



INDUSTRY UPDATE

Digital Assets and Registered Exchanges Act, 2020

VIRTUAL BROADCAST/WEBINAR
31 March 2022
10:00 a.m.



INDUSTRY UPDATE

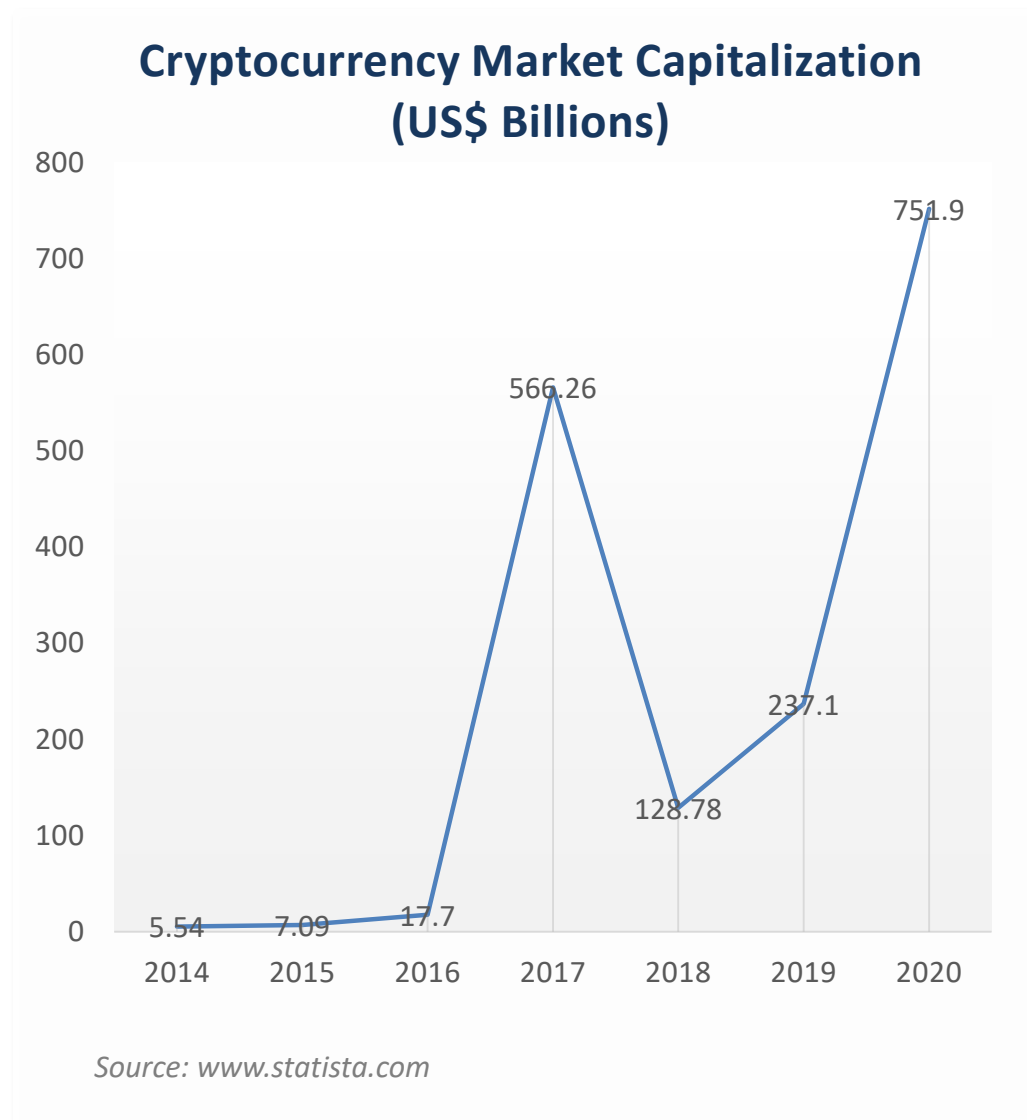
Digital Assets and Registered Exchanges Act, 2020

Overview of the DARE Legislative Framework

Presenter:

