asset servicing times
The primary source of global asset servicing news and analysis
ISSUE 248 02 September 2020

# Ready, set, go

## Broadridge's Demi Derem discusses the challenges and opportunities associated with SRD II

### Australia Update

*Find out how its large superannuation industry is growing and custodians are showing support for ASX's CHESS replacement system*

### CSDR News

*A further delay to CSDR's settlement discipline regime has been welcomed by industry participants*


# CSDR's SDR delay 'a positive step' for the industry

A further delay to the Central Securities Depositories Regulation (CSDR) settlement discipline regime until 1 February 2022 has been welcomed by industry participants.

Paul Baybutt, senior product manager, HSBC, explained that the delay is a "positive step because it will allow the industry an opportunity to further address the open issues concerning the implementation of settlement discipline".

On 28 August, the European Securities and Markets Authority (ESMA) published a final report on draft regulatory technical standards (RTS) to further postpone the implementation of CSDR's settlement discipline until 2022.

In its final report, ESMA highlighted the "severe impact" of the ongoing COVID-19 pandemic on the overall implementation of regulatory and IT projects by central securities depositories (CSDs) and their participants as well as by other financial market infrastructures.

ESMA explained it would be "extremely difficult" for market stakeholders to comply with the requirements of the RTS on settlement discipline by the 1 February 2021 deadline.

The RTS on settlement discipline covers measures to prevent and address settlement fails including rules for the trade allocation and confirmation process; cash penalties on failed transactions; mandatory buy-ins; and monitoring and reporting of settlement fails.

Derek Coyle, global custody product, vice president, Brown Brothers Harriman, stated that ESMA's confirmation "aligns with what has been discussed in industry circles in the past

continued on page 7


W: www.assetservicingtimes.com
T: @ASTimes_

Editor: Becky Bellamy
beckybutcher@blackknightmedialtd.com
+44 (0)208 075 0927

Reporter: Maddie Saghir
maddiesaghir@blackknightmedialtd.com
+44 (0)208 075 0925

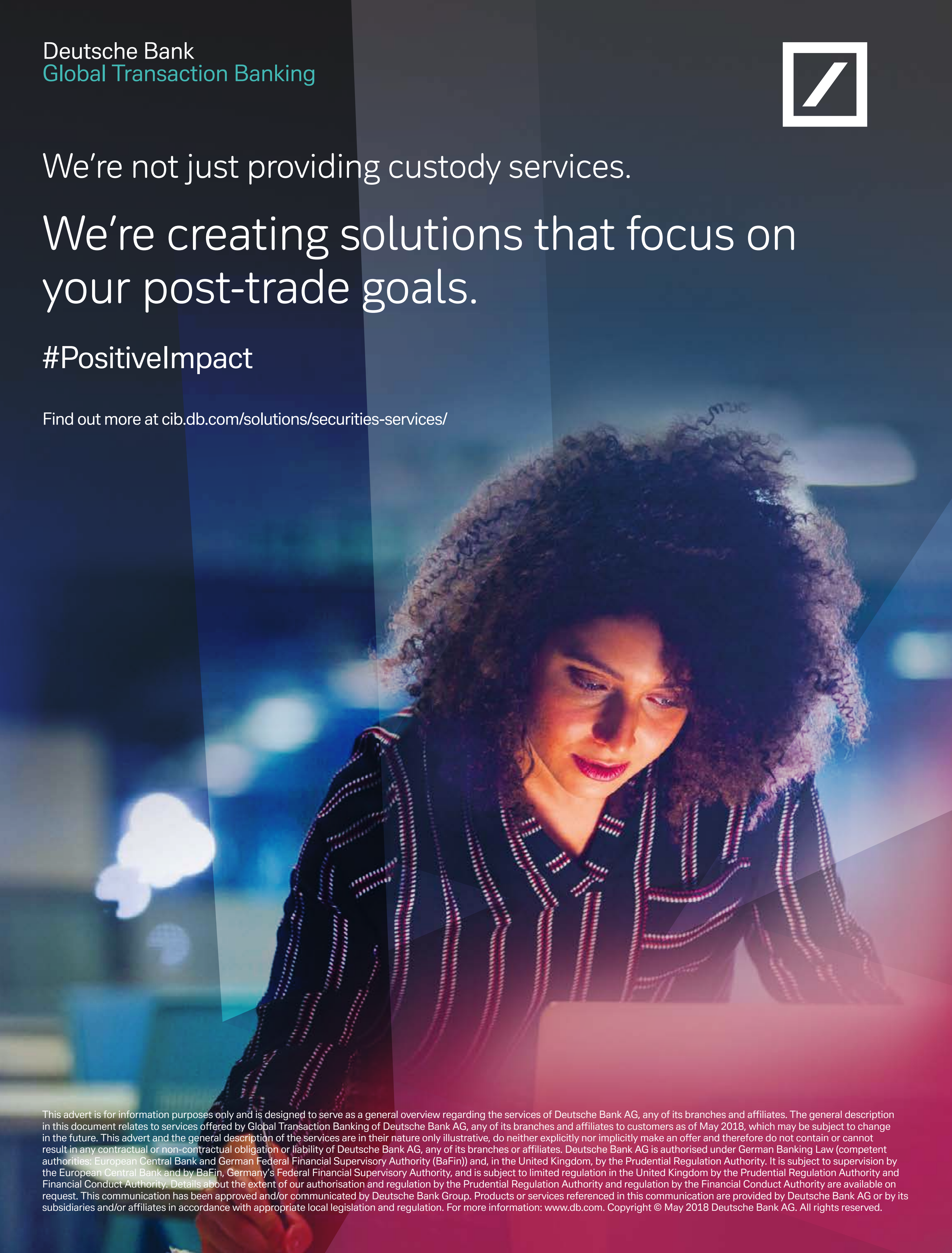
Contributor: Maria Ward-Brennan
mariawardbrennan@blackknightmedialtd.com

Contributor: Rebecca Delaney
rebeccadelaney@blackknightmedialtd.com

Designer: James Hickman
jameshickman@blackknightmedialtd.com
+44 (0)208 075 0930

Publisher: Justin Lawson
justinlawson@blackknightmedialtd.com
+44 (0)208 075 0929

Published by Black Knight Media Ltd


Deutsche Bank
Global Transaction Banking
We're not just providing custody services.
We're creating solutions that focus on your post-trade goals.
#PositiveImpact
Find out more at cib.db.com/solutions/securities-services/
This advert is for information purposes only and is designed to serve as a general overview regarding the services of Deutsche Bank AG, any of its branches and affiliates. The general description in this document relates to services offered by Global Transaction Banking of Deutsche Bank AG, any of its branches and affiliates to customers as of May 2018, which may be subject to change in the future. This advert and the general description of the services are in their nature only illustrative, do neither explicitly nor implicitly make an offer and therefore do not contain or cannot result in any contractual or non-contractual obligation or liability of Deutsche Bank AG, any of its branches or affiliates. Deutsche Bank AG is authorised under German Banking Law (competent authorities: European Central Bank and German Federal Financial Supervisory Authority (BaFin)) and, in the United Kingdom, by the Prudential Regulation Authority. It is subject to supervision by the European Central Bank and by BaFin, Germany's Federal Financial Supervisory Authority, and is subject to limited regulation in the United Kingdom by the Prudential Regulation Authority and Financial Conduct Authority. Details about the extent of our authorisation and regulation by the Prudential Regulation Authority and regulation by the Financial Conduct Authority are available on request. This communication has been approved and/or communicated by Deutsche Bank Group. Products or services referenced in this communication are provided by Deutsche Bank AG or by its subsidiaries and/or affiliates in accordance with appropriate local legislation and regulation. For more information: www.db.com. Copyright © May 2018 Deutsche Bank AG. All rights reserved.

