

Financial Markets Law Committee (“FMLC”)

FinTech Scoping Forum

Date: Tuesday 2 June 2020

Time: 2.00pm to 3.00pm

Virtual meeting



Attendees:

John Salmon (Moderator)	Hogan Lovells International LLP
Nikita Aggarwal	University of Oxford
John Casanova	Sidley Austin LLP
Cat Dankos	Herbert Smith Freehills LLP
Dorothy Delahunt	
Jonathan Gilmour	Travers Smith LLP
Tessa Jones	FIA
Mark Kalderon	Freshfields Bruckhaus Deringer LLP
Matthias Lehmann	University of Bonn
Emmanuel Le Marois	Global Financial Markets Association ("GFMA")
Sarah Lewis	Cleary Gottlieb Steen & Hamilton LLP
Ernest Lima	xReg Consulting
Philippa List	Dechert LLP
Helen McGrath	Stripe
Angus McLean	Simmons & Simmons LLP
Matthew Nyman	Ziglu Limited
James Reynolds	The Law Society
Bradley Rice	Ashurst LLP
Julia Smithers Excell	White & Case LLP
John Taylor	Queen Mary University of London
Kathleen Tyson	Granularity Ltd
Venessa Parekh	FMLC Secretariat
Katja Trela-Larsen	FMLC Secretariat

Guest Speaker:

Wendy Saunders

Herbert Smith Freehills LLP

Regrets:

Douglas Arner

The University of Hong Kong

Antony Beaves

Bank of England

Anne Bodley

HSBC Bank plc

Andrew Harvey

Global Financial Markets Association ("GFMA")

Richard Hay

Linklaters LLP

Sian Jones

xReg Consulting

Ben Kingsley

Slaughter and May

Suhail Khawaja

Wilmington Trust

Lewis Lee

CLS Bank International

Ciarán McGonagle

International Swaps and Derivatives Association

Deborah Sabalot

Deborah A. Sabalot Regulatory Consulting

William Samengo-Turner

Allen & Overy LLP

Michael Sholem

Cadwalader, Wickersham & Taft LLP

Ian Stevens

CMS Cameron McKenna Nabarro Olswang LLP

Rupert Wall

Sidley Austin LLP

Minutes:

1. Introductions

1.1. Mr Salmon opened the meeting.

2. FSB Consultation: Addressing the regulatory, supervisory and oversight challenges raised by "global stablecoin" arrangements (Wendy Saunders)¹

2.1. Ms Saunders introduced herself. She explained the remit of the Financial Stability Board ("FSB") is to support international financial stability, for which it coordinates with National Competent Authorities ("NCAs") and international standard-setting bodies. The FSB has issued a Consultation (the "FSB Consultation") addressing a range of challenges arising in the context of the rise of "global stablecoins" and making

¹ Please see Appendix I –

recommendations to resolve them.² Areas such as monetary policy, monetary sovereignty, currency substitution, data privacy and competition are out of the scope of the FSB Consultation.

- 2.2. Ms Saunders noted there is no single definition of a stablecoin but offered a few descriptions which may be helpful to consider. The FSB in its consultation has defined a stablecoin as a cryptoasset that aims to maintain a stable value relative to a specified asset, or a pool or basket of assets. The FSB Consultation defines a “global stablecoin” (“GSC”) as a “stablecoin with a potential reach and adoption across multiple jurisdictions and the potential to achieve substantial volume”. Finally, FSB Consultation defines a stablecoin arrangement as an “arrangement that combines a range of functions (and related specific activities) to provide an instrument that purports to be used as a means of payment and/or store of value”. The FSB notes that the matters it raises may also be relevant to other types of stablecoin or crypto-asset arrangements.
- 2.3. Ms Saunders gave a summary of some of the high-level financial stability considerations in relation to GSCs raised within the FSB Consultation including those raised by fluctuations in value. If GSCs are used for payments, operational disruption could significantly impact economic activity and financial system functioning. In addition, the risk exposures of financial institutions might increase in scale and change in nature – particularly if they perform multiple roles in a GSC arrangement - or large-scale redemptions of GSCs could mimic the impact of bank runs. Other challenges include those related to governance, market liquidity and credit risks as well as operational and cybersecurity risks.
- 2.4. The FSB surveyed a number of its members to ascertain the current or anticipated application of regulation to GSCs and what elements would likely be in or out of scope. The issuance and redemption of stablecoins, the management of reserve assets, the exchange and trade of stablecoins, the storage of private keys for wallets and the provision of custody/trust services for reserve assets are likely to be in scope of current regulations. On the other hand, the governance of and control over the whole stablecoin arrangement, the operation of the infrastructure of a stablecoin arrangement, and the validation of transactions are likely to be out of scope.

