diversity, and strongly supports a government plan to require firms to publish an ethnicity pay gap.

The pandemic has led regulators around the globe to give concessions against reporting deadlines. One such concession was provided by the UK government to the reporting required under the Gender Pay Gap Regulation, which came into force in April 2017. There will be no enforcement action against firms that do not file their 2019/2020 reports in time, but about one-quarter of the employers expected to file gap reports this year have already done so.

The Chartered Institute for Personnel and Development urged companies to delay rather than avoid reporting. It said, *"The Coronavirus stands to have a disproportionate impact on women in the labour market, because of the high proportion of women working in retail and hospitality. This makes it more important than ever that we don't take our eye off the ball and risk losing momentum in our efforts to close the gender pay gap."* [8]

In **France**, the obligation for boards to have at least 40 percent female members was extended in January 2020 from listed companies to companies with at least 250 employees and the sanctions for not abiding by the rules were strengthened.

EU rules on gender diversity are being drawn up. The Commission's five-year Gender Equality Strategy includes a proposal for a Directive to introduce binding measures on improving the gender balance on corporate boards. Such measures already exist in a small number of European countries.

[8]Source: CIPD, Press Release, 24 March 2020

© 2020 KPMG International Cooperative ("KPMG International"), a Swiss entity. Member firms of the KPMG network of independent firms are affiliated with KPMG International. KPMG International provides no client services. No member firm has any authority to obligate or bind KPMG International or any other member firm vis-à-vis third parties, nor does KPMG International have any such authority to obligate or bind any member firm. All rights reserved.

Chapter 8

New products and opportunities

There is growing emphasis by national regulators on creating frameworks that can compete cross border and that can accommodate alternative assets. These types of funds are sought by institutional investors but also, increasingly, by retail investors.

Pension regimes around the world are also increasingly accommodating new asset classes. Rule changes are variously aimed at expanding the range of investment options open to retirement savers and to provide pension scheme member protections. There are also proposals to expand tax-incentivized savings schemes to cover alternative assets.

New fund vehicles are created

We reported in EAMR 2019 that **Singapore** was set to introduce a new collective fund vehicle – the Variable Capital Company (VCC) – designed to bring alternative vehicles back onshore from overseas fund domiciles and to allow existing funds to convert to VCCs. VCCs are supervised by the MAS through the Securities and Futures Act and may be set up as standalone funds or as umbrella funds with sub-funds containing segregated assets and liabilities. Plans for the VCC started eight years ago but have been delayed by the complex interplay of issues.

In September 2019, 18 fund managers participated in a pilot program run by the MAS and the Accounting and Corporate Regulatory Authority. The VCC framework was subsequently launched in January 2020, and a total of 53 VCCs had been incorporated or re-domiciled as at early May 2020. Simultaneously, the MAS launched the VCC Grant Scheme, which helps to defray incorporation or registration costs by co-funding up to 70 percent of expenses paid to Singapore-based service providers.

© 2020 KPMG International Cooperative ("KPMG International"), a Swiss entity. Member firms of the KPMG network of independent firms are affiliated with KPMG International. KPMG International provides no client services. No member firm has any authority to obligate or bind KPMG International or any other member firm vis-à-vis third parties, nor does KPMG International have any such authority to obligate or bind any member firm. All rights reserved.

Hong Kong (SAR), China is introducing a regime for limited partnership funds, which is expected to come into operation at end-August 2020. The new regime, together with the introduction of open-ended fund companies in July 2018 and the expansion of mutual recognition of fund arrangements in recent years, demonstrates the government's commitment to strengthen the city's position as an international hub for fund management activities and investment fund domiciliation.

In **Switzerland**, an amendment to the Collective Investment Schemes Act, introducing the Limited Qualified Investor Fund, is in the legislative process. The Federal Council dispatch is expected in summer 2020. The funds are not subject to authorization, are open only to qualified investors (such as insurance companies and pension funds), and must be managed by an institution authorized and supervised by FINMA. Because the funds are not subject to authorization, they can be launched faster and at lower cost, and are subject to more liberal investment and risk diversification rules.

The **Brazilian** Economic Freedom Act became law in September 2019. The act aims to reduce bureaucracy and is part of a broader legislative shift to revamp the economy. Among other things, it brings the structure of local investment funds closer to international standards. One of the most notable changes is the limiting of investors' liability to the value of their interest in the fund. Investors' liability was previously uncapped and could be large if the NAV of the fund turned negative due to, for example, adverse movements on derivative portfolios. In addition, collective funds, particularly alternative investment funds, can now issue different classes of shares to satisfy the needs of different categories of investors.

The act, which has yet to be approved by the regulator, reinforces the concept of *"pacta sunt servanda"* (the agreement between the parties is binding) and stipulates that parties to contracts are now considered equals under most circumstances. Brazilian courts are expected to refer to the contractual terms when deciding disputes, which is expected to increase legal certainty. There is also more clarity on the role of the administrator. Previously, administrators had a fiduciary role and were responsible for fund assets and liabilities. This is no longer the case, in line with most other financial markets.

It is not all good news for fund managers. In **Hungary**, the government issued a sovereign, fixed interest bond, which quickly became the prime destination for consumer savings due to the preferential interest rate. The bonds have a five-year maturity, can be sold at face value at the end of each year and have fixed interest rates rising from

> "... limiting of investors' liability to the value of their interest in the fund"

3.5 percent to 6 percent over the five years. The effective interest rate over five years of 4.95 percent compares favorably with an average of just one percent available to savers elsewhere. The bonds are a direct competitor to bond funds and real estate funds. Equity funds have not been impacted.

Regulators accommodate alternative assets

In **Saudi Arabia**, the Sharia-compliant product range is being expanded to include derivative products. Banks with Sharia boards have now started to issue Sharia-compliant derivatives and investment firms may use these products if in line with their investment mandate. Investment managers previously had few options for short term treasury management but can now access rate swaps. The derivatives launch is in preparation for a central clearing facility for cash products and derivatives, which the regulator intends to set up during 2020.

