MINUTES

ICI Telephone Conference with representatives of EFMLG, HKMA, MAS, FMLC, FMLG, FLB and SNB

Tuesday, 28 November 2017, 13:00-14:30 h Swiss time (7-8.30 am EST / 8-9.30 pm SGT)

1. EFMLG initiatives – update	**European Central Bank – European Financial Markets Lawyers Group** Niall Lenihan, Iñigo Arruga Oleaga, Marek Svoboda, Volker Enseleit, Adrienn Petrovics
a. Proposal for a regulation of the European Parliament and of the Council amending Regulation (EU) No 1095/2010 and Regulation (EU) No 648/2012 with regard to the procedures and authorities involved for the authorisation of central counterparties and the recognition of third country central counterparties	On 13 June the European Commission published a second proposal to amend the European Market Infrastructures Regulation - EMIR - for the supervision and recognition of EU CCPs and third country CCPs. The proposal seeks to introduce a more pan-European approach to the supervision of EU CCPs, and ensure closer cooperation between supervisory authorities and central banks of issue responsible for EU currencies In particular, a new CCP Executive Session of the European Securities and Markets Authority (ESMA) is established to consent to a wide variety of decisions by national competent authorities, including CCP authorisation, extension of activities and capital requirements, access to a CCP/ trading venue, responsibility for recognition and authorisation of third country CCPs. The Commission is also proposing an enhanced role for central banks of issue in the supervision of EU CCPs, with supervisors required to submit to central banks of issue draft decisions relating to the authorisation, extension of activities, liquidity risk controls, collateral and settlement requirements, and to obtain the consent of the central banks of issue in respect of any aspect of those decisions relating to the carrying out of their monetary policy tasks. In addition, ESMA is required to submit draft decisions to the central bank of issue of the relevant currency before adopting certain specific decisions establishing regulatory technical standards relating to margin requirements, the management of liquidity risk and collateral requirements, and guidelines or recommendations relating to the assessment of inter-operability arrangements. Again, ESMA is required to obtain the consent of the relevant central bank of issue in respect of any aspect of those decisions relating to the carrying out of their monetary policy tasks.

	As far as non-EU CCPs are concerned, the proposal will make the process to recognise and supervise third country CCPs more rigorous for those which are of key systemic importance for the EU. First, there are Tier 1 third-country CCPs, which are not systemically important, which go through the existing equivalence and recognition procedure, whereby they are recognised on the basis of home country supervision provided their home country regimes are determined to be equivalent to the EU regime. Second, there are Tier 2 CCPs, which ESMA determines to be systemically important for the financial stability of the EU or for one or more of its Member States taking into account a number of criteria. Tier 2 CCPs must comply with the full range of capital, organisational, conduct of business, prudential and inter-operability requirements under EMIR. However, ESMA is required to take into account the extent to which a Tier 2 CCP's compliance with these requirements is satisfied by the CCP's compliance with comparable requirements applicable in the third country. In this respect, a CCP may submit a reasoned request that ESMA assesses its comparable compliance with these requirements, setting out the factual basis for a finding of comparability. The Commission will adopt delegated legislation specifying the minimum elements to be assessed for this purpose and the modalities and conditions to carry out the assessment. The Commission's proposed regulation confers extensive supervisory powers with respect to Tier 2 CCPs, including information reporting requirements, powers to conduct investigations, on-site inspections, adopt supervisory measures, impose fines and periodic penalty payments and conduct hearings, all subject to the jurisdiction of the European Court of Justice. The central banks of issue of the most relevant Union currencies of the financial instruments cleared have to confirm, both at the time of recognition and on an ongoing basis, that the Tier 2 CCP complies with any requirements imposed by those central banks when carrying out their monetary policy tasks, e.g., in the area of liquidity risks, payment or settlement arrangements, collateral, haircuts, investment policies, collateral segregation requirements, liquidity arrangements between central banks. Following recognition, the consent of the central bank of issue would be required for certain supervisory decisions for systemically important third country CCPs, e.g., margin requirements, liquidity risk controls, collateral requirements, settlement, approval of interoperability arrangements. Turning to the potential specific impact of Brexit on the UK CCPs, the Commission proposes that ESMA, in agreement with the relevant central banks of issue and commensurate with the degree of

