

Global Blockchain Business Council

Monthly Fintech Updater

Norton Rose Fulbright LLP – 2 November 2020



Global, EU, UK and US Regulatory developments

EU	
ECB publishes report examining the issuance of digital euro	<p><u>On 2 October 2020</u>, the ECB published a <u>report</u> which considers the issuance of a digital euro from the point of view of the Eurosystem. In the respective sections, the report discusses:</p> <ul style="list-style-type: none">• Reasons for issuing a digital euro;• Potential effects of a digital euro;• Legal considerations (among others, the ECB noted that EU primary law does not rule out issuing digital euro as legal tender, which would require payees to accept it as payment);• Functional design possibilities for a digital euro;• Technical and organizational approaches to digital euro services;• Follow-up work, which may include launching a digital euro project, starting with an investigation phase in mid-2021. <p>The ECB noted that the report is intended to serve as a basis for discussion and starting point for a public consultation.</p> <p>Published: 2 October 2020</p>
Keynote speech by Burkhard Balz at the China Europe Finance Summit - A Hybrid Conference on Sino-European Capital Markets	<p><u>On 20 October 2020</u>, Burkhard Balz, a Member of the Executive Board of the Deutsche Bundesbank, gave a speech at the China Europe Finance Summit, a hybrid conference on Sino-European capital markets.</p> <p>Mr Balz noted the People's Bank of China's (PBOC) push for the introduction of a digital yuan, which is already at a pilot testing stage, and the Eurosystem's considerations with regards to issuing a digital euro, including those set out in the recent ECB report.</p> <p>Mr Balz also considered the implications of a digital euro as a means of payment as opposed to a store of value, including the associated risks and mitigation approaches.</p> <p>Published: 20 October 2020</p>

ECB consults on the draft Eurosystem oversight framework for electronic payment instruments, schemes and arrangements

On 27 October 2020, the European Central Bank (**ECB**) published the following consultation papers on the draft Eurosystem oversight framework for electronic payment instruments, schemes and arrangements:

- [Eurosystem oversight framework for electronic payment instruments, schemes and arrangements](#). In this consultation the ECB proposes a single oversight framework for electronic payment instruments, payment schemes and payment arrangements – the PISA framework. The new framework would replace the “Harmonised oversight approach and oversight standards for payment instruments” and all related oversight frameworks for cards, direct debits, credit transfers and the security objectives for e-money. The ECB states that the proposed framework takes into consideration the Eurosystem’s approach to the oversight of payment systems and is, where appropriate and possible, aligned with the relevant parts of the Principles for Financial Market Infrastructures (issued by the Committee on Payments and Market Infrastructures and the International Organization of Securities Commissions) and the ECB’s revised Oversight Framework for Retail Payment Systems.
- [Eurosystem assessment methodology for electronic payment instruments, schemes and arrangements](#). The underlying methodology is based on the “Revised assessment methodology for payment systems” but in view of the different scope of the PISA framework some key considerations and assessment questions have been adjusted and complemented by content from previous assessment guides for payment schemes. In addition, new requirements have been added which take into account market developments. The PISA assessment methodology combines and replaces the guidance that was previously provided in dedicated documents for each payment instrument.
- [Exemption policy for the Eurosystem oversight framework for electronic payment instruments, schemes and arrangements](#). The draft policy defines the criteria used to identify the payment schemes / arrangements to be overseen by the Eurosystem and those which are exempt, taking into account their relevance for the overall payment system. In this respect the size, market penetration and geographical relevance of a payment scheme / arrangement within the euro area are considered. The exemption criteria and their respective thresholds seek to be proportionate to the risks introduced by small and/or emerging payment schemes / arrangements and exempt payment schemes / arrangements which do not meet the defined criteria and thresholds. The Eurosystem will review this policy at least every three years to ensure it is in line with market developments.

The deadline for responding to the consultations is 31 December 2020.

Published: 27 October 2020

**EFAMA launches
Cyber Resilience
Working Group**

The European Fund and Asset Management Association (**EFAMA**) has published [updates](#) to the 'IIFA Cybersecurity Program Basics'.

The IIFA Cybersecurity Program Basics sets out key cyber-prevention standards for investment management companies. The commonly-shared principles that firms should apply in order to minimize the likelihood of cyber incidents were originally launched last year. These six principles are recommended to any firm looking to adopt cyber-hygiene standards, or improve their existing ones:

- Establish an overarching cyber-security framework.
- Conduct cyber-risk awareness trainings with company staff.
- Have an incident response plan.
- Conduct table top exercises to "test" such response plan.
- Establish and monitor normal network activity.
- Participate in trusted information sharing networks.

In light of the concerns raised by the COVID-19 pandemic, the IIFA's Cybersecurity Working Committee has produced the following updates to the above core principles in the form of best practices:

- Business continuity planning.
- Information technology controls.
- Inventory and control of software & hardware.
- Principle of least privilege.
- Work from home considerations.
- Secure configuration.

