Centre for Banking & Finance Law
Faculty of Law

Observations on the Conference on Financial Law and Regulation

UCL Faculty of Laws
30th June – 1st July 2022

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[CBFL-Rep-2201]
September 2022

This report is based on the proceedings of the inaugural Conference on Financial Law and Regulation, held at UCL Faculty of Laws from 30th June to 1st July 2022. The views expressed in this report reflect the author's personal opinions and do not necessarily reflect the policies or views of the conference organisers, presenters, and discussants, or the Centre for Banking & Finance Law.

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The Centre for Banking & Finance Law (CBFL) at the Faculty of Law, National University of Singapore, focuses broadly on legal and regulatory issues relating to banking and financial services. It aims to produce research and host events of scholarly value to academics as well as of policy relevance to the banking and financial services community. In particular, CBFL seeks to engage local and international bankers, lawyers, regulators and academics in regular exchanges of ideas and knowledge so as to contribute towards the development of law and regulation in this area, as well as to promote a robust and stable financial sector in Singapore, the region and globally.

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I. Introduction

Financial law, as a discipline, can appear fragmented, possibly due to the traditionally sectoral nature of the financial industry and its regulation, which encompasses several areas – including the law and regulation of commercial banking, capital markets, derivatives, insurance, and investment management. Yet, increasing convergence in financial markets has been providing compelling impetus for the consolidation and development of financial law and regulation as an integrated discipline.[1]

The lack of an established point of focus for the discipline is an issue recognised by the organisers of the inaugural Conference on Financial Law and Regulation.[2] The conference, held in person at University College London (UCL) Faculty of Laws, from 30th June to 1st July 2022, hence aimed to provide an opportunity for financial law scholars in the United Kingdom (UK) and beyond to gather and discuss the evolution of financial law and regulation, and recent developments in the field. Organised by Dr. Andreas Kokkinis and Dr. Federico Lupo-Pasini, the conference was supported by a grant from the Society of Legal Scholars, and was closely connected to the Society's Banking & Finance section. This year's closed conference was attended by more than fifty delegates, including scholars, practitioners, and regulators.

This report is based on the proceedings of the conference. It aims to synthesise and process selected themes and ideas presented during the event, and hopes to contribute to furthering the fruitful exchanges that took place at the conference. The report does not, however, provide a comprehensive and detailed summary of all conference proceedings, but is based on the author's limited personal observations as a conference attendee. The author also regrets any errors that may have unwittingly been made herein.

To provide an outline of the report, Parts II and III address recent developments – first, in international finance (specifically, financial sanctions imposed in relation to Russia, the emerging sovereign debt crisis, and post-Brexit issues); and second, in financial markets, products, and regulation (including in the banking, equity capital markets, debt markets, and derivatives sectors). Parts IV and V cover two particular themes that pose ongoing challenges to financial regulation – namely, sustainable finance, and financial technology (FinTech). Part VI then shifts from considering these substantive questions to considering pedagogical questions about teaching finance law.

A. Overview of Conference Programme

To give an overview, at the outset, of the conference programme, the conference involved a series of roundtable discussions (taking place on Day 1), as well as the presentations of various papers across different panels (on Day 2). Roundtable discussants included

[1] Joanna Benjamin, *Financial Law* (Oxford University Press, 2007) at paras 1.05, 1.12–1.13 and 1.15–1.16.
[2] "Call for Papers: Financial Law and Regulation" at p 1, <https://www.ucl.ac.uk/laws/sites/laws/files/cel_call-for-papers_v2.pdf> (accessed 4 August 2022).

influential academics and leading practitioners, and the discussions were interspersed with questions and comments from other delegates. The programme also included two keynote speeches, as well as a discussion on teaching finance law. A more detailed programme summary is set out below.[3]

Day 1
Roundtable: **International Finance** Chair: Sir William Blair (Professor of Financial Law and Ethics, Queen Mary University of London) Lead Panellists: • Mr. Jeffrey Golden KC (Hon) (3 Hare Court) • Dr. Andromachi Georgosouli (Queen Mary University of London) • Dr. Stephen Connelly (University of Warwick) • Dr. Karina Patrício Ferreira Lima (University of Leeds) • Dr. Lerong Lu (King's College London)
Roundtable: **FinTech** Chair: Mr. Simon Gleeson (Clifford Chance LLP) Lead Panellists: • Mr. Charles Proctor (Fladgate LLP) • Professor Louise Gullifer KC (Hon) (University of Cambridge) • Dr. Joseph Lee (Manchester University) • Dr. Alison Lui (Liverpool John Moores University) • Dr. Clara Martins Pereira (King's College London)
Discussion: **Teaching Finance Law** Chair: Sir William Blair Lead Panellists: • Associate Professor Dora Neo (National University of Singapore) • Dr. Alan Brener (University College London) • Dr. Federico Lupo-Pasini (Durham University)

[3] Further details of the conference are also available at UCL Faculty of Laws, "Financial Law and Regulation Conference" <https://www.ucl.ac.uk/laws/events/2022/jun/financial-law-and-regulation-conference> (accessed 4 August 2022).

Roundtable: **Developments in Markets, Products, and Regulation**

Chair: Professor Eilís Ferran (University of Cambridge)

Lead Panellists:

- Professor Graham Penn (University College London & Sidley Austin LLP)
- Professor Jennifer Payne (University of Oxford)
- Dr. Vincenzo Bavoso (University of Manchester)
- Dr. Andrea Fejős (University of Essex)
- Professor Pierre Schammo (Durham University)

Roundtable: **Sustainable Finance**

Chair: Professor Iain MacNeil (University of Glasgow)

Lead Panellists:

- Professor Luca Enriques (University of Oxford)
- Professor Konstantinos Sergakis (University of Glasgow)
- Dr. Eva Micheler (London School of Economics)
- Dr. Costanza Russo (Queen Mary University of London)
- Dr. Andrea Miglionico (University of Reading)

Keynote Speech:
"Who Thought of That: Is it Legal? A Journey in Financial Legislation"

Sharon Margaret Bowles, Baroness Bowles of Berkhamsted
(Member of the House of Lords)

Day 2

Paper Presentations: **Regulatory Frameworks**

Chair: Dr. Anat Keller

- *The Fallacy of Bail-In as a Bank Resolution Strategy*
  Dr. Virág Blazsek (University of Leeds)

- *The Post-Insolvecy Stage of The Covered Bond Issuer: Risks for Investors*
  Mr. Thomas Papadogiannis-Varouchakis (PhD candidate, University College London)

- *Improving Competition in the EU Payment Services Market*
  Ms. Louise Damkjær Ibsen (PhD candidate, University of Southern Denmark)

- *Romania: Regulation and Contractual Certainty in the Banking Sector in Times of Humanitarian and Economic Crisis*
  Ms. Astrid Bolea (PhD candidate, West University of Timisoara)

- *Gatekeeper-led Governance*
  Dr. Jonathan Chan (University College London)

Paper Presentations: **Litigation and Financial Consumer Protection**

Chair: Professor Graham Penn

- *Risks and Benefits of Third-Party Litigation Finance (TPLF) Regulation: Comparing the UK with the US*
  Mr. Wala Al-Daraji (University of Westminster)

