18 November 2026

CryptoUK
Formal House
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Submitted by email: cp26-36@fca.org.uk

Dear FCA

Response to: (CP26/36): Cryptoasset Perimeter Guidance (the "*Consultation*")

CryptoUK ("**we**") and its members welcome the opportunity to respond to the FCA Consultation on the FCA's proposed amendments to the Perimeter Guidance Manual ("**PERG**"), which reflect the exclusions and other changes introduced by the Financial Services and Markets Act 2000 (Cryptoassets) (Miscellaneous Amendments) Regulations 2026 (the "**Cryptoassets Regulations**").

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 policy frameworks on a global basis.

We have provided detailed answers to each question posed in the Consultation within the Appendix. We seek to offer pragmatic and relevant observations about, and suggestions in response to, the content within the Consultation. However, at the outset, we would like to make a number of general/thematic comments about the Consultation and the FCA's broader approach to the future cryptoasset regulatory regime, as follows:

- **Overall support:** We broadly support the proposed guidance. We especially welcome the new exclusions for temporary settlement, payment related and backing asset arrangements for UK qualifying stablecoins, proprietary trading and market making, and technical services.
- **Guidance should track the legislation:** In a few places the draft goes further than the legislation, notably the territorial link from UK-based development or governance, the 'order for onward transfer' requirement in the payment exclusion, the service indicators in the proprietary trading guidance, and some indicators narrowing the technical services exclusion. We ask the FCA to revisit these.
- **Decentralisation:** Consistent with the FCA's 'clear controlling person' approach to DeFi, the guidance should distinguish effective control of a regulated financial service from historic, collective or purely technical involvement in a protocol. Software development, maintenance, security work and participation in decentralised governance should not, by themselves, establish that a person carries on a regulated activity. The 'decentralised protocol' concept should be used consistently across PERG 18, while assessing each person's actual activities separately.
- **Illustrations and positive statements:** A few high-level examples and positive statements of activities usually outside the perimeter would help, especially for decentralised arrangements, the 'business of engaging in' test and technical service providers. We also suggest cross-references between PERG 8 and PERG 18.

- **International competitiveness:** We encourage the FCA to raise with HM Treasury outcomes that disadvantage UK firms, such as UK technical providers offering access to overseas regulated venues and payments using overseas-issued stablecoins, and to align with MiCA where appropriate.

We would welcome the opportunity to discuss any of these points further with the FCA.

Yours sincerely

Nick Brooks
Policy Director, CryptoUK

Appendix

Consultation Questions:

1. **Do you agree with the FCA's interpretation of the legislative provisions proposed in the draft perimeter guidance in section 18.1? If not, please explain why.**
   CryptoUK broadly agrees with draft PERG 18.1, including that the perimeter is technology neutral and that labels such as 'DeFi', 'DAO' or 'decentralised' do not decide the outcome. We welcome PERG 18.1.20, which accepts that some DeFi arrangements may involve no person carrying on a regulated activity. We have three comments.

   Attribution through design and parameters.
   Draft PERG 18.1.17 refers to persons who 'determine or materially influence' the design or parameters of automated arrangements, or who develop, maintain or govern them. Read alone, this could catch open-source developers, upgrade contributors or governance token holders. In PS26/11 the FCA said it will apply its rules to DeFi only where there is a clear controlling person. We ask the FCA to make clear in PERG 18.1.17 and 18.1.18 that any attribution must establish a current, material connection between the relevant person's role and the elements of the particular regulated activity carried on by way of business. Developing or publishing software, proposing or implementing technical upgrades, fixing vulnerabilities, receiving compensation for development or security work, and participating in decentralised governance should not, by themselves, establish that a person carries on that activity. The guidance should distinguish those functions from effective control or operation of a regulated financial service, including control exercised by persons acting together.

