NORTON ROSE FULBRIGHT

Global Blockchain Business Council

Monthly FinTech Updater

Norton Rose Fulbright LLP – 31 October 2022

Global, EU, UK and US Regulatory Developments

EU	
EU Commissioner delivers speech on crypto regulation and the digital euro	The EU Commissioner for Financial Stability, Financial Services and the Capital Markets Union, Mairead McGuiness delivered a speech at the Banque de France conference on the topic of crypto market regulation. In this speech, Commissioner McGuiness warned of the dangers of a "Wild West" situation which might develop if crypto is not regulated, describing unregulated crypto markets as having the potential to pose systematic risks to global financial stability, pointing to market volatility over the last year. Commissioner McGuiness also mentioned that the European Commission is planning to process legislation for a possible digital euro in 2023, which would lay the groundwork for the eventual issuance of the digital currency by the European Central Bank. **Published 3 October 2022**
ECON approves MiCA	The Economic and Monetary Affairs Committee of the European Parliament approved the EU's Markets in Crypto-Assets (**MiCA**) Regulation, all but finalising its implementation, pending only approval by the larger European Parliament plenary. Once MiCA is approved by the plenary and takes effect, an 18-month countdown will begin, by the end of which all firms will have to become compliant with the new Regulation. Assuming the Regulation is approved by the plenary, it will likely take effect either later this year or early 2023. **Published 10 October 2022**
EBA report on the peer review on ICT risk assessment under the SREP	The European Banking Authority (**EBA**) published a report setting out its findings following a peer review on the Information and Communication Technology (**ICT**) risk assessment under the Supervisory Review and Evaluation Process (**SREP**). Key findings from the peer review include: • EU competent authorities have largely implemented the EBA guidelines on ICT risk assessment under the SREP and applied them in their supervisory practices. • EU competent authorities have applied a risk-based approach to the supervision of ICT risk management where the depth and frequency of the assessments correlate with the level of ICT risk of the institutions. • No significant concerns were raised regarding supervisory practices on ICT risk management, but the EBA makes a number of general recommendations to further strengthen them. The peer review also includes recommendations for the EBA to incorporate a number of identified good practices into its guidelines on ICT risk assessment under the SREP. These are to be incorporated when the guidelines are reviewed in the future. **Published 17 October 2022**
UK	
PRA / FCA Joint Discussion Paper 22/4	On 11 October 2022, the PRA and FCA jointly published Discussion Paper 22/4 'Artificial intelligence and machine learning' (**DP22/4**).

'Artificial intelligence and machine learning'	The FCA, PRA and Bank of England have a close interest in the safe and responsible adoption of artificial intelligence (**AI**) in financial services. Although the use of AI may bring a range of benefits, it can also pose novel challenges for firms and regulators as well as amplify existing risks to consumers, the safety and soundness of firms, market integrity, and financial stability. One of the most significant questions is whether AI can be managed through clarifications of the existing regulatory framework, or whether a new approach is needed. How to regulate AI to ensure it delivers in the best interests of consumers, firms, and markets is the subject of a wide-ranging debate. Henceforth, the regulators want to share and gain insight on their thinking on: • The potential benefits and risks related to the use of AI in financial services. • How the current regulatory framework applies to AI. • Whether additional clarification of existing regulation may be helpful. • How policy can best support further safe and responsible AI adoption. The deadline for comments on DP22/4 is 10 February 2023. **Published 12 October 2022**
Economic Crime and Corporate Transparency Bill reaches the committee stage in Parliament	The Economic Crime and Corporate Transparency Bill (the **Bill**) having been approved at its second reading before the House of Commons (**HOC**) has reached the Committee stage. During the course of this stage, the Bill will be scrutinised by the Public Bill Committee, which will then present a report to the HOC on 29 November. Following this, the Bill will receive its third and final reading and, if approved by the HOC will then proceed to the House of Lords for consideration by Parliament's upper house. The Bill, which is sponsored by the Home Office, proposes a sweeping range of reforms to Companies House, in order to crack down on economic crime. As part of its proposed measures, the Bill would enhance the powers of law enforcement by enabling them to seize suspected criminal crypto assets, and the powers of the courts by simplifying the enforcement of orders against defendants' crypto assets. **Published 25 October 2022**
FCA Discussion Paper 22/5 'The potential competition impacts of Big Tech entry and expansion in the retail financial services'	On 25 October 2022, the FCA published Discussion Paper 22/5 'The potential competition impacts of Big Tech entry and expansion in retail financial services' (**DP22/5**). In DP22/5 the FCA notes that Big Tech firms' presence internationally and in UK financial services markets has been increasing, with the potential to grow and change market outcomes quickly. Big Tech firms can provide innovative and efficient products and services. However, in the FCA's view, based on evidence from Big Tech firms' core markets and their expanding ecosystems, competition risks could arise in the future from them rapidly gaining market share, markets 'tipping' in their favour, and potential exploitation of market power that would be harmful to competition and consumer outcomes. As a result of this, the purpose of DP22/5 is to stimulate a discussion on the potential competition impacts identified using existing research to inform the FCA's approach to Big Tech firms. The FCA wants to hear views about where Big Tech entry is likely to create the biggest competition benefits for consumers and those areas where there is the greatest risk of significant harm if competition develops in a particular way. The FCA has focused its