² Financial Stability Board, Addressing the regulatory, supervisory and oversight challenges raised by “global stablecoin” arrangements – Consultative document (14 April 2020) available at: <https://www.fsb.org/wp-content/uploads/P140420-1.pdf>

- 2.5. The FSB Consultation proposes ten high-level recommendations to address the regulatory, supervisory and oversight challenges raised by GSC arrangements. Although these recommendations are addressed to NCAs, some have an element which appears directly applicable to the design and structure of GSC arrangements. The FSB Consultation considers the specific challenges arising in a cross-border context, including the need for cross-border cooperation and coordination. For example, the "home" and "host" supervisory concepts applicable to regulated financial institutions (and "lead overseer" in the context of financial market infrastructures) cannot easily be applied to GSC arrangements. The FSB alludes to the need for supervision and oversight on a holistic basis.
- 2.6. Ms Saunders went on to outline the proposed regulatory obligations for GSC arrangements. Given the interconnectedness, GSC arrangements will need to have in place governance structures and accountabilities covering the whole arrangement – activities, functions and participants. Similarly, all functions and activities of GSC arrangements must be subject to appropriate risk management. Data management systems within GSC arrangements need to be robust. GSC arrangements will need to have in place plans to support an orderly wind-down or resolution, which should include continuity or recovery of any critical functions and activities within the GSC arrangement. There is an extensive list of aspects of a GSC arrangement to be disclosed to bolster confidence and mitigate failure risk. A lack of transparency is cited as a cause of failure in stablecoins to date, particularly where it leads to a lack of confidence. There are recommendations for legal clarity, but also transparency, in relation to redemption rights. Although redemption rights may not feature in all GSC arrangements. There needs to be adaptability of design to accommodate new regulatory requirements.
- 2.7. Ms Saunders touched on the selection of policy points identified by the G7 Working Group on Stablecoins, some of which are out of scope of the FSB Consultation, that highlight regulators reason for concern about GSCs.³ She noted a number of authorities have commented on the potential for central bank digital currencies (“**CBDCs**”) as a solution or alternative to private cryptoassets and GSCs.⁴ A main driver of these concerns

³ Bank for International Settlements, *G7 Working Group on Stablecoins: Investigating the impact of global stablecoins* (October 2019) available at: <https://www.bis.org/cpmi/publ/d187.pdf>

⁴ European Central Bank, *A regulatory and financial stability perspective on global stablecoins* (5 May 2020), available at: https://www.ecb.europa.eu/pub/financial-stability/macprudential-bulletin/html/ecb.mpbu202005_1~3e9ac10eb1.en.html#toc1

is thought to be the Libra Association White Paper originally published in June 2019 and recently revised.⁵ Members discussed the challenges of regulating GSCs raised in the FSB Consultation.

3. **BAFT Distributed Ledger Payment Commitment (John Taylor)**

3.1. Mr Taylor introduced himself and explained he is part of a Working Group established by the Bankers Association for Finance and Trade (“**BAFT**”) examining the digitisation of trade finance instruments. The Working Group initially started looking into common standards for trade finance platforms and decided to narrow the initial scope to focus on payment commitments in digital form. Mr Taylor offered an update on the work of the Working Group. He said there are three main concerns which common standards need to address: technical issues; whether they will be easily adoptable by industry participants; and legal enforceability.

3.2. Any finance transaction will lead to one or more payment commitments being made. The aim of the project was to create a digital payment commitment standard that is effective, technology neutral—so could be used on any distributed ledger platform—and legally enforceable. The Working Group recommended that the instrument be governed by the law of and be under the jurisdiction of Delaware State, as this choice of law specifically allows for a digital promissory note. The Working Group has prepared a set of technical and business best practices.⁶ It is hoped that this will become the industry standard.

