11 March 2026

CryptoUK
Formal House
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Submitted by email: cp26-4@fca.org.uk

Dear FCA

Response to Consultation Paper 26/4 - Application of FCA Handbook for Regulated Cryptoasset Activities II (the "*Consultation Paper*")

CryptoUK (**"we"**) and its members welcome the opportunity to comment on the Consultation Paper regarding the FCA's approach to applying the FCA Handbook to regulated 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.

We have provided detailed answers to each question posed in the Consultation Paper within the Appendix. We seek to offer pragmatic and relevant observations about, and suggestions in response to the content within the Consultation Paper. However, at the outset, we would like to highlight some of the most important issues with the potential to impact to our members, arising from the Consultation Paper:

- **International firms -** While we appreciate the FCA's effort to provide clarity in relation to the territorial scope of the regime in respect of international firms, we would be grateful for clearer guidance in relation to the rules that would apply to overseas firms, particularly branch-authorised QCATPs, serving both UK and non-UK users. We believe that the application of UK rules should be limited to UK consumers, and should not inadvertently apply to overseas firms' non-UK customers simply because the service they receive relies on the authorised firm's shared infrastructure and liquidity pool. Moreover, applying UK rules extraterritorially would diverge from established UK cross-border principles and could result in duplicative or conflicting conduct obligations for services that are already regulated under the client's home jurisdiction.
- **Consumer Duty -** While we appreciate the FCA's guidance in seeking to clarify the application of the Duty's cross cutting obligations and outcomes in relation to cryptoasset firms, we note that many of the "good practice" suggestions may not be appropriate expectations for firms that operate execution only or non-advised business models (such as CATPs), compared to firms providing advisory or portfolio management services. Further guidance may therefore be necessary to ensure that firms understand the FCA's expectations in relation to particular activities, including

those involving a greater or lesser degree of discretion or personalised customer engagement.

- **Reconsideration of the RMMI classification -** The FCA has stated it does not have "evidence to support switching off the financial promotions rules" where qualifying cryptoassets could be 'downgraded' from RMMI status. We respectfully disagree. Our response to question 16 makes the case for revisiting the RMMI designation under the new regime. In particular, we believe that the FCA's supervision of cryptoassets in relation to the new regime's prudential standards, safeguarding, disclosures, operational resilience and governance requirements, will more effectively achieve the outcomes sought under the original RMMI regime. Additionally, we believe that consumer risk will be more effectively mitigated through regulation of the intermediary, rather than through marketing restrictions based on the intrinsic characteristics of the asset alone.
- **Safeguarding requirements under CASS 17 -** Whilst we are broadly in agreement with these proposals, there are a number of specific issues which we would appreciate further clarity on to ensure the rules operate coherently across custody models:
    - CASS 17.3.3R requires that a trust is created in relation to safeguarded cryptoassets, including where the custodian only has control over the assets by virtue of holding the "means of access" (private keys). This means that a person will technically be safeguarding where they have control over the means of access but do not otherwise *hold* the actual cryptoassets. If the cryptoassets are held with another custodian, it is unclear how the person that is "safeguarding" simply by virtue of holding the private keys could be expected to create a trust over the actual cryptoassets.
    - CASS 17.3.6(1)(b) provides an exception to the trust requirement where necessary for certain services, however it is unclear what evidence would be expected from firms when relying on the exception. Given the diversity of transaction flows in cryptoasset markets, clarity on evidentiary expectations would support consistent application.
    - While we broadly agree with the proposals in relation to record keeping and reconciliations, topping up shortfalls and removing excesses, we would appreciate specific guidance that better reflects the operational realities of cryptoasset firms, such as multi-wallet structures, cross-chain movements, and timing differences arising from settlement cycles or network congestion.

Thank you for your continued engagement both prior to and during the consultation. We look forward to continuing to work with you on these proposals as the industry prepares for the new regime coming into force on 25 October 2027. If you have any questions in relation to our responses and/or it would be helpful to discuss any of these matters further, please do not hesitate to get in touch.

Appendix

Consultation Questions:

1. **Do you agree with our proposed approach on guidance for international crypto firms? If not, provide details.**

   We broadly agree with this approach however, as noted in our earlier consultation responses (to CP25/25 and CP25/40), we believe that the FCA should provide additional clarity on some key points to ensure the location policy does not result in the unintended application of UK rules to non-UK users of a UK QCATP authorised via a UK branch of an overseas firm.

   Whilst we note that Annex 4 provides welcome clarity on the FCA's supervisory objectives in relation to international firms and certain specific branch models, uncertainty remains at an operational level. In particular, the continued reliance on a case-by-case assessment, without illustrative or non-exhaustive guidance on acceptable branch use cases, limits firms' ability to design scalable and compliant operating models in advance. Case-by-case supervisory assessments create operational uncertainty. We believe that firms would benefit from the FCA providing non-exhaustive examples of acceptable branch structures, operating models, and cross-border arrangements that avoid inadvertently triggering the full application of UK requirements to non-UK business.This uncertainty is most acute for overseas firms authorised via a UK branch serving both UK and non-UK users through shared infrastructure, liquidity pools, and risk management frameworks.

