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Opalesque Roundtable Series '18

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Editor's Note

According to the IOSCO hedge fund survey, Cayman is the domicile of choice owning 53% of the global hedge fund industry. How is CIMA, undisputedly the world's leading hedge fund regulator, dealing with funds that have identified their investment strategy as being related to cryptocurrencies?

The regulator is foremost concerned about the AML/CFT aspect where the focus is all around establishing the actual owner or investor. Says CIMA's Heather Smith: *"Cryptocurrencies are similar to bearer shares in our view in that whoever holds it owns it. There is of course the distributed ledger technology, whereby it is said that all transactions using this technology can be tracked and ownership all the way through the process established. However, there are still some questions remaining, even when such technology and cryptocurrencies exchanges are involved – what happens as persons move in and out of these exchanges? Is due diligence undertaken each time?"*

"There is also the issue of valuation. We have all seen the wild fluctuations in the value of these cryptocurrencies. Are valuation agents equipped to accurately value such products?"

CIMA accepts that the cryptocurrencies, ICOs and FinTech are generally here to stay, and so this Roundtable also covers CIMA's position and questions around ICOs and RegTech. The Opalesque 2018 Cayman Roundtable took place in Georgetown, Cayman Islands, with:

1. Heather Smith, Head of Investments & Securities Division, Cayman Islands Monetary Authority (CIMA)
2. Lucy Frew, Partner, Head of Regulatory & Risk Advisory, Walkers
3. Leanne Golding, Senior Vice President, The Harbour Trust Co. Ltd.

The group also discussed:

- What does CIMA expect from financial service providers in a risk based approach to AML/CFT? Why is a risk-based approach to supervision and enforcement achievable in the Cayman Islands in a way which is simply not possible for larger jurisdictions? (page 5-7)
- What is SupTech? (page 8)
- How is custody of assets for a cryptocurrency fund different to a standard fund? (page 10)
- Crypto funds, ICOs and Governance: The role for independent directors (page 13)
- What challenges can regulators have with emerging manager platforms? (page 15-19). Fee pressure and expense caps (page 18)
- General Data Protection Regulation: What everyone needs to know (page 19-21)
- Cybersecurity: When a regulator (SEC) gets hacked, you will too (page 22-23). What is the key benefit of cyber insurance? (page 23)
- New governance on LP and LLC structures (page 24)

Enjoy!

Matthias Knab
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Participant Profiles

(LEFT TO RIGHT):

Matthias Knab, Heather Smith, Leanne Golding, Lucy Frew.

Cover photo: A flight from Quito, Ecuador to Miami, Florida..., Grand Cayman Islands© Murray Foubister Follow, under Creative Commons license

Introduction

Heather Smith
Cayman Islands Monetary Authority

My name is Heather Smith. I work with the Cayman Islands Monetary Authority ("CIMA"), which is the financial services regulator in the Cayman Islands. I am the Head of the Investments Supervision and Securities Supervision Divisions. I have been a regulator for over 20 years and during this time have seen a lot of changes in the industry. I am looking forward to our discussion this morning to talk some more about some of these changes and their potential impact on the future growth and evolution of the funds and securities sectors in Cayman.

Leanne Golding
Harbour

My name is Leanne Golding. I am a Senior Vice President at the Harbour Trust Company [either "Harbour" or "The Harbour Trust Co. Ltd."]. I am responsible for providing fiduciary services to Harbour's fund clients, including serving as a director to alternative investment funds.

Harbour has been in the business of providing fiduciary services for over 20 years now. I have been working in Cayman since 1996 and have been able to see first hand the evolution of the industry and the tremendous growth, both in terms of size and then the regulatory environment as well.

Prior joining Harbour in 2009, I was with Goldman Sachs working on the fund administration side of the industry.

Lucy Frew
Walkers

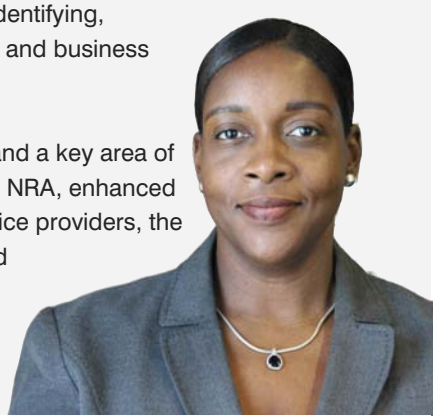
My name is Lucy Frew. I am a Partner at Walkers, a leading international law firm, where I head the Regulatory & Risk Advisory Practice Group from our Cayman Islands office. We also advise on the laws of Bermuda, the British Virgin Islands, Guernsey, Ireland and Jersey, with offices in those jurisdictions, as well as having offices in Dubai, London, Hong Kong and Singapore.

I joined Walkers in 2016 and bring more than 17 years' experience as a specialist financial regulatory and risk management advisory lawyer.

Matthias Knab Let's briefly review 2017. What has happened in 2017 that is of relevance to Cayman and the international fund management and investor communities?

Heather Smith: In 2017, for CIMA, the focus was on the review by the Caribbean Financial Action Task Force, which was an assessment of the Anti-Money Laundering ("AML") and Countering the Financing of Terrorism ("CFT") framework in the Cayman Islands. Prior to this assessment, the jurisdiction underwent a National Risk Assessment ("NRA"), also focused on AML/CFT, which resulted in changes to the Money Laundering Regulations (now renamed the Anti-Money Laundering Regulations ("AMLRs")) and an updating of the Guidance Notes ("GNs") to the regulations. The GNs provides practical advice to financial service providers ("FSPs") in relation to the implementation of the provisions of the AMLRs and while not intended to be a complete answer to all scenarios, sets out the minimum expectations of CIMA.

A key amendment of the AMLRs and as explained further in the GNs is the expectation of a **risk based approach to AML/CFT.** It is of the utmost importance that FSPs adopt a more formalized approach to identifying, assessing and mitigating against the risks posed by their particular organization, structure and business activities.



A robust AML/CFT framework has always been an objective that Cayman works towards and a key area of focus as a regulator. However, we are now also seeing that, through exercises such as the NRA, enhanced corporate governance structures are emerging, with a lot more engagement from the service providers, the directors and other fiduciaries on ensuring that there is sound risk management evidenced throughout all areas of operation. I am sure Leanne will speak more to this in terms of the impact on her.

Matthias Knab I have a follow-up question regarding risks. In the European AIFMD framework, risk is one of the essential pillars, and it has been very clearly defined what the regulator or the legislator is expecting from the fund manager. Have you done something similar in such a prescriptive way regarding risk or risk management?

Heather Smith: CIMA has to date taken a more **principles-based approach** versus being rules-driven, recognizing that the nature, scale and the complexity of your business impacts the amount and type of risk faced; therefore, it is not necessarily one size fits all.

Risk is understood to exist in all areas of a business' operations and thus sound risk management is expected to permeate through everything that is done by the regulated entity.

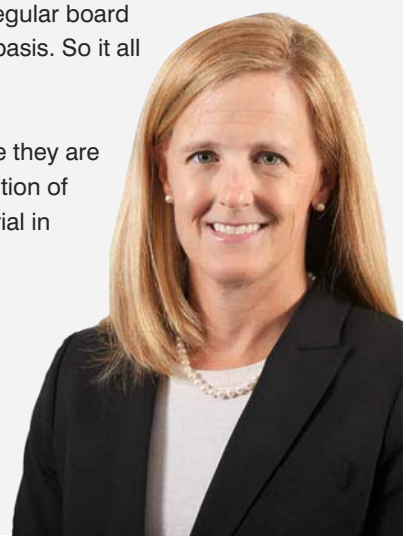
Going back to AML/CFT, as an example, the focus should be around areas such as *where is your business coming from, what is your client profile, what are your product and service offerings, how do you get business, and how do you assess and risk rate the countries that you do business with or in.* However, risk is more than just looking at these types of things.

