



# DIGITAL ASSET MANAGEMENT: NEW FRONTIER FOR FINANCIAL MARKETS



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Membre Partenaire du GSCGI

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## ÉDITORIAL

### Le Conseil du GSCGI nomme son nouveau Président

Le 22 novembre 2017, le Conseil du GSCGI a élu son nouveau Président, **Luca P. Comparato**, que certains d'entre vous connaissent déjà, et dont nous vous résumons brièvement le parcours en quelques lignes.

Luca Comparato, âgé de 37 ans, peut se prévaloir, en dépit de son jeune âge, d'une carrière de plus de 10 ans dans la gestion de fortune. Au bénéfice d'une expérience de 5 ans dans le secteur bancaire, il constitue, avec 2 autres associés, sa première entreprise pour laquelle il obtient en 2009, la licence LPCC. En 2012, il la quitte pour lancer sa "nouvelle réalité" Phoenix Investment Managers SA dont le siège est à Lugano. Clientèle privée et institutionnelle, ainsi que gestion de fonds alternatifs, sont les deux piliers de Phoenix.

Luca Comparato participe activement à la vie associative du GSCGI depuis plus de 5 ans dans diverses positions: Membre du Conseil et de la Commission Veille Juridique de longue date, et Vice-Président régional du Tessin. Il contribue efficacement aux différents travaux effectués par le Groupement.

Quelques mots de notre nouveau Président:

*«Je suis honoré d'avoir été élu en tant que Président du GSCGI. Certes, le moment n'est pas des plus faciles mais, comme disait W. Churchill, "Difficulties mastered are opportunities won". D'importants chantiers restent toujours ouverts, comme les nouvelles lois LSFIn-LEFin et/ou l'impact de MiFID II en Suisse. L'environnement réglementaire semble parfois trop complexe et dominé par la bureaucratie. Je pense que le rôle d'une organisation faîtière comme la nôtre consiste, entre autres, à fournir une contribution effective et tangible pour accompagner le changement et essayer de prévenir toute dérive négative et irrationnelle».*

*«En tant que Membre d'une association, je m'attends à obtenir des réponses, des informations, des stimuli intellectuels qui pourront m'aider à définir ma stratégie de développement. En qualité de Président, je m'efforcerai de faire de mon mieux afin que le GSCGI puisse affiner son rôle de plateforme d'échange de vision et opinions, de critiques constructives, de discussions et interactions entre professionnels de la gestion».*

*«Après plusieurs années en tant que Membre du Conseil du GSCGI, j'assume avec enthousiasme cette nouvelle position; pour ma part, en qualité de Membre du Groupement, Membre du Conseil et professionnel de la gestion, je tiens à remercier chaleureusement notre Président sortant et fondateur du GSCGI, Monsieur Pierre Christodoulidis, pour son infatigable travail et son dévouement au cours des dernières décennies. "Merci Pierre, j'espère être à la hauteur de la tâche qui m'est confiée"».*

*«Jeune gérant et jeune entrepreneur, je m'efforcerai d'incarner au mieux une présidence jeune, dynamique et résolument tournée vers l'avenir, dans le respect des valeurs de notre Groupement».*

Le Conseil se réjouit de son nouveau rôle de Président du GSCGI et le soutiendra dans ses efforts.



**LUCA P. COMPARATO**  
PHOENIX INVESTMENT MANAGERS SA  
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**LE CONSEIL DU GSCGI**

## DIGITAL ASSET MANAGEMENT: NEW FRONTIER FOR FINANCIAL MARKETS



### The Challenges of Asset Management in the Era of Social Media

The proliferation of the digital economy is giving birth to new internet-based business models in a vast array of industries and has dramatically changed the way companies deliver services to their customer base, how they interact with clients and the vehicles they use to market their products.

We are living in an era where business-to-customer (B2C), business-to-business (B2B) and peer-to-peer (P2P) communications are rapidly evolving and are becoming tightly linked to social media as a channel to connect and engage the customer base. This has also been facilitated by the growing ubiquity of new mobile technologies, which enable people to constantly connect and get access to a wider range of opportunities. We are assisting the democratization of information, which is empowering people to interact on a global scale, share information quicker and more effectively.



In this scenario, a strategy which combines the new technologies to the access to qualitative information in a user-friendly and cost-effective environment is today the key to success.

The new app “myCornèr” is a unique example that aims to combine different banking services, including a fully responsive trading platform, to external independent research on fundamental analysis, Momentum and Technical analysis, all accessible to customers through their mobile.



**Massimo Salezze**  
Sn. Product Specialist and Sales Solution

*“In CornèrTrader, we have a clear understanding of the great potential given by the new technologies in the investment area. We want to bring to our customer the best solutions and the most valuable information available in the market at the most cost-effective conditions, in order to enable them in taking informed investment decisions” ... says Marianna Vassallo, Head of CornèrTrader.*

### So What for Asset Managers?

Distribution through social media networks could be a valuable option for asset managers. But, given the current complexity of the Anti-Money Laundering (AML) and Know Your Customer (KYC) requirements in several countries, as well as operational issues, positioning such a model could be challenging.

The future requirement is integration!



## DIGITAL ASSET MANAGEMENT: NEW FRONTIER FOR FINANCIAL MARKETS



Financial intermediaries face an important challenge when selecting a trading platform for their clients. They need to ensure that their clients' assets are secure, that the broker has robust risk management and that the most sophisticated market access and trading technology are available. Last but not least, they need a platform that has the ability to provide frequent and granular portfolio performance and reporting.

Against this backdrop, the solution is to find competitive advantages with a broker who offers not merely executions, but middle and back-office support for their end clients.

CornèrTrader offers fund managers direct markets access to global markets — FX spot, FX forward, FX options, CFDs, Futures, stocks, stock options, bonds, ETFs, Commodities, Cryptocurrencies — from a single account in real time. Towards family offices, the offer focus on the ability to manage multiple clients with fully integrated reporting. CornèrTrader one account and one margin approach significantly decreases complexity for family offices trading across multiple asset classes. A tailored made solution is designed for both asset managers with license to trade on behalf of the client and consultants who have an advisory role.

Moreover, automation of asset allocation and wealth management will be one of asset managers' main priorities in the coming years. Coupled with this, a new breed of technology-driven players is disrupting the fund market

with new business models that provide affluent retail investors with an alternative in the financial advisory domain. They are called "robo-advisory" or "automated advisors".

These firms are adopting fully delegated, assisted or self-service advisory models through sophisticated algorithms, in order to help consumers build and manage investment portfolios based on their age, income, risk aversion, investment time frame, income requirements, savings and assets.

Technology driven liquidity providers offer their clients ready-made connectivity to the platforms of their choice, via stable industry standard channel protocols, such as FIX. CornèrTrader's API trading solutions.

**Massimo Salezze**

**Sn. Product Specialist and Sales Solution  
CornèrTrader — [www.cornertrader.ch](http://www.cornertrader.ch)**

*After successfully completing his Bachelor Degree in Economics of Markets and Financial Intermediaries at Cattolica University, Massimo Salezze chose to pursue his studies through an exchange program with Åbo Akademi in Finland. Having obtained his M.Sc. in Economics in 2007, he then moved to Copenhagen where he began his career directly on the Trading Floor of Saxo Bank AS, as Global Sales Trader. Four years later, he covered the position as Head of Sales Trading at Saxo Bank Italy in Milan, and remained there for 15 months. In 2012, he moved to the trading desk in Zurich, taking the position of First Vice President. Currently, he is Product Specialist for CornèrTrader, offering eCommerce solutions to HNW clients in multi-asset class markets (Foreign Exchange, Futures, Commodities, CFDs, as well as Shares and Bonds). With a 10+ years track record in financial markets, Massimo Salezze is specialized in the FX Spot & Options Market. As FX dealer, he has been an international member of the ACI Financial Markets Association since 2008 and he is active in that role also in Switzerland.*



*Choosing CornèrTrader means having access through a Swiss regulated bank to the new change in digital asset management. Unleash your potential and contact the institutional desk for further information and a personal meeting.*

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## LES MEMBRES DU GSCGI

Networking & la Vie de nos Collègues d'ailleurs

FECIF informs...

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### FECIF NewsFlash 2/2018 — Council of the European Union: Bulgarian Presidency Programme

**Executive Summary** — The Bulgarian Presidency of the Council of the European Union, which runs from 1st January to 30th June, has presented its programme.

**Analysis** — Bulgaria's Presidency has four priority areas, which reflect these reforms:

- economic and social cohesion with a focus on the next EU multiannual financial framework, future Cohesion and Common Agricultural Policy, and a deeper Economic and Monetary Union;
- stability and security of Europe: common decisions on more security on the EU's external borders, more efficient migration management, laying the foundations of a Defence Union, including through implementation of the first EU Permanent Structured Co-operation;
- European prospects and connectivity of the Western Balkans;
- digital economy and skills for the future: with a focus of completing the EU digital single market and development of digital economy and skills.

Strong emphasis will be placed on risk reduction in the banking sector and the completion of the Banking Union. The Bulgarian Presidency will continue working on the development of the Capital Market Union, the discussion of the legislative proposals on clearing obligations and derivative reporting, on the establishment of a framework for recovery and resolution of central counterparties and supervisory oversight, as well as on requirements vis-a-vis third-country CCPs.

