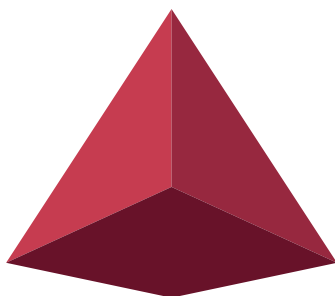




AUTOMATION, INFORMATION SYSTEMS AND RESPONSIBILITY WITHIN THE FINANCIAL ADVISORY PROFESSION



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ÉDITORIAL

L'ascension des marginaux et des 'outsiders'

La plupart de nos systèmes, sur les plans économique, social et politique, s'inspiraient de façon inconsciente d'un grand principe physique, la force centripète. Ainsi tout un chacun sait depuis l'enfance que notre système solaire est soumis à la force de gravité (*l'attraction gravitationnelle*) exercée par le soleil qui permet aux planètes de maintenir leur orbite solaire. Nos systèmes sociaux et économiques, pour des raisons que je ne saurais commenter, s'inspiraient inconsciemment de ce même phénomène du moins jusqu'à la récente histoire. Tous les actes de notre vie courante étaient basés sur quelques principes fondateurs, des soleils qui irradient nos habitudes, nos esprits et nos valeurs. Ainsi la famille, l'entreprise sous toutes ses formes, l'école etc., projetaient certaines énergies qui contribuaient à assurer la stabilité des diverses sphères qui interagissaient entre elles. Quelques autres manifestations systémiques en orbite avaient tendance à rejeter ces forces centripètes par leur résistance à cette attraction.

Mais depuis des 'dérèglements climatiques' polluants se sont manifestés et ont perturbé les dynamiques sociales qui ont résisté aux forces inverses depuis 500 ans, la dernière en date et l'une des moins bien gérées était certainement celle de la révolte contre les tutelles du passé lancée par les cercles étudiants en 1968. Nous connaissons tous le slogan répété à satiété qui affirmait qu'*'il est interdit d'interdire'*, sur un terrain fertile et affaibli des anciens thèmes centripètes, discrédités par des comportements d'une extrême cruauté suite à deux guerres d'une barbarie inégale dans l'histoire humaine. Ce relâchement des forces rassembleuses, pétries des notions fondatrices de nos vieilles civilisations judéo-chrétiennes, ont favorisé les mouvements gravitationnels marginaux auxquels est soumise notre société. L'illustration la plus frappante est observée au niveau de nos systèmes politiques, tant sur le plan global que national.

Dans les années 90, juste après l'effondrement du système soviétique (*suivi de près par le changement chinois*), tout le monde tablait sur une évolution de concordance, de paix et de progrès social, par l'intermédiaire de grands ensembles socio-économiques, tels que l'Union Européenne avec pour arbitre international les Etats Unis. Les mots d'ordre de l'époque étaient la croissance économique et une distribution plus équitable de la richesse créée à tous les acteurs économiques, et une meilleure éducation accessible à tous. Les opportunités créées et la meilleure formation auraient dû avoir comme corollaire une amélioration générale du niveau de vie et du bonheur de chaque individu. Depuis les années 2000, ce modèle reçoit coup après coup, assénés par certains acteurs dominants du système, mais aussi par des errances idéalistes auto-infligées par les bien-pensants et les donneurs de leçons. L'avidité des uns et le dédain des autres ont conduit nos systèmes démocratiques à ce phénomène d'apparition de nombreuses forces disparates centripètes et contradictoires. Stupidité et rapacité ont dépouillé (*dénué*) le capitalisme de toute retenue et critères moraux.

Ces processus que nos politiques ont été incapables (*ou trop faibles*) de déceler ont conduit à des manifestations de mécontentement de groupes sociaux divers (*"nuit debout", salafistes, etc.*) réunissant un nombre croissant de déçus. Nos élites politiques ont cru trop facilement que la simple amélioration des conditions matérielles et des avantages servis à bon compte par l'Etat aux masses suffiraient à assurer la satisfaction de leurs citoyens. C'était sans compter sur les aspirations morales et mentales de l'homme dans une ère d'accession libre (*et parfois sauvage*) à l'information. Ces planètes d'attraction périphériques, mues par des motifs divers,

ont gagné en force, ce d'autant plus qu'elles ont constaté que les instances dirigeantes de l'Occident ne répondaient pas aux défis, ou alors le faisaient de façon inappropriée et en tout cas peu convaincante. Elles confirmaient ainsi qu'elles-mêmes ne croyaient plus vraiment à leurs modèles passés.



Ainsi, des acteurs marginaux ont déterminé le rythme des événements politiques, comme cela a été le cas des candidats démocrates aux Etats-Unis où la campagne a été dominée par Bernie Sanders, pour ne pas mentionner l'émergence de Donald Trump dans les rangs des républicains, un 'outsider' habile et habitué des plateaux télévisés qui a su capitaliser sur tous les thèmes (*et ils sont nombreux*) de mécontentement populaire des masses. Mais la perte de confiance la plus significative est à imputer au sentiment général d'un vide (*d'une absence*) de gouvernance, et plus prosaïquement de respect de certaines valeurs et convenances élémentaires, indispensables à la cohésion sociale. Des acteurs sociaux de premier plan, tels que Madame Clinton ou Monsieur Hollande, du fait de leur parcours désordonné et souvent chaotique, ont contribué à détacher le citoyen du fait politique.

Sur le plan suisse, était-il normal que nos édiles révisent dans la précipitation (*pour ne pas dire dans la panique*) le cadre de structures financières contre lequel aucun pays occidental n'avait trouvé à redire depuis plus de 70 ans? Ainsi, ils se sont empressés de signer des conventions et de rédiger hâtivement des lois mal conçues, alors même que les Américains leur imposaient FATCA qu'eux-mêmes n'appliquent pas? Le dommage réputationnel infligé à la Suisse est irréparable, et ce pour plusieurs générations.

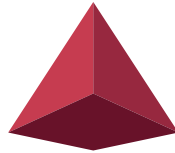
Que révèlent ces événements successifs, lourds de conséquences? Peut-être que ceux qui évoluent de façon vigoureuse (*énergiquement*) en marge de la politique (*l'exemple récent et frappant en est l'élection de Monsieur Donald Trump*) vont-ils prendre les commandes politiques?

Dans un récent article de Joshua Mitchell, professeur à l'Université de Georgetown, celui-ci relevait que nous nous dirigeons vers "un âge d'exhaustion", un âge de déprime mentale collective, de descente (*déliquescence*) lente mais sûre des exigences morales et culturelles, en un mot de désespoir et d'absence de conviction en un quelconque renouveau intellectuel futur. Nos prétendus intellectuels, à de rares exceptions, se contentent de se dissimuler dans quelque position confortable leur assurant une existence paisible, dans la majorité des cas dans le monde des médias.

Il n'y a plus de voix pour sonner l'alarme soulignant que le problème actuel touche à la dimension morale et spirituelle des individus qui ne peuvent plus se référer aux forces gravitationnelles qui les inspiraient par le passé. Certains ont perçu ce vide d'aspirations et ont réussi à le combler par des discours tapageurs et percutants. Si nos élites politiques refusent de relever ce défi, nous serons tous responsables des événements futurs dont on observe déjà les prémices. Comme dit N. de Chamfort, *«A la longue, un peuple de moutons finit par engendrer un gouvernement de loups»*.

Pierre Christodoulidis
Président d'Honneur du GSCGI

AUTOMATION, INFORMATION SYSTEMS AND RESPONSIBILITY



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Automation, Information Systems and Responsibility *within the Financial Advisory Profession*

Are the Japanese automated Rail Road and the Tokyo underground information systems an example for the (*retail client*) Financial Advisory Industry? What strategy needs to be implemented in order to keep up with changing market conditions worldwide and newer client expectations?

My family and I have just returned from a leisure journey across Japan, during which we travelled over 3,000 Kms and experienced the Japanese Rail Road as well as the Tokyo underground systems. Japan's population is about 127 million and is expected to decrease to about 90 million by the year 2050. About 30% of the population commutes daily by train and the underground systems, not counting the 20 million tourists visiting each year Japan, who do not speak Japanese.

This great experience tells us a lot about how a society can rely successfully on automation and information systems. It also helps us take a new look at the two main activities of the Financial Advisory profession: Portfolio Management and Client Relationship Management. Although both domains are gearing toward more efficiency, Client Relation Management is only now beginning to respond

Daniel Glasner



to the increasing expectations of higher automation from both established and new investors.

The stronger competition in the financial industry and the increasing regulatory pressure are forcing banks and independent financial advisors to boost their productivity while lowering costs. To achieve this, there is only one solution: implementing automated systems, while keeping up with the quality of service. On the other hand, automation (*or even a reduction in the price of services*) will obviously not be the cure-all. The foundation for any successful automation will be the trust placed by the investor into the competence of their Advisor. The next two key factors will be the user-friendliness of the tools provided to clients, as well as the power and simplicity of the information they receive.



AUTOMATION, INFORMATION SYSTEMS AND RESPONSIBILITY

Could we achieve better performance in Portfolio Management by delegating some tasks to computers?

Definitely yes, this is the way to go! But with one caution: the most fundamental ingredient in our profession is, and will remain, human competency. Automation brings more power, but we should always keep in mind that “with greater power comes greater responsibility”.

Let us take the subject of client services around income tax. It is important to recognize that we are living through a profound paradigm shift. Until recently, a significant proportion of foreign clients' wealth held in Switzerland was undeclared in their country of residence. This situation has profoundly changed.

One key issue now is tax suitability: how to make portfolio allocations that take into account the impact of income tax? How could a Portfolio Manager ever deal with the complexity of foreign tax systems? Is it even possible?

It is clear that 2017 will be the year of ‘tax-suitable’ financial investments in Switzerland. When the impact of taxes is measured in thousands of basis points, *‘performance after tax’* is obviously the key factor. It is not easy to deal with this added complexity, but there is no choice: either financial intermediaries will be able to answer those new demands of their clients, or they will have to quit the business. And those who believe that robots or outsourcing are the “miracle solution” that will save them from personally rolling up their sleeves and solving that issue will also fail! It also takes human competency to solve that issue.