3.3. A member queried the digital payment commitment’s compatibility with smart contracts. Mr Taylor explained that, while smart contracts had not been specifically addressed by the Working Group, the digital payment commitment takes the form of a 13-element

European Central Bank, *An ECB digital currency – a flight of fancy?* (11 May 2020) available at <https://www.ecb.europa.eu/press/key/date/2020/html/ecb.sp200511~01209cb324.en.html>

Bank of England, *Discussion Paper—Central Bank Digital Currency: Opportunities, challenges and design* (March 2020), available at: <https://www.bankofengland.co.uk/-/media/boe/files/paper/2020/central-bank-digital-currency-opportunities-challenges-and-design.pdf?la=en&hash=DFAD18646A77C00772AF1C5B18E63E71F68E4593>

⁵ The Libra Association, *Libra White Paper* (April 2020), available at: <https://libra.org/en-US/white-paper/#conclusion>

⁶ BAFT, *Technical Best Practices: Distributed Ledger Payment Commitment* (June 2020), available at: https://baft.org/docs/default-source/2020/06/baft-dlpc-technical-bps-final.pdf?sfvrsn=27ad20e1_4

BAFT, *Business Best Practices: Distributed Ledger Payment Commitment* (June 2020), available at: https://baft.org/docs/default-source/2020/06/baft-dlpc-business-bps-final.pdf?sfvrsn=5fad20e1_6

instrument which can be “locked on” to a contract or contract-like document which governs the transaction in question. The digital payment commitment is effectively a “promise to pay”, analogous to a cheque.

4. The recent introduction of crypto asset supervision and a license for crypto depositories in German law (Matthias Lehmann)

4.1. Dr Lehmann gave a summary of recent German legislation which sets out a new licensing requirement for service providers engaging in “crypto custody business” in Germany under the German Banking Act—*Kreditwesengesetz* (“**KWG**”). The legislation forms part of a legislative package in connection with the implementation of Directive (EU) 2018/843 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing (the “**Fifth Anti-Money Laundering Directive**” or “**5MLD**”).⁷

4.2. The legislation introduces a new category of “cryptoassets” (*Kryptowerte*) in the German definition of “financial instruments” set out in the KWG and introduces a new regulated financial service, namely “crypto custody business” (*Krypto-verwahr-geschäft*), for which service providers will need to obtain a special license within Germany.

4.3. Dr Lehmann explained that this new legislation is not intended to be a general overarching regulation of cryptoassets (like, for example, Directive 2004/39/EC on markets in financial instruments (“**MiFID**”) regulates other financial instruments) but only includes cryptoassets within the category financial instruments for prudential purposes. He noted that the German Securities Act—*Wertpapierhandelsgesetz* (“**WpHG**”)—remains unchanged; there are no provisions on civil law aspects of cryptoassets—for example on transfers or property protection—or on the treatment of cryptoassets in insolvency. Members discussed the differences in treatment of cryptoassets in France and Germany and whether European consensus may develop.

5. Any other business

5.1. No other business was raised.

⁷ The German Bundesrat, *Gesetz zur Umsetzung der Änderungsrichtlinie zur Vierten EU-Geldwäscherichtlinie* (in force since January 2020), available at: https://www.bundesrat.de/SharedDocs/drucksachen/2019/0501-0600/598-19.pdf?__blob=publicationFile&va=1



HERBERT
SMITH
FREEHILLS

Presentation to the FMLC Fintech Scoping Forum

FSB consultation: Addressing the regulatory, supervisory and oversight challenges raised by “global stablecoin” arrangements

2 June 2020 at 2pm

Wendy Saunders, Senior Associate

Overview of topics covered

Remit of FSB

What are global stablecoins (GSCs)?

Financial stability concerns and challenges for GSC design and performance

Current application of regulation to GSC functions and activities

Key obstacles and proposed recommendations

Developing and implementing appropriate cross-border cooperation mechanisms

Proposed regulatory obligations for GSC arrangements

Broader Policy concerns

Views of regulators on GSCs - the alternative of central bank digital currencies (CBDCs)

Further resources

Appendix A: FSB consultation questions

Remit of FSB

In scope

- Financial stability
 - Market integrity
- Consumer protection

Out of scope

Numerous areas including:

- Monetary policy
- Monetary sovereignty
- Currency substitution
 - Data privacy
 - Competition
 - Taxation

What are global stablecoins(GSCs)?

stablecoin

- A crypto-asset that aims to maintain a stable value relative to a specified asset, or a pool or basket of assets. (The stabilisation mechanism of a stablecoin could alternatively be algorithm-based, attempting to maintain a stable value via protocols that provide for the increase or decrease of the supply of stablecoins in response to changes in demand.)

