NORTON ROSE FULBRIGHT

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Global, EU, UK and US Regulatory developments

EU	
MiCA: Regulating provision of services in crypto-assets	On 24 September 2020 the European Commission published its long-anticipated Digital Finance package, comprising legislative proposals and non-legislative communications. One of the legislative proposals published included a draft regulation on markets in crypto-assets (MiCA). MiCA is the first European-level legislative initiative aiming to introduce a harmonized and comprehensive framework for the issuance, application and provision of services in crypto-assets. The draft legislation provides a set of prescriptive rules that, once formally adopted, will shape conduct of business in European markets in crypto-assets. In a new briefing series we aim to provide a comprehensive overview of the proposed rules as intended to apply to various categories of participants in the crypto-asset markets. The first article focuses on the provision of services in crypto-assets and can be read here. **Published: 19 November 2020**
ECB publishes working paper on central bank digital currencies	On 19 November 2020, the European Central Bank published a working paper on central bank digital currencies (**CBDC**) in an open economy. In particular, the paper considers a range of technical features in the design of a CBDC, and how certain design features may play a role in determining the magnitude of a CBDC's impact on international monetary policy and technology shocks. **Published: 19 November 2020**
EU regulation on markets in crypto-assets: Member States start MiCA review	In September we published a blog setting out 10 key things that firms needed to know about the draft regulation on markets in crypto-assets (MiCA). In this blog we provide an update on what's been happening. On 13 November 2020, the German Presidency of the Council hosted a meeting of a working party on financial services, the agenda of which focused on a review of the specific provisions of Title II (crypto-assets other than asset-referenced tokens or e-money tokens), Title V (Authorisation and operating conditions for crypto-asset service providers) and Title VI (prevention of market abuse involving crypto-assets). In advance of the meeting the Presidency circulated a note to Member States, broadly setting out the key issues for discussion which included: 1. Offer of crypto-assets to the public and admission on a trading platform: some Member States questioned the provision in the MiCA proposal that would require issuers of crypto-assets to set up a legal entity but without an obligation to be established in the EU or have a registered office in the EU. They argued that such approach may have adverse consequences for innovation in the market. Other Member States pointed to the lack of requirement for such issuers to be legally incorporated in the EU in the absence of an equivalence regime, and questioned some of the exemptions proposed. The Presidency asked for further views on the legal entity requirement and whether any future solution should involve ESMA.

	2. White-paper accompanying issuance of crypto-assets: the Presidency asked for Member States' views whether the proposed requirements concerning the publication of a white-paper by issuers of crypto-assets adequately reflects the nature of crypto-assets and their differences in comparison to financial instruments, and whether the list of information to be included in the white-paper should be extended. 3. Notification of the white-paper to the NCA: some Member States questioned the mechanisms of the mandatory notification of the white-paper to Member State competent authorities (NCAs), including in respect of a related marketing communication, others proposed further amendments addressing – among other – the role of ESMA. The Presidency asked for Member States' views whether the proposed notification requirement should be replaced by mandatory approval by the NCAs and whether the proposed regime provided for sufficient safeguards. 4. Right of withdrawal: a number of Member States raised further questions in respect of the proposed MiCA provisions requiring the issuer of crypto-assets to offer the right of withdrawal, including why such right would not be applicable when crypto-assets are admitted to trading on a platform for crypto-assets. The Presidency therefore sought views about any circumstances in which such right of withdrawal should not be granted and whether it should be renewed or prolonged in case of modification of the originally published white- 5. Authorisation of crypto-asset services providers: many Member States in their initial comments on the MiCA proposal suggested that additional information should be requested of crypto-asset services providers in the course of their application for authorisation. The Presidency sought views whether such information should be specified in Level 1 or Level 2 texts. 6. Cross-border provision of crypto-asset services: some Member States questioned the proposed MiCA provisions on cross-border provision of services by authorised crypto-asset service providers, and suggested further alignment between the MiFID and MiCA regimes in that aspect. The Presidency sought views of all delegations whether such alignment would be appropriate. 7. Obligations for crypto-asset service providers: a number of comments provided on the MiCA proposal to date by Member States included suggestions for more clarity and alignment with other pieces of European legislation and international standards, notably MiFID II, PSD II and FATF, as well as to provide additional information on reporting requirements. The Presidency therefore asked for further opinions as to whether it would be appropriate to set out in Level 2 more detail of what is expected of crypto-asset service providers. 8. Off-chain transactions: some Member States noted that the proposed obligation for an operator of a trading platform in crypto-assets to have their client's transactions immediately settled on the respective DLT system would prevent any kind of off-chain settlement of transactions, which would be contrary to current market practice ("cold wallets"). The Presidency asked for Member States' views whether MiCA should allow operators of a trading platform in crypto-assets to execute customers' transactions off-chain, and whether it should require the accounts to be operated by trading platforms for crypto-assets to be regularly aligned with the holding of crypto-asset according to the distributed ledger.

