EVIA Consultation Response; HMT_FFS Regulatory Regime for Cryptoassets; CP & CfE

Summary Points

i. Our response supports and defers to that of AFME, without seeking to replicate the points in that detailed submission but endeavouring to focus on the activities of operating wholesale trading venues and arranging services.

ii. The UK Regime should clearly distinguish between wholesale and retail frameworks. Whilst it is clearly correct to include the financial services regulation of cryptoassets within the regulatory framework established by the UK's Financial Services and Markets Act 2000 (FSMA), we urge the UK to draw a Brightline between a domestic retail regime which looks to combine proper regulation and supervision in a business sensitive environment, and an expanded wholesale perimeter which deploys the existing principles and activities-based handbook to cover balance sheet transactions and asset classes incorporating Digital and Crypto based workflows.

iii. The wholesale regulations should be principles based and integrated into the wider UK FSMA regime. As with TradFi, this needs to allow for firms to fail simply, rather than being overly prescriptive and restrictive.

iv. We agree with the principles underpinning the UK's wholesale approach, namely: "*Same risk, same regulatory outcome*", "*Proportionate and focused*", and "*Agile and flexible*". We would urge that the same definition of "cryptoasset" is deployed across the HMT approach, clearly including that used in the FS&M Bill, and that this be the same as any global definition recognised by the Financial Stability Board and other global standard setting bodies.

v. Across the potential scope for wholesale market operations and institutional use-cases, the adoption and inclusion of digitalised securities, of tokenised collateral, cryptoassets and e-money wallets may well be better served without creating separate asset classes, segregated permissions, and novel legal definitions. We recall that G20 regulations were all reformed and rebuilt after the GFC so as to be "technologically neutral".

vi. We urge the UK to maintain the effective overseas and cross-border aspects of the existing TradFi approach, which means that the proposed scope expansion should not seek to be extraterritorial any more than it is for financial markets. Rather, the UK should build on the OPE[1] regime along with current FCA work to

[1] the overseas persons exclusion (OPE) in Article 72 [RAO] remains an important feature of the UK regulatory regime, in particular for wholesale markets, and the exclusion should be retained for regulated activities in respect of Regulated Cryptoassets. However, if HMT determines to expand the territorial scope of FSMA-authorisation requirements in section 19 FSMA to apply to relevant activities carried out both "*in or to*" the UK, the OPE should similarly be expanded to

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define the regulatory and the multilateral perimeters and seek to continue to promote international coordination and deference to global standard setting bodies and the G20 institutions. This should particularly consider the role for AML/CFT and for Market Abuse.

Consultation Questions

Chapter 2 – Definition of Cryptoassets and Legislative Approach

1. Do you agree with HM Treasury's proposal to expand the list of "specified investments" to include cryptoassets? If not, then please specify why.

Yes, we agree, but add the comment that for wholesale markets [2]it is more important to expand the activity based supervisory approach rather than any basis solely predicated on instrument and product definitions since these are nascent and the application of digital protocols to ongoing services should not result in fragmentation.

Simply put, just because an asset or a derivative has a digital representation, a crypto underlier, or is held on a virtual ledger; it may not mean that the product is not fungible with a more traditional predecessor or should not be traded as spreads, packages, collateral or contingent against the TradFi estate of MiFID2 within institutional balance sheets.

The risks and treatment of these products for wholesale markets should be dealt with under prudential and conduct rules, rather than by the location of the regulated perimeter or definitional specificities. It is clear that the Basel Committee has already adopted a highly conservative approach to derivatives based on Cryptoassets, but equally the deployment of tokens to ensure settlement finality and realtime collateralisation or payments can add measurably to financial stability.

cover additional activities in in their entirety, where they involve Regulated Cryptoassets, such as safeguarding and/or administration (for which the OPE is not currently relevant) and arranging (for the OPE generally is only relevant for activities with/through affiliates of the overseas persons who are authorised and, not for example, activities conducted with or for unaffiliated wholesale market participants). the OPE, if appropriately adapted, should allow UK cryptoasset services providers to export their cryptoasset services across the world in a manner consistent with the existing regime that applies to Traditional Assets. Over any medium term this open approach often results in international firms establishing a permanent presence in the UK as the volume of their UK business grows.

[2] Under the term "Wholesale Markets" we mean the common language understanding that includes Professional Customers, Eligible Counterparties, corporates, overseas institutions, and public authorities, but specifically excludes retail customers and individuals.

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One illustration of this point is demonstrated in the work over 2022/23 of the Anna-DSB Product Committee working group on Virtual Assets ["DAS-SC"]. This group set out to make recommendations to the FSB and to ISO for a Unique Product Identifier ["UPI"] categorisation of derivatives based on virtual assets[3]. When these were finally delivered, the opinion did not deem that a new and addition fundamental asset class for digital asset underliers ["V"] was required because most use-cases for any such *Security Tokens* and *Referential Tokens and their derivatives* would only create a duplication over or in parallel to the existing high-level set of 13 asset classes[4].

