

FINANCIAL REGULATION

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Financial Regulation

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FINANCIAL REGULATION

JULY 2017 • ANNUAL REVIEW

Financier Worldwide canvasses the opinions of leading professionals around the world on the latest trends in financial regulation.

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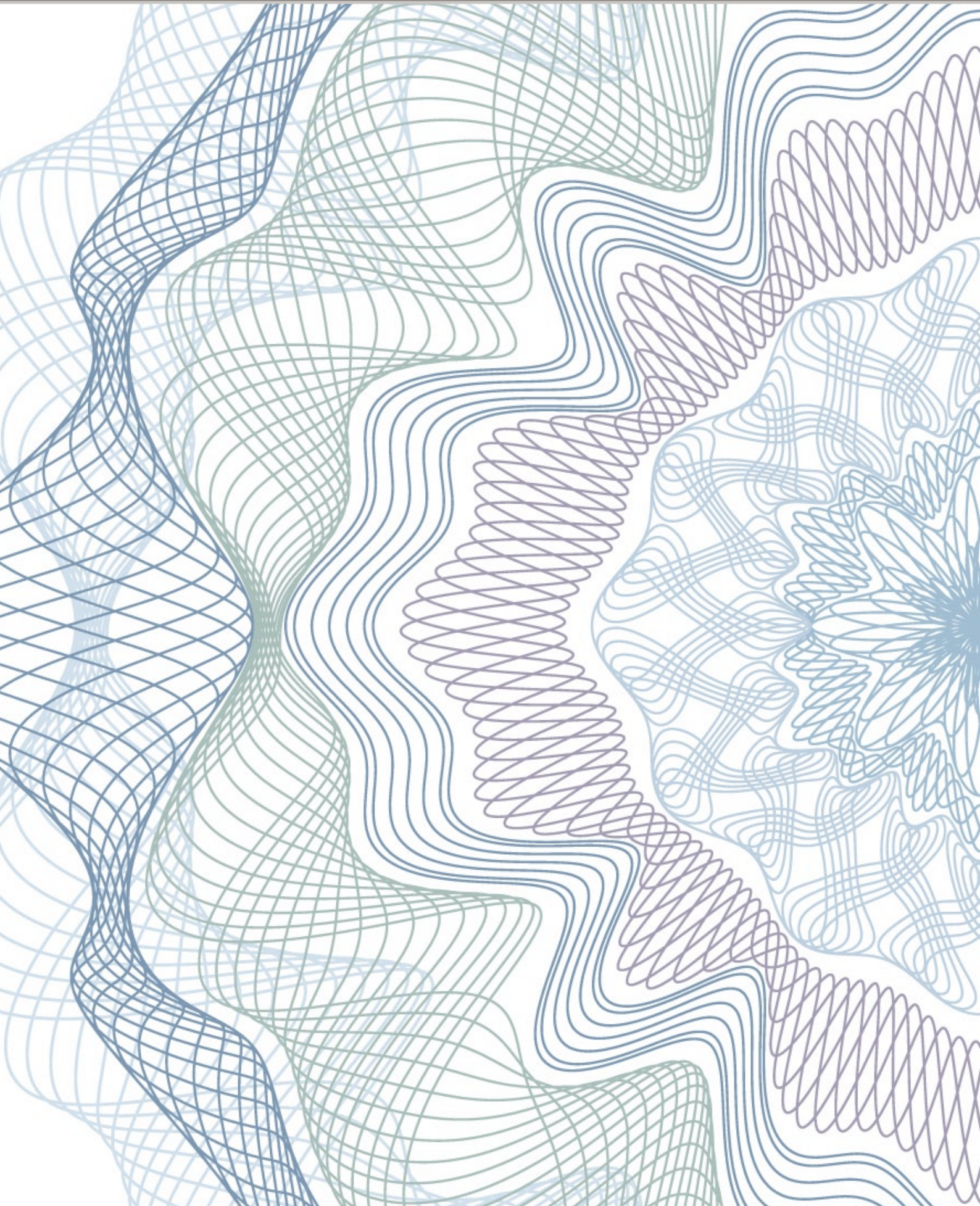
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INTRODUCTION

Given the burgeoning level of regulation in the financial services industry, banks and other FIs must be aware of their compliance obligations at all times. They must also keep their ear to the ground regarding new, incoming regulations.

In the US, given the political upheaval brought about by the 2016 presidential election, the level of regulatory scrutiny FIs face may be decreasing after years of particularly stringent regulatory oversight. The new administration's drive to roll back regulations including the Dodd-Frank Wall Street Reform and Consumer Protection Act, for example, could be sea-change. However, the Securities and Exchange Commission (SEC) and the Commodity Futures Trading Commission are not expected to go quietly into the night, meaning enforcement activity may remain strong in the years to come.

In Europe, the implementation of the General Data Protection Regulation (GDPR), Payment Services Directive II and National Information Security Directive, as well as MiFID II in 2018, will have serious consequences throughout the financial services sector.

Going forward, financial institutions will be forced to re-evaluate the way they handle data, and therefore must prioritise investment in compliance functions. This will require institutions to adopt a joined-up approach to compliance, allowing different departments to combine their knowledge and create a more holistic approach.

Keeping up to speed with the ever-changing regulatory landscape is a difficult task for all financial services firms, and communicating those changes throughout an organisation requires strong and clear communications channels.



UNITED STATES

JENNIFER L. ACHILLES
REED SMITH LLP

Q TO WHAT EXTENT DO YOU BELIEVE TODAY'S FINANCIAL INSTITUTIONS ARE OPERATING IN AN ENVIRONMENT OF INCREASING REGULATORY SCRUTINY AND ENFORCEMENT ACTIVITY?

ACHILLES: Although financial institutions must continue to be vigilant about compliance with new and existing regulations in the US, the general consensus is that regulatory scrutiny may have finally reached its peak. Over the past several years, banks and financial institutions have expended significant resources to come into compliance with the heightened regulatory requirements imposed by the Dodd-Frank Wall Street Reform and Consumer Protection Act put into place following the financial crisis. Financial institutions have also faced a record number of enforcement actions and criminal investigations in recent years, resulting in multi-billion dollar fines and penalties. Although the Trump administration has ordered a review of Dodd-Frank regulations and has signalled agencies to ease up on enforcement, the newly-appointed enforcement directors of the Securities and Exchange Commission (SEC) and the Commodity Futures Trading Commission (CFTC) are widely expected to continue their agencies' missions of enforcing the current financial regulations. Accordingly, while we do not necessarily expect that enforcement activity against financial institutions will increase, we expect it to remain robust over the next few years.

Q COULD YOU OUTLINE SOME OF THE BROAD LEGAL AND REGULATORY CHANGES AFFECTING THE FINANCIAL SERVICES SECTOR?

ACHILLES: The US' regulatory system involves many different regulators at the federal level, as well as financial regulators for each state. Federal law already requires financial services firms to implement procedures designed to protect their customers' data. Many states also have general cyber security requirements that protect personally identifiable information and require companies to notify customers in the event of a breach. More recently, New York and Colorado have enacted their own cyber security regulations specifically focused on financial services firms. In addition, the US Department of Labor has recently expanded the definition of 'investment advice fiduciary' to include any financial professional making a recommendation or solicitation. Previously, the only requirement for certain types of retirement advice was the suitability standard, typically limited to determining risk suitability. This new standard means that the financial professional must always act in the best interests of the customer and must avoid or disclose any conflicts of



interest. This rule is part of a larger trend toward protecting customers and consumers of financial services. Finally, states are increasingly beginning to incorporate digital ledger technology into their regulatory regimes. A handful of states have amended their money transmission laws or issued guidance to account for digital currencies, but unfortunately there is little consistency among state laws.

