

## SUMMARY MINUTES

Teleconference: FMLC, EFMLG, FMLG, HKMA, FLB, MAS and SNB

Thursday, 18 June 2015, 8-10 pm HKT

1.	FMLC initiatives – update	<b>Financial Markets Law Committee</b> Lord Walker, Sherine El-Sayed, Avril Forbes
a.	Sovereign Debt	<p>Three main questions arising out of the recent litigation in the courts of New York between a “hold-out” creditor, NML Capital, and the Republic of Argentina were raised.</p> <ol style="list-style-type: none"><li>1. The first question is the interpretation, as a matter of contract law, of the terms on which the bonds were issued. The particular focus is on the “<i>pari passu</i>” clause. The contractual terms will normally be interpreted in accordance with the governing law.</li><li>2. The second question is that of remedies, if the issuing sovereign state (having submitted to the jurisdiction of some national court) is held, as a matter of contract law, to be in breach of its obligations. This is a very different type of problem, as it engages sovereign immunity, which is an old and well-established principle of public international law. In the courts of New York NML Capital succeeded in obtaining an injunction with far-reaching effects.</li><li>3. The third question is whether the best answer to these difficulties, and an acceptable answer for international markets, would be a move towards stronger collective action</li></ol>

		<p>clauses (“CACs”), by which a majority of bondholders can bind a dissentient hold-out minority. Particular attention has focused on what are called single-limb CACs, by which voting rights are aggregated across bonds of different series.</p> <p>In 2014 the International Monetary Fund (“IMF”) invited the FMLC to consider whether single-limb aggregated CACs would be enforceable under English law and whether the conclusions set out in the FMLC’s 2005 paper on <i>pari passu</i> clauses hold good today.</p> <p>The FMLC set out its interim views in memoranda to the IMF in 2014 and published two subsequent papers on these issues this year.</p> <p>On the topic of single limb CACs, the FMLC concluded:</p> <ul style="list-style-type: none"><li>• single-limb CACs, subject to certain caveats, are enforceable under English law;</li><li>• single-limb CACs significantly reinforce legal certainty by eliminating some of the problems which can occur in respect of hold-out creditors by promoting swift resolution of disputes arising in the context of sovereign debt restructuring; and</li><li>• oppression, bad faith or insufficient disclosure (which are principles that have been developed through case law) in the exercise of powers will lead to vulnerability with all types of CACs, including single-limb, but these situations will tend to be rare.</li></ul> <p>On the subject of <i>pari passu</i> clauses, the FMLC published a paper in April this year which confirms:</p> <ul style="list-style-type: none"><li>• the views set out in the 2014 memorandum that the conclusions expressed in the</li></ul>
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<p>b.</p>	<p>Benchmark Reforms</p>	<p>In 2013, the European Commission published a draft text on a Regulation for indices used as benchmarks in financial instruments and financial contracts. The European Parliament and Council reviewed the Commission’s draft text and subsequently published amendments. Both the Council and Parliament published several texts inserting provision to the effect that third country administrators could obtain recognition prior to the adoption of an equivalence decision by the Commission (by virtue of Article 21a). The FMLC published correspondence drawing attention to issues in respect of this recognition requirement as set out in the Council’s negotiating mandate dated February 2015. The issues highlighted include:</p> <ul style="list-style-type: none"> <li>i. issues regarding the criteria for how a member state of reference shall be determined;</li> <li>ii. uncertainties arising with regards to the requirement for a third country administrator to have a legal representative established either in its Member Stated</li> </ul>

		<p>of reference or in the union; and</p> <p>iii. the lack of transitional provisions for third country administrators who will need to apply for recognition.</p> <p>Separately, the FMLC wrote to the Financial Stability Board this year examining issues in the context of commodities benchmarks. The FMLC commended the work of the FSB in the field of benchmark reform generally but noted that commodities benchmarks have not been covered by the FSB. The FMLC inferred from a <u>letter</u> written by the Chairman, Mark Carney (dated 4 February 2015) that further work on benchmarks may be contemplated by the FSB in the future. The Committee, therefore, encourages the FSB to consider adopting the approach that it took in relation to the study on IBOR benchmarks to commodity benchmarks.</p>
c.	Capital Markets Union	<p>The FMLC shared their response to the CMU Green Paper (“GP”) and related Securitisation Consultation Document (“SCD”).</p> <p>The FMLC felt that the CMU project, as a whole, was pitched at a very high level and this was reflected in the consultation documents. Therefore, rather than responding to each consultation question, the FMLC thought it would be more worthwhile to pick out specific questions which related to previous FMLC workstreams and to use the consultations as a vehicle for advancing these issues, while at the same time recognising the importance of resolving these issues for the CMU project.</p>

		<p>The FMLC picked out 4 areas of response in relation to:</p> <ul style="list-style-type: none"><li>(a) Securitisation Disclosure Regimes (in response to question 6B of the SCD);</li><li>(b) Collateralised Loan Obligations (“CLOs”) and the Securitisation Risk Retention Rules (in response to question 3A of the SCD);</li><li>(c) Securities Financing Transactions (“SFTs”) and Article 15(1) of the proposed Regulation on them (in response to question 27 of the GP); and</li><li>(d) Co-ordination in the Reform of International Financial Regulation (informed by the Staff Working Document which accompanies the GP).</li></ul> <p>The FMLC prepared a longer paper in respect of (a) and an “umbrella” letter in respect of (b), (c) and (d). In the paper and letter, the FMLC identified its previous publications highlighting the relevant issues.</p> <p>Taking each in turn, the issues raised were as follows:</p> <ul style="list-style-type: none"><li>(a) multiple disclosure regimes can apply to EU securitisation transactions. These regimes can overlap and conflict, causing confusion and uncertainty, which is overlaid when third country regimes also apply to a transaction. To put this in context, the paper includes a case study giving an example of a securitisation transaction where multiple countries’ disclosure regimes could apply. The paper calls for rationalisation of disclosure regimes and the establishment of a single depositary for regulatory disclosure;</li></ul>
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		<p>(b) it is difficult for CLOs to comply with the Securitisation Risk Retention Rules because they do not fit easily into the definitions of “original lender”, “sponsor” and “originator” on whom the obligation to retain risk is. To address this, the umbrella letter calls for guidance issued by the Committee of European Banking Supervisors (the predecessor body to the European Banking Authority (“EBA”)) to be codified or, as an alternative (taking into account a report published by the EBA at the end of December 2014 which concluded that CLOs had to be subject to the rules), the definitions of “original lender”, “sponsor” and “originator” amended to accommodate CLOs better for the purposes of the risk retention rules;</p> <p>(c) Article 15(1) of the proposed Regulation on SFTs is inappropriate in the case of Title Transfer Financial Collateral Arrangements (“TTFCAs”). Article 15(1) introduces a transparency requirement to SFTs whereby a receiving counterparty’s entitlement to reuse collateral is subject to the conditions that the providing counterparty has been informed of the risk of rehypothecation and has provided its consent to it. While the conditions for reuse may seem logical where the SFT takes the form of a Security Financial Collateral Arrangement (“SFCA”), this is not the case where the SFT takes the form of a TTFCa because, here, absolute title of the collateral passes to the receiving counterparty and it becomes the outright owner of the collateral. Accordingly, subjecting the receiving counterparty (as owner of the collateral) to conditions regarding use of the collateral is illogical and Article 15(1) fails to differentiate between a SFCA where the conditions are appropriate and a TTFCa. The umbrella letter therefore calls for TTFCAs to be exempt from Article 15(1); and</p>
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		<p>(d) co-ordination of financial regulation across the globe. The Staff Working Document which accompanies the GP notes a lack of harmonisation at the national level and “gold plating” by some Member States when implementing European legislation. The lack of harmonisation is a theme which resonates throughout the FMLC’s work. In February 2015, the FMLC published a longer paper entitled “Co-ordination in the Reform of International Financial Regulation” which was the culmination of a series of lectures and noted the lack of harmonisation in the implementation of the G20 principles. One example given in the paper was the Securitisation Risk Retention Rules where the EU and US took opposite approaches to implementation. The umbrella letter cautions that when legislating for the CMU, it should be borne in mind that EU legislation does not exist in a vacuum and its interaction with third country regimes must be considered.</p> <p>The FMLC will continue to monitor the CMU project and awaits the action plan and concrete proposals which will be published in Autumn informed by the consultation responses and public hearing at the beginning of June.</p>
<p><b>2.</b></p>	<p><b>EFMLG initiatives - update</b></p>	<p><b>European Financial Markets Lawyers Group (European Central Bank)</b>                  Iñigo Arruga Oleaga, Adrienn Petrovics, Marguerite O'Connell, Sarah Palmer</p>
<p>a.</p>	<p>Status of Capital Markets Union</p>	<p>The presentation gave an overview of on-going EU work in relation to the Capital Markets Union, in particular, it referred to: (1) the European Commission’s Green Paper on CMU; (2) some points of relevance for the interaction of the CMU and third country markets; and</p>

