

Fund Management

In 15 jurisdictions worldwide

Contributing editors

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2015

GETTING THE
DEAL THROUGH 

Global Overview

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We are seeing unprecedented growth in the worldwide investment fund industry. Mutual fund assets increased from US\$4 trillion in 1990 to more than US\$31 trillion (3Q 2014) with the US and Europe accounting for approximately 80 per cent of the world's mutual fund assets. Worldwide growth has been achieved despite sluggish economic performance, deflationary threats and geopolitical tensions. There are four key factors for this overall positive outcome: the quest for investment returns within a very low interest rate environment; the enhanced investor protection now offered by investment funds; the variety of investment strategies and risk-return profiles available; and central banks' actions to prevent deflation and foster economic growth.

Regulators are always conscious of the need to prioritise investor protection in a world of record growth in assets under management, and managers face ever-higher regulatory burden and supervision. Worldwide, key regulatory themes for fund managers that have dominated the period since the financial crisis and continue to set the agenda are: monitoring and management of systemic risk; investor disclosure, education and protection; and shadow banking. On a less overt policy note, we see more and more barriers to fund distribution; a regulatory distrust of 'complex' products; and demands for more elaborate and costly compliance infrastructure.

Americas

United States

The year 2014 was a solid one for the US investment fund industry. Total assets of Securities and Exchange Commission (SEC)-registered investment funds, over US\$17 trillion at the end of 2014, were essentially flat relative to year-end 2013. Assets of private funds (both hedge funds and private equity funds) managed by SEC-registered investment advisers increased by more than 20 per cent to US\$6.9 trillion.

In response to the financial crisis, the US Congress adopted the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (the Dodd-Frank Act) to improve the functioning of the financial markets, to enable enhanced monitoring of systemic risk and to provide better investor protection. However, much of the Dodd-Frank Act was not self-executing and required various regulatory agencies to adopt rules implementing its provisions. As a result, the majority of recent and anticipated regulatory changes affecting asset managers relate to the implementation of the Dodd-Frank Act by regulators. In addition to the changes mandated by the Dodd-Frank Act, regulators also have independently adopted or proposed other regulatory reforms. Cybersecurity is a new and expanding area of concern.

The effects of the changes in regulation, including the new regulations described below, have yet to be fully understood. As a result, there are still many questions that will be answered in time, including: (i) how the derivatives markets will adjust to new regulation; (ii) how banks will respond to the new regulations; (iii) whether and how private funds will take advantage of general solicitation and advertising; (iv) whether concerns regarding cybersecurity will lead to new regulations; and (v) whether asset managers will be deemed to pose systemic risks, thereby justifying bank-like regulation.

Key US regulatory themes

Derivatives

The Dodd-Frank Act includes substantial new requirements with respect to over-the-counter derivative transactions. The changes are largely designed to mitigate systemic risk by decreasing credit risk between parties to derivatives transactions and by increasing transparency in derivatives

markets. While some of the new requirements entered into effect, many other requirements have not yet been implemented so the ultimate impact of these provisions remains unclear.

Some of the key requirements are as follows: (i) certain interest rate swaps and credit default index swaps are required to be cleared through a central clearing house and it is expected that some other types of derivatives transactions (such as non-deliverable currency forwards) will become subject to this requirement in the future; (ii) various US regulators have proposed rules that will require minimum amounts of initial and variation margin for uncleared derivatives transactions; and (iii) certain benchmark interest rate swaps and frequently traded credit default index swaps are required to be executed on a swap execution facility or exchange, rather than on a bilateral basis. It is expected that some other types of derivatives transactions will become subject to this requirement in the future. All of these changes are expected to increase the cost of entering into derivatives transactions and may well impact the liquidity of the derivatives market.

