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# ENHANCING THE EU- SINGAPORE REGULATORY DIALOGUE AND INVESTMENT CLIMATE



Knowledge partner to the EuroCham Financial Services Committee

## Context

The Financial Services committee (FSC) of the European Chamber of Commerce in Singapore (EuroCham) represents the European financial services industry in Singapore. EuroCham engages with market participants, regulatory authorities and other stakeholders on important issues concerning the financial services industry.

Singapore is an important location for European banks and financial services companies, not only because of its facilitative business climate, effective regulatory environment, its pool of highly skilled finance professionals, and its status as an international financial hub and gateway to Southeast Asia and the wider Asia Pacific region. The signed EU-Singapore Free Trade Agreement is a testament to the strengthening economic cooperation between Singapore and the European Union (EU).

In this context, the members of the EuroCham FSC underline the importance of increased regulatory cooperation, especially given the increasingly connected European and Asia-Pacific markets and fully support strengthening cross-border collaboration. The EuroCham FSC endorses the objectives of the EU-Asia Pacific Financial Services Forum and believes it is important to improving mutual understanding; the outcomes will benefit market participants operating in both jurisdictions and their contribution to the local implementation of global regulatory standards.

The purpose of this paper is to contribute and participate in the regulatory dialogue between the EU and Asia-Pacific financial services supervisors. In this paper we share our observations and insights gained by interviews with institutions operating in both Singapore and the EU on current and future regulatory developments, as well as seek to address issues and challenges that have arisen.

The methodology for this position paper was a combination of statistics, policy papers, as well as facts and insights from interviews of experts from European banks operating in Singapore. All views and statements expressed in this position paper are based on reports, market observations and the knowledge and expertise of the members of the EuroCham Financial Services committee. In addition, interviews were conducted with industry stakeholders.

## Key recommendations

- EuroCham FSC encourages the Singapore and European authorities to actively monitor, understand and act on the implications of the extra-territorial impacts of EU regulations. Many EU financial institutions (“EU firms”) have their base in Singapore. The services these EU firms provide to both local and EU clients generates value both in the host and home economies. The ongoing aggregate effects of EU directives and regulations on these firms’ access to markets, competitiveness, risks and costs profiles should not result in an EU firm being unable to provide services, under the best possible terms and conditions, to local and EU clients due to unnecessary loss of competitiveness and access to markets vis-a-vis their competitors.
- As financial markets become increasingly inter-connected, regulations in one jurisdiction may inadvertently impact or contradict regulations in another jurisdiction. We believe the path forward is through closer and more formalized regulatory dialogue to facilitate a level playing field while recognizing the applicable regulations in each other’s jurisdictions as equivalent. This will also encourage a more harmonised implementation the FSB recommendations following the G20 Financial Regulatory Reforms, an example being the Legal Entity Identifier (LEI) requirement.
- EuroCham FSC suggests a structured, pro-active and ongoing dialogue between the European Commission, European Securities and Markets Authority (ESMA), the European Central Bank (ECB), the MAS and the Singapore authorities to discuss the application and effects of EU’s directives and regulations, by re-assessing equivalence with EU legislations to allow for recognition of a local jurisdiction’s framework and supervisory authority or through a jurisdictional equivalence process, beyond what is currently envisaged, that will ensure EU firms’ market access and competitiveness.
- One option to consider is to expose select non-EU regulatory authorities early in the EU rule making process to assess the potential impacts of EU legislation on the non-EU markets and market participants prior to the EU commission proposals being published. The EuroCham FSC believes this will result in a more balanced outcome for both the EU and Asia as well as promoting a more in-depth mutual understanding of jurisdictions and markets. Further, pro-active and on-going dialogue will provide a forum for EU and Asian regulators to discuss and assess the impacts of EU legislation on non-EU markets and market participants.
- EuroCham FSC believes facilitating and regulating the technological transformation in the financial markets, such as cyber security, data security and cross-border data flows, outsourcing and FinTech, requires not only a collaborative response from governments, regulators and industry but also a high-degree of consistency in key supervisory areas like privacy and know-your-customer (KYC). A consistent approach or a global standard towards such key areas across national regulatory frameworks can mitigate conflicting guidance, reduce duplication while promoting a more inclusive and competitive level-playing field.

