**SUMMARY MINUTES**

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

**Wednesday, 7 June 2017, 8-10 pm JST**

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| **1.** | **SNB initiatives - update** | **Swiss National Bank**  Claudio Faeh |
| a. | Elimination of exchange deadline for old banknote series in Switzerland | Once the Swiss National Bank (SNB) brings a new series of banknotes into circulation, it can recall the banknotes from the previous series. The recalled banknotes then cease to be legal tender, but they can be exchanged at the SNB for a period of 20 years[[1]](#footnote-1). After the exchange deadline, the old banknotes lose their value and can no longer be exchanged. The exchange deadline for old bank note series was established in order to make the withdrawal of replaced banknotes effectively and to encourage people to exchange old bank notes in a timely manner once a new banknote series has been introduced. The exchange deadline of 20 years was considered as a sufficiently long time to enable all owners of old banknote series the exchange into new banknotes. An exchange deadline of more than 20 years was deemed to provoke indifference with the public with regard to the recall of old banknote series and was therefore considered as inappropriate. Another argument for the timely limited obligation to take back old bank note series is the technological development which is considered as increasing the potential danger of falsifications of old banknote series[[2]](#footnote-2).  However, from the sixth banknotes series which was launched at the end of the 1970’s and which becomes invalid in May 2020, the amount of 1.14 billion Swiss Francs was still in circulation as of the end of last year. The exchange deadline for old banknote series is considered as a de facto expropriation of owners of old banknote series. Inheritors of fortunes including old banknotes which cannot be exchanged anymore as well as foreign workers which returned to their home countries and kept old banknote series are assumed to be mainly affected by the exchange deadline. The most industrialised countries do not provide for an exchange deadline for old banknotes series[[3]](#footnote-3).  Based on an interpellation from a National Councillor, the Federal Department of Finance (FDF) and the SNB have reviewed the current practice and are requesting the elimination of the exchange deadline. During its meeting on 5 April 2017, the Federal Council addressed the exchange deadline for old banknote series and is proposing the elimination of this deadline as well. The FDF has been instructed to prepare a consultation draft with the necessary legislative amendments by the end of August 2017. The elimination of the exchange deadline for old banknote series will prevent a situation where people find themselves with banknotes that have suddenly lost their value. Switzerland is thus adapting to the customary practice in the main industrialised nations[[4]](#footnote-4). |
| b. | Swiss Sovereign Money Initiative (“Vollgeld” initiative) | This popular initiative is proposing a completely new framework for Switzerland's monetary system. A new Article 99 in the Federal Constitution should give the Swiss National Bank (SNB) a monopoly for issuing book money. Commercial banks would no longer be able to grant loans financed by sight deposits (current accounts) like at present. The initiative also provides for the SNB putting money into circulation debt-free by distributing it directly to government units and the people. The initiators believe this reform would result in a more stable banking and financial system[[5]](#footnote-5).  The Federal Council considers the reform unlikely to have a stabilising effect. It would cause Switzerland to go it alone and would result in an extensive and untried transformation of its monetary system and financial sector. Such a profound transformation of the monetary system would carry substantial risks. Moreover, economic upheaval would have to be expected, especially in the financial sector, during the changeover process in particular[[6]](#footnote-6).  In addition, the debt-free money creation called for by the initiative could jeopardise SNB's credibility. The money put into circulation by the SNB currently stands against assets in its statement of financial position, primarily currency reserves and gold at present. Acceptance of the initiative would mean that the SNB would no longer be in a position in the long term to reduce the money supply created by selling assets. Aside from the fact that it would be more difficult to implement monetary policy and ensure price stability, the SNB would also be more exposed to political covetousness[[7]](#footnote-7).  The fractional-reserve banking reform would significantly restrict commercial banks' business scope in places, as it would no longer be permitted to grant loans financed by sight deposits. Banks would have to resort to other, generally more expensive sources of financing for this. Payment transaction costs for bank clients would probably rise. Particularly smaller banks, which generate a large proportion of their revenue in the interest margin business, would be affected by the cost increase. If it were impossible to cover the demand for credit with other sources of financing, the SNB would have to grant banks the corresponding loans. Some of the credit volume would thus be managed centrally by the SNB[[8]](#footnote-8).  The Federal Council wishes to adhere to its existing strategy for a stable financial centre. Considerable progress has been made in recent years with the adjustments to the Basel III standards and the requirements for systemically important financial institutions (“too big to fail”). The depositor protector regulations currently protect client assets in bank accounts up to a sum of CHF 100,000. Moreover, the Swiss Financial Market Supervisory Authority (FINMA) supervises banks for excessive risks. The Federal Council is thus requesting that Parliament recommend to the people and the cantons rejection of this popular, without a counterproposal[[9]](#footnote-9). |