- *A Critical Review of the Application of Investor Protection Rules under EU Law to Cases Involving Robo-advisors*
  Dr. Ilias Kapsis (University of Bradford)

- *The Quest for Protection of Vulnerable Consumers in Digital Financial Technologies*
  Dr. Andrea Miglionico (University of Reading)

- *The rule of law and artificial intelligence (AI): Algorithmic Transparency and the Customer's Right to Explanation in Automated Credit Decisions*
  Dr. Alison Lui (Liverpool John Moores University)
  George Lamb (Liverpool John Moores University)
  Lola Durodola (Coventry University)

Keynote Speech:
"The Post-Brexit Return of Global Competitiveness as a Regulatory Objective"

Professor Eilís Ferran (University of Cambridge)

Paper Presentations**: The Promises and Challenges of FinTech**

Chair: Dr. Federico Lupo-Pasini

- *Regulation of Cryptoassets and Resolving Disputes Involving Cryptoassets*
  Ms. Shobana Iyer (Swan Chambers)

- *Public Policy and the Evolution of FinTech Regulation in China: Retrospect and Prospect*
  Dr. Chi Zhang (University of Glasgow)

- *The Role of Financial Regulators in the Governance of Algorithmic Credit Scoring*
  Assistant Professor Nydia Remolina (Singapore Management University)

Paper Presentations: **Sustainable Finance and ESG**

Chair: Professor Konstantinos Sergakis

- *The Mutual Funds Industry and ESG Integration*
  Dr. Mohammed Alshaleel (University of Essex)

- *ISSB Draft Standards in Sustainability and Climate Disclosure*
  Dr. Jorge Guira (University of Reading)

- *ESG-Based Remuneration in the Wave of Sustainable Finance: Theory, Practice, and the Law*
  Dr. Longjie Lu (University of Edinburgh)

Paper Presentations: **Developments in CBDCs and Crypto-derivatives**

Chair: Dr. Andrea Miglionico

- *The Emergence of Central Bank Digital Currencies (CBDCs): Thoughts on a Normative Framework*
  Dr. Kosmas Kaprinis (HSBC)

- *Central Bank Digital Currencies: A Challenge for Central Bank Independence*
  Mr. Rory Copeland (Allen & Overy LLP)

- *Regulating Cryptocurrency Derivatives: A Comparative Analysis of Approaches in the UK, the EU, and Singapore*
  Ms. Rachel Phang (National University of Singapore)

- *The Old Habit and New Route. The Challenges Crypto Derivatives Posted on the European Market Infrastructure Regulation's Monitoring of Systemic Risks*
  Ms. Zi Yang (PhD candidate, University of Strathclyde)

II. Current Issues in International Finance

Finance is a global force of great importance.[4] Correspondingly, financial law and regulation necessarily has an international dimension. This Part II addresses selected current issues in international finance that were discussed during the conference, specifically, financial sanctions imposed on Russia in 2022, the emerging sovereign debt crisis, and post-Brexit issues.

[4] William Blair, "International Finance" Roundtable Discussion, Conference on Financial Law and Regulation (CFLR), UCL (30 June 2022).

A. Financial Sanctions

Traditionally, sanctions – especially with respect to commodities such as oil and gas – are not a primary subject for financial lawyers (notwithstanding the interconnections derivatives create between the financial and non-financial sectors).[5] However, the recent unprecedented financial sanctions, imposed on Russia in response to its invasion of Ukraine, call for attention from a financial law perspective. Two exceptional developments were the application of restrictive measures directly with respect to the Russian central bank, and the exclusion of selected Russian financial institutions from the SWIFT messaging system.

In considering legal issues that arise, Sir William briefly discussed the decision in *Libyan Arab Foreign Bank v. Bankers Trust Co.* [1989] 1 QB 728 and its potential implications for the present context. In that case, despite the imposition of an asset freezing order by the President of the United States (US), the defendants were not excused from making payment to the plaintiffs; the court found that payment was not illegal by the proper law of the contract (being, in respect of the plaintiffs' London account, English law), nor did it necessarily involve an illegal act by the law of New York. Sir William also discussed the potential confiscation of assets under European Union (EU) law.[6] Additionally, Bolea examined issues of regulation and contractual certainty in the banking sector in Romania, which are arising out of the recent imposition of sanctions and out of these times of humanitarian and economic crisis.[7]

With the imposition of sanctions in relation to Russia in 2022, many parties have similarly needed to work out the immediate impact of these present sanctions on their contractual obligations, as well as to anticipate further legal issues moving forwards. These concerns, though discussed at the conference primarily in the context of the UK, Romania, and the EU, are relevant also in Singapore, where the government has likewise imposed targeted financial sanctions in relation to Russia.[8] These questions, which are often highly fact-dependent and not necessarily legally straightforward, are among the current issues arising in the sphere of international finance.

B. Sovereign Debt

i. The Emerging Sovereign Debt Crisis

Separately but relatedly, at the forefront of current issues of paramount concern in international finance is the emerging sovereign debt crisis. As Patrício Ferreira Lima explained during the opening roundtable discussion, a sovereign debt crisis is presently emerging out of a "perfect storm" of extraordinary events, any of which would, on their own, pose significant

[5] Ibid.
[6] Ibid.
[7] Astrid Bolea, "Romania: Regulation and Contractual Certainty in the Banking Sector in Times of Humanitarian and Economic Crisis", CFLR, UCL (1 July 2022).
[8] Monetary Authority of Singapore, "Targeted Financial Sanctions" <https://www.mas.gov.sg/regulation/anti-money-laundering/targeted-financial-sanctions> (accessed 17 August 2022).

challenges. These include the supply chain crisis originating from the Covid-19 pandemic, the ongoing food and energy crisis, the balance of payments crisis in several economies, and the recent imposition of sanctions on Russia.[9] Moreover, though exacerbated by recent extraordinary events, the sovereign debt crisis is fundamentally also a structural issue arising out of the inherently hierarchical nature of the international monetary system. Where money flows out to the periphery during booms but into the core during crises, crises have asymmetrical effects for nations that do not have access to the same liquidity.[10] Sovereign debt default and crisis is therefore a looming prospect for several emerging markets and developing countries.[11]

However, there appears to be a lack of sufficient legal tools to deal with sovereign debt crises. Patrício Ferreira Lima suggested that possibilities for sovereign debt restructuring include binding private creditors to participate in programmes akin to the recent Debt Service Suspension Initiative, or considering how insolvency mechanisms under English law could be extended to the sovereign debt context.[12] These possibilities demonstrate how international finance law can potentially valuably draw not only on international initiatives, but also on domestic law mechanisms. Such further development and refining of sound legal tools for sovereign debt restructuring is a crucial and pressing challenge currently confronting international financial law.

ii. Sovereign Credit Derivatives

As an ancillary concern, in addition to legal issues arising out of sovereign defaults, Golden highlighted that legal and dispute resolution issues also arise in relation to credit derivatives that protect against such sovereign defaults.[13] Notably, in June 2022, Russia reportedly defaulted on its foreign currency sovereign debt for the first time since 1918.[14] However, preceding this historic default, in the credit derivatives market, the EMEA Credit Derivatives Determinations Committee had earlier already determined that for the purpose of credit derivatives governed by International Swaps and Derivatives Association (ISDA) documentation, a "Failure to Pay Credit Event" had occurred with respect to the Russian Federation, as a result of the non-payment of amounts due in relation to certain bonds[15] – triggering payouts on credit default swaps.

