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ISSUE167 14 June 2017

EU proposes 'two-tier' approach to central clearing regulation

EU legislators have proposed a massive overhaul of central counterparty supervision.

The European Commission's proposal for more robust supervision of CCPs was issued yesterday, in response to a lack of regulatory consistency, their increasing importance in financial services, and the expectation that the UK's withdrawal from the EU will have a significant impact on the regulation and supervision of clearing in Europe.

Under the proposal, a new supervisory mechanism will be established within the European Securities and Markets Authority (ESMA), which will be responsible for ensuring a more coherent and consistent supervision of CCPs based in the EU, as well more robust supervision of CCPs in non-EU countries, or 'third countries'.

Non-EU CCPs appear to be the real targets of this proposal, with the introduction of a new two-tier system designed to apply stricter requirements to systemically important—or so-called second-tier—CCPs. These requirements include compliance with the

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EU proposes ‘two-tier’ approach to central clearing

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necessary prudential requirements for EU CCPs while taking into account third-country rules, as well as confirmation from EU central banks that the CCP complies with any additional requirements they set forward, such as collateral management, asset segregation and liquidity arrangements.

ESMA also envisages second-tier CCPs agreeing to provide ESMA with all relevant information and to enable on-site inspections, as well as the necessary safeguards confirming that these arrangements are valid in the third country.

In the event that a third-country CCP is deemed to be of “such systemic importance that the requirements are deemed insufficient to mitigate the potential risks”, the European Commission will have the power to say that the CCP can only provide services in the union if it establishes itself in the EU.

Non-systemically important CCPs will continue to be able to operate under the existing European Market Infrastructure Regulation equivalence framework.

Monica Gogna, financial regulation partner at law firm Ropes & Gray, said: “This ‘two-tier’ approach seems to be shifting the balance of power further into the hands of the EU and ESMA. What is interesting is that, as with many other initiatives recently produced by ESMA, the effect is far-reaching to jurisdictions other than the UK. It is clear that the deluge of regulation from the EU shall continue in this space.”

Valdis Dombrovskis, vice president responsible for financial stability, financial services and the capital markets union at the European Commission, commented: “The continued safety and stability of our financial system remains a key priority. As we face the departure of the largest EU financial centre, we need to make certain adjustments to our rules to ensure that our efforts remain on track.”

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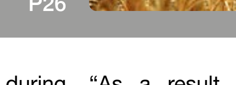

UK’s Financial Conduct Authority releases dividend arbitrage results

Some UK-based firms engaged in dividend arbitrage may not be identifying the risk posed by contrived or fraudulent trading for the purpose of making illegitimate withholding tax reclaims, according to the Financial Conduct Authority (FCA).

The UK’s FCA published the results of a review of dividend arbitrage practice in the UK this month and warned firms using trading activities such as securities lending and derivatives to sidestep withholding tax during dividend season to make sure they have adequate processes in place to assess and monitor transactions.

“Most firms executing transactions with, or on behalf of, clients engaged in dividend arbitrage, appear to comply with our requirements,” the FCA said in its June Market Watch newsletter.

“However, some firms may not have identified the risk posed by contrived or fraudulent trading for the purpose of making illegitimate withholding tax reclaims.”

“As a result, some firms may not have adequate processes to allow them to assess the purpose for dividend arbitrage trading by prospective clients and/or do not establish or monitor clients’ trading abilities and the true nature of the transactions involved.”

“This could result in firms failing to identify clients who may be using this strategy for inappropriate purposes.”

The FCA looked at the activities of a number of inter-dealer brokers, settlement agents and custodians involved in trading European equities around ex-dividend dates.

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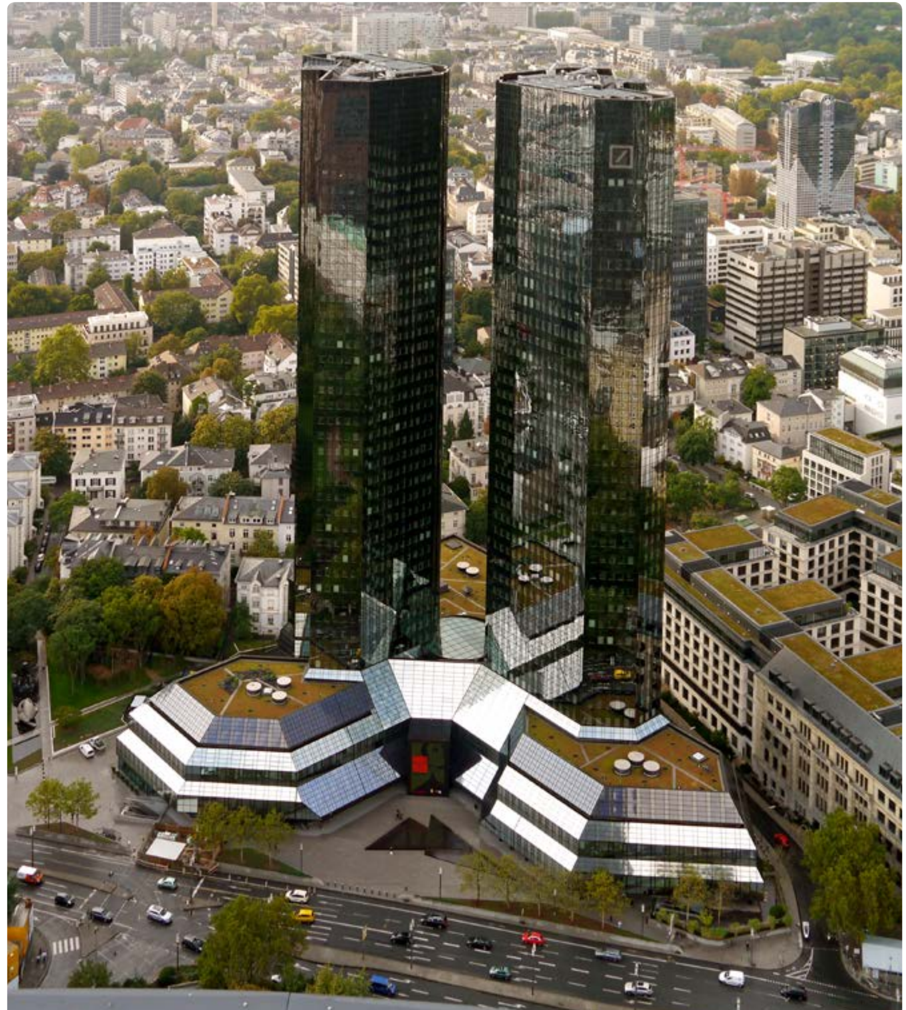

Deutsche Bank fined $41m for anti-money laundering deficiencies

Deutsche Bank is facing a $41 million penalty and a consent cease and desist order from the US Federal Reserve for "significant deficiencies" in its anti-money laundering management.