**Q WHAT ARE THE
IMPLICATIONS OF THESE
RECENT REGULATORY
REQUIREMENTS FOR
FINANCIAL INSTITUTIONS?**

ACHILLES: Not only do firms have to be wary of facing a cyber attack from criminals seeking to steal their customers' financial information, firms have to be prepared to be scrutinised by their own regulators for how well their systems, policies and procedures are working to protect that information. Cyber security regulations and compliance requirements have already resulted in enforcement actions by the SEC in certain instances, and state regulators are not far behind. In addition, being a fiduciary is a much higher level of accountability than the suitability standard previously required of financial salespersons, such as brokers, planners and insurance agents, and those who work with retirement plans and accounts. 'Suitability' meant that as long as an investment recommendation met a customer's defined need and objective, it was deemed appropriate. Now, financial professionals are legally obligated to put their clients' best interests first, rather than simply finding 'suitable' investments. This opens up financial institutions to even greater regulatory scrutiny. Finally, blockchain technology and digital currencies are rapidly evolving and beginning to be deployed in the financial sector. Financial services firms must be vigilant about reviewing and assessing whether they must comply with state and federal regulation, or whether they should be meeting with regulators to help shape future regulations.

**Q IN YOUR EXPERIENCE,
HOW ARE FINANCIAL
INSTITUTIONS RESPONDING**

ACHILLES: It is critical that financial institutions establish strong internal governance to maintain compliance. Financial firms are working with outside law firms and sometimes directly with the regulators themselves regarding how new financial regulations should be and will be interpreted and enforced.



AND ADAPTING TO THESE
REGULATORY CHANGES?
HOW IMPORTANT IS IT
TO ESTABLISH A STRONG
INTERNAL GOVERNANCE
FRAMEWORK TO MAINTAIN
COMPLIANCE?

Financial institutions are also finding automated solutions for flagging which new regulations apply to their businesses, and then looking to outside counsel for innovative ways to implement changes to their internal policies and processes. Regarding data security, most financial institutions turn to their rapid response team, including data breach counsel, in the event their systems are hacked. Firms are also making sure they have the appropriate insurance coverage for cyber events and for internal investigations.

Q WHAT POLICY AND
PROCESS CHANGES MIGHT
FINANCIAL INSTITUTIONS
NEED TO IMPLEMENT TO
MAINTAIN COMPLIANCE
WITH NEW REGULATIONS?

ACHILLES: In general, the first step to implementing and maintaining compliance is to generate awareness and support among executives and all business stakeholders within the financial institution. For example, the new requirements regulating cyber security and the protection of customer financial data require a heightened level of cooperation between the legal, compliance, information technology and operations groups within financial institutions. Similarly, the business and technology teams at financial firms who are creating new systems using blockchain and supporting digital assets must work hand-in-hand with legal and compliance groups to strike the right balance between innovation and risk management. Financial institutions may also need to shift their focus from a business-centric approach to a more customer-centric approach in order to comply with the new fiduciary rule and other consumer protection regulations.

Q IN WHAT WAYS ARE DATA
PROTECTION AND PRIVACY
LAWS IMPACTING THE
OPERATIONS OF FINANCIAL
INSTITUTIONS? DOES
MORE NEED TO BE DONE TO
ADDRESS CYBER RISK AND
RELATED LIABILITIES?

ACHILLES: Due to continued federal and state regulatory focus, cyber security compliance has become an additional cost of doing business in the financial services industry. Financial firms have been funding information security initiatives and monitoring security expenditures as a percentage of overall operational and IT budgets for at least the past few years. Financial institutions must be sure they find and retain information security professionals with the proper qualifications, and then ensure those employees remain up-to-date regarding the applicable regulatory requirements. Prompt, proactive attention to cyber security risks and compliance before an incident goes a long way towards limiting the negative ramifications when a cyber security incident actually occurs. Financial institutions can do more by collaborating with each other and with the cyber security professionals in law enforcement to identify and address risk.



“Firms face challenges keeping up-to-date with new regulatory requirements and disseminating compliance changes within their organisations in a timely manner.”

Q COULD YOU PROVIDE AN INSIGHT INTO SOME OF THE CHALLENGES ASSOCIATED WITH ENSURING THAT COMPLIANCE POLICIES AND PROCEDURES ARE ADHERED TO ACROSS MULTIPLE JURISDICTIONS?

ACHILLES: Global financial firms are dealing with an overwhelming amount of regulatory change throughout the jurisdictions in which they operate. Firms face challenges keeping up-to-date with new regulatory requirements and disseminating compliance changes within their organisations in a timely manner. Additional challenges arise because there are often competing laws and regulations among jurisdictions regarding data privacy, customer protection, attorney-client privilege and cooperation with government regulators, to name just a few. For example, firms may face a situation where they receive a subpoena to produce documents to a US regulator regarding customer accounts in Europe, but where European law would prohibit such disclosure. Cultural differences can also cause compliance challenges if firm executives outside of the US do not fully appreciate the significant fines and criminal penalties that can result from non-compliance.

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MEXICO

RENÉ ARCE LOZANO
HOGAN LOVELLS



Q TO WHAT EXTENT DO YOU BELIEVE TODAY'S FINANCIAL INSTITUTIONS ARE OPERATING IN AN ENVIRONMENT OF INCREASING REGULATORY SCRUTINY AND ENFORCEMENT ACTIVITY?

ARCE LOZANO: Ever since the economic crisis of 2008, financial institutions, governments and financial authorities all over the world have taken steps toward implementing stronger regulatory systems. Mexico has been no exception. After facing its own financial crisis in 1994, Mexican authorities have been looking for different ways to strengthen the banking industry regulatory framework and supervising authorities. As a result of measures that were adopted then, the Mexican economy remained relatively stable despite fluctuations and volatility in the global market during the 2008 recession. In recent years, there have been important changes made to the regulatory framework, including the implementation of the framework provided by the third instalment of the Basel Accords and president Peña Nieto's structural reforms – 'Pacto por México' – which included amendment to 34 statutes, rules and regulations covering the financial industry. National financial institutions are also expected to continue facing regulations introduced by the federal government.

Q COULD YOU OUTLINE SOME OF THE BROAD LEGAL AND REGULATORY CHANGES AFFECTING THE FINANCIAL SERVICES SECTOR?

ARCE LOZANO: As part of efforts to strengthen the financial industry, in 2014 Congress enacted a new set of structural reforms that called for greater participation by industry players in the nation's economic progress. According to its objectives, the reforms sought to boost development banking, improve legal certainty in the activities of private financial agents, and increase the competition and stability of the financial sector. Another recently enacted related statute is the Federal Law for the Prevention and Identification of Illicit Funds Transactions, which scrutinises financial institutions' money laundering issues. Undoubtedly, the financial industry is an evolving area with a tremendous amount of change and innovation. As part of efforts to keep up with such financial regulation developments, there are innovative proposals directly related to the emerging FinTech industry in Mexico, which is rapidly growing. Included in the FinTech Law initiative that is currently under review before being presented to Congress, the FinTech Law will regulate the organisation, operation, functioning and authorisation of companies that offer



alternative means of access to finance and investment, such as crowdfunding, the issuance and management of electronic payment funds and the exchange of virtual assets, or cryptocurrency.

**Q WHAT ARE THE
IMPLICATIONS OF THESE
RECENT REGULATORY
REQUIREMENTS FOR
FINANCIAL INSTITUTIONS?**

ARCE LOZANO: The implementation of the Third Basel Accord by Mexican regulators was relatively straightforward given that Mexico's existing rules on capitalisation were already very similar to those set out in the Accord. In this respect, Mexico's banking system has positioned itself as one of the most solid, even more so with the implementation of financial reform. Furthermore, the financial reform of 2014 has had important implications for the relationship between banks and their clients. Banks are now able to grant cheaper and more accessible credits. On the other hand, financial institutions will also have broader authority with respect to loan collections and making the collection process more effective. These measures will give greater certainty to financial institutions, which will imply a decrease in potential risks and, in turn, reduce interest rates. Other measures that financial institutions have implemented as a result of the financial reform concern stress tests, subordinate debt issued and net capital requirements.

**Q IN YOUR EXPERIENCE,
HOW ARE FINANCIAL
INSTITUTIONS RESPONDING
AND ADAPTING TO THESE
REGULATORY CHANGES?
HOW IMPORTANT IS IT
TO ESTABLISH A STRONG
INTERNAL GOVERNANCE
FRAMEWORK TO MAINTAIN
COMPLIANCE?**

ARCE LOZANO: The major financial institutions that operate in Mexico have adapted well to the new regulatory measures. However, concerns that the new regulations require special standards on capitalisation and liquidity have been raised by smaller banking entities. Competitors in the industry anticipate that these measures could result in mergers and acquisitions among big banks and smaller institutions in future. Without a strong set of internal policies to monitor financial institutions, compliance with new regulations may become challenging. Although certain plans of action, policies and procedures are mandatory for financial institutions, such as risk management, contingency financing and compensation systems, it is crucial that financial institutions



“Every day, new and more sophisticated technologies for hacking and creating cyber attacks are a real and constant threat to all participants of the financial industry.”

identify areas of improvement through the implementation of best internal governance practices issued by international organisations. An example is the recently issued global code for good practice in the foreign exchange market, which the Bank of Mexico has already announced it is adhering to.

