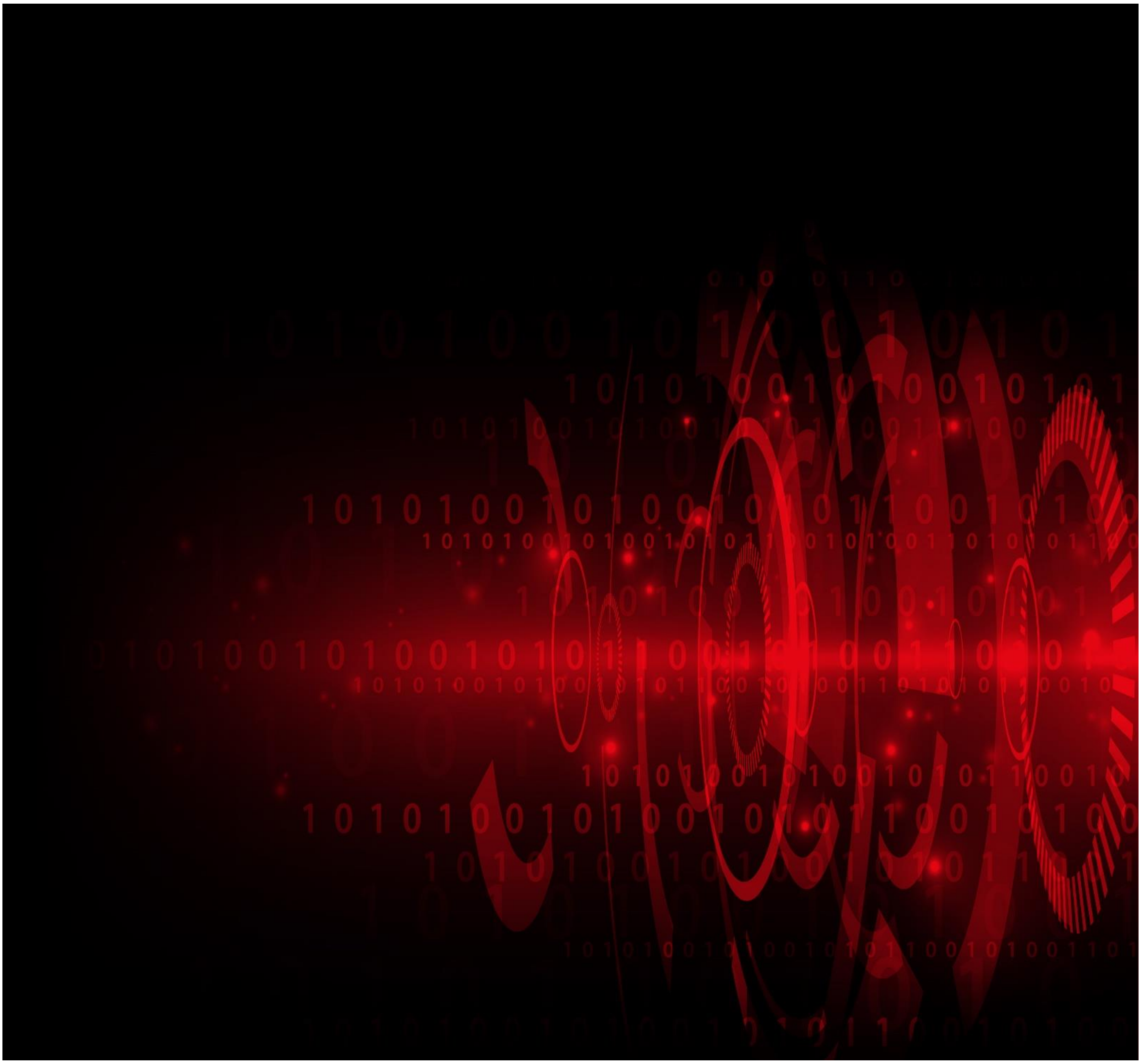
Global Blockchain Business Council

Monthly FinTech Updater

Norton Rose Fulbright LLP – 31 March 2022



Global, EU, UK and US Regulatory Developments

EU	
ECON: Cryptocurrencies in the EU: new rules to boost benefits and curb threats	On 14 March 2022, the Committee on Economic and Monetary Affairs (ECON) published a press release on the European Parliament's website regarding new rules on cryptocurrencies in the EU. The press release reports that members of European Parliament (MEPs) have agreed on draft rules concerning the supervision, consumer protection and environmental sustainability of cryptoassets, including cryptocurrencies such as bitcoins. The key provisions agreed cover transparency, disclosure, authorisation and supervision of transactions. The agreed text also includes measures against market manipulation and to prevent money laundering, terrorist financing and other criminal activities. To reduce the high carbon footprint of crypto-currencies, particularly of the mechanisms used to validate transactions, MEPs have also asked the Commission to present a legislative proposal to include in the EU taxonomy (a classification system) for non-sustainable activities and crypto-asset mining activities that contribute substantially to climate change, by 1 January 2025. A decision to enter into negotiations with EU governments on the final shape of the bill was adopted with 33 votes to 25. **Published 16 March 2022.**
Basel Committee newsletter on AI and machine learning	On 16 March 2022, the Basel Committee on Banking Supervision issued a newsletter on artificial intelligence (AI) and machine learning (ML). Among other things the Basel Committee mentions that it is working to develop further insights into AI and ML and its discussions are focusing on the following areas: • The extent and degree to which the outcomes of models can be understood and explained. • AI/ML model governance structures, including responsibilities and accountability for AI/ML-driven decisions. • The potential implications of broader usage of AI/ML models for the resilience of individual banks and more broadly, for financial stability. **Published 17 March 2022.**
EU financial regulators warn consumers on the risk of crypto-assets	On 17 March 2022, the European Supervisory Authorities (ESAs) published a warning to consumers that many crypto-assets are highly risky and speculative. The ESAs set out key steps consumers can take to ensure they make informed decisions. The warning is a result of growing consumer activity and interest in crypto-assets and the aggressive promotion of those assets and related products to the public.

