



MAPLES  
GROUP

# A CLOser

LOOK AT REGULATORY  
DEVELOPMENTS

MARCH 2021

## INTRODUCTION

There have been several new regulatory developments in the Cayman Islands, Ireland and Delaware over the past few months that potentially impact CLO transactions. The Maples Group is proactively monitoring and addressing these regulatory developments to ensure that our clients' CLO transactions are compliant with new requirements. This CLOser Look focuses on the implications of the recent regulatory developments for the CLO market in particular, and provides a gateway to the more general updates that have been issued by the Maples Group.

## CAYMAN ISLANDS

### ECONOMIC SUBSTANCE

The Department for International Tax Cooperation ("DITC") has recently extended the reporting deadlines for entities due to file an Economic Substance return (an "ES Return"). The deadline for the first submission for entities providing evidence that they are tax resident overseas is 28 February 2021 for those with a financial year ending up to 29 February 2020. Otherwise, the deadline for filing an ES Return (other than with respect to IP Business) is 30 April 2021. In general, CLO Issuers fall outside of the requirement to file an ES Return. The Maples Group is taking care of the annual ES classification notifications for the CLO Issuers administered by the Group. For any bespoke structures that require an ES Return to be filed, the Maples Group has been actively engaging with clients to ensure that they are aware of the reporting deadlines and requirements.

[Economic Substance and CbCR – January 2021](#)

## BENEFICIAL OWNERSHIP

The Registrar of Companies is actively imposing penalties and issuing warning letters to companies that fail to submit the beneficial ownership information required under the Beneficial Ownership regime (the "BOR Regime"). Companies that do not pay the fines and/or continue to be non-compliant with the requirements of the BOR Regime will be removed from the register of companies. CLO Issuers structured as off-balance sheet vehicles can readily comply with the requirements. The Maples Group has proactively engaged with all clients to ensure full compliance.

## AML REGULATIONS AND GUIDANCE NOTES

There have been no recent material changes to the Cayman Islands Anti-Money Laundering Regulations. Most CLO Issuers administered by the Maples Group also benefit from our AML compliance services as we are familiar with the AML requirements and can advise clients of any action required.



## THE REGULATORY 15/15

The Reg 15/15 is a monthly 15-minute webcast released by our Cayman Islands Regulatory team on the 15th day of each month, providing timely updates on current regulatory developments. The February webcast covers the following topics:

- CRS Compliance Form
- Economics Substance Updates
- Virtual Asset Service Provider (VASP) Update
- Monthly New Product

The webcast can be accessed on demand [here](#).



## FATCA / CRS REPORTING

The Tax Information Authority has introduced a CRS Compliance Form, which seeks extensive information with respect to a Reporting Financial Institution ("Reporting FI"), including its regulatory status, financial account data, its service providers and CRS and anti-money laundering processes. A Reporting FI is also required to confirm that it has established and maintained written policies and procedures which comply with CRS requirements. The Maples Group handles these reporting requirements for any CLO Issuers administered by the Group. CLO Issuers not otherwise engaged by the Maples Group can reach out to us if they require assistance with respect to their Cayman Islands FATCA and CRS reporting requirements.

## DELAWARE

CLO transactions with a Delaware co-issuer will in due course need to comply with the new reporting requirements under The Corporate Transparency Act (the "Act"). There is an extended timeframe for compliance, as the reporting requirements are not effective until two years after the effective date of regulations under this new law.

The Act has become law, as it was included in the Anti-Money Laundering Act of 2020, which in turn was part of National Defense Authorization Act for 2020. The stated purpose is to capture ownership information about shell companies and combat money laundering.

The new law requires Beneficial Owners of Reporting Companies to provide information including full legal name, date of birth, current residential or business address and a unique identifying number (e.g. passport or driver's license number). This information must be reported to FinCen, who maintains a national registry, which will not be public.

Exclusions from the reporting requirements include: (i) publicly traded companies; (ii) certain non-profits and government entities; (iii) certain financial institutions (banks and credit unions); and (iv) companies that employ more than 20 full-time employees; file a federal income tax return with more than US\$5 million in sales or gross receipts and maintain an operating presence with a physical office within the United States.

## IRELAND

An Irish CLO Issuer structured as a section 110 company will be considered a NFC (as defined below) under the Securities Financing Transactions Regulation<sup>1</sup> ("SFTR"), which was enacted to enhance transparency in the securities financing markets and mandates the reporting of Securities Financing Transactions ("SFTs") to a trade repository registered with or recognised by the European Securities and Markets Association ("TR").

An SFT is defined as:

- a. a repurchase transaction;
- b. securities or commodities lending and securities or commodities borrowing;
- c. a buy-sell back transaction or sell-buy back transaction;
- d. a margin lending transaction; or
- e. liquidity swaps and collateral swaps not falling under the definition of derivative contracts under EMIR<sup>2</sup>.

The fourth phase of the implementation of SFTR came into effect on 11 January 2021 (the "Commencement Date") and applies to all non-financial counterparties ("NFC"). An entity will be defined as an NFC if it is an "undertaking" established in the EU or in a third country and it does not fall within the definition of "financial counterparties"<sup>3</sup>. Therefore, section 110 companies, including CLO Issuer entities, would be considered NFCs.

Counterparties to SFTs are each obliged to report the details of any SFT they have concluded, as well as any modification or termination thereof, to a TR. The prescribed details of the SFT shall be reported no later than the working day following the conclusion, modification or termination of the transaction.

Counterparties are further required to keep a record of any SFT that they have concluded, modified or terminated for at least five years following the termination of the transaction.