Christina Rolle

Executive Director

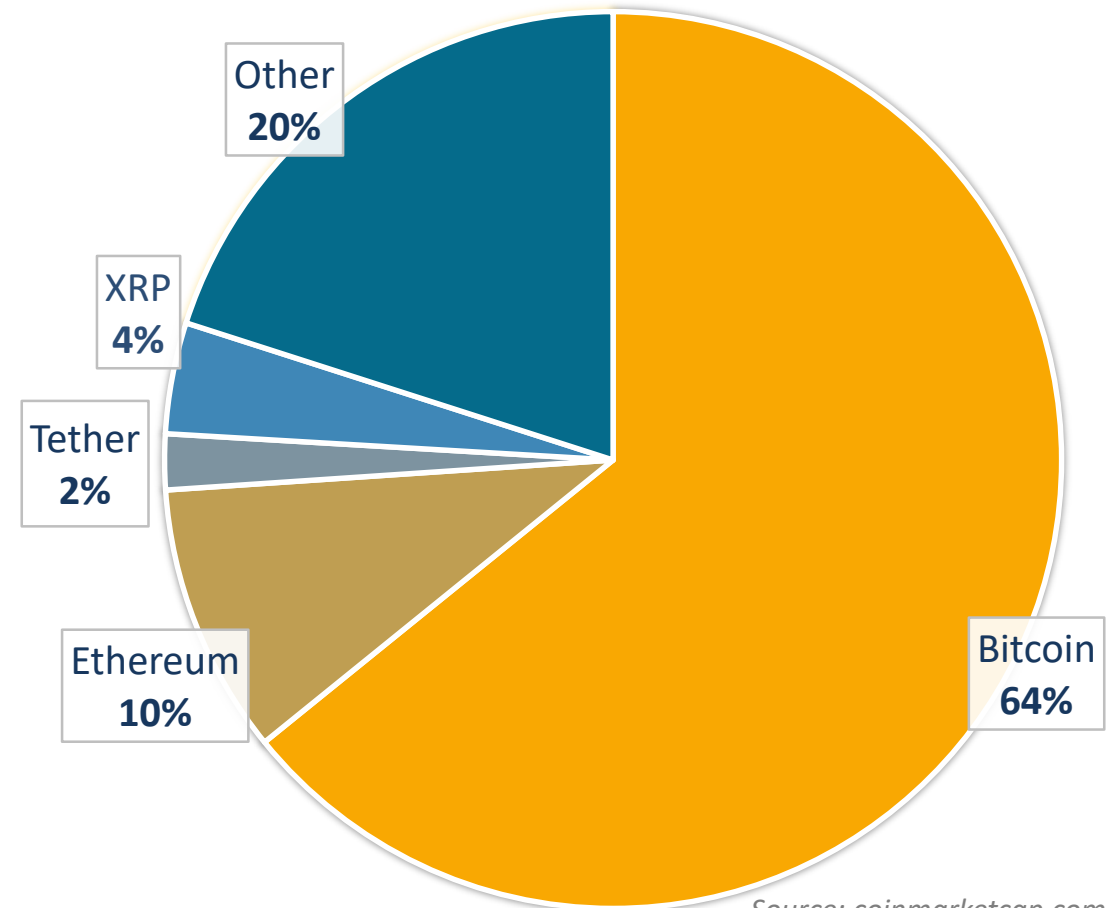


**Global crypto market
cap \$2.0 Trillion**
As at 24 March 2022

Source: www.statista.com



Cryptocurrency Market Capitalization Leaders



Source: coinmarketcap.com

Digital Assets: Growing Investor Demand

7 in 10 institutional investors expect to buy/invest in digital assets in the future



Of which, >90% expect allocation in their/their clients' portfolios within 5 years

Approx. 9 in 10 investors found digital assets appealing;
8 in 10 felt they had a place in their portfolio

79% of US family offices had a neutral-to-positive view of digital assets

84% of US & European investors interested in institutional investment products that hold digital assets



Source: Fidelity Digital Assets' 2021 Institutional Investor Digital Assets Study (20 July 2021)



Global Crypto
ecosystem growth

Threat of financial
system misuse and
investor abuse

Governmental,
regulatory and
industry will to
facilitate orderly
market
development

Objectives:

- Define legal status
- Introduce regulatory framework
- Address tokens, exchanges and service providers
- Curb illicit activity
- Protect market integrity



Benchmarking & Consultancy



Gibraltar

Switzerland

Hong Kong

Thailand

Malta

United States

Development

- Benchmarked 13 jurisdictions
- Engaged External Consultant to support initial research phase
- Careful monitoring of Global Standards (including FATF Recommendation 15)
- Internally drafted
- Industry consultation in development



Introducing DARE: *What it does*

DARE provides for the Securities Commission of The Bahamas to regulate the issuance, sale and trade of digital assets in or from within The Bahamas.

Digital Assets Business

- a digital token exchange;
- providing services related to a digital token exchange;
- operating as a payment service provider business utilising digital assets;
- operating as a digital asset service provider, including providing DLT platforms that facilitate:
 - (i) the exchange between digital assets and fiat currencies;
 - (ii) the exchange between one or more forms of digital assets; and
 - (iii) the transfer of digital assets;
- participation in and provision of financial services related to an issuer's offer or sale of a digital asset;
- any other activity which may be prescribed by regulations.

