

26 May 2026

CryptoUK
Formal House
60 St George's PI
Cheltenham GL50 3PN

Submitted by email: cp26-13@fca.org.uk

Dear Sir or Madam,

Response to Consultation Paper 26/13: Cryptoasset Perimeter Guidance (the “Consultation Paper”)

CryptoUK (“we”) and its members welcome the opportunity to comment on the Consultation Paper regarding changes to the FCA’s Perimeter Guidance Manual (“PERG”) in respect of cryptoassets. CryptoUK is the UK’s 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 make a number of general/ thematic comments about the Consultation Paper and the FCA’s broader approach to the future cryptoasset regulatory regime, as follows:

- International interoperability and competitiveness - We welcome the FCA’s objective of providing greater clarity to market participants on the scope of the regulatory perimeter and when authorisation is required. However, given the inherently cross border nature of cryptoasset markets and the fact that many firms operate across multiple jurisdictions, we would encourage the FCA to ensure that the UK regime remains aligned, where appropriate, with international regulatory developments, including MiCA and IOSCO recommendations. Divergence in perimeter interpretation could increase fragmentation, create duplicative compliance costs and potentially reduce the attractiveness of the UK market. A globally interoperable regime would help support consumer protection while maintaining the UK’s competitiveness as a centre for responsible cryptoasset innovation.
- Territorial scope and cross border services - We would be grateful for further practical guidance on how the “in the UK” test applies in complex cross border scenarios, particularly where services are provided remotely or through global platforms, or where liquidity, price formation and user activity are distributed across jurisdictions. Additional guidance on what constitutes “targeting” the UK would be beneficial, enabling firms to assess whether they practically fall within the scope of the regime.
- Trading platforms and technical services - The guidance should more clearly distinguish operating a qualifying cryptoasset trading platform or arranging deals from

providing technology, software or connectivity. Firms would welcome examples showing how the FCA will assess control, system design, operational involvement and trading linked remuneration. Additional guidance on the intended scope of the regime as it applies to technology providers would also be welcome.

- Decentralised, automated and hybrid models - We welcome the FCA's clarification that the use of decentralised technologies, smart contracts or public blockchains does not, in itself, place an activity outside the regulatory perimeter. However, given the increasing prevalence of partially decentralised and hybrid models, further guidance would be beneficial on how concepts such as "control", "operation", "maintenance" and "commercial benefit" should be interpreted in practice. Without such clarification, there is a risk that the perimeter may be understood too broadly and may inadvertently capture DeFi or protocol related activity where there is no identifiable person carrying on the relevant regulated activity in the UK. A proportionate, outcomes focused approach would support consistent application without discouraging responsible innovation.
- Classification of cryptoassets and perimeter concepts - We support the FCA's efforts to explain the new categories of qualifying cryptoassets, qualifying stablecoins and specified investment cryptoassets. That said, the concepts of fungibility, transferability and functioning as more than a mere record of value or rights may raise interpretative questions in practice, particularly for novel token models, wrapped tokens, liquid staking tokens and other emerging use cases. Further examples and internationally aligned classification principles would help reduce divergent interpretations and provide firms with greater confidence when assessing whether particular assets and activities fall within the perimeter.
- Stablecoins - In light of the recent amendments introduced by HM Treasury concerning the activities of arranging and dealing as they relate to UK qualifying stablecoins, we recommend that additional guidance be issued to clarify the scope of regulated activities applicable to stablecoins, particularly with respect to any distinctions that may arise depending on whether the stablecoin in question is issued domestically within the UK or issued by a foreign entity.
- Proportionate implementation and interaction with related regimes - As the FCA develops the future cryptoasset regulatory regime, we would encourage continued focus on proportionality, clarity and coherence with adjacent regimes, including the Money Laundering Regulations and the financial promotions regime. Firms would benefit from guidance that clearly distinguishes the perimeter for regulated cryptoasset activities from related obligations, including where a person provides advice, makes financial promotions or carries on activities in relation to specified investment cryptoassets. Clear signposting between PERG 19, PERG 8 and the existing PERG framework would help avoid unnecessary uncertainty and support timely, accurate applications for authorisation.