Published: 28 October 2020

Member States start discussions on content of digital operational resilience proposal

The [proposal for a Regulation on digital operational resilience in the EU financial sector \(DORA\)](#) is making its first steps through the EU legislative process. The proposal, which would introduce a detailed legislative framework on operational resilience for financial institutions in the EU, has entered the negotiating phase in the Council. Member States are discussing different aspects of the framework through the Council Working Group meetings, the third of which took place on 28 October 2020.

We understand that the Council Working Group discussed the following issues:

1. Interaction with the NIS Directive

The Council discussed the interaction between the DORA proposal and the Network Information Systems Directive (**NIS Directive**) in relation to the requirements of the proposal on information communication technology (**ICT**) risk management and ICT-related incident reporting contained in Chapter III of the DORA proposal. Under the NIS Directive, provisions of a sector-specific EU legal act will take precedence over the NIS Directive provisions. According to the European Commission, the DORA proposal can be qualified as such a *lex specialis* since a declaration to this extent is mentioned in the proposal itself. Nevertheless, the proposal states that financial entities should remain in the ecosystem of the NIS Directive. Member States were asked to provide their views on whether this *lex specialis* approach is sufficiently considered in the proposal.

2. ICT-related incidents reporting

Currently, there are a number of parallel systems in place for the reporting of ICT-related incidents. One of the aims of the DORA proposal is to harmonise these reporting channels. Member States were asked for their views on the reporting channels introduced by the proposal, which states that incidents should be reported to the competent authority relevant to the financial institution concerned. Member States were also asked which competent authority should receive these ICT-related incident reports. In addition, Member States were asked to share their views on the interaction between incident reporting under the revised Payment Services Directive (PSD 2) and DORA. DORA would amend PSD 2 to the extent that payment service providers would have to report specific ICT-related incidents and major non-ICT related incidents under PSD 2. Some Member States are understood to be concerned that this will lead to fragmentation.

3. Delegation of reporting requirements

Under the DORA proposal, financial institutions can delegate their ICT-related incident report to a third party after receiving approval from the relevant competent authority. Member States were asked whether they agree with this proposal, or whether the possibility to delegate these tasks should be deleted from the proposal. As a third option, a few Member States shared the view that a simple notification to the competent authority of a delegation would be sufficient.

4. Information sharing arrangements

Chapter VI of the DORA proposal provides the possibility for financial entities to set up information sharing arrangements among each other. As this could raise data protection concerns, the Presidency is understood to have asked the Council Working Group members for their views on this issue.

5. Digital operational resilience testing

Chapter IV of the DORA proposal requires financial firms to establish independent parties within or outside their firm that conduct operational resilience testing. It is understood that

	<p>Member States discussed whether they agree with this requirement, or whether testing should be undertaken by external parties only, or whether at least advanced testing should be done by an external independent party. Regarding the role of the competent authority in this, the Council Working Group discussed their views on the proposal to let competent authorities identify financial entities that should perform advanced threat lead penetration testing (TLPT), or that Member States have the power to designate a more suitable national authority for this. Views are also asked on whether the proposal should explicitly refer to a TLPT framework introduced by the European Central Bank (ECB) in 2018. If this would be the preferred view, the possibility for the European Supervisory Authorities (ESAs) to specify requirements for TLPT would be deleted and replaced by the specificities of the ECB's TLPT framework. With regard to cross-border cooperation of competent authorities in charge of TLPT, questions were asked whether DORA should include a further clarification of what this supervisory cooperation would entail, or whether level 2 regulatory standards developed by the ESAs would suffice.</p> <p>Published: 30 October 2020</p>
<p>UK</p>	
<p>FCA assists innovative companies in tackling coronavirus challenges</p>	<p><u>On 5 October 2020</u>, the FCA <u>announced</u> that it had opened the application windows for cohort 7 of the Regulatory Sandbox and the pilot of a new Digital Sandbox initiative, with an emphasis on supporting products and solutions that will assist consumers and firms affected by the pandemic.</p> <p>The FCA is collaborating with The City of London Corporation to pilot a 'digital sandbox'. The following features are being piloted as the foundations of the digital sandbox:</p> <ul style="list-style-type: none"> Access to synthetic data assets to enable testing, training and validation of prototype technology solutions, for example transactional banking data sets, SME lending data and customer accounts. An Application programming interface (API) market place where digital service providers list and provide access to services via APIs Integrated development environment in which applicants can develop and test their solution A collaboration platform – to facilitate an ecosystem of key organisations that will provide support and input to digital sandbox participants, such as incumbents, academia, government bodies, venture capital, and charities. An observation deck – to enable regulators and other interested parties to observe in-flight testing at a technical level, to inform policy thinking in a safeguarded environment. <p>Applications for cohort 7 of the Regulatory Sandbox are now open until 31 December 2020. Applications for the digital sandbox are open from now until 30 October 2020.</p> <p>Published: 5 October 2020</p>

FCA bans the sale of crypto-derivatives to retail consumers

On 6 October 2020, the FCA published [Policy Statement 20/10](#): Prohibiting the sale to retail clients of investment products that reference cryptoassets (PS20/10).