	9. Alignment with MiFID II: noting that potential risks stemming from provision of services in crypto-assets can be at least as high as those with regards to financial instruments, some Member States suggested that the relevant MiCA provisions should be brought even more into line with the MiFID II The Presidency sought views from all delegations as to whether they agree with the Commission's approach or whether more alignment with MiFID II should be considered in the context of regulating provision of services in crypto-assets. 10. Prevention of market abuse involving crypto-assets: in their initial comments on the MiCA proposal some Member States noted that the proposed provisions on market abuse for crypto-assets were less comprehensive that the regime for financial instruments as set out by Market Abuse Regulation (MAR), others questioned whether formulating specific requirements is a suitable approach at all. The Presidency sought further views whether the proposed market abuse regime for crypto-assets should be further strengthened, and if so, by which measures (Level 1 / Level 2 provisions). On the European Parliament's side, the legislative review is in its preparatory phase. The rapporteur who will be leading the work of the Economic and Monetary Affairs (ECON) committee on the MiCA proposal has recently been appointed, together with a group of shadow rapporteurs from other political groups. That said, the leading lawmaker role has been allocated to Stefan Berger (EPP / Germany), he will be supported by Ondřej Kovařík (Renew / Czech Republic), Antonio Maria Rinaldi (ID / Italy) and Patryk Jaki (ECR / Poland). The ECON committee is yet to present its indicative timeframe for the MiCA review. If you would like to discuss any aspects of the MiCA legislative review please do not hesitate to get in touch: anna.carrier@nortonrosefulbright.com **Published: 16 November 2020**
EU regulation on markets in crypto-assets: Member States continue MiCA review	In September we published a blog setting out 10 key things that firms needed to know about the draft regulation on markets in crypto-assets (MiCA). We have since published an update on what's been happening and as we continue our close monitoring of the key developments regarding the MiCA review, in this blog we provide an overview of the key takeaways from a subsequent Council working group meeting that took place on 24 November 2020. The most recent meeting of the Member States representatives was focused on discussing the specific provision of Title VII (Competent authorities), VIII (Delegated acts and implementing acts) and IX (Transitional and final provisions). In advance of the meeting the Presidency circulated a note to Member States, broadly setting out the key issues for discussion which included: 1. Competent authorities powers and cooperation with ESMA, EBA: majority of Member States appear to endorse the proposed approach but some suggested extension of powers conferred upon national competent authorities (NCAs) and aligning it with the powers under MAR and MiFID. Suggestions were also made to provide further clarifications regarding home/host state arrangements. The Presidency therefore sought views, among other, whether the NCAs supervisory powers should be further strengthen.

	2. Administrative measures and sanctions: suggestions were made to align the MiCA provisions with those under MAR, and provide further specification between intentional and unintentional infringement. The Presidency sought views whether any such clarifications should be provided in the amended MiCA. 3. EBA and issuers of significant asset-referenced tokens and significant e-money tokens: some Member States questioned the appropriateness of conveying supervisory powers in respect of the issuers of significant asset-referenced tokens and significant e-money tokens to the EBA, and suggested that the better solution would involve some sort of shared competences between the EBA and NCAs. The Presidency therefore asked for further views as to who should be responsible for supervision of such issuers. 4. EBA and issuers of asset-referenced tokens and e-money tokens: consistent with their approach as mentioned above, some Member States questioned the appropriateness of conferring powers to the EBA in respect of the issuers of asset referenced tokens and e-money tokens (non-significant). However, other Member States see benefits of strengthening the EBA's powers in that respect, including with regard to cooperation with third-country authorities. The Presidency therefore sought views on, among other, clarification of college processes and scope of cooperation with third-country authorities. 5. Delegated acts and implementing acts: some Member States noted that MiCA does not provide for development of Level 2 measures in respect of the supervision of crypto-asset service providers, and that some guidance might be helpful in that respect. The Presidency asked for views whether any such Level 2 measures should be developed. 6. Transitional and final provisions: The Presidency was interested in Member States views whether any of the timeframes – including MiCA's entry into force and grandfathering provisions for the crypto-asset service providers – should be extended from 18 to 24 months. If you would like to discuss any aspects of the MiCA legislative review please do not hesitate to get in touch: anna.carrier@nortonrosefulbright.com **Published: 24 November 2020**