So, how should a financial intermediary tackle it? First, each portfolio manager, either independently or as part of a team, should focus on one or a few residence countries for his clients. Deciding on these limitations may be hard. The second challenge is to acquire the new competencies needed to master each of these foreign tax systems: portfolio managers will have to learn rules they are not familiar with, and be able to predict the tax impact of their investments (*this requires training*). Then, with trained and informed employees/partners, financial intermediaries can reorganize their business in order to meet that challenge.

The key point is that automation is ‘the’ pre-requisite, but it takes far more than that. Portfolio managers will need software tools that help them detect whether a financial instrument is tax suitable or not. And, on top of that, they will have to learn to estimate the impact of income tax

on the investments on their clients, or be prepared to lose them... because these clients might withdraw their assets and go to the next-door portfolio manager who has already learnt to do that for a specific country. Therefore, human competency remains the foundation of our profession.

This is indeed a big debate. Will Portfolio Managers delegate specific tasks to Robo-Advisors? Will software robots risk replacing human advisors?

First of all, automation in the financial advisory field is nothing new. Since the early 2000s, most investment managers have implemented a Portfolio Management System, or at least a third party risk metrics system, in order to monitor the portfolio performance of their clients' assets under management against various indexes and benchmarks. Once the investment manager has gone through the ordinary due diligence investment process, he can already perform a primary selection and comparison of investments.

The issue then, is simply how to also include criteria for tax suitability, assuming that the relevant data are available – it can be obtained through public registrars and a number of private financial information vendors such as SIX, Bloomberg, Reuters, Dow Jones, Fitch, Morningstar and others. An investment manager could also personally meet representatives of the upper management of listed companies they want to invest into. In any case, most of financial intermediaries will have to implement a more sophisticated database for the securities they might select that takes these tax parameters into account, if that is not already done otherwise.

Let us remember, however, that a Robo-Advisor is (*as the name indicates*) only a servant and it is never a master. The process of defining the strategic guidelines of the investment strategy is still the most important part and it will remain a human activity. Computers never “decide” anything in portfolio allocation: they only execute faithfully what they are being told to do, for the better or the worst (*software or data errors can have catastrophic consequences*). Again, with increased power of automation, comes increased...

*Cet article est disponible en version intégrale
sur le website -- www.gscgi.ch*


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LES MEMBRES DU GSCGI

Networking & la Vie de nos Collègues d'ailleurs

FECIF informs...



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FECIF NewsFlash 100 /2016 — ESMA: Q&A MiFID II

Executive Summary — The European Securities and Markets Authority (ESMA) has published two Questions and Answers (Q&A) documents regarding implementation issues relating to market structures and transparency topics under the Market in Financial Instruments Directive and Regulation (MiFID II/ MiFIR).

Analysis — ESMA has published a new Q&A document on market structures which provides clarifications on the two following topics:

- data disaggregation; and,
- the mandatory tick size regime.

ESMA has also updated its Q&A on transparency with two new questions which provide details regarding:

- article 4(7) of MiFIR, review of waivers granted in accordance with MiFID I; and,
- the procedure for granting a waiver from pre-trade transparency obligations for illiquid non-equity financial instruments.

The purpose of the Q&A document is to promote common supervisory approaches and practices in the application of MiFID II/MiFIR and its implementing measures.

Sources — *The Q&A PDFs are available upon request to either FECIF or GSCGI.*

FECIF NewsFlash 99/2016 — Council of the European Union: No intention to object to PRIIPs delay

Executive Summary — The Council of the European Union has no intention to object to the European Commission's proposal on the delay of the packaged retail and insurance-based investment products as regards the date of its application.

Analysis — On 9 November 2016, the Commission transmitted to the Council the proposal to amend Regulation (EU) No 1286/2014 (PRIIPS Regulation). The purpose of this proposal is to extend by one year the date of application of the PRIIPS Regulation. As the current date of application of the PRIIPS Regulation is 31 December 2016, the proposal needs to be adopted and enter into force before that date. The Council has no intention to object to the proposal or to amend it. The position of the European Parliament is still pending.

Sources — *The note of the Council PDF is available upon request to either FECIF or GSCGI.*

FECIF NewsFlash 98/2016 — ESMA: Consultation on transparency rules for package orders under MiFID II

Executive Summary — The European Securities and Markets Authority (ESMA) has opened a public consultation on draft regulatory technical standards (RTS) regarding the treatment of package orders under the amended Markets in Financial Instruments Directive (MiFID II). The

...cont'd on page 7

LES MEMBRES DU GSCGI

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consultation will run until 3rd January 2017.

Analysis — Package transactions are interlinked financial transactions comprising various instruments which firms execute jointly in order to reduce transaction costs and for risk management purposes. MiFIR's pre-trade transparency regime requires the disclosure of trading interest in all non-equity instruments. However, national competent authorities will be able to waive this requirement if certain conditions are met. Unless there is a liquid market for the package order as a whole, the amended MiFID II also allows to waive the pre-trade transparency obligation.

ESMA's draft RTS establish a methodology for determining those package orders for which there is a liquid market in the European Union as a whole, and which consequently may not be waived from pre-trade transparency requirements. The methodology ESMA is proposing is based on qualitative criteria which allows ESMA to take the characteristics of packages into account which are standardised and frequently traded. Asset-class specific criteria have been developed for

the following asset classes:

- interest rate derivatives;
- equity derivatives;
- credit derivatives; and
- commodity derivatives.

Packages in asset classes for which no asset-class specific criteria exist are considered not to have a liquid market as a whole.

ESMA is seeking stakeholders' input to its draft RTS by 3 January 2017 and will use the feedback received to finalise the standards by February 2017. The MiFID II regime will enter into force on 3 January 2018.

Sources — *The consultation documents are available upon request to either FECIF or GSCGI.*

* * *

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CIFA informs...

CIFA's

XVth International Forum

May 30-June 1, 2017

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JURISTES, FISCALISTES & JURISPRUDENCE

Le Conseil fédéral adopte le message sur l'échange des déclarations pays par pays

Berne, 23.11.2016 — Lors de sa séance du 23 novembre 2016, le Conseil fédéral a adopté le message concernant l'accord multilatéral entre autorités compétentes portant sur l'échange des déclarations pays par pays ainsi que la loi nécessaire à la mise en œuvre de cet accord. L'objectif de ce projet est d'améliorer la transparence en matière d'imposition des groupes d'entreprises multinationales, tout en fixant un cadre uniforme pour l'échange de ces déclarations.

La Suisse met ainsi en œuvre un standard minimal développé conjointement par les pays du G20 et l'Organisation de coopération et de développement économiques (OCDE) pour lutter contre l'érosion de la base d'imposition et le transfert des bénéfices (Base Erosion and Profit Shifting, BEPS). Pour pouvoir échanger automatiquement des déclarations pays par pays, la Suisse doit disposer des bases légales suivantes:

- la convention multilatérale du Conseil de l'Europe et de l'OCDE concernant l'assistance administrative mutuelle en matière fiscale, que l'Assemblée fédérale a adoptée le 18 décembre 2015. Cette convention entre en vigueur le 1er janvier 2017, et la Suisse pourra l'appliquer à partir du 1er janvier 2018;
- l'accord multilatéral entre autorités compétentes portant sur l'échange des déclarations pays par pays (accord EDPP) signé par la Suisse le 27 janvier 2016, que le Conseil fédéral soumet à l'Assemblée fédérale dans le cadre du message mentionné;
- la loi fédérale sur l'échange international automatique des déclarations pays par pays des groupes d'entreprises multinationales (LEDPP), que le Conseil fédéral soumet également à l'Assemblée fédérale dans le cadre du message mentionné.

Si le Parlement approuve ce projet et qu'aucun référendum n'est demandé dans le délai prévu, l'accord EDPP et la LEDPP pourront entrer en vigueur à fin 2017. Les groupes d'entreprises multinationales basés en Suisse devront alors établir une première déclaration pays par pays pour l'année fiscale 2018. La Suisse et ses États partenaires pourraient ainsi échanger des déclarations pays par pays en 2020. En même temps qu'il fixera la date de l'entrée en vigueur de la LEDPP, le Conseil fédéral déterminera avec quels États la Suisse entend échanger des données.

Si les bases légales entrent en vigueur à fin 2017, les groupes d'entreprises pourront fournir volontairement une déclaration pays par pays pour les périodes fiscales antérieures à 2018. Conformément à la loi, l'Administration fédérale des contributions pourra transmettre ces déclarations aux États partenaires à partir de 2018 selon les modalités de l'accord EDPP.

L'accord EDPP et la LEDPP ont fait l'objet d'une consultation du 13 avril au 13 juillet 2016. L'échange des déclarations pays par pays a été généralement bien accueilli.

Déclaration pays par pays

La déclaration pays par pays contient des informations relatives à la répartition mondiale des chiffres d'affaires et des impôts acquittés d'un groupe d'entreprises multinationales. Elle fournit également des données sur les principales activités économiques du groupe dans les différents pays. Ce document devra uniquement être établi par les groupes d'entreprises multinationales qui réalisent un chiffre d'affaires annuel consolidé de plus de 750 millions d'euros ou d'un montant équivalent à cette somme en monnaie nationale au 1er janvier 2015. Cette obligation devrait concerner environ 200 groupes basés en Suisse.

La déclaration pays par pays est transmise chaque année automatiquement aux autorités fiscales des États où ces groupes disposent d'entités, pour autant qu'une base conventionnelle permette l'échange. Les données sont uniquement destinées aux autorités fiscales et ne sont pas publiées.

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JURISTES, FISCALISTES & JURISPRUDENCE

Le Conseil fédéral adopte l'ordonnance sur l'échange international automatique de renseignements en matière fiscale

Berne, 23.11.2016 — Lors de sa séance du 23 novembre 2016, le Conseil fédéral a adopté l'ordonnance sur l'échange international automatique de renseignements en matière fiscale (OEAR). L'ordonnance entrera en vigueur le 1er janvier 2017. Le projet a été accueilli favorablement par la grande majorité des participants à la consultation.