In PS20/10 the FCA summarises the feedback it received to 'Consultation Paper 19/22: Prohibiting the sale to retail clients of investment products that reference cryptoassets' (CP19/22) (our blog is [here](#)) and sets out its final policy position and Handbook rules. In CP19/22 the FCA proposed rules to ban the marketing, distribution and sale of derivatives and exchange traded notes that reference certain types of cryptoassets to retail consumers. The FCA reports in PS20/10 that having considered the feedback, it is confirming the rules as consulted on, subject to some minor, technical amendments.

One of the amendments the FCA has made to its final rules concerns the definition of an unregulated transferable cryptoasset. In CP19/22 the FCA proposed prohibiting the sale, marketing and distribution to retail consumers of all derivatives (i.e. CFDs, options and futures) and exchange traded notes referencing unregulated transferable cryptoassets. The proposed definition was intended to capture derivatives referencing cryptoassets that the FCA called transferable exchange and utility tokens in 'Consultation Paper 19/3: Guidance on Cryptoassets'. The FCA also explained that it did not intend to capture security tokens, tokens that are not widely transferable and e-money tokens. Respondents to CP19/22 raised concerns that the definition of unregulated transferable cryptoassets could capture certain crypto-derivatives that were not intended to be in scope being: (i) commodities where ownership is recorded on the blockchain (crypto-commodities); and (ii) currencies issued or guaranteed by a central bank or public authority, commonly known as central bank digital currencies (CBDCs). In response the FCA has altered the definition of unregulated transferable cryptoassets so that these are not within the scope of the prohibition.

The FCA has also published an annex to PS20/10 which provides a description of the supporting data and analysis for CP19/22 and PS20/10. This includes the FCA's analysis of: cryptoasset valuation models, the correlation between cryptoasset prices and Google trends data, price dislocation across exchanges and the time period used to assess client outcomes.

The new rules will come into force on 6 January 2021 after the end of the transition period. The FCA has amended the rules to reflect the end of the transition period and to ensure that the rules continue to apply to the same firms as would have been subject to the rules before that point.

The final rules apply to:

- MiFID investment firms, including CRD IV credit institutions as appropriate, who are marketing, distributing or selling crypto-derivatives in, or from, the UK to retail clients.
- MiFID optional exemption firms who are marketing, distributing or selling crypto-derivatives in, or from, the UK to retail clients.
- UK branches of third-country investment firms who are marketing, distributing or selling crypto-derivatives in, or from, the UK to retail clients.
- EEA MiFID investment firms which currently passport into the UK and which continue operating in the UK after 6 January 2021 under the temporary permissions regime or the financial services contracts regimes.

The FCA expects firms to comply with the prohibition. The FCA's supervision in this area will focus on:

	<ul style="list-style-type: none"> • Attempts to avoid the effect of the new Handbook rules by: (i) inappropriately opting up retail clients to become elective professional clients; and (ii) moving retail consumers to associated non-UK entities. • The conduct of inward passporting firms operating under the temporary permissions regime. <p>Published: 7 October 2020</p>
<p>BoE opening remarks at the launch of the AI public private forum</p>	<p>The BoE has published the opening remarks given by Dave Ramsden (Deputy Governor for Markets and Banking) at the launch of the Artificial Intelligence Public Private Forum.</p> <p>Key points in the opening remarks include:</p> <ul style="list-style-type: none"> • The world is a very different place today from the one we started with this year. While the COVID-19 pandemic has had, and will continue to have, a profound impact on the economy, and on the households and businesses that drive it, it has also increased and focussed interest in the potential uses of artificial intelligence (AI) in tackling some of the many immediate problems and challenges precipitated by the pandemic. • In a recent survey of the banks and insurers regulated by the PRA, around 45% of those firms that participated reported that the pandemic has led to an increase in the importance of AI and data science applications for their future operations, with around 55% reporting no change, and none noting a decrease. • The existing regulatory landscape is somewhat fragmented when it comes to AI, with different pieces of regulation applying to different aspects of the AI pipeline, from data through model risk to governance. Policy must strike a balance between high-level principles and a more rules-based approach. Policy initiatives need to be future proofed in a fast-changing field. • In order to further its objective of promoting the safe adoption of AI in financial services, the BoE, along with the FCA, is launching the AI Public-Private Forum. The purpose of the Forum is to further dialogue between the public and private sectors in order to better understand the use and impact of AI in financial services. The Forum, which is expected to run for one year, will consist of a series of quarterly meetings and workshops structured around each of three topic areas: Data, Model Risk Management, and Governance. <p>Published: 12 October 2020</p>