The Federal Reserve discovered "unsafe and unsound practices at the firm's domestic banking operations".

"Failures" were identified in Deutsche Bank's US banking operations to maintain an effective programme to comply with the Bank Secrecy Act and anti-money laundering laws.

The consent cease and desist order requires Deutsche Bank to improve its senior management oversight and controls related to its US banking operations' compliance with anti-money laundering laws. Deficiencies in Deutsche Bank's transaction monitoring capabilities allegedly prevented the bank from properly assessing anti-money laundering risk for "billions of dollars in potentially suspicious transactions processed between 2011 and 2015" for some of Deutsche Bank's European affiliates, which reportedly failed to provide sufficiently accurate and complete information.

Deutsche Bank, which did not reply to a request for comment on this fresh consent cease and desist order, was issued with two fines in January over anti-money laundering failings.

The bank was ordered to pay a penalty of £163.1 million to the UK's Financial Conduct Authority, the largest ever imposed by the regulator.

The New York State Department of Financial Services also received $425 million to settle the investigation into violations of the state's anti-money laundering laws.

Those that were identified as failing to adequately assess and monitor transactions did so in a number of circumstances, including through the use of back-to-back securities lending agreements and over-the-counter derivatives instruments to hedge stock trades.

Areas of concern for the FCA also included potential connections and associations between the owners of offshore funds and the firms involved in the custody, settlement and clearing of the stock, as well as a lack of transparency as to both the source and availability of funds supposedly being used to fund the trading, and the source of stock needed to fulfil a trade.

The FCA reminded UK-based firms engaged in dividend arbitrage that they need to comply with requirements covering financial crime risk.

It said: "They must also have effective processes for carrying out due diligence on new business proposals, on new clients and for monitoring ongoing business."

"We also expect firms to have a good understanding of the risks that are relevant to their business, as well as strong controls for mitigating those risks."

"A firm must have the appropriate management oversight and controls in place to minimise the extent to which it is possible for its business to be used for a purpose connected with financial crime."

Blockchain 'poses risk' in EU

The increase in distributed ledger technology poses a risk of market fragmentation in the EU, but regulation should not hamper development, according to Mario Draghi, president of the European Central Bank (ECB).

Speaking on financial innovation at the European Parliament's Economic and Monetary Affairs Committee on 29 May, Draghi said the ECB is monitoring fintech developments "to better understand its impact, to assess the risks and to adjust the regulatory environment and supervisory approaches where needed".

The activity in distributed ledger technology is a development that could affect the processing of payments and securities, he said.

"Given the rapid pace of development in this field, there is a need to constantly monitor and assess potential new or more pronounced risks resulting from the application of new technology such as the distributed ledger to payment, clearing and settlement infrastructures in particular."

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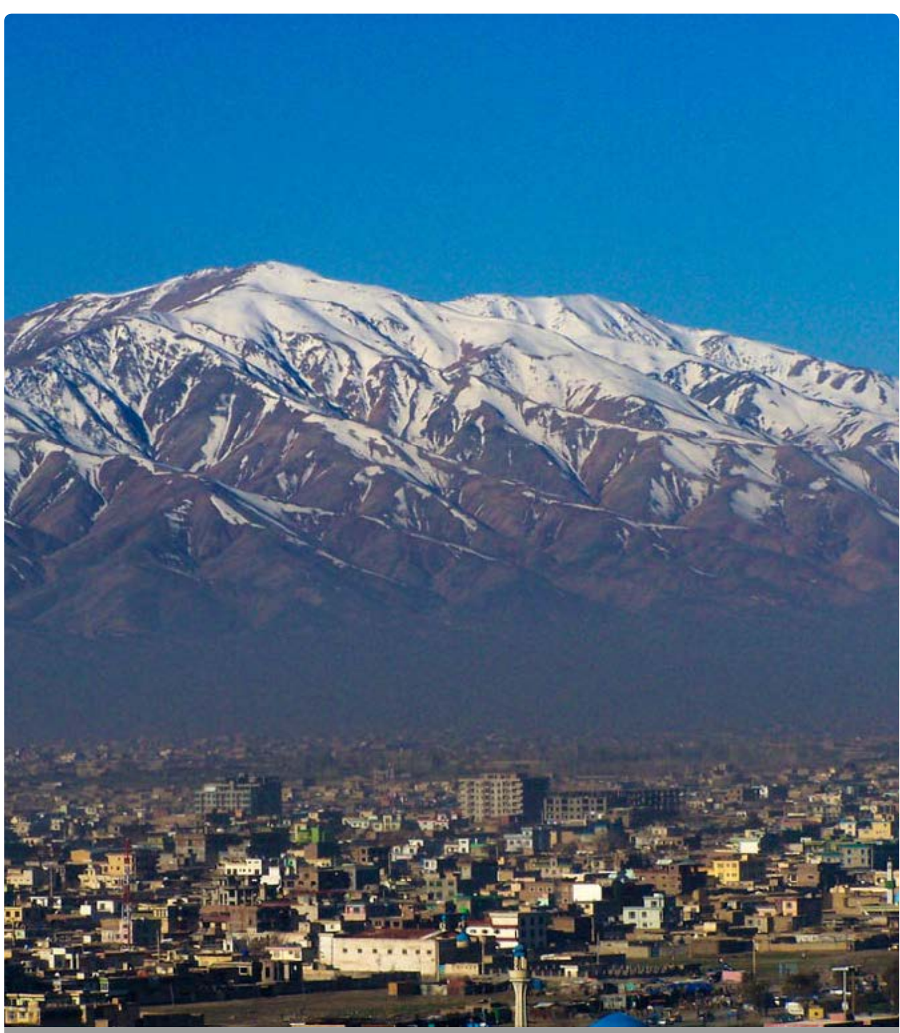

Accuity wins Afghan screening mandate

The First MicroFinance Bank, Afghanistan (FMFB-A) has selected Accuity to provide regulatory screening of customer accounts and cross-border transactions.

Accuity's Firco Compliance Link is a data-enabled screening solution to improve compliance screening operations through reducing manual procedures, automating regulatory list updates and allowing for faster screening of transactions and accounts.

