NORTON ROSE FULBRIGHT

Global Blockchain Business Council

Monthly FinTech Updater

Norton Rose Fulbright LLP – 31 December 2022

Global, EU, UK and US Regulatory Developments

EU	
ESMA publishes final report on guidelines on standard forms, formats and templates to apply for permission to operate a DLT market infrastructure	The European Securities and Markets Authority (**ESMA**) published a final report containing guidelines on standard forms, formats and templates to apply for permission to operate a Distributed Ledger Technology market infrastructure (**DLT MI**). Between 11 July and 9 September 2022, ESMA conducted a public consultation on draft guidelines on standard forms, formats and templates to apply for permission to create a DLT MI. The final report summarises and analyses the responses to the consultation paper and explains how the responses have been taken into account. The guidelines include templates to be used by market participants to apply for specific permission to operate any type of DLT MI under the DLT Pilot Regulation, namely a DLT MTF, a DLT settlement system or a DLT trading and settlement system. They also include a template for the applicant DLT MIs to request limited exemptions from specific requirements under the Markets in Financial Instruments Regulation, Markets in Financial Instruments Directive 2014, or Central Securities Depositories Regulation, provided they comply with certain conditions. Applicants are strongly encouraged to anticipate the formal entry into force of the guidelines, and to refer to the guidelines and liaise with their Member State national competent authority to prepare their application for permission to operate a DLT MI. The guidelines will be published on ESMA's website in the EU official languages in the coming weeks. The guidelines will enter into force on 23 March 2023. **Published 15 December 2022**
UK	
Digital Regulation Cooperation Forum workplan 2023 to 2024: Call for input	The Digital Regulation Cooperation Forum (**DRCF**) issued a call for input on its workplan for 2023 to 2024. The DRCF comprises of four UK regulators – the Competition and Markets Authority, the Office of Communications, Information Commissioner's Office and Financial Conduct Authority – which seek to deliver a coherent approach on digital regulation for the benefit of people and businesses online. The call for input invites stakeholders for their views about issues that the DRCF should take into consideration as it develops its work plan for 2023 to 2024. **Published 7 December 2022**
Insights arising from the discussions held at the FCA's quarterly Cyber Coordination Group meetings	The FCA has published a new webpage providing insights arising from the discussions at its quarterly Cyber Coordination Group (**CCG**) meetings during 2021. The webpage is split into three sections: the first highlights the cyber risk landscape, as well as emerging cyber risks discussed at the CCGs in 2021.

	The key insights discussed include: • Malicious cyber actors targeting internet-facing systems such as email servers and virtual private networks with newly disclosed vulnerabilities, ransomware attacks using Remote Desktop Protocols and unpatched devices, denial of service attacks, and inadequate supply chain oversight leading to supply chain compromise. • The Covid-19 pandemic continued to impact the sector in 2021, with the challenges posed by remote and hybrid ways of working. • Emerging trends in cyber security risks, include supply chain compromise and exploit of zero-day vulnerabilities. • The importance of board engagement in setting the organisational cyber risk appetite. This also extends to board support in measuring the effectiveness of cyber security postures, and board assurance that supply chain partners effectively protect the information shared with them. Several common good practices can be used for implementing security in the early stages of the software development cycle (also known as DevSecOps). This includes empowering rather than mandating security practices and giving access to security tools to the development teams. **Published 8 December 2022**
BOE calls for increased regulation of “dangerous” crypto assets	In an interview, Sir Jon Cunliffe, the deputy governor of the Bank of England (**BOE**), discussed recent turbulence in the crypto asset market and announced that the BOE is considering the introduction of additional regulations for the purpose of protecting consumers. Sir Jon described the crypto asset market as “incredibly volatile”, comparing the trading of crypto assets to gambling. Additionally, he raised concerns that, if existing trends continue, the crypto industry could become fully integrated into the existing financial system and that, if so, its volatility could potentially create a “systemic problem”. Allowing the crypto industry to remain unregulated was described by Sir Jon as “too dangerous” to consider. While he acknowledged that it would be difficult to do so, Sir Jon expressed the view that crypto assets should be brought within the financial services regulatory framework, so that the risks associated with them can be effectively managed. **Published 23 December 2022**
USA	
SEC published guidance on the disclosure of crypto asset risks	The Division of Corporation Finance of the Securities and Exchange Commission (**SEC**) published guidance for issuers of securities in the form of a letter titled “Sample Letter to Companies Regarding Recent Developments in Crypto Asset Markets”. This letter, published in the aftermath of high-profile scandals and general turbulence in the crypto asset industry, requests various disclosures to investors in relation to a company’s involvement in crypto-assets. The letter, which requests that companies disclose “any significant crypto asset market developments material to understanding or assessing your business, financial condition and results of operations”. The letter also sets out a non-exhaustive list of “Risk Factors”, in relation to which companies should disclose their involvement. These include reputational