Q WHAT POLICY AND PROCESS CHANGES MIGHT FINANCIAL INSTITUTIONS NEED TO IMPLEMENT TO MAINTAIN COMPLIANCE WITH NEW REGULATIONS?

ARCE LOZANO: Although the national banking system has been praised for its high standards of solvency and capitalisation, even beyond those required by the Third Basel Accord, financial institutions have still had to adopt certain measures to keep up with the most recent changes to the regulatory framework. As an example of a recently implemented measure, banking institutions have been required to establish an index known as the liquidity coverage coefficient. Such an indicator would consider both on-and off-balance sheet transactions that involve a potential liquidity risk. Its publication is required in order to increase the discipline and transparency of the financial market and provide more information to market participants. In order to keep up with regulations, institutions must constantly monitor and have full knowledge of their compliance requirements, as well as any new developments to the regulatory framework that could cause an impact to their operations.

Q IN WHAT WAYS ARE DATA PROTECTION AND PRIVACY LAWS IMPACTING THE OPERATIONS OF FINANCIAL INSTITUTIONS? DOES MORE NEED TO BE DONE TO ADDRESS CYBER RISK AND RELATED LIABILITIES?

ARCE LOZANO: Financial institutions are required to maintain stricter controls regarding data protection and privacy. The collection and safekeeping of personal data by financial institutions has to be made in compliance with these laws. Although this may represent additional administrative burdens, they are essential to uphold the right to privacy of financial consumers. Cyber security is without a doubt a major challenge faced by the industry. Every day, new and more sophisticated technologies for hacking and creating cyber attacks are a real and constant threat to all participants of the financial industry, and complex defence measures against such attacks are crucial. Last month's worldwide ransomware attack exposed the vulnerability that all systems users are under and the financial industry is no exception. Given that financial institutions handle sensitive personal data and information on private operations on a day-to-day basis, they are an attractive target for cyber attacks.



Q COULD YOU PROVIDE AN INSIGHT INTO SOME OF THE CHALLENGES ASSOCIATED WITH ENSURING THAT COMPLIANCE POLICIES AND PROCEDURES ARE ADHERED TO ACROSS MULTIPLE JURISDICTIONS?

ARCE LOZANO: Ensuring compliance across multiple jurisdictions can be a complicated matter for financial institutions, given the different regulatory standards and obligations that apply depending on the jurisdiction. With an increased level of regulation in countries across the globe, financial institutions need to fully understand each applicable regulation, take into account that levels of compliance vary across jurisdictions and that relationships with the regulatory authorities also vary. Establishing ethical and ideological uniformity within a financial institution's different branches provides a good foundation to achieve compliance, particularly in challenging jurisdictions where there is little guidance as to the application or enforcement of certain regulations. Other actions that may be taken are the proper identification of the potential risks faced by a financial institution based on the services offered and the jurisdictions in which it operates, ensuring that internal controls and reporting mechanisms comply with all applicable regulations and organising the adequate training of employees.



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UNITED KINGDOM

RHODRI THOMAS

FRESHFIELDS BRUCKHAUS DERINGER LLP

Q TO WHAT EXTENT DO YOU BELIEVE TODAY'S FINANCIAL INSTITUTIONS ARE OPERATING IN AN ENVIRONMENT OF INCREASING REGULATORY SCRUTINY AND ENFORCEMENT ACTIVITY?

THOMAS: There was a decrease in the number of fines imposed against firms by the Financial Conduct Authority (FCA) in 2016 to 2017, with penalties falling to £181m, compared to £855m in 2015 to 2016. Some point to a more conciliatory approach being taken by the FCA, but the figures do not really tell the full story. The 2014 to 2016 numbers were skewed by large wholesale market conduct enforcement investigations, such as those concerning Libor and Forex. Putting those anomalous cases aside, I have seen no evidence that regulatory and enforcement activity will ease up. In fact, we may well see the number of enforcement investigations that are opened rise, particularly in light of the FCA's 2017 Mission Statement. This stresses the use of enforcement actions as a 'diagnostic process' and emphasises that a sanction is not inevitable or even likely simply because an investigation has been opened.

Q COULD YOU OUTLINE SOME OF THE BROAD LEGAL AND REGULATORY CHANGES AFFECTING THE FINANCIAL SERVICES SECTOR?

THOMAS: The FCA has not yet used its recently acquired competition powers to bring about enforcement outcomes. I would expect that to change and we are already seeing the FCA adopting something of a competition mindset when dealing with conduct issues. An example of this can be found in the FCA's thematic review and market study of annuities, where the FCA characterised a competition issue – the failure of customers to shop around – as a conduct failing, namely, inadequate information disclosure to customers. The impact of the Senior Managers Regime (SMR), which came into force last year, is continuing to be felt by institutions. Other areas of focus include financial crime, consumer vulnerability and the developing regulatory environment around FinTech and cyber security. In the medium to long term, I would expect the most significant legal and regulatory changes facing the sector to emerge from Brexit.



Q WHAT ARE THE IMPLICATIONS OF THESE RECENT REGULATORY REQUIREMENTS FOR FINANCIAL INSTITUTIONS?

THOMAS: At this stage, the full implications of Brexit are impossible to predict. However, uncertainty is a present fact. Firms are reacting with contingency plans for a range of scenarios and in some cases they are being required to do so by regulators. Many firms will take the view that EU equivalence arrangements as they currently stand are unlikely to provide adequate protection for business continuity, and so reorganisations within some business lines may be required. The possible divergence in approach between UK and EU regulators and the ability to employ workers from the EU will also be high up the list of concerns. The implications of other regulatory changes will vary and affected firms will need to examine each one in turn. However, one issue that will be common to many of the changes is how a firm manages the tensions between driving financial performance on the one hand and the impact of new regulatory requirements on operations on the other.

Q IN YOUR EXPERIENCE, HOW ARE FINANCIAL INSTITUTIONS RESPONDING AND ADAPTING TO THESE REGULATORY CHANGES? HOW IMPORTANT IS IT TO ESTABLISH A STRONG INTERNAL GOVERNANCE FRAMEWORK TO MAINTAIN COMPLIANCE?

THOMAS: Prudent firms continue to invest in their in-house compliance, legal and risk functions. Ensuring that these functions are sufficiently joined up with each other and with the board is crucial to ensure that nothing falls between the cracks. Keeping on top of regulatory developments is a full-time job and one that external advisers can provide significant help with. Strong internal governance is absolutely critical. Nearly all enforcement investigations will involve an examination on some level of systems and controls. And if the regulator concludes there was a failure in systems and controls, the firm can expect a far greater sanction than in the case of a simple rule breach. As the SMR continues to be embedded with oversight from FCA supervision teams, individuals are more and more likely to become the subject of investigations where there has been a failure of governance.



“Innovation is strongly encouraged and buy-in from the FCA around new compliance tools at an early stage of their development helps to ensure that regulatory expectations are met.”

Q WHAT POLICY AND
PROCESS CHANGES MIGHT
FINANCIAL INSTITUTIONS
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MAINTAIN COMPLIANCE
WITH NEW REGULATIONS?

THOMAS: Whether a firm is seeking to meet regulatory expectations in relation to financial crime, competition or consumer vulnerability, one issue that continues to pervade policy decisions is culture. This has been a regulatory priority for several years now and so the Prudential Regulation Authority (PRA) and FCA expect firms' market conduct to be driven by an embedded culture of compliance that can be evidenced in governance structures, employee rewards, training, senior management accountability and so forth. RegTech is an area growing in importance and value. Used correctly, it can provide a cost-efficient means of improving the speed and effectiveness of regulatory compliance and reporting. The FCA is keen to engage firms on RegTech over the coming years, particularly in relation to anti-money laundering (AML) and know your customer (KYC). Innovation is strongly encouraged and buy-in from the FCA around new compliance tools at an early stage of their development helps to ensure that regulatory expectations are met.

