10 February 2026

CryptoUK
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Submitted by email: cp25-40@fca.org.uk

Dear FCA

Response to Consultation Paper 25/40 - Regulating Cryptoasset Activities (the "Consultation Paper")

CryptoUK (**"we"**) and its members welcome the opportunity to comment on the Consultation Paper regarding the FCA's approach to regulating cryptoasset activities. CryptoUK is the UK's leading self-regulatory trade association representing the cryptoasset sector. Our members comprise over 150 of the leading companies across the sector and across the UK. Many of our members are also international and engage with regulators and policies on a global basis.

In the Appendix, we provide detailed answers offering pragmatic suggestions and relevant observations in response to each question posed in the Consultation Paper. At the outset, however, we would like to make a number of general and thematic comments on the Consultation Paper and the FCA's broader approach to the future cryptoasset regulatory regime.

- We understand that international harmonisation is a priority for the FCA. We endorse an approach that seeks alignment with international standards, with scope for divergence where appropriate. An equivalence based approach would, in our view, be most effective in supporting international harmonisation, and we urge the FCA to commence this process as soon as possible.
- The Consultation Paper alternates between the terms "consumer" and "retail client". While we recognise that "consumer" is a statutory term, the distinction between these concepts should be clearly articulated, given the overlap of FCA rules applicable to these categories. Any ambiguity between "consumer", "retail" and "professional" client definitions creates uncertainty in relation to disclosure, suitability and conduct obligations across jurisdictions. The FCA should clarify, through updated guidance, whether professional clients are likely to fall within the definition of consumers.
- The Consultation Paper does not confirm or provide guidance on the following points:
    - Whether offering loans to retail clients in the form of cryptoassets constitutes consumer credit lending. While the lending and borrowing sections confirm the position in relation to arranging and dealing, they do not provide guidance on the application of the consumer credit regime. This is a recognised grey area under existing regulation and would benefit from clarification.

- How tokenised peer-to-peer loans fit within the proposed legislative framework, given that they are not specified investment cryptoassets and are not "transferable" under the definition of qualifying cryptoassets. Guidance on this issue would assist in clarifying the proposed regulatory perimeter.

Appendix

Consultation Questions:

1. **Do you agree with our proposals on location, incorporation and authorisation of UK CATPs? If not, please explain why not?**

   We note that the FCA has proceeded with the proposals set out in DP25/1. Our views remain unchanged from those expressed in our response to DP25/1 (Question 1).

   Most of our members consider that significant ambiguity persists in the FCA's approach, particularly in the absence of supporting guidance for international firms. As currently framed, the proposals create uncertainty for firms seeking to design business models that are pro UK. Many global cryptoasset businesses operate centralised infrastructure—such as risk management, liquidity and surveillance—across regions. Ambiguity regarding acceptable operating models may therefore discourage UK market entry rather than promote compliance.

   Our members remain concerned about the FCA's intention to assess branch models on a case-by-case basis. Without clear guidance on when a branch model will be acceptable, firms are unable to prepare adequately for the new regime. We will address the location policy guidance issued under CP26/4 separately in our response to that consultation.

2. **Do you agree with our proposals on UK CATP access and operation requirements? If not, please explain why not?**

   We agree that monitoring on chain activity should be a standard requirement for all CASPs. However, the FCA should avoid duplicative or UK specific tooling requirements that do not enhance market integrity outcomes or improve compliance.

   We acknowledge that this may have cost implications for smaller firms. We also welcome the FCA's approach of not applying more burdensome requirements to algorithmic traders and market makers, and of not necessarily importing all elements of MAR. As noted in our response to Question 5 of DP25/1, proportionality in the FCA's approach is key.

3. **Do you agree with our proposals on additional rules to protect UK retail customers? If not, please explain why not?**

   We are broadly supportive of the proposed additional rules. However, we consider that further FCA guidance is needed on how CATP operators should ensure that UK retail

investors do not access products admitted solely for qualified or overseas investors in circumstances where a Qualifying Cryptoasset Disclosure Document ("**QCDD**") may not be required.