The mandate is intended to help FMFB-A meet the standard of regulatory compliance set by the Central Bank of Afghanistan, as well as global best practices.

According to Accuity, the technology and flexibility of the solution mean that FMFB-A could reduce the turnaround time of its screening process by as much as 60 percent.

Frank van der Poll, CEO of FMFB-A, said: "As a leading bank in Afghanistan providing sustainable financial services, we have a commitment to ensure high standards of regulatory compliance to both the regulator and our clients."

"To help us meet these compliance requirements and improve the performance of our compliance operations, we decided to take a proactive approach to enhancing our financial crime screening solutions."

Sean Norris, managing director for Accuity in the Asia Pacific region, commented: "FMFB-A is committed to using finance in innovative ways to promote economic development and from our own research into financial inclusion we understand the challenges of the current environment."

"We look forward to helping FMFB-A meet its regulatory compliance obligations at the same time as improving the performance of the bank's compliance operations."

"One such possible risk is an increase in market fragmentation if different distributed ledger technology approaches were to become firmly established in parallel in different member states," Draghi said.

Draghi also noted the increase of non-banks and the rise of innovation in financial services providers, suggesting that regulators must be prepared to assess new risks that may come to light.

He said: "[It is] essential to assess and adapt the prudential framework to cater for the increased role of non-banks and financial innovation, ensure the existence of a level playing field for both new and existing players, and provide supervisors with adequate tools to address new risks."

Finally, he addressed the issue of "heightened cyber security concerns", saying cyber risk has "long been a priority for national and European supervisory authorities".

Although fintech developments can improve efficiency, reduce costs and lead to better products in the financial sector, Draghi suggested it also poses new potential risks and "new regulatory questions".

He added: "It is in all our interests to rise to this challenge."

"As fintech involves the entire financial sector, different regulatory responses are likely to be needed. Depending on the nature of the fintech activity, those responses may need to encompass prudential, consumer protection and other regulation—but, at the same time, they should not hamper healthy developments."

CCP system promises efficiencies

Trading and clearing technology provider Cinnober has launched a risk management system for central counterparties (CCPs).

Cinnober's TRADExpress CCP Risk offers a single point of access, enabling efficient risk and collateral management across all asset classes and instruments cleared by the CCP.

The first customer to implement the system is Japan Exchange Group, which plans to go live during 2018 with its new risk solution across the entire Japanese market of equities, bonds, futures, options, credit default swaps and interest rate swaps.

According to Cinnober, TRADExpress CCP Risk enables CCPs to run multiple risk models in parallel, allowing them to "migrate from old models to new, more sophisticated statistical approaches better fit for today's versatile array of cleared contracts".

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Misys and Message Automation tackle regulatory reporting

Financial services software provider Misys has built a regulatory reporting component for compliance with the second Markets in Financial Instruments Directive (MiFID II).

FusionCapital Regulatory Reporting was built in conjunction with Broadridge Financial Solutions's Message Automation.

It promises to reduce the cost and effort associated with data capture and compliance.

The solution automates the reporting process to comply with MiFID II's January 2018 deadline, and supports the European Market Infrastructure Regulation (EMIR) requirements around over-the-counter derivatives, as banks prepare to report by November 2017.

The FusionCapital Regulatory Reporting architecture is also scalable to accommodate new regimes, including the Securities Financing Transactions Regulation (SFTR).

Nadeem Syed, CEO at Misys, commented: "It makes sense to team up with a leading specialist provider of post-trade reporting tools [in Broadridge's Message Automation] to bring seamless reporting to our capital markets clients."

"It's no secret that the industry is creaking under the weight of multiple regulations and banks need transparency and enterprise-wide consistency. FusionCapital Regulatory Reporting acts as a strategic regulatory hub. It will reduce operational risk, while helping banks to meet today's biggest compliance challenges, without disrupting day-to-day business."

Hugh Daly, CEO of Message Automation, said: "Banks are taking this regulatory 'opportunity' to look at how they can consolidate all of their trade and transaction reporting needs into one solution."

"We're pleased to support Misys with an end-to-end reporting platform that is capable of tackling the large data quantities required by MiFID II, brings down implementation costs and lends itself to future regulatory demands."

Broadridge acquired Message Automation earlier this year for an undisclosed sum, and revealed that its central data model is highly extensible to handle new regulations and market changes.

According to Broadridge, at the time of the acquisition in March, Message Automation was actively implementing its MiFID II solution in preparation for the January 2018 deadline, already working with Broadridge on addressing self-reporting needs for buy-side firms under MiFID II, and was in advanced planning for SFTR.

Mikael Öhman, chief architect of risk solutions at Cinnober, said: "CCPs need to avoid overburdening market participants with excessive margin requirements without becoming a systemic risk to the financial industry."

He added: "For this, new methods and procedures that give a full view across all asset classes and instrument types are required, and that's what we're introducing with TRADExpress CCP Risk."

NEX enlists Duco for MiFID II reconciliations requirements

NEX Regulatory Reporting is partnering with Duco, a data normalisation and reconciliation service provider, to aid its clients in compliance with the second Markets in Financial Instruments Directive (MiFID II).

The joint offering will use Duco's reconciliation platform Duco Cube to provide MiFID II-compliant reconciliation, validation and reporting services to NEX Regulatory Reporting clients, ahead of the directive's implementation in January 2018.

Clients will also have access to Duco Cube for more complex requirements such as clean-up activities or additional internal controls related to MiFID II.

Collin Coleman, CEO of NEX Regulatory Reporting, said: "What sets us apart in the market is our understanding of both regulation and technology and our strong focus on the end-to-end experience."

"By working with Duco, we will be able to scale fast and provide our rapidly-growing client base with strong independent verification based on best-of-breed technology."

Christian Nentwich, CEO of Duco, added: "Duco Cube is particularly suited to the high volume, high complexity requirements imposed by MiFID II."

"Many of our clients rely on Duco Cube for regulatory reporting reconciliations under the European Market Infrastructure Regulation and MiFID today, and we are pleased to bring this technology to a wider audience in partnership with NEX Regulatory Reporting."

SIX x-clear adjusts CCP risk model

SIX x-clear has recalibrated its inter-central counterparty (inter-CCP) risk models in order to improve accuracy.

SIX Securities Services, through its clearing arm SIX x-clear, has adjusted its CCP's model towards a more 'defaulter-pays' approach of raising margin requirements and lowering

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US Financial CHOICE Act passes House of Representatives

US President Donald Trump's efforts to turn back the clock by gutting the bulk of post-financial crisis regulation took another step forward earlier this month, with the House of Representatives passing the Financial CHOICE Act.