Bulgaria will continue the work on the legislative proposal for the creation of a **Pan-European pension product** with a view to making maximum progress on the dossier. Bulgaria will start substantive discussions on the review of the European System of Financial Supervision and on the proposal to introduce a new prudential regime for investment firms.

The Bulgarian Presidency will encourage the debate on deepening of the Economic and Monetary Union, including in relation to the European Commission's package of proposals of 6 December 2017. Bulgaria will support open and transparent discussions on the issues related to the structure of the Economic and Monetary Union.

In the area of direct taxation, the Bulgarian Presidency will strive to achieve a general approach on the proposal on the Administrative Cooperation Directive regarding automatic exchange of information linked with the reportable cross-border arrangements in the area of taxation, as well as to make progress on the draft Directive on a common corporate tax base. Giving priority to the topic of taxation of the digital economy, the Bulgarian Presidency will focus its efforts on making significant progress at technical level on the upcoming EC's proposal in this area, which is expected in early 2018, with a view to gathering political support.

**Sources** — *The Bulgarian Programme .PDF is available upon request to either FECIF or GSCGI.*

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## LES MEMBRES DU GSCGI

### Networking & la Vie de nos Collègues d'ailleurs

...cont'd from page 6

#### FECIF NewsFlash 1/2018 — ESMA: Update key transparency calculations for MiFID II implementation

**Executive Summary** — The European Markets and Securities Authority (ESMA) published an updated version of the MiFID II/MiFIR transitional transparency calculations (TTC) for equity and bond instruments.

**Analysis** — This updated version mainly reflect changes in the classification of the instruments and the related parameters and resubmission of data by some trading venues. This new version is the one to be used by market participants, infrastructures and authorities under the new regulatory framework from 3 January 2018.

MiFID II's implementing measures on transparency for financial instruments require NCAs to compute and publish transparency calculations on financial instruments, including transitional ones prior to the date of application of MiFIR. NCAs from the European Economic Area (EEA), with the exception of Poland, have delegated to ESMA the compilation of TTC. ESMA has already provided TTC for non-equity instruments in July and September 2017.

ESMA has performed these calculations with due care and to the best of its ability. However, given the scope and complexity of the calculations, including the various underlying data sources, future corrections of the TTC cannot be ruled out. ESMA expects to continuously supplement and update the information provided, where necessary.

The TTC will be applicable starting 3 January 2018 and the equity instruments TTC will apply until 31 March 2019 and for bond instruments (*liquidity assessment*) until 15 May 2018. Further information is available on [ESMA's website](#).

**Sources** — The updated information are available [here](#) and/or upon request to either FECIF or GSCGI.

\* \* \*

#### FECIF NewsFlash 145/2017 — European Commission: Consultation on the Amendment to IDD as regards the date of application

**Executive Summary** — The European Commission has opened in its [website](#) a consultation on the proposal on

the Amendment to IDD as regards the date of application of Member States' transposition measures published on Wednesday. The deadline for comments is 16 February 2018.

**Analysis** — The new website created by the European Commission will be use in order to create a direct contact between institutions and stakeholders. It is possible to submit views on:

- roadmaps and inception impact assessments, which set out ideas for new laws and policies, or for evaluations of existing ones,
- legislative proposals and accompanying impact assessments, which are put forward to the EU Parliament and Council once they have been agreed on by the Commission,
- draft delegated and implementing acts, which either amend or supplement existing laws or, set the conditions for existing laws to be implemented in the same way across the EU.

The feedback can be published with your personal details or organisation's details or anonymously. To give feedback or subscribe to receive notifications you should register to the website.

Once submitted, the feedback will be immediately published on this site. The Commission will review published feedback to check that it complies with the rules for feedback and suggestions. If it doesn't, it will be removed. You will not receive an individual response, but your views will feed into further preparation of the initiative. The adopted act will contain an overview of the feedback gathered and how it has contributed to the act as part of an 'explanatory memorandum'.

The proposal is open for feedback for 4 weeks. Please note that the limit for the general comment is 4000 characters. The deadline for comments is 16 February 2018.

**Sources** — The consultation on the Amendment to IDD as regards the date of application is available [here](#) and/or upon request to either FECIF or GSCGI.

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## ASSURANCE PROFESSIONNELLE

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

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

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



inattendues et génératrices de conséquences financières parfois dévastatrices.

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

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

### COUVERTURES D'ASSURANCES

#### Responsabilité civile professionnelle (RCPI)

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

##### *Les fautes les plus courantes sont:*

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

##### *Qui est assuré?*

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

##### *Quelle est la couverture? L'assureur va payer:*

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

#### Responsabilité des dirigeants (D&O)

En tant que dirigeant de votre entreprise, vous n'êtes pas à l'abri de revendications à titre personnel même s'il s'agit d'une erreur d'un employé. En effet, un lésé peut aller chercher une responsabilité personnelle vers le directeur ou l'administrateur de la société pour obtenir réparation du préjudice sur les biens propres du dirigeant. Il peut vous être reproché une mauvaise décision ou de ne pas avoir pris une décision, d'avoir fait un choix stratégique contraire

au but social, d'avoir effectué des investissements hasardeux, communication financière insuffisante ou erronée, manque de surveillance des dirigeants ou d'une filiale. Font aussi partie les conflits du travail: licenciement abusif, discrimination, harcèlement.

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

##### *Quelle est la couverture?*

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

#### Assurance Fraude (FR)

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

##### *Qui est assuré?* L'entreprise

##### *Couverture d'assurance...*

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

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

## JURISTES, FISCALISTES & JURISPRUDENCE

### Publication de la version révisée de la Circulaire Outsourcing

...article de Philipp Fischer — Centre de Droit Bancaire et Financier, <https://www.cdbf.ch/991/>

Le 5 décembre 2017, la FINMA a publié la version révisée de la Circulaire Outsourcing (*désormais appelée **Circulaire FINMA 2018/3***), qui s'appliquera aux banques et aux négociants en valeurs mobilières. La nouvelle circulaire s'appliquera aussi aux assurances, mais ce volet ne sera pas abordé dans le cadre du présent commentaire.

Elle remplace la Circulaire 2008/7 et fixe les conditions qu'un projet d'externalisation d'une fonction essentielle doit remplir afin de pouvoir être mis en œuvre sans requérir une approbation spécifique de la FINMA. Les questions relatives au secret bancaire et à la protection des données sont désormais exclusivement régies par les lois spéciales (*notamment la LB et la LPD, en cours de révision*).

Le principe fondamental demeure inchangé sous l'empire de la Circulaire 2018/3: l'assujetti continue d'assumer vis-à-vis de la FINMA la même responsabilité que s'il exerçait lui-même la fonction externalisée (Cm 23).

#### A. Principaux enjeux de la Circulaire FINMA 2018/3

**Champ d'application matériel:** La Circulaire 2008/13 ne contient plus d'annexe listant les prestations essentielles auxquelles la circulaire est susceptible de s'appliquer. Chaque assujetti doit déterminer sur une base autonome (*auto-évaluation*) si un projet d'externalisation implique une "fonction dont dépend de manière significative le respect des objectifs et des prescriptions de la législation sur la surveillance des marchés financiers" (Cm 4).

**Inventaire:** Chaque assujetti doit établir et tenir à jour un inventaire des fonctions externalisées (Cm 14), lequel doit comprendre (i) une description de la fonction externalisée, ainsi que les noms (ii) du fournisseur, (iii) du bénéficiaire et (iv) de l'organe responsable au sein de l'assujetti (Cm 14). Dans une perspective pratique, il peut sembler opportun de coordonner la préparation de cet inventaire avec la préparation du "registre des activités de traitement" qui est évoqué aux art. 11 du projet de révision de la LPD et 30 du Règlement général européen sur la protection des données (RGPD). A l'avenir, tout projet d'externalisation devra être revu à l'aune de la Circulaire FINMA 2018/3 et des règles suisses et européennes en matière de protection des données.

**Choix du prestataire:** Dans le cadre du choix du prestataire, l'assujetti doit notamment (i) prêter attention au risque de concentration si plusieurs fonctions sont externalisées auprès d'un même prestataire et (ii) s'assurer

que la réintégration ordonnée de la fonction externalisée est garantie (Cm 16ss).

#### B. Principaux changements par rapport au projet de Circulaire publié en décembre 2016

Hormis l'extension du délai transitoire (*cf. ci-dessous*), deux changements notables sont à signaler:

**Outsourcing intra-groupe:** La Circulaire actuelle (2008/7) prévoit une application partielle aux externalisations au sein d'un groupe. Le projet de révision visait à supprimer totalement cet allègement. La Circulaire 2018/3 prévoit finalement que l'externalisation au sein d'un groupe peut être "prise en compte" au niveau de l'appréciation du risque (*ce qui aura notamment un impact au niveau de la formalisation de la procédure ayant mené au choix du prestataire*).

**Externalisation vers l'étranger:** La FINMA renonce au devoir d'information préalable de l'autorité en cas d'externalisation à l'étranger impliquant une grande quantité de données-clients. Cela dit, les projets d'externalisation impliquant des données-clients doivent être réalisés en conformité avec la Circulaire 2008/21 (*cf. Annexe 3, Principe 9*).