   We would ask the FCA to consider including additional guidance in Annex 4 to provide greater clarity on the territorial scope of UK rules when applied to branch-authorised QCATPs and the extent to which non-UK business may continue to be conducted under overseas regimes without triggering full application of UK requirements. Specifically, we would be grateful for additional guidance that the UK rules applicable to operators of QCATPs will not automatically apply on an extraterritorial basis to non-UK users on the basis that the QCATP is authorised through a UK branch.

   The application of UK rules should be determined primarily by the location of the user and the distribution activity directed at them, rather than by shared infrastructure, liquidity pools, or technical components which service both UK and non-UK clients. Clarifying this principle would also help firms understand that globally integrated systems do not, in themselves, alter the territorial scope of UK requirements.

   The UK framework should also avoid creating territorial outcomes that materially diverge from international norms, particularly where other major jurisdictions rely on user-location principles to avoid unintended extraterritorial effects, and where excessive divergence could create operational fragmentation or duplicative infrastructure burdens for internationally active firms.

a. **In particular, we would be interested in views as to whether any of our proposed rules in this should be applied differently to a UK QCATP which is authorised via a UK branch of an overseas firm, in relation to non- UK users.**

We agree with this proposal however, as stated above, believe that non-UK users should be excluded and any implications for non-UK users should be made explicitly clear by the FCA through additional specific guidance, including confirmation that the use of shared systems or liquidity pools does not in itself bring non-UK user activity within scope of the UK regime.

2. **Do you consider that the SUP 3.3-3.8 should be extended to all cryptoasset activities? If not, explain why.**

Whilst we agree with the proposals, we would like the FCA to provide clarity on the rationale of selecting just these specific sections. Can the FCA please confirm that 3.1 and 3.2 are also going to apply? We believe these should be included as they provide the applicability of the audit requirements.

3. **Do you agree with our proposals to apply Principle 12 and PRIN 2A to cryptoasset firms supplemented by non- Handbook guidance to clarify how the duty applies to cryptoasset activities?**

We agree with this proposal. However, consistent with our response to question 1 above, we believe that further guidance is necessary to clarify that the Duty should only apply to UK-facing activity involving UK retail consumers, and not to services provided to non-UK users by overseas firms operating through shared global infrastructures or liquidity pools.

4. **Do you agree with our approach that the Duty will not apply to trading between participants of a UK QCATP?**

We agree with this proposal. This approach reflects established regulatory practice for traditional trading venues and helps ensure that Consumer Duty obligations focus on the firm's own communications, governance and customer-facing processes, rather than on market interactions between third parties.

5. **Do you agree with our approach that the Duty will apply to all activities carried out in relation to UK-issued qualifying stablecoins, including activities relating to public offers and admissions to trading?**

We agree in principle with this approach. However, we note that the price and value of cryptoassets and stablecoins cannot be measured using the same methods as in tradfi. The seller will likely not have control over that price and additionally tradfi would include fees which would not apply in this market.

We note the FCA's carve out from the definition of retail market business would exclude from the scope of the Duty the designated activities relating to public offers and admissions to trading of qualifying cryptoassets. The FCA has stated in its Consultation paper that it does not propose to extend this carve out to disclosures relating to UK-issued qualifying stablecoins, including the designated activities relating to public offers and admissions to trading (including the UK issued qualifying

stablecoin QCDDs). This means that UK issuers of qualifying stablecoins will need to comply with both the admissions and disclosures regime as well as the Duty, whereas other firms involved in activities relating to public offers and admissions to trading of cryptoassets can effectively ignore the Consumer Duty. However, we note that there is no rationale provided for this proposal.

Can the FCA please clarify the intention for this proposal. In particular, is it intended that stablecoin issuers should have a more onerous compliance burden than other firms when carrying out activities relating to public offers and admissions to trading?

6. **Do you have any comments on our proposed guidance on how cryptoasset firms should comply with the Consumer Principle and three cross cutting rules?**

   While we appreciate the FCA's guidance in seeking to clarify the application of the Duty's cross cutting obligations, of acting in good faith, avoiding foreseeable harm and enabling and supporting retail customers to pursue their financial objectives, we expect that in practice the FCA will ensure that these factors are applied proportionately to different cryptoasset activities with different risk profiles. For example, we note that expectations should be materially different for a QCATP offering leveraged products, compared to an issuer of a UK qualifying stablecoin. A proportionate application will help ensure that obligations remain aligned with the nature of the firm's role and the risks it can reasonably control.

   We appreciate the FCA's guidance in relation to the specific requirement to avoid causing foreseeable harm, that firms are not required to avoid all harm, accepting that some cryptoassets are inherently volatile meaning that customer's capital is at high risk. The FCA's expectation for firms to have a reasonable belief (through its disclosures) that customers understand the relevant risks as part of meeting the obligation to avoid causing foreseeable harm, is therefore welcome. In this respect, we believe that clear communications/disclosures inr relation to risk is an appropriate means of meeting this objective, without imposing unrealistic expectations regarding market outcomes.

