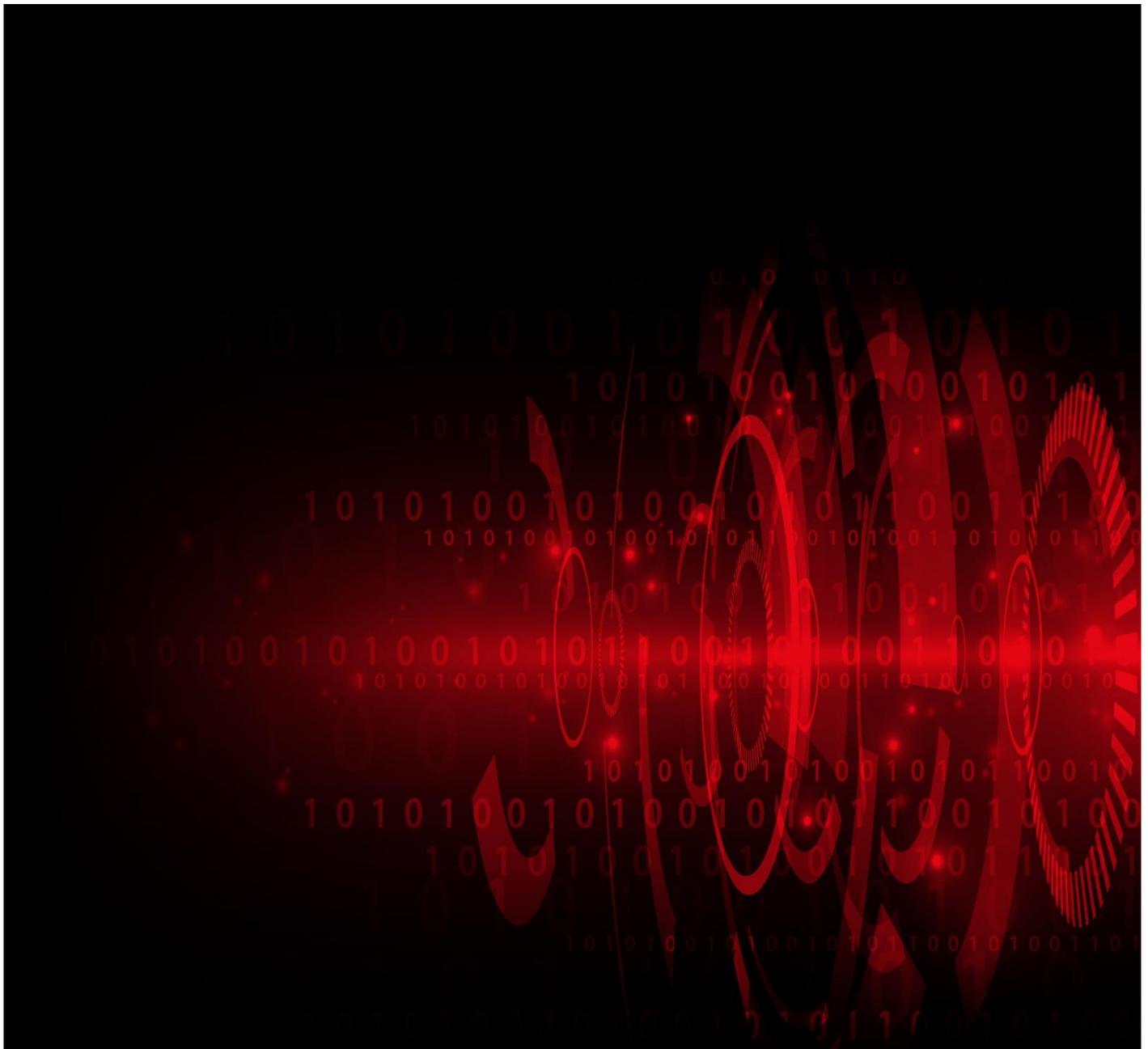


# Global Blockchain Business Council

Monthly Fintech Updater - February

Norton Rose Fulbright LLP – March 2021



## Global, EU, UK and US Regulatory developments

EU	
<b>EIOPA launches a public consultation on “open insurance”</b>	<p><u>On 28 January 2021</u>, the European Insurance and Occupational Pensions Authority (<b>EIOPA</b>) launched a consultation on what is known as “open insurance”, namely the access to, and sharing of, insurance-related data.</p> <p>EIOPA has also <u>published</u> a discussion paper in which it considers whether and the extent to which insurance value chains can be opened up through the sharing of data to insurers and others in the distribution chain. The discussion paper considers what types of data might be shared, taking into account new sources of data available for pricing risk (such as information available through social media) and considers data protection and cyber security issues.</p> <p>The review of the potential for an “open insurance” market comes after a similar exercise in banking. Recent policy initiatives such as the General Data Protection Regulation (GDPR), Payment Services Directive (PSD2) and the EU Digital Finance Strategy recognise the importance of data-driven innovation for growth while recognising the need to protect data ownership and privacy. The Digital Finance Strategy will present a legislative proposal for an open finance framework in 2022. Open insurance could form part of these proposals.</p> <p>EIOPA believes that a framework for an open insurance market might introduce standardisation and potentially compulsory data sharing requirements for the insurance industry (based on the explicit consent of the customer) and could be developed to ensure better consumer protection. Of course open insurance also increases risks such as data security, cyber risks, interoperability challenges, liability, ethical and broader consumer protection issues.</p> <p>Some limited infrastructure already exists to enable greater access to data, for example the provision of white-labelled ‘insurance-as-a-service’ solutions using banking data, providing open application programming interfaces (or “APIs”) and the use of dashboards/aggregators.</p> <p>The main areas of the consultation paper include:</p> <ul style="list-style-type: none"><li>• open insurance definition and use cases</li><li>• risks and benefits of open insurance</li><li>• regulatory barriers</li><li>• possible areas to consider for a sound open insurance framework</li></ul> <p>The consultation is open until 28 April 2021.</p> <p>View: <a href="https://www.eiopa.europa.eu/content/eiopa-consults-open-insurance_en">https://www.eiopa.europa.eu/content/eiopa-consults-open-insurance_en</a></p> <p><b>Published: 2 February 2021</b></p>