		<p>(4) the Eurosystem’s response to the Commission’s consultation. Many of the suggestions – both in the Commission Green Paper and in the Eurosystem response – remain at a high-level policy stage, and will be fleshed out further in the coming months by the Commission. The next steps envisaged include the publication of an Action Plan by the Commission later in 2015.</p> <p>(1) The policy priorities in the Commission Green Paper include the need to encourage high quality securitisation; to review the Prospectus Directive to make it easier for SMEs to raise funding and reach cross-border investors; to improve the availability of credit information on SMEs; to develop a pan-European private placement regime to foster direct investment in smaller businesses; and to establish the European Fund for Strategic Investments. In the long term, the Commission will seek to address obstacles to cross border capital flows caused by insolvency laws, corporate laws, taxation and securities laws.</p> <p>(2) Some points of interest were raised on the need to attract international investment. These points included emphasis (by the Commission and stakeholders) that European capital markets must be open and globally competitive, well regulated and integrated. There was also an emphasis on the importance of the EU’s international trade and investment policy, and the need for agreements to liberalise international trade and investment. Moreover, international work on free movement of capital needs to be pursued, with a leading role for the EU. Also, direct marketing of EU investment funds and other investment instruments in third countries should be facilitated in order to reducing barriers.</p> <p>(3) The main points to be drawn from the Eurosystem response to the Green paper was that the CMU project needs an appropriate level of ambition and high level of financial</p>
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		<p>integration, but needs to avoid risks to financial stability. Moreover, there is a need for a genuine Single Rulebook in the financial services sector: there is a need to close legislative loopholes in the single rulebook making use of Regulations rather than Directives, and limiting national discretions to ensure level-playing field.</p> <p>Finally, a single European capital markets supervisor – along the lines of the SSM needs to be an ultimate destination for the CMU project.</p>
<p>b.</p>	<p>Regulatory initiatives in the field of securitisation</p>	<p>This presentation noted that the first wave of regulatory initiatives in the field of securitisation reacted to opaque and risky securitisation structures which contributed to the financial crisis. In contrast, the current second wave of regulatory initiatives attempts to achieve differentiated regulation of securitisation instruments and actors. The main reason for this change of regulatory tone is a broad recognition that securitisation can be a useful tool for banks and companies to access capital market financing, improve their capital position and improve the flow of credit to the real economy – a theme underlying the EU capital markets union (CMU) project.</p> <p>There are two main regulatory initiatives in the EU at the moment – consultation on securitisation as part of the overall CMU project and the consultation by the Commission and European Banking Authority (EBA) on high quality securitisation. Both initiatives have two main goals. First, they aim to identify common characteristics of securitisation structures which performed well through the crisis and which could therefore be classified as ‘simple, standard and transparent’ and second, to ease the regulatory capital treatment of investments in such simple standard and transparent securitisations for investors. EBA’s</p>

		consultation closed in January 2015 and the criteria for qualifying securitisations are to be discussed at a public hearing with the industry on 26 June and EBA’s final report will then be used to support the work on securitisation as part of the CMU.
<b>3.</b>	<b>FMLG initiatives – update</b>	<b>Financial Markets Lawyers Group (Federal Reserve of New York)</b> Shawei Wang, Joyce Hansen, Michael Nelson, David Lisante
a.	Congressional Update	<p>The United States is likely to avoid having another debt-limit showdown in Congress this fall. Most observers feel that Congress will pass another extension of the debt-ceiling limit sometime this September or October. There is little political appetite in Congress or amongst the American public for another government shutdown in Washington.</p> <p>The Senate Banking Committee is currently considering legislation, “The Financial Regulatory Improvement Act of 2015” and “Bailout Prevention Act of 2015,” which would affect the Dodd-Frank regulatory regime. There is broad support to provide regulatory relief for small and mid-size financial institutions and for proposals to elevate the threshold for when the Financial Stability Oversight Council would consider a company to be a Systemically Important Financial Institution. The question is whether this legislation will actually move out of the Senate, as there are certain members of Congress who want to repeal aspects of Dodd-Frank more significantly than others.</p> <p>Other legislation being considered would further restrict the Federal Reserve’s ability to provide emergency assistance to distressed financial institutions under Section 13 of the Federal Reserve Act. This legislation highlights the continued skepticism among some lawmakers concerning the Federal Reserve’s actions during the financial crisis.</p>