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[9] Karina Patrício Ferreira Lima, "International Finance" Roundtable Discussion, CFLR, UCL (30 June 2022).
[10] Ibid.
[11] See, for example, Marcello Estevão, "Are We Ready for the Coming Spate of Debt Crises?" <https://blogs.worldbank.org/voices/are-we-ready-coming-spate-debt-crises> (accessed 15 August 2022).
[12] Patrício Ferreira Lima, "International Finance" Roundtable Discussion.
[13] Jeffrey Golden, "International Finance" Roundtable Discussion, CFLR, UCL (30 June 2022).
[14] Giulia Morpurgo and Libby Cherry, "Russia Slips into Historic Default as Sanctions Muddy Next Steps", *Bloomberg*, 28 June 2022 <https://www.bloomberg.com/news/articles/2022-06-26/russia-defaults-on-foreign-debt-for-first-time-since-1918> (accessed 15 August 2022).
[15] EMEA Credit Derivatives Determinations Committee, "EMEA DC Meeting Statement 7 June 2022 regarding the Failure to Pay Credit Event in relation to The Russian Federation"

Golden highlighted that the Committee's determination demonstrated the fundamental importance of legal certainty in the markets, particularly, the derivatives market. In his view, markets often place a premium on certainty in the form of an authoritative, quick, and cost-effective answer, at times even at the expense of a better or more "just" answer. Achieving such certainty may require a specialist determination (such as that by the Credit Derivatives Determinations Committee). Moreover, Golden pointed out that even when a determination is made by a traditional adjudicator in a dispute resolution context, given the phenomenon of standardisation in derivatives documentation globally, persons not a party to the dispute may nonetheless be keenly interested in its outcome and the implications for similar transactions. This raises the question, therefore, of whether such determinations may need to take into account not only the facts of the present case, but also wider interests.[16] These considerations reflect the increasing interconnectedness of global finance, and invariably, of financial law and dispute resolution in this area.

C. Post-Brexit Issues

Yet, even as international finance converges towards interconnection in important aspects, in other aspects, national concerns predominate. Particularly trenchant in the UK is the difficulty of navigating these issues post-Brexit. One current issue, as Georgosouli explained, is the effects of Brexit on access to the European Economic Area for UK firms. Despite the UK's withdrawal from the EU, the UK market and EU single market remain in many ways interconnected, and legal engineering is therefore key in ensuring that things run smoothly post-Brexit.[17]

As London becomes an offshore financial centre with respect to the EU, one often-repeated concern is whether the international competitiveness of the UK may diminish. In this regard, one current development, post-Brexit, is the proposed return of global competitiveness as a secondary regulatory objective for the Prudential Regulatory Authority and the Financial Conduct Authority.[18] This was the subject of Ferran's keynote speech on the second day of the conference. In assessing this proposal, Ferran raised the question of whether global competitiveness should indeed be part of the "day job" of the regulators, taking into account issues such as competitive pressure, regulatory procyclicality risk, and the importance of uncluttered mandates. She located the concern with international competitiveness first, in the literature (including literature on regulatory competition, regulatory procyclicality, and regulatory architecture); second, in past experience (including in assessments in the near

<https://www.cdsdeterminationscommittees.org/documents/2022/06/emea-dc-meeting-statement-7-june-2022-russian-federation.pdf/> (accessed 15 August 2022).

[16] Golden, "International Finance" Roundtable Discussion.

[17] Andromachi Georgosouli, "International Finance" Roundtable Discussion, CFLR, UCL (30 June 2022).

[18] HM Treasury, *Financial Services Future Regulatory Framework Review: Proposals for Reform,* CP 548 (November 2021) at para 3.16, <https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1032075/FRF_Review_Consultation_2021_-_Final_.pdf> (accessed 3 August 2022).

aftermath of the Global Financial Crisis that there had been excessive concern with competitiveness); and third, in current circumstances (such as in how international competitiveness is currently framed in the Financial Services and Markets Act 2000 (c 8) (UK)). Ferran highlighted that making international competitiveness a secondary objective carries risks, which require stronger risk management, as well as focus on mechanisms of accountability and control.[19] With the UK government having since decided to proceed with its proposal of introducing competitiveness as a secondary objective,[20] these important considerations now carry fresh gravity for the regulatory approach moving forwards.

Moreover, this discussion also carries lessons from the perspective of Singapore, where growing the nation as an internationally competitive financial centre has been one of the principal objectives of the country's integrated financial regulator since 2007.[21] Though the objective is, by contrast, fairly uncontroversially entrenched in Singapore's legislation, the UK's debate nevertheless poses important reminders of the pitfalls and necessary safeguards associated with the choice to enshrine international competitiveness as a financial regulatory objective.

III. Developments in Markets, Products, and Regulation

Besides current issues in international finance, the conference addressed selected current developments in markets, products, and regulation. These spanned, among others, the banking, equity capital markets, debt markets, and derivatives sectors.

A. Banking: Bail-in Regulation

In the area of banking regulation, since the Global Financial Crisis, bail-in has been central to the resolution strategies of globally systemically important banks. Bail-in, or the write-down and conversion of debt into equity or other instruments of ownership, has been a tool for facilitating creditor-financed recapitalisation.[22] However, given the potentially highly consequential implications of bail-in measures, this (now) conventional wisdom bears critical assessment. Blazsek discussed the "fallacy of bail-in as a bank resolution strategy", arguing that the post-2008 bank resolution framework is based on erroneous assumptions. She analysed key bank resolution case studies and canvassed arguments in support of this position. Among

[19] Eilís Ferran, "The Post-Brexit Return of Global Competitiveness as a Regulatory Objective", Keynote Speech, CFLR, UCL (1 July 2022). See also Eilís Ferran, *International Competitiveness and Financial Regulators' Mandates: Coming Around Again* (June 2022) University of Cambridge Faculty of Law Legal Studies Research Paper Series, Paper No. 6/2022.

[20] HM Treasury, *Financial Services Future Regulatory Framework Review: Proposals for Reform – Response to the Consultation*, CP 737 (July 2022) at para 2.5, <https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1092499/FRF_Review_-_Proposals_for_Reform__Government_Response_-_July_2022_.pdf> (accessed 3 August 2022).

[21] Monetary Authority of Singapore Act 1970 (2020 Rev Ed) s 4, as amended in 2007 by the Monetary Authority of Singapore (Amendment) Act 2007 (Act 13 of 2007) s 4.

[22] Financial Stability Board, *Bail-in Execution Practices Paper* (13 December 2021) at p 1, <https://www.fsb.org/wp-content/uploads/P131221-2.pdf> (accessed 1 September 2022).

other arguments, she reasoned that bail-in does not create liquidity, because the write-off or write-down of bail-in debt is merely an accounting adjustment that does not add new funds to the bank; future bank bailouts, therefore, cannot be avoided. She also pointed out that there is a discrepancy between the underlying principles of bail-in (i.e., burden sharing) and crisis management (i.e., stopping panic in the market), arguing that in a financial crisis, the latter should be prioritised rather than the former.[23] Given the centrality of bail-in to bank resolution strategies, it is essential to crisis preparedness that this mechanism and its assumptions be subject to such rigorous assessment – preferably prospectively before a crisis should arise, rather than retrospectively.