| **2.** | **EFMLG initiatives – update** | **European Financial Markets Lawyers Group (European Central Bank)**  Inigo Arruga, Niall Lenihan |
| a. | EURIBOR - pre-live verification program outcome | On 4 May 2017, the European Money Markets Institute (EMMI), administrator of the Euribor benchmark, communicated the outcome of the Euribor Pre-live Verification Programme. This exercise was conducted to ascertain the feasibility of a seamless transition from the current quote-based to a transaction-based Euribor. EMMI collected transactional data of 31 banks from 12 countries for the period September 2016 to February 2017.  EMMI’s analysis has concluded that under the current market conditions it will not be feasible to evolve the current Euribor methodology to a fully transaction-based methodology following a seamless transition path. These findings have been corroborated by the Belgian Financial Services and Markets Authority (FSMA) which oversights the EMMI. The market underpinning Euribor has been subject to material change as a result of regulatory requirements and the negative rate interest environment.  EMMI has already implemented a robust governance framework for the Euribor benchmark in general including in its current quote-base methodology. It also remains committed to reform the benchmark methodology to anchor Euribor in real transactions in line with the EU Benchmarks Regulation.  Over the next months EMMI will develop a hybrid methodology adapting to the prevailing market conditions and hence fit at all times. In the meantime, quote-based Euribor, which is a critical benchmark of systemic importance for financial stability will be continued, along with consultation with public authorities, panel banks and all market participants. |
| b. | Review of the Capital Requirements Regulation/ Directive/ Bank Recovery and Resolution Directive/ Single Resolution Board Regulation | In November 2016 the European Commission published a package containing five legislative proposals amending the EU Capital Requirements Regulation, the EU Capital Requirements Directive, the EU Bank Recovery and Resolution Directive and the EU Single Resolution Mechanism Regulation. The package implements into EU law elements agreed at international level through the Basel Committee, including a binding 3% leverage ratio; a binding detailed net stable funding ratio; a requirement to have more risk-sensitive own funds for institutions that trade in securities and derivatives as part of the fundamental review of the trading book; amendments to the large exposures framework; implements in the EU the IFRS 9; and other changes. The package also revises the minimum requirements for own funds and eligible liabilities, commonly referred to as MREL, in order to facilitate the bail-in of liabilities in resolution. This part of the package implements into EU law the FSB’s total loss-absorbing capacity – or TLAC - standard agreed by the G20 for Global Systemically Important Institutions. Under the proposal there are therefore slight differences in the MREL rules applicable to G-SIIs and non-G-SIIs. The package contains a number of specific additional elements.   * For example, the package introduces a harmonised approach to the ranking of bank creditors in insolvency in order to enable banks to issue debt in a new statutory category of unsecured non-preferred debt which would rank below senior unsecured liabilities but above subordinated liabilities. This facilitates bail-in and resolution action consistent with the principle that no creditor should be worse off in resolution than in insolvency, and follows on from legislative initiatives to establish this new category of bank debt in a number of Member States, including France and Germany. * The package also introduces a moratorium tool allowing for the suspension of certain contractual obligations for a short period of time in resolution as well as in the early intervention phase. As proposed, the package envisages that the moratorium would not be imposed for longer than five days. The moratorium would not apply to payment and delivery obligations owed to central banks, to EU payment and settlement systems, or to non-EU central counterparties recognised by the European Securities and Markets Authority. Nor would the moratorium apply to deposits covered by the EU Deposit Guarantee Schemes Directive. * The package introduces a new requirement for banking and financial groups whose ultimate parent company is established outside the EU to establish an intermediate EU parent undertaking, either in the form of an EU holding company or an EU credit institution. This new requirement would apply to non-EU banking and financial groups that are identified as Global Systemically Important Institutions outside the EU or that have subsidiaries or branches in the EU with total assets of at least EUR 30 billion. The purpose behind this new requirement is to strengthen the resolution process for non-EU groups having significant activities in the EU. * The package allows for waivers from capital and liquidity requirements for cross-border banking groups supervised by the same competent authority within the EU. This would be of most relevance for banking groups supervised under the euro area’s Single Supervisory Mechanism, where due to the reinforced consolidated supervision on a euro area-wide basis, capital and liquidity requirements applicable to subsidiaries could be waived, subject to parent companies establishing intra-group guarantee and collateral arrangements with respect to their subsidiaries.   The legislative package is under discussion in the EU Council and the European Parliament, and is intended to be adopted by the end of 2017. |