Therefore, as the risk-based approach becomes more the focus, both from a supervisor and industry standpoint, it is possible that more defined guidance for the funds and securities sectors will be issued to assist regulated entities in building a robust risk management framework for their business.

Leanne Golding: From the perspective of corporate governance, a risk-based approach works well. The director has an oversight role and analyzing our clients from a risk perspective aligns with that role. We do a risk analysis of our clients when we bring them onboard, and on an ongoing basis, which helps to ensure we have a good understanding of the key information on each fund structure: where they are investing, who their investors are, who their service providers are, and almost as important, have any of these elements changed since we last reviewed the relationship.

The changes we have all seen in 2017 have not necessitated a great shift in how we do our business. If anything, it has reinforced the value of the structure around what we do. That structure follows on from the Statement of Guidance on Corporate Governance that was issued in 2013. The framework of the SOG defined what CIMA wants to see and we were fortunate to already be doing everything that was required in the SOG.

We make an effort to travel to see our clients and meet with them face to face on regular basis, in most cases at least once a year. We aim to have a very open dialogue with them about how they are approaching the risk in their business. This ongoing interaction enables us as a director to ensure we are asking the right questions at both our regular board meetings and during our ad hoc transactional-type discussions, which happen on a regular basis. So it all fits in very well.



Numerous initiatives in 2017 have required directors to engage with their clients to make sure they are on top of all of the new or revised regulatory requirements. In some cases they require adoption of additional policies and procedures or additional filings. Many of these have been extraterritorial in nature, for example CRS, AIFMD or MiFID II.

Our approach is always intended to be supportive and value add in this regard. From a director's point of view it entails checking in on a regular basis and asking our clients key questions including, how are you handling this initiative, how are you tackling this regulatory challenge and do you have everything in place to ensure compliance.

Lucy Frew: *A primary objective of the AIFMD is to ensure that all alternative investment fund managers operate within a robust risk management frame¬work to adequately manage risks arising from funds' strategies and objectives rather than anti-money laundering and counter-terrorist financing (AML/CFT).*

Also, the AIFMD imposes requirements on manager rather than on funds. As the Cayman Islands is primarily a fund domicile, the focus is on funds and, in particular, a robust AML/CFT regime and corporate governance framework.

The Cayman Islands AML/CFT regime is already recognised as reflecting international standards and the Anti-Money Laundering Regulations, 2017 represent enhancements, rather than significant alterations, to the existing regime. Nevertheless, there are certain changes which will need to be

implemented by those applying the Cayman Islands regime. A fund continues to be able to comply with its obligations by delegation and reliance on others, in the Cayman Islands or overseas.

The Anti-Money Laundering Regulations, 2017 reflect more precisely the Financial Action Task Force Recommendations and codify a risk based-approach. As a private practice lawyer one benefits from having an overview across a wide range of clients and a risk-based approach is very much aligned with what clients are already doing in practice. Indeed, a *risk-based approach is one of those areas where regulation is aligned with what makes good sense from a business perspective.*

Following on from experience onshore, it is refreshing to see that a **risk-based approach to supervision and enforcement is achievable in the Cayman Islands in a way which is simply not possible for larger jurisdictions.** I spent time working at the UK regulator, the Financial Conduct Authority, which supervises over 55,000 firms. With the best will in the world, it is not possible for supervisors within such a large operation to have the same level of knowledge of individual businesses as is possible in the Cayman Islands, being a much smaller and more specialized jurisdiction. CIMA is genuinely able to take itself a more risk-based approach to supervision and enforcement. We have the luxury of being able to call CIMA and speak immediately to an individual who knows a particular client's business rather than an anonymous call centre staff member.

Matthias Knab In our space there are a lot of hot new buzzwords like RegTech, do you see technological solutions becoming more important now?

Lucy Frew: Undoubtedly. **RegTech** is about new technologies developed to help overcome regulatory challenges in financial services. Regulated businesses are currently required to gather and report information and constantly monitor regulatory developments, which is often inconsistent across multiple jurisdictions.

Ideally regulators worldwide should partner with firms and with each other to improve regulatory compliance processes, reduce duplication and facilitate compliance. RegTech has the potential to revolutionize regulatory compliance to benefit regulators, regulated firms and underlying investors – who may ultimately bear the costs of regulatory compliance – alike. I was involved in the UK Financial Conduct Authority's Call for Input on RegTech since commencement in 2015. This has clearly showed that industry sees a role for regulators to participate in initiatives that encourage the adoption of RegTech.

There are certainly certain aspects of regulation which cannot be replaced by technology. However, the more that RegTech can assist with more mundane regulatory reporting and compliance, the more that businesses and regulators can focus resources on real risks and matters which genuinely require human insight.

Investor due diligence in the context of AML/CFT is an area where RegTech has potential to vastly reduce duplication and increase efficacy. There are some very exciting innovations which will allow **identification, verification and authentication** to be done in a much more efficient and effective manner – for example using biometric data. We also see duplication in the investor due diligence information required across various regimes – for example as between the AML/CFT regimes on one hand and the 'taxulation' initiatives such as US FATCA and the OECD's Common Reporting Standard on the other.

Heather Smith: Within RegTech, which includes the reporting from the industry and the regulated entities to the supervisor, I also came across another term this year which is **SupTech**, which gives supervisors the technological solutions to analyze data that is submitted by registrants and licensees. One criticism that is sometimes heard from the industry is that regulators are requesting too much information, but not necessarily doing anything, or enough, with it. Thus, the more that regulators can demonstrate what we have done with the information received, the more that regulated entities will be able to see the value of providing such information as they too can benefit from the reporting of aggregated information, thus developing useful trend analyses or, more impactful on an individual level, inform the way that they are directly supervised, as the information collected from regulated entities goes a long way towards building the risk profile of each entity and thus the risk based supervisory method employed by the regulator for that entity.

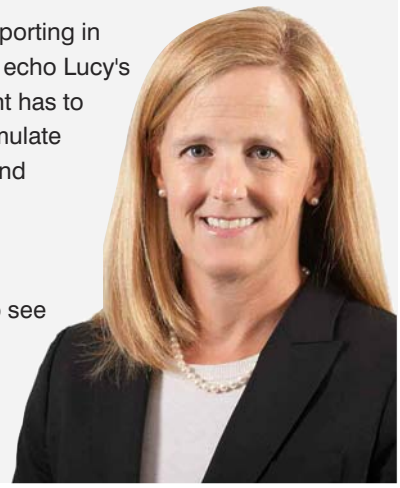
More generally, such technological advancements are very exciting for CIMA. For instance, the registration of funds is now all done online. CIMA has also brought online the processes of any changes to a fund's operations, such as changes to a director or service provider. It is hoped that the streamlining of the process for reporting and recording such changes results in CIMA having more up-to-date records in relation to regulated entities and thus being able to identify and address issues in a more timely manner.

Technology, as Lucy mentioned, is here to stay and its uses will definitely provide a lot of benefits. Of course as we continue to have the conversation, there are also the known challenges around technology and for a regulator these are especially important, *once again focusing on risk – in what areas is the use of technology now becoming prevalent, who owns information, who has access to information and how readily can the regulator obtain information.*

A key responsibility of a regulator is cooperation with other regulators, primarily through the sharing of information. Therefore, the changes in technology, which now often results in information being held in multiple places, must not impede the ability of a regulated entity to provide information to CIMA in a timely manner, as the reputation of the jurisdiction is impacted by CIMA's ability to meet its ongoing responsibilities in this very important area.

Leanne Golding: The use of data and the use of artificial intelligence has certainly expanded on the side of the investment manager as well. We have clients who use big data in their research and investment selection. This often takes the form of information collected through freedom of information requests, through intelligent web searches, and through data vendors.