The Jumpstart Our Business Startups Act (the JOBS Act)

In 2012, Congress adopted the JOBS Act, which required, among other things, that the SEC remove the Securities Act prohibition on general solicitation or general advertising of certain offerings of securities to accredited investors (investors who satisfy certain financial thresholds). In 2013, the SEC effected the removal and private funds may now use general solicitation or general advertising to offer and sell fund interests, provided the fund takes reasonable steps to verify that the purchasers are, in fact, accredited investors. It is unclear to what extent private funds will rely on the new rules, as verification procedures would need to be developed and general solicitations in the US might affect the fund's ability to rely on private placement exemptions in non-US jurisdictions.

Registration under the Commodity Exchange Act

Under the Commodity Exchange Act, the operator of a commodity pool (ie, a fund that invests in at least one commodity contract) must register as a commodity pool operator (CPO), and an adviser providing advice with respect to commodity contracts must register as a commodity trading advisor (CTA) (in each case, absent an exemption from registration). The Dodd-Frank Act amended the definition of commodity contract to encompass a much broader range of derivatives contracts. The Commodity Futures Trading Commission (CFTC) takes the position that the operator of a fund (including a fund organised and operated outside the US) with one or more US investors, or that enters into any uncleared derivatives with a US counterparty, is subject to CPO registration (or must find an exemption). A registered CPO or CTA is subject to various reporting, disclosure and record-keeping requirements (which vary depending on the sophistication of the client or investors in the fund). Further, a registered CPO or CTA must become a member of the National Futures Association (NFA), a self-regulatory organisation, and is subject to examination by the NFA or the CFTC.

Volcker Rule

The Dodd-Frank Act amended the Bank Holding Company Act by adding a new section 13, commonly known as the Volcker Rule, which curbs certain investment activities by banks and their affiliates. The Volcker Rule prohibits banking entities – broadly defined to include banks, parents of banks, non-US banking organisations with a US banking presence, as well as their subsidiaries and affiliates – from engaging in proprietary trading

in securities, derivatives, or certain other financial instruments, and from investing in, sponsoring, or having certain relationships with private funds, including, among others, hedge funds and private equity funds, subject to a number of exceptions. After a three-and-a-half-year process, final regulations to implement the Volcker Rule were adopted in December 2013. Those subject to the new law, which includes many organisations based outside the US, are engaged in planning and preparedness activities that will enable them to comport their activities and investments with the requirements of the law and regulations no later than 21 July 2016 (almost certainly to be extended to 21 July 2017), for activities and investments commenced before 31 December 2013, and 21 July 2015 for activities and investments commenced on or after 31 December 2013. The final regulations eliminated much of the ambiguity that existed during the proposal phase of the regulatory process but significant interpretative issues remain.

Cybersecurity preparedness

In 2014, the SEC conducted examinations of SEC-registered investment advisers to increase its understanding of the cybersecurity threats faced by the investment advisers subject to SEC regulation and supervision. In the examinations, the SEC staff collected information to analyse differences in the level of cybersecurity preparedness among the examined firms. In February 2015, in a 'risk alert', the SEC reported on the results of its examinations and described current practices employed by registered investment advisers, including data regarding the frequency with which the observed practices have been adopted by investment advisers. In the risk report, the SEC also stated that its staff continues to review the information it has gathered and will continue to focus on cybersecurity using risk-based examinations. Cybersecurity remains an SEC priority but it is too early to predict what regulatory action, if any, the SEC may initiate.

Systemic risk oversight

The Dodd-Frank Act established the Financial Stability Oversight Council (FSOC) to identify risks to the financial stability of the US and respond to emerging threats to the stability of the US financial system. In December 2014, the FSOC released a public notice regarding the potential risks to US financial stability from asset management products and activities. The public comment period ended on 25 March 2015. The Dodd-Frank Act also requires the SEC to establish methodologies for stress testing of SEC-registered funds and SEC-registered investment advisers and to design a reporting regime for this stress testing. Further, the SEC staff is developing a recommendation to require SEC-registered investment advisers to create transition plans to prepare for a major disruption in their business, including insolvency.

