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Global Blockchain Business Council

Monthly Fintech Updater, April

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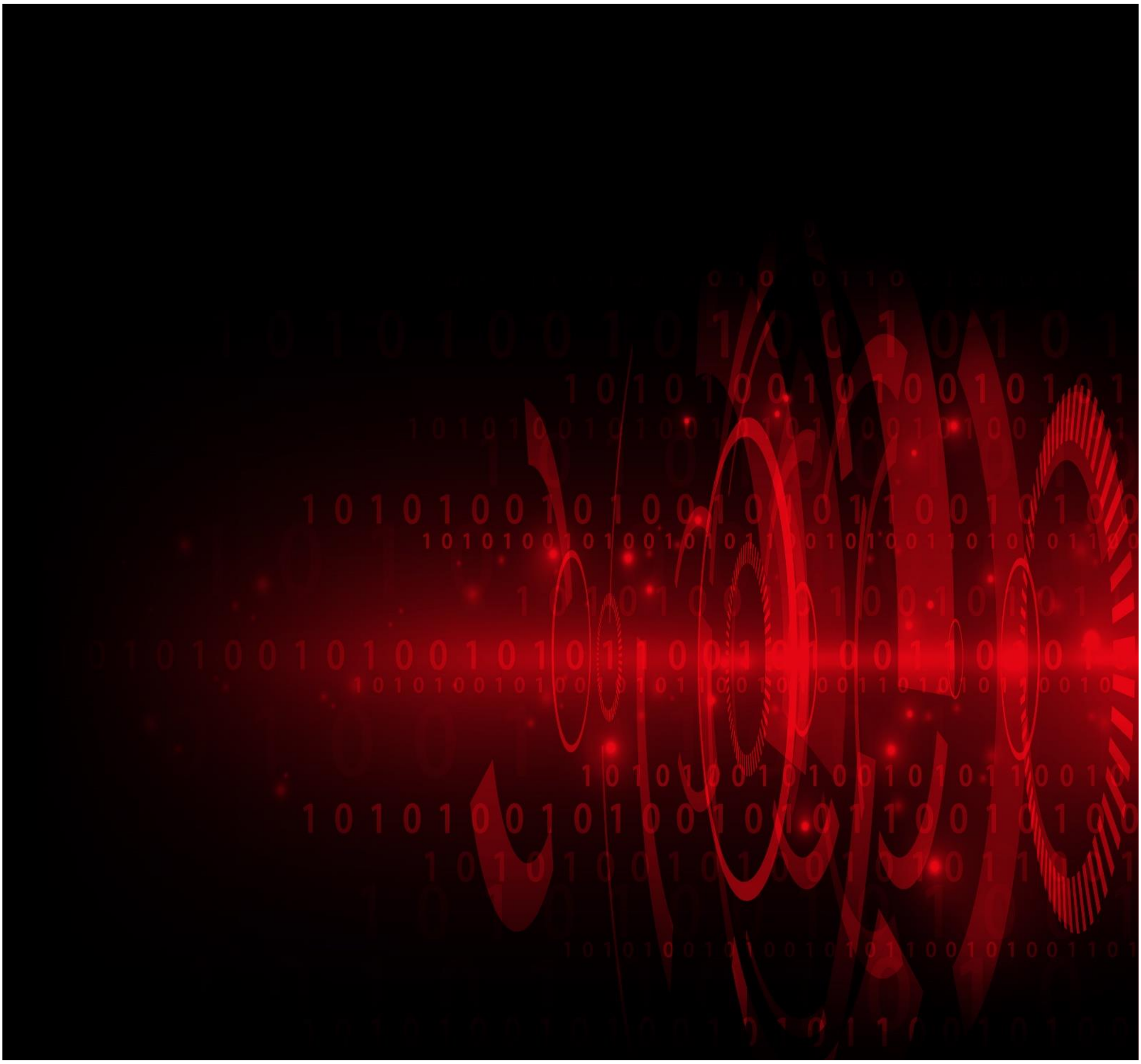

