European Financial
Markets Lawyers Group

22 June 2018

ICI TELEPHONE CONFERENCE WITH REPRESENTATIVES OF
FLB, FMLC, FMLG, HKMA, MAS AND SNB, HOSTED BY THE EFMLG
22 March 2018

Draft MINUTES

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22 March 2018 at 13:00 CET

1.	**EFMLG initiatives - update**	**European Central Bank – European Financial Markets Lawyers Group** Otto Heinz, Niall Lenihan, Iñigo Arruga Oleaga, Marta Szablewska
a.	EBOR update	The ECB's new benchmark is progressing in accordance to the schedule. The final name is ESTER (euro short- term rate). ESTER will be produced before 2020 and will complement existing benchmark rates and serve as a backstop reference rate.
b.	Update on the European Master Agreement (EMA)	The European Banking Federation (EBF) is in the process of updating the EMA as well as the relevant legal opinions.
c.	Fintech action plan of the European Commission	In March 2018, the European Commission unveiled an "Action Plan on how to harness the opportunities presented by technology-enabled innovation in financial services (FinTech)". The Plan is part of the Commission's efforts to build a Capital Markets Union (CMU) and a true single market for consumer financial services, as well as part of the Commission's drive to create a Digital Single Market.

		The Plan sets out 19 measures to enable innovative business models to scale up, support the uptake of new technologies, increase cybersecurity and the integrity of the financial system, including (i) hosting of an EU FinTech Laboratory where European and national authorities will engage with tech providers in a neutral, non-commercial space, (ii) creation of an EU Blockchain Observatory and Forum (it will report on the challenges and opportunities of crypto assets later in 2018 and is working on a comprehensive strategy on distributed ledger technology and blockchain addressing all sectors of the economy), (iii) the Commission to present a blueprint with best practices on regulatory sandboxes, based on guidance from European Supervisory Authorities. The Commission also presented a proposal for an EU Regulation on investment-based and lending-based crowdfunding service providers (ECSP) for business. The proposal aims to ensure an appropriate and proportionate regulatory framework that allows crowdfunding platforms that want to operate cross-border to do so with a comprehensive passporting regime under unified supervision.
d.	European Commission proposal for a regulation on the prudential requirements of investment firms	On 20 December 2017 the European Commission published a proposed regulation and a proposed directive on the prudential supervision of investment firms. On the one hand, the proposal aims to cover systematically important investment firms and treat them like banks, on the other hand, it aims to introduce more proportionate and risk-sensitive rules for investment firms in order to alleviate regulatory burden on smaller investment firms. One provision of the proposed regulation redefines the concept of a "credit institution", or bank, under Union law. Under existing Union law a credit institution – essentially a bank - is defined as an undertaking the business of which is to take deposits or other repayable funds from the public and to grant credits for its own account. Under the proposed regulation this concept is being expanded to also include an investment firm whose business consists of dealing on own account and underwriting of financial instruments and/or placing financial instruments on a firm commitment basis and whose total assets exceeds EUR 30 billion, or which is part of a group of undertakings carrying out these activities whose total assets exceed EUR 30 billion. The basic idea behind this proposal is to bring systemic investment firms, of which there are eight, all currently based in the UK, within the category of credit institutions because of the greater risk they pose to financial stability given their size and interconnectedness, and in view of their exposure to substantial counterparty credit risk and market risk for positions they take on their own account. As a result of their reclassification as credit institutions, these firms would, if established post-Brexit in the euro area, fall under the system for the direct supervision by the ECB of significant credit institutions within the

		framework of the ECB's Single Supervisory Mechanism.
2.	**FLB initiatives – update**	**Financial Law Board (Bank of Japan)** Masato Ui, Makoto Chiba, Yutaro Ikari, Shiori Sugiura
a.	Regulatory update on cryptocurrencies	(i) Coincheck's incident At the end of January 2018, a major Tokyo-based cryptocurrency exchanger, Coincheck, was hacked into and lost a large amount of cryptocurrency NEM, equivalent to $500 million. In response to this incident, the Japanese Financial Service Agency (JFSA) promptly issued a business improvement order and made an on-site inspection against Coincheck under "Payment Services Act", amended and enforced last year in order to catch up with FinTech innovation. In such inspections, it focused on (1) compensation for customers, (2) financial conditions, (3) system management, and (4) Coincheck's own efforts on consumer protection. After Coincheck published its improvement plan, it has gradually resumed withdrawals and sales of some kinds of cryptocurrencies. At the same time, it announced that it would compensate customers for stolen NEM by cash in Japanese yen. According to Coincheck, it does not use the asset in its custody to compensate; it compensates by its own capital[1]. (ii) Tightening supervision by the JFSA Following the incident above, the JFSA is tightening its supervision over cryptocurrency exchangers other than Coincheck. From February 2018, the JFSA started to make on-site inspections against all cryptocurrency exchangers. In order to grasp their problems thoroughly, it targeted both registered and unregistered ones. On March 8, the JFSA announced that it took administrative orders for several cryptocurrency exchangers to take remedial actions as it determined they lacked the proper internal control systems to

[1] On April 6, Coincheck announced that it completed the compensation.