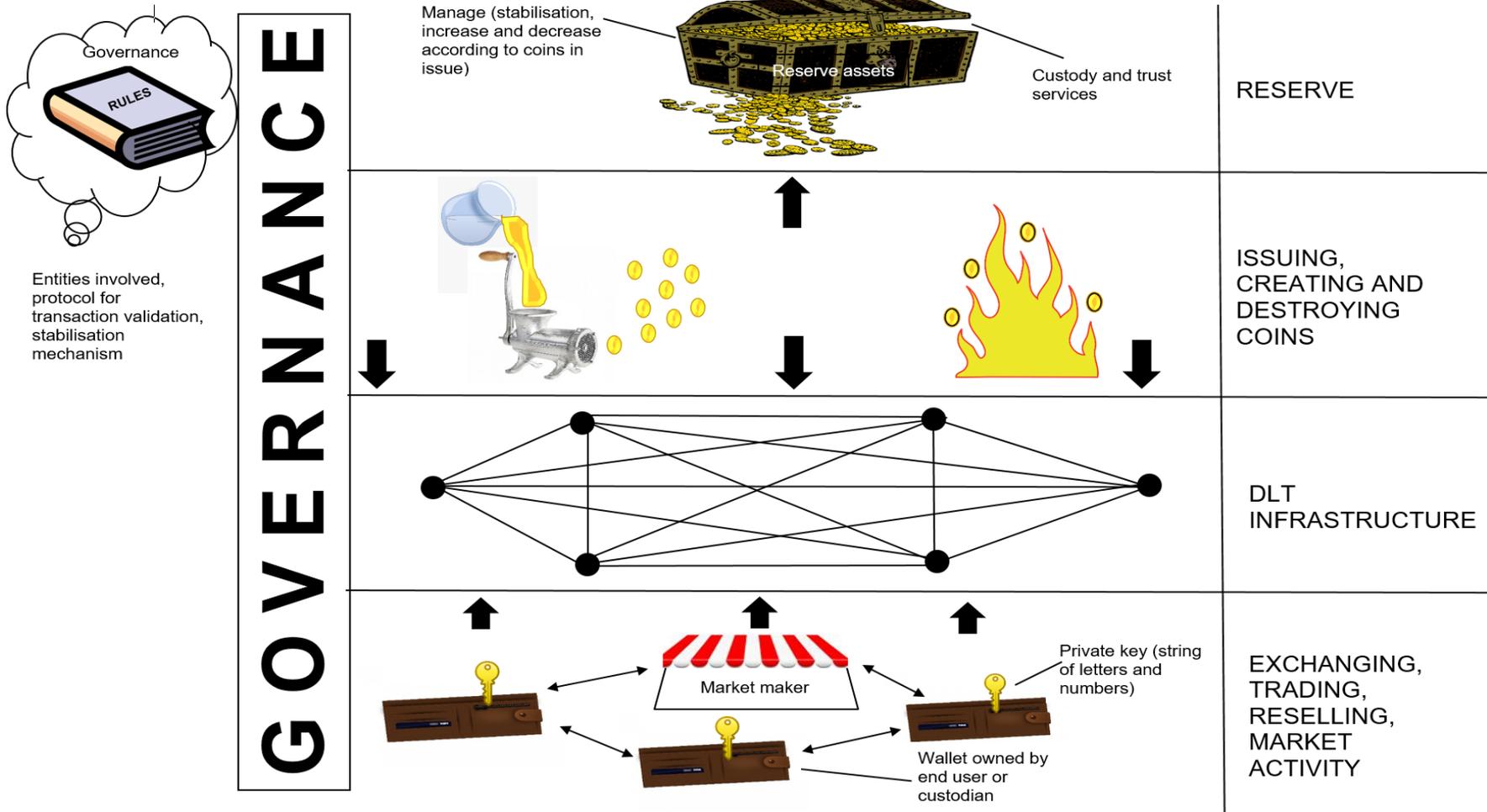
global stablecoin

- A stablecoin with a potential reach and adoption across multiple jurisdictions and the potential to achieve substantial volume.

stablecoin arrangement

- An arrangement that combines a range of functions (and related specific activities) to provide an instrument that purports to be used [as] a means of payment and/or store of value. This is particularly with respect to privately-issued GSCs primarily used for retail purposes and that may be widely used as a means of payment and/or store of value.
- The FSB notes that the matters it raises may also be relevant to other types of stablecoin or crypto-asset arrangements.