**European Commission asks ESAs for technical advice on digital finance**

On 2 February 2021, the European Commission (the **Commission**) sent a request to the European Supervisory Authorities (**ESAs**) for technical advice on digital finance and related issues. Specifically, the Commission requested advice on how to address “same activity, same risk, same rules” issues, more fragmented value chains, the scope of the supervisory perimeters, the prudential risks related to non-bank lending and the protection of clients’ funds. This initiative originates from the Commission’s Digital Finance Strategy that was published in September 2020, one of the stated objectives of which was “the Commission’s ambition to adapt the EU’s prudential and conduct regulation and supervision frameworks to be future proof for the new financial ecosystem.” Noting, among other, the importance of digital finance for economic transformation, the increasing role of technology companies in the financial services sector and the role of technology in the breakup up of previously integrated value chains in financial services (for example in payment services), the Commission intends the technical advice to provide input into its ongoing work, which may result – in due course – in proposing new legislation, amending existing EU laws or taking other action. To this end, the request for technical advice covers the following five topics:

**1. Regulation and supervision of more fragmented or non-integrated value chains**

The ESAs are requested to monitor and if applicable report, “on new material developments in the evolution and fragmentation of value chains of single financial services driven by technological innovation and the entry of new market participants”. In relation to their respective areas of competence, they should also assess if and when more fragmented or non-integrated value chains lead to unidentified or unaddressed risks and what challenges they bring for supervisors, and to advise how to manage the overall risks of the value chain with a focus on a holistic approach to regulation and supervision. In particular, the advice should address regulatory and supervisory challenges (prudential, AML/CFT and conduct) stemming from: (i) cooperation among regulated providers active in multiple subsectors of financial services (e.g. retail financial services, payments, investment services, insurance) and established in one or various Member States in the EU; (ii) cooperation between technology companies – in particular BigTech firms – and financial service providers established in one or various Member States in the EU; and (iii) cooperation among multiple subsectors of financial services and nonregulated companies operating in the EU but established outside the EU.

Deadline: joint interim report by 31 October 2021; joint final report by 31 January 2022.

**2. Platforms and bundling of various financial services**

The ESAs are requested to assess the extent to which platforms that operate across multiple Member States to market or provide various financial products and services are effectively regulated and supervised. To this end, they should advise whether there is a need to extend or modify current EU financial services regulation and whether there is a need to enhance supervisory practices, including through convergence measures. In doing so, the ESAs should take into account the supervisory perimeters of the legislation already in force or already adopted, as well as assess if current supervisory capacities and skill are adequate for monitoring such online services and enforcing rules and provide such advice as appropriate.

Deadline: joint interim report by 31 October 2021; joint final report by 31 January 2022.

**3. Risks of groups combining different activities**

Considering the level playing field, the European Banking Authority (**EBA**) is requested to assess: (i) whether current approaches to group regulation and consolidated supervision that aim to address the risks of regulated financial groups at consolidated level could be detrimental to a level playing field between entities providing the same financial services as part of a group versus as a single entity; and (ii) whether there are areas where targeted adjustments to the EU regime could

be considered without endangering prudential soundness and safety. In addition, the ESAs should assess the situation in other sectors such as investment firms and insurance groups, and more generally mixed activity groups going through digital transformation and provide advice on the potential need for adjusting the associated legislation.

Regarding mixed activity groups, the ESAs are requested to analyse new emerging risks, in particular large technology companies with a significant activity outside the financial sector marketing or providing financial services, and to assess whether current licencing practices and regulatory requirements are adequate for large mixed activity operators that gain significant market share or have particular business models in payments, lending, holding customer funds, and/or insurance and investment or whether these providers should be required to fulfil more stringent and proportionate requirements. To this end, they should also assess whether existing EU legislation address these risks, or whether adjustments would be needed.

The ESAs are also requested to analyse the potential need for a new cooperation and coordination arrangements between financial supervisors and – if needed – other authorities in order to ensure effective supervision of emerging new types of mixed activity groups. The advice should specify how to adjust the supervisory arrangements relative to mixed activity groups, in particular large technology companies that build up substantial market share in financial services, and it should focus on (i) whether large technology companies (with substantial market share) in financial services as mixed activity groups should be supervised specifically; (ii) how interdependencies with, and potential risks stemming from, the financial and non-financial part of the business can be identified and addressed; and, (iii) how supervisory cooperation within the EU and with third countries can be improved for these companies and groups.

Deadline: joint interim report by 31 October 2021; joint final report by 31 January 2022.

#### **4. Non-bank lending**

The EBA is requested to examine to what extent lending provided by financial intermediaries outside of the European financial services regulatory perimeter, including as applicable by technology companies and digital platforms, exists in the EU and may evolve recognising the deployment of innovative technologies as a means to reach new customers. In particular, the EBA should: (i) report on the business models and legal structures employed; (ii) identify any regulatory and supervisory issues that may impede effective risk management at both a micro and macro level, and also scaling up of services cross-border; and (iii) assess to what extent these activities are not covered – or sufficiently covered – by other EU legislation. The EBA should advise on any potential need to adjust the EU regulatory perimeter and it should develop and propose policy options to address any identified issues, taking into account the necessity of establishing specific authorisation, passporting, prudential requirements, conduct, consumer protection and supervision arrangements at both the domestic and cross-border level.

Deadline: an interim report by 31 December 2021, the final report by 31 March 2022.

#### **5. Protection of client funds and the articulation to the deposit guarantee scheme directive (DGSD)**

The EBA is requested to advise on the implications of the DGS protection of the client funds held by financial firms, such as payment and emoney institutions, investment firms or other financial technology companies. In addition, the advice should discuss the advantages and disadvantages of such protection through Article 7(3) DGSD, as well as the conditions allowing to preserve the level playing field between non-banks and banks. The EBA should also: (i) map how often credit institutions are used to fulfil the safeguarding requirements; (ii) at which point in time and how often the client funds are deposited; (iii) what the deposited volumes are; and (iv) whether these