		protect investors and consumers from criminal use. More specifically, it ordered two exchangers to suspend business, and issued business improvement orders to five, including Coincheck (for the second time). Among these companies, the two are registered exchangers and the residual five are unregistered ones[2]. (iii) Study group about cryptocurrency regulation framework In March 2018, following the inspections above, the JFSA announced that it set up a study group regarding cryptocurrency regulation. Its members discuss recent issues related to cryptocurrency exchanges, including (1) user protection, (2) money laundering, (3) margin trading and (4) ICO business. Through discussion in the study group, the JFSA intends to consolidate the current regulation, and to newly introduce regulations about margin trading and ICO business, which are not prescribed in the current "Payment Services Act".
b.	Draft of the Companies Act	The Legislative Council of the Ministry of Justice had discussed the amendment of the Companies Act since last year and the summary was announced last month. There are two main points in the draft. One is an amendment concerning the shareholders' meeting and the other is an amendment concerning the directors. 1. The Amendments Concerning Shareholders' Meeting According to the current Companies Act, documents for the shareholders' meeting must be provided to the shareholders in writing in principle, and it is necessary for each shareholder's consent to provide these documents by an Electromagnetic Method. On the other hand, in the draft, it is suggested that if the director posts the materials on the website and informs the shareholders of the address in writing, it is legitimate to provide materials without the consent of each shareholder. In addition, the draft suggests that a new provision is set to restrict the number of proposals that shareholders can propose at the same meeting, or restrict proposals of inappropriate content by shareholders. 2. The Amendments Concerning Directors In the draft, it is suggested to newly establish provision of accountability at the shareholders' meeting regarding the decision policy of remunerations and to review the procedure of shareholders' meeting in

[2] On April 6, the FSA additionally issued business improvement orders to two unregistered exchangers and ordered an unregistered one to suspend business.

		the case of giving the company's shares as remunerations to directors. Also, the draft suggests the provision concerning company compensation which is the system in which a corporation bears the expenses incurred by a director when a director is filed a lawsuit. Moreover, there are some proposals that encourage the use of outside directors in the draft.

3.	**FMLC initiatives – update**	**Financial Markets Law Committee** Joanna Perkins
b.	Brexit	The FMLC has published 4 research papers on the topic of the UK withdrawal from the E.U. ("Brexit") and 4 letters to HM Government. The most recent letter was on the topic of interpretation of autonomous concepts of E.U. law when those have been incorporated into domestic U.K. law under the Withdrawal Bill. Dr Perkins provided an overview of developments in the Brexit negotiations which take place against the backdrop of the European Union (Withdrawal) Bill. Clause 6 of the Withdrawal Bill provides that the jurisdiction of the ECJ will be terminated post-Brexit. According to the Bill, where the meaning of an autonomous E.U. term or concept is defined before exit day, U.K. judges will follow that interpretation. The FMLC notes, however, that where the meaning of terms is not fixed by exit day—or their interpretation is discussed and adjudicated upon by the ECJ post-Brexit—there remains ambiguity as to how U.K. courts should proceed. A previous FMLC research paper on the topic of Brexit, published in December 2017, considered the effect of WTO rules on the U.K.'s prospective trade in financial services with the E.U. and Third Countries. This covered analysis on a transitional deal, a new bespoke FTA and simply trading on the basis of commitments recorded in the U.K. and E.U.'s WTO schedule of commitments. Four other Brexit papers on the following topics are in varying stages of preparation: i. Retained Law; ii. Emissions Allowances; iii. BRRD and CIWUD; and iv. Robustness of Financial Contracts.

c.	Benchmarks	Last year the Chief Executive of the Financial Conduct Authority made a statement that the FCA can no longer support LIBOR by compelling Panel Banks to contribute after 2021. This has given some impetus to the development of Risk Free Rates (RFR's). The Bank of England launched a new publication on SONIA as the preferred RFR and recommended that term derivative contracts be transitioned on to this rate. This raises a number of legal and economic questions. Legal questions include the continuity of legacy contracts which currently reference LIBOR, the viability of a large repapering exercise to incorporate SONIA, and the application of fall back provisions in existing contracts once LIBOR is withdrawn. Dr Perkins mentioned the difficulties this would raise, including the need for coordinated market action – which can be problematic from a competition law perspective - and touched upon questions such as (i) whether or not longer tenors will be established for RFRs; and (ii) how an auction process could be used to construct longer tenors. A participant asked a question about logistical challenges to a seamless transition from LIBOR. Dr Perkins stated—in respect of a pathway which contemplated the discontinuation of LIBOR and the publication of a new rate based on an RFR on the LIBOR publication venues that there are difficulties which include reluctant industry participants; and the required co-operation of third parties such as the current LIBOR administrator and Reuters and Bloomberg data services.

4.	FMLG initiatives – update	**Financial Markets Lawyers Group (Federal Reserve of New York)** Michael Nelson, Shawei Wang
a.	Crapo Bill Amendments to the Dodd-Frank Act	On March 14, the Senate passed the Economic Growth, Regulatory Relief, and Consumer Protection Act (S. 2155) by a vote of 67 to 31. The bill is now before the House of Representatives, and any changes made in the House must be reconciled with the Senate version before President Trump can sign it into law. Rep. Jeb Hensarling (R-Texas), Chairman of the House Financial Services Committee, has indicated that further negotiations with the Senate must take place before the House votes on S. 2155. The following is a summary of some select provisions of S. 2155, as engrossed in the Senate and reported to the House. **Increased Asset Thresholds for Enhanced Prudential Standards** S. 2155 would make significant changes to the enhanced prudential standards ("EPS") provisions of the Dodd-Frank Act ("Dodd-Frank") and give the Federal Reserve ("Fed") discretion to apply EPS to bank holding companies ("BHCs") and foreign banking organizations ("FBOs") based on their risk profile. S. 2155 would increase— from $50 billion to $250 billion—the consolidated asset threshold at which BHCs automatically qualify as systemically important financial institutions ("SIFIs") subject to EPS. For purposes of implementing the new regime, the bill divides BHCs into three categories based on asset size. • BHCs with less than $100 billion in assets would be exempt from EPS on the date of enactment

- BHCs with between $100 billion and $250 billion in assets would be exempt from EPS (except stress testing requirements) 18 months after the date of enactment; however, the Fed would have discretion to exempt such firms earlier on a case-by-case basis.

