

## Financial Markets Law Committee (“FMLC”)

### Finance and Technology Scoping Forum

Date: 8 February 2022

Time: 9.00am to 10.00am

Virtual Meeting



#### Attendees:

Matthew Nyman (Moderator)	CMS Cameron McKenna Nabarro Olswang LLP
Diego Ballon Ossio	Clifford Chance LLP
Antony Beaves (Observer)	Bank of England
Anne Bodley	Queen Mary University of London
Emily Bradley	Slaughter and May
Cat Dankos	Herbert Smith Freehills LLP
Deborah Deane	Deborah A. Sabalot Regulatory Consulting
Rita Flakoll	Clifford Chance LLP
Richard Hay	Linklaters LLP
Ernest Lima	XReg LLP
Helen McGrath	Stripe
Angus McLean	Simmons & Simmons
Bradley Rice	Ashurst LLP
John Salmon	Hogan Lovells International LLP
Ferdisha Snagg	Cleary Gottlieb Steen & Hamilton LLP
Ian Stevens	CMS Cameron McKenna Nabarro Olswang LLP
Venessa Parekh	FMLC Secretariat

#### Guest speaker

Sid Ulker	Ashurst LLP
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#### Regrets:

Sanjev Warna-Kula-Suriya	Latham & Watkins LLP
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## Minutes

### 1. Introductions

1.1. Mr Nyman opened the meeting and welcomed attendees.

### 2. Cryptoassets promotions: HM Treasury [Response](#) to 2020 Consultation on financial promotions regime and FCA [consultation](#) on its proposals to strengthen financial promotion rules (Bradley Rice)

2.1. Mr Rice provided an overview of HM Treasury's response to its Consultation, published in 2020, on the financial promotions regime. The response sets out HM Treasury's proposals to amend the U.K.'s financial promotions regime to bring into scope "qualifying cryptoassets". Mr Rice and attendees also discussed the linked FCA consultation on its proposals to strengthen financial promotion rules, including amendments to its rules on high-risk investments.

2.2. Attendees discussed the wider, concurrent changes to the financial promotion regime being proposed by HM Treasury and the FCA and noted these would lead to a significant change in the UK regulatory approach through a piecemeal approach and a patchwork of regulation.

2.3. Mr Rice and attendees discussed the following concerns:

- a) The lack of certainty as to the definition of "cryptoasset", both in the context of the term "qualifying cryptoasset" as mentioned within the documents and generally within elements of the regulatory framework;
- b) The lack of direct correlation of the financial promotions regime to the authorisation regime under the Financial Services and Markets Act 2000 ("FSMA"), leading to the creation of a complex authorisation schema. Attendees noted that similar challenges also arise under the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 (the "MLRs");
- c) A general uncertainty because of the patchwork of regulation which applies to cryptoassets in the U.K. This includes, besides the financial promotions regime, the MLRs, the Electronic Money Regulations 2011, the Payment Services Regulations 2017, sections of the FSMA regime and the anticipated regulation of stablecoins. As a result, firms face onerous compliance requirements, uncertainty

around what regulation applies, and possible regulatory overlap. Attendees recommended that authorities consider a coordinated approach to creating a bespoke regulatory regime for cryptoassets, either based on existing rules or a single, clear regime just for cryptoassets.

- d) There is no certainty on which regulated entities will be able or willing to approve financial promotions, especially for qualifying cryptoasset promotions.
- e) Attendees expressed scepticism at the effectiveness of the proposed regulatory changes, given the international and decentralised nature of cryptoasset markets, and observed that continued piecemeal regulation of cryptoassets would increase the regulatory burden on firms and the enforcement burden on authorities.

2.4. Forum members recommended that the FMLC write to HM Treasury to raise the above concerns regarding the regulation of cryptoassets. They queried whether such a letter ought to be sent before the legislation amending the financial promotions regime was published or whether these issues may be raised in response to a future consultation on cryptoasset regulation. Ms Parekh agreed to ascertain the most effective manner and time to highlight the concerns.

### **3. Plenary discussion of upcoming developments and priorities (Matthew Nyman)**

3.1. Members identified the following topics for discussion at a future meeting:

- a) The anticipated publication of HM Treasury's proposals on regulating stablecoins in the U.K.;
- b) The impact of the new Consumer Duty in the crypto space; and
- c) The Online Safety Bill

### **4. Any other business**

4.1. No other business was raised.