L'ordonnance contient les dispositions d'exécution du Conseil fédéral concernant la loi fédérale sur l'échange international automatique de renseignements en matière fiscale (LEAR). Elle définit en particulier d'autres institutions financières non déclarantes et comptes exclus, et règle les détails concernant les obligations de déclaration et de diligence qui incombent aux institutions financières suisses déclarantes. En dehors des dispositions d'exécution relatives à la LEAR, l'ordonnance contient d'autres dispositions nécessaires à la mise en œuvre de l'échange automatique de renseignements (EAR). Elle définit en outre les tâches de l'Administration fédérale des contributions (AFC) dans le cadre de l'EAR et fournit des précisions concernant son système d'information. Dans son annexe, l'ordonnance contient les dispositions alternatives du commentaire de l'OCDE relatif à la Norme commune de déclaration et de diligence raisonnable.

Le 15 juillet 2014, le Conseil de l'Organisation de coopération et de développement économiques (OCDE) a approuvé la nouvelle norme internationale relative à l'échange automatique de renseignements en matière fiscale (norme EAR). Cette norme prévoit que certaines institutions financières, certains instruments de placement collectif et certaines sociétés d'assurance collectent des renseignements financiers relatifs à leurs clients ayant une résidence fiscale à l'étranger. Ces renseignements comprennent tous les types de revenus de capitaux ainsi que le solde des comptes. Ils sont transmis automatiquement, en règle générale une fois par an, à l'autorité fiscale nationale, qui les transmet à l'autorité étrangère compétente pour le client concerné. Cette transparence vise à éviter que du substrat fiscal puisse échapper au fisc d'un pays en étant dissimulé à l'étranger.

En vue de l'introduction de la norme EAR, l'Assemblée fédérale a adopté, le 18 décembre 2015, non seulement la LEAR, mais aussi la Convention multilatérale concernant l'assistance administrative mutuelle en matière fiscale ainsi que l'accord multilatéral entre autorités compétentes

concernant l'échange automatique de renseignements relatifs aux comptes financiers (Multilateral Competent Authority Agreement, MCAA). Les bases légales de l'EAR ont ainsi été posées. Afin que l'EAR puisse être appliqué avec un État partenaire, il doit être activé bilatéralement. Jusqu'à présent, la Suisse a conclu un accord visant à introduire l'EAR avec l'Union européenne et a signé, avec un certain nombre d'autres États et territoires, des déclarations communes d'introduction de l'EAR sur la base du MCAA.

À l'heure actuelle, plus de 100 États et territoires ont annoncé au Forum mondial sur la transparence et l'échange de renseignements à des fins fiscales (Forum mondial) leur intention d'introduire la nouvelle norme EAR. La Suisse entend introduire l'EAR en 2017, de sorte que le premier échange de renseignements puisse avoir lieu avec certains États partenaires en 2018.

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JURISTES, FISCALISTES & JURISPRUDENCE

Jurisprudence ... Tribunal fédéral

Arrêt du 26 septembre 2016 (2C_916/2014, 2C_917/2014):
Amendes à caractère pénal non déductibles
fiscalement pour les personnes morales

Les amendes et les autres sanctions financières à caractère pénal prononcées à l'encontre de personnes morales ne sont pas déductibles fiscalement, car elles ne représentent pas des charges justifiées par l'usage commercial. Une déduction ne peut être effectuée que dans la mesure où, avec la sanction prononcée, un profit obtenu indûment a été réduit. Le Tribunal fédéral admet un recours de l'administration fiscale cantonale de Zurich.

En 2009, la Commission européenne avait infligé à une société anonyme suisse une amende de 348'000 euros en raison d'activités administratives dans le cadre d'accords cartellaires. L'entreprise avait en conséquence constitué des provisions correspondantes, pour un montant d'environ 460'000 francs. En 2013, la Commission de recours en matière fiscale du canton de Zurich a décidé d'admettre la provision en déduction du bénéfice net, ce que le Tribunal administratif cantonal a confirmé.

Le Tribunal fédéral admet le recours formé par l'administration fiscale du canton de Zurich. Les amendes et les autres sanctions financières à caractère pénal infligées à des personnes morales (*sociétés anonymes et autres sociétés de capitaux, sociétés coopératives, associations et fondations*) en raison de leur propre responsabilité ne sont pas déductibles fiscalement. Le fait que les amendes ne représentent pas des dépenses justifiées par l'usage commercial et partant déductibles ressort d'abord de l'interprétation de la loi: si les amendes de personnes morales étaient déductibles fiscalement, cela aurait pour conséquence qu'une partie de l'amende infligée à l'entreprise serait indirectement prise en charge par la collectivité. L'effet pénal recherché de la sanction serait de ce fait contourné. Sous l'angle de l'unité de l'ordre juridique, une telle influence du droit fiscal sur le droit pénal n'est pas souhaitable. Il faut aussi prendre en considération le fait que selon le droit actuel, les déductions fiscales en lien avec des commissions occultes ne sont pas non plus admissibles et que la corruption est elle-même punissable. Il serait paradoxal que des versements de commissions occultes ne puissent pas être déduites fiscalement, et qu'en revanche les amendes prononcées à l'encontre de la société pour corruption le soient. Le Tribunal fédéral a en outre déjà jugé...

Lien URL pour télécharger le communiqué de presse:
http://www.bger.ch/fr/press-news-2c_916_2014-t.pdf

Arrêt du 22 septembre 2016 (4A_83/2016):
Programme américain de régularisation fiscale:
banque pas autorisée à livrer aux autorités américaines
des noms d'avocats.

Une banque tessinoise s'est vu interdire de livrer aux autorités des Etats-Unis, dans le cadre du programme américain de régularisation fiscale, des données se rapportant à deux avocats et à une étude d'avocats. Le Tribunal fédéral rejette dans ses points essentiels le recours de la banque et confirme en conséquence la décision du Tribunal de commerce du canton de Zurich.

La banque ayant son siège dans le canton du Tessin participe, en rapport avec le règlement du litige fiscal avec les Etats-Unis, au "*Program for non-prosecution agreements and non-target letters for Swiss banks*" (Programme américain de régularisation fiscale) de l'administration fiscale américaine et du Département de la justice américain. La banque tessinoise avait l'intention dans ce cadre de fournir les noms de deux avocats suisses, qui avaient géré en tant que représentants autorisés des comptes de la banque pour des clients américains, ainsi que d'une étude d'avocats qui avait amené à la banque des clients américains. Le Tribunal de commerce du canton de Zurich a admis au mois de décembre passé une action des avocats et de l'étude fondée principalement sur la Loi sur la protection des données (LPD) et a interdit à la banque de fournir les données en question aux autorités américaines.

Le Tribunal fédéral rejette dans ses points essentiels le recours intenté par la banque contre cette décision. La livraison envisagée des données aux autorités américaines constitue en principe une violation de la personnalité des intéressés, étant donné que les Etats-Unis n'ont pas de législation assurant un niveau de protection adéquat des données au sens de l'article 6 alinéa 1 LPD. Dans ces circonstances, une livraison des données peut être justifiée selon la Loi sur la protection des données si elle est indispensable à la sauvegarde d'intérêts publics prépondérants (article 6 alinéa 2 LPD).

Comme cette condition doit être réalisée à l'époque de la livraison des données, les circonstances peuvent évoluer au cours de la procédure. Une livraison des données aux autorités américaines serait indispensable dans le sens précité notamment s'il fallait admettre que, sans la livraison de celles-ci, le litige fiscal avec les Etats-Unis...

Lien URL pour télécharger le communiqué de presse:
http://www.bger.ch/fr/press-news-4a_83_2016-t.pdf

ASSURANCE PROFESSIONNELLE

Exemple de Sinistres

**Pas de cas de sinistre
à signaler
dans cette édition.**

* * *

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

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

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

Vous retrouverez d'autres exemples de sinistres dans les prochaines éditions du WealthGram.

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

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

ANALYSES & PLACEMENTS

La course au timing détruit de la valeur

...article de BCGE, Membre Partenaire du GSCGI



Xavier Pintado



Annick Baud-Woodtli

La performance du fonds versus la performance collective

La performance des fonds de placement fait souvent l'objet d'après débats. C'est en général le gérant du fonds qui se retrouve au centre des discussions, car il joue un rôle essentiel dans la création de valeur. En fonction du type de véhicule de placement, le gérant aura pour mission de maximiser son rendement par rapport au benchmark ou par rapport au risque. Le gérant est ainsi le point focal de toutes les attentions.

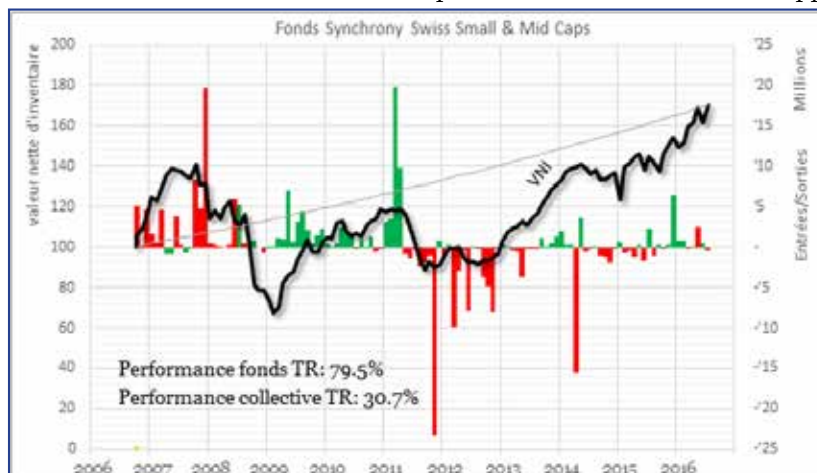
Il est bien normal que les investisseurs s'interrogent sur l'efficacité des gérants de fonds à qui ils confient leur argent - et il est légitime qu'ils se montrent exigeants. Cependant, les investisseurs ne doivent pas oublier qu'eux aussi participent au processus de création de valeur. Ils y contribuent de différentes manières, dont l'une revêt une importance particulière:

ils décident par eux-mêmes à quel moment ils achètent ou vendent des parts de fonds. Ces décisions jouent naturellement un rôle essentiel dans la performance dégagée pour les investisseurs.

Il faut noter cependant que lorsqu'un investisseur décide d'entrer dans un fonds ou d'en sortir, cela n'influence pas le rendement de ce fonds. En effet, la méthode de calcul utilisée pour calculer sa performance, basée sur la VNI, neutralise l'impact des souscriptions/rachats. La mesure

de l'habileté du gérant est ainsi «isolée» des décisions prises par les investisseurs. Nous appellerons cette performance la performance du gérant du fonds. Il s'agit de celle qui est habituellement disséminée auprès du public.