Appendix

Consultation Questions:

1. Do you agree with our proposed guidance set out in the Introduction section? If not, please explain why.

We broadly agree with the proposed guidance set out in the introduction and welcome the FCA's objective of helping firms determine whether they are carrying on activities for which authorisation may be required. In particular, we support the FCA's structured approach, including the use of a question based framework and decision making criteria to help firms assess whether they are carrying on regulated activities.

We also welcome the FCA's recognition that cryptoasset market terminology and business models do not always map neatly onto traditional financial services concepts, and the regulatory assessment must therefore focus on the actual role performed by a person within an arrangement rather than the labels used. This is a critical principle for ensuring consistent and effective application of the regime across a diverse and evolving ecosystem.

However, we would welcome further clarification in the following areas to support consistent and proportionate application of the guidance in practice.

a) Practical application of the case-by-case assessment.

We recognise that perimeter analysis will necessarily depend on the specific facts and the substance of the relevant activity. However, given the consequences of carrying on regulated activity without the required authorisation, including potential criminal liability and unenforceability of agreements, firms will need a high degree of practical certainty when applying the guidance to their operating models.

We would therefore encourage the FCA to include additional non-exhaustive worked examples in the Introduction section, or in the accompanying Annex, showing how the five-stage assessment in PERG 19.1.7 should be applied to common cryptoasset business models. This would be particularly helpful where relatively small factual differences may affect whether a person is carrying on a regulated activity, whether an exclusion applies, or whether a Variation of Permission is required.

b) Decentralised, automated and hybrid models.

We welcome the FCA's clarification that the use of decentralised technologies, smart contracts or public blockchains does not, in itself, place an activity outside the regulatory perimeter. We also agree that the focus on whether there is an identifiable person carrying on a regulated activity in the UK is appropriate.

However, given the increasing prevalence of partially decentralised and hybrid models, further clarification would be beneficial on how concepts such as "control",

“operation”, and “commercial benefit” should be interpreted in practice. In particular, it would be helpful for the FCA to provide examples distinguishing between persons who merely develop, publish or maintain technical infrastructure and persons who operate or control arrangements in a way that should bring them within the regulatory perimeter. This would help firms more consistently assess whether there is an identifiable person carrying on a regulated activity.

Providing such guidance would reduce the risk of inconsistent interpretations and help avoid unnecessarily broad readings of the perimeter for DeFi related or protocol adjacent activity. We would recommend that the FCA considers a gradual and more proportionate approach.

c) Territorial scope and international firms

We welcome the FCA’s guidance on how the “in the UK” test applies to regulated cryptoasset activities, including where services are provided to UK consumers by persons based outside the UK. However, we would seek clarity in relation to the territorial scope of activities given that cryptoasset markets are inherently global, with liquidity, price formation, and user activity distributed across jurisdictions. We recognise the FCA’s objective of protecting UK consumers, however would state that additional guidance on how the “in the UK” test applies in complex cross border scenarios would be essential, specifically where services are provided remotely or through global platforms. Providing additional clarity, alongside a proportionate approach to application, would help mitigate this risk and support the UK’s competitiveness.

Consistent with the approach taken in the benchmark response on international firms, the guidance should make clear that territorial outcomes should be driven principally by the relevant UK nexus and user facing activity, rather than by the mere use of shared technical systems, liquidity pools or global infrastructure.

d) Interaction with international standards

We consider it important that the UK regime remains internationally interoperable and does not create unnecessary divergence from other major cryptoasset frameworks. There is a critical need for continued alignment with international regulatory developments. As firms increasingly operate across jurisdictions, differences in perimeter interpretation can create fragmentation, increase compliance costs, and potentially reduce the attractiveness of the UK market. We would therefore encourage the FCA to explain, where appropriate, how the proposed perimeter guidance is intended to sit alongside relevant international frameworks, including MiCA and IOSCO recommendations. This would support firms seeking to design operating models that are compliant in the UK while remaining compatible with global regulatory expectations.