	The ESAs highlight that these assets are not suited for most retail consumers as an investment or as a means of payments or exchange. Consumers should be aware of the lack of recourse or protection available to them, as crypto-assets and related products and services typically fall outside existing protection under current EU financial services rules. In relation to the current situation in Ukraine and related sanctions, the ESAs welcome the previous clarification by the Council of the European Union of the scope of the restrictive measures against Russian and Belarusian entities and individuals as regards to crypto-assets. **Published 18 March 2022.**
Ireland's Central Bank warns of 'misleading' crypto ads by social media influencers	The Central Bank of Ireland has warned consumers about the risk of "misleading" adverts promoting crypto investments, particularly ones by influencers on social media. The Central Bank has emphasized that crypto assets are highly risky and speculative, and may not be suitable for retail customers. The Central Bank's warning comes as part of a Europe-wide campaign by financial regulators surrounding the risks in crypto investment. For example, the European Securities and Markets Authority (ESMA) has previously issued a statement saying consumers "face the very real possibility of losing all their invested money if they buy these assets." **Published 22 March 2022.**
UK	
Warning on illegal crypto ATMs operating in the UK	On 11 March 2022, the FCA issued a statement warning operators of crypto ATMs in the UK to shut their machines down or face enforcement action. Crypto ATMs offering cryptoasset exchange services in the UK must be registered with the FCA and comply with UK Money Laundering Regulations. None of the cryptoasset firms registered with the FCA have been approved to offer crypto ATM services, meaning that any of them operating in the UK are doing so illegally and consumers should not be using them. **Published 11 March 2022.**
Joint statement from UK financial regulatory authorities on sanctions and the cryptoasset sector	On 14 March 2022, a joint statement was published on the Financial Conduct Authority's (FCA) website from the UK regulatory authorities on sanctions and the cryptoasset sector. In the statement the UK financial regulatory authorities reiterate that all UK financial services firms, including the cryptoasset sector, are expected to play their part in ensuring that sanctions are complied with. The statement refers to a letter that the FCA has already sent to registered cryptoasset firms and those holding temporary registration status highlighting the application of sanctions on various entities and individuals. The FCA also reminds firms that financial sanctions' regulations do not differentiate between cryptoassets and other forms of assets. The use of