B. Equity Capital Markets: Hill Review, Gatekeeper-led Governance

With respect to the equity capital markets sector, one point of focus was developments in the UK initial public offering (IPO) market, particularly, the decline of IPOs in the UK – a key concern of the recent Hill Review.[24] Payne discussed factors contributing to this decline, including IPO compliance costs; preferences for alternatives that allow companies to remain private for a longer period of time (such as private equity funding); and regulatory competition in the form of alternative models (such as special purpose acquisition companies or SPACs in the US, and the availability in Asian financial centres of dual class share structures that accommodate founders' desires to retain control). She discussed the Hill Review and its proposals, highlighting its merits yet also its limitations, and suggesting potential further prospects for reform (for example, reforming the liability regime in order to encourage issuers to provide more forward-looking information). Brexit and the Hill Review have posed opportunities for reassessing the UK IPO regime, but it appears that there is room still for meaningful reform.[25]

Separately, in relation to issues of regulatory frameworks and market governance, Chan discussed the concept of gatekeeper-led governance as applied in the capital markets context. Specifically, he examined the case study of AIM, the London Stock Exchange's sub-market for small and medium size growth companies, paying particular attention to the role of nominated advisors (NOMADs). He described a model where gatekeepers are at the centre of the regulatory architecture, rather than at the periphery as third-party enforcers – building on existing work on gatekeeper liability, gatekeepers as reputational intermediaries, and issues arising where there are multiple gatekeepers.[26] Chan's novel approach potentially presents an

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[23] Virág Blazsek, "The Fallacy of Bail-In as a Bank Resolution Strategy", CFLR, UCL (1 July 2022); paper forthcoming with Arthur Wilmarth (2022).

[24] HM Treasury, *UK Listing Review* (3 March 2021) <https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/966133/UK_Listing_Review_3_March.pdf> (accessed 1 September 2022).

[25] Jennifer Payne, "Developments in Markets, Products, and Regulation" Roundtable Discussion, CFLR, UCL (30 June 2022). See further Jennifer Payne and Clara Martins Pereira, "The Future of the UK IPO", *Oxford Business Law Blog,* 9 March 2022 <https://www.law.ox.ac.uk/business-law-blog/blog/2022/03/future-uk-ipo> (accessed 5 September 2022).

[26] Jonathan Chan, "Gatekeeper-led Governance", CFLR, UCL (1 July 2022).

explanatory – or even prescriptive – model for market governance, particularly in the context of alternative markets.

C. Debt Markets: Private Credit, CLOs, Covered Bonds

In addition to developments relating to equity capital markets, issues and developments considered in and in relation to the debt markets sector included the rise of private credit; developments in the collateralised loan obligation (CLO) market; and the regulation of covered bonds.

First, Penn discussed the post-2008 rise of private credit, which includes lending not only from private equity firms, but also from sovereign wealth funds, pension funds, and other alternative lenders. He traced how an uneven playing field contributed to this phenomenon, given the regulatory crackdown on banks following the Global Financial Crisis on the one hand, yet the relative lack of regulation for private credit on the other hand. Penn also discussed the risks posed by the prevalence of private credit, including particular risks arising from structures and market practices such as sub-participations and sub-contracting to third-party service providers, and from lending structures that blur the distinction between equity and debt. He outlined troubling potential implications for access to credit and the real economy more generally, especially if interest rates hikes continue.[27]

Second, Bavoso discussed developments in the CLO market, the growth of which is related to the previously-discussed growth of private debt. CLOs are essentially a form of asset-based securitisation referencing portfolios consisting of corporate and sovereign loans. Bavoso discussed notable recent developments in the CLO market, highlighting, in particular, a new element of re-engineering of the market such that it is essentially brokered by private equity firms, with such firms having a central role as sponsors and managers of the transactions. Another concerning development is also the securitisation of high-risk loans. Bavoso outlined the risks and regulatory issues that arise, speaking about the stress in the CLO market in the spring of 2020, and the potential systemic risk implications.[28]

Third, Papadogiannis-Varouchakis discussed the regulation of covered bonds, focusing particularly on risks for investors in the post-insolvency stage of the bond issuer. Covered bonds are generally understood as debt securities issued by credit institutions and backed by assets that are typically high in quality (such as mortgages and public sector loans). Such covered bonds are often subject to differing regulatory treatment, such as, for example, with respect to regulatory capital requirements. Yet, as Papadogiannis-Varouchakis explained, covered bonds pose risks for investors at the post-insolvency stage of the issuer, including,

[27] Graham Penn, "Developments in Markets, Products, and Regulation" Roundtable Discussion, CFLR, UCL (30 June 2022).
[28] Vincenzo Bavoso, "Developments in Markets, Products, and Regulation" Roundtable Discussion, CFLR, UCL (30 June 2022). See further Vincenzo Bavoso, "Hail the New Private Debt Machine: Private Equity, Leveraged Loans, and Collateralised Loan Obligations" (2020) 14(3) Law and Financial Markets Review 141.

among others, risks related to the method used to transfer assets to the special purpose vehicle and risks stemming from the cover pool. These risks, he pointed out, raise questions as to whether regulators' preferential treatment of covered bonds may appear to be miscalibrated.[29]

D. Derivatives: "Standardise to Digitise", Crypto Derivatives

Additionally, developments discussed in relation to the derivatives markets included efforts to facilitate standardisation and thereby automation in the over-the-counter (OTC) derivatives markets, and the rise and regulation of crypto-derivatives.

A notable ongoing market development is ISDA's move to "standardise to digitise" in the OTC derivatives market.[30] These include initiatives directed at increasing standardisation in the negotiation, trading, and management of OTC derivatives – so as to thereby facilitate digitisation of documentation and development of smart contracts, and potentially, automation in the market.[31] Schammo discussed ISDA's efforts to facilitate such industry-wide automation through standardisation, particularly, by way of the ISDA Common Domain Model (CDM), and the ISDA Taxonomy and Clause Library initiatives. He discussed implementation challenges, such as switching costs, and how the increase in value of these network effect products depends on their increased adoption. Schammo also touched on concerns that arise, noting, for example, that the availability of open access to the CDM belies that it is integrated into other initiatives, like ISDA Create, which are not similarly open access, and highlighting issues that may therefore arise where regulators drive the adoption of standardisation initiatives.[32]

Another notable product development is that of crypto-derivatives, or financial contracts that derive their value from cryptoassets. Such products have increased in prominence in recent years, with the trading volume of cryptocurrency derivatives across centralised exchanges reportedly exceeding $3 trillion in July 2022.[33] Yang discussed the challenges such products pose to the European market infrastructure regulation (EMIR) disclosure regime, advocating for increased "moral transparency". [34] Additionally, Phang (also the author of this