	systemic importance of the CCP in accordance with the criteria to be further specified in the Commission's delegated legislation, may conclude that a CCP is of such substantial systemic importance that compliance with the capital, organisational, conduct of business, prudential and inter-operability requirements under EMIR and central bank monetary policy requirements does not sufficiently ensure the financial stability of the Union or of one or more of its Member States, and should not therefore be recognised, in which case recognition as a Tier 2 CCP would be withheld. This would imply that the substantially systemically important third country CCPs would have to establish themselves inside the EU if they wish to continue providing services to EU counterparties and markets. The justification for this would be that no other major currency's transactions would be cleared to such a large extent outside its own monetary area. While the ECB would be involved in such a decision as the central bank of issue, the final decision would rest with the Commission. The withdrawal of the UK from the EU will have a major impact on the Eurosystem's ability to carry out its tasks as central bank of issue for the euro. At present UK CCPs clear significant amounts of euro-denominated transactions, accounting for around 99% of the Union markets in euro-denominated repos and interest rate swaps. Thus, a significant disturbance affecting a major CCP could lead to a severe decrease in liquidity within the euro area. The Eurosystem's ability to monitor and manage the risks posed by UK CCPs will be adversely affected if UK CCPs are no longer subject to the regulatory and supervisory framework for EU CCPs under EMIR. Given that the General Court of the European Court of Justice has held that the ECB does not have the competence necessary to regulate CCPs, the ECB Governing Council has unanimously issued a recommendation to the European Parliament and the EU Council to amend the ECB's statute in order to grant the ECB the power to regulate clearing systems for financial instruments. The ECB must have the relevant powers under the ECB's statute in order to ensure that the Eurosystem, as central bank of issue for the euro, can carry out the role envisaged for it by the Commission's legislative proposal. The Commission has expressed its support for this proposal. However, the Commission has also proposed to reformulate the wording of the ECB's proposal, so as to clarify that the ECB's power to make regulations regarding clearing systems to achieve the objectives and carry out the tasks of the ESCB must be consistent with acts adopted by the European Parliament and the Council and Level 2 acts adopted thereunder.

b. Review of European Supervisory Agencies	On 20 September 2017 the European Commission put forward a proposal to create a stronger and more integrated European financial supervision. Once adopted, the proposals would expand the mandates and streamline the governance of the ESAs for banking (European Banking Authority, EBA), for securities and financial markets (European Securities and Markets Authority, ESMA), and for insurance and pensions (European Insurance and Occupational Pensions Authority, EIOPA). The essence of the changes is to grant more powers on the EU level.
c. Developments on EBOR	In July 2017 the Governing Council of the ECB decided to produce a euro unsecured overnight interest rate ("Euro Bank Overnight Rate" or "EBOR") based on data available to the Eurosystem. In September the Governing Council approved the conceptual design for this project. The interest rate, which is planned to be produced by 2020, would complement existing benchmark rates produced by the private sector and serve as a backstop reference rate. This interest rate will be based entirely on unsecured transactions in euro that are reported by banks in accordance with the ECB Regulation on Money Market Statistics (MMSR). The ECB decided to take action as benchmark rates have an important anchoring role for contracts in financial markets. Monetary policy is transmitted through financial markets and benchmark rates play a pivotal role in the operationalisation and monitoring of the transmission of the ECB's monetary policy. The high-level features of this new overnight interest rate will be consulted with market participants and other stakeholders in the course of 2018. They will then be invited to provide their feedback on the suggested approach. Critical interest rate benchmarks are currently undergoing in-depth reforms. In this regard, the ECB also provides the Secretariat for a recently established industry-led Working Group on identifying risk free alternative reference rates for the Euro-area.

<table>
<tr><td>2. HKMA initiatives – update</td><td>Hong Kong Monetary Authority
Flora Leung, Shirley Chung</td></tr>
<tr><td>a. Bank culture reform in Hong Kong</td><td>1. The HKMA issued a circular titled “Bank Culture Reform” to all banks, restricted licence banks and deposit taking companies (collectively known as “Authorized Institutions” or “AIs”) in Hong Kong earlier this year (“Circular”) to provide guidance for AIs to develop and promote a sound corporate culture that supports prudent risk management and contributes towards incentivising proper staff behaviour.
2. The HKMA recognises that there is no standard approach and the expectation is for AIs to adopt a holistic and effective framework for fostering sound bank culture. In particular, the Circular sets out three pillars for promoting this:
(a) Governance:
– The board and senior management of AIs should lead by example and establish a culture that promotes prudent risk taking and fair treatment of customers.
– Senior management is expected to establish effective mechanisms for ensuring that the AI’s desired culture is communicated, understood and shared by all levels of staff.
– AIs should have a dedicated board-level committee, chaired by an independent non-executive director, to advise and assist the board in discharging its responsibilities in respect of culture related matters. The board-level committee should have a regular process in place to review the effectiveness of the overall culture enhancement initiatives.
(b) Incentive Systems: AIs should review and introduce reform to their incentive systems to induce behaviours which promote the desired culture and values and which reward good business performance and behavioural standards. The following factors should be taken into consideration:
– a shift away from over reliance on sales/profit targets as the primary determinant of an employee’s performance and remuneration, with more focus on adherence with cultural values;
– adequate consideration of behavioural indicators in performance assessment of individual employees;</td></tr>
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	– separate performance rating for adherence to corporate values in annual performance assessments of employees; and – a balanced use of incentives and disincentives, with a view to sanctioning mis-behaviours and promoting positive behaviours that enhance the culture of the AI. (c) Assessment and Feedback Mechanisms: – A set of indicators should be introduced for monitoring and assessing behaviour and to provide feedback to help management consider whether any enhancements are necessary. – Mechanisms should be put in place to obtain and collate customer and staff feedback. – AIs should share with employees lessons learnt from internal misconduct. – An internal escalation channel should be introduced for staff to report concerns. 3. All AIs, whether incorporated in Hong Kong or overseas, are required to review their governance arrangements as well as policies and procedures in relation to corporate culture and to implement the necessary enhancement measures by 1 March 2018, subject to the following: • overseas incorporated AIs may wish to put in place a tailor-made framework to fit individual circumstances; • the guidance set out in the Circular may be applied on a proportionate basis for those institutions with smaller and less complex businesses; and • where an institution is part of an international banking group and adopts a relevant framework formulated at the group level, it should make any necessary adjustments, having regard to local circumstances and any applicable guidelines and circulars issued by the HKMA. 4. In addition to issuing the Circular, the HKMA has recently published a revised version of the Supervisory Policy Manual Modules on corporate governance and risk management (together, the “Revised Modules”) as statutory guidance under the Banking Ordinance. Through the Circular and the Revised Modules, the HKMA seeks to enhance the corporate governance and risk management standards of AIs, with particular focus on senior managers being held accountable for establishing and fostering sound cultures within AIs.