		<p>Finally, in terms of the United States budget, it is not likely that the SEC and CFTC will receive additional funding from Congress to hire staff and other types of support to help undertake their increased regulatory responsibilities post-Dodd-Frank.</p>
<p>b.</p>	<p>CFTC Update</p>	<p style="text-align: center;"><i>Margin Requirements for Uncleared Swaps</i></p> <p>One of the CFTC’s current priorities is finalizing its proposal on margin requirements for uncleared swaps. This process involves working to harmonize the rules across jurisdictions concerning when margin must be collected, the timing of implementation, and the basic standards for initial margin models, in addition to an examination of the cross-border aspects of the rules.</p> <p>The CFTC’s proposed uncleared margin rules initially set an effective date of December 2015 for variation margin posting and the phase-in of initial margin rules. This has now been delayed until September 2016.</p> <p>Last September, the CFTC asked for public comments on three possible approaches to deal with cross-border transactions. The first is in line with the CFTC’s current cross-border guidance; it favors a transaction-based approach and includes a broad exclusion for foreign-to-foreign trades. The second approach is an entity-based approach that would apply the uncleared margin rule to all uncleared swaps of a registered dealer with no exceptions. The third approach was developed by the prudential regulators and is also an entity based approach, but would allow for substituted compliance in many cases and includes an exception for trades when neither party is controlled or guaranteed by a U.S. person. In recent public remarks, Chairman Massad has proposed a hybrid of these three approaches, but these options are still the subject of internal discussions and no final decision has been</p>

		<p>made.</p> <p>With regard to uncleared margin efforts on the industry side, ISDA has put together and is currently seeking approval from various regulators for its “Standard Initial Margin Model” (SIMM), which is a standardized model for calculating initial margin on uncleared swaps.</p> <p><i>Cross-Border Recognition and Clearinghouse Regulation</i></p> <p>Another major issue the CFTC is dealing with is clearinghouse recognition. As you may know, the European Commission recently delayed until December 2015 the deadline for European Union banks to hold extra capital to cover cleared trades at CCPs. The rules originally would have taken effect on June 15 and required European banks to analyze their exposure to US CCPs and set enough capital aside to cover potential losses. The capital rule delay will give U.S. and European authorities additional time to reach an agreement on whether U.S. CCP rules are equivalent to those in Europe.</p> <p>One outstanding issue between the U.S. and Europe concerns the difference in the margin methodology used for futures in the two regulatory systems. Under current CFTC regulations, U.S. CCPs use a one-day minimum liquidation period, while the European regulatory regime requires a minimum two-day period. The U.S. follows a policy of gross collection and posting, while the European regime allows netting. Thus, while clearing members must pass on to U.S. CCPs the full amount of initial margin for each individual customer, in Europe if one customer’s exposure offsets another’s, the clearing member can post the initial margin netted across customers. The European Commission is concerned that the margin methodologies used by U.S. clearinghouses are inferior to Europe’s and create an unacceptable level of risk. To address the debate as to whether one-day gross produces a higher customer margin than two-day net or vice-versa, in May, Chairman</p>
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		<p>Massad presented a CFTC analysis before the European Parliament’s Committee on Economics which evaluated the different methodologies used under the two systems. The analysis used actual data for seven days and reconstructed what the required margin would be under each system for the nine largest clearing members at three different U.S. CCPs. The CFTC found that the required margin was substantially higher under the one-day gross U.S. regime than it would have been under the European regime.</p> <p>Still, there are other outstanding issues on this topic, including registration rules and the treatment of house margin and affiliate transactions, so conversations are continuing on this issue.</p> <p style="text-align: center;"><i>Looking Forward</i></p> <p>Looking forward, the CFTC has expressed an interest in stress testing of clearinghouses to test the adequacy of recovery planning and resolution plans. It has also announced that later this summer, it plans to propose some changes to its swap reporting rules for cleared swaps, with the aim of clarifying reporting obligations and improving the quality and usability of data in the data repositories.</p> <p>In addition, the CFTC plans on holding a public roundtable at some point later this year [now announced as July 15, 2015] to consider the made-available-for-trade determination process for SEF-mandated trading.</p> <p>Finally, the CFTC has reached out to the FMLG to revive discussions about FX prime brokerage on SEFs. About a year ago, the FMLG had put together a proposal for how PB could work on SEF, including model SEF rules.</p>
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<p><b>4.</b></p>	<p><b>HKMA initiatives – update</b></p>	<p><b>Hong Kong Monetary Authority</b> Joanna Wong, Yvonne Tsui, Christine Tam</p>
<p>a.</p>	<p>Implementation of regulatory regime for stored value facilities &amp; retail payment systems in Hong Kong</p>	<ol style="list-style-type: none"> <li>1. I would like to share with you all some updates on the implementation of the regulatory regime for stored value facilities and retail payment systems in Hong Kong.</li> <li>2. The global retail payment market has been developing rapidly. Technological advancements and increasing acceptance of new technologies by the public have led to the emergence of new forms of retail payment products and services, such as stored value payment cards, online stored value payment facilities, and Internet or mobile payment services. In Hong Kong, there has been a growth in such products and services being offered to the public in recent years.</li> <li>3. The current regulatory regime for stored value cards under the Banking Ordinance (Chapter 155) (“BO”) only applies to device-based multi-purpose stored value products; and the Clearing and Settlement Systems Ordinance (“CSSO”) only provides a statutory framework for the Hong Kong Monetary Authority (“HKMA”) to designate and oversee large-value clearing and settlement systems<sup>1</sup> (“CSS”). The current regulatory regime in the BO and CSSO, therefore, does not cover a range of non-device-based payment facilities and payment systems related to retail activities. To ensure the safety and soundness of these payment facilities and systems, there is, therefore, a need to bringing them into the</li> </ol>

<sup>1</sup> Large-value CSS refer to the systems established for the clearing and settlement of transfer of funds or securities among financial institutions. Examples of designated CSS are the Hong Kong Dollar Real Time Gross Settlement (“RTGS”) System, US Dollar RTGS System, Euro RTGS System, and Renminbi RTGS System, Central Moneymarkets Unit, and Continuous Linked Settlement System.