In addition, investment managers are using technology to enhance their reconciliation and reporting in middle and back office. This approach to automated operations is expanding rapidly. I would echo Lucy's point that technology can do a lot, but at the end of the day, at some point the human element has to come in for the analysis and for a final review. You can have all the data points needed to formulate your assessment, but then you also need a knowledgeable person to take that assessment and evaluate it.



There is also a **cost component** involved, so the degree to which a larger manager can take advantage of such advanced technology versus a smaller one is sometimes an issue. We do see that there are a lot of options with providers at different price points which should enable everyone to embrace this development to some extent.

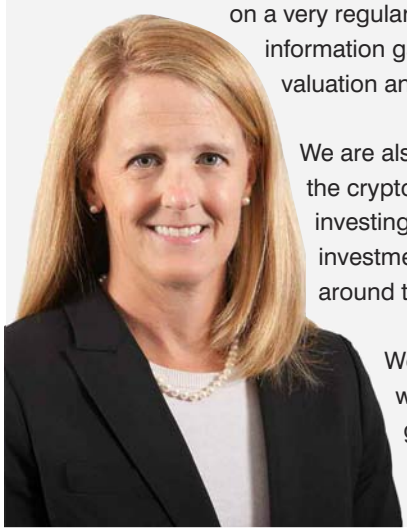
Heather Smith: Have these requirements around information technology impacted your hiring policies? Are you required to now have persons with a very good understanding of and skills in this area?

Leanne Golding: On the corporate governance side, we are not specifically hiring technology experts for analysis of data. We do of course have ongoing discussions with our clients about how they are approaching this matter though. As I noted previously, increased automation in the middle and back office reduces the need for administrative staff, but still requires higher-level managers to oversee the process and trouble-shoot. We are also seeing more data experts being recruited to ensure efficient and effective handling of data.

This issue does, however, overlap with our ongoing oversight of **cybersecurity** because the minute you are gathering all of this data, having an appropriate cyber program becomes a priority. In our role as a service provider we receive requests for copies of our cyber policy and details on how we are protecting our data from cyber threats. And fortunately Harbour has a large institutional infrastructure which ensures we have a very robust cyber program. We take this issue very seriously and have protocols in place.

It is important to make sure that whoever is providing governance to your fund has an appropriate cyber framework in place. Some of the smaller providers might struggle to have sufficient infrastructure. Directors handle a lot of very sensitive information, so ensuring its security and integrity is important.

With talk of big data, AI and cyber, the discussion can naturally lead to **crypto**. We are certainly getting inquiries and requests on a very regular basis of how we are approaching this new asset class. At this point we are still in the information gathering stage and we need to be more comfortable with issues surrounding custody, valuation and AML.



We are also seeing existing clients choosing not to launch a crypto fund or investing directly in any of the cryptocurrencies, but instead taking advantage of the excitement around that industry and investing in industries that support this initiative through technology. Depending on where an investment manager sits on the topic, they are either long or short, but they are investing in themes around the edges of that.

We see this new development as an exciting area that will continue to develop rapidly, and I would be curious to hear what CIMA's position is on crypto funds and how the regulator is going to handle that as well.

Heather Smith: **CIMA currently has approximately 10 funds registered that have identified their investment strategy as being related to cryptocurrencies**. Most are invested in the technology that supports cryptocurrencies and are not themselves processing subscriptions or redemptions using cryptocurrencies, although we have had that question.

To the two points that you have raised; first there is the AML/CFT aspect where the focus is all around establishing the actual owner or investor. Cryptocurrencies are similar to bearer shares in our view in that whoever holds it owns it. There is of course the distributed ledger technology, whereby it is said that all transactions using this technology can be tracked and ownership all the way through the process established. However, there are still some questions remaining, even

when such technology and cryptocurrencies exchanges are involved – *what happens as persons move in and out of these exchanges? Is due diligence undertaken each time? There is also the issue of valuation.* We have all seen the wild fluctuations in the value of these cryptocurrencies. Are valuation agents equipped to accurately value such products?

Getting into the ICO discussion a bit more, it is very important to understand the way in which the token will be used. CIMA has seen proposals for investment in the underlying technology or the token used as a currency, security or asset.

Each proposed use requires different considerations and thus the regulator has to fully understand the associated risks and be comfortable with the way in which such risk will be mitigated.

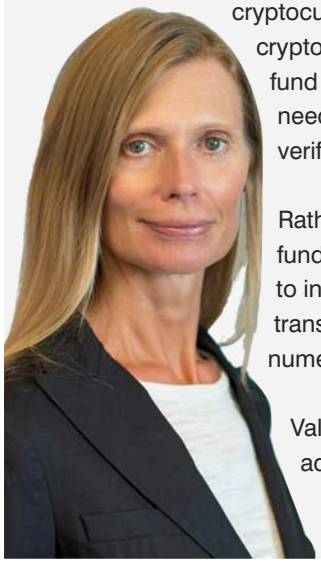
However, what CIMA has heard from most proposed highlights exactly the concerns that has Leanne raised – how do you accurately value such products and how do you determine who owns them through all phases of the transaction process.

CIMA accepts that the cryptocurrencies, ICOs and FinTech generally is here to stay and is actively assessing where the related activity fits within the regulatory framework and the changes that might be necessary to support such activity being conducted in or from the jurisdiction; to the extent that such activity fits with the level of risk that CIMA deems appropriate and that the necessary risk management framework is in place.

Lucy Frew: Talking about cryptocurrency and FinTech, it is really a question of where to start. I had been working with a wide range of FinTech business for a few years onshore, with London being a leading FinTech hotspot, as well as with more traditional financial sector business and Cayman Islands fund structures. It has therefore been tremendously exciting to observe the inevitable mutual discovery of each other by Fintech and offshore jurisdictions, especially the Cayman Islands.

The surge in global cryptocurrency markets over 2017 has been remarkable. From a legal perspective, it is notable that the response of worldwide regulators is not only inconsistent but in flux. The legal and regulatory framework at the level of the cryptocurrency fund is the same as for other types of alternative investment funds. Nevertheless, a cryptocurrency strategy does present particular administrative and operational challenges that must be addressed both in practice and in legal drafting. *The concepts around the traditional hedge fund services of administration, audit, custody and prime brokerage all require rethinking to reflect the fact that cryptocurrencies are digital assets.* A small but ever increasing minority of service providers are offering specialized services to cryptocurrency funds. This is a fast developing area.

In particular, **custody of assets** for a cryptocurrency fund is very different to that for a standard fund. It is not, technically, cryptocurrency itself that is held in custody. Rather, it is the unique private key in respect of any cryptocurrency transaction that is the true asset. Loss of a private key is an unacceptable scenario for a fund manager as there is no other way of accessing the cryptocurrency. Auditors of cryptocurrency funds need to be highly specialized, not only in audit but also blockchain technology, in order to be capable of verifying ownership of cryptocurrency.



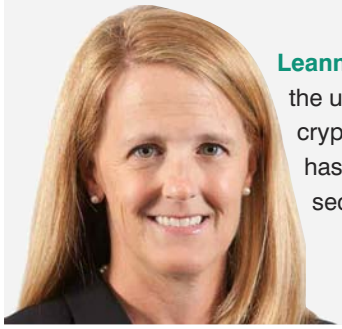
Rather than working with large banks and traditional prime brokers, it is necessary for cryptocurrency fund managers to establish relationships with **exchanges.** Many exchanges cater to retail, as opposed to institutional, needs so managers may need to consider also working with brokers for over-the-counter transactions. Managers will wish to carry out extensive due diligence and spread assets across numerous exchanges to reduce risks relating to cybersecurity and server failure.

Valuation and liquidity are issues arising in relation to cryptocurrency assets. The role of fund administrator must also take into account that transactions are stored on blockchain. If it is intended

that a fund should accept subscriptions and provide redemptions in cryptocurrency, more complex challenges need to be addressed. But we work with a number of specialist service providers, our list of which is growing. We are also seeing clients wishing to establish cryptocurrency related service provider business, such as custodians, prime brokers and exchanges, in the Cayman Islands.