In practice, we consider that the FCA should adopt an equivalence based approach under which QCDDs, or equivalent disclosure documents (such as whitepapers) that meet UK standards, can be made available to retail investors. Purely jurisdictional controls and limitations are not well suited to a globally accessible market and risk undermining competition, as they are difficult to enforce in global digital markets. In turn, this may inadvertently reduce consumer protection by fragmenting liquidity and disclosure requirements.

We also seek clarity on the identification of the "issuer" of a QCDD and the treatment of existing listings. Specifically, where assets are already admitted to trading, will there be a requirement to produce new or retrospective QCDDs, and, if so, would CATPs be expected to suspend or restrict existing listings until an appropriate QCDD is in place? Retroactive disclosure requirements or forced suspensions could disrupt markets and harm retail users. Instead, we would advocate for clear grandfathering or transition provisions for existing listings. Our members require further guidance on these points.

4. **Do you agree with our proposals to manage conflicts of interest and related risks? If not, please explain why not?**

We agree with the proposal and additionally request that the FCA provide illustrative, non-exhaustive examples of appropriate controls for specific conflict scenarios. Examples could include affiliate trading, market making, and matched principal activity.

Providing such examples would help firms plan and calibrate their control frameworks effectively without imposing prescriptive rules and would promote consistency across jurisdictions particularly for vertically integrated business models while preserving flexibility and supporting consistent, industry wide implementation.

5. **Do you agree with our high-level proposals on settlement? If not, please explain why not?**

The FCA's proposals are extremely high level. We note that CP26/4 addresses settlement in further detail and, accordingly, we will provide our response to the settlement obligations in our response to CP26/4.

6. **Is any further guidance on best execution required? If so, what additional guidance can we provide to clarify the scope of and expectations around best execution?**

In line with our comments on DP25/1, we do not agree that the FCA should apply best execution rules in this context, and we refer to our responses to Questions 19, 20 and 23 of DP25/1.
If the FCA does intend to proceed with its proposals in the final rules, we consider that:

- There would be value in further FCA guidance on how proprietary trading firms should determine whether their counterparties qualify as clients under the new regime.
- In the context of OTC trading, proprietary trading firms do not execute orders on behalf of clients but instead engage in principal to principal trading. The Consultation Paper refers to the European Commission's ("**EC**") "four-fold test", which provides that a firm does not owe contractual or agency obligations where the test is satisfied. Our interpretation is that, in such circumstances, proprietary trading firms do not owe contractual or agency obligations to counterparties when executing OTC trades, and no client relationship exists but it is unclear if this is how the FCA interprets that issue and we would ask for confirmation on our understanding
- Transitional arrangements should include provisions to support the maintenance of liquidity conditions during the implementation period. At present, the FCA highlights the risks associated with intermediaries relying on a limited number of liquidity sources, yet intermediaries have no realistic assurance of accessing diversified liquidity on day one of the regime, given the proposed execution constraints (via UK authorised platforms)
- More broadly, we consider that significant transitional arrangements are necessary, as seen under MiCA and IFPR, where large scale regulatory changes have been accompanied by substantial bedding in and ramp up periods. Given the scope of the rules being introduced for cryptoasset firms, it would be appropriate to allow similarly substantial transition periods across areas including liquidity provision, disclosures and prudential capital.

7. **Do you agree with our proposed guidance (including the exemptions proposed) to check at least 3 reliable price sources from UK-authorised execution venues, such as a CATP or principal dealer (if available)? If not, please explain why not?**

   As noted at Question 19 of DP25/1, we consider that mandating a set number of quotes from specific venues introduces costly inefficiencies. We maintain this position and consider that the FCA's approach is not proportionate.

   Furthermore, a requirement to check three UK venues represents a significant localisation measure that does not fully reflect the global and highly interconnected nature of cryptoasset markets, where price discovery and liquidity are typically formed across international venues rather than within a single jurisdiction. Geographic restrictions on reference prices risk degrading execution quality and increasing costs for retail clients. Given the global and fragmented landscape, competitive pricing should take into account prices from the largest global participants.

   Additionally, smaller international exchanges and DeFi platforms may be necessary for newer and lower capitalisation tokens, as such tokens may only be traded on those venues. In this context, limiting benchmark price sources by reference to UK authorisation status risks producing outcomes that are less representative of prevailing market conditions and, therefore, less supportive of best execution in practice.