| c. | Proposed Regulation on central counterparty resolution | In November 2016 the European Commission published a proposal for a Regulation on a framework for the recovery and resolution of central counterparties or CCPs.  The proposal sets out a recovery and resolution framework for CCPs comparable to the framework applicable to banks and investment firms under the EU Bank Recovery and Resolution Directive or BRRD, but adapted to the specific features of CCPs.  The proposal takes into account the FSB’s Key Attributes of Effective Resolution Regimes for Financial Institutions and the CPMI/IOSCO guidance on recovery plans for financial market infrastructures. The standards developed by these two international fora are curr‎ently evolving, and relevant developments may be taken into account in the ongoing legislative process at the EU Council and the European Parliament.  Regarding resolution triggers, the triggers are similar to the BRRD triggers, with the competent supervisory authorities for CCPs being primarily responsible for determining the ‘failing or likely to fail’ condition' and, therefore, the entry of the CCP into resolution.  Regarding resolution tools, four types of resolution tools could be used individually or in combination: namely the allocation of losses and positions among clearing members; the sale of the CCP’s business to a third-party purchaser; the creation of a publicly controlled bridge CCP and the write-down and conversion of the CCP’s capital and debt instruments.  In addition, the resolution authority may use government stabilization tools, including the injection of public equity or temporary public ownership, where certain conditions are met, including that the use of resolution tools would not suffice to avoid a significant adverse effect on the financial system.  Moreover, the resolution authorities are entitled to use any other appropriate resolution tool according to their national frameworks.  Regarding resolution powers, similarly to the BRRD, resolution authorities are entrusted with broad resolution powers, including the power to require a clearing member to provide services or facilities to enable a third-party purchaser or bridge CCP to operate effectively; the exclusion of certain contractual rights foreseen in the case of default of the counterpart; the power to suspend payment or delivery obligations of the counterparties to a contract entered into by a CCP, the power to restrict the enforcement of security interests or the power to temporarily suspend termination rights (except vis-à-vis payment and settlement systems, other CCPs and central banks).  The proposal applies the ‘no-creditor-worse-off’ principle in such a way as to ensure that shareholders, creditors and clearing participants do not incur greater losses than they would have incurred had (1) they instead been subject to outstanding obligations pursuant to the CCP’s contractual arrangements in its operating rules in the event of the default of a clearing member (i.e., the CCP’s use of margins and default fund contributions to cover losses) or (2) the CCP been wound up under normal insolvency proceedings in an event other than the default of a clearing member (including by taking account of its contractual arrangements in its operating rules). |
| **3.** | **HKMA initiatives – update** | **Hong Kong Monetary Authority**  Stephen Law, Christine Tam |
| a. | HKMC’s introduction of Life Annuity Scheme | The first piece of update from the HKMA is the recent introduction of a life annuity scheme by The Hong Kong Mortgage Corporation, a subsidiary of the HKMA. In the light of the aging population of Hong Kong, one of the key tasks of the government is to try to enhance the quality of living of the elderly after retirement. The new scheme attempts to help the elderly turn their lump sum cash into fixed monthly income for life so that they don't have to worry about the return of their investments. The scheme targets those aged 65 or above. The minimum amount of premium would be HK$50,000 and the maximum amount of premium would be HK$1 million. For example, a male insured would be able to get HK$5,000 to HK$5,800 for HK$1 million premium. If an insured needs money urgently, he can surrender the policy and get the residual value. The initial scale of the scheme would be HK$10 billion. So far, the scheme has received positive public feedback. The current plan is to sort out the details and launch it by the middle of 2018. |
| b. | HKMA’s launch of a dedicated webpage on opening and maintenance of bank accounts | 1. On 24 March 2017, the Hong Kong Monetary Authority (HKMA) launched a webpage on its website and a dedicated email account to receive comments and answer queries regarding the opening and maintenance of bank accounts. 2. In the past few years, international efforts in combating money laundering, terrorist financing and tax evasion have stepped up significantly. Banks worldwide have extensively enhanced their AML/CFT control measures, including a more stringent customer due diligence process for existing and new customers. As such, the account opening process is now more complex and requires more time as compared to five or ten years ago. 3. In response, the HKMA has been working closely with the banking industry on the issue of “hard to open a bank account”. The industry has since introduced various measures to enhance transparency and improve customer experiences, including shortening the turnaround time for account opening, providing interim updates on the progress of applications and launching review mechanisms to re-examine unsuccessful applications. 4. The newly launched webpage of the HKMA contains useful information about account opening and maintenance procedures, documentation and information requirements and contact details of banks. It also provides information on what banks should not do when processing account opening applications and useful tips for the reference of unsuccessful applicants. 