b. HKMA's Fintech Facilitation Office	1. The HKMA has established the Fintech Facilitation Office ("FFO") to facilitate the healthy development of the fintech ecosystem in Hong Kong. The FFO acts, amongst other things, as: • an initiator of industry research in the potential application and risks of fintech solutions; • a platform for exchanging ideas of innovative fintech initiatives among key stakeholders; • an interface between the HKMA and market participants to help improve the industry's understanding of the regulatory landscape; and • a facilitator to nurture talents to meet the growing needs of fintech in Hong Kong. 2. In the past 18 months, the HKMA / FFO has launched a number of initiatives. For example, these include: (a) Cybersecurity Fortification Initiative: This seeks to raise the level of cybersecurity of Authorized Institutions using fintech in Hong Kong through: i. Cyber Resilience Assessment Framework: This helps Authorized Institutions assess their own risk profiles and determine the level of defence and resilience required. The assessment comprises: - Inherent Risk Assessment which is aimed at determining an Authorized Institution's inherent cybersecurity risk and risk rating; - Maturity Assessment which is intended to help an Authorized Institution assess whether its actual level of cyber resilience is commensurate with that of its inherent risk. Where material gaps are identified, the Authorized Institution is expected to formulate a plan to enhance its cyber resilience maturity level; and - Intelligence-led Cyber Attack Simulation Testing which is aimed at evaluating an Authorized Institution's capability to identify and respond to cyber-attack scenarios. ii. Professional Development Programme: This training programme seeks to increase the supply of qualified cybersecurity professionals in Hong Kong. iii. Cyber Intelligence Sharing Platform: This platform allows inter-bank sharing of cyber threat intelligence in order to enhance collaboration and systemic resilience. (b) Fintech Supervisory Sandbox: This allows Authorized Institutions and their partnering technology firms to conduct pilot trials of their fintech applications involving a limited number of

	participating customers without the need to achieve full compliance with the HKMA's supervisory requirements. Authorized Institutions and technology firms are able to gather data and user feedback so that they can refine their products and services before formal launch. The latest feature of the Fintech Supervisory Sandbox is the Fintech Supervisory Chatroom which seeks to provide supervisory feedback to Authorized Institutions and technology firms at an early stage of their fintech projects. (c) Smart Banking: This will help foster the development of the financial ecosystem in Hong Kong. Smart Banking encompasses a number of initiatives to be launched, including, for example: – Faster Payment System: This will operate round the clock and is aimed at providing an infrastructure to allow users to initiate and receive real-time payments / fund transfers and real-time settlements in Hong Kong dollars and Renminbi; – "Banking Made Easy": This will involve a new HKMA task force to work with the banking industry to minimise regulatory obstacles in customers' digital experience; and – Closer cross-border collaboration: For example, the HKMA and the UK's Financial Conduct Authority entered into a Co-operation Agreement to foster collaboration between the two authorities in promoting financial innovation. The HKMA also signed a Co-operation Agreement with the Monetary Authority of Singapore earlier this year, with a view to fostering fintech development within the region. Pursuant to this Co-operation Agreement, a Memorandum of Understanding to jointly develop the Global Trade Connectivity Network was exchanged by the two authorities at the Singapore FinTech Festival 2017.

3. MAS initiatives – update	**Monetary Authority Singapore** Paul Yuen, Dawn Chew, Lynette Lee, Agatha Teng, Priscilla Shen
a. Developments in Financial Technology – Singapore Fintech Festival	1. Singapore FinTech Festival (a) The second edition of the week-long Singapore FinTech Festival was held from 13 to 17 November 2017. More than 30,000 participants from over 100 countries participated in this year's Singapore FinTech Festival which aimed to provide a platform for connection, collaboration and co-creation for the global FinTech community.

