

# Global Blockchain Business Council

Monthly FinTech Updater

Norton Rose Fulbright LLP – 31 August 2022



## Global, EU, UK and US Regulatory Developments

EU	
<p><b>The European Commission publishes its final report on disclosure, inducements, and suitability rules for retail investors study</b></p>	<p>The European Commission (<b>EC</b>) has published its final <a href="#">report</a> on disclosure, inducements, and suitability rules for retail investors study. The study assessed the existing investment environment across the EU, with an analysis of the product costs, current practices in advice and product provision. Throughout the report it notes the prevalence of cryptoassets in the portfolios of retail investors. In particular, cryptoassets were attractive to young and risk-seeking investors. It will feed into the development of the retail investment strategy announced for 2022, which is one of the actions planned under the Capital Markets Union's <a href="#">Action Plan</a>.</p> <p><b>Published 2 August 2022</b></p>
<p><b>ECB issues CBDC working paper</b></p>	<p>The European Central Bank (<b>ECB</b>) has published a <a href="#">working paper</a> titled 'The economics of central bank digital currency'. It covers the economic factors that will influence the rise of digital money and reviews the motivations for issuing retail central bank digital currencies (<b>CBDC</b>). It also considers the impact of a retail CBDC on the financial system; policy issues and challenges; and areas where more work is required to address knowledge gaps such as data privacy.</p> <p><b>Published 17 August 2022</b></p>
UK	
<p><b>FCA updates its webpages on cryptoassets</b></p>	<p>The Financial Conduct Authority (<b>FCA</b>) has updated the following webpages:</p> <ul style="list-style-type: none"> <li>• <a href="#">Requirements for a change in control</a> – The webpage now provides that, an FCA registered cryptoasset firm (i.e. a cryptoasset exchange provider and/or a custodian wallet provider) is subject to the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 (the <b>MLRs 2017</b>). It is not subject to the regime under Financial Services and Markets Act 2000 (<b>FSMA</b>). The Money Laundering, Terrorist Financing and Transfer of Funds (Amendment) (No.2) Regulations 2022 bring elements of the FSMA change in control provisions within the scope of MLRs 2017.</li> <li>• <a href="#">Change in control: notification forms</a> – New forms have been added.</li> <li>• <a href="#">Cryptoassets: AML/CTF regime</a> – The webpage now contains a new section under the heading 'change in control for registered cryptoasset firms'. The sections sets forth that, from 11 August 2022 any person who decides to acquire 25% or more control of an FCA registered cryptoasset firm must receive prior FCA approval before completing the transaction. Furthermore, it is a criminal offence to acquire control of an FCA registered cryptoasset firm without FCA approval.</li> <li>• <a href="#">Control thresholds or bands</a> – The webpage now notes that a single threshold of 25% or more applies to FCA registered cryptoasset firms.</li> </ul> <p><b>Published 11 August 2022.</b></p>
<p><b>Cryptoasset providers: Impact of the amendments to the MLRs 2017</b></p>	<p>In June, HM Treasury issued its response to its October 2021 consultation on amendments to the MLRs 2017. The response contained a number of updates to the MLRs 2017 which, for the most part, come into force on 1 September 2022. The updates are being implemented via secondary legislation, The Money Laundering and Terrorist Financing</p>

(Amendment) (No.2) Regulations 2022 (**SI**). A draft of the SI was published on the day after HM Treasury had issued its response and the SI was subsequently made on 21 July 2022.

Among the various updates were those relating to cryptoassets which are discussed below.

#### Travel Rule

The Travel Rule requires the originators and beneficiaries of all transfers of digital funds to exchange certain identifying information. In the UK only one of the following pieces of information need to accompany a cross-border transfer that is above a *de minimis* threshold: originator's address; date and place of birth; or passport number.

The *de minimis* threshold (the **Threshold**) for the activation of the Travel Rule will no longer include both fiat currency and cryptoasset transfers in the calculation. This will be a welcome change by those firms that may have experienced technological difficulties in developing a system that could cover both types of transfer. Furthermore, the Threshold has been amended to EUR 1,000 from GBP 1,000, with the purpose of ensuring currency alignment with other thresholds within the MLRs 2017.