Systemic risk is the central concern of the FSOC, and such risk is an important concern for the SEC. The SEC also is concerned with investment adviser succession planning. Nevertheless, because both the FSOC and the SEC's plans are developing, it is too early to predict what regulatory actions, if any, either the FSOC or the SEC may undertake.

Canada

In 2014, total net assets of Canadian mutual funds surpassed US\$1 trillion for the first time.

In 2014, the Canadian federal government and several provinces, including Ontario (which includes Toronto) agreed to establish a 'cooperative capital markets regulatory system'. Among other things, a new regulator would have powers to regulate systemic risk, which could include investment funds and asset managers as systemically important entities.

The Canadian Securities Administrators (CSA) completed its preliminary review of fund risk classification methodologies to establish a methodology for fund managers to satisfy disclosure obligations to investors of the risk of each fund. In January 2015, the CSA published its proposed methodology.

Brazil

Brazil has the largest economy in Latin America. In 2014, the Brazilian funds industry had approximately US\$1 trillion in net assets under management (third among all countries in the Americas). The year was difficult for Brazilian funds due to the fact that Brazilian stocks hit a five-year low in 2014. As a consequence, Brazil's Securities Commission (CVM) increased the freedom of mutual funds to invest abroad. The new limits doubled previous thresholds.

The CVM is currently undertaking a review of existing rules governing the administration and management of portfolios of securities, including

investment funds. The review is focused on the registration requirements applicable to asset managers, with a goal of creating two types of registered entities: (i) fiduciary administrators that will have the responsibility of direct and indirect custody of fund assets, bookkeeping and, more generally, supervising portfolio managers; and (ii) portfolio managers who will manage securities portfolios. The CVM is likely to permit only financial institutions to serve as registered fiduciary administrators.

Europe

2014 was a record year for the European investment fund industry. Net sales of European investment funds rose to an all-time high of €634 billion in 2014 and assets under management exceeded €11 trillion, divided between approximately 70 per cent undertakings for collective investment in transferable securities (UCITS) and 30 per cent non-UCITS. Bond funds in particular attracted large net inflows in light of continued low interest rates and an expectation that they will fall further. Equity funds recorded lower net sales than in 2013 against the background of a gloomy economic outlook and volatile stock markets. In this uncertain macro-economic environment, investor demand for balanced funds soared to record levels as the asset diversification and risk reduction offered by this type of fund continued to attract investors. On the other hand, money-market funds suffered net withdrawals, albeit much less pronounced than in 2013. Many consider this surprising given the consistent low interest rate environment and the threat of impending additional regulation, but it does confirm the view that European institutions use money-market funds as short-term cash management tools even if they offer close-to-zero returns.

Key European regulatory themes

Systemic risk and alternative manager regulation

The G20 summit set regulators the goal of developing tools to monitor and assess the build-up of macroprudential risks in the financial system. We have discussed earlier the new regulatory regime for derivatives introduced in the US in the form of the Dodd-Frank Act. Similarly, the same 2009 G20 commitment that: (i) all standardised over-the-counter (OTC) derivative contracts should be traded on exchanges or electronic trading platforms, where appropriate, and cleared through central counterparties (CCPs); (ii) OTC derivative contracts should be reported to trade repositories; and (iii) non-centrally cleared contracts should be subject to higher capital requirements has begun to be implemented in Europe in the form of the European Market Infrastructure Regulation (EMIR). Under EMIR, all users of derivatives must report their derivatives (whether OTC or exchange traded, cleared or non-cleared) to a registered or recognised trade repository and must have in place certain risk-mitigation techniques for their OTC derivatives that are not cleared by a CCP. Financial entities and certain non-financial entities classed as sophisticated users of derivatives will be subject to mandatory clearing of OTC derivatives and margin rules for non-cleared OTC derivatives when these sets of supplementary rules are finalised. The 'trading obligation' (the obligation to conclude derivatives, including OTC derivatives, on exchanges or electronic trading platforms) will be introduced in Europe through the Markets in Financial Instruments Directive (MiFID) II package of legislative measures (see 'Investor protection', below).