Global, EU, UK and US Regulatory developments

EU	
European Central Bank publishes the results of the public consultation on a digital euro	On 14 April, the European Central Bank (ECB) published a comprehensive analysis of its public consultation on a digital euro. The analysis confirms, by and large, our initial findings: what the public and professionals want the most from such a digital currency is privacy (43%), followed by security (18%), the ability to pay across the euro area (11%), no additional costs (9%) and offline usability (8%). "A digital euro can only be successful if it meets the needs of Europeans," says ECB Executive Board member Fabio Panetta. "We will do our best to ensure that a digital euro meets the expectations of citizens highlighted in the public consultation." Privacy is the most important feature of a digital euro for both the public and professionals, especially merchants and other companies. Both groups support requirements to avoid illicit activities, with fewer than one in ten responses from members of the public showing support for full anonymity. More than two-thirds of respondents acknowledge the importance of intermediaries providing innovative services that allow access to a digital euro and indicate that it should be integrated into existing banking and payment systems. They would like additional services provided on top of basic digital euro payments. Around a quarter of respondents take the view that a digital euro should make cross-border payments faster and cheaper. They want the digital euro to be usable outside the euro area, though with limits. The ECB received many technical suggestions from the respondents. According to a quarter of individual respondents, end-user solutions comprising (smart) cards or a secure element in smartphones would be preferred to facilitate cash-like features. Almost half mention a need for holding limits, tiered remuneration, or a combination of the two, to manage the amount of digital euro in circulation. A similar share of professional respondents agree. The consultation was launched on 12 October 2020 and concluded on 12 January 2021, receiving over 8,200 responses – a record participation for an ECB public consultation. A large majority of respondents were private citizens (94%). The remaining participants were professionals, including banks, payment service providers, merchants and tech companies. Most responses came from Germany (47%), Italy (15%) and France (11%). The answers are not necessarily representative of the views of the EU population as the consultation was open to everyone, and respondents participated on their own initiative. Still, they provide important input into the ECB's analytical and experimental work and into the upcoming decision of the Governing Council on whether to launch a formal investigation phase in view of the possible issuance of a digital euro. **Published:14 April**
DORA review: Member States consider inclusion of payment card networks and retail payment infrastructures.	On 28 April, the Portuguese Presidency of the Council held a meeting of a Council working group in order to continue its legislative review of the proposed regulation on digital operational resilience for the financial sector (**DORA**). During the meeting, Member States discussed certain issues relating to the scope of the proposed legislation, as well as select provisions under Chapter V (managing of information and communication technology **(ICT**) third-party risk). In respect of the scope of the draft legislation, the Presidency put forward for Member States' consideration two non-papers, namely a joint non-paper authored by a group of Member States on provisions concerning ICT infrastructures enabling retail payment clearing and a non-paper prepared by France on proposed inclusion within the scope of DORA of payment card schemes.

	Key points to note: **1. Scope** In its non-paper mentioned above, France noted that payment card networks play a major role in the payment chain and that large-scale, sophisticated attacks against the main providers have already occurred in the past. It suggests the need for extension of the scope of DORA to cover payment card networks by arguing that an attack on such market participants could have major consequences for financial stability and for the smooth functioning of payments in the EU, and by highlighting lack of consistency and clarity in supervisory regime for card payment networks. In addition, the group of Member States in their joint paper pointed to evidence that the ICT infrastructures enabling retail payment clearing are some of the main sources of systemic cyber risk for the financial sector. Noting the lack of harmonised EU legal framework for addressing digital operational resilience for providers of such services, they argued in favour of inclusion of payment system infrastructures in the scope of DORA, and they proposed some drafting amendments for consideration of the working group. **2. Contractual arrangements for the use of ICT services** The Presidency proposed certain drafting amendments for Member States' consideration, addressing – among other issues – responsibilities of financial entities prior to entering a contractual arrangement. It also proposed to amend provisions pertaining to an obligation of financial entities to record certain information in the Register of Information. **3. Oversight framework** The Presidency put forward several points for Member States' review. Among other issues it sought to receive Member States' final views as to which European Supervisory Authority should be designated a Lead Overseer for the purpose of the establishment of the oversight framework for critical third-party ICT service providers. It also proposed further drafting amendments concerning criticality assessment procedure for third party service providers, the rules of procedure of the oversight forum, reporting by third party service providers and the composition of the Joint Examination Team. **Published: 29 April**
UK	
Ambitious plans to boost UK FinTech and financial services set out by Chancellor	On 19 April 2021, the Chancellor, Rishi Sunak, speaking at FinTech week, set out proposals to enhance the UK's competitive advantage in FinTech, from regulatory support and reforms to help firms grow to a new taskforce to lead the UK's work on a central bank digital currency. Building on opportunities generated since the UK's departure from the EU, the Chancellor confirmed the UK would be taking forward many of the recommendations made in the recent FinTech Review, led by Ron Kalifa, and the Listing Review, led by Lord Hill. Chancellor of the Exchequer, Rishi Sunak said: *"Our vision is for a more open, greener, and more technologically advanced financial services sector. The UK is already known for being at the forefront of innovation, but we need to go further. The steps I've outlined today, to boost growing FinTech, push the boundaries of digital finance and make our financial markets more efficient, will propel us forward. And if we can capture the extraordinary potential of technology, we'll cement the UK's position as the world's pre-eminent financial centre".*

In overview the reforms include:

- new FCA 'scale box' and Centre for Finance, Innovation and Technology to boost growth;
- UK to lead digitisation of finance with central bank digital currency taskforce and support for new technologies and infrastructures;
- additional plans for capital markets reform to enhance open and dynamic financial centre.

1. **Supporting growing firms and FinTech hubs across the UK**

To support FinTech firms to scale up, the Financial Conduct Authority (FCA) will take forward a 'scale box' - a package of measures to enhance its pioneering regulatory sandbox, which has been invaluable for allowing start-ups to test new propositions, and to provide a one-stop shop for growth stage firms. It will also launch the second phase of its Digital Sandbox to enable firms to test concepts that tackle sustainability and climate change-related challenges, helping to deliver a greener financial sector that supports the transition to net zero.

The Chancellor also backed the creation of an industry-led Centre for Finance, Innovation and Technology (CFIT) and committed to work with regional and national FinTech bodies to make it a reality. The CFIT would work closely with the regional hubs to identify and address sector challenges in support of FinTech growth across the UK. These initiatives build on announcements made at Budget 2021 to help FinTech firms access the talent they need, which included a new 'scale up' visa stream allowing skilled people with a job offer at a recognised UK 'scale up' to qualify for a fast-track visa without sponsorship or third party endorsement.