The Financial CHOICE Act, which promises to repeal and replace key elements of the Dodd-Frank Act, including scrapping the Volcker Rule restrictions on short-term proprietary trading using banks' own funds, will now face the Senate, where Democrats are expected to fiercely oppose it.

The bill would take away the the Financial Stability Oversight Council's mandate to designate non-bank financial institutions and utilities as 'systemically important', with those currently designated as such being freed from the additional associated regulatory standards.

It would also see an end to state-funded bank bailouts by eliminating the Federal Deposit Insurance Corporation's orderly liquidation authority and establishing new provisions for bankruptcy.

House financial services committee chairman Jeb Hensarling officially introduced the act in April, but a series of Democratic amendments and other delays were raised before the final vote was taken.

default fund. SIX said this was done to bring its model in line with industry standards.

"The risk exposure arising from CCPs interoperating with other CCPs to effectively compete for efficiency and development optimisation will be significantly reduced," said SIX x-clear. "A balanced risk exposure is essential for the liquidity flows between markets."

SIX x-clear has adapted its current inter-CCP margin model to include a margin add-on for co-CCPs in order to continue best practice in risk management and the fair treatment of all clearing members.

Roger Storm, deputy head of CCP clearing at SIX Securities Services, said: "SIX x-clear has been in close discussions with other CCPs and the oversight authorities in order to ensure interoperability among CCPs and to better balance the interests and exposures among markets."

SimCorp embraces liquidity boost with OTCX partnership

SimCorp is partnering up with multi-dealer derivatives platform OTCX to provide a more integrated trading workflow for over-the-counter (OTC) derivatives.

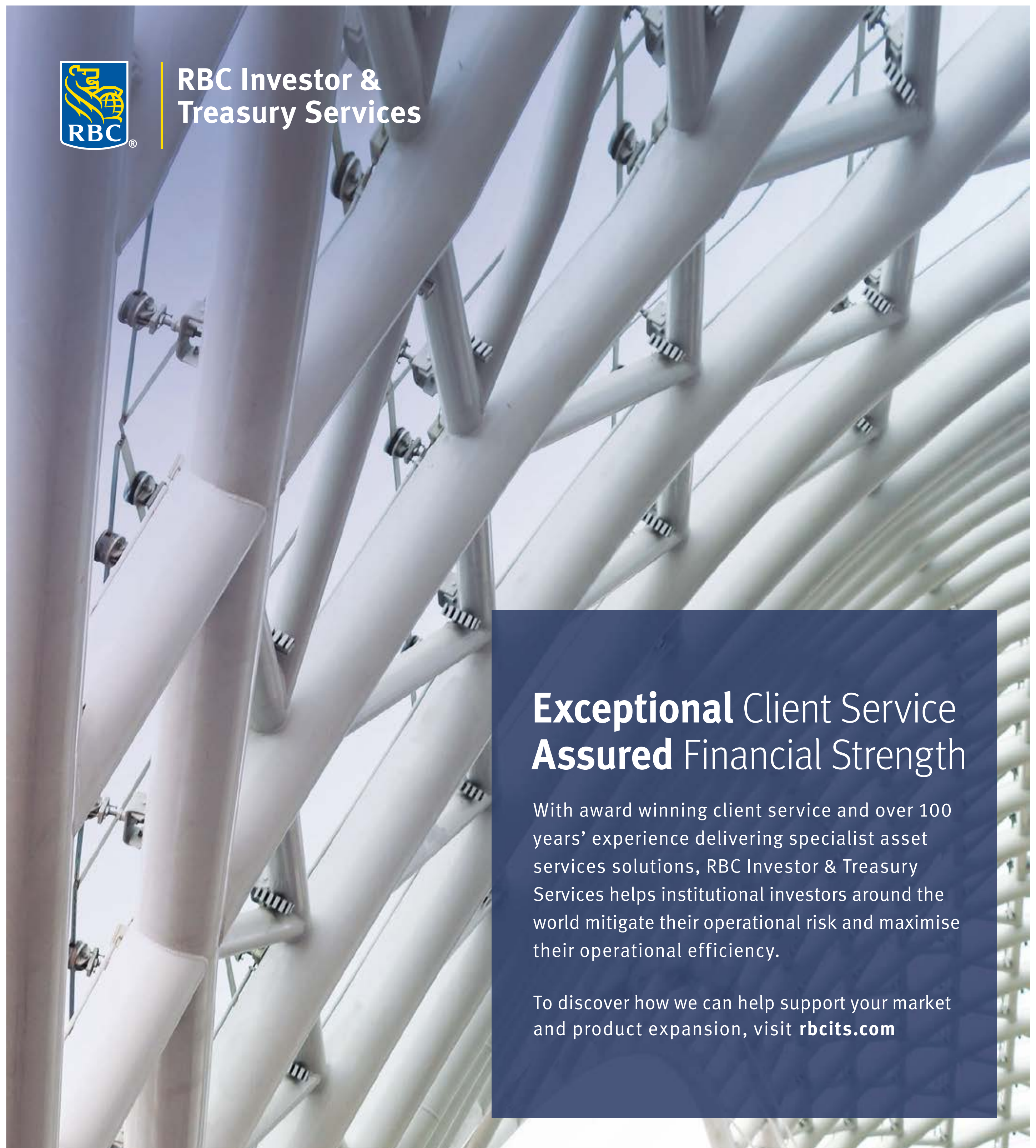
Through the partnership, SimCorp buy-side clients will gain access to the OTCX Request For Quote (RFQ) platform, and a network of OTC liquidity providers.

The new service is intended to provide more automation and a more efficient way of managing OTC trading, while reducing dependence on manual processes and increasing straight-through processing for interest rate derivatives, equity derivatives and structured products.

It will also provide a single source of data and an audit trail for each trade, allowing for easier compliance with reconciliation, best-execution and trade reconstruction requirements under the second Markets in Financial Instruments Directive.

Matthew Reid, product manager for trading at SimCorp, said: "This partnership is testament to our mission; to provide clients with a simplified and highly automated workflow, across the entire investment lifecycle, through one core open system."

"It is our belief that one source of data through the consolidation of systems, which offer extensive coverage across all asset classes and instruments, arms the buy side with the best foundation to achieve their investment goals."



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European Commission hands more power to ESMA after CMU review

The European Commission is to hand the European Securities and Markets Association (ESMA) more powers in order to improve the effectiveness of the capital markets union (CMU).