EU and US alternative fund managers are now subject to compulsory registration and reporting of their funds' exposures and risks. Notably, the EU Alternative Investment Fund Managers Directive (AIFMD) introduced a tailored authorisation and compliance regime for all EU alternative investment fund managers (AIFMs). The AIFMD does not impose any restrictions on the type of product that managers can sell (other than some limitations that apply to private equity 'asset stripping' and, prospectively, fund leverage limits) but it does impose practically equivalent regulatory infrastructure on all AIFMs; in AIFMD terms, every AIFM represents some risk, and the AIFMD seeks to manage that risk. The AIFMD requires all managers to develop risk and liquidity management systems (with some exceptions for closed-ended funds) and to report a large amount of data on their funds' risks. AIFMD reporting commenced for many EU and non-EU AIFMs in January 2015 but questions remain as to the quality and consistency of the data reported and the ability of regulators to aggregate all the data reported to give insights into systemic risk.

While the AIFMD has a noble objective of ensuring regulatory supervision of all EU alternative investment fund managers (which was arguably already the case on a member state level before the AIFMD), it is hard not to see its overtones of political punishment. Its 'one size fits all' approach to manager regulation ignored the vast number of EU fund managers that

pose little systemic risk. Whilst the EU marketing passport allows access to some markets that were (at least officially) closed to alternative fund distribution before the AIFMD, one wonders whether its relatively cumbersome registration regime (derived from EU UCITS rules) is of particular benefit to managers, many of whom were able to distribute their product through all sorts of private channels (private banks, placement agents, investor networks, investor advisers) perfectly well beforehand. The AIFMD is due for review by the European Commission in mid-2017 – it is not known whether that will entail any reduction or increase in the regulatory burden of AIFMs.

The AIFMD contains provisions under which a non-EU AIFM can opt in to the Directive by obtaining authorisation as an AIFM and marketing its funds in the EU with an EU marketing passport. The European Securities and Markets Authority (ESMA) is due to issue an opinion in July 2015 on the application of these provisions; if ESMA's opinion is positive, it is possible that non-EU AIFMs will be able to opt in to the AIFMD from 2016. ESMA has made it clear that it will grant the EU marketing passport on a country-by-country basis and will consider equivalent market access as a condition to the grant of a passport to any given country. Whether ESMA will be able to conclude that key jurisdictions, such as the US, grant equivalent market access to EU managers is open to doubt. Equally so, it is unclear how an EU 'member state of reference' (in effect, an EU host regulator) will be able, effectively, to supervise a third-country manager. There are now regulatory cooperation arrangements between EU regulators and many non-EU regulators, but how effective those arrangements would be for a proactive EU regulator is open to doubt. It should also be noted that granting the passport to non-EU AIFMs will switch on a separate requirement for any non-EU AIFM of a fund which is established in the EU to be authorised under AIFMD.

Considering the steps involved (selection of an EU 'member state of reference'; a gap analysis between the AIFMD's requirements and local law; determining whether combined compliance with both the AIFMD and local law is possible and whether local law has equivalent provisions with the same level of protection; and implementation of the AIFMD compliance procedures, including remuneration rules), whether any non-EU AIFM will become authorised under the AIFMD remains to be seen. Any non-EU AIFM taking this route will likely want to contain the effect of the AIFMD to a ring-fenced management entity and a new fund investing in parallel to the existing structure. Of course, AIFMD obligations apply irrespective of a successful marketing campaign – how many managers will commit to this process without being sure of the success of any resultant EU marketing?