   Consistency with the 'decentralised protocol' concept.
   An arrangement's status as a 'decentralised protocol' under article 9Z2A and PERG 18.8.32 should be assessed consistently with PERG 18.1.17. Maintaining or governing such a protocol should not, by itself, establish that a participant carries on a regulated activity. Equally, protocol status should not automatically exempt a person who separately carries on a regulated financial service. A short cross-reference should clarify both points and require assessment of each person's actual role.

   Illustrations and future DeFi guidance.
   The three categories of features in PERG 18.1.17 are a helpful framework. A few high-level contrasting examples would help, including an arrangement in which an identifiable entity retains effective control over transactions and material commercial terms (for example by holding administrative keys, upgrade authority or control over fee parameters), compared with one governed through an open, distributed process without a person or coordinated group exercising such control. The examples should also address protocols with limited, transparent security or emergency powers. Neither ongoing maintenance nor the existence of upgrade or security mechanisms should, by itself, establish centralised control; their scope, safeguards and allocation should be assessed. Irrevocable relinquishment of all upgrade or administrative powers should not be a prerequisite for developer protection or recognition of decentralisation. Please also confirm that the forthcoming DeFi guidance will build on PERG 18.1 rather than introduce a separate test, and pursue international consistency, including with MiCA, where compatible with these protections.

2. **Do you agree with the FCA's interpretation of the legislative provisions proposed in the draft perimeter guidance in section 18.2? If not, please explain why.**
   CryptoUK agrees that, where functions are spread across several participants, the 'by way of business' test should be applied to each relevant person separately, using the ordinary factors. The key question is the role the person performs, not whether the arrangement is called decentralised.

   We ask the FCA to cross-refer in PERG 18.2.3 to the narrower 'business of engaging in' test for regulated cryptoasset activities, and to explain how it applies in a decentralised context. In particular, it would help to confirm that the following are unlikely, on their own, to amount to the business of engaging in a regulated cryptoasset activity:

   - holding or voting governance tokens;
   - receiving grants or bounties for contributing code, audits or security reviews;
   - operating a node or validator in the ordinary course of blockchain validation; and
   - participating in a protocol as an end user or on one's own account.

   Please also confirm that receiving protocol fees, token rewards, grants or bounties is relevant but not decisive where the participant does not otherwise perform the regulated activity. Commercial funding of development, maintenance or security work should not, by itself, convert those functions into financial intermediation.

3. **Do you agree with the FCA's interpretation of the legislative provisions proposed in the draft perimeter guidance in section 18.3? If not, please explain why.**
   CryptoUK agrees that overseas elements do not, by themselves, mean an activity is not carried on in the UK, and that the territorial analysis must follow the relevant statutory provisions, including section 418 of FSMA.

   However, draft PERG 18.3.1A says UK involvement in the governance, operation, maintenance or development of decentralised arrangements 'may be sufficient to establish a territorial link with the UK'. This goes beyond the legislation. The question is whether the regulated activity itself is carried on in the UK, or deemed to be under section 418. A UK-based developer or maintainer does not, by itself, mean that operating a QCATP or arranging deals is carried on in the UK.

   A broad reading could deter UK developers from open-source and decentralised projects without any consumer protection benefit, contrary to the FCA's secondary international competitiveness and growth objective.

   We suggest revising the sentence to say that UK involvement in governance, operation, maintenance or development may be relevant where it forms part of the relevant person carrying on the regulated activity, and that development or technical maintenance alone is unlikely to be enough.

4. **Do you agree with the FCA's interpretation of the legislative provisions proposed in the draft perimeter guidance in section 18.6.6? If not, please explain why.**
   CryptoUK welcomes the revised exclusion in article 9Q and much of the FCA's interpretation. In particular, we welcome confirmation that the exclusion may be available to persons whose dealing and arranging activities are themselves excluded, that how the transaction is brought about does not matter, and that collateral transfers may be a 'transaction'. We have one comment.