The Netherlands	
Dutch transitional arrangements for crypto service providers to expire on 21 November 2020	On 21 May 2020 the Act implementing the Fifth Anti-Money Laundering Directive (5MLD) (*Implementatiewet wijziging vierde anti-witwasrichtlijn*, the **Act**) entered into force. The Dutch Central Bank (*De Nederlandsche Bank*, **DNB**) has published a news item emphasizing that the transitional arrangements laid down in the Act will expire on 21 November 2020. As a result, crypto service providers subject to the Act must from that date onwards be registered with DNB in order to continue to provide their services. DNB also notes that the registration process will not be completed within the intended six months for certain crypto service providers. DNB understands that this raises questions and aims to quickly complete the application processes where an applicant is able to meet all the requirements in the short term. DNB will discuss what this specifically entails for each provider on an individual basis. **Published: 19 November 2020**

UK	
CDEI review into bias in algorithmic decision-making	The Centre for Data Ethics and Innovation (CDEI) is an independent expert committee, led by a board of specialists, set up and tasked by the UK Government to investigate and advise on how the UK maximises the benefits of data driven technologies. In the October 2018 Budget, the Chancellor announced that the CDEI would investigate the potential bias in decisions made by algorithms. This review formed a key part of the CDEI's 2019/2020 work programme, though completion was delayed by the onset of COVID-19 pandemic. On 27 November 2020, the CDEI published its final report of its review which includes a set of formal recommendations to the UK Government. In relation to the financial services sector the CDEI review found: A mature sector that has long used data to support decision-making. Finance relies on making accurate predictions about peoples' behaviours, for example how likely they are to repay debts. However, specific groups are historically underrepresented in the financial system, and there is a risk that these historic biases could be entrenched further through algorithmic systems. Financial service organisations ranged from being highly innovative to more risk averse in their use of new algorithmic approaches. They are keen to test their systems for bias, but there are mixed views and approaches regarding how this should be done. This was particularly evident around the collection and use of protected characteristic data, and therefore organisations' ability to monitor outcomes. The CDEI's main focus within financial services was on credit scoring decisions made about individuals by traditional banks. Its work found the key obstacles to further innovation in the sector included data availability, quality and how to source data ethically, available techniques with sufficient explainability, risk averse culture, in some parts, given the impacts of the financial crisis and difficulty in gauging consumer and wider public acceptance. The regulatory picture is clearer in financial services than in the other sectors the CDEI have looked at. The Financial Conduct Authority is the main regulator and is showing leadership in prioritising work to understand the impact and opportunities of innovative uses of data and AI in the sector. The use of data from non-traditional sources could enable population groups who have historically found it difficult to access credit, due to lower availability of data about them from traditional sources, to gain better access in future. At the same time, more data and more complex algorithms could increase the potential for the introduction of indirect bias via proxy as well as the ability to detect and mitigate it. Key recommendations in the CDEI report include: 1) Government should place a mandatory transparency obligation on all public sector organisations using algorithms that have an impact on significant decisions affecting individuals. 2) Organisations should be actively using data to identify and mitigate bias. They should make sure that they understand the capabilities and limitations of algorithmic tools, and carefully consider how they will ensure fair treatment of individuals.

	3) Government should issue guidance that clarifies the application of the Equality Act to algorithmic decision-making. This should include guidance on the collection of data to measure bias, as well as the lawfulness of bias mitigation techniques (some of which risk introducing positive discrimination, which is illegal under the Equality Act). **Published: 30 November 2020**
FCA announces changes to open banking identification requirements	On 3 November 2020, the FCA published a statement as follows: "The FCA's changes will permit UK-based third-party providers (TPPs) to use an alternative to eIDAS certificates to access customer account information from account providers, or initiate payments, after Brexit. Firms must act to ensure they can continue to provide open banking services. eIDAS certificates are required for TPPs to identify themselves to account providers and allow firms to interact and share customer account information online in a trusted and secure way. Under the Strong Customer Authentication Regulatory Technical Standards (SCA-RTS), they are the only accepted identification standard permitted between providers of open banking services in the EU. However, in July 2020 the European Banking Authority (EBA) announced that eIDAS certificates of UK TPPs would be revoked when the transition period ends on 31 December 2020. The near final instrument, published by the FCA, allows TPPs to rely on an alternative certificate. The changes will mean: • UK-based TPPs will likely need to obtain a new certificate to be able to continue to provide open banking services in the UK, post-Brexit • Account providers (e.g. banks) will likely need to make technical changes to their systems to enable TPPs to continue accessing customer account information, by accepting an alternative certificate and informing TPPs as soon as possible which certificate(s) they will accept Firms must review the changes immediately and implement any necessary changes as soon as possible. Acknowledging the challenges faced by the industry, the FCA will provide a transition period until the end of June 2021 for complying with our rules." **Published: 3 November 2020**
Speech by Andy Haldane at TheCityUK 10th Anniversary Conference: Seizing the opportunities from digital finance	On 18 November 2020, Andy Haldane, Executive Director and Chief Economist of the Bank of England, gave a speech at TheCityUK 10th Anniversary Conference. Mr Haldane discussed the development and impact of fintech and innovation during the pandemic, primarily within the context of payments by individuals and lending to SMEs. In particular, he considered issues surrounding digital currencies' rapid emergence, stablecoins, central bank digital currencies and digital identifiers. **Published: 18 November 2020**