Digital Asset

- a digital representation of value distributed through a DLT Platform where value is embedded or in which there is a contractual right of use and includes without limitation digital tokens



Introducing DARE: *Who may participate?*

- All persons (which includes natural persons, companies, partnerships, trusts and any other legal entity) carrying on or involved in digital assets business operating in/from The Bahamas must be registered or licensed with SCB
- Full identification of founders, beneficial owners, security holders, directors and officers is required
- Financial institutions already licensed or registered with the Commission may apply for registration of additional digital asset business or service
- Licensed businesses must maintain professional conduct requirements including financial requirements (to be prescribed)
- FCSPA, 2020, provides for wallet service providers and custody of digital assets services to be licensable financial services





Supervision and Monitoring

- SCB has authority:
 - to suspend or revoke registration, including for activities not covered by DARE if to protect the public
 - to refuse application as a digital asset business
 - to inspect and investigate including for AML/CFT related laws
- Registrants have a duty to comply and cooperate, and must provide information about their operations as the Commission requires
- Clear penalties and SCB can enforce administrative sanctions
- Records must be maintained according to FTRA requirements
- FTRA and POCA amended to specifically address digital assets and digital assets business

DARE: AML/CFT & FATF Recommendation 15

- Compliant with Financial Action Task Force Recommendation 15 re: New Technologies
- SCB takes a risk-based approach to AML/CFT supervision
- DARE Brings digital assets business under national AML/CFT risk coordination framework
- Digital Assets business must have systems in place to prevent, detect and disclose money laundering, terrorist financing and suspicious transactions pursuant to Proceeds of Crime Act, 2018 (POCA); the Anti-Terrorism Act, 2018 (ATA) and the Financial Transactions Reporting Act, 2018 (FTRA)
- For sale, exchange or transfer of digital assets, providers must conduct AML/CFT risk assessment, ensure compliance with POCA, ATA and FTRA, and comply with Commission's rules on AML/CFT



Transparency & Beneficial Ownership

- Beneficial owner in DARE has the same meaning assigned to it as in section 2 of the Proceeds of Crime Act, 2018
- SCB has a range of administrative sanctions available under DARE, including banning of a registrant, suspension of a manager, removal of directors, officers and other senior managers or general partners

Information Exchange

- SCB has co-operative power with respect to domestic and international overseas regulatory authorities



Other Investor Protection/ Market Integrity Measures

- Registrants to maintain data protection measures consistent with the Data Protection (Privacy of Information) Act re customers' personal data
- Commission to maintain register of digital asset business
 - Name and address of digital assets business
 - Regulatory licenses or registrations held by the business including foreign licenses or registrations
 - Names of principals, directors and other persons with management control
 - Conditions imposed by SCB
 - Will be accessible on SCB's website.
- Provides for SCB to establish financial requirements





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POLICY AND INNOVATION UPDATES

Presenter:

Christian D. Adderley

Head of Policy and Research




The Digital Asset Sector

The Case For Regulation

Capacity Development
Initiatives

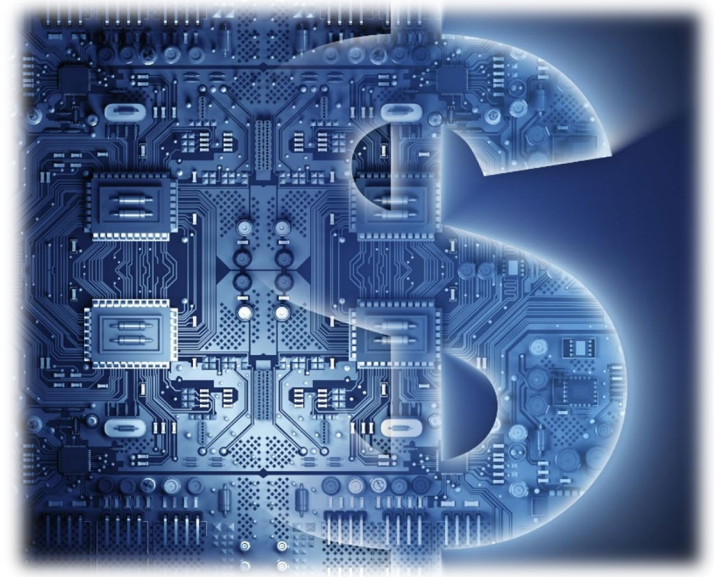
The Commission's
International Initiatives

SCB FITLink (Year in Review)/
FinTech Hub Updates



WHAT IS THE DIGITAL ASSET SECTOR?

The digital asset sector is a growing sub-sector of financial services that comprises of digital assets ("cryptocurrencies"), digital asset businesses (e.g. digital asset exchanges and digital asset service providers) and other related services.