Transactions already entered into.
The draft now says that 'settlement of a transaction' is likely to be limited to actions needed to meet obligations under a transaction 'that has already been entered into'. Please confirm that this does not rule out pre-positioning cryptoassets for a specific, identified transaction about to be executed (for example, where a trading venue's settlement model requires it), provided the safeguarding is directly linked to settling that transaction.

5. **Do you agree with the FCA's interpretation of the legislative provisions proposed in the draft perimeter guidance in sections 18.5.7 and 18.6.14? If not, please explain why.**
CryptoUK agrees. The draft accurately reflects articles 43A and 9QB. In particular, the exclusions apply only to arrangements for the backing assets of UK qualifying stablecoins carried on by a person with Part 4A permission to issue that stablecoin, and they do not remove the need to comply with the CASS 16 safeguarding rules for backing assets. We welcome the removal of a duplicate permission requirement for UK issuers.

6. **Do you agree with the FCA's interpretation of the legislative provisions proposed in the draft perimeter guidance in section 18.6.13? If not, please explain why.**
CryptoUK supports the exclusion in article 9QA and broadly agrees with the FCA's interpretation. This includes that 'payment transaction' covers activity that would not be a payment service because of the exclusions in Part 2 of Schedule 2 to the Payment Services Regulations, and that a payment service provider receiving a UK qualifying stablecoin as a fee is unlikely to fall within article 9N.

   Our main concern is the statement that a firm should be able to show the stablecoin is 'accompanied by an order for onward transfer'. Article 9QA only requires it to be held temporarily 'in connection with the execution of a payment transaction'. Common models such as merchant acquiring, payee-initiated collections and refunds involve a short holding period before the onward instruction is finalised. We ask the FCA to confirm that an onward transfer order is one way, not the only way, of showing the link, and that contractual settlement terms identifying the payee and timing may also suffice.

   We would also welcome confirmation of how 'temporarily' applies where the payment is delayed for reasons outside the firm's control, such as sanctions screening or fraud checks.

   Finally, the exclusion applies only to UK qualifying stablecoins. Payments using stablecoins that do not meet that definition cannot rely on this particular exclusion, although other exclusions may be available. UK qualifying status depends on the applicable issuance and permission requirements, not the currency in which a stablecoin is denominated. We encourage the FCA to review with HM Treasury whether equivalent payment activities involving overseas-issued stablecoins could receive proportionate treatment, subject to appropriate safeguards.

7. **Do you agree with the FCA's interpretation of the legislative provisions proposed in the draft perimeter guidance in section 18.6.16? If not, please explain why.**
CryptoUK agrees that the exclusion in article 9R(4) applies only to relevant specified investment cryptoassets, not qualifying cryptoassets, and that it depends on the CSD operator taking on a responsibility no less onerous than if it had safeguarded the

cryptoasset itself. We welcome the inclusion of third-country CSDs, which helps tokenised securities settlement work with international market infrastructure. We have two comments:

- The guidance says a CSD operator would likely give the undertaking only for assets held by its group bare nominee company. The legislation is not limited to nominee structures, so this should be framed as an observation on market practice, not a limitation.
- Please confirm whether a digital securities depository in the Digital Securities Sandbox can fall within article 9R(4) and, if not, how safeguarding under arrangements it operates should be analysed. As we noted in response to the joint Call for Input on tokenisation, clarity on custody and ownership records for tokenised securities is a priority for the market.

8. **Do you agree with the FCA's interpretation of the legislative provisions proposed in the draft amendments to the perimeter guidance in Chapter 8? If not, please explain why.**
CryptoUK agrees with the FCA's interpretation of the Financial Promotion Order amendments, including the new controlled activity of issuing a qualifying stablecoin, the treatment of qualifying stablecoins as a controlled investment and the exemption in article 73ZAA. We welcome confirmation that the article 73ZAA exemption covers many payment-related activities involving UK qualifying stablecoins, mirroring the exclusion in article 9Z10A. We have the following comments:

   - *Other new exemptions:* The Cryptoassets Regulations also add article 29(4B) (communications required or authorised under the market abuse regime for qualifying cryptoassets) and article 67A (communications required or permitted by the rules of an authorised QCATP or by the FCA), and extend the overseas communicator exemptions in articles 30 and 31 to the new cryptoasset controlled activities. The draft PERG 8 amendments do not seem to cover these. Brief guidance on each would help, especially on article 67A, given its relevance to disclosures by UK QCATPs and intermediaries.
   - *Technical services:* As the Explanatory Memorandum confirms, the technical services exclusion in article 9Z2A is not repeated in the financial promotions regime. We ask the FCA to cross-refer in PERG 8 to PERG 18.8.34 and explain when a technical service provider excluded from arranging may still communicate a financial promotion. This would meet our request in response to CP26/13 for clear cross-referencing between PERG 8 and the cryptoasset perimeter guidance.
   - *Differentiated treatment:* Now that qualifying stablecoins are a controlled investment in their own right, PERG 8 should signpost how the rules for promoting UK qualifying stablecoins differ from those for other qualifying stablecoins. As we noted in response to CP26/17, we welcome the move towards differentiated treatment for UK-issued qualifying stablecoins.

9. **Do you agree with the FCA's interpretation of the legislative provisions proposed in the draft perimeter guidance in section 18.4.5A? If not, please explain why.**
CryptoUK agrees that the draft accurately reflects the new definition of 'UK qualifying stablecoin', including that a person with permission to issue a qualifying stablecoin may issue both UK qualifying stablecoins and other qualifying stablecoins. This partly meets our request in response to CP26/13 for guidance on the differences between stablecoins issued in the UK and by foreign entities.

Whether a token is a UK qualifying stablecoin depends on facts known to the issuer, not intermediaries, yet several exclusions turn on it. We therefore ask the FCA to:

- maintain a public, machine-readable record identifying each UK qualifying stablecoin by Digital Token Identifier, contract address and network, consistent with the status service we proposed in our response to CP26/32;
- confirm that a firm may reasonably rely on that record, and on the issuer's Stablecoin QCDD, when determining whether an exclusion is available;
- address the position where an issuer issues both UK qualifying stablecoins and other qualifying stablecoins using the same ticker or smart contract, or across multiple networks, and whether such tokens can be distinguished in practice; and
- clarify the status of tokens issued before the issuer obtained its Part 4A permission, and the consequences for holders and intermediaries if that permission is varied or cancelled.

We also suggest confirming, in line with PERG 18.4.5, that a wrapped or bridged version of a UK qualifying stablecoin is not automatically a UK qualifying stablecoin, so firms do not assume the exclusions extend to it.

10. **Do you agree with the FCA's interpretation of the legislative provisions proposed in the draft perimeter guidance in section 18.4.5B? If not, please explain why.**
CryptoUK welcomes the guidance on the difference between electronic money and qualifying stablecoins, which respondents to CP26/13 requested and the FCA promised in PS26/18. We agree that a product cannot be both, and that each case must be assessed on its facts.

However, several of the listed characteristics may not reliably tell the two apart. Without more explanation, they could create uncertainty for firms that issue, or plan to issue, electronic money recorded on distributed ledger technology:

- Characteristics (1) (minted before it is issued) and (2) (issued using distributed ledger technology) describe the technology and process used, not the legal character of the product. Electronic money may lawfully be recorded on distributed ledger technology, and relying on these factors seems at odds with the technology-neutral approach elsewhere in PERG 18.
- Characteristic (5) (marketing, holding out and treatment by intermediaries) depends in part on the conduct of third parties outside the issuer's control.
- Characteristic (4) (backing assets held at least in part to assure others of a stable value) may also describe funds safeguarded by an electronic money issuer.

We suggest the guidance identify the most telling legal features (such as the purpose of issue and the holder's claim and redemption rights), indicate the weight of the technology-related characteristics, and include an example of DLT-based electronic money.