Il en va tout autrement de la capacité du fonds à créer de la valeur pour les investisseurs. Celle-ci est à la fois tributaire de la compétence du gérant et des flux d'entrées/sorties, décidés cette fois-ci par les investisseurs. La performance du gérant du fonds est de ce fait différente de la performance que le fonds génère collectivement pour ses investisseurs. Nous appellerons cette dernière la performance collective.



Cette différence, bien réelle, dépend, cette fois, des investisseurs. Lorsque ceux-ci font preuve collectivement d'une bonne capacité de «timing» pour leurs souscriptions/rachats, le fonds va générer une performance collective supérieure à celle du gérant de fonds. Ils auront dans ce cas ajouté de la valeur au

processus. A contrario, lorsque la performance collective est inférieure à celle que réalise le gérant, cela signifie que le moment d'entrée et de sortie décidé par les investisseurs n'a pas été optimal. On pourrait dire qu'un bon gérant de fonds associé à des investisseurs avisés peut faire des merveilles.

Beaucoup d'investisseurs se montrent surpris par le distinguo qu'on peut faire entre ces deux performances. Ils soupçonnent parfois que la distinction relève de...

Cet article est disponible en version intégrale sur le website -- www.gscgi.ch -- pendant un mois et en zone "membres" dès janvier 2017

ANALYSES & PLACEMENTS

Enhance Prosperity and Improve Health: Slash Regulations, Please

...article by Steve H. Hanke

Productivity and economic growth continue to surprise on the downside in most countries. While there is a great deal of handwringing over the so-called productivity puzzle, little attention is given to the real elixir: freer markets and more competition. Indeed, the policy tide is moving in the opposite direction in most places.

To get a grip on the productivity puzzle, let's lift a page from the late Senator Daniel Patrick Moynihan, who once said, *"You're entitled to your own opinions, but you're not entitled to your own facts."* Yes. There is nothing better than a hard look at empirical evidence to see if it supports those who espouse freer markets or those who embrace the regulatory state as models to enhance our prosperity and health.

The World Bank has been rigorously measuring the ease of doing business (DB) in many countries for over ten years, producing a treasure trove of empirical evidence. The Bank publishes its results identifying levels of economic freedom (*read: regulatory freedom*) each year in a volume entitled **Doing Business**. Ten sets of indicators that capture important dimensions of an economy's regulatory environment are quantified. The accompanying table defines each of the ten quantitative indicators. These are each measured by using standardized procedures that ensure comparability and replicability across the 189 countries studied. For each indicator, the scores range from a potential low of '0' to a high of '100'.

Using the DB scores, we can determine whether there is a relationship between a freer regulatory environment (*a high DB score*) and prosperity as measured by GDP per capita. The accompanying chart shows that there is a strong, positive relationship between DB scores and prosperity. For example, the United States' DB score is 82.15 and its GDP per capita is \$55,836, while Indonesia's DB score is only 58.12 and its GDP per capita is \$3,346. All the remaining 187 countries are plotted on the chart. There are only four countries that are "outliers", with outsized

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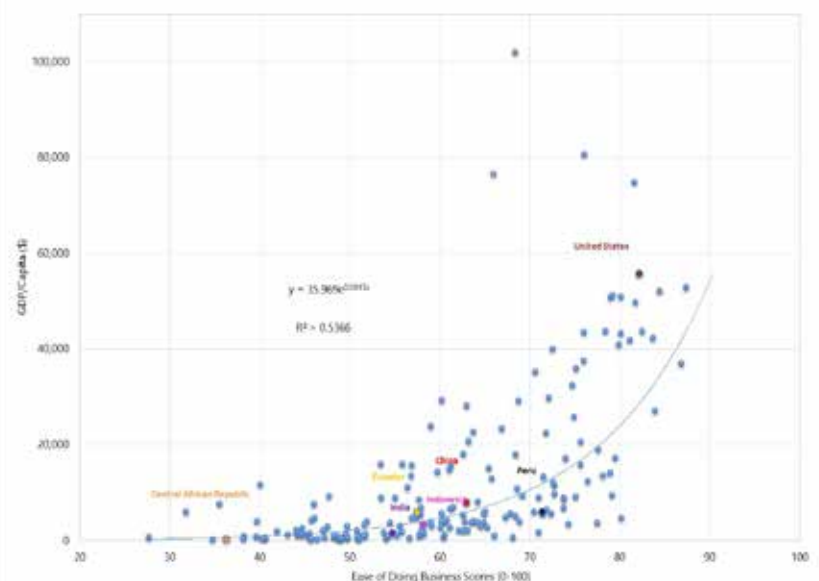
What Doing Business measures – 10 areas of business regulation

Indicator Set	What Is Measured
Starting a Business	Procedures, time, cost, and paid-in minimum capital to start a limited liability company
Dealing with Construction Permits	Procedures, time, and cost to complete all formalities to build a warehouse and the quality control and safety mechanisms in the construction permitting system
Getting Electricity	Procedures, time, and cost to get connected to the electrical grid, the reliability of the electricity supply and the cost of electricity consumption
Registering Property	Procedures, time, and cost to transfer a property and the quality of the land administration system
Getting Credit	Movable collateral laws and credit information systems
Protecting Minority Investors	Minority shareholders' rights in related-party transactions and in corporate governance
Paying Taxes	Payments, time, and total tax rate for a firm to comply with all tax regulations
Trading Across Borders	Time and cost to export the product of comparative advantage and import auto parts
Enforcing Contracts	Time and cost to resolve a commercial dispute and the quality of judicial processes
Resolving Insolvency	Time, cost, outcome, and recovery rate for a commercial insolvency and the strength of the legal framework for insolvency

Source: Doing Business 2016.

Prepared by Prof. Steve H. Hanke, The Johns Hopkins University.

2015 GDP/Capita vs. Ease of Doing Business Scores



Source: Doing Business 2016 and World Economic Outlook Database.
Calculations by Prof. Steve H. Hanke, The Johns Hopkins University.

ANALYSES & PLACEMENTS

Enhance Prosperity and Improve Health: Slash Regulations, Please

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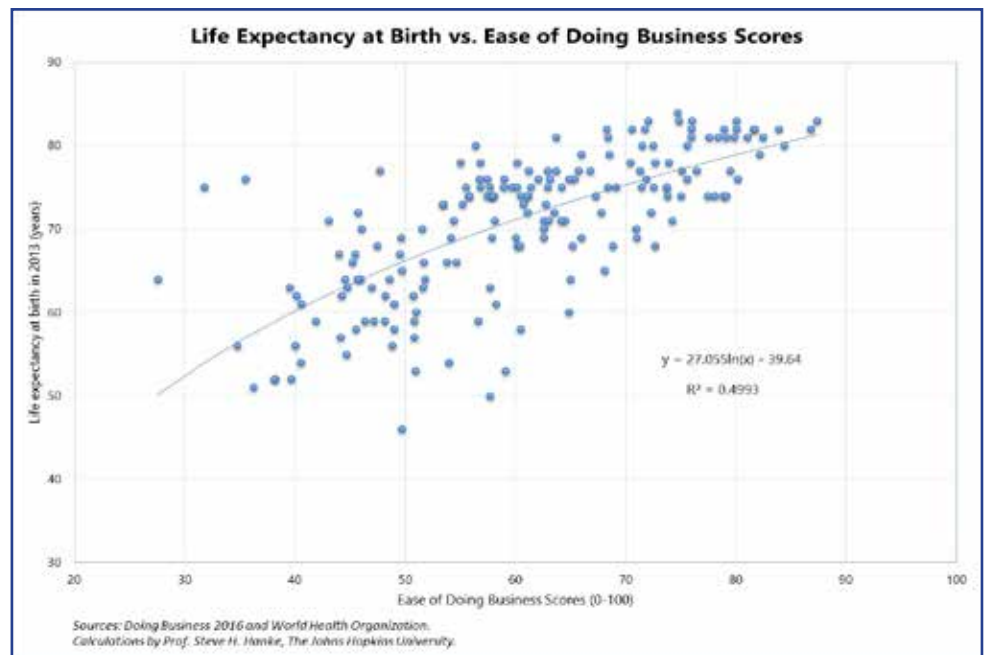
GDP per capita relative to their DB scores: Qatar, Luxembourg, Switzerland, and Norway.

In addition to the strong, positive relationship between regulatory freedom (*ease of doing business*) and prosperity (*GDP per capita*), deregulation yields increasing returns. That is, each increment increase in the DB score yield larger and larger gains in GDP per capita. With each improvement in the DB score, there is a more-than-proportionate improvement in prosperity. This explains why post-communist countries that embraced Big Bang economic liberalizations, like Poland, have done so much better than the gradualists. The Big Bangers literally got more for their buck.

Economic prosperity is, quite literally, a matter of life and death. The relation between income growth and life expectancy is, of course, complex. Economic prosperity affects life expectancy through many channels: higher individual and national incomes produce favorable effects on nutrition, on standards of housing and sanitation, and on health and education expenditures. While it is true that reductions in mortality have sometimes been the result of “technological” factors, in the larger sense, it is clear that sustained economic growth is a precondition for the kinds of investments and innovations that, over time, significantly reduce mortality. The evidence on this point is abundant and unequivocal.

So, knowing that a freer regulatory environment is associated with higher levels of GDP per capita, we should observe that a freer regulatory environment (*a higher DB score*) is associated with higher life expectancies. Sure enough, it is. The accompanying chart shows a strong and positive relationship between DB scores and life expectancy – albeit one characterized by diminishing returns (*given additional increments in DB scores yield smaller and smaller gains in life expectancy*).

Many of the 189 countries reviewed in the Doing Business 2016 report are far away from adopting “best practice” policies when it comes to the regulatory frameworks they



impose on businesses. In consequence, prosperity and health are inferior to what they could be. Just how can that be changed? The easiest way is the simplest: just mimic what is done where “best practice” policies prevail. This is an old, tried-and-true technique that is used in industry, particularly when competitive markets prevail. Just copy what the “good guys” do. If you do so, you will become productive and competitive. These lessons about the diffusion of “best practice” and how it improves productivity are documented in great detail in a most insightful book by William W. Lewis: *The Power of Productivity*. (Chicago: University of Chicago Press, 2004) The same strategy can be used by governments to slash regulations.