Asia	
Financial connectivity between Singapore and Chongqing grows despite disruptions from COVID-19	Press release dated 23 November 2020 by the Monetary Authority of Singapore as follows: “Singapore and Chongqing co-organised the 3rd Singapore-China (Chongqing) Connectivity Initiative (CCI) Financial Summit. Speaking virtually at the opening ceremony today, Mrs Josephine Teo, Minister for Manpower, Singapore, highlighted that Singapore and Chongqing could jointly facilitate closer cooperation between ASEAN and Western China to strengthen the economic relationship with greater financial connectivity and trade through a digitalised CCI New International Land-Sea Trade Corridor (CCI-ILSTC). This would enhance the resilience of our supply chains and support further economic growth and recovery from COVID-19. The theme of this year’s CCI Financial Summit is Enhancing Financial Connectivity, Contributing to and Sharing Benefits of the New International Land Sea Trade Corridor (CCI-ILSTC). Keynote remarks were also delivered by Mr Ravi Menon, Managing Director of the Monetary Authority of Singapore (MAS), and by ASEAN Deputy Governors. Financial institutions and corporates from ASEAN participated virtually, alongside Chinese regulators and financial institutions in the Western Region of China in Chongqing. Panel sessions on the second day of the Summit will discuss key areas of common interest such as cross-border financing, green and sustainable finance, and financial technology. Mr Menon in his remarks proposed to make the CCI-ILSTC trade route between China and ASEAN fully digitalised end-to-end, and to be the first of its kind in the world. This would make trade flows and financing smoother, cheaper and faster between both regions, and create opportunities to tap on FinTechs from China and ASEAN for innovative solutions to build this digital trade corridor. Mr Menon and Mayor Tang also witnessed a virtual signing of six MOUs on cross-border financial services cooperation, financial technology and talent training and exchanges between Chongqing and Singapore corporates (please see Annex A). In addition, the CCI Financial Sub-Committee Advisory Group (CAG), which comprises financial leaders from Singapore and China, will hold its inaugural meeting tomorrow to explore ways to deepen financial services cooperation between Singapore and Chongqing (please see Annex B).” **Published: 23 November 2020**

Singapore	
$35 Million Grant to Help Small Financial Institutions Adopt Digital Solutions for Data Reporting	Press release dated 9 November 2020 as follows: “The Monetary Authority of Singapore (MAS) announced today the launch of a S$35 million Productivity Solutions Grant (PSG) for the financial services sector to help smaller financial institutions adopt digital solutions for more streamlined data reporting to MAS. The grant is currently applicable to banks and will be subsequently expanded to include insurers and capital market intermediaries. The PSG provides funding support for smaller financial institutions to adopt regulatory reporting solutions from pre-approved managed service providers. These technologies will facilitate more efficient processes for the preparation and submission of data, in line with regulatory requirements. Please refer to the Annex for the list of pre-approved managed service provider solutions. The PSG will co-fund up to 30% of qualifying expenses for the adoption of digital solutions from the pre-approved managed service solution providers, capped at $250,000 per project for banks. Eligible banks can now apply for funding via the Business Grants Portal. This grant is part of MAS’ recent initiatives to support smaller financial institutions in their efforts to improve productivity. Smaller financial institutions that wish to adopt digital solutions outside of regulatory reporting can consider the Digital Acceleration Grant (DAG). Please refer to the MAS website for more information about the DAG. Mr Sopnendu Mohanty, Chief FinTech Officer, MAS, said, “The co-funding support for the adoption of regulatory reporting solutions will help smaller financial institutions leverage technology to better meet regulatory obligations. There are now a range of grant schemes specific to smaller financial institutions. Together, these schemes provide strong support for these financial institutions to adopt solutions that improve their operational capabilities in various domains.” **Published: 9 November 2020**