WHY REGULATE THE DIGITAL ASSET SECTOR?



- Speed of transaction processing
 - Cross Border / Ease of Retreat
- Investor Protection Issues
 - Disclosure/Suitability
 - Watch out for scams!
- Cyber Security
 - Where is my data?

CAPACITY BUILDING INITIATIVES

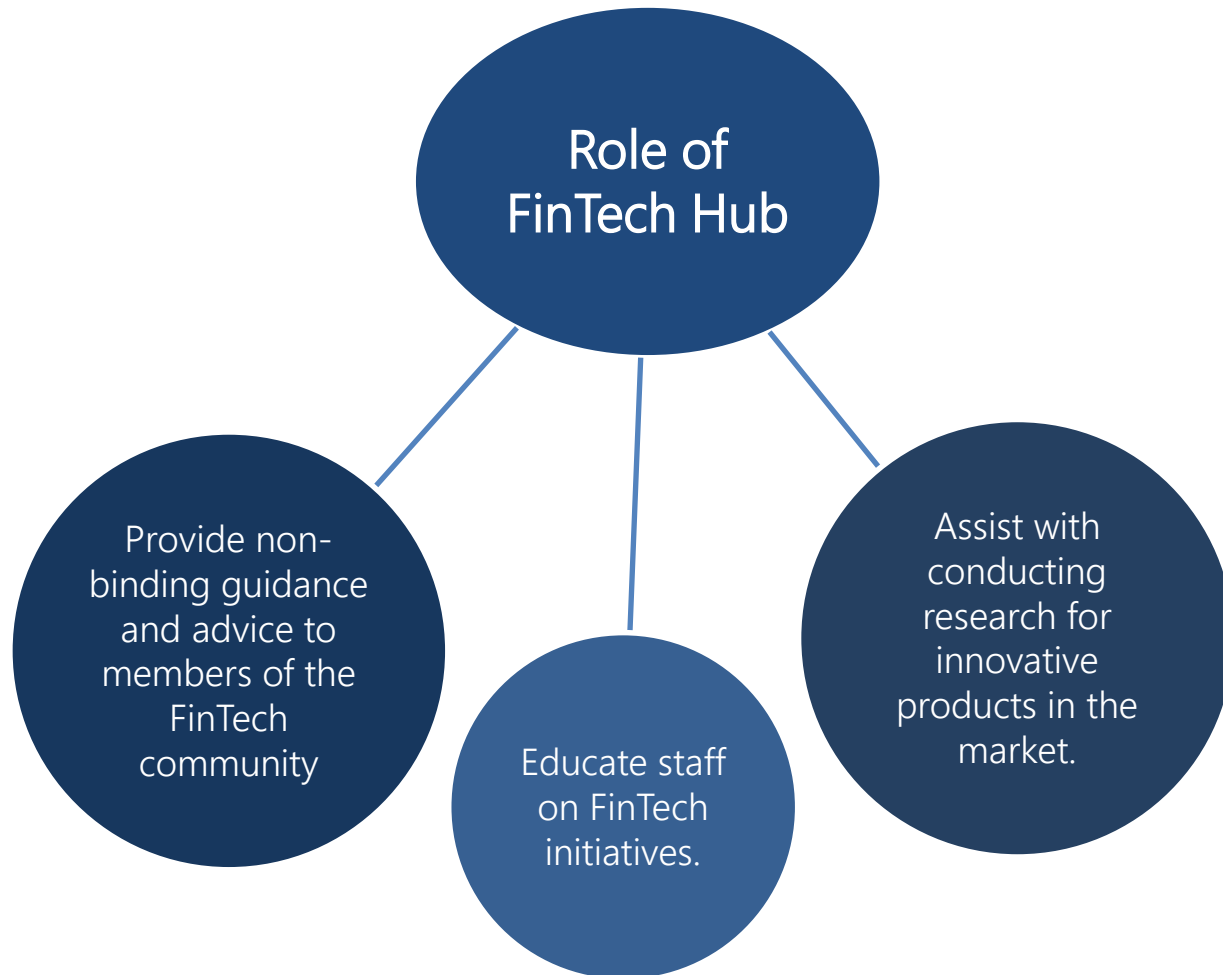
IOSCO FINTECH NETWORK

GLOBAL FINANCIAL INNOVATION NETWORK (GFIN)