The SEC is proposing to modernize the rules on the use of derivatives by **US** registered funds – mutual funds, ETFs and registered closed-ended funds (but not MMFs or unit investment trusts). The proposal, issued in November 2019 with a comment deadline in March 2020, is a re-proposal of an early rulemaking effort in 2015. It would permit eligible funds to engage in broadly defined derivatives transactions, provided they comply with specified conditions intended to protect investors (see Chapter 2). The proposal also addresses a fund's ability to enter into reverse repurchase agreements and similar financing transactions, as well as unfunded commitments to make certain loans or investments, subject to conditions tailored to these transactions.

The SEC has also proposed changes to the accredited investor definition to allow more US retail investors to access private assets. The current test takes a binary approach to who does and does not qualify, based only on a person's income or net worth. The proposal would add additional means for individuals to qualify based on professional knowledge, experience or certifications. The SEC is also seeking to expand choice by allowing various types of registered and private funds to act as gatekeepers for the financial sophistication test.

© 2020 KPMG International Cooperative ("KPMG International"), a Swiss entity. Member firms of the KPMG network of independent firms are affiliated with KPMG International. KPMG International provides no client services. No member firm has any authority to obligate or bind KPMG International or any other member firm vis-à-vis third parties, nor does KPMG International have any such authority to obligate or bind any member firm. All rights reserved.

Ana Martínez Pina, CNMV vice-chair said at a conference, in March 2020, that the regulator was looking into making it easier for private clients in **Spain** to access alternative assets. She said firms must ensure that the product is suitable, that clients with less than EUR 500,000 of disposable assets must invest less than 10 percent of their assets in the vehicles, and that at least EUR 10,000 must be in each product (currently EUR 100,000).

In **Ireland**, amendments to the Investment Limited Partnership (ILP) Act are under discussion. Partnership structures are commonly used around the globe for alternative asset classes. However, before the proposals were made, there were only around six funds using the ILP structure. The reasons for the poor take-up were said to be that the legislation had not been updated to take account of features that are now market standard or to take account of AIFMD and other relevant EU legislative changes. A new bill addresses these issues and aims to align the ILP with other existing Irish fund structures by allowing fund managers to set up umbrella structures and multiple sub-funds. Registration of business conducted in non-English-speaking jurisdictions will also be allowed.

On another note entirely, cannabis has become a popular investment asset in North America after **Canada** and certain **US** states legalized it in recent years, but it remains illegal at federal level, creating a legal grey area.

Some European asset managers are now considering launching cannabis funds. **Luxembourg** is to legalize cannabis for both recreational and medical use in 2022, which could make the Grand Duchy an attractive location to launch funds in the future. However, many consider it too risky from a regulatory and legal standpoint. A key concern for **UK** fund managers, for instance, is whether investment in cannabis could fall under the Proceeds of Crime Act, which has extraterritorial reach.

Factors to consider in the choice of fund vehicle

© 2020 KPMG International Cooperative ("KPMG International"), a Swiss entity. Member firms of the KPMG network of independent firms are affiliated with KPMG International. KPMG International provides no client services. No member firm has any authority to obligate or bind KPMG International or any other member firm vis-à-vis third parties, nor does KPMG International have any such authority to obligate or bind any member firm. All rights reserved.

Pensions and long-term savings: protection and expansion

Pension rule changes are variously aimed at expanding the range of investment options open to investors and to provide pension scheme member protections. There are also proposals to expand tax-incentivized savings schemes to cover alternative assets.

In **Italy**, tax-exempt individual savings plans (*piani individuali di risparmio* or PIR) were introduced in 2017 to channel investment into Italian listed companies. The plans – an important channel for Italian fund managers – exempt investors from capital gains tax on investments of up to EUR 30,000 a year over a period of five years, subject to domestic allocation requirements. In March 2020, the Italian industry association, Assogestioni proposed "alternative" PIRs to promote investments in unlisted SMEs, which it believes will assist companies to access capital, made more difficult by the pandemic. Assogestioni noted that the current annual investment cap and 10 percent concentration limit would need to change. It recommends an annual investment cap of EUR 150,000, a limit on total investment of EUR 1.5 million and that the allocation to a single company should not exceed 20 percent of the portfolio.

New rules for **Estonian** pension funds introduced in September 2019 have relaxed restrictions on riskier investments to improve performance and promote investment in local companies, including via private equity funds. The 75 percent limit on equity-based assets was removed, except for funds with a conservative risk profile, but they are now able to take on some equity risk and make other, previously proscribed investments, of up to 10 percent of their portfolios. Pension funds can also now make loans of up to 10 percent of their total portfolio.

In the **UAE**, the first mandatory workplace savings scheme – administered by the Dubai International Financial Centre – came into being in February 2020, after a private initiative to create one failed to materialize. The aim is to restructure the previous DB employee plan into a funded and professionally-managed DC plan. It is likely to be attractive to the many ex-pats working in the UAE, who are increasingly deciding to stay in the region for the long term. The scheme allows employees to make voluntary contributions on top of those by employers and to choose how their savings will be managed, catering to a range of risk appetites and including Sharia-compliant options.

© 2020 KPMG International Cooperative ("KPMG International"), a Swiss entity. Member firms of the KPMG network of independent firms are affiliated with KPMG International. KPMG International provides no client services. No member firm has any authority to obligate or bind KPMG International or any other member firm vis-à-vis third parties, nor does KPMG International have any such authority to obligate or bind any member firm. All rights reserved.

In **Mexico**, mandatory pension funds are now allowed to invest in foreign actively-managed funds, having previously been able to access global markets only through investment mandates, ETFs and index funds. As a result, the inflows into these funds have risen considerably as pension funds look for assets outside the domestic market in order to diversify risk and return streams. Investment in active strategies is also allowed subject to certain restrictions. This opens the door to large asset managers, and to both passive and active funds. In addition, these funds transitioned towards target date funds from December 2019 to align investments to investors' ages.