The regulatory segregation of cryptoassets and digital workflows from existing wholesale markets would likely diminish their use-cases and benefits. Rather, the FCA should have the ability to add the activity of handling or dealing in these products alongside other such permission and licences.

2. Do you agree with HM Treasury's proposal to leave cryptoassets outside of the definition of a "financial instrument"? If not, then please specify why.

Yes, EVIA is supportive of this approach since it follows from our principles for outcomes, as well as our ISO classification discussion in question 1, that separate rules should not apply to cryptoassets under the UK perimeter framework from those which apply to MiFID financial instruments.

For wholesale markets, we would advocate for a harmonised approach of applying cryptoassets into the perimeter of "financial Instruments" where appropriate by way of an extended activities permission. Just because an instrument has been issued on DLT-based technology, is a derivative of such, or may be cleared/settled into a virtual financial market infrastructure, it should still be able to enter into a MiFID multilateral trading system.

We envisage that the majority of relevant trading activities would take place in forwards or derivatives upon cryptoassets and digitalised instruments and therefore would

[3] Classifications using the ISO 10962 (CFI) category were discussed by members of the DAS-SC and recommendation included:

1. Agreed definitions for the main classifications of digital asset underliers (i.e.: Security Token, Referential Token)
2. A recommendation for the identification and classification of Security Tokens
3. A recommendation for the short-term identification and classification of Referential Tokens.
4. A recommendation for the long-term identification and classification of Referential Tokens.

[4] These currently are: Equities [E]; Debt [D]; Collective Investment Vehicles [C]; Entitlement (Rights) [R]; Listed Options [O]; Futures [F]; Swaps [S]; Non-listed and complex listed options [H]; Spots [I]; Forwards [F]; Financing [L]; Referential instruments [T]; & Misc. / Others [M]

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advocate for these instruments to exist as secondary CFI characteristics or as attributes under the existing scope of ISO 10962 asset classes. This would naturally mitigate towards the HMT proposed approach.

3. Do you see any potential challenges or issues with HM Treasury's intention to use the DAR to legislate for certain cryptoasset activities?

EVIA is supportive of this approach since it draws upon the successful experience of the pre MiFID2 ancillary activities exemptions in the UK, and because the cogent alternatives would not allow for sufficient flexibility on the part of either certain market participants, nor on that of the FCA. The proposed DAR approach would appear to form the basis for the proportionate and elective inclusion of the fuller set of relevant activities than may otherwise be the case under solely a comprehensive regime.

The challenges to the DAR approach may primary relate to its approach to overseas activities and its interaction with the OPE, as well as in not holding any direct parallel regime in the financial services perimeter within the other G20 specified regimes to which the UK would naturally seek mutual recognition.

Chapter 3 – Overview of the Current Regulatory Landscape for Cryptoassets

4. How can the administrative burdens of FSMA authorisation be mitigated for firms which are already MLR-registered and seeking to undertake regulated activities? Where is further clarity required, and what support should be available from UK authorities?

All EVIA member firms are authorised by their relevant competent authorities to operate multilateral trading venues and carry-out arranging activities, whilst some also hold the addition UK MLR-registrations to carry on Regulated Cryptoasset-related regulated activities.

For firms who are MLR registered already, as well as those which hold licenses to operate MTF / OTF, or those which have permissions relating to the "arranging and bringing about" of trading interests in financial instruments; then a Variation of Permissions should be accessible such that what could otherwise be the full gamut of FSMA authorisation's is not applied.

More broadly, given our answer to question 2 above, the regulatory application to be able to arrange and to admit cryptoassets onto trading venues such as those currently existing MTFs and OTFs should be applied under an FCA variation process as applies to the permissioned entity subsidiaries or via MIC-Segments thereof.

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5. Is the delineation and interaction between the regime for fiat backed stablecoins (phase 1) and the broader cryptoassets regime (phase 2) clear? If not, then please explain why.

Yes, the phasing is clear.

6. Does the phased approach that the UK is proposing create any potential challenges for market participants? If so, then please explain why.

For the admittance onto trading venues, arranging activities or access to post-trading infrastructures, we do not currently foresee any challenges from the phased approach that the UK is proposing. The UK should consider a temporary or pre-authorisation pathway for instances where contingent forward phasing does present a hurdle.

It may well be envisaged that the forwards and derivatives to as yet unregulated native tokens and assets would be admitted into trading onto trading venues within the scope of FSMA. Clearly that would be no different to the current situation across many TradFi assets, albeit that any ISO and CFI classification of the underlying digital native instruments may not be in place for such cryptoassets as it is currently for underliers that may or may not be financial instruments