2. **Pushing the boundaries of digital finance**

The Chancellor also set out new initiatives to ensure the UK remains at the cutting edge of digitalising financial services. A new Taskforce, bringing together HM Treasury and the Bank of England, will be established to explore a possible UK central bank digital currency (CBDC). Two new forums will also be established to engage technical experts, and key stakeholders (including financial institutions, merchants, business users, civil society groups, and consumers) through the process.

To support private sector innovation, firms exploring how to use technologies like distributed ledger (DLT) to improve financial market infrastructure will have access to a new sandbox. This new regime will be inspired by the FCA's sandbox and HM Treasury will work together with the Bank of England and the FCA to deliver this. In addition, the Bank of England has launched a new 'omnibus' account to allow access to innovative financial market infrastructure providers that can support delivery of faster, cheaper, 24-hour wholesale payment and settlement using central bank money.

3. **Reforms to listing and capital markets rules**

In a further boost for innovative companies seeking to raise money in the UK, the Chancellor confirmed how the Government will take forward all the recommendations directed towards it by the Listing Review. As part of this, the UK will consult on changes to its prospectus regime – which governs the information a company must publish when raising finance - this summer, to ensure the rules are not overly burdensome but provide investors with the information they need, tailored to the type of transaction.

The consultation will also explore how to make it easier for companies to provide the forward-looking financial information investors want to see, which would particularly benefit

	technology and life sciences companies with high-growth potential, and their investors. A group of experts will also be convened to look at how to improve the efficiency of rights issues – when a listed company invites its existing shareholders to purchase additional new shares – and the role technology could play in streamlining the process, as recommended by the Review. Separately, ambitious reforms to the UK's wider capital markets regime will also be consulted on this summer, including proposals to delete the share trading obligation and double volume cap. The consultation process aims to deliver a rulebook that is fair, outcomes-based and supports competitiveness, whilst ensuring the UK maintains the highest regulatory standards. The Government will set out its detailed response to the FinTech Review in a written statement to Parliament shortly. The FinTech Review final report and recommendations can be found here. **Published: 19 April**
BoE statement on Central Bank Digital Currency	On 19 April, the Bank of England (BoE) and HM Treasury announced the joint creation of a Central Bank Digital Currency (CBDC) taskforce to coordinate the exploration of a potential UK CBDC. The taskforce will: • Coordinate exploration of the objectives, use cases, opportunities and risks of a potential UK CBDC. • Guide evaluation of the design features a CBDC must display. • Support a rigorous, coherent and comprehensive assessment of the overall case for a UK CBDC. • Monitor international CBDC developments to ensure the UK remains at the forefront of global innovation. The BoE is also creating: • A CBDC Engagement Forum to engage senior stakeholders and gather strategic input on all non-technology aspects of CBDC. It will consider issues such as – but not limited to – 'use cases' for CBDC, functional needs of CBDC users, roles of public and private sectors in a CBDC system, financial & digital inclusion considerations, and data & privacy implications. • A CBDC Technology Forum to engage stakeholders and gather input on all technology aspects of CBDC from a diverse cross-section of expertise and perspectives. The BoE is also establishing a CBDC Unit. This new division of the BoE will lead its internal exploration around CBDC. It will also lead the BoE's external engagement on CBDC, including with other UK and international authorities. The Government and the BoE have not yet made a decision on whether to introduce a CBDC in the UK, and will engage with stakeholders on the benefits, risks and practicalities of doing so.

FCA speech: Levelling the playing field – innovation in the service of consumers and the market	On 20 April 2021, the FCA published a speech given by its CEO, Nikhil Rathi, during the FinTech Week event. The speech is entitled Levelling the playing field – innovation in the service of consumers and the market. Highlights in the speech include: • The Chancellor has announced that the FCA will be taking forward the Kalifa Review's recommendation for a Scalebox. This will draw on lessons from Project Innovate, which has shown that once authorised, firms continue to need higher levels of support from the regulator and, often, enhanced oversight. • By autumn, the FCA will develop plans to create a regulatory 'nursery'. This will create a period of enhanced oversight as newly authorised firms develop and grow used to their regulatory status. • The FCA will shortly begin allowing year-round applications for the Sandbox and better advertise the support it already offers those firms looking to build out their innovative offering. • Working in partnership with the Corporation of the City of London, the FCA will also refine the Digital Sandbox, successfully piloted last year and focus, specifically, on sustainability. The FCA has called on the Government to take action to provide better financial protection for consumers online. Online search and social media firms need to take greater responsibility for their role in connecting consumers with investment offers. The FCA sees no reason why different standards should apply to a search engine or social media compared to a newspaper. The FCA is currently reviewing how the Regulatory Decisions Committee functions. **Published: 20 April 2021**