   Our members consider that a more flexible, outcome based approach could be adopted, under which firms are required to evidence that reasonable steps were taken to obtain the best available pricing. This could include, but should not be limited to, using three price sources as one possible demonstration of those reasonable steps. In addition, we

suggest that a "UK authorised venue" should be interpreted as including branches of international firms that access global liquidity pools, allowing CATPs to reference reliable and relevant price sources regardless of jurisdiction, subject to appropriate governance, conflict management and documentation.

Comparable international regimes do not impose geographic or jurisdiction specific constraints. Adopting a similar approach would better align the UK with global markets and more accurately reflect how global liquidity functions, while continuing to support the FCA's market integrity and consumer protection objectives.

8. **Regarding the general disclosure requirements when firms serve retail or professional clients, what changes or additions may help client understanding?**

We reiterate points made in earlier responses: disclosure requirements should encourage personal responsibility, be combined with principles led customer education, and be accompanied by proportionate risk warnings and other disclosures. These should be written in plain language that investors can fully understand, avoiding complex guidance. They should be easy to understand for investors at all levels of sophistication in these markets and tailored appropriately to retail customers' understanding.

The FCA should clarify at what stages of the consumer journey these disclosures should be made to reduce over disclosure fatigue and improve consumer comprehension under this guidance. Experience in other jurisdictions suggests that layered, contextual disclosures are more effective than repetitive or overly technical warnings.

9. **Do you agree with the proposed specific pre-trade disclosures to clients by principal dealers? If not, please explain why not? Do you have any suggestions that can make these disclosures more effective?**

We broadly agree with this point, however, refer back to our response at question 8, on the need for proportionately.

In addition, we would also like to understand the rationale behind the inclusion of professional clients within this disclosure requirement and whether there will be any exemptions in relation to disclosure for this type of client. Applying retail style disclosure obligations to professional clients may not improve outcomes and could conflict with established institutional market practices.

10. **Do you agree with the proposed client order handling rules? If not, please explain why not?**

We welcome the FCA's approach to allowing clients to give specific instructions. We generally consider the client order handling rules to be proportionate but would welcome further guidance on the application of these rules to automated intermediaries and smart order routing.

In particular, we seek clarification on the requirements for intermediary systems that apply automated, non discretionary smart order routing across connected execution venues. The draft consultation appears to suggest that the non discretionary nature of order book matching may exempt certain platform trades from best execution obligations. It would be helpful to confirm the scope of any such exemption and the circumstances in which it applies.

We also believe there is scope to recognise exemptions for systems that can be demonstrably programmed to adhere to best execution principles while delivering operational efficiencies. If such exemptions are envisaged, we ask the FCA to set out the parameters and evidential standards for demonstrating compliance. Specifically, we request explicit guidance on how an automated system should be designed to meet best execution requirements and the metrics, testing methodologies, governance, and record keeping by which firms can evidence ongoing adherence.

Whilst we acknowledge the efficiencies offered by automated processes relative to manual assessment, firms need clarity on what constitutes sufficient proof that an automated approach achieves outcomes consistent with best execution. Clear parameters will help reduce interpretive uncertainty, promote consistent supervisory outcomes, and support effective consumer protection.

11. Given the overall location policy established by the amendments to section 418 of FSMA set out in the Cryptoasset Regulations, do you agree with our proposed execution venue requirement? If not, please explain why not? What changes do you propose?

We support the principle underpinning the proposed requirements but consider that they must be accompanied by a detailed, clear and proportionate equivalence regime and a realistic view of how liquidity is accessed in these markets for optimal order execution. The provision for equivalence would enable UK authorised CATPs to execute on, or reference, overseas venues that are subject to comparable regulatory standards, while preserving the FCA's ability to exercise appropriate oversight, deliver consumer protection outcomes, and remain consistent with its location and enforcement objectives under FSMA. This would also support the UK's ambition to remain an innovative and competitive market for cryptoasset activity, while ensuring fair and reasonable execution outcomes for UK investors.

We also consider that principal dealing intermediaries should be able to execute on, or reference, a full range of global venues for all client types such that they are able to achieve best execution on the order; and that international CATPs should be able to use their UK authorised branch to access their global liquidity pools and order books (as already proposed).

