NORTON ROSE FULBRIGHT

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Global, EU, UK and US Regulatory Developments

EU	
DORA published in the OJ	There was published in the Official Journal of the European Union (**OJ**): • Regulation (EU) 2022/2554 of the European Parliament and of the Council of 14 December 2022 on digital operational resilience for the financial sector and amending Regulations (EC) No 1060/2009, (EU) No 648/2012, (EU) No 600/2014, (EU) No 909/2014 and (EU) 2016/1011. This Regulation shall enter into force on the twentieth day following that of its publication in the OJ and shall apply from 17 January 2025. • Directive (EU) 2022/2556 of the European Parliament and of the Council of 14 December 2022 amending Directives 2009/65/EC, 2009/138/EC, 2011/61/EU, 2013/36/EU, 2014/59/EU, 2014/65/EU, (EU) 2015/2366 and (EU) 2016/2341 as regards digital operational resilience for the financial sector. The Directive shall enter into force on the twentieth day following that of its publication in the OJ. **Published 27 December 2022**
Commission call for advice to the EBA regarding delegated acts under MiCA	The European Commission published a letter it had sent to the European Banking Authority (**EBA**) being a provisional request for technical advice on certain delegated acts that the Commission intends to adopt under the Regulation on Markets in Crypto-Assets (**MiCA**). The request for advice concerns delegated acts on certain criteria for classification of asset-referenced tokens and e-money tokens as significant as well as a delegated act on supervisory fees to be charged by the EBA to the issuers of significant asset-referenced tokens or e-money tokens. The letter requests that the EBA deliver the technical advice by 20 September 2023. **Published 4 January 2023**
European Commission asks ESAs for technical advice on DORA	The EBA published a letter from the European Commission (**Commission**) to the European Supervisory Authorities (**ESAs**) requesting advice on designation criteria and fees for the oversight framework for critical third-party service providers set out under the Regulation on digital operational resilience for the financial sector (**DORA**). Together with the letter, the EBA published the content of the Call for Technical Advice, which sets out in more detail the scope of the advice requested by the Commission. As per the mandate set out in DORA, the ESAs are requested to deliver technical advice on two delegated acts: 1. Delegated act specifying the amount of fees to be collected from critical third-party service providers; and 2. Delegated act specifying the criteria for assessing criticality. In respect of this delegated act the ESAs are requested to specify the relevant indicators of a qualitative and quantitative nature of each of the four criteria to determine criticality of third-party service providers as set out in DORA and including: – The systemic impact on the stability, continuity or quality of the provision of financial services in the event that a critical third-party

	– service provider would face a large-scale operational failure to provide its services; – The systemic character or importance of the financial entities that rely on a critical third-party service provider; – The reliance of financial entities on the services provided by a critical third-party service provider; and – The degree of substitutability of a critical third-party service provider. The deadline for the ESAs to deliver the technical advice is 30 September 2023. DORA will become applicable on 17 January 2025. **Published 4 January 2023**
Bank of France calls for obligatory licensing for crypto-asset firms	The Governor of the Bank of France, Francois Villeroy de Galhau, delivered a speech in which he called for stricter regulatory requirements in relation to crypto-assets. Mr Villeroy stated that it should be obligatory for crypto-asset firms to be licensed. Currently, it is not compulsory in France to obtain a license for "Digital Asset Service Providers" and currently not a single firm holds one. **Published 5 January 2023**
ECB announces market research on digital euro, invites market participants to provide input	The European Central Bank (**ECB**) announced that it is undertaking "Market research on possible technical solutions for a digital euro" as part of the wider investigative phase of the digital euro project, leading up to its final report on the subject which is due in autumn 2023. The purpose of the ECB's research project is to gather the views of market participants on potential solutions to cover the different components, as well as the timeline for their implementation, their development process, and maintenance/operating costs. The ECB also seeks to gather participants' views on the options for digital euro technical architecture. The deadline to provide input is 17 February 2023 (17:00 CET). **Published 13 January 2023**
Commission publishes envisaged initiatives for H1 2023	The Commission published its list of upcoming legislative initiatives it is planning to adopt over the first half of 2023. On 24 May 2023, the Commission is planning to publish its proposal on a digital euro. At present, discussions among the Member States on the design and application of a digital euro are ongoing. **Published 17 January 2023**
UK	
Five associations form industry alliance to guide the UK's digital currency future	UK Finance announced that five industry associations have come together to form a new alliance, The UK Forum for Digital Currencies (**UK FDC**). The UK FDC will provide a forum for discussion and collaboration around the industry's response to digital currency developments in the UK. This includes the potential for a Central Bank Digital Currency, as well as the regulatory approach to stablecoins and other variable value crypto-assets. Members include City of London Corporation, Digital Pound Foundation, The Payments Association, TheCityUK and UK Finance. **Published 11 January 2023**