Exporting boost to UK FinTech sector to help build back better	On 19 April, the Department for International Trade (DIT) has announced a series of measures that will help promote the UK as a global hub for FinTech and digital service and help boost the UK's presence in overseas markets. Marking this year's UK FinTech Week, new support for the industry will help businesses more directly, making sure that they have the capabilities to export their products so UK firms can become world leaders in FinTech and industries of the future. This includes creating a new bespoke Export Academy that will give businesses free advice on issues such as legal, tax, regulatory, accounting and market entry, making their exporting journey shorter and smoother. The UK is home to a diverse FinTech talent pool, innovation, and capability. A new DIT FinTech Champions scheme is also being established that will tap into that pool and work with industry leaders to elevate the UK's status as a global FinTech hub, as well as promote expansion around the world and help businesses scale-up and up-skill. The UK is already a world leader in this space, owning more than 10% of the global market share and is home to approximately 1,600 FinTech companies, which is expected to more than double by 2030. Cementing the UK's position as a global trailblazer in the wider tech sector, the FinTech industry is worth more than £11 billion a year to the UK economy and supports around 76,000 jobs across the country. With an increasing number of FinTech firms exporting globally from the UK, DIT is helping the sector take advantage of our global trade links, ultimately creating more jobs and driving further investment into all corners of the country. Minister for Exports, Graham Stuart MP, said: The UK is the best place to start and grow a FinTech company, so I'm pleased to see even more support for this world-renowned sector which is already worth more than £11 billion to the UK economy. The new FinTech Export Academy programme will take selected high potential firms and give them intensive support to allow them to scale-up faster and reach international markets ahead of their competitors. Meanwhile our innovative FinTech Champion scheme will harness already successful firms to provide advice and support to those who are breaking through and act as global ambassadors for the UK FinTech scene. The package of measures announced today are in response to the publication of the Kalifa Review in February 2021, calling for further support to the ongoing success of the UK's FinTech industry. It also comes after DIT recently announced the launch of four regional trade hubs as part of a major export drive, which will see DIT focussed on promoting British exports from all parts of the UK, to help level up the country, build back better, and support a resilient economy as outlined in the government's Integrated Review. Earlier this month, government-led research showed exports supported 6.5m jobs across the UK, 74% of which were outside London. The research estimated jobs directly and indirectly supported by exports paid around 7% higher than the national median, with Office for National Statistics estimating that goods exporting businesses are also 21% more productive. **Published: 19 April**
FCA updates webpage on the Digital Sandbox pilot	On 28 April 2021, the FCA updated its webpage regarding The Digital Sandbox pilot by adding a new section on an evaluation report. The FCA explains that the report sets out the findings of the pilot, including how it accelerated the development of innovative products and solutions within financial services, as well as key lessons learned from the pilot phase. The FCA also announces that it will be launching the second phase of the Digital Sandbox pilot focused on sustainable finance later this year. It will also explore, with industry, viable sustainable operating models for a future, permanent version of the digital sandbox. **Published: 28 April**

Turkey	
Turkey's central bank bans the use of crypto assets in payments	On 16 April, the Turkish Central bank introduced the "Regulation on the Disuse of Crypto Assets in Payments." The regulation bans the use of crypto assets in payments but trading in them continues to be permitted. The price of bitcoin fell in response to the news as fears grew that other countries might take similar steps; indeed, countries like Morocco and India have already done so. The central bank's press release is as follows: Crypto assets entail significant risks to the relevant parties due to the following reasons: • They are neither subject to any regulation and supervision mechanisms nor a central regulatory authority. • Their market values can be excessively volatile. • They may be used in illegal actions due to their anonymous structures. • Wallets can be stolen or used unlawfully without the authorization of their holders, and • Transactions are irrevocable. Recently, some initiatives have emerged regarding the use of these assets in payments. It is considered that their use in payments may cause non-recoverable losses for the parties to the transactions due to the above-listed factors and they include elements that may undermine the confidence in methods and instruments used currently in payments. Accordingly, pursuant to the authority vested by the Law No:1211 on the Central Bank of the Republic of Turkey (CBRT) and the Law No. 6493 on Payment and Securities Settlement Systems, Payment Services and Electronic Money Institutions, the CBRT has introduced "Regulation on the Disuse of Crypto Assets in Payments". The ban is set to take effect on 30 April. **Published: 16 April**
South Korea	
7th Digital Finance meeting discusses guidelines on the use of ai technologies in financial services	On 13 April, Vice Chairman Doh Kyu-sang held the 7th consultative body meeting on digital finance via teleconference and discussed potential risks of digital transformation in financial sectors, establishing guidelines on the use of AI technologies in financial services and plan for the operation of the consultative body subcommittees. At the meeting, Vice Chairman Doh spoke about the progress made by the consultative body meetings as they helped to resolve differences of interests between big techs, FinTechs and financial companies. Amid a deepening digital convergence taking place throughout the economy, Vice Chairman Doh stressed the importance of continuing with efforts to seek innovative solutions in financial sectors. The following is a summary of Vice Chairman Doh's remarks. **1. Digital Transformation and Potential Risks in Financial Sectors** Digital transformation is an inevitable change throughout the world. Although there are positive effects, such as expanded consumer choice and increased efficiency, there also needs to be policy efforts to prepare for potential risks. As such, the FSC will first strengthen risk management on the impact of a growing number of new players entering the financial markets. As competition between big techs and financial institutions deepens, the authorities will keep a close eye on for any changes in their sales behavior, potential damages to consumers and the possibility of debilitating soundness of financial companies.

Second, the FSC will lay the groundwork upon which new technologies can be used safely. The authorities will work to ensure transparency and fairness in the process of using AI and other innovative technologies in financial services, while closely inspecting for the possibility of skewness which may result from financial companies using similar algorithms. Third, the authorities will closely monitor financial sector risks, such as the possibility of risk transfer in the process of non-financial firms engaging in financial services or the growth of shadow financing, etc.