Our view is that expanded routing for principal dealers, in the case of retail clients, can be managed through specific balancing measures. First, that orders would be routed to non UK authorised execution venues only in the event that that routing achieves a better client execution than would have been the case if executed on a UK authorised venue. Second, that FCA would define equivalency guidance that would ensure any permitted execution venue falls within its expectations with regard to market abuse and consumer

protection outcomes. Third, that retail investors could be offered additional disclosures where orders were routed to a non-UK authorised venue.

By easing execution venue requirements for intermediaries in this targeted way, the FCA would support the UK's ambition to remain an innovative and competitive market for cryptoasset activity, while ensuring fair and reasonable execution outcomes for UK investors. It would also maximise the chances of optimal order execution for UK retail customers, as best execution may in many cases rely on access to global liquidity beyond purely UK authorised venues.

In absence of any amendments to currently proposed execution venue requirements, our primary concern would be that at the point of regime go live, there are insufficient international CATPs that have obtained UK authorisation meaning that intermediary dealers would be unable to access sufficient liquidity on UK authorised venues to satisfy retail client orders effectively. This challenge will be particularly acute in the early stages of the UK regime. Should this be the case, it may be appropriate to consider a relaxation of the execution venue requirements.

In addition to this we also consider the following areas relating to other trading platforms that require clarification:

- Scope of permitted execution models - the proposed rules define a "UK qualifying cryptoasset execution venue" as a FSMA authorised: (a) qualifying cryptoasset trading platform; (b) single dealer platform; or (c) liquidity provider. This raises questions as to whether execution models such as matched principal trading, commonly operated by retail brokers, are intended to be permitted. Based on the execution venue requirements set out in paragraph 3.45 of CP25/40 and HM Treasury's policy intention in amending section 418 of FSMA, we see no basis for excluding matched principal trading. We therefore query whether this reflects an error in the draft rules or whether the FCA intends to adopt a more restrictive approach than suggested by the consultation paper, and we would welcome clarification on this point.
- Restrictions on sourcing liquidity from affiliated non FSMA authorised venues - HM Treasury has explicitly stated its intention to avoid chains of firms requiring authorisation (see paragraph 2.12.1 of the Policy Note). Given the inherently global nature of cryptoasset markets, access to overseas liquidity is critical. We are concerned that the proposed restriction on sourcing liquidity from affiliated non FSMA authorised trading platforms represents a direct constraint on competitiveness, and it is unclear how limiting access to overseas liquidity would deliver consumer benefit.
- Application to selling/distributing versus all trade flows - it appears that the proposed FCA rules apply to all transactions, including scenarios where a firm is purchasing cryptoassets from a retail client. This approach does not appear to align with the FCA's broader policy framework and warrants further clarification.
- Drafting error in CRYPTO 5.2.2R - finally, we note a drafting error in CRYPTO 5.2.2R, where the word "cryptoasset" has been omitted. The provision should refer to a "UK qualifying cryptoasset execution venue".

12. Do you agree with our proposed restrictions on the cryptoassets in which an intermediary can deal or arrange deals for a UK retail client? If not, please explain why not?

We believe there may be issues in satisfying best execution requirements if there are limitations on venues for sourcing this information. There is an acknowledgement that if best execution can be secured from UK venues then this will not be a concern, but if limitations do exist then other options should be considered as acceptable by the FCA.

Whilst our earlier response to this point had indicated no concerns with restrictions, there are some members expressing concern that there could be a place for a middle ground solution that relied on. We believe there could be a solution that allows for a carve out for intermediaries with either equivalence or additional disclosures being supplied if dealing with a retail client - this would also meet the required safeguarding expectations for the FCA in relation to retail clients.

13. Do you agree with our proposed approach to addressing conflicts of interest during order execution when a firm is engaged in proprietary trading? If not, please explain why not?

Yes, although we consider this should be principle based, more consideration is required around functional separation in cryptoasset markets where typical models will adopt a back to back principal.

We believe that in these markets mandatory functional separation (and distinct governance structures) may not reflect market realities and could undermine efficient execution without delivering commensurate risk reduction.