Q IN WHAT WAYS ARE DATA
PROTECTION AND PRIVACY
LAWS IMPACTING THE
OPERATIONS OF FINANCIAL
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MORE NEED TO BE DONE TO
ADDRESS CYBER RISK AND
RELATED LIABILITIES?

THOMAS: 2018 will be a big year for data protection rules, with the General Data Protection Regulation (GDPR), Payment Services Directive II and Network and Information Security Directive all taking effect throughout the EU. The GDPR, in particular, will prompt financial institutions to revisit, and in most cases make changes to, the way they hold data. This comes at a time when the use of cloud storage and Big Data analytics by firms is increasing at a rate of knots. Each of those issues creates its own, further legal and regulatory risks. It is clear that no institution can prevent cyber attacks with a 100 percent success rate. Recognising this, effective mitigation of cyber risks includes not just investment in expensive cyber defences and IT staff, but also education around cyber risks for all employees, robust incident response plans and flexible business continuity processes. Intelligence sharing between institutions is critical to the fight against cyber crime, but it faces several challenges and is currently in its infancy.



Q COULD YOU PROVIDE AN INSIGHT INTO SOME OF THE CHALLENGES ASSOCIATED WITH ENSURING THAT COMPLIANCE POLICIES AND PROCEDURES ARE ADHERED TO ACROSS MULTIPLE JURISDICTIONS?

THOMAS: There are the age-old difficulties faced by international institutions when trying to implement global policies – cultural differences, head office oversight and competing regulatory regimes, some with extraterritorial aspects, to name a few. But an emerging issue that will be very interesting to follow is how recent political challenges to globalisation might further complicate an international approach to compliance. To what extent will the rise of protectionism in countries such as the US create further regulatory divergence across the globe? Managing people with more than one reporting line, and matrix management more generally, is a challenge for many global financial institutions. This is often the case where an organisation is structured to have shared services. The SMR really brought this issue to the fore in the UK, but the challenge is not limited to that. And when it comes to the allocation of responsibilities, one lesson that can be learned from the implementation of the SMR is that clarity and simplicity go an awful long way.



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IRELAND

PAUL O'CONNOR
KPMG



Q TO WHAT EXTENT DO YOU BELIEVE TODAY'S FINANCIAL INSTITUTIONS ARE OPERATING IN AN ENVIRONMENT OF INCREASING REGULATORY SCRUTINY AND ENFORCEMENT ACTIVITY?

O'CONNOR: Financial institutions have been subject to increasing regulatory scrutiny since the dawning of the financial crisis. The introduction of the Single Supervisory Mechanism (SSM) regime and new, more prescriptive legislation at a European level, based on the G20 agenda, brings a greater need for regulators to understand the balance sheets of banks and any inherent risks. The financial crisis resulted in taxpayer funds being used to support the financial system resulting in increased scrutiny so that authorities are alerted to any issue that may result in a threat to a financial institution. Enforcement powers and activity have increased in tandem, both through the SSM enforcement regime and local powers such as skilled persons' regimes in individual countries. This ensures that there are consequences for financial institutions and individuals who do not adhere to the regulatory rules.

Q COULD YOU OUTLINE SOME OF THE BROAD LEGAL AND REGULATORY CHANGES AFFECTING THE FINANCIAL SERVICES SECTOR?

O'CONNOR: We have seen significant reform to financial services legislation. Banks must plan for recovery and resolution scenarios under the Bank Recovery and Resolution Directive. The Capital Requirements Directive and Regulation (CRD4/CRR2) has brought new requirements in the areas of capital, liquidity, leverage and, indeed, governance. Banks have to hold more capital of a stronger quality and liquidity needs to be managed so that a bank has sufficient liquid assets, as well as longer term stable funding to meet its commitments. Data protection rules have been transformed and anti-money laundering remains a top priority. MiFID II brings additional transparency and product governance requirements and the new Payment Services Directive will change the traditional approach to payments for banks and creates opportunities for FinTech companies.



Q WHAT ARE THE IMPLICATIONS OF THESE RECENT REGULATORY REQUIREMENTS FOR FINANCIAL INSTITUTIONS?

O'CONNOR: The volume of regulation has forced banks to think strategically in terms of their businesses and, in many cases, launch transformation or re-engineering programmes. Regulation is costly, and institutions have to look at the profitability and viability of individual lines of business. Resolution planning has changed how debt is issued and has restructured the legal entities within a bank. A more granular approach has been taken to all risks with new legislation at an EU level determining how much capital needs to be set aside to provide for these risks. Additional discretionary capital requirements can be applied by the financial regulator under the Pillar II provision of the EU Capital Requirements Directive. Internal governance has been strengthened with full board ownership of issues and compliance.

Q IN YOUR EXPERIENCE, HOW ARE FINANCIAL INSTITUTIONS RESPONDING AND ADAPTING TO THESE REGULATORY CHANGES? HOW IMPORTANT IS IT TO ESTABLISH A STRONG INTERNAL GOVERNANCE FRAMEWORK TO MAINTAIN COMPLIANCE?

O'CONNOR: Financial institutions are responding. Risk management frameworks have been strengthened and institutions now work to formal statements of risk appetite. Transformation programmes are resulting in improved operations, better quality data and increased levels of service. Increasingly we are seeing firms trying to capture the compliance universe they are subject to and putting structures in place to ensure that obligations arising from that universe are managed and monitored. Strong and improved internal governance ensures both consideration and oversight and is critical to a bank managing its obligations to customers, shareholders, staff and stakeholders.



**Q WHAT POLICY AND
PROCESS CHANGES MIGHT
FINANCIAL INSTITUTIONS
NEED TO IMPLEMENT TO
MAINTAIN COMPLIANCE
WITH NEW REGULATIONS?**

O'CONNOR: Policy changes are largely happening and have brought about increased resources, as well as the enhanced role of compliance at a senior level. Compliance is not just a second line activity but is happening more at the first line of defence and the compliance officer is seen as a trusted guardian of the business' reputation. Process changes helped by technology are delivering a pragmatic approach to implementing these policies. Integrated assurance continues to be difficult to implement but banks are building their universe of compliance obligations. They are putting improved management structures in place and adapting their control mechanisms to meet these requirements.

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**Q IN WHAT WAYS ARE DATA
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LAWS IMPACTING THE
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MORE NEED TO BE DONE TO
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RELATED LIABILITIES?**

O'CONNOR: The latest data rules, such as GDPR, have a significant impact on financial institutions' operations. Issues, such as what data is held, for what purpose, for how long, where it is held, how it is controlled, if it is going to be transferred anywhere and who gets access to it are all critical. Banks have to assess the data risks, and go through a significant transformation to ensure data is being managed and controlled to the new standards. Cyber crime represents a threat to operations everywhere and requires a collaborative effort. Ireland has an advanced model with strong links between financial institutions, law enforcement agencies and academia with a world class centre for cyber crime research and investigation established in University College Dublin. Sharing information across industries and strong collaboration with law enforcement will help.

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“The most important thing is for financial institutions that operate across jurisdictions to adopt a strong and consistent approach to compliance from the centre.”

Q COULD YOU PROVIDE AN INSIGHT INTO SOME OF THE CHALLENGES ASSOCIATED WITH ENSURING THAT COMPLIANCE POLICIES AND PROCEDURES ARE ADHERED TO ACROSS MULTIPLE JURISDICTIONS?

O'CONNOR: Cross-border compliance will always be challenging, on a prudential level because of the complexity of the requirements and on a consumer level because of fragmented, local approaches. We now have a level of consistency of approach across Europe helped by the SSM and regulations, such as the single rule book. SSM inspections happen across the major banks and this drives a common standard in approach. Policies should reflect not just an institution's individual approach, but also how it will comply with key regulations such as AML, risk and governance, among others. The most important thing is for financial institutions that operate across jurisdictions to adopt a strong and consistent approach to compliance from the centre.



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FRANCE

GILLES KOLIFRATH

KRAMER LEVIN NAFTALIS & FRANKEL LLP



Q TO WHAT EXTENT DO YOU BELIEVE TODAY'S FINANCIAL INSTITUTIONS ARE OPERATING IN AN ENVIRONMENT OF INCREASING REGULATORY SCRUTINY AND ENFORCEMENT ACTIVITY?