		<p>regulatory net of the HKMA. The new regime will be implemented by amending the CSSO, and the new amendment ordinance will be called the “Payment Systems and Stored Value Facilities Ordinance”.</p> <p>4. The HKMA together with the Financial Services and the Treasury Bureau launched a three-month public consultation on the proposed regulatory regime in May 2013. Altogether 41 responses were received from a broad range of interested parties, including market players, public bodies, business and professional organisations, and several information technology industry associations. Comments received indicated overall support for the policy objectives and the key proposals of the new regulatory regime. Most respondents generally consider that a well-regulated environment will help further develop retail payment products and services in Hong Kong, and enhance users’ acceptance of and confidence in such products and services. The HKMA had taken on board many useful suggestions and comments, after balancing relevant perspectives (in terms of market development, evolving market needs, protection for users, and level-playing field considerations). A Consultation Conclusion was issued to address these suggestions and comments in October 2014.</p> <p>5. The primary regulatory concern of SVF stems from the need to protect users’ float (ie the total sum of money paid by a user to an issuer for storage on the SVF) maintained by SVF issuers. To ensure the ability and competence of SVF issuers and the proper protection and management of the float, a mandatory licensing regime for SVF will be introduced. Under the new regime, no person may issue SVF in Hong Kong without a licence granted</p>
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		<p>by the HKMA. It will be a criminal offence to issue SVF without being authorized by a licence.</p> <p>6. The licensing regime will cover both device-based and non-device-based multi-purpose SVF. Single-purpose SVF will remain not subject to regulation – an arrangement in line with the existing “multi-purpose cards” regime under the BO, and the practices adopted by major overseas jurisdictions. Indeed, single-purpose SVF are in essence bilateral contractual arrangements between service vendors and their respective users for advance payment for specific goods or services.</p> <p>7. SVF which do not involve payment of money by users or have limited usage will also be excluded from the regulatory regime. The exclusion will apply to loyalty and bonus point schemes with cash reward or involving limited users’ cash elements; single online store platform; and SVF with limited usage and a float size of not more than HK\$1 million.</p> <p>8. Notwithstanding the express exclusions, the HKMA will retain the power to exempt an SVF from the regulatory regime, having regard to the materiality of the risk posed by the relevant facility to the users or potential users, and the payment or financial systems in Hong Kong. The HKMA may also attach conditions to any such exemption granted.</p> <p>9. The licensing criteria for multi-purpose SVF will include the following major elements –</p>
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		<p>(a) <b>Physical presence in Hong Kong:</b> A licensee must be a body corporate under Hong Kong law and have a registered office in Hong Kong. This requirement will allow the HKMA to exercise effective supervision over the licensee even though some of its systems and operations may be located outside Hong Kong, or services are provided through the Internet;</p> <p>(b) <b>Principal business:</b> The principal business of a licensee must be the issuance of SVF to ensure that the principal resources will only be used on its SVF business. Some SVF schemes may involve the provision of remittance or money changing service as an ancillary service to the SVF business, potentially falling into the existing licensing regime for “money services operators” (“MSO”) administered by the Customs and Excise Department (“C&amp;ED”) under the Anti-Money Laundering and Counter-Terrorist Financing (Financial Institutions) Ordinance (Chapter 615) (“AMLO”). To avoid any regulatory overlap, the licensee whose operation involves a MSO business which is ancillary or incidental to its SVF business will only need to obtain an SVF licence from the HKMA and will not be required to obtain a MSO licence from the Customs;</p> <p>(c) <b>Financial strength:</b> The licensee must meet a minimum on-going capital requirement, so that the aggregate amount of its paid-up capital should not be less than HK\$25 million. This is in line with the current regulatory regime for “multi-purpose cards” under the BO in which case a non-bank multi-purpose card issuer must be authorized as a deposit-taking company and be subject to, among</p>
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		<p>other things, a minimum level of share capital of HK\$25 million;</p> <p>(d) <b>Management of float:</b> A licensee will be required to have in place safeguarding measures that adequately protect the float, and to keep the float separate from other funds of the issuer<sup>2</sup>. The licensee must also have adequate risk management policies and procedures for float management to ensure that there will be sufficient funds for the redemption of outstanding stored value;</p> <p>(e) <b>“Fit and proper” ownership and management, and prudential risk management requirements:</b> Controllers, directors, and chief executives of SVF licensees must be fit and proper persons, and persons responsible for the management of the SVF business must possess appropriate knowledge and experiences. The licensee must have in place appropriate risk management policies and procedures for its operation commensurate with the scale, risk profile and complexity of the scheme.</p> <p>10. In line with the existing “multi-purpose cards” regime under the BO, licensed banks will be deemed to be licensed to issue SVF as a line of business. This, together with other lines of banking business in a licensed bank, will be subject to regulatory requirements and on-going supervision by the HKMA on a consolidated basis. Nevertheless, licensed banks</p>
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<sup>2</sup> We propose in the Bill that the HKMA may approve, as licensing conditions for an SVF issuer, the float protection arrangements, on a case-by-case basis, taking into account factors including financial strength, scale of business, risk management, and internal control environment, etc. of each scheme. The HKMA will need to be satisfied that the types of investment in which the licensee proposes to invest are appropriate, having regard to the nature of the investments, and also, the financial strength, overall corporate governance, and risk management controls of the SVF issuer.

		<p>will still be required to comply with the relevant requirements under the proposed regulatory regime, including float safeguarding and management, should they decide to continue, or embark on, SVF business.</p> <p>11. With respect to RPS, the HKMA noted that safe and efficient functioning of widely-used RPS is essential to the smooth running of day-to-day economic activities in Hong Kong. Having regard to the existing regulatory regime for large-value CSS under the CSSO, the HKMA proposed to extend the regime to cover RPS as appropriate<sup>3</sup>. An RPS which operates in Hong Kong or processes retail payment transactions denominated in Hong Kong dollar or other currencies may be designated under the regime if certain designation criteria are met by such a system.</p> <p>12. Like large-value CSS, the HKMA’s oversight for RPS will be conducted through a “designation system”. This will mean that the HKMA may designate certain RPS available in the market for the sake of imposing a set of requirements over them. The HKMA may designate an RPS<sup>4</sup> if any disruptions to the RPS are likely to result in any or more of the following –</p> <p>(a) monetary or financial stability, or the functioning of Hong Kong as an international</p>
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<sup>3</sup> While the CSSO provides, at present, statutory backing to the finality of settlement for transactions made through the designated CSS by protecting the settlement finality from insolvency laws or any other laws, the finality of settlement will not apply to RPS in future.

<sup>4</sup> We are aware that an SVF normally requires a CSS to support its operation. Such a system may fall within the definition of RPS. To avoid regulatory overlap, we do not intend to designate CSS run by a SVF licensee to support its own SVF scheme. However, if the RPS operated by a SVF issuer supports SVF scheme run by other issuers, the HKMA may designate such RPS if it meets the designation criteria.