- BHCs with over $250 billion in assets, as well as any BHC that qualifies as a Global Systemically Important Bank ("G-SIB") under the Fed's systemic risk indicator score, would remain subject EPS in full.

In addition, the Fed would retain discretion to apply any or all EPS to exempt BHCs on a case-by-case basis, as appropriate to combat threats to U.S. financial stability and promote the safety and soundness of the banking system.

S. 2155 does not affect the Fed's EPS as applied to FBOs with $100 billion or more in total consolidated assets, including the Fed's authority to require the establishment of an intermediate holding company ("IHC"), impose EPS, or tailor regulation of an FBO with $100 billion or more in assets.

<u>Changes to Capital and Liquidity Requirements</u>

In addition to EPS modifications, S. 2155 would require the following targeted changes to bank capital and liquidity rules.

(i) Supplementary Leverage Ratio for "Custodial Banks"

S. 2155 directs the federal banking agencies to amend the Supplementary Leverage Ratio ("SLR") so that funds of a "custodial bank" that are deposited with a central bank are not taken into account when

		calculating the SLR denominator (except to the extent that such funds exceed the total value of deposits linked to fiduciary or custodial and safekeeping accounts). “Custodial bank” is defined as “any depository institution holding company predominantly engaged in custody, safekeeping, and asset servicing activities, including any insured depository institution subsidiary of such a holding company.” **(ii) Liquidity Coverage Ratio for Municipal Bonds** S. 2155 also directs the banking agencies to amend their liquidity coverage ratio (“LCR”) rules to classify “investment-grade” and “liquid and readily-marketable” municipal securities as “Level 2B” liquid assets under their LCR rules and “any other regulation that incorporates a definition of the term ‘high-quality liquid asset’ or another substantially similar term.” **Volcker Rule** S. 2155 would exempt from the Volcker Rule banks and BHCs with (1) less than $10 billion in total consolidated assets, and (2) total trading assets and liabilities that are less than 5 percent of total consolidated assets. The bill would also permit any banking entity to share its name with a hedge fund or private equity fund for which it serves as an investment adviser, provided that (1) the investment adviser is not—and does not share a name with—an insured depository institution (“IDI”), a company that controls an IDI, or an FBO, and (2) the name does not contain the word “bank.”

b.	Department of Treasury Orderly Liquidation Authority Report	In February 2017, President Trump issued an Executive Order setting forth seven "Core Principles" of financial regulation, and directing the U.S. Treasury Department ("Treasury") to review and report on areas for reform consistent with those principles. In April 2017, Trump issued a Presidential Memorandum directing the Treasury Secretary to specifically examine the Dodd-Frank Act's Orderly Liquidation Authority ("OLA") and whether a new chapter of the Bankruptcy Code should be adopted for resolution of financial institutions. On February 21, 2018, the Treasury Department issued its report on the OLA and bankruptcy reform ("Report"). **Background on OLA** Title II of the Dodd-Frank Act permits the Treasury Secretary to appoint the Federal Deposit Insurance Corporation ("FDIC") as receiver of a severely distressed financial company. A supermajority of both the Federal Reserve Board of Governors ("Fed") and the FDIC must vote to recommend that the Secretary invoke OLA based on eight statutory criteria. Further, the Secretary must make seven specific findings prior to placing the company in in FDIC receivership. The decision to invoke OLA is subject to limited, expedited judicial review. If a financial company does not consent to the appointment of the FDIC as receiver, the Treasury Secretary must petition an order from the D.C. District Court. The Court then has 24 hours to review two of the Treasury Secretary's findings—the company is in default or in danger of default, and it qualifies as a "financial company" under Title II—to determine whether the decision to invoke OLA was "arbitrary and capricious." Once appointed as receiver, the FDIC assumes broad statutory authority to wind down and sell off the financial company immediately or after transferring its assets to a new bridge company. Title II also

establishes an Orderly Liquidation Fund ("OLF") at Treasury as a liquidity facility that the FDIC may draw upon, subject to terms set by Treasury, to lend to the financial company in receivership.

Critics of Title II have argued that OLA gives too much discretion to administrative agencies, and that the OLF could be used to bailout creditors and creates an implicit taxpayer backstop. Conservatives in Congress have advocated for eliminating and replacing the OLA with a new chapter of the Bankruptcy Code.

Summary of Treasury's Recommendations

The Treasury Report recommends that the OLA remain in place as an emergency tool for resolving large, complex, cross-border financial companies. However, the Report recommends amending the U.S. Bankruptcy Code to provide for a new Chapter 14 bankruptcy process that would serve as a "first resort" for resolution of financial companies. The Report also made several OLA reform recommendations that address concerns raised by its critics.

(i) A new type of bankruptcy proceeding should be developed to serve as the first resort for resolution of a failing financial company.