> Asset managers have started to offer new solutions

In February 2020, in its response to a government consultation on reforming the **Swedish** premium pension system, the Swedish financial regulator proposed that the number of available funds be significantly reduced and the platform overhauled, in order to improve consumer protection. The funds should offer a range of risk profiles, to simplify the management of the system and to prevent sub-standard investment firms from accessing pension savers' money, the regulator said. The debate is ongoing, mainly driven by The Swedish Investment Fund Association, since such change in the pension system would alter the market conditions for many independent fund managers that lack local branches for distribution.

In **Australia**, consultation on improving the flexibility of superannuation for older citizens ended in March 2020. Superannuation rules currently allow people aged 65 to 74 to make voluntary contributions if they work a minimum of 40 hours over a 30-day period in a given financial year (the "work test"). Also, only people under 70 are permitted to receive spouse contributions. New regulations, effective from July 2020, allow people aged 65 and 66 to make voluntary contributions without meeting the work test, and people up to age 74 to receive spouse contributions.

In **Poland**, the government introduced in 2019 a new system of DC retirement vehicles, known as Employee Capital Plans. The aim is to increase the pool of retirement savings and is based on an auto-enrollment approach. Employers with over 250 employees are already enrolled. Medium-sized employers (50-250 employees) were due to sign management agreements by April 2020. However, due to COVID-19, the Polish government postponed the signing to October 2020. In addition, in early 2020 the government announced that it would substantially change its private pension system by transferring all the assets in the system to individual pension accounts. In April 2020, again due to the pandemic, this reform was delayed.

In **France**, decrees and ordinances were passed during summer 2019, providing details and permitting the implementation of the ambitious reform of mandatory profit-sharing schemes, employee savings schemes and optional profit-sharing schemes introduced by the PACTE Law (see EAMR 2019). In relation to employee savings schemes, the law eventually harmonizes the various existing supplementary pension plans and created from October 2019 a new Retirement Savings Plan. The aim was to simplify the offer and make it more legible to savers, and to open further the retirement saving products market to asset management companies. Asset managers have started to offer new solutions, particularly related to the management of assets eligible in the plans.

The recently passed SECURE Act in the **US** has provisions to help retirement savers, young and old. Up to one year after the birth or adoption of a child, up to USD 5,000 can be withdrawn without tax penalty. Withdrawals up to USD 10,000 over the lifetime can be used for the purpose of making a student loan or participating in an apprenticeship. The age for taking required minimum distributions has been increased to 74 and the 70.5 age limit for making contributions to a retirement account has been abolished.

In June, the Department of Labor issued an Information Letter, confirming that plan fiduciaries can prudently offer private equity as part of a diversified investment option under 401(k) and other DC retirement plans. Plan fiduciaries have previously avoided such investments due to concerns of potential liability under the 1974 Employee Retirement Income Security Act. This confirmation is a significant step toward allowing 401(k) plans to invest in private equity funds.

In February 2020, the Securities Commission **Malaysia** issued revised Guidelines on Private Retirement Schemes. The amendments include new limits for investment in collective vehicles, new requirements on gold ETFs, an expanded definition of pre-retirement withdrawal to include housing and healthcare purposes, and clarification that members who opted for the default option do not have the right to withdraw.

© 2020 KPMG International Cooperative ("KPMG International"), a Swiss entity. Member firms of the KPMG network of independent firms are affiliated with KPMG International. KPMG International provides no client services. No member firm has any authority to obligate or bind KPMG International or any other member firm vis-à-vis third parties, nor does KPMG International have any such authority to obligate or bind any member firm. All rights reserved.

Use of DLT for funds moves at snail pace

Over the last couple of years, there have been industry initiatives to harness the power of distributor ledger technology (DLT) for funds. Legal considerations can be complex, though, including how to ensure privacy and integrate cash management.

> "... allowing the issuance and exchange of financial instruments in DLT"

The **German** authorities are considering allowing the use of DLT to issue equities and investment funds, as part of plans for the country to become a pioneer in such technology. It is proposed that the current requirement that securities must be issued in hard copy will no longer apply and that "paperless" securities will be permitted, as is already the case in some other countries. Under the original timetable, a draft law for DLT-based issuance of bonds was to be published by end-2019, followed by consideration of whether to allow the digital issuance of stocks and fund shares. The law has not yet materialized, however, while the Ministries of Finance, of Justice, and for Economic Affairs and Energy seek to resolve the various legal issues.

In January 2020, the **French** AMF released a digital strategy working document, which called for the current asset management and market infrastructure regulatory framework and tools to be revisited, to make them *"more agile and more conducive to innovation without sacrificing investors' protection nor the security of the financial system".* Some of the proposals were quite far-reaching, such as questioning the relevance of regulated intermediaries such as Central Securities Depositaries for digital assets, and allowing the issuance and exchange of financial instruments in DLT ("tokenization") by eliminating existing legal obstacles and creating a stable value asset allowing interbank stable settlement coin.

Chinese wealth management grows

China allowed the establishment of wealth management units within rural commercial banks, starting from December 2019. By April 2020, 33 banks had announced plans to set up wealth management subsidiaries, and 16 had been approved.

© 2020 KPMG International Cooperative ("KPMG International"), a Swiss entity. Member firms of the KPMG network of independent firms are affiliated with KPMG International. KPMG International provides no client services. No member firm has any authority to obligate or bind KPMG International or any other member firm vis-à-vis third parties, nor does KPMG International have any such authority to obligate or bind any member firm. All rights reserved.

Chapter 9

Some walls tumble down, others rise

With some notable exceptions, regulations that prevent cross-border distribution and registration are being eroded. In the US, Europe and Asia, regulators are amending rules which previously put onerous restrictions on foreign entities. There is also easing of the extra-territorial impacts of some jurisdictions' rules and attempts within the EU to remove remaining distribution barriers.