	<p>placements cause potential concentration risk. Finally, it should also analyse: (i) potential misconduct which could lead to detriment to existing customers and consumers; and (ii) potential discrepancy between the extent of deposit protection granted to customers of different financial institutions. If appropriate, the EBA should propose amendments to the DGSD framework addressing any identified shortcomings.</p> <p>Deadline: an interim report by 31 July 2021, the final report 31 October 2021.</p> <p><b>Published: 11 February 2021</b></p>
<p><b>ESAs letter on legislative proposal for a regulation on digital operational resilience for the financial sector</b></p>	<p>On 9 February 2021, the European Supervisory Authorities (<b>ESAs</b>) published a letter they had sent to the Chair of ECON, the President of the ECOFIN Council and the EU Commissioner in charge of Financial stability, financial services and capital markets. The letter concerns the legislative proposal for a regulation on digital operational resilience for the financial sector (<b>DORA</b>). In particular, the letter sets out the ESAs views on how to most efficiently take forward important aspects of the governance and operational processes of the oversight framework for critical third party service providers and the application of the proportionality principle in DORA.</p> <p>Among other things the ESAs state that the current proposal raises challenges on the practical functioning of the oversight framework, especially the complexity of the governance and decision-making process between the Joint Committee of the ESAs, the Boards of Supervisors of the ESAs and the Oversight Forum (which would operate as a sub-committee of the Joint Committee). In addition, the ESAs state that considering the highly technical nature of the entities falling under the scope of oversight, the proposed composition of the Oversight Forum may face challenges from a technical capacity and expertise perspective as it will need to be competent to discuss and address quite technical IT issues related to the oversight activities.</p> <p>In relation to proportionality, the ESAs note that the current legislative proposal excludes only micro-enterprises from the application of certain requirements and does not make any reference to sectoral legislation when defining the financial entities in scope. Given this, the ESAs suggest a more comprehensive inclusion of the principle of proportionality in a more flexible way across the legal act.</p> <p><b>Published: 10 February 2021</b></p>

**Member States continue review of proposed EU legislation on markets in crypto-assets**

On 4 February 2021 the Portuguese Presidency of the Council held a first working group during its term in office to continue Member States' discussions over the proposed regulation on markets in crypto-assets (MiCA). Two main issues on the agenda included discussion on selected issues related to asset-referenced tokens (ART) with payment purposes and those related to scope. In order to steer the discussion the Presidency prepared two non-papers, setting out some of its suggestions and further questions for the delegations to consider:

**Provisions applicable to all ARTs:** the Presidency outlined its proposals for clarifying the concept of ARTs and further strengthening the framework applicable to them. To this end, the Presidency proposes to maintain the definition of ARTs as included in the Commission's proposal, as sufficiently balanced but it proposes to introduce a sub-category of ARTs with payment purpose. The Presidency further notes that the Commission's proposal remains to some extent ambiguous on the nature of the liability that issuers of ARTs have towards the holders of ARTs and proposes to clarify that ARTs should always be structured as secured liability collateralised by the reserve. In terms of reserve assets, the Presidency proposes to clarify that issuers are not allowed to incur in mismatches between the assets referenced by the ART and exposures of the reserve. In accordance with the Commission's proposal, holders of ARTs should have the right to redeem the crypto assets permanently. The Presidency proposes to clarify that such right of redemption is set against the defined basket of currencies/commodities/crypto-assets that are referenced by the ART. Noting complexities linked with implementation of a right to redeem in the context of multi-asset ART, the Presidency proposes two alternative solutions that would facilitate that process.

**ARTs with payment purpose:** noting that identification of ARTs with payment purpose is not a straightforward task, the Presidency proposed three alternative options for Member States' consideration, based either on fixed thresholds or discretionary approach and allowing flexibility for the classification of an ART to change over time. The Presidency addressed in its note its perceived pros and cons in respect of two alternative options to introduce more stringent requirements for ARTs with payment purposes – i.e. classifying them as e-money or creating a separate sub-category of instruments, supporting and further outlining the latter.

**Scope and definitions:** while the Presidency proposes to maintain the broad scope of the Commission's proposal, it also seeks to address any shortcoming that might be stemming from the broad application of MiCA. It discusses in more detail the differences between various categories of persons that might be subject to the MiCA obligations, and in particular distinction between the issuer, offeror and person seeking admission to trading. It proposes some amendments in order to further clarify the concepts of issuers and offerors, and to clearly differentiate the latter from the concept of a crypto-asset service provider.

**Decentralised, unidentifiable and third-country crypto-asset issuers:** noting that there are crypto assets without a centralised issuer or when such issuer is not identified, the Presidency proposes to shift compliance with Title II MiCA requirements to offers, persons seeking admission of such crypto-assets to trading or upon a crypto-asset service provider operating a trading platform (when admitting a crypto-asset to trading on its own initiative). The Presidency also notes complexities linked with enforcement of an obligation to comply with the MiCA requirements by third-country crypto-asset issuers and proposes that a person responsible for compliance of Title II is located in the EU. Specifically, it proposes that compliance with Title II MiCA, as regards requests for admission to trading from a person in third country, should be ensured by the crypto-asset service provider operating the trading platform. Finally, the Presidency proposes to clarify the exemptions from the requirements of Title II MiCA.

**Published: 8 February 2021**

Netherlands	
<p><b>DNB responds to letter from the Dutch Association of Bitcoin Companies</b></p>	<p>On <a href="#">10 February 2021</a>, the Dutch Central Bank (<i>De Nederlandsche Bank</i>, <b>DNB</b>) has published its response to a letter it received from the Dutch Association of Bitcoin Companies (<i>Verenigde Bitcoinbedrijven Nederland</i>) in November 2020.</p> <p>The Dutch Association of Bitcoin Companies raised a number of questions with regard to DNB's supervision in relation to the registration regime for crypto service providers, in particular the supervision of compliance with sanctions legislation. DNB's letter covers, among other things, the requirements applicable in relation to the integrity risk analyses that crypto service providers are required to carry out, white listing, compliance with sanctions legislation, and more generally how the registration regime for crypto service providers is being implemented/carried out.</p> <p><b>Published: 17 February 2021</b></p>
UK	
<p><b>The Kalifa report on the UK fintech sector</b></p>	<p>On <a href="#">26 February 2021</a>, there was published the <a href="#">independent report</a> on the UK fintech sector by Ron Kalifa OBE.</p> <p>At the 2020 Budget, the Chancellor asked Mr Kalifa to conduct an independent review to identify priority areas to support the UK's fintech sector. The review formally launched in July 2020 with objectives for supporting the growth and widespread adoption of UK fintech, and for maintaining the UK's global fintech reputation.</p> <p>The independent report notes that technological change has arrived in financial services and with it, an abundance of threats and opportunities. The FCA's pro-competition mandate has helped support new fintech firms and ensure a more nurturing regulatory environment. In 2016, the FCA launched the world's first regulatory "sandbox", which was subsequently replicated abroad by regulators looking to follow the UK's lead in innovation. Similarly, the Bank of England and the FCA's 'New Bank Start-up Unit' provides additional support and advice for firms looking to gain a banking licence. This in turn is accelerating the digital transformation of banks, asset managers, and insurers, as they strive to meet changing consumer and business demands. This catalysed the UK into becoming the fintech hub of today, coupling it with the sophisticated financial services ecosystem of London.</p> <p>Building on the UK's strong current position in fintech the independent report sets out a five-point plan of recommendations covering:</p> <ul style="list-style-type: none"> <li>• Policy and regulation – dynamic leadership that protects consumers yet nurtures fintech activity and encourages competition.</li> <li>• Skills – ensuring fintech has sufficient supply of domestic and international talent and the means to train and upskill the current and future workforce.</li> <li>• Investment – completing the funding ladder from start-ups right through to IPO.</li> <li>• International – a targeted approach to exports and inward investment.</li> <li>• National connectivity – leveraging the output of fintechns across the UK and facilitating connectivity amongst them.</li> </ul>