For example, until 2009, those seeking to import and sell pharmaceuticals in the Republic of Georgia faced the same regulatory review process as one would if the drugs were produced domestically. Applicants would pay a registration fee and file a two-part form with the Departmental Registry of State Regulation of Medical Activities at the Ministry of Labor, Health, and Social Protection. The subsequent review involved both expense and delay, with a fair amount of back-and forth between applicant and bureaucracy as technical examinations led to agency demands for corrections. This process was not intended to exceed about six months, but often took far longer. In addition, the government required all importers

ANALYSES & PLACEMENTS

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to obtain trade licenses from foreign manufacturers, adding to their costs.

In October 2009, however, the Georgian government did something remarkable. Recognizing that its regulatory machinery was, in fact, unnecessarily duplicating that in many developed countries, it adopted a new “approval regime.” It compiled a list of foreign authorities with good regulatory track records (*including, for example, the European Medicines Agency and drug administrations in the United States, Japan, Australia, and New Zealand*), and pharmaceuticals that were approved for sale by those entities could henceforth gain automatic approval for sale in Georgia. In addition, the registration fee was slashed 80 percent for brand name drugs and packaging regulations were greatly simplified under a new “reporting regime.”

This regulatory outsourcing compressed the time and greatly reduced the expense required to compete in the Georgian pharmaceutical market. The hope was that this would put significant downward pressure on prices and improve access to drug therapies in the domestic market. It did so very quickly. (*These results are documented in Steve H. Hanke, Stephen J.K. Walters, and Alexander B. Rose. “How to Make Medicine Safe and Cheap.” Regulation, Fall 2014.*)

To grasp the huge potential for increasing productivity, prosperity, and health, let's look at Indonesia. The accompanying table shows Indonesia's DB score for each of the ten indicators. Each is compared to the score of the country with the best DB score in that indicator. For example, Indonesia has a deplorable score on enforcing contracts. Indeed, the gap between Indonesia and Singapore, which scores the best on that indicator in the 189 countries studied, is huge. So, the potential

<i>Indonesia – Doing Business Scores by Indicators</i>		
Doing Business Indicator	Indonesia's Doing Business Score	Country with Best Doing Business Score
Starting a Business	66.04	New Zealand (99.96)
Dealing with Construction Permits	66.68	Singapore (92.97)
Getting Electricity	80.73	Republic of Korea (99.88)
Registering Property	52.4	New Zealand (94.46)
Getting Credit	55	New Zealand (100)
Protecting Minority Investors	53.33	Singapore (83.33)
Paying Taxes	60.46	UAE (99.44)
Trading Across Borders	64.75	Denmark (100)
Enforcing Contracts	35.37	Singapore (84.91)
Resolving Insolvency	46.48	Finland (93.81)

Source: Doing Business 2016.

Prepared by Prof. Steve H. Hanke, The Johns Hopkins University.

Incremental Analysis of Indonesia		
Doing Business Score	GDP/Capita (\$)*	Increase in GDP/Capita (\$)
58 (Current)	\$3,346	
63	\$5,321	\$1,975
68	\$8,345	\$3,025
73	\$12,887	\$4,541
78	\$19,706	\$6,819
83	\$29,946	\$10,240
88	\$45,321	\$15,375
93	\$68,408	\$23,087
98	\$103,074	\$34,666

*Listed GDPs/Capita (\$) are expected values based on the regression equation, normalized for Indonesia's current GDP/Capita.
Note: Discrepancies between additive increases in GDP/Capita and absolute GDP/Capita figures are the result of rounding errors.
Sources: Doing Business 2016 and World Economic Outlook Database.

Calculations and chart by Prof. Steve H. Hanke, The Johns Hopkins University.

improvement for Indonesia by adopting the best practice for enforcing contracts is enormous.

Just what overall improvements in Indonesia's regulatory regime would do for prosperity is displayed in the last table relating incremental DB score improvement to GDP per capita. Indonesia's current score is 58 and its GDP per capita is \$3,346. So, if Indonesia attempts to slash its regulations and move closer to best practice – let's say it improved its DB score by 10 points, yielding a score of 68 (*the same as Greece and Serbia*) – Indonesia's GDP per capita would be expected to jump by \$4,999, or 2.5 times.

With an appeal to the facts, the productivity puzzle is easy to solve. Just slash regulations by mimicking observed best practices.

Steve H. Hanke

LE COIN TECHNIQUE

Trump, a casting mistake for many, yet not for financial markets

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

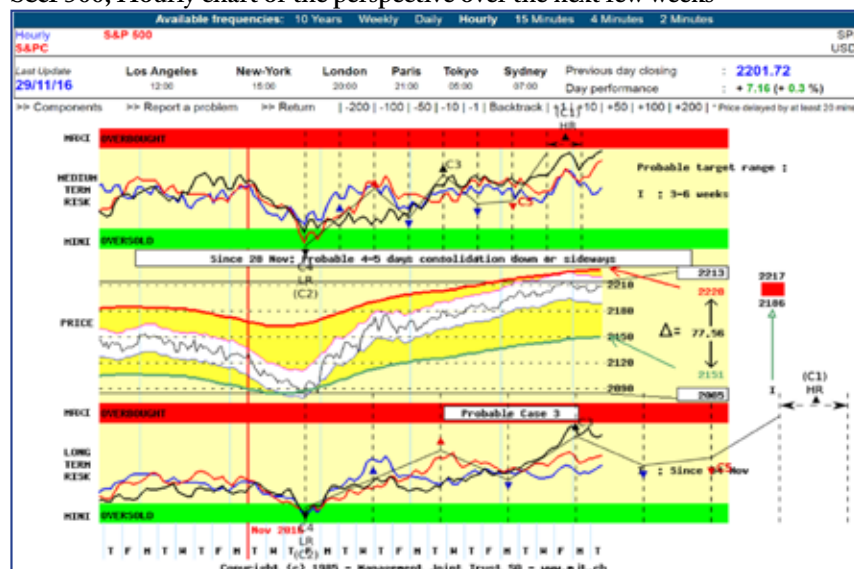


The election of Mr Trump as the next US President must have caught most by surprise (*ourselves included*). Yet, from a markets perspective, it only confirmed the Reflation scenario we had been anticipating and writing about since this Spring.



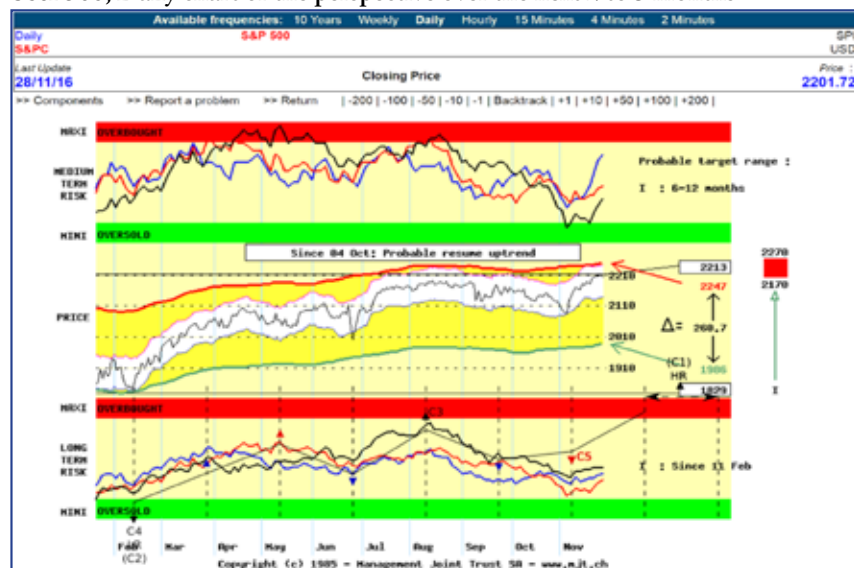
Now, 3 weeks down the line, reflation has become a mainstream theme. With the huge move we just had on interest rates, the new highs just made on US markets and the Dollar Index reaching levels not seen since early 2003, it may be time to pause and consider the prospects for the S&P500 as we move towards year end and 2017.

S&P500, Hourly chart or the perspective over the next few weeks



The rally since the 9th of November has reached its impulsive targets up (right hand scale) and our long term oscillators (lower rectangle) have just confirmed an intermediate top (Case 3). Our medium term oscillators (upper rectangle) are now also Overbought. They are entering a High Risk zone. Over the next 10 days, as shown by our model, we would now expect a consolidation down which could retrace towards our envelope (40 to 60 points lower) before a new uptrend materializes until year end.

S&P500, Daily chart or the perspective over the next 2 to 3 months



Following its long, yet high level consolidation down since August, the S&P500 has now resumed its uptrend. Barring the correction just mentioned above on the hourly chart, it should then continue up and reach a High Risk zone slightly below 2'300 during January, possibly early February. Following that, we would expect a more widespread correction down towards the end of March/April.

Therefore, reflation has turned mainstream, yet for now, and it's all eyes on the Italian referendum next Sunday. Who knows whether it will be rejected or not, and how the market will react to either outcomes? Yet, if we believe our S&P500 charts above, resilience might prevail and the S&P500 should continue to climb its 'wall of worry' until early next year, at least until Mr Trump effectively takes office.

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

LE COIN TECHNIQUE

Surpondérer le marché du Nikkei!