Investor protection

In the EU, the next iteration of MiFID II, finally agreed in 2014, introduces significant new investor protection rules. Most of MiFID II's rules take effect in January 2017. There is a new regime for disclosure to investors of all costs associated with a given product, which will require managers to disclose all underlying costs involved in managing a fund, to include such items as broker commissions, foreign exchange costs and performance fees incurred by the manager – in many cases, a manager will need to model and estimate all such expected costs.

Even more challengingly, MiFID II envisages new responsibilities for product 'manufacturers', under which any such manufacturer must take steps, inter alia, to identify a target market of end clients for whom the product is compatible, identify the needs of that market, monitor ongoing distribution of the product to ensure that it is only distributed to the target market, and satisfy themselves that products are functioning as intended. Firms will now need to 'join the dots' between the type of product that they want to sell, the type of investor who they think might buy it, the needs and wants of those investors, and the risks inherent in the product before deciding upon the best route to market.

MiFID II bans the payment of commission by product providers to firms that provide advice to all types of investors on an independent basis. There is no ban on commission payable to firms that do not provide independent advice (although the UK, through its Retail Distribution Review, has achieved a ban on commission paid by product providers to any type of retail financial advisor, and the Netherlands likewise). Firms that do not provide independent advice must demonstrate some 'tangible benefit' to clients arising from the receipt of commission, such as ongoing financial check-ups or access to a wide range of products from third-party providers. Outside the UK and the Netherlands, the distributor commission model looks relatively secure.

Separately, the EU Regulation on Packaged Retail Investment and Insurance Products (PRIIPs) envisages standard pre-contract disclosure

for all investment funds distributed to retail investors in the shape of a key information document (KID). This is significant in terms of the logistics required, the risk warnings and methodology for presenting risk and possible enhanced liability on the part of the manufacturer for any inaccuracy in the KID.

Drawing these developments together, it is easy to see that regulators want to see a move to lower cost, simpler products; less biased financial advice to the ordinary investor; lower management fees; and possibly more management fee competition. That governments want to encourage investor saving is not always compatible with a regime that is tending to limit the provision of free investor advice. In 2014 the UK Financial Conduct Authority published guidance on the regulatory status of 'simplified advice' or 'limited or focused advice' (straightforward forms of advice that do not necessarily amount to paid-for investment advice) and there is certainly regulatory interest in forms of guidance (via, for instance, an automated format on a website) that assist the investor in making an investment decision but do not amount, in regulatory terms, to one-to-one advice.

On a separate note, MiFID II introduces new pre- and post-trade transparency regimes to EU markets – in particular, bond fund managers are looking at the challenges of trading bonds in markets that have hitherto been 'dark' trading pools.

Distribution of retail products

The EU UCITS product continues to gather worldwide respect. UCITS funds must be managed in the EU, although it is possible for non-EU managers to manage and distribute a UCITS fund as the delegate of an EU manager. MiFID II will introduce new rules to treat 'complex UCITS' differently (in the context of the appropriateness check that distributors must perform on an 'execution-only' sale), signalling the end of a single distribution regime for UCITS funds. Structured UCITS (including UCITS that use swaps to obtain investment exposure) will automatically be complex UCITS – investment firms will need to determine whether or not other UCITS are complex.

Complex UCITS are a product of the 2003 liberalisation of the UCITS regime (known as UCITS III) that in particular allowed UCITS to use derivative instruments for investment exposure. While it is true that funds are employing investment strategies (such as gold and equity short selling) that were not originally contemplated under UCITS, it does not always follow that complex portfolio management techniques necessarily produce greater risk for investors. The designation of a category of UCITS as 'complex UCITS' by EU regulators is thought to do no favours to the UCITS brand worldwide.

A further iteration of UCITS, UCITS VI, was mooted in 2012. There is no indication in the European Commission (the Commission)'s current work programme that UCITS VI will materialise – what was perhaps the Commission's most serious concern when it first tabled UCITS VI, that investors need some degree of protection when they purchase more complex products on an execution-only basis, has arguably now been addressed in the new rules in MiFID II. Indeed, the Commission has indicated that once the next round of protections are introduced under UCITS V (enhancing depositary protection and introducing remuneration rules and administrative sanctions), the UCITS product line will have reached the 'gold standard'.