	cryptoassets to circumvent economic sanctions is a criminal offence under the Money Laundering Regulations 2017 (MLRs 2017) and regulations made under the Sanctions and Anti-Money Laundering Act 2018. The joint statement also sets out steps to reduce the risk of sanctions evasion via cryptoassets. These steps cover controls to identify customers and monitor their transactions under the MLRs 2017. It also covers red flag indicators that suggest an increased risk of sanctions evasion. In terms of controls developed under the MLRs 2017 the joint statement mentions that firms will need to implement additional sanctions specific controls as appropriate including: • Updating business-wide and customer risk assessments to account for changes in the nature and type of sanctions measures. • Ensuring that customer onboarding and due diligence processes identify customers who make use of corporate vehicles to obscure ownership or source of funds. • Ensuring that customers and their transactions are screened against relevant updated sanctions lists and that effective re-screening is in place to identify activity that may indicate sanctions breaches. • Identifying activity that is not in line with the customer profile or is otherwise suspicious and ensuring that these are reported quickly to the nominated officer for timely consideration. • Where blockchain analytics solutions are deployed, ensuring that compliance teams understand how these capabilities can be best used to identify transactions linked to higher risk wallet addresses. • Engage with public-private partnerships and private-private partnerships to gather insights on the latest typologies and additional controls that might be relevant and share their own best practice examples. In terms of red flag indicators, these include: • A customer who is resident in or conducting transactions to or from a jurisdiction which is subject to sanctions, or which is on the UK's High Risk Third Countries list for anti-money laundering and counter-terrorist financing purposes, or any jurisdiction a firm has identified as posing an increased risk of illicit financial activity. • Transactions to or from a wallet address associated with a sanctioned entity, or a wallet address otherwise deemed to be high-risk, based on its transaction history or that of associated addresses, or other factors. • Transactions involving a cryptoasset exchange or custodian wallet provider known to have poor customer due diligence procedures or which is otherwise deemed high-risk.

	• The use of tools designed to obfuscate the location of the customer (for example, an IP address associated with a virtual private network or proxy) or the source of cryptoassets (for example, mixers and tumblers). • Other red flag indicators that are normally associated with money laundering more broadly. In both situations, the aim of the illicit actor is to make an illegal transaction seem legitimate. The FCA adds that flag indicators should be considered in context. What may appear innocent in isolation may be indicative of sanctions evasion when considered alongside other red flag indicators or contextual information. **Published 14 March 2022.**
FMLC letter to HM Treasury: Financial promotions rules for cryptoassets	On 15 March 2022, the Financial Markets Law Committee published a letter that it had sent to HM Treasury highlighting some examples of legal uncertainty as regards the proposals in HM Treasury's response to its 2020 consultation on cryptoasset promotions and the FCA's consultation on strengthening financial promotion rules for high-risk investments, including cryptoassets. **Published 16 March 2022.**
House of Lords publishes responses to Central bank digital currencies: a solution in search of a problem	On 18 March 2022, the House of Lords (Economic Affairs Committee) published the Bank of England's (BoE's) and HM Treasury's (HMT's) response to the Lords' Economic Affairs Committee report 'Central bank digital currencies (CBDC): a solution in search of a problem?' The taskforce comprising of the BoE and HM Treasury was established in 2021 to lead the UK's exploration of a CBDC, along with forums to engage a broad range of stakeholders from across the economy and society, including consumer groups, think tanks, businesses, academics, financial institutions and technology experts. The BoE and HMT have not yet made a decision on whether a CBDC should be introduced in the UK. They are currently in a "research and exploration" phase, evaluating the case for CBDC, in order to determine whether one could be needed. **Published 21 March 2022.**
Crypto firms hit with industry-wide enforcement notice for misleading advertisements	The Advertising Standards Authority (ASA) has issued an enforcement notice to all crypto-asset and cryptocurrency firms advertising in and from the UK. The notice orders them to carry out an immediate review of all promotional materials to ensure they are compliant with ASA guidance. Crypto firms have until 2 May 2022 to comply with ASA rules, after which they face sanctions and being reported to the FCA. Among other things, the guidance requires crypto advertising to carry prominent warnings that cryptocurrencies are unregulated in the UK and that the value of investments can go down.