# BNP Paribas launches digital client review solution

BNP Paribas Securities Services has created a multilingual service review solution to digitalise its client service reviews. The solution aims to improve feedback processes by encouraging a more user-friendly, client-centric format, with a consolidated view across services and global locations.

The NeoLink client portal will facilitate the online service reviews, which will be available to clients at any time through any device to promote the availability, transparency and traceability of information.

Featuring two streams, the portal is divided into a client satisfaction scorecard, where clients can provide ongoing feedback during a service to be discussed at a formal service review meeting, and an online action plan follow-up to provide details of current service plans and request updates and comments on pending actions.

Mark Hillman, head of global client services at BNP Paribas Securities Services, explained: "We want to deliver the best possible client experience, and service reviews are an integral part of this objective."

"We are making the service review journey as easy as possible for our clients to rate our services and access their information online 24/7."

**continued from page 3**

weeks, factoring in the market trading volatility of COVID-19 impacts in March and April of this year, and also accounting for feedback from various groups and forums concerning regulatory items which needed to be addressed".

Baybutt said: "This is the first step in organising a further delay to the EU settlement discipline regime."

He suggested that as ESMA has done this at the request of the European Commission "it should pass quickly to parliament for a decision".

Also commenting on ESMA's announcement, consultant Tony Freeman said that confirmation "came quite quickly" but "their speed of action is very welcome".

Freeman explained that although the postponement is officially subject to non-objection by the European Parliament and the European Council, ESMA must be very confident this is a technicality.

He said: "Market participants can now re-plan for a February 2022 start-date with almost 100 percent certainty."

"There is no indication in the report that the terms of the settlement discipline regime will be changed: this is a simple time delay and not a review of its contents", Freeman added.

Coyle explained that the deadline extension will also allow for further discussion and clarity on items such as buy-ins, where it is hoped that February 2022 implementation will allow for more buy-in agents to be confirmed.

He suggested that another important factor will be where the delay will allow for more testing time to be built into project planning. He said:

# Northern Trust extends ESG analytics offering

Northern Trust has expanded its environmental, social and governance (ESG) risk exposure analytics capabilities to cover new reporting for environmental data categories.

As part of Northern Trust's new 'ESG Insights' product suite, asset owner clients will be able to assess specific environmental risk factors for their investment portfolios.

The new capabilities will also allow clients to generate data and analytics which will help them to identify carbon footprint metrics across individual managers, portfolios, countries and sectors, as well as monitor changes in a fund's environmental risk profile and align towards sustainable investment frameworks.

The expansion follows the reporting recommendations of the Financial Stability Board's taskforce for climate-related financial disclosures to establish standards for financial risk disclosures.

Serge Boccassini, product lead for investment accounting and analytic solutions at Northern Trust, commented: "Our enhanced capabilities can help clients more closely incorporate the 'E' of 'ESG' into their decision-making. Northern Trust is committed to providing clients with deep analytical insights as they strive to meet their ESG responsibilities."

"An example being the hope that readiness for penalty reporting and handling can be in place a few months ahead of February 2022, allowing for CSDs, custodians and trading parties to run through tests and scenarios for best practices in penalties."

In terms of next steps, ESMA said that following the endorsement of the RTS by the European Commission, the delegated regulation will then be subject to the non-objection of the European Parliament and of the European Council.

## GPP to provide fund administration services to Dowgate Capital

Dowgate Capital has appointed GPP to provide fund administration and back-office support services.

As part of the deal, GPP will use its technology platform to administer Dowgate's investment assets and provide an outsourcing solution to enable it to scale its business through its next phase of growth.

Tom Wooders, head of clearing and wealth solutions at GPP, said: "Our wealth solutions platform offers a compelling alternative to traditional administration models and its core tenets – scalability, efficiency and innovation – are clearly resonating with investment managers such as Dowgate. Current market conditions present a unique challenge for the investment industry, but our outsourcing solution offers the flexibility of enabling managers to reduce costs, keep pace with regulatory change and focus on their competitive advantages. We look forward to working with Dowgate to deliver these benefits and support future business growth."

images by johanswanepoel/adobe.stock.com

## 21 Analytics software enables first compliant crypto asset transaction

The first automated and compliant crypto asset transaction has been enabled by Swiss asset technology software provider 21 Analytics between Crypto Finance AG and Mt Pelerin. The bitcoin transaction was compliant with the anti-money laundering ordinance of the Swiss Financial Market Supervisory Authority (FINMA).

21 Analytics' newly released software allows financial intermediaries and virtual asset service providers (VASPs) to comply with FINMA over both the OpenVASP and Travel Rule decentralised protocols.

Crypto Finance and Mt Pelerin clients are now able to perform crypto asset transactions between any legally compliant financial intermediaries.

Jan Brzezek, CEO of Crypto Finance, commented: "The global adoption of crypto assets requires an international standard as well as the technology and processes to comply with it. All players now have the legal certainty they need in order for crypto assets to become an important alternative asset class."

Arnaud Salomon, CEO of Mt Pelerin, added: "This live demonstration shows once again that crypto assets and regulatory compliance are compatible through practical solutions, which is one of the key focuses of our tokenisation technology."

## ESMA recommends greater harmonisation of UCITS and AIFMD

The European Securities and Markets Authority (ESMA) has said the Alternative Investment Fund Managers Directive (AIFMD) review is a chance to consider "greater harmonisation" of the UCITS and AIFMD regimes.

In a letter to the European Commission setting out areas to consider during the upcoming AIFMD review, ESMA explained in some cases, the newer AIFMD provisions are "more granular or specific compared to the UCITS requirements, although there might not be any objective justification for such differences".

ESMA used the example of different levels of granularity with respect to risk management and liquidity management requirements.

The letter stated: "The European Commission should consider aligning the frameworks where appropriate, in particular as applying different requirements to management companies which manage both UCITS and AIFs creates additional burdens for the firms concerned and divergences in supervisory/regulatory outcomes."

Other areas that ESMA put forward for consideration include delegation and substance; liquidity management tools; leverage; the AIFMD reporting regime and data use; and the harmonisation of supervision of cross-border entities.

ESMA said the AIFMD review provides the EU with "an opportunity to apply lessons learned". It also encouraged the commission to support the areas identified in the letter "in order to improve the effectiveness and soundness of the AIFMD".

## J.P. Morgan appointed custodian for $16bn Australian fund

J.P. Morgan has been appointed as custodian to provide custody and fund administration services and reporting for CareSuper's $16 billion fund. The new custodian appointment marked the end of NAB Asset Servicing's fund services relationship with CareSuper and a transition will take place in the first half of 2021.

The investment banking firm offers technology, as well as reporting solutions that will assist with the Australian industry superannuation fund's investment programme and strategic growth plans.

Julie Lander, CEO of CareSuper, explained: "As part of our tender process, we wanted a custodian that could demonstrate how it could align both culturally and with the strategic growth initiatives of our fund."

Suzanne Branton, chief investment officer of CareSuper, added: "J.P. Morgan's global scale and data-driven approach to securities services are particularly well placed to support our evolving investment programme."

"The increasing sophistication of the programme, including its diversification into private assets across international markets, means J.P. Morgan's capabilities will support our service needs."

## William Blair reappoints State Street for investment management services

State Street has been reappointed by global financial services company William Blair to provide investment management services for mutual funds, non-registered products and Canadian pooled funds.

The extension continues the 20-year relationship between the two firms.