5. Role of the HKMA – The HKMA has taken a number of steps to deal with the account opening issue encountered by some corporate customers. The HKMA’s aim is to maintain a robust AML/CFT regime in Hong Kong which does not undermine access by legitimate businesses and ordinary citizens to basic banking services. As the HKMA attaches great importance to the issue concerning difficulties in opening bank accounts, it has embarked on a series of follow-up work, such as: 6. the engagement of various stakeholders including overseas and local chambers of commerce and SME associations to have an in-depth and full understanding of the situation, gathering the details of specific incidents related to difficulties in opening bank accounts and following up the cases with banks accordingly; 7. the issuance of a circular[[10]](#footnote-10) in September 2016 to reiterate that banks should adopt a “risk-based” approach in handling account opening applications and conducting ongoing due diligence for existing customers; and 8. the issuance of FAQs on CDD[[11]](#footnote-11) in September 2016 to clarify with banks some of the commonly misinterpreted CDD requirements. 9. Customer Due Diligence – Banks need to undertake CDD to understand customers’ backgrounds and needs before opening bank accounts.  This helps banks to provide suitable banking services to their customers. 10. When conducting CDD measures, banks should not make unreasonable requests to their customers that are disproportionate or irrelevant to risk assessment.  These may include, for example: 11. requiring all directors and beneficial owners of an overseas corporate to be present at account opening; 12. mandating that all documents of an overseas corporate are certified by a certifier in Hong Kong; 13. requesting a start-up to provide the same degree of detail on its track record, business plan and revenue projections as a long-established company; 14. expecting a Hong Kong business registration certificate for all applicants or evidence of a Hong Kong office for all overseas corporates, irrespective of business model or mode of operation; 15. requiring voluminous or very detailed information on source of wealth irrespective of the risks presented by the relationship or type of service offered which is difficult or impossible for the customer to provide; and 16. rejecting account opening based on unreasonably high benchmarks such as expected or actual sales turnover. 17. In general, banks should provide reasons for rejecting account opening applications. Further, banks have established review mechanisms for unsuccessful applications. The rejected applicants can ask the banks concerned to re-examine their account opening applications and may also contact the HKMA to make comments or enquiries. |
| **4.** | **MAS initiatives – update** | **Monetary Authority of Singapore**  Paul Yuen, Lynette Lee, Amanda Goh, Er Ewen |
| a. | Strengthening the resilience of the financial system | 1. **Strengthening the Resilience of the Financial System – Resolution of Distressed Financial Institutions** 2. The Monetary Authority of Singapore (Amendment) Bill 2017 (the “Bill”) was moved for First Reading in Parliament on 7 May 2017. The Bill introduces legislative amendments to strengthen the Monetary Authority of Singapore’s (“MAS”) powers to resolve distressed financial institutions in an orderly manner, taking reference from the Financial Stability Board’s Key Attributes of Effective Resolution Regimes (“Key Attributes”). 3. The Bill seeks to achieve the following:    1. consolidate MAS’ powers to:       1. impose requirements relating to Recovery and Resolution Planning (“RRP”) on financial institutions[[12]](#footnote-12).       2. require financial institutions to prepare and maintain recovery plans, submit information to MAS for resolution planning, and where necessary, adopt measures to address deficiencies in their recovery plans or remove impediments to orderly resolution.    2. provide MAS with sufficient time to implement resolution measures[[13]](#footnote-13) for financial institutions that enter into resolution, by:       1. dis-applying counterparties’ rights to terminate contracts with financial institutions[[14]](#footnote-14);       2. temporarily staying early termination or acceleration rights of counterparties to contracts entered into with such financial institution, such as. The temporary stay power will be subject to safeguards, including limits on the duration of stay imposed and the types of entities that the stay may not apply to.    3. empower MAS to write down or convert into equity, instruments issued or contracted to absorb losses or recapitalise a distressed financial institution[[15]](#footnote-15)[[16]](#footnote-16).    4. introduce a framework for MAS to recognise (all or part of) any resolution action taken by foreign resolution authorities on financial institutions in Singapore[[17]](#footnote-17).    5. provide disadvantaged creditors and shareholders[[18]](#footnote-18) with a right to compensation for the difference. This is in line with the “no creditor worse off than in liquidation” principle stipulated in the Key Attributes.    6. introduce a framework for resolution funding arrangements. Such arrangements will be established to meet the costs of implementing resolution measures[[19]](#footnote-19). |
| b. | Positioning the financial sector to support growth and innovation | 1. **Positioning the Financial Sector to Support Growth and Innovation** 2. Consultation on Refinements to the Regulatory Framework for Managers of Venture Capital Funds    1. On 15 February 2017, MAS published a consultation paper proposing refinements to the authorisation process and regulatory framework for managers of venture capital funds (“VC managers”). The move is part of MAS’ broader efforts to facilitate financing for enterprise development.    2. VC managers provide capital and expertise to businesses that are in the start-up or early growth phases.    3. Currently, VC managers are subject to the same regulatory framework as other fund managers. VC managers are different from other fund managers as they manage funds that typically:       1. invest in only unlisted business ventures operating for no more than five years;       2. do not accept new subscription after the close of a fund, with redemption only available at the end of the fund life; and       3. are offered only to non-retail investors.   These differences make some fund management rules that are currently imposed on VC managers less relevant.   * 1. MAS therefore proposed to simplify the authorisation process and regulatory regime for VC managers. The proposals take into account the contractual safeguards that are present in typical fund management contracts negotiated by VC managers’ sophisticated investor base.   2. Under the proposed simplified authorisation process:      1. MAS will focus primarily on fitness and propriety assessment of the VC managers[[20]](#footnote-20).      2. VC managers will not be subject to the capital requirements and business conduct rules that currently apply to fund managers in general[[21]](#footnote-21).   3. To ensure that the VC industry maintains good governance and adequate controls against financial crime, and upholds high standards of integrity, VC managers (including their directors and key officers) must continue to meet fit and proper requirements and comply with anti-money laundering obligations.  1. Consultation on a New Corporate Framework for Investment Funds    1. On 23 March 2017, MAS commenced a public consultation on a new corporate structure for investment funds – the Singapore Variable Capital Company (“S-VACC”).    2. The S-VACC seeks to complement existing investment structures[[22]](#footnote-22) with one that is tailored for investment funds. The S-VACC framework can offer a flexible and efficient platform for fund managers to co-locate fund domiciliation with their substantive fund management activities in Singapore and deepen the asset servicing ecosystem.    3. The proposed S-VACC framework allows for segregation of assets and liabilities of sub-funds within an umbrella structure. This can facilitate the consolidation of administrative functions at the umbrella fund level. In addition, S-VACCs would be required to disclose the registers to supervisory and law enforcement agencies where necessary. 2. Fostering development and adoption of financial technology    1. MAS has been taking steps to facilitate the development and adoption of financial technology:       1. Close to 2 years ago, we formed a FinTech & Innovation Group (FTIG) within MAS. FTIG would review regulatory policies and development strategies to facilitate innovation and the use of technology. This would help our industry better manage risks, and enhance efficiency and competitiveness;       2. MAS issued “regulatory sandbox” guidelines in November 2016 to encourage and enable experimentation of solutions that utilise technology innovatively to deliver financial products or services;       3. MAS facilitated the sharing and exchange of ideas and developments, and connection of global fintech community through the Singapore FinTech Festival last year;       4. MAS signed cooperation agreements with foreign authorities/agencies[[23]](#footnote-23) to enhance FinTech cooperation[[24]](#footnote-24); and       5. MAS also embarked on collaborative projects with industry. I will elaborate on two such projects.    2. First. MAS is working with industry to apply Distributed Ledger Technology (“DLT”) in securities settlement and cross border payments       1. On 9 March 2017, MAS announced the successful conclusion of the proof-of-concept project to conduct domestic inter-bank payments using distributed ledger technology. The project, in partnership with a DLT company and a consortium of financial institutions, was first announced on 16 November 2016 by MAS.       2. The project demonstrates the potential of making the MAS Electronic Payment System interoperate with the DLT for automated collateral management.       3. MAS has plans for two spin-off projects:          1. To make fixed income securities trading and settlement cycle more efficient through DLT.          2. To explore new methods to conduct cross border payments using central bank digital currency.       4. MAS is also exploring the use of DLT to allow the settlement of cross-border payments using central bank accounts.    3. Secondly, MAS is working with our industry to explore the feasibility of developing an industry Know-Your-Customer (“KYC”) utility       1. KYC is the process by which financial institutions identify and verify the credentials of their clients. This is a critical process for the financial services industry worldwide, but has become increasingly costly and resource intensive.       2. The development of an industry KYC utility to perform KYC processes on a centralised basis can potentially simplify KYC processes and enhance efficiencies within financial institutions. |
| **5.** | **FMLC initiatives – update** | **Financial Markets Law Committee**  Joanna Perkins, Venessa Parekh |
|  | Various aspects of Brexit | Joanna Perkins, on behalf of the FMLC, provided a summary of the developments in Brexit negotiations to date, including: (i) the delivery of the U.K.’s letter to Donald Tusk notifying the E.U. of the U.K.’s decision to withdrawal (29 March 2017); (ii) the anticipated date of withdrawal (29 March 2019); (iii) the anticipated publication of the Great Repeal Bill (on 19 June 2017); and (iv), the snap general election which had been called for 8 June 2017.  **The FMLC’s work on Brexit**  Dr Perkins provided an overview of the FMLC's work on legal uncertainties arising from Brexit, including the establishment of the High Level Advisory Group on Brexit, the publication in December 2016 of the FMLC’s first [paper](http://www.fmlc.org/paper-on-issues-of-legal-uncertainty-arising-in-the-context-of-the-withdrawal-of-the-uk-from-the-eu---the-application-of-english-law-the-jurisdiction-of-english-courts-and-the-enforcement-of-english-judgments.html) on cross-border litigation post Brexit, and the four forthcoming papers examining the status of financial services and E.U. law following Brexit. Dr Perkins noted that the FMLC's work on Brexit ran on two tracks: (i) the examination of questions about mutual markets access and how the U.K. would negotiate with the E.U. as a “Third Country” and the rest of the world were it to become a “fourth country” (i.e., no longer party to the E.U.’s agreements with the rest of the world); and (ii) legal questions about the future of U.K. law, including the form of the Great Repeal Bill and complications with respect to references in E.U. legislation transposed directly into U.K. law to bodies such as the European Court of Justice and European Supervisory Authorities.  