– Experiments to harness block-chain technology for inter-bank payments	(b) The Singapore FinTech Festival this year incorporated the highlights of last year's Festival, including the FinTech Conference, Global FinTech Hackcelerator, FinTech Awards, FinTech Exhibition, visits to innovation labs, as well as community and networking events. A new feature of this year's Festival is the Investor Summit, which provided an opportunity for FinTech start-ups to access funding from a variety of local and global investors. (c) At the three-day FinTech Conference, over 160 leaders from central banks and regulatory agencies, financial institutions, venture capital firms, and FinTech companies spoke on nine key themes including global market insights, data analytics, tech risk, sustainable FinTech, and the future of FinTech. Speakers and panelists shared their perspectives and experiences on the opportunities and challenges ahead. These include balancing innovation and efficiency against concerns on security, compliance and privacy; using technology to enable better risk monitoring and management; and liability issues in the new digital age for consumers and market players. There were also discussions on the different policy and regulatory approaches to enable FinTech for financial inclusion whilst taking into account risks to consumer protection, financial integrity, and financial stability. (d) The Global FinTech Hackcelerator showcased 20 market-ready FinTech solutions, shortlisted from close to 600 global submissions. These solutions are intended to solve real-life industry problems in areas including customer-facing solutions, RegTech, and financial inclusion. For example, one of three winning solutions provides customer consent and data rights management technology which enables businesses to request, receive and capture customer consent to the use of their personal data. The firm creates consent receipts for the business and convert them to customer data rights accessible across all data systems, enabling businesses to comply with regulations by putting in place auditable workflows to record and prove lawfulness of processing of customer data. (e) The Investor Summit wrapped up the week-long Singapore FinTech Festival. Over 1,000 attendees turned up for the FinTech Festival's Investor Summit, and up to US$2 billion of capital was made available for the start-ups. 2. Experiments to harness blockchain technology for inter-bank payments (a) Project Ubin is a collaborative project with the industry to explore the use of Distributed Ledger Technology (DLT) for clearing and settlement of payments and securities. It seeks to

	use DLT to enable entities across different jurisdictions to make payments directly with one another, with much greater speed and efficiency, and at lower cost and risk. (b) Last year, Phase 1 of Project Ubin demonstrated that banks could conduct inter-bank payments without going through MAS, using a blockchain-based digital representation of the Singapore Dollar. (c) On 5 October 2017, MAS and ABS announced that Phase 2 has been concluded. The consortium which MAS and ABS led successfully developed software prototypes of three different models for decentralised inter-bank payment and settlements with liquidity savings mechanisms. (d) The three software models developed are amongst the first in the world to implement decentralised netting of payments in a manner that preserves transactional privacy. Existing netting programmes used in inter-bank payments rely on a single payment queue visible to the operator to find offsetting payments. Decentralising the queue, however, potentially exposes payment details to an unauthorised party. The latest models in Project Ubin achieve a combination of decentralisation and privacy. (e) MAS is preparing to extend Project Ubin beyond Singapore, and has recently announced a collaboration on cross-border payments with the Bank of Canada using blockchain technology. (f) To encourage innovation in inter-bank payments, the source-codes of all three successful prototypes from Project Ubin Phase 2 were publicly released by MAS and ABS. Central banks, financial institutions, as well as academic and research institutions can now tap on the open source-codes to facilitate their experiments, research and innovation.
b. Regulatory developments on payments and virtual currency – Regulatory position and Guide on Digital Token Offerings – Consultation on Payment Services Bill	1. Regulatory Position and Guide on Digital Token Offerings (a) On 1 August 2017, MAS issued a statement to clarify that the offer or issue of digital tokens in Singapore will be regulated by MAS if the digital tokens constitute products regulated under the Securities and Futures Act (Cap. 289) (SFA). The clarification was made in the wake of an increase in the number of initial coin (or token) offerings (ICOs) seen in Singapore and elsewhere as a means of raising funds. (b) ICOs are vulnerable to money laundering and terrorist financing (ML/TF) risks due to the anonymous nature of the transactions, and the ease with which large sums of monies may be

	raised in a short period of time. (c) MAS' position of not regulating virtual currencies is similar to that of most jurisdictions. However, MAS has observed that the function of digital tokens has evolved beyond just being a virtual currency. For example, digital tokens may represent ownership or a security interest over an issuer's assets or property. Such tokens may therefore be considered an offer of shares or units in a collective investment scheme under the SFA. Digital tokens may also represent a debt owed by an issuer and be considered a debenture under the SFA. (d) MAS also published a Guide to Digital Token Offerings on 14 November 2017 to provide general guidance on the application of the securities law administered by MAS in relation to offers or issues of digital tokens in Singapore. 2. Consultation on Proposed Payment Services Bill (a) MAS currently regulates various types of payment services under the Payment Systems (Oversight) Act (Cap. 222A) (PS(O)A) and the Money-Changing and Remittance Businesses Act (Cap. 187) (MCRBA), enacted in 2006 and 1979 respectively. However, the payment services landscape has changed considerably in the past few years, presenting new risks that arise from activities beyond the current scope of the PS(O)A and MCRBA. New payment business models have also blurred the lines between activities regulated under these two Acts. (b) On 21 November 2017, MAS published a consultation paper proposing a new payments legislation in the form of the proposed Payment Services Bill. The proposed Payment Services Bill is to:- i. streamline payment services under a single legislation by combining the PS(O)A and the MCRBA; ii. enhance the scope of regulated activities to take into account developments in payment services; and iii. calibrate regulations according to the risks the activities pose by adopting a modular regulatory regime. (c) By regulating the payment activities along the payment value chain and mitigating attendant risks, MAS aims to promote greater confidence among consumers and merchants to adopt electronic payments.