   In relation to supporting customers to pursue their financial objectives, we note the FCA's examples of good practice including profit/cost calculators for staking and lending products, loan-to-value calculators for borrowing products, and scenario based illustrations showing how products behave under stress. However, we feel that additional guidance is necessary to distinguish between different business models. In particular, some of these good practice suggestions may not be appropriate expectations for firms that operate execution only or non-advised business models, compared to firms providing advisory or portfolio management services. Clarifying these boundaries would help ensure firms understand which good-practice measures are expected of them, and which relate to activities involving a greater degree of discretion or personalised customer engagement.

7. **Do you have any comments on our proposed guidance on application of the Duty's: (a) products and services outcome; (b) price and value outcome; (c) consumer understanding outcome; and (d) consumer support outcome?**

   In relation to the products and services outcome, we appreciate the FCA's guidance that firms should consider whether some products need a more defined target market

and distribution strategy – e.g., more complex products like crypto lending and borrowing products may be suitable for smaller target markets. However, as the FCA recognises, many cryptoassets have no identifiable issuer. The guidance should therefore better distinguish between product governance responsibilities of intermediaries (distributors) vs those of issuers (manufacturers). We believe that, where there is no identifiable manufacturer, the expectations for distributors should reflect the degree of control they have in relation to the cryptoasset in question, rather than assume firms can exercise product-design control.

Also, consistent with our response to question 6 above, we believe that product governance expectations should reflect where firms are providing execution only or non-advised access to spot cryptoassets. In particular, CATPs that provide execution only or non-advised access to spot cryptoassets, typically serve broad retail audiences with widely diversified risk appetites. The assessment of target markets by such CATPs, should not result in unduly restricting access to these products, providing that the risks have been appropriately disclosed as part of the firm's distribution strategy. Execution-only trading platforms should also not be expected to meet obligations akin to suitability assessments or personalised financial planning. This distinction is well recognised in traditional markets and should be applied to this regime.

In relation to the price and value outcome, we appreciate the FCA's recognition that cryptoasset prices are subject to significant volatility, and that firms should focus on ensuring that their fees and charges bear a reasonable relationship to the benefits provided. However, we would recommend that the FCA guidance specifically acknowledge that fair value assessments may rely on cross-platform benchmarking, rather than traditional cost-plus models. Whether fees represent fair value should be assessed against service quality, operational resilience and security and safeguarding costs.

In relation to the consumer understanding outcome, we recognise the importance of firms ensuring customers can understand communications and are supported in their decision making. We therefore appreciate the FCA's guidance on good practice, which emphasises the importance of effective disclosures and educational resources being made available throughout the product or service lifecycle.

8. **Are there any areas where cryptoasset firms could benefit from additional guidance to better understand their obligations? Please provide examples.**

   There are no other specific recommendations, other than the requests for additional guidance outlined in our responses above. However, in relation to the price and value outcome, we note that it is permissible under the Duty for certain tradfi businesses to apply different fee structures to customers depending on their investment. While this is currently not common practice amongst cryptoasset firms, we believe that providing cryptoasset firms can clearly and transparently demonstrate that retail customers are receiving fair value for the price they agree to pay then this should allow for variable service offerings.

9. **Do you agree with our proposal to apply the DISP 1 complaint handling requirements to all cryptoasset firms?**

We agree with this proposal.

10. **Do you agree with the proposal to add requirements to the crypto sourcebook for stablecoin issuers to put in place contractual arrangements with third parties that carry out activities on their behalf?**

    We agree with this proposal.

11. **Do you agree that the Financial Ombudsman should consider complaints about all new cryptoasset activities carried out by all UK authorised firms? If not, are there specific activities it should not be able to consider complaints for?**

    We agree with this proposal as it applies to retail customers and eligible complainants. However, we would be grateful for better alignment in the terminology used across the FCA's DISP rules, CP25/36 and the recent FCA consultations in relation to the definitions for 'consumer', 'retail' and 'eligible complainant'. Specifically, we would like the FCA to clarify that firms not servicing 'retail' customers in relation to cryptoasset activities will not have 'eligible complainants' within the scope of FOS.

12. **Do you agree that the Financial Ombudsman should not extend the voluntary jurisdiction to cover complaints about the proposed new cryptoasset activities?**

    We agree with this proposal and would like to refer the FCA to the fact that there are already strict rules on the process of complaint handling set out in MiCA regulations in the EU.

13. **Do you agree with our approach to not extend FSCS coverage to new regulated cryptoasset activities and all types of qualifying cryptoassets?**

    We agree with this proposal.

14. **Given that the move of Specified Investment Cryptoasset (SIC) safeguarding from Article 40 to Article 9N may remove it from the scope of FSCS protection, do you agree with our approach to SIC safeguarding even though it may give rise to potential inconsistent outcomes, for example, safeguarding a traditional share would fall within FSCS scope, while safeguarding its tokenised equivalent would not?**

    As the FCA acknowledges, by removing the activity of safeguarding SICs from the designated investment business framework that underpins FSCS eligibility (in COMP 5.5.1R), this will lead to inconsistent outcomes for firms safeguarding a traditional share (within FSCS scope) compared to its tokenised equivalent (outside FSCS scope). This effectively means that two economically equivalent custody relationships could have different FSCS outcomes based solely on the technology used. We believe that this issue requires further consideration.