		<p>financial centre, being adversely affected;</p> <p>(b) the public’s confidence in payment systems or the financial system of Hong Kong being adversely affected; or</p> <p>(c) day-to-day commercial activities being adversely and materially affected.</p> <p>13. In applying the designation criteria, the HKMA may take into account factors, including (a) the estimated aggregate value of orders transferred, cleared or settled through the system; (b) the estimated average value of orders transferred, cleared or settled through the system; (c) the estimated number of orders transferred, cleared or settled through the system; (d) the estimated number of participants of the system; and (e) any direct or indirect interfaces to the large-value payment systems.</p> <p>14. Designated RPS will be subject to the HKMA’s oversight. To ensure their safety and robustness, they will be required to have in place operating rules to provide for the system to be operated in accordance with the requirements, including default arrangements which are appropriate for the system. Designated RPS will also be subject to safety requirements, which include, among other things, risk management and control procedures relating to the operation of the system; safety and integrity of information held within the system; soundness of the system including financial soundness; and efficiency requirements including costs of participation and reasonableness of criteria for admission as a participant in the system.</p> <p>15. To enable the HKMA to perform various day-to-day supervisory functions over</p>
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		<p>SVF and designated systems, the new legislation will include provisions that will enable the HKMA to conduct effective on-going supervision over the relevant licensees and operators (including on-site examinations and off-site reviews), gather information, give directions, impose operating rules, make regulations, and issue guidelines, etc.</p> <p>16. The HKMA will also be empowered to conduct investigation into SVF licensees and designated systems when the HKMA has a reasonable cause to believe that an offence has been committed in connection with the proposed regulatory regime.</p> <p>17. The HKMA may impose a range of civil sanctions, which will be proportionate to the nature and severity of the misconduct, under the proposed regulatory regime. The proposed civil and supervisory sanctions include –</p> <ul style="list-style-type: none"><li>(a) minor sanctions (such as caution, warning, reprimand, and order to take specified actions(s), etc.) and supervisory sanctions (such as temporary suspension, suspension or revocation of licence, or a combination of the above);</li><li>(b) pecuniary penalty of not exceeding HK\$10 million or three times the amount of profit gained or loss avoided, whichever is higher, or</li><li>(c) any combination of such sanctions.</li></ul> <p>18. To ensure that the exercise of the HKMA’s powers is subject to checks and balances, the HKMA proposed to expand the ambit of the existing Clearing and Settlement Systems Appeals Tribunal to cover appeals against relevant HKMA’s decisions in relation to SVF and RPS.</p> <p>19. The new legislation will be implemented in two phases after its passage by the Legislative Council. Phase one (which mainly concerns the provisions relating to the</p>
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		<p>application and processing of SVF licences, as well as the designation regime of RPS) will come into operation upon gazettal of the Amendment Ordinance. Phase two (which mainly concerns the provisions relating to offences in relation to the proposed licensing regime for SVF) will come into operation one year after the commencement of Phase one. This is intended to cater for the time required for potential and existing SVF issuers to apply for a licence, and for the HKMA to process the SVF licence applications. Pre-existing SVF operators at the time of the commencement of phase one may continue their SVF business during the one-year transitional period before the commencement of phase two. However, unless they will exit the industry during the transitional period, these pre-existing SVF operators must complete their licence application process during the transitional period and obtain a SVF licence to take effect upon the commencement of phase two.</p>
<p>b.</p>	<p>Anti-Money Laundering Controls over Tax Evasion</p>	<ol style="list-style-type: none"> <li>1. Hong Kong is fully committed to combating money laundering and safeguarding its financial system from being used to facilitate tax evasion. It has long been the position of the Hong Kong Monetary Authority (“HKMA”) that it is important for authorized institutions (“AIs”) to act prudently in the conduct of their customer relationships and not, knowingly or deliberately, aid and abet tax evasion, or facilitate the laundering of the proceeds of tax evasion, by their customers.</li>   <li>2. The Anti-Money Laundering and Counter-Terrorist Financing (Financial Institutions) Ordinance (Chapter 615 of the Laws of Hong Kong) (“AMLO”) came into effect on 1 April 2012. Under the AMLO, “money laundering” is defined as “an act intended to have the effect of making any property that is the proceeds obtained from the</li> </ol>

		<p>commission of an indictable offence ... not to appear to be ... such proceeds”<sup>5</sup>. Since tax evasion constitutes an indictable offence in Hong Kong<sup>6</sup>, the requirements under the AMLO and, where AIs are concerned, the HKMA’s Guideline on Anti-Money Laundering and Counter-Terrorist Financing (For Authorized Institutions) (“AMLO Guideline”), are applicable to tax evasion. Critical in the fight against tax evasion is the requirement for a robust set of anti-money laundering control systems, including customer due diligence (“CDD”) procedures, which identify risks of tax evasion and lead to the application of risk-based measures to manage those risks.</p> <p>3. In March 2015, the HKMA issued a Guidance Paper on Anti-Money Laundering Controls over Tax Evasion (“Guidance Paper”). The Guidance Paper aims to assist AIs in meeting the legal and regulatory obligations under the AMLO and implement effective measures to mitigate their money laundering risks in respect of tax evasion. The HKMA expects senior management of AIs to take responsibility for money laundering risk management, which includes understanding the risks that may arise from tax evasion, and ensuring that the risks are managed effectively by establishing a strong AML compliance culture.</p> <p>4. Money laundering and terrorist financing (“ML/TF”) risk assessment is central to the design of anti-money laundering and counter-terrorist financing (“AML/CFT”) policies, procedures and controls and is essential to the effective application of the risk-based</p>
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<sup>5</sup> Section 1 of Part 1 of Schedule 1 to the AMLO.

<sup>6</sup> Section 82 of the Inland Revenue Ordinance (Chapter 112 of the Laws of Hong Kong).

		<p>approach. AIs are required to identify, assess and understand their ML/TF risks and should take into account relevant risk factors<sup>7</sup>. Tax evasion-related risk factors are expected to include (a) at the customer level, the nature and location of customers' activities and other indicators that suggest that customers may be concealing (or seeking to conceal) their taxable assets; and (b) at the institutional level, the nature of the services provided and the customer base. Therefore, senior management should critically review whether tax evasion-related risks have been adequately identified and properly assessed through the AI's ML/TF risk assessment process. AIs should then determine, based on the results of their ML/TF risk assessment, the applicable measures to mitigate the tax evasion-related risks. AIs should also establish adequate policies and procedures which should reflect both the assessed tax evasion-related risks and the complexity of their operations.</p> <p>5. Like other ML/TF risks, mitigation of tax evasion-related risks can be achieved through effective application of risk-based CDD. The potential tax evasion-related risks of each customer should be assessed during the account opening stage and, where necessary, enhanced checking should be conducted or additional information on a customer's tax status should be obtained. AIs may, for example, obtain voluntary disclosures or declarations from customers assessed as posing an elevated risk of tax evasion or develop questionnaires or surveys for different types of customers, as part of CDD processes to assess customers' tax-risk profiles. The Guidance Paper includes a non-exhaustive list of red flag indicators which AIs should take into account when constructing a customer's tax-risk profile and</p>
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<sup>7</sup> Chapters 2 and 3 of the AMLO Guideline.



		<p>assessing the customer’s potential tax evasion-related risk. Examples of red flag indicators include (a) uncommon customer structure or overly complex structure without a clear and legitimate commercial purpose or some reasonable justification; (b) indicators of undisclosed nexus of customers; and (c) inconsistency between the organisational structure and/or transactions of a customer with the documentation recorded on file. While an individual red flag may not in itself be indicative of tax evasion, AIs should be alert to the possibility of tax evasion where red flags are identified, particularly where multiple red flags occur with the same customer. Enhanced due diligence measures<sup>8</sup> should be applied where a customer is assessed to present a higher tax evasion-related risk. On-going CDD requirements, including updating customer risk assessment, are equally applicable to tax evasion-related risks. Customers presenting a high risk of tax evasion should be subject to periodic reviews in accordance with the requirements set out in the AMLO Guideline.</p> <p>6. Although AIs are not expected to determine whether a customer is fully compliant with tax obligations globally, AIs are required to determine whether there are tax evasion-related risks, or whether there is suspicion that the assets of a particular customer arose from tax evasion, irrespective of where the offence takes place. Where there are such risks that cannot be mitigated through enhanced due diligence measures, AIs should not enter into a business relationship with that customer. The Guidance Paper further states that AIs incorporated in Hong Kong should put in place a group tax-related control policy to ensure that all of their branches and subsidiary undertakings have in place proper</p>
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<sup>8</sup> Paragraph 4.11.1 of the AMLO Guideline.