FCA states that 85% of crypto-asset firms applying for registration failed to meet minimum AML standards	In a written follow-up to its evidence session with the Treasury Select Committee, the Financial Conduct Authority (**FCA**) stated that c.85% of crypto-asset firms which applied for registration failed to demonstrate that they satisfied the FCA's minimum anti-money laundering (**AML**) systems and controls standards. The FCA specifically noted "significant failures in relation to key controls" including customer due diligence (**CDD**), risk assessment, ongoing monitoring, governance and management information. The FCA also noted that in many cases, key personnel within crypto-asset firms lacked adequate knowledge and skills. **Published 19 January 2023**

FCA speech - Building better foundations in AI	The FCA published a speech by Jessica Rusu (FCA Chief Data, Information and Intelligence Officer) entitled Building better foundations in AI. Key points in the speech include: • last month the FCA published a multi-firm review on diversity and inclusion. The review demonstrated that firms – even those with the best data – are not making full use of those insights to inform their diversity and inclusion strategies. The outputs from those strategies require better data to measure outcomes, something that is as true for diversity and inclusion as it is for AI; • a recent survey that the FCA conducted with the Bank of England found that the use of AI in financial services is accelerating - 72% of respondent firms reported actively using or developing AI applications, with the trend expected to triple in the next three years. Firms also reported that AI applications are now more advanced and embedded in day-to-day operations, with nearly 8 out of 10 in the later stages of development; • one of the most significant questions in financial services is whether AI in UK financial markets can be managed through clarifications of the existing regulatory framework, or whether a new approach is needed. This is the topic of a Discussion Paper that the FCA issued with the Bank of England; • effective governance and risk management is essential across the AI lifecycle. Good governance is complemented by a healthy organisational culture, which helps cultivate an ethical and responsible environment at all stages of the AI lifecycle: from idea, to design, to testing and deployment, and to continuous evaluation of the model; • synthetic data is an increasingly important area of research for the FCA. For the past five years, the FCA has been exploring the potential for synthetic data to expand data sharing opportunities in a privacy compliant manner. The FCA will shortly be publishing a Feedback Statement to its Call for Input on Synthetic Data which it published last year; and • within the next few weeks, the FCA will also be publishing a Call for Interest in a Synthetic Data Expert Group. **Published 24 January 2023**
USA	

Regulatory agencies issue warning to banking organisations on risks of dealing in crypto-assets	The Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, and the Office of the Comptroller of the Currency (collectively the **Regulators**), published a "Joint Statement on Crypto-Asset Risks to Banking Organisations". In this statement, the Regulators noted that for the crypto-asset market, 2022 was marked by "significant volatility and the exposure of vulnerabilities". Based on this, the Regulators highlighted a series of "key risks" involved in participating in the crypto-asset market, including: • the risk of fraud and scams; • high market volatility; • legal uncertainty surrounding custody practices, redemptions, and ownership rights; • "Contagion risk" due to the high degree of interconnectedness between crypto-asset participants; and • a lack of robust risk management and governance policies/procedures. The Joint Statement set out the Regulators' approach to mitigating the risk posed by these issues, as well as advice on how banking organisations can do the same internally. **Published 8 December 2022**
New House of Representatives subcommittee created to oversee regulation of crypto-asset sector	The Chairman of the House Financial Services Committee, Patrick McHenry, announced a new panel which will be responsible for overseeing the crypto-asset market. The ambit of responsibility for the newly created "Subcommittee on Digital Assets, Financial Technology and Inclusion" will include: • formulating "clear rules of the road" for the regulation of crypto-assets; • supporting the proliferation of financial technology in "underserved communities"; and • helping to foster diversity and inclusion in the crypto-asset sector. Congressman French Hill, the first chairman of the new subcommittee, has previously called for additional oversight and consumer protection in the crypto-asset space, describing it as one of the keys to establishing the USA as global crypto-asset hub. **Published 12 January 2023**
DFS releases guidance on protecting consumers from crypto-asset insolvency	The New York Department of Financial Services (**DFS**) released guidance on consumer protection in the event of a crypto-asset insolvency. The persuasive (but non-binding) guidance applies to all entities that have been licensed or chartered by the DFS to handle virtual currency assets on behalf of customers. The guidance advises that: • custodians should segregate customer virtual currency from corporate assets; • custodians should take possession of customer assets only for the purpose of carrying out custody services (as opposed to establishing debtor-creditor relationships);