#### C. Principaux points à régler dans le contrat

Toute externalisation couverte par la Circulaire 2018/3 doit faire l'objet d'un contrat écrit avec le prestataire de services. Celui-là doit contenir au minimum les dispositions suivantes:

1. droit de donner des instructions au prestataire et de contrôler leur respect (Cm 21);
2. délimitation contractuelle des responsabilités de l'assujetti et du prestataire (Cm 19);
3. exigence d'une approbation préalable en cas de recours à des sous-traitants (Cm 33);
4. fixation contractuelle des exigences en matière de sécurité (notamment dans le domaine informatique) et de business continuity (Cm 24);
5. droit d'examen intégral et sans entrave en faveur de l'assujetti, de l'auditeur réglementaire de l'assujetti et de la FINMA (Cm 26), également en cas d'externalisation à l'étranger (Cm 30);
6. engagement du prestataire de mettre à disposition de la

...cont'd on page 11

## JURISTES, FISCALISTES & JURISPRUDENCE

### Publication de la version révisée de la Circulaire Outsourcing

...article de Philipp Fischer — Centre de Droit Bancaire et Financier, <https://www.cdbf.ch/991/>

FINMA toutes les informations relatives au domaine d'activités transféré (Cm 29); et

7. en cas d'externalisation vers l'étranger, exigence que les informations nécessaires à l'assainissement et la liquidation de l'assujetti soient disponibles depuis la Suisse à tout moment (Cm 31).

#### D. Dispositions transitoires

La Circulaire 2018/3 entrera en vigueur le 1er avril 2018. Elle s'appliquera immédiatement aux projets d'externalisation des banques et des négociants en valeurs mobilières qui seront conclus ou modifiés après son entrée en vigueur.

Les externalisations (*soumises à la Circulaire 2018/3*) en place au 1er avril 2018 devront être adaptées dans un délai transitoire de cinq ans (*soit jusqu'au 31 mars 2023*): un aspect important à prendre en compte dans le cadre de la renégociation des contrats d'externalisation.

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### La FINMA révisé l'OIMF-FINMA

L'autorité fédérale de surveillance des marchés financiers FINMA introduit l'obligation de compenser pour les dérivés de gré à gré sur taux d'intérêt et les dérivés sur défaut de crédit de gré à gré standardisés. A cet effet, elle complète l'annexe 1 de l'ordonnance de la FINMA sur l'infrastructure des marchés financiers et mène une audition jusqu'au 12 février 2018.

La FINMA désigne les catégories de dérivés de gré à gré qui sont désormais soumises à l'obligation de compenser. Pour ce faire, elle s'inspire de la législation européenne étant donné que les acteurs économiques suisses négocient les dérivés essentiellement par delà les frontières et en particulier avec des intervenants sur le marché ayant leur siège dans l'Union européenne. Sont concernés les dérivés de gré à gré sur taux d'intérêt et les dérivés sur défaut de crédit de gré à gré standardisés. A compter de l'entrée en vigueur de la version partiellement révisée de l'ordonnance de la FINMA sur l'infrastructure des marchés financiers, des délais transitoires de six à dix-huit mois s'appliqueront pour se conformer à l'obligation de compenser. En vue de ces modifications, la FINMA complète l'annexe 1 de son ordonnance sur l'infrastructure des marchés financiers et mène une audition jusqu'au 12 février 2018.

L'obligation de compenser, au moyen d'une contrepartie centrale approuvée ou reconnue par la FINMA, certaines catégories de dérivés de gré à gré désignées par celle-ci constitue un élément central de la réglementation suisse relative à la négociation de dérivés. Les dérivés de gré à gré sont des dérivés qui ne sont pas négociés sur une plateforme de négociation telle qu'une bourse ou un système multilatéral de négociation.

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Liens du communiqué de presse, ainsi que de l'Ordonnance et Rapport explicatif, et des informations sur l'audition...

<https://www.finma.ch/fr/news/2017/12/20171218---mm--rs---finfrav/>



## JURISTES, FISCALISTES & JURISPRUDENCE

### Le TPF confirme la protection du secret professionnel de l'avocat

...article d'Alexandre Richa — Centre de Droit Bancaire et Financier, <https://www.cdbf.ch/992/>

Dans un arrêt du 4 septembre 2017 (BE.2017.2), le Tribunal pénal fédéral (TPF) s'est prononcé sur la portée du secret d'avocat quant aux rapports d'enquête interne.

Cet arrêt est à lire en lien avec l'arrêt 1B\_85/2016 rendu par le Tribunal fédéral (TF) en date du 20 septembre 2016, auquel le TPF se réfère, et sur lequel nous reviendrons ci-après.

La Département fédéral des finances (DFF) avait ouvert en 2016 une procédure de droit pénal administratif contre les personnes responsables d'une banque, pour soupçon de violation de l'obligation de communiquer de la LBA (art. 9 et 37 LBA). Les reproches étaient liés à des relations bancaires avec des clients d'un gérant indépendant.

Bien avant la procédure du DFF, la banque avait confié l'exécution d'une enquête interne à un cabinet d'avocats, qui devait établir les faits, se prononcer sur le respect de la réglementation bancaire et déterminer quelles mesures correctives devaient éventuellement être prises. La FINMA s'était fondée pour l'essentiel sur l'état de fait établi par les rapports d'enquête interne du cabinet d'avocats pour prendre une décision, le 25 mars 2013, constatant la violation grave des exigences légales bancaires en matière d'organisation et de l'exigence de la garantie d'une activité irréprochable. Quelques mois après l'ouverture de sa procédure, le DFF avait ordonné à la banque de produire ces rapports, puis demandé au TPF la levée des scellés sur ceux-ci.

Le TPF doute tout d'abord de la réalisation de la condition préalable à la levée des scellés, à savoir l'existence d'une suspicion suffisante d'infraction (à la LBA en l'espèce). Il laisse toutefois cette question ouverte, considérant que les rapports d'enquête interne sont de toute façon protégés par le secret d'avocat, pour les raisons suivantes.

Conformément à l'art. 46 al. 3 DPA, «il est interdit de séquestrer les objets et les documents concernant des contacts entre une personne et son avocat si celui-ci est autorisé à pratiquer la représentation en justice en vertu de la loi du 23 juin 2000 sur les avocats et n'a pas le statut de prévenu dans la même affaire». Cette protection couvre l'activité typique de l'avocat, à savoir le conseil juridique et la représentation en justice. Cette disposition correspond, dans le CPP, à la règle de l'art. 264 al. 1 let. a et d CPP, et a été modifiée justement dans le but d'uniformiser la réglementation applicable à la protection du secret d'avocat.

Dans le cas d'espèce, le TPF a confirmé que les rapports du cabinet d'avocats étaient couverts par le secret professionnel et étaient donc protégés contre les séquestres (art. 46 al. 3 DPA). En effet, l'établissement des faits, préalable au conseil juridique, relève de l'activité typique de l'avocat.

Le TPF précise qu'il n'y avait pas de délégation de tâches de compliance (obligation de clarification, obligation d'établir des documents) et de contrôle au sens de la LBA, situation qui avait amené le TF, dans une autre affaire (arrêt 1B\_85/2016 du 20 septembre 2016), à nier l'application du secret professionnel pour certains documents préparés par un cabinet d'avocats. Le TPF interprète le précédent arrêt du TF comme ne limitant la protection du secret professionnel en matière d'enquête interne qu'en présence d'une réelle délégation (outsourcing) de tâches découlant de la LBA. Sous cette réserve, le conseil juridique relatif à la LBA, y compris quant à son art. 9 LBA, ainsi que l'établissement des faits qu'il requiert, constituent des activités typiques bénéficiant du secret professionnel de l'avocat.

Le TPF complète son appréciation en relevant que la situation d'espèce ne comportait pas un risque de contournement de la LBA, au contraire de l'hypothèse qui avait été soumise au TF dans son arrêt de septembre 2016.

\* \* \*

Au sujet de l'arrêt du TPF: cf. le commentaire d'Alain Macaluso et Andrew Garbarski du 5 décembre 2017

Au sujet de l'arrêt du TF: cf. l'article de Benoît Chappuis

Au sujet des enquêtes internes en général: cf. la thèse à venir de David Raedler, *Les enquêtes internes en droit suisse et américain: instruction de l'entreprise ou Cheval de Troie de l'autorité?*, in press, CEDIDAC (Lausanne) 2018.

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## JURISTES, FISCALISTES & JURISPRUDENCE

### South Africa — Taxpayers beware: only lawyers can keep your secrets

...article by Howmera Parak and Rui Lopes (Johannesburg) of Baker McKenzie as published in the Dec. 2017 PWM

It is well known that the tax advisory fraternity has generally become a multidisciplinary practice, with the academic background of advisers ranging from qualifications in law, accounting, economics or business studies.

Having a diverse professional discipline in a tax/exchange control department means that the client offering on fiscal statute can be more specialized and ensures that the legal, practical and commercial bases of a client's tax matters are all covered.