		<p>controls.</p> <p>7. Further, training is an essential element of an effective control system to prevent and detect tax evasion. AIs should provide appropriate and adequate staff training which covers red flag indicators and common tax evasion typologies. Staff of AIs should understand their obligations, when and how to escalate any tax evasion-related suspicious activities for management’s review, including suspicions that may give rise to the filing of a suspicious transaction report. Where AIs have knowledge or suspicion of any tax evasion-related activity, there is a statutory requirement<sup>9</sup> to make a disclosure to the Joint Financial Intelligence Unit.</p> <p>8. The HKMA conducts regular on-site examinations of AIs’ AML/CFT controls, including tax-related controls. While the Guidance Paper does not form part of the AMLO Guideline, the HKMA expects AIs to give full consideration to the adoption of the practices described therein and, where necessary, improve their AML/CFT systems. Being identified with involvement in tax evasion, with the resultant negative publicity and potential for sanction, would pose a serious risk to an AI’s reputation which could impair public confidence in the AI concerned. Further, Hong Kong’s reputation as a prudently managed international banking centre may suffer to the detriment of all AIs, thereby undermining Hong Kong’s position as an international financial centre.</p>
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<sup>9</sup> Section 25A of the Organized and Serious Crimes Ordinance (Chapter 455 of the Laws of Hong Kong).

<p><b>5.</b></p>	<p><b>FLB initiatives – update</b></p>	<p><b>Financial Law Board (Bank of Japan)</b> Takuto Ninomiya and Keisuke Hasegawa</p>
<p>a.</p>	<p>Establishment of Infrastructure Fund Market in Tokyo Stock Exchange</p>	<p>This April, JPX opened an infrastructure fund market in Tokyo Stock Exchange, in which funds investing in infrastructures are listed and traded. In addition, Japanese financial authorities amended relevant laws and regulations to facilitate this market.</p> <p>In Japan, Prime Minister Shinzo Abe and His Cabinet published “Revised Japan Revitalization Strategy” in 2014. This Strategy pointed out among other things that it is important for Japan’s economic growth (1) to utilize private financial resources to develop or renew infrastructures and (2) to further utilize renewable energy such as solar power or wind generated electricity. It is also suggested that the government should take necessary measures to establish infrastructure fund market to strengthen Japanese financial and capital markets. These policies led to the establishment of infrastructure fund market in JPX.</p> <p>The established infrastructure fund market is expected to channel part of enormous investment capital in Japan to infrastructure financing. In this market, domestically structured funds as well as foreign structured ones can be listed. Fund shares that have already been listed in other exchanges can also be cross-listed. Listed funds can invest in wide range of eligible assets such as transportation infrastructures including toll roads, airports and railways, and renewable power generation facilities. They can also invest in concessions to operate public infrastructures.</p> <p>Listing rules applicable to the infrastructure funds are created by modifying the rules of J-REIT. Listed infrastructure funds is required to publish information regarding operators and operations of their assets, in addition to the basic information required for</p>

		<p>investment funds in general, to warrant transparency about operations of funds' assets taking into account the uniqueness of infrastructural businesses.</p> <p>At present, several funds that specialize in large solar power plants are said to be planning to list their shares on the market.</p>
<p>b.</p>	<p>Extension of the hours in operation of the Zengin-Net System (Japanese Banks' Payment Clearing Network)</p>	<p>In December 2014, Japanese Bankers Association (JBA) publicly released its plan to establish a new system to enable real-time domestic funds transfers 24 hours 7 days a week.</p> <p>The current Zengin-Net system (Japanese bank's payment and clearing network operated by an affiliate of JBA) process funds transfers on a real-time basis during its operating hours (from 8:30am to 3:30pm on weekdays from Monday to Friday.) Specifically, large value transfers over 100 million Yen are routed and settled on RTGS basis on the BOJ Net, and small value transfers are processed on a real-time basis subject to net debit cap and cleared through the Zengin Net. After the operating hours, however, funds transfers cannot be processed, and there may be considerable time lag between customer instruction and completion of the transfer.</p> <p>JBA's plan is to develop a new system separately from the current Zengin Net. The new system operates during the off-time of the current system, and enables banks to transmit and receive information about funds transfer at any time.</p> <p>JBA has already started to develop the new system, and it is expected to go live by the end of 2018. In principle, whether each individual member bank will use the new system is up to each bank's decision. However, because real-time funds transfers requires both transferor's bank and transferee's bank connected to the system, JBA says it will consider measures to encourage member banks to participate, including introduction of a mandatory</p>

		<p>common connecting time during hours in which individual and corporate customers' needs are strong.</p>
<p>c.</p>	<p>The Japan's Corporate Governance Code</p>	<p>Japan's Corporate Governance Code has been introduced since this June 1st. Japan's code consists of 5 general principles, 30 principles and 38 complementary principles. Those principles are applied to Japanese listed companies, and intended for enhancing their governance. The principles are influenced by OECD Corporate Governance Principle and other countries' Corporate Governance Codes. Although the Code is not legally binding regulation, it effectively has impact on Japanese listed companies. Through the introduction of the Code, those firms are expected to disclose their stance on each principle, and if they decide not to respect a principle in the Code, they are supposed to explain the reason publicly.</p> <p>When it comes to the background, there is Prime Minister Abe's economic growth strategy, so-called "the third arrow" of the Abenomics. In the strategy, the Government regards building up to corporate governance as indispensable to sustainable economic growth, since Japanese Companies' low profitability is primarily due to their poor corporate governance.</p> <p>There are two characteristics which attracts our attention. First point is new definition of the word, "corporate governance." Generally speaking, the meaning of corporate governance is sometimes regarded as restrictions on business, asking companies to set some rules or disciplines to control their risks properly including a risk of a scandal. In the Code, however, the definition of corporate governance sounds novel. The Government names that corporate governance "growth-oriented governance." It is defined as a structure for</p>