<p>HM Treasury call for evidence: access to cash</p>	<p><u>On 15 October 2020</u>, HM Treasury issued a call for evidence concerning access to cash.</p> <p>The Government committed at the March 2020 Budget to bring forward legislation to protect access to cash and ensure that the UK's cash infrastructure is sustainable in the long term. This will ensure that those who may be less able to benefit from wider moves to digital payment methods are not left behind, and that cash continues to be available for those that need to use it.</p> <p>The call for evidence sets out the Government's aims for protecting access to cash throughout the UK. It seeks views on: how the Government can ensure the UK maintains an appropriate network of cash withdrawal and deposit-taking facilities over time through legislation, including the potential role of cashback; the factors affecting cash acceptance; and whether the Government should give a single regulator overall statutory responsibility for maintaining access to cash.</p> <p>The call for evidence will close on 25 November 2020.</p> <p>Published: 16 October 2020</p>
<p>FCA to participate in GFIN cross-border testing of financial products and services</p>	<p>The Financial Conduct Authority (FCA) has issued a statement advising that it will be among 23 regulators across 5 continents taking part in the cross-border testing initiative organised by the Global Financial Innovation Network (GFIN).</p> <p>Firms interested in applying to take part in cross-border testing should review the list of participating regulators and their respective regulatory compendiums and submit an application via the GFIN website before the 31 December deadline.</p> <p>Firms interested in exploring cross-border testing with the FCA can contact GFIN@fca.org.uk</p> <p>Published: 29 October 2020</p>
<p>Japan</p>	
<p>Bank of Japan announces approach to central bank digital currency</p>	<p>On 9 October 2020, the Bank of Japan (BoJ) published its approach to the issuance of a "general purpose" central bank digital currency (CBDC) intended for a wide range of end users including individuals and firms. While the BoJ currently has no plan to issue such a CBDC, the BoJ has published the approach with the aim of preparing a response to ensure stability and efficiency of payment and settlement systems following a change in circumstances such as a possible surge in public demand for CBDC.</p> <p>Published: 9 October 2020</p>
<p>Philippines</p>	
<p>BSP unveils Digital Payments Transformation Roadmap</p>	<p>Press release as follows:</p>

“The Monetary Board approved the Bangko Sentral ng Pilipinas (BSP) Digital Payments Transformation Roadmap 2020-2023. The roadmap charts the BSP’s current initiatives and strategy in advancing an efficient, inclusive, safe and secure digital payments ecosystem. This shall support the achievement of the BSP’s mandates and meet the diverse needs and capabilities of individuals and firms. The roadmap identifies two key strategic objectives. First, is the strengthening of customer preference for digital payments by converting 50% of the total volume of retail payments into digital form and expanding the number of the financially included to 70% of Filipino adults by onboarding them to the formal financial system through the use of payment or transaction accounts. The second is the availability of more innovative digital financial products and services designed to be responsive to the needs of consumers, enabled by a digital ID (Philippine Identification System or PhilSys), and supported by the availability of a next generation payment and settlement system to facilitate real-time processing of financial transactions. Said objectives are strategically anchored on three critical pillars, which are envisaged to successfully transform the cash-heavy Philippine economy into a cash-lite economy. The first is the development of digital payment streams (use cases) which will accelerate wider acceptance and use among individuals, businesses and the government. The second is the establishment of the necessary digital finance infrastructure to facilitate interoperability in the digital payments ecosystem, allowing providers to offer a wider array of affordable products and services. The third is the implementation of digital governance standards that will safeguard the integrity and privacy of consumer data, and ensure appropriate governance and regulation of digital products and services. The roadmap also recognized the broader challenges to the development of a digital payment ecosystem and financial inclusion, key among which is the state of access to and quality of internet connectivity. This challenge may be addressed by exploring the use of satellite communications technology in delivering internet connectivity to hard-to-reach rural places. “Our thrust to promote digitalization of payments is also strategically geared towards furthering financial inclusion as we view the two to be mutually reinforcing: They go hand in hand, with each one enabling the other,” according to Dr. Benjamin E. Diokno, Chairman of the Monetary Board and Governor of the BSP. “With the launch of the Digital Payments Transformation Roadmap, we aim to hit two birds with one stone. We are securing the digitalization of payments, and increasing the number of Filipinos with access to financial services,” the Governor adds. The momentum for pursuing digital payments has also been catalyzed by the recent lockdowns brought about by the COVID-19 pandemic. Comparing data from 01 to 16 March 2020 and during the ECQ from 17 March to 31 May 2020, a significant decline in the volume and value of check payments and automated teller machine withdrawals was observed, suggesting that consumers are wary of the risk of exposure brought about by face-to-face transactions in the bank. Meanwhile, PESONet and InstaPay transactions remarkably increased by 74%, from 18.4 million prior to the COVID-19 lockdown (01 January to 16 March 2020) to 32.1 million during the enhanced community quarantine (17 March to 31 May 2020). At the same time, the 2019