Matthias Knab Both the CME and CBOE have launched Bitcoin futures, which is extremely interesting because players can now get long and short exposure to the price of Bitcoin via this derivative structure. The launch of these futures was a major tipping point for the crypto space.

Lucy Frew: The launch of bitcoin futures trading may provide an early movers' advantage in the volatile but fast-growing asset class. The SEC has asked, to the extent that a fund plans to hold cryptocurrency-related derivatives that are physically settled, under what circumstances could the fund have to hold cryptocurrency directly and potentially provide for custody. However, at least some custody-related challenges must be overcome by investing in cryptocurrency-based derivatives rather than cryptocurrencies themselves.



Leanne Golding: And it's interesting that a derivative can come into play without a consensus on how the underlying asset will be regulated. It can be expected that the point will come where a cryptocurrency or an ICO is officially categorized by the regulators. The fact that the futures trading has happened in advance of that is interesting, and it shows that there is demand for it. This is a sector of the industry where we will likely see change on a daily or weekly basis for a while.

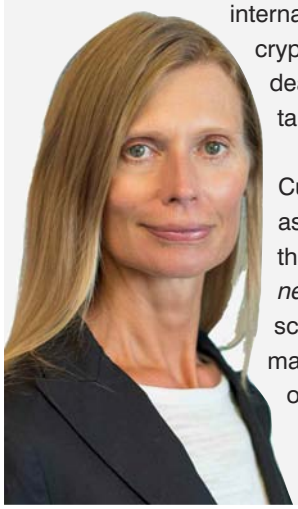
Heather Smith: The conversations that CIMA has had this year reflects this in that actions are being taken or proposed around activity that is not fully defined or perhaps even fully understood. *Thus we have activity that is regulated taking place but in relation to a product that is not defined within the regulatory framework.*

The Securities Investment Business Law in Cayman does not include cryptocurrencies or tokens in its list of securities; however futures, contracts for differences and the like are defined as securities. Thus the question would be, where the underlying asset is not a security but the wrapper is, should this product be regulated?

This conversation highlights one of the key challenges of being a regulator, where it is

expected that policy decisions are based on sound research, which includes a cost/benefit analysis. However, *with the speed at which this space is evolving, it suggests that regulators may need to move quicker than we usually would,* as with the use of technology being a huge driver of the changes and innovations we are seeing, things can happen in a split second and regulators need to be able to respond.

Lucy Frew: Digital assets, payments and products such as digital currencies, blockchain-based tokens and blockchain-based coins or ICOs are a related subject also worth discussing. Because the Cayman Islands is so widely recognized as a key international investment jurisdiction, it is proving very attractive to those wishing to set up ICOs and cryptocurrency related businesses. Legal and professional service providers are seeing a great deal of interest and there is a keenness to ensure that a workable, consistent and effective approach is taken to protect the reputation of the Cayman Islands as a leading international financial centre.



Currently, there is no specific legislative regime for activities, services and products relating to digital assets. Indeed, these innovations are diverse may arise in any part of the existing financial sector rather than being standalone. Thus, *CIMA's approach to regulation of such innovations has been technology neutral*. Accordingly, whether an activity, service or product involving digital assets falls within the scope of licensing by CIMA can only be decided on a case-by-case basis. However, those involved may need to comply with the Cayman Islands AML/CFT regime. Moreover, the provisions of the Proceeds of Crime Law apply to all legal and natural persons.

Heather Smith: *What is encouraging for me to see is that the requests to be regulated and the conversation about regulation are coming up in the first place.* These digital currencies by their very origins were designed to be off the grid so to speak, as they did not want government or any sort of formal oversight. So the fact that they are now moving into the mainstream of financial activity, with the creators of such products saying we want to formalize our operations, we want to have validity around it and we want to be regulated, as we want the persons that will potentially invest in our products or utilize our services to recognize that we are credible and we believe that regulation can provide that to us, is very interesting. So a question might be, why is this now happening?

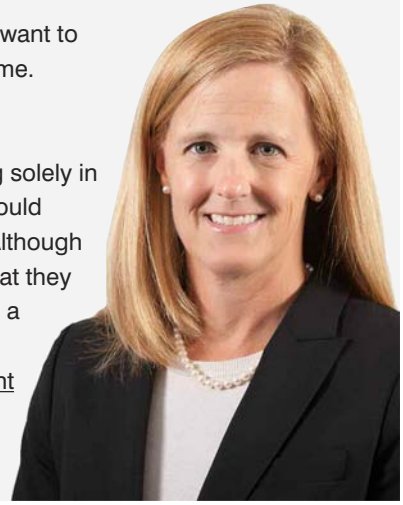
It would appear that this is being driven by the requirement to have an infrastructure that includes an administrator, auditor and custodian, as well as directors. Therefore, if I am seeking entry into the financial sector and wish to attract real investor money, there would be value in also being able to say that I am a regulated entity.

Lucy Frew: Endorsing Heather's comments, I have seen very similar trends happening in other jurisdictions as well, where there has been **organized industry campaigning for a regulatory framework** to be put in place, for instance in relation to peer-to-peer online lending platforms in the UK, where there was none previously. This has proved very successful and led to many worldwide platforms opting for the UK. This was a great example of industry and regulator working together to come up with a balanced and workable regime.

Matthias Knab Some people are concerned that this ICO space has and will continue to attract bad actors. At our 2017 Malta Roundtable, the Chairman of the Malta FSA said he is "looking to have the issuers of coins regulated as approved persons". Are you looking at the whole wider governance aspect of ICOs?

Leanne Golding: From our perspective, if we had a fund manager who wanted to allocate a certain portion of their portfolio to ICOs or crypto, we would expect the same level of governance as any other structure. So not dissimilar to saying the regulations are the regulations and that they are there to regulate the industry regardless of the category of the asset.

From a governance perspective, we would ask all of the same questions we ask a more traditional alternatives manager. We would have the same concerns if we didn't get the answers we were looking for.



There are certain aspects of this sector that need to mature and will require regulation if they want to attract the institutional investors. We have seen this evolution in the industry for quite some time. Change is ultimately being driven by the investors.

In this environment, if we had an inquiry from either a crypto fund or a fund that was investing solely in ICOs and it didn't pass our initial vetting process during the first meeting or discussion, we would pass and walk away. This is the same approach we have to any new potential relationship. Although the specifics will be different, I am going to ask the same types of questions regardless of what they are investing in and if I don't like the answers then it's not going to work. Therefore I don't see a different governance structure being required for this new sector. We require the same governance structure with the same expectations we have for traditional alternative investment funds.

Matthias Knab ICOs are a very peculiar domain and very close to venture capital. You might have a team of four programmers and they raised $250 million. What is the governance around that pot of money? Are the milestones defined and control mechanisms? Most really won't, except for a few that have set up for or that are coming from a more institutional governance mindset.

Lucy Frew: It is also important to bear in mind that many ICOs worldwide are targeting retail purchasers, which from my perspective is where many of the potential issues arise. Issues such as **mis-selling and fraud at the retail end** of the market is where we are likely to see headlines. This is where regulators in any jurisdiction with a significant retail public are focusing their attention.

The Cayman Islands business model is very much centered on institutional and sophisticated businesses. Funds, for example, have the resources and expertise to carry out due diligence on cryptocurrency related investments and, in turn, cater to institutional and sophisticated investors. *There is less motivation to become involved in the retail end of the market than is the case of, say, the US, Asia and the UK.* In the case of the latter, for example, there has been massive growth in recent

years of very easily accessible online equity crowdfunding and peer-to-peer lending brought about in part by low returns from traditional investments, the appetite to deploy risk capital, and challenges faced by borrowers with imperfect credit histories.