2. **Guidelines on the Use of AI in Financial Services**

The FSC will draw up its policy on the use of AI technologies according to the following three objectives. First, with regard to the AI-related infrastructure development, the authorities will set up a big data infrastructure and provide testbeds through which the validity of AI algorithms can be verified. Second, in order to improve fairness and transparency, the FSC will come up with guidelines that can provide a balanced solution to the issue of bias in data processing and decision making. Third, the FSC will work to protect consumers from newly emerging financial crimes. The authorities will preemptively respond to deepfakes and other AI-based financial frauds and work on suptech to enhance consumer protection measures. Based on the result of the research on AI, the authorities will draw up guidelines on the use of AI in financial services in the second half of this year.

3. **Plan for Subcommittees**

From now on, the subcommittees of the digital finance consultative body will be reorganized around the following four sections. First, the platform and open banking section will focus on creating the necessary infrastructure to promote FinTech development. Through legislative efforts, the authorities will work to promote financial companies' investments in FinTechs and their overall efforts at digital transformation. The authorities will also discuss making FinTech support available at each business development stage in a more systematic way, and work to further improve the open banking system in order to make 'open finance' possible.

Second, the regulatory innovation section will seek to further improve the financial regulatory sandbox program. Through the introduction of a digital sandbox program, early stage FinTech startups will be able to test their ideas and the authorities will seek ways to introduce more innovative financial solutions in various areas. Third, the data sharing section will work on ways to promote data economy. The connectivity between the financial and non-financial sectors will be boosted through the growth of MyData industry and the authorities will work on data infrastructure development, such as data mapping. Fourth, the financial data security section will focus on building a safe and secure system for financial innovation. It will seek to transform the traditional principles and ideas of financial data security from a regulation-based perspective toward a principle-based approach. The authorities will also draw up measures to improve the rules on authentication and personal identification system as well as the rules on network separation.

Published: 16 April

United States	
US House of Representatives passes bipartisan Financial Services Bills to clarify crypto regulation	On 20 April, the U.S. House of Representatives passed several bipartisan pieces of financial services legislation, including H.R. 1602, introduced by Congressman Patrick McHenry (NC-10), the Republican leader of the House Financial Services Committee. The bipartisan Eliminate Barriers to Innovation Act will establish a digital asset-working group to ensure collaboration between regulators and the private sector to foster innovation. "[This bill] requires the Securities and Exchange Commission and the Commodity Futures Trading Commission to establish a working group focused on digital assets, which will consist of appointees from the Commission as well as representatives from financial technology companies, financial firms, and small businesses, among others. "This is the first step in opening up the dialogue between our regulators and market participants and move to needed clarity," said Republican Leader McHenry. "Establishing this working group is an important step to provide necessary regulatory clarity. By ensuring increased collaboration, we can create an environment that encourages innovation, rather than holding it back. Digital assets have untold potential benefits for consumers, American businesses, and our standing as a world leader in developing these technologies. This working group will provide insight into how we can work with innovators to unleash these benefits." The working group will produce a report within a year that will include an analysis of the domestic regulatory framework and the developments in other countries relating to digital assets. The report also requests insight into best practices to reduce fraud, protect investors, and assist in compliance with obligations under the Bank Secrecy Act. **Published: 20 April**
What is an NFT, anyway?	Once relegated to the fringe of the crypto/FinTech communities, non-fungible tokens (NFTs) have recently exploded to the forefront of modern pop culture and are taking on an ever-increasing number of forms—from collectible digital kittens, to sport highlights, to music albums, to pieces of art auctioned off by Christie's for US $69.3 million. But what, exactly, is a non-fungible token and how is it different from a fungible, or any other, token? In a recent Legal Update, "Anatomy of an NFT," Andrew Lom, partner in the Norton Rose Fulbright New York, and Rachael Browndorf, Associate in the Norton Rose Fulbright Denver Office, discuss NFTs and the various questions they raise: • What if the NFT is the asset and doesn't represent anything separate? • If I own an NFT, do I really own the object it represents? • Are NFTs regulated and, if so, how? These sorts of questions are extremely important for consumers, industry and attorneys alike—and, unfortunately, the answers to many of them are unclear and still being clarified. **Published: 27 April**

International Developments

G20

Second Finance Ministers' and Central Bank Governors' Meeting

On 7 April, the G20 Finance Ministers and Central Bank Governors (FMCBG) met for their second official meeting under the Italian G20 Presidency. The meeting, as for the previous G20 FMCBG February meeting, was held in virtual mode. G20 Ministers and Governors had a very productive exchange of views and agreed on a series of commitments, detailed in the official Communiqué, issued at the end of the meeting. The discussion spanned from issues covering global economy, efforts to push forward the economic recovery and promoting a more sustainable growth, to the support to the most vulnerable countries, advancements in international taxation matters and financial sector related issues.

The full report of what was discussed at the meeting can be read here.

Published: 7 April

Bank for International Settlements (BIS)

Basel Committee publishes work programme and strategic priorities for 2021-22

On 16 April, the Basel Committee on Banking Supervision published its work programme for 2021-22. The work programme sets out the strategic priorities for the Committee over the coming year and reflects the outcome of a recent strategic review by the Committee to ensure that it continues to effectively promote global financial stability and strengthen the regulation, supervision and risk management practices of banks worldwide.