In its response HM Treasury stated that the statutory instrument makes it clear that the Travel Rule will only apply to intermediaries that are cryptoasset exchange providers or custodian wallet providers and will not capture others, like software providers, to whom the Travel Rule is not intended to apply.

HM Treasury also modified its proposals in its response with regard to unhosted wallets. Instead of requiring the collection of beneficiary and originator information for all unhosted wallet transfers, cryptoasset businesses will only be expected to collect this information for transactions identified as posing an elevated risk of illicit finance. The rationale behind this approach is that unhosted wallets do not automatically represent a higher risk, as many persons using them do so due to their customisability and potential security advantages.

HM Treasury also decided to allow a 12-month grace period, to run from the point at which the amendments to the MLRs 2017 take effect until 1 September 2023, during which period cryptoasset businesses will be expected to implement solutions to enable compliance with the Travel Rule.

#### Change in control

The MLRs are being amended so that proposed acquirers of cryptoasset firms must notify the Financial Conduct Authority (**FCA**) ahead of such acquisition. This will allow the FCA to undertake a 'fit and proper' assessment of the acquirer, and provide the FCA with powers to object to any such acquisition before it takes place and cancel registration of the firm being acquired.

#### Digital Art and Non-Fungible Tokens (NFTs)

In its response HM Treasury decided at this time not to extend the definition of Art Market Participant to include Digital Art and/or NFTs. However, it will take these into consideration as it conducts further work to consider possible future changes to the definition.

#### Key takeaways for firms

- Firms should ensure that their systems and controls are updated to align with the amendments to the rules, such as those impacting unhosted wallets.

Cryptoasset firms being acquired and those acquiring firms conducting cryptoasset activities should ensure they are ready to follow the upcoming amended change in control requirements to pass the "fit and proper" test.

**Published 11 August 2022**

<p><b>UK Jurisdiction Taskforce publishes consultation on the transfer of digital assets</b></p>	<p>The U.K. Jurisdiction Taskforce (<b>UKJT</b>) has published a <a href="#">consultation</a> on the issuance and transfer of "digital securities" under English law. Digital securities are shares, bonds and other debt securities which are constituted by reference to a blockchain or distributed ledger. English law is commonly used as the governing law of choice for conventional debt securities in international markets, but questions have recently arisen as to whether English law can support the issuance and transfer of digital securities. The UKJT intends to publish a legal statement on the subject in December 2022.</p> <p>The consultation paper seeks input on a range of questions to inform the legal statement, including whether digital securities can be validly issued using blockchain or DLT under English law, the form that such digital securities could take and the mechanism by which such securities could be transferred.</p> <p>Responses to the consultation should be submitted by 23 September 2022. A public event will be held on 14 September 2022 to receive in-person feedback to the consultation.</p> <p>In 2019, the UKJT published a <a href="#">legal statement</a> on cryptoassets and smart contracts, which sets out when a cryptoasset will be considered to be property and a smart contract will be considered an enforceable contract.</p> <p><b>Published 1 August 2022</b></p>
<p><b>USA</b></p>	
<p><b>Senate bill would grant Commodity Futures Trading Commission authority over cryptoassets</b></p>	<p>A new <a href="#">bill</a> (the <b>Bill</b>) was recently introduced in the Senate that would make the Commodity Futures Trading Commission (<b>CFTC</b>) the direct regulator of the most popular cryptocurrencies.</p> <p>For example, the Bill will give the CFTC exclusive jurisdiction over Bitcoin and Ether as well as any other cryptoassets which are deemed to be commodities. In addition to this, crypto platforms will need to register with the CFTC as well as brokers, custodians and exchanges. Registration with the CFTC would be accompanied by levels of regulation normally seen with traditional commodities already overseen the CFTC.</p> <p>Supporters of the Bill argue that it will add much needed clarity for the regulation of cryptoassets. The Bill joins a growing number of pieces of proposed legislation aimed at clarifying the regulation of cryptoassets.</p> <p>In his keynote address at the Brookings and Institution <a href="#">webcast</a> 'The Future of Crypto Regulation', CFTC Chairman Rostin Benham said that 'The CFTC is ready and well situated to address the risks in the cash markets for digital assets through direct oversight. At its core, the CFTC is a markets-focused regulator that works to ensure market integrity and vibrancy through oversight of exchanges and clearinghouses that are required to comply with well-established core principles and regulations, as well as through oversight of market intermediaries and participants.'</p> <p><b>Published 3 August 2022</b></p>
<p><b>Asia</b></p>	
<p><b>Hong Kong Monetary Authority announce the addition of a CBDC to Global Fast Track</b></p>	<p>The Hong Kong Monetary Authority (<b>HKMA</b>) and Invest Hong Kong (<b>IHK</b>), the department of the Hong Kong Special Administrative Region Government responsible for attracting foreign direct investment, have <a href="#">jointly announced</a> the addition of a CBDC Track to the Global Fast Track 2022, a programme with a business matching portal, pitching competition, and mentoring sessions which connect global fintech companies with a diverse range of Asian corporate, investor and service champions to explore potential business partnerships and investments.</p>

