THE IFA's Wealth Gram

LA TRIBUNE MENSUELLE
DES MEMBRES DU GSCGI

wealthgram@gscgi.ch
www.gscgi.ch

Vol. VIII
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REFLEXION SUR L'EVOLUTION DE LA REGULATION FINANCIERE

et plus particulièrement des 'IFA' (Independent Financial Advisors) depuis la crise financière de 2008

Convention of Independent Financial Advisors

A non-profit Foundation

A non-Governmental Organization in 'General Consultative Status' with the Economic and Social Council of the United Nations

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ÉDITORIAL

AI, Quantum, Blockchain, and Cloud will be the Central Fabric of Financial Institutions

...An interview with Jay Oberai of Synergy Asset Management, Membre du GSCGI

The deployment of these emerging technologies, all working together and simultaneously, can help CEOs of financial institutions make their jobs more exciting and rewarding. CEOs have spent endless dollars and hours in weekly tech meetings with CTOs, getting bored and frustrated at the dryness of the subject. However, the possibilities are endless, from conservative improvements *(doing the same thing better)*, to taking more informed and smarter decisions, to doing something radically different with new value propositions. According to Jay Oberai, founder of Geneva-based Synergy Asset Management, these technologies are going to make CEOs of Financial Institutions take radical decisions on their businesses. Mr Oberai believes that technology will revolutionise the wealth management sector. His firm is currently looking at Quantum, AI and Neurosciences to develop a more meaningful understanding of clients and a better management of their assets.

The current approach to measuring a client's attitude to risk was inadequate: a "tick box" exercise, where clients would assess their own risk appetite through very basic questions, not taking into account age or cultural differences. A 60 year old Client from Brazil and a 60 year old Client from Japan have a different understanding of a conservative approach to investment. Yet the questionnaires treat them the same. The rise of behavioural sciences is due to the recognition that "humans are irrational", but this approach only goes that far. It does not ***"neutralize these differences or attempt to put them on a common scale of measurement."*** ***"Neurosciences can provide an answer,"*** says Mr Oberai. ***"The analysis of brain activity can help determine the true level of reaction of the Client to his environment and the things that are dear to him"***. This, in turn, can help better understand the client's investment personality. Gamification is the next step to collect and analyze the brain activity. According to Jay Oberai, this is just one way where technology could be used in wealth management. There are "massive opportunities", but the players in the sector need to act together to capitalize on them.

Mr Oberai warned that, as these technologies help Clients search and compare costs of services, firms will be pushed to market extremes, amplifying the returns for largescale players and creating new opportunities for niche and agile innovators *(like quant funds)*. The mid-sized firms will struggle to make the investments necessary to remain competitive, as incumbent firms will increasingly become smart technology service providers *(their technology backoffices will become profit centers)*. The backoffice transformation will shift the competitive basis of firms towards the front office.

Mr Oberai also warned that the old methods of differentiation *(price, speed and access)* will become redundant as these smart technologies will commoditize these differentiators. The new battlefields for customer loyalty will be fought in Customization *(optimizing outcomes for each client)*, Capturing their attention *(engaging the users)*, and developing ecosystems *(multidimensional product and services beyond just finance)*.

The Investment Management sector was facing certain headwinds, such as **(1)** Customer expectations of Digital Channels *(62% of consumers find cross-channel switching important. 48% speak to a person only when online services are not good enough)*; **(2)** Ageing Advisory Talent *(51 is the average age of financial advisors in the US)*; **(3)** Risk of new Non-Financial Entrants *(43% of millennials are open to trusted brands like Nike/Google/Apple offering financial services)*; **(4)** Advisory fees will half further leading to revenue compression; **(5)** Global unmanaged deposits are now at $50 trillion, receiving no returns at all, *(China alone has $17 trillion)* representing a massive opportunity; **(6)** Customer demand for alternative assets has been going up as already over $1 trillion are invested in quant funds.

According to Jay Oberai, financial institutions urgently need to lead the way in setting their direction in the digital age. They have a choice between four main business models of the future: **(1)** Mass Product *(Hyper-efficient Low-fee Investment Management ... using machine learning)*; **(2)** Mass Customer *(venturing into Emerging Markets and catering to low-income wealth ... using cloud and AI)*; **(3)** Niche Customer. Customized Investment Portfolio Management *(focus on customer profiling and preferences ... using AI and Machine learning)*; **and (4)** Niche Product *(use data to generate Alpha and thus differentiate through returns)*.

These technology transformations will be discussed, among others, at the Geneva WealthTech Forum, a one-day conference taking place at Campus Biotech on March 14, 2019. Aimed at maintaining and further enhancing Geneva's position as the leading global wealth management centre, Geneva WealthTech Forum is a strategic initiative bringing together industry leaders, digital innovators, and State officials. Notable speakers at this year's forum include **Ilyas Khan**, founder of Cambridge Quantum Computing; **Martin Meyer**, Head of Innovation and Client Centric Design at Global Wealth Management UBS; **Robert Wardrop**, Cambridge Centre for Alternative finance; **Chris Skinner**, FinTech Expert and Author of the best-selling book Digital Bank; and **Nicholas Steiner**, Director Strategy and Innovations at Invesco.

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REFLEXION SUR L'EVOLUTION DE LA REGULATION FINANCIERE

Réflexion sur l'évolution de la régulation financière et plus particulièrement des 'IFA' (Independent Financial Advisors) depuis la crise financière de 2008

La **CIFA** (Convention of Independent Financial Advisors) est une ONG avec 'Statut Consultatif Général' auprès du Conseil Economique et Social (ECOSOC) des Nations Unies à New York, qui est plus particulièrement concernée par la protection des Investisseurs, conformément à la **Charte des Droits de l'Investisseur** déposée auprès de l'ONU en 2008.

Ce qui nous intéresse, par conséquent, est la pertinence de la surrèglementation mise en place, ainsi que des mesures prises au niveau international, supranational et national, dans le but d'éviter une nouvelle crise comme celle de 2008 et de protéger l'investisseur/épargnant de toute expropriation directe ou indirecte.

Dès 2009, les institutions de 'Bretton Woods' se sont mises au travail avec la création de nouvelles institutions pour trouver la parade aux problèmes qui ont amené le système financier si proche du gouffre en 2009.

S'en est suivi un Tsunami règlementaire mené par l'UE, notamment MIFID I et MIFID II, qui a permis au régulateur européen d'éliminer plus de 150'000 petits intermédiaires financiers indépendants qui ne représentaient aucun risque systémique ou de réputation.

Il nous semble que la nouvelle législation Suisse sur les marchés financiers recherche la même dynamique, car à y regarder de plus près, la LSFin/LEFin ressemble suffisamment à MIFID I et MIFID II pour avoir un effet similaire, voire identique sur le marché Suisse.

Cependant nous attirerons l'attention de l'investisseur/épargnant sur les quelques faits suivants:

- La dette mondiale globale a été multipliée par quatre depuis 2008.
- Quarante pourcents de cette dette est souveraine, principalement US et UE.
- Il y a des produits financiers en circulation pour dix fois le PIB mondial.
- Le 'Bail-In' a été introduit en 2015.

Ces quelques constatations permettent aisément à toute personne de se faire une idée personnelle quant à la situation du monde financier à ce jour.

Elles permettent également de mesurer d'une certaine manière l'efficacité de la régulation mise en place depuis 2008, plus particulièrement en ce qui concerne la protection de l'investisseur/épargnant.

Jean-Pierre DISERENS
Secretary-General
www.cifango.org

Decouvrez dans les pages suivantes le programme du Forum annuel 2019 qui se tiendra à New York.

...cont'd on page 5 & 6

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CONVENTION OF INDEPENDENT FINANCIAL ADVISORS
A Non-Profit Foundation
A Non-Governmental Organization in general consultative status with the Economic and Social Council of the United Nations

PRELIMINARY PROGRAM
XVIIth INTERNATIONAL CIFA FORUM
NEW YORK CITY, MAY 6-7, 2019

HOW TO MOBILIZE PRIVATE FINANCE TOWARDS FUNDING THE UN-SDGs?

Monday, May 6

09:00 Official opening ceremony by Jean-Pierre Diserens, Secretary-General of CIFA

09:20 Welcome address by Tony Mahabir, President of CIFA

09:50 Keynote Speaker: (TBC)

10:30 Keynote Speaker:
Ferghane Azihari, Chargé d'études, Institut de recherches économiques et fiscales (IREF), Paris

THEME: POVERTY, INC.
FIGHTING POVERTY IS BIG BUSINESS. BUT, WHO PROFITS THE MOST?

UNITED NATIONS 2030 AGENDA

11:10 ECOSOC THEME 2019 SESSION:
"ONE WORLD FOR ALL: EMPOWERING PEOPLE TO BUILD EQUAL AND INCLUSIVE SOCIETIES"
"ADDRESSING INEQUALITIES AND CHALLENGES TO INCLUSION THROUGH FISCAL, WAGE AND SOCIAL PROTECTION POLICIES"

Confirmed Moderator:
Hanifa D. Mezoui, UN-ECOSOC Representative, International Association of Economic and Social Council and Similar institutions (AICESIS), Former Senior Advisor Humanitarian Affairs and Civil Society, United Nations Alliance of Civilizations (UNAOC)

Invited Speakers(TBC):
Daniela Bas, Director, Division for Inclusive Social Development Department of Economic and Social Affairs, United Nations
Navid Hanif, Director, Financing for Sustainable Development Office Department of Economic and Social Affairs United Nations
Chantal Line Carpentier, Chief, UNCTAD New York Office of the Secretary General
Louise Kantrow, Former International Chamber of Commerce (ICC), Ambassador to the United Nations
H.E. Mr. Horacio Sevilla Borja, Former Ambassador of Ecuador, Chair of the Group77 for 2017, United Nations
Lila Karbassi, Chief, Programmes, United Nations Global Compact

12:30 Concluding Remarks:
Francois Loriot, SDGs, Human Rights Advocate-President, Bar Association for NGOs
Reda Mezoui, Docteur d'Etat en Sciences Politiques, Algiers University

13:00 Networking Lunch

15:00 Welcome address by the Chairperson for the afternoon
Cosima F. Barone, Member of CIFA's Executive Committee

15:10 THEME 1: GLOBAL FINANCIAL SYSTEM REGULATION AND THE IMPENDING NEED TO FINANCE THE UNITED NATIONS' SDGs

How to channel private investments to finance the Sustainable Development Goals?