While clients can, as a result, be assured of a broadened service offering for their fiscal affairs, taxpayers should be aware of the fact that their engagement with advisers who are not admitted attorneys or advocates of a High Court (*referred to interchangeably here as attorneys*) is not protected by the enshrined principle of legal privilege. This legal privilege assures: (i) the requisite degree of protection over the communication between client and adviser, such that the information is never at risk of being volunteered by the adviser to a third party, in the absence of client consent; **and** (ii) the adviser can never be placed under any form of obligation to disclose the advice either by virtue of their own professional obligations or if requested by our fiscal regulatory bodies, such as SARS or the South African Reserve Bank.

From a tax perspective, it should be noted that the Tax Administration Act No. 28 of 2011 extends very wide powers to SARS to seek information in relation to a taxpayer under audit or investigation from third parties, such as tax advisers. Under the TAA, SARS has three mechanisms to request information from a third party (*and therefore potentially the taxpayer's tax advisers*):

→ Section 46 of the TAA (*under Part B of the TAA*) permits SARS to make a "request for relevant information" to both the taxpayer as well as other persons, and in principle, gives SARS free rein to make any enquiries it deems relevant in determining a taxpayer's state of affairs, if such information ought "reasonably to [have] be[en] maintained...in relation to the taxpayer."

This might mean that the tax adviser could be required to disclose either orally or in writing, under oath or solemn declaration, every form of information entrusted by the client to the adviser from inception of the matter, including all adviser-client communication, all documentation submitted by the client to the adviser

and all opinions issued by the adviser to the client. In addition, where a tax dispute becomes litigious, the tax adviser could be subpoenaed to court and questioned about the taxpayer's affairs under oath and in an open court.

→ Under Part B of the TAA, section 48 of the TAA permits SARS to request that a field audit or criminal investigation into information SARS believes it may require for purposes of its audit or investigation be conducted at such person's premises (*and therefore potentially the tax adviser's premises*).

→ Section 53 of the TAA (*under Part C of the TAA*) permits SARS to issue a notice to any person to appear before an enquiry for purposes of being examined under oath and produce any relevant information in the custody of the person.

→ Part D of the TAA permits SARS to, with or without a warrant (*subject to certain qualifying criteria being met*), enter a premises where "relevant material" is kept and to search the premises and any person present on the premises and seize relevant material.

Should SARS invoke these provisions against tax advisers, and they fail to adhere to the request or to do so completely and honestly ("*without just cause*"), the tax advisers may be at risk of committing a criminal offense.

Failure to make an honest disclosure in a court or by way of a written declaration or affidavit deposed to under oath could also result in the tax adviser facing a criminal charge of perjury. Similarly, from an exchange control perspective, although there are no statutory provisions on this issue, the SARB, being governed predominantly by its self-established policy, may adopt similar measures to satisfy itself of the exchange control affairs of a person.

Fortunately, inherent to the legal profession, every form of information disclosed by clients to attorneys, together with all attorney-client communication and advice, carry the protection of confidentiality – a duty imposed on attorneys in relation to their client's information which remains in effect indefinitely; and privilege – a personal right extended to clients of an attorney in relation to both day-to-day legal advice (*legal advice privilege*) as well as matters of a litigious nature (*litigation privilege*), which also extends to communications between the client or

...cont'd on page 14

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the attorney and third parties, if those communications were made for the purpose of pending or contemplated litigation.

A client only loses the protection of privilege if he/she waives his/her right to privilege or if the tax adviser is requested to do so by a court.

In the context of the third-party enquiry procedures available to SARS, the TAA does not override privilege, but rather in section 42A and section 65 of the TAA, acknowledges that it may successfully be raised as a defense to Part B to Part D of the TAA, and sets out the requirements that must be met for the assertion of privilege and provides for the adjudication procedure to be followed for matters where SARS does not accept the assertion of legal professional privilege.

Should SARS ever dispute privilege and the issue is referred to a High Court for adjudication, an attorney should easily be able to evidence its ability to raise privilege, which has been set out in the Constitutional Court, in *Thint (Pty) Ltd v. National Director of Public Prosecutions and Others*; and *Zuma v. National Director of Public Prosecutions and Others* 2009 (1) SA 1 (CC), which provided that the onus of privilege can be met if it can be demonstrated that:

- The legal practitioner must have been acting in a professional capacity.
- The client must have consulted with the legal practitioner in confidence.
- The communication must have been for the purpose of obtaining legal advice.
- The advice must not have facilitated the commission of fraud or a crime.

Given the wide range of investigatory powers of our fiscal bodies into the affairs of both juristic and natural persons, all tax and exchange control advisory work should be referred exclusively to an attorney so as to ensure that legal privilege is applicable to all communications and documentation.

Privilege is generally seen as an afterthought and only becomes relevant when a taxpayer faces a dispute with a fiscal authority – at which time it is too late.

To err on the side of caution, clients are advised to:

- ▶ only involve non-attorneys to the extent that there is no risk whatsoever in disclosing such information to the relevant fiscal authority;
- ▶ where the expertise of non-attorneys are required, ensure that all communications are dealt solely with the attorney and that the non-attorneys involvement is limited to that of an expert mandated and controlled by the attorney;
- ▶ segregate the institution providing the client's audit/accounting requirements from all other fiscal advisory functions.

*This article was published in the Private Wealth Management of December 2017 by Managing Editor Stephanie Jarrett of Baker McKenzie Geneva.*

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Read on: [https://f.datasrvr.com/fr1/717/49476/PWN\\_Issue\\_4\\_-\\_December\\_2017\\_-\\_Final.pdf](https://f.datasrvr.com/fr1/717/49476/PWN_Issue_4_-_December_2017_-_Final.pdf)



## ANALYSES & PLACEMENTS

### Markets Climb a “WALL of WORRY!”

...article is an excerpt from CFB's *Inferential Focus* #245 as of Sep. 2017— [www.finarc.ch](http://www.finarc.ch)

*Not much has changed since I wrote this piece in September 2017...*

This time around, it looks like the “wall of worry” has become “perpetual”. Financial markets have had a powerful recovery since the depths of the financial crisis, despite significant uncertainty coming from all angles: valuations, interest rates, economics and even geopolitics.

After all, investing must be scary! In the absence of worries, there would be no risk premium in investing, prices would be ‘high’ and there would not be opportunities around to make money.

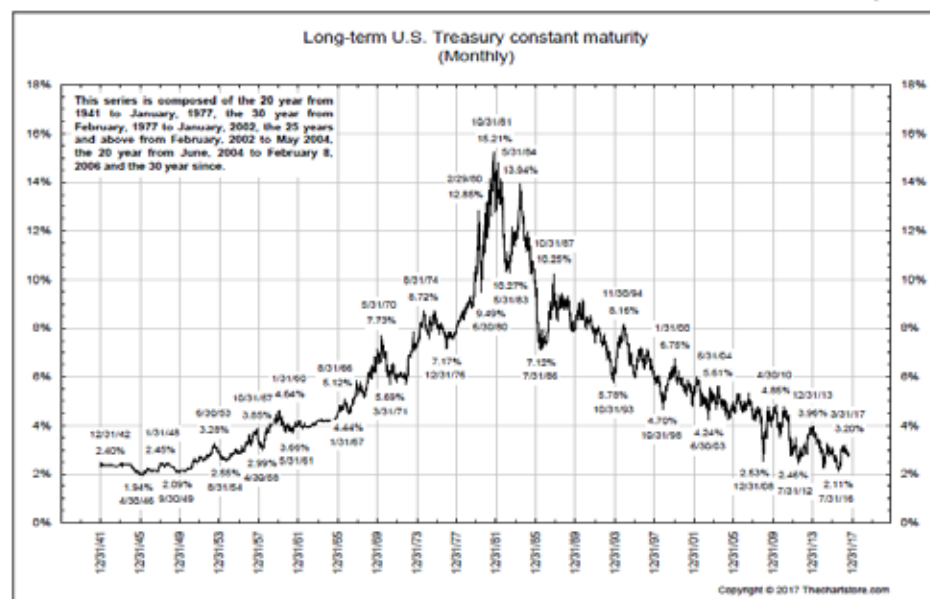
Worry keeps the upswing intact. Equities are on a roll. So are bonds in their 35th year of delivering positive returns, even though investors no longer look for yield ... “preserving capital” is good enough nowadays. Writing the obituary of the bull market in bonds has proved, year after year, rather premature.

Broadly, according to a study of stock market returns by Finance Professor Hendrik Bessembinder, most equities are not good investments as they do not even beat the paltry returns of 1-month U.S. Treasuries. The study unveiled, as well, that only 50 stocks account for 40% of the net wealth generated between 1926 and 2016.

There is generally a misconception in the marketplace of what is “wealth”. In what is a monumental delusion, most

tend to believe that “wealth” is embodied in the price of an asset, rather than the stream of cash flow it is able to deliver over time. So, when the price goes up, it does not necessarily entail that there has been “wealth creation”. The price surge only creates an opportunity of “wealth transfer” by selling the asset to a poor investor holding the bag perhaps at the worst possible time. Then, following question appears legitimate: *Have central banks made investors “wealthier”?* The answer is simple. “No”. Central banks have only helped to pull future returns into current prices. Then, what returns could be reasonably expected over the next 10-15 years? Close to zero ... considering the level of personal savings as a percentage of disposable personal income, which is at best an indirect measure of equity market valuation.