Overall, we support the FCA’s proposed Introduction guidance, but consider that its practical value would be materially enhanced by additional examples and clearer decision points in the areas identified above. This would help firms apply the perimeter consistently, support proportionate implementation, and further the FCA’s objective of developing a competitive and sustainable cryptoasset sector in which UK consumers are served by authorised firms and can make informed decisions.

2. Do you agree with our proposed guidance set out in the New specified investments section? If not, please explain why.

We broadly agree with the proposed guidance in the New specified investments section and welcome the FCA's attempt to explain the concepts of qualifying cryptoassets, qualifying stablecoins and specified investment cryptoassets in a single, dedicated section of PERG 19. We also support the FCA's proposed focus on the substance and functionality of the relevant cryptoasset, rather than the label used to describe it.

However, given the importance of asset classification to the permissions analysis, we consider that the guidance would benefit from additional examples and clearer decision points in a number of areas. This is particularly important because classification may determine whether firms analyse their activities under the new regulated cryptoasset activities for qualifying cryptoassets, or under the existing regulated activities framework for specified investment cryptoassets.

a) Fungibility

We welcome the proposed guidance that fungibility is a question of fact and that a cryptoasset's label or marketing description should not be determinative. This is a helpful principle, particularly in relation to tokens that may be described as non-fungible but may in substance be treated by market participants as interchangeable.

That said, application of the concept may raise interpretative questions in practice, particularly for novel or emerging token models, including those used in decentralised finance (DeFi) context. Further guidance would be helpful on how firms should assess fungibility where the characteristics or market use of a cryptoasset change over time. For example, a token may initially have unique or restricted features, but later become treated by market participants as economically interchangeable with other units of the same token. Conversely, a token that initially appears fungible may later acquire attributes, restrictions or market practices that make unit-specific characteristics relevant to holders.

We would therefore encourage the FCA to include non-exhaustive examples illustrating when firms should reassess fungibility, including where a token's rights, transfer restrictions, metadata, market treatment or utility evolves after issuance. This would help firms apply the guidance consistently and would reduce the risk of divergent classification outcomes for novel or emerging token models.

b) Transferability, restricted transfers and off-chain mechanisms

We welcome the FCA's clarification that transferability is not confined to the technical ability to move a token on-chain, and may include circumstances where the cryptoasset confers transferable rights that can be assigned or transferred off-chain. We also welcome the guidance that contractual restrictions, lock-ups or the use of particular infrastructure do not necessarily prevent a cryptoasset from being transferable.

However, it would be useful for the FCA to provide more examples of how transferability should be assessed across a range of common use cases. In particular, we note that the FCA has provided guidance in the draft PERG 19.4.3 which states that: (i) burning one token and minting or issuing another does not necessarily prevent the cryptoasset from being transferable; and (ii) a cryptoasset may be transferable even if transfers require the use of particular infrastructure or compliance processes, provided that the cryptoasset (or rights it confers) is capable of being transferred between persons or addresses. While these examples are helpful, we note that the phrases "does not necessarily prevent..." and "may be transferable" leave this open to interpretation. We would therefore encourage the FCA to either amend this guidance to make it less ambiguous, or supplement this guidance with additional similar example scenarios.

c) Cryptoassets that are “solely a record” of value or rights

We welcome the FCA’s functional approach to assessing whether a cryptoasset is solely a record of value or contractual rights and therefore excluded from the qualifying cryptoasset definition.

We would encourage the FCA to expand this part of the guidance with further examples covering wrapped tokens, liquid staking tokens, deposit or receipt tokens, tokenised records, loyalty or reward tokens, and tokens used within DeFi arrangements. In particular, it would be helpful to identify the indicators that distinguish a token that is “merely evidential of rights held elsewhere” from a token that is itself treated by market participants as the asset, object of exchange or bearer of commercial risk.