## **1. The EU should consider reassessing European regulation applied in Singapore and wider Asia through regulatory dialogue to facilitate cross-border business while safeguarding the financial markets**

### **1.1 Background**

The implementation of the G20 financial reform agenda is substantial, especially when taken cumulatively and implemented in multiple jurisdictions. For the G20 financial reforms to work across multiple jurisdictions, especially in an inter-connected global financial market with cross-border flows, it is important that regulations are harmonised and do not result in duplicative or contradictory requirements. As financial markets become increasingly inter-connected, the regulations in one jurisdiction may have an impact in another jurisdiction. The members of the EuroCham FSC fully support the implementation of the G20 reforms to create robust financial markets while facilitating economic growth.

When the United States (US) and the EU implemented the G20 financial reforms, some of the regulations were extra-territorial in nature, resulting in contradictory or duplicative or equivalence requirements for cross-border transactions. The consequences of regulations being extraterritorial in nature are not specific to the US or EU alone and are understandably meant to protect the local financial market. Unfortunately, these regulations have resulted in the unintended consequence of being extra-territorial in nature as a result of the inter-connectedness of the financial markets.

When assessing the current EU financial services regulatory landscape, European banks in Asia Pacific and Asian financial institutions face a plethora of regulations with new legislation coming into force in 2018; namely Markets in Financial Instruments Directive (MiFID), Packaged Retail and Insurance-based Investment Products (PRIIPs) Regulation, EU Benchmarks Regulation (EU BMR) and implementation of Capital Requirements Directive IV (CRD IV). Meanwhile, the European Market Infrastructure Regulation (EMIR) is currently under review.

Where there are cross-border impacts, EuroCham FSC believes there is a strong need for regulators to work together to ensure there is no duplicative or conflicting requirements that may result in a market disruption. This is reflected in the implementation of the non-centrally cleared margin requirements which is a good example of globally coordination, harmonisation and recognition of a home jurisdiction's regulations to date.

### **1.2 Main issues & challenges**

EU-based financial companies active in Singapore and/or local companies involved in dealing with EU-based counterparties have raised some practical questions, for example on the LEI registration, on how to implement measures enacted in both jurisdictions, as well as the impact of EU legislation on their day-to-day business.

EU financial services legislation provides for a "third country regime", which allows non-EU firms to offer services on a cross-border basis across the EU, subject to a registration requirement with EU regulatory bodies. Registration can be stringent on the APAC firm being licensed in its home country and the legal and supervisory framework in the home country will have to be determined "*equivalent*" by the EU. To encourage economic growth, a simplified and outcomes-based equivalence assessment process should be considered.

It should also be noted that the EMIR equivalence assessments for third country central counterparties (CCPs) and developing cooperation arrangements has taught us that such equivalence decisions may not be quickly forthcoming. In fact, the volume of equivalence assessments will increase rather than decrease simply due to the requirements under the EU BMR and MiFID II.

In order to prevent market disruption, facilitate cross-border flows, encourage economic growth and avoid similar concerns with the EMIR equivalence assessments, for other equivalence determinations such as 3<sup>rd</sup> country trading obligations; "similar" trading venues and non-EU benchmarks, the equivalence process must be simplified and outcomes-based rather than rules-based to ensure equivalence determinations are forthcoming before the respective EU legislation comes into force. In addition, a proportionate equivalence process based on systemic impact to the EU financial markets could be considered.

Among other EU regulations with extraterritorial effect that came up in discussions, EuroCham FSC members raised particular concerns regarding MiFID II, EMIR, EU BMR as well as Basel III & IV.

### 1.2.1 MiFID II / EMIR / Benchmarks

On 03 January 2018 the revised Markets in Financial Instruments regime (MiFID II) will come into force and will impact market participants in Asia Pacific, either directly for EU-based institutions or indirectly when firms in Asia Pacific interact with EU firms. Although the majority of the MiFID II implementing measures are now being published, a substantial number of Asia Pacific based firms do not seem to be fully aware of the practical MiFID II implications and it seems unlikely that they will be ready for the MiFID II regime ahead of the 03 January deadline.