On the other hand, regulatory and fiscal demands for firms to have "substance" in a jurisdiction are increasing, and Brexit has created new borders that the industry must navigate. The Asian fund passports continue to attract very low take-up.

There is good news for foreign inward investment, though, as some markets open their borders.

Barriers to foreign asset managers are lowered

China has lifted restrictions on foreign ownership of mutual funds and securities firms, a year earlier than planned. The relaxation of limits, giving foreign companies full ownership of their China-based ventures, is being rolled out throughout 2020. The China Securities Regulatory Commission (CSRC) allowed full foreign control of mutual fund and securities companies from April 2020.

In January 2020, China and the **US** signed a preliminary trade agreement, confirming that investment firms will have unfettered access to each other's markets. The agreement states that *"each party shall, on a non-discriminatory basis, review and approve a qualified application of a financial institution of the other party for a securities, fund management, or futures license."* The full scope of services provided by firms can be offered in the other country. The agreement came into force in April 2020.

© 2020 KPMG International Cooperative ("KPMG International"), a Swiss entity. Member firms of the KPMG network of independent firms are affiliated with KPMG International. KPMG International provides no client services. No member firm has any authority to obligate or bind KPMG International or any other member firm vis-à-vis third parties, nor does KPMG International have any such authority to obligate or bind any member firm. All rights reserved.

In **Australia**, in March 2020, ASIC released the details of its new regulatory framework for foreign financial services providers providing services to certain Australian clients. From April 2022, foreign fund managers that target only a sub-class of the professional investor category will be granted relief from the licensing requirement for investment services relating to offshore vehicles or portfolio management services.

Japan's efforts to revitalize its main financial center continue with further activity around its "International Financial City Tokyo" concept. A Tokyo Financial Forum in New York was held in late 2019 to encourage investment firms into Japan and to help Japanese firms considering setting up outside the country. This event was followed by the Tokyo Asset Management Forum, part of a drive to promote the asset management industry in Tokyo and to raise awareness of the "Emerging Managers Program" among domestic asset owners, emerging asset managers, overseas asset managers and industry associations.

In addition, the JFSA published, in early 2020, a guidebook to facilitate the smooth entry of investment managers into Japan. The guidebook explains the type of registration required for each type of asset management business using intuitive flowcharts and illustrations, and provides an overview of the procedure for registration screening.

Extra-territorial impacts are reduced

An exchange of letters between the **European** Commission, AIMA and ESMA confirmed that non-EU AIFs, irrespective of manager location, will not be subject to the Securities Financing Transactions Regulation (SFTR) reporting obligation. This brought clarity over the requirement for asset managers to report transactions on a "T+1" basis. The SFTR imposes requirements on all types of EU investment firms conducting SFTs, such as repurchase agreements, and securities, margin and commodities lending transactions. It is being phased in over a nine-month period starting in April 2020, with AIFs and UCITS due to comply by October 2020.

The **US** Federal Reserve published in June 2020 revisions to the so-called Volcker Rule. Currently, a non-US fund could be subject to Volcker Rule prohibitions against proprietary trading. The Fed had mitigated this by announcing it would not take enforcement action against funds that met certain criteria, referred to as "qualifying foreign excluded funds". The revisions codify this regulatory relief and create permanent exemptions for foreign funds meeting the criteria.

In EAMR 2019, we noted that the SEC was reported to have blocked applications for registration by **EU** asset managers due to concerns over the application of the EU General Data Protection Regulation (GDPR). The GDPR prevents EU firms from handing over information on individuals required by the SEC. Work to solve the impasse is progressing. The European Commission has provided assurances that SEC staff can have direct access to firms' books and records via the GDPR derogations. The SEC can retrieve the data it needs via European national regulators, provided the request is thought to be proportionate, not excessive and not going against national legislation. In return, the SEC is seeking guarantees from the Commission that EU national regulators will not oppose national exceptions under the GDPR derogations.

> "... concerned more broadly about cross-border data flows"

US agencies are concerned more broadly about cross-border data flows, specifically if they are limited by a non-EU jurisdiction's local data rules. A working group is being set up by the G7 to discuss this issue.

The MiFID II review has again highlighted the wider impact of **EU** rules on investment research (see Chapter 6). MiFID II clashes with the US "soft dollar" rule that requires a US business that sells research for "hard" dollars to be a registered investment adviser, which US brokers, understandably, resisted. In November 2019, the SEC issued a three-year extension to its no-action letter of October 2017, to allow further time to monitor the evolving impact of the MiFID II rules and to decide whether additional SEC action is required. It said it was focused on *"ensuring that market participants have flexibility and choice in how they pay for research."* Meanwhile, some US asset managers have voluntarily signed up to the MiFID II rules across their worldwide operations.

Finally, an area of regulatory activity that is likely to give rise to new extra-territorial impacts is ESG (see Chapter 7).

Brexit, the EU and third-country asset managers

Some walls are not falling but are being built, due to the **UK**'s withdrawal from the **EU** – Brexit. After the transition period (to end-2020), barriers to the cross-border distribution of funds and asset management services between the EU/EEA and the UK will be raised in both directions. Moreover, the pandemic has caused some delays to the processing by EU national regulators of applications from UK firms to establish new regulated entities or widen the licenses of existing firms.

It is generally presumed that the EU and UK regulatory regimes will continue to be aligned in the short term, but in the medium term will tend to move apart, as the EU reduces its dependence on what is now a "third-country" financial center and the UK looks to serve other financial

© 2020 KPMG International Cooperative ("KPMG International"), a Swiss entity. Member firms of the KPMG network of independent firms are affiliated with KPMG International. KPMG International provides no client services. No member firm has any authority to obligate or bind KPMG International or any other member firm vis-à-vis third parties, nor does KPMG International have any such authority to obligate or bind any member firm. All rights reserved.

markets operating under its own rules. This points to an increasingly fragmented rule book for global players – counter to repeated industry demands for open markets and a level playing field at global level.

