



Navigating cross-border financial services strategies

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Introduction

The past five years have seen some significant, and perhaps unexpected, events. The UK's departure from the European Union (EU), a global pandemic, significant geopolitical and regulatory shifts, technological advances and a renewed focus on the climate emergency have left us all pausing for breath.

This is the first in a new series of board papers that will look at the implications of these and other shifts for cross-border financial services businesses, and the questions boards may need to ask when probing their strategic operating models. The need to regularize and optimize operations and investments against a backdrop of ongoing uncertainty remains a major challenge. We start by looking at how diverging regulatory standards and digital innovation might impact location and cross-border decisions.

These papers will not offer exhaustive analysis but rather provide thoughts on some of the key issues that boards will need to consider and monitor to provide a sensible starting point for strategic planning and the challenge that should accompany it. We are grateful to all those who have taken the time to contribute to our thinking and welcome the opportunity to debate and discuss the views presented in this document.



The regulatory and political backdrop

Global developments

The changes and trends that are influencing banking and financial markets are global. They are significantly driven by new technology, science and changing societal structures and expectations linked to wealth distribution. They are also strongly influenced by the changes now necessary to respond to the cumulative impact of old technology on our environment.

Although these mega-trends are global and the responses on a jurisdictional basis are similar, they are not necessarily the same. The focus of this paper is on the current and prospective changes occurring in Europe and

the different public policy drivers and regulatory policies under development in the United Kingdom and the European Union. While we are seeing alignment between the jurisdictions in some areas, there are also areas of fragmentation that will have implications for cross border business strategies, operations and procedures.

In the European Union

The EU is focused on building up its own financial services capabilities as part of its broader drive for “strategic autonomy.” The EU Commission’s January 2021 communication on the EU’s economic and financial system set out the need to strengthen the international



role of the Euro, complete the banking union and make progress on the Capital Markets Union (CMU). In addition to this, the communication highlighted the need to review the possible introduction of a digital Euro and increasing the EU's ability to work around unilateral sanctions by other countries.

The Commission's 2020 CMU action plan aims to build a CMU to facilitate the flow of investments and savings across the EU to benefit consumers, investors and companies, regardless of where they are located. The COVID-19 crisis has created an additional impetus for the Commission to deliver on a CMU to help facilitate a green, digital, inclusive and resilient economic recovery and build its capital market capabilities, including simplifying listing rules, amending legislative frameworks for long-term investment, promoting market-making activities by banks and other financial firms and scaling-up the securitization market.

For firms that built up EU capabilities ahead of Brexit, work remains for some to meet EU authorities requirements for sufficient capital, substance and governance in location. Continued scrutiny over the role of third-country branches, whether they are conducting cross-border EU activity and whether National Competent Authorities are delivering a consistent level of EU supervision means that a degree of consistent reporting requirements is possible. The European Central Bank (ECB) is also consulting on requiring EU banks to secure further supervisory exemptions when seeking to apply full exposure limits to third countries.

In the UK

Brexit has delivered significant cross-border shifts, and its impacts are not yet fully understood. Forty-three percent (95 out of 222) of financial services firms have moved or plan to move some UK operations or staff to Europe, taking the total number of Brexit-related job moves to almost 7,600, up from 7,500 in October 2020.¹ The UK has secured only one EU financial services-related equivalence determination – a temporary decision over UK central clearing counterparties (CCPs) that runs until June 2022. The UK Chancellor's Mansion House speech in July and HM Treasury's subsequent release of a Capital Markets Review proposing significant divergence from EU standards appear to acknowledge that further equivalence determinations are not expected.

With the loss of seamless cross-border access to the EU and the politics still difficult, the UK is conducting a suite of reviews to strengthen its position as an open and global hub, supporting technology and innovation and green finance. The ambition to tailor regulation, including onshored EU regulation, to support UK attractiveness and promote UK markets is explicit. Work include reviews of the UK listings regime, prospectus regime, funds regime, payments landscape, data protection, wholesale markets, Solvency II and the anti-money laundering (AML) and counter-terrorist financing (CFT) regulatory and supervisory regime.

The HM Treasury Financial Services Future Regulatory Framework Review is also considering accountability for the powers which have been onshored from the EU and given to Financial Conduct Authority (FCA) and the Prudential Regulation Authority (PRA).

¹ EY Financial Services Brexit Tracker: UK Financial Services Firms continue to incrementally move assets and relocate jobs to the EU, but changes since the Brexit deal are small

Impact of strategic, legal and regulatory divergence. What do boards need to consider?