In terms of policy and regulation the independent report proposes:

- The delivery of a digital finance package that creates a new regulatory framework for emerging technology. The UK must prioritise new areas for growth and cross-industry challenges such as financial inclusion, and adopt specific policy initiatives that will help create an enhanced environment for fintech, such as digital ID and data standards.
- The implementation of a “Scalebox” that supports firms focusing on scaling innovative technology. This would include enhancing the regulatory sandbox, making permanent the digital sandbox pilot, introducing measures to support partnering between incumbents and fintech and regtech firms, and providing additional support for regulated firms in the growth phase.
- The establishment of a Digital Economy Taskforce (**DET**). Multiple departments and regulators have important fintech competencies and functions. The DET would be responsible for collating this into a policy roadmap for tech and digital, in particular, the digital finance package. It would provide a ‘single customer view’ of the government’s regulatory strategy on tech and a single touchpoint for the private sector to engage.
- That fintech forms an integral part of trade policy. The UK must build upon early successes and ongoing industry engagement and further develop its global trade policy in relation to fintech, ensuring a coherent and consistent approach, as well as to secure commitments in its future trade agreements that would benefit fintech.

In addition, the independent report sets out a series of sub-recommendations for each of the above proposals. For example, in terms of promoting the digitalisation of financial services the independent report gives a number of examples including the development of a central bank digital currency (**CBDC**). It states that the consensus seems to be that delivering a wholesale CBDC would be the “easiest” option and offer a short-term win. A wholesale CBDC, in effect, already exists through central bank reserves. The advantages of a wholesale CBDC could include atomic settlement, leading to zero exposure risk as well as increased resilience and less system downtime. The independent report also states that the UK has the potential to be a leading global centre for the issuance, clearing, settlement, trading and exchange of crypto and digital assets. It adds that the UK should aim to be at least as broad in ambition as the EU’s Markets in Crypto-Assets (**MiCA**) proposal but should also consider whether it can develop a bespoke regime that is more innovation-driven.

**Published: 26 February 2021**

<b>South Korea</b>	
<b>FSC Proposes Additional Rules Change on Virtual Asset Service Providers</b>	<p><u>Press release</u> as follows:</p> <p>“The FSC announced a revision proposal for the supervisory regulation on virtual assets on February 17 as the revised Act on Reporting and Using Specified Financial Transaction Information is scheduled to go into effect on March 25, 2021. The revision proposal will be put up for public notice from February 18 until March 2 and will take effect from March 25.</p> <p><b>Key Revisions</b></p> <p>(On Virtual Assets) The revised supervisory regulation contains the following details on pricing, exemption for real-name accounts, requirements for virtual asset service providers (VASPs), etc.</p> <ul style="list-style-type: none"><li>• Pricing of virtual assets in fiat money for the purpose of sales, exchange or transfer will be determined by the price displayed by VASPs at the time of sales, exchange or transfer.</li><li>• VASPs whose service activities entail no exchange of virtual assets with fiat money will be exempted from the real-name account rule that requires them to maintain real-name accounts with financial institutions.</li><li>• New business registration, change and renewal forms have been established for VASPs.</li><li>• A VASP will be allowed to serve as a broker between its own customer and another VASP’s client only if the other party is a qualified AML compliant VASP and that verifying information on the other party’s client is possible.</li><li>• An adjustment has been made to the suspicious transaction reporting form to include virtual assets.</li></ul> <p>(On STR Requirement) The revised supervisory regulation stipulates that financial institutions should file suspicious transaction reports to the KoFIU within three business days from the time of detecting suspicious financial transactions for money laundering by their AML officers.”</p> <p><b>Published: 17 February 2021</b></p>

**Digital Finance Meeting Discusses Ways to Improve Rules for Fintechs and Big Techs**

Press release as follows:

“Vice Chairman Doh Kyu-sang held the 6th consultative body meeting on digital finance via teleconference on February 9 to discuss ways to improve rules for both fintechs and big techs and to examine areas for further improvements in the financial regulatory sandbox program.

The following is a summary of Vice Chairman Doh’s remarks.

(Rules on Fintechs and Big Techs) Since October last year, the FSC has held talks with both fintechs and big techs on ten different occasions. Through these meetings, industry officials have suggested a total of seventy-four areas where regulatory reforms are needed. On fifty-two of them, the FSC will immediately take actions to improve the rules. On eleven others that are considered as mid- to long-term projects and require coordination with other ministries or further considerations for their impact on financial consumers, the FSC will continue to seek ways to make improvements. On the remaining eleven areas where it is deemed to be difficult to seek immediate change at the moment, the authorities will continue to closely monitor the trends to make improvements when conditions become permissible.

On regulatory reforms to promote fintech innovation, the FSC will pursue the following policies. First, the FSC will work to create an environment where new digital businesses can be quickly launched and flourish. As many fintechs and platform service providers have requested, the authorities will work to provide strong support for launching new and innovative financial services through platforms. To this end, the FSC will ensure the launch of new innovative financial services through the regulatory sandbox program while working for a prompt enactment of the relevant amendments to the Electronic Financial Transactions Act. To build a strong foundation for the MyData industry, the FSC will promptly work to provide medium- and small-sized fintechs with support for their API data standardization and build a one-stop integrated MyData authentication system. The FSC will also provide support through legal interpretations, best practice guidelines, etc.