CARIBBEAN GROUP OF SECURITIES REGULATORS'
FINTECH WORKING GROUP



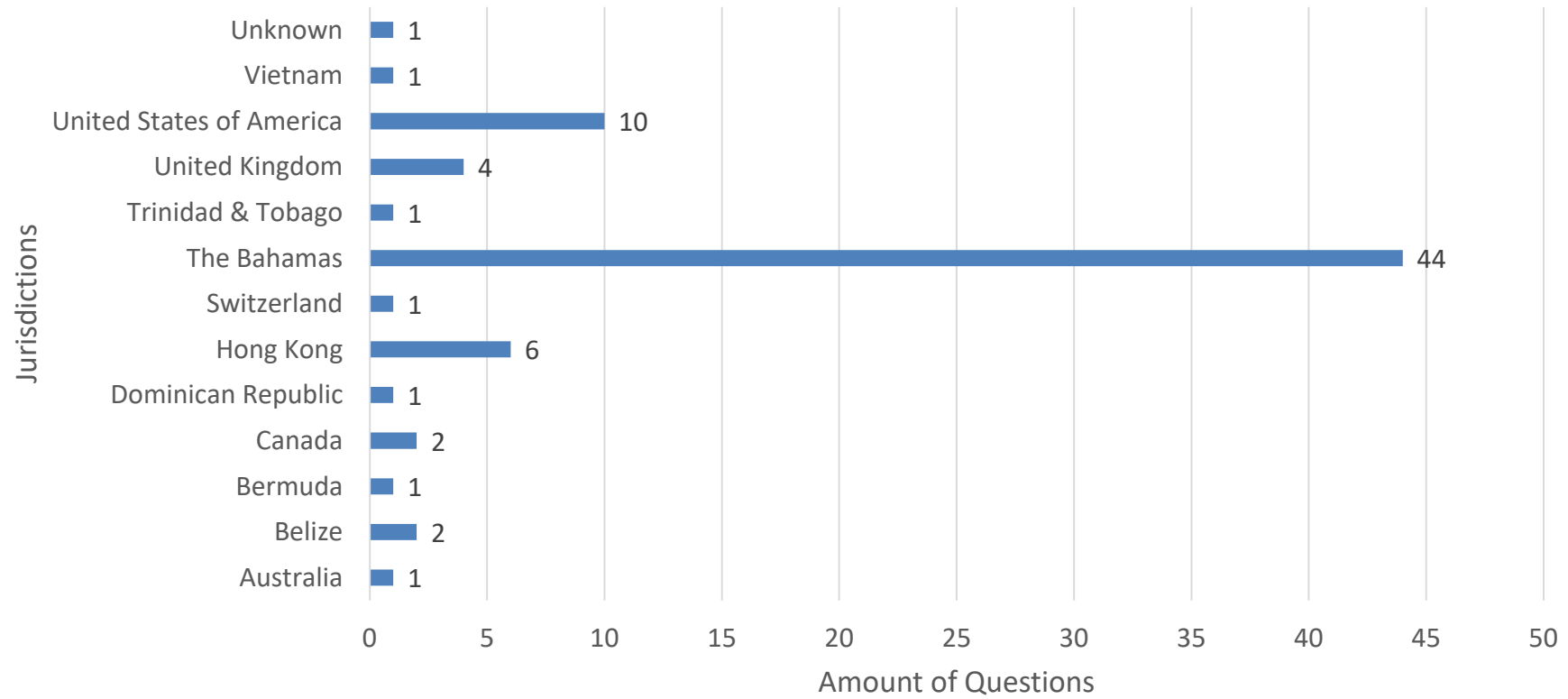
SCB FITLINK



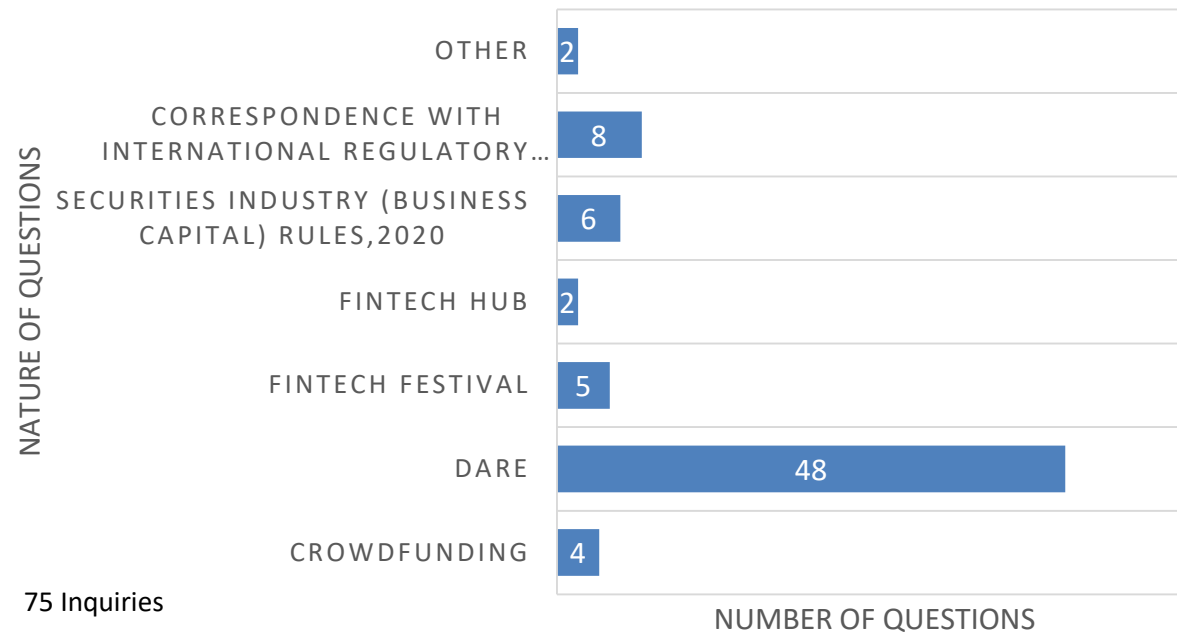
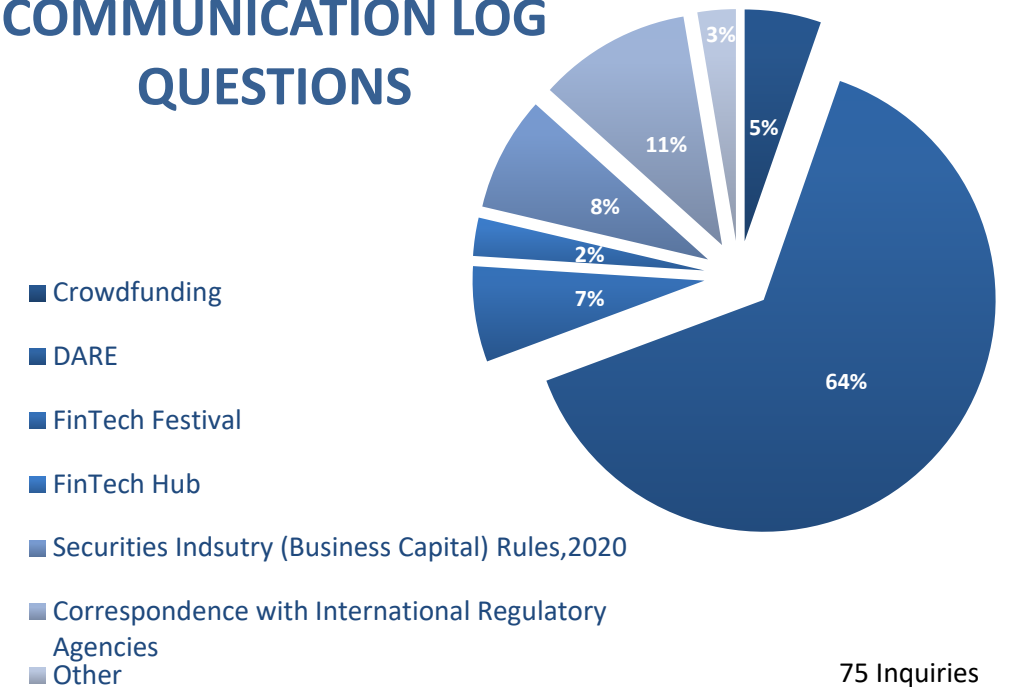
- SCB FITLINK
 - “FINTECH HUB”
 - Financial Innovation and Technology Link
 - Launched 2019
 - Central point of contact
 - Bridge Regulatory Gap
- Contact Information
 - fitlink@scb.gov.bs

SCB FITLINK – YEAR IN REVIEW

Jurisdictions



SCB FITLINK – YEAR IN REVIEW

FINTECH COMMUNICATION LOG
QUESTIONSPERCENTAGE OF FINTECH
COMMUNICATION LOG
QUESTIONS



- FinTech is rapidly evolving with numerous opportunities
- Many benefits for the average Bahamian
- Risks are high
- We need to work together
- Regulators are here to help, not impede!



