Article Information

Authors: Louisa Xu, Michael Bacina, Tom Skevington
Service: Blockchain, FinTech
Sector: Financial Services, IT & Telecommunications

Blockchain Bites: Future of Payments event, FATF report red flags, RBA considers retail CBDC and the Open Patent Alliance

Michael Bacina, Tom Skevington, Louisa Xu, Jade McGlynn and Marc Kopelowitz of the Piper Alderman Blockchain Group bring you the latest legal, regulatory and project updates in Blockchain and Digital Law.

Event: Blockchain and the Future of Payment – 1 October 2020

Blockchain Australia Young Professionals, and Piper Alderman are hosting an event on 1 October 2020 to discuss the future of payments in Australia. In particular, the panel discussion will cover the issues facing payment business, implications of the recent FinCEN leak, challenges of regulation, the interplay of blockchain and payments, and the upcoming trends in payments in Australia and internationally.

The event will feature a panel discussion by:

1. Charlie Karaboga, CEO & Co-Founder of RelayPay;
2. Christian Westerlind Wigstrom, CEO of Monoova;
3. Emma Poposka, Director & Business Development at bronID; and
4. Nicolas Steiger, Chief Operating Officer of FlashFX.

The discussion will be hosted by our very own, Michael Bacina, Partner at Piper Alderman and moderated by Louisa Xu, Associate at Piper Alderman and Co-Chair of Blockchain Australia Young Professionals.

This event is also the launch of RelayPay, a platform bridging the gap between traditional finance solutions and digital currencies.

Link to register for the event here.

Monetary Authority of Singapore expands guidance for Payment Services Act

Following the commencement of the Payment Services Act (**PSA**) in January, the Monetary Authority of Singapore (**MAS**) recently published an information paper for businesses setting out a framework for how cryptocurrency businesses and other payment services governed by the PSA can measure the efficacy of their compliance programs.

The informational paper sets out MAS' supervisory expectation of effective Enterprise-wide Risk Assessment (**EWRA**) frameworks and processes, and interestingly sets out the outcomes of some inspections conducted by MAS into unnamed financial institutions early in 2020.

Broadly, the information paper found that while generally the financial institutions MAS inspected had established frameworks for conducting EWRAs, the quality of implementation of the EWRA's was more of a patchwork. This is hardly a problem unique to Singapore, with Australian banks copping record from the anti-money laundering regulator AUSTRAC, despite having supposedly stringent AML/CTF programs in place.

Follow the Money: The FATF releases a red flag report for virtual assets

Fraud, tax evasion, cyber attacks, drugs trade and human trafficking. According to a new report released by the Financial Action Task Force (**FATF**), these are just a few of the offences that criminals disguise using virtual assets like blockchain, bitcoin, crypto assets and virtual currencies. Thankfully, this report has been prepared to assist virtual asset service providers (**VASPs**) with the identification of money laundering or terrorism red flags.

As with most regulator reports, this latest FATF report opens with a fairly typical acknowledgement of the transformative potential of blockchain, before quickly emphasising the:

> new opportunities for money launderers, terrorist financiers, and other criminals to launder their proceeds or finance their illicit activities

FATF summarises these concerns by remarking that the speed and supposed anonymity of virtual assets also create opportunities for those who want to launder the proceeds of, or finance their criminal activities.

Perhaps the most illuminating part of the report is the granularity of detail in some of the case studies. These examples provide a valuable example for reporting entities with multiple indicators to identify suspicious activity. Ironically, despite some ongoing scepticism from regulators, including FATF, many of these case studies being with something to the effect of:

> To disguise the funds' origin, cash was first deposited into various accounts at different [Financial Institution]s across the jurisdiction.

pointing once again to the best tool for money laundering (cash), and the greater ability of the money to be followed in the world of virtual assets, relative to fiat currencies.

Future of FinTech and financial services reform in Australia

It's an exciting time for reformists in the financial services and FinTech industries. Following the release of an Interim Report by the Australian Senate Select Committee inquiry into FinTech and RegTech, the Australian Law Reform Commission (**ALRC**) has confirmed it is starting a three-year review into how financial services regulation could be more efficient.

While the two processes review and reform processes are entirely separate, there is little doubt that the ALRC will be considering the Senate Committee's 32 recommendations from the Interim Report, as well as the outcome of the final report due on 16 April 2021.

The Terms of Reference for the ALRC review focus on the provisions of the *Corporations Act 2001* (Cth) and the *Corporations Regulations 2001* (Cth) primarily, while also referring to other financial services legislation, and legislative instruments.

Three fairly broad sub-topics are specifically identified, each of which is to be the subject of a separate interim report, prior to release of the consolidated Final Report by the ALRC. The timeline for each interim report is:

- A first interim report focusing on the appropriate use of definitions in corporations and financial services legislation is due by 30 November 2021;
- A second interim report focusing on regulatory design and the hierarchy of primary law provisions, regulations, class orders, and standards, is due by 30 September 2022;

- A third interim report focusing on potential reframing or restructuring of Chapter 7 of the Corporations Act is due by 25 August 2023;

The above will all come together in a consolidated final report due by 30 November 2023.