	analysis on four retail sectors: (i) payments; (ii) deposit taking; (iii) consumer credit; and (iv) insurance. The deadline for comments to DP22/5 is 15 January 2023. The FCA will be hosting an expert panel event on 28 November 2022, followed by sector specific workshops on 6 and 7 December 2022. The FCA plans to publish a Feedback Statement in the first half of 2023 setting out how it will develop its regulatory approach in response to the feedback received. **Published 25 October 2022**
USA	
SEC charges celebrity with the unlawful promotion of crypto security	The Securities and Exchange Commission (**SEC**) announced that it was levying charges against a celebrity respondent for allegedly unlawfully promoting a crypto asset security on social media in exchange for a USD 250,000 payment from the security's issuer. The respondent neither admitted nor denied the SEC's allegations but agreed to pay approximately USD 1.26 million, which included disgorgement, plus interest, and a USD 1 million fine. The respondent also agreed not to promote any crypto asset securities for three years. This development is the latest SEC action against celebrities for promoting crypto assets and reflects the organisation's commitment to regulation of the crypto space, as well as the position of its chair Gary Gensler whom last month stated his belief that the "vast majority" of crypto tokens are securities and therefore subject to federal securities laws. Mr Gensler also recently released a video warning investors to exercise caution when dealing with celebrity endorsements of crypto assets. **Published 1 October 2022**
Treasury Department fines major crypto exchange USD 29 million for violating sanctions and anti-money laundering laws	The US Treasury Department announced that it had reached a settlement with one of the largest crypto exchanges in the country following fines amounting to USD 53 million collectively being levied against the exchange by the Treasury Department's Office of Foreign Assets Control (OFAC) and Financial Crimes Enforcement Network (FinCEN). Under the terms of the agreement, the exchange will only have to pay USD 29 million. The fine-incurring conduct stemmed from the failure of the crypto exchange to prevent, over a number of years, individuals based in sanctioned jurisdictions from using its platform. The Treasury investigation also found that the exchange had failed to maintain an effective anti-money laundering program, in breach of money laundering regulations. **Published 11 October 2022**
FSOC releases' Report on Digital Asset Financial Stability Risks and Regulation'	Pursuant to an Executive Order by President Biden on the "Responsible Development of Digital Assets", the Financial Stability Oversight Council (FSOC) published an exhaustive 120-page report discussing crypto assets and the associated risks posed by them to financial stability. The report stated that while the current risks posed by crypto assets are limited, they may increase substantially in the near future. In addition to issues within the "Crypto-Asset Ecosystem" such as price volatility, the "prevalence of fraud" and the absence of prudential regulations, the report also highlighted "Interconnections" between the crypto market and the "Traditional Financial System". According to the FSOC, these "Interconnections" have created the potential for disruptions in the crypto market to adversely impact financial institutions exposing them to various increased risks. The report recommended the creation of a regulatory authority to oversee the crypto market, the organisation of a comprehensive regulatory framework and that regulatory agencies should assess the impact of vertical integration. SEC Chair Gary Gensler published a statement in support of the FSOC's conclusions and advocated for increased regulation of crypto markets.