Central bankers tend to continue in their self-congratulatory attitude, while wise investors know well that the global financial crisis was the result, not the origin, of central banks’ activism. Undoubtedly, in this low-growth, low-interest-rate world, central banks will most likely remain dependent on unconventional monetary policy measures. Meanwhile, financial markets run under “overvalued, overbought, overbullish” syndromes while decay is present internally, but not entirely visible yet. However, despite almost daily record breaking equity indices, money is flowing out into bond funds, such as the iShares 20+ year Treasury Bond ETF that holds government debt maturing between 2036 and 2047. Why? Stability over time or legitimate worry that the equities’ run might hit the “wall”?



Market capitalization (please view historical graph on following page), currently at 155% of GDP, is getting pretty close to its all time high of 174% to GDP recorded on the 31st of March 2000! Such paltry valuations indicate that investors haven't learned much from past financial bubbles' bursting, from the Dutch tulips in 1636 to present.

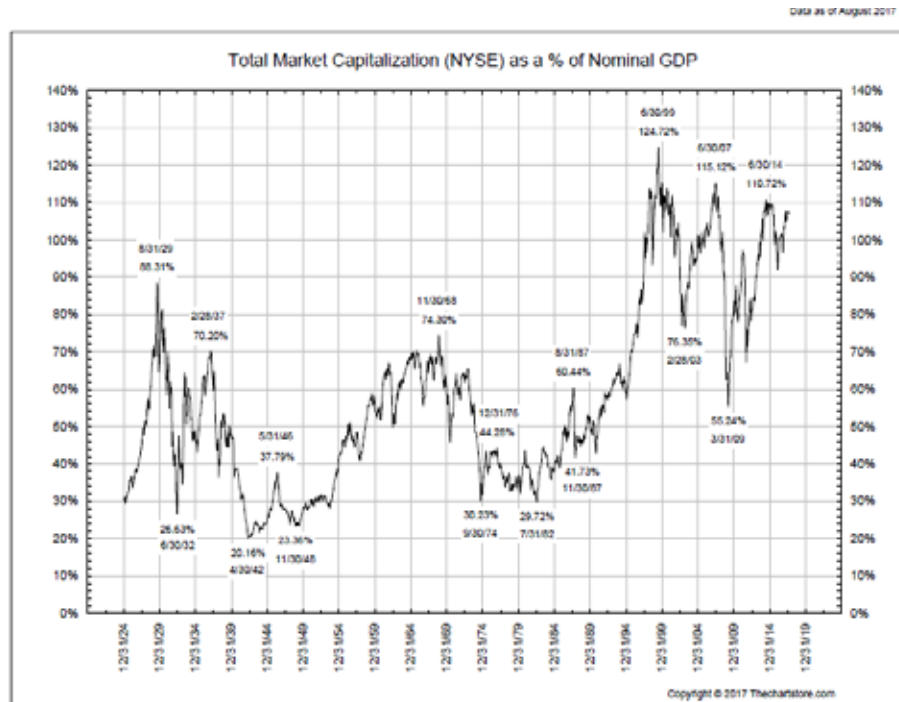
There is nothing wrong with investors venturing into new fields and allowing new things getting off the ground. However, it is absolutely toxic and destructive when investment in new areas is fueled by excessive debt. A

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## ANALYSES & PLACEMENTS

## Markets Climb a “WALL of WORRY!

...article is an excerpt from CFB's Inferential Focus #245 as of Sep. 2017— [www.finarc.ch](http://www.finarc.ch)



lending boom becomes toxic when players are highly leveraged and especially when financial institutions themselves participate in the buying frenzy. That was the case for Fannie Mae and Freddie Mac as explained in the second section of this INFERENTIAL FOCUS issue.

**Extremely accommodative central bank policies** tend to fuel potential bubbles, although fingers of blame can be pointed in all directions. Ironically, and the inescapable truth of the past decade, is that the central bank policies, also the unorthodox quantitative easing (QE), introduced to mitigate the crisis, might be sowing the seeds of another one.

**Global debt**, according to the Institute of International Finance, has hit a record of \$217 trillion, having added \$70 trillion over the last decade. Most of the added debt is in China and other emerging countries.

Also, the attitude of bankers was evidenced in scandals from the “LIBOR” fixing and foreign exchange manipulation to the mis-selling of PPIs (*payment protection insurance*) and mortgage-backed securities.

Nowadays, other crises are raging... sub-prime car loans (*the U.S. car finance market has expanded 70% over the past seven years and loan defaults are running at six-year highs*), non-prime mortgage loans (*mentioned here in the second*

section) and China (total debt to GDP has soared above 300%) are part of the pack.

Take also the **digital currencies'** price swings (*Bitcoin, Ethereum, etc.*) that are feeding a "cryptocurrency" mania. There exists apparently almost 1,100 distinct cryptocurrencies, many of which have no market value. Trading in digital currencies recall the infamous PONZI schemes, where early investors are paid with money from new recruits. *Then, why are they priced, allowed to quintuple, and at the same time be a useful currency for making or receiving payments?* Something is escaping my understanding. *How can it be both?*

*How is it possible that exchanges are racing to secure a piece of the growing cryptocurrency market?* Even the venerable CBOE teamed up with the Cameron and Tyler Winklevoss to list Bitcoin derivatives. The SEC, however, had denied the Winklevoss brothers the ETF last March.

Cryptocurrency start-ups have raised money through an ICO (*initial coin offering*), a type of fund raising campaign. Despite the obvious risk inherent to ICO, the mania has infected the financial place.

Recently, Chinese authorities announced a muscled crackdown on virtual currencies, but the moneymaking craze goes on.

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### Markets Climb a “WALL of WORRY!”

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This is going to end in tears! And nobody to sue in case of fraud (*opaque web actors*)! Investors should be aware that there is no sovereign backing behind a virtual currency or an ICO. Only sovereign currencies have the backing of a sovereign nation.

In a latest surprising turn ... *central banks should consider introducing their own cryptocurrencies, said the Bank for International Settlements (BIS) in its September 2017 Quarterly report where it presented the “new taxonomy of money”. Is this a symptom that authorities are losing control over their monetary systems?* Apparently, Bank of England and Bank of Canada have experimented with ways to use blockchain, while the Reserve Bank of India is considering to issue its own digital currency. If central banks begin issuing digital currencies, such a system would allow consumers and businesses to potentially bypass intermediaries (*banks*). *URL link to download the BIS quarterly report ... [www.bis.org/publ/qtrpdf/r\\_qt1709.pdf](http://www.bis.org/publ/qtrpdf/r_qt1709.pdf)*

*Is Western finance safer nowadays?* Not really, despite a slew of new regulation. Remember, banks were deemed “too big to fail” during the financial crisis. But, they are even bigger today! As an example, Bank of America balance sheet has ballooned 50 percent.

The Repo-market (*repurchase agreements*) has pointed its head as a case of worry recently, with J.P. Morgan Chase exiting the business, there is only one bank (*Bank of New York Mellon*) for the \$3.5 trillion repo-market! Certainly, this is a cause of concern for traders and investors, because having a single bank handling clearing and settlement in a short-term lending market leaves it exposed to all sort of risks, going from normal power outages to cyber attacks and terrorism. Problems in the repo-market can easily spill over to broader financial markets. For years, regulators have tried insulate financial markets from such a risk, but to no avail.

As markets keep scaling great heights, even a bigger risk lie, however, with the uncontrolled expansion of “non-bank” financial groups, such as BlackRock, the king of passive investing (ETFs). It is the largest fund management group in the world, with \$5.7 trillion of assets under management ... the amount has quadrupled in only a decade.

Recently, veteran investor Jim Rogers warned that ETF holders might get mauled by the “worst bear market” ever!

ETFs’ growth has been phenomenal in the last 25 years or so. As investors find them attractive and a cheaper

alternative to actively managed funds, markets have been literally flooded with ETFs of all sorts. According to industry data provider ETFGI, ETFs accounted for over \$4 trillion at the end of June 2017. In 2006, the ETFs value was only \$580 billion. In Asia, ETFs represent a modest size, when compared with their size in the U.S. and Europe. Japan is the exception, as the central bank (*Bank of Japan*) actively accumulated these assets, holding \$175 billion at the end of August. Penetrating the Chinese market, however, has proven more difficult for ETFs providers. An insightful news was recently seen in the international medias. BlackRock, Fidelity and Schroders ended up backing China’s Communist party writing itself into company law, a rule that applies normally to SOEs (*Sinopec, ICBC, etc.*), thus putting the party above company boards. Interestingly enough, Vanguard and Norges Bank voted against the party’s inclusion in their boards.

Regulators and central bankers (*Ireland has been the first to issue a firm warning about ETFs*) have been calling for greater scrutiny especially of how the industry works (*ownership and pricing*). Are existing guidelines adequate for ETFs, which are considered to be the most important financial product of the investment fund industry over the past 20 years?