	<p>Financial Inclusion Survey shows a notable increase in the number of e-money account owners from 1.3% of the adult population in 2017, to 8% in 2019.</p> <p>E-money providers have also reported record-high increases in their number of transactions and account users during the quarantine period, while latest data on the volume of transactions using PESONet and InstaPay manifest a sustained shift to digital payments demonstrating a substantial growth of 122% from 23 million to 51.2 million from the first to the second quarter of 2020.</p> <p>These developments indicate that there is a growing consumer sentiment to shift towards more digital payments. The BSP's Digital Payments Transformation Roadmap supports this remarkable development by providing our key stakeholders, such as banks, financial and payment service providers, fintech service players, and consumers with a helpful strategic guide in navigating the country's whole of nation approach towards a digital payments-enabled economy."</p> <p>Published: 11 October 2020</p>
<p>US</p>	
<p>Important SAFT court opinion; lawyers accepting virtual currency as payment</p>	<p><u>In a much-anticipated decision with important implications for the cryptocurrency industry</u>, a second New York federal judge has now ruled that an offeror's use of a two-stage "Simple Agreement for Future Tokens" or "SAFT" structure for issuing cryptocurrency tokens will not suffice to exempt the offering from the reach of US securities law. In this latest ruling, the court held that social media company Kik Interactive Inc. violated US securities laws when it failed to register its 2017 sale of nearly US\$100 million of its digital tokens, called "Kin," with the <u>Securities and Exchange Commission</u>. SEC v. Kik Interactive Inc., 2020 WL 5819770 (SDNY Sept. 30, 2020).</p> <p>In a legal <u>update</u>, <u>Robert Schwinger</u>, a partner in Norton Rose Fulbright's New York office, and <u>Jacob Laksin</u>, a senior associate in Norton Rose Fulbright's New York office, analyze the case and discuss the implications for cryptocurrency issuers.</p> <p>In addition, in his most recent column in <u>The New York Law Journal</u>, Robert Schwinger discusses states' current thinking on whether their legal ethics rules permit attorneys to take payment in the form of cryptocurrency, or to hold such assets in escrow or trust.</p> <p>Norton Rose Fulbright has a useful <u>database</u> of FinTech materials for those who are interested in learning more about the subject</p> <p>Published: 15 October 2020</p>
<p>First conditional Bitlicense issued by New York State Department of Financial Services</p>	<p><u>Press release</u> extract as follows:</p>

	<p>“Superintendent of Financial Services Linda A. Lacewell today announced PayPal, Inc. (PayPal) is the first to receive a conditional Bitlicense from the New York State Department of Financial Services (DFS). With approval from DFS, PayPal, in partnership with Paxos Trust Company (Paxos), has launched a new service enabling its customers to buy, sell and hold certain cryptocurrencies. Paxos, a New York State chartered trust company, will provide cryptocurrency trading and custodial services to PayPal for the benefit of PayPal customers.</p> <p>“DFS’ approval today follows our June 2020 announcement for a new framework for a conditional Bitlicense to encourage, promote, and assist interested institutions to have a well-regulated way to access the New York virtual currency marketplace in a way that is both timely and protective of New York consumers, through partnerships with New York authorized virtual currency firms,” said Superintendent Lacewell. “DFS will continue to encourage and support financial service providers to operate, grow, remain and expand in New York and work with innovators to enable them to germinate and test their ideas, for a dynamic and forward looking financial services sector, especially as we work to build New York back better in the midst of this pandemic.”</p> <p>This announcement follows Superintendent Lacewell’s public comments approximately one year ago at DC Fintech week, when she promised to take a fresh look at DFS’ regulatory framework for virtual currencies. Since that time, and during the 5th year anniversary of DFS’ virtual currency licensing framework, DFS has taken a series of steps to update its approach, including guidance for companies to adopt new coins, a proposed conditional licensing framework, and additional informational resources for applicants and licensees. These efforts aim to help emerging, nascent, and seasoned firms to start, enter, and grow in New York.”</p> <p>Published: 21 October 2020</p>
<p>CFTC Staff Issues Advisory on Virtual Currency for Futures Commission Merchants</p>	<p><u>Press release</u> extract as follows:</p> <p>“The Division of Swap Dealer and Intermediary Oversight (DSIO) of the Commodity Futures Trading Commission today issued an advisory to futures commission merchants (FCMs) regarding the holding of virtual currency in segregated accounts. The advisory provides guidance to FCMs on how to hold and report certain deposited virtual currency from customers in connection with physically-delivered futures contracts or swaps. The advisory also provides guidance that FCMs should follow when designing and maintaining risk management programs concerning the acceptance of virtual currencies as customer funds.</p> <p>“At the CFTC, one of our core values is to provide clarity to market participants,” said DSIO Director Joshua B. Sterling. “As Chairman Tarbert has stated, the CFTC is committed to fostering responsible fintech innovation and improving the regulatory experience of registered firms where doing so is consistent with our rules. This advisory furthers these critical goals and will provide additional certainty on these issues as the Commission works to establish a holistic framework for digital asset derivatives.”</p> <p>Published: 21 October 2020</p>

CFTC Charges BitMEX Owners with Illegally Operating a Cryptocurrency Derivatives Trading Platform and Anti-Money Laundering Violations

Press release extract as follows:

“The Commodity Futures Trading Commission today announced the filing of a civil enforcement action in the U.S. District Court for the Southern District of New York charging five entities and three individuals that own and operate the BitMEX trading platform with operating an unregistered trading platform and violating multiple CFTC regulations, including failing to implement required anti-money laundering procedures. This case is brought in connection with the Division of Enforcement’s Digital Asset and Bank Secrecy Act Task Forces. [...]