Second, the authorities will work to promote smooth cooperation between fintechs and financial institutions as it is critical for promoting innovation in digital finance. To facilitate this, the FSC will work on a new bill that lays legal grounds for financial institutions investing in fintechs. The new bill on fintech support will clearly indicate the types of fintechs in which financial companies can invest, ensure a prompt investment approval process, allow sanctions exemption, etc. A fintech-financial institution matching platform will also be set up to facilitate smooth cooperation between the financial companies seeking a digital transition and the promising fintechs with technological prowess. The FSC also plans to hold the international fintech expo Korea Fintech Week twice this year to help provide more opportunities for IR and collaboration.

Third, the FSC will work to improve the necessary infrastructures. For non-personal data related IT development work, the authorities will work to ease the network separation rules, while working to improve rules to ensure the safety in using various bio authentication mechanisms for financial services. The FSC will also work for the advancement of open banking system by making it available from more types of financial institutions.

(Financial Regulatory Sandbox) Based on the experience of operating the regulatory sandbox program over the past two years, the FSC has drawn up the following measures for making improvements. First, the authorities will introduce a digital sandbox program. For a fintech startup looking to test their innovative ideas, the current regulatory sandbox has limits as it is intended for providing regulatory exemptions. In this regard, more opportunities will be provided to fintechs to conduct virtual tests on their innovative ideas.

	<p>Improvements will be made to the current regulatory sandbox program as well. For the designated financial services whose safety standards have been sufficiently tested, the FSC will support an expansion of their services, while providing consulting services to those whose service launch is being delayed since their designation. Based on the different needs of fintechs according to their business cycle, state-backed financial institutions will make financial support available to them in a more thorough way, and more investment from the fintech innovation fund will be directed toward the early-stage fintech startups. In order to ensure that medium- and small-sized fintech firms face no difficulties in applying for the regulatory sandbox program, the authorities will also work to provide comprehensive consulting services.”</p> <p><b>Published: 9 February 2021</b></p>
<b>US</b>	
<p><b>FinCEN releases statement on Financial Crimes Tech Symposium</b></p>	<p><a href="#">Statement</a> released on 4 February 2021 as follows:</p> <p>“Section 6211 of the Anti-Money Laundering Act of 2020 (the “AML Act”) requires the Department of the Treasury to periodically convene a global anti-money laundering and financial crime symposium focused on how new technology can be used to more effectively combat financial crimes and other illicit activities. The AML Act further requires that such symposia shall be convened in coordination with a new Bank Secrecy Act Advisory Group (BSAAG) Subcommittee on Innovation and Technology, as established under section 6207 of the AML Act.</p> <p>The Financial Crimes Tech Symposium will build upon the success of FinCEN’s Innovation Initiative, which was launched with the release of the <a href="#">Joint Statement on Responsible AML/CFT Innovation</a> (December 2018) to foster a better understanding of the opportunities and challenges of Bank Secrecy Act and Anti-Money Laundering (BSA/AML)-related innovation in the financial services sector. A cornerstone of FinCEN’s Innovation Initiative, FinCEN’s “Innovation Hours” program (IH Program), began in <a href="#">March 2019</a> and marked its first year anniversary in July 2020. Despite the ongoing challenges of the COVID-19 pandemic, the IH Program continues to provide the private sector with opportunities to present their innovative products and services to FinCEN and engage on solutions designed to improve how consumers and businesses move money, conduct transactions, or ultimately enhance BSA/AML efforts to keep Americans and our financial system safe from harm. The symposia will provide a platform for firms to review new technologies and demonstrate proof of concept for a broad range of attendees, including domestic and international financial regulators, regulated firms, technology providers, representatives from law enforcement and national security agencies, and academics, among others.</p> <p>As FinCEN works with the BSAAG to design and plan for an inaugural Financial Crimes Tech Symposium, with details to be announced at a future date, FinCEN invites feedback from the private sector and other interested parties to factor into the planning process. If you would like to share feedback for FinCEN and the BSAAG to consider in planning for a forthcoming symposium, please utilize the Innovation Hours <a href="#">contact form</a> to submit your ideas.”</p> <p><b>Published: 4 February 2021</b></p>

<p><b>OCC Conditionally Approves Bank Charter for Second Crypto Firm</b></p>	<p>The Office of the Comptroller of the Currency (OCC) <a href="#">granted</a> crypto-focused Protego Trust Company, a Washington state trust company, <a href="#">conditional approval</a> to convert to a national trust bank earlier this month, marking only the second time that a federal bank charter has been approved for a crypto firm – and the first since the January departure of Brian Brooks, the “crypto-friendly” former acting comptroller of the OCC and former chief legal officer of Coinbase.</p> <p>Protego Trust Company was the first, and to-date only, digital asset-focused trust company chartered by the state of Washington. Upon the effectiveness of the conversion, Protego Trust Company will become Protego Trust Bank, National Association (Protego). State trust companies may convert to a national trust bank with the approval of the OCC.</p> <p>Protego seeks to provide its clients the ability to hold, trade, lend, and issue digital assets. While Protego’s services will initially be limited to Bitcoin and Ethereum, and Protego’s clients will initially be limited to institutional investors, high net worth individuals, digital asset exchanges, and certain digital asset issuers, in a <a href="#">statement</a>, Protego indicated it anticipates expanding to support additional cryptocurrencies and clients after launch.</p> <p>Though Protego will designate Washington as the state in which it acts in a fiduciary capacity, it will provide nationwide services to its customers through offices in Seattle, Boston, and New York, and – of course – through the internet.</p> <p>In addition to custodial services, Protego plans to offer the following services in a fiduciary capacity:</p> <ol style="list-style-type: none"><li>(1) determining whether a customer should claim forked assets;</li><li>(2) staking its customers’ assets to earn rewards; and</li><li>(3) participating in the governance of certain blockchains that permit participants to use their digital assets to cast votes for decisions regarding blockchain protocols.</li></ol> <p>The Protego approval adds to the list of recent crypto-friendly actions by the OCC. Late last year, the OCC issued two groundbreaking interpretative letters affirming the authority of national banks to <a href="#">provide cryptocurrency custody services</a> and to <a href="#">hold stablecoin reserves</a> (see our prior article <a href="#">here</a>). Building on this foundation, in early January the OCC issued an <a href="#">interpretative letter</a> affirming the authority of financial institutions to conduct payment activities and other bank-permissible functions using distributed ledger technology (blockchains) and related stablecoins. Later in January, the OCC conditionally approved the <a href="#">first conversion</a> of a crypto-focused, state-chartered trust company to a federally-chartered trust bank, Anchorage Digital Bank, National Association (Anchorage). The OCC issued its conditional approval of Anchorage on January 13, 2021, just a day before Brooks stepped down as acting comptroller.</p> <p>Though the Protego submission was undoubtedly submitted and began undergoing review during Brooks’ tenure, it is notable to see an approval post-Brooks. And, while there remains ambiguity with regard to how a post-Brooks OCC (and other US regulators) will act on crypto and digital asset issues under the Biden administration, the Protego approval indicates the OCC may continue to be receptive toward federally-charted banks providing crypto services. For now, at least, the national charter route for crypto-banks appears to remain open.</p> <p>Under the terms of the approval, Protego has 18 months to meet all pre-conversion regulatory requirements and consummate the conversion. These requirements include:</p> <ul style="list-style-type: none"><li>• Having in place systems, policies, practices and procedures, acceptable to the OCC, to ensure the safe and sound operation of Protego, all of which must be continuously reviewed by the board of directors;</li><li>• Obtaining adequate fidelity bond coverage;</li></ul>
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- Applying for membership in the Federal Reserve System;
- Ensuring all other required regulatory approvals have been obtained; and
- Ownership of qualifying shares by Protego’s directors in accordance with The National Bank Act.