Financial services firms have already dealt with a huge amount of change at pace, but the reality is that there is still more to come. Although most UK firms have achieved a degree of stability within the EU (and vice versa), having changed legal/operating structures, migrated clients and addressed the challenges that COVID-19 pandemic delivered, now may be the time for boards to reflect on whether the new operations are optimal for future strategy, and this leads to a series of questions, across the front, middle and back office to consider.

The footprints that several firms are operating is the result of the carve-up of business that was historically driven in fewer markets. Those footprints or client franchises made sense before the carve-up occurred but may require right-scaling for relevance post-intra group carve-up. This may mean increasing in scale, decreasing in scale or right-sizing operational support. The footprints, and their attractiveness, may also depend on how the migrations or carve-ups happened with some franchises diluted by the approach taken and the pressure from competition.

From a legal and regulatory perspective, firms or groups operating across borders (including between the UK and the EU and vice versa) will be faced with cross-border challenges resulting from differences in the legal and regulatory regimes of the jurisdictions in which they operate. At a strategic level, these challenges can have implications for how a firm (or group) chooses to structure (or restructure) its operations in another jurisdiction, as the scale and extent of the challenge may vary depending on the different types of legal entity/licensing

arrangements. Differences in requirements or supervisory expectations between individual jurisdictions can also impact a firm's strategy and operating models.

We, therefore, start with a reminder of some of the key legal entity, strategy and operating model considerations that boards may wish to re-examine as part of a wider review. However, boards will also need to look to the future. The regulatory and political backdrop, as discussed in the previous section, points to the need to prepare for increasing regulatory divergence. In this paper we, therefore, explore six areas of regulatory focus (people, data privacy, tax, AML, sustainable finance and technology) where we are seeing, or are starting to see, divergence, and consider the challenges this divergence may create for firms, finally posing questions that boards may wish to ask to help them understand these issues. There are, of course, many other areas in which differences occur (or may occur), and we plan to look at some of these in future publications.



Legal entity, strategy and operating model considerations

Legal structure

For UK firms and for the many non-UK firms that were using the UK as their operating base in Europe, the exit of the UK from the EU has driven the establishment of new legal entities with significant additional costs. Other changes in the EU have imposed further legal entity requirements in respect of (I) large investment firms (over €30b must be a bank), (II) establishment of Intermediate Parent Undertakings (IPU) and (III) likely changes to EU third-country branching legislation that will require subsidiarization in certain circumstances.

As the full costs of operating a multi-legal entity structure across European jurisdictions become clear, there may be a need for further refinement of the legal structure. However, firms may first want to revisit their strategies and their business forecasts based on some of the key politically driven strategies emerging (e.g., Climate policy, Digital policy, including central bank digital currency (CBDC)) and the changing operating models as described in the section on sustainable finance.

Business model and strategy

Regulatory fragmentation will mean the basic operating costs are increasing for firms operating in the UK and the EU. Firms used to developing business strategies focused on customers, markets and jurisdictions will need to develop strategies to support the investment in particular legal structures. Profits and returns need to reflect the legal and regulatory costs of business. Firms may also need

to consider ways of scaling up the business revenue or amending the business model on a legal entity/jurisdictional basis to produce reasonable returns. The issues discussed in this paper are also likely to lead to inorganic considerations, such as acquiring to scale, divesting to rationalise and right-sizing support.

Operating model

Operating model requirements will be closely aligned with the legal structure and the activities conducted in the entities. As noted, EU regulators and supervisors are continuing to drive the need for appropriate substance in EU regulated entities, and this includes the management of risks originated from activities with EU clients, trading of EU products on EU markets and clearing through EU CCPs and exchanges. Firms will need to re-examine their initial Brexit responses, assess the most cost-effective ways of delivering service and consider sub-contracting or outsourcing some operations. Implementing multi-jurisdictional outsourcing will diversify location risk and reduce costs but may also create a more jurisdictional-neutral service-company environment that is less sensitive to jurisdictional regulatory or supervisory restrictions.

Cross-border legal and regulatory considerations

People

As we emerge from the pandemic, we see sustained demand for “work anywhere” to feature in future of work models in the financial services sector. EY teams ran a global work reimagined survey across all sectors that revealed 9 out of 10 employees polled want flexibility in where they work, with over 50% willing to move employers to get that flexibility.² Not all of that is cross-border of course, but changes in the UK and EU relationship have created additional regulatory hurdles around the movement of people making pandemic-induced cross-border flexible working models highly complex.