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[29] Thomas Papadogiannis-Varouchakis, "The Post-Insolvency Stage of the Covered Bond Issuer: Risks for Investors", CFLR, UCL (1 July 2022).
[30] ISDA, "Standardise to Digitise" (2020) 6(1) ISDA Quarterly 12.
[31] ISDA, "ISDA Launches Clause Library", 23 June 2020 <https://www.isda.org/a/3JbTE/ISDA-Launches-Clause-Library.pdf> (accessed 6 September 2022).
[32] Pierre Schammo, "Developments in Markets, Products, and Regulation" Roundtable Discussion, CFLR, UCL (30 June 2022). See further Pierre Schammo, "Of Standards and Technology: ISDA and Technological Change in the OTC Derivatives Market" (2022) 15(1-2) Law and Financial Markets Review 3; and Pierre Schammo, "Of Standards and Technology: ISDA and Technological Change in the OTC Derivatives Market", *Oxford Business Law Blog,* 29 April 2022 <https://www.law.ox.ac.uk/business-law-blog/blog/2022/04/standards-and-technology-isda-and-technological-change-otc> (accessed 6 September 2022).
[33] CryptoCompare, "Exchange Review: July 2022", 11 August 2022, at p 3 <https://www.cryptocompare.com/media/40485073/exchange_review_july_vf-1.pdf> (accessed 5 September 2022).
[34] Zi Yang, "The Old Habit and New Route: The Challenges Crypto Derivatives Posted on the European Market Infrastructure Regulation's Monitoring of Systemic Risks", CFLR, UCL (1 July 2022).

present report) discussed the regulation of a sub-category of crypto-derivatives: cryptocurrency derivatives. She considered the differing regulatory approaches to cryptocurrency derivatives in the UK, the EU, and Singapore – where, with respect to retail trading, for example, the regulatory responses range widely, respectively, from an outright ban, to temporary restrictions on retail cryptocurrency contracts for differences (CFDs), to regulation only of cryptocurrency derivatives traded on or offered by certain regulated venues and financial institutions. Phang undertook a critical assessment and comparative analysis of the regulatory approaches taken in these jurisdictions, and commented on the insights these might yield for the future regulation of cryptocurrency derivatives.[35]

E. Other Issues and Developments in Financial Regulation

Apart from sector-specific developments discussed above, the conference also addressed issues in financial regulation generally, as well as topics specific to financial consumer protection.

With respect to financial legislation generally, Baroness Bowles, in her keynote speech on the first day of the conference, highlighted the problems that are often inherent in the fundamental questions asked. She spoke of how actors are frequently concerned more with compliance (and the question, "Is it legal?"), rather than with principles (and the question, "Does it cause harm?") Baroness Bowles highlighted that there is difficulty in that while preventing harm is ultimately at the root of regulation, it is impossible to make rules that will prevent every specific harm. Rather than focusing on the regulatory perimeter, then, regulation should look at failures to prevent harm. The speech also addressed the challenging issue of the need for independent scrutiny of regulators (citing in this regard, for example, the Gloster report of the independent investigation into the Financial Conduct Authority).[36]

i. Financial Consumer Protection

Moving from general principles of financial legislation and regulation to specific topics and concerns, one particular recurring consideration was that of financial consumer protection. Miglionico spoke about "the quest for protection of vulnerable consumers in digital financial technologies", highlighting that such consumers are especially susceptible to harm, particularly when firms are not acting with an appropriate level of care. He spoke about the need to monitor the employment of automated procedures and the flow of information received from autonomous predictive models – cautioning about the risk of automated decision-making resulting in hidden biases that may not be accessible to affected consumers, amplifying financial exclusion. Miglionico also discussed relevant considerations under the proposed EU

[35] Rachel Phang, "Regulating Cryptocurrency Derivatives: A Comparative Analysis of Approaches in the UK, the EU, and Singapore", CFLR, UCL (1 July 2022); paper forthcoming in the Journal of Business Law (2023).
[36] Sharon Margaret Bowles, "Who Thought of That: is it Legal? A Journey in Financial Legislation", Keynote Speech, CFLR, UCL (30 June 2022).

Artificial Intelligence Act, as well as the UK Financial Conduct Authority's regulatory principles.[37]

Additionally, consumer protection was also a central concern in comments by Fejős on consumer credit regulation; by Ibsen on the EU payment services market; and by Al-Daraji on third-party litigation finance regulation.[38] Specifically, with respect to the regulation of consumer credit (such as "buy now pay later" (BNPL) and payday loans), Fejős spoke about the challenges of payment fraud, and the shortfalls of regulatory approaches that are merely reactive and centred on information provision.[39] With respect to payment services, Ibsen discussed the EU's Second Payment Services Directive. She explained how the Directive potentially improved competition and financial inclusion, yet, also increased the financial literacy required of consumers, without necessarily providing consumers with tools for improvement in this regard. This raises the question: How far should regulation go to protect consumers? [40] It is a question not only relevant to the payment services regulatory regime, but also a central and perennial question for financial regulation.

These represent some of the issues and developments in the banking, equity capital markets, debt markets, and derivatives sectors, as well as in financial regulation generally, highlighting current and potential areas for increased scrutiny and development.

IV. Sustainable Finance

In addition to these current issues and developments in international finance (discussed in Part II), and in financial markets, products, and regulation (discussed in Part III), especial focus also fell on two particular themes in financial law and regulation. The first of these, and the focus of this Part IV, is that of sustainable finance. Sustainable finance generally refers to the incorporation of environmental, social, and governance (ESG) considerations into financial sector investment decisions, thereby resulting in greater investment in sustainable activities and projects.[41] This investment movement has been growing in momentum – impelled by climate change, pervasive inequality, governance failures, and other critical ESG imperatives – as the social, economic, and human costs, and potentially catastrophic perils, of preoccupation solely with economic growth have been drawing increasing urgent and serious

[37] Andrea Miglionico, "The Quest for Protection of Vulnerable Consumers in Digital Financial Technologies", CFLR, UCL (1 July 2022).
[38] Wala Al-Daraji, "Risks and Benefits of Third-Party Litigation Finance (TPLF) Regulation: Comparing the UK with the US", CFLR, UCL (1 July 2022).
[39] Andrea Fejős, "Developments in Markets, Products, and Regulation" Roundtable Discussion, CFLR, UCL (30 June 2022).
[40] Louise Damkjær Ibsen, "Improving Competition in the EU Payment Services Market" CFLR, UCL (1 July 2022).
[41] European Commission, "Overview of Sustainable Finance" <https://finance.ec.europa.eu/sustainable-finance/overview-sustainable-finance_en> (accessed 12 September 2022).

concern.[42] In Singapore, for instance, sustainable finance is a central concern of the Monetary Authority of Singapore, which is seeking through its Green Finance Action Plan to support a transition to a more sustainable, low-carbon economy.[43]

A. Challenges for Sustainable Finance and Sustainable Corporate Governance

In this regard, one topic of discussion was the challenges of promoting sustainable finance and sustainable corporate governance. Miglionico spoke about the difficulties of a lack of commonly accepted ESG metrics, as well as rating agencies' conflicts of interests.[44] Relatedly, Guira discussed and analysed a key initiative directed at improving reporting, namely, the International Sustainability Standards Board (ISSB) Draft Sustainability Disclosure Standards. Guira considered questions such as, among others, whether the draft standards are fit for purpose; the extent to which the implementation of previous international standards may carry lessons for the rolling out of these draft standards; and how a new climate financial architecture may involve trade-offs between alignment, ambiguity, and arbitrage.[45]

The discussions and presentations also spanned other issues and topics relating to sustainable corporate governance. MacNeil spoke about fiduciary duty as a control and accountability mechanism in the context of sustainable finance,[46] while Lu discussed the integration of ESG factors into remuneration incentives.[47] Russo, additionally, examined the issue of the liability of financial market participants in ESG matters.[48]