	harm as a result of crypto asset market disruption, legislative/regulatory developments, and liquidity-related risks. Within the wider context of increased efforts by the SEC to impose regulatory oversight on the crypto asset industry, this guidance may represent the benchmark upon which future crypto asset disclosure standards will be based and will likely herald further guidance and regulation relating to the protection of consumers from the risks associated with crypto assets. **Published 8 December 2022**
Bipartisan bill aimed at preventing money laundering using crypto assets introduced in Senate	A new bill titled "Digital Asset Anti-Money Laundering Act of 2022" (the **Bill**), was jointly introduced to the US Senate by Democrat Senator Elizabeth Warren and Republican Senator Roger Marshall. The purpose of the Bill is to combat the use of crypto assets for the purposes of money laundering and the financing of terrorism. The scope of the Bill is relatively narrow, as its content mainly focusses on the direction of the Financial Crimes Enforcement Network (**FinCEN**) to implement rules: • "classifying custodial and unhosted wallet providers, cryptocurrency miners, validators, or other nodes who may act to validate or secure third-party transactions, independent network participants, including MEV searchers, and other validators with control over network protocols as money service businesses". • Requiring transactions in crypto assets with a value of over $10,000 which involve overseas accounts to be reported. The Bill also directs various government agencies to examine their existing anti-money laundering and anti-terrorism policies and procedures and requires the operators of crypto asset kiosks and the ATMs to determine the identity of all customers/users. **Published 14 December 2022**
Australia	
RBA publishes report on stablecoins confirming they will be brought within the regulatory framework	The Reserve Bank of Australia (**RBA**) released a report on stablecoins in which it was confirmed that the Council of Financial Regulators (**CFR**) is working on options to incorporate payment stablecoins into the regulatory framework for stored-value facilities. According to the report, “stablecoins have the potential to enhance the efficiency and functionality of a range of payment and other financial services”. Nevertheless, the report identifies various risks associated with crypto assets, including climate change risks, disruptions to funding markets, increasing bank exposure and liquidity risks. According to the report, the CFR is currently prioritising the creation of a regulatory framework for “payment stablecoins”. This reflects both the possibility of such crypto assets becoming a widespread means of payment, as well as of the risks associated with this. **8 December 2022**
Australia to introduce framework for the licensing and regulation of crypto service providers	The Australian Treasury published a statement announcing its plans to establish an official framework for the licensing and regulation of crypto service providers. In the statement, it was stated that Australia’s regulatory system “has not kept pace with changes in the market, including the advent of new digital products and services”. In response to these shifts in the landscape, the government of Australia under Prime Minister Anthony Albanese (who assumed power earlier in 2022), intends to introduce “additional safeguards” intended to protect Australian consumers.

	The government will release a consultation paper in early 2023 which will set out which crypto assets will be subject to financial services regulations and will inform the development of appropriate custody and licensing settings for the purpose of consumer protection. Following consultation, new custody and licensing legislation will be introduced. **14 December 2022**
Canada	
CSA announces intention to increase regulation of crypto asset trading platforms	In the aftermath of turmoil in the crypto asset market, the Canadian Securities Administrators (**CSA**) announced that it would be "strengthening its approach to oversight of crypto trading platforms". This "strengthening" will entail the introduction of various additional requirements which platforms must satisfy in order to operate in Canada. Specifically, unregistered crypto asset trading platforms must deliver a pre-registration undertaking or cease operation, otherwise they may face enforcement action from the CSA. Additionally, unregistered platforms will also be subject to expanded terms and conditions in relation to Canadian clients, which will include having to hold Canadian clients' assets with an appropriate custodian, to segregate such assets from the platform's proprietary business, and to never offer margin or leverage for any Canadian client. In its announcement, the CSA also acknowledged, for the first time, that in its view stablecoins, or stablecoin arrangements, "may constitute securities and/or derivatives". This marks a significant landmark in the CSA's approach to crypto asset regulation, bringing it closer to the position of the USA's SEC, the chairman of which has for several months expressed the view that most crypto assets are securities and should be treated as such. **Published 20 December 2022**

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