	Crypto firms must be able to substantiate any claims they make about their products' annual returns. The guidance also bans crypto providers from claiming their products are regulated — crypto firms are only registered for anti-money laundering in the UK. "When creating an ad, you should consider the presentation of its entire content, the context and the likely interpretation of the target audience," the ASA said in the enforcement notice. **IOSCO** The ASA's action comes as the International Organization of Securities Commissions (IOSCO) published a consultation on introducing a toolkit for regulators designed to help them more easily identify and clamp down on fraudulent investment products, including crypto. IOSCO said its members had noticed a marked increase in retail investors' appetite for higher-risk products since the onset of the pandemic. Fraudsters are using a range of "effective and sophisticated tactics to build trust and exploit vulnerabilities to defraud investors", IOSCO said in the consultation, published on 21 March 2022. IOSCO's report makes it clear that many of its financial regulator members are facing similar problems to the UK. It recommends that its members consider whether they have adequate surveillance and supervisory capacity. Some securities regulators are already using online monitoring tools. France's AMF uses three: Financial Scam Hunter (FI.S.H.) to identify fraudulent websites; Spam Detection (SPA.DE.) to spot early-stage scams; and Wetrend to detect fraudulent financial offers. **Published 22 March 2022.**
Financial Stability in Focus: Cryptoassets and decentralised finance	On 24 March 2022, the Bank of England (BoE) published, 'Financial Stability in Focus: Cryptoassets and decentralised finance (DeFi)' which sets out the Financial Policy Committee's (FPCs) view on specific topics which relate to financial stability. The publication focuses on: • the role of cryptoassets and decentralised finance in the financial system; • financial stability implications of cryptoassets and associated markets; • risks to financial stability; • the FPCs approach to monitoring risks from cryptoassets; • the FPC's assessment of financial stability risks from cryptoassets and DeFi; and • regulatory initiatives to mitigate risks from cryptoassets and DeFi. Key points regarding the FPC's assessment of financial stability risks from cryptoassets and DeFi include: • The FPC continues to judge that direct risks to the stability of the UK financial system from cryptoassets and DeFi are currently limited. But the pace of growth and potential

	for interconnections with the wider financial system mean that they will present a number of financial stability risks in the future. • Where crypto technology is performing an equivalent economic function to one performed in the traditional financial sector, the FPC judges this should take place within existing regulatory arrangements, and that the regulatory perimeter should be adapted as necessary to ensure an equivalent regulatory outcome. • Enhanced regulatory and law enforcement frameworks, both domestically and at a global level, are needed to address developments in these markets and activities, and encourage sustainable innovation as well as maintain broader trust and integrity in the financial system. **Published 25 March 2022.**
PRA Dear CEO letter – Existing or planned exposure to cryptoassets	On 24 March 2022, the Bank of England (BoE) published a Dear CEO letter it had sent to dual regulated firms concerning how the prudential framework applies to ensure that firms engaging in crypto activity manage the risks in a way that supports the firm's safety and soundness. The PRA has issued this Dear CEO letter as it is aware that whilst firms have taken limited exposure to cryptoassets to date, there is increased interest from banks and designated investment firms to enter various crypto markets. The letter is therefore intended to ensure that where firms do have exposures, they understand the PRA's expectations around risk management and measurement against the existing prudential framework. The PRA explains that while no one part of the current prudential framework fully captures crypto risks, a combination of strong risk controls, operational risk assessments, robust new product approval processes, Pillar 1, Pillar 2, and ongoing monitoring arrangements has the potential to provide firms with an appropriate interim treatment. Firms will need to use all aspects of the prudential framework, and consider the risks from first principles, to ensure that risks are appropriately considered, and mitigated and/or capitalised as needed. The PRA will continue to monitor any expansion of firms' crypto-related activities. The Dear CEO letter then discusses further: • Strong risk controls. • Prudential framework. • Pillar 1 (market risk, counterparty credit risk). • Pillar 2. When discussing Pillar 2 the PRA mentions that operational risks are particularly relevant to certain crypto-related activities and gives the example that some activities will expose firms to greater levels of fraud or cyber risks. The PRA reminds firms that to the extent that they