14. Do you agree with our proposed approach to PFOF? If not, what carve outs do you consider necessary and why?

We would propose that rather than an outright prohibition, a nuanced approach is taken to consider the business models of entities, charging PFOF. As a global comparison, in the US the Securities and Exchange Commission ("**SEC**") permits PFOF, as long as requirements for best executions, disclosures, regulatory reporting, and ongoing monitoring is undertaken. In order to address the concerns of the FCA relating to conflicts of interest for relevant business models, a similar approach could be considered in the UK.

The approach to PFOF needs to be consistent, transparent and applied to all trading firms to avoid any potential competitive advantage that has the potential to result in a less optimal price for the underlying customer. This approach to applying PFOF would demonstrate to consumers, markets and regulators that no routing decisions are being prioritised over client outcomes from PFOF revenue.

We also would recommend that best execution obligations are undertaken by brokerage firms requiring integration with at least three trading firms.

15. **Do you agree with the proposal to apply personal account dealing rules to cryptoasset intermediaries? If not, please explain why not?**

    Yes, we agree with the proposal to apply personal account dealing rules to cryptoasset intermediaries.

16. **Do you agree with our proposed requirements on intermediaries around settlement arrangements, where applicable? If not, please explain why not?**

    Yes we broadly agree with the proposed requirements on intermediaries around settlement arrangements although await further details from the FCA in Q1.

17. **Do you agree with our proposed pre-and post-trade transparency requirements for UK CATP operators and principal dealers? If not, please explain why not?**

    Whilst we agree on the proposals we would ask for additional clarity on the format / venues that the FCA has expectations to provide information post trade. As mentioned in question 15 of DP 25/1, we think there should be no additional requirements other than those already required under MiFID and MiCA. These requirements should be appropriately calibrated to ensure proportionality and reflect the developing nature of the cryptoasset industry.

    We also welcome the FCA's approach in now allowing pre trade transparency waivers.

18. **Do you agree with our proposed methodology for determining the pre-trade transparency threshold? If not, please explain why not? What other methodology do you suggest?**

    Yes we agree with the proposed methodology for determining the pre-trade transparency threshold.

19. **Do you agree with our proposals for transaction recording and client reporting requirements for UK CATP operators and intermediaries? If not, please explain why not?**

    In general, we are in agreement with the proposals set out by the FCA.

    However:

    - We would like to ask for clarity on how the remittance of trade information is guaranteed for brokers within the window T+0. Intermediaries are reliant on their partner CATP's to provide the necessary information in this scenario and as such an intermediary cannot guarantee the immediate availability of this information from the CATP. This will mean that in practice reporting to clients will be difficult, and the FCA should ensure there are waivers and/or dispensations in place.
    - We also note that there are concerns relating to the transmission of personal identifying data and believe the FCA should take into consideration the potential risks associated with data breaches relating to this.

    We consider that reporting should be proportionate to the size, scale and business model of the CATP in question.

20. Do you agree with our proposals on strengthening retail clients' understanding and express prior consent? If not, please explain why not?

Yes we agree with the proposals on strengthening retail clients' understanding and expressing prior consent.

21. Do you agree with our proposal to prohibit the use of proprietary tokens for L&B as outlined above? If not, please explain why not?

We recognise that the use of proprietary tokens in L&B structures is established market practice in cryptoasset markets today, including for collateralisation, incentive mechanisms, and liquidity management. Therefore, we agree with the FCA's objective of addressing the significant conflicts of interest and market manipulation risks that can arise where proprietary tokens are used within L&B arrangements, particularly where issuers may retain influence over token supply, pricing or market conditions.

While market practice alone should not determine regulatory outcomes, it does indicate that such structures are deeply embedded in current market models and, in some cases, serve functional purposes for platforms and users.

As referenced in our earlier response to DP25/1 we believe it important for the regulatory framework to remain outcomes focused and proportionate and not reliant on blanket prohibitions in scenarios where risk can be effectively identified, managed and mitigated. The associated risks could be addressed through a series of controls that the FCA should consider, as opposed to a blanket ban, including:

- Clear governance and separation arrangements, limiting user discretion over token economics and L&B terms.
- Enhanced and clearly signposted disclosures around conflicts of interest and token specific risk factors.
- Eligibility, concentration or 'haircut' limits on the use of proprietary tokens as collateral
- Independent valuation and pricing methodologies, referencing liquid external markets where available.
- Enhanced monitoring and surveillance, including on chain analysis, to detect manipulation or abusive behaviour.