Korea	
FSC proposes new rules on AML requirements on virtual assets	Press release as follows: "The FSC introduced a proposal of new rules to provide further details of anti-money laundering (AML) requirements on virtual assets under the revised Act on Reporting and Using Specified Financial Transaction Information ("the Act" hereinafter), which is scheduled to go into effect on March 25, 2021. The proposal will be available for public notice and comment for forty days from November 3 to December 14, 2020. Key provisions *Scope of Virtual Asset Service Providers* The Act defines "virtual asset service provider (VASPs)" as business entities which engage in one or more of the following activities or operations: (i) purchase and sales of virtual assets; (ii) exchanges between virtual assets; (iii) transfer of virtual assets; (iv) safekeeping and administration of virtual assets; (v) intermediation or brokerages of virtual asset transactions; exchange of virtual assets; and (vi) other activities specified by the enforcement decree. The enforcement decree provides examples of VASPs subject to the Act such as virtual asset trading service providers, safekeeping/administration service providers, and digital wallet service providers. *Scope of Virtual Assets* The Act defines "virtual assets (VAs)" as digital tokens with economic value that can be digitally traded or transferred. The Act also provides a list of items which are not included in the scope of virtual assets: (i) digital tokens that cannot be exchangeable for fiat currencies, commodities and services and whose purpose of use is limited by the issuer; prepaid electronic payment methods or e-money; electronically registered stocks; electronic notes; electronic B/L; and others specified by the enforcement decree given the formats and features of transactions. The enforcement decree stipulates that prepaid cards, mobile gift cards and electronic bonds are excluded from the scope of VAs. *Requirements for Real-Name Accounts* The Act mandates that VASPs use real-name accounts in their financial transactions with customers. The enforcement decree prescribes additional requirements for VASPs to open real-name accounts with financial institutions (FIs): (i) separation of customers' deposit; (ii) a certificate of Information Security Management System by KISA; (iii) no record of fines and other penalties at least within 5 years; (iv) separate management of customers' transaction records; and (vi) assessment of money laundering risks associated with VASPs by FIs.

	'Travel Rules' for Virtual Assets The Act applies the so-called 'travel rule' to VASPs in transactions of VA transfer. Under the travel rule, the originating VASP is required to provide the beneficiary with information about VA transfer. The enforcement decree stipulates that the travel rule will apply starting from March 25, 2022, to give VASPs enough time to introduce common solutions for information sharing. Under the enforcement decree, a VA transfer transaction which amounts to more than KRW1 million would become subject to the travel rule." **Published: 3 November 2020**

Hong Kong	
Consultation to bring non-securities virtual assets under SFC oversight opens	The Financial Services and Treasury Bureau (**FSTB**) issued a consultation paper on 3 November 2020 seeking comments on its proposal (the **New Regs**) to amend Hong Kong's anti-money laundering legislation to bring exchanges that offer virtual assets (**VAs**) that are not securities within the regulatory remit of Hong Kong's securities regulator, the Securities and Futures Commission (**SFC**), in line with recommendations issued in 2019 by the Financial Action Task Force (**FATF**) in relation to virtual asset service providers (**VASPs**). By way of recap, the SFC already has a regulatory framework in place for virtual asset trading platforms (the **2019 Framework** – see our blog entry on its launch in November 2019 here). This licensing regime works on an opt-in basis, and is only available to exchanges that offer trading in at least one token that qualifies as a security under the Hong Kong securities regime. As a result, exchanges that offered only payment cryptocurrencies such as bitcoin were not covered. The New Regs are designed to close this regulatory gap and seek to regulate providers of non-securities virtual asset services for the first time. The aim, as stated by Ashley Alder, Chief Executive of the SFC during Hong Kong Fintech Week, is to ensure that the same regulatory standards as the 2019 Framework apply. **What is covered by the New Regs?** This has thrown the unwary reader. The consultation paper suggests initially that all VASPs are in scope (which, following FATF parlance would include not just crypto-to-crypto and crypto-fiat exchanges, but also business transferring and safekeeping VAs as well as those providing financial services related to an offer or sale of VAs). However, when describing the regulated activity that will be caught, the reference is to businesses operating a *VA exchange* (defined as any trading platform which is operated for the purpose of allowing an offer or invitation to be made to buy or sell any VA in exchange for any money or any VA (whether of the same or different type), and which comes into custody, control, power or possession of, or over, any money or any VA at any point in time during its course of business). Does this mean other service providers (e.g. a free standing VA custody service) which would fall within the FATF definition of VASPs are not caught? They seem to be – the consultation paper expressly refers to seeing "a case to tailor a licensing regime for VA exchanges" and that VA activities conducted outside VA exchanges in Hong Kong are "negligible". The paper goes to conclude that the Government will consider the need for regulation when the market is ready. For completeness, note that the New Regs will align the definition of VAs[1] with that in the FATF requirements, and will include stablecoins. Excluded are digital representations of fiat currencies (including CBDCs) and financial assets such as securities and structured products that are already regulated by the SFC. In addition, closed loop, limited purpose items that are non-transferable, non-exchangeable and non-fungible (e.g. air miles, credit card rewards, gift cards, customer loyalty programmes, gaming coins etc.) will also be carved out.