...article de Bruno Estier Strategic Technicals - <http://bruno.estier.net/> - bruno.estier@sunrise.ch

En 2014 jusqu'en été 2015, le Nikkei était dans une tendance haussière et surperforait les actions US (*trait pointillé noir*), aidé par la baisse du yen (*trait orange*) situé sur le panel supérieur du graphique. Ensuite et jusqu'à juillet 2016, le yen a rebondi, la force relative a pris une tendance baissière et le Nikkei a baissé de 21000 à 14800 après avoir cassé sa moyenne mobile de 40 semaines et traversé le nuage hebdomadaire ICHIMOKU. Alors que le Nikkei avait déjà atteint 14800 en février 2016, il revint tester ce niveau une seconde fois en juin 2016 au moment où la force relative du Nikkei versus le S&P500 atteignait son point bas et alors que le yen index atteignait le niveau psychologique de 100 ($1\$=100¥$). Alors que ces signaux renforçaient la tendance baissière, les instruments de vitesse situés sur la partie inférieure du graphique, en particulier le Stochastique et le MACD, commençaient à donner des signaux divergents. Lors du second creux à 16800, le MACD hebdomadaire établissait un creux plus élevé en juillet qu'en février 2016. De plus, l'indicateur Stochastique se retournait à la hausse à partir de la zone survenue. Ainsi, le rebond de cet été, de 14800 à 16500, n'était pas une grande surprise d'un point de vue technique. Mais, à quel moment a-t-on obtenu la confirmation que la tendance baissière a cédé la place à une tendance haussière? Il faudra attendre trois signaux successifs qui s'étalent sur une période de quatre mois de juillet à octobre.

troisième signal est donné par le processus de pénétration par l'index du nuage à sa limite inférieure de 16800 au début d'octobre. Cette traversée du nuage prendra encore six semaines jusqu'à la mi-novembre pour dépasser sa borne supérieure à 17900. Dès lors, le Nikkei est établi solidement dans une tendance haussière qui devrait atteindre les anciens sommets de 20000 et 21000. D'ailleurs, cette perspective est renforcée sur le panel supérieur par la progression régulière à la hausse de sommets et de creux de la force relative (*noir pointillé*) du Nikkei par rapport au S&P500. De même, la forte baisse du Yen dans les deux dernières semaines a aussi corrélé parfaitement avec l'accélération haussière du Nikkei de 17500 à 18500. Avec un MACD hebdomadaire positif depuis mi-octobre, la hausse doit se poursuivre avec des retours de faible amplitude qui seront limités par la borne supérieure du nuage, qui reste à 17900 jusqu'en février 2017 et ne descend qu'à 17500 de mars à mai 2017. Ainsi, aussi longtemps que la force relative du Nikkei est en progression haussière, le marché japonais est certainement à surpondérer dans une allocation géographique de marchés actions.



Après le rebond de juillet, le premier signal de confirmation est la progression de l'indice au-dessus de la moyenne mobile descendante de 40 semaines (*en bleu*) vers le niveau de 17000 en septembre. Mais, il faudra attendre jusqu'à la fin octobre pour obtenir le second signal qui est le changement de direction d'une tendance baissière à une tendance à la hausse de cette moyenne mobile de 40 semaines. Le

Graphique:

Nikkei en bougie hebdomadaire avec représentation de moyennes mobiles de 40 et de 20 semaines, entourée de Bandes de Bollinger. Sur le panel supérieur se trouve le ratio du Nikkei versus le S&P500 (*trait pointillé noir*) et la valeur du Yen (*trait plein orange*).

Source: Stockcharts.com



Paying Taxes 2017

A PwC in-depth analysis on tax systems in 190 economies – 11th edition

Report released on Nov. 2016 -- <http://www.pwc.com/gx/en/services/tax/paying-taxes-2017.html>

Download PDF ... <https://www.pwc.com/gx/en/paying-taxes/pdf/pwc-paying-taxes-2017-chapter4.pdf>

ABOUT THE REPORT

Paying Taxes 2017, now in its 11th edition, continues to be a unique report from PwC and the World Bank Group. It is the only piece of research which, by using a medium-sized domestic case study company, measures and assesses the ease of paying taxes across 190 economies. This year, for the first time, we look at two post-filing processes; obtaining a VAT refund and correcting a corporate income tax return and dealing with any corresponding tax audits. This publication also includes two articles which look beyond the case study. The first considers that while paying taxes is an important part of how companies contribute to society, companies may have more to offer. The second article looks at the rising importance of consumption taxes to governments and the challenges of creating effective and efficient VAT systems.

* * *

Some noticeable global findings, based on 2015 data:

- Twenty-six economies introduced or enhanced the electronic systems for filing and paying taxes.
- 162 economies have a VAT system, with a VAT refund available to the case study company in 93 economies. A fast and efficient process can be critical to ensure that a company does not face cash flow difficulties.
- The analysis shows it typically takes less time to comply with a VAT refund in high income economies (*almost 8 hours*) than in low income economies (*almost 27 hours*).
- 180 economies in the study levied corporate income tax in 2015.
- Average Total Tax Rate 40.6%.
- Average Time to comply 251 hours.
- Average Number of Payment 25.
- Globally, in 59% of economies with corporate income tax, the tax authority would not be expected to audit the case study company as a result of the corporate income tax error.
- In 84% of the economies in the EU & EFTA region, the corporate income tax error is unlikely to trigger an audit.
- The EU & EFTA region performs the best, on average, across the post-filing index with just over 7 hours to claim a VAT refund, almost 15 weeks to receive the refund.



Wealth Adviser Briefing: Barred Brokers

[...] Dozens of former brokers who were permanently or temporarily barred by regulators from working at a brokerage firm have begun new careers as investment advisers. The transition is legal, but the nuances between the professions of broker and investment adviser can be lost... [...]

[...] Brokers are overseen by an industry self-regulator, the Financial Industry Regulatory Authority, and have to give only "suitable" advice on investments. [...]

[...] Investment advisers are overseen by state regulators and the Securities and Exchange Commission and are held to a "fiduciary" standard that requires them to put clients' interests ahead of their own. [...]

Read more: <http://blogs.wsj.com/moneybeat/2016/11/04/wealth-adviser-daily-briefing-barred-brokers-wall-streets-election-slog/>

Source: The Wall Street Journal - Nov. 4, 2016

CFB

SEC Sharpens Focus on Registered Investment Advisers

[...] Agency working to enhance its oversight of Finra, Wall Street's self-regulator [...]

[...] In response to a boom in the number of so-called registered investment advisers, or RIAs, the SEC has boosted by 20% the number of examiners assigned to monitoring wealth-management firms and investment companies. [...]

[...] The SEC expects this group of advisers, whose ranks have climbed 17% over the past two years to 12,000, will manage more than \$70 trillion of assets by the end of this fiscal year, up from \$28 trillion a decade ago. [...]

[...] In its latest annual performance plan and budget justification to Congress, the SEC said hiring examiners for the investment-adviser population was a priority. Beyond a jump in the number of advisers and assets under management, the agency flagged challenges posed by the increased use of new and complex products and increased use of technology in operations. [...]

Read more: <http://www.wsj.com/articles/sec-sharpens-focus-on-registered-investment-advisers-1476971185>

Source: Financial Times - Oct. 20, 2016

CFB

Italy's banking system needs intensive care

[...] When a crisis has passed, the survivors should be wiser for it. How much Europe learnt from the global financial crisis may be tested soon, in Italy, where the banks are in a perilous state. [...]

[...] The likelihood that further government intervention will be required is high. Yes, UniCredit, the country's largest bank, is seeking to raise €13bn capital, and Monte dei Paschi, its most troubled large bank, may close a €5bn combined debt-for-equity swap and capital increase this week. But these sums are small compared with the system's needs and the worst problems are concentrated in the smaller banks. [...]

[...] There are €360bn of impaired loans in the system, according to the Bank of Italy; €200bn of these are of the worst sort, the non-performing sofferenze. This is a huge number given that there is €225bn in equity on the books of the banking system. And this may understate the rot. [...]

Read more: <https://www.ft.com/content/4a3597d8-b25c-11e6-9c37-5787335499a0>

Source: Financial Times - Nov. 24, 2016

CFB

Are asset management companies too profitable?

[...] Fund companies may face pressure to reduce fees and be more transparent on charges. [...]

[...] The FCA's 200-page report painted a damning picture of the industry and the value it delivers for investors. The majority of active managers underperform their indices after fees, the regulator found. [...]

[...] It added that institutional investors get better fees and performance than individuals, who typically struggle to understand complex charging structures. More worryingly for the industry, the regulator was explicitly critical of the consistently high profits booked across the industry. [...]

[...] The FCA found that asset management companies have "consistently earned substantial profits" over the past six years, with an average profit margin, a measure how much of every pound of sales a company actually keeps in earnings, of 36 per cent. [...]

Read more: <https://www.ft.com/content/962ae5d0-b30b-11e6-a37c-f4a01f1b0fa1>

Source: Financial Times - Nov. 27, 2016

CFB

GLOBAL EVENTS

Le Groupement a négocié pour les membres du GSCGI:

- 20% discount pour la première inscription, et
 - 50% pour toute inscription supplémentaires de la même société
- à la prochaine conférence d'Academy & Finance**

ACADEMY & FINANCE

L'AGEFI
QUARTIER DE VIEUX COURTOIS ET FINANCIERS À GENÈVE

Transparence fiscale, toujours plus Secret bancaire, toujours moins

Le nouveau tournant de la place financière suisse - 4^{ème} conférence annuelle

GENÈVE, 1^{ER} & 2 DÉCEMBRE 2016, GRAND HÔTEL KEMPINSKI

Jörg Gasser,
Secrétaire d'Etat aux questions
financières internationales (SFI),
Département fédéral des finances
(accord de principe)

Herbert J. Scheidt,
Président de l'Association suisse
des banquiers (ASB), Bâle

- > **Risque fiscal du client** et responsabilité des professionnels suisses
- > **Emploi de structures offshore (Panama papers)** : quelles implications ?
- > Gestion du risque légal asymétrique : les leçons de Petrobras, FIFA, BSI,...
- > **LSFin/LEFin**: quelle est l'incidence de la non-conformité fiscale des clients sur les autorisations en faveur des établissements financiers ?
- > Transparence accrue sur les détenteurs de structures dans l'UE et aux USA
- > **Échange automatique de renseignements**: les dernières évolutions importantes
- > Augmentation massive de l'entraide administrative en matière fiscale
- > **Les lanceurs d'alerte** au service de la transparence fiscale
- > Le nouveau modèle de surveillance des gérants indépendants et des trustees

Christian Balmat, OAR-G
Frédérique Bensahel, FBT
Paolo Bernasconi, Bernasconi
Martinelli Alippi & Partners
Patrick Dörner, ASG
Didier de Montmollin, DGE
Franz de Planta, OAR-G
Fabrice Filliez, Secrétariat
d'Etat aux questions
financières internationales
Emmanuel Genequand, PWC

Darlene Hart, US TFS
Marc Henzelin, Lalive
Stéphanie Hodara El Bez,
Altenburger Ltd
Olivier Jornot, Procureur
général, Canton de Genève
Jan Langlo, Association de
Banques Privées Suisses
Alexis Lautenberg, Swiss
Finance Council

Alain Bruno Lévy, Junod,
Muhlstein, Levy & Puder
Carlo Lombardini, Poncet
Turrettini Avocats, Genève
Martin Maurer, ABES
Metihe Mehmeti, SEI-AFC
Yves Moneris, Yramis Pénal
Dr. Stilian Ordolli, MROS
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Olivier Stahler, Lenz & Staehelin
Alexandre Von Heeren, SATC

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AGENDA OF GSCGI's MONTHLY CONFERENCES

Les informations pour la conférence du...
— 20 janvier 2017 —
seront communiquées prochainement.