The work programme, which was recently endorsed by the Group of Governors and Heads of Supervision (GHOS), the oversight body of the Committee, focuses on three key themes:

1. **Covid-19 resilience and recovery**
   As the pandemic and economic crisis continue to unfold, the Committee's work related to Covid-19 will continue to form a core part of its work programme. This includes the ongoing monitoring and assessment of risks and vulnerabilities to the global banking system. Where deemed relevant, the Committee stands ready to deploy additional policy and/or supervisory measures to mitigate these risks.
2. **Horizon scanning and mitigation of medium-term risks and trends**
   The Committee will pursue a forward-looking approach to identifying, assessing and mitigating medium-term risks and structural trends to the banking system. This includes work related to the ongoing digitalisation of finance, climate-related financial risks, and the impact on banks' business models resulting from a "low-for-long" interest rate environment.
3. **Strengthening supervisory coordination and practices**
   The Committee will pursue a range of initiatives aimed at strengthening supervisory coordination and practices, with a focus on the role of artificial intelligence / machine learning in banking and supervision, data and technology governance by banks, operational resilience, and the role of proportionality in bank regulation and supervision.
   As previously agreed by the GHOS, the Committee has marked a clear end to the Basel III policy agenda. Going forward, the Committee's Basel III-related work will focus on: (i) monitoring the full, timely and consistent implementation of these standards by its members; and (ii) completing an evidence-based evaluation of the effectiveness of these reforms.

The Committee will continue to cooperate closely with other global standard-setting bodies and international fora on cross-sectoral supervisory issues, including work related to cross-border payments, non-bank financial intermediation, benchmark rate transition and FX settlement risk.

Published: 16 April

Financial Action Task Force (FATF)

G20 confirm their support for the FATF as the global standard-setter to prevent money laundering, terrorist financing and proliferation financing.

On 7 April, G20 Finance Ministers and Central Bank Governors confirmed their commitment to tackling all sources, techniques and channels of money laundering and the financing of terrorism and proliferation. They emphasised the importance, in particular, of combatting financial crimes linked to the COVID-19 pandemic.

In his remarks to the G20, FATF President Dr. Marcus Pleyer highlighted the importance of risk-based supervision to effectively detect and prevent financial crimes that undermine global economies and hinder economic recovery. Dr. Pleyer called upon the G20 to lead on a change of regulatory culture. Today, many supervisors and compliance officers still merely take a basic tick-box approach: making sure forms are filled in correctly instead of focussing on the real risks. The FATF last month released guidance for risk-based supervision, which will help supervisors address the full spectrum of money laundering and terrorist financing risks and focus resources where they are most needed.

The G20 welcomed the FATF's ongoing work to fight environmental crime by preventing corruption and illicit finance associated with the illegal exploitation of natural resources. The G20 recognised the impact of environmental crime on climate and bio-diversity. Environmental crime is one of the priorities of the FATF, which builds on earlier work to tackle money laundering linked to the illegal wildlife trade.

The G20 acknowledged the relevance of the FATF's second 12-month review on the global implementation of the FATF standards on virtual assets and virtual assets service providers, recognising that so-called stable coins are covered by the FATF standards.

G20 Finance Ministers committed to further strengthening the FATF's Global Network of regional bodies in order to reinforce the effective implementation of the FATF standards.

Published: 7 April

FATF Meeting of Private Consultative Forum on Virtual Assets

On 20 April 2021, the Financial Action Task Force (FATF) hosted a meeting of its private consultative forum to discuss its ongoing work streams concerning virtual assets. The meeting was organised in two main sessions: the first session was focused on money laundering (ML) and terrorist financing (TF) risks in virtual assets, and the second session was focused on addressing the revised FATF Guidance on virtual assets and virtual asset service providers (VASPs). The meeting gathered over 240 industry representatives as well as representatives of public authorities from FATF jurisdictions.

Both sessions featured a lively debate with the audience, key points to note include:

1. **ML/TF risks and virtual assets**
   The purpose of the session was to provide additional feedback to FATF in the context of the ongoing 12-month review of FATF Standards on virtual assets and VASPs. Focussing on ML/TF risks, the participants sought to address what has changed over the course of the last year, how risks may evolve in the coming years and the challenges and opportunities in monitoring and mitigating ML/TF risks in the area of virtual assets. Starting the discussion, a representative of the US Department of Justice stressed growing sophistication of the illicit use of virtual assets, but on the other hand, more law enforcement successes. Some of the trends noticed by law enforcement authorities included uses of virtual asset exchanges and wallets for the purposes of laundering virtual assets – but also regular – fraud proceeds. In this context, jurisdictional arbitrage is a big issue, and criminals tend to use VASPs located in non-compliant jurisdictions.

A representative of a blockchain analytics company noted that while in 2011/2 a large proportion of illicit funds derived from bitcoin was going to traditional crypto exchanges, currently this amount is less than 50%. More of the illicit proceed activity is now moving into so-called no-KYC exchanges and the so-called “mixers” and privacy wallets.

A representative of a major regulated crypto exchange stressed that current ML risks sit mainly with unregulated crypto-exchanges in non-compliant jurisdictions – and not with VASPs generally, which is supported by data from data analytic companies. Therefore, one of the suggestions is that from a law enforcement and compliance perspective, it is best to focus on these unregulated exchanges. There are other increasing risk-generating trends, such as use of peer-to-peer (P2P) exchange platforms and to a lesser extent the use of the bitcoin ATMs. Finally, another industry representative explained some of the new typologies used to launder and use virtual assets, and including chain-hopping, shell VASPs and programmatic ML.