Given the pace of innovation in cryptoasset markets, novel and emerging token models will need to be assessed against this guidance from the outset. We would therefore encourage the FCA to include a diverse range of worked examples covering different asset types, business models and use cases, so that firms can more reliably map their current and future activities to the relevant perimeter concepts and permissions.

d) International interoperability of classification concepts

We reiterate the importance of international interoperability in the classification of cryptoassets. As firms increasingly operate across multiple jurisdictions, materially divergent perimeter concepts may increase compliance complexity, fragment product governance processes and reduce the attractiveness of the UK as a market for global cryptoasset firms.

We would encourage the FCA to explain, where appropriate, how its approach to fungibility, transferability, qualifying stablecoins and specified investment cryptoassets is intended to operate alongside other major international frameworks. Members have suggested that the definitions should be aligned with the ones to be found in MiCA and aligned with the EU. It is considered that competition is coming directly from the EU and, which provides access to 30+ markets. If the UK does not align with MiCA definitions then the question would be, why consider the UK as a relevant and competitive market. Alignment on token definitions will help to mitigate this and ensure the UK remains on an even footing for consideration. This would assist

international firms in designing classification and permissions frameworks that are both UK-compliant and operationally interoperable with other major regimes.

3. Do you agree with our proposed guidance set out in the New regulated cryptoasset activities section? If not, please explain why.

We broadly agree with the proposed guidance on the new regulated cryptoasset activities and welcome the FCA's attempt to provide practical guidance across issuing qualifying stablecoins, safeguarding, operating a QCATP, dealing, arranging, lending and borrowing, and staking. However, we consider that certain aspects of the guidance would benefit from further clarification to ensure firms can apply the perimeter consistently and with sufficient legal certainty. We have set out three examples of where guidance could be improved below.

First, in relation to Q5.2 / PERG 19.5.2, the guidance states that Article 9M should be considered as a whole and that carrying on only one element of Article 9M does not amount to issuing qualifying stablecoin, while also noting that a person could be issuing where they carry out one element and arrange for another person to carry out the remaining elements. We would welcome further examples clarifying when a person performing only part of the stablecoin issuance lifecycle will be treated as the issuer, particularly in group, outsourcing, white-labelling, backing asset management and third-party redemption arrangements. This would help firms distinguish between the regulated issuing activity and ancillary, outsourced or technical functions that should not, in themselves, require issuer authorisation.

Secondly, we welcome the FCA's statement at paragraph 2.45 that purely technical services are generally out of scope for the activity of arranging qualifying cryptoasset staking, including operating a validator node or offering solo staking tools without further involvement. We would, however, encourage the FCA to reinforce this position in PERG 19.10.2 by providing clearer indicators of when a validator node operator or staking technology provider remains outside scope, and when additional services amount to regulated arranging. In particular, further guidance would be helpful on the treatment of dashboards, validator recommendations and non-custodial staking interfaces. We would recommend that the FCA ensures that purely technical services are definitively kept outside the regime, rather than 'being unlikely' to be within it.

Thirdly, we consider that the guidance would benefit from an equivalent Q&A on advice in relation to cryptoassets, in particular clarifying when a person providing advice in relation to cryptoassets requires authorisation, and how that analysis differs depending on whether the asset is a qualifying cryptoasset or a specified investment cryptoasset. It would also be helpful for that guidance to explain how the financial promotions regime under PERG 8 applies alongside, and is distinct from, any authorisation requirement for advice. The guidance in Q8.7 / PERG 19.8.7 on managing investments is helpful in explaining that managing investments does not include qualifying cryptoassets, but that firms whose mandates include trading qualifying cryptoassets may need permissions for dealing, arranging, safeguarding or arranging safeguarding. A similar Q&A on advice would help clarify the distinction between regulated advice on specified investment cryptoassets, unregulated commentary or analysis relating to qualifying cryptoassets, financial promotions, and

activity that may amount to arranging deals in qualifying cryptoassets. It would also help if the guidance were to point to the application of the Financial Promotions Order and to the guidance provided in PERG 8.