    In particular, we note that treating tokenised and non-tokenised forms of the same instrument differently for FSCS purposes could distort adoption of tokenisation in UK capital markets.This is especially relevant as firms transition towards models where digital and traditional custody are increasingly integrated, and regulatory outcomes should ideally support rather than inhibit this convergence.

In the event the FCA proceeds with this proposal, this also raises an important question in relation to who would be responsible for the FSCS levy, where firms operate across both regimes. Clarity on levy allocation will be necessary to ensure that firms safeguarding SICs are not inadvertently exposed to disproportionate or misaligned funding obligations compared to firms safeguarding the traditional equivalent.

15. What is your view on whether COBS generally (subject to COBS 1 Annex 1 carve-outs) should apply to non-UK retail and professional clients of a UK QCATP operator that is incorporated overseas and authorised via a UK branch?

We are unanimously of the view that COBS should only be applicable for UK retail customers and should not apply for any non-UK customers. Applying COBS extraterritorially would diverge from established UK cross-border principles and could result in duplicative or conflicting conduct obligations for services that are already regulated under the client's home jurisdiction. We therefore consider that limiting COBS to UK clients is both consistent with territorial scope and necessary to avoid unintended regulatory overlap for internationally active firms.

16. Do you have any views on what qualifying cryptoassets should be assessed as Category A or Category B qualifying cryptoassets? If so, please provide details.

We refer to our previous response on CP 25/42, in which we expressed concern that the currently proposed definitions would mean that most assets, with the likely exception of qualifying stablecoins, will be classed as Category B (unless they have been trading for 3 years and therefore would be classed as Category A). The issue relates to the 100% net exposure requirements that will be in place for Category B assets. We believe this could have a detrimental impact on the market, restrict competitiveness and severely restrict growth opportunities for the UK, potentially causing firms to operate outside of the UK. We would therefore encourage further consideration of whether the criteria strike the right balance between prudential soundness and market development.

We note that the FCA has stated it does not have "evidence to support switching off the financial promotions rules" where qualifying cryptoassets could be 'downgraded' from RMMI status based on past performance, noting instead that the different Categories A&B will allow adjustments to minimum capital requirements. However, we respectfully disagree that the FCA does not have evidence to support a reconsideration of the RMMI categorisation for the purpose of the financial promotion rules. Once the new regulatory regime is fully in force, the environment in which cryptoassets are promoted and distributed will be materially different from the context in which RMMI was originally introduced.

While we recognise the FCA has not specifically invited comments on this point, we would like to outline several considerations which may help reinforce the case for revisiting the RMMI designation once the new regulatory perimeter is fully in force:

a. Original purpose of RMMI
The RMMI regime was introduced as an interim measure when cryptoassets largely sat outside FCA supervision. With authorisation, prudential standards, safeguarding,

disclosures, operational resilience and governance requirements now being applied to qualifying cryptoasset firms, the context has materially changed. This shift warrants an updated policy assessment of whether RMMI remains necessary or proportionate. We believe this assessment is particularly important where the same consumer outcomes can be more effectively achieved through strengthened conduct and disclosure requirements under the new regime.

b. Role of regulated intermediaries

Under the incoming regime, retail consumers will interact with cryptoassets primarily through regulated firms, not directly with the underlying instrument. In traditional markets, consumer risk is mitigated through regulation of the intermediary, rather than through marketing restrictions based on the intrinsic characteristics of the asset alone. It may therefore be appropriate to consider whether continued RMMI treatment accurately reflects how consumers access cryptoassets within a supervised environment.

c. Need for clear justification

If RMMI classification is retained, it would be helpful for the FCA to set out:

- what specific residual risks remain unmitigated by the new framework;
- why existing Handbook requirements are insufficient to address them; and
- why continued RMMI designation is the most proportionate response.

Encouraging such transparency would support a more robust consultation outcome. It would also help firms understand how RMMI status is intended to operate alongside the new prudential, conduct and safeguarding requirements.

d. Prudential calibration under CP25/42

Category A/B classification interacts directly with capital requirements. The criteria for Category A, including the proposed three-year trading history threshold, may merit reconsideration to ensure that prudential calibration is risk-sensitive and does not unduly constrain market development. We would welcome further analysis of whether alternative criteria could achieve the same prudential objectives while avoiding unintended barriers to innovation or entry.

17. Do you agree with our proposals on express consent, appropriateness testing, and strengthening retail clients' understanding? If not, please explain why not? If there is an issue of timing or cost in relation to our proposals on appropriateness assessments and express consent, including as they apply to existing clients, please share details.

We largely agree with these proposals. However, we do not believe that creating additional, more onerous, variations of the appropriateness tests is necessary for cryptoasset firms. The purpose of the appropriateness assessment is to evaluate a client's understanding of the product, not to introduce a higher standard that could operate as a de facto suitability requirement. In our view, the existing approach can achieve the FCA's objectives without introducing new layers of testing that may increase friction without improving consumer outcomes.