The deal will enhance the offering of William Blair, which specialises in investment banking and management, as well as private wealth management.

John Lehner, head of asset management at State Street, commented: "We are incredibly pleased to be renewing our servicing relationship with William Blair. Our two organisations have forged a strong partnership which we have adapted over time to address the evolving needs of the business, and our reappointment is testament to our combined success."

# AIFMD Review: a test case of how EU financial services will be structured post Brexit

## Consultant Tony Freeman discusses the publication of ESMA's letter to the European Commission on recommendations to consider for the AIFMD review

At first glance, last week's publication of a letter about the Alternative Investment Fund Managers Directive (AIFMD) from the European Securities and Markets Authority's (ESMA) to the European Commission doesn't seem like big news. Isn't AIFMD a somewhat obscure piece of legislation that is a minority interest? Not really.

The EU sees the investment funds market in two segments. UCITS funds, which are subject to high levels of regulatory protection because they are sold to the public, and alternative investment funds (AIFs) sold to institutional investors and sophisticated retail clients. The combined UCITS & AIF segments are huge: EFAMA says there are 61,000 funds managed by 4,500 buy-side firms with the value under management is €16.3 trillion. But despite a large amount of overlap between the two segments the regulatory treatment has, historically, been quite different. What makes this significant is that ESMA is now acknowledging these discrepancies and is making clear that whatever revisions are agreed to AIFMD will also apply to the UCITS segment. In effect, the two separate pieces of legislation will not be combined but will be harmonised.

The other key issue that will be unearthed during the AIFMD review is the post-Brexit relationship between the EU and the UK. Two issues are front and centre in the review: delegation and substantive-presence.

Delegation is the practice of registering a fund in a single location inside the EU (typically Ireland or Luxembourg) enabling retail sales across the whole EU. The actual management of the fund can be done in another location.

Many of the bigger investment managers are geographically dispersed and typically very little of the front-office tasks — such as asset allocation, stock picking, risk management — actually happen in Dublin or Luxembourg.

They can perform these roles anywhere in the EU, or even outside. One of the largest European tech funds is controlled by a portfolio manager located in Taipei.

What happens in Luxembourg and Dublin is primarily back-office functions like fund accounting and shareholder record keeping.

Substantive presence is a closely related subject, which has come into focus due to Brexit and the shift of investment banking activity from London to Frankfurt. The EU, very understandably, wants to avoid Cayman Islands style shell companies that are registered and legally domiciled in the EU but where all real activity takes place in London. So-called "brass plate" companies are not acceptable. Regulators require a local entity to be properly staffed and resourced on the ground. The by-product is a growth of high-paying jobs in the local market. This is clearly a political win.

The AIFMD review will bring both issues into the spotlight. One possible outcome is that the current arrangements will persist. But the ESMA letter appears to make this very unlikely.

Firstly, the letter links delegation to "operational and supervisory risks". It isn't specific and doesn't provide any evidence or examples. But the tone is clear.

Secondly, it connects differences between EU and non-EU regulatory standards to "circumvention" and "regulatory arbitrage". This is quite a contentious opinion and could be seen as a somewhat politicised viewpoint. Again, the direction of travel is quite clear.

> *"If the outcome is that core functions must be performed within the EU, which appears to be the political ambition, substantial organisational change is inevitable"*

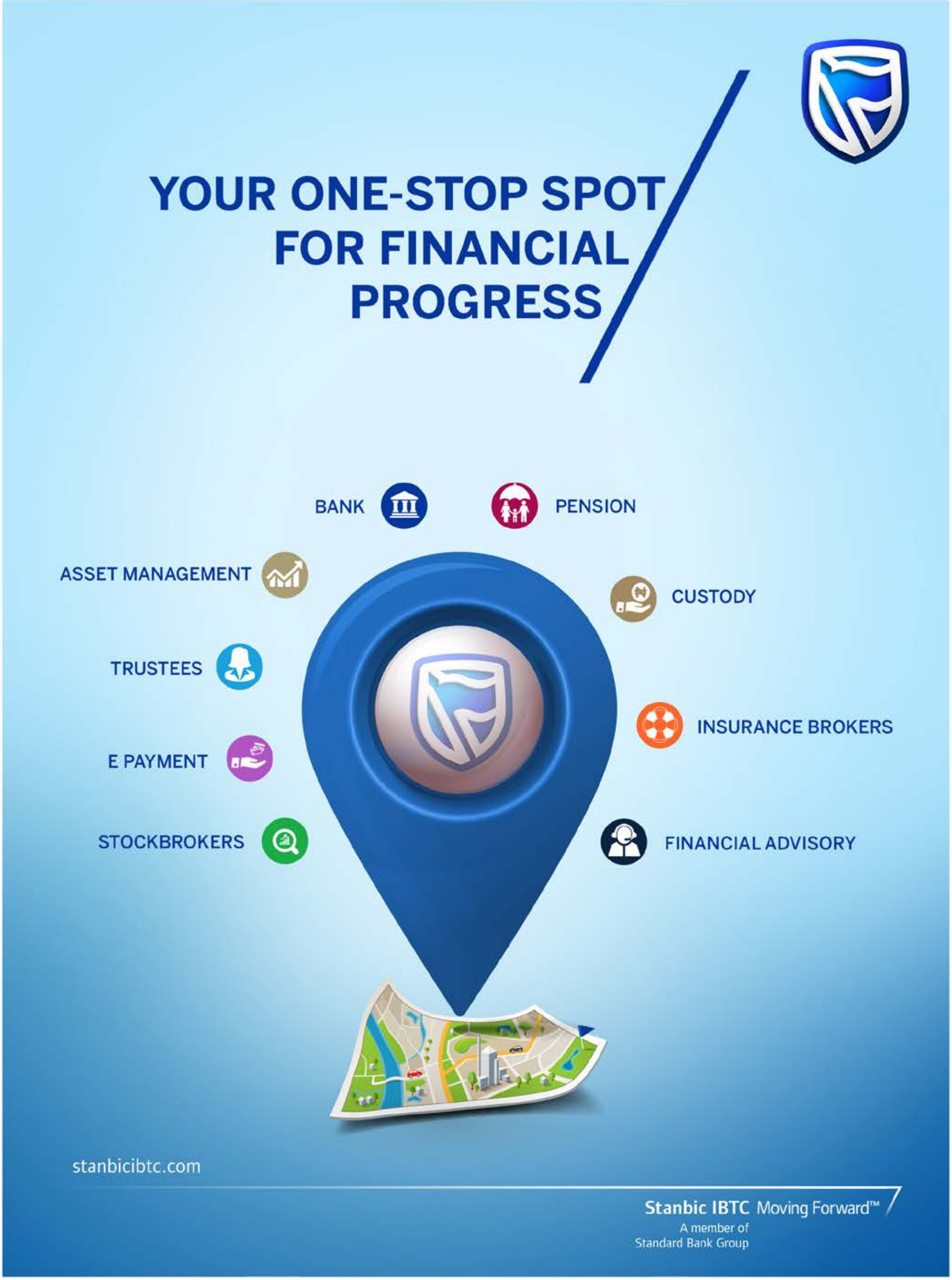
The letter specifically refers to the opacity and confusion that surround these issues – even amongst the regulators themselves.

It therefore proposes a further definition of what activities should be classified as "core" versus "supporting" tasks. Presumably, the core activities must meet the substantial presence requirements.

Clarity is always welcome, but the result could be uncomfortable. If the outcome is that core functions must be performed within the EU, which appears to be the political ambition, substantial organisational change is inevitable. And to make it more delicate this is not purely an EU-UK issue.