And the problem might not only be “greater investor education” about how ETFs work. *What does the investor actually own? How is the investor protected in case of a market meltdown? What is an ETF? Is it an asset class? Or, is it merely an investment vehicle? What is the level of market systemic risk inherent to ETFs, given the size of providers, such as BlackRock?* So many questions, while answers are few or totally missing.

Investors have to take also into consideration, when assessing their investment decision, a **flattening yield curve** in the U.S., as it was in March 2005, in February 1996 or in July 1988. These three periods were followed by S&P 500 gains around 20% over the following two years, before recession hit after the yield curve inverted.

But, do equities fit the same story? For the time being, growth seems to be driving the up run.

So, it is possible that **all the “worry” just described might keep the upswing intact!** As always, caution is a must for investors.

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## LE COIN TECHNIQUE

### SMI Reaching Key Resistance Along Rising Euro/CHF

...article de Bruno Estier Strategic Technicals - <http://bruno.estier.net/> - [bruno.estier@bluwin.ch](mailto:bruno.estier@bluwin.ch)



As the Relative Strength (RS) of the SMI versus STOXX50 (*orange line*) is rising to a higher high after a higher low, it is possible that it may be more interesting to invest in the SMI rather than the Eurostoxx Index while considering geographical diversification away from the US equity market, which is clearly outperforming the Swiss market as the declining black dashed RS line of the SMI versus S&P500 is testifying.

While the media is celebrating a sharp rise in the US equity market in the first week of the new year, it seems worthwhile to look at the long-term technical pattern of the Swiss Market Index (SMI), which is displayed as monthly candles beginning 2010. Since November 2017, the steep rising uptrend is approaching the 9537 key resistance level of 2015, which was a few points above the previous peak of the mid-2007 level of 9531. The SMI was able to rise during 2017 because the parity of the Euro/CHF has been rising from about 1.07 to 1.1770, as the Swiss Franc was weakening versus the Euro, helping the export industry. As the current uptrend of the Euro/CHF is expected to extend toward 1.20-1.22, it should help the rise of the SMI. As the momentum of the SMI is strong, as displayed in the lower panel by the positive and rising MACD, a break of the 9537 resistance level is possible. The next long-term target for the SMI is a Fibonacci extension of the previous range of 7425-9537, namely 10845 or 13.7% above the current price. Then the full width of that same range can be used to project a 11650 target or a lofty increase of 22%. To realize these targets, the SMI will need to stabilize above the 9540 area to create a springboard for a further advance.

From a technical point of view, the current price of the SMI is still below the key resistance of 9537 and, therefore, there is a possibility that it stalled there. If we also consider the influence of the second momentum indicator on the lower panel, the monthly Stochastic Index is displaying a potential negative divergence (*a lower high*) while being in the overbought area for nine months. That consideration is reinforced as we check on the weekly time horizon and also discover a bearish divergence between the price of the SMI and the weekly Stochastic Index during the recent October to January period. To start 2018, the SMI is soon going to send an important message: either a pause below a key resistance and that could mean a temporary top in the US market as well; or, a break up above that major level of 9540 and the continuation of a bull trend, with most probably a further rise for global equities.

So, happy 2018 and ... watch the SMI Index!

#### Graph:

The Swiss Market Index (SMI) monthly candles with Ichimoku cloud. Also, the Euro/CHF parity is shown in dashed green line. On the upper panel is the declining Relative Strength of SMI versus SP500 in black dashed line, but the rising Relative Strength of the SMI versus STOXX50 (*orange line*). On lower panel MACD displays bullish momentum, but the monthly STO is overbought for more than a year with slight negative divergence.

Source: Stockcharts.com



## LE COIN TECHNIQUE

### The Dollar is getting ready to bounce, European markets could outperform in Q1 2018

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

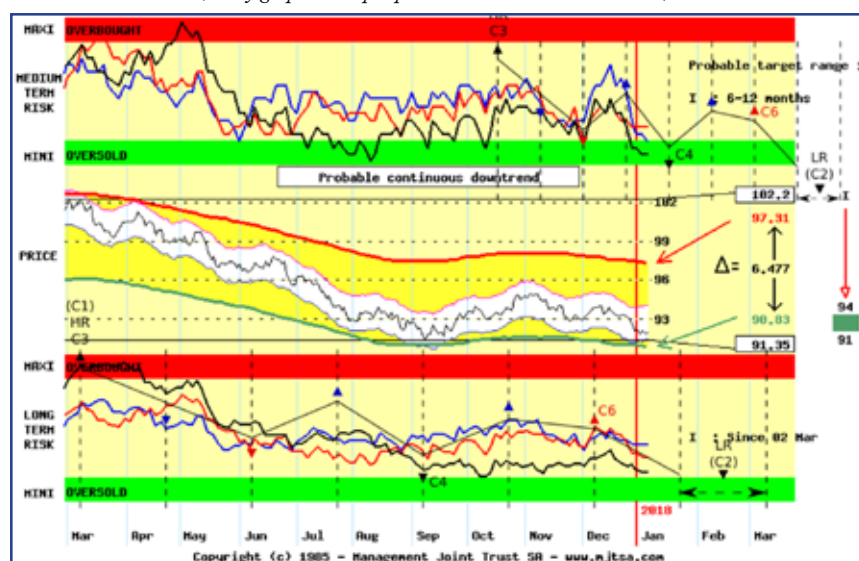
In wishing you our best wishes for 2018, we will start our contributions this year with the US Dollar and its influence on the performance of European equity markets vs US ones. Indeed, we believe the US Dollar could bounce in Q1 2018 and that European markets could follow and outperform.



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US Dollar Index (Daily graph or the perspective over the next 2-3 months)

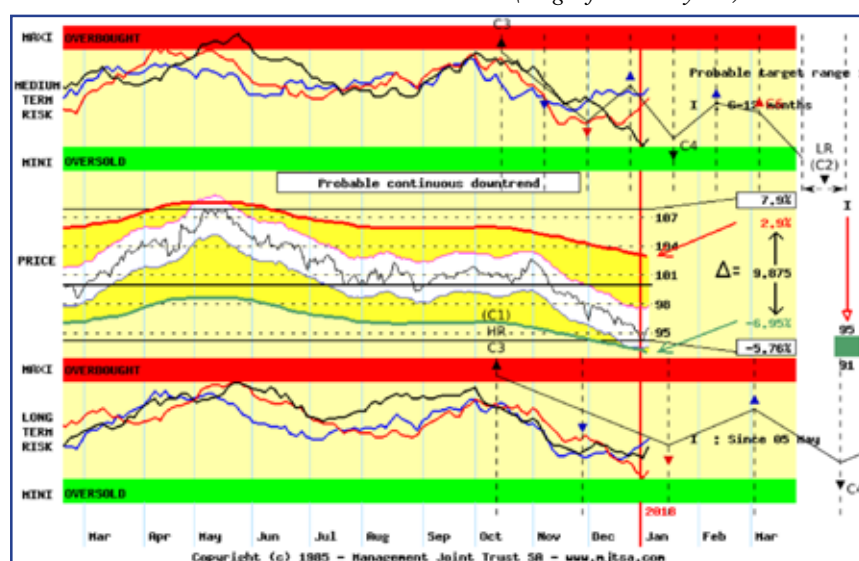


On this daily graph, the downtrend on the US Dollar is getting close to exhaustion. It has reached its I Impulsive targets down between 94 and 91 (right-hand scale), and on our long term oscillators series (lower rectangle), it is approaching a Low Risk position (between mid-/late-January and early February). Our medium term oscillators (upper rectangle) would suggest that the US Dollar may start to bounce from mid-January, possibly into late February/early March. Given our current measure of historical volatility "Delta" (6.477; middle rectangle; right-hand side), this initial bounce could amount to 3 to 5 figures (or 0.5 to 0.8 times "Delta").

For more information on our services and methodology, please visit [www.mjtsa.com](http://www.mjtsa.com) or contact us.

All opinions, news, research, analyses, prices or other information in the article above are provided as general market commentary and do not constitute any financial advice.

The EuroStoxx 50 Index vs the S&P500 Index (hedged for currency risk)



This graph compares both indexes like to like (i.e. hedged for currency risk). Most often, in such currency hedged comparisons, the Index with the stronger currency underperforms the one with the weaker currency (and vis versa). In this case, the EuroStoxx 50 has underperformed the S&P500 for most of 2017, especially since EUR/USD started to really accelerate up in May. As we enter 2018, the downtrend of the EuroStoxx 50 vs. the S&P500 also seems well exhausted. On both oscillator series (upper and lower rectangle), the ratio should reach an intermediate bottom mid January and then start to bounce until early March. The downside risk is limited as our I Impulsive targets down (right-hand scale) has been pretty much achieved.

**CONCLUDING REMARKS:** As we enter 2018, two key asset allocation trends of 2017 may be getting ready to reverse. Indeed, the US Dollar is getting very Oversold. Similarly, European equity markets seem ready to bounce vs. their

US counterparts. It is too early to conclude if this shift is durable, yet this initial bounce could last into late February / early March at least.

## Yes, Economic Security Is National Security

[...] The 2017 National Security Strategy (NSS) is different because it emphasizes the role of the economy: "Economic security is national security," the new NSS avers. [...]