Outside Europe, the Asia Pacific Economic Cooperation and Association of Southeast Asian Nations already have mutual fund passports, although only with partial success. While questions are being raised by Asian regulators about UCITS products, it is clear that the dialogue with mainland China on the attractiveness of the product continues. One interesting development to note is that an official translation of the UCITS rules is now available in Mandarin Chinese.

Shadow banking

Since the financial crisis, policymakers around the world have been engaged in defining 'shadow banking' and seeking ways to regulate any such activity. The International Financial Stability Board originally identified funds that engage in 'credit intermediation' (particularly, funds that buy and sell debt) as a type of shadow bank. In terms of concrete policy proposals, the EU's work on shadow banking has materialised in the form of new tailored regulation for money-market funds and a new regime on the reporting of securities financing transactions. There is little indication now that the EU will impose any new rules on funds that buy and sell debt, or extend the scope of the prudential rules for banks to funds that are regarded as shadow banks.

Balanced against shadow banking concerns, there is increased support for the non-bank sector. The Commission's proposed European Long Term Investment Funds Regulation provides an interesting opportunity for EU AIFMs to market closed-ended funds to retail investors; again, whether there will be much uptake remains to be seen. The Commission also published in February 2015 a discussion paper on means to encourage funding by capital markets (as opposed to banks) in EU companies, especially SMEs (small and medium-sized enterprises). The main focus of the paper is to promote better access to the bond and equity markets by SMEs. As an encouraging side note, the Commission refers to lowering barriers to entry for fund distribution in the EU and internationally, and increasing participation in UCITS.

Protectionism

The AIFMD allows member states discretion in continuing with or further restricting national private placement rules. While private placement is still possible for non-European funds and non-European managers in countries where it was permitted before the AIFMD was implemented, many of these countries have introduced a lengthy and expensive registration process. In the eyes of many non-EU managers, this reflects a national dislike and distrust of offshore funds and a form of protection of an EU-managed product.

Asia-Pacific

Australia

Australian mutual funds manage approximately US\$1.6 trillion or more than double the fund assets under management of any other country in the region. Australia also has one of the largest hedge fund sectors in Asia and, with a few exceptions, each of the top-20 global investment managers have an Australian presence.

Beginning in 2013, the Australian retail fund industry was materially affected by the enactment of Future of Financial Advice (FoFA) reforms. FoFA changed the way in which advisers can recommend funds due to the introduction of a prohibition on 'conflicted remuneration' and a requirement that advisers comply with and investor-best-interest duty. The September 2013 change in government in Australia has left uncertainty regarding what form the final FoFA regime will take.

In July 2014, the Australian Securities and Investments Commission (ASIC) released feedback on its January 2014 report on complex products, which include hedge funds. The report had described the risks that complex products pose to retail investors and described opportunities for investigation. ASIC continues to consider issuing further guidance regarding its expectations of product issuers when developing complex products.

In November 2014, the Financial System Inquiry, a committee appointed by the Australian treasurer, issued its final report. The committee was charged with examining how the financial system could be positioned to best meet Australia's evolving needs and support Australia's economic growth. In its report, the committee made recommendations to strengthen the economy by making the financial system more resilient (including reducing the risk of bank failure) and to lift the value of the superannuation system and retirement incomes.

China

The Chinese retail fund market has grown significantly over the last few years, with approximately US\$600 billion in assets under management in 2014. Nevertheless, accessing Chinese investors of all types is very complicated, with China's major banks serving as the principal channel to these investors.