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PROPOSED AML/CFT RULES

Presenter:

Mechelle Martinborough

Senior Legal Counsel,

Office of Legal Counsel

Introduction

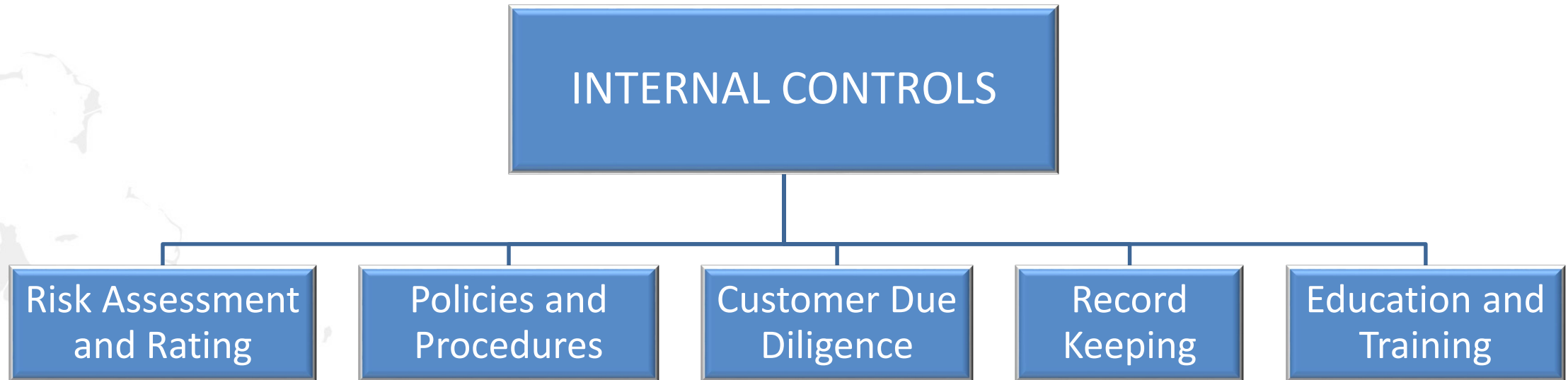
- The Commission's AML/CFT Framework across sectors.
 - DARE AML/CFT Rules as a compliance aid.
 - Proposed rules substantively mirror AML/CFT framework for other sectors.
 - Proposed rules reflect international and financial industry standards.

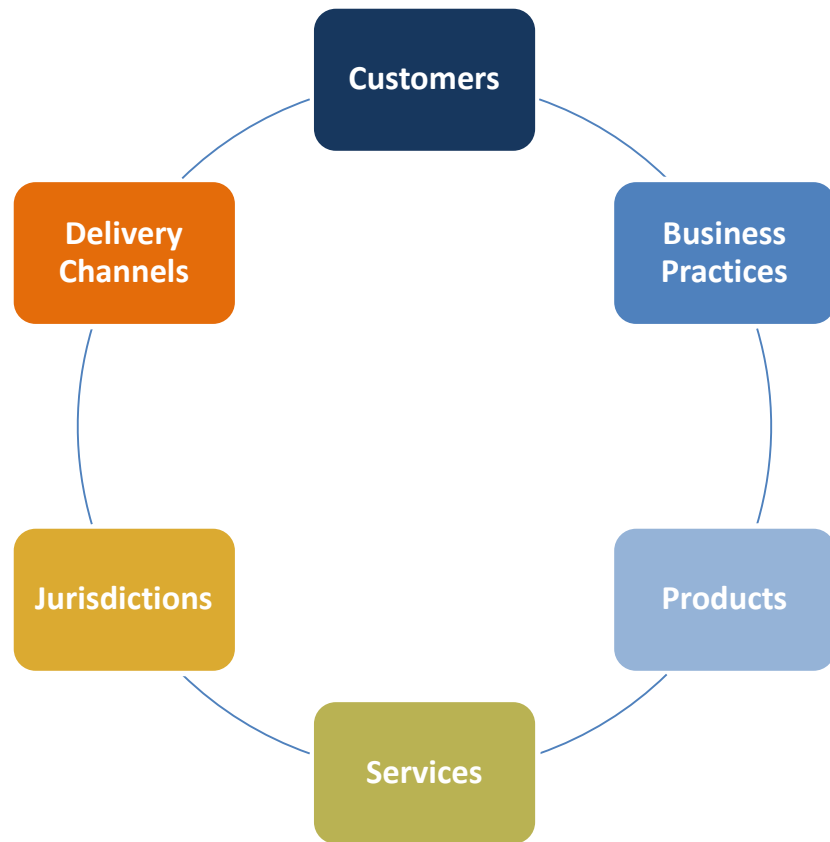
Objectives

- Supplement to the Financial Transactions Reporting Act 2018.
- Highlight standards and obligations specific to the digital asset space.



IMPLEMENTATION OF RISK FRAMEWORK





Part II – Rule 3

- **Risk Rating**
 - Identify, assess, and document current and emerging risks and ratings.
 - Assess risks prior to onboarding or introduction of new practices, services and products.
- **Policies and Procedures**
 - Risk identification, measurement, management and mitigation.
 - Account for National risk assessments and regulatory guidance.
 - Categorize customers and products based on risk rating.
 - Ongoing monitoring, review and re-categorization.