* * *

Jan. 20, 2016/Geneva — Orateur: Ambassadeur Fabrice Filliez, Secrétariat d'Etat aux questions financières internationales (SIF)

Feb. 24, 2016/Geneva — Orateur: *tba*

* * *

Réservez ces dates!

Les thèmes de Conférence sont communiqués par invitation et sur le site du Groupement — www.gscgi.ch

Non-Membres bienvenus — Inscrivez-vous!

LA REUNION MENSUELLE DU GSCGI

Nov. 18, 2016 - Geneva - Implications of AIFMD for Swiss Fund Managers

...article by CFB, Cornèr Banca, DF Advocates & Alter Domus

For our last luncheon conference of the year, organized in cooperation with **Cornèr Banca SA, Partner Member of our Groupement**, the above mentioned topic was presented by the following speakers: **Ms DEBORAH CHAPPELL** (Senior Associate, DF Advocates - Malta – Head of Financial Services Practice); **DR. JEAN C. FARRUGIA B.A. LL.D** (Senior Partner, DF Advocates); **MR RAMON BONDIN** (Head of Depositary Services Malta, Alter Domus Malta, Fund Management Services – Malta); **MR DOMENIC AZZOPARDI** (Senior Manager - Funds Services, Alter Domus Malta, Fund Management Services – Malta). Finally, **MR SERGIO PEÑA** (Institutional Sales Manager, Cornèr Banca SA) and **MR JÉRÔME JATON** (First Vice President, Cornèr Banca SA, Geneva branch) presented historical and actual facts, services and data about Cornèr Banca with a set of slides that members of GSCGI may find in our online conference archives.

Dr. Jean C. Farrugia presented the main conference topic in a few slides focusing especially on:

- AIFMD legislation time line and its key objectives, namely (a) better manage systemic risks related to alternative funds, (b) increase transparency of these funds for regulators and investors, and (c) enhance investor protection.
- AIFs' segment including Hedge funds, Real estate funds, Infrastructure funds; Private equity funds; and Venture capital funds (*within or outside the EU*) targeting generally so-called 'Professional Clients' under MiFID II Annex II.

Finally he mentioned that the 'European Passport' for the distribution of AIFs to professional investors within the EEA was made possible by the AIFMD legislation. Furthermore, he went into explaining instances where Swiss Managers could access the European Passport, as detailed in a couple of infographics (*see our online conference archives*).

Then an insightful debate, between Dr. Jean C. Farrugia and panelists from Alter Domus (Malta), began. It was successfully moderated by Ms. Deborah Chappell, and it could be resumed with the following seven main questions:

1. From your experience how can a Swiss Manager set-up in the EU?

Some clients of ours have set up their own AIFM and AIF structure but that can obviously prove to be costly (*though more efficient than other European jurisdictions such as Luxembourg and Ireland*). We have a number of clients that start by setting up what in Malta we call a CATEGORY 1 Investment Services Firm which is basically a licensed European Investment Services Company that can perform a number of investment services to retail clients, professional clients, and collective investment schemes such as reception and transmission of orders and investment advisory services. These CAT 1s however cannot manage and control clients money themselves. However this has become very popular, especially with Swiss managers as it gives them the opportunity to make use of the European passport of the

CAT 1 and distribute its funds and is relatively cost efficient. As one gets used to Malta and the business grows the CAT 1 can then be upgraded to a full AIFM and with a proven track record with the regulator this can be relatively quick to achieve. There are various options available. It is very important to assess the pros and cons of each in light of the specific requirement of the manager or family office. Making use of AIFM platforms is also very common for start-up funds and might be a good option and time to market is obviously quicker than setting your own AIFM structure. Moreover, funds with a proven track record in other jurisdictions are not usually keen to end up under someone else's umbrella or 'brands'. Earlier this year the MFSA has released the Notified Alternative Investor Fund or NAIF which is the Maltese equivalent of the RAIF that one finds in Luxembourg (*we actually released the NAIF regulations before our Lux colleagues*). Although one needs the support of a full scope AIFM be it in Malta or in any other European jurisdiction, a NAIF is not licensed by the MFSA but undergoes a mere notification. The regulator has put an internal deadline of 10 business days. Within 10 days one can therefore launch a new fund which is fully AIFMD compliant and the possibility to Market within the EU.

2. How can Swiss Managers (non-EUAIFMs) market their funds within the EU?

As things stand right now a licensed Swiss Fund Manager can only market in the EU via reverse solicitation and under private placement regime which is very limited for obvious reasons. This is especially true for small players in the market and start-up funds. National private placement rules are subject to compliance with certain additional operational conditions and disclosure requirements. For a non-EU AIFM to be able to market an AIF in those EU countries which permit the private placement of AIF interests, three conditions must be complied with:

- Disclosure: The non-EU AIFM must comply with certain of the disclosure and transparency provisions in the AIFM Directive
- Cooperation: Appropriate information exchange agreements (*described in the AIFM Directive as "appropriate cooperation arrangements for the purpose of systemic risk oversight"*), which are aligned with international standards, must be in place between the regulator(s) of the EU country or countries where the AIFs are marketed, as well as the regulator(s) of the country where the AIF itself is established and the regulator of the country where the non-EU AIFM is established
- FATF: Neither the non-EU AIFM nor the non-EU AIF should be established in a country which is listed by the Financial Action Task Force (FATF) on anti-money laundering and terrorist financing as a "Non-Cooperative Country and Territory."

3. Recently we have witnessed an increased interest by third country managers launching their funds in collaboration with

LA REUNION MENSUELLE DU GSCGI

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authorised AIFMs via the RAIF regime in Luxembourg. Malta has recently launched the Notified AIF regime. Which are the distinguishing feature of this regime?

The NAIF is only applicable to qualifying or professional investors and is to be managed by a full-scope AIFM. The AIFM will assume full responsibility for the Notified AIF and for the fulfilment of the obligations of the Notified AIF. EU/EEA AIFMs may submit a notification to the MFSA for an AIF to be included on the List of Notified AIFs. Third country AIFMs will be able to submit a request for notification of an AIF once the country where these have been established has been granted passporting rights pursuant to the AIFMD. The great benefit lies within the fact that new funds will be able to come onto the market faster without the need to be authorised by the MFSA and will not be subject to ongoing supervision. Within 10 business days from the date of filing of a complete notification pack, the MFSA will proceed to include the AIF in the List of Notified AIF and the fund can start being operative.

4. In the interim are there any other products available for third country managers?

The regulatory regime of certain European countries contemplate other regimes regulating professional investor funds in parallel with the AIFM regime. The Maltese legislator for one has opted to retain the Professional Investor Fund ("PIF") regulatory regime. The PIF regulations can be an alternative used by third country managers to manage a Fund Structure in an EU Country. A PIF is a type of collective investment scheme licensed and regulated by the Malta Financial Services Authority (MFSA). Since PIFs are not intended for the general public, but for professional or wealthy investors, they are not burdened with the restrictions usually imposed on retail funds. PIFs benefit from not being subject to investment restrictions. Minimum Investment threshold is €100,000 and PIFs are promoted to Qualifying Investors. A PIF can be set up as a self managed structure thereby not requiring a third party manager alternatively a Swiss Manager may be appointed as manager of a third party managed PIF.

5. When will non-EU AIFMs benefit from the AIFM Passport?

On July 19, 2016, the European Securities and Markets Authority (ESMA) published its advice to the European Commission, the European Parliament and the Council of the European Union on the application of the AIFMD passport to non-EU AIFMs and AIFs (the "Advice"). In its Advice, ESMA considered the extension of the AIFMD marketing passport to 12 non-EU countries (i.e., "third countries") including Switzerland. As with ESMA's Previous Advice, each country

has been assessed on a case-by-case basis against the criteria of investor protection, market disruption, competition and monitoring of systematic risk. ESMA has also considered how existing Memoranda of Understanding (MoUs) between the relevant non-EU countries and EU Member States have been operating. In its Advice, ESMA has given positive assessments for Guernsey, Jersey, Switzerland, Canada, Japan, and, subject to an amendment to local law, Australia. This means that, in ESMA's view, there are no obstacles to the AIFMD third-country passport being extended to these countries. The United States, Hong Kong and Singapore have also all been granted some form of positive assessment. Bermuda, the Cayman Islands and the Isle of Man have not received a positive assessment at this stage.

6. What are the implications of ESMA's assessments?

If the AIFMD passport is "activated" in respect of the countries for which a positive assessment has been made (each, a Positive Country):

- an EU AIFM managing an AIF domiciled in a Positive Country would be able to market that AIF throughout the EU on the basis of the AIFMD marketing passport; and
- an AIFM from a Positive Country:
 - which manages non-EU AIFs domiciled in a Positive Country may apply to the relevant EU Member State regulator for full authorisation under (and be subject to full compliance with) the AIFMD and may then market those non-EU AIFs throughout the EU on the basis of the AIFMD marketing passport; and
 - which manages EU AIFs must apply to the relevant EU Member State regulator for full authorisation under (and be subject to full compliance with) the AIFMD; it will then also be able to market those EU AIFs throughout the EU on the basis of the AIFMD marketing passport.

Should the Commission decide not to wait for the remaining non-EU countries to be assessed by ESMA and decide instead to "activate" the passport for the Positive Countries to date, this would in theory make those Positive Countries more attractive as AIF domiciles for EU AIFMs, since such EU AIFMs would be able to market AIFs from those Positive Countries throughout the EU using the AIFMD passport.