KOLIFRATH: Since the financial crisis, financial institutions have been facing increasing regulatory scrutiny. Current regulation requirements impose various obligations on financial institutions, which market players must now comply with. The European Market Infrastructure Regulation (EMIR) includes the obligation to centrally clear certain classes of over-the-counter (OTC) derivative contracts through central counterparty clearing or apply risk mitigation techniques when they are not centrally cleared. For example, financial institutions that perform OTC derivative contracts not cleared by a central counterparty will be subject to margining requirements, such as cleared derivatives. Consequently, they have to establish new documentation reflecting the new provisions in the field of initial and variation margins.

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Q COULD YOU OUTLINE SOME OF THE BROAD LEGAL AND REGULATORY CHANGES AFFECTING THE FINANCIAL SERVICES SECTOR?

KOLIFRATH: From a European perspective, changes include the implementation of the Markets in Financial Instruments Directive Regulation (MiFID II/MiFIR), the commission delegated regulation supplementing the EMIR regulation with regard to regulatory technical standards for risk-mitigation techniques for OTC derivative contracts not cleared by a central counterparty, and rules governing key information documents for Packaged Retail and Insurance-based Investment Products (PRIIPs), which will impact a large number of market players. It is important to mention the complex regulation in relation to the Capital Requirements Regulation (CRR) and the Capital Requirements Directive (CRD IV), reflecting the Basel II and Basel III rules on capital measurement and capital standards.

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Q WHAT ARE THE IMPLICATIONS OF THESE RECENT REGULATORY REQUIREMENTS FOR FINANCIAL INSTITUTIONS?

KOLIFRATH: In order to face the recent regulatory requirements, financial institutions have to monitor and evaluate a significant volume of information. The rules and procedures to implement are often complex. Navigating in this complex environment could be costly and time consuming, especially in the field of reporting and data management. Financial institutions must take these new requirements into account in their investment decisions to be compliant. Consequently, a balance should be made between the regulatory requirements and the business strategies of the firms.

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Q IN YOUR EXPERIENCE, HOW ARE FINANCIAL INSTITUTIONS RESPONDING AND ADAPTING TO THESE REGULATORY CHANGES? HOW IMPORTANT IS IT TO ESTABLISH A STRONG INTERNAL GOVERNANCE FRAMEWORK TO MAINTAIN COMPLIANCE?

KOLIFRATH: Regulatory compliance is often time-consuming in terms of adapting systems to new monitoring requirements. Companies need robust systems that present data efficiently for regulatory assessments. Reporting standards are becoming a very important part of the internal governance framework, developing each step of regulatory compliance. Furthermore, different departments such as legal, risk and compliance have to work together in order to combine and share their knowledge on the different areas of the regulation because the rules are often complex and difficult to understand and apply.

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**Q WHAT POLICY AND
PROCESS CHANGES MIGHT
FINANCIAL INSTITUTIONS
NEED TO IMPLEMENT TO
MAINTAIN COMPLIANCE
WITH NEW REGULATIONS?**

KOLIFRATH: First, respecting the compliance deadline might prove the most challenging issue for market participants. Second, the new requirements impose the review of internal processes and legal documentation with most of the counterparties in due time. For example, new regulations are stricter and imply a more cautious review of risk factors, such as risk management and legal risk mapping. Firms must have up-to-date processes, with independent reviews, that ensure the resilience of the overall firm and not especially regarding its core business activities. This implies, namely for capital markets, more information given to customers and a deep knowledge of the business activity and products sold to customers. This also implies a complete review of any outstanding contracts. Updating contractual documentation creates opportunities for counterparties to renegotiate the key elements of those contracts. Third, new requirements like margin requirements, liquidity ratio or equity issue have a direct impact on business strategies and pricing. Lastly, the new regulations raise operational issues, especially IT issues regarding the resilience of IT systems and ongoing maintenance and upgrades.

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**Q IN WHAT WAYS ARE DATA
PROTECTION AND PRIVACY
LAWS IMPACTING THE
OPERATIONS OF FINANCIAL
INSTITUTIONS? DOES
MORE NEED TO BE DONE TO
ADDRESS CYBER RISK AND
RELATED LIABILITIES?**

KOLIFRATH: The main impact regarding privacy and data protection is record keeping and retention and reporting to authorised persons such as regulators. While many mandatory regulations compel firms to maintain confidentially on the one hand, on the other hand many regulations also have specific provisions that enable firms to disclose information, even private information in certain circumstances. Moreover, many contracts contain disclosure provisions that enable parties to act as if there were no mandatory privacy laws. Ultimately, privacy laws and data protection lack international recognition and are not as well organised and controlled around the world as financial requirements. Cyber risk is indeed the new major risk that needs to be addressed, such as Acceptable Means of Compliance (AMC) a few years ago.

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“The new regulations raise operational issues, especially IT issues regarding the resilience of IT systems and ongoing maintenance and upgrades.”

Q COULD YOU PROVIDE AN INSIGHT INTO SOME OF THE CHALLENGES ASSOCIATED WITH ENSURING THAT COMPLIANCE POLICIES AND PROCEDURES ARE ADHERED TO ACROSS MULTIPLE JURISDICTIONS?

KOLIFRATH: One of the main challenges is certainly a lack of worldwide harmonisation of mandatory regimes and the different scales – no national, regional and worldwide regulation – and set of obligations depending on the applicable regulation. These divergences in rules, applicable calendars and enforceability – namely EMIR and its delegated regulations – create a distortion of competition and also legal and political issues. Although most of the regimes try to align to a worldwide legal framework, for example, the G20, some countries still do not have the ability to undertake such huge changes, resulting in a lack of control by national and local regulators. Thus, regulation shopping for the most profitable regimes is taken into account by most companies in their business strategies.

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POLAND

BEATA BALAS-NOSZCZYK
HOGAN LOVELLS



Q TO WHAT EXTENT DO YOU BELIEVE TODAY'S FINANCIAL INSTITUTIONS ARE OPERATING IN AN ENVIRONMENT OF INCREASING REGULATORY SCRUTINY AND ENFORCEMENT ACTIVITY?

BALAS-NOSZCZYK: The economic landscape for financial institutions is dynamic. Despite recent global macroeconomic events, as well as local issues, the financial system in Poland enjoys a solid reputation within the European market. In some cases, local legislation as well as soft-law regulations issued by the regulators seem stricter in comparison to EU standards. For example, legislation which concerns administration fines for money laundering or regulations that pertain to the implementation of the Insurance Distribution Directive. However, it still seems to be acceptable for market participants. As regards enforcement activities, supervisory measures appear to be applied more frequently now than they used to be in the past, but it may be a result of the new regulations.

Q COULD YOU OUTLINE SOME OF THE BROAD LEGAL AND REGULATORY CHANGES AFFECTING THE FINANCIAL SERVICES SECTOR?

BALAS-NOSZCZYK: The fast growth of financial markets and the development of e-commerce will be supported by new regulations, such as the Insurance Distribution Directive, the Payment Services Directive (PSD2), the Markets in Financial Institutions Directive II, the AIFM Directive and many others. Also, new anti-money laundering (AML) regulations will be introduced in the near future. A widely discussed issue is the introduction of a so-called banking tax, which applies not only to the banks, but also to many other types of financial institutions. In terms of contracts, there has also been a recent change. Since 2016, it has been permitted for contracts to be concluded in electronic form, such as via email. In addition, there are currently inter-ministerial consultations concerning changes to the Polish pension system. This is likely to affect the structure of public pension funds, in some cases, members of global financial groups. In terms of soft-law regulations issued by the Polish Financial Supervision Authority (PFSA) some years ago, the regulations



for banks and insurers had a significant impact on the structure and distributions models used within the bancassurance channel.

Q WHAT ARE THE IMPLICATIONS OF THESE RECENT REGULATORY REQUIREMENTS FOR FINANCIAL INSTITUTIONS?