- Global financial markets' deregulation in 1970s, '80s and '90s allowed for the introduction of highly sophisticated financial instruments, which caused an overt misallocation of savings and impaired the efficient allocation of financial resources towards real economic growth. How to create the needed funding of 'common good' goals, such as the SDGs?
- In the aftermath of the global financial crisis of 2008, enhanced financial regulation aimed mainly at the stabilization of the financial system (as a pre-condition to economic growth and job creation) and the protection of investors. Should regulators now focus on directing the global financial system towards becoming the leading funding source for achieving the SDGs by 2030? Are these goals (financial system stability and SDGs) compatible or incompatible?
- How to improve regulation of the financial system in order to reduce/eliminate speculative investments?
- How to align the global financial system with sustainable development? Which investments are really relevant and efficient for the SDGs as opposed to financial instruments basically packaged/structured to generate fees/income benefitting the financial system dominant players and asset managers?

...cont'd on page 6

REFLEXION SUR L'EVOLUTION DE LA REGULATION FINANCIERE

- How to align the financial system interests with the 'common good' goals: SDGs? What is urgently needed: increased liberalization and deregulation, allowing for enhanced competition, stronger regulation across all sectors (financial and economic), selective nationalization process…?

Confirmed Moderator:

William K. Black, Member of CIFA's Advisory Board, Associate Professor of Economics and Law, University of Missouri-Kansas City, USA

Confirmed Speakers:

Thierry Bonneau, Professor of Law, Director of the doctoral school of private law, University of Panthéon-Assas (Paris 2)

Joe Oliver, Canadian politician, former Minister of Natural Resources (2011) and former Minister of Finance (2014)

Olaf Weber, Research Chair in Sustainable Finance, University of Waterloo, Waterloo, Canada

17:00 End of the first day

20:00 Patrons' Dinner at ..... 'by invitation only' *(Black tie suggested)*

Tuesday, May 7

09:00 Welcome address by the Chairperson for the day

Afaf Konja, Communication Specialist: Media and Public Relations

09:15 THEME 2: TAXATION AND SDGs

How to achieve the SDGs through a tax system aimed at enhancing private wealth creation?

- Rethinking taxation in a globally integrated liberal economy: how to finance public spending without impairing competitiveness, innovation and growth?
- Who should bear the burden of direct taxation in a world where a State cannot tax:
  1. capital/capital income (free movement of capital)
  2. corporate profits too heavily (risk of delocalization)
  3. the rich (who can transfer their residence to low tax jurisdictions)
  4. the poor
  5. the middle class exclusively that consumes and drives demand?
- How to achieve tax compliance (fight against tax fraud) without excluding vast amounts of undeclared funds from financing economic development? Are tax compliance policies going too far and playing against economic development especially in emerging countries? How to unlock the financial resources available in offshore accounts?

Confirmed Moderator:

Daniel Mitchell, Member of CIFA's Advisory Board, Chairman, Center for Freedom and Prosperity

Confirmed Speakers:

Allison Christians, Full Professor Associate Dean (Research) H. Heward Stikeman Chair in Tax Law, McGill University, Montreal, Canada

Peter Egger, Professor of Applied Economics, ETH Zurich, KOF Swiss Economic Institute

Stephanie Kelton, Professor of Public Policy and Economics, Stony Brook University, USA

11:10 THEME 3: QUANTUM POLITICS AND SDGs

How to achieve the SDGs in the new political era of quantum politics characterized by the populist intrinsic opposition to regulation, taxes, globalization and multilateralism, along with the rejection of political elites and mainstream media?

- In the current global political environment, could SDGs be achieved through multilateral agreements, increased regulation, heavier taxation of the carbon content of fuels, bureaucratic politics approach?
- In a newly designed global political environment, could the answer be: diminished State intervention and regulation, reduced tax pressure, increased trust in the capacity of citizens, corporates, investors to come up with the best solutions to face the challenges of achieving the SDGs?

Confirmed Moderator:

Francois Loriot, SDGs, Human Rights Advocate-President, Bar Association for NGOs

Confirmed Speakers:

Joe Oliver, Canadian politician, former Minister of Natural Resources (2011) and former Minister of Finance (2014)

Henry Olsen, Senior Fellow at the Ethics and Public Policy Center, Washington, DC

13:00 Networking Lunch

15:00 THEME 4: *(TBA)*

17:00 End of the second day

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David Charlet
FECIF's
Chairman of the Board
www.fecif.org

Jiří Šindelář
FECIF's
Vice-Chairman

Vincent J. Derudder
Honorary Chairman
and Chairman of the
Consultative Committee

* * *

GSCGI
is Member of
FECIF's Board

FECIF NewsFlash 25/2019 — ESMA:Trends, Risks, and Vulnerabilities Report

Executive Summary — The European Securities and Markets Authority (ESMA) as published its latest Trends, Risks, and Vulnerabilities Report.

Analysis — Uncertainty related to Brexit, amid weakening growth prospects, global trade tensions, and reduced global monetary policy stimulus have contributed to market risk remaining very high.

The fourth quarter of 2018 saw increasing volatility on equity and sovereign bond markets, a decrease in equity prices, continued repricing on corporate and sovereign bond markets, and regional developments leading to localised sell-offs and increased short-selling activity.

Overall risk levels for the European Union's (EU) financial markets remained stable but at high levels for most risk categories, particularly liquidity, market contagion and credit risk. Securities markets experienced several episodes of short-term volatility, and equity markets suffered sharp declines from October onwards, erasing all the gains made in the first half of 2018.

Going forward, EU financial markets can be expected to become increasingly sensitive to mounting political and economic uncertainty, with concerns over a no-deal Brexit weighing on economic and market expectations.

Areas of focus

ESMA, in a series of articles in the Vulnerabilities section of the TRV, also looks in more detail at the following issues:

- **RegTech and SupTech**: We examine how technology can help supervised entities and supervisors to perform their duties. New automated tools in areas such as fraud detection, regulatory reporting and risk management are available for firms, while potential applications of new tools for regulators include greater surveillance capacity and improved data collection and management.
- **Retail Alternative Investment Funds – heterogeneity across the EU**: We provide an overview of the EU market for Alternative Investment Funds (AIFs) sold to retail investors. Overall, the size of AIFs sold to retail investors accounts for 18% of the AIF market in terms of NAV in 2017. The data do not suggest significant signs of liquidity mismatch for AIFs held exclusively by retail clients in 2017.
- **Double Volume Cap mechanism – impact on EU equity markets**: We analyse the impact of the DVC mechanism on market liquidity in lit markets. For equities banned by the DVC mechanism, trading in dark pools dropped from 7% to less than 1% in August before increasing again above 5% in September 2018, when the ban was lifted. The share of trading in periodic auctions increased over the same period from virtually 0% to 4% of the total before declining to 2%. Market liquidity in lit markets improved in terms of breadth and depth, while it worsened in terms of tightness, as measured by the spread between bid and ask.
- **Money Market Funds in the EU – new stress-testing requirements**: This article provides an

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overview of potential financial stability risks posed by MMFs, and how the MMF Stress test guidelines aim at increasing the resiliency of the sector by addressing the issues identified, such as the "first-mover advantage". The Regulation also introduces new stress-testing requirements, as part of fund risk management and regulatory disclosure. ESMA will design common parameters and scenarios to coherently capture the risks of the sector. Stress test results will be reported to ESMA and the National Competent Authorities (NCAs).

Sources — *The Trends, Risks, and Vulnerabilities Report is available upon request to either FECIF or GSCGI.*

* * *

FECIF NewsFlash 24/2019 — CRD V/CRR2: Agreement on the proposals

Executive Summary — The Romanian presidency of the Council and the European Parliament reached a provisional agreement on a package of measures, composed of a regulation and a directive, setting out new **prudential requirements and supervisory arrangements for investment firms.**

Analysis — There are about 6000 investment firms in the European Economic Area. Most of them are rather small, but a limited number of investment firms hold a significant proportion of all assets and provide a very broad range of services.

Until now, all investment firms have been subject to the same capital, liquidity and risk management rules as banks. The capital requirements regulation and directive (CRR/CRD4) are based on international standards intended for banks. Therefore, they do not fully take into account the specificities of investment firms.

On the basis of the text agreed today, investment firms will be subject to the same key measures, in particular as regards capital holdings, reporting, corporate governance and remuneration, but the **set of requirements they would need to apply would be differentiated according to their size, nature and complexity.**

The largest firms ("class 1") would be subject to the full banking prudential regime and would be supervised as credit institutions:

- Investment firms that **provides "bank-like" services,** such as dealing on own account or underwriting financial instruments, and **whose consolidated assets exceed EUR 15 billion** would automatically be subject to CRR/CRD4;
- Investment firms engaged in "bank-like" activities with consolidated assets **between EUR 5 and 15 billion** could be requested to apply CRR/CRD4 by their supervisory authority, in particular if the firm's size or activities would **involve risks to financial stability**.

Smaller firms that are not considered systemic would enjoy a new bespoke regime with dedicated prudential requirements. These would, in general, be different from those applicable to banks, but competent authorities could allow to continue applying banking requirements to certain firms, on a case by case basis, to avoid disrupting their business models. Such an option will be framed with a safeguard preventing regulatory arbitrage, in particular through the application of lower capital requirements under CRR/CRD4 as compared to IFR in a disproportionate manner. The text also provides for a 5-year transitional period to give companies enough time to adapt to the new regime.

The agreement **further strengthens the equivalence regime that would apply to third country investment firms**. It sets out in greater detail some of the requirements for giving them access to the single market and grants additional powers to the Commission. In particular, the Commission is charged with assessing capital requirements applicable to firms providing bank-like services to make sure that those are equivalent to those applicable in the EU. In addition, in case the activities performed by third country firms are likely to be of systemic importance, the new regime allows the Commission to apply some specific operational conditions to an equivalence decision to ensure that ESMA and national competent authorities have the necessary tools to prevent regulatory arbitrage and monitor the activities of third country firms.

The equivalence rules for the third country investment companies are tightened. On top of fulfilling additional prudential organisational, internal control and business conduct requirements, third-country firms would be only

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able to provide services of systemic importance to the EU after a detailed assessment by the Commission paired with a significantly enhanced monitoring by ESMA.

Negotiators also agreed to subject investment firms to transparency requirements about their investments and their voting behaviour during shareholder meetings.

Finally, the text agreed by the Presidency and the Parliament complements the existing MIFID2/MIFIR framework by **extending the "tick size" regime to systematic internalisers,** thus enhancing level-playing field between systematic internalisers and trading venues.

The political agreement will now be submitted to EU ambassadors for endorsement. It will then undergo a legal linguistic revision. Parliament and Council will be called on to adopt the proposed package of measures before mid April.