Heather Smith: For regulators, these are also issues that are being discussed. IOSCO has now widened its focus on **market-based financing** to include these types of services, such as peer-to-peer lending. The tightening of the banking rules has pushed a lot of the credit financing to the capital markets, who are more willing to offer financing in areas traditionally serviced by the banks. Therefore, you now have entities that are in some respects doing exactly what banks are or were doing – they are just not a bank.

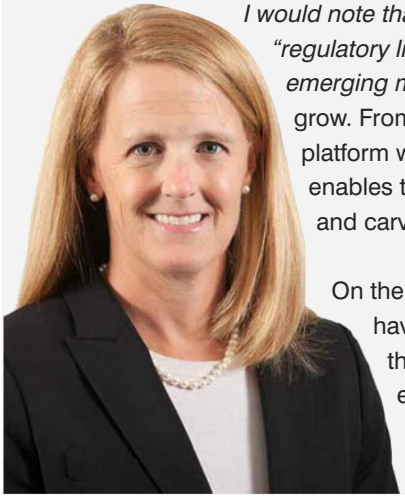
The reality is, this is not going to change. The evolution of financial services means that the clear lines between each type of service – banking, securities, insurance – is now blurring and, as much of what is now emerging is happening in the securities sector, securities regulators will have to decide what they will allow as unregulated activity versus what should be regulated and the extent of such regulation. All this of course balanced against enabling continued innovation, which is what has always set the securities sector apart.

The **sandbox approach** is being utilized by some regulators, for example the FCA, to balance supporting this continued innovation against the need to retain oversight of the operations of these entities. Essentially the regulator is saying, you are a startup and you want to be regulated; you may not be able to meet, for example, the capital requirements because you are small, or perhaps it is having the minimum number of directors and sufficient segregation of duties. So we will accept a lower capital and a few less directors/more overlapping roles in the short-term, and we will work with you for a set period, with the expectation that at the end of such time you are in a position to meet all the standard requirements.

Therefore, it is not about saying you can be a regulated entity but you can get away with not doing certain things. It is the regulator working with an expressed commitment by the entity to meeting all the necessary requirements, within a certain timeframe, while providing support throughout this process; with the additional benefit of the regulator also learning more about such product or service offering, which can guide its policy making. Anything other than setting such clear expectations would have the regulator running the risk of, exactly as you are saying, creating players who become the bad actors and we have actually facilitated this, which is of course not what you would want to happen.

As to misspelling and the general need for consumer protection, these are issues that are currently present with the traditional funds and securities products; but CIMA does recognize that the chances of this occurring with cryptocurrencies and ICOs are increased through the prevalence of these products being marketed to retail investors.

Leanne Golding: Heather mentioned the sandbox approach of some regulators for start-up firms. This recognizes the issues involved in the approach for an emerging investment manager. I believe we would all agree that it is much harder now for a new manager to start up than it was 10-15 years ago. It is crucial to have supportive frameworks in place to help these emerging managers grow to a sufficient size. This can be achieved with **emerging manager platforms** that we see many service providers offering.



I would note that adopting a sandbox approach does not mean any of us would advocate for anything like "regulatory light". It is not an option to allow certain rules to be ignored just because you are an emerging manager. What is helpful is to be cooperative and supportive of those managers as they grow. From our perspective on the governance side, we have put in place an emerging manager platform which includes a higher level of interaction and flexibility, particularly around the fees. This enables the emerging manager to avoid getting swamped by their set-up costs and early stage fees, and carves out a path to get them to where they need to be.

On the flipside is that *often the smaller managers pose the greater risk.* At launch they may not have done a full analysis of their risk. Service providers often end up spending more time with those emerging managers versus time spent with a large established one due to the fact that emerging mangers need a bit more handholding and guidance in those initial years.

Lucy Frew: I echo that sentiment. However, at least new and emerging managers have typically gained experience with an established fund management or investment banking environment and are therefore familiar with working within a financial regulatory environment. But what we are now increasingly seeing is tech entrepreneurs who come from the technology sector rather then the financial sector. At Walkers we spend time assessing the extent to which such clients understand the regulatory framework and assisting them with becoming equipped to comply.

Heather Smith: You actually made a good point, Leanne, as when we look at the statistics – while the overall number of Cayman funds has trended downwards over the last few years, CIMA has also noted an **increase in SPC structures – segregated portfolio structures –** some of which are emerging manager platforms. Here, they are setting up as a segregated portfolio company but with the underlying SP not necessarily connected to each other and being run by individual managers. As SPC is one legal structure and the individual SPs do not have a separate legal identity, CIMA is required to look at the company as a whole; which creates issues when the SPC is being ran as a platform and each piece is essentially a different fund. CIMA has also been challenged in identifying the SPCs where this is in fact the arrangement and being able to accurately track the creation and termination of all underlying SPs, due to inconsistent reporting.

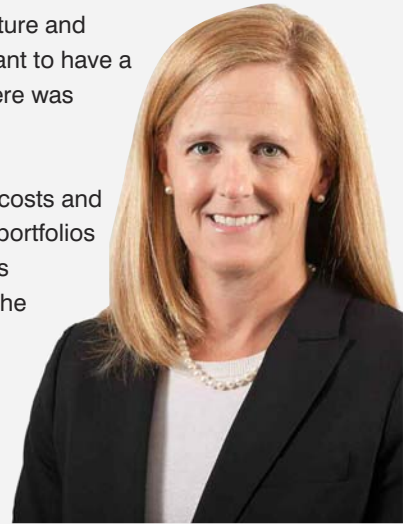
Therefore, CIMA has now created an online form that SPCs are required to complete and submit for each new SP formed or existing one terminated, accompanied by the offering document or supplement in the case of new formation. CIMA also has an exercise underway to update its records in regards to existing SPCs so that it has an accurate count of all SPs.

There are also certain requirements for SPCs, for example an SPC can only have one

auditor for all the SPs, as CIMA has found from experience that there is a need to have an independent, aggregate view of the entire structure. However, areas such as governance and who is really responsible in this regard, especially when there are several different managers and/or service providers, require a closer assessment.

Leanne, I was wondering when you as a Director see these kinds of structures and where each piece can represent something different, how do you then work with such structures?

Leanne Golding: We have seen this trend in recent years and although I do not as yet have any using this multi manager approach, I understand the structure. For the SPCs that I currently provide director services to, they are all structures where it's the same manager with each segregated portfolio following a slightly different strategy. In this scenario, it's offering customization to investors. They are able to use a piece of the strategy, adjusted for their particular needs or risk/return profile. This is a more traditional use for an SPC. I would note that if I had a structure like what Heather described, that has essentially a different underlying emerging manager in each portfolio, the role of the Board will naturally be more complex and I would expect very time-consuming.



Presumably in most of those structures there is one coordinating group overseeing the structure and coordinating the seeding of each segregated portfolio. For a director it would be very important to have a strong relationship with those players at the top level. It would also be essential to ensure there was appropriate oversight for each of those SPs.

I see the appeal of it. It allows someone to be in a Cayman structure with reduced operating costs and an easy process to launch, while still having their portfolio legally segregated from the other portfolios in the structure. I am not sure if that's how that structure was intended to be used when it was established, but I see how it has evolved that way. As I mentioned before, the oversight and the time that would need be taken to make sure that you are getting the appropriate level of reporting from each of those segregated portfolios would be higher than average and I absolutely agree that having one auditor across such a structure is best. Ideally, having one administrator across a structure would also be recommended.

Heather Smith: From a regulator's perspective, the issues start even before that; for example, when it comes to a question as simple as *how many SPs have been formed by the SPC?* Service providers are not always able to tell CIMA how many SPs were formed and we have seen situations where the SP is created, say January, and perhaps its investment threshold or objective is not met and it is terminated by November but there was never any information as to its existence provided to CIMA. Then CIMA receives a complaint from an investor and the investigation reveals that the entity invested in is said SP. This creates a problem and raises corporate governance concerns in relation to the operators of the SPC, as well as record keeping and reporting concerns for any regulated service provider that is involved.