On 22 September, based on data from the International Swaps and Derivatives Associations (ISDA), Bloomberg reported that only less than 5% of the 530,000 LEI issued globally has been issued for Asia. ISDA estimates that tens of thousands of Asian organisations need to obtain LEIs ahead of the 03 January 2018 implementation deadline; if they are to continue trading with European financial entities. We appreciate ESMA's briefing note<sup>1</sup> on LEI to raise the industry's awareness for a LEI ahead of MiFID II coming into force. However, the take-up of LEI in many jurisdictions is low due to the perception that the mandatory use of LEI is an EU/ US requirement and non-EU entities are not impacted by these requirements. The lack of MiFID II preparedness is in line with feedback that EuroCham FSC members have received from clients and other stakeholders.

A similar principle applies to EMIR margining rules. The current margining rules are generally considered workable and are well coordinated. However, EuroCham FSC believes the upcoming revision of EMIR after 3-year implementation would provide for a suitable opportunity to discuss margining standards, in particular the product scope subject to variation margin under the EU margin requirements. The Review should seek alignment with the margin rules in other jurisdictions to ensure a level playing field, i.e. the EU imposed Variation Margin (VM) for FX products whereas the United States (U.S.) and Asia Pacific regulators have not.

Key concern of the EU FSC members relate to EMIR and MiFID II transaction reporting. While an entity based in Asia will have no obligation under MiFID II, an EU counterparty will be in scope and therefore required to collect data points to comply with the MiFID II reporting rules. This could require significant changes in the systems and processes of the Asian entity. In addition, EuroCham FSC would like to highlight a key challenge faced by EuroCham FSC members for their MAS reporting requirements. There are two different reporting requirements under MAS, the MAS 610 reporting and the MAS transaction reporting requirements which requires slightly different data. As a result, EuroCham FSC members need to ensure data is accurate for both these reports which increases the amount of reporting required; and increases operational risks and compliance costs.

MAS may wish to consider a single set of reporting requirements to meet the MAS reporting obligations. We believe better coordination and information sharing between the home regulator (EU) and the Singapore regulator would streamline reporting (IT) processes and avoid any duplication in compliance efforts and reduce costs. Transaction reporting requirements should not be duplicative or allow the use "substitute compliance" to reduce cost and operational risks, where possible.

Under the EU BMR a non-EU benchmark that is used by an EU supervised entity needs to be recognised, endorsed or deemed equivalent by the EU authorities. We are encouraged by the steps taken to provide different methods for a non-EU benchmark administrator to seek EU approval. However, the recognition process requires a non-EU administrator to have a legal representative in the EU while the endorsement process requires an administrator located in the EU who is authorised or registered with a clear and well-defined role within the control or accountability framework of a 3<sup>rd</sup> country administrator. For a non-EU administrator, it is unlikely they would have a legal representative in the EU or an entity authorised or registered in the EU with a role in the framework of a 3<sup>rd</sup> country administrator. This will mean that the most likely path available for 3<sup>rd</sup> country administrators would be to seek equivalence.

EuroCham FSC received similar feedback regarding the implementation of International Financial Reporting Standards (IFRS). EuroCham FSC is encouraged to see regulatory alignment in harmonising IFRS globally and would suggest to all supervisors involved making sure a similar level of alignment is taking place on the implementation level.

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<sup>1</sup> [https://www.esma.europa.eu/sites/default/files/library/esma70-145-238\\_lei\\_briefing\\_note.pdf](https://www.esma.europa.eu/sites/default/files/library/esma70-145-238_lei_briefing_note.pdf)

### 1.2.2 Basel III & IV

The EuroCham FSC generally believes banks are well positioned to meet the Basel III minimal requirements ahead of implementation in 2019. Many Asian economies, including Singapore, have existing capital regulations more stringent than Basel III requirements. In addition, a number of Asian regulators implemented liquidity requirements prior to the Basel NSRF rules<sup>2</sup>. Asian economies, including Singapore, have had prudential liquidity standards in place prior to Basel III. Most of these economies are following the introduction date and phase-in arrangements for the NSFR rules.