When exploring regulatory developments, there are diametrically opposed trends at play. On the one hand, we are seeing high levels of competition for international talent and government drives to attract talent to support economic recovery through the sector. On the other, immigration continues to be a politically charged issue across borders with post-pandemic levels of unemployment possibly triggering some protectionist policies. Discussion around international trade agreements continues, and this could open options on business mobility, but the key issue with trade and mobility is always usability of these agreements and practical implementation and whether that delivers something differentiating for business.

The movement of people also remains challenging due to evolving pandemic border restrictions. There is a lack of effective coordination around travel and border restrictions and thus navigating differing jurisdictional policies remains

complex. As vaccination rates increase, this is leading to a greater ability to move cross-border, but there are still tight controls for travelers and a complex risk portfolio covering personal, corporate, physical and legal risk.

In the EY work reimagined survey, 67% of employees wanted to see a return to business travel, and the top reason driving employee demand for travel is internal meetings, whereas for employers, it is customer/client face-to-face time.² At the same time employees expect more, and they are looking at role their employer plays in society. From a cross-border perspective, there is a significant opportunity to build forward on business travel, to a new model that makes more effective use of travel and with commitments to a reduced carbon footprint.

Data privacy

Moving data across borders is fraught with legal and regulatory risk. The EU has challenged the US to protect its citizens' data better, encouraging EU data-localization by the backdoor. Modern data privacy law is predicted to increase from 15% to 80% by 2024. These laws will reinforce individual rights along European lines and give wide-ranging powers to data protection authorities worldwide. Financial services and data protection regulators are cooperating to measure the impact of data privacy breaches on the financial ecosystem and customer outcomes.

But data privacy law is not designed to inhibit the growth of financial services. Rather, it is designed to enable growth in digital services while protecting individual consumers from the worst intrusions and effects. The UK Government has also launched a consultation on the UK's data protection legislation to break down barriers to innovation and encourage responsible uses of data to enable it to boost UK growth. However, there is a risk that the proposed changes

² More than half of employees globally would quit their jobs if not provided post-pandemic flexibility, EY survey finds

to the onshored General Data Protection Regulation (GDPR) might put at risk the four-year EU/UK data adequacy determination, which would have implications for EU to UK flows of personal data (including HR data).

Data privacy teams are coming to terms with their new role in the business, guiding the firm through the political and legal environment. Chief data offices are being established, embedding privacy controls into the fabric of the digital business. New technologies are being developed that enable clear oversight of privacy risk for marketing and product development teams. Financial services firms should invest in these teams and technologies to stay ahead of the privacy curve, building trust with their customers, and continuing to unlock value from data to grow their business.

AML

Although the Financial Action Task Force (FATF) has helped to create consistency in global AML and CFT regimes, it has been clear that more has been needed to achieve this. The release of the EU's new AML package, which contains ambitious new measures to strengthen the fight against money laundering and terrorist financing in the EU aims to do just that. The package contains four legislative proposals, including a Regulation establishing a single EU rulebook on AML/CTF and a Regulation establishing a new EU Anti-Money Laundering Authority (AMLA) for EU-level AML/CTF supervision.

The package, which will repeal the current 4th and 5th AML Directives, will bring significant change to the AML regime at an EU level. As the proposals are at an early stage in the legislative process, the requirements can and are likely to change. However, the underlying intentions of the European Commission are clear – an increased EU harmonization of AML standards, AML supervision, and more cooperation

across borders between Financial Intelligence Units (FIUs). Unlike the Directive's that precede it, the new AML package will overhaul the existing regime and will bring about substantial change which firms will need to add to their list of priorities. Both EU firms, and firms located outside the EU with subsidiaries or branches in a Member State, will need dedicated resources to monitor the development of the new requirements throughout the EU legislative process to understand any amendments that are agreed, and then to determine the impact on existing controls, processes, people and technology. In particular, UK firms operating in the EU will need to be mindful of a potential future divergence between EU and UK AML rules and consider how this may be best managed within their business, and what the impact would be on any group-wide policies, procedures and processes. Regulatory expectations for any EU branches or subsidiaries may also change too with the establishment of the new EU AMLA to oversee EU Regulators, and in some cases, directly supervise certain EU firms.

In the UK, HM Treasury is carrying out a review of the effectiveness of the current AML/CTF regulatory and supervisory regime to identify areas where it could be made more proportionate, as well as more effective. The review will culminate in a report to be released by June 2022, with options for potential reforms.

With fast-moving developments in both the EU and the UK, and particularly given the scale of the proposed EU AML package, firms operating cross-border will need to carry out a full impact assessment of the EU proposals, as well as any changes that are made to the UK AML and CFT regimes and Money Laundering Regulations, to inform strategic decision-making and ensure appropriate resource is devoted to ensuring readiness.