Lucy Frew: It is very interesting to see this trend in the Cayman Islands. In other jurisdictions, hosted platforms are now often the best, or even only, way for start-ups and emerging managers to launch their funds given the burden of onshore regulation, for example, the AIFMD. Hosted platforms can allow managers to focus their resources on day-to-day investment management while benefiting from the more sophisticated regulatory compliance framework and economies of scale provided by the platform. The operator of the platform, or SPC, has ultimate responsibility for meeting regulatory requirements, providing an incentive for it to ensure compliance in relation to those using its structure.

Heather Smith: I agree with you from the perspective that support for an emerging manager creates opportunities that promotes growth within the industry. However, the challenge comes, as outlined, where CIMA is only aware of this being a regular SPC but there is a whole lot more going on with the entity. To date, there has been no fund setting up that tells CIMA in advance of its intention to be an emerging manager platform. Therefore, CIMA is left to deduce through the information submitted that this may be something other than the usual SPC structure.

Thus, it is also useful if, in addition to CIMA's queries, service providers have a handle on what exactly the SPC or hosted platform is doing, and I also cannot stress enough the **corporate governance aspect.** It is at the end of the day one legal entity and so a lot of responsibility exists at that level.

Leanne Golding: I agree, we can have a certain structure defined in a certain way when it's established but actually the real work begins in the ongoing supervision, whether it's from the regulator or from the corporate governance side of things. For us this means having regular dialogue, at both formal board meetings and the informal check-ins with the client.

Matthias Knab Are there any other comments regarding emerging managers and how the industry is developing and hopefully also rejuvenating?

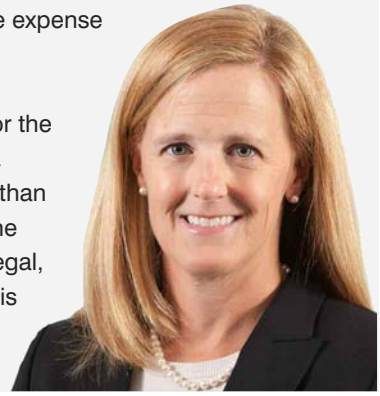
Leanne Golding: Emerging managers need to find the niche that will appeal to investors. There's a lot of competition and a lot of pressure from the passive side of the industry with many large investors questioning why they need to pay high fees to go into a hedge fund when they can get a better return in the short run from a passive investment with lower fees.

What we are seeing more and more of is **customization**, and with that very specialized strategies. We continue to see separately managed accounts being established by our existing clients. Those structures typically don't require our services, but we do see them growing in size and numbers. We also see more funds of one with customized portfolios.

Fees are still a hot topic of discussion. The large institutional investors with large allocations are usually able to dictate what fees they will accept and we are seeing more flexibility on the side of the managers to accept these custom arrangements both from the strategy and fee perspectives.

There was a lot of discussion over the past 18 months about the **1-or-30 fee** model. From our perspective we have seen a lot of talk but not really a huge uptick in application. In most cases, managers are taking on that fee model only for a large institutional investor with a significant allocation to make. On the other hand, we also don't see emerging managers launching with a 2 and 20 fee structure. It's even very rare to have legacy funds with that fee model. We really see it falling away.

We also see **expense caps** in place with a lot of the emerging managers. This means the emerging manager will often need to self-fund a portion of their operations for the first few years. Investors are looking at the whole business model and expense ratios and are spending a lot of time reviewing these figures and being firm on the expense threshold they will accept.



As we have mentioned many times, the investors are driving the business. It's quite common for the investor to tell a manager, "We will invest with you, but you will have to cap your expenses on a monthly basis at this level". So in addition to facing higher costs to launch and operate a fund than ever before, they have to deal with ongoing fee pressure. This naturally trickles down to all of the service providers in the business. We speak with all of our colleagues whether they are audit, legal, administration and everyone is feeling the fee pressure. In a way, everyone in this environment is expected to do a lot more, often for a lot less.

Lucy Frew: For Walkers, it has been a very busy time and 2018 is set to be even busier. is that your impression as well Heather?

Heather Smith: **CIMA's 2016 Investment Statistical Digest** will have been published by the time that the Opalesque Roundtable goes to print and reports an **increase in total and net assets of US$435 billion and US$17 billion**, respectively, despite the decrease in the overall number of funds. The dollar value of net assets was $3.6 trillion as compared to $3.57 trillion as at the end of 2015.

This evidences that there is still a lot of strength in our industry and with there being many funds to choose from, investors are maximizing their ability to make such choices. *Redemptions exceeded subscriptions by about $86 billion in the 2016, and so managers realize that they have to be responsive if they want to stay in the game.* Thus, the Digest also reported a decrease in performance fees of 26%, supporting the theory that managers are seeking to attract and retain investors through a reduction in the fees charged.

In relation to overall fund numbers, the number of funds that are terminating are still slightly ahead of those registering. *For the year to date (early December 2017), CIMA registered or licensed approximately 1,045 funds, with around 1,100 terminating.* This is a trend that CIMA has seen for the past few years and is indicative of the increased engagement by the operators of the fund whereby they are examining profitability, regulatory compliance, reporting, infrastructure requirements, including technology and cybersecurity, as well all the ability to address the needs of investors on an ongoing basis. Where it has been determined that the investment levels may not enable the fund to continue to operate and generate the necessary level of returns, you may see a fund that is registered in January terminate by December because decisions are being made much more swiftly.

It should also be noted that, as compared to other jurisdictions, the Cayman Islands continues to stand out as the fund domicile of choice. In the IOSCO hedge fund survey, which reported on data gathered as at September 2016, **Cayman is reported as having 53% of the global hedge fund industry.** CIMA contributed information to the report for the first time and expects to participate more substantively in future reports.

Lucy Frew: It would be excellent to have data which includes emerging managers which are setting up under the umbrella of another SPC. Based on experience of other jurisdictions, hosted platforms are where most start-up and emerging manager launches are taking place so one needs to have visibility in order to assess the true growth in new fund launches.

Heather Smith: CIMA is looking into exactly that and part of the exercise that I mentioned earlier of gathering information around SPCs entails knowing how many SPs there are. CIMA needs to ensure that we get to a place where we have an accurate count of the number of underlying portfolios for each SPC on an ongoing basis.

A lot of other jurisdictions report their overall fund number include underlying SPs. CIMA would also like to be able to provide such reporting but as outlined previously it is necessary that the numbers reported are accurate.

Matthias Knab Anything to add regarding new legislation, new developments here in Cayman?

Lucy Frew: Well, there are onshore developments such as MiFID II/MiFIR and the General Data Protection Regulation (GDPR), which are EU initiatives with potential extra-territorial impact on businesses in non-EU jurisdictions including the Cayman Islands. MiFID II/MiFIR is an area where we have been advising clients on what, if any, impact there is on their Cayman Islands operations. In particular, we are working with onshore counsel and clients in the US and Asia, who may be less close to the MiFID II/MiFIR framework than those in the EU. For some Cayman Islands funds MiFID II/MiFIR is completely irrelevant, while for others certain steps are required in order to continue trading and distribution in the EU.

The other theme which is gaining prominence is **data security and privacy.** Significant developments in the regimes for data protection and cybersecurity, together with increasing investor awareness, mean that these are key issues for fund businesses in 2018.

With the introduction of new domestic legislation in the form of the Cayman Islands Data Protection Law, 2017 (DPL), new international regulation in the form of the GDPR and heightened regulatory scrutiny from CIMA, investor demands, as well as commercial and reputational risk sensitivity, mean that data protection and cybersecurity are topping hedge fund businesses' priorities lists for 2018. Walkers has worked with AIMA, Clifford Chance, Akin Gump and others, in the production of AIMA & Clifford Chance GDPR Implementation Guide, with Walkers particular focus being the offshore funds industry.