In its mid-term review of the CMU, launched in January, the commission set out a list of new priority actions, including to "strengthen the powers of ESMA to promote the effectiveness of consistent supervision across the EU and beyond".

The CMU action plan was first published in September 2015, and laid out measures to strengthen the capital markets in order to make the economy more resilient.

The union is intended to provide alternative sources of financing and more funding opportunities for institutional investors.

Further new priority actions include delivering a more "proportionate regulatory environment" for small and medium-sized enterprises listed on public markets; a review of the prudential treatment of investment firms; facilitating cross-border distribution of UCITS and alternative investment funds; and providing guidance on treatment of cross-border EU investments". The European Commission will also "assess the case for an EU licensing and passporting framework" for activities related to financial technology.

European Commission vice president Jyrki Katainen, commented: "We are now expanding our scope to meet new challenges such as funding sustainable investment and harnessing the potential of fintech."

"The new measures presented here today renew and reinforce the commission's commitment and set us on an irreversible path towards the CMU."

European Commission vice president Valdis Dombrovskis, who is responsible for financial stability, financial services and the CMU, added: "As we face the departure of the largest EU financial centre, we are committed to stepping up our efforts to further strengthen and integrate the EU capital markets. This review makes clear the scale of the challenge and we count on the support of the European Parliament and member states to rise to it."

Nicolas Koechlin, CEO Of OTCX, commented: "SimCorp and OTCX's new collaboration will further enhance the trading experience for the buy side with a seamless end-to-end OTC derivatives electronic workflow."

He added: "Together we will provide more intelligent tools and better use of data leading to seamless transparent transactions."

IHS Markit adds new string to collateral services bow

IHS Markit has launched a cloud-based, end-to-end solution for calculating margin, settling calls and managing disputes.

The Collateral Manager solution covers a range of trades, including securities lending, repos, cleared and non-cleared over-the-counter (OTC) derivatives, future and options.

In a statement on the launch, IHS Markit said: "Collateral Manager's intuitive, configurable dashboards and real-time reporting help users automate processing of margin calls, manage exceptions and provide transparency for audit and risk purposes."

Collateral Manager was created in partnership with CloudMargin, which previously produced the market's first web-based collateral and margin management solution.

IHS Markit cited its existing offerings, including Portfolio Valuations, Counterparty Manager, MarkitSERV and Fixed Income Pricing, as important data sources that will support the Collateral Manager solution.

Laura Kholodenko, director for Portfolio Valuations at IHS Markit, said: "Collateral Manager offers the unique ability to link the disparate information that is critical to a straight-through collateral process, making IHS Markit a one-stop shop for margin and collateral services. Achieving an automated collateral programme is a growing priority as managing margin becomes a larger and more complex challenge."

When discussing the drivers behind the new product launch, IHS Markit highlighted that new regulation requires the mandatory exchange of variation and initial margin for cleared and uncleared OTC derivatives transactions. "In response, financial institutions seeking operational excellence require new tools with which to automate margin activity and manage legal and liquidity risk," IHS Markit explained.

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The GDPR to-do list

The EU's General Data Protection Regulation is now less than a year away, and affected firms still have much to do, heard attendees at GAIM London

Data and technology issues took up much of the conversation at the GAIM London conference, but one session got stuck into the particulars of the General Data Protection Regulation (GDPR), with speakers unravelling the requirements for investment managers and laying out a 'to do' list of responsibilities ahead of the 25 May 2018 implementation date.

Currently, the 28 EU member states are regulated by the EU Data Protection Directive. According to Lupe Sampedro, a partner in the international privacy and data protection practice at Bird & Bird, since its inception in 1995, the EU Data Protection Directive has been transposed into law in the 28 member states in "a quite inconsistent manner".

There are different data protection obligations, and different rights for citizens, depending on the country in which an investment manager is based. More pressingly, there are drastically varying ways of penalising breaches of these rules, with data protection agencies having different levels of power—some can issue monetary penalties while others cannot.

As a regulation, GDPR will be directly applicable to all EU member states, allowing for a consistent single legal framework of protection data across Europe.

According to Sampedro, while GDPR will harmonise the legal framework, EU member states will still be able to regulate on top of it on certain specific areas.

Therefore, although GDPR will provide more consistency to the data protection legal framework, it will not fully harmonise it. While GDPR is significantly more restrictive than the current rules, it merely raises the bar. For some jurisdictions it will be a huge change. For others it won't go as far, as their current legislation is quite restrictive already.

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> *Data protection agencies will have the power to prohibit companies from processing, a penalty that effectively halts business entirely*

Sampedro went on to explain that a major change coming in with the regulation is the penalties for non-compliance. First, the monetary penalties are “higher than under any European data protection law”, up to €20 million, or 4 percent of a firm’s global annual turnover. Needless to say, the threat of financial penalty is driving companies to comply.

However, what could be concerning them more is the suspension of data processing. Under the regulation, data protection agencies will have the power to prohibit companies from processing, a penalty that effectively halts business entirely, producing an outcome that would be “much more disruptive to business than a monetary penalty”, Sampedro said.

Another major change will be around accountability, in that companies must be able to actively demonstrate their compliance with GDPR.

Another speaker, Marc Lotti, partner at ACA Aponix, suggested that regulators are specifically looking for policies and procedures here, “not simply a process that is enforced”. This will include assessing the compliance levels of third-party vendors, and being held accountable for them.

The same levels of data protection requirements must be imposed on any new vendor, and firms must also be able to prove they have completed the appropriate due diligence in choosing said vendor.

“If they have access to, or custody of, sensitive information, you could be at risk,” Lotti warned.

Sampedro added: “It’s not good enough to comply with the law, you need to build data governance, build policies internally, and have paperwork to demonstrate that compliance with GDPR.”

The regulation lays out obligation for a specific data protection officer (DPO) in certain cases, and mandates records of data processing to be maintained—that is, a registry of all the data in the company from employees and customers, explaining what is done with that information, and for what purpose it is used.

Sampedro explained that companies will have to adopt certain data protection by design, and through default measures: “We will need to make sure that privacy is at the core of the way we plan any business use of personal data”

But there are exceptions to these rules: the obligation for a record of data processing, for example, only applies to firms with more than 250 employees.

James Tedman, managing director of ACA Aponix and moderator of the panel, called this exemption “pretty much irrelevant”. He noted that a record of data is fundamentally a data inventory allowing for better understanding of the data held, with justification for keeping the data, and explanations for where it is, how it’s secured and how it is passed to third parties.