Sources — *The text is not yet available.*

Caterina Vidal | Senior Consultant
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ASSURANCE PROFESSIONNELLE

Assurance Cadre Responsabilité Civile ... pour les Membres du GSCGI

Le GSCGI offre à ses membres une couverture cadre d'assurance exclusive, négociée avec les assureurs AXA et Liberty. Ces deux assureurs seront nos partenaires exclusifs autorisés à présenter les couvertures des trois risques précités aux conditions préférentielles pour nos membres.

Ces couvertures étendues et complètes — **Responsabilité civile professionnelle (RCPI); Responsabilité des dirigeants (D&O); Assurance Fraude (FR)** — offrent une sécurité accrue aux gérants dans leur activité quotidienne. L'assurance professionnelle met les professionnels à l'abri de situations inattendues et génératrices de conséquences financières parfois dévastatrices.

Pratiquement, les membres pourront s'adresser au Secrétariat du GSCGI, ou à la Commission Assurances, pour obtenir tous les renseignements.

Un formulaire spécifique du GSCGI a été édité pour obtenir les offres des assureurs, il figurera sur le site web du Groupement et sera donc à disposition des membres. Il devra être complété par le gérant pour demander les offres avec la preuve de sa qualité de membre et envoyé confidentiellement au courtier. Le GSCGI n'aura pas accès à ces informations.

Couvertures d'Assurances

Responsabilité civile professionnelle (RCPI)

Elle couvre les actes fautifs commis par la société du gérant indépendant ou l'un de ses représentants en cas d'erreur, d'omission dans le cadre de l'activité professionnelle qui entraînerait un préjudice financier d'un tiers.

Les fautes les plus courantes sont:

— Mauvaise exécution d'un ordre
— Oubli d'un délai
— Non respect de la stratégie convenue
— Rupture abusive d'un crédit
— Défaut de conseil
— Délit de fraude fiscale

Qui est assuré?

1. L'institution financière et / ou ses filiales
2. Toutes les personnes physiques agissant dans l'exercice de leur fonction dans la société *(salarié, stagiaire, dirigeant, administrateur)*

Quelle est la couverture? L'assureur va payer:

- Les frais engagés pour la défense des assurés
- Les dommages et intérêts dus au lésé après jugement et condamnation
- Les réparations résultant d'un accord amiable *(après acceptation de l'assureur)*

Responsabilité des dirigeants (D&O)

En tant que dirigeant de votre entreprise, vous n'êtes pas à l'abri de revendications à titre personnel même s'il s'agit d'une erreur d'un employé. En effet, un lésé peut aller chercher une responsabilité personnelle vers le directeur ou l'administrateur de la société pour obtenir réparation du préjudice sur les biens propres du dirigeant. Il peut vous être reproché une mauvaise décision ou de ne pas avoir pris une décision, d'avoir fait un choix stratégique contraire au but social, d'avoir effectué des investissements hasardeux, communication financière insuffisante ou erronée, manque de surveillance des dirigeants ou d'une filiale. Font aussi partie les conflits du travail: licenciement abusif, discrimination, harcèlement.

Qui est assuré? Tous les dirigeants exécutifs et les administrateurs ainsi que leur famille directe.

Quelle est la couverture?

— Les frais engagés pour la défense des assurés à titre privé
— Les dommages et intérêts dus au lésé après jugement et condamnation
— Les réparations résultant d'un accord amiable *(après acceptation de l'assureur)*

Assurance Fraude (FR)

L'évolution technologique et économique des sociétés financières a beaucoup évolué et les risques au sein de ces entreprises aussi. Le risque de fraude devient élevé dans les services financiers surtout en fonction de l'importance croissante des équipements informatiques. L'infidélité et la malhonnêteté des employés sont aussi une source de fraude *(cas Falciani)*. L'usage intensif d'Internet fragilise les services en terme de risques de sabotage ou de terrorisme cybernétique. Des fraudes peuvent aussi être commises sur les marchés ou sur l'octroi des crédits.

Qui est assuré? L'entreprise

Couverture d'assurance...

Une telle assurance a pour but de garantir les pertes subies par la société suite à la fraude:

1. Commise par un ou plusieurs employés y compris la fraude informatique et le transfert de fonds
2. Fraude informatique interne ou externe *(hacking)*
3. Frais de procédure et honoraires d'avocat

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JURISTES, FISCALISTES & JURISPRUDENCE

La banque doit-elle vérifier les pouvoirs du titulaire du compte?

...article de Laurent Hirsch — Centre de Droit Bancaire et Financier, https://www.cdbf.ch/1049/

Un organisme public allemand actionne une banque suisse pour récupérer des fonds publics qui avaient été déposés auprès de cette banque au nom d'une société et que la banque avait en conséquence laissés à la libre disposition de la société titulaire du compte. Le Tribunal fédéral considère que la banque aurait dû se préoccuper des droits de l'organisme public allemand et tranche en faveur de ce dernier, dans un long arrêt du 17 janvier 2019 (4A_302/2018), annulant un arrêt de l'Obergericht de Zurich.

Le recourant est un organisme public allemand *(Bundesanstalt für vereinigungsbedingte Sonderaufgaben)* qui, selon le droit allemand, était seul autorisé à disposer de certains fonds publics d'Allemagne de l'Est. Une société est-allemande, soumise à ces dispositions du droit allemand, était titulaire de comptes auprès d'une banque zurichoise. La question principale soumise aux tribunaux suisses était de savoir si, au-delà des apparences, la banque aurait dû réaliser que les fonds dont elle avait laissé la société est-allemande disposer, entre 1990 et 1992, pour CHF 97 mios environ, étaient des fonds publics dont cette société n'était pas libre de disposer.

Le Tribunal de district de Zurich a rejeté la demande en décembre 2016, considérant que la banque était de bonne foi et qu'on ne pouvait pas lui reprocher de n'avoir pas procédé à une analyse plus approfondie de la situation. L'Obergericht de Zurich, par arrêt du 18 avril 2018, a rejeté l'appel et confirmé le rejet de la demande. Il a considéré que, même si la banque ne pouvait pas invoquer sa bonne foi, une transaction conclue entre l'organisme public allemand et la société est-allemande interdisait à l'organisme public allemand de poursuivre la banque.

Le Tribunal fédéral, statuant à cinq juges, donne raison à l'organisme public allemand sur plusieurs points.

Sous l'angle de l'art. 158 LDIP, il était établi que les opérations litigieuses étaient intervenues en violation des restrictions des pouvoirs de représentation découlant de la loi allemande *(visant spécifiquement les fonds publics est-allemands)* et était litigieuse la question de savoir si la banque aurait dû connaître ces restrictions. La banque soutenait qu'on n'aurait pas pu attendre d'elle qu'elle connaisse de telles restrictions, mais le Tribunal fédéral confirme que le degré de diligence requis, en fonction des circonstances concrètes du cas d'espèce et compte tenu en particulier d'un retrait d'espèces de DM 20 mios intervenu en décembre 1990, ne permettait pas à la banque de se prévaloir de son ignorance *(consid. 2.2)*. L'organisme public allemand soutenait de son côté que la banque aurait eu une obligation d'éclaircir la situation déjà auparavant, en juin 1990, suite à la réception d'un transfert de DM 67 mios. Le Tribunal fédéral suit le recourant sur ce point et considère que, même s'il s'agissait d'une entrée de fonds, cette opération aurait dû amener la banque à éclaircir la situation, compte tenu de la situation de l'Allemagne de l'Est à l'époque, du caractère insolite de l'opération et de l'incohérence des explications reçues *(suite aux demandes de la banque à l'époque)*. Le Tribunal fédéral admet ainsi que, pour toutes les opérations intervenues après cette opération au crédit, la banque ne s'est pas libérée valablement *(consid. 2.3)*. Le Tribunal fédéral renvoie ainsi la cause à l'Obergericht pour déterminer les montants à allouer pour la période complémentaire, entre juin et décembre 1990 *(consid. 2.5)*.

Le Tribunal fédéral observe encore brièvement qu'il ne s'agit pas d'une simple faute légère de la banque, de sorte que la clause de transfert de risque *(Freizeichnungsklausel)* de ses conditions générales n'est pas applicable, comme l'avait d'ailleurs retenu l'Obergericht *(consid. 2.4)*.

Peut-être une analyse plus fine aurait-elle pu se justifier concernant la clause contractuelle, en distinguant suivant les périodes. Il peut être un peu déstabilisant que le Tribunal fédéral qualifie de faute plus que légère une omission de la banque d'éclaircir la situation en juin 1990, alors que l'Obergericht considérait que la banque n'avait pas d'obligation d'éclaircir la situation à cette époque.

Le Tribunal fédéral examine ensuite la transaction extra-judiciaire intervenue en janvier 2009 entre l'organisme public allemand et la société est-allemande. Sur la base d'une interprétation objective de cette transaction, l'Obergericht avait considéré que le paiement de EUR 106 mios à l'organisme public allemand éteignait également les prétentions de ce dernier à l'encontre de la banque. Procédant à son tour à une interprétation objective de cette transaction, le Tribunal fédéral parvient à la conclusion contraire, à savoir que cette transaction visait à mettre un terme aux prétentions de l'organisme public allemand à l'encontre de la société est-allemande exclusivement, et non à l'encontre de la banque *(consid. 4.2)*.

Il peut être inquiétant de constater que cette transaction, semblant néanmoins rédigée soigneusement *(vu les montants en jeu)*, a pu donner lieu à des lectures aussi différentes par l'Obergericht et par le Tribunal fédéral.

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Le Tribunal fédéral laisse encore ouverte la question de savoir si l'organisme public allemand devrait tout de même se voir imputer tout ou partie des montants reçus de la société est-allemande, indépendamment de l'interprétation de la transaction, soit en fonction d'une solidarité qui existerait entre la banque et la société est-allemande (art. 147 CO), soit en fonction d'une gestion d'affaires sans mandat (art. 419 ss CO). À défaut de constatations de fait pertinentes, le Tribunal fédéral renvoie la cause à l'Obergericht pour juger de ces questions *(consid. 4.2 in fine)*.

Si l'on souhaite prendre un peu de recul, on peut repenser à l'affaire du trésor du FLN, qui date d'il y a 45 ans. Alors que les juridictions genevoises avaient condamné une banque à verser environ CHF 40 mios à l'État algérien, le Tribunal fédéral avait admis le recours et rejeté la demande, considérant que la banque n'avait pas à s'intéresser aux rapports internes entre le FLN et son trésorier (ATF 100 II 200). Cet arrêt de 1974 n'apparaît plus d'actualité en 2019. La tendance des tribunaux est de relever les attentes vis-à-vis des banques, en particulier en présence d'opérations importantes et insolites, et apparemment sans possibilité d'exclusion contractuelle de responsabilité. Qu'on l'approuve ou non, on peut s'attendre à ce que cette tendance se poursuive.