	(d) The proposed Payment Services Bill comprises two regulatory regimes. <u>Licensing Regime</u> i. The first framework is a licensing regime that focuses on retail payment activities facing consumers and merchants. Retail payment services that pose sufficient ML/TF risks, user protection concerns, technology risks, and interoperability concerns are identified for regulation under the licensing regime. Any entity that intends to provide retail payment services in Singapore will need to hold a licence (unless exempted) under the Bill. ii. The activities regulated under the licensing framework are, namely:- 1. Account issuance services; 2. Domestic money transfer services; 3. Cross border money transfer services; 4. Merchant acquisition services; 5. E-money issuance; 6. Virtual currency services (i.e. virtual currency intermediation); 7. Money-changing services. iii. A retail payment service provider that is regulated under the Bill would only need to hold a single licence to conduct any or all of the regulated activities. This single licence will permit a licensee to undertake specific activities as set out in its licence. iv. There are three classes of licences that an entity can apply for under the Bill:- 1. Money-Changing Licence; 2. Standard Payment Institution Licence; or 3. Major Payment Institution Licence. v. A Money-Changing Licensee may only provide money-changing services. Standard Payment Institutions and Major Payment Institutions may provide any regulated service under the Bill. However, only a Major Payment Institution may carry out payment services above any of the following thresholds:- 1. Accepting, processing, or executing a monthly average of transactions (including all payment transactions) above S$3 million in a calendar year; or 2. Holding an average daily e-money float above S$5 million in a calendar year.

	vi. Specific risk mitigating requirements apply to licensees under the Bill where the licensee conducts a regulated activity that poses the relevant risk. The types of specific risk mitigating measures are:- 1. AML/CFT measures; 2. User protection measures; 3. Powers to impose interoperability measures; and 4. Technology risk management measures. vii. The AML/CFT measures will apply to all three classes of licensees (Money-Changing licence, Standard Payment Institution licence, and Major Payment Institution licence). The other types of specific risk mitigating measures will apply only to Major Payment Institutions. Designation Regime viii. The second framework under the proposed Bill is a designation regime that focuses on payment systems whose disruption would pose financial stability risks or impact confidence in the financial system. These are likely to be inter-bank payment systems. The designation regime will be expanded in the proposed Bill to allow MAS to designate payment systems for competition or efficiency reasons.

4. FMLC initiatives – update	**Bank of England – Financial Markets Law Committee** Joanna Perkins, Venessa Parekh, Emelie Bradly (?)
a. Brexit	**Update on Brexit since July 2017** Joanna Perkins, on behalf of the FMLC, provided a summary of the developments in Brexit negotiations to date, including: i. The introduction in the House of Commons of the European Union (Withdrawal) Bill. The U.K. government won a vote to take the Withdrawal Bill forward by a majority of 36 but MPs have proposed 136 changes to the draft legislation. Concerns have also been expressed about the “Henry VIII powers” written into the Bill which enables the executive to rewrite some laws without consulting the parliament;

	ii. The publication of reports by the U.K. Government on a new customs arrangements with the E.U. and on enforcement and dispute resolution; iii. Prime Minister Theresa May's keynote speech in Florence, laying out an offer for a two-year "implementation" period after March 2019 in which status quo would be maintained between the U.K. and the E.U.; iv. The Bank of England's recommendation to include within the Withdrawal Bill a clause in relation to the maintenance of cross-border derivative contracts and insurance policies after Brexit; v. Ireland's suggestion that a transition period lasting up to 5 years be negotiated; and vi. The plans for a divorce bill to be settled within the next three weeks. Dr Perkins then provided an overview of the FMLC's work on Brexit, including the two papers recently published on issues of legal uncertainty (i) related to the future classification of the U.K. as a Third Country with regards to E.U. law; and (ii) in relation to cross-border insolvency proceedings. Two letters have been sent to the Ministry of Justice, (i) drawing attention to issues of legal uncertainty stemming from Clause 3 of the Withdrawal Bill; and (ii) concerning the Government policy paper on a cross-border civil judicial cooperation framework. Finally, Dr Perkins mentioned the FMLC's Brexit-related projects still in progress, which will examine the impact of the WTO rules on a future U.K.-E.U. partnership, the status of emissions allowances, bank resolution and the continuity of financial contracts post-Brexit.[1]
b. Distributed Ledger Technology	Dr Perkins proceeded to give an update on recent developments relating to distributed ledger technology ("**DLT**") as deployed in the financial services arena, highlighting both the activities of market participants as well as the increased interest taken by national regulators in the technology (particularly when used in relation to Initial Coin Offerings, "**ICOs**"). Dr Perkins went on to describe how the FMLC has been putting together a paper considering the appropriate conflict of laws rule to be used when identifying the governing law for the proprietary effects of transactions conducted on a DLT system. Uncertainty as to governing law arises in this

[1] Details of all the FMLC's work on Brexit can be found on our website here: http://www.fmlc.org/brexit.html.

	context owing to the fact that, where a DLT system spans several jurisdictions, it might be unclear where assets and their records are located. Dr Perkins noted that ICI teleconference participants may recall similar issues arising in the case of intermediated securities. Observing that the *lex situs* rule—which looks to the place in which the property or claim to property is situated—is difficult to apply successfully in the context of a DLT system, Dr Perkins called attention to several alterative rules that the FMLC DLT Working Group has been considering, including: • so-called "elective *situs*" (dictating that the proprietary effects of transactions in a DLT system should be governed by the system of law chosen by the network participants); • the law of the place of the relevant administrator or operating authority (if there is one within the particular DLT system); • the chosen law of the transaction/transfer/assignment; • the law of the place of the issuer master account; and • the law of the place where the system participant or transferor of the assets is resident. Dr Perkins concluded by noting that the Secretariat is in the process of finalising the paper, and that it will be available on the FMLC's website in due course.