The delegation model has a global impact because whatever new rules are defined surely have to apply equally to all non-EU countries.

The AIFMD review isn't a technical exercise on an obscure piece of legislation. It's a test-case of how EU financial services will be structured post Brexit. It deserves very close attention.


YOUR ONE-STOP SPOT
FOR FINANCIAL
PROGRESS
BANK
PENSION
ASSET MANAGEMENT
CUSTODY
TRUSTEES
INSURANCE BROKERS
E PAYMENT
STOCKBROKERS
FINANCIAL ADVISORY
stanbicibtc.com
Stanbic IBTC Moving Forward™
A member of
Standard Bank Group

# Ready, set, go

*Broadridge's Demi Derem discusses the challenges and opportunities associated with the second Shareholder Rights Directive as the implementation date draws very near*

*Maddie Saghir reports*

## Do you think the industry is ready for SRD II?

As we approach the 3 September deadline, our major focus has been to support our clients in getting ready for the changes the second Shareholder Rights Directive (SRD II) presents, which are significant from an operating and business model perspective.

From what we have seen, the industry is ready to varying degrees. While some intermediaries, such as global custodians, are fully aware of their new obligations under SRD II and are duly prepared, for many other firms in the banking, brokerage and wealth industries, the provision of services such as proxy voting and shareholder disclosure are new and present challenges.

In any case, given the impact of COVID-19 on all aspects of life, regulators may take a pragmatic approach to compliance. This means that for new entrants, in particular, the most important thing will be to show engagement in the process and to have a plan in place to be compliant either by the 3 September deadline or shortly after.

## What have been the biggest challenges?

The biggest challenges that SRD II poses for the industry are interpretation, lack of standardisation and implementation. On interpretation, the terms used in the directive are somewhat open, resulting in some firms expressing difficulties with understanding the requirements and changes that need to be made.

Meanwhile, many firms have struggled to implement changes, largely due to the delay in transpositions and the complexity involved in updating existing processes and technology to allow for enhanced automation and data security so that information can be passed efficiently up and down the chain of intermediaries between the investor and shareholder.

### How has the pandemic affected SRD II implementation preparations?

Undoubtedly the pandemic has frustrated implementation preparations. Earlier in the year, we saw a number of appeals to the European Commission to ask for a delay to the SRD II deadline, citing the widespread disruption caused by the pandemic as a major obstacle to implementation. Companies had been forced to adapt quickly to carry out business as usual, and the letter to the European Commission was evidence that firms were finding it difficult to make the structural changes necessary to meet the new investor communications requirements in the current global environment.

### The directive is set to enable closer engagement between a company and its shareholders, what opportunities will this bring?

SRD II represents a significant opportunity for firms to improve not just transparency and engagement, but also to address operational inefficiencies and achieve greater levels of automation through standardisation. The world of investor services is changing – and the increased automation of voting through proxy can help remove human error, and improve accuracy and speed.

Firms that have historically not offered SRD II-compliant services have been waking up to the fact that they need help; as a result, we have seen unprecedented demand for our services this year, with new clients being signed across markets in Europe and other regions, including multiple tier-one banks, brokers and wealth managers.

### Do you think the SRD II go-live will be smooth?

We expect mixed results from the industry in the first few months after the September deadline. In May this year, we conducted a survey which showed that a significant number of firms had struggled to understand their new obligations and introduce the changes that SRD II demands of them.

It is likely that it will take some time for the industry to evaluate which parts of the regulation and implementing law require further alignment and definition. Consequently, we also expect to see a number of firms modify their day one compliance strategies post go-live.

> *SRD II represents a significant opportunity for firms to improve not just transparency and engagement, but also to address operational inefficiencies and achieve greater levels of automation through standardisation*
>
> ***Demi Derem***
> ***General manager, investor communication solutions international***
> ***Broadridge***

### Do you think the financial industry has somewhat been left to their own devices to come up with harmonised and standardised practices as well as interpreting legal definitions associated with SRD II?

In certain aspects, yes. With process and legal terms remaining somewhat open to interpretation and varying by jurisdiction, the industry has in certain areas been left to its own devices to come up with harmonised and standardised practices. As an example, we have seen that the Shareholder Disclosure process has caused some excitement in debates, as members of the industry have disagreed on interpretations over the definition of terms like “shareholder” and “without delay processing”. Going forward, we believe that it will be necessary for the market to come together to agree on elements of ambiguity through either a common body or service provider that can help shape, set and implement standards. I think that it is also reasonable to expect that, over time, member states will revisit the definition of shareholder so that the definition has the same meaning across all member states.

# Class Actions

***Rhea Dhillon of Phi Finney McDonald explains that maintaining the current levels of competition in the market is key to ensuring the ongoing improvement in returns to class action participants in the long term***

As we approach the 30-year anniversary of the Australian federal class action regime, class actions are once again under the political spotlight. This time, the focus is on the litigation funders that make most class actions possible.

While much of the focus is on how much money litigation funders make, any concerns about excessive commercial returns or a proliferation of claims seem increasingly out of date.

## Historical picture

Since the introduction of the federal class action regime in 1992, there have been just over 634 class actions filed. On average this equates to about 23 class actions per year. As reported by the Australian Law Reform Commission (ALRC), class actions constitute between 0.33 percent and 0.68 percent of all cases filed in the federal court each year.

Of the 634 class actions filed, there have been a total of 122 shareholder class actions. The successful shareholder class actions have returned almost over $900 million to over 94,000 shareholders. It is also estimated that product liability class actions have returned over $400 million to nearly 12,000 customers.

There are the important policy benefits of shareholder class actions that, through their various iterations, have operated to correct the information asymmetry between listed companies and the market. The potential of class action litigation has no doubt worked effectively in the background to create a greater impetus for company directors to carefully consider what information is material and when it ought to be released to the market.

Litigation funders have played a key role in delivering these policy outcomes as well as compensation to shareholders and other class members.

Working together with plaintiff law firms, litigation funders have delivered access to justice in circumstances where the financial risk of litigation would not have been borne by anyone else.

## Current state of the market

The market has seen an increase in players over the years. There used to only be a single litigation funder in the Australian market, whereas now there are 33. Meanwhile, plaintiff law firms that conduct the majority of the class actions for plaintiffs have increased from two to almost 30, including a number of large commercial firms.

The growth in the number of players in the class action and litigation funding market in Australia has unsurprisingly had the welcome effect of generating real competition between litigation funders and thereby driving drive down the cost of litigation to group members.

This is a result of both greater competition and increased judicial intervention in funding agreements in the context of common fund applications, which allows judges to scrutinise the funder's rate of return and risk taken in the proceeding before approving a funder's commission in a class action settlement. The days when the small handful of funders took a 40 percent commission on gross recoveries are well and truly behind us. Commissions recently approved by the court have been no greater than 25 percent of net recoveries.

There is evidence of increasing innovation, such as in the Westpac shareholder class action launched by Phi Finney McDonald in 2019. In that case, group members are guaranteed to receive more than 90 percent of gross litigation proceeds. Terms like this were simply not available to group members even three years ago.

## A case for reform?

In the last five years, a number of inquiries and reports into the class action regime commissioned by the federal and state governments have provided overwhelmingly positive conclusions about the effectiveness of the class action regime, including litigation funding.

In 2014, the Productivity Commission conducted an inquiry into access to justice arrangements in which in concluded that litigation funders performed an important role of funding claims by plaintiffs who would otherwise lack resources to proceed' but also recommended that litigation funders be licensed to ensure they met capital adequacy requirements.