The complaint alleges that from at least November 2014 through the present, and at the direction of Hayes, Delo, and Reed, BitMEX has illegally offered leveraged retail commodity transactions, futures, options, and swaps on cryptocurrencies including bitcoin, ether, and litecoin, allowing traders to use leverage of up to 100 to 1 when entering into transactions on its platform. According to the complaint, BitMEX has facilitated cryptocurrency derivatives transactions with an aggregate notional value of trillions of dollars, and has earned fees of more than over \$1 billion since beginning operations in 2014. Yet, as alleged in the complaint, BitMEX has failed to implement the most basic compliance procedures required of financial institutions that impact U.S. markets.

The complaint charges BitMEX with operating a facility for the trading or processing of swaps without having CFTC approval as a designated contract market or swap execution facility, and operating as a futures commission merchant by soliciting orders for and accepting bitcoin to margin digital asset derivatives transactions, and by acting as a counterparty to leveraged retail commodity transactions. The complaint further charges BitMEX with violating CFTC rules by failing to implement know-your-customer procedures, a customer information program, and anti-money laundering procedures.

As alleged in the complaint, BitMEX touts itself as the world’s largest cryptocurrency derivatives platform, with billions of dollars’ of trading volume each day. Much of this volume, and related transaction fees, derives from the operation of the platform from the U.S. and its extensive solicitation of and access to U.S. customers, the complaint alleges. Nevertheless, BitMEX has failed to register with the CFTC, and has failed to implement key safeguards required by the CEA and CFTC’s regulations designed to protect the U.S. derivatives markets and market participants.

Published: 1 October 2020

International developments

G20

There has been no reported activity.

Financial Stability Board (FSB)

FSB report highlights increased use of RegTech and SupTech

On 9 October 2020, the Financial Stability Board (FSB) published a [report](#) on the use of supervisory (SupTech) and regulatory (RegTech) technology by FSB members and regulated institutions.

The report notes that SupTech and RegTech tools could have important benefits for financial stability. For authorities, the use of SupTech could improve oversight, surveillance and analytical capabilities, and generate real time indicators of risk to support forward looking, judgement based, supervision and policymaking. For regulated institutions, the use of RegTech could improve compliance outcomes, enhance risk management capabilities and generate new insights into the business for improved decision-making.

The report states that based on a survey of FSB members, the majority of respondents had a SupTech, innovation or data strategy in place, with the use of such strategies growing significantly since 2016. The most common 'use cases' reported by authorities for SupTech tools were in the areas of regulatory reporting and data management. The use of SupTech for 'misconduct analysis' and microprudential supervision has increased in recent years, whereas use cases for market surveillance were reported as having reduced somewhat. Despite the opportunities and benefits of SupTech and RegTech, authorities are vigilant to possible risks that could arise from the use of such technologies. Survey responses indicated that the risk reported to be of greatest concern was around resourcing, followed by concerns around cyber risk, reputational risk and data quality issues.

The report contains a variety of case studies giving practical examples of deployment of SupTech and RegTech tools. These include a number of examples related to the COVID-19 experience, which has served both to increase interest in SupTech and RegTech, but also to illustrate where authorities have been able to deploy these solutions to support remote working, crisis response and enhanced surveillance and supervision.

The FSB has also published a [report](#) that considers market developments and financial stability implications from the provision of financial services by BigTech firms in emerging market and developing economies (EMDEs). The report finds that the expansion of BigTech firms in financial services in EMDEs has generally been more rapid and broad-based than that in advanced economies

Published: 13 October 2020

FSB publishes high-level recommendations for regulation, supervision and oversight of "global stablecoin" arrangements

On 13 October 2020, the Financial Stability Board (FSB) published the [final version](#) of its high-level recommendations for the regulation, supervision and oversight of "global stablecoin" (GSC) arrangements following an earlier public consultation. The report states that GSC arrangements are expected to adhere to all applicable regulatory standards and to address risks to financial stability before commencing operation, and to adapt to new regulatory requirements as necessary.

The report sets out ten high-level recommendations that seek to promote coordinated and effective regulation, supervision and oversight of GSC arrangements to address the financial stability risks posed by GSCs, both at the

domestic and international level, while supporting responsible innovation and providing sufficient flexibility for jurisdictions to implement domestic approaches. The recommendations call for regulation, supervision and oversight that is proportionate to the risks, and stress the value of flexible, efficient, inclusive, and multi-sectoral cross-border cooperation, coordination, and information sharing arrangements among authorities that take into account the evolving nature of GSC arrangements and the risks they may pose over time.