2. Revised FATF Guidance

This session took place in the context of the ongoing public consultation on the proposed FATF revisions to its 2019 Guidance for a risk-based approach on virtual assets and VASPs (consultation document), for which the deadline to provide responses expired on 20 April 2021.

By way of background, the proposed updates to the FATF Guidance focus on six main areas: (1) clarification of the definitions of virtual assets and VASP to make clear that these definitions are expansive and there should not be a case where a relevant financial asset is not covered by the FATF Standards (either as a virtual asset or as a traditional financial asset), (2) provision of guidance on how the FATF Standards apply to so-called stablecoins, (3) provision of additional guidance on the risks and potential risk mitigants for peer-to-peer transactions, (4) provision of updated guidance on the licensing and registration of VASPs, (5) provision of additional guidance for the public and private sectors on the implementation of the ‘travel rule’ and (6) inclusion of the FATF Principles of Information-Sharing and Co-operation Amongst VASP Supervisors.

The session started with a short overview of the revised Guidance provided by selected members of the FATF project team. It was explained that the origin of the project was the recent 12-month review of the Guidance, where areas that required further clarity were identified and resulted in proposed drafting. The intention was not to change the definitions, just deepening and broadening them, while emphasizing FATF’s expansive approach. Regarding the rules, the revised Guidance included among other things counterparty VASP due diligence requirements, plus clearer requirements of key terms and requirements for ordering and beneficiary institutions. In respect of licensing and registration, the revised Guidance included – among other things – a new section on information sharing and cooperation between VASP supervisors.

In the subsequent panel presentations, one of the private sector representatives raised an issue concerning a potential unintended consequence that the revised Guidance – if adopted as proposed – may have from the human rights point of view. Therefore, the question who is and who is not a VASP is critical and the current draft has internal contradictions (demonstrated by using an example of technology developers). More generally, the lack of clarity in drafting increases interpretation uncertainties and this erodes the rule of law, extends mass surveillance beyond the norm (i.e. chasing free software advocates in the light of research indicating that ML takes place on centralised crypto exchanges seems pointless) and can result in an extra burden on public authorities. Prohibiting P2P transactions may also have adverse consequences from a human rights perspective and to avoid this, they should instead be treated as cash transactions. It is also not appropriate to consider extending the travel rule to transactions between VASP and non-VASP by means of updating the Guidance. A representative from a group of software companies recommended extending time needed for the adoption of the revised Guidance, and stressed that capturing technology providers within the revised VASP definition would be detrimental and not proportionate.

The same participant also provided an extensive explanation of the DeFI protocols and stressed increased transparency and traceability of transactions based on DeFi, while noting that the draft Guidance seem to presuppose otherwise.

Next steps: following analysis of feedback received by stakeholders, FATF may include further amendments to the revised draft during its June 2021 plenary meeting.

Published: 21 April

Global Legal Entity Identifier Foundation (GLEIF)

GLEIF Welcomes Pioneering Advances by China Financial Certification Authority (CFCA) Which Pave the Way for Increased LEI Usage in Mass Market Digital Identity Products.

Press release as follows:

The Global Legal Entity Identifier Foundation (GLEIF) has welcomed the first commercial demonstration of Legal Entity Identifiers (LEIs) embedded within digital certificates by the China Financial Certification Authority (CFCA). Simultaneously, GLEIF confirms that CFCA, which is a member of the GLEIF Certification Authorities (CA) Stakeholder Group, is the newest Validation Agent in the Global LEI System and the inaugural CA to sign up for the Validation Agent role.

These developments by CFCA follow the recent launch of the GLEIF CA Stakeholder Group, created as a platform for GLEIF to collaborate with CAs and Trust Service Providers (TSPs) on the coordination and promotion of a global approach to LEI usage across digital identity products. CFCA's advances are significant because they are the earliest reported successes aligned to the direction of this industry initiative, which is aimed at achieving a critical mass of LEIs embedded within digital certificates.

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Our blog series on Regulation Tomorrow

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

Part 6: The changing world of sanctions regimes

Recently, we have been seeing rapid changes to sanctions regimes around the world. In particular, there has been a number of significant developments at UK, EU and US levels and in this article we will be looking at the following themes:

- Key UK sanctions developments as a result of Brexit
- Tighter sanctions enforcement
- EU adoption of Global Human Rights Sanctions Regulations
- Biden's Executive Orders to reverse Trump administration sanctions regimes

Key UK sanctions developments as a result of Brexit

Prior to Brexit, the United Kingdom (**UK**) had applied the United Nations (**UN**) and the European Union (**EU**) sanctions regimes locally. This meant that sanctions regimes in the UK and across Europe were similarly aligned, making it easier for firms operating in multiple jurisdictions to ensure compliance and monitor for sanctions developments. The

UK has historically pushed for stricter sanctions regimes within the EU, and just prior to leaving the EU, the UK adopted its first autonomous sanctions regime – the Global Human Rights Sanctions Regulations 2020 (**UK GHRS**). The UK GHRS has been designed as a Magnitsky-style regime to specifically target individuals and entities who have committed human rights violations and abuses worldwide wherever they are in the world by imposing assets freezes and travel bans.

Whilst the UK has onshored the UN and a large proportion of the EU sanctions regime into UK law through the Sanctions and Anti-Money Laundering Act 2018 (**SAMLA**), enabling the regime to continue to apply in the UK post Brexit, the swift adoption of the UK GHRS demonstrates the UK's willingness to readily enhance EU sanctions approaches and implement an extra territorial regime which aligns with its own economic and humanitarian interests.