	outsource their crypto activities they should have a detailed understanding of their residual liability. Firms should also consider both their legal and operational ability to access and gain control of relevant assets in the event of third-party service provider failures. At the end of the Dear CEO letter the PRA states that it is launching a survey of firms covering existing crypto exposures and future plans for 2022. The PRA is asking for this information by 3 June 2022. **Published 25 March 2022.**
Update on FCA temporary registration regime for cryptoasset businesses	On 30 March 2022, the FCA updated its webpage concerning its role as the anti-money laundering and counter-terrorist financing supervisor of UK cryptoasset businesses under the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017. Specifically, the FCA has provided an update on the temporary registration regime for cryptoasset businesses stating that it has concluded its assessments and the regime will close on 1 April 2022, for all but for a small number of firms where it is strictly necessary to continue to have temporary registration. This is necessary where a firm may be pursuing an appeal or may have particular winding-down circumstances. **Published 31 March 2022.**
USA	
President Biden to sign Executive Order on ensuring responsible development of digital assets	On 9 March 2022, President Biden signed an Executive Order (The Order) outlining the first ever, whole-of-government approach to addressing the risks and harnessing the potential benefits of digital assets and their underlying technology. The Order lays out a national policy for digital assets across six key priorities: consumer and investor protection; financial stability; illicit finance; U.S. leadership in the global financial system and economic competitiveness; financial inclusion; and responsible innovation. Specifically, The Order calls for measures to: **Protect U.S. Consumers, Investors, and Businesses** by directing the Department of the Treasury and other agency partners to assess and develop policy recommendations to address the implications of the growing digital asset sector and changes in financial markets for consumers, investors, businesses, and equitable economic growth. The Order also encourages regulators to ensure sufficient oversight and safeguard against any systemic financial risks posed by digital assets. **Protect U.S. and Global Financial Stability and Mitigate Systemic Risk** by encouraging the Financial Stability Oversight Council to identify and mitigate economy-wide (i.e., systemic) financial risks posed by digital assets and to develop appropriate policy recommendations to address any regulatory gaps.