Tax

The global tax framework impacting multinational firms is evolving quickly. The latest round of the Organization for Economic Co-operation and Development (OECD) Base Erosion and Profit Shifting (BEPS) project, under the auspices of an Inclusive Framework (IF) group of over 130 countries, has reached a ground-breaking political consensus for changing the international tax system. The two “pillars” consist of, firstly, a reallocation of taxing rights, with respect to very large multinationals (albeit with a carve-out for regulated financial services) in favor of “market” jurisdictions; secondly a global minimum tax rate for multinationals that have a global annual turnover of more than €750m. More detail on these proposals is expected in October 2021, and the OECD contemplates that both these pillars will take effect in 2023.

The post-Brexit environment continues to develop, and although there is less focus on equivalence moving forward, firms need to be aware of EU regulators’ evolving expectations and the development of UK business tax policy in the context of the EU/UK Trade and Cooperation Agreement (TCA). Firms will also need to consider the degree to which a UK Government indicates a wish to diverge from developing EU business tax policy and the corporate and individual/employment tax implications of cross-border work-anywhere models.

Tax transparency remains to be a key theme, through continued implementation of Country by Country Reporting and Mandatory Disclosure Regimes (MDRs). Firms are facing increased investor scrutiny and analysis with an emphasis on environmental, social and governance (ESG) factors and diversity and inclusion (D&I). Tax is very much part of the ESG reporting landscape, and there is increasing pressure on firms to disclose their approach to tax governance and

risk management and that tax paid aligns with economic substance and activity. Furthermore, within the ESG space, there is a proliferation of green tax initiatives – both at national and EU levels that firms need to factor into their strategy, both through monitoring the impact on tax profile and the potential for new value drivers.



Sustainable finance

The fast-moving pace of regulatory developments relating to climate change and ESG and the differences in approach which are emerging between jurisdictions present significant challenges to financial services firms operating across multiple borders. In particular, banks, asset managers and insurers are challenged when understanding and interpreting regulatory expectations, designing and rolling out implementation programs to comply with new requirements, and identifying where to invest to pre-empt future changes. In addition, the actions taken by firms and the financial services industry's role in the transition to net-zero are under increasing scrutiny by regulators, shareholders and wider society.

Practical challenges for these firms, either now or in the future, include:

Defining sustainable

As new taxonomies are planned and developed across the world, including in the EU, UK, Canada, China, Japan and Singapore, firms operating in multiple jurisdictions are already experiencing confusion defining green products and what classifies as sustainable. Jurisdictional differences in taxonomies will make group-wide definitions problematic and are likely to drive different, perhaps subtly different, product-level disclosure requirements or labels, which would necessitate local, rather than group-wide, approaches. There is also a concern that what is marketed as sustainable now may, with hindsight, be found wanting, which could expose a firm to the legal risk associated with stranded assets and mis-selling claims.

In addition, The Platform on Sustainable Finance is proposing an EU Social Taxonomy and recommending the extension of the EU Taxonomy “beyond green” to include significantly harmful activities and no significant impact (NSI) activities. Certain financial services regulators in the EU, such as the De Nederlandsche Bank (DNB) are also increasing focus on the financial risks from biodiversity loss. There is a concern that, at least initially, the screening criteria measures for wider environmental risks and societal issues may, unlike climate change mitigation and adaptation, be less developed in terms of their science-based maturity or availability of datasets to support the same. Firms should, therefore, be monitoring developments closely, including understanding the extent to which their regulators and stakeholders will be focusing on the wider aspects of ESG, including diversity and inclusiveness, and effective stewardship.

Corporate reporting and ESG

Firms operating cross-border need to comply with different corporate reporting and public disclosure requirements for climate change and ESG more broadly. At the same time, firms need to monitor the development of new requirements (such as the mandatory rollout of Task Force on Climate-related Financial Disclosures (TCFD), aligned reporting in the UK and the development of the Sustainable Finance Disclosure Regulation (SFDR) in the EU), particularly the development of corporate sustainability reporting (including whether the approach uses financial materiality or, like the Corporate Sustainable Reporting Directive (CSRD) proposal, environmental and social materiality that also considers the impact of the firm) and any extra-territorial impacts.