The FCA should keep this guidance under review as HM Treasury brings stablecoin payments into the payments perimeter, since characteristic (6) relies on the purpose of issue.

11. **Do you agree with the FCA's interpretation of the legislative provisions proposed in the draft perimeter guidance in section 18.5.1? If not, please explain why.**
CryptoUK agrees that the change to PERG 18.5.1 accurately reflects the amendment to article 9M confirming that the offering limb must be carried on from a UK

establishment, consistent with PERG 18.3.5. We would welcome more guidance on two points the draft does not cover:

- Article 9M(2)(a) now covers a person who offers, or arranges for another to offer, a qualifying stablecoin 'or has previously done so, whether before or on or after the coming into force of this article'. Please explain the intended effect of this wording. In particular, please confirm that an issuer that has stopped new issuance but still redeems and holds backing assets remains within article 9M, and how the wording applies to tokens offered before 25 October 2027.
- More clarity on what counts as offering 'from an establishment in the UK' where offers are made through distributors, exchanges or online channels run by group entities or third parties outside the UK, building on PERG 18.5.4 to 18.5.6. This would help international groups considering UK issuance, and reflects our request in response to CP26/13 for more examples on group, outsourcing and white-labelling arrangements.

12. Do you agree with the FCA's interpretation of the legislative provisions proposed in the draft perimeter guidance in sections 18.8.5A and 18.8.5B? If not, please explain why.

CryptoUK agrees with the FCA's interpretation of article 9Z10A and welcomes confirmation that many payment-related activities involving UK qualifying stablecoins will not need dealing or arranging permissions. We also welcome the exclusion in article 9Z10A(4) for title transfer collateral and repurchase arrangements. It applies to all qualifying stablecoins and addresses concerns raised in response to CP26/13 about wholesale collateral, liquidity and settlement. We have the following comments:

- *Scope of 'comprising or related to':* please confirm how broad activity 'related to' a transfer or exchange is. For example, confirm that the exclusion covers, for articles 9T, 9W and 9Y, on- and off-ramp services exchanging UK qualifying stablecoins for money, and exchanging a UK qualifying stablecoin for a specified investment cryptoasset (which is not a qualifying cryptoasset and so is not caught by article 9Z10A(3)). The specified investment leg would still need to be analysed under the existing regulated activities.
- *Right for return:* article 9Z10A(2) disapplies the exclusion where a transfer or disposal is subject to a right for the return of the stablecoin. Please confirm that ordinary payment features, such as refunds, chargebacks, reversing mistaken transfers and redemption with the issuer, are not by themselves such a right, so that payment flows are not caught by accident.
- *FCA rules:* the collateral exclusion does not apply where the original holder is specified, or of a description specified, in FCA rules. We would welcome an indication of whether the FCA intends to make such rules and confirmation that it would consult on them.
- *Other qualifying cryptoassets:* PERG 18.8.5B is framed as covering collateral in qualifying cryptoassets generally, but gives substantive guidance only on qualifying stablecoins. Given how important collateral arrangements are to institutional members, cross-references to PERG 18.6 (title transfer collateral arrangements and safeguarding) and PERG 18.9 (lending and borrowing) would help.
- *Drafting:* paragraph (4) of PERG 18.8.5B refers to an arrangement meeting 'the condition in (1) or (2) above'. We assume the intended reference is to sub-paragraphs (3)(a) and (b).

13. Do you agree with the FCA's interpretation of the legislative provisions proposed in the draft perimeter guidance in section 18.8.18A? If not, please explain why.

Broadly, yes. CryptoUK supports the proprietary trading and market-making exclusions in article 9UA, but asks the FCA to revise PERG 18.8.18A so that its service indicators do not unduly narrow them.

A person trading its own inventory, for its own account and bearing the resulting gains and losses, should be able to rely on article 9UA(a) where it has not undertaken to provide a dealing service to another person. This proportionate approach keeps UK proprietary trading and market making competitive with overseas firms.