The recommendations are addressed to authorities at jurisdictional level and focus on privately issued GSCs predominately intended for retail use. Although the recommendations are aimed at global stablecoins, they could be used for other stablecoins, including those that may pose risks to financial stability only in some countries or regions, and, potentially, other crypto-assets that could pose risks similar to some of those posed by GSCs because of comparable international reach, scale and use. The report is intended to primarily address risks to financial stability and therefore does not cover important issues such as anti-money laundering / counter financing of terrorism (AML/CFT), data privacy, cyber security, consumer and investor protection and competition, which however could have consequences for financial stability if they are not properly addressed. The report therefore stresses the importance of addressing these issues as part of a comprehensive effective supervisory, regulatory and oversight framework.

The ten high level recommendations are:

- Authorities should have and utilise the necessary powers and tools, and adequate resources, to comprehensively regulate, supervise and oversee a GSC arrangement and its associated functions and activities, and enforce relevant laws and regulations effectively.
- Authorities should apply comprehensive regulatory, supervisory and oversight requirements and relevant international standards to GSC arrangements on a functional basis and proportionately to their risks.
- Authorities should cooperate and coordinate with each other, both domestically and internationally, to foster efficient and effective communication and consultation in order to support each other in fulfilling their respective mandates and to ensure comprehensive regulation, supervision, and oversight of a GSC arrangement across borders and sectors.
- Authorities should ensure that GSC arrangements have in place a comprehensive governance framework with a clear allocation of accountability for the functions and activities within the GSC arrangement.
- Authorities should ensure that GSC arrangements have effective risk management frameworks in place especially with regard to reserve management, operational resilience, cyber security safeguards and AML/CFT measures, as well as 'fit and proper' requirements.
- Authorities should ensure that GSC arrangements have in place robust systems for collecting, storing and safeguarding data.
- Authorities should ensure that GSC arrangements have appropriate recovery and resolution plans.
- Authorities should ensure that GSC arrangements provide users and relevant stakeholders with comprehensive and transparent information necessary to understand the functioning of the GSC arrangement, including with respect to its stabilisation mechanism.
- Authorities should ensure that GSC arrangements provide legal clarity to users on the nature and enforceability of any redemption rights and the process for redemption, where applicable.
- Authorities should ensure that GSC arrangements meet all applicable regulatory, supervisory and oversight requirements of a particular jurisdiction before commencing any operations in that jurisdiction, and adapt to new regulatory requirements as necessary.

FSB final report – Effective practices for cyber incident response and recovery

On 19 October 2020, the Financial Stability Board (FSB) published a [toolkit](#) of effective practices for financial institutions' cyber incident response and recovery (CIRR). The toolkit draws on the feedback from a public consultation process, including four virtual outreach meetings. The report was delivered to G20 Finance Ministers and Central Bank Governors for their October meeting.

The toolkit includes 49 practices for effective CIRR across seven components: (i) governance, (ii) planning and preparation, (iii) analysis, (iv) mitigation, (v) restoration and recovery, (vi) coordination and communication, and (vii) improvement. The toolkit is composed as a resource and reference guide for effective practices using common cyber-taxonomies in a manner aligned to industry standards accessible to senior management, board of directors or other governance or compliance, risk and legal professionals that interface with cyber security technical experts within their organisation.

The toolkit is not intended to create an international standard, or constitute standards for organisations and their supervisors. It is not a prescriptive recommendation for any particular approach. The toolkit is designed as a range of effective practices that any organisation can choose from, based on its size, complexity and risks.

Earlier this year we updated our popular online briefing note, [Cybersecurity: Not just an IT issue, but a regulatory one too](#). The briefing note is [here](#).

Published: 20 October 2020

Registration is open for the FSB's virtual workshops on FinTech issues

[Register](#) for the FSB's FinTech virtual workshops on 4 and 5 November from 13.00-15.00 (CET).

The objective of the workshop on 4 November is to present the FSB's work on the use of supervisory (SupTech) and (RegTech) regulatory technology by authorities and regulated institutions. The workshop will consider issues raised in the FSB's [recent report on this topic](#).

The objective of the workshop on 5 November is to present the FSB's work on the provision of financial services by BigTech firms in emerging market and developing economies, based on the FSB's [recent publication on this topic](#).

Published: 28 October 2020

FICC Markets Standards Board (FMSB)

There has been no reported activity.

Bank for International Settlements (BIS)

On 9 October 2020, the Bank for International Settlements (BIS) published a [report](#), Central bank digital currencies: foundational principles and core features. The report was compiled by the Bank of Canada, the Bank of England, the Bank of Japan, the European Central Bank, the Federal Reserve, Sveriges Riksbank, the Swiss National Bank and the BIS.

For the central banks contributing to the report, the common motivation for exploring a general purpose central bank digital currency (CBDC) is its use as a means of payment. Providing cash to the public is a core responsibility of central banks and a public good. All the contributing central banks commit to continue providing cash as long as there is public demand. Yet a CBDC could provide complementary central bank money to the public, supporting a more resilient and diverse domestic payment system. It might also offer opportunities not possible with cash while supporting innovation.