BALAS-NOSZCZYK: Financial institutions must monitor a growing number of regulatory requirements. They must think up new ways of conducting business, produce more documentation or change the documentation used in relations with clients as well as their operational systems. Changes follow so rapidly that once the institution adjusts its activity to new requirements, it must once again review the process. The amount of reporting and disclosure toward the customers is constantly increasing, which consumes a lot of time within the financial institution structure. Consumers often do not understand the huge amount of information provided and this can hinder sales – so new business-oriented solutions need to be introduced. For instance, in terms of the implications, certain entities acting in the Polish market were covered by the new requirements of the act on investment funds and management of alternative investment funds, which required proper registration in the PFSA register or obtaining a licence to conduct activity.

Q IN YOUR EXPERIENCE, HOW ARE FINANCIAL INSTITUTIONS RESPONDING AND ADAPTING TO THESE REGULATORY CHANGES?

BALAS-NOSZCZYK: Regulatory changes are usually statutory or rule-based in Poland and financial institutions usually treat new requirements seriously. As changes in law are frequent and occur in almost every field, an integrated approach should be asserted by internal compliance departments. It should be mentioned that some of the recommendations



“Driving compliance across multiple jurisdictions is a challenging task, especially considering the dynamic regulatory aspect.”

HOW IMPORTANT IS IT
TO ESTABLISH A STRONG
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COMPLIANCE?

issued by the PFSA are ambiguous, therefore financial institutions often find it difficult to understand their exact meaning and the expectations of the regulator. The internal governance framework is crucial, not only in order to be compliant with requirements of the PFSA, but also to assure clients and business partners about the highest level of professionalism. Also, in many cases the financial institutions are also members of global financial groups and any cases of non-compliance may affect the reputation of the entire group.

Q WHAT POLICY AND
PROCESS CHANGES MIGHT
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WITH NEW REGULATIONS?

BALAS-NOSZCZYK: New regulations may require changes to be made to documents provided to clients, particularly in respect of customers' needs. Introducing the relevant changes in complaints handling procedures and information in this respect will also be required. In some cases, new internal policies or by-laws may be required. In the near future, this will include changes related to new AML and insurance distribution regulations.

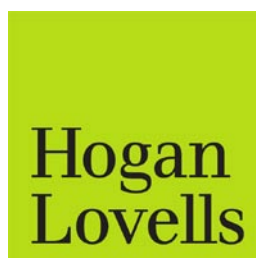
Q IN WHAT WAYS ARE DATA
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RELATED LIABILITIES?

BALAS-NOSZCZYK: Financial institutions operating in Poland are usually aware of the importance of safety measures applied to possessed personal data. According to public sources, financial institutions are occasionally subjected to cyber attacks but there have been no major cases recently. The PFSA also publicly reminds financial institutions to apply relevant security measures within their day-to-day activity. Additional security measures will be surely applied also as a result of implementation of the new regulations, such as PSD2.



Q COULD YOU PROVIDE AN INSIGHT INTO SOME OF THE CHALLENGES ASSOCIATED WITH ENSURING THAT COMPLIANCE POLICIES AND PROCEDURES ARE ADHERED TO ACROSS MULTIPLE JURISDICTIONS?

BALAS-NOSZCZYK: Today, financial institutions are confronted with many challenges in respect of compliance in the regulatory landscape. Driving compliance across multiple jurisdictions is a challenging task, especially considering the dynamic regulatory aspect. Although globalisation and the harmonisation of EU law means that the fundamentals of financial regulations are similar all over the world, there are still many subtleties which may cause difficulties in being up-to-date while conducting business activities in different countries. Also, in certain cases of EU law implementation, the EU member states are allowed to opt-out from certain regulations, which makes the process of implementing certain policies and procedures in multiple jurisdictions even more difficult.



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INDIA

MUZAMMIL PATEL
DELOITTE

Q TO WHAT EXTENT DO YOU BELIEVE TODAY'S FINANCIAL INSTITUTIONS ARE OPERATING IN AN ENVIRONMENT OF INCREASING REGULATORY SCRUTINY AND ENFORCEMENT ACTIVITY?

PATEL: Financial institutions continue to be impacted by the influx of regulations, a trend that is unlikely to abate. In addition to regulations resulting from past mishaps, regulators are increasingly focused on early identification of potential systemic issues. This at times means that regulatory supervision is more data intensive and at times intrusive. There is an increasing trend of direct regulatory intervention, especially in the area of bad loan resolution. Regulators are also directly engaging in corrective action where weak financial institutions can potentially impact the financial stability of the system.

Q COULD YOU OUTLINE SOME OF THE BROAD LEGAL AND REGULATORY CHANGES AFFECTING THE FINANCIAL SERVICES SECTOR?

PATEL: In recent times, the focus of legal and regulatory change has been on controlling and resolving the issue of bad loans. The introduction of the insolvency and bankruptcy code is aimed at providing a framework for speedier resolution for bad loans. The Banking Regulation Ordinance provides the Reserve Bank of India direct authority to engage in stressed asset resolution. On the development front, there has been a greater push towards enabling digital payments and creating infrastructure to support electronic payments. Regulatory relaxations and simplifications have enabled newer financial instruments like infrastructure investment trusts and real estate investment trusts to become popular. There is increased regulatory concern around cyber security. This has led to a slew of guidelines requiring financial institutions to strengthen their cyber security frameworks. There continues to be regulatory focus on improving the quality and quantum of capital under BASEL norms. The focus of regulation is increasingly shifting from mainly macro-prudential to an emphasis on governance and customer protection. The adoption of IFRS and more specifically IFRS 9 by the financial services sector aims at increasing transparency and moving towards an expected credit loss approach for provisioning.



Q WHAT ARE THE IMPLICATIONS OF THESE RECENT REGULATORY REQUIREMENTS FOR FINANCIAL INSTITUTIONS?

PATEL: Regulations and direct regulatory intervention relating to stressed assets have led to acceleration in provisions. This has had direct implications on both profitability and capital adequacy. This, coupled with IFRS 9, is likely to result in consistently higher provisioning for the next few quarters. Macro-prudential regulations, especially those relating to BASEL, have resulted in increased investments in the risk and regulatory infrastructure. This has accelerated the growth of risk and RegTech. Financial institutions are increasingly using risk and RegTech as tools to gain a competitive advantage. Return on equity continues to be under pressure as macro-prudential regulations take effect. The move towards digital payments has increased liquidity in the banking system and brought down the cost of deposits. However, deployment of this liquidity continues to be a challenge in light of the deteriorating capital position. In spite of increased awareness relating to cyber risks, investments in cyber risk management continue to be woefully inadequate.

Q IN YOUR EXPERIENCE, HOW ARE FINANCIAL INSTITUTIONS RESPONDING AND ADAPTING TO THESE REGULATORY CHANGES? HOW IMPORTANT IS IT TO ESTABLISH A STRONG INTERNAL GOVERNANCE FRAMEWORK TO MAINTAIN COMPLIANCE?

PATEL: Financial institutions are responding to regulatory changes by focusing on asset quality, conservation of capital and optimising capital allocation. There is also an increased focus on fee-based distribution and flow businesses that can be monetised through digital channels. There is an increased focus on aligning credit pricing with underlying credit risk, enhancing credit underwriting processes and making early warning systems more robust. Financial institutions are aligning their internal risk management frameworks with the supervisory framework with a view to evaluate risks through a regulatory lens. There is a far greater degree of engagement with regulators. The governance frameworks of financial institutions have been continually upgraded, both in terms of construct and implementation. There tends to be zero tolerance for non-compliance and an increased focus on embedding a risk and compliance culture within performance management.



**Q WHAT POLICY AND
PROCESS CHANGES MIGHT
FINANCIAL INSTITUTIONS
NEED TO IMPLEMENT TO
MAINTAIN COMPLIANCE
WITH NEW REGULATIONS?**

PATEL: As regulatory supervision becomes increasingly data intensive, the focus of financial institutions on their data architecture, data governance and data lineage becomes critical. The organisation, availability and quality of data determine the reaction time in assessing the impact of and ensuring adherence to any new regulation. The sharp increase in non-performing assets on banks' balance sheets has put into question credit appraisal and underwriting processes. There is likely to be closer scrutiny of credit rating models and policies going forward. This will accelerate the move towards internal ratings based on deeper analysis of cash flows and industry-specific data. Processes and tools for differentiated pricing of credit based on the risk profile are likely to take precedence. Investments in risk and regulatory technology are critical to ensuring compliance. An increase in the speed and quality of regulatory intelligence means that financial institutions need to invest heavily in surveillance and continuous control monitoring. Embedding predictive analytics into the control framework will become equally important.