“Just because you’re exempt from producing that report, you’re not exempt from your credentials under GDPR,” Tedman said.

“Frankly, without understanding what data you have and how it’s secured, it’s very difficult to abide by the obligations of the regulation.”

The DPO exemption, however, is linked to the activities of a company, rather than the size, and applies to companies that monitor individuals or process sensitive data on a large scale.

The position of DPO comes with additional compliance requirements, “which can be quite strict”, Sampedro said, suggesting instead that companies that do not meet the threshold to appoint a DPO under the GDPR should to build a data governance structure and “appoint someone to take care of data privacy, but that person does not need to be a DPO under the GDPR”.

The panel was in agreement that those firms not obliged to appoint a DPO should not take their GDPR responsibilities any more lightly. Lotti clarified: “If you don’t appoint a DPO it does not mean you shouldn’t have a data governance programme.”

Tedman added: “The responsibilities that would be taken by the DPO—ensuring that you understand your data protection obligations, ensuring that you have good knowledge of the data within your organisation—are key, and somebody within the organisation needs to take those responsibilities on.”

Finally, Tedman outlined a GDPR “to-do list” for investment managers, instructing attendees to ensure they understand the regulation, their responsibilities and obligations; to build up their personal data inventories; and to undertake risk assessments to review their existing measures and identify any gaps. Unless a firm fully understands its own environment, it is “pretty much impossible to secure it”, he said.

Companies should start to implement the appropriate technical measures, create records of processing, and review their operations, documents and service provider agreements—updating them where necessary. Tedman added that “a number” of vendors in the investment management space “would not pass GDPR inspection today”.

Although there is almost a year until the final GDPR implementation date, Lotti warned that this preparation should be considered “a regulatory priority”, and that it should be robust, as many firms have layers of technology and procedure that could be concealing non-compliant activity. Lotti said: “Once you start peeling back that onion, there can be a lot of surprises.” **AST**

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Practice what they breach

Ian Kelly, CEO of Augentius, discusses the implications of the upcoming General Data Protection Regulation for the private equity industry

When it comes to data, the headlines in recent weeks have understandably been dominated by the global WannaCry ransomware attack, but that's not the only data issue that should be on the agenda of private equity fund managers and investors. In a year's time, the General Data Protection Regulation (GDPR) will come into force, extending the scope of the EU data protection law to all foreign companies that process data that could identify living EU residents.

This new framework, the GDPR, is to be backed by strong enforcement and puts individuals in control of their own data. It provides for a harmonisation of the data protection regulations throughout the EU but comes at the cost of a strict data protection compliance regime with severe penalties in the event of breaches.

The sanctions threatened are serious: a warning in writing in cases of first and non-intentional non-compliance; a requirement to be subject to regular periodic data protection audits; and a fine up to €20 million or up to 4 percent of the annual worldwide turnover of the preceding financial year, whichever is greater.

The fines will reflect the seriousness of the breach and will be based on the number of individuals affected, the type of data involved, the impact on the individuals, and how seriously the business has taken its data protection responsibilities. However, experience shows that the quantum of the fine is the least of the problems facing the business—the UK Information Commissioner's Office will "name and shame" businesses that are fined and the reputational damage could be significant.

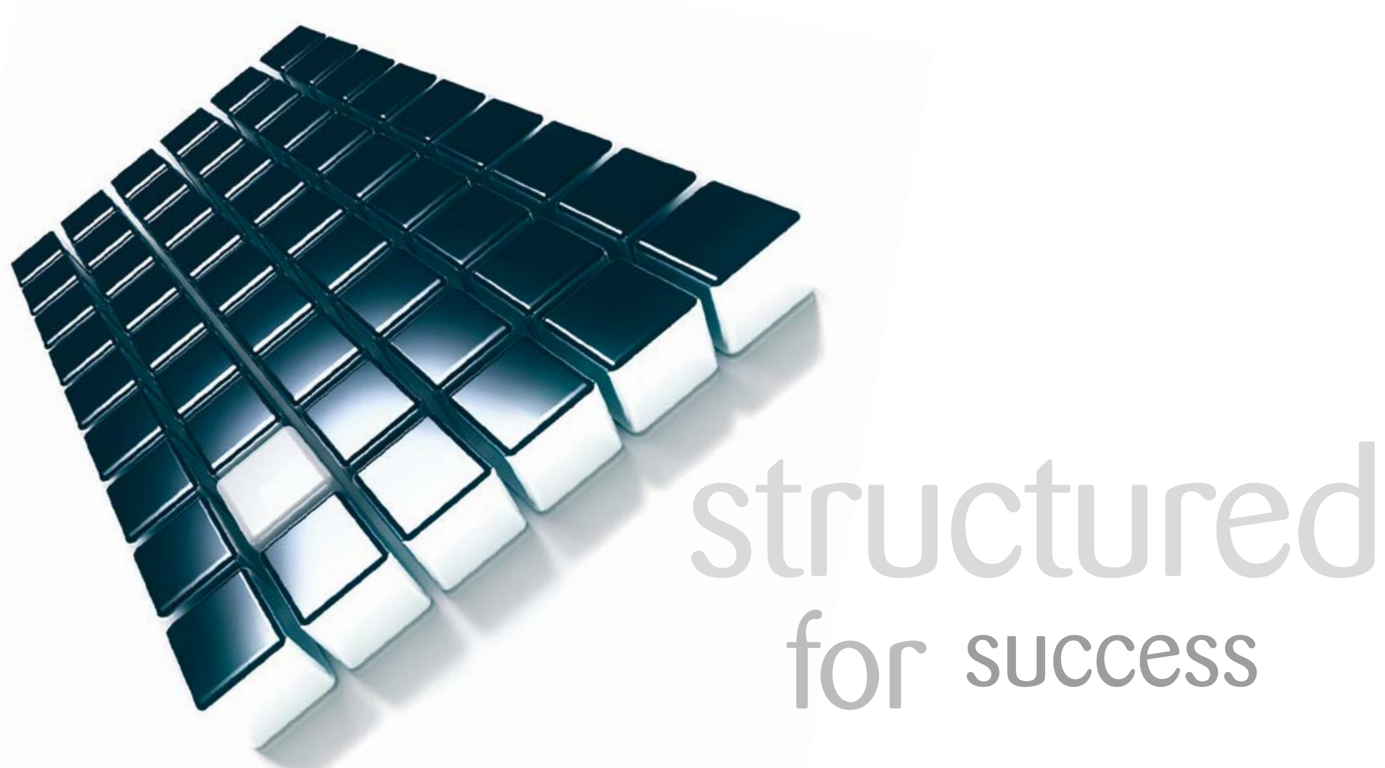
It is immediately apparent that there will be significant work involved in preparing for the implementation of the GDPR. The headlines have mostly been about breach notification, the right to be forgotten, and the need to appoint a data protection officer. However, the provisions of Article 21, data protection by design and data protection by default, require that data protection is factored into the development of business processes for products and services. This will be the major challenge for data controllers and processors.