CBDC issuance and design are sovereign decisions to be made by each jurisdiction. The report is not about if or when to issue a CBDC. Central banks will make that decision for their jurisdictions (in consultation with governments and stakeholders). None of the central banks contributing to the report have reached a decision on whether or not to issue a CBDC. Instead, the report advances the foundational international work by outlining common principles and the key features a CBDC and supporting infrastructure would need in order to contribute to central bank public policy objectives.

The report highlights three key principles for a CBDC:

- Coexistence with cash and other types of money in a flexible and innovative payment system.
- Any introduction should support wider policy objectives and do no harm to monetary and financial stability.
- Features should promote innovation and efficiency.

The possible adverse impact of a CBDC on bank funding and financial intermediation, including the potential for destabilising runs into central bank money, has been a concern of central banks. Any decision to launch a CBDC would depend on an informed judgment that these risks can be managed, likely through some combination of safeguards incorporated in the design of a CBDC and financial system policies more generally. Understanding the potential market structure effects of CBDC, their implications for financial stability, and any potential mitigants is a further area of work for this group.

The next stage of CBDC research and development will emphasise individual and collective practical policy analysis and applied technical experimentation by central banks. The report highlights CBDC design and technology considerations, including initial thoughts on where trade-offs lie. Far more work is required to truly understand the many issues, including where and how a central bank should play a direct role in an ecosystem and what the appropriate role might be for private participation. The speed of innovation in payments and money means that these questions are ever more urgent.

Published: 13 October 2020

Keynote speech by Mr [Fabio Panetta](#), Member of the Executive Board of the European Central Bank, at the ECB Conference "A new horizon for pan-European payments and digital euro", Frankfurt am Main, 22 October 2020

Speech extract as follows:

"European authorities must be attentive and ready to respond to the ongoing transformation of the European payments landscape. They must ensure that digital payments are underpinned by a competitive and innovative market capable of meeting consumer demand, while preserving European sovereignty.

To reach these objectives, the Eurosystem has set out a comprehensive strategy based on complementary elements, which range from the provision of cash to the promotion of pan-European payment solutions, the fast deployment of instant payments in the entire euro area, the introduction of a new comprehensive oversight framework embracing new products and players, and the preparation for the possible issuance of a digital euro. Our action on these fronts, in close cooperation with the European Commission and other European institutions, will help to foster a resilient and innovative European payments market that will strengthen confidence and trust in the euro."

Published: 22 October 2020

Press release: [FX execution algorithms contribute to market functioning but bring new challenges](#)

Execution algorithms - designed to buy or sell a predefined amount of foreign exchange according to a set of user instructions - have seen a rise in usage amid an increasingly decentralised and fragmented trading environment according to a report published today by the BIS Markets Committee.

This has helped support price discovery and market functioning but also has the potential to create new risks, said the report, [FX execution algorithms and market functioning](#).

The report examines the drivers and implications of the increase in EA usage in FX markets. It draws on a unique survey of 70 sophisticated market participants globally and extensive industry-wide outreach, and provides distinctive perspectives on the use of EAs, including by central banks.

Prepared by a study group led by Andréa M Maechler, Member of the Governing Board of the Swiss National Bank, it concludes that while EAs improve market functioning, they also create new challenges. In particular, they transfer execution risk from dealers to end users; contribute to changing liquidity dynamics and the underlying market structure; and raise the bar for market participants in accessing the data, skills and tools required to navigate this market successfully.

"The report provides an insightful stocktake of the growing use of FX execution algorithms by a broad range of participants in FX markets, and highlights both the benefits and the potential risks of such execution algorithms. This will help market participants gain a deeper understanding of such elements, which are becoming increasingly important in FX markets," said Jacqueline Loh, Deputy Managing Director, Monetary Authority of Singapore, and Chair of the Markets Committee.

EAs may also create self-reinforcing loops and exacerbate sharp price moves, although initial observations from the Covid-19 pandemic suggest that these risks may be less acute than expected. Still, further research is needed.

"While the focus of the report is on the FX market, many of the findings are also of broader relevance to other fast-paced electronic markets experiencing similar trends. As those markets continue to evolve rapidly, access to high-quality data, novel skills and adequate tools becomes key in this context," said Ms Maechler.

These issues require broad-based collaboration between the official and the private sectors. The [Global Foreign Exchange Committee \(GFXC\)](#) has already established workstreams on algorithmic trading and disclosures to examine them in detail.

Published: 30 October 2020

International Organisation of Securities Commissions (IOSCO)

There has been no reported activity.

Committee on Payments and Market Infrastructures (CPMI)

There has been no reported activity.

Basel Committee on Banking Supervision (Basel Committee)

There has been no reported activity.

Financial Action Task Force (FATF)

There has been no reported activity.

World Economic Forum

There has been no reported activity.

SWIFT

There has been no reported activity.

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