Since that report, a number of organic developments in the class action market have addressed some of the key risks associated with capital adequacy of funders, most notably including the increased uptake of after the event insurance by funders which provide defendants with a direct right to call on funds to cover the specific adverse costs liability in the case in the event of their success.

In 2018, the Australian Law Reform Commission (ALRC) conducted a full-scale review into the class action regime since 1992. Many of the recommendations contained in its final report delivered to the federal government in December 2019 went to formalising practical mechanisms already in use by parties and the courts to deal with specific aspects of class action procedure such as dealing with multiplicity, embedding the presumption that funders provide security for costs and giving the court increased powers to reject, vary or set terms of litigation funding agreements.

The ALRC closely considered and ultimately rejected the need for a mandated financial services licensing regime of litigation funders on the basis that the court would be better equipped to provide consumer protections and enforce capital adequacy requirements. This makes sense given the court's ability to intervene on the specific terms of litigation funding agreements, rather than having a funder meet a set of generic requirements under a boilerplate licencing regime.

## Australian financial services licences: square peg, round hole

Rather than delivering its response to the ALRC's important recommendations, in May 2020, the federal government urgently tasked the Parliamentary Joint Committee on Corporations and Financial Services to conduct yet another Inquiry into litigation funding and the regulation of the class action industry. The inquiry is convened on what the current data suggests is an out-dated premise that the price of litigation funding is too high. Their report is due by 7 December 2020 but certain outcomes have already been determined, regardless of the committee's findings.

On 22 August, the federal government brought into force regulations requiring litigation funders to hold an Australian Financial Services Licence (AFSL) as well as placing class actions into the managed investment scheme (MIS) framework.

While the need for greater regulation of litigation funding is well accepted from both sides of the debate, there is an abundance of doubt as to whether these regulations will deliver any net benefit to class members.

First, the AFSL regime is far from perfect. Under this regime, a significant number of financial advice scandals, such as Storm Financial and Opes Prime went undetected in the Australian regulatory regime and hundreds of millions of dollars were lost by retail investors. The Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry in 2019 also found that banks and lenders had engaged in egregious misconduct despite operating under the AFSL regime.

Secondly, the AFSL and MIS regimes are ill-suited to litigation funding. Under the current proposal, a litigation funded class action will be treated as an MIS. Putting aside the associated and onerous documentation required to operate an MIS – it is unclear what the 'scheme property' would be and how it would operate in tandem with open class actions. It is unclear which entity would appropriately act as the responsible entity. Would it open up another layer of management fees payable by class members, as is often the case in these investment schemes?

It is highly unlikely that introducing this overlay of mismatched regulatory requirements will result in better consumer protections for class action participants.

What is clear is that in addition to having to deal with litigation funding agreements, solicitors' costs agreements and disclosure statements, class members will also have to familiarise themselves with the Product Disclosure Statement for the case, the scheme's constitution and make an application for investments in the scheme.

There is also the real risk that, given the red tape associated with the operation of AFSL and MIS schemes, including reporting requirements, the costs of litigation funding will have to increase to meet the added expenditure. This may force smaller litigation funders out of the Australian market. The resulting combination of increased costs and fewer players will likely have the ironic outcome of decreasing competition and increasing costs at the very time competition is placing downwards pressures on prices.

> *“While the need for greater regulation of litigation funding is well accepted from both sides of the debate, there is an abundance of doubt as to whether these regulations will deliver any net benefit to class members”*

The better outcome would be to see the federal government engage with recommendations made by the ALRC following their in-depth review of the class action regime.

Those recommendations favour giving more powers to the court to intervene in litigation funding and legal cost arrangements as well as supporting the open class action regime.

The courts have a far better understanding of class action practice and also have a statutory role to supervise and protect the interests of group members.

In our view, the court is far better placed to deliver bespoke consumer protections to class members rather than a 'one-size-fits-no-one' regulatory regime. Regulation for regulations' sake is the worst type of reform. As the facts show, class actions in Australia are working relatively well. Maintaining the current levels of competition in the market is key to ensuring the ongoing improvement in returns to class action participants in the long term.

# Acceleration to automation

***The role of the custodian is continuing to evolve and with the current pandemic, efforts to further digitalise and automate in this space are of heightened importance***

*Maddie Saghir reports*

The role of the custodian has evolved rapidly over the past years. The pandemic has even further bolstered the evolution of the custodian and amplified the need for more automation in this space.

Custodians are responsible for the safety of assets and securities but the role of the custodian is changing and we are seeing a rise in digital custody as the popularity continues to grow for digital assets. The direction is pointing towards digitisation and automation.

Caroline Butler, global head of custody at BNY Mellon, predicts that COVID-19 will serve to accelerate progress towards a fully digitised and automated industry.

She suggests that automation and digitisation have "long been the direction of travel in the industry but the impact of the COVID-19 lockdown has both highlighted the benefits of automated processes and clarified for some firms the vulnerabilities in parts of their architecture. The COVID-19 experience will no doubt prove a catalyst for investment to address such issues and streamline operations," Butler says.

So with a potential catalyst of change occurring in this space, industry experts discuss the hot topics in the custody market at the moment.

## The big talking points

Some of the big talking points in the custody space revolve around data, technology, automation and custody of digital assets.

BitGo's CEO Mike Belshe affirms that custody of digital assets continues to be a critical and complex specialised endeavour, which requires the highest level of proper internal controls to protect the assets.

"Trust and security at a large scale is an absolute necessity for banks and industry to adopt cryptocurrency in a meaningful way. BitGo's custody solution gives institutional investors the assurance they need to accelerate their investment in digital assets," Belshe says.

Elsewhere, Ciaran Roddy, head of global custody product for Asia, asset owners and managers, securities services at HSBC, observes a few other important talking points in the custody space.

One talking point is around connectivity. Roddy notes that clients are increasingly looking to identify opportunities and connect directly with their own platforms to build synergies and ensure the information that companies such as HSBC are providing is timely, accurate and as broad a data set as possible.

"The second is around data and delivery channels in terms of how we are communicating with clients, who are looking to understand if there is an opportunity to leverage new technologies like application programme interfaces (APIs) and Chat-Bots," Roddy says.

He continues: "As clients look for faster access to the latest trade status of a transaction and whether it has achieved straight-through processing (STP), the challenge, therefore, is for custodians to provide clients with data sets beyond mere SWIFT messaging standards which both of these channels facilitate."

Additionally, another talking point, Roddy suggests, is around the different investment opportunities clients are seeing and how those opportunities can be enabled.

For example, Roddy explains: "Trading in new emerging/frontier markets, collateral management, accessing China through various channels, and, as clients chase yield, alternative and digital assets are becoming increasingly attractive. Custodians need to ensure they can help facilitate clients accessing these investment opportunities in a timely and efficient manner, and provide the full range of services."

"The last is around operational efficiency between service providers, clients and the market. It is about understanding opportunities for utilities to be created with an increased level of standardisation," he adds.

## A rise in digital custody

As previously mentioned, digital assets are continuing to grow in popularity, and they are also becoming increasingly welcomed by institutional investors. Digital assets require enterprise-grade market infrastructure that can be integrated with existing technology and processes to run properly in regulated environments. This is so they can trust and align digital assets with the existing business. As such, the rise in digital custody and properly regulated digital exchanges is something that is continuing to gain momentum.

"*Trading in new emerging/frontier markets, collateral management, accessing China through various channels, and, as clients chase yield, alternative and digital assets are becoming increasingly attractive*"

***Ciaran Roddy***
***Head of global custody product for Asia, asset owners and managers, securities services***
***HSBC***

Discussing whether we will see an increase in digital asset custodians and whether there will be a rise in new firms or existing custodians expanding into the digital asset space, Belshe comments: "For future custodians, we do expect to see new entrants. We expect some of the incumbent financial services firms to enter the market and that they will likely often choose to use BitGo technology to ensure safety, security, and compliance for their own clients."