She also provided details of the forthcoming papers:   1. **Third Country Regimes:** Dr Perkins noted that the U.K. would lose access rights to the European single market post-Brexit and would be treated as a ‘Third Country’ in respect to E.U. law. The FMLC was preparing a paper considering legal uncertainty particularly concerning: (i) the scope of Third Country provisions; (ii) the criteria which must be satisfied in order to carry out activities in the E.U.; (iii) the timing of assessments of equivalence (observing that the U.S.-E.U. arrangement for clearing had taken four years); and (iv), the impact of these legal uncertainties. 2. **Scope of the WTO Rules:** In the absence of a bespoke agreement between the U.K. and E.U., U.K. trade with the rest of the world and the E.U. will be governed by the WTO rules, and with regards to the provision of financial services by the WTO's General Agreement in Trade in Services ("**GATs**"). It was noted that the Most Favoured Nation ("**MFN**") commitment prohibits preferential arrangements amongst WTO members and that the GATs does not provide much by way of market access. It was also noted that MFN provisions could affect transitional arrangements between the U.K. and E.U. 3. **E.U. Insolvency Regulation:** The Recast E.U. Insolvency Regulation (“**EUIR**”) provides a framework (through directly applicable law) for conducting cross-border insolvency proceedings. Upon Brexit, it is not clear whether the EUIR would continue to apply to the U.K. and whether the mutual recognition provisions would continue to work. The FMLC's paper will set out four options to deal with the absence of the EUIR. 4. **BRRD and Related Legislation:** Dr Perkins outlined how similar issues of jurisdiction and recognition arise in the context of the Bank Recovery and Resolution Directive ("**BRRD**") and the Credit Institutions Winding Up Directive ("**CIWUD**").   Attendees on the teleconference asked for examples of Third Countries which had successfully negotiated access to the E.U. market. Dr Perkins discussed the case of the U.S., which had achieved access for certain sections for the financial services but noted that each individual decision took varying periods of time and there was little certainty.  Another question was raised about the functioning of the Great Repeal Bill. Dr Perkins acknowledged that the Bill was expected to achieve a great deal and that it was expected that a number of shortcuts would be employed, including the establishment of British substitutes for E.U. organisations (such as the ESAs) and the use of the Henry VIII provisions which enable primary legislation to be amended or repealed by subordinate legislation. |
| **6.** | **FMLG initiatives – update** | **Financial Markets Lawyers Group (Federal Reserve of New York)**  Michael Nelson, Shawei Wang |
|  | The CHOICE Act | Michael Nelson gave the group an update on the Financial CHOICE Act, which had passed the House Financial Services Committee in a party-line vote on May 4, 2017. Michael predicted the CHOICE Act would soon pass the full House, which it did the day after our ICI teleconference, on June 8, 2017.  The CHOICE Act, proposed by Rep. Jeb Hensarling (R-Texas), includes, among other things, provisions that would (i) decrease regulatory burden on community banks, (ii) restructure the Consumer Financial Protection Bureau, (iii) subject the financial institution supervision functions of the Federal Reserve Board and Reserve Banks to Congressional appropriations, (iv) modify the membership of the FOMC, (v) repeal the Volcker Rule and (vi) remove the FDIC from the Title I resolution plan process.  The next stop for the CHOICE Act is the Senate, where 60 votes are needed to pass the legislation. The CHOICE Act is almost certain to face changes in the Senate. One unknown is where on the list of priorities financial regulation will fall given other issues fighting for attention. We will provide further updates at the next ICI call. |
| **7.** | **FLB initiatives – update** | **Financial Law Board (Bank of Japan)**  Masayasu Yano, Masaru Itatani |
| a. | The Amendments to the Financial Instruments and Exchange Act | On May 17 this year, in order to cope with the development of information technology, the act which amends the “Financial Instruments and Exchange Act” has passed the diet. By this amendment, the following measures and rule will be introduced.  (i) Measures to cope with “high speed algorithmic trade”  The measures to cope with high speed algorithmic trade will be introduced. In Japan as well, the number of high speed algorithm trade, so-called HFT, is increasing. Whereas such trade provides the market with liquidity, it also provides some adverse effects which may deteriorate market function, such as sharp rise of market volatility and deviation from the appropriate pricing based on medium-to-long term enterprise value.  To cope with these adverse effects, the following three measures will be introduced in the amended act. The first one is the registration scheme of the companies conducting HFT. Under this scheme, registered companies have to keep sufficient capital and develop operational management system. The second one is the supervisory system by the JFSA, Japanese Financial Service Agency. The JFSA may issue “the Order to Improve Business Operation” and execute “On-Site Inspection” if necessary. The third one is the direct investigation scheme against high-frequency-traders by stock exchanges. The amended act empowers stock exchanges to investigate these traders directly regardless of whether traders belong to the securities companies or not.  (ii) Introduction of “fair disclosure rule”  The fair disclosure rule will be also introduced. Fair disclosure rule is a rule which make securities issuers provide information to all investors when these issuers provide a specific recipient with non-disclosed information. In Japan, unlike “Regulation FD” in the U.S and “Market Abuse Directive” in the EU, fair disclosure rule was not introduced before. Since some problematic cases regarding fair disclosure occurred, the rule is required to market participants.  