	• sub-custody agreements should only be established if done so after appropriate due diligence and in compliance with DFS guidance; • custodians must clearly disclose to customers the arrangements, terms, and conditions, associated with their products, including segregation arrangements; and • customer agreements should clearly set out that it is the intention of the parties to enter into a custodial relationship and not a debtor-creditor relationship. **Published 23 January 2023**
FRB issues rebuttable presumption prohibiting FRB-regulated banks from engaging as principal in the majority of crypto-asset activities	The Federal Reserve Board (**FRB**) published a policy statement on section 9(13) of the Federal Reserve Act. In this statement, the FRB set out a rebuttable presumption that FRB-regulated banks are prohibited from engaging, as principal, in any activities that are not permissible for national banks or under federal statute or the Federal Deposit Insurance Corporation's regulations. The one exception to this new presumption is engagement as principal in relation to certain payment stablecoin activities which are compliant with the conditions of the Office of the Comptroller of the Currency's Interpretive Letter 1179. This will have the effect of substantially restricting the kinds of crypto-asset related activities in which FRB-regulated banks can take part and comes as part of a wider move by US federal regulators to impose stricter regulatory requirements on the crypto-asset market. Having said this, the statement makes clear that the new presumption will not apply to non-principal activities and will not prohibit FRB-regulated banks from providing safekeeping services for crypto-assets in a custodial capacity, if such activities are conducted in compliance with the relevant AML, and anti-terrorist-financing laws. **Published 23 January 2023**
White House publishes statement on mitigating crypto-asset risks	The White House published "The Administration's Roadmap to Mitigate Cryptocurrencies' Risks". In this statement, the White house noted recent disruption in the crypto-asset market and expressed scepticism regarding the internal risk mitigation systems and controls currently being used by crypto-asset firms, stating that some firms "ignore applicable financial regulations and basic risk controls". The statement also called upon Congress to support the Administration's efforts to impose greater regulatory oversight on the crypto-asset sector by taking steps to: • expand the powers of federal regulators to protect consumers; • strengthen transparency and disclosure requirements for crypto-asset firms; • increase the penalties for violating applicable regulations; and • help to isolate the risks posed by the crypto-asset sector to traditional finance. **Published 27 January 2023**
Canada	

OSC releases draft statement of priorities highlighting focus on crypto assets	The Ontario Securities Commission (**OSC**) released its draft Statement of Priorities for its 2023-24 fiscal year in which it listed one of its key priorities as being to "strengthen oversight and enforcement in the crypto-asset sector". Citing the "considerable risks" associated with crypto-asset investment, the OSC noted the importance of bringing crypto-assets within the ambit of securities laws and to bring enforcement actions in cases of non-compliance where appropriate. This statement comes amidst a series of similar resolutions by Canadian regulators like the Canadian Securities Administrators to take stronger measures to ensure regulatory compliance by crypto-asset businesses in the wake of the recent turmoil in the sector. **22 December 2022**
Asia	
Japanese regulator urges West to regulate crypto-asset market like traditional financial institutions	In a recent interview, the Deputy Director-General of Japan's Financial Services Agency's Strategy Development and Management Bureau (the **Bureau**), Mamoru Yanase, urged regulators to subject crypto-assets to the same degree of regulatory oversight as "traditional financial institutions" such as banks and brokerages. Yanase blamed volatility in the crypto-asset market on "lax internal controls, and the absence of regulation and supervision". With this in mind, the Bureau has begun to exert pressure on Western regulators via the transnational Financial Stability Board, to impose higher regulatory standards on crypto-asset businesses. **16 January 2023**
HKMA initiates consultation on amendments to AML and counter-terrorism guidelines for authorised institutions	The Hong Kong Monetary Authority (**HKMA**) launched a consultation on legislative amendments which it has previously proposed in relation to its Guideline on Anti-Money Laundering and Counter-Financing of Terrorism (For Authorized Institutions). These amendments notably include: • amending the definition of "politically exposed person" (**PEP**) and allowing financial institutions to take a risk-sensitive approach in determining the degree of CDD in relation to former PEPs; • amending the definition of "beneficial owner" to include (where a trust is concerned) trustees, beneficiaries and classes of beneficiaries; and • allowing the use of a recognized digital identification system for the purposes of CDD. The deadline for feedback is 8 March 2023. **19 January 2023**
International	
IMF warns of "Crypto Contagion" and systemic risk to financial stability if crypto-assets remain under-regulated	In a piece published on the International Monetary Fund (**IMF**) blog, co-written by Bo Li (Deputy Managing Director, IMF), a warning was issued that the growing ties between the crypto-asset market and the "core financial system" have the potential to create systemic risk in relation to the global financial system. The piece also notes that certain emerging and developing economies are already being materially affected by crypto-assets and their associated volatility. To help alleviate the potential risks associated with crypto-assets, the IMF recommendations include that:

	• crypto-asset service providers should be required to obtain licences/authorisation; • crypto-asset platforms should be subject to additional prudential requirements; • exposure requirements in relation to crypto-assets should be imposed on financial institutions; and • robust, globally consistent crypto-asset regulations be developed so as to enable a cohesive and internationally consistent approach. **8 December 2022**
BIS publishes bulletin on crypto-asset risks and potential authority responses	The Bank for International Settlements published a bulletin - Addressing the risks in crypto: laying out the options - in which it discussed the key risks associated with the crypto-asset market. The highlighted takeaways from this bulletin include: • the crypto-asset market is made vulnerable by the "shadow financial" functions it engages in, through centralised financial entities and decentralised finance protocols. The associated risks are exacerbated by "high leverage, liquidity and maturity mismatches and substantial information asymmetries"; • the relevant authorities can choose to (a) ban specific crypto-asset activities; (b) Isolate crypto-assets from traditional financial institutions and the "real economy"; or (c) regulate the crypto-asset sector to a similar extent to traditional financial institutions; and • an alternative approach to tacking the disruption caused by the crypto asset market would be for traditional financial institutions to make themselves more attractive by encouraging innovation and embracing central bank digital currencies. **12 January 2023**

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