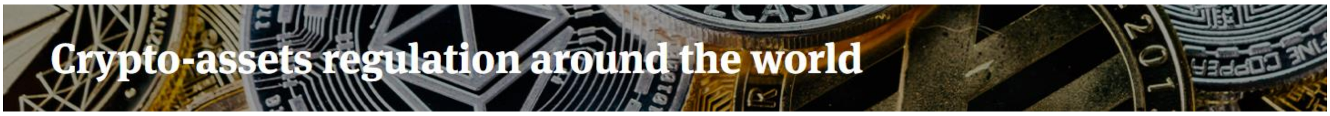
	Mitigate the Illicit Finance and National Security Risks Posed by the Illicit Use of Digital Assets by directing an unprecedented focus of coordinated action across all relevant U.S. Government agencies to mitigate these risks. It also directs agencies to work with our allies and partners to ensure international frameworks, capabilities, and partnerships are aligned and responsive to risks. **Promote U.S. Leadership in Technology and Economic Competitiveness to Reinforce U.S. Leadership in the Global Financial System** by directing the Department of Commerce to work across the U.S. Government in establishing a framework to drive U.S. competitiveness and leadership in, and leveraging of digital asset technologies. This framework will serve as a foundation for agencies and integrate this as a priority into their policy, research and development, and operational approaches to digital assets. **Promote Equitable Access to Safe and Affordable Financial Services** by affirming the critical need for safe, affordable, and accessible financial services as a U.S. national interest that must inform our approach to digital asset innovation, including disparate impact risk. Such safe access is especially important for communities that have long had insufficient access to financial services. The Secretary of the Treasury, working with all relevant agencies, will produce a report on the future of money and payment systems, to include implications for economic growth, financial growth and inclusion, national security, and the extent to which technological innovation may influence that future. **Support Technological Advances and Ensure Responsible Development and Use of Digital Assets** by directing the U.S. Government to take concrete steps to study and support technological advances in the responsible development, design, and implementation of digital asset systems while prioritizing privacy, security, combating illicit exploitation, and reducing negative climate impacts. **Explore a U.S. Central Bank Digital Currency (CBDC)** by placing urgency on research and development of a potential United States CBDC, should issuance be deemed in the national interest. The Order directs the U.S. Government to assess the technological infrastructure and capacity needs for a potential U.S. CBDC in a manner that protects Americans' interests. The Order also encourages the Federal Reserve to continue its research, development, and assessment efforts for a U.S. CBDC, including development of a plan for broader U.S. Government action in support of their work. This effort prioritizes U.S. participation in multi-country experimentation, and ensures U.S. leadership internationally to promote CBDC development that is consistent with U.S. priorities and democratic values. The Administration will continue work across agencies and with Congress to establish policies that guard against risks and guide responsible innovation, with our allies and partners to develop aligned international capabilities that respond to national security risks, and with the private sector to study and support technological advances in digital assets. **Published 9 March 2022.**

Senator Warren Announces Sanctions Compliance Bill for Crypto Companies	On 17 March 2022, U.S. Sen. Elizabeth Warren (D-Mass.) announced a new bill intended to block non-U.S. cryptocurrency companies from conducting business with sanctioned companies. "This is a bill that would authorize the President to sanction foreign cryptocurrency firms that are doing business with sanctioned Russian entities and authorize the Secretary of Treasury to act," she said. According to a draft of the bill, the administration would be tasked with identifying "any foreign person" who operates a crypto exchange or otherwise facilitates digital asset transactions who has also supported sanctions evasion by Russian individuals named to the Office of Foreign Asset Control's sanctions list. Moreover, the U.S. President could sanction these exchange operators unless there was a national security interest in not doing so. The U.S. Treasury Secretary could also require that crypto exchanges operating in the U.S. would not conduct transactions for, or otherwise work with, crypto addresses belonging to people based in Russia if this is deemed to be in the national interest. The Treasury Secretary would have to report to Congress about this decision. The bill seems to extend beyond just Russian sanctions in that another provision would authorize the Financial Crimes Enforcement Network (FinCEN) to identify users transacting with more than $10,000 in crypto. "Not later than 120 days after the date of enactment of this Act, the Financial Crimes Enforcement Network shall require United States persons engaged in a transaction with a value greater than $10,000 in digital assets through [one] or more accounts outside of the United States to file a report," the bill said. **Published 17 March 2022.**
Bitcoin mining ban bill makes it out of New York State Assembly Committee	On 22 March, the Environmental Conservation Committee of the New York State Assembly voted to move along a proposed law that would ban so-called proof-of-work (PoW) cryptocurrency mining for two years. Key points include: • The bill was put together under the auspices of the state's Climate Leadership and Community Protection Act, which mandates that New York's greenhouse gas emissions be cut by 85% by 2050, with net emissions being slashed to zero. • It would effectively ban PoW mining – the energy-intensive process used to secure the Bitcoin (BTC) network – for a period of two years. • The legislation still requires passage through the entire New York State Assembly and the state's Senate, and then would need to be signed into law by the governor.