5. FMLG initiatives – update	**New York Federal Reserve Bank – Financial Markets Lawyers Group** Shawei Wang, Michael Nelson
a. Regulatory Reform	On November 16, 2017, Senate Banking Chairman Mike Crapo released the text of his proposed Economic Growth, Regulatory Relief, and Consumer Protection Act. This summary is of an early version of the bill, which the Senate Banking Committee has been marking up, so the proposals below are subject to change. **Revised Threshold for Prudential Standards** The bill's key change for prudential standards is that it (1) replaces the default $50 billion threshold currently in Section 165(a) of the Dodd Frank Act with a new $250 billion threshold and (2) gives the Fed discretion to apply prudential standards to BHCs with $100 billion or more in total consolidated assets.

	The default threshold change will affect multiple standards under Section 165, such as resolution planning, stress testing and risk committee requirements. The bill also gives the Board the authority (by rule or order) to apply Section 165 prudential standards to bank holding companies (BHC) with total consolidated assets of $100 billion or more after considering (1) the institution's risk-related characteristics and (2) determining either that application is appropriate for financial stability or for safety and soundness. In addition, the Board (before 18 months have passed after enactment) may by order exempt any BHC with less than $250 billion in total consolidated assets from any Section 165 standard. **Central Bank Deposits** On central bank deposits, the bill provides that the banking agencies must amend their capital rules such that funds of a custodial bank that are deposited with a central bank are not taken into account when calculating the supplementary leverage ratio ("SLR") for the custodial bank (except to the extent such funds exceed the total value of deposits of the custodial bank linked to fiduciary or custodial and safekeeping accounts). For purposes of this rule, "custodial bank" means a depository institution or a depository institution holding company for which assets under custody are not less than 30 times total consolidated assets. "Central bank" means the Fed and the ECB, as well as OECD central banks that meet certain risk-weighting and sovereign debt non-default criteria.
b. Data Security Reform Legislation	On October 12, 2017, Rep. Patrick McHenry (R-N.C.) introduced H.R. 4028 in the House, where it was referred to the House Financial Services Committee. The bill, titled the Promoting Responsible Oversight of Transactions and Examinations of Credit Technology Act of 2017 ("PROTECT Act"), would amend the Federal Financial Institutions Examination Council Act of 1978 ("FFIEC Act") and the Fair Credit Reporting Act ("FCRA"). Rep. McHenry stated in a press release that the bill would strengthen consumer protections and cybersecurity oversight of credit reporting agencies in the wake of the recent Equifax data breach by: i. Requiring the Federal Financial Institutions Examination Council ("FFIEC") to create uniform cybersecurity standards for credit reporting agencies and submit them to onsite examinations; ii. Creating a national framework for credit freezes with special protections for victims of identity theft, active military personnel, people over 65 years of age, and children;

	iii. Stopping credit reporting agencies from using social security numbers as a basis for identification by 2020. On October 18, 2017, Sen. David Perdue (R-Ga.) introduced a companion bill (S. 1982) in the Senate, where it was referred to the Senate Committee on Banking, Housing, and Urban Affairs. Separately, on November 1, 2017, the House Financial Services Committee's Financial Institutions and Consumer Credit Subcommittee ("Subcommittee") conducted a hearing to examine data security vulnerabilities and the shortcomings of the existing regulatory regime, identify gaps in data security regulation, and highlight opportunities for reform. The Subcommittee heard testimony from Kenneth Bentsen, President and CEO, Securities Industry and Financial Markets Association ("SIFMA"); Daniel Mennenoh, President, H.B. Wilkinson Title Company, on behalf of the American Land Title Association ("ALTA"); Edmund Mierzwinski, Consumer Program Director, U.S. Public Interest Research Group ("U.S. PIRG"); and Debra Schwartz, President and CEO, Mission Federal Credit Union, on behalf of the National Association of Federally-Insured Credit Unions ("NAFCU"). During the hearing, the witnesses and Subcommittee members focused on the issues in the following key areas: (1) minimum national standards for all entities that hold consumer data; (2) harmonization of data security regulation at the federal, state, and Self-Regulatory Organization levels; (3) frameworks for public-private collaboration; and (4) data collection and protection by regulators.