It could also mean even greater pressure on supervisors to avoid extraterritorial impacts and to accept supervision in other jurisdictions. However, Brexit has focused attention on the different third-country rules in EU legislation. Some member states strongly object to, what they regard as, "free" access for third-country firms to EU markets, even though MiFID II/MiFIR allows asset managers to delegate portfolio management services to third-country firms only if an equivalence judgement is in place. The nub of industry concerns has been that the equivalence process is not transparent or time-certain, and that an equivalence decision might be suspended or withdrawn with insufficient notice for firms to make alternative arrangements.

In a July 2019 Communication, the European Commission confirmed that equivalence – both initiating an assessment and the decision itself – is in its gift, and that it has the right to suspend or withdraw an equivalence decision at any time. It also noted that recent legislation (such as the new prudential rules for investment firms) included "improved" equivalence provisions, which emphasize that decisions need to be risk-sensitive, reflect closely the third country's regulatory and supervisory framework, and take into consideration the impact of third-country activities in the EU.

> "wide-spread push to strengthen "substance" requirements "

The Commission said there must be ongoing monitoring of a third-country's framework after an equivalence decision has been made, to ensure that "potentially serious divergences" are identified early on. Assessment of a third country whose firms are likely to make intensive use of equivalence require a more significant set of risks to the EU to be assessed. The Communication refers both to assessments being outcomes-based and that they involve *"a rigorous case-by-case assessment of third-country rules".* It also refers to other factors being part of the assessment, including tax transparency and AML rules.

For its part, ESMA set out in its Strategic Orientation for 2020-22 how it will exercise its new powers, including the assessment and monitoring of third-country equivalence. ESMA noted that its interaction with non-EU regulators is likely to increase.

Brexit is impacting portfolio composition, too. UK securities will no longer be EU/EEA securities, creating issues for benchmarks and thresholds. For example, **French** *Plan d'Epargne en Actions* (equity savings plans) receive favorable tax treatment but must invest at least 75 percent of their assets in EU/EEA shares. Firms wrote to customers about potential changes in investment mandates, such as swapping to benchmarks that exclude the UK. Around the **EU**, some national pension funds are subject to a minimum threshold on investment in EU/EEA securities and are also having to re-align their portfolios.

The wider debate on substance

There is a similar but more wide-spread push to strengthen "substance" requirements and their enforcement. Many jurisdictions have come under pressure to investigate thoroughly whether fund managers domiciled in their territories have enough staff and senior management working in the entity. The aim is to avoid "letterbox entities", whereby firms are set up in foreign jurisdictions to avoid compliance with onshore regulations or tax obligations. In the context of Brexit, for example, ESMA is monitoring that **EU** national regulators properly scrutinize applications from **UK** asset and fund managers.

The major driver comes from fiscal authorities, which are concerned about potential erosion of their tax base due to profits being shifted to non-taxable or low-tax jurisdictions, or to letter box entities. Many authorities are seeking to demonstrate that entities in their jurisdictions have economic substance by placing additional demands on regulated firms. Tax returns now include economic substance declarations, for example. This questioning of economic substance also applies to funds. There are greater demands for data about fund investors to identify potential tax treaty abuse. Financial services regulators are lending their support to these efforts.

Some jurisdictions are extending regulation to previously unregulated entities and some regulators are requiring addition information and declarations before they will renew existing licenses. For example, the SFC clarified in a circular in January 2020 that private equity firms conducting regulated activities in **Hong Kong (SAR), China** must be licensed by the SFC unless they fall within the exemption. The SFA also provided guidance on the definition of discretionary investment authority, the licensing of investment committee members, the interpretation of the private company securities exclusion and industry experience requirements for responsible officers.

© 2020 KPMG International Cooperative ("KPMG International"), a Swiss entity. Member firms of the KPMG network of independent firms are affiliated with KPMG International. KPMG International provides no client services. No member firm has any authority to obligate or bind KPMG International or any other member firm vis-à-vis third parties, nor does KPMG International have any such authority to obligate or bind any member firm. All rights reserved.

Some jurisdictions moved early. The **Channel Islands**, for example, introduced economic substance requirements for accounting periods commencing on or after 1 January 2019. There are some practical issues in complying with these rules, though. Fund managers are within scope, but funds are not. Managers must report on directed and managed procedures, core income generating activities, adequate level of employees, management, annual expenditure and premises. Both economic substance and associated reporting can be met through outsourcing to service providers, but only where the provider is conducting the activity in the same territory and the manager is able to "monitor and control" the activities carried out by the service provider.

In the **Cayman Islands**, substance laws were passed in 2019. There were also changes in the mutual funds law, notably the removal of exemptions that were available to funds with fewer than 15 investors. The Private Funds Law 2020 aims to regulate most private fund vehicles across the private equity spectrum. The Law includes operating conditions on valuation, safe keeping of fund assets, cash monitoring, retention of records, audit and more, and will align the islands' regulatory regime with other fund domiciles. The volume of compliance monitoring and reporting has risen, which has been the trend in the asset management industry.

Bermuda has also moved towards a regulated structure, and mutual funds have until August 2020 to register with the regulator. Whereas the Cayman Islands require a locally approved auditor for funds, Bermudan law permits the auditor to be based in a foreign jurisdiction. The Bermudan regulator has therefore pledged to carry out stringent substance checks.

Efforts to lower barriers within Europe

EU/EEA funds wishing to distribute into the **UK** could face increased red tape after the transition period, because they will have to go through a formal recognition process to be able to market to retail investors. To mitigate this impact, the government has proposed a special recognition regime for such funds. The Overseas Funds Regime will provide two equivalence regimes – one for retail funds and one for MMFs. The government will make an equivalence determination in respect of another country's regime(s), rather than on an individual fund-by-fund basis. Factors involved in making the determination will include the level of investor protection for retail funds, the comparability of the regulatory regime, and the supervisory co-operation arrangements between the FCA and the other country's regulator.