By the amended act, the listed companies have to provide the non-disclosed information fairly; there are three points as follows. First, when a listed company provides material non-disclosed information to a specific recipient deliberately, the company has to disclose it simultaneously to the public. Second, when a listed company provides such information to a specific recipient accidentally, the company has to disclose it promptly. Finally, in order to ensure activities by the recipients who don’t use the non-disclosed information for the purpose of investment, the rule does not cover these recipients. Those who have the duty of confidentiality or who does not use the information for investment decisions are treated as the specific recipient. |
| b. | The Amendments to the Banking Act | On May 26 this year, the act which amends the “Banking Act” has also passed the diet. The purpose of the amendment is to cope with the advancement in Fin-Tech.  This year's amendment is the follow-up of the last year’s one, which allowed banks to invest in companies that contribute to the advancement of banking business or the improvement of customers profit without restricting the acquisition of voting rights. The amended act has two points as follows. First, the registration scheme will be introduced to “electric payment agents”, which provide services that mediate transactions between financial institutions and users. Under this scheme, registered electric payment agents have to develop appropriate operational management system and personal information management system. Second, the amended act requires financial institutions to endeavor to build the system of Open-API, opening measures of connection between financial institutions and electric payment agents.  In order to develop the Fin-Tech industry, it is necessary to realize both open innovation between financial institutions and Fin-Tech companies and the protection of personal information in a well-balanced manner. This amendment is expected to lead the developments of Japan’s Fin-tech industry. |
| c. | Shortening of JGBs Settlement Cycle to T+1 | In April 2012, settlement cycle for outright transaction of JGBs was shortened from T+3 to T+2 in Japan. After then, market participants in cooperation with the BOJ have discussed the way and procedure to further shorten it to T+1.  On February 23 this year, a working group of Japan Securities Dealers Association (JSDA) has decided the scheduled date of T+1 JGBs settlement cycle implementation as May 1 2018. In accordance with this decision, Market participants are now working for the final phase of preparations, including the running test (RT) for the system change which is expected to start from this autumn.  In order to shorten the settlement cycle for outright transaction to T+1, it is necessary to shorten that for GC repos to T+0. To execute GC repos with T+0 efficiently, the process of GC repos will be changed from “Prior Collateral Allocation Method” to “Subsequent Collateral Allocation Method”. Under Subsequent Collateral Allocation Method, each party of GC repos have only to designate the amount of money and the type of JGBs in trading -phase. Then, once the trading matches, not each party of GC repos but the CCP of JGBs allocates JGBs in accordance with the counterparties’ agreement. Since the usage of CCP is not mandatory under former Prior Collateral Allocation Method, operational procedures of GC repos will be changed drastically.  Moreover, contractual form of GC repos will also be changed. In Japan, due to taxation on sales of securities in the 1990's, which was abolished, though, securities lending against cash collateral is still widely accepted as the contractual form of GC repos. In conjunction with shortening the settlement cycle of GC repos to T+0, the contractual form will be replaced to globally accepted repurchase agreement.  Regarding the legal issues of GC repos, the FLB published a paper titled “Legal Issues Regarding the Scheme of GC Repo Transactions under Subsequent Collateral Allocation Method” in March 2016. This paper clarifies that the GC repos under Subsequent Collateral Allocation Method are valid in Japanese contract law and are covered by the Financial Instruments and Exchange Act as buying/selling of JGBs. Through publishing this paper, the FLB has contributed shortening of settlement cycle to T+1 in legal aspect. |
| d. | Banking Business and Fund Transfer Transactions: Scope of Bank Regulation― Bank of Japan Research Laboratory Series 17-E-2 March 2017 ― | * In Japan, conducting fund transfer business is considered to fall under the scope of banking business, and is subject to criminal sanctions, if carried out without a banking license. There is a long standing legal issue on this regulation. The leading Supreme Court case in 2001 said, "‘execution of fund transfer transactions’ is to accept fund transfer orders from clients using a scheme for that purpose without sending cash directly, or to perform such transfers." Unfortunately, this court precedent too broadly defined the regulatory scope of fund transfer transactions. Because of this precedent, people hesitate to engage in fund transfer business without obtaining banking license. * The ambiguity of the restriction on fund transfer transactions has been a source of debate for quite a long time. One such example is “collection agency” service. (In Japan, people often make small household payments at the convenience stores, which are given authority to accept payments, for utility bills, mobile phone bills, on-line purchases and so on. Those convenience stores function as collection agency.) Those services are often conducted without banking license, and their legality has long been debated. * In our blog entry, we tried to find policy justification for this NON-compliance. We are trying to differentiate collection agency business from traditional fund transfers. In general, prevention of bank run is a major concern for bank regulation. However, keeping fund transfer business exclusively to banks is not that self-explanatory in order to achieve this policy goal. Going back to the example of collection agency, customers enjoy the accessibility and flexibility to pay at the nearby location, and do not assume credit risk of convenience stores. Therefore, we could conclude that there is no such concern as bank run against collection agency. Collection agency service therefore does not constitute fund transfer transactions. * This analytical framework has broad application. Especially, we are seeing many new Fintech businesses because they sometimes take the form of collection agency to conduct fund transfer transactions. We hope that our paper will contribute to deepening discussions on the proper scope of Japan's banking regulations. |