B. The Role of Investors in Sustainable Finance

Another topic of discussion was the role of investors in sustainable finance. On the one hand, there are challenges, as Micheler mentioned, in relying on individual investors to use their savings to invest ethically or sustainably. For instance, while investors may be willing to forego higher returns in favour of investing sustainably, there may be an intention-action gap between these intentions and actual investment decisions. Micheler also spoke about the effect that investment tax credits have on investment decisions, how these may deprive savers of the incentive to examine disclosures, and the possibility therefore of making such investment tax credits dependent on sustainability criteria.[49] On the other hand, Sergakis advocated for further empowering investors to participate in capital markets and sustainable finance, by ending "de-

[42] "About This Book" in *The Palgrave Handbook of ESG and Corporate Governance* (Paulo Câmara and Filipe Morais eds) (Palgrave Macmillan, 2022).
[43] Monetary Authority of Singapore, "Sustainable Finance" <https://www.mas.gov.sg/development/sustainable-finance> (accessed 13 September 2022).
[44] Andrea Miglionico, "Sustainable Finance" Roundtable Discussion, CFLR, UCL (30 June 2022).
[45] Jorge Guira, "ISSB Draft Standards in Sustainability and Climate Disclosure", CFLR, UCL (1 July 2022).
[46] Iain MacNeil, "Sustainable Finance" Roundtable Discussion, CFLR, UCL (30 June 2022).
[47] Longjie Lu, "ESG-Based Remuneration in the Wave of Sustainable Finance: Theory, Practice, and the Law", CFLR, UCL (1 July 2022).
[48] Costanza Russo, "Sustainable Finance" Roundtable Discussion, CFLR, UCL (30 June 2022).
[49] Eva Micheler, "Sustainable Finance" Roundtable Discussion, CFLR, UCL (30 June 2022).

personalisation" and taking steps to recognise investors' individual autonomy.[50] There hence are different degrees of optimism about the role of individual investors in sustainable finance.

Additionally, Micheler spoke also about the involvement of institutional investors, such as pension funds, in sustainable finance.[51] Relatedly, Alshaleel discussed issues relating to ESG integration in the mutual funds industry.[52] Given the structural importance of their role of in the investment landscape, assessing these dynamics of institutional investor participation in sustainable finance is especially pertinent.

C. Asset Partitioning and Divestment of "Dirty" Assets

Finally, Enriques raised another aspect of sustainable finance, the phenomenon of asset partitioning and divestment of high-emission ("dirty") assets, examining incentives for and possible unintended consequences of doing so. Under pressure from investors – particularly, institutional investors – to decarbonise, the segregation or sale of high-emission assets may appeal as a simple way of achieving such an outcome. Enriques also discussed how EU regulation, such as the Sustainable Finance Taxonomy Regulation and the Sustainable Finance Disclosure Regulation, may favour and incentivise such asset partitioning and divestment. However, he highlighted that asset partitioning and divestment of "dirty" assets may have unintended consequences that run contrary to their motivations and aims. Carbon emissions may, for example, instead increase, should high-emission assets be sold to private firms whose shareholders are unconcerned with climate considerations. Asset partitioning and divestment may also isolate "dirty" assets to segments of the market that are more inscrutable and inaccessible to investors who are concerned with sustainable finance. Enriques urged therefore for mindfulness of the distinction between greening a firm or a portfolio, and greening the planet.[53] This underscores the potential for unintended effects of sustainable finance regulations, and represents but some of the complex challenges involved in relation to sustainable finance.

V. FinTech

A second key current theme is the regulation of FinTech, or technology-enabled innovation in financial services.[54] Martins Pereira spoke, in this regard, about key regulatory choices that arise. Essential choices include whether to regulate now, or later; and whether to

[50] Konstantinos Sergakis, "Sustainable Finance" Roundtable Discussion, CFLR, UCL (30 June 2022).
[51] Micheler, "Sustainable Finance" Roundtable Discussion.
[52] Mohammed Alshaleel, "The Mutual Funds Industry and ESG Integration", CFLR, UCL (1 July 2022).
[53] Luca Enriques, "Sustainable Finance" Roundtable Discussion, CFLR, UCL (30 June 2022). See further John Armour, Luca Enriques, and Thom Wetzer, "Dark and Dirty Assets: Greening Climate-Driven Asset Partitioning", *Oxford Business Law Blog,* 14 June 2022 <https://www.law.ox.ac.uk/business-law-blog/blog/2022/06/dark-and-dirty-assets-greening-climate-driven-asset-partitioning> (accessed 4 August 2022).
[54] Financial Stability Board, *FinTech and Market Structure in Financial Services: Market Developments and Potential Financial Stability Implications* (14 February 2019) <https://www.fsb.org/wp-content/uploads/P140219.pdf> (accessed 7 September 2022).

take an enabling or a precautionary approach. Choosing to regulate now, rather than taking a "wait and see" approach, promotes certainty and allows regulators to have a say on the future of FinTech. Yet, waiting to regulate or taking an enabling approach is thought to be more facilitative of efficiency and innovation. To temper the discussion, Martins Pereira pointed out that in this analysis, it should be borne in mind that financial stability and safety are by their nature public goods – so that if regulators are not considering and accounting for these concerns, it may well be that no one else will. In addition, once the decision to regulate is made, another key question is that of what regulatory tools to employ. These range from creating sandboxes, to encouraging the adoption of RegTech, to investing in SupTech, among many others. Each of these has their own merits and drawbacks, among them, for example, that of automation bias.[55] FinTech hence is necessitating careful consideration by regulators of these various aspects and choices.

In particular, Zhang examined the public policy and regulatory choices that have been made so far in FinTech regulation in China, taking retrospective and prospective perspectives of FinTech regulation in the jurisdiction.[56] Questions of FinTech regulation also arose with respect to two specific areas: first, FinTech in banking, particularly, the use of artificial intelligence (AI), robo-advisory services, and algorithmic credit scoring; and second, digital assets, particularly, central bank digital currencies (CBDCs).

A. FinTech in Banking: AI, Robo-Advisors, Automated Credit Scoring

As Martins Pereira explained, FinTech in banking is not a new phenomenon, with previous developments ranging from online banking in the 1990s, to the first use cases of algorithmic trading. Present developments now encompass the use of cloud computing, distributed ledger technology (DLT), and AI (including in customer-facing AI chat bots, algorithmic credit scoring, and back-office functions such as scam and fraud detection[57]).[58]

Lui discussed the benefits, challenges, as well as legal and regulatory issues these bring. One key benefit is that of potentially increasing financial inclusion, as is the aim, notably, of Lui's work in an ongoing project that seeks to enhance access to digital financial payment services for women and minority groups in Nigeria. Challenges, however, include challenges of transparency and accountability, cybersecurity, and the need to improve digital and financial literacy, without which, FinTech is likely to exacerbate financial exclusion rather than achieve financial inclusion. Lui also assessed legal and regulatory issues that arise, such as data privacy protection and customers' rights to information.[59]

[55] Clara Martins Pereira, "FinTech" Roundtable Discussion, CFLR, UCL (30 June 2022).
[56] Chi Zhang, "Public Policy and the Evolution of FinTech Regulation in China: Retrospect and Prospect", CFLR, UCL (1 July 2022).
[57] Alison Lui, "FinTech" Roundtable Discussion, CFLR, UCL (30 June 2022).
[58] Martins Pereira, "FinTech" Roundtable Discussion.
[59] Alison Lui, "FinTech" Roundtable Discussion.