It is also worth noting that there is no consistent global approach to the appropriateness testing. For example, this is mandated in Hong Kong, but not currently mandated under MiCA (it is only required with advice). Given this divergence, any enhancements should be proportionate and mindful of the

operational impact on firms serving international user bases. This is particularly important where firms would need to revisit onboarding flows for large numbers of existing clients, which may introduce material timing and implementation costs without a clear, demonstrable benefit.

18. Do you agree with our proposals to introduce thresholds for becoming an SM&CR Enhanced firm for authorised stablecoin issuance firms and authorised cryptoasset custodians? If not, please explain why.

We agree with this proposal. Applying enhanced requirements only where activity reaches a material scale helps ensure that governance expectations are targeted at firms whose operations could pose greater prudential, operational or market integrity risks.

19. Do you agree with our proposals to apply the TC Sourcebook to certain cryptoasset activities similar to the existing approach for traditional finance? If not, please explain why?

Firstly, we agree that these proposals should be applicable to retail facing firms only. This is aligned with the current approach applied to traditional finance organisations.

However, we believe that to be fully effective, the application of the TC Sourcebook should reflect the diverse nature of cryptoasset products and services as these can vary greatly in their structure, risk profile and functionality. We would recommend that competence expectations are proportionality aligned to the specific product and activity and explicitly recognise the need for appropriate technical knowledge, an understanding of underlying technology, operational process and risks to ensure strong consumer protection, whilst avoiding a blanket approach to the application of the TC Sourcebook requirements.

Specifically, we would also ask that the FCA takes into account the following considerations:

a. Distinguishing competence from suitability

Competence refers to knowledge and skills necessary to perform a function; suitability relates to an individual's overall fitness to hold a controlled role. Confusing these concepts may lead to disproportionate requirements at the gateway.

b. Functional mapping to existing qualification standards

Where cryptoasset activities are meaningfully comparable to traditional advisory functions, established qualification levels may be appropriate. However, many crypto roles, including in relation to custody operations, technical key management, staking infrastructure, engine operation, have no direct equivalent in the TC regime. Any qualification requirement should therefore be grounded in functional equivalence rather than applied uniformly.

c. Cost, capacity and market readiness

Any expansion of TC obligations should be supported by a clear cost–benefit analysis, recognising that:

- new examinations require design and accreditation;
- training providers may need time to develop suitable materials; and
- firms may face significant onboarding burdens.

We would therefore ask the FCA to consider whether the qualification ecosystem is mature enough to support such requirements.

20. Do you agree with our proposed application of the existing regulatory returns to qualifying cryptoasset firms?

We agree with this proposal.

21. Do you agree with our phased approach to introducing regulatory returns for qualifying cryptoasset firms?

We agree with this proposal and acknowledge that the proposed phased approach is a positive move for firms, allowing them to adopt the model in a gradual manner. We also note that the initial baseline reports seem to be proportionate.

22. Do you agree with the proposed approach for:

As a general comment applicable to the subset of questions below, we would highlight that the way a customer relationship operates in a crypto trading environment is not the same as the equivalent relationship in a tradfi setting. Tradfi relationships and deals are usually managed directly with an individual, however in the crypto sector, these deals are managed online. Consequently, there is more complexity involved in attempting to identify vulnerable customers and as such the application of these proposals should take this into account.

a. Stablecoin issuance

We agree with this proposal and its acknowledgement that this is specific to issuance only and not trading.

b. Operating a Qualifying Cryptoasset Trading platform

We agree with this proposal.

c. Dealing and Arranging (intermediation)

We agree with this proposal.

d. Cryptoasset Staking

We agree with this proposal.

e. Cryptoasset Lending and Borrowing

We agree with this proposal.

23. Do you agree with our approach to qualifying cryptoasset safeguarding reporting?

We agree with this proposal.

24. Do you agree with our approach to cryptoasset complaint and active client reporting?

We would refer back to our earlier response in Q22 in relation to the complexities of identifying vulnerable customers in a crypto dealing scenario given this is likely to be a more 'remote' and online relationship, compared to a direct relationship with an individual, such as exists in the tradfi markets.

The identification of vulnerable customers should be an additional consideration - with the possibility of proper warnings and offers of assistance being made directly on firms' websites as opposed to self-identification. Most crypto firms will be operating with a high volume of customers and lower staffing levels than most tradfi firms, and as such it would be an unrealistic expectation for these firms to speak directly with all relevant customers offline.

25. Do you agree with our proposed approach to supplementary data collections?

We agree with this proposal.

26. Do you agree with our approach to prudential reporting?

Whilst we agree with this proposal, we would like to request that as the reporting becomes finalised, the FCA gives an allowance for sufficient time to be allocated for firms to implement the requirements into the existing systems.

27. Do you agree with our proposed approach to applying CASS 17 in these scenarios? If not, why not, and please describe any scenarios we may not have considered.

Whilst we are broadly in agreement with this proposal, there are a number of specific issues which we would appreciate further clarity on.