	Published 17 October 2022
Australia	
Australian Law Reform Commission releases paper on regulation of crypto assets and decentralised autonomous organisations	The Australian Law Reform Commission is currently considering reforming the country's existing financial services regulation framework. As part of its associated enquiries, the Commission has produced various background papers and reports. The most recent of these, released on 12 October 2022, was a background paper titled "New Business Models, Technologies, and Practices". The paper discusses various technologies used in the financial services sector, with a focus on crypto assets and decentralised autonomous organisations. It also discusses how the design of the future regulatory framework should be tailored to be most effective in relation to these technologies. **Published 12 October 2022**
Africa	
The Bank of Namibia permits the acceptance of cryptocurrencies as payment	The Bank of Namibia has announced that while privately issued cryptocurrencies are still not recognised in the country as legal tender, individual merchants and traders are permitted to accept them as payment if they wish to do so. This represents a significant relaxation of the Bank's position on the use of cryptocurrencies by the public and reflects its ongoing consideration of the possibility of rolling out a central bank digital currency. In the same announcement, the Bank also stated that it "has brought VAs [(Virtual Assets)] and VASPs [(Virtual Assets Service Providers)] under its FinTech Innovations Regulatory Framework in a phased approach". **Published 6 October**
South Africa legally classifies crypto assets as financial products, bringing them within the jurisdiction of the Financial Advisory and Intermediary Services Act	South Africa's Financial Sector Conduct Authority (**FSCA**) has announced that crypto assets will now fall into the category of "financial products", as set out in the Financial Advisory and Intermediary Services Act (**FAIS**), thereby bringing them within the FSCA's remit. The announcement defines a crypto asset as a digital representation of value that : 1. is not issued by a central bank, but is capable of being traded, transferred or stored electronically by natural and legal persons for the purpose of payment, investment and other forms of utility; 2. applies cryptographic techniques; and 3. uses distributed ledger technology. A key implication of this change is that entities regulated by FAIS often have to comply with other regulations which are enforced by the FSCA. However, according to the FSCA press release published in conjunction with the official announcement, "persons rendering financial services (advice and/or intermediary services)" will not be subject to the requirement set out in FAIS that such persons must receive official approval as financial services providers. However, this exemption will only apply until the person's licence application has been approved or declined (the window for the submission of applications is 1 June – 30 November 2023). **Published 19 October 2022**
South America	

Chile passes long-awaited FinTech legislation	After nearly two years of debates, the Chilean congress has passed a major financial services bill which sets out the country's regulatory framework for FinTech services. Once approved by President Gabriel Boric, the new legislation will: • Grant various powers to Chile's Financial Market Commission (**CMF**) to regulate FinTech businesses. • Require regulated services providers to register with and receive authorization from the CMF. • Establish an open banking system to facilitate the exchange of information between participant institutions. • Amend various existing financial services laws to be consistent with the new law. The law will make Chile one of the only countries in Latin America with a dedicated FinTech regulatory framework. **Published 14 October**

International Developments

International Organisations	
International Regulation of Crypto-asset Activities: A Proposed Framework – For Consultation	On 11 October 2022, the Financial Stability Board (FSB) published a consultative report which sets out a number of proposed recommendations to promote the consistency and comprehensiveness of regulatory, supervisory and oversight approaches to crypto asset activities and markets intended to strengthen international cooperation, coordination and information sharing. The recommendations apply to any type of crypto-asset activities and associated issuers and service providers (including intermediaries such as crypto-asset trading platforms) that may pose risks to financial stability. The FSB has also published a consultative report regarding a review of its high-level recommendations of October 2020 for the regulation, supervision, and oversight of global stablecoin arrangements. The revised recommendations emphasise the need for authorities to be ready to apply relevant regulations to any stablecoins that could become a global stablecoin arrangement. They include guidance to strengthen the governance framework by clearly defining the responsibilities of the actors and the redemption rights of single fiat-referenced global stablecoins by requiring these stablecoin issuers to provide robust legal claims, guarantee timely redemption at par into fiat, and maintain effective stabilisation mechanisms, among other revisions. The revised recommendations clarify that reliance on algorithms and arbitrage activities are not effective stabilisation mechanisms and therefore many existing stablecoins would not meet the FSB's high-level recommendations. The FSB is soliciting comments on both reports until 15 December 2022. The FSB will finalise the recommendations by mid-2023 in light of the feedback received. **Published 11 October 2022**
FSB consultative document on achieving greater convergence in cyber incident reporting	On 17 October 2022, the FSB published a consultative document in which it sets out proposed recommendations to address impediments to achieving greater convergence in cyber incident reporting (**CIR**) with a view to promoting better practices, while recognising that a one-size-fits-all approach is not feasible or preferable. The FSB's proposals include: • Recommendations to address the challenges to achieving greater convergence in CIR. The FSB sets out 16 recommendations to address the practical issues associated with the collection of cyber incident information from financial institutions and the onward sharing between financial authorities. • Further work on establishing common terminologies related to cyber incidents. • A proposal to develop a common format for incident reporting exchange that could be further considered among financial institutions and financial authorities. The concept of the common format leverages the analysis of various incident reporting templates, which identified many commonalities in the data that financial authorities collect to meet their reporting objectives. **Next steps** The deadline for responding to the consultative document is 31 December 2022. **Published 17 October 2022**

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