The OCC also imposed the following conditions on its approval of the conversion:

- Protego must limit its business to the operations of a trust company, and activities related or incidental thereto, and may not engage in activities that would cause it to be a “bank” under the Bank Holding Company Act;
- Protego must enter into, and thereafter implement and adhere to, a written Operating Agreement with the OCC, in a form acceptable to the OCC, within three business days after the conversion;
- Within three business days after the effective date of the Operating Agreement between Protego and the OCC, Protego must enter into a written Capital and Liquidity Support Agreement (CSA) with two affiliates and the OCC, on terms and conditions acceptable to the OCC, setting forth the affiliates’ obligation to provide capital and liquidity support to Protego if and when necessary;
- Within three business days after the effective date of the Operating Agreement between Protego and the OCC, Protego must enter into a written Capital Assurance and Liquidity Maintenance Agreement (CALMA) with two affiliates, on terms and conditions acceptable to the OCC, setting forth the affiliates’ obligation to provide capital and liquidity support to Protego if and when necessary.

The OCC has the authority to enforce these conditions under federal law, including through the assessment of civil money penalties.

**Published: 24 February 2021**

## International developments

### G20

[Press release](#) extract as follows:

"The G20 Finance Ministers and Central Bank Governors (FMCBGs) met on Friday 26 February 2021 for the first time under the Italian G20 Presidency. The event was held online.

The Ministers and Governors expressed broad support for the Italian G20 Presidency's initiatives to ensure growth and financial stability beyond the COVID-19 pandemic. The swift implementation of the G20 roadmap for enhancing cross-border payments will improve the framework underpinning those transactions, including for remittances. Initiatives to fill data gaps for assessing climate-related financial risks and to promote more consistent climate-related disclosure were also endorsed. Recognizing the need to address the impact of climate change on the financial system and to ensure its capacity to support the transition towards more sustainable economies, the Ministers and Governors agreed to re-establish the Sustainable Finance Study Group.

Finally, there was a dedicated discussion on the role that the accelerating pace of digitalization in payments and other financial services is playing in enhancing or endangering the financial inclusion of the most vulnerable and underserved groups. There was broad consensus on the need to identify the related gaps that may have emerged as a consequence of the COVID-19 crisis and to share country-specific experiences and policy responses, also in the field of digital financial awareness."

**Published: 26 February 2021**

### Bank for International Settlements (BIS)

*Issues in the regulation of big techs in finance*

A [presentation](#) on this topic was given by Mr Hyun Song Shin, Economic Adviser and Head of Research of the BIS, at the Peterson Institute for International Economics virtual event, "A Holistic Look at Big Tech Regulation" on 10 February 2021. The presentation was released on the BIS website, along with a [summary](#) as follows:

"The business model of big techs rests on the direct interactions of users and the data that are an essential by-product of that interaction. As big techs make inroads into financial services, the user data in their existing businesses in e-commerce, social media or search give them a competitive edge. Network effects generate yet more user activity, generating the "data-network-activities loop" or "DNA loop". The DNA loop is a force for greater financial inclusion, better services and lower costs. Yet the same network effects that lead to benefits can erect silos or "walled gardens" that exclude competitors and give rise to anti-competitive practices and further entrenchment. Breaching walled gardens through the combination of data access policies and common technical standards for data transfer is a way to channel the network effects so that a vicious circle can turn into a virtuous one. Payment services based on open markets and application programming interfaces (APIs) are one possible route, and many jurisdictions have opted to take it. Credit intermediation is another area where the policy trade-offs necessitate intelligent design of regulation that takes account of financial stability, competition and data privacy. Increasingly, the regulatory framework for big techs is transitioning from the traditional activities-based model (based on licences for individual business lines in payments, credit, insurance, wealth management, etc) towards entity-based rules that impose prudential and entity-specific criteria, as in the banking sector. Entity-based rules can take better account of the spillovers across sectors and business lines."

**Published: 10 February 2021**

*Bank for International Settlements (BIS) to hold inaugural BIS Innovation Summit on 22-25 March*

Press release as follows:

"The Bank for International Settlements (BIS) will hold the inaugural BIS Innovation Summit from 22 to 25 March, where central bankers, policymakers, business leaders and academics will discuss: "How can central banks innovate in the digital age?"

Taking place as a virtual event to cater for audiences in Asia-Pacific, African, American and European time zones, and organised by the BIS Innovation Hub, it will kick off with a live discussion between Jerome Powell, Chair of the Board of Governors of the Federal Reserve System, Jens Weidmann, President of the Deutsche Bundesbank, and Agustín Carstens, General Manager of the BIS.

Keynote speakers also include:

- Christine Lagarde, President, European Central Bank
- John A Rolle, Governor, Central Bank of the Bahamas
- Sir Jon Cunliffe, Deputy Governor, Bank of England
- Cecilia Skingsley, Deputy Governor, Sveriges Riksbank
- Mark Carney, UN Special Envoy for Climate Action and Finance
- Brad Smith, President, Microsoft

Participants will shed light on key issues around cross-border and retail payments, central bank digital currencies, banking and the new digital ecosystem, decentralised finance, data analytics, AI and cloud technologies as well as cultural and organisational changes that may be needed within central banks to meet the challenges of this digital age.