In the GDPR, a data controller and data processor are defined as follows: "'Controller' means the natural or legal person, public authority, agency or any other body which alone or jointly with others determines the purposes, conditions and means of the processing of personal data; where the purposes, conditions and means of processing are determined by union law or member state law, the controller or the specific criteria for his nomination may be designated by union law or by member state law."

It continues: "'Processor' means a natural or legal person, public authority, agency or any other body which processes personal data on behalf of the controller."

The requirements apply to the handling of employee data equally as they do to data held on investors. This is covered by a piece of secondary regulation: the Employment Practices Data Protection Code. The Information Commissioner's Office has issued comprehensive guidance on how employers can meet these data protection obligations and these should be reflected in the firm's HR policies and procedures.

Many private equity firms are wondering whether they need to appoint a dedicated data protection officer. The reality is that unless they operate in the public sector or employ a staff of 250 or more, this isn't necessary. That said, the GDPR recommends that a business that employs fewer than 250 members of staff should consider appointing a suitably qualified individual with responsibility for data protection.



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Another area of confusion regards the fact that information held is typically subject to statutory and common law retention times, which could seem to be at variance with the new "right to be forgotten and to erasure". Statutory and common law retention times are paramount and this is reinforced in Principle 5 of the Information Commissioner's Office current Data Protection Principles. The "right to be forgotten and to erasure" only applies in certain circumstances and is not an absolute right, however, firms should have procedures in place to comply with any legitimate request and to assess whether or not the request is valid. There may be instances where the request does not meet the criteria set out in Court of Justice of the EU rulings and the cost, in terms of time and money, can be avoided.

The question of where the data is stored is important too. Many firms now employ cloud systems where the servers are housed outside the EU. On 2 February 2016, the European Commission and the US agreed on a new framework for transatlantic data flows known as the EU-US Privacy Shield. The Information Commissioner's Office will issue updates when the European Commission and the EU data protection supervisory authorities agree a way forward.

To ensure they are ahead on course to meet the GDPR's implementation date of 25 May 2018, fund managers should undertake a comprehensive review to benchmark their data protection policy and procedures against the requirements of the regulation. They should check that their HR policies and procedures reflect the requirements of the Employment Practices Data Protection Code and identify the gaps and what is required to address them.

We recommend managers consult with their IT suppliers to establish what steps they propose to take to meet their obligations and the systems required to help the manager meet their obligations. Following this, all managers should agree an appropriate action plan, including timeframes and ensure it is implemented to the letter. AST

Fund managers should undertake a comprehensive review to benchmark their data protection policy and procedures against the requirements of the regulation

Ian Kelly, CEO, Augentius

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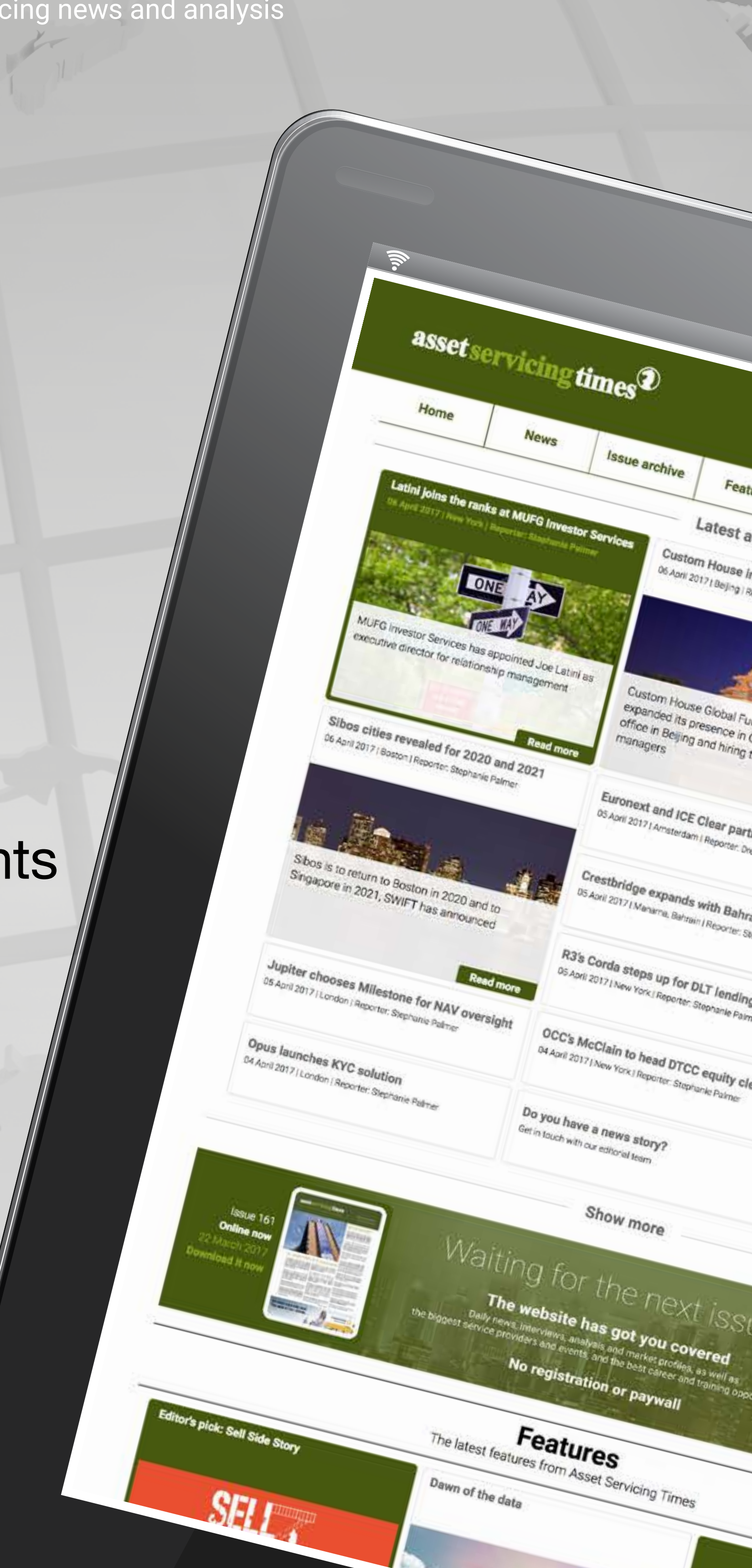

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Movers and shakers at DTCC, the NSD, Northern Trust, and more

Northern Trust has named Sally Surgeon as the new head of its Sydney office, in addition to her responsibilities as head of client services for Australasia.