Overall, we support the FCA's proposed guidance, but would welcome targeted amendments to make the perimeter more practically workable in these areas. In particular, further worked examples on stablecoin issuance, technical staking services and advice-related activities would help firms assess their permission requirements more consistently.

4. Do you agree with our proposed guidance set out in the Exclusions relevant to the activities section? If not, please explain why.

We agree with the proposed guidance and do not have substantive concerns. However, we would welcome additional practical examples showing how the exclusions apply across common business models, particularly where an exclusion from one regulated cryptoasset activity may still leave the firm carrying on another regulated activity. This would be helpful in relation to the goods and services exclusion, the related sale or supply limb, and activity carried on by agents or service providers in connection with no financial goods or services.

In particular, further examples would help firms determine when accepting cryptoassets for goods or services remains ancillary to a commercial transaction, and when related activities by agents, payment facilitators or technology providers may move beyond the scope of the exclusion.

5. Do you agree with our proposed guidance set out in the Interaction with the current cryptoasset framework for Money Laundering Regulations (MLRs) section? If not, please explain why.

We agree with the proposed guidance. Given the number of firms currently registered under the MLRs, we would welcome a consolidated transition table or worked examples mapping common MLR-registered business models to the likely Part 4A permissions that may be required under the new regime, similar to other guidance issued by the FCA on MiFID and the RAO interactions.

We would also welcome additional examples explaining where a firm may fall outside the FSMA authorisation perimeter but remain subject to MLR registration or obligations, including where the relevant asset is not a qualifying cryptoasset or where the firm relies on an RAO exclusion.

It would also be helpful for the final guidance to present the relevant notification requirements and timing in one place, including the interaction between the 30-day notification for existing MLR-registered firms and the 28-day notification requirements for authorised firms.

6. Do you agree with our proposed guidance set out in PERG 1, PERG 2 and PERG 8? If not, please explain why.

We agree with the proposed amendments to PERG 1, PERG 2 and PERG 8. We would welcome clear cross-references between PERG 8 and PERG 19 to help firms distinguish financial promotion obligations from authorisation requirements, particularly where a communication or online interface may also raise questions under the arranging perimeter.

Further examples would be helpful on the boundary between financial promotions, mere communications and arranging activity, including websites, apps, order-routing tools, educational content, affiliate links and other online journeys that may assist users in reaching a transaction. This will provide firms with clear guidance on the permissions and processes they are required to follow.

We would also welcome further examples in PERG 2 or PERG 19 illustrating the narrower 'business of engaging in' test for cryptoasset activities, including the distinction between firms providing services to customers and individuals or entities participating as end users or on their own account.

CMS is a leading international law firm that provides full service legal and tax advice to the world's major financial institutions. With 78 offices in over 40 countries and more than 5,000 lawyers, CMS has long standing expertise in its local jurisdictions and can powerfully leverage the CMS network on cross border mandates. Our UK Financial Services team regularly advises the leading global investment banks, fund managers, intermediaries, market makers and institutional investors on technical regulatory and transactional matters. Many of our team have spent time inhouse at our clients or at the regulators and we seek to develop productive working relationships with our clients and prioritise practical, business driven solutions. Further information is available at www.cms.law.

Key contact:

Sam Robinson - Partner, Financial Services Regulatory, sam.robinson@cms-cmno.com

Yasmin Johal - Senior Associate, Financial Services Regulatory, yasmin.johal@cms-cmno.com

Rowan Platt - Senior Associate, Financial Services Regulatory, rowan.platt@cms-cmno.com

Marelize Abercrombie, Financial Services Regulatory, Marelize.Abercrombie@cms-cmno.com