The Report recommends that the Bankruptcy Code be amended to include a Chapter 14 proceeding for financial companies, and that the proceeding incorporate the following features:

- Regulator standing and deference: U.S. regulators should have statutory standing to raise issues and be heard in the Chapter 14 bankruptcy case. Foreign regulators should be given standing at the discretion of the court. The court should also be required to give deference to a

Fed determination as to the financial stability implications of a bridge company transfer.

- Chapter 14 Judges: Chapter 14 bankruptcy cases should be overseen either by: (a) a set of bankruptcy judges designated in advance by the Chief Justice of the Supreme Court, or (b) federal district court judges.

- “Capital Structure Debt” under Chapter 14: The definition of “Capital Structure Debt” should include all unsecured debt for borrowed money (other than Qualified Financial Contracts (“QFCs”)) as well as a secured lender’s unsecured deficiency claim for an under-secured debt.

- Eligibility for Chapter 14 bankruptcy: Chapter 14’s definition of “covered financial corporation” should be consistent with the definition of “financial company” under Title II and the FDIC’s implementing regulations. An asset threshold should not be used to determine eligibility.

(ii) Title II should be amended to limit the FDIC’s discretion, protect against taxpayer exposure for losses, and strengthen judicial review.

The Report recommended the following OLA reforms to *limit the FDIC’s administrative discretion*:

- Restrict FDIC’s ability to treat similarly situated creditors differently: The FDIC’s latitude to treat similarly situated creditors differently should be narrowed so that only critical vendors needed for the continuation of vital services may be given favored treatment.

- Provide for adjudication of claims by a bankruptcy court: The FDIC should manage the transfer of assets and liabilities to the bridge company, but a bankruptcy court should be given responsibility for administering the claims on liabilities left in the receivership.

- FDIC should clarify single-point-of-entry (“SPOE”) resolution strategy: The FDIC should finalize its notice regarding the SPOE strategy, and identify circumstances under which the FDIC does not believe SPOE would be the preferred resolution method.

		The Report recommended the following OLA reforms to *protect against taxpayer exposure for losses*. • Use guarantees and premium rates to encourage return to private credit markets: Loan guarantees should be preferred over direct lending, and FDIC loans and guarantees should only be extended if a premium interest rate or guarantee fee is charged. • All OLF lending should be secured by high-quality assets: The FDIC should only lend on a secured basis, and Treasury should only advance funds to the OLF on those terms. The FDIC should seek high quality assets as collateral, publish a list of assets eligible to serve as collateral for an OLF loan, and only accept a different form of collateral with approval from Treasury. • Limit duration of OLF loans: OLF loans should be limited to a fixed term that is only as long as necessary to meet liquidity needs. • Expedite OLF industry-wide backstop assessment: any assessments should be charged as soon as reasonably possible. The Report recommended the following OLA reforms to *strengthen judicial review*: • Clarify the statutory standard for commencing Title II proceeding: The statutory tests for determining when a financial company is in “default or in danger of default” should be clarified to require that each test is likely to be met within a specified period, to be no more than 90 days from the determination. • Broaden the scope of judicial review: The court should be permitted review all seven of the Treasury Secretary’s required findings under the “arbitrary and capricious” standard. • Reform the timing and process of judicial review: The Report suggested two possible appeals processes if a financial company does not consent to OLA proceedings: a) Replace the current *ex ante* review process with a full judicial review after the

		appointment of the FDIC as receiver. Within 30 days of appointment, the financial company could appeal a district court to remove the FDIC as receiver. There would be no statutory time limit for the court to issue a decision, and Title II's restriction on granting stays or injunctions pending appeal could be removed. b) Retain the current *ex ante* review process and provide that, in the event of an appeal, the district court's decision is to be reviewed by the circuit court *de novo* and without regard to the arguments made in the district court.

5.	**HKMA initiatives – update**	**Hong Kong Monetary Authority** Yvonne Tsui, Queenie Chan
a.	Consultation on the revised Guideline on Authorization of Virtual Banks	**Guideline on Authorization of Virtual Banks** The HKMA believes that the time is ripe for Hong Kong to try out virtual banks. In some jurisdictions, it has proved to be technically feasible and commercially viable for virtual or branchless banks to operate. A virtual bank operates on a different model of service delivery and may help promote financial inclusion as they normally target small customers, be they individuals or small and medium-sized enterprises (SMEs). The HKMA's view is that the emergence of virtual banks in Hong Kong would also provide additional impetus to the application of fintech in Hong Kong and offer a new kind of customer experience in mobile and digital banking. Given the recent developments in fintech and the evolution of digital banking, the HKMA consulted the public on a revised Guideline on Authorization of Virtual Banks recently. As part of the package of initiatives announced in September 2017 to bring Hong Kong into a New Era of Smart Banking, the HKMA intends to facilitate the establishment of virtual banks in Hong Kong and carried out a review of the Guideline on Authorization of Virtual Banks first issued in 2000. The Guideline on Authorization of Virtual Banks sets out the principles which the HKMA will take into account in deciding whether to authorize virtual banks to conduct banking business in Hong Kong. As defined in the revised guideline, a "virtual bank" refers to a bank which delivers retail banking services primarily, if not entirely, through the internet or other forms of electronic channels instead of physical branches. Generally speaking, the HKMA considers that the basic principles contained in the guideline issued in 2000 remain applicable. These principles include those relating to the requirement on a virtual bank to present a concrete and credible business plan, the importance of properly managing the risks associated with virtual banking, the requirement to treat customers fairly, and the need to maintain adequate capital commensurate with the nature and scale of operation of the virtual bank. Some updates or refinements are nonetheless necessary having regard to the present day circumstances. These include: (i) Banks, financial institutions and technology companies may apply to own and operate a virtual bank in Hong Kong.