The first is in relation to the application of the requirement in CASS 17.3.3R to ensure that a trust is created (in accordance with UK trust law requirements) in relation to the cryptoassets, in circumstances where the custodian only has control over the assets by virtue of holding the "means of access" (private keys). We note that under the new safeguarding activity in Art. 9N(2)(a) of the RAO, a person will technically be safeguarding where they have control over the means of access but do not otherwise *hold* the actual cryptoassets. In this scenario, if the actual cryptoassets are held with another custodian, it is unclear how the person that is "safeguarding" simply by virtue of holding the private keys could be expected to create a trust over the actual cryptoassets (or whether they would be expected to create a trust over the means of access). We are also unsure whether it is possible to validly create a trust over assets

that are not legally held by the trustee. Accordingly, we would ask the FCA to consider whether it may be necessary to create another exception from acting as trustee under CASS 17.3.3 where the custodian is only "safeguarding" by having control over the means of access.

Clarification here would ensure the rules operate coherently across custody models that rely on cryptographic control rather than traditional forms of possession.

We would also welcome further clarity on the operation of the exception in CASS 17.3.6(1)(b). In particular, it would be helpful for the FCA to outline what evidence it would expect firms to demonstrate when relying on this provision. Given the diversity of transaction flows in cryptoasset markets, clarity on evidentiary expectations would support consistent application. For example, it would be useful for the FCA to confirm whether the following steps, supported by appropriate contractual terms, would be sufficient to evidence that a transaction falls within this exception:

- the customer makes an upfront payment as conditional acceptance of a quoted exchange price, forming a contract of exchange;
- the paid funds become the assets of the firm for the duration of that pre-settlement phase, such that safeguarding requirements do not apply at that point; and
- safeguarding obligations recommence once the firm adjusts the customer's balance following completion of the exchange, corresponding to the act of transmission or assignment of property.

Clarity on whether this type of structure meets the FCA's expectations would help firms design compliant and operationally workable settlement models.

We would also seek further clarification from the FCA in relation to the practical operation and implementation of the float model.

We recognise the rationale for permitting a limited float model where client cryptoassets may temporarily leave the trust for settlement purposes. However, we consider that the proposed 1% threshold would benefit from further clarification and flexibility, particularly in relation to how it has been calibrated and how it would operate across different market conditions, asset types and business models. In particular, we note that settlement flows can vary significantly depending on liquidity profiles, trading volumes and the timing characteristics of different networks, and these factors may make fixed thresholds challenging to implement consistently.

This clarification should address a range of practical scenarios that include periods of market stress, the context of intra-day settlement flows, application across cryptoassets with differing liquidity profiles and in situations where firms rely on netting or third party settlement arrangements. The provision of this clarity will support firms in the implementation of a framework that supports orderly market functionality and effective safeguarding parameters.

We would additionally like to address the differences between assets held on trust and those held outside of the trust, which introduces a layer of complexity for retail

clients. In particular, we would appreciate additional guidance from the FCA in relation to supporting consumers in identifying and understanding associated risks in light of Consumer Duty requirements.

We also believe that additional detail from the FCA may be helpful in the following areas:

a. Delegated and distributed custody models

Crypto custody frequently involves sub-custodians, MPC providers, and group-level shared infrastructure. Guidance clarifying how CASS 17 applies where control is split, shared, or delegated would improve consistency. This is particularly relevant where no single entity holds unilateral authority to transfer assets, which raises questions about how "control" should be interpreted for safeguarding purposes.

b. Operational surplus and float arrangements

Firms may benefit from clearer definitions of:

● what constitutes a "temporary operational imbalance", how float thresholds were calibrated, and

● how the model should operate in periods of stress or across assets with differing liquidity profiles.

Clarifying these concepts would reduce the risk of divergent interpretations and help firms calibrate operational processes in a way that maintains robust consumer protection.

c. Insolvency expectations

Given the importance of return-of-client-assets outcomes, it may be helpful for the FCA to clarify expectations around evidentiary standards, reconciliation timing, shortfall allocation, and treatment of hot/cold wallets or non-UK infrastructure in an insolvency scenario.

d. Staking and protocol-level restrictions

Certain cryptoassets may become temporarily inaccessible due to protocol design (e.g., bonded or staked assets). It would be helpful to clarify whether safeguarding obligations continue to apply throughout such periods and how firms should treat rewards, unbonding phases, and temporary illiquidity.

We also note that while we agree the application of CASS 17 should be limited to custodial staking arrangements, we would recommend that the rules for staking in CP 25/40 should be similarly limited to custodial staking models. As described in our response to CP 25/40, custodial and non-custodial arrangements present fundamentally different risk profiles, and extending requirements relating to disclosure, consent, and record-keeping to non-custodial activities would be disproportionate and may introduce legal uncertainty.

28. Do you agree with our proposed approach to protecting clients' ownership rights, including the approach to the operational surplus and class of cryptoasset? If not, why not?

We agree with this proposal and welcome the flexibility that this approach will offer to firms. In particular, we support the intention to ensure that client ownership rights remain clearly identifiable and enforceable, including in circumstances where operational surpluses or timing mismatches arise. Further clarity on how firms should distinguish temporary operational discrepancies from genuine surpluses would help promote consistency across the sector and avoid unnecessary remediation actions.
We also think it would be helpful for the FCA to confirm that the classification of cryptoassets for these purposes should reflect the economic nature and custody model of the asset rather than being tied too rigidly to technical distinctions. This would support coherent safeguarding outcomes across different product types as tokenisation evolves.