	<p>The CBDC track is hoped to provide local and global firms with the opportunity to partner with the central banking institution to boost the growth and adoption of fintech in Asia and beyond. All qualified candidates may also have the opportunity to collaborate with the HKMA on research projects and pilots to foster the future growth of the CBDC ecosystem. This announcement highlights the emphasis being placed upon the importance of CBDCs by regulators around the world.</p> <p><b>Published 10 August 2022</b></p>
<p><b>Singapore Exchange Regulation: Governance and transparency – cryptocurrencies and sustainability</b></p>	<p>The Singapore Exchange (<b>SGX</b>) has published the remarks given by its chair, Prof Tan Cheng Han at the <a href="#">GOH address</a>. Prof Tan Cheng Han focused on how the downturn in cryptocurrency markets had affected confidence in crypto and on the ongoing development of sustainability reporting.</p> <p><b>Published 3 August 2022</b></p>
<p><b>Australia</b></p>	
<p><b>ASIC releases research about investment behaviour</b></p>	<p>The Australian Securities and Investments Commission (<b>ASIC</b>) has released <a href="#">Report 735</a> titled 'Retail investor research'. This report sets out retail investor motivations, attitudes and behaviours in the period following the COVID-19 pandemic.</p> <p>The research surveyed 1,053 Australian retail investors aged 18 and over who had directly traded in securities, derivatives or cryptocurrencies at least once since March 2020. ASIC Chair Joe Longo stated that, 'With so many new investors active in financial markets, the research builds on our understanding of retail investors and helps us consider where our regulatory efforts are warranted.'</p> <p>Of the 1,053 retail investors surveyed, 44% reported holding cryptocurrency, making it the second most common product type held after Australian shares at 73%. A quarter of surveyed investors who held cryptocurrency indicated that cryptocurrency was the only investment they held.</p> <p>The research also showed that, after bank trading platforms (used by 31% of surveyed investors), the three most commonly used platforms all specialised in cryptocurrencies.</p> <p><b>Published 11 August 2022</b></p>

## International Developments

Bank for International Settlements	
<b>BIS speech given by Dr Joachim Nagel</b>	<p>Dr Joachim Nagel, President of the Deutsche Bundesbank, gave a <a href="#">speech</a> at the Centre for Financial Studies and the Institute for Monetary and Financial Stability Special Lecture, Goethe University.</p> <p>He focused on the risks and opportunities associated with a 'digital euro'. One main risk he elaborated on in his speech was the possibility of bank runs whilst also stating that there would be significant potential benefits to consumers.</p> <p>Also mentioned was the application of a 'digital euro' to cross-border payments and the associated benefits.</p> <p><b>Published 10 August 2022</b></p>

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