		(ii) Virtual banks should play an active role in promoting financial inclusion in delivering their banking services. While virtual banks do not maintain physical branches, they may set up customer service centres. Virtual banks should take care of the needs of their target customers, be they individuals or SMEs. They should not impose any minimum account balance requirement or low-balance fees on their customers. (iii) Since virtual banks will engage primarily in retail businesses, they should operate in the form of a locally-incorporated bank. This is in line with the arrangement for banks engaged in retail businesses. (iv) Virtual banks will be subject to the same set of supervisory principles and key requirements applicable to conventional banks, although some of the requirements will need to be appropriately adapted to suit the business models of virtual banks. (v) As virtual banking is a new business model in Hong Kong, virtual banks should provide an exit plan at the time of application, so that they can unwind their businesses in an orderly manner should it become necessary. The public consultation has just finished. The HKMA will now take into account the comments received during the consultation and issue a revised guideline in May 2018. Companies intending to apply for a virtual banking licence may submit an application to the HKMA now. In evaluating the applications received, the dedicated team of HKMA will give due regard to the extent to which the authorization of the applicant will promote fintech and innovation, new customer experience and financial inclusion in Hong Kong. The HKMA will also set up a new task force within the HKMA and work with the banking industry to identify and, where appropriate, modify or streamline those regulatory requirements or processes that may hinder technological innovations. The HKMA will seek to clarify regulatory expectations, review our own guidance and rules to make them more user friendly, thereby facilitating innovations in products and services for better customer experience. Remote onboarding of customers and account maintenance are two such examples in which the use of new technology may lower operating costs and improve customer experience. The HKMA will also initiate legislative changes in our anti-money laundering laws and regulations so

		that a more risk-sensitive approach to remote customer onboarding can be undertaken. The HKMA and the Hong Kong Association of Banks are now studying how to use know-your-customer (KYC) utility to conduct customer due diligence processes more efficiently. The HKMA is also considering the introduction of multiple tiers of bank accounts so that the process required for opening accounts for the low risk banking services can be simplified. In addition to customer onboarding and account maintenance, Banking Made Easy would seek to facilitate the use of technology in the areas of online finance, online wealth management and robo advisers.
b.	Consultation on Open Application Programming Interfaces (API) framework for the banking industry in Hong Kong	As one of the seven initiatives announced by the HKMA in September 2017 for preparing Hong Kong to move into a New Era of Smart Banking, the HKMA proposed to formulate an Open API framework for the Hong Kong banking industry. The HKMA launched in mid-January 2018 a two-month industry consultation on its Open API framework. The HKMA is now considering the comments it received before finalising the framework, which will initially be applicable to retail banks in Hong Kong. *What is an Open API?* In the context of banks, Open API refers to a set of publicly available coding that enables recognized third-party service providers ("TSPs"), with the consent of the customers concerned where appropriate, to connect to, and conduct data exchange with, the IT systems of platforms to obtain information about products and services of banks for comparison and analysis. Hence, Open API allows better and easier system and service integration between banks and other industries, e.g. lifestyle, health care and retail services. It would maintain competitiveness and improve financial services for better consumer experience through collaboration between banks and tech firms, for example, different banks' products and services can be aggregated under the same website or mobile app for comparison and financial planning by users with ease and in a secure environment. *The consultation* However, the key benefits of Open API can only be reaped if it is widely adopted in the banking sector. To this end, the HKMA consulted the banking industry on the proposed Open API framework, which comprises of five areas: *(A) & (B) Open API functions and deployment timeframe* The HKMA in the consultation paper charted a phased introduction of Open API to reflect the

		unanimous view by the banks. Industry comments were sought on the proposed implementation timelines for different Open API functions. As it would not be ideal for Hong Kong to prescribe Open API functions in detail at the start, a flexible and inclusive approach has been adopted by the HKMA such that only high-level Open API functions are identified for banks to deploy and banks are expected to provide the HKMA with road maps of Open API adoption by certain deadlines. *(C) Technical standards* Setting standards in Open API allows interoperability. The HKMA sought comments on the standards for "data" but not in respect of the standards for "architecture" and "security", as there appears to be a general consensus on these two areas and it is believed that such standards are a reflection of the industry norm or best practice. *(D) TSP governance* TSP certification covers a range of governance activities and the HKMA proposed that a phased approach be taken such that: i. a flexible, risk-based bilateral approach will be adopted during the growth cycle of banks offering Open API and TSPs entering the market; and ii. as a long term goal, when the Open API ecosystem has grown to a sustainable size, a central certification entity which manages TSP certification be established. If there is sufficient support from the industry, the HKMA may consider developing a set of "risk- and principle-based" common baseline criteria for banks as reference for on-boarding TSPs. *(E) Maintenance* The HKMA proposed to set up a working group under the Hong Kong Association of Banks to review the technical standards on an ongoing basis and take on other industry-wide tasks of coordination where needed (e.g. harmonization of Open API functions in the longer term to achieve interoperability).