Illustration of functions and activities within a stablecoin arrangement



Financial stability concerns and challenges for GSC design and performance

Fluctuations in value

- Could affect spending decisions and economic activity

Used for payments

- Operational disruption could significantly impact economic activity and financial system functioning

Exposures of financial institutions

- Might increase in scale and change in nature – particularly if FIs perform multiple roles in a GSC arrangement (e.g., as resellers, wallet providers, managers or custodians/trustees of reserve assets).
- Large-scale redemptions of GSCs could mimic the impact of bank runs

Governance challenges

- Decentralised nature of GSC arrangements

Market, liquidity and credit risks

- Stabilisation mechanisms and redemption arrangements

Operational and cybersecurity risks

- Infrastructure and technology used for recording transactions, and accessing, transferring and exchanging coins

Current application of regulation to GSC functions and activities

Same business, same risks, same rules

Likely to be in scope	Likely to be out of scope
Issuance and redemption of stablecoins	Governance and control over the whole stablecoin arrangement
Managing reserve assets	Operation of the infrastructure of a stablecoin arrangement
Providing custody/trust services for reserve assets	Validation of transactions
Exchanging and trading	
Storing the private keys for wallets	

Key obstacles and proposed recommendations (1)

- Sector-specific regulation does not map neatly onto GSCs.
- Cross-border nature of GSC arrangements gives rise to the potential for regulatory arbitrage between regimes

Authorities: facilitating effective regulation and oversight

Powers and tools

Recommendation 1: Authorities should have and utilise the necessary powers and tools, and adequate resources, to comprehensively regulate, supervise, and oversee a GSC arrangement and its multi-functional activities, and enforce relevant laws and regulations effectively.

Functional and proportionate approach

Recommendation 2: Authorities should apply regulatory requirements to GSC arrangements on a functional basis and proportionate to their risks.

Comprehensive cross-border and cross-sector regulation and co-operation

Recommendation 3: Authorities should ensure that there is comprehensive regulation, supervision and oversight of the GSC arrangement across borders and sectors. Authorities should cooperate and coordinate with each other, both domestically and internationally, to foster efficient and effective communication and consultation in order to support each other in fulfilling their respective mandates and to facilitate comprehensive regulation, supervision, and oversight of a GSC arrangement across borders and sectors.

Ensuring compliance: before operations commence and on an ongoing basis

Recommendation 10: Authorities should ensure that GSC arrangements meet all applicable regulatory, supervisory and oversight requirements of a particular jurisdiction before commencing any operations in that jurisdiction, and construct systems and products that can adapt to new regulatory requirements as necessary.

Key obstacles and proposed recommendations (2)

Private GSCs: achieving appropriate structure, design and regulatory compliance

Comprehensive governance framework

Recommendation 4: Authorities should ensure that GSC arrangements have in place a comprehensive governance framework with a clear allocation of accountability for the functions and activities within the GSC arrangement’.

Effective risk management frameworks

Recommendation 5: Authorities should ensure that GSC arrangements have effective risk management frameworks in place especially with regard to reserve management, operational resiliency, cyber security safeguards and AML/CFT measures, as well as “fit and proper” requirements.

Robust data systems

Recommendation 6: Authorities should ensure that GSC arrangements have in place robust systems for safeguarding, collecting, storing and managing data.

Recovery and resolution plans

Recommendation 7: Authorities should ensure that GSC arrangements have appropriate recovery and resolution plans.

Transparency, particularly of stabilisation mechanism

Recommendation 8: Authorities should ensure that GSC arrangements provide to users and relevant stakeholders comprehensive and transparent information necessary to understand the functioning of the GSC arrangement, including with respect to its stabilisation mechanism.

Redemption

Recommendation 9: Authorities should ensure that GSC arrangements provide legal clarity to users on the nature and enforceability of any redemption rights and the process for redemption, where applicable.

Design-inherent ability to adapt to new regulatory requirements

Recommendation 10: Authorities should ensure that GSC arrangements meet all applicable regulatory, supervisory and oversight requirements of a particular jurisdiction before commencing any operations in that jurisdiction, and construct systems and products that can adapt to new regulatory requirements as necessary.