A counterparty is permitted to delegate its reporting obligations under SFTR. NFCs which conclude an SFT with a financial counterparty may, in certain specified circumstances, rely on the financial counterparty to report the SFT in respect of both parties.

The reporting obligation shall apply to SFTs which:

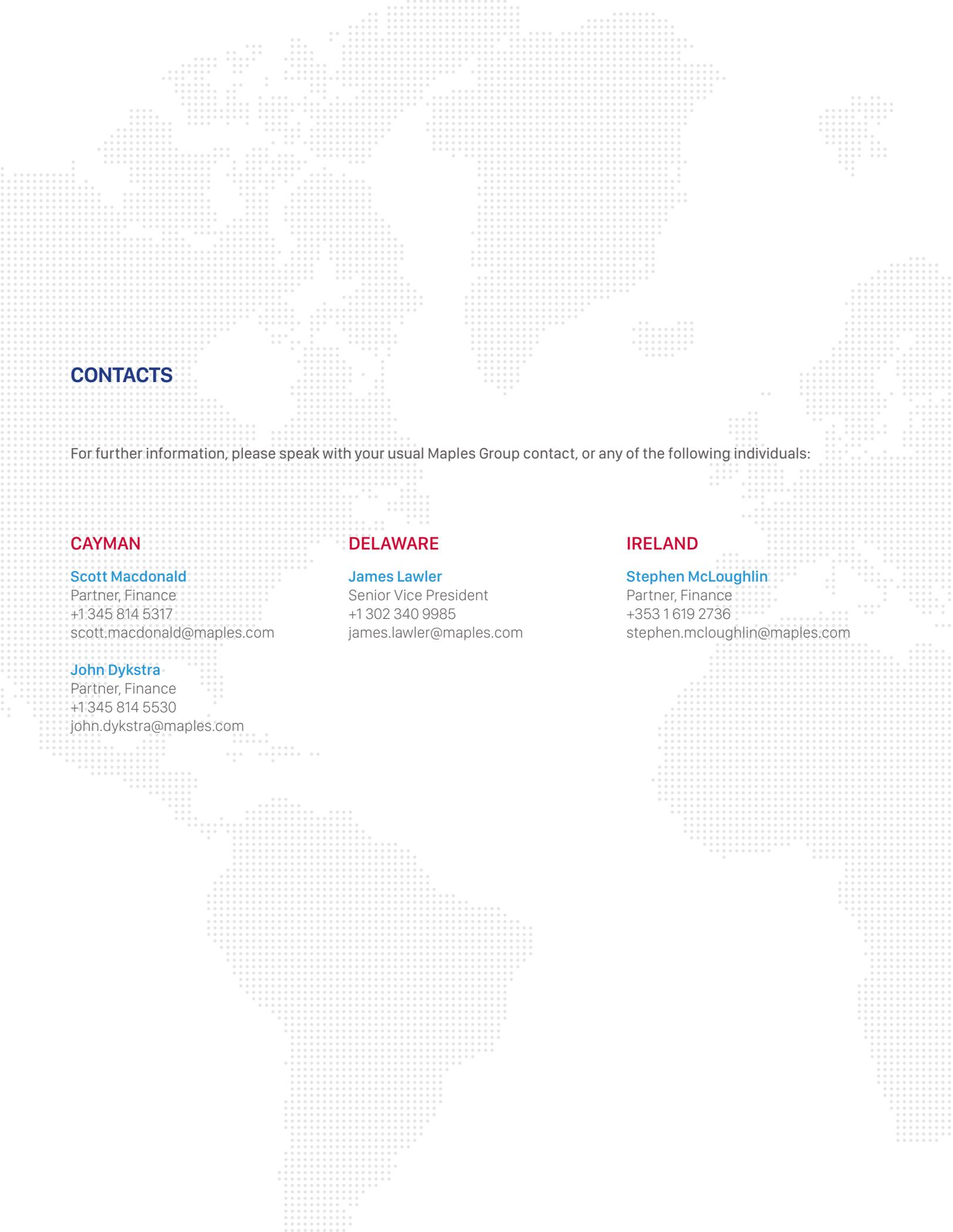
- a. are concluded on or after the Commencement Date; or
- b. where concluded before the Commencement Date and remain outstanding on that date, if:
  - i. the remaining maturity of the SFT exceeds 180 days; or
  - ii. the SFT has an open maturity and remains outstanding 180 days after the Commencement Date.

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<sup>1</sup> Regulation (EU) 2015/2365 of the European Parliament and of the Council of 25 November 2015 on transparency of securities financing transactions and of reuse and amending Regulation (EU) No 648/2012.

<sup>2</sup> Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories.

<sup>3</sup> Financial counterparties include investment firms, credit institutions, insurance and reinsurance undertakings, UCITS and UCITS management companies, Alternative Investment Fund managed by an AIFM authorised under the Alternative Investment Fund Managers Directive ("AIFMD"), institutions for occupational retirement provision, central counterparties and central securities depositories.



## CONTACTS

For further information, please speak with your usual Maples Group contact, or any of the following individuals:

### CAYMAN

**Scott Macdonald**  
Partner, Finance  
+1 345 814 5317  
[scott.macdonald@maples.com](mailto:scott.macdonald@maples.com)

**John Dykstra**  
Partner, Finance  
+1 345 814 5530  
[john.dykstra@maples.com](mailto:john.dykstra@maples.com)

### DELAWARE

**James Lawler**  
Senior Vice President  
+1 302 340 9985  
[james.lawler@maples.com](mailto:james.lawler@maples.com)

### IRELAND

**Stephen McLoughlin**  
Partner, Finance  
+353 1 619 2736  
[stephen.mcloughlin@maples.com](mailto:stephen.mcloughlin@maples.com)