6.	MAS initiatives – update	Monetary Authority of Singapore Paul Yuen, Dawn Chew, Lynette Lee, Germaine Leung
a.	Developments in electronic payments	**1. Consultation on the proposed e-payments user protection guidelines** a. In November 2017, MAS consulted the public on a proposed Payment Services Bill. This Bill sought to modernise and streamline the regulatory framework for payment services and encourage wider adoption of e-payments in Singapore. b. Following that, MAS published a consultation paper on 13 February 2018 setting out proposed guidelines to standardise the user protection practices relating to unauthorised or mistaken payment transactions. The key areas include: (i) Liability caps for an account user and the financial institution (FI) in an unauthorised payment transaction; (ii) Notification duties of account users and financial institutions; and (iii) Resolution process for unauthorised and mistaken payment transactions. c. Under the proposed guidelines, financial institutions are expected to provide timely notifications of all e-payment transactions. Financial institutions will also be expected to set clear resolution processes for unauthorised or erroneous payment transactions. d. E-payments users are expected to adopt good security practices to protect their passwords

		and e-payment accounts. They should also report unauthorised transactions promptly. e. These guidelines will apply to banks, non-bank credit card issuers, finance companies and holders of widely accepted stored value facilities[3]. f. MAS hopes that these guidelines will help to make e-payments simpler and more secure, and give individuals and micro-enterprises more confidence to adopt and integrate e-payments into their daily activities **2. Singapore Quick Response Code Specifications for electronic payments** a. On 20 November 2017, the Payments Council (comprising 20 leaders from banks, payment service providers, businesses and trade associations) endorsed the specification for a common Singapore Quick Response Code (SG QR) that can accept electronic payments by both domestic and international payment schemes, e-wallets, and banks. The new SG QR was developed by an industry taskforce co-led by the Monetary Authority of Singapore (MAS) and Infocomm Media Development Authority. b. The SG QR is an unprecedented national initiative supported by the industry to provide consumers and merchants with a seamless and streamlined e-payment experience. It will be progressively rolled out across Singapore by payment service providers in 2018. The SG QR includes protocols customised for Singapore, building on the QR specifications of EMVCo, a consortium of international payment schemes. The SG QR optimises the number of e-payment schemes it contains by improving the efficiency of processing merchant relevant data.

[3] When the Payment Services Bill commences, MAS also intends to make the guidelines applicable to payment services licensees that issue payment accounts.

b.	Recent AML/CFT measures in the financial industry	**1. Guidance on the use of technology to facilitate safe, non-face-to-face customer on-boarding** a. MAS requires FIs operating in Singapore to implement robust controls when onboarding new customers to detect and deter money laundering or terrorism financing. b. FIs are permitted to carry out non-face-to-face (NFTF) verification of customer identity, provided adequate measures are in place to guard against impersonation. These include the use of biometric identification, real-time video conferencing and secure digital signature using Public Key Infrastructure (PKI)-based credentials issued by accredited Certificate Authorities under Singapore's Electronic Transactions Act. c. On 8 January 2018, MAS issued new guidance to FIs on the use of innovative technology solutions to facilitate safe, non-face-to-face (NFTF) customer on-boarding. d. MAS' guidance relates to the use of MyInfo as a verified source of identification information. MyInfo is a digital service that enables individuals to authorise service providers to access their personal data that had been earlier submitted to and verified by the Singapore government. e. MAS will allow the use of MyInfo for NFTF customer identification and verification as it considers MyInfo to be a reliable and independent source for the purposes of verifying the customer's name, unique identification number, date of birth, nationality and residential address. FIs that have been given access to a customer's MyInfo data will not be required to obtain additional documents (such as photograph and identification number) to verify a customer's identity. The use of MyInfo will streamline customer due-diligence checks across the financial industry. It will

		improve the quality of risk management while saving time and costs. FinTech firms can also capitalise on the MyInfo platform, with customer consent, to develop innovative financial solutions for FIs to enhance customer experience.
c.	Developments in the financial sector in ASEAN	**1. Singapore's ASEAN chairmanship** a. In January this year, Singapore assumed the chair of the Association of Southeast Asian Nations (ASEAN) for 2018. During its chairmanship of ASEAN this year, Singapore will focus on five key economic areas. i. advance innovation and the digital economy[4]. ii. pursue initiatives that facilitate seamless trade and movement of goods within ASEAN[5]. iii. push forward long-standing services integration and reduce impediments to investment, so as to boost ASEAN's attractiveness as a business and investment destination. iv. cultivate a conducive regulatory environment, promoting greater cooperation and capacity building in energy efficiency and renewable energy, to support the goals of energy security, accessibility and sustainability.

[4] We will work to advance trade rules in e-commerce, lower business' operating barriers to entry, and build up digital connectivity in the region.

[5] As ASEAN gradually fulfils its tariff liberalisation commitments, we will work with ASEAN to further enhance intra-ASEAN trade, reduce trade transaction costs, and facilitate the digitalisation of trade procedures within ASEAN.

		v. pursue deeper ties between ASEAN and its external partners. b. Singapore will continue efforts to strengthen ASEAN cohesion through continual alignment with the necessary work to progress the ASEAN Economic Community (AEC) Blueprint 2025. **2. AEC Blueprint 2025** a. The financial sector integration vision for 2025 as set out in the AEC Blueprint 2025 encompasses three strategic objectives, namely financial integration, financial inclusion, and financial stability, and 3 cross-cutting areas (Capital Account Liberalisation, Payment and Settlement Systems, and Capacity Building). b. Besides the AEC Blueprint 2025, there have been various other developments in the financial section in ASEAN recently. **3. ASEAN Financial Innovation Network to support financial services innovation and inclusion** a. ASEAN Financial Innovation Network (AFIN) aims to support financial services innovation and inclusion in less developed markets within the ASEAN region and to provide a platform for collaboration and innovation for financial institutions and FinTech firms. b. On 16 November 2017, MAS, International Finance Corporation (IFC) which is a member of the World Bank Group, and the ASEAN Bankers Association (ABA), introduced an industry FinTech sandbox for financial institutions and FinTech firms as part of the AFIN. c. AFIN will provide an integrated platform for collaboration between ASEAN banks, microfinance institutions, non-banking financial institutions (NBFI) and regional FinTechs.