29. Do you agree with our proposed approach to exempting firms from holding cryptoassets on trust in certain scenarios? If not, why not?

We agree with this proposal. In particular, we support an approach that recognises that a trust requirement is not appropriate where a firm does not have unilateral control over client assets or is not performing a safeguarding function in substance. Clear criteria for when exemptions apply will help ensure the regime remains proportionate and avoids imposing trust structures in situations where they would create legal or operational inconsistency.

We would also welcome the FCA's consideration of how emerging devolved legislation interacts with the trust requirement. For example, the Digital Assets (Scotland) Act 2026, which recently passed Stage 3, introduces a statutory framework under which certain digital assets may constitute "incorporeal moveable property" and treats "control" as a form of possession for property-law purposes. While the UK-wide regulatory position remains paramount, it may be helpful to clarify whether, and to what extent, such property-rights frameworks could satisfy the underlying policy objective of ensuring that client assets are legally segregated and recoverable in an insolvency context. This may be relevant when assessing whether additional trust requirements are necessary for firms operating from Scotland or using Scottish law structures.

30. Do you agree with our proposed approach to record- keeping requirements, including only applying them to client cryptoassets held on trust? Please explain your answer and indicate whether this approach would create a gap in consumer protection.

We agree with this proposal. Limiting the enhanced requirements to situations where assets are held in trust is a proportionate way of ensuring that record-keeping expectations are aligned with the legal framework that underpins client ownership.

However we would emphasise:

- the need for reconciliation processes that reflect technological realities such as multi-wallet structures; for example, firms may manage assets across hot, warm

and cold wallets, or across multiple chains, which requires flexibility in how reconciliation is evidenced;
- a preference for technology-neutral requirements to avoid duplicative record-keeping; in particular where on-chain records already provide immutable evidence of balances or transaction flows;
- the importance of consistent and interoperable reporting formats across firms This will support comparability, reduce implementation costs, and help ensure that return-of-assets processes can operate efficiently in the event of firm failure.

31. Do you agree with our proposed approach to reconciliations, topping up shortfalls and removing excesses? If not, why not?

We agree with this proposal. We would, however, welcome clarification to ensure that reconciliation processes can accommodate operational realities such as multi-wallet structures, cross-chain movements, and timing differences arising from settlement cycles or network congestion. Providing flexibility in how firms evidence reconciliation would help avoid unnecessary remediation actions where discrepancies are temporary or purely technical in nature.

We would also appreciate further clarification on the reconciliation requirements in CASS 17.5. In particular, the obligation for custodians to make up any shortfall using the firm's own cryptoassets or by acquiring additional assets may present operational challenges for some firms, especially where shortfalls arise from timing mismatches, network congestion, or protocol-level delays rather than from a genuine loss event. In this regard, we note that the analogous provision for traditional custody shortfalls under CASS 6 permits the custodian to make up the shortfall by using its own assets or cash, whereas the requirement in CASS 17.5.13(7) specifies that cryptoasset custodians must make up the shortfall using only cryptoassets of the same class (money is prohibited for this purpose). We would be grateful if the FCA could please clarify the intention of this restriction - i.e., why there is no ability for the custodian to replenish a shortfall with other assets/cash.

Additionally, we would be grateful for further guidance on how the FCA expects firms to distinguish temporary imbalances from actual shortfalls, and on how proportionality should apply in this context. This would help ensure consistent and workable implementation across the sector.

32. Do you agree with our proposed approach to private key management and security? If not, why not?

We agree with this proposal, however, we believe that the proposal of a review once per business day would be excessive. The FCA should consider whether it may instead be more proportionate to issue guidelines on how this process could potentially be automated. Given that many firms already rely on automated monitoring, distributed signing mechanisms and MPC-based controls, allowing technology-led processes to satisfy the review requirement would help ensure that the rules remain practical without diminishing security outcomes.

We also agree with the proposed changes indicated in paragraph 9.61 of the Consultation that private key rules should only be applied to clients cryptoassets and that it would be appropriate to carve out firms' proprietary funds to avoid imposing unnecessary operational obligations where there is no safeguarding risk.

33. Do you agree with our proposed approach to the use of third parties? If not, why not?

We agree with this proposal. Given the role that specialist third-party providers play in cryptoasset custody and operations, it would be helpful for the FCA to confirm that the existing SYSC outsourcing and oversight framework provides the primary reference point for assessing these arrangements. Clarification on how proportionality applies, particularly where firms use distributed custody models, MPC technology providers or non-UK infrastructure partners, would support consistent implementation while ensuring that firms retain appropriate oversight and accountability.

We would also welcome further clarity on the due diligence requirements in CASS 17.6.3. In practice, firms may find it difficult to obtain all the information necessary to meet the prescribed due diligence factors, particularly where the third party is not UK-authorised or is based in a jurisdiction with developing regulatory frameworks. Additional guidance on what constitutes "reasonable steps" in such cases would help ensure that the requirement operates proportionately and does not limit firms' ability to appoint technically competent global service providers.