With the current implementation of the Basel III, the impact of the Basel III requirements on the sector will become clearer over the coming months. In a recent speech titled "*Financial Regulation: The Way Forward*" - Mr Ravi Menon (Managing Director, MAS) stated: "*We need to be mindful of proportionality when applying international regulatory standards. Subjecting banks of different sizes, different scope of activity and different degrees of internationalisation, to the same rules is not appropriate.*"

EuroCham FSC encourages regulators to conduct in-depth research on any potential unintended consequences, particularly for non-systemically important local financial institutions and foreign financial institutions located in that jurisdiction where it may be appropriate to apply proportionate rules. This must be balanced with the need to maintain the Basel international standards, developed to ensure a minimum set of standards, are adopted by all jurisdictions. If each jurisdiction only adopts a portion of the Basel standards, it will no longer be an international standard and the fundamental foundation of the Basel standard will be eroded. We support the proportionate roll out of the NSFR in Asia such as under MAS NSFR requirements, the NSFR standard applies to D-SIBs in Singapore, where foreign headquartered D-SIBs shall maintain a NSFR ratio of over 50%.

EuroCham FSC does welcome the flexibility on timetables on the implementation of the Basel standards, in particular, as certain aspects of the Basel standards have yet to be finalised at the BCBS level. Although there is an internationally-agreed Basel timetable, certain jurisdictions have indicated a delay in implementation due to outstanding clarifications at the BCBS level. We encourage all jurisdictions to align the implementation dates of the various components of the Basel standards to ensure a level playing field on a global level. For example: the timeline for NSFR has been delayed in the US and EU till 2020 while several Asian regulators have indicated a go-live date of 1 January 2018.

### 1.3 Recommendations

- The impact of extra territorial legislation resulting in contradictory or duplicative or equivalence requirements can be mitigated through co-operation, coordination and dialogue amongst regulators. This is reflected in the implementation of the non-centrally cleared margin requirements which is a good example of globally coordination, harmonisation and recognition of a home jurisdiction's regulations to date.
- The EU should be more conscious of the impact on non-EU markets and the market participants would benefit from better regulatory coordination when drafting new legislation. Improved coordination in implementation and monitoring of compliance will ultimately lead to more stable and accessible financial markets and a level playing field.
- The volume of equivalence assessments will increase rather than decrease simply due to the requirements under the EU BMR and MiFID II. In order to prevent market disruption, facilitate cross-border flows and encourage economic growth, the equivalence process must be simplified and outcomes-based or a proportionate equivalence process allowed based on systemic impact to the EU financial markets.
- EuroCham FSC encourages regulators to conduct in-depth research on any potential unintended consequences, particularly for non-systemically important local financial institutions and foreign financial institutions located in that jurisdiction where it may be appropriate to apply proportionate rules.

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<sup>2</sup><http://www.mas.gov.sg/~media/MAS/News%20and%20Publications/Consultation%20Papers/Draft%20NSFR%20Notice%2016%20Nov%202016.pdf>

## 2. The quest to become a Smart Financial Centre

### 2.1 Background

On top of the ongoing implementation of financial reforms, banks and financial institutions are increasingly positioning themselves to embrace technological innovation impacting the financial services industry, including the challenges around cybersecurity. Financial technology (FinTech) is transforming financial services in an unprecedented way; blockchain or distributed ledgers are being tested for a wide variety of financial operations; digital payments are becoming increasingly widespread, and perhaps the biggest potential is being seen in what is referred to as Big Data.

Singapore is taking a leading role to become a global FinTech hub, with the Smart Financial Centre vision acting as the key driver. Earlier this year the Committee on the Future Economy (CFE) in Singapore proposed a comprehensive set of recommendations to guide Singapore's economic strategy for the next 5 to 10 years, with data analytics and cyber security playing a key role. Similar initiatives are on the way in the EU. European Commission President Jean-Claude Juncker in the latest State of the Union highlighted cyber security as a key priority for 2018, while EU's new data protection law is going to have a great impact on companies worldwide. Furthermore, the EU Commission launched an internal Financial Technology Taskforce (FTTF) which aims to develop strategies to address the challenges FinTech may pose.