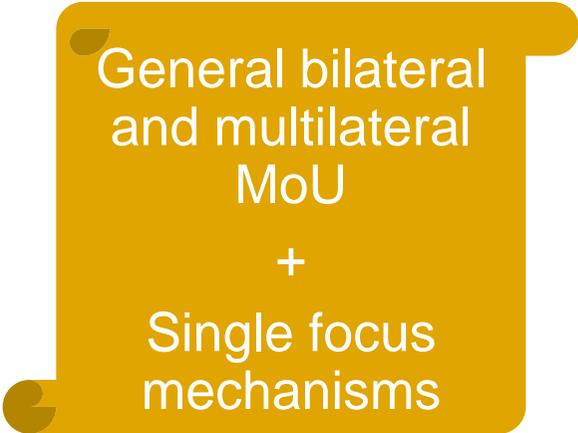
Developing and implementing appropriate cross-border cooperation mechanisms

- “Home” and “host” supervisory concepts applicable to regulated financial institutions (and “lead overseer” in the context of FIMs) cannot easily be applied to GSC arrangements
- Existing international standards may apply to GSC arrangements
- Standard setting bodies may need to review and adjust standards
- Authorities may need to develop cross-border supervisory mechanisms

An important challenge will be to give national authorities the ability to supervise and oversee a stablecoin arrangement **holistically**, rather than in a **piecemeal framework** based on its component functions and activities



Supervisory colleges, fora, networks



General bilateral and multilateral MoU

+

Single focus mechanisms

Proposed regulatory obligations for GSC arrangements (1)

Governance framework and permissible degree of decentralisation

Given the interconnectedness, GSC arrangements will need to have in place governance structures and accountabilities covering the whole arrangement – activities, functions and participants. The FSB expects such governance structures and accountabilities would:

- have one or more governance bodies or equivalent mechanism facilitating appropriate oversight, governance and safeguards. It could be challenging to satisfy these requirements if fully permissionless ledgers are used;
- be based on a sound legal basis;
- be clear and transparent, and disclosed to users and other stakeholders;
- show allocation of accountabilities among different entities in different jurisdictions; and
- show limits on accountability and legal liability on a per jurisdiction basis.

Similar to the rules on traditional outsourcing, where a GSC arrangement relies upon a third party, the GSC governance body must demonstrate that this reliance does not impede its ability to meet regulatory requirements and expectations. However, it is unclear what would be caught here given the separate entities with loose connections that may form part of a GSC arrangement.

Robust data systems

Data management systems within GSC arrangements will need to satisfy certain requirements, including:

- recording and safeguarding relevant data and information in a discoverable format;
- complying with all applicable data privacy requirements;
- safeguarding the integrity and security of on-chain and off-chain data; and
- data being accessible to authorities in a complete and timely manner.

Risk management frameworks

Similarly, all functions and activities of GSC arrangements must be subject to appropriate risk management. A GSC arrangement will need appropriate policies, procedures and processes, covering at least the following risks: operational; AML/CFT; cyber; market risks; and those idiosyncratic risks presented by permissionless or anonymous networks. These risk management arrangements will need to be evidenced prior to commencing operations (in line with recommendation 10).

Under the heading of 'risk management', four further categories of requirements are set out:

Testing: continuous risk assessments, contingency preparedness and continuity planning.

Assurance of settlement finality: evidence of how the technology model and rules for transferring coins achieve settlement finality.

Financial requirements:

Strict rules on management of reserve assets, covering:

- duration, credit quality, liquidity and concentration of reserve assets;
- increase or decrease in reserve assets corresponding to issuance and destruction of GSC (asset-linked stabilisation mechanisms); and
- increases and decreases in reserve assets being managed to avoid impacts on the broader market.

Adequate capital and liquidity buffers.

Fit and proper: individuals involved in the management and control of the GSC arrangement, and those exercising significant power or discharging significant responsibilities in relation to GSC activities, must satisfy "fit and proper" standards.

Recovery and resolution plans

- GSC arrangements will need to have in place plans to support an orderly wind-down or resolution, which should include continuity or recovery of any critical functions and activities within the GSC arrangement.
- The implementation of these plans will need further consideration, taking into account the entities within a GSC arrangement and their geographical distribution.

Proposed regulatory obligations for GSC arrangements (2)

Transparency

A lack of transparency has been a cause of failure in stablecoins to date, particularly where it leads to a lack of confidence. This recommendation relies on transparency to bolster confidence and mitigate failure risk. There is an extensive list of aspects of a GSC arrangement to be disclosed, including:

- governance structure;
- allocation of roles and responsibilities assigned to operators or service providers;
- design of the stabilisation mechanism and how it maintains the stablecoin's value;
- operation of the stabilisation mechanism;
- investment mandate for the reserve assets;
- custody arrangement and applicable segregation of reserve assets;
- dispute resolution mechanisms or procedures for seeking redress or lodging complaints;
- mechanisms in place to protect users in event of modification of GSC arrangement which could have a material impact;
- amount of GSC in circulation (subject also to independent audit); and
- value and composition of assets in the reserve backing the GSC (subject also to independent audit).