6. FLB initiatives – update	**Bank of Japan – Financial Law Board** Masato Ui, Makoto Chiba, Yutaro Ikari
a. The amendments to the Civil Code (Obligations Law)	• "The Obligations Law" prescribes legal rights and obligations between individuals in the Japanese Civil Code. In this May, the bill for amending "the Obligations Law" was passed in the Diet and will be enforced within 3 years. • There are 2 main purposes why "the Obligations Law" is amended. First, the amended law intends to keep up with the social and economic changes after the enactment, in 1896. Since "the Obligations Law" had not been substantially amended up to now, some provisions became obsolete. Second, some former provisions were too difficult for ordinary people to understand. The

	amended law clarifies such provisions by incorporating some judicial precedents set by the Japan's Supreme Court. • The amended "Obligations Law" has a lot of revised contents in connection with financial transactions. Typical examples are as follows. (a) Introduction of variable interest rate So far, the statutory interest rate, 5% on annual basis, is fixed and is quite different from actual market interest rates. The amended law changes the fixed rate into variable interest rate, started from 3% per year and revised every 3 years based on the average loan rate. (b) Tightening requirements of a guarantee by an individual In terms of strengthening consumer protection, when an individual guarantees the debt for business as a third party, the amended law tightens the requirements for legal validity. (c) Introduction of rules about standard terms and conditions Since there are no provisions about standard terms and conditions, consumers, who don't generally read them, might bear excessive liabilities. In order to make consumer protection solider, the amended law clarifies requirements to be legally valid as a standard terms and conditions.
b. Topics about Fin-Tech – Update on virtual currency legislation – Structure of P2P lending and investor protection	**Update on virtual currency legislation** • On April 1 2017, the amended "Payment Services Act" was enforced and became effective. In order to respond to the environmental changes resulting from information technologies, it prescribes regulations regarding virtual currency. • Under the amended act, the registration system is introduced. If an entity wants to perform "virtual currency exchange services", it is required to register with the Japanese Financial Service Agency (FSA)2. • In line with the introduction of the registration system, the amended act defines "virtual currency exchange services". To fit in the definition, it is necessary for virtual currency exchangers to perform any of following 3 types of services as a business. (a) sales and purchases of virtual currency or exchange with other virtual currency

[2] http://www.fsa.go.jp/en/index.html

(b) intermediation, brokerage or agency regarding (a)

(c) management of the users' money or virtual currency in relation to (a) and (b)

- At the end of September, the FSA announced that 11 virtual currency exchangers were registered and allowed to provide "virtual currency exchange services". It is said that there are still over 50 entities waiting for registration or considering application[3].
- Though the amended act is not generally intended to cover Initial Coin Offering business, the FSA published a paper[4] about how to deal with ICO business in October. It says that ICO business should be regulated by the Japan's securities act and this new "Payment Services Act", depending on the economic substance of ICO business. This approach could be similar to the U.S and Singapore.

Structure of P2P lending and investor protection[5]

(i) The structure and characteristics of P2P lending

- P2P lending platforms assess borrowers' credit rating and monitor the credit risk of borrowers after loans have been extended. On the other hand, investors are responsible for deciding on whether to extend loans and for assuming the default risk of the borrowers.
- P2P lending platforms do not conduct business using their balance sheets in the way banks do. P2P lending platforms are not subject to banking regulations.
- P2P lending has the potential to improve social welfare by conducting business at a lower cost than existing financial intermediaries and distributing social surplus among investors and borrowers.

(ii) Legal arrangement for P2P lending

- In Japan, lending business is strictly regulated. Therefore, P2P investors do not extend loans directly to borrowers. The P2P lending platform originates the loan with funds it collects from investors through partnership agreements. Under those agreements, called silent partnership

[3] On December 1 2017, 4 virtual currency exchangers are also registered by the FSA.

[4] http://www.fsa.go.jp/policy/virtual_currency/07.pdf

[5] http://www.boj.or.jp/en/research/wps_rev/lab/lab17e06.htm/

	agreements, the P2P lending platform engages in lending as a business operator and the investors provide funds to the P2P lending platform as partners. • Under the Commercial Code of Japan, the funds of this kind of partnership agreement are included in the property of the business operator. It means that investors do not have direct claims to funds provided to or collected from borrowers. Therefore, the bankruptcy of a P2P lending platform could lead to unexpected losses for its investors. • In order to deal with the bankruptcy risk of P2P lending platforms in Japan, schemes such as specific purpose companies or specific purpose trusts can be used to segregate investors' loans from the other assets of the P2P lending platform.

7. SNB initiatives – update	**Swiss National Bank** Christina Kessler
a. Monetary policy report – Is the SNB's governance appropriate to fulfil its statutory mandate?	Following the SNB's decisions to impose a negative interest rate on sight deposit account balances at the SNB (December 2014), and to discontinue the minimum exchange rate for the euro (January 2015) the political pressure on the SNB increased substantially, as those decisions presented major challenges to the Swiss economy, and of course, also attracted the attention of politicians. The result were several parliamentary procedural requests (so called postulates) dealing with the SNB's monetary policy in general and its governance. Members of parliament use a postulate to task the Federal Council to consider revising the law or taking certain measures. In response to the various postulates, the Federal Council issued a detailed report on these topics on 21 December 2016. **As regards the SNB's monetary policy mandate** the question was raised whether the existing legal framework, i.e. the National Bank Act from 2004, provides sufficient instruments for the SNB to perform its mandate, or whether there is a need to change it in light of the various challenges of the past years. It was also discussed whether the SNB interprets its mandate too extensively and whether its independence guaranteed by the Federal Constitution needs to be limited. The report shows that the SNB's monetary policy concept has proved to be efficient also in difficult situations such as in the wake of the global financial crisis. In its report the Federal council concluded that the SNB has all the instruments necessary to perform its mandate, and that no amendments to the exiting legal framework