Specifically, Remolina, Lui and Durodola analysed issues relating to algorithmic credit scoring and automated credit decisions. Lui and Durodola conducted an empirical survey in the banking sector and amongst the general public in relation to their research on the rule of law and AI, focusing on algorithmic transparency and customers' right to explanation in the context of automated credit decisions. They advocated for bank customers to be accorded such a right to explanation of credit decisions (such as the rejection of a loan application), which are made by automated systems or AI algorithms.[60] Remolina agreed that such a right to know algorithmic outcomes would promote "digital self-determination", and discussed what would need to change in order for such a right to be accorded in Singapore's context, given the Personal Data Protection Commission's recent decision[61] regarding a bank's refusal to provide a customer with access to redacted data relating to his unsuccessful credit card application.[62]

Remolina also examined the role that financial regulators play in the governance of algorithmic credit scoring, setting out a typology of various current governance approaches. These range from light-touch approaches (such as principles-based guidelines and sandboxes) to regulation-based approaches (including credit scoring, fair lending, AI, and data protection regulation). She discussed various regulatory initiatives in Singapore (including the Monetary Authority of Singapore's Veritas Initiative and the Infocomm Media Development Authority's AI Verify Governance Testing Framework and Toolkit), and made recommendations regarding financial regulators' governance approaches to algorithmic credit scoring.[63]

Additionally, Kapsis presented a critical review of the application of EU investor protection rules to cases involving robo-advisors. He discussed key issues such as information asymmetries, conflicts of interests, opacity of the investment advisory process, as well as potential algorithmic biases and design flaws. Kapsis assessed their legal implications, including the difficulty of detecting such design flaws in order to establish a cause of action, the question of how liability should be attributed in the context of the provision of robo-advisory services, and the debate about whether AI should be granted a form of legal personality.[64] From a Singapore perspective, the Monetary Authority of Singapore's Guidelines on Provision of Digital Advisory Services provided an interesting point of comparison with the EU approach, making recommendations in relation to, among others, the governance and supervision of algorithms, as well as the disclosure of pertinent information

[60] Alison Lui and Lola Durodola, "The Rule of Law and Artificial Intelligence (AI): Algorithmic Transparency and the Customer's Right to Explanation in Automated Credit Decisions", CFLR, UCL (1 July 2022).
[61] *In the Matter of a Review under Section 48H(1)(a) of the Personal Data Protection Act 2012 and of the Personal Data Protection (Enforcement) Regulations 2021 between [Redacted] and HSBC Bank* [2021] SGPDPC 3.
[62] Nydia Remolina, "The Role of Financial Regulators in the Governance of Algorithmic Credit Scoring", CFLR, UCL (1 July 2022).
[63] Ibid. See further Nydia Remolina, "The Role of Financial Regulators in the Governance of Algorithmic Credit Scoring" (15 March 2022) SMU Centre for AI & Data Governance Research Paper No. 2/2022 <http://dx.doi.org/10.2139/ssrn.4057986> (accessed 9 September 2022).
[64] Ilias Kapsis, "A Critical Review of the Application of Investor Protection Rules under EU Law to Cases Involving Robo-Advisors", CFLR, UCL (1 July 2022).

relating to algorithms used and conflicts of interests.[65] Questions, however, still remain across these jurisdictions with respect to the use of robo-advisors, automated credit scoring, AI, and FinTech in banking generally.

B. Digital Assets

Another challenge for FinTech law and regulation is the rise of digital assets. Tracing their evolution over time, Lee shared his experiences with digital assets, from early uses of Bitcoin, to the use of DLT for securities transactions, to current developments.[66] Conference delegates analysed this phenomenon of the development and growing prominence of digital assets from several angles, addressing regulatory, private law, as well as dispute resolution issues pertaining to digital assets.

First, from a regulatory perspective, Proctor provided an overview of UK regulation of cryptoassets. Virtual currencies, he noted, are generally not investments under the Financial Services and Markets Act 2000. However, cryptoassets are subject to anti-money laundering (AML) regulation and the financial promotion regime.[67] Moreover, the Treasury has recently consulted on a regulatory approach to stablecoins, that is, cryptoassets that seek to stabilise their value.[68] Proctor briefly contrasted the UK regulatory approach with that of the US, and highlighted some outstanding questions. Relatedly, Iyer also spoke about the difficulties of regulating cryptoassets. These may arise, for example, because the classification of cryptoassets is prone to contestation due to factors such as their variety, rapid evolution, and exhibition of properties resembling those of different existing categories of products (among these, money, electronic money, commodities, and securities). The cross-border reach of cryptoassets also poses the challenge of potentially requiring greater co-operation between national and international regulatory bodies to develop consistent regulatory frameworks.[69]

Second, Gullifer discussed issues relating to the private law of digital assets. These include, for example, the law on transfers of, custody of, and taking of security over cryptoassets; whether cryptoassets can be the subject of a trust; and the legal position involving

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[65] MAS, *Guidelines on Provision of Digital Advisory Services*, Guideline No. CMG-G02 (8 October 2018) <https://www.mas.gov.sg/-/media/MAS/Regulations-and-Financial-Stability/Regulations-Guidance-and-Licensing/Securities-Futures-and-Fund-Management/Guidelines-on-Provision-of-Digital-Advisory-Services--CMGG02.pdf> (accessed 4 August 2022).

[66] Joseph Lee, "FinTech" Roundtable Discussion, CFLR, UCL (30 June 2022).

[67] Charles Proctor, "FinTech" Roundtable Discussion, CFLR, UCL (30 June 2022).

[68] HM Treasury, *UK Regulatory Approach to Cryptoassets and Stablecoins: Consultation and Call for Evidence* (January 2021) <https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/950206/HM_Treasury_Cryptoasset_and_Stablecoin_consultation.pdf> (accessed 4 August 2022); HM Treasury, *UK Regulatory Approach to Cryptoassets, Stablecoins, and Distributed Ledger Technology in Financial Markets: Response to the Consultation and Call for Evidence* (April 2022) <https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1088774/O-S_Stablecoins_consultation_response.pdf> (accessed 4 August 2022).

[69] Shobana Iyer, "Regulation of Cryptoassets and Resolving Disputes Involving Cryptoassets", CFLR, UCL (1 July 2022).

cryptoassets in the event of insolvency. Gullifer spoke about several notable developments and ongoing projects in the UK and internationally. These included domestic developments, such as proposed amendments to the US Uniform Commercial Code that affect digital asset transactions; and the legal statement on cryptoassets and smart contracts issued by the UK Jurisdiction Taskforce, which has since been taken up by the courts. She also addressed regional and international efforts, such as the European Law Institute principles on the use of digital assets as security, including proposed conflict of laws principles; and the International Institute for the Unification of Private Law (UNIDROIT) Digital Assets and Private Law Project, where Gullifer serves as a member of the project working group.[70] Moreover, in the weeks following the conference, the UK Law Commission issued a significant consultation paper regarding how UK personal property applies, and should apply, to digital assets[71] – underscoring the rapidly evolving nature of the discussion of private law issues relating to digital assets.