Registrants required to –

- Implement Policies and Procedures for risks and suspicious transactions –
 - Prevention
 - Detection
 - Disclosure

Guided by -

- DARE AML/CFT Rules
- Financial Transactions Reporting Act 2018
- Financial Transactions Reporting (Wire Transfer) Regulations 2018
- Appoint an approved and registered MLRO



Due diligence framework -

- Verify customer is who they claim to be, prior to entering relationship, including BOs
- Document, including nature and purpose of relationship
 - ✓ Independently sourced
 - ✓ Reliable
 - ✓ Capable of confirming identity
- Review and monitoring

Once obtained, re-verify for changes to –

- Authorized persons
- Board resolutions or mandates
- Partners, controllers, trustees, fiduciaries, nominees
- Corporate structure
- Doubts around identity
- Material changes
- Reasonable suspicion of AML/CFT breaches

Ongoing monitoring (r. 18)-

- Scrutiny of transactions
- Sources of information kept up to date
- Analyze blockchain and similar transactions on risk basis
- Use of automated systems to monitor large transactions
- Flagged transactions subject to human analysis

When in **doubt** regarding customer identity or legitimacy of transactions, determine –

- Other steps to verify?
- Proceed with the relationship?
- File a STR?
- Suspend activity on the account?

Enhanced Due Diligence Measures–

- Corroborating identity information
- Video conferencing and document certification
- Tracing IP addresses
- Corroborating customer activity with profile
- Source of funds and source of wealth
- Reasons for transactions
- Enhanced monitoring
- Transactions data and history

Relationships (EDD)

- High-risk jurisdictions
- Anonymous emails or tokens/services
- Avoiding reporting thresholds
- Use of assets to avoid sanctions
- PEPS

Transactions (EDD)

- Peer-to-peer
- Anonymity enhanced features, products, services
- Associated with dark-net, market abuse, ransomware, hacking, fraud, ponzi schemes, sanctions assets, unregulated exchanges
- Higher risk based on analysis

Simplified Due Diligence (SDD)

- Applied in limited circumstances
- Clearly documents risk assessment

Customer Verification Requirements According to Nature and Structure

- Natural persons
- Corporate customers
- Partnerships and unincorporated businesses
- Other legal structures and fiduciary arrangements
- Foundations
- Non-profits and Charities
- Powers of Attorney

Politically Exposed Persons (r. 13)

- Policies and procedures to identify and verify
- Definition:
 - ✓ Entrusted with prominent public function domestically, internationally, or as part of an international organization
 - ✓ Includes:
 - Certain family members
 - Close associates
 - Entities established by or for the benefit of a PEP



Third-party Verification

- Reliance on CDD from another Financial Institution –
 - ✓ Institution is a regulated entity, subject to AML/CFT obligations, and not listed by an international organization regarding AML/CFT deficiencies
 - ✓ Written confirmation that customer identity verified
 - ✓ Confirmation of existence of account

Eligible Introducers

- Domestic and foreign registered and licensed Financial Institutions supervised by government authorities similar to the Commission or Central Bank of The Bahamas
- Obtain from the introducer-
 - ✓ Confirmation customer identity verified
 - ✓ Clear an legible copies od documents within 30 days
 - ✓ Certification that copies identical to originals
- Terminate the relationship where requirements not satisfied (r. 16)

Exempted

- ✓ FI licensed/registered with the Central Bank, Securities Commission, Insurance Commission or Gaming Board
- ✓ FI subject to AML/CFT obligations, supervised for AML/CFT compliance, and with adequate procedures in place for CDD and record-keeping requirements
- ✓ Central or local government bodies
- ✓ Publically traded companies on BISX or other marketplaces registered with the Commission and specified in the schedule to FTRA 2018

Record-keeping –

- Maintain records for a minimum of 7 years after business relationship concludes
- Records that enable:
 - The assessment of AML/CFT compliance
 - Reconstruction of transactions
 - Identification of public keys
 - Satisfaction of Court Orders and inquiries from the Commission and other appropriate authorities
 - Client identity verification
 - Provision of historical correspondence
 - Provision of suspicions raised internally but not reported, suspicions appropriate supervisory authorities have advised are of not interest
- Originals or electronic media

Education and Training –

- Ensure employees and senior management aware of:
 - Internal AML/CFT policies and procedures
 - AML/CFT legislative framework and regulatory obligations



Thank you!



Securities Commission of The Bahamas

Poinciana House | North Building, 2nd Floor | 31A East Bay Street | PO Box N-8347 | Nassau, The Bahamas

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Question & Answer Session!



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