Furthermore, CASS 17.6.3(1) requires that the third party operate in a jurisdiction which specifically regulates the safeguarding of cryptoassets. While this may be straightforward for custodians in the EEA subject to MiCA, the position is less clear for non-UK/EEA entities. We would therefore encourage the FCA to clarify how firms should assess jurisdictions that apply broader financial services or trust-law frameworks rather than cryptoasset-specific rules, and whether these could satisfy the underlying regulatory objective.

Finally, it would be helpful for the FCA to provide additional clarity on the distinction between a "custodian" or "custodial relationship" and an infrastructure or service provider. Many firms rely on third parties that provide security tooling, key-management systems, MPC infrastructure or operational support, without themselves performing a safeguarding function. Clear criteria for determining when a third party is acting as a custodian would help firms understand when the full CASS 17 due diligence requirements apply, and when a provider should instead be assessed under the SYSC outsourcing framework.

34. Do you agree with our proposed approach to applying CASS 17 rules on protecting clients' ownership rights, private key management and appointment of third parties, applying SYSC and SUP rules to SIC custodians and amending the application of SUP 3.10.4R(2)? If not, why not?

We agree with this proposal and reiterate the concerns noted in our response to Q32 regarding the operational impact of a mandatory daily review of private key arrangements. In our view, this frequency may be disproportionate for certain custody

models and would benefit from greater flexibility or guidance on how automated controls could be used to satisfy the underlying objective.

In addition, where CASS 17 is combined with SYSC and SUP requirements for SIC custodians, further clarity on the interaction between these regimes would assist firms in designing consistent controls. For example, it would be helpful for the FCA to confirm how firms should apply the CASS 17 framework in scenarios involving delegated custody, MPC-based key management, or non-UK technical infrastructure. Clear expectations on the delineation between CASS obligations and broader SYSC oversight responsibilities would support effective implementation.

35. Do you foresee challenges for firms currently safeguarding SICs and subject to CASS 6 when transitioning to CASS 17? Please explain why.

We do not currently foresee significant structural challenges for firms transitioning from CASS 6 to CASS 17, given that many of the core safeguarding principles remain familiar and conceptually aligned. However, we would emphasise that a number of the operational requirements under CASS 17 are materially more detailed and cryptoasset-specific than those under CASS 6. As such, firms may require time to adjust internal processes, governance oversight and systems architecture to meet the new standards.

In particular, areas such as private-key management, evidencing control, delegated custody arrangements and reconciliation methodologies may involve new operational or legal considerations that were not contemplated under CASS 6. These may not amount to fundamental barriers, but they could introduce practical implementation complexity during the transition phase. For this reason, we consider that a post-implementation review, once firms have begun operating under the finalised rules, would be appropriate to confirm that the transition is functioning as intended and to identify any areas where further clarification or guidance may support consistent application.

36. What are the potential use cases for and the rationale for SIC custodians to use these exclusions?

At this stage, our members have not identified specific use cases that would require reliance on these exclusions. However, we recognise that certain operational scenarios, such as short-term settlement movements, group-level custody arrangements, or the use of specialised technology providers, could, in principle, give rise to circumstances where temporary or narrowly defined exclusions may support orderly processing without undermining client protection.

Given the early stage of market development for SIC custody, it may be more appropriate to revisit this question once firms have practical experience operating under the new framework, at which point clearer use cases may emerge.

37. Do you agree that rules applying to small AIFMs due to exclusions applying to UK UCITS and AIF managers should be extended to SIC and cryptoasset custodians under CASS 17? Please explain why.

We agree with this proposal. In our view, extending these exclusions to SIC and cryptoasset custodians under CASS 17 is a proportionate approach that reflects the scale and operational profile of smaller firms. We also see benefits in maintaining consistency across the broader CASS framework, so that equivalent activities performed by smaller firms in adjacent sectors are treated similarly. This supports coherent regulatory design and reduces the likelihood of distortions in business models arising from inconsistent rule application.

38. Do you anticipate SICs being used for SFTs in future? If so, should the requirements in CASS 6 permitting the use of clients' safe custody assets for SFTs be applied? Please explain why.

We agree that SICs are likely to become relevant for securities financing transactions (SFTs) as tokenised instruments develop and market infrastructure evolves. Allowing SICs to be used in SFTs would provide continuity with existing market practices and support the growth of digital representations of traditional securities.

We also agree that the CASS 6 framework should apply in this context, as this would ensure that the safeguards, consent requirements and client-asset protections that already exist for traditional securities are maintained when applied to their tokenised equivalents. Aligning the treatment of SICs and traditional instruments helps ensure consistent risk management, protects clients' ownership rights, and avoids unnecessary divergence between analogue and digital markets.

We would also welcome further FCA guidance on how CASS 6 concepts, such as rehypothecation conditions, disclosure standards and record-keeping, should be interpreted in a tokenised environment, particularly where settlement models or custody structures differ from traditional arrangements.

39. 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.

We would question some of the assumptions being made in the CBA and request additional information and explanation on how these figures have been reached by the FCA. In particular, we are concerned that some of the models indicate a potential total cost of £96.7m, which if accurately calculated would eliminate many smaller firms and start ups from the market. We feel this may be inconsistent with the FCA's secondary objective and would place the UK market in an uncompetitive position.

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

No additional comments further to those already raised in earlier responses in this paper.

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