	are necessary. Also, the report states that the additional powers given to the SNB since the financial crisis were moderate, and that the existing legal framework sets clear limits to the SNB's independence and therefore does not require any changes in law. As regards the **SNB's governance**, the report deals with various topics. **First**, it has been discussed whether the SNB needs to **change its legal form**. Since its foundation in 1907 the SNB is a joint-stock company governed by special provisions of federal law. It is administered with the co-operation and under the supervision of the Confederation in accordance with the provisions of the National Bank Act. Its shares are listed on the stock exchange. 55% of the share capital is held by public shareholders and the remaining shares are largely in the hands of private persons. The Confederation does not hold any shares. The Federal Council, therefore, exercises its cooperation and supervision with regard to the administration of the SNB through various powers of appointment and approval. In this way, the Swiss government ensures that the National Bank is managed properly and efficiently. However, with regard to monetary policy decisions the SNB is independent and must not accept any instructions either from the Federal Council or from the Federal Assembly or any other body. In its report the Federal Council concluded that the legal form of the SNB does not need to be changed. Particularly, the Federal Council felt that the existing legal form guarantees best the SNB's independence, and ensures that the SNB's assets are not used to fund the Confederation. **Second**, the report deals with the question whether the SNB, as a counterbalance to its independence, needs to **become more transparent** with regard to the communication of its monetary policy decisions. In particular, one postulate proposed that public hearings should be introduced; and another one required that the transcripts of the board meetings should be published as is the case with other central banks. The National Bank Act provides that the SNB is accountable vis-à-vis the Federal Council, the Federal Assembly and the public. With the Federal Council, the SNB regularly discusses the economic situation, monetary policy and topical issues of federal economic policy. Formally, the Federal Council's Delegation for General Economic Policy and the SNB's Governing Board inform each other at periodic meetings. To the Federal Assembly, the SNB submits a written report on the fulfilment of its statutory tasks on an annual basis, and it elaborates on its monetary policy to the competent parliamentary committees. Finally, the SNB informs the public through quarterly reports on the development of the real economy and of the monetary situation, and the SNB publicly announces its monetary policy intentions. By explaining its policy on a regular basis and

	rendering account of its decisions in various publications and numerous speeches, the SNB makes its activities transparent. The Federal Council in its report concluded that the SNB's communication is very transparent already and that public hearings would not enhance the information available to the public. Also, the report states that the publication of the transcripts would not add much to the SNB's accountability, and would in fact undermine the so-called principle of collegiality which is a distinctive principle of the Swiss political system. It means that once a body has taken a decision all member of that body have to defend that decision despite their personal view. **Finally**, the question was raised whether the **size and composition of the Governing Board** and the Bank Council should be changed, and whether parliament (as opposed to the Federal Council) should elect the members of the Governing Board, or at least confirm their election by the Federal Council. Particularly, one postulate criticized that the Governing Board with only three members and three deputies was too small compared to other central banks. In the opinion of the Federal Council parliament should not elect or confirm the election of the members of the Governing Board as this would overly politicise the election. As regards the size of the Governing Board, the report carefully weighed up the pros and cons of a larger decision making body. Overall, the Federal Council concluded that the size of the Governing Board should remain unchanged for several reasons. First, the decision making process is usually more efficient the smaller the group is. Second, the bigger the group is, the smaller is the personal responsibility of each member, which increases the likelihood of risky decisions. Third, monetary policy decisions of the Governing Board follow a given process whereby the views of many internal experts as well as the views of the deputy members of the Governing Board are taken into account. Last but not least, in a country as small as Switzerland the number of potential candidates is comparatively small given that candidates not only have to be experts in their field but also have to be Swiss citizens.
b. Revision of Monetary Assistance Act	On 1 November 2017 the revised Monetary Assistance Act came into force. The Monetary Assistance Act (MAA) empowers the Confederation to provide monetary assistance in the form of loans, guarantee liabilities and non-repayable contributions. The SNB can act on behalf of the Confederation as lender or guarantor. The revision of the MAA was necessary due to changes to lending practices at the multilateral level, in particular the IMF. The most significant adjustment made, is the increase of the maximum term for monetary

	assistance from seven to ten years. With the entry into force of the revision, the requirements are met for Switzerland to be able to grant a bilateral loan to the IMF with a ten-year repayment period. So far, this has not been possible as the restriction provided in the MAA regarding the maximum term for monetary assistance was not in line with the IMF's lending policy. Also, a new provision has been added which allows the involvement of the Swiss National Bank (SNB) in monetary assistance for individual countries. So far, the involvement of the SNB was limited to monetary assistance in case of the disruption of the international monetary system as well as in case of IMF lending to certain countries via special lending facilities such as the PRGT. Now, the SNB on behalf of the Swiss Confederation can act as lender to individual countries.

8. Other issues	
a. Date and organisation of next meeting	EMFLG kindly offers to organise and host the next conference in spring 2018.