The BIS Innovation Hub Centres in Hong Kong, Switzerland and Singapore will showcase key projects as part of their work to explore the development of central bank public goods. The winners of the global ISO 20022 Hackathon will also be announced at the event.

The event is free to attend and open to the media and the public. Register [here](#)."

**Published: 25 February 2021**

*Central banks of China and United Arab Emirates join digital currency project for cross-border payments*

Press release as follows:

"The Digital Currency Institute (DCI) of the People's Bank of China (PBC) and the Central Bank of the United Arab Emirates (CBUAE) have joined a central bank digital currency project for cross-border foreign currency payments.

The m-CBDC Bridge initiative is run in partnership with the BIS Innovation Hub (BISIH), the Hong Kong Monetary Authority (HKMA) and the Bank of Thailand (BoT). It will further explore the capabilities of distributed ledger technologies (DLT) by developing a proof-of-concept (PoC) prototype to support real-time cross-border foreign exchange payment-versus-payment transactions in multiple jurisdictions, operating 24/7. It will analyse business use cases in a cross-border context with both domestic and foreign currencies.

The m-CBDC Bridge project will foster a conducive environment for more central banks in Asia as well as other regions to jointly study the potential of DLT in enhancing the financial infrastructure for cross-border payments.

The aim of the project, which was initiated by the HKMA and the BoT under the name Inthanon-LionRock and renamed upon the accession of the BIS Innovation Hub Centre in Hong Kong SAR, the DCI of the PBC and the CBUAE, is to

propose solutions and concepts to alleviate the current pain points in making cross-border fund transfers. These include inefficiencies, high cost and complex regulatory compliance.

The participating central banks will take into account the results of the PoC work to evaluate the feasibility of the m-CBDC Bridge project for cross-border fund transfers, international trade settlement and capital market transactions in their own jurisdictions.”

**Published: 23 February 2021**

*BIS Innovation Hub and SWIFT launch ISO 20022 and API hackathon*

Press release extract as follows:

“The BIS Innovation Hub and SWIFT have launched a new ISO 20022 hackathon and invite teams to build and showcase solutions that enhance cross-border payments, using the ISO 20022 standard for payments messages and application programming interfaces (APIs).

The ISO 20022 Hackathon, which is open for registration until 8 March, aims to highlight the potential of ISO 20022, which is being adopted by large parts of the world's payment infrastructures over the next four years. Teams can adapt an existing product to make use of ISO 20022 or build and demonstrate new solutions leveraging ISO 20022 and APIs using SWIFT's API sandbox.

Three winning teams will showcase their solutions at the BIS Innovation Summit in March to a global audience including key payments industry players and central bankers.

As part of the event, teams can also participate in a SWIFT masterclass to understand the benefits and complexities of adopting ISO 20022 and APIs in retail and wholesale payments.

Interested teams should register by Monday, 8 March at: <https://iso20022hackathon.hackerearth.com/>

**Timeline:**

- 8 March: deadline for initial proposals;
- 11/12 March: kick-off sessions for successful applicants;
- 19 March: deadline for submission of solutions;
- 23-25 March: winners announced at the BISIH Innovation Summit

Solutions will be judged by a panel including experts from the European Central Bank, Bank of England, Federal Reserve System, SWIFT, Innovate Finance (UK), CPMI, Payments Canada, New Payments Platform (Australia), Swish (Sweden) and DBS Bank (Singapore).”

**Published: 23 February 2021**

## International Organisation of Securities Commissions (IOSCO)

IOSCO published its work programme for 2021-2022 on 26 February 2021, identifying crypto-assets, artificial intelligence and machine learning, and retail distribution and digitisation, as among its six work priorities that would be carried over from 2020 into 2021 and 2022. In addition, IOSCO has also identified “the ongoing implications for securities markets of financial innovation and digitalisation developments through the ICO and Fintech Networks” as one of the important areas in which it will further its efforts. See [press release](#) and [work programme](#) extract as follows:

### “Crypto-Assets (including Stablecoins)

In 2021, the ICO Network will continue to develop the ICO Support Framework to ensure that it remains up to date. This will involve expanding the scope of the materials to cover a broader set of ICO lifecycle activities and issues that range beyond the current focus on primary issuance activities (for example, trading and distribution of tokens).

In 2020, IOSCO examined regulatory issues arising from so-called “Global Stablecoins” as they relate to securities markets, given recent developments within this area. IOSCO’s Fintech Network delivered a report to the IOSCO Board in October 2019 and published the main findings in March 2020. In 2021, IOSCO will continue to contribute to the discussion at the international level and support the global regulatory agenda related to Stablecoins.

- Follow-up work to the FSB Regulatory Issues in Stablecoins report: a review of IOSCO standards against the [FSB High-level Recommendations](#).

### Artificial Intelligence and Machine Learning (AIML)

IOSCO continues to explore how AIML is being used in capital markets and the risks that may be emerging from the use of these technologies. IOSCO is seeking to gain a better understanding of potential areas of risk where AIML is being used by market intermediaries and asset managers. As a result, IOSCO has developed proposed guidance for regulators on issues to consider when regulating market participants that use AIML. IOSCO consulted on these measures in 2020. The final report on the Use of Artificial Intelligence and Machine Learning by Market Intermediaries and Asset Managers is expected to be published in Q2 2021.

- Final Report on the Use of Artificial Intelligence and Machine Learning by Market Intermediaries and Asset Managers.

### Retail Distribution and Digitalisation:

The rapid growth in digitalisation, especially via social media, has changed the way financial products are marketed and distributed, providing new opportunities for domestic and crossborder offerings. Building on its work on over the counter (OTC) Leveraged Products, IOSCO is developing a set of policy measures to address and mitigate the risks posed by online cross-border marketing and distribution. The measures will also contain guidance on effective enforcement approaches. The final report on Online Marketing and Retail Distribution will be published by end Q3 2021.

- Final Report on Online Marketing and Retail Distribution.”