Adaptability of design to accommodate new regulatory requirements

This recommendation effectively requires GSC arrangements to:

Prior to launch: Proactively engage with relevant authorities, and meet all applicable regulatory, supervisory and oversight requirements in all jurisdictions of operation; and obtain any necessary licenses or registrations.

On a continuing basis: Be designed in such a way so as to be able to maintain that level of compliance, even where regulatory requirements change.

Redemption

This recommendation concerns not only legal clarity, but also transparency, in relation to redemption rights. Redemption rights may not feature in all GSC arrangements.

To the extent they do, they will have to comply with the following requirements:

Cost of redemption:

- Predictable and transparent rates of exchange.

Disclosures:

- Nature and enforceability of redemption rights.
- Any claims users and intermediaries may have on underlying reserve assets.
- Any claims users and intermediaries may have against the issuer or guarantors.
- How claims may be treated in insolvency or resolution.
- Process for redemption and enforcement of claims.
- Recovery avenues for user who loses access to his/her wallet and private key due to cyber-attack/other operational incident.

GSC widely used for payment purposes:

- Prudential standards comparable to those applicable to financial institutions performing the same economic functions and posing similar risks to be followed.
- Redeemable at par into fiat (where authority considers it appropriate).

Broader policy concerns

A selection of policy points (excluding points already made above concerning financial stability) identified by the G7 Working Group on Stablecoins highlight why regulators are so concerned about global stablecoins.

Competition

- Global stablecoin arrangements could achieve market dominance due to their strong existing networks and the large fixed costs that a potential competitor would need to implement large-scale operations, and the exponential benefit of access to data

Change in nature of deposit

- In countries whose currencies are part of the stablecoin reserve, some deposits drained from the banking system when retail users buy global stablecoins may be repaid to banks by way of larger wholesale deposits from stablecoin issuers. If banks were to counter this by offering products denominated in global stablecoins, they could be subject to new forms of foreign exchange risk and operational dependencies.

Shortage of high-quality liquid assets (HQLA)

- Purchases of safe assets for a stablecoin reserve could cause a shortage of HQLA in some markets, potentially affecting financial stability.

Reduce impact of monetary policy

- This could happen in several ways. If, for example, there were multiple currencies in the reserve basket, the return on global stablecoin holdings could be a weighted average of the interest rates on the reserve currencies, attenuating the link between domestic monetary policy and interest rates on global stablecoin deposits. This would be particularly true where the domestic currency is not included in the basket of reserve assets.

View's of regulators on GSCs – the alternative of central bank digital currencies (CBDCs)

CBDCs would not be stablecoins or cryptoassets, but may possibly (although not necessarily) operate using distributed ledger technology similar to that which supports cryptoassets

Bank of England (BoE) states that there are 7 ways a CBDC could potentially assist the BoE in meeting its monetary and financial stability objectives, one of which is expressly to avoid the risks of new forms of private money creation.

The BoE goes on to state in its recent discussion paper on CBDC that:

“Stablecoins will only be widely adopted if they provide functionality and efficiency benefits over existing payment systems. But given the risks they could pose, it may be worth asking if CBDC can be designed to better meet those needs. CBDC may be able to provide better payment services, backed by risk-free central bank money, and reduce the demand for new privately issued money-like instruments.”

The ECB (as outlined in a recent speech – reference in next slide) is also concerned to ensure that Europeans maintain a direct link to the ECB as ultimate owner of the euro by maintaining access to central bank liabilities in euro.