The **GDPR** will apply from 25 May 2018. It will apply not only to organizations in the EU but also to organizations based outside the EU if they collect or process personal data of EU individuals (for example, in the context of a fund, when collecting anti-money laundering, FATCA or CRS information).

The Cayman Islands is not part of the EU and has not implemented the GDPR. Nevertheless, one of the key changes under the GDPR is the extension of territorial scope to include data controllers and processors that are not established within the EU but whose data processing activities relate to 'offering goods and services to individuals in the EU' or 'monitoring behavior taking place in the EU'.

In terms of what is meant by "offering", it is important to distinguish the application of the GDPR from that of the AIFMD. A number of alternative investment fund sector businesses that were not within scope of the predecessor regime will now be captured and will need to ensure that their processes are compliant with the GDPR.

Relationships with entity investors, as well as individual investors, are likely to involve the processing of personal data of natural persons. An individual who invests in a fund is usually required to provide a host of personal data. A company, partnership or trust investor in the fund is usually required to provide personal data in relation to its individual directors, members, shareholders and other beneficial owners. *There are many reasons why managers and service providers may hold personal data relating to individuals in the EU, for example through holding lists of contacts for marketing purposes.*

Domestically, the DPL will introduce for the first time a data protection regime in the Cayman Islands. The DPL will come into force on a date set by Cabinet Order, expected to be January 2019. Meanwhile, regulations will be made in relation to various provisions of the DPL. As the DPL is based on the UK and EU data protection legislation, its definitions and concepts will look very familiar to UK or EU managers or service providers to Cayman Islands hedge funds.

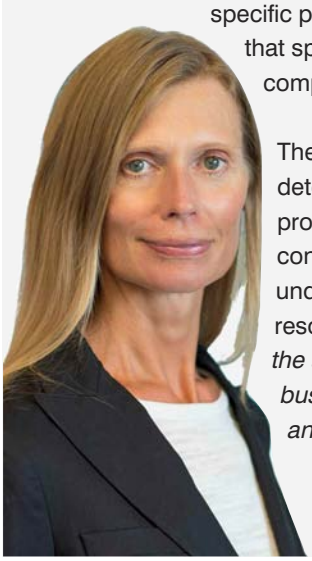
Similar to its predecessor legislation, the GDPR restricts transfers of personal data beyond the EU to ensure it is being sent to a country which provides for adequate data protection. By implementing the DPL, the Cayman Islands is beginning the process towards achieving "equivalence" status. Meanwhile, transfers of personal data can be made in the absence of adequacy decisions in various circumstances, including where consent has been given.

Compliance with the GDPR and DPL overlap to a significant degree with fund businesses' cybersecurity measures. *Controllers must implement appropriate technical and organizational measures to ensure the protection of personal data during processing and transfer and to prevent unauthorized or unlawful processing of personal data and accidental loss or destruction of, or damage to, personal data.*

The GDPR requires regular testing and evaluation of controls, and the ability to recover in a timely fashion from a natural or technical disaster. The fact is, however, regardless of legislation, funds sector businesses are highly incentivized to ensure data security given the commercial and reputational drivers. Investors' due diligence questionnaires are increasingly focused on data security. As such, new requirements to ensure data security are very much aligned with what businesses would be doing in any case.

Heather Smith: I have a question in relation to GDPR, assuming a fund with an EU investor. In looking at AML/CFT requirements, a fund can outsource its AML/CFT functions, therefore, you can have an MLRO employed by the fund's administrator, which is located within the EU. The AMLRs sets out the expectation that, if there is something found in relation to the fund, a SAR is filed with the Financial Reporting Authority here in Cayman. Where this reporting involves personal information relating to the EU investor, would there be a constraint on the MLRO filing such SAR?

Lucy Frew: The data protection legislation permits data to be processed where required by law, for example as in the case of filing suspicious activity reports, in the public interest or potentially in the case of other legitimate interests. But fund structures should determine the status of each entity in the group for each category of personal data and processing purpose. This should be undertaken in relation to service providers also. In particular, when an entity determines that it is a controller for specific personal data for a specific purpose, it should also consider whether there may be other controllers for that specific processing purpose. If there are joint controllers, firms should clearly document any split in compliance responsibilities between themselves and provide the information to relevant investors.



The terms of any service agreements between service providers and funds will to a great extent determine the status of the fund and service provider as either a controller or processor for particular processing activity. Where a processor in effect goes beyond its processing instructions from the controller, it will be deemed to be the controller for the purposes of such processing. Also, when undertaking its own internal processes (such as anti-money laundering checks, human resources/payroll for EU based employees), a service provider will be a controller in its own right. *Once the application of the data protection legislation as either a controller or processor has become clear, businesses should also consider the use of consent from data subjects, updating fund documentation and privacy notices and agreements with service providers.*

Heather Smith: The second question I had relates to record retention requirements. One of the things I read about GDPR is that the individual has a say as to how long someone can retain their personal data; however, there are also certain record retention requirements set by various laws. Was there an attempt to sync requirements in this area? Are there any issues or discussions around that aspect?

Lucy Frew: Indeed, records must be retained only as long as required pursuant to record retention requirements. This raises some interesting issues in relation to information stored on the blockchain which, it appears, is maintained in perpetuity.

The other point to note is that there is no central controller or operator in relation to blockchain transactions so it is unclear how, or against who, date protection requirements may be enforced. So, you are right, Heather, there are a whole host of questions for all of us to consider. You also put your finger on the broader tension between increased data reporting and transparency on one hand and the need for data security and privacy on the other.

Matthias Knab Do you have any further comment or question regarding cybersecurity?

Heather Smith: From CIMA's side, there is ongoing engagement with licensees in regards to cybersecurity and is also an area reviewed during onsite inspections. I go back to a point Leanne made earlier, about her investors or potential clients asking to see Harbour's cybersecurity policies, and note that this is also a question that CIMA is getting with increased regularity from regulated entities regarding the information that they provide to us.

So **what does CIMA do in regards to ongoing data protection?** Building and maintain a robust cybersecurity framework is very important to CIMA and I think that CIMA's IT team is phenomenal.They are committed to maintaining awareness in this area and regularly run security tests, as well as provide ongoing training to users. People remain the biggest weakness of any cybersecurity framework and so, for hackers, it is a game of odds, currently in their favor, as they persist in their efforts knowing that it is only a matter of time until someone clicks a link or document that they shouldn't.

This threat is also real for regulators globally. I recently attended an IOSCO seminar that offered a workshop around cybersecurity, where it was highlighted that regulators need to remain vigilant individually and also collectively because we are a repository for a lot of information. Unfortunately, the same challenges and potential areas of weakness exist for regulators as it does for regulated entities and service providers, as the workshop occurred on the same day that the U.S. SEC announced that its EDGAR filing system had been hacked earlier in the year. So cyber threats are a reality and require ongoing engagement by everyone.

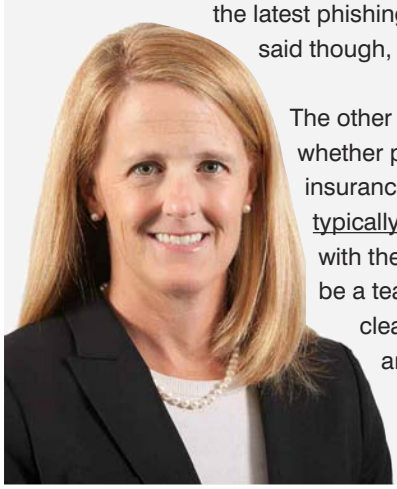
A lot more regulated entities are now proactively reporting to CIMA when they have had an attempted or successful intrusion. The ensuing discussion covers not only *what was the intrusion that happened but also what have you done about it? What do you now have in place?*

While entities, understandably, want to keep news of this nature under wraps, the question is no longer a matter if – it is when will this happen to me. Also, the advances in technology that we discussed earlier, the increase in outsourcing arrangements, as well as the use of third party vendors for the storage of sensitive information, all means increased opportunities for such occurrences. Therefore, there is value in **sharing information** on systems and controls that have proven effective, so that we are all better protected against the threats.