	• Earlier this month, a similar PoW ban narrowly failed to pass in an EU Parliament committee vote. **Published 23 March 2022.**
Asia	
Benjamin E Diokno, Governor of the Central Bank of the Philippines gives speech titled 'Financial stability and crypto-assets	On 28 February 2022, Mr Benjamin E Diokno, Governor of the Central Bank of the Philippines, gave a speech titled 'Digital finance – a thrust towards financial inclusion'. Mr Diokno began by emphasising the widespread nature of Fintech innovation by listing various Asian governments that have introduced their own regulatory sandboxes. He then goes on to state the importance of digital finance for creating better customer outcomes and empowering consumers to achieve their life aspirations. Following this, he reveals that the Central Bank of the Philippines will be finalising its own regulatory sandbox framework. Finally, he describes the research and development that the central bank is involved in which includes a possible roll out of a CBDC. **Published 4 March 2022.**
Thailand SEC bans crypto payments, seeks disclosure of system failure from exchanges	On 23 March 2022, in an ongoing effort to carve out a regulated crypto market for the general public, the Thailand Securities and Exchange Commission (Thai SEC) announced a ban on the use of cryptocurrencies for payments. The Thai SEC also proposed a new rule that demands disclosure of service quality and IT usage information from crypto businesses including brokers, exchanges and dealers. According to the notice issued by the Thai SEC, businesses in the region have been advised against accepting crypto payments from April 2022 after discussing its implications with the Bank of Thailand (BOT). The joint study conducted by the BOT and Thai SEC concluded that: "[Crypto payments] may affect the stability of the financial system and overall economic system including risks to people and businesses." **Published 23 March 2022.**

International Developments

The Financial Stability Board (FSB)	
FSB report – FinTech and Market Structure in the COVID-19 pandemic – Implications for financial stability	On 21 March 2022, the Financial Stability Board (FSB) published a report titled 'FinTech and Market Structure in the COVID-19 pandemic – Implications for financial stability'. The main outcome of the report was that the COVID-19 pandemic has accelerated the trend toward digitalisation of retail financial services. While comprehensive data on the market shares of FinTechs, BigTechs and incumbent financial institutions in retail digital financial services are scarce, proxies suggest that BigTechs and larger FinTechs have further expanded their footprint in financial services. This expansion can bring benefits such as improved cost efficiencies and wider financial inclusion for previously underserved groups. However, the report cautions over the potential for market dominance. In some markets, concentration measures are high, but there is no evidence of a generalised increase. There could be negative financial stability implications from dependence on a limited number of BigTech and FinTech providers in some markets. There could also be consumer protection risks from greater dependency on technology and data protection issues. The report outlines the types of actions taken by authorities during the COVID-19 pandemic that may impact market structure and the role of different firms in providing digital financial services and stresses the importance of cooperation between financial authorities and, where relevant, with competition and data protection authorities. **Published 22 March 2022.**



The first instalment in our new monthly podcast series, Regulation Around the World, is available now to stream and download. In Regulation Around the World we take a hot topic in financial services and apply a global lens, examining key developments in different jurisdictions.

In this month's episode, in line with our financial services team's Regulation Around the World updater, we are taking a look at the regulation of crypto assets. The size of the crypto market has exploded in recent years, prompting regulators to sit up and take notice, whether from a consumer protection perspective or owing to fears relating to financial crime. In Regulation Around the World this month, we hear from Etelka Bogardi in Hong Kong, Jeremy Wickens in Australia, Glen Barrentine in the USA, Albert Weatherill in the UK and Nikolai de Koning in the Netherlands.

Regulation Around the World is available to stream and download on Apple Podcasts, iTunes, Spotify and Soundcloud. To listen to this episode on Apple, please click here. If you would like to skip to a particular section, please see the episode description for timings.

Our publication on crypto assets can be found on our Regulation Around the World webpage here.

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