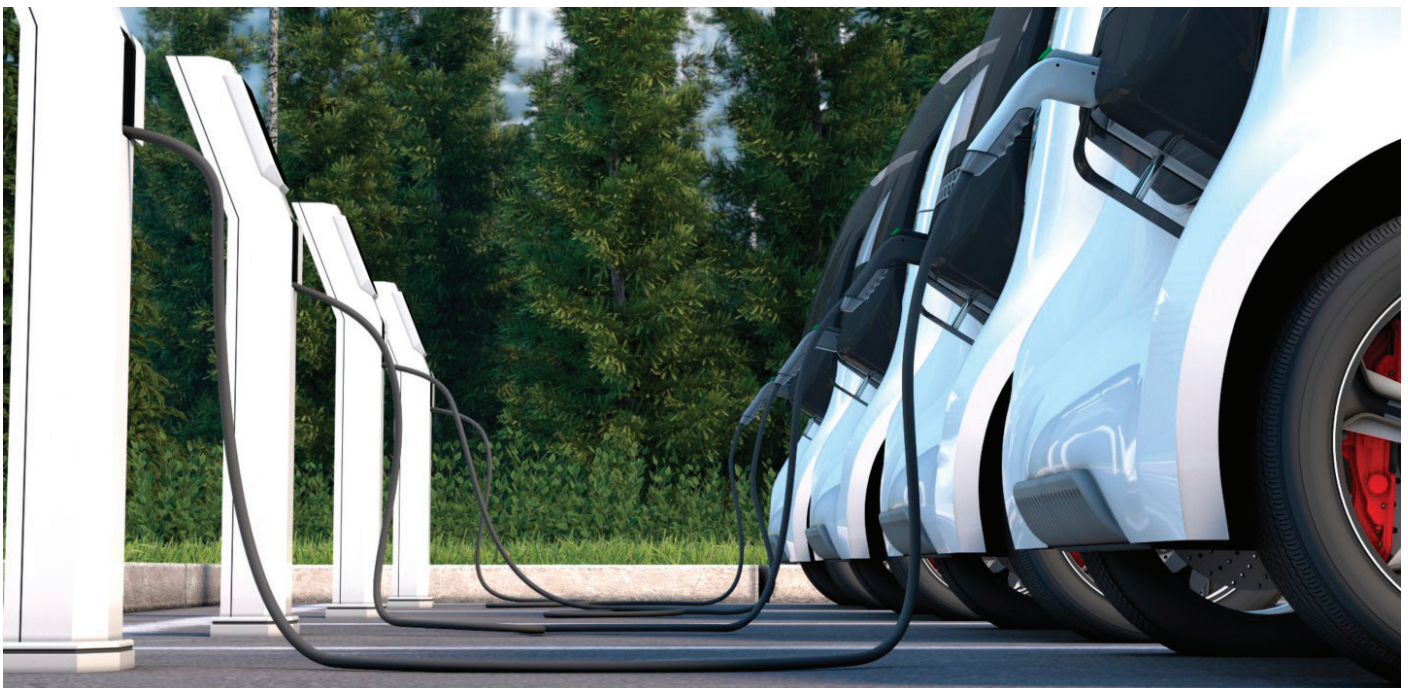
Firms will need to examine their ESG-related external reporting and disclosures holistically in order to assess the adequacy of their risk and control structures, consider any local requirements for assurance over data used, the degree to which firms may rely on third parties or suppliers and the operational resilience of the same. Boards will also need to reassure themselves that data used externally is sufficient, fit for purpose and reliable and will not create compliance or legal risks in the future.

Firms are also facing challenges with the availability of data needed for public reporting requirements in various jurisdictions. For example, greenhouse gas emission data is available from corporates in Europe but is not yet available under a consistent format across the Americas. Social data is also not always made available within global supply chains, and governance scores are not always available to hand

across all Asia Pacific jurisdictions. These insufficiencies need to be factored into firms' responses to regulatory expectations and requirements that focus on the need to "show and tell".

Diverging supervisory approaches

In addition to differences in policy approaches, firms are also seeing very different supervisory approaches from central banks when addressing the financial risks from climate change and ESG more broadly. For example, although the Network for Greening the Financial System (NGFS) plays a crucial role in driving a consistent approach and sharing experience between regulators, the Bank of England (BoE) and the ECB have taken different approaches to stress testing with the latter being more granular and challenging from a data perspective.



Technology in financial services

The rate at which technology is transforming financial services continues to accelerate, be it through servicing of products, use of crypto-assets, outsourcing to the Cloud, artificial intelligence (AI) or future technologies such as quantum computing.

Boards need to question where investments are being made, in a business and regulatory context, as well as understanding where diverging or different standards can cause complications. Some of the key issues for firms and regulators are set out below:

Payments

The EU is undertaking a review of the second Payment Services Directive (PSD2), which may result in a further step to modernize the European payment landscape. In June 2021, the EU decided to launch the investigation phase of the digital Euro project.