### 2.2 Main issues & challenges

The EuroCham FSC underlines CFE's observation that there are great opportunities in Singapore for companies to innovate and deepen technological capabilities to stay relevant to the world in the upcoming decades. The EuroCham FSC members are well positioned to implement the CFE strategies<sup>3</sup> and help Singapore to realise its Smart Financial Centre vision. However, it is fundamentally important that a regulatory level playing field is implemented to ensure fair competition and consumer protection. New market entrants should be required to comply with the same standards if they provide the same services. Uneven application of regulatory requirements, particularly on data processing and protection, do not contribute to fair competition or enhance consumer protection.

The EuroCham FSC members welcome the recent consultation on data privacy and cybersecurity; they, together with the Outsourcing Guidelines, form the cornerstones of the Smart Financial Centre. While the data privacy requirements are largely in line with global standards, a part of the contributors of this white paper believes that the current Outsourcing Guidelines and audits are onerous, particularly for branches of foreign financial institutions. A more outcome driven approach and flexibility on implementation of outsourcing guidelines on (cross border) group-level would be desirable.

#### 2.2.1 Cybersecurity

Cybersecurity measures are not only important to maintain system resilience but equally to address the growing privacy concerns underpinning consumer confidence in new technologies and innovative services. While we support the need for increased cybersecurity measures to protect the domestic markets, such measures should not include automatic on-shoring requirements for technology systems or domestic requirements to isolate systems in a particular jurisdiction. The Financial Stability Institute recently published the "*Regulatory Approaches to Enhance Banks' Cyber-security Frameworks*", which notes that the nature of cyber-crime will require a collaborative response from governments, regulators and industry but also a high-degree of alignment across national regulatory frameworks to avoid any conflicting guidance.<sup>4</sup>

This is echoed by the Singapore Minister for Communications and Information, Dr Yaacob Ibrahim, in a recent speech when he called for strengthening international partnerships as a coherent, coordinated global effort is key to a trusted

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<sup>3</sup> *Deepen and diversify our international connections, and continue to support free and open markets; support the acquisition and utilization of deep skills; to strengthen enterprise capabilities so that Singapore companies are innovative and competitive and to develop strong digital capabilities and support the pervasive adoption of digital technologies across all sectors of the economy.*

<sup>4</sup> Financial Stability Institute, FSI Insights on policy implementation No 2, *Regulatory Approaches to Enhance Banks' Cyber-security Frameworks*, August 2017, <http://www.bis.org/fsi/publ/insights2.pdf>

and resilient cyber environment. We support the enhanced international partnerships; cooperation and coordination amongst jurisdictions as a path towards building a global resilient environment.

### 2.2.2 FinTech

We endorse the MAS vision on FinTech that regulation must not front-run innovation and that introducing regulation prematurely may stifle innovation and potentially derail the adoption of useful technology. EuroCham FSC would like to reiterate the importance of assessing the risks posed by new technologies to critical infrastructure and the incentives in risk mitigation aspects, such as supervision. Members of the EuroCham FSC believe that the MAS regulatory sandbox approach for financial institutions and new FinTech players to test their innovations is adequate, and allows experimentation to take place in a safe environment whilst maintaining a level playing field.

Furthermore, EuroCham FSC Members are encouraged to see that MAS' approach focusses on activity-based regulation as opposed to entity-based regulation in order to maintain a level playing field; regulating electronic payments and the offering of digital tokens being a good example of this approach. However, as noted above, it is vital that a regulatory level playing field is implemented to ensure fair competition and consumer protection. It is important to note that banks are investing substantial amounts of money in AML/KYC and risk mitigation. As the European Commission is currently drafting FinTech regulation, EuroCham FSC would welcome the EU taking a similar approach when it comes to introducing a regulatory sandbox, while maintaining a fair and level playing field and minimising the potential risks to the market.

### 2.3 Recommendations

- EuroCham FSC Members are encouraged to see that MAS' approach focusses on activity-based regulation as opposed to entity-based regulation to maintain a level playing field. It is important that a regulatory level playing field is implemented to ensure fair competition and consumer protection. EuroCham FSC would like to reiterate the importance of assessing the risks posed by new technologies to critical infrastructure and the incentives in risk mitigation aspects, such as supervision.
- While we support the need for increased cybersecurity measures to protect the domestic markets, such measures should not include automatic on-shoring requirements for technology systems or domestic requirements to isolate systems in a particular jurisdiction.
- EuroCham FSC encourages the pan-European Agency for Network and Information Security (ENISA) or the new European Cyber Security Agency to share knowledge and best practises with their Singaporean counterparts at the Cyber Security Agency (CSA).