Hong Kong continues to serve as the gateway to China. UCITS now comprise roughly 70 per cent of the funds authorised for retail sale in Hong Kong. The prominence of the UCITS brand is being somewhat eroded by initiatives aimed at transforming Hong Kong from a distribution centre into a fund management centre, most notably through anticipated mutual recognition initiatives between Hong Kong and China. In December 2013, regulators announced they were in the final stages of creating the principles of mutual recognition that, when effective, would permit fund managers to sell their Hong Kong-domiciled funds to Chinese mainland retail investors (and China-domiciled funds to retail investors in Hong Kong). In June 2014, Chinese regulators announced they had agreed on arrangements for mutual recognition of funds. Detailed regulations concerning the criteria for recognition and requirements for fund distribution remain to be issued.

Japan

Japanese individual investors have US\$15 trillion in assets. However, only about 5 per cent of this amount (nearly US\$800 billion) is invested in the domestic mutual fund market. Instead, Japanese investors rely on low-interest-rate bank and postal deposits, which are perceived as very safe. Moreover, the fund industry in Japan was badly affected recently with scandals hitting Japanese fund managers and a Cayman Islands fund.

After the US, Japan has the second-largest pool of retirement assets in the world. There are signs that those who manage the retirement assets are disposed to new management techniques to increase returns. Much like many western countries, Japan will face a demographic 'problem' in the near future as the number of retirees increases. Consequently, many pension fund managers are looking at alternatives, including permitting non-Japanese fund managers to participate in the Japanese market.

Key Asia-Pacific regulatory themes

Given the growing interest, economies and sophistication of the financial markets in the Asia Pacific region, a number of economies in Asia have now got together to initiate Asia-centric fund passport schemes. As a result of the regional discussions, the ASEAN CIS Framework for Cross-Border Offering of Funds and the APEC Asia Region Funds Passport have emerged.

On 1 October 2013, the ASEAN Capital Markets Forum announced that the securities regulators of Singapore, Malaysia, and Thailand (the Framework countries) have signed a memorandum of understanding to establish the ASEAN CIS Framework (the Framework) for cross-border offering of collective investment schemes (CISs). The Framework aims to facilitate the cross-border offering of CISs targeted at retail investors, and has been implemented, enabling fund managers from those jurisdictions to offer their funds directly to retail investors in the Framework countries.

On 20 September 2013, the finance ministers of Singapore, Korea, Australia and New Zealand signed a statement of intent to establish the Asia Region Funds Passport (ARFP), which will, not unlike the ASEAN CIS Framework, facilitate the distribution across regional borders of CIS funds manufactured, distributed and administered within the region. When implemented, the ARFP will enable CIS operators who operate in a member economy to offer interests in any CIS that is constituted and authorised to investors in other member economies. This is part of the wider effort to reduce the barriers to cross-border financial transactions. The ARFP is intended to be operational from January 2016. More countries in the region may well look to join this effort.

Middle East and North Africa

Volatile oil prices and political instability dominate the 2015 outlook for the Middle East and North Africa (MENA) region. The decline in oil prices has set off a domino effect within the region where governments rely more on oil revenues to finance economic spending. A potential upside, though, is that this volatility may further accelerate the process of diversifying the Gulf Cooperation Council (GCC) economies towards services, funds and manufacturing. Concurrently, large sovereign wealth funds (with assets under management totalling US\$8.1 trillion for the region) insulate many of the GCC economies, mainly by allocating approximately a third of their investments to private equity. Privately managed funds that invest in a wide variety of asset classes are beginning to develop in MENA countries, however, in terms of assets under management, investment funds in MENA countries are still small relative to those in countries with similar economic and demographic characteristics.

Regulations are part of a wider GCC-led effort to promote its investment funds initiative throughout the region. MENA countries have achieved notable progress in developing and launching regulatory reform programmes over recent years, with governments in the region exhibiting national and regional commitments to regulatory reform as an impetus for economic development. For example, the UAE Securities and Commodities Authority issued the UAE Investment Funds Regulations, which apply to (i) foreign funds (and their promoters); (ii) UAE investment funds; and (iii) Dubai Financial Services Authority-regulated promoters of funds. Similarly, the Saudi Capital Market Authority proposed fund rules to assist in the development of the market within Saudi Arabia. It is clear that the regulators' principle aim is to protect retail investors at a time of rapid market development and diversification away from its natural resources.