© 2020 KPMG International Cooperative ("KPMG International"), a Swiss entity. Member firms of the KPMG network of independent firms are affiliated with KPMG International. KPMG International provides no client services. No member firm has any authority to obligate or bind KPMG International or any other member firm vis-à-vis third parties, nor does KPMG International have any such authority to obligate or bind any member firm. All rights reserved.

In **Switzerland**, the new FINSA and FINIA rules (see Chapter 4) are closely aligned with MiFID II, which should facilitate cross-border business between Switzerland and the EU. The concept of distribution has been abolished and new concepts introduced. The offer of financial instruments and the provision of financial services are subject to regulation, covering documentation, registration and licensing requirements. Client advisors are deemed to be natural persons who provide financial services on behalf of a financial service provider or themselves as financial service providers.

Foreign funds no longer need a local representative and paying agent if their shares are offered exclusively to "qualified investors", such as large occupational pension funds or private banks. Foreign sales and marketing staff (including of foreign financial service providers not subject to prudential supervision) must be entered in a register of advisors created under FinSA, unless they target only professional investors and institutional clients.

> "concerns that banks remain too dominant across distribution channels"

The **European** Commission is looking to boost retail fund distribution within the EU, amid concerns that banks remain too dominant across distribution channels. The Commission is reviewing several pieces of regulation, including MiFID II, AIFMD and the UCITS Directive, and issued a call for tender in March 2020 for analysis of the disclosure, inducements and suitability rules.

Meanwhile, the Commission's high-level working group on Capital Markets Union (CMU) published an interim report in February 2020, including recommendations on how to refresh the CMU project, which is widely viewed as treading water. Regulatory divergence between EU member states must be ironed out, the report said, if CMU is to succeed. CMU is also being assessed by the European Court of Auditors, which is examining whether efforts to diversify funding for EU companies, especially small- and medium-size enterprises, and to foster more integrated markets have been successful.

Commission President Ursula von der Leyen has made the completion of CMU one of her key objectives for the next five years. ESMA agrees that the EU needs more people to invest. Speaking at a finance event in Paris in February 2020, Steven Maijoor, ESMA chair said the authority will keep up its scrutiny of fund managers to encourage the trust of investors.

Brexit could have a negative impact on agreements between the UK and other third countries. The **UK** is seeking to take pre-emptive action to minimize this risk. In September 2019, the FCA and the SFC agreed additions to their memorandum of understanding to ensure that mutual recognition of funds will continue to operate in a smooth manner after Brexit, between **Hong Kong (SAR), China** and the UK.

Asian passports limp forward

While bilateral agreements have proliferated, the three main passporting projects in Asia continue to have low take-up. The reasons cited are numerous and include the lack of a common language in the region, different business and investment cultures, and wide differences in political and regulatory regimes.

We reported in EAMR 2019 that the **Mainland China** and **Hong Kong City** mutual recognition framework was said to be "on track", but there has since been little progress. The CSRC and SFC have discussed the approval process for "northbound" funds, but common ground has not yet been found and few Hong Kong (SAR), China funds have been given approval to access the mainland Chinese market. In November 2019, SFC chair, Tim Lui said in a speech that the SFC had been talking with the mainland authorities on the delegation of investment functions outside Hong Kong, as well as relaxing the requirement that the value of shares sold to Hong Kong investors be no more than 50 percent of the total.

Equally, the Association of South-East Asian Nations Collective Investment Scheme Framework has gained little traction. And while **Australia, Japan** and **Thailand** opened to receive registration applications from February 2019 onwards for the Asian Region Funds Passport, little action has ensued. The last face-to-face meeting of the Joint Committee of the Passport was held in **South Korea** in May 2019, but officials are concerned that local firms could lose business to foreign competitors, it is reported.

Openings for foreign inward investment

In September 2019, SEBI introduced revised regulations governing the process to be followed by foreign portfolio investors (FPIs) wishing to invest in **India**. The new rules took immediate effect. They permit FPIs to carry out off-market transfers of securities and simplify know-your-customer requirements. Enhancements to the registration process include reducing the categories of FPI from three to two: Category 1 includes sovereign wealth funds, pension funds, asset management companies and portfolio managers; Category 2 includes charitable organizations, family offices, individuals and unregulated funds.

© 2020 KPMG International Cooperative ("KPMG International"), a Swiss entity. Member firms of the KPMG network of independent firms are affiliated with KPMG International. KPMG International provides no client services. No member firm has any authority to obligate or bind KPMG International or any other member firm vis-à-vis third parties, nor does KPMG International have any such authority to obligate or bind any member firm. All rights reserved.

The **Chinese** State Administration of Foreign Exchange announced at a press conference in September 2019 the removal of the investment quota limitations on the inbound USD-denominated and CNY-denominated qualified foreign institutional investor programs. The authority said the move would make it much more convenient for overseas investors to participate in China's domestic financial markets. At the time of the removal, two-thirds of the existing quotas were unused.

As part of the China-US agreement mentioned above, China confirmed there would be no block on **US**-owned private investment managers investing in H shares – the shares of mainland Chinese companies listed on the **Hong Kong** stock exchange. Also, firms can invest in the full scope of futures products as in their domestic markets, including financial, interest-rate and exchange-rate futures.

In the **US**, the SEC changed its initial public offering rules in November 2019 to include a couple of important exemptions for foreign investment companies and foreign employee retirement benefit plans.[1] Prior to the change, a foreign investment company often had difficulty confirming whether it met the test of no a single investor holding more than 5 percent of its shares, because the holding might be through an intermediary that holds multiple investors' shares in a nominee account.

The amended rules, which took effect in January 2020, exempt investment companies if they can show they have at least 100 direct investors or at least 1,000 indirect investors, or that the company was not formed to allow restricted persons to invest in new issues. Foreign investment companies argued they should all be exempt given that they are highly regulated in their home jurisdictions, but the Financial Industry Regulatory Authority disagreed.