## 3. Identifying opportunities for the financial sector in sustainable finance

### 3.1 Background

Green finance can be understood as the financing of investments that provide environmental benefits in the broader context of environmentally sustainable development, and will require tens of trillions of dollars in the coming decade.<sup>5</sup> In Singapore, the Singapore Exchange (SGX) launched 'comply or explain' reporting rules covering environmental policies and performance in June 2016 that will cover all listed companies by 2018; and the MAS supported the launch of an industry-led initiative to develop a vision for green finance in Singapore. EU law also requires large companies to disclose certain information on the way they operate and manage social and environmental challenges (Directive 2014/95/EU).

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<sup>5</sup> [http://unepinquiry.org/wp-content/uploads/2017/07/Green\\_Finance\\_Progress\\_Report\\_2017.pdf](http://unepinquiry.org/wp-content/uploads/2017/07/Green_Finance_Progress_Report_2017.pdf)

In November 2017, ASEAN Green Bond Standards (AGBS) were launched. The AGBS were developed based on ICMA's Green Bond Principles (GBP) tailored to meet the needs and commitment of ASEAN. The AGBS label is to be used only for issuers and projects in the region and specifically excludes fossil fuel power generation projects.

On 09 September 2016, the EuroCham FSC brought together world experts from the financial industry but also from the public sector including the World Bank, the Asian Development Bank and the International Finance Corporation to discuss the complex topic of 'Green Finance'. The seminar, titled '*Climate Change Finance: How can Green Projects be Better Financed Today in Asia?*<sup>6</sup>', discussed how businesses can alter their growth trajectories towards one that takes into consideration environmentally sustainable practices. Moreover, to what extent will this compromise long term profitability, and are there such 'green financing' opportunities for businesses in Asia? Speakers at the conference highlighted the rapid growth of the global green bond market, reaching more than US\$80bn in 2016. In Asia, the green bond market has also started to take off.

### *Green Bonds*

EuroCham FSC believes there is large potential in Singapore and the region to develop a green bond market and agrees with MAS' statement that the presence of a green bond market will add to the breadth and depth of Singapore's debt market, providing investors with more investment opportunities, and supporting the growth of ancillary services as well. In this respect, the EuroCham FSC was very pleased to see the recent Green bond issues by CDL and DBS. We hope this is only the start of more green bonds from Singapore issuers.

### Green finance and the FTA

From an Asian perspective, EuroCham's FSC believes that beyond green bond, green finance in general is becoming more important and getting more attention: this is an area where European banks could and should contribute substantially to economies in Asia.

Besides, EuroCham FSC welcomes the statements by European Commission vice-chairman Dombrovskis that "*the EU should lead the way in green finance*". Members of the EuroCham FSC are looking forward to the Commission proposals around disclosing green fiduciary duties, setting-up an EU label and a cut in capital requirements for green bonds. Also, EuroCham FSC understands the future FTA agreement between the EU and Singapore should include environmental clauses. EuroCham FSC supports that and intends to participate in the flagship event planned by EuroCham through showcasing capabilities of its members in contributing to Singapore's ambitions in sustainable finance.

### **3.2 Conclusion:**

- EuroCham FSC is looking forward to the EU Commission proposals around green finance and believes European banks can play an important role in this area in Singapore and the region.

#### **ABOUT EUROCHAM**

The European Chamber of Commerce in Singapore, also known as EuroCham, represents the common interests of the European business community in promoting freer trade and investments between Europe and Singapore. EuroCham is a non-profit, fee-based membership association comprising corporate members and the various European National Business Groups in Singapore. EuroCham provides an excellent platform for advocacy and networking for all members, and as a communication channel among Singaporean and European political and economic circles. EuroCham is the sole European representative at the Singapore Business Federation (SBF) Council.

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<sup>6</sup> <http://eurocham.org.sg/events/event-detail/?id=365>