As the UK has chosen to implement more stringent sanctions measures, the UK GHRS will have a large impact on international businesses in areas such as, for example:

- Ownership and control: under the EU regime, there is a rebuttable presumption where a non-designated person is more than 50% owned or controlled by a designated person making funds available to such non-designated person will amount to firms indirectly providing funds to the designated person. The UK regime removes this presumption and instead, looks at the extent to which the designated person can run the entity's affairs it owns and controls in accordance with its wishes. This means firms with operations/business in the UK and the EU will need to carry out two different assessments for ownership and control to determine whether they are allowed to do business with a particular entity.
- Designated list: under the EU regime, there is a single list maintained by the European Commission. The UK has divided this list into two: the UK sanctions list and the consolidated list, with the former covering all sanctions made under the SAMLA, and the latter all financial sanctions designations. This means firms will need to be alert as to the increased number of sanctions checks it needs to conduct and ensure any service providers it uses has updated their system parameters to account for these changes.

Tighter sanctions enforcement

The UK's Office of Financial Sanctions Implementation (OFSI), which forms part of the UK's HM Treasury department, has increasingly been given more powers to administer and enforce the UK's sanctions regime. Most recently, OFSI has amended its guidance on monetary penalties (which comes into force on 1 April 2021) to demonstrate it is willing to take a far tougher stance on sanctions enforcement going forward. For example:

- OFSI will now be prepared to impose financial sanctions on persons regardless of whether they are also being criminally prosecuted.
- OFSI will have a wider discretion in determining the seriousness of financial sanctions breaches and will introduce a new category of "most serious" cases, which will be cases demonstrating "particularly poor, negligent or intentional conduct."
- As a first step in response to potential sanctions breaches, OFSI will be able to issue "written warnings" and write to UK companies asking for details as to how they propose to enhance their compliance practices. This signifies a far more direct response to firms by OFSI and one, which suggests less tolerance even for accidental or non-substantial sanctions breaches.

EU adoption of Global Human Rights Sanctions Regulations

In December 2020, EU adopted its own sanctions measures, in the form of a decision and a regulation, to address serious human rights violations and abuses worldwide (the EU GHRS). Notably, the scope of the EU GHRS application appears to be broader than that of the UK GHRS with the definitions under the former also covering human trafficking, sexual/gender-based violence, violations/abuses of freedom of peaceful assembly, of opinion and expression or of religion/belief. However, the EU GHRS does not have an extra-territorial reach and thus it does not create any obligations on firms outside the EU (such as the UK).

Other important points on the EU GHRS for financial services firms are:

- Should firms find themselves dealing with a listed individual, they will be expected to supply the competent authority (of the EU jurisdiction in which they are based) with any information that would facilitate compliance with the regulation, including the details of any accounts frozen, incoming transfers, and attempts by customers to circumvent the regulation. The EU-based firms will therefore need to take more active steps to assist the EU in implementing the regime.
- The EU GHRS seeks to also target individuals and entities which provide financial, technical or material support to those involved in serious human rights violations and abuses worldwide, as well as to target the individuals and entities associated with those perpetrators. There is therefore considerable freedom for the Council of the EU to determine which individuals or entities will be penalised under the EU GHRS. Firms will need to have sufficiently robust systems and controls in place to determine exactly whom they are dealing with and whether any current or prospective clients have any associations with listed individuals or entities.

Biden's Executive Orders to reverse Trump administration sanctions regimes

While US President Joseph Biden has reversed several executive orders issued by the previous administration on subjects such as immigration issues, he has not yet reversed any currently imposed economic sanctions. Instead, he has added to them.

In response to the 1 February 2021 coup by the military in Burma, President Biden imposed economic sanctions on Burma by issuing an executive order on 11 February. The sanctions targets include those persons operating in the defense sector, leaders in the Burmese government post-coup, and spouses or adult children of a blocked party. That same day, the US Department of the Treasury's Office of Foreign Assets Control (OFAC) also added several persons, responsible for the coup, or associated with it, to the blocked persons list (the Specially Designated Nationals and Blocked Persons (SDN List), including individuals and three entities. Additional persons have been added since. Among other consequences of being listed on the SDN List, a sanctioned person cannot engage in financial transactions with persons in or transiting the US. All property and interests in property belonging to sanctioned persons are blocked. For more detail on the initial Burmese sanctions (which were later also imposed by the EU and the UK), please read our legal update.

Concluding remarks

The recent sanctions developments around the world demonstrate an increasing global willingness to adopt and use sanctions, not only as a means to tackle terrorism or corruption, but also as a means of standing up to governments and institutions that fundamentally do not respect human rights principles and engage in serious acts of violence against individuals. While this is a step in the right direction from a political and social perspective, the significant expansion in the scope of sanctions regimes creates more complexities for firms who will need to navigate them effectively. At the same time, the UK's departure from the EU and change of guard in the US will foster divergence in sanctions approaches, and firms, particularly in these early days of changes, may not be able to solely rely on the automated sanctions screening tools to keep pace with change. Instead, one would expect firms to ensure there is proactive involvement of relevant staff with appropriate training to such staff being provided and to promptly review and assess any fuzzy matches and make appropriate adjustments to the software parameters in response to relevant sanctions changes.

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