		Through the platform, AFIN will: i. facilitate development and experimentation of innovative digital financial products and services; ii. support an array of financial service functions and solutions such as customer onboarding, credit scoring, merchant payments and compliance solutions amongst others. d. By providing a structured method for integration and defining relevant standards where necessary to connect the backend systems of banks and FinTechs, AFIN can help banks test out solutions in a quick and seamless manner. e. AFIN will collaborate closely with MAS and other regulators in the region to provide a practical environment where banks and regulators can also gain better insight into the evolving impact of FinTech from key challenges such as security, data privacy and consumer protection. **4. Malaysia and Singapore to set up stock market trading link** a. MAS announced in February 2018 that it will work together with the the Securities Commission Malaysia (SC) to facilitate the establishment of a stock market trading link between Bursa Malaysia (BM) and Singapore Exchange (SGX) by the end of 2018. The trading link will allow investors to trade and settle shares listed on each other's stock market in a more convenient and cost efficient manner. Retail investors notably will benefit from such a link. b. This initiative follows from the ongoing efforts of the ASEAN Capital Markets Forum (ACMF) to deepen financial connectivity across the region's capital markets. The

		bilateral link between BM and SGX will extend beyond trading to cover post-trade arrangements like the clearing and settlement of the stocks traded. In relation to this strategic initiative, MAS and SC will set up cross-border supervisory and enforcement arrangements, and work together with the two exchanges to operationalise the link. The trading link will help lower trading costs for investors and encourage greater cross-border investments in the stocks listed on each other's exchanges. This will improve the liquidity of both Singapore and Malaysia's stock markets.

7.	SNB initiatives – update	Swiss National Bank Christina Kessler; Renée Nef; Anette Knoll, Claudio Fäh
a.	New guidelines for initial coin offerings (ICO)	**New ICO Guidelines** There has been a sharp increase in the number of initial coin offerings (ICOs) planned or executed in Switzerland. It is therefore important that ICO organisers have clarity about the applicability of the existing legal and regulatory framework. On 16 February 2018, the Swiss Financial Market Supervisory Authority FINMA published new guidelines on how it intends to apply financial market legislation in handling enquiries from ICO organisers. These guidelines complement its earlier FINMA Guidance 04/2017 issued in 2017. The guidelines also define the information FINMA requires to deal with such enquiries and the principles upon which it will base its responses. There are three key aspects to FINMA's supervisory approach: a) **First, each case must be decided on its individual merits:** Financial market law and regulation are not applicable to all ICOs. Depending on the way in which ICOs are designed, they may not always be subject to regulatory requirements. At present, there is no ICO-specific regulation, nor is there relevant case law or consensus among scholars. b) **Second, FINMA's principles focus on the function and transferability of tokens:** In assessing ICOs, FINMA will focus on the economic function and purpose of the tokens issued by the ICO organiser. Also FINMA will take into account whether the token is already tradeable or transferable. At present, there is no generally recognised terminology for the classification of tokens either in Switzerland or internationally. FINMA categorises tokens into three types, but hybrid types are possible: • **Payment tokens** are a synonym for cryptocurrencies and are intended to be used, now or in the future, as a means of payment for acquiring goods or services or as a means of money or value transfer. Cryptocurrencies give no rise to claims on their issuer. • **Utility tokens** are intended to provide digital access to an application or service. • **Asset tokens** represent assets such as participations in a real physical underlying, in a company, or in revenues, or an entitlement to dividends or interest payments. In terms of their economic function, these tokens are very similar to equities, bonds or derivatives. c) **Third, FINMA's focus is on anti-money laundering and securities regulation:** FINMA's analysis

		indicates that money laundering and securities regulation are the most relevant pieces of regulation in the context of ICOs. So far, projects which would fall under the Banking Act (governing deposit-taking) or the Collective Investment Schemes Act (governing investment fund products) are rare. The Anti-Money Laundering Act contains requirements for financial intermediaries including, for example, the need to establish the identity of the beneficial owner. The law aims to protect the financial system against the risks of money laundering and the financing of terrorism. Money laundering risks are especially high in a decentralised blockchain-based system, in which assets can be transferred anonymously and without any regulated intermediaries. Securities regulation is intended to ensure that market participants can base their decisions about investments on a reliable minimum set of information. Moreover, trading should be fair, reliable and offer efficient price formation. On the basis of these criteria (i.e., function and transferability), FINMA will handle ICO enquiries as follows: • **Payment tokens**: In case the token is intended as a means of payment and can already be transferred, FINMA will require compliance with anti-money laundering regulations. However, FINMA will not treat such tokens as securities. • **Utility tokens**: These tokens do not qualify as securities if their sole purpose is to confer digital access rights to an application or service and if the utility token can be used in this way at the point of issue. If a utility token functions solely or partially as an investment in economic terms, FINMA will treat such tokens as securities (i.e. in the same way as asset tokens). • **Asset tokens**: FINMA treats asset tokens as securities. Asset tokens constitute securities if they represent an uncertificated security and the tokens are standardised and suitable for mass standardised trading. Also, they qualify as securities if they represent a derivative (i.e. the value of the conferred claim depends on an underlying asset), and if they are standardised and suitable for mass standardised trading. In the case of the pre-financing and pre-sale phases of an ICO which confer claims to acquire tokens in the future, these claims will also be treated as securities (i.e. in the same way as asset tokens) if they are standardised and suitable for mass standardised trading. If an asset token qualifies as security, securities law requirements for trading in such tokens, as well as civil law requirements under the Swiss Code of Obligations (e.g. prospectus requirements) will apply. Since many ICO projects are at an early stage of development, they are subject to numerous legal uncertainties. Apart from the aforementioned challenges with regard to financial market law and regulation there are also other legal aspects that have to be taken into account. For example, it is uncertain whether contracts executed via blockchain technology are legally binding under the existing civil law.