[1]Source: SEC, No. 34-87470

© 2020 KPMG International Cooperative ("KPMG International"), a Swiss entity. Member firms of the KPMG network of independent firms are affiliated with KPMG International. KPMG International provides no client services. No member firm has any authority to obligate or bind KPMG International or any other member firm vis-a-vis third parties, nor does KPMG International have any such authority to obligate or bind any member firm. All rights reserved.

EAMR abbreviations

ADGM	Abu Dhabi Global Market (UAE)
AFM	Autoriteit Financiële Markten (Netherlands)
AI	artificial intelligence
AIF	alternative investment fund
AIFMD	Alternative Investment Fund Managers Directive (EU)
AIMA	Alternative Invesment Management Association
AMF	Autorité des Marchés Financiers (France)
AML	anti-money laundering
AMLD V	Fifth Anti-Money Laundering Directive (EU)
APRA	Australian Prudential Regulatory Authority
ASIC	Australian Securities and Investments Commission
BaFiN	Bundesanstalt für Finanzdienstleistungsaufsicht (Germany)
BIB	Basic Information Sheet (Germany)
CBB	Central Bank of Bahrain
CBI	Central Bank of Ireland
CMU	Capital Markets Union (EU)
CNMV	Comisión Nacional del Mercado de Valores (Spain)
CSA	Canadian Securities Administrators
CSRC	China Securities Regulatory Commission
CSSF	Commission de Surveillance du Secteur Financier (Luxembourg)
CTF	counter-terrorist financing
DB	defined benefit
DC	defined contribution
DLT	distributed ledger technology
EAMR	Evolving Asset Management Regulation report
EFAMA	European Fund and Asset Management Association
ESAs	European Supervisory Authorities
ESG	environmental, social and governance
ESMA	European Securities and Markets Authority
ETF	exchange-traded fund
FAR	Financial Accountablility Regime (Australia)
FATF	Financial Action Task Force
FCA	Financial Conduct Authority (UK)
FIDC	Fundo de Investimento em Direitos Creditórios (Brazil)
FinIA	Financial Institutions Act (Switzerland)
FINMA	Financial Market Supervisory Authority (Switzerland)
FinSA	Financial Services Act (Switzerland)
FPI	Foreign Portfolio Investor (India)
GDPR	General Data Protection Regulation (EU)
HWM	high water mark
IBOR	interbank-offered rate
ICI	Investment Company Institute (US)
IIROC	Investment Industry Regulatory Organization of Canada
ILP	Investment Limited Partnership (Ireland)
IOSCO	International Organization of Securities Commissions
JFSA	Japanese Financial Services Agency
KIID	Key Investor Information Document (EU)
MAS	Monetary Authority of Singapore
MEP	Member of the European Parliament
MiFiD II	Markets in Financial Instruments Directive, revised (EU)
MiFiR	Markets in Financial Instruments Regulation (EU)
MMF	money market fund
NAV	net asset value
PIR	Piano Individuali di Risparmio (Italy)
PRIIP KID	Packaged Retail Investment and Insurance-based Product, Key Information Document (EU)
RFR	risk-free rate
SEBI	Securities and Exchange Board of India
SEC	Securities and Exchanges Commission (US)
SFC	Securities and Futures Commission (Hong Kong (SAR), China)
SFDR	Sustainable Finance Disclosures Regulation (EU)
SFTR	Securities Financing Transactions Regulation (EU)
SMCR	Senior Managers and Certification Regime (UK)
SME	small- or medium-sized enterprise
SRI	socially-responsible investment
TCFD	Task Force on Climate-related Financial Disclosures
UCITS	undertaking for collective investment in transferable securities (EU)
VaR	value at risk
VCC	Variable Capital Company (Singapore)

Acknowledgments

Kelly Henney
KPMG in Australia
E: khenney@kpmg.com.au

Karlie Lytas
KPMG in Australia
E: klytas@kpmg.com.au

Jacinta Munro
KPMG in Australia
E: jacintamunro@kpmg.com.au

Cecilia Storniolo
KPMG in Australia
E: cstorniolo@kpmg.com.au

Raphael Ongom
KPMG in Bahrain
E: rongom@kpmg.com

Benoit van den Broeck
KPMG in Belgium
E: bvandenbroeck@kpmg.com

Gary Pickering
KPMG in Bermuda
E: garypickering@kpmg.bm

Charles Thresh
KPMG in Bermuda
E: charlesthresh@kpmg.bm

Lino Martins da Silva Junior
KPMG in Brazil
E: lmjunior@kpmg.com.br

© 2020 KPMG International Cooperative ("KPMG International"), a Swiss entity. Member firms of the KPMG network of independent firms are affiliated with KPMG International. KPMG International provides no client services. No member firm has any authority to obligate or bind KPMG International or any other member firm vis-à-vis third parties, nor does KPMG International have any such authority to obligate or bind any member firm. All rights reserved.