As a regulator you are looking for the regulated entity to be proactive in how they are addressing these issues and to demonstrate that they understand and are effectively mitigating against the risks unique to their operation in this area.

Lucy Frew: This links into the discussion around **digital identity.** At the moment, everyone is required to provide personal data for AML/CFT purposes which is transmitted and stored by multiple financial institutions and service providers in multiple locations. A centralized data custodian would arguably reduce duplication and costs while increasing security.

Leanne Golding: We appreciate the importance of there being security at every service provider. They handle and store sensitive information, often about us Directors personally. We also ask our clients all those questions on a regular basis, how are you handling this situation? Have you had any intrusions? Have you had any breaches? Usually, every manager will detail the latest phishing test, which is often an internal email designed to entice their staff to click a link. It must be said though, that as fast as you prepare, the hackers are out there, working to try and get in.



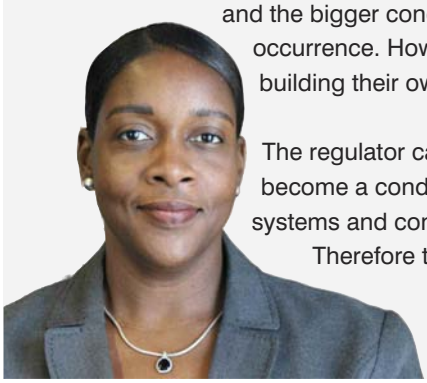
The other conversation we've had a lot more recently in the last couple of years is discussion of whether people are taking out **cyber insurance policies** as an add-on to their standard D&O and PI insurance. The biggest benefit to having those policies is that when you have an incident, the insurer typically has a remediation team that shows up onsite to help you sort through the problem. Dealing with the fall out of one of these incidents is enormous and it requires very expert talent. This would be a team not dissimilar to who you would call if your house flooded. They arrive and do the cleanup. If you are unlucky enough to have a cyber intrusion, you want to make sure that you are dealing with the breach right away and not scrambling around yourself trying to sort it out.

Lucy Frew: Prior to coming to the Cayman Islands I served on the Committee of the City of London Police, which has lead national responsibility for cyber-fraud. Based on that experience there are two points particularly worth bearing in mind.

One is that although financial services is a regulated area, it is very important that businesses should feel that they are able to come forward if they have had a breach and not be inhibited from doing so because they fear penalties. It is very important that information is shared between industry, regulators and law enforcement authorities.

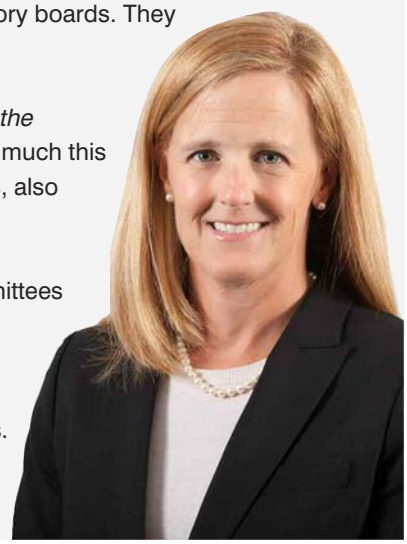
The other is that it is very useful to have a mechanism whereby financial sector business can share information about attempts because then patterns can be identified and stakeholders forewarned of certain sorts of attacks. I very strongly encourage such a pro-active approach – it is one of the most effective means of defending against these attacks, which will only become increasingly prevalent worldwide.

Heather Smith: I strongly agree. As outlined previously, the instinctive reaction when someone has had a breach or an intrusion is to be reticent about it because they are concerned around the impact on their image. Even if their response to the event is extremely robust and done in a timely manner, the question will usually linger as to why it happened in the first place and the bigger concern will be, will it happen again. Hence, they will not necessarily want to advertise the occurrence. However, there is value in the, what did you do, as this can provide information to others in building their own cybersecurity infrastructure.



The regulator can play an important role by aggregating the information received from each entity and become a conduit to provide information to the wider industry regarding additional considerations for systems and controls that could be utilized, without the entities involved having to reveal themselves. Therefore there is benefit to be derived from entities continuing to report in this area.

Leanne Golding: Leaving for a moment the cyber discussion and looking at other industry developments, we have seen a **push for governance on LP and LLC structures,** whether they are Cayman domiciled, Delaware or elsewhere. These take the form of advisory boards and governance committees. Institutional investors are accustomed to seeing a corporate governance structure in place for the funds they invest in and as their universe of what they invest in expands – whether they move more into private equity or into hybrid-type vehicles – they are pushing for these advisory boards. They appreciate the value of having independent oversight of the structure.



It's important to note that *adding this layer of governance really can add value and enhance the operations of that structure at very minimal incremental cost.* It will be interesting to see how much this trend will move into the private equity space which traditionally uses LP advisory committees, also known as LPACs.

In some cases the LPs don't want to give up their seat on an LPAC. However, as those committees are being asked to review and take decisions on more topics including conflicts of interest, expense allocations and valuations, the institutional investors often need to distance themselves from those decisions. This can result in a clear push to establish more independent oversight by establishing an advisory board to take care of many of those tasks.

Heather Smith: So advisory committees were put in place to cover off this area?

Leanne Golding: The advisory boards add that layer of independent oversight to a traditional LP structure. Normally the General Partner, or Managing Member, in the case of an LLC would make all of the decisions. The introduction of independent oversight for these structures has been a very interesting development and in practice we find it works quite well. It doesn't add cumbersome layers of bureaucracy, which is usually what clients can be afraid of. We have been able to demonstrate that it does the exact opposite. It adds value and it keeps things running smoothly.

Adding a general comment on the industry, I would note that in 2017 and in the years before we have all had to deal with many regulatory initiatives, whether they were Cayman-based or extraterritorial. It has been really encouraging to see the engagement locally between both the private and the public sector and the ongoing dialog that all of us have with CIMA and the Cayman Islands Government on the various new initiatives. There has been a great level of cooperation between all sides of the industry and a lot of discussion, which is always a good thing.

Heather Smith: Certainly we are kept busy with managing both the domestic requirements, as well as participating in and contributing to the international initiatives, which always requires a balancing act. One positive is that we now seem to have moved pass the point where CIMA has to provide reasons and explanations for all its actions, which it is still of course committed to doing, having in place a robust consultation process. However, the financial services industry is now itself a lot more engaged and aware of the issues, proactively engaging with CIMA make proposals and seek to identify solutions.

There remain challenges, as always, with quite a few global initiatives in the pipeline that will impact Cayman's financial industry. I previously mentioned the new AML/CFT requirements for local financial service providers, resulting from the updated Financial Action Task Force requirements in this area. There are also the discussions within the EU on economic substance in regards to tax related matters and, while tax matters is not within CIMA's purview, the changes that may result for Cayman entities will also impact those that are regulated. CIMA is up for whatever challenges that may come and will continue to do its part to promote and enhance market confidence, consumer protection and the reputation of the Cayman Islands as a financial centre.

Lucy Frew: I have found it very useful being in the Cayman Islands to have discussions with CIMA and with Government. Although liaising with regulatory and legislative authorities has always been central to my practice as a financial regulatory lawyer, it is much easier to do so in the Cayman Islands because the jurisdiction is relatively small yet also **highly expert driven.**

There are certain business models here which regulators and legal and professional service providers know inside out, with staff generally being specialists with long track records. They have often have seen a number of economic and regulatory cycles, so these are very good conversations to have. There is also a very strong feeling that everybody is on the same side in the sense of wanting the best for the jurisdiction and the industry.

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