		The Swiss federal government has established a blockchain/ICO working group, which will, in close consultation with market participants, review the existing legal framework and identify any need for action. The aim of this work is to increase legal certainty, maintain the integrity of the financial centre and ensure technology-neutral regulation. The working group will report to the Federal Council by the end of 2018. The guidelines are available in English: https://www.finma.ch/en/news/2018/02/20180216-mm-ico-wegleitung/
b.	New rules for the accumulation of capital for systemically important banks	**Easier accumulation of capital for systemically important banks** The Swiss too-big-to-fail (TBTF) regime forces systemically important banks to have sufficient capital to be available in the event of a crisis. Such banks might thus issue TBTF instruments such as bail-in bonds, write-off bonds and contingent convertible bonds (CoCos). In accordance with the requirements of the Swiss Financial Market Supervisory Authority FINMA such TBTF instruments must be issued by the group parent company as of 1 January 2020 at the latest. The group parent company transfers the funds of these TBTF instruments internally to those group companies that require capital. This new approach increases the profit tax burden on financial interest revenue for the group parent company, as the so-called participation deduction is lower. More taxes lead to lower capital and are thus inconsistent with the TBTF legislation's aims. Estimates show that in the long term such increased profit tax burden could amount to additional taxes, on a cantonal and federal level, of up to several hundred million Swiss francs per year. In order to support the TBTF legislation's aims, the calculation of the participation deduction for the group parent company of systemically important banks will be adjusted on a selective basis. • TBTF instruments' interest expense should no longer be part of financing expenses, which reduce the participation deduction. • The funds from TBTF instruments transferred to group companies are to be excluded from the group parent company's consolidated statement of financial position.

		This change in tax law will be limited to systemically important banks in order to keep the exemption as narrow as possible. This includes the two Swiss GSIBs as well as the Swiss DSIBs. Previously, Parliament had also decided to exempt TBTF instruments from withholding tax in order to leverage the TBTF legislation's aims.
c.	Sovereign money initiative.	**Sovereign money initiative – Why the SNB opposes the initiative** The Swiss popular initiative *'For crisis-resistant money: end fractional-reserve banking' ('Vollgeld-Initiative')* will be put to a vote in a national referendum on 10 June 2018. The initiative calls for the introduction of a sovereign money system in Switzerland. Switzerland's commercial banks would no longer be permitted to create deposits through lending (money creation). All sight deposits would have to be backed by (i.e. consist of) central bank money created by the SNB. The SNB would put newly created money into circulation 'debt-free'. In other words, it would be distributed directly to the Confederation and cantons or citizens as a sort of 'gift'. The initiative's backers believe that centralising money creation at the SNB would result in a more stable financial system and would also increase central bank payouts to the state and citizens due to higher profit from the note-issuing privilege ('seigniorage'). The initiative would bestow more competencies on the SNB. The SNB nevertheless opposes the initiative, as does the Federal Council and the Swiss parliament, for the following reasons: • Switzerland's financial system has a proven track record and relevant new regulation has made it more secure. There is no fundamental problem that needs fixing. A radical overhaul of Switzerland's financial system is inadvisable and would entail major risks. • Today's decentralised system is both customer-focused and efficient. Competition between banks ensures favourable interest rates and high-quality, modern and low-cost services. • The SNB has the requisite instruments at its disposal to steer the interest rate level and hence the money supply, thereby fulfilling its mandate of ensuring price stability. • The proposed reform would politicise and complicate the implementation of monetary policy. - Today, the SNB can steer demand for money and credit via *interest rates*. Interest rate targeting is practised by the major central banks and has proved its worth as a strategy. Abandoning the current system of interest rate targeting in favour of monetary targeting would be an unnecessary

		and regressive step. - The ‘debt-free’ issuance of central bank money envisaged by the initiative would *expose the SNB to political ambitions*. It would also result in a concentration of tasks at the central bank, which would jeopardise monetary policy independence and the fulfilment of the SNB’s mandate. • The ‘debt-free’ issuance of central bank money would erode the SNB’s balance sheet and weaken confidence in the Swiss franc. • A sovereign money system could not prevent credit cycles and asset bubbles. Improved instruments are now available to ensure financial stability – these include capital requirements and the ‘too big to fail’ regulations. A sovereign money system could not deliver on its promise to guarantee a secure financial system and ensure greater prosperity through directly issued central bank money.