What are the required standards?

All responsible officers (**ROs**) and ultimate owners will need to meet the fit & proper test, and only locally incorporated companies can apply. The RO regime will follow that of other SFC-licensed financial services firms – i.e. the licensed VASP will need to appoint at least two ROs, and all executive directors must be made ROs upon approval by the SFC.

In addition to being required to observe the statutory AML/CTF requirements under the anti-money legislation, licensed VASPs will be subject to a robust set of regulatory requirements which will be imposed by way of licensing conditions which include:

- At the initial stage, services can only be offered to professional investors (i.e. institutional investors or those that meet specified asset threshold tests) – this rules out almost all of the retail market other than HNW individuals
- (As yet unspecified) financial resources requirements
- Governance, knowledge and risk management requirements
- Segregation of client assets
- Listing and trading policies
- Financial reporting and disclosure
- Prevention of market manipulation and market abuse
- Prevention of conflicts of interest

The SFC will be granted far-reaching supervisory and intervention powers which we expect to be in line with other financial services firms under its remit. Sanctions for non-compliance are extensive and include criminal penalties.

Important for our friends overseas

The consultation paper proposes that in order to protect local investors from being exposed to risks from unlicensed VA exchanges, the proposal is to prohibit any person from actively marketing, whether in Hong Kong or elsewhere, to the public of Hong Kong a regulated VA activity or a similar activity elsewhere (i.e. services associated with a VA exchange), unless the person is properly licensed and regulated by the SFC for the purpose of conducting the regulated VA activity.

It is not clear what “similar activity elsewhere” means – potentially this would mean that wider services are caught offshore than onshore?

The term “active marketing” will be interpreted in accordance with the equivalent term that is used in relation to offshore to onshore marketing for other financial services firms within the SFC’s remit. We can provide further guidance as needed.

Food for thought

1. It makes sense for the new proposal to be rolled into the amendment of the anti-money laundering legislation, as Hong Kong is required to implement the 2019 FATF standards for VASPs. This will make entities regulated under the New Regs criminally liable for failures to implement client due diligence and record-keeping requirements. It will be important to ensure that the new regime matches that for already licensed VA platforms to create a level playing field.
2. Any VA adjacent businesses will need to check their business model carefully. As set out above, we don't think some of these VASP businesses will be caught at the outset.
3. The professional investor only requirement will be a big blow to the businesses dealing in "traditional" crypto assets such as BTC.
4. Beware active marketing restrictions: even overseas exchanges will need to tread a very fine line when onboarding Hong Kong customers. We will need to see some clarification on what "similar activity elsewhere" means.
5. Who are ultimate owners? It is not yet clear whether the ultimate owners will follow the substantial shareholder definition used in the securities legislation for other SFC regulated businesses (broadly > 10% direct and > 35% indirect ownership or control up the chain)?
6. Will all the other requirements in the 2019 Framework apply? See also point 1. above.
7. No word on derivatives and whether margin will be permitted.

The consultation paper is available here, and responses can be submitted until 31 January 2021. If you want to discuss, please contact Etelka Bogardi (etelka.bogardi@nortonrosefulbright.com) or Amy Chung (amy.chung@nortonrosefulbright.com).

[1]*The proposed definition is: [A] digital representation of value that is expressed as a unit of account or a store of economic value; functions (or is intended to function) as a medium of exchange accepted by the public as payment for goods or services or for the discharge of a debt, or for investment purposes; and can be transferred, stored or traded electronically.*