		<p>transparent, fair, timely and decisive decision-making by companies, with due attention to the needs and perspectives of shareholders and also customers, employees and local communities. It requires companies to make the most of corporate governance as helpful tools for their proper decision making, thereby enhancing the profitability and growth of the companies.</p> <p>Second point is the relation between Japan’s Corporate Governance Code and Japan’s Stewardship Code. On the one hand, Japan’s stewardship code, which was established on February this year, encourages institutional investors to engage in purposeful dialogue with companies. On the other hand, the corporate governance code asks companies to reflect on the relationships with stockholders. One of the basic principles requires firms to have dialogue with shareholders. It states that corporations should engage in constructive dialogue with shareholder even outside the general shareholder meeting in order to contribute sustainable growth and the increase of corporate value over the mid- to long term. So both codes are promoting dialogue between companies and investors. The Government says that those two codes are expected to work together as “the two wheels of a cart” in order to achieve effective corporate governance.</p>
d.	The Social Security and Tax Number System (“My Number System”)	<p>In Japan, each resident will be notified of his or her own individual number on this October. The 12-digits number is nicknamed “My Number.” and it will be used from the next year.</p> <p>The number will be used for legally stipulated administrative services such as social security, taxation, and disaster response. For instance, the Government’s public welfare office can efficiently pay pension to elderly people by using My Number. Since the number</p>

		<p>enables the governments' tax office easily to grasp how much money people earn, it can impose taxes fairly and prevent tax evasion. It means that the use of My Number for private purposes is prohibited.</p> <p>Still, in the future, My Number may be paying more significant roles. The government aims to develop Japan into the worlds' leading IT society, and make My Number system more convenient. In order to achieve that goal, the government is now discussing broadening areas where the number can be utilized. As I mentioned, although the areas where the number is available are regulated now, they are reflecting on whether to remove or maintain the regulations in other areas such as financial services and medical care services.</p>
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6.	MAS initiatives – update	<b>Monetary Authority of Singapore</b> Yvonne Wong, Dawn Chew, Lynette Lee
a.	Update on the Framework for Domestic Systematically Important Banks in Singapore	<ol style="list-style-type: none"> <li>1. We shared at the previous videoconference on 23 October 2014 that MAS had proposed a framework to identify domestic systematically important banks (“<b>D-SIBs</b>”) in Singapore and to address the risks they pose.</li> <li>2. On 30 April 2015, MAS published this framework and the inaugural list of D-SIBs. 7 banking groups have been designated as D-SIBs<sup>1</sup>:                         <ol style="list-style-type: none"> <li>1. DBS Bank;</li> <li>2. Oversea-Chinese Banking Corporation;</li> <li>3. United Overseas Bank;</li> <li>4. Citibank;</li> <li>5. Malayan Banking Berhad;</li> <li>6. Standard Chartered Bank; and</li> <li>7. The Hongkong and Shanghai Banking Corporation.</li> </ol> </li> <li>3. D-SIBs are banks that are assessed to have a significant impact on the stability of the financial system and proper functioning of the broader economy. All banks in Singapore will be assessed annually for their systematic importance based on their size, interconnectedness, substitutability and complexity.</li> <li>4. MAS will apply additional supervisory measures on banks designated as D-SIBs. Other measures such as recovery and resolution planning, liquidity coverage ratio</li> </ol>

<sup>1</sup> Designation includes all banking entities (including merchant banks) operating in Singapore which belong to the same banking group



		<p>requirements, and enhanced disclosures will also apply depending on the banks' operating model and structure.</p> <p>5. Banks with a significant retail presence in Singapore will be required to locally incorporate their retail operations. Locally incorporated D-SIBs will need to meet higher capital requirements. MAS will allow a transition period for affected banks to comply with the requirements that are currently not in effect, such as the local incorporation requirement.</p> <p>Link to the media release:  <a href="http://www.mas.gov.sg/news-and-publications/media-releases/2015/mas-publishes-framework-for-domestic-systemically-important-banks-in-singapore.aspx">http://www.mas.gov.sg/news-and-publications/media-releases/2015/mas-publishes-framework-for-domestic-systemically-important-banks-in-singapore.aspx</a></p> <p>Link to the media release:  <a href="http://www.mas.gov.sg/news-and-publications/media-releases/2015/mas-publishes-framework-for-domestic-systemically-important-banks-in-singapore.aspx">http://www.mas.gov.sg/news-and-publications/media-releases/2015/mas-publishes-framework-for-domestic-systemically-important-banks-in-singapore.aspx</a></p>
<p>b.</p>	<p>Strengthening MAS' regulations on Anti-Money Laundering and Countering the Financing of Terrorism – Revised Notices and the MAS (Amendment) Bill</p>	<p>6. On 24 April 2015, MAS issued revised Notices to financial institutions on anti-money laundering (AML) and countering the financing of terrorism (CFT). These revisions are benchmarked against international best practices and the latest Financial Action Task Force (FATF) recommendations.</p> <p>7. The key changes include:-</p> <ol style="list-style-type: none"> <li>1. <u>Requiring more comprehensive enterprise-wide ML/TF risk assessment to complement risk assessment of individual customers;</u></li> </ol>

		<ul style="list-style-type: none"><li>i. The revised Notices include new obligations for the financial institutions to identify and assess the overall ML/TF risks they face on an enterprise-wide level. This includes a consolidated assessment of the financial institution’s ML/TF risks that exist across all its business units, product lines and delivery channels. The assessment is intended to enable the financial institution to better understand its overall vulnerability to ML/TF risks and forms the basis of the financial institution’s overall risk-based approach.</li><li>ii. This assessment needs to be approved by the financial institution’s senior management. The financial institution is required to put in place adequate policies, procedures and controls to mitigate these risks.</li></ul> <p>2. <u>Elaborating on the requisite steps to identify and verify beneficial ownership of companies, LLPs and trusts;</u></p> <ul style="list-style-type: none"><li>i. Financial institutions are to take reasonable measures to identify the natural persons who ultimately own the legal person;</li><li>ii. If there is doubt, or no natural persons ultimately own the legal person, financial institutions are to identify the natural persons who control the legal person;</li><li>iii. If the steps in (i) and (ii) cannot be done, financial institutions will need to identify the natural persons having executive authority (or equivalent or similar positions) in the legal person.</li><li>iv. When dealing with trusts, financial institutions will need to identify the trustees, settlor, protector (where applicable), beneficiaries and any natural person exercising ultimate ownership or control of the trust as well as take</li></ul>
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		<p>reasonable measures to verify their identities.</p> <p>3. <u>Introducing a new category of Politically Exposed Persons (PEPs)</u>; and</p> <ul style="list-style-type: none"> <li>i. PEPs are defined as domestic politically exposed person, foreign politically exposed person or international organization politically exposed person;</li> <li>ii. MAS introduced a new category, the International Organisation PEP, which is defined as a natural person who is or has been entrusted with prominent public function by an international organization. The new category is aligned with the latest FATF 40 Recommendations.</li> <li>iii. The revised Notices also introduce a risk-based approach towards determining whether to perform enhanced CDD or the extent of enhanced CDD to be performed for domestic PEPs, International Organisation PEPs and PEPs who have stepped down from their prominent public functions.</li> </ul> <p>Link to the revised MAS AML/CFT Notices and Guidelines:  <a href="http://www.mas.gov.sg/Regulations-and-Financial-Stability/Anti-Money-Laundering-Countering-The-Financing-Of-Terrorism-And-Targeted-Financial-Sanctions/Anti-Money-Laundering-and-Countering-the-Financing-of-Terrorism/Notices-and-Guidelines.aspx">http://www.mas.gov.sg/Regulations-and-Financial-Stability/Anti-Money-Laundering-Countering-The-Financing-Of-Terrorism-And-Targeted-Financial-Sanctions/Anti-Money-Laundering-and-Countering-the-Financing-of-Terrorism/Notices-and-Guidelines.aspx</a>.</p>
c.	Proposed measures to facilitate crowdfunding which involves the offer of securities	<p>8. In February 2015, MAS issued a consultation paper proposing measures to facilitate crowdfunding which involves the offer of securities (securities-based crowdfunding) to accredited and institutional investors to facilitate the access by start-ups and small and medium enterprises (SMEs) to more sources of funding.</p> <p>9. In particular, MAS proposes to relax certain financial requirements for capital market</p>