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* * *

OECD and European Commission release reports on the digital economy; United States confirms its stance

...article by Kent Stackhouse, Roeland Bavinck (Amsterdam) and Winna Li (Washington, DC) of Baker McKenzie

The OECD, European Commission (EC) and United States recently publicized their current perspectives on taxation of the digital economy. Addressing the related challenges, let alone the divergent views, remains the subject of heated debate in the tax world.

The OECD's assessment

On 16 March 2018, the OECD released its Tax Challenges Arising from Digitalisation – Interim Report *(«Interim Report»)*, which was prepared for the G20 Finance Ministers by the OECD's Task Force on Digital Economy *(TFDE)*. This is a follow-up to the 2015 BEPS Action 1 Report, which grappled with international taxation challenges of the digital economy. The Interim Report represents recent work by the TFDE, and broadly, the more than 110 member countries that have joined the Inclusive Framework *(«Members»)*.

The Interim Report notes that, while it is still early in the process, evidence suggests that countries are achieving widespread implementation of BEPS measures, which is already having an impact. For example, some high-profile digitalized companies have started modifying their structures from remote sales models to local reseller models. Further, multinationals have begun taking steps to align their corporate structures with their real economic activity, either through reconsidering transfer pricing policies and/or by relocating assets such as intangibles to locations where substantial economic activities take place. There are also strengthened CFC rules and anti-hybrid rules through

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OECD and European Commission release reports on the digital economy; United States confirms its stance

tax reform in the United States, Japan and the EU. That said, the impact of BEPS measures are much less evident for the broader tax challenges raised by digitalization *(i.e., nexus, data and characterization)* because the relevant measures were largely designed to target double non-taxation rather than the systematic tax challenges posed by digitalization.

The Members have differing views on whether the international tax rules should be modified to account for features of highly digitalized business models *(i.e., cross-jurisdictional scale without mass, heavy reliance on intangibles, and data and user participation)*, particularly with respect to the impact of data collection and analysis and user participation on value creation. The **first group** is of the opinion that data and user participation can create misalignments between the location where the profits are taxed and where the value is created. This group believes that the challenges are confined to certain business models, and that there is no need for wide-ranging change to the existing international tax rules. The **second group** takes the view that the digital transformation of the economy *(and, more generally, globalization)* puts pressure on the existing international tax rules, which is not exclusive or specific to highly digitalized business models. The **third group** believes the BEPS package largely addressed the double non-taxation, though it is still too early to evaluate the full impact of all measures. This group does not currently see the need for significant reform of the international tax rules. The Members have agreed to take into account these conflicting views as they analyze the two key aspects of the existing framework, the nexus and profit allocation rules, and seek a consensus-based solution.

Change does not happen overnight. Developing, agreeing and implementing a global consensus-based solution will take significant time and effort, but some Members are considering more immediate action through interim measures *(e.g., an excise tax or equalization levy on certain online activity)*. The Interim Report discusses numerous considerations for the design of interim measures that should be taken into account by Members considering such measures, including: compliance with a country's international obligations; being temporary; being targeted; minimizing over-taxation; minimizing impact on start-ups, business creation and small businesses; and minimizing cost and complexity. Other Members are explicitly against interim measures despite any limitations that may be imposed as they could potentially create adverse consequences. The Interim Report is clear, however, that ***«there is no consensus on the need for, or the merit of, interim measures, and therefore [the Interim Report] does not make a recommendation for their introduction.»***

As the Interim Report indicates, more work is on the horizon. The Interim Report, along with an update to the G20 in 2019, are stepping stones toward the TFDE providing a consensus-based approach to digital taxation by 2020. As political pressures mount, the question is, will this work come soon enough to dissuade further unilateral action, or multilateral action such as that recently proposed by the EC?

The EC's move

In Europe, the BEPS project has found traction, with the EC being at the forefront of developing anti-BEPS measures through directives such as the Anti Tax Avoidance Directives 1 and 2. A new chapter to the EC's efforts was published on 21 March 2018 in the form of two proposals for directives that lay down new rules for taxing the digital economy. Not coincidentally, these proposals were published just a couple of days after the OECD published the Interim Report.

The first directive is based on the traditional rules of taxation but proposes to modify the concept of a «brick and mortar» permanent establishment to also identify a taxable presence based on the digital footprint companies may have in a jurisdiction. Since profits also have to be attributed to a taxable presence in order to ensure effective taxation, the proposal includes a flanking measure introducing a new mechanism for profit allocation. To create this nexus for digital companies, the income from providing digital services, the number of users or the number of third-party contracts to provide digital services in a particular Member State should be taken into account. The EC suggests that to allocate profits to this digital nexus, special attention should be given in the functional analysis to value created through user data and the place where digital services are provided. Further, the allocation of the profits should be done through the profit-split method.

Since the EC acknowledges that implementing the aforementioned rules requires amending applicable double taxation conventions, which entails reaching consensus to effectively apply these rules to non-EU digital companies, the EC also introduced an interim measure in the form of a digital service tax (DST). The DST is a 3% tax on revenue realized through certain digital business models.

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OECD and European Commission release reports on the digital economy; United States confirms its stance

This proposed directive tries to tax revenue created from activities where user input is regarded as one of the main value drivers. At a high level, the following types of business models are considered to be in the scope of the DST:

(i) Placing advertising targeted at users on a digital interface.

(ii) Operating a digital multisided interface connecting users and enabling them to interact.

(iii) Transmitting user data generated through user activity on a digital interface.

By setting the threshold for being subject to DST at a worldwide revenue of EUR 750 million and EU revenues of 50 million, the EC targets what it considers to be the 'Tech Giants' without putting undue burden on start- and scale-up businesses. What it does not take into account is the fact that some of the companies meeting these thresholds have a strategy based on acquiring market share rather than being profitable in the initial years. Therefore, the measure that seems to be aimed at making highly digitalized companies pay their fair share of profit taxes could cause companies to be subject to DST without making a dollar of profit.

With the DST proposal, the EC is taking matters into its own hands regardless of the statement in the OECD Interim Report that there is no consensus on the merit or need for interim measures. With the proposal for taxation of digital nexus, the EC is looking to steer the debate into its desired solution. But, how likely is it that these proposals will actually come into effect by their desired effective date of 1 January 2020? Under European law, these proposed directives have to be adopted unanimously in order to pass. In his latest press conference after the ECOFIN meeting in Sofia on 28 April 2018, EU Commissioner Moscovici stated that there is a general willingness to discuss these proposals seriously, and that there is still work to be done to develop the draft directives into rules that all Member States can agree upon, but that there is a broad basis of support. However, in the aftermath of the ECOFIN meeting, it appears that this support for DST may be rather thin, with some of the bigger EU economies reluctant to support a proposal targeted mainly at US multinationals, as this may be regarded a hostile act by the Trump administration. Regardless, Member States may choose to introduce similar rules unilaterally. In any case, it will be interesting to follow where this debate is heading.

The United States' view

Ring-fencing the digital economy has always been concerning for the United States. The United States remains convinced that the debate about the digital economy boils down to the underlying basic principles, such as the definition of a permanent establishment under Article 5 of the OECD model tax convention, the profit attribution rules under Article 7, and the transfer pricing rules under Article 9. While the United States is open to reexamining principles and discussing changes in these areas, it insists that any changes should apply to all businesses and is adamantly opposed to any measures that delineate what the digital economy is and treat digital companies differently from others. In response to proposals in Europe and elsewhere for a digital PE standard on digital transactions, US Treasury Secretary Steven Mnuchin reiterated in a March 16 statement that ***«[t]he US firmly opposes proposals by any country to single out digital companies,»*** even though he ***«fully support[s] international cooperation to address broader tax challenges arising from the modern economy and to put the international tax system on a more sustainable footing.»***

The new international tax rules under The Tax Cuts and Jobs Act (P.L. 115-97) may be considered a move aimed at addressing some concerns US trading partners had and proactively implementing the United States' own solutions to taxing the foreign profits of US multinationals. Yet crafting a fair system of digital taxation and reaching global consensus on measures to tax the digital economy will continue to be a massive undertaking. Multinationals should closely follow local developments as the OECD continues its work and the pressure from the EU and other taxing authorities around the world continues to grow in the area of digital taxation.

The above article is courtesy of...

Baker McKenzie.

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A l'Europe et d'autres de s'inspirer de la Suisse

Si l'Europe connaît des difficultés en matière de croissance économique et en matière budgétaire, il est important de s'arrêter sur le cas de la Suisse, pays encerclé par ses partenaires européens, et fortement dépendant de ces derniers.

Force est de constater que la Suisse se porte insolemment bien. La croissance annoncée pour 2018 est proche de 2.8 %, alors que la croissance du PIB européen a été de 1.9% la même année. Le taux de chômage actuel est de 2.4%, alors même que celui en Europe *(en nette amélioration sur l'année)*, est d'environ 7%. Il est d'autant plus important de rappeler que ces bons chiffres s'inscrivent une fois encore dans un contexte international quelque peu dégradé depuis le 2ème semestre 2018.

La devise helvétique est à un niveau élevé depuis 18 mois à 1.13 contre EURO, après une embellie en 2017 à 1.20 CHF, alors même que près de 70% des exportations de la Suisse se destinent toujours à l'Europe. La Suisse est également au 1er rang mondial en matière de compétitivité selon le WEF *(World Economic Forum)*.

Alors tout naturellement on se pose la question de savoir comment fait la Suisse. Penchons-nous surtout sur les raisons de cette aisance économique et sociale:

- Stabilité politique, dont le système d'élection permet aux conseillers fédéraux de se concentrer sur les projets, sur les décisions nécessaires et non sur leur réélection. Le système de votations régulières permet une vraie démocratie participative.

- Stabilité financière au travers du franc suisse, qui historiquement est une monnaie forte et refuge.

- Stabilité fiscale, qui renforce le cadre de développement des entreprises, de leur avenir, sans changement incessant après chaque élection et l'arrivée de nouveau gouvernement comme c'est le cas par exemple en France, en Italie, changements qui ne font que renforcer l'incertitude.

- Rigueur budgétaire avec une dette publique proche de 15% du PIB, contre 62% pour l'Allemagne *(présentée comme le bon élève de la zone euro)*. Un Etat peu gourmand, avec une part de 32% du PIB contre 56% pour l'Etat français, champion des pays de l'OCDE en 2018.