Published: 4 November 2020

US	
SEC publishes statement on WY Division of Banking's "NAL on Custody of Digital Assets and Qualified Custodian Status"	On 9 November 2020, the SEC published the following statement requesting comments from the public: "The Staff of the Division of Investment Management (the "Staff"), in consultation with the FinHub Staff, issue this statement following the publication of a recent letter by the Wyoming Division of Banking that included the Wyoming Division of Banking's views relating to the definition of "bank" and "qualified custodian" under the Investment Advisers Act of 1940 (the "Advisers Act") and rule 206(4)-2 thereunder (the "Custody Rule"). The Wyoming Division of Banking letter seeks to address questions regarding custody of digital assets under federal law and state law by stating that a Wyoming-chartered public trust company is permitted to provide custodial services for digital and traditional assets under Wyoming law. For example, the letter states that the entity may serve as a "qualified custodian" under the Custody Rule based on the definition of "bank" under the Advisers Act. The letter further states that the Wyoming Division of Banking would not recommend an investigation or enforcement action to the Securities and Exchange Commission (the "Commission"). In this regard, the letter seeks to provide interpretive guidance on a critical component of the Custody Rule, the definition of a "qualified custodian." The Wyoming Division of Banking letter recognizes that it is addressing issues of both federal and state law and expressly states that the letter "should not be construed to represent the views of the SEC or any other regulatory agency." The Staff is issuing this statement to encourage interested parties to engage with the Staff directly on the application of the Custody Rule to digital assets, including with respect to the definition of "qualified custodian" under the rule. SEC-registered investment advisers have important regulatory obligations under the Custody Rule, and they are expected to exercise care with respect to client assets with which they are entrusted. Determining who qualifies as a qualified custodian is a complicated, and facts and circumstances based, analysis given the critical role qualified custodians play within this framework by safeguarding the client assets entrusted to investment advisers. The Commission has limited the types of financial institutions that may act as qualified custodians to those institutions that possess key characteristics, including being subject to extensive regulation and oversight, that help to ensure that client assets are adequately safeguarded. The Staff has engaged extensively with investment advisers, custodians and other market participants who are interested in the application of the Custody Rule to digital assets.[7] Our engagement has also centered on soliciting feedback on issues related to the development of staff recommendations to amend the Custody Rule. If you would like to let the Staff know your views regarding these issues, we are providing an email box as a convenient method for you to communicate with us; we continue to communicate through the following address: IMOCC@sec.gov and insert "Custody Rule and Digital Assets" in the subject line. In particular, we have been interested in the following on the topic of qualified custodians:

	• Do state chartered trust companies possess characteristics similar to those of the types of financial institutions the Commission identified as qualified custodians? If yes, to what extent? • In what ways are custodial services that are provided by state chartered trust companies equivalent to those provided by banks, broker-dealers, and futures commission merchants? In what ways do they differ? Would there be any gaps in – or enhancements to – protection of advisory client assets as a result of a state chartered trust company serving as qualified custodian of digital assets or other types of client assets? • How do advisers assess whether an entity offering custodial services satisfies the definition of qualified custodian in the Custody Rule? What qualities does an adviser seek when entrusting a client's assets to a particular custodian? Do the qualities vary by asset class? That is, are there qualities that would be important for safeguarding digital assets that might not be important for safeguarding other types of assets? If so, what qualities and why? Should the rule prescribe different qualities based on asset class, or should the rule take a more principles-based approach and allow advisers to exercise care in selecting a custodian? • Are there entities that currently satisfy the definition of qualified custodian under the Custody Rule that should not be included within that definition because they do not meet the policy goals of the rule? If so, which ones and why? Conversely, are there entities that currently do not satisfy the definition of qualified custodian but should? If so, which ones and why? Submissions in response to this request will be made publicly available, and persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. Please submit only information that you wish to make publicly available." **Published: 9 November 2020**

International developments

G20

G20 leaders adopted the G20 Riyadh Summit Leaders Declaration on 22 November 2020 following the two-day summit. Extract as follows:

"17. While responsible technological innovations can deliver significant benefits to the financial system and the broader economy, we are closely monitoring developments and remain vigilant to existing and emerging risks. No so-called 'global stablecoins' should commence operation until all relevant legal, regulatory and oversight requirements are adequately addressed through appropriate design and by adhering to applicable standards. We welcome the reports on the so-called 'global stablecoins' and other similar arrangements submitted by the FSB, the Financial Action Task Force (FATF) and the IMF. We look forward to the standard setting bodies engaging in the review of existing standards in light of these reports and making adjustments as needed. We look forward to the IMF's further work on macro-financial implications of digital currencies and socalled 'global stablecoins'.

18. We support the Anti-Money Laundering (AML)/Counter-Terrorist Financing (CFT) policy responses detailed in FATF's paper on COVID-19, and reaffirm our support for the FATF, as the global standard-setting body for preventing and combating money laundering, terrorist financing and proliferation financing. We reiterate our strong commitment to tackle all sources, techniques and channels of these threats. We reaffirm our commitment to strengthening the FATF's Global Network of regional bodies, including by supporting their expertise in mutual evaluations, and call for the full, effective and swift implementation of the FATF standards worldwide. We welcome the strengthening of the FATF standards to enhance global efforts to counter proliferation financing.