1. Paragraph 3 of Art. 9 of the Federal Act on Currency and Payment Instruments (CPIA)

   <https://www.admin.ch/opc/en/classified-compilation/19994336/index.html> [↑](#footnote-ref-1)
2. Federal Council’s statement as of 17 August 2016 on the interpellation 16.3323 of National Councillor Manuel Tornare

   <https://www.parlament.ch/rm/ratsbetrieb/suche-curia-vista/geschaeft?AffairId=20163323> [↑](#footnote-ref-2)
3. Interpellation 16.3323 as of 27 April 2016 of National Councillor Manuel Tornare

   <https://www.parlament.ch/rm/ratsbetrieb/suche-curia-vista/geschaeft?AffairId=20163323> [↑](#footnote-ref-3)
4. Federal Council’s media release on the elimination of the exchange deadline for old banknote series as of 5 April 2017

   <https://www.admin.ch/gov/en/start/documentation/media-releases.msg-id-66263.html> [↑](#footnote-ref-4)
5. Sections 2 and 3 of the preprint of the Federal Council’s dispatch on the “Vollgeld” initiative

   <https://www.admin.ch/gov/en/start/documentation/media-releases.msg-id-64444.html> [↑](#footnote-ref-5)
6. Federal Council’s media release on the adoption of the dispatch on the “Vollgeld” initiative as of 9 November 2016 and section 4.1 of the preprint of the dispatch on the Vollgeld initiative

   <https://www.admin.ch/gov/en/start/documentation/media-releases.msg-id-64444.html> [↑](#footnote-ref-6)
7. Federal Council’s media release on the adoption of the dispatch on the “Vollgeld” initiative as of 9 November 2016 and section 4.2.2 of the preprint of the dispatch on the Vollgeld initiative

   <https://www.admin.ch/gov/en/start/documentation/media-releases.msg-id-64444.html> [↑](#footnote-ref-7)
8. Federal Council’s media release on the adoption of the dispatch on the “Vollgeld” initiative as of 9 November 2016 and sections 4.2.1, 4.2.3 and 4.2.5 of the preprint of the dispatch on the “Vollgeld” initiative

   <https://www.admin.ch/gov/en/start/documentation/media-releases.msg-id-64444.html> [↑](#footnote-ref-8)
9. Federal Council’s media release on the adoption of the dispatch on the “Vollgeld” initiative as of 9 November 2016 and sections 4.2.3, 4.2.4 and 5 of the preprint of the dispatch on the “Vollgeld” initiative

   <https://www.admin.ch/gov/en/start/documentation/media-releases.msg-id-64444.html> [↑](#footnote-ref-9)
10. “De-risking and Financial Inclusion” issued on 8 September 2016. [↑](#footnote-ref-10)
11. “Frequently Asked Questions on CDD” issued on 29 September 2016. [↑](#footnote-ref-11)
12. MAS’ policy intent is to apply the RRP requirements to financial institutions regulated by MAS that are assessed to be systemically important or that maintain critical functions in Singapore. [↑](#footnote-ref-12)
13. For instance, a transfer of business functions to a bridge entity, to achieve an orderly resolution. [↑](#footnote-ref-13)
14. Where such rights arise solely by reason of the financial institution’s entry into resolution. [↑](#footnote-ref-14)
15. The Bill sets out that MAS, when exercising its statutory bail-in powers, will have regard to the principles of respecting the hierarchy of claims in liquidation and equal treatment of creditors of the same class. [↑](#footnote-ref-15)
16. The amendments provide for the financial institutions and instruments that will be within the scope of the bail-in regime to be prescribed in subsidiary legislation at a later date. [↑](#footnote-ref-16)
17. The framework prescribes that, in determining whether a foreign resolution action should be recognised, MAS will take into account factors such as whether the foreign resolution action would have a widespread adverse effect on the financial system or economy of Singapore, whether it discriminates against Singapore creditors relative to other creditors of the financial institution, whether it is against public interest, and whether it has material fiscal implications. [↑](#footnote-ref-17)
18. Creditors or shareholders who receive under the resolution of a financial institution less than what they would have received had the financial institution been liquidated. [↑](#footnote-ref-18)
19. These include the provision of loans to a financial institution under resolution, initial capital for a bridge entity, administrative costs, and creditor compensation claims. Such costs will be recovered from the financial industry and market participants on an ex post basis. [↑](#footnote-ref-19)
20. MAS will not require VC managers to have directors and representatives with at least five years of relevant experience in fund management. [↑](#footnote-ref-20)
21. The base capital and risk-based capital requirements will be removed. Requirement for independent valuation, internal audits and the submission of audited financial statements will not be imposed. [↑](#footnote-ref-21)
22. Namely unit trusts, companies and limited partnerships. [↑](#footnote-ref-22)
23. Examples include France, Japan, South Korea and Switzerland. [↑](#footnote-ref-23)
24. In May 2017, MAS had entered into a memorandum of cooperation with the International Finance Corporation (a member of the World Bank Group) to establish the ASEAN Financial Innovation Network and facilitate broader adoption of financial technology innovation and development within the ASEAN region. [↑](#footnote-ref-24)