Chris Farkas
KPMG in Canada
E: chrisfarkas@kpmg.ca

Peter L Hayes
KPMG in Canada
E: phayes@kpmg.ca

Anthony Cowell
KPMG in the Cayman Islands
E: acowell@kpmg.ky

Richard Scott-Hopkins
KPMG in the Cayman Islands
E: richardscotthopkins@kpmg.ky

Rennie Khan
KPMG in the Cayman Islands
E: renniekhan@kpmg.ky

Alexandra Reip
KPMG in the Channel Islands
E: alexandrareip@kpmg.com

Harry Briggs
KPMG in the Channel Islands
E: hbriggs@kpmg.com

Michelle Hammond
KPMG in the Channel Islands
E: mhammond1@kpmg.com

Wilson Huang
KPMG in China
E: wilson.huang@kpmg.com

Abby Wang
KPMG in China
E: abby.wang@kpmg.com

Luyi Pan
KPMG in China
E: luyi.pan@kpmg.com

Marie-Helene Angelides
KPMG in Cyprus
E: marie-helene.angelides@kpmg.com.cy

Axelle Ferey
KPMG in France
E: aferey@kpmg.fr

Elmar Schobel
KPMG in Germany
E: eshobel@kpmg.com

Adrian Berger
KPMG in Germany
E: adrianberger@kpmg.com

Arion Yiu
KPMG in Hong Kong (SAR), China
E: arion.yiu@kpmg.com

Péter Szalai
KPMG in Hungary
E: peter.szalai@kpmg.hu

Fanni Firon
KPMG in Hungary
E: fanni.firon@kpmg.hu

Gillian Kelly
KPMG in Ireland
E: gillian.kelly@kpmg.ie

Niamh Mulholland
KPMG in Ireland
E: niamh.mulholland@kpmg.ie

Jane Jones
KPMG in Ireland
E: jane.jones@kpmg.ie

Giuseppe D'Antona
KPMG in Italy
E: gdantona@kpmg.it

Masako Kanno
KPMG in Japan
E: masako.kanno@jp.kpmg.com

Ryuichi Murasawa
KPMG in Japan
E: ryuichi.murasawa@jp.kpmg.com

Alan Picone
KPMG in Luxembourg
E: alan.picone@kpmg.lu

Gabrielle Jaminon
KPMG in Luxembourg
E: gabrielle.jaminon@kpmg.lu

XinYi Yeoh
KPMG in Malaysia
E: xinyiyeoh@kmpg.com.my

Yan Chuan Lee
KPMG in Malaysia
E: yanchuanlee@kpmg.com.my

Alex Azzopardi
KPMG in Malta
E: alexzzopardi@kpmg.com.mt

Nicolas Olea
KPMG in Mexico
E: olea.nicolas@kpmg.com.mx

Erick Morales
KPMG in Mexico
E: erickmorales@kpmg.com.mx

Kees Roozen
KPMG in the Netherlands
E: roozen.kees@kpmg.nl

Rob Voster
KPMG in the Netherlands
E: voster.rob@kpmg.nl

Andrzej Galkowski
KPMG in Poland
E: agalkowski@kpmg.pl

Pawel Wolczkiewicz
KPMG in Poland
E: pwolczkiewicz@kpmg.pl

Ovais Shahab
KPMG in Saudi Arabia
E: oshahab@kpmg.com

Phil Knowles
KPMG in Saudi Arabia
E: philknowles@kpmg.com

Shahid Zaheer
KPMG in Singapore
E: szaheer@kpmg.com.sg

Ericia Lee
KPMG in Singapore
E: ericialer@kpmg.com.sg

Zola Beseti
KPMG in South Africa
E: zola.beseti@kpmg.co.za

Myles Coelho
KPMG in South Africa
E: myles.coelho@kpmg.co.za

Michelle Dubois
KPMG in South Africa
E: michelle.dubois@kpmg.co.za

Francisco Javier Muñoz Neira
KPMG in Spain
E: fjmunozneira@kpmg.es

Alfonso Francisco Figal Morate
KPMG in Spain
E: afigal@kpmg.es

Sven Hoglund
KPMG in Sweden
E: sven.hoglund@kpmg.se

Pascal Sprenger
KPMG in Switzerland
E: psprenger@kpmg.com

Sandra Gasser
KPMG in Switzerland
E: sgasser@kpmg.com

Luke Ellyard
KPMG in the UAE
E: ellyard@kpmg.com

Larry Godin
KPMG in the US
E: lgodin@kpmg.com

Mark McKeever
KPMG in the US
E: mmckeever@kpmg.com

Durba Roy
FS Risk & Regulatory Insight Centre, EMA
E: durba.roy@kpmg.co.uk

© 2020 KPMG International Cooperative ("KPMG International"), a Swiss entity. Member firms of the KPMG network of independent firms are affiliated with KPMG International. KPMG International provides no client services. No member firm has any authority to obligate or bind KPMG International or any other member firm vis-à-vis third parties, nor does KPMG International have any such authority to obligate or bind any member firm. All rights reserved.

Contact us

KPMG AG
Räffelstrasse 28
Postfach
CH-8036 Zurich

Pascal Sprenger
Partner, Financial Services
+41 58 249 42 23
psprenger@kpmg.com

Sandra Gasser
Senior Manager, Financial Services
+41 58 249 53 15
sgasser@kpmg.com

KPMG Asset Management practices offer a wide range of services to clients at national, regional and global levels. KPMG professionals in Audit, Tax and Advisory are specialist in their fields and have deep experience in the issues and needs of investment management businesses. Member firms' clients include investment managers, wealth managers, fund administrators and service providers which focus on mutual funds, hedge funds, private equity funds, infrastructure funds and real estate funds, and institutional investors such as pension funds and sovereign wealth funds.

You can download the report by chapter by visiting
kpmg.com/eamr2020

Throughout this document, "we", "KPMG", "us" and "our" refer to the network of independent member firms operating under the KPMG name and affiliated with KPMG International or to one or more of these firms or to KPMG International. KPMG International provides no client services. No member firm has any authority to obligate or bind KPMG International or any other member firm vis-à-vis third parties, nor does KPMG International have any such authority to obligate or bind any member firm.

The information contained herein is of a general nature and is not intended to address the circumstances of any particular individual or entity. Although we endeavor to provide accurate and timely information, there can be no guarantee that such information is accurate as of the date it is received, or that it will continue to be accurate in the future. No one should act on such information without appropriate professional advice after a thorough examination of the particular situation. The scope of any potential collaboration with audit clients is defined by regulatory requirements governing auditor independence. If you would like to know more about how KPMG AG processes personal data, please read our Privacy Policy, which you can find on our homepage at www.kpmg.ch.

© 2020 KPMG AG is a subsidiary of KPMG Holding AG, which is a member of the KPMG network of independent firms affiliated with KPMG International Cooperative ("KPMG International"), a Swiss legal entity. All rights reserved.