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**Q IN WHAT WAYS ARE DATA
PROTECTION AND PRIVACY
LAWS IMPACTING THE
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MORE NEED TO BE DONE TO
ADDRESS CYBER RISK AND
RELATED LIABILITIES?**

PATEL: Data protection and privacy laws are still evolving in India. However, as more and more instances of breach in cyber security surface, financial institutions are being required by their respective regulators to enhance their cyber risk frameworks. While the advent of cyber insurance provides an avenue to reduce cyber risk, the unknowns related to cyber risk continue to concern financial institutions. There is a long way to go to address cyber risk and related liabilities. As financial institutions increase their digital investments and consequently bring their internal IT assets to the frontline, cyber risk continues to increase. Financial institutions still have a lot of work to do in the areas of early threat identification, incident response, security operations and application security.

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“There is likely to be closer scrutiny of credit rating models and policies going forward.”

Q COULD YOU PROVIDE AN INSIGHT INTO SOME OF THE CHALLENGES ASSOCIATED WITH ENSURING THAT COMPLIANCE POLICIES AND PROCEDURES ARE ADHERED TO ACROSS MULTIPLE JURISDICTIONS?

PATEL: Regulations and laws of the land are not always consistent across jurisdictions. This poses a challenge for financial institutions as the lack of awareness can lead to inadvertent non-compliance. Maintaining and updating compliance libraries across jurisdictions is critical to ensure that the compliance objectives of the institution are met. Regulatory reporting can also vary significantly across jurisdictions. Differences in data interpretation, computation and reporting formats create a need for local investments in configuring regulatory reporting.

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VIETNAM

KENT WONG
VCI LEGAL



Q TO WHAT EXTENT DO YOU BELIEVE TODAY'S FINANCIAL INSTITUTIONS ARE OPERATING IN AN ENVIRONMENT OF INCREASING REGULATORY SCRUTINY AND ENFORCEMENT ACTIVITY?

WONG: Banking reforms by the government have seen vital steps taken to revamp and restructure Vietnam's financial sector. The boardrooms of Vietnamese banks are being zeroed in on as part of the government's intensified scrutiny of the banking system after problems of non-performing loans. Increased pressure is not limited to the larger banks. Smaller banks – those categorised as 'weak' – are also facing more scrutiny. The stepped up regulatory scrutiny is the result of concerns that recent banking problems have been due in part to banks' boards not understanding the risks they were taking and not exercising appropriate oversight. Despite the aftermath of high-profile criminal 'mega-cases' involving banks – such as the imprisonment of ACB chairman, Nguyen Duc Kien; Vietinbank's former head of risk management, Huynh Thi Huyen Nhu, for embezzling \$188m; SeABank Hai Ba Trung's Nguyen Thi Huong Giang; and Maritime Bank's staff fraud – regulators have focused first on ensuring banks have robust financial debt ratio cushions. Furthermore, although regulators have yet to fully turn their attention to corporate governance and the role of directors to make sure banks have the right culture, risk management systems and controls need to prevent excessive risk-taking.

Q COULD YOU OUTLINE SOME OF THE BROAD LEGAL AND REGULATORY CHANGES AFFECTING THE FINANCIAL SERVICES SECTOR?

WONG: The government recently issued several regulations to restructure the financial system in Vietnam. Decision 254 on "restructuring the system of credit institutions during 2011 and 2015", initiated the merger and consolidation of credit institutions. Instruction 02 for the settlement of bad debts, requires credit institutions to strictly obey safe operation provisions, debt restructuring, loan classification and the establishment of risk provisions. Circular 36 stipulates the minimum safety limits and ratios for transactions performed by credit institutions and foreign banks branches for strict management and supervision. Decree 39 defines the operations of certain types of financial companies and financial leasing companies. Circular 31 provides for additional information, such as know your customer (KYC) checks on individuals, corporate customers and other obligations of financial institutions for anti-money laundering (AML) compliance.



And Circular 39 replaces Decision 1627 and imposes stricter criteria for lending transactions by limiting lending transactions to individuals and legal entities.

**Q WHAT ARE THE
IMPLICATIONS OF THESE
RECENT REGULATORY
REQUIREMENTS FOR
FINANCIAL INSTITUTIONS?**

WONG: The operation of credit institutions, especially banks, will be more strictly managed and the 'health' of each institution identified and given an appropriate solution for restructuring. Credit institutions must obey regulations and procedures to reduce their ratio of bad debts. Numerous limitations on granting loans are now applied to credit institutions, such as publicising and reporting loans and capital contributions. Cross-ownership, cross-investment and unfair competition in the banking system will be restricted and prevented due to many regulations on the conditions and limits of capital contribution, and the purchase of shares between subsidiaries, affiliates and companies controlled by commercial banks and finance companies.

**Q IN YOUR EXPERIENCE,
HOW ARE FINANCIAL
INSTITUTIONS RESPONDING
AND ADAPTING TO THESE
REGULATORY CHANGES?
HOW IMPORTANT IS IT
TO ESTABLISH A STRONG
INTERNAL GOVERNANCE
FRAMEWORK TO MAINTAIN
COMPLIANCE?**

WONG: A raft of new regulations and legislation has caused substantial work for banks, requiring them to build new relationships, change various reporting regimes and, in some cases, change their organisational structure to successfully identify and adapt to opportunities which arise from a new regulatory environment. Credit institutions are advised to comply with the new financial regulations by focusing on promptly checking bad debts and making plans and remedies for selling bad debts to the Vietnam Asset Management Company (VAMC), and meeting the objective of reducing bad debts to less than 3 percent by the end of 2017. They must adjust processes to comply with new regulations such as changing the processes and conditions for granting loans. In addition, financial institutions must avoid cross-ownerships and cross investment by transferring their contributed capital in other financial institutions or merging with institutions where they own contributed capital.



**Q WHAT POLICY AND
PROCESS CHANGES MIGHT
FINANCIAL INSTITUTIONS
NEED TO IMPLEMENT TO
MAINTAIN COMPLIANCE
WITH NEW REGULATIONS?**

WONG: To maintain compliance with new regulations, credit institutions should change the policies and processes of management and settlement of debts, especially bad debts, to speed up the process of settlement of bad debts to meet the requirements of the SBV. They can also apply new risk management processes by strictly and frequently checking and reporting such activities to SBV. Applying new policies on granting loans is also an option. For example, banks need to change policies on granting loans in which total loans and extensions of outstanding credit to a client and an associate entity do not exceed 25 percent of their equity capital and ensure borrowing conditions are fully satisfied. Moreover, credit institutions could balance, modify and adapt internal information – such as work cycles, human resources and IT – according to the regulatory changes.

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**Q IN WHAT WAYS ARE DATA
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RELATED LIABILITIES?**

WONG: Despite the spate of recent cyber attacks occurring around the world, the Vietnamese government has not placed much importance on data protection and privacy laws in the financial sector. Furthermore, Vietnam does not have a comprehensive data privacy protection law. Instead, general confidentiality protection provisions for personal data are included in the Civil Code. Regarding electronic personal data, regulation is provided by the Law of Information Technology and Law on Electronic Transactions which deal with the processing of electronic personal data. Information obtained by businesses from consumers is protected by the Law on Protection of Consumers' Rights. The nature of the protection is similar in each case, although there are slight differences in wording. Vietnam is tabling a draft of the Law on Information Security in Vietnam's National Assembly. The Ministry of Information and Communications, the communications authority in Vietnam, has established the Vietnam Computer Emergency Response Team, which is the task force to deal with cyber security issues at the national level. In 2011, the SBV issued compulsory requirements for information security, including human resources, hardware, software, access management, data recovery and disaster protection planning.

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**Q COULD YOU PROVIDE AN
INSIGHT INTO SOME OF THE**

WONG: Meeting different and conflicting regulatory agendas is not an easy task. Regulation is one of the biggest drivers of change facing the financial sector, significantly impacting liquidity, capital, data capture and return on equity.



“Regulation is one of the biggest drivers of change facing the financial sector, significantly impacting liquidity, capital, data capture and return on equity.”

CHALLENGES ASSOCIATED
WITH ENSURING THAT
COMPLIANCE POLICIES AND
PROCEDURES ARE ADHERED
TO ACROSS MULTIPLE
JURISDICTIONS?