19. Digital Economy: Connectivity, digital technologies, and policies have played a key role in strengthening our response to the pandemic and facilitating the continuation of economic activity. We take note of the Policy Options to Support Digitalization of Business Models during COVID-19. We acknowledge that universal, secure, and affordable connectivity, is a fundamental enabler for the digital economy as well as a catalyst for inclusive growth, innovation and sustainable development. We acknowledge the importance of data free flow with trust and cross-border data flows. We reaffirm the role of data for development. We support fostering an open, fair, and non-discriminatory environment, and protecting and empowering consumers, while addressing the challenges related to privacy, data protection, intellectual property rights, and security. By continuing to address these challenges, in accordance with relevant applicable legal frameworks, we can further facilitate data free flow and strengthen consumer and business trust. We recognize the importance of working with stakeholders to connect humanity by accelerating global internet penetration and bridging digital divides. We recognize the importance of promoting security in the digital economy and welcome the G20 Examples of Practices Related to Security in the Digital Economy. We will continue to promote multi-stakeholder discussions to advance innovation and a human-centered approach to Artificial Intelligence (AI), taking note of the Examples of National Policies to Advance the G20 AI Principles. We welcome both the G20 Smart Mobility Practices, as a contribution to the well-being and resilience of smart cities and communities, and the G20 Roadmap toward a Common Framework for Measuring the Digital Economy."

Published: 22 November 2020

Financial Stability Board (FSB)

Press release dated 9 November as follows:

"The Financial Stability Board (FSB) today published a discussion paper for public consultation, on Regulatory and Supervisory Issues Relating to Outsourcing and Third-Party Relationships. The discussion paper draws on findings from a survey conducted among the FSB members.

Financial institutions have relied on outsourcing and other third-party relationships for decades. However, in recent years, the extent and nature of interactions with a broad and diverse ecosystem of third parties has evolved, particularly in the area of technology. The financial sector's recent response to COVID-19 highlights the benefits as well as the challenges of managing the risks of financial institutions' interactions with third parties. The pandemic may have also accelerated the trend towards greater reliance on certain third-party technologies.

The discussion paper identifies a number of issues and challenges. For instance, financial institutions have to ensure that their contractual agreements with third parties grant to them, as well as to supervisory and resolution authorities, appropriate rights to access, audit and obtain information from third parties. These rights can be challenging to negotiate and exercise, particularly in a multi-jurisdictional context. The management of sub-contractors and supply chains is another challenge that was highlighted in the context of financial institutions' response to COVID-19.

There is a common concern about the possibility of systemic risk arising from concentration in the provision of some outsourced and third-party services to financial institutions. These risks may become higher as the number of financial institutions receiving critical services from a given third party increases. Where there is no appropriate mitigant in place, a major disruption, outage or failure at one of these third parties could create a single point of failure with potential adverse consequences for financial stability and/or the safety and soundness of multiple financial institutions. Given the cross-border nature of this dependency, supervisory authorities and third parties could particularly benefit from enhanced dialogue on this issue.

The FSB welcomes comments and responses to the questions set out in the discussion paper by 8 January 2021. Consultation responses will help facilitate a discussion on current regulatory and supervisory approaches to the management of outsourcing and third-party risks. Consultation responses will be published on the FSB's website unless respondents expressly request otherwise."

Published: 9 November 2020

Bank for International Settlements (BIS)

On 5 November 2020, BIS published a paper on the development of FinTech in Latin America. The report outlines the fintech landscape in the region and discusses the current regulatory frameworks, along with region-wide challenges in developing fintech.

Published: 5 November 2020

On 9 November 2020, BIS published a working paper on the positive effects of joining a regulatory sandbox on a FinTech firm's ability to raise funding. Specifically, the paper compared capital raised from 2014 to 2019 by firms which joined the UK FCA regulatory sandbox against those which did not, and found that entry into the sandbox is associated with an increase of around 15% in average amount of funding raised.

Published: 9 November 2020

On 24 November 2020, BIS published a working paper on the market development of "stablecoins" and discuss potential regulatory responses. In particular, it draws the distinction between existing stablecoins and the proposed global stablecoins, such as Facebook's revised Libra 2.0 project which seeks to challenge existing means of digital payment for e-commerce. In light of the above, the paper considers the effectiveness and benefits of various regulatory responses including "embedded supervision" and the issuance of central bank digital currencies.

Published: 24 November 2020

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