- Décisions anticipées en matière de financement des retraites qui fixe l'âge à 64 ans pour les femmes et à 65 ans pour les hommes et ce depuis 1948 pour ces derniers.

- La durée hebdomadaire du travail est fixée à 42 heures, alors que la France a mis en place «les 35 heures» pour une partie des entreprises.

- Charges fiscales adéquates et non dissuasives sur les entreprises et les particuliers.

Enfin, le «made in Switzerland» est aujourd'hui encore synonyme de tradition, de compétences et de qualité.

A l'Europe et d'autres de s'en inspirer.

Patrick MAAS
Associé Gérant, Stratégie Finance SA
Membre du Conseil du GSCGI

Patrick Maas est gérant de fortune indépendant et fondateur de Stratégie Finance depuis 1998 en Suisse et, auparavant, de 1995 à 1998 en Belgique. Patrick est binational.

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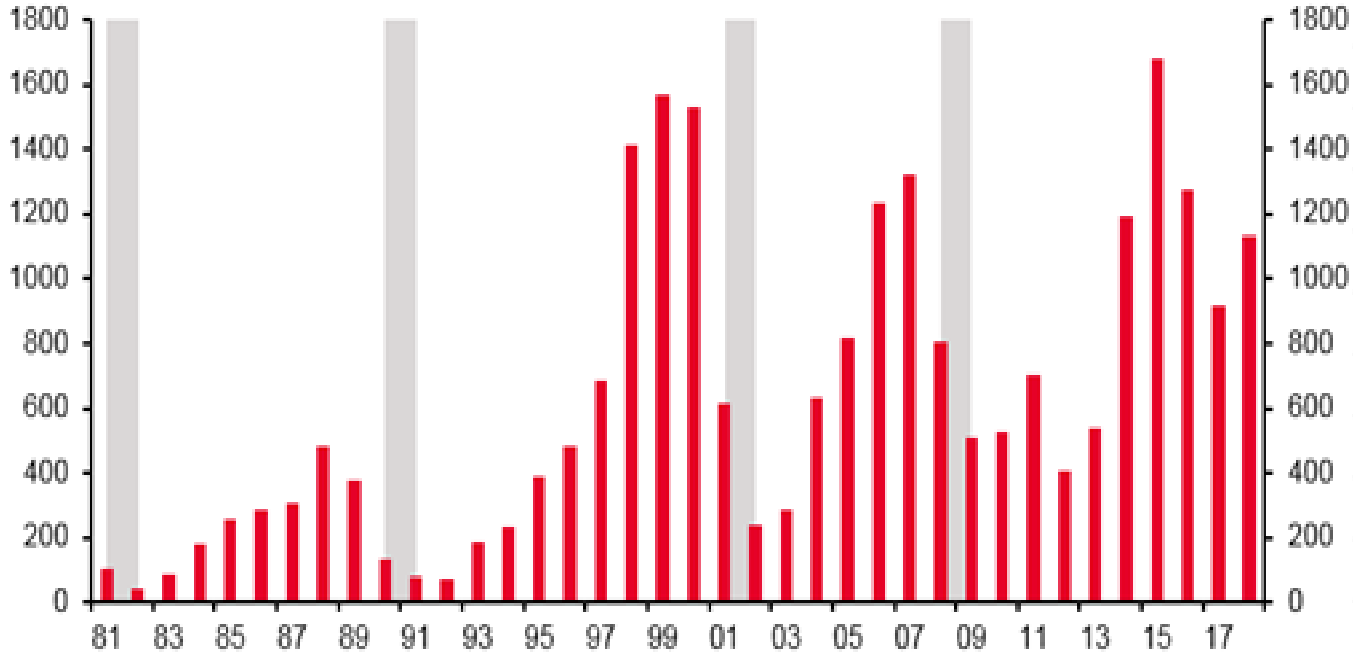
M&A: a late cycle thematic

...article by Roland Kaloyan, Head of European Equity Strategy at Société Générale, Membre Partenaire du GSCGI

History suggests that M&A activity tends to accelerate very late in the economic cycle and that is when the biggest deals are struck. Indeed, at that stage companies have cash, profit margins have recovered and thus organic growth expectations are decelerating. As a consequence, companies tend to look for external growth opportunities with the prospect of raising pricing power and tapping synergies.

M&A activity (red) tends to peak ahead of a recession (grey shadow) in the U.S.



Grey shadow: US recession preiods; red: M&A US total value of deals in $bn.
Sources: Federal Reserve Bank of Saint Louis, Datastream, SG Cross Asset/Equity Strategy

Why late-end cycle deals have difficulty creating value?

The reality is more complex, however: late-cycle deals are typically expensive, which is why sellers are ready to sell, and so they create goodwill but not necessary value. Such deals could also put balance sheets at risk as the imminent downturn *(if not outright recession)* pushes gearing ratios higher.

Equity markets tend to peak a few months ahead of the business cycle. Thus, equity market valuation is generally high ahead of a recession. For example, one year ahead of the last recession that began in October 2007, the overall US market price-to-book value was 2.8x and the European price-to-book was 2.5x. It took respectively seven years *(until December 2014)* for US equities to return to this level, and they currently stand at 1.8x, while European markets are even now still well below their previous peak-cycle level. Management teams will no doubt argue that they have a long-term view and that their planned M&A deals will ultimately create value.

The second issue is the balance sheet. Leveraging the balance sheet at the middle of the cycle when ROIC is very high makes sense, with demand accelerating and investment required to foster top-line growth. Financial leverage can prompt an acceleration in earnings expectations. This is more dangerous at the end of the cycle, as equity markets and earnings fall in a recession and thus gearing ratios increase mechanically.

2018: another stronger year in M&A activity

Fears of a recession returned forcefully at the end of 2018, a reminder that what looks set to be the longest economic cycle in US history is drawing to a close. The probability of a recession in the US twelve months ahead has doubled

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ANALYSES & PLACEMENTS

M&A: a late cycle thematic

...article by Roland Kaloyan, Head of European Equity Strategy at Société Générale, Membre Partenaire du GSCGI

according to Federal Reserve Banks of New York and is standing at 21%.

In 2018, global acquisition volumes stand at $2.2tn according to Bloomberg. This is an acceleration compared to 2017 *($1.8tn)*. The numbers of deal *(pending and completed)* stands at 16,800, which is also higher than 2017 *(16,000)*. Half of global acquisition in volumes was on US market, but the biggest deal in 2018 was the takeover of the Japanese Pharmaceutical company Takeda on Shire (UK) for $81bn.

Top 15 global acquisitions in 2018

	Deal Type	Announce Date	Target Name	Acquirer Name	Announced Total Value (mil.)	Deal Status
21)	M&A	05/08/2018	Shire PLC	Takeda Pharmaceutical Co Ltd	80,971.73	Completed
22)	M&A	03/08/2018	Express Scripts Holding Co	Cigna Corp	68,369.38	Completed
23)	M&A	08/01/2018	Energy Transfer Operating LP	Energy Transfer LP	59,299.55	Completed
24)	M&A	04/29/2018	Sprint Corp	T-Mobile US Inc	57,805.63	Pending
25)	M&A	04/25/2018	Sky Ltd	Comcast Corp	50,714.26	Completed
26)	M&A	10/28/2018	Red Hat Inc	International Business Machines Corp	31,802.52	Pending
27)	M&A	04/30/2018	Andeavor	Marathon Petroleum Corp	28,993.48	Completed
28)	M&A	05/11/2018	EDP - Energias de Portugal SA	China Three Gorges Corp	28,159.92	Pending
29)	M&A	05/09/2018	Multiple Targets	Vodafone Group PLC	21,813.20	Pending
30)	M&A	10/14/2018	L3 Technologies Inc	Harris Corp	19,551.88	Pending
31)	M&A	07/11/2018	CA Inc	Broadcom Inc	18,128.00	Completed
32)	M&A	03/05/2018	XL Group Ltd	AXA SA	15,200.60	Completed
33)	M&A	03/16/2018	Fibria Celulose SA	Suzano Papel e Celulose SA	15,162.89	Completed
34)	M&A	06/26/2018	Keurig Green Mountain Inc	Keurig Dr Pepper Inc	14,862.34	Completed
35)	M&A	01/03/2018	SCANA Corp	Dominion Energy Inc	14,504.33	Completed
36)	M&A	07/03/2018	Multiple Targets	CK Hutchison Holdings Ltd	14,148.92	Completed
37)	M&A	03/27/2018	Brookfield Property REIT Inc	Brookfield Property Partners LP	13,070.61	Completed
38)	M&A	05/11/2018	EDP Renovaveis SA	China Three Gorges Corp	11,248.91	Pending

Acquisitions: pending or completed company takeovers. Sources: Bloomberg, SG Cross Asset/Equity Strategy

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Roland Kaloyan *has been Head of European Equity Strategy since 2014. Prior to that, he was part of SG's Global Asset Allocation team (ranked No.1 in Extel). He joined SG Research in 2005 after graduating from Ecole Centrale Marseille with an engineering degree in statistics and finance. Roland also holds the Certified International Investment Analyst qualification (CIIA).*

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Vol. VIII - N° 84 - Mars 2019

LE COIN TECHNIQUE

Two Preferred Cases Near a Top for the Next Six Months

...article by Bruno Estier Strategic Technicals - http://bruno.estier.net/ - bruno.estier@bluewin.ch

Panic selling until December 24 and two 90% "up days" *(Dec 26, Jan 4)* reflecting strong BUYING, suggested a major low was seen at the end of 2018. The outperformance of small- and mid-caps underlines the widening breadth of the market rebound during January & February, and recently led to new all-time highs for the Advance-Decline Line (ADL), which usually precedes new all-time highs in the major indexes. The recent equity V-shaped rebound is very reminiscent of the two-month rebound of the S&P500 after the October low of 1998. Indeed, in the last two months, the 20% rise took place within a more narrowing channel than in 1998 with pullbacks lasting only a few days.

Thus now should come the time for a more sizeable pullback toward 2740 *(VIOLET path)* at minimum or toward 2580 *(GREEN path)*. Later the S&P500 2940 all-time high will be revisited in the 3rd or 4th quarters of 2019. We stop the dissertation here as various intermarket-relationships were reviewed at length in past issues and we leave more space for your eyes only!