RBA reluctantly reconsiders retail CBDC in latest paper

Following on from its early sceptical position in 2017, the Reserve Bank of Australia (**RBA**) has published a detailed paper setting out its continued cautious position on retail central bank digital currency (**CBDC**). The updated paper "Retail Central Bank Digital Currency: Design Considerations, Rationales and Implications" explores some issues around the possible design, rationales for issuance, and implications of issuance of a retail CBDC.

In short, the paper sets out the RBA's position that, despite ongoing decline in the use of cash, as well as the broader digitalisation of the economy:

> there does not seem to be a strong public policy case for [CBDC] issuance in Australia

Interestingly, the RBA also comments on stablecoins generally that:

> In Australia, to date, there has been essentially no issuance of stablecoins nor any use of them as a payment method

This of course is not entirely correct, with various stablecoin projects underway in Australia, and significant growth in acceptance of stablecoins for payment, including yours truly at Piper Alderman through RelayPay.

Overall, in summarising the view that there is no strong public policy case for the introduction of a retail CBDC, the RBA finds that:

1. demand for Australian banknotes continues to increase and has risen significantly since the onset of the COVID-19 pandemic;

2. Australia's electronic payments system compares favourably with other jurisdictions, particularly the NPP, which represents a major upgrade to the payments system, allowing realtime, data-rich, easily addressed account-to-account payments that can be made 24/7;

3. Regulation remains an option for dealing with any concerns associated with private-sector provision of payment services; and

4. It would be a major decision to implement a retail CBDC.

Or in short, it's super complicated and if it ain't broke, don't fix it.

Patent hoarders in Square's sights with Cryptocurrency Open Patent Alliance

International payment company Square, co-founded and led by prolific entrepreneur and crypto advocate Jack Dorsey, has launched the Cryptocurrency Open Patent Alliance (**COPA**) in a bid to limit patent hoarding. Built as a non-profit, COPA purportedly aims to encourage the adoption and advancement of digital asset technology and remove patents as a barrier to growth and innovation, by encouraging the type of collaborative, open-source mentality that blockchain was built on.

COPA aims to address the concern that:

> 'patent lockup' of foundational cryptocurrency technologies by a select few will stifle innovation and deter

> mass-adoption.

We can only presume that VISA will not be applying for membership any time soon, after a patent application of theirs was published in May 2020 for a "digital fiat currency".

According to COPA's website, although Square is in control of COPA and establishing the organisation for its first year, COPA will be governed by a board made up of nine members drawn from various parts of the community. Three board members will come from from the crypto and open source community, three from the founding companies, and the remaining three from the remaining membership of COPA.

With a 2018 Australian Computer Society and IP Australia Report finding that "Blockchain patent filings have grown 140% or more each year since 2013", concerns for stifling innovation may be well-founded. Of course, everyone's for sharing until they personally have invented something valuable they want to sell. A pessimist could be forgiven for thinking that the COPA pledge will end up being argued in court in the years to come.

Putting a price on privacy's head: Monero Wanted Dead or Alive by the Internal Revenue Service

The US Internal Revenue Service (**IRS**) is riding into town and offering up a bounty to any contractor who can track the privacy-centric crypto asset monero (XMR), alongside other Layer 2 distributed ledger privacy schemes, such as those offered by Lightning Labs.

The tax agency notes that in the wild west of digital currency privacy the Federales have "*limited investigative resources*" for tracing these transactions.

As more settlers ride their digital caravans and stake their claims, the IRS is clearly serious about finding a solution that will help their investigations into transactions, offering up a US$625,000 to the bounty hunter who succeeds.

In its official proposal, the IRS announced it is:

> *…seeking a solution with one or more contractors to provide innovative solutions for tracing and attribution of privacy coins, such as expert tools, data, source code, algorithms, and software development services.*

The IRS will be accepting applications to develop working prototypes made by September 16 – if a submission is made within 8 months of an applicant accepting the challenge and is proven to work, the applicant will receive an initial payment of $500,000. If the working concept is approved, then the applicant will be awarded with a further $125,000.

Coca Cola invests in Centrapay for crypto collaboration

Paying for a coke with crypto may be closer than you think, after Amatil X, Coca-Cola Amatil's (**CCA**) corporate venture arm, completed a minority investment in NZ company Centrapay, as part of the payment platform's seed funding round.

This latest investment follows CCA's earlier commercial partnership with Centrapay, announced in June 2020. This early partnership allowed consumers to use Centrapay at over 2000 vending machines in Australia and NZ by scanning Centrapay's QR code payment sticker to pay in various digital assets. Justifying the partnership to sceptical investors (looking at you Warren), CCA said that it hoped to learn how to distribute deals as digital assets at scale to consumers and drive them to our customers outlets.

Centrapay CEO Jerome Faury explained CCA's investment as an exercise in future proofing, suggesting that:

> The global money supply is evolving rapidly with new economic models and the advent of smart, programmable money. The way we exchange value is set to change dramatically. There's more change likely in the next 10 years than we've seen in the past 100.