RegTech

The European Banking Authority (EBA) published an analysis of the current RegTech landscape in the EU during June 2021. The work highlights a number of benefits of RegTech, including enhanced risk management, better monitoring and sampling capabilities and reduced human errors. It also highlights challenges such as data (quality, security and privacy), interoperability and integration with the existing legacy systems, a lack of financial institutions' application programming interface (API) capabilities, costly and often lengthy and complex due diligence processes.

Artificial Intelligence

AI is being rapidly adopted by firms and is seen as a key technology for future economic growth. However, its reliance on quality and graded data and the risks

surrounding its ability to learn and perpetuate biases have concerned regulators in multiple jurisdictions, and as such, we expect regulation to evolve rapidly in this space.

In both the EU and the UK, firms with AI systems that process personal data are responsible for demonstrating compliance with the EU GDPR and the UK GDPR. In the UK, the UK Equality Act 2010 also protects individuals from discrimination, including discrimination generated by automated decision-making.

In the EU, the European Commission has published a proposal for a Regulation to strengthen and harmonize the rules on the use of AI. The proposal would, among other things, prohibit the use of AI systems that are "considered a clear threat to the safety, livelihoods and rights of people" and introduce strict obligations for high-risk AI systems (including AI used for credit scoring in lending decisions).³ Currently being debated in the EU Parliament, the Regulation is expected to come into force in 2022. Firms should note that the new rules would apply to AI systems outside the EU if their use affects people located in the EU.

In the UK, the Centre for Data Ethics and Innovation has been tasked by the UK Government with connecting policymakers, industry, civil society and the public to develop the right governance regime for data-driven technologies, including AI. The Alan Turing Institute was also commissioned by the FCA to explore the use of AI in financial services. Their report will support the FCA's future work on digital markets, focusing on, amongst other things, AI ethics principles and the fundamental importance of transparency. The FCA and BoE's Artificial Intelligence Public-Private Forum is also exploring, with the industry, how to support safe adoption of AI and machine learning in financial services, and whether principles, guidance, regulation or industry good practice could support this adoption.

³ Europe fit for the Digital Age: Artificial Intelligence

While regulatory expectations solidify, firms should focus on building transparency and explainability into the design and development phases of the AI lifecycle, followed by adopting vigilant supervision to continuously fine-tune, curate and monitor systems to achieve reliability in performance, identify and remediate bias and promote transparency and inclusiveness. Explanation of AI's decisioning will be critical to evidencing compliance with developing regulations, including, in the UK, the FCA's expectations around the treatment of vulnerable consumers and the proposed Consumer Duty. In addition, firms operating in multiple jurisdictions will need to monitor developing regulatory expectations and requirements around the use of AI systems in each jurisdiction in which they operate and also, crucially, in each jurisdiction in which clients who are impacted by those AI systems are located.

Cryptoassets

In a sense, borders do not exist in the digital world of cryptocurrencies, and therein lies the challenge. Regulators have to walk that fine line between keeping regulation at a sufficient level onshore so both firms and customers understand the benefit while not driving the level of regulation too high resulting in firms moving offshore and customers losing any protection they may have had. There is no doubt that regulation in this space is maturing with many regulators moving toward technology-agnostic regulation, revisiting their rules and ensuring that they remain fit for purpose as the world continues to change rapidly; reconciliations do not mean much in a blockchain world. There are various types of cryptoassets including E-money, stable-coins, non-fungible tokens, crypto currency, virtual currencies, and CBDC. Each have unique characteristics, and therefore, the precise nomenclature is still being discussed and debated as regulators grapple with their impact.

The EU's digital agenda is an ambitious strategy which covers a host of topics including cryptoassets with Markets in Crypto Assets (MiCA). Although there is always a danger of regulation stifling innovation, MiCA gives firms in the EU an opportunity to plan and invest in the cryptoasset space by giving some certainty as to the regulatory framework under which they should expect to operate. In return, those firms have the benefit of leveraging their initial investment across the large EU space. However, cryptoassets also presents an AML Risk, as discussed earlier.

In the UK, HM Treasury and the BoE are developing an approach to the regulation of crypto in addition to also working with the industry to explore the potential of a UK CBDC and identify practical challenges through the CBDC Taskforce.

As regulation continues to mature in this space, a globally joined-up approach is key if we are to address many of the problem statements that crypto-currencies and CBDCs are meant to solve. For example, international money remittance drove some of the current crypto-currency usage, which CBDCs will not solve unless they are connected. The digital world is borderless; expectations are high; the challenge is live.