Sub-Saharan Africa

Boasting favourable demographics and robust GDP growth, sub-Saharan Africa is becoming more investor friendly through strengthened legal

and regulatory systems, with its growth expected to reach 5.8 per cent this year. Recent trends in the funds industry across the sub-region indicate that the industry is moving out of its infancy to become a more established part of the African investment landscape. In 2014, total deal value was the second highest on record at US\$8.1 billion, with an additional US\$2.3 billion of interim closes announced. Most notably, funds such as Helios Investment Partners and Carlyle closed their sub-Saharan-focused funds at US\$1.1 billion and US\$698 million, respectively. For 2015, fundraising is set to continue and improve with the increasing appetite for Africa-focused investments, following the relatively successful output from 2014.

Sub-Saharan Africa's new phase of maturity has prompted government leaders within the region to focus efforts on regulatory reforms to protect and enhance its diversification away from resource-driven growth, as demand for capital remains prominent.

Outlook for 2015

It is clear that it is becoming more difficult to build, manage and distribute funds domestically and internationally. Indeed, the complaint of over-regulation is gathering momentum. Against a backdrop of huge growth in

the funds industry, regulators are under increasing pressure to ensure that they are not caught asleep at the wheel as perhaps some were during the financial crisis. The message is clear: society has changed; profits are no longer the deciding factor within the investment funds world; and behaviour is important and valued. Investor trust needs to be restored and, in a world where there is a belief that investors need to be almost protected from themselves (from purchasing the wrong products for their needs), regulators are acting as the investors' guardians. They are looking for fund providers to play a greater role in both investor education and in offering 'safer' and easier to understand products, in a world searching for yield. Regulators are going to be persuaded more by arguments that change will have a direct benefit to investors as opposed to having any sympathy for cost-related methodologies. The question remains as to whether sufficient thought has been given to the law of unintended consequences and interdependencies. Will investors be thankful for all of this change and the resulting increased costs? Will all of this result in better investment choices for their needs? 2015 is likely to be a year of digestion of the changes highlighted, and by the end of it, we are likely to get a better sense of the real impact of this unprecedented wave of regulatory reform.

Getting the Deal Through

Acquisition Finance	Distribution & Agency	Life Sciences	Restructuring & Insolvency
Advertising & Marketing	Domains & Domain Names	Mediation	Right of Publicity
Air Transport	Dominance	Merger Control	Securities Finance
Anti-Corruption Regulation	e-Commerce	Mergers & Acquisitions	Securities Litigation
Anti-Money Laundering	Electricity Regulation	Mining	Ship Finance
Arbitration	Enforcement of Foreign Judgments	Oil Regulation	Shipbuilding
Asset Recovery	Environment	Outsourcing	Shipping
Aviation Finance & Leasing	Foreign Investment Review	Patents	State Aid
Banking Regulation	Franchise	Pensions & Retirement Plans	Structured Finance & Securitisation
Cartel Regulation	Fund Management	Pharmaceutical Antitrust	Tax Controversy
Climate Regulation	Gas Regulation	Private Antitrust Litigation	Tax on Inbound Investment
Construction	Government Investigations	Private Client	Telecoms & Media
Copyright	Insurance & Reinsurance	Private Equity	Trade & Customs
Corporate Governance	Insurance Litigation	Product Liability	Trademarks
Corporate Immigration	Intellectual Property & Antitrust	Product Recall	Transfer Pricing
Cybersecurity	Investment Treaty Arbitration	Project Finance	Vertical Agreements
Data Protection & Privacy	Islamic Finance & Markets	Public-Private Partnerships	
Debt Capital Markets	Labour & Employment	Public Procurement	
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