Weighing in on this, Roddy adds: "It is a very interesting area at the moment. There is a huge number of existing digital asset custodians. We have done a lot of research on how mature the ecosystem actually is. Traditionally, most of these custodians have focused very much on the cryptocurrency side, whereas we are now seeing these fintechs looking to pivot and offer services to an institutional client base."

He adds: "From our perspective as a traditional custodian, the client base that we serve would still expect existing providers to offer services to support digital assets – they will continue to look to minimise the amount of counterparty exposure they have, and will expect consolidated reporting

*Future digital asset market participants will be able to trade more safely, with larger, more established firms, and a better understanding of risk*

***Mike Belshe***
***CEO***
***BitGo***

across all asset classes, both traditional and emerging, and therefore we do not expect specialised digital asset custodians to take significant market share away from traditional custodians."

## Effects from the pandemic

The pandemic caused unprecedented challenges for the global securities services industry, but experts say overall it coped "remarkably well". Challenges throughout the pandemic included adapting to a new way of working remotely and handling manual processes.

Butler observes that investment in digitised, automated processes over previous years made possible the rapid shift to remote working for most in the industry within a matter of days.

"It's a feat that would have been considerably harder to achieve ten or even five years ago. Even so, COVID-19 exposed weaknesses within the wider ecosystem, in particular those processes where cross-industry automation and digitisation have not yet been achieved or even seriously attempted," Butler remarks.

According to Roddy, it is evolving, but it has also helped identify whether there are any inefficiencies in client operating models.

"A lot of clients have been quite open to reviewing some of those bespoke processes we have been undertaking on their behalf. In some cases, we have also been asked to identify for them best practice in working from home arrangements. So it has been challenging but also interesting in terms of the new definition for 'ways of working' in large organisations," he adds.

## Looking to the future

Looking to the future, as the markets evolve, experts say that becoming increasingly transparent is something that will continue to be important. Roddy explains that being transparent is more important than ever in a continual low-interest-rate environment.

"There continues to be a lot of scrutiny and focus around ongoing regulatory changes, both global and local. We have to ensure we are able to provide clients with the appropriate level of service and reporting to help them meet their regulatory obligations," he says.

As well as this, custodians must also support evolving client needs, such as different communication channels, asset classes, and markets, according to Roddy.

He comments: "As the markets are evolving, identifying the opportunities to collaborate with clients and different financial market infrastructures to enable more seamless communication flow is becoming increasingly important."

Also commenting on the future landscape, Belshe concludes: "We expect the market structure to continue to evolve to reduce the risk for institutional investors. Future digital asset market participants will be able to trade more safely, with larger, more established firms, and a better understanding of risk."

In terms of technology, fiat and digital assets will blur – enabling a new wave of safer, more transparent financial systems, as we'll be able to achieve atomic delivery versus payment and finality in trading settlements."

# An evolving landscape

***Australia's financial services market is seeing continued growth in its large superannuation industry and custodians in this space are continuing to evolve while showing support for ASX's CHESS replacement system. J.P. Morgan's Nadia Schiavon discusses these themes and more***

*Maddie Saghir reports*

With glorious sandy beaches and an exciting outback, Australia has little resemblance to its neighbours in the Asia Pacific area. Not only is it different in looks, but its financial service industry is quite the contrast too. Australia is dominated largely by its growing superannuation industry, which is now the second-largest pensions market in Asia Pacific, after Japan. Over the next few years, industry experts predict Australia's superannuation industry will continue to grow and further consolidate at a rapid pace. CLS' Margaret Law recently predicted that firms will also continue to grow in-house management capabilities and reduce outsourced mandates.

Elsewhere on Australia's financial services' landscape, the role of the custodian is continuing to evolve and the demand for custodial services in this space is rising. This is based on institutional investor demands for support in implementing sophisticated investment strategies, timely and complete information, greater efficiency and risk mitigation and continual regulatory change.

With this backdrop, the Australian Securities Exchange (ASX) is working to replace the Clearing House Electronic Subregister System (CHESS) to create more efficiency.

A recent whitepaper from the Australian Custodial Services Association stated: "The current ASX CHESS replacement project is an example of how custodians are engaged in consultation, advocacy for positive change, technology build and workflow redesign in the interests of overall market efficiency and robust change management."

CHESS is the computer system, based on distributed ledger technology, used by ASX to manage the settlement of share transactions and to record shareholdings.

It was developed by ASX more than 25 years ago and enabled the dematerialisation of the cash equity market, a move to T+5 settlement—which was lowered to T+2 in March 2016—and improved the efficiency and effectiveness of post-trade processing in Australia. However, CHESS was set to be replaced with distributed ledger technology (DLT) in April 2021, but this is now expected to be pushed back. ASX said the new DLT will

provide a "broader range of benefits to a wider cross section of t he market".

Peter Hiom, deputy CEO of ASX, says: "The exchange has undertaken a comprehensive, risk-based approach to the replan of the CHESS replacement project. We have listened to the diverse views of stakeholders and accommodated feedback on timing, user readiness and changes to functionality."

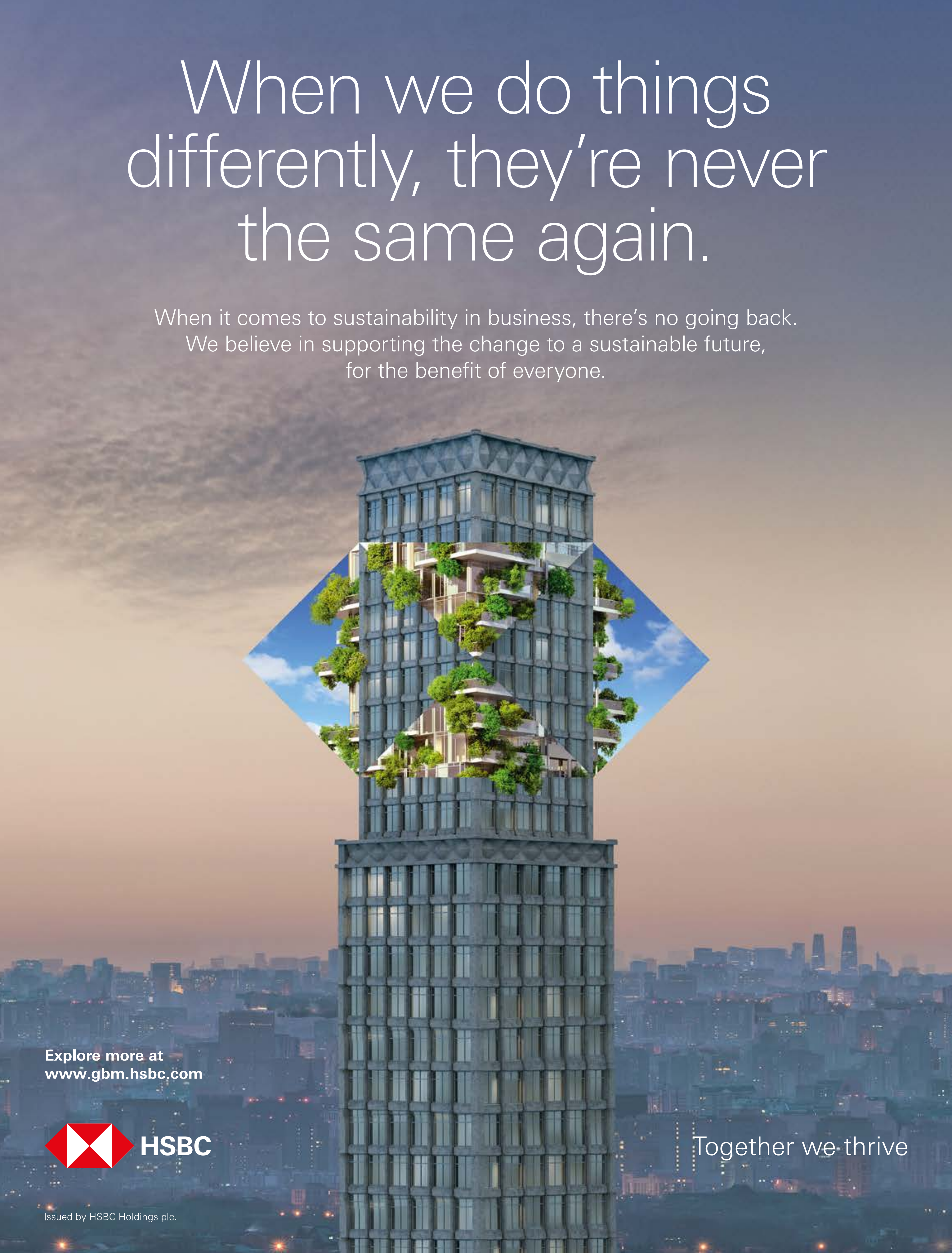
"At its core, the new CHESS system will deliver existing services, new and enhanced functionality, high availability, reliability and performance, and will underpin Australia's financial markets for the next decade and beyond. We have made great progress in challenging circumstances and are focused on delivering the solution in a safe and timely manner."