Third, Iyer discussed the resolution of disputes involving cryptoassets, which have entailed, and may entail, issues of property law, conflict of laws, contract law, and tort law. She surveyed a number of case law developments, from *Vorotyntseva v Money-4 Ltd* [2018] EWHC 2596 (Ch) (with respect to whether cryptocurrency is property as a matter of law); to *Fetch.ai Ltd. V Persons Unknown* [2021] EWHC 2254 (Comm) (with respect to the *lex situs* of a cryptoasset); to *Tulip Trading Ltd v Bitcoin Association* [2022] EWHC 667 (Ch) (regarding fiduciary and tortious duties of digital asset network developers and controllers), among other decisions. Iyer also discussed difficulties relating to cryptoasset disputes, such as in identifying the cause of action; identifying the counterparties when they are persons unknown; resolving jurisdiction and governing law issues; enforcing court orders and judgments; dealing with the rapid evolution of the technological landscape; as well as the expense of the dispute resolution process.[72] The development and use of digital assets hence is evidently forging new frontiers, from legal, regulatory, and dispute resolution perspectives.

i. Central Bank Digital Currencies

Additionally, and specifically, a particular phenomenon in the digital asset space is the emergence of CBDCs, or central bank-issued digital money that represents a liability of the central bank.[73] As Kaprinis explained, there are different models of CBDCs, including direct (retail) CBDCs, indirect (wholesale) CBDCs, and hybrid CBDCs.[74] Views of CBDCs have

[70] Louise Gullifer, "FinTech" Roundtable Discussion, CFLR, UCL (30 June 2022).
[71] Law Commission, *Digital Assets: Consultation Paper*, Law Com No 256 (28 July 2022) <https://s3-eu-west-2.amazonaws.com/lawcom-prod-storage-11jsxou24uy7q/uploads/2022/07/Digital-Assets-Consultation-Paper-Law-Commission-1.pdf> (accessed 4 August 2022).
[72] Iyer, "Regulation of Cryptoassets and Resolving Disputes Involving Cryptoassets".
[73] Anneke Kosse and Ilaria Mattei, "Gaining Momentum – Results of the 2021 BIS Survey on Central Bank Digital Currencies" (May 2022) BIS Papers No 125 at p 2, <https://www.bis.org/publ/bppdf/bispap125.pdf> (accessed 7 September 2022).
[74] Kosmas Kaprinis, "The Emergence of Central Bank Digital Currencies (CBDCs): Thoughts on a Normative Framework", CFLR, UCL (1 July 2022).

differed across various jurisdictions, with a small minority piloting or having issued live CBDCs, and over half of central banks considering the possibility of issuing a CBDC in the future.[75] Kaprinis spoke about the political economy of CBDCs, a necessary perspective at this still relatively nascent stage for legal and regulatory frameworks, and considered various interpretations of the emergence of CBDCs: the "benevolent" interpretation, the "erosion of state power" interpretation, and the "arms race" interpretation.[76] Relatedly, Copeland also discussed differing motivations for and benefits of CBDC development. In some contexts, CBDC issuance fills a vacuum and facilitates financial inclusion, such that CBDC issuance is itself a social good; in other contexts, benefits are likely to accrue more at the stage of post-issuance CBDC management (such as where CBDCs have pure technical superiority, or interest rate or other advantages).[77]

CBDCs raise both practical and legal issues. Kaprinis discussed practical issues, such as the question of developing the necessary infrastructure for CBDCs, given that many collaborative projects are often currently relying on the services and infrastructure of private banks.[78] Legal issues associated with CBDCs include data privacy and data governance concerns;[79] the legal tender status of CBDCs; operational legal issues such as AML and interoperability measures; and the pursuit of international legal harmonisation.[80] Lu also raised the question of whether CBDCs give rise to a need to rethink the role played by central banks.[81] In this regard, Copeland spoke about the role of the central bank as the "banker of banks" with a responsibility to maintain financial stability. He described how central bank independence is a necessary precondition for neutral transmission of monetary policy; yet, it is possible that CBDCs may challenge central bank independence. Specifically, the pursuit of certain types of objectives, such as central banks stepping in to incentivise the take-up of CBDCs, may alter central banks' independence. Copeland pointed out that in addition to focusing on the question, "Can it work?", there is a need for research and discourse to focus on the normative question: "Should it?"[82] CBDCs, therefore, give rise to certain unique concerns, which are distinct from those associated with privately-issued digital assets, and must be carefully considered.

VI. Teaching Finance Law

Besides these substantive questions of financial law and regulation, the conference also addressed pedagogical questions about teaching finance law. For instance, what skills should law schools teach students in preparation for the practice of financial law? Neo discussed

[75] Kosse and Mattei at p 9.
[76] Kaprinis, "The Emergence of CBDCs: Thoughts on a Normative Framework".
[77] Rory Copeland, "Central Bank Digital Currencies: A Challenge for Central Bank Independence", CFLR, UCL (1 July 2022).
[78] Kaprinis, "The Emergence of CBDCs: Thoughts on a Normative Framework".
[79] Lerong Lu, "International Finance" Roundtable Discussion, CFLR, UCL (30 June 2022).
[80] Kaprinis, "The Emergence of CBDCs: Thoughts on a Normative Framework".
[81] Lu, "International Finance" Roundtable Discussion.
[82] Copeland, "Central Bank Digital Currencies: A Challenge for Central Bank Independence".

practical ways in which developments in financial law might be included in law school curriculums, such as by introducing fresh electives, structuring short intensive modules by visiting scholars, and updating traditional courses to incorporate new issues and topics.[83] Additionally, Brener raised the importance of skills such as financial literacy and communication with clients.[84] Moreover, Lupo-Pasini spoke about how, in addition to teaching topics with which scholars are comfortable, there is a need to consider the question: what does the industry want or need law graduates to know?[85] Delegates from both legal practice and academia weighed in on the discussion, reflecting in microcosm the necessity and benefits of active dialogue between regulators, the academy, and the profession.

VII. Conclusion

This report summarises selected themes and ideas presented during the Conference on Financial Law and Regulation held at UCL Faculty of Laws – focusing on recent developments in international finance, as well as in financial markets, products, and regulation (as discussed in Parts II and III), and on the two particular key themes of sustainable finance and FinTech (as discussed in Parts IV and V). Even from this brief survey, it is apparent that financial law and regulation is a rapidly evolving field, spanning a number of sectors, with international and cross-border dimensions. The nature of the discipline therefore makes it all the more important for there to be opportunities to discuss key developments and exchange ideas. The inaugural Conference on Financial Law and Regulation was one such excellent opportunity, and enormous credit is due to the organisers for their vision and efforts to actualise this event. This report hopes to assist in building, in a modest way, on the exchanges that took place at this year's conference, and the author looks forward to what is hoped will be many subsequent iterations of the conference to come.

[83] Dora Neo, "Teaching Finance Law" Discussion, CFLR, UCL (30 June 2022).
[84] Alan Brener, "Teaching Finance Law" Discussion, CFLR, UCL (30 June 2022).
[85] Federico Lupo-Pasini, "Teaching Finance Law" Discussion, CFLR, UCL (30 June 2022).