Previously based in Northern Trust's Melbourne office, Surgeon has relocated to Sydney, where she will be involved in supporting industry, client and consultant relationships in the city.

She continues to report to Madeleine Senior, head of the Australasia region at Northern Trust.

Surgeon has been with Northern Trust since 2005, when she joined the London office. She move to Melbourne in 2007.

Senior said: "Sally Surgeon has been instrumental in growing our client base across the region and we are delighted to appoint her to lead our Sydney office where, drawing on her experience, she will focus on continuing to deepen relationships with our clients and the industry and drive momentum for our expanding business."

Northern Trust established its second Australia office in Sydney with the acquisition of Aviate Global in May last year.

Michael Rüdiger is set to become the new chair of the Frankfurt Stock Exchange.

Rüdiger is CEO of DekaBank Deutsche Girozentrale, and has been a member of the exchange council as representative of public law credit institutions since the previous election on 1 December 2016.

He replaces Lars Hille, who will leave DZ BANK in October 2017 and therefore will terminate his membership in the exchange council after ten years.

Matthias Zieschang, executive board member at Fraport, remains deputy chair.

Carsten Kengeter, CEO of Deutsche Börse, said: "Lars Hille took over the chairmanship during challenging times but made the most of his brief tenure, taking an active and engaged approach to the role."

"We are delighted that with Michael Rüdiger we once again have an excellent representative of the Frankfurt financial centre heading the council."

The National Settlement Depository (NSD), Russia's Central Securities Depository, has launched a new technological services business line and appointed Alexander Nam to lead it as managing director.

According to the NSD, the new business segment is part of a drive to improve IT services and supply better-quality post-trade services.

Nam joined NSD in 2015 and was previously responsible for managing remote interactions with clients and for the strategy and implementation of electronic channels.

Before this, he spent five years at SWIFT as director for development.

The Depository Trust & Clearing Corporation (DTCC) has appointed Matthew Stauffer as managing director and head of institutional trade processing.

Stauffer, who will take up the role on 30 June, will be responsible for integrating DTCC's middle-office trade processing solutions, including the Omgeo suite, Trade Support Services and the GMEI Utility, as well as leading new product development.

He will report to Timothy Keady, managing director and head of DTCC Solutions.

Stauffer previously served as CEO of Clarient Global, a partnership that DTCC launched in 2014 with six founder banks to provide centralised services for all client data and documents needed to satisfy internal know-your-customer and broader related regulatory requirements. DTCC sold the business to Thomson Reuters earlier this year.

DTCC has also made a series of internal organisational changes, with Paula Arthus and Christopher Childs taking on new mandates.

Arthus, who most recently served as head of Omgeo and data services, will take on a new assignment as chief of staff and head of corporate strategy in the office of the DTCC CEO.

DTCC will also align its Global Trade Repository, Trade Information Warehouse and DTCC-Euroclear GlobalCollateral businesses under a single portfolio, which will be led by Childs. Childs is managing director and head of derivatives and collateral, as well as CEO of Deriv/SERV.

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Keady said: "Bringing our derivatives and collateral businesses together under the same umbrella will help accelerate integration efforts to create a more robust end-to-end processing solution for the industry."

"We believe there is tremendous potential to leverage these services more fully to address a wider range of operational challenges for the derivatives market."

Michelle Neal, CEO of BNY Mellon Markets, is set to join the bank's executive committee.

Having joined BNY Mellon Markets in Q4 2015, Neal has been credited with leading the team in the delivery of a suite of new solutions and services to help clients access capital, financing and liquidity.

Gerald Hassell, CEO of BNY Mellon, said: "Michelle Neal's leadership experience and her expertise across the entire spectrum of BNY Mellon Markets's activities will be a valuable addition to our executive committee."

Financial services consultancy GFT has formally appointed its new managing director and CEO, following a four-month transition period.

Marika Lulay, formerly managing director and COO of the company, has taken over leadership from Ulrich Dietz, who resigned from the position a decision that GFT said was taken "in agreement with the administrative board and of his own accord".

Lulay was unanimously elected by the board to fill the position. Dietz will remain as chairman of the administrative board and the anchor shareholder of GFT Technologies.

Lulay has been with GFT for 15 years, and has overseen significant growth in that time.

She and Jochen Ruetz, CFO of GFT, will also jointly form a new board of managing directors.

Responsibilities for the COO role will now be split between board members Carlos Eres, managing director for GFT Spain, and Alfio Puglisi managing director for GFT Italy.

NEX Group has seen a leadership reshuffle, as group CFO Stuart Bridges has stepped down from the board and announced his plans to leave the company later in the year.

Samantha Wren, currently chief commercial officer for NEX Markets, will take over the role and will also take Bridges's place on the board, effective immediately.

Bridges has been CFO since September 2015, and was appointed to the board in February 2016. He is credited with playing a key role in NEX's merger with TP ICAP.

Wren joined ICAP in 2009, before it was rebranded as NEX. She has held several roles including CFO and COO in the global broking decision, and was made chief commercial officer in March last year.

In addition to these changes, Ken Pigaga, global COO of NEX, is joining the board as a director, also with immediate effect.

According to NEX, Pigaga's appointment reflects his importance in the company's 'transformation programme' and its increasing focus on technology and cyber security.

Pigaga has been with the firm since 2006, when he joined as COO for ICAP Americas. He was made global COO in 2013.

Advisory and fund administrator Maitland has appointed David Hathorn as a non-executive director.

Based in South Africa, Hathorn will also be chairman of the audit and risk committee of Maitland International Holdings.

Hathorn was previously CEO of FTSE 100 packaging and paper company Mondi, a position he held for 17 of his 25 years at the firm. He has also been a long-standing Maitland client.

Maitland chairman Michael Solomon said: "[Hathorn] brings to the boardroom not only significant corporate leadership experience but also more intimate insights into the firm from a client perspective." **AST**

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