With ongoing challenges surrounding the pandemic interfering with the original implementation date, ASX opened a consultation on a new go-live date of April 2022, 12 months beyond the original target go-live date. Feedback from the consultation, at the start of August, revealed that 91 percent of CHESS users can meet the revised go-live date for CHESS replacement of April 2022.

ASX received 88 submissions, which represented 92 percent of the 96 CHESS users. Those who have not been able to confirm readiness have asked for more information on particular issues, which ASX will assist in the near-term.

The new proposed deadline remains subject to a detailed review of all submissions and any other relevant considerations before being finalised by ASX. Meanwhile, ASX is following up with CHESS users that haven't responded to ensure as much input as possible is received. ASX explained that CHESS users are those organisations that plan to connect to the new system, including clearing and settlement participants, product issuer settlement participants, approved market operators, back-office software developers, payment providers and share registries.

To discuss ASX's CHESS replacement and other themes in Australia's financial services industry, AST sits down with Nadia Schiavon, head of securities services, Australia and New Zealand, J.P. Morgan, to find out more.


When we do things differently, they're never the same again.
When it comes to sustainability in business, there's no going back.
We believe in supporting the change to a sustainable future,
for the benefit of everyone.
Explore more at
www.gbm.hsbc.com
HSBC
Together we thrive
Issued by HSBC Holdings plc.

**How would you describe the current climate for asset servicing business in Australia?**

Australia is a highly complex market for asset servicing and taxation, and because of this complexity is unique in comparison to its global counterparts. Technology disruption, a rapidly changing asset owner environment – including the consolidation of superannuation funds – ongoing regulation and market volatility are a few of the many factors shaping the current and future climate for asset servicing in Australia.

The end to end asset servicing process is completely manual and while a small number of improvements have been made in recent years, corporate action announcements are still made via PDFs, instructions submitted via fax and payments are needed by cheque. Given that CHESS is not a true depository corporate action, events are run and managed by the issuers share registry. Each share registry has their own set of processes and policies which, while similar, are not always the same. This results in the same type of event having small variations which may impact on the end investor.

Due to this, asset servicing in Australia carries a significant amount of operational risk and requires skilled teams to manage complex processes for a variety of events, each of which may have their own nuances. The need for standardisation of events, the introduction of electronic communication channels and removal of paper-based processes are long overdue in the market.

**What trends are you currently seeing in this space?**

The market has seen a trend towards increasing levels of non-standard information being required to facilitate corporate action events. This is most prevalent within capital raising events where the requirement to provide beneficial owner details has been seen as a condition of acceptance of an offer. From a custodian perspective, it is a highly manual and time-consuming process to collect this information given that omnibus accounts are standard within the market and the multiple intermediaries who may sit between the legal owner and the beneficial owner.

images by f11photo/adobe.stock.com



Unfortunately, there does not appear to be a near term solution to this issue and this will not be supported in the CHESS replacement system.

Some progress has been made to standardise the announcement of corporate action events through the ASX corporate action straight-through processing (STP) project which currently provides ISO 20022 announcements for four event types. In time this will be expanded out to cover 13 event types with issuers directly inputting details into a portal which will generate market announcements. This will not cover all events, however, it will enable a degree of standardisation for the events that are supported.

### How will the delay of ASX's CHESS replacement impact the industry? Was this expected with the ongoing pandemic?

The significant spike in trading activity seen in March and the inability of CHESS to cope with the volumes has brought into focus the fact that the current system is approaching its end of usable life and a replacement is needed. Following these spikes, ASIC stepped into the market and capped the number of trades large brokers were able to execute each day. The increased time until implementation provides an extended window in which trade limit restrictions could be re-imposed and the potential flow on the financial impact of this. From a custodian perspective, the most significant impact of the delay is the removal of a clear implementation date for functionality that will bring automation, efficiency, risk reduction and resiliency to asset servicing in Australia. This functionality will have many benefits and with the implementation delayed these benefits will take longer to be realised.

### What opportunities will the new CHESS system deliver?

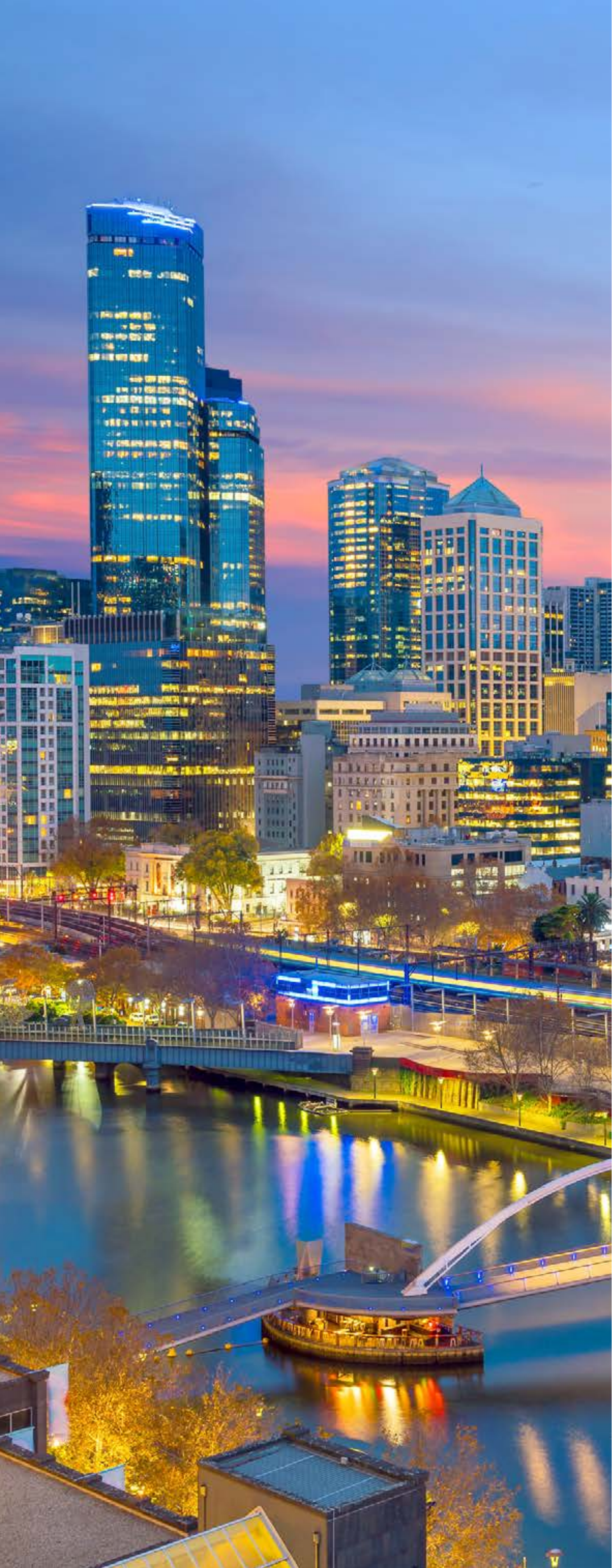
The use of DLT provides an opportunity for greater connectivity between issuers and investors in the Australian market reducing the points of failure in the chain of custody. There are over AUD 2 trillion of assets held on the current CHESS platform and the