[...] President Donald Trump's administration rightly points to its regulatory reforms and its recently enacted tax legislation as strategies for increasing economic growth. A bigger economy provides the resources to build stronger military capabilities. [...]

[...] As an economist, I am pleased that the NSS has given substantial attention to the economic aspects of U.S. national security. The author, MARTIN FELDSTEIN is a professor of economics at Harvard University and president emeritus of the National Bureau of Economic Research. He chaired President Ronald Reagan's Council of Economic Advisers from 1982 to 1984. [...]

Read more: <https://www.barrons.com/articles/yes-economic-security-is-national-security-1514600292>

Source: Barron's - Dec. 30, 2017

CFB

## How high-frequency trading hit a speed bump

[...] Go West (*a trail of wireless towers, fibre-optic lines and submarine cables linking Chicago, the Pacific coast and Tokyo*), which is due to be operational in early 2018, is the latest stage in a quest to move financial transactions closer to the speed of light. [...]

[...] But it is also a sign of pressures inside the lucrative high-frequency trading sector. Rather than outpace each other with competing paths to Tokyo, top companies formed a consortium to build a single route, sharing bandwidth and costs. [...]

[...] Since markets left bustling exchange floors for computer data centres a decade ago, the majority of deals in equities and futures have come to be executed by machines — automated and lightning-fast. [...]

[...] But the bonanza has now ended. Trading firms are struggling to wring profits from the incremental millisecond. Subdued volumes and reduced volatility have shrunk the size of the pie. [...]

Read more: <https://www.ft.com/content/d81f96ea-d43c-11e7-a303-9060cb1e5f44>

Source: Financial Times - Jan. 1, 2018

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## Putin considers 'cryptorouble' as Moscow seeks to evade sanctions

[...] Moscow officials say that President Vladimir Putin has commissioned work on establishing a cryptocurrency, as state-run Russian institutions rush to embrace blockchain, the shared ledger technology on which bitcoin and other digital currencies are based. [...]

[...] As with the internet, which the Kremlin has largely learned to tame in recent years, the interest in cryptocurrencies reveals Russia's desire to harness a concept originally designed to be free of government influence. [...]

[...] Several of the world's biggest central banks have examined the potential of the technology. ... The European Central Bank and Bank of Japan described blockchain technology as too "immature" for use in their payment systems. [...]

Read more: <https://www.ft.com/content/54d026d8-e4cc-11e7-97e2-916d4fbac0da>

Source: Financial Times - Jan. 2, 2018

CFB

## Some of the World's Largest Employers No Longer Sell Things, They Rent Workers

[...] Outsourcing firms' workforces grow as more companies look to cut their headcounts. [...]

[...] Large outsourcing companies like Compass Group PLC, Accenture PLC and other businesses essentially lease workers to clients. [...]

[...] Of the top 20 global employers in 2017, five are outsourcing and "workforce solutions" companies, according to an analysis by S&P Global Market Intelligence. [...]

[...] Workers in jobs that have gone to outsourcers, though, can feel moved around like chess pieces, either displaced entirely or re-badged as employees of a service provider, sometimes with fewer benefits and lower pay. [...]

[...] A growing body of economic research suggests that outsourcing is a significant factor fueling the rise of income inequality in the past decade. [...]

Read more: <https://www.wsj.com/articles/some-of-the-worlds-largest-employers-no-longer-sell-things-they-rent-workers-1514479580>

Source: Barron's - Dec. 30, 2017

CFB



## Europe begins countdown to Mifid II

[...] Sweeping changes to EU rules on financial instruments come into force on January 3. [...]

[...] January 3 marks a defining moment in financial regulation, the much anticipated introduction of a revamped version of Europe's Markets in Financial Instruments Directive, more commonly known as Mifid II. [...]

[...] The gigantic piece of EU legislation, more than seven years in the making and containing more than 1.7million paragraphs of rules, will affect every corner of the continent's financial services system—from banks to brokers, asset managers to pension funds, stock exchange operators to retail investors. [...]

[...] But many companies and member states are not fully ready for implementation, despite massive spending: preparing IT systems was expected to cost more than \$2bn in 2017 alone. [...]

[...] Some critics are asking if the changes, which will affect investors well beyond Europe, will unnecessarily complicate and fragment markets. *"I think it's the worst piece of legislation I have seen in my career,"* Jeff Sprecher, chief executive of Intercontinental Exchange, said early last year. [...]

Read on: <https://www.ft.com/content/b8a9a634-e116-11e7-a8a4-0a1e63a52f9c>

Source: *Financial Times* - Jan. 1, 2018

CFB

## Le Canada à la présidence du G7 en 2018

[...] Un programme progressiste à risque est proposé par le Canada qui prendra la présidence du G7 en 2018. [...]

[...] Pour Justin Trudeau, cette présidence arrive au moment où toutes les énergies de son gouvernement sont absorbées depuis des mois par la difficile renégociation de l'Accord de libre-échange nord-américain (Aléna) avec les Etats-Unis et le Mexique, exigée par le président Trump dans un contexte de protectionnisme américain. [...]

Read on: <http://www.agefi.com/home/europe-et-monde/detail/edition/online/article/un-programme-progressiste-a-risque-est-propose-par-le-canada-qui-prendra-la-presidence-du-g7-en-2018-467430.html>

Source: *L'AGEFI* - Dec. 22, 2017

CFB

## L'équivalence conditionnée des bourses suisses exacerbe des relations fragiles Suisse-UE

[...] Le Conseil fédéral envisage des mesures pour renforcer la compétitivité de la place financière. Et remet en cause la subvention destinée à l'UE. [...]

[...] Que la nomenclature de l'Union européenne (UE) soit nerveuse face à la crise irrésolue à long terme de sa monnaie bancaire et au processus de désadhésion de l'un de ses plus importants contributeurs nets, le Royaume-Uni, n'est guère surprenant. [...]

[...] La décision de l'UE, hier, de ne reconnaître l'équivalence de la réglementation boursière de la Suisse que pour un an, la conditionnant de surcroît à une avancée sur un accord institutionnel, en témoigne: la compétitivité suisse reste un aiguillon irritant pour Bruxelles. [...]

Read on: <http://www.agefi.com/quotidien-agefi/une/detail/edition/2017-12-22/article/suisse-ue-le-conseil-federal-envisage-des-mesures-pour-renforcer-la-competitivite-de-la-place-financiere-et-remet-en-cause-la-subvention-destinee-a-lue-467314.html>

Source: *L'AGEFI* - Dec. 22, 2017

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## Pension Funds' Dilemma: What to Buy When Nothing Is Cheap

[...] How much risk to tolerate in 2018 is a question all investors are asking at a time when some say everything is overvalued. The largest U.S. public pension fund debated in December whether to sell more than \$50 billion in stocks as global markets raced higher. But in the end, the board of the California Public Employees' Retirement System decided it was fine to hold more. [...]

[...] Decades of low government contributions, overly optimistic assumptions, overpromises on benefits and two recessions have left them with deep funding holes at a time when retirees are accelerating cash outflows. Estimates of their current combined funding shortfall vary from \$1.6 trillion to \$4 trillion. [...]

[...] The goal of most pension funds is to pay for future benefits by earning 7% to 8% a year. [...]

Read on: <https://www.wsj.com/articles/pension-funds-dilemma-what-to-buy-when-nothing-is-cheap-1514808000>

Source: *The Wall Street Journal*, Jan. 1, 2018

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## AGENDA OF GSCGI's MONTHLY CONFERENCES

### INVITATION / REGISTRATION

#### Luncheon-conference 26 January 2018

We take great pleasure in inviting you, your colleagues and friends to our forthcoming conference in Geneva, organized in cooperation with **Cornèr Bank / CornèrTrader, Membre Partenaire du GSCGI**:



www.cornetrader.ch

**Cornèr Bank / CornèrTrader** invited Dr. Costa Vayenas, Senior Investment Consultant at Wellershof & Partners, to address the audience about the following topic of interest to independent asset managers, fund managers, financial analysts and investors:

#### INVESTMENT OUTLOOK 2018 Short Term Momentum & Long Term Trends



**Dr. Costa Vayenas** is a Senior Investment Consultant at Wellershof & Partners, an independent consultancy focusing on global economics, financial markets and comprehensive risk management. Previously, he was a Managing Director at the Chief Investment Office of UBS, where his recent roles included Head of Research and Head of Credit for emerging markets. He has published extensively and also lectured on international finance at the University of Zurich and the Swiss Federal Institute of Technology.