Banks have had to develop a completely new business model that integrates compliance with the strategic changes wrought by impending regulations, often across multiple jurisdictions. However, this requires a high level of sophistication and maturity. Some guiding principles which underpin a comprehensive futures-oriented approach, include developing an expansive view of the global regulatory landscape to facilitate long term strategic planning; evaluating the cumulative impact of regulatory change on the balance sheet, supporting business and operating models; developing comprehensive stress tests which are fully integrated into strategic and operational decisionmaking; and automating and industrialising regulatory processes through investment in resilient and flexible technology platforms. The multijurisdictional nature of regulatory change is clearly increasing the complexity for banks, given the need to comply with different timeframes, nuances and supervisors. This places ever more emphasis on the need to manage the changes holistically and to develop coordinated, organised responses.



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UNITED ARAB EMIRATES

SEAN THOMAS BOYCE

JONES DAY

Q TO WHAT EXTENT DO YOU BELIEVE TODAY'S FINANCIAL INSTITUTIONS ARE OPERATING IN AN ENVIRONMENT OF INCREASING REGULATORY SCRUTINY AND ENFORCEMENT ACTIVITY?

BOYCE: UAE financial institutions undoubtedly operate in an environment of increasing national and international regulatory scrutiny. First, in light of the ongoing expansion of UAE financial regulatory regimes, institutions are necessarily subject to growing enforcement risks. Indeed, while the expansion promises greater market stability, the transition will involve greater compliance obligations and oversight by regulators as institutions continue to adapt to the new regulatory frameworks. Second, operating in a global business hub requires UAE institutions to confront myriad international regulatory regimes and regulators. While heightened international regulatory scrutiny has, no doubt, become familiar, ongoing regional instability and the challenges of current market realities require institutions to navigate regulatory risks ever more carefully. The core challenge for UAE financial institutions is not just increasing regulatory scrutiny, but rather balancing international and national regulatory expectations against the needs of the local and regional financial market.

Q COULD YOU OUTLINE SOME OF THE BROAD LEGAL AND REGULATORY CHANGES AFFECTING THE FINANCIAL SERVICES SECTOR?

BOYCE: The UAE continued to align its regulatory framework with international standards and adopt needed reforms. However, geopolitical considerations continue to impose regulatory risks. UAE regulators enacted or announced legislation to adopt international standards, including capital adequacy regulations in line with Basel III, preparatory steps to implement IFSR9 and proposed reforms in the Emirates Interbank Offered Rate (EiBOR) calculation. Notably, at the end of last year, the European Commission identified the UAE and Dubai International Finance Centre (DIFC) financial services regulatory regimes as equivalent to the European Market Infrastructure Regulation (EMIR) framework. Regulators also introduced key reforms and guidance on promotion of foreign securities and application of financial regulatory regimes, including enacting a bankruptcy law, new anti-money laundering legislation, and measures to counter de-risking. In addition, international and regional volatility has or may trigger new compliance risks, including Qatar-related diligence requirements and continuing international sanctions against Iran and Russia.



**Q WHAT ARE THE
IMPLICATIONS OF THESE
RECENT REGULATORY
REQUIREMENTS FOR
FINANCIAL INSTITUTIONS?**

BOYCE: Recent and upcoming changes to UAE financial regulatory regimes will inevitably increase the cost of compliance. In particular, new capital allocation, liquidity, reporting and methodological requirements will require institutions to revisit existing business models. Moreover, the increased due diligence obligations imposed by international, regional and national anti-money laundering and sanctions regimes demand further investment in compliance functions. Such costs may be particularly daunting in light of current market realities. Nevertheless, ongoing efforts to align UAE financial regulations with international standards and address systemic risks should enhance market stability and boost international confidence in the UAE financial sector. UAE financial institutions that are prepared to adapt quickly to regulatory trends and invest in robust internal compliance frameworks will, as a result, be well-positioned to seize the emerging opportunities presented as the evolving regulatory regime solidifies the UAE as a global economic hub.

**Q IN YOUR EXPERIENCE,
HOW ARE FINANCIAL
INSTITUTIONS RESPONDING
AND ADAPTING TO THESE
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HOW IMPORTANT IS IT
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FRAMEWORK TO MAINTAIN
COMPLIANCE?**

BOYCE: In response to the evolving regulatory landscape, financial institutions are, understandably, increasingly investing in their compliance functions. Indeed, in order to contend with and thrive under the array of international regulatory regimes, institutions must maintain a robust internal governance framework guided by clear written policies. To keep pace with changing regulations and regional volatility, such policies should be built around core, unchanging principles and augmented by easily revised procedures designed to timely address emerging compliance needs. There is not, however, any standardised approach to establishing these policies and procedures. Rather, they should respond to and reflect each institution's unique constellation of risks, risk tolerance and objectives. Such a nuanced and bespoke approach is particularly important for institutions operating in emerging economic hubs such as the UAE and thus faced with multiple, different and competing international, regional and local regulatory regimes.



“Even where international standards have been widely adopted, the methodologies with which they are applied vary, frustrating compliance as well as market entry and competitiveness.”

**Q WHAT POLICY AND
PROCESS CHANGES MIGHT
FINANCIAL INSTITUTIONS
NEED TO IMPLEMENT TO
MAINTAIN COMPLIANCE
WITH NEW REGULATIONS?**

BOYCE: Financial institutions are, by now, attuned to the benefits of fostering a culture of compliance, providing clear written policies and procedures and conducting robust due diligence. It is no less important, however, for institutions to ensure that they have established an internal compliance function that has authority to ensure that corporate culture, policies and procedures are applied and positioned to quickly respond to new regulations. Even the best internal culture and policies will remain aspirational if they are not supported with proactive training and ongoing review of operational practices. Further, as regulatory regimes rapidly evolve and expand across jurisdictions, it is vital for institutions to ensure they monitor and respond to new obligations promptly. Although a centralised compliance function does not and cannot resolve all needs, it can be a crucial tool to ensure timely response, incorporation and application of new requirements as they arise.

**Q IN WHAT WAYS ARE DATA
PROTECTION AND PRIVACY
LAWS IMPACTING THE
OPERATIONS OF FINANCIAL
INSTITUTIONS? DOES
MORE NEED TO BE DONE TO
ADDRESS CYBER RISK AND
RELATED LIABILITIES?**

BOYCE: Addressing cyber security risks and compliance with data protection and privacy laws are a crucial challenge. Financial institutions are caught between the opportunities offered by new technologies and the risks posed by managing increasing volumes of sensitive data. While data protection and cyber security necessarily pose regulatory compliance concerns, they are, more practically, a core competitive consideration. Indeed, even as consumers demand innovative technological solutions, they require institutions to rigorously safeguard their data from cyber risks. Regulators, international and regional groups and individual institutions – particularly in the UAE – have made strides meeting market expectations while addressing attendant cyber security risks through, for instance, establishing regional and institutional cyber security information sharing platforms. However, further regulation and investment – individually and collectively – will be necessary to ensure that the financial sector, within the UAE and elsewhere, is able to meet existing and evolving cyber security risks while seizing the opportunities offered by new technologies.



Q COULD YOU PROVIDE AN INSIGHT INTO SOME OF THE CHALLENGES ASSOCIATED WITH ENSURING THAT COMPLIANCE POLICIES AND PROCEDURES ARE ADHERED TO ACROSS MULTIPLE JURISDICTIONS?

BOYCE: Financial institutions, particularly in the UAE, confront multiple international, regional and local regulatory regimes, which impose varied – and often competing – requirements. While harmonised international standards mitigate some discordance, those standards remain relatively limited in scope, and institutions continue to address an array of idiosyncratic anti-corruption, anti-money laundering, sanctions and other national regulatory regimes. Even where international standards have been widely adopted, the methodologies with which they are applied vary, frustrating compliance as well as market entry and competitiveness. The conservative approach may be to conform to the most stringent regulations and centralise oversight. That approach, however, may not balance compliance obligations with the market demands each institution faces. A more nuanced approach would monitor regimes across jurisdictions and tailor oversight to local objectives. Each approach poses challenges, and institutions must therefore continually assess strategic objectives and regulatory requirements to calibrate their compliance programmes to best address their risks and needs.



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