We also ask the FCA to provide additional guidance on entities supporting a group's proprietary trading and on automated proprietary trading.

Group employment structures and dealing as agent

Staff are often employed by a separate group services or employing entity rather than by the entity whose business they carry on, for employment, payroll, tax or other organisational reasons. That arrangement should not, by itself, determine whether the employing entity carries on a business of dealing as agent. Article 9UA excludes activity from article 9T, but it does not exclude dealing as agent under article 9W, and the cryptoasset regime contains no exclusion for dealing as agent on behalf of another group member. For the same reasons that ordinary proprietary trading should remain outside the perimeter for dealing services, an entity should not be treated as conducting a separate business of dealing as agent merely because it supports a proprietary trader within the same group.

We also note that for traditional investments, article 69(2) of the Regulated Activities Order excludes dealing as agent (article 21) for another member of the same group and the incoming cryptoasset regime already follows the same approach for most activities: dealing as principal with group members (article 9V(1)(g)), arranging deals for group members (article 9Z5(1)(f)) and safeguarding through a group custodian (article 9O).We ask the FCA to address the agency analysis and the 'business of engaging in' test expressly in PERG 18.2 and 18.8.18A, with examples for both dealing as principal and dealing as agent.

Indicators of a dealing business should include the following, where they relate to actual dealing or execution functions: holding itself out to third parties as providing dealing or execution services; or soliciting clients or marketing those services to the public.These indicators are not exhaustive and should be assessed alongside the nature, continuity and scale of the activity and any applicable exclusions.

For example, an entity marketing an execution service and charging clients, including group entities, a commission for each trade should ordinarily be regarded as carrying on a business of dealing as agent, subject to the statutory conditions and any exclusions..

By contrast,a group technology and operations entity implementing the proprietary trader's instructions through shared systems, remunerated through a fixed allocation of operating costs, with no third-party clients should not be regarded as conducting a separate business of dealing as principal or as agent.

The guidance should also distinguish an execution commission from a technical interface fee. A software fee set in advance and disclosed to users, including one calculated by reference to transaction volume and applied regardless of route or counterparty, should not, by itself, establish a dealing business where the provider performs no dealing function (see also our response to Question 14).

In addition to guidance and for the reasons above, we also encourage the FCA to identify to HM Treasury a legislative amendment to explicitly exclude group activity from the dealing as agent perimeter.

Proprietary trading and automated execution

CryptoUK also asks the FCA to apply the proprietary trading analysis in a technology-neutral manner. Algorithms and smart contracts may implement a trader's own pricing, quoting and inventory strategy without changing the character of the trading. Automated quotation or execution should not, of itself, establish that the trader provides a service or acts on another person's behalf. The guidance should distinguish the ordinary obligations arising from a proprietary trade from a separate undertaking to provide a dealing or execution service.

The four service indicators

We ask the FCA to qualify the four indicators in PERG 18.8.18A as follows, applying them to the substance and purpose of the dealing rather than treating them as automatic grounds for denying the exclusion in article 9UA(a).

- *Retail counterparties.* A counterparty's retail status should not, by itself, establish that a proprietary trader provides a service, whether that status is known or unknown. The distinction should be whether the trader undertakes to serve that person as a client, rather than whether a retail investor can accept its quote.
- *Fees and commissions.* An ordinary bid/offer spread, proprietary trading gain or adjustment to a quote should not, by itself, be remuneration for a dealing service. Conversely, remuneration for an actual execution service should be assessed as such even if included in the price. Labels should not determine the outcome.
- *Ongoing arrangements.* Continuous quotes, repeated trading with the same counterparty and automated price updates should not, without more, establish an ongoing service arrangement. The indicator should identify an undertaking to provide a service beyond the individual proprietary trades.
- *Holding out.* Publishing executable prices or communicating a willingness to buy and sell for one's own account should not, by itself, amount to holding out as a provider of dealing services, including where described as liquidity provision. Nor should the identification of a trader's wallet or smart contract address, by the trader or an independent third party, establish that purpose. Soliciting clients for execution or representing that the entity will deal on their behalf should be assessed separately as evidence of a service relationship.