		<p>intermediaries that deal in securities, which will benefit certain intermediaries operating crowdfunding platforms.</p> <p>10. MAS also proposes to clarify the application of certain exemptions from prospectus requirements under the Securities and Futures Act (SFA) for fundraising through securities-based crowdfunding.</p> <p>11. Securities-based crowdfunding can offer an alternative source of private financing for start-ups and SMEs. However, there are high risks associated with such investments which include loss of capital<sup>2</sup>, lack of liquidity<sup>3</sup>, fraud<sup>4</sup> and platform closure of failures<sup>5</sup>.</p> <p>12. In considering the regulatory approach for securities-based crowdfunding, MAS seeks to strike a balance between facilitating the development of securities-based crowdfunding in Singapore and ensuring that there are sufficient safeguards for investors. As very few jurisdictions have implemented such regulatory frameworks, it is prudent to start by facilitating securities-based crowdfunding offerings to accredited and institutional investors in the first instance. MAS will continue to monitor developments in other jurisdictions to consider if it will be appropriate to extend securities-based crowdfunding to retail investors.</p> <p>Link to the Consultation Paper for Facilitating Securities-Based Crowdfunding:</p>
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<sup>2</sup> High risks of capital loss to investors as failure rate for start-ups is high;

<sup>3</sup> Investors may not be able to sell their securities, or may have to sell them at significant discounts in the absence of a secondary market for trading in securities

<sup>4</sup> Fundraising is carried out through online platforms. There is a risk that the projects and proposals may not be genuine and promised rewards or returns will not materialize as investors may not have personal contact with the offerors and also there may be limited information provided on the projects and proposals being funded

<sup>5</sup> If customer monies are not properly segregated, investors may face losses if the securities-based crowdfunding platform operator that handles the monies fail

		<a href="http://www.mas.gov.sg/~media/MAS/News%20and%20Publications/Consultation%20Papers/Facilitating%20Securities%20Based%20Crowdfunding.pdf">http://www.mas.gov.sg/~media/MAS/News%20and%20Publications/Consultation%20Papers/Facilitating%20Securities%20Based%20Crowdfunding.pdf</a>
7.	<b>SNB initiatives – update</b>	<b>Swiss National Bank</b> Matthias AMMANN
a.	Update on legislation regarding the financial markets (FINIG and FIDLEG)	<p>The Federal Financial Services Act (FIDLEG) governs the relationship between financial intermediaries and their clients for all financial products and the draft of the Federal Institutions Act (FINIG) governs the relationship between financial intermediaries and their clients for all financial products. The consultation on the preliminary drafts of the Financial Services Act and the draft of the Financial Institutions Act ended on October 2014.</p> <p>At the beginning of March 2015 the Federal Council informed the public about the results of the consultation on the preliminary drafts of the two acts and explained that both of the drafts were positively received by the majority of the consultation participants. However, in part there were serious reservations expressed about individual areas. For example, the proposed rules on the reversal of the burden of proof, the proposed procedural costs fund and the proposed arbitration court were clearly rejected together with the idea of instruments of collective legal protection limited to financial services. Further, the planned rule on disclosure of the compensation of financial service providers (e.g. retrocessions) was hotly debated. The proposals ranged from a complete ban on retrocession payments to abandoning the rule in the preliminary draft. In the Financial Institutions Act in particular, the rule on enhanced due diligence requirements relating to clients' tax compliance was</p>

		<p>rejected.</p> <p>The Federal Council has already taken some initial decisions on the direction to be taken on the controversial topics which came up in the consultation procedure (i.e., mainly with respect to enforcement). With respect to the other topics which came up in the consultation procedure, the Federal Council instructed the Department of Finance to carry out various adjustments in particular to enforcement and to draw up a dispatch by the end of the year 2015. The final drafts and the dispatch will then go into parliamentary debate but it has not yet been decided when the parliamentary debate is going to happen.</p>
<p>b.</p>	<p>New legislation to combat money laundering and terrorism financing (adaption of FATF/GAFI recommendations)</p>	<p>On 12 December 2014, the Swiss Parliament approved the new Federal Act for Implementing the Revised Financial Action Task Force (FATF) Recommendations of 2012. The referendum deadline of the new act expired unused on 2 April 2015 and the Federal Council decided to bring the act into force in two stages.</p> <p>As the country evaluation of the Global Forum on Transparency and Exchange of Information for Tax Purposes is due in the autumn of 2015, the provisions on the transparency of legal entities and bearer shares will come into force first. According to the new provisions the acquirer of bearer shares of a company must within a month after the acquisition inform the company about the acquisition, provide his or her name and address and report any future name or address changes to the company. The new provision require the company to keep a register of all holders of bearer shares, including their names and addresses. The consequences of not informing the company of an acquisition are quite dire:</p>

		<p>As long as the acquirer of bearer shares does not notify the company about the acquisition the membership rights associated with the relevant bearer shares cannot be exercised. Should a holder of bearer shares fail to inform the company about the acquisition for more than a month after the acquisition, all dividend rights associated with the relevant bearer shares forfeit. The dividend rights are reinstated after the company has been informed about the acquisition but only for future dividends. These new provisions regarding the bearer shares do only require minor implementation work and come into force on 1 July 2015 already.</p> <p>The second part of the new Federal Act for Implementing the Revised Financial Action Task Force requires either implementing provisions at the ordinance level or certain implementation work on the part of the target entities concerned. The financial intermediaries and the self-regulatory organisations under the Anti-Money Laundering Act in particular should have the time necessary to be able to make the preparations required for implementation. This is why the second part of the new Federal Act for Implementing the Revised Financial Action Task Force will come into force half a year later after the first part of the act (i.e., 1 January 2016).</p>
<p><b>8.</b></p>	<p><b>Other issues</b></p>	
<p>a.</p>	<p>Date and organisation of next meeting</p>	<p>MAS kindly offers to organise and host the next conference.</p>