Further resources

ECB: A regulatory and financial stability perspective on global stablecoins 5 May 2020 https://www.ecb.europa.eu/pub/financial-stability/macprudential-bulletin/html/ecb.mpbu202005_1~3e9ac10eb1.en.html#toc1

ECB: An ECB digital currency – a flight of fancy? 11 May 2020 <https://www.ecb.europa.eu/press/key/date/2020/html/ecb.sp200511~01209cb324.en.html>

Bank of England: Discussion Paper - Central Bank Digital Currency: Opportunities, challenges and design March 2020 <https://www.bankofengland.co.uk/-/media/boe/files/paper/2020/central-bank-digital-currency-opportunities-challenges-and-design.pdf?la=en&hash=DFAD18646A77C00772AF1C5B18E63E71F68E4593>

Appendix A: FSB consultation questions

1. Do you agree with the analysis of the characteristics of stablecoins that distinguish them from other crypto-assets?
2. Are there stabilisation mechanisms other than the ones described, including emerging ones, that may have implications on the analysis of risks and vulnerabilities? Please describe and provide further information about such mechanisms.
3. Does the FSB properly identify the functions and activities of a stablecoin arrangement? Does the approach taken appropriately deal with the various degrees of decentralisation of stablecoin arrangements?
4. What criteria or characteristics differentiate GSC arrangements from other stablecoin arrangements?
5. Do you agree with the analysis of potential risks to financial stability arising from GSC arrangements? What other relevant risks should regulators consider?
6. Do you agree with the analysis of the vulnerabilities arising from various stablecoin functions and activities (see Annex 2)? What, if any, amendments or alterations would you propose?
7. Do you have comments on the potential regulatory authorities and tools and international standards applicable to GSC activities presented in Annex 2?
8. Do you agree with the characterisation of cross-border issues arising from GSC arrangements?
9. Are the proposed recommendations appropriate and proportionate with the risks? Do they promote financial stability, market integrity, and consumer protection without overly constraining beneficial financial and technological innovation?
 - a. Are domestic regulatory, supervisory and oversight issues appropriately identified?
 - b. Are cross-border regulatory, supervisory and oversight issues appropriately identified?
 - c. Do the recommendations adequately anticipate and address potential developments and future innovation in this sector?
10. Do you think that the recommendations would be appropriate for stablecoins predominately used for wholesale purposes and other types of crypto-assets?
11. Are there additional recommendations that should be included or recommendations that should be removed?
12. Are there cost-benefit considerations that can and should be addressed at this stage?

Financial Services Regulation



Wendy Saunders

Senior Associate, Financial Services Regulatory

T +44 20 7466 2373

M +44 7809 200 237

wendy.saunders@hsf.com

Experience

Wendy specialises in financial services and markets law and regulation. Wendy draws on her in-depth experience and insight gained during four years within the Financial Services Authority's Enforcement Division to provide informed and strategic advice and guidance to clients. Wendy's banking experience has included two one-year secondments: one to the group regulatory team of a leading retail bank and the other as senior regulatory risk lawyer within the central compliance team of a global investment bank. Wendy has advised a range of other clients in relation to outsourcing, payment services regulations, ringfencing, operational continuity in resolution, client money, and more generally on MiFID II. Wendy has developed a particular interest in cryptoassets and was part of the Financial Markets Law Committee working group on initial coin offerings. Wendy is currently on a part-time secondment to HSF's Digital Law Group.

Articles

<https://hsfnotes.com/fsrandcorpcrime/2019/06/04/crypto-asset-compliance-in-an-uncertain-regulatory-environment/>

<https://hsfnotes.com/fsrandcorpcrime/2019/06/20/cryptoassets-what-should-the-second-line-of-defence-be-focussing-on/>

<https://hsfnotes.com/fsrandcorpcrime/2019/07/29/cryptoassets-personal-account-dealing-policies-and-procedures/>

<https://hsfnotes.com/fsrandcorpcrime/2019/11/11/crypto-assets-and-the-market-abuse-regulation-main-challenges/>

<https://hsfnotes.com/fsrandcorpcrime/2020/04/09/cryptoassets-and-dlt-global-stablecoins-v-cbdcs-and-the-potential-for-private-dlt-to-connect-public-payment-systems/>

<https://hsfnotes.com/fsrandcorpcrime/2020/05/20/addressing-concerns-around-global-stablecoins-fsb-proposes-an-extensive-regulatory-framework/>

Disclaimer

The contents of this publication, current at the date of publication set out in this document, are for reference purposes only. They do not constitute legal advice and should not be relied upon as such. Specific legal advice about your specific circumstances should always be sought separately before taking any action based on this publication. Herbert Smith Freehills LLP and its affiliated and subsidiary businesses and firms and Herbert Smith Freehills, an Australian Partnership, are separate member firms of the international legal practice known as Herbert Smith Freehills.

© Herbert Smith Freehills LLP 2020

For a full list of our global offices visit [HERBERTSMITHFREEHILLS.COM](https://www.herbertsmithfreehills.com)