Cloud

The regulatory landscape for Cloud is continuously evolving as Cloud becomes a key business enabler. The maturity of regulators' approach to the Cloud has enhanced significantly in recent years as they themselves are adopting Cloud, and facilitating knowledge-sharing with each other.

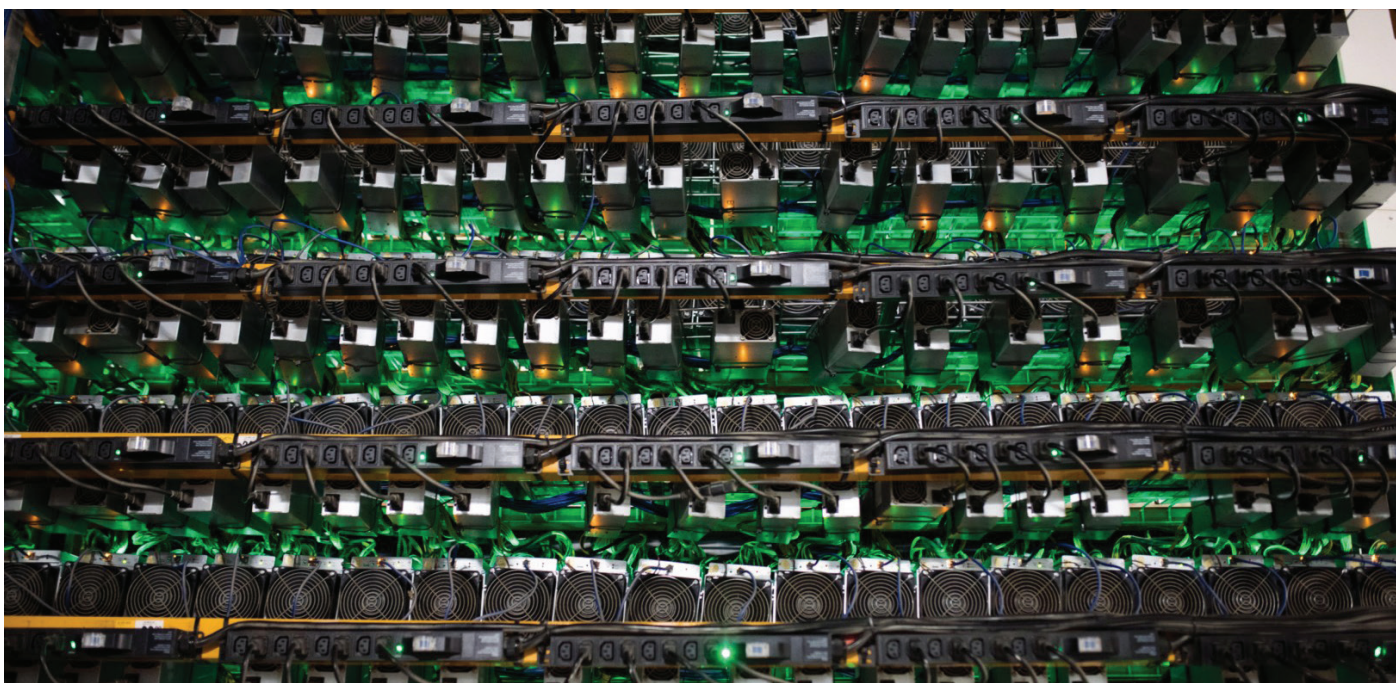
The European Securities and Markets Authority (ESMA) has issued Cloud guidelines for EU investment/securities firms and their regulators, which came into effect from July 2021. The objectives of these guidelines are to establish consistent,

efficient and effective supervisory practices within the European System of Financial Supervision (ESFS). In particular, these guidelines aim to help firms and competent authorities identify, address and monitor the risks and challenges arising from Cloud outsourcing arrangements, from making the decision to outsource, selecting a Cloud service provider and monitoring outsourced activities to providing for exit strategies.

In the UK, the FCA has issued guidance for firms outsourcing to the Cloud, mainly to help firms and service providers understand expectations where firms are using or are considering using the Cloud and other third-party IT services. Regulators are focusing on multiple areas (e.g., strategy alignment, risk management, operational

resilience) to ensure that firms effectively oversee all aspects of the life cycle of their outsourcing arrangements.