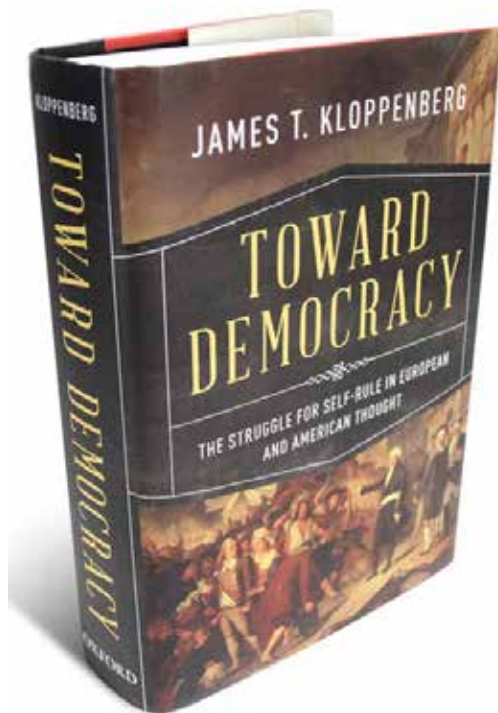
7. What are the next steps?

The Commission indicated, in a letter to ESMA in December 2015, that it would take a decision as to the activation of the third country passport once "a sufficient number of countries have been appropriately assessed." Now that some form of positive assessment has been given in respect of nine states, it remains to be seen whether the Commission will take this next step and draft a delegated act to activate the third-country passport for these countries.

BOOK REVIEW

Toward Democracy: The Struggle for Self-Rule in European and American Thought

by James T. Kloppenberg



THE BEST WORST FORM OF GOVERNMENT

Democracy's great success in securing liberty invariably threatens to erode the sense of the common good upon which it depends

Article by Darrin McMahon (WSJ)

“With “Toward Democracy,” James T. Kloppenberg has undertaken nothing less than the story of democracy “as it was imagined, understood, and practiced” from its origins in ancient Greece to its modern emergence in the 18th and 19th centuries. The book presents both a history of ideas and a political history and is ... a weighty project in more than one respect.”

“Democracy has always been more than a set of political practices ... it is also, Mr. Kloppenberg writes, an “ethical ideal”...”

“Democracy, Mr. Kloppenberg notes, was born in bloodshed and “has never strayed far from it”...”

“Human beings should have the power to rule themselves. But were all human beings really of equal power? Surely some, whether by nature or

circumstance, were better endowed than others? And if so, then what could be better than “rule by the best” (*aristokratia*) or even “rule by one” (*monarkhia*), the best of all?”

Read more: <http://www.wsj.com/articles/the-best-worst-form-of-government-1480279508>

* * *

TWO CHEERS FOR DEMOCRACY

Article by James Piereson (The New Criterion)

“The recent decision by voters in Great Britain to leave the European Union has provoked some probing questions about the virtues of democracy among writers and editors...”

“Are voters really capable of making decisions about issues as complex and far-reaching as whether Britain should leave or stay in the European Union? Should a decision of this complexity and magnitude ever be turned over to voters to decide in a national referendum? Is it possible in any case to discern what voters were trying to express when they cast those ballots to leave the European Union? Might the blunt results of the referendum be overturned by Parliament or by some official body whose members truly understand the issues at stake? Democracy, they seemed to be saying, is generally a good thing, but it is also a blunt instrument in need of being checked or refined by institutions that reflect a more sophisticated understanding of the common good.”

“Little did these critics realize that their skeptical views about democracy and majority rule are not much different from those expressed by philosophers and statesmen through the ages going back to the time of Plato and Aristotle in ancient Greece.”

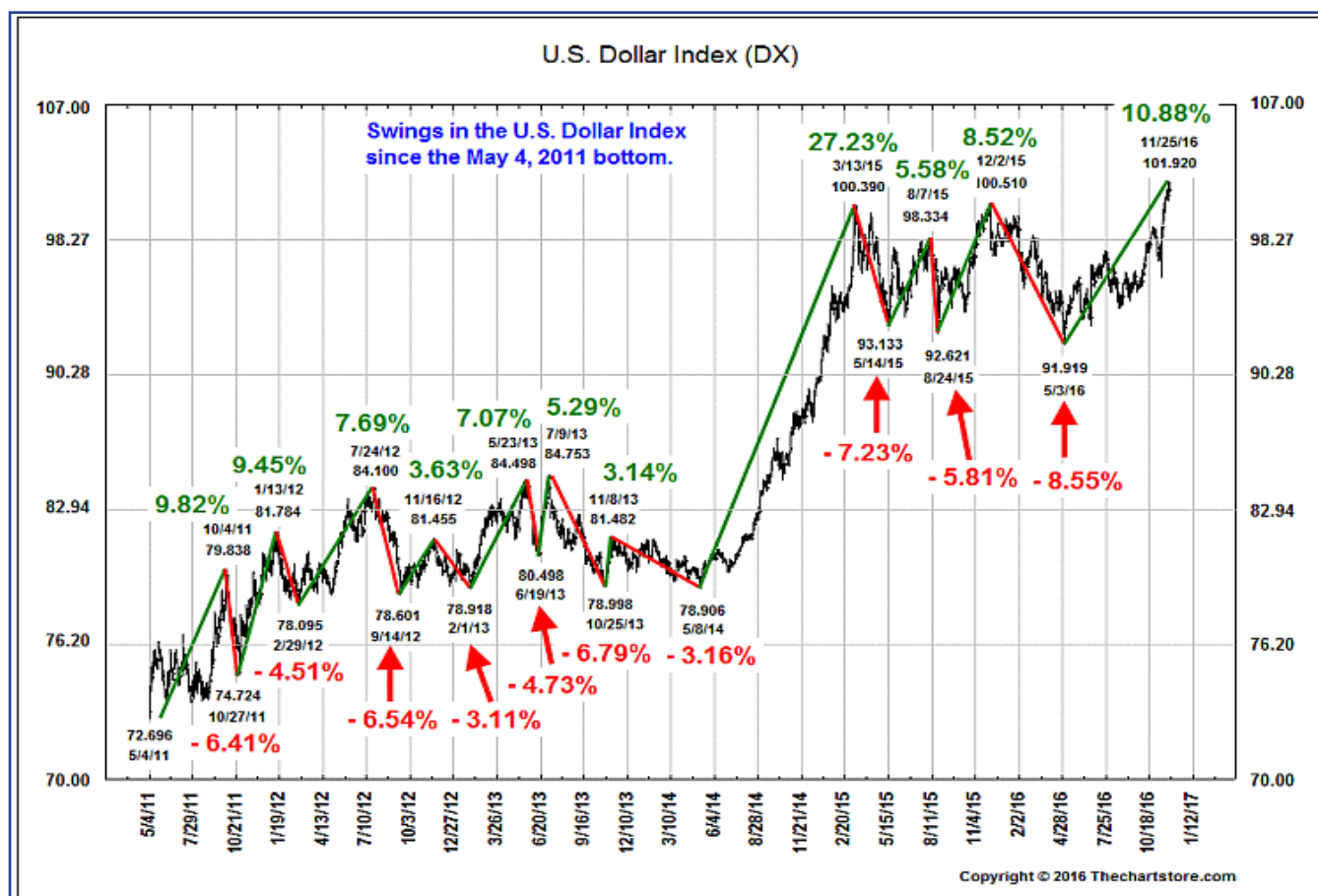
“Up until recent times, Democracy was thought to be an inferior form of government.”

“The great wars of our time have been “wars for democracy,” while important political decisions and movements are now assessed in terms of their contribution to the onward march of democracy.”

Read more: <https://www.newcriterion.com/articles.cfm/Two-cheers-for-democracy-8481>

CLIN D'OEIL À L'HISTOIRE

Greenback, a Reserve Currency hard to dethrone...



Despite an increasing chorus of voices calling for an end to the dollar's role as the world's primary reserve, intervention and transactions currency — sometimes referred to as “dollar hegemony”— the greenback keeps climbing.

From a technical standpoint, should the U.S. Dollar index climb to 102+, the upside breakout, from a 2-year consolidation, might lead to a 136 potential target, but on a very long-term basis.

Cosima F. BARONE, FINARC SA

Membre du Conseil du GSCGI,

www.finarc.ch -- c.barone@finarc.ch

Historical graph: courtesy of www.thechartstore.com



LA PAROLE EST A VOUS

Le Conseil du GSCGI et le Comité de Rédaction de “The IFA's Wealth Gram” invitent les Membres et Partenaires du Groupement à partager leur expérience et connaissance avec les collègues en fournissant des articles sur des thèmes divers: (a) actualité, (b) techniques de gestion, (c) analyse fondamentale, technique et globale, (d) fiscalité, (e) régulation, etc. Annoncez et adressez vos écrits à wealthgram@gscgi.ch le plus rapidement possible. Les non-Membres également peuvent fournir des articles et sponsoriser Wealth Gram.

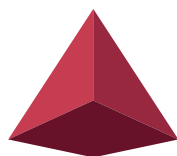
SOUHAITEZ-VOUS ÊTRE LE SPONSOR D'UN PROCHAIN NUMÉRO MENSUEL?

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**An ecosystem combining skills, experience and know-how
with the goal of
successfully completing complex mandates and projects**

Firstly, the wealth management and trading business have been constructed by amalgamating the existing methods with knowledge of modern management practices. Secondly, investment procedures are rapidly changing thanks to the revolution in information technology as well the growth in laws and regulations which never cease to multiply. Given this situation, it proved to be a wise choice for Action Finance SA to invest in a niche that had been left almost vacant by the auditing firms and lawyers.

In order to transform the financial institutions in Switzerland seeking a banking license, or a securities license under Sesta (*the Swiss Federal Act on Stock Exchanges and Securities Trading*), it is necessary to possess a good dose of credibility, knowledge and practical experience without forgetting the ethical dimension (*the guarantee of a business beyond reproach*). These skills and values allowed Daniel Glasner, the

founder of Action Finance SA, to launch a strategy and organizational consulting business intended to provide support in Switzerland for existing and newly created financial institutions.

Action Finance has developed a mutual fund automated retail client financial advisory & discretionary management platform project that enables the client relationship manager to monitor the investment activities proposed directly by the automated platform to his client, according to the financial institution's mutual fund investment universe and its exclusive economic forecast.

This solution is a win-win for the client, for the financial institution, and for the client relationship manager who can devote his time to other valuable tasks performed for existing or prospective clients.

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