14. Do you agree with the FCA's interpretation of the legislative provisions proposed in the draft perimeter guidance in sections 18.8.25 to 18.8.35? If not, please explain why not.

CryptoUK welcomes the technical services exclusion in article 9Z2A, which responds to concerns raised by our members and many others in response to CP26/13 about how broad the arranging activity is. We broadly agree that the exclusion separates non-discretionary technical access from substantive intermediation, as the Explanatory Memorandum indicates. We especially welcome confirmation that:

- a service does not cease to be technical because it is designed specifically for cryptoasset transactions, operates commercially, charges a fee or provides a convenient means of access;
- added value or additional features do not, of themselves, make the exclusion unavailable;

- ‘allows’ means facilitates, and the technical service need not be the only means of access;
- a decentralised protocol need not provide a service, carry on a regulated activity or be a person capable of being authorised; and
- limiting access for technical security or legal compliance reasons will not necessarily amount to substantive intermediation.

We agree that the arranging exclusion does not itself determine the application of the financial promotions regime or the Money Laundering Regulations. However, the FCA should expressly confirm that the statutory conditions of each regime must be satisfied independently: providing an excluded technical interface does not, by itself, establish that the provider communicates a financial promotion or carries on an activity subject to AML registration or compliance requirements. Parts of the guidance also risk narrowing the technical services exclusion beyond what the legislation requires and could be more internally consistent.

Routing by objective rules.
Draft PERG 18.8.30 treats routing ‘by reference to an assessment of price, liquidity, speed, transaction costs, counterparty risk or likely outcome’ as a sign of discretion, but also treats routing by ‘predetermined objective rules’ as non-discretionary. Many interfaces route orders by a fixed, disclosed rule such as best quoted price, with the user setting the parameters. If any such rule counted as discretion, few interfaces could use the exclusion. We ask the FCA to reconcile these passages and distinguish user-directed execution of disclosed objective rules from a provider exercising qualitative judgement on the user’s behalf. Software design choices alone should not establish such judgement. The assessment should address who controls the relevant choices and whether the provider assumes responsibility for determining material transaction terms or outcomes.

Substantive participation.
Some matters in PERG 18.8.31, such as whether A ‘receives, combines, modifies or routes orders as part of the transaction process’ or ‘structures the transaction process’, would, read literally, describe almost any interface, because passing on a user’s instruction always involves receiving and routing it. We suggest limiting these matters to activity that involves discretion or otherwise materially determines the terms or outcome of the transaction beyond implementing the user’s instructions. Routine formatting, transmission, security checks and user-directed routing should not, by themselves, establish substantive intermediation.

Remuneration.
We welcome the statement that transaction-linked remuneration is not decisive. Many technical providers charge per-transaction or volume-based interface fees as standard. Please confirm that a fee based on transaction volume, but not dependent on the user dealing with a particular counterparty, venue or protocol, is unlikely by itself to indicate substantive intermediation.

Overseas regulated services.
Under PERG 18.8.29, the exclusion is unavailable where V needs no authorisation because it is outside the UK. So a UK provider giving clients access to an overseas regulated venue cannot use the exclusion, while an equivalent overseas provider may be outside the perimeter altogether. We encourage the FCA to raise this imbalance with HM Treasury and, meanwhile, signpost other relevant exclusions.

Positive statements.

We encourage the FCA to include positive statements of functions that will usually fall within the exclusion, such as wallet software sending a user-signed transaction to a protocol the user selects, or an interface passing orders unchanged to an authorised venue the user selects. The guidance should also confirm that technical maintenance and security updates do not, by themselves, remove the exclusion, while preserving a separate assessment where a provider actually controls or operates a regulated financial service.

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