Though there are similarities in UK and EU regulations, there are differences as well. For firms operating in both the EU and UK, the challenge is to ensure compliance with both sets of regulatory requirements. Additional governance and oversight would be needed to ensure that the local regulations are addressed; for example: for countries having strict data retention laws, the choice of Cloud service provider's regions for deployment is critical. If done in the right way, compliance activities can help solidify the Cloud foundations, which can accelerate and standardise the Cloud migration journey.





Conclusion

Financial services firms operating across borders need to prepare for an increasing amount of disruption even as they evaluate their efforts to meet past changes. There is no one-size-fits-all blueprint that maps out these future changes as the precise challenges firms are likely to face will depend, amongst other things, on their legal structures, licensing arrangements, operating models and sector. Boards, therefore, need to ensure that relevant legal and regulatory developments, across all jurisdictions in which their firm operates, are being

monitored, assessed for strategic implications, and included as part of their regular management information. Although we may not yet have answers, identifying and understanding the key areas of divergence that may affect their firm is key to successful cross-border operation. The following questions may help to understand the likely impact and could enable boards to look through a different lens to support optimization of business decisions.



Questions for the board

Legal entity, strategy, and operating model

- ▶ How are you managing the global business line view versus national/regional regulations?
- ▶ How are you planning to generate sufficient return on equity in a low rate environment and where capital is balkanized?

Front office

- ▶ We maintained the client franchise, but the cost to serve is high – should we look at a client tail/offboarding project?
- ▶ We didn't manage to maintain the client franchise – others migrated better than us and we lost clients, and we now have an outsized coverage model – should we rationalize?
- ▶ Our client franchise made sense when coupled with London-based business, but now it's a bit of a hotch-potch – how do we articulate the strategy, should we sell businesses/portfolios, should we acquire?
- ▶ Are we of sufficient scale to succeed?

Middle office

- ▶ Did we build the best set of skills/capabilities that we could have done?
- ▶ Have we got the right balance of local bespoke operations and centers of excellence?
- ▶ Are we able to transform the operating model? Are we able to enjoy the benefits of group programs?

Back office

- ▶ Are we getting the right deal with parent for internal services?
- ▶ Can we be a better buyer of group services?
- ▶ Could we go further with our material outsourcing to parent/group? How can we demonstrate appropriate control locally?

Cross border legal and regulatory

People

- ▶ Are all your people functions (HR, reward, mobility, immigration, talent and recruitment, legal etc.) properly integrated to manage this highly complex puzzle in a cohesive manner?

Data

- ▶ How do you ensure that cross-border data challenges do not hold back your business?
- ▶ Are there any risks to transferring data in your current or future operating models?

AML

- ▶ Has your firm allocated sufficient resources to monitor and understand the changes being made to both the EU and UK AML and CFT regimes, as well as to determine the implications these may have on your firm/group?
- ▶ How is the Board being regularly briefed on the changes and implications?

Tax

- ▶ Has your corporate tax strategy evolved to take account of the rapidly changing international regulatory and tax landscape?
- ▶ How is your corporate tax strategy addressing the challenging expectations of your external stakeholders around tax transparency and ESG more broadly?

Sustainable finance

- ▶ How are you keeping up-to-speed on the development of taxonomies in the jurisdictions in which you operate?
- ▶ Have you carried out an exercise to identify the differences in taxonomies and what they may mean for product governance policies and corporate reporting and other public disclosure requirements?
- ▶ What are you doing as a firm to identify and mitigate the financial risks from biodiversity loss in your mortgage, lending, insurance underwriting and investment portfolios?
- ▶ How will firms meet regulatory expectations when reporting their green asset/investment ratios or their sustainable product disclosures if the underlying data is not available?
- ▶ How will firms manage to bridge the differences in methodologies between source data providers and manage any potential for interpretation' risks?
- ▶ How will firms manage source data accuracy and operational resilience issues, particularly when depending upon non-traditional sources of information?

- ▶ How will financial entities address the issue of who assumes liability for what?
- ▶ Do you understand your regulator's agenda for the year-ahead and where their expectations may differ? For example – what are the different data needs for stress testing?

Technology in financial services

- ▶ How are you responding to innovation in payments and the rapid innovation in the area of digital currencies?
- ▶ How are you embracing the benefits of RegTech and working to overcome challenges to its adoption?
- ▶ Is your AI decisioning sufficiently transparent to enable you to trace back (for example, to demonstrate compliance with legal or regulatory requirements or for explainability to consumers) why a specific decision was made, what data points were used and what rules applied?
- ▶ If distributed ledgers and decentralized finance products/services are by definition distributed and without a nexus, how do you consider which local laws apply and consider compliance with them?
- ▶ Have you set up Cloud foundations and governance to ensure compliance with the regulations?

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