Graph:

Chart of S&P500 in weekly candles with Ichimoku cloud and VIX represented in orange dotted line behind the S&P500 candles. On the upper panel is displayed the rising Relative Strength (RS) of Small caps Russell2000 versus SP500 in green dash line, the pausing RS of Emerging markets versus S&P500 in orange solid line and the about flat RS of Nasdaq100 versus S&P500 in red dotted line. On lower panel MACD is rising about to cross above zero confirming a bull rise, while the weekly STO is crossing down in strongly overbought area (96%), as usual after a four year low! Time to review our three paths presented on December 17, 2018: The Red path would be an unlikely bearish extension of the Green path, which may correspond better to "average bear market". At this stage the Green path appears less probable than the Violet path, which corresponds to V bottom like 1998. Violet path may find support near 2730, the weekly lower cloud line in Q2 and resume upward afterward. Along the expected Four year cycle the third presidential year (2019) has a bull bias and could break above 2940!

Source: Stockcharts.com / Red, Green and Purple paths are proposed by BEST

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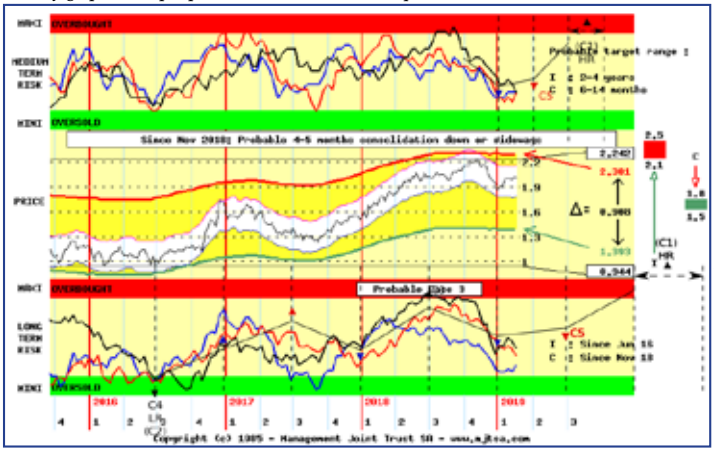
LE COIN TECHNIQUE

The US Dollar and the USD-Euro interest rate differential

...article by Jean-Francois Owczarczak - CEO, Management Joint Trust SA - jfo@mjt.ch

Since US long term yields started to correct down last October, the US Dollar has stalled. US long term yields are more volatile than their peers in other regions of the world, and hence when they correct *(or re-accelerate up)*, their moves are usually more dynamic. Hence, the US Dollar to Euro interest rate differential currently rises and falls with US long term yields. Movements in the US Dollar are also closely related, yet with some discrepancies and some lags. Indeed, the other factor, which plays into movements in the US Dollar are US inflation expectations *(proxied by the TIPs vs Treasuries breakeven ratio)*. When these rise, the US Dollar is under pressure. Inversely, when these fall, the US Dollar is supported. Both factors take turns as to which one is the strongest. In Q4 last year, they pretty much leveled out, as declining US long term yields *(and a declining interest rate differential)* met a sell-off in inflation expectations *(these followed risk assets lower)*. The Dollar consolidated in a tight range and at high levels. Our rule of thumb in this environment is that during risk asset corrections, the Dollar should hold up rather well *(declining interest rate differential, declining inflation anticipations)*, while in a possible reflationary boom, a lot will depend "at the margin" on the FED: rising inflation expectations, rising yields, rising differential and a dovish FED will probably lead to temporary Dollar weakness *("à la H2 2017")*, while once/if the market expects the FED to start hiking again, the USD will accelerate higher *("à la H2 2016")*.

10Y USD-EUR IRS Swap rate differential
(Weekly graph or the perspectives over the next 2 to 4 quarters)



Dollar Index *(Weekly graph or the perspectives over the next 2 to 4 quarters)*

To illustrate the above rule of thumb, the H2 2017 period is indeed interesting. The FED had remained on hold that September, considering storm-related disruptions in the wake of hurricanes Harvey, Irma, and Maria. Then, during Q4, Oil, Equity markets, European economic data, US long term yields and the USD-EUR interest rate differential started to accelerate up again, and the US Dollar tanked. The market considered that the FED was behind the curve, and it took two rate hikes, in December 2017 and March 2018, for the Dollar to eventually reverse up. On the contrary in H2 2016, while reflationary assets (and the interest rate differential) were accelerating up, the FED signaled late September that the case for an increase in the federal funds rate had strengthened (although it actually raised rates only in December). The market considered this statement as being rather hawkish and the Dollar shot up. Going forward, we expect that following a potential retest/retracement down during the rest of Q1 2019 (our medium term oscillators; upper rectangle), the interest differential (and US long term yields) should reaccelerate up to retest last year's highs (right-hand scale) into the Summer. At the latest this moves starts midyear on our long term oscillators and extends into year-end. For the Dollar, a lot will depend on the FED's stance between late Q1 and early Q3, especially if reflationary assets continue to accelerate.

For more information on our services and methodology, please visit www.mjtsa.com or contact us.
All opinions, news, research, analyses, prices or other information in the article above are provided as general market commentary and do not constitute any financial advice.

On our long term oscillators (lower rectangle), we believe the Dollar Index is building a base. It should act as a backstop to any extreme US Dollar weakness. On our medium term oscillators (upper rectangle), the sequence is still uptrending, yet may correct down at some point between now and mid Q2. This could be an interesting Buy the Dips opportunity. Indeed, following that, towards mid/ late Q2, we expect the US Dollar to accelerate up again, probably towards year-end, and above the resistance of our C Corrective targets to the upside (i.e. above 0.99).

www.mjtsa.com

Concluding Remarks: Following the sharp Q4 sell-off, it seems that the whole world is reflating. The FED has signaled a pause, China is ramping up its monetary and fiscal stimulus, while Europe and Japan have postponed any attempt at tightening. This environment should be very supportive for risk assets, inflation expectations and long term US interest rates, probably into the Summer. At some point, the Dollar risks being on the other side of that trade, at least, until the FED signals it intends to start tightening again. In the meantime, we expect some retracement on risk assets following the massive rally since December. This should support the US Dollar in short term, probably into late March, as inflation expectations could also retrace.

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IN GLOBO

Senior Democrat suggests 'Glass-Steagall' law for tech companies

[...] The US should consider subjecting large technology companies to the kinds of restriction imposed on global banks after the Great Depression [...]

[...] This add to growing calls from senior figures in the Democratic party to curb the market power held by the likes of Facebook, Google and Amazon [...]

[...] The Glass-Steagall rules, enacted in 1933, were repealed in 1999 [...]

Read on: https://www.ft.com/content/561b8546-355c-11e9-bd3a-8b2a211d90d5

Source: Financial Times - March 4, 2019 CFB

Banks Are Paying Peanuts on Deposits. Robo Advisers Are Offering Higher Rates.

[...] Better deals for consumers could hit traditional banks and brokerages, where cash deposits have long generated a significant chunk of revenue. [...]

[...] Wealthfront's new cash-management account, essentially a brokerage account meant for cash, is offering a 2.24% annual interest rate, and Betterment LLC's account, launched in August, offers 2.23% after fees. That compares with a national average of 0.10% U.S. banks are paying savers, according to Bankrate.com. [...]

[...] The reason financial technology companies are paying more on deposited cash is so they can attract and retain investors' money, said Rich Repetto, a brokerage analyst at Sandler O'Neill + Partners LP. "The high rates keep the robos in the game," he said. [...]

[...] Research firm Aite Group estimates the robo advice industry had $260 billion in assets at the end of 2018—up from $223 billion a year earlier—and will have $1.1 trillion by the end of 2022, eating into the $24 trillion market for brokerage and personal financial advice services. Wealthfront has about $11 billion in assets, while Betterment has $16 billion. [...]

Read more: https://www.wsj.com/articles/banks-are-paying-peanuts-on-deposits-robo-advisers-are-offering-higher-rates-11551452400

Source: The Wall Street Journal - March 1, 2019 CFB

The allure of financial tricks is fading

[...] It was only a matter of time before Apple issued a credit card ... an example of a market trend known as financialisation. That is a wonky term used mostly by academics to describe the rise of finance and financially-oriented behaviour throughout our economy. [...]

[...] Financialisation has been a key driving force in the global economy for several decades. But ... we have reached what I call "peak Wall Street", the apex of that trend [...]

[...] Consider the decline of Kraft Heinz. The company demonstrates how a strategy focused on short-term financial results can backfire. [...]

[...] The energy bond market has tripled in size in the past decade, but much of the money has funded higher executive salaries and an output glut. [...]

[...] The multiyear explosion in share buybacks, which increase earnings per share by reducing the number of shares, reflects the trend. [...]

[...] Debt is, of course, the lifeblood of finance. But it is also the biggest indicator of future crises. [...]

Read more: https://www.ft.com/content/a9f13afc-3c3d-11e9-b856-5404d3811663

Source: Financial Times - March 3, 2019 CFB

For stocks, it's corporate buying that really matters

[...] Companies are the biggest buyers of equities through buybacks and acquisitions. [...]

[...] According to consultants Willis Towers Watson there has been a 20-year decline in equity ownership by pension funds across the globe. [...]

[...] This has coincided with a decline in the role of public equity markets in the developed world. The number of listed companies in the US, per million of population, halved between 1996 and 2012. [...]

Read on: https://www.ft.com/content/d6ec0bb8-343b-11e9-bb0c-42459962a812

Source: Financial Times - Feb. 19, 2019 CFB

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IN GLOBO

The Dollar Is Still King. How (in the World) Did That Happen?

[...] A cursory assessment might find the United States a less than ideal candidate for the job of managing the planet's ultimate form of money. [...]

[...] Its public debt is enormous — $22 trillion, and growing. [...]

[...] Its politics recently delivered the longest government shutdown in American history. [...]

[...] Its banking system is only a decade removed from the worst financial crisis since the Great Depression. . [...]

[...] Its proudly nationalist president provokes complaints from allies and foes alike that he breaches the norms of international relations, setting off talk that the American dollar has lost its aura as the indomitable safe haven. [...]

[...] But money tells a different story. [...]

[...] The dollar has in recent years amassed greater stature as the favored repository for global savings, the paramount refuge in times of crisis and the key form of exchange for commodities like oil. [...]

[...] "There is no alternative to the dollar," said Mark Blyth, an international political economist at Brown University. "We're stuck with the dollar, which gives the United States astonishing structural power." [...]

Read on: https://www.nytimes.com/2019/02/22/business/dollar-currency-value.html

Source: The New York Times - Feb. 22, 2019 CFB

Jim Grant: The Danger Lurking in the Fed's Monetary Policy

[...] Last Monday, the Federal Reserve embarked on a yearlong listening tour to discover the concerns of the American people. [...]

[...] The whole shebang of modern monetary methods—manipulated interest rates, levitated asset values, the supposed necessity of a 2% inflation rate—is on the table for constructive criticism. [...]