### PROGRAM

**Date** Friday, 26 January 2018  
**Venue** Hôtel Métropole, Quai Général-Guisan 34, Geneva, Switzerland  
**12:00pm** Registration and welcome cocktails  
**12:30pm** Conference, followed by Q&A session  
**13:00pm** Luncheon begins being served  
**14:00pm** End of conference

**This luncheon is  
graciously offered by  
CornèrTrader**

**Please register by Wednesday, 24 Jan. 2018 -- email to: [secretariat@gscgi.ch](mailto:secretariat@gscgi.ch)**

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**26 Jan. 2018/Geneva:** Orateur ... Dr. Costa Vayenas, Senior Investment Consultant at Wellershof & Partners invited by Cornèr Bank / CornèrTrader Zürich, Membre Partenaire du GSCGI

**22 Feb. 2018/Geneva:** *tba*

**23 Mar. 2018/Geneva:** *tba*

**20 Apr. 2018/Geneva:** *tba*

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*Les thèmes de Conférence sont communiqués par invitation et sur le site du Groupement — [www.gscgi.ch](http://www.gscgi.ch)*

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EN 2018 ET AU-DELA.**



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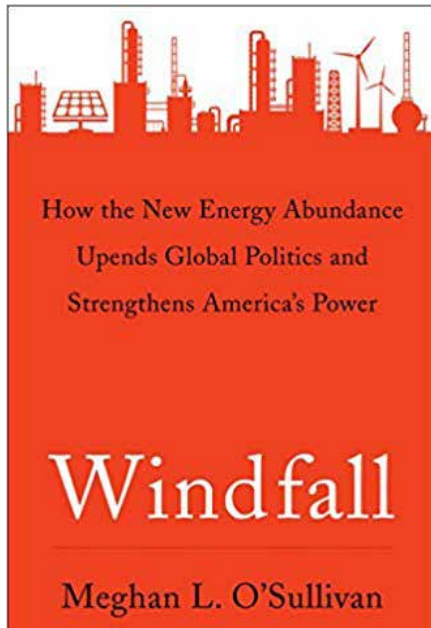
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## BOOK REVIEW

**Windfall:** *How the New Energy Abundance Upends Global Politics and Strengthens America's Power*  
by Meghan L. O'Sullivan



### KIRKUS REVIEW

Remember when the world was running out of oil? The good news is that energy is abundant, at least for the time being. As for the bad news... **The era of peak oil has peaked.** In just the last decade, writes O'Sullivan (*Practice of International Affairs/Kennedy School of Government, Harvard Univ.; Shrewd Sanctions: Statecraft and State Sponsors of Terrorism, 2003, etc.*), *"developments in the world of energy have unfolded at breakneck speed,"* such that fracking, digitally wrought efficiencies, and other advances, combined with reductions in demand, have changed the political stage. For one thing, writes the author, the Arab oil-producing nations have lost some of their hold as the U.S. has emerged as an energy exporter—though, as she adds, that picture is complicated by the fact that the U.S. also imports fossil fuels. Its supremacy as a producer also puts Russia in a leading role, especially in any European scenario. For its part, Europe's conventional oil production is projected to fall, while shale gas extraction is forbidden in many places, so that net imports will almost certainly rise within the next two decades. ... How all this will play out in the current political setting, given the threat of trade and other wars, remains to be seen, but O'Sullivan's generally optimistic view of *"energy realities"* merits attention. A lucid and provocative look at the geopolitics of energy and the shifts and dislocations it is likely to produce.

Read on: <https://www.kirkusreviews.com/book-reviews/meghan-l-osullivan/windfall-osullivan/>

\* \* \*

### The Oil and Gas Sector Is Changing — and So Is Geopolitics

Geopolitics is power played out against geographical settings. In this battle, ideas and ideologies matter. But it is often the most technical and complex factors — the ones we least understand and therefore discount, according to Columbia University's Robert Jervis — that carry the greatest weight. There may be no factor more influential in contemporary geopolitics and yet least understood by journalists and policymakers than the energy revolution, which is less about renewables like wind and solar power than about how the oil and gas sector itself is changing. A Harvard professor and former assistant to President George W. Bush, Meghan L. O'Sullivan, has dissected the intricacies of this industry to offer a riveting and comprehensive geopolitical theory in "Windfall."

Read more: <https://www.nytimes.com/2017/12/28/books/review/windfall-meghan-osullivan.html?rref=collection%2Ftimestopic%2FBook%20Reviews>

\* \* \*

### Windfall, by Meghan O'Sullivan

When former vice-presidential hopeful Sarah Palin called for America to "drill, baby, drill" in a debate with Joe Biden in October 2008, the chant was mocked. Mr. Biden said it would take 10 years for one drop of oil to come out of any US wells. Since then, the shale revolution has meant the US has become a leading global oil producer and net exporter of natural gas. According to Meghan O'Sullivan, a professor at the Harvard Kennedy School, the answer is a geopolitical shift that should benefit the US.

Read more: <https://www.ft.com/content/a4363732-d5bb-11e7-a303-9060cb1e5f44>

### ABOUT THE AUTHOR

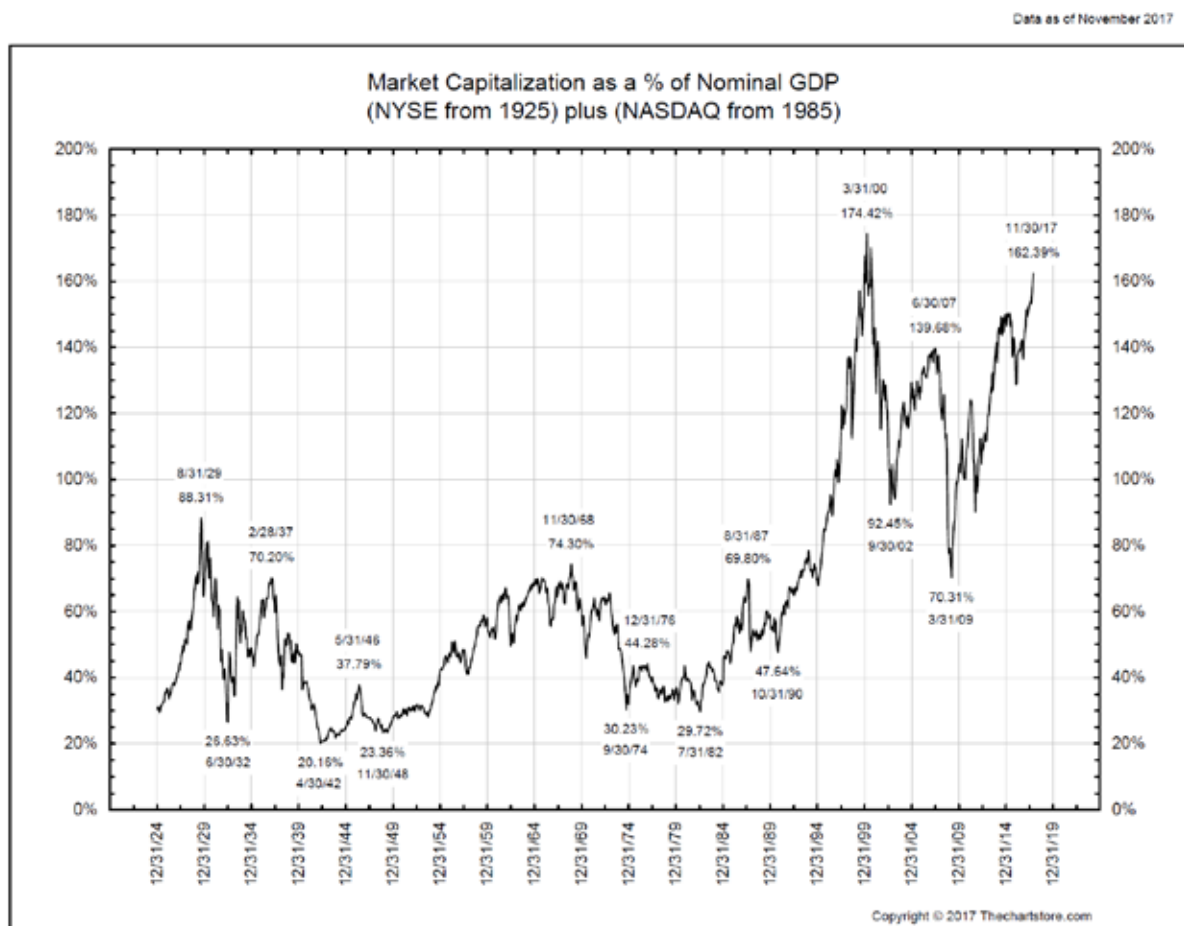
Meghan L. O'Sullivan is the Jeane Kirkpatrick Professor of the Practice of International Affairs at Harvard University's Kennedy School of Government. She is also the Director of the Geopolitics of Energy Project, which explores the complex interaction between energy markets and international politics. Between 2004 and 2007, she was special assistant to the President George W. Bush and Deputy National Security Advisor for Iraq and Afghanistan for the last two years of her tenure. She lives in Cambridge, MA.





## CLIN D'OEIL À L'HISTOIRE

### Technology substantially impact total market capitalization



Technology impact on total market capitalization has substantially increased recently, a move that recalls the 2000 Tech-bubble.

According to The Chart Store, at the end of November total market capitalization for the NYSE only reached 112.% of GDP, while by including also the NASDAQ data the percentage is as high as 162% of GDP. Graph details span from 1925 to present.

Readers might view the above historical graph by comparing it to the historical graph on page 16. *Historical Graph: courtesy of www.thechartstore.com*



Cosima F. Barone, FINARC SA  
Membre du Conseil du GSCGI,  
www.finarc.ch -- c.barone@finarc.ch

## 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](mailto:wealthgram@gscgi.ch) le plus rapidement possible. Les non-Membres également peuvent fournir des articles et sponsoriser **Wealth Gram**.

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