

## “PACTE”: French President Macron’s Action Plan for Business Growth and Transformation

### IN SHORT

**The Situation:** The long-awaited bill of President Macron’s government relating to economic reforms and simplification of companies’ day-to-day operations was tabled to the Cabinet on June 22, 2018.

**The Result:** Expected to be presented to the Parliament this fall, the plan addresses netting, European market infrastructure, risk management, collateral arrangements, and initial coin offerings.

**Looking Ahead:** This plan is designed to be an important step in the context of Brexit and the new strategies of France and Germany for strengthening their respective banking and capital markets.

The bill, named “PACTE” (in French) for Action Plan for Business Growth and Transformation, is a significant proposed legislation addressing a wide range of issues and subject matters. It combines “technical” proposals with more general ones, including removing legal constraints preventing certain privatizations.

Outlined below is a snapshot of topics dealing with Brexit and issues related to the financial markets.

#### Scope of the Favorable Netting Regime

The scope of the current French favorable netting regime will be further extended. Presently, as is the case in many European jurisdictions, the scope is twofold, and netting is enforceable with respect to: (i) any “financial obligations” according to the meaning in the EU Collateral Directive, when both parties are banks, investment firms, funds, insurance companies, or other similar “eligible entities”; and (ii) any “transactions on financial instruments,” when only one of the counterparties is an eligible entity and the other is, for example, an ordinary corporation.

The netting safe harbor previously did not cover agreements documenting spot FX transactions and therefore created a follow-on “bad apple risk” for any agreement governing both qualifying and nonqualifying transactions under one single umbrella. Such limitations will disappear, and the netting safe harbor will expressly cover spot FX transactions and spot transactions on allowances, gold, silver, palladium, platinum, and other bullions, whether cash or physically settled, even as applied to ordinary corporation.

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#### Increased Control over Foreign Investments

The Ministry of Economy will add “Market infrastructures” to the list of companies and sectors for which foreign investment will be subject to prior authorization.

#### Market Infrastructures

In certain circumstances to be determined by a governmental decree, the Prudential Supervisory and Resolution Authority may require central counterparty clearing houses (“CCPs”) operating in France to be licensed as credit establishments. This is a significant relaxation of the existing regime as currently, all CCPs are required to be credit establishments. Direct access to CCPs for financial regulated institutions (such as asset managers or insurance companies, whether French or European) will be extended, subject to conditions to be further determined in secondary regulations.

#### Investment Services Monopoly and Third-Party Countries

Currently, non-EU investment firms are authorized to provide investment services to French professional clients and eligible counterparties from abroad, without being required to open a branch in France. The bill provides that such entities be required to open a branch in France in order to provide investment services in the country to professional clients or eligible counterparties only so long as the European Commission has not made a decision of equivalence in relation to the relevant third-party country or the decision is no longer applicable.

#### Supervision of Branches

French branches of third-country investment firms will be subject to several key mandatory provisions

relating to proceedings for proper governance, internal control, risk management, IT systems controls and backup, European Market Infrastructure Regulation risk mitigation techniques, prudential ratios, etc.

### Compounding of Interest

The provisions of the French Civil Code prohibiting interest to be capitalized for a period of less than 12 months will be subject to a major exception. Each time such interest—whether late interest or not— is due and calculated pursuant to the provisions of a master agreement, such as the new 2002 ISDA Master Agreement (French law) or the 2013 FBF Master Agreement, the capitalization will be authorized, even for period as short as overnight.

### Financial Collateral

The Parliament gives broad and open authority to the French government to further modernize and strengthen laws and regulations relating to a broad range of security interests, title transfers, and collateral arrangements customarily in use in financial transactions.

### Initial Coin Offerings

A statutory regime will govern initial coin offerings ("ICOs") proposed to the French public (provided that the coins or tokens are not financial instruments). Promoters of ICOs will have the option to have their offering documentation stamped by the French *Autorité des marchés financiers* if the document and other marketing materials comply with certain information requirements (to be detailed in secondary regulations).

Participants in the European financial services markets should view these changes in light of the rapid progress made by Paris and Berlin to reform and strengthen the Eurozone and further consolidate the banking and capital markets unions.

## THREE KEY TAKEAWAYS

1. French President Emmanuel Macron's plan to spur investment and boost his nation's economy will be voted on by Parliament this fall.
2. Broad in scope, the PACTE legislation addresses regulations for financial transactions, new rules for calculating interest, domicile requirements for third-country investment firms, the implementation of a statutory regime for ICOs offered to the French public, and other matters.
3. The proposed changes should be viewed in light of the financial reforms taking place across the Eurozone.



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