[...] But you know how it is with constructive criticism. The friend who asks to hear it really doesn't want any. [...]

[...] This column would opine that artificially low interest rates never fail to store up trouble—facilitating leverage, they promote not growth, but larger balance sheets. [...]

[...] It would opine, further, that the central bank is playing with fire by actively seeking to depreciate the dollar, a currency that, whatever its current lofty status in the world, is a piece of paper of no defined value. [...]

[...] And it is our opinion that the Federal Reserve should at least consider the appealing course of letting the market alone. [...]

Read more: https://www.barrons.com/articles/federal-reserve-monetary-policy-danger-51551454711

Source: Barron's - March 1, 2019 CFB

Crown dependencies face crackdown on secret companies

[...] Tory MPs ambushed prime minister Theresa May to demand that Jersey, Guernsey and Isle of Man reveal names of corporate owners. [...]

[...] The three crown dependencies are exempt from EU rules requiring countries to publish registers of the real owners of companies. Transparency campaigners argue that the lack of disclosure has aided large-scale money-laundering. [...]

[...] The UK was previously accused of trying to block EU action on tax havens. [...]

Read more: https://www.ft.com/content/d96a3bac-3c3e-11e9-b72b-2c7f526ca5d0

Source: Financial Times - March 1, 2019 CFB

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GLOBAL EVENTS

Le GSCGI est Partenaire de cette conférence.
20 tickets d'entrée avec 30% de discount (Code: **GSCGI30**) sont généreusement offerts aux Membres du Groupement.

https://www.genevawealthtechforum.com/

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AGENDA OF GSCGI's MONTHLY CONFERENCES

INVITATION / INSCRIPTION

Déjeuner-conférence 22 Mars 2019

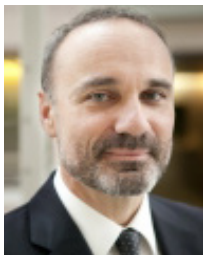
Nous avons le plaisir de vous inviter, ainsi que vos collègues et ami(e)s à notre prochain déjeuner-conférence qui aura lieu à Genève, organisé en collaboration avec le Centre de Droit Bancaire et Financier de l'Université de Genève *(www.cdbf.ch)*...

CENTRE DE DROIT BANCAIRE ET FINANCIER

Le thème suivant, d'actualité certaine et de grand intérêt pour les gestionnaires de fortune indépendants, gestionnaires de fonds d'investissements, conseillers et analystes financiers:

POURQUOI UN TRUST SUISSE

sera présenté par le:



Prof. Luc THÉVENOZ
Professeur ordinaire à la Faculté de droit de l'Université de Genève
Directeur du Centre de droit bancaire et financier de l'UNIGE

Docteur en droit de l'Université de Genève, avocat au Barreau, Luc Thévenoz a été nommé professeur ordinaire en 1993. Il enseigne régulièrement à l'Université du Luxembourg. Son parcours académique comprend des séjours comme professeur ou chercheur invité à l'Université de Californie à Berkeley, à Boston University et à Duke Law School.
Luc Thévenoz est membre du comité éditorial de la Revue suisse de droit des affaires et de Trust Law International. La Society of Trust and Estate Practitioners lui a conféré en novembre 2007 la distinction de honorary member en raison de sa contribution à une meilleure reconnaissance des trusts dans les juridictions de droit civil et à la ratification de la Convention de La Haye par la Suisse.
Luc Thévenoz est également membre du conseil d'administration de la Banque Mirabaud & Cie SA.

PROGRAMME

Date **Vendredi, 22 Mars 2019**
LIEU Hôtel Métropole, Quai Général-Guisan 34, Geneva, Switzerland
12h00 Enregistrement
12h30 Conference & Session Q&A
13h00 Le repas commence à être servi
14h00 Fin de conférence

Prière de vous inscrire avant le mercredi, 20 Mars 2019, en ligne ou par email: secretariat@gscgi.ch

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22 Mars 2019/Geneva: Orateur: Prof. Luc Thévenoz, Centre du Droit Bancaire et Financier

12 Avril 2019/Geneva: Orateurs: *tba* ... Cronos Finance SA, Membre du GSCGI

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Réservez ces dates!
Les thèmes de Conférence sont communiqués par invitation et sur le site du Groupement — www.gscgi.ch
Non-Membres bienvenus — Inscrivez-vous!

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LA REUNION MENSUELLE DU GSCGI

2019, Feb. 15 — LA RÉVOLUTION DURABLE…et ce qu'elle signifie pour les investisseurs

…article de Cosima F. Barone

BERTRAND GACON
HEAD OF CORPORATE SUSTAINABILITY
BANQUE LOMBARD ODIER & CIE SA

Bertrand démarre son parcours professionnel dans le secteur financier et travaille tour à tour en Asie, à Paris et à Genève au sein du groupe BNP Paribas. En 2006, Bertrand créé l'offre Investissement Responsable de la banque française et développe une gamme complète de solutions ISR et Impact Investing pour ses clients privés au niveau international. En 2011, il rejoint le groupe Lombard Odier à Genève et prend la direction de l'Impact Office, équipe avec laquelle il développe des solutions d'investissement innovantes dans le domaine de la finance de développement et des obligations climatiques. En 2018, il prend la responsabilité de la durabilité d'entreprise pour l'ensemble du groupe Lombard Odier et met en place un ambitieux programme d'excellence environnementale et sociale impliquant toutes les parties prenantes de l'entreprise.

YVES CHARLET
RESPONSABLE EAM SUISSE ROMANDE
BANQUE LOMBARD ODIER & CIE SA

Avant de rejoindre Lombard Odier, Yves Charlet a accumulé plus de vingt ans d'expérience dans le domaine bancaire. Il a notamment occupé tour à tour les postes de Business Developer, Responsable d'équipe EAM à Lausanne et Responsable EAM Suisse romande au sein d'UBS.

La 2ème Réunion Mensuelle de 2019 a été organisée par le Groupement en collaboration avec la **BANQUE LOMBARD ODIER & CIE SA**, Membre Partenaire du GSCGI, qui a proposé un thème d'investissement fort actuel: La Révolution Durable.

MONSIEUR YVES CHARLET *(Responsable EAM Suisse romande)* intervient en premier et décrit l'attachement historique de Lombard Odier au secteur des gérants de fortune externes depuis plus de trente années. Ce département, dirigé brillamment par **MONSIEUR LAURENT PELLET**, est subdivisé en trois segments: Suisse romande *(avec présence à Genève et Lausanne)*, Suisse allemande *(Zürich)* et l'international *(bureaux à Nassau, Singapour, Luxembourg et Londres)*. Par ailleurs, il souligne la solidité financière de la banque et, en particulier, de la campagne stratégique 'Rethink Sustainability' lancée en 2018 après plus de deux décennies de mûre réflexion. Lombard Odier affirme clairement combien les investissements doivent être un moyen pour faire face aux défis de la planète sans pour autant oublier les autres dimensions traditionnelles *(rendement et risque)*. La 'révolution durable' est une opportunité à saisir pour le bien de la planète et de l'humanité, mais également pour les investisseurs.

Le temps est venu de positionner la 'révolution durable' au cœur de toute décision d'investissement, dit **MONSIEUR BERTRAND GACON**, car la durabilité représente une transformation profonde de l'économie alimentée par cinq tendances majeures structurantes que sont la hausse de la démographie, l'épuisement des ressources naturelles, le changement climatique, la hausse des inégalités, et la révolution digitale. On assiste à une véritable refondation de l'économie et de l'entreprise, comportant certes des grands défis mais également de grandes opportunités. Il n'est plus possible de laisser l'environnement et le tissus social continuer à se dégrader sans engager sa responsabilité d'investisseur. Il est important de s'adapter, d'innover et de repenser l'approche de l'investissement.

Monsieur Bertrand Gacon, tout en relevant la mutation évidente des préférences des consommateurs, met l'accent sur la responsabilité de l'investisseur d'accompagner cette révolution durable par ses choix d'investissement. Il est important désormais de soutenir les entreprises qui manifestent une véritable prise de conscience de ces impératifs, auxquels s'ajoutent parfois des nombreuses nouvelles réglementations mises en place par la puissance

…cont'd on page 25

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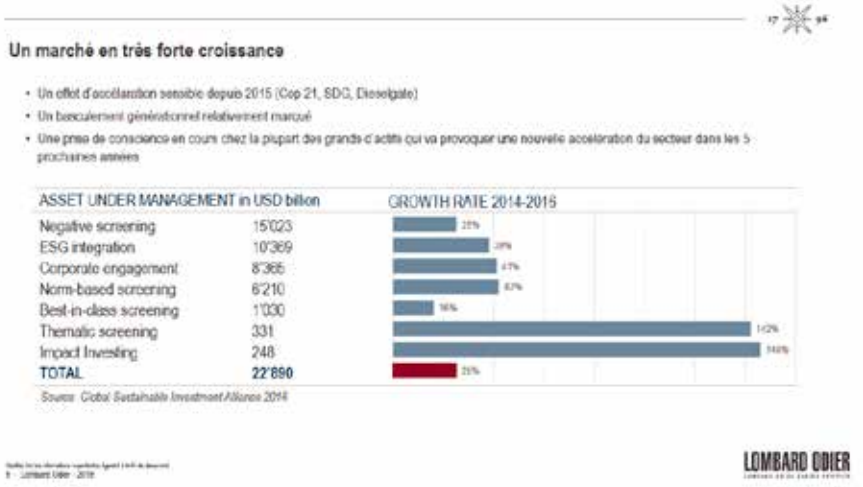
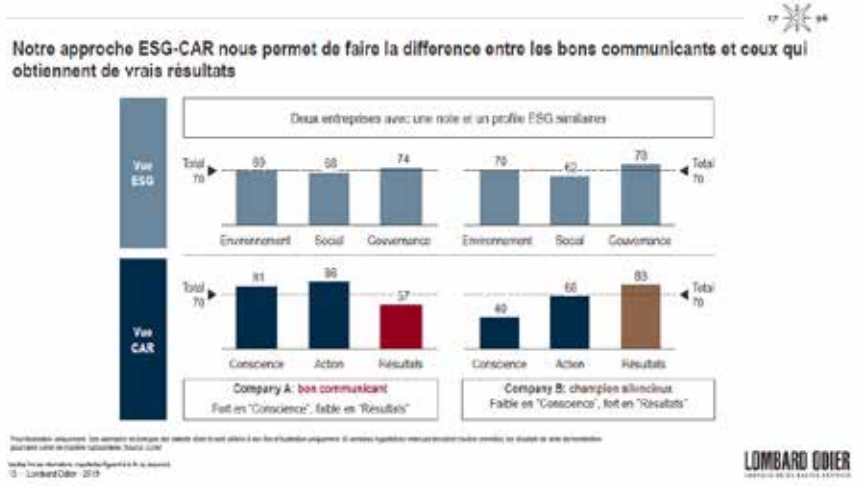
publique. Par ailleurs, déjà un quart des actifs mobiliers sont désormais gérés en intégrant des critères ESG *(environment, social, governance)*. Le mouvement est très clair et tend à s'accélérer après l'année charnière que 2015 a été *(Dieselgate, COP21 et SDGs)*.