> *The implementation of the CHESS replacement system will provide an updated platform to perform clearing and settlement in Australia with the associated benefits of any new system including better capacity and greater connectivity options*

migration of this to the new platform using new technology poses a significant risk. For this reason, many participants are utilising trusted and enterprise-grade connectivity methods to communicate with the new system on day one.

**How will the new system alter Australia's financial markets in the future?**

The implementation of the CHESS replacement system will provide an updated platform to perform clearing and settlement in Australia with the associated benefits of any new system including better capacity and greater connectivity options. We do not, however, see this as having a revolutionary impact on the Australian financial markets with the initial implementation being akin to a messaging upgrade. The implementation of corporate action functionality will also bring Australia up to



a good international standard. The use of distributed ledger technology provides a platform on which other services could be provided.

### What changes do you expect to see within the next five years in the Australian asset servicing space?

Given the delayed implementation of the CHESS replacement system, opportunities are opening up for new entrants to provide systems that reduce risk and add efficiency. One such company, Proxymity, has already come into the market looking to streamline the flow of meeting and proxy voting information by connecting issuers with investors. Once the CHESS replacement system is fully implemented it is expected that debt securities will be migrated to the platform removing the need to support the Austraclear depository.

From a custodial and fund services perspective, the development of end-to-end workflow integration designed to interact with multiple order management systems and the wide ecosystem is a key development in the coming years. At J.P. Morgan, we are not taking a vertical integration approach and have opted for an open architecture model because clients generally use multiple best in class providers. Data will continue to be at the forefront of this space. Robust, real-time data will allow providers to integrate more front-office services and provide a full platform solution.

Over the next five years, there will be an increasing emphasis on the governance and controls concerning tax oversight in relation to asset holdings and income processing. The Australian taxation office's justified trust programme (derived from an Organisation for Economic Co-operation and Development concept) in part requires asset owners and managers to independently assure themselves of the completeness and accuracy of tax records under their purview, even if these are managed day to day by third party providers.

There is expected to be increased demands for tax-related data to allow all participants in the system to fulfil the obligations under this programme.

## Citi has appointed Kanika Thakur as Asia Pacific trade head, based in Hong Kong.

In her new role, Thakur will report to Rajesh Mehta, head of Asia Pacific treasury and trade solutions and Ebru Pakcan, global head of trade. She succeeds Vishal Kapoor who was named head of treasury and trade solutions for Citi Hong Kong earlier this year. Thakur will be responsible for the continued growth of Citi's trade business, with a focus on delivering trade financing solutions that offer working capital benefits to clients.

Thakur has worked at Citi since 2001 where she served as a management associate in India and has also been located in Singapore and Hong Kong. Prior to her new role, Thakur was Asia Pacific head of trade finance.

Mehta commented: "Asia Pacific is a critical region for growth for Citi's treasury and trade solutions business. With her strong leadership skills, wealth of experience and in-depth understanding of both the business and how clients' needs are evolving, I am confident that Kanika Thakur will take our trade business in the region to the next level. In addition to maintaining our market leadership, she will also be responsible for charting the course of our future business model in a rapidly changing environment."

## Grant Thornton, a global accountancy, tax and advisory firm, has added two new directors to its leadership team in the Cayman Islands.

Joseph Ferruzzi has been appointed as director and co-head of the firm's US tax practice, which was set up mid-2019 in response to growing demand. Ferruzzi, who has 18 years of industry experience, joins Chris Willemseand, director and head of tax for Grant Thornton Cayman Islands, to lead the service line.

Meanwhile, Sherri Fleming has joined the firm as a director in the audit practice, specialising in the audit of alternative investment funds.

In her new role, Fleming will lead audit engagements, build and develop client relationships, coach and mentor her teams, and take part in industry-related webinars focusing on the evolving landscape of asset management in the Cayman Islands.

Fleming brings with her nearly 20 years of experience in the audit industry, the last 14 of which have been in the Cayman Islands.

Greg O'Driscoll, partner and head of asset management at Grant Thornton Cayman Islands, said: "We are delighted to welcome two new industry experts to our team."

He added: "We have seen significant growth in our funds practice over the past three years, which is now complemented by our US tax services offering. The addition of Joseph Ferruzzi and Sherri Fleming further enables us to deliver our ambitious growth strategy. We are thrilled to welcome them both and their wealth of experience to Grant Thornton."

## State Street has expanded its Middle East presence by opening an office in Riyadh, Saudi Arabia to provide institutional services and asset management in the region.

The newly-created State Street Saudi Arabia has appointed Abdullah Saleh Bakhrebah as CEO and managing director, where he will be responsible for driving overall business strategy, exploring growth opportunities and managing relationships with local government officials and regulators.

He most recently served as head of product and business development for Saudi Arabia at Ashmore Group, and brings over a decade of experience in the kingdom's banking and finance industry.

Haifa Al Goufi and Hassan Al Khalaf have also been appointed as the Middle East and North Africa (MENA) chief compliance officer and MENA chief financial officer, respectively.

Commenting on the new office and appointments, Jörg Ambrosius, head of Europe, Middle East and Africa at State Street, said: "Saudi Arabia itself is a strategically important country for State Street. Having an office here is absolutely vital for us to fulfil our ambitious growth plans for the region."

## IQ-EQ has appointed Amy LeJune as client services director for the firm's corporate segment, based in the UK.

In her new role, LeJune will be responsible for managing a range of client portfolios, including global corporations, mid-cap companies and private equity houses, as well as spearheading organic growth of the investor services firm.

LeJune most recently served as finance business unit manager at Intertrust. She has more than 20 years of experience in accounting across the financial services, hospitality and media industries.

Joanne McEnteggart, head of corporate services, UK and Ireland, IQ-EQ, commented: "Amy LeJune has extensive industry experience and international knowledge, which makes her an excellent addition to our UK and Ireland cluster and to our corporate segment as a whole."

"I look forward to working closely with LeJune and the rest of the team as we continue to build our corporate services business in this key market."

LeJune added: "It is an exciting time to be joining IQ-EQ as the firm continues to consolidate, grow and strengthen its corporate services offering in the UK, Ireland and across the globe. I look forward to working with my new colleagues and applying my own experience to further establish IQ-EQ as a corporate service provider of choice."