**Published: 26 February 2021**

### Financial Action Task Force (FATF)

The second Plenary of the FATF under the German Presidency of Dr Marcus Pleyer took place on 22, 24 and 25 February 2021, with one of the strategic initiatives advanced by the delegates being “mitigating the money laundering and terrorist financing risks of virtual assets”. [Press release](#) extract as follows:

“The FATF has agreed to release an update to the FATF guidance for virtual assets and VASPs for public consultation. This guidance was released in June 2019 and accompanied amendments to the FATF Standards to clearly place AML/CFT obligations in relation to virtual assets and VASPs. The FATF Recommendations now require that VASPs are regulated, licensed and registered, and subject to effective systems for monitoring and supervision. The [FATF’s 12-month review](#) of the implementation of the revised FATF Standards on virtual assets and VASPs, highlighted that both the public and private sectors had made progress in implementing necessary measures. But, it also revealed a need for greater guidance to implement the revised requirements, including for low-capacity countries.

The FATF has now updated its guidance to address specific areas, including on how to apply the FATF Standards to so-called stablecoins, how public and private sectors can implement the travel rule, and how to address the risks of disintermediated peer-to-peer transactions. The FATF will publish the public consultation draft in March. Feedback from the consultation will inform the final guidance which the FATF expects to approve in June 2021. The FATF has also launched its second 12-month review which will look at the state of implementation globally of the FATF Standards on virtual assets, and identify any further challenges.”

**Published: 25 February 2021**

### Global Legal Entity Identifier Foundation (GLEIF)

On 11 February 2021, the Global Legal Entity Identifier Foundation (GLEIF) [published](#) issuance and technical infrastructure models for its recently announced verifiable LEI (vLEI) system. A vLEI is a secure digital attestation of a conventional LEI. When fully developed, the vLEI will enable instant and automated identity verification between counterparties operating across all industry sectors, globally. By embedding new and existing LEIs in verifiable credentials, the vLEI will create a cryptographically secure chain of trust that replaces current manual processes required to access and confirm an entity’s LEI data.

**Published: 12 February 2021**

## Our blog series on Regulation Tomorrow

Senior management and boards are increasingly acknowledging the threat of financial crime as a critical risk to their business that must be addressed. This has been exacerbated in the last 12 months through the impact of the pandemic as well as rising domestic and international tensions. Our financial crime compliance specialists, located in the UK, US, Canada, Australia and Asia, are looking ahead to 2021 to identify the incoming legislative changes, growing role of technology and the need for an effective regulatory response. This forms part of a seven part series which will assess amongst other things the expansion of virtual currencies, the growth of the role of the money laundering reporting officer, the changing world of sanctions regimes, and how the Biden Presidency could shape financial crime compliance into the future.

### Part 3: The expansion of virtual currencies – Are virtual assets businesses ready for regulators?

As prices of Bitcoin and rival virtual currencies have soared to unprecedented levels, there has been a recent flurry of activity in the crypto and virtual assets space, triggering extensive news coverage and renewed public interest. This has caught the attention of regulators and other stakeholders.

Regulators across the globe, together with major inter-governmental bodies, have taken significant steps towards understanding the virtual asset market and, in particular, the associated financial crime risks. Since 2014, the Financial Action Task Force (**FATF**), an intergovernmental organization which set international standards for anti-money laundering and counter-terrorist financing (**AML/CTF**), has published reports as well as guidance on ML/TF risks and red flag indicators for identifying suspicious ML/TF activity in connection with virtual assets service providers (**VASPs**) and setting the minimum AML/CTF standards for the sector. Recently, FATF issued a similar report which allows affected stakeholders to use certain proposed red flag indicators of ML/TF activities, which are based on the FATF's analysis of over 100 case studies from 2017 to 2020, as guardrails against the criminal use of virtual assets (please see [here](#) for our discussion of the report).

Furthermore, the EU's Fifth Money Laundering Directive (**5MLD**) which came into force across the EU on 10 January 2020, brought various types of VASPs into AML regulatory scope, signifying a major step towards closer and more targeted supervision of this sector. What soon followed was a series of announcements to further tighten the regulatory grip, including to bring VASPs within the scope of Market Abuse Regulation or to categorise certain more types of virtual assets as financial instruments. At the same time, the use and types of virtual assets are constantly evolving making it a challenge to adequately define and regulate this space without unintentionally hampering growth and innovation. In the UK, the AML supervisor for cryptoasset businesses, the Financial Conduct Authority (**FCA**), has extended the deadline under which existing cryptoasset firms require registration for AML supervision purposes. This was due to the challenges associated with understanding and thus adequately reviewing the applicant VASPs' business activities as part of the registration process (please view our blog [here](#)).

On the other side of the globe, the Department of Finance in Canada recently released the final amending regulations that amend the Proceeds of Crime (Money Laundering) and Terrorist Financing Act and certain regulations. The amendments introduce certain sweeping changes to the regulatory compliance regime for VASPs in Canada. Among other things, the amendments extend the 'travel rule' (whereby certain reporting entities are required to pass on identifying information about a customer to the next reporting entity when sending money on the customer's behalf) to virtual assets businesses in addition to various other changes to certain client on-boarding requirements (please see [here](#) for our more detailed discussion of the amendments).

In the US, Financial Crimes Enforcement Network (**FinCEN**), which is the US AML agency, at the end of last year published a proposal to impose requirements for banks and money services businesses (**MSBs**), related to certain transactions involving convertible virtual currency (**CVC**) or virtual assets with legal tender status (**LTDA**). Specifically, FinCEN proposed reporting requirements on CVC or LTDA transactions greater than \$10,000, or aggregating to greater than \$10,000, that involve unhosted wallets or wallets hosted in a jurisdiction identified by FinCEN. FinCEN also proposed that banks and MSBs report certain information regarding counterparties to transactions by their hosted wallet customers, and comply with recordkeeping requirements similar to the recordkeeping and travel rule regulations (similar to the Canadian “travel rule”) pertaining to funds transfers and transfers of funds. The comment period had closed in January but now has been extended until 29 March 2021. A copy of the proposed rule and additional information can be found [here](#).

In summary, it is evident that, across the globe, there is a heightened scrutiny by AML/CTF regulators of VASPs. In our view, as the exponential growth of the virtual assets industry continues globally, AML/CTF regulators will be more proactive in seeking enforcement of the growing AML/CTF requirements and expectations, particularly for virtual assets and currencies. Invariably, this means that firms will need to exercise a greater deal of prudence and increase their efforts to remain compliant and keep pace with regulatory changes and expectations.

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