Il s'agit d'un véritable basculement générationnel très axé vers cette prise de conscience: transformer, par des décisions d'investissement intelligentes, l'entreprise de l'intérieur avec un objectif de durabilité à long terme du modèle financier, de ses pratiques *(ESG; CAR: conscience, action et résultats)* et de son modèle d'affaires. Ce troisième sujet est sans doute le plus complexe, réclamant une analyse fondamentale de la durabilité des produits et des services de l'entreprise, de son impact global et des externalités positives ou négatives qu'elle induit. Toute controverse sévère fait courir le risque d'une correction boursière *(valeur)* à court ou moyen terme. Le temps du 'short-termism' est révolu, mais pas oublié pour autant, alors que la durabilité des résultats sur un horizon temporel plus important devient le facteur clé. La durabilité est un véritable levier de performance … *voir 2ème infographie à droite.*

Monsieur Bertrand Gacon précise que Lombard Odier a mis au cœur de sa stratégie la 'Révolution Durable' et, par conséquent, tous les produits offerts à l'investissement sont réputés conformes à cette philosophie. Ces produits d'investissement intègrent désormais – ou sont sur le point de le faire – une analyse de la durabilité des entreprises principalement basée sur les trois piliers suivants:

- La durabilité du modèle financier de l'entreprise
- La durabilité des pratiques de l'entreprise
- La durabilité du modèle d'affaires de l'entreprise





En clôture de sa présentation, il fait un aparté sur l'investissement d'impact, approche qui associe rendements financiers et impact positif pour les 'Sustainbale Development Goals' des Nations Unies (SDGs). Il illustre notamment son propos au moyen des cas concrets suivants:

- Accès à l'énergie pour les populations à faibles revenus *(SDG 7: affordable and clean energy)* … Ouganda.
- Amélioration des revenus des petits producteurs et distributeurs africains *(SDG 8: decent work and economic growth)* … Kenya.
- Reconversion de pêcheurs en producteurs de noix de Saint-Jacques *(SDG 14: life below water)* … Pérou.
- Rénovation énergétique des bâtiments *(SDG 13: climate action)* … USA.

Les orateurs de ce jour ont traité, en cour de séance, un grand nombre de questions, toutes honorées par des réponses précises et circonstanciées. C'est article n'est qu'un très modeste récit de cette belle conférence sur un thème très actuel et fort intéressant. Dès lors, il est recommandé de participer aux conférences du GSCGI.

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BOOK REVIEW

Better Regulation: Risks, Markets, Responsibility

by Institut Libéral

Better Regulation: Risks, Markets, Responsibility

Excessive and inappropriate government regulation is one of the most pressing issues of our time.

Increasing regulatory density translates into less economic freedom and choice, higher compliance costs reaching up to 10% of gross domestic product, and industry capture of regulation, leading to corporate scandals in several sectors as well as systemic crises in the financial realm.

According to the PwC Global CEO Survey, overregulation remains the top business concern globally, and in the top five perceived threats across every region surveyed.

Regulatory overreach, increasingly driven at the supranational level, may hamper economic growth prospects more than geopolitical and monetary risks going forward.

How can regulation be better reconciled with entrepreneurial freedom and consumer choice?

Would self-regulation and consultation processes akin to the Swiss practice promote more effective rules?

How can regulatory capture by special interests be prevented in order to keep competition and innovation alive to the benefit of all?

What role should personal responsibility and market reputation play in the 21st century?

This publication, which draws on the international Better Regulation Conference held on 25 September 2018 in Geneva, reassesses markets, risks, and responsibility in an environment where competitiveness becomes a priority in many countries.

Read on: www.institutliberal.ch

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ABOUT THE LIBERAL INSTITUTE

Founded in 1979, the Liberal Institute pursues as its mission the research and dissemination of the ideas of liberty. The Institute advances the Swiss tradition and culture of individual freedom, peace, openness and political diversity and furthers the development of the liberal intellectual tradition.

Private autonomy on the basis of property and contract and the free exchange of ideas and products on open markets in a non-centralized institutional environment serve as guiding principles.

As the first independent Swiss-wide think tank with an international outlook, the Liberal Institute works in four languages: German, French, Italian and English. It develops different activities from its headquarters of Geneva, Lugano, and Zurich.

At the core of the activities of the Liberal Institute lie numerous publications and a variety of public and private events. The Institute organizes special programs for students and several topic-related competence centers as well as related services. It cooperates Switzerland-wide and internationally with organizations pursuing similar goals. The Liberal Institute presents every year the Röpke Prize for Civil Society to individuals who have made significant contributions for the culture of liberty in Switzerland. At its Bern site, the Institute maintains a multilingual Library of Liberty, which is available to students, researchers, and other interested parties.

To sustain its commitment and pursue its work, the Liberal Institute needs the support of private persons or institutions who share our ideals and principles. Your involvement makes it possible for us to expand our activities and promote the foundations of a free society of responsible citizens.

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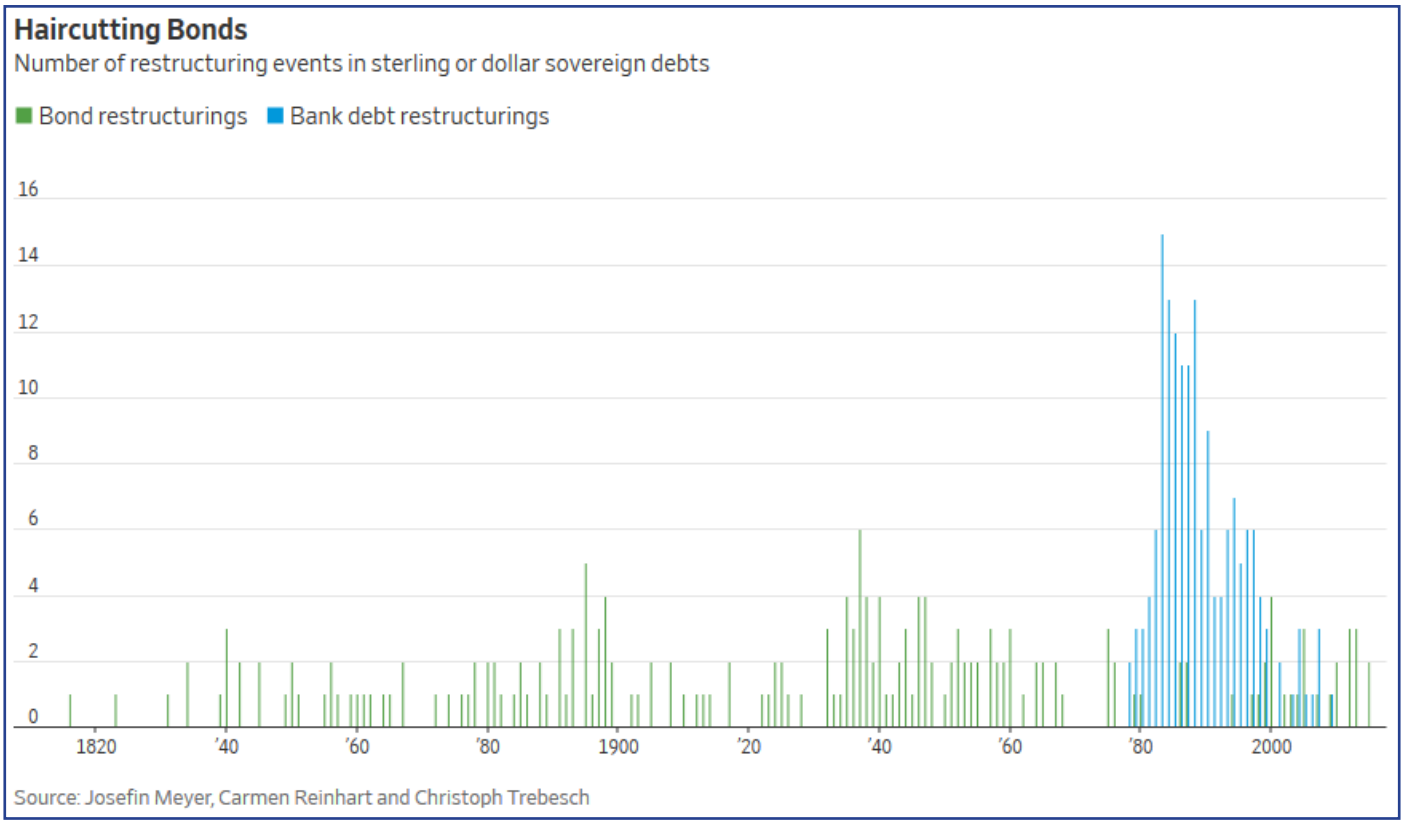
Vol. VIII - N° 84 - Mars 2019

CLIN D'OEIL À L'HISTOIRE

Defaults Hurt, But Emerging Debt Still Wins in the Long Run ... WSJ *(Feb.26, 2019)*



Emerging governments' bonds gave long-term investors surprisingly good returns—but the long term was 200 years

- Those fat coupons are vital. Research on hard-currency bonds since Britain and Prussia defeated France at the Battle of Waterloo in 1815 shows that on average the return from lending to governments issuing external debt in sterling or dollars delivered a return close to U.S. stocks, with lower volatility...
- Lending to serial defaulters was even more lucrative, because the high rates Western investors demanded more than offset the terrible repayment record of emerging-market debtors, according to a new study by Josefin Meyer and Christoph Trebesch of the Kiel Institute for the World Economy and Harvard's Carmen Reinhart...

Article & Graph: https://www.wsj.com/articles/defaults-hurt-but-emerging-debt-still-wins-in-the-long-run-11551186002

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Le prochain Forum International de la CIFA se tiendra les 6 et 7 mai 2019 à New York, avec le soutien du G77, de l'ECOSOC, de l'UNAOC, de l'UNITAR, de la CNUCED et d'autres agences onusiennes et ONG.

La participation à ce Forum est exclusivement sur invitation.

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