22. Do you agree with our proposed record-keeping requirements on regulated L&B firms? If not, please explain why not?

Yes, we agree with the proposed record-keeping requirements on regulated L&B firms.

23. Do you agree with our proposals on additional collateral, mandatory over-collateralisation of retail clients' loans, and managing the limits/ levels of the loan? If not, please explain why not?

Whilst we agree with the FCA's proposals, we consider that:

- The requirement to refer to market value of collateral should be reassessed at intervals throughout the relationship, when relationships with a client are long; and
- further regulatory guidance is required on the FCA's modelling expectations and reasonable calibration for stress testing models.

24. Do you agree with our proposals on negative balance protection? If not, please explain why not?

Yes, we agree with the proposals on negative balance protection.

25. Do you agree with our proposal that regulated staking firms must provide retail clients with information on the firm and its staking service, and provide the key terms of agreement in relation to those services and obtain retail clients' express prior consent in relation to those terms each time cryptoassets are staked, as outlined in paragraphs 6.14-6.19? If not, please explain why not?

Whilst we agree in principle with the proposed approach we have concerns around this seeming to apply the same treatment for both custodial and non custodial staking. We believe the framework should clearly differentiate between custodial and non custodial as these models involve fundamentally different risk profiles and levels of intermediation.

Within the scope of custodial staking, the proposed requirements are coherent and proportionate. Where a firm safeguards client assets, intermediates rewards, and exposes clients to operational or insolvency risk, it is appropriate to require detailed information on the firm and its staking service, clear key terms, and express prior consent.

However, in non custodial staking and delegated staking arrangements, validators do not take custody of client assets and do not control private keys; ownership and control remain with the delegator, with validation rights assigned only at the protocol level, and this distinction needs to be reflected in the regulatory scope.

This makes the drafting of provisions CRYPTO 10.4.3R(b) and the related part in paragraph 6.8 of the Consultation Paper problematic, as they imply that record keeping and consent requirements apply even where no custody exists. Where staking is non custodial and a firm merely provides technical infrastructure or interfaces enabling interaction with the protocol, the activity is substantively peer to peer and should fall outside the scope of regulated staking, consistent with the exemption in article 9Z9 (Enabling parties to communicate).

Without the FCA providing this clarity, there is a risk of creating uncertainty as to whether requirements designed for custodial services could be interpreted as applying to arrangements where firms do not control client assets or intermediate staking activity. Without clearer guidance, there exists the risk that obligations intended to address custody, counterparty, and insolvency risks are extended to non custodial participation in staking that does not generate those risks.

We would like to note that regulation in other jurisdictions supports this function based approach. Recent guidance from the US SEC and the European Commission's

interpretation of MiCA both draw a clear line between protocol level or self custodial staking and staking as a service that involves custody. Under MiCA, staking services are regulated only where they are ancillary to custody and involve control over client assets or private keys. Aligning the UK framework with this custody linked logic would materially improve legal certainty, reduce interpretative risk, and ensure that regulatory obligations attach only where firms exercise control over client assets or materially shape economic outcomes, rather than where they merely facilitate participation in proof of stake networks.

26. Do you agree that our proposed information provision, key terms and express prior consent requirements should only apply to retail clients and not to non-retail clients? If not, please explain why not?

We agree to the proposed requirements but refer back to our response to Q25 that this should only apply if the requirements are limited to custodial staking.

27. Do you agree with our proposed record-keeping requirements on regulated staking firms? If not, please explain why not?

We agree to the proposed requirements but refer back to our response to Q25 that this should only apply if the requirements are limited to custodial staking.

28. Do you agree with our proposal to apply rules and guidance in chapters 2-6 and guidance to firms engaging in DeFi where there is a clear controlling person(s) carrying on one or more of the new cryptoasset activities? If not, please explain why not?

As set out in our response to DP25/1, we consider that regulatory obligations should attach based on substance and control, rather than on the use of decentralised technology or DeFi labels alone. Where a person or entity exercises meaningful control or influence over protocol design, governance, operation, or key parameters—and is effectively carrying on a regulated activity—it is appropriate that they are subject to proportionate regulatory requirements.

The difficulty lies in ensuring that this principle is not extended in a way that mischaracterises sufficiently decentralised systems. DeFi is not simply traditional intermediation implemented on a blockchain. It is a different financial architecture based on self custody, automated execution, transparency and permissionless access. These characteristics change both the source of risk and the way risks are mitigated, and they cannot be assessed using the same assumptions that apply to custodial or discretionary intermediaries.

The central issue therefore becomes how “control” is defined and identified. In DeFi, influence is typically distributed across token holders, DAOs, multisig arrangements, validators and communities, and is often constrained by code rather than exercised through managerial discretion. Without a technically precise and objective concept of control, the notion of a “clear controlling person” risks becoming elastic and discretionary,

creating legal uncertainty and inconsistent application. Control should be assessed through demonstrable factors such as the ability to unilaterally alter or pause protocol operations, dominance over governance voting power, concentration of token supply, or privileged access to modify core protocol parameters, rather than through mere participation in development, governance or infrastructure provision.

It is equally important to distinguish public, permissionless infrastructure from intermediation. Where anyone can participate in validation or interact with a protocol without permission, and where facilitating access does not introduce custody, discretion, or economic control, the activity is infrastructural in nature. Treating autonomous smart contract systems such as Automated Market Makers ("**AMMs**"), liquidity pools or wrapping mechanisms as equivalent to intermediated financial services risks conflating neutral technical infrastructure with regulated activities and undermines the architectural distinctions that define DeFi.

Control and decentralisation should be understood as existing on a spectrum rather than as a binary classification. Protocols can decentralise over time as governance diffuses and code becomes immutable or recentralise through token concentration or discretionary upgrade powers. Supervisory expectations should therefore scale with the demonstrable level of control at any given point, rather than triggering wholesale application of frameworks designed for custodial firms or principal dealers. A spectrum based, control focused approach better aligns regulatory obligations with actual influence, custody and discretion, and avoids imposing requirements that autonomous systems cannot meaningfully satisfy.

We note that this approach is consistent with international regulatory thinking, including the IOSCO policy recommendations on DeFi, which emphasise assessing decentralisation by reference to control, governance, and the ability to influence outcomes, rather than purely technical architecture. IOSCO's work provides a useful and well developed framework for identifying when purportedly decentralised arrangements retain sufficient centralisation to justify regulatory obligations.

Consistent with our DP25/1 response, we consider it important that this approach is applied in a clear, proportionate and predictable manner, and does not inadvertently capture arrangements that are genuinely decentralised, where no identifiable controlling person exists and regulatory obligations could not be meaningfully discharged.

We would therefore welcome further clarification, including illustrative examples or indicators of control, drawing where appropriate on international work such as IOSCO's, to support legal certainty and consistent application across different DeFi operating models.

Subject to the clearly defined approach set out above being undertaken we would add the following in relation to the application of regulatory guidance to ensure this is appropriate and proportionate.

Where a clear controlling person exists (with clear criteria defining the meaning of a "controlling person", to ensure this definition is consistent across firms), the underlying risks the regulatory framework seeks to address are materially similar to those present in more traditional, centralised cryptoasset business models. The use of DeFi technology or

decentralised architecture should not mean that activities are exempt from regulation if decision making, control, or economic benefit can be clearly attributable to clear persons or entities. This approach is similar to traditional finance models and brings regulatory clarity promoting a level playing field between centralised and decentralised implementations of similar activities.

We should recognise that some DeFi implementations may retain decentralised characteristics even where a controlling person exists. In some cases, while a controlling person can be identified historically or administratively, the day to day operation and risk exposure for users is driven by code and decentralised governance, not by discretionary decisions of the company. Additionally, we would note that some DeFi protocols have "security council" type arrangements whereby protocol changes are only possible in limited, software established situations which indicate some aspect of the protocol has been compromised?

We would additionally request the FCA provides guidance on both how firms should evidence compliance where control is shared, indirect, or exercised through smart contract governance mechanisms and how to proceed when dealing with decentralised protocols with no ongoing control

29. Do you agree with our assumptions and findings as set out in this CBA on the relative costs and benefits of the proposals contained in this consultation paper? Please give your reasons.

Our members do not have a view on this question.

30. Do you have any views on the cost benefit analysis, including our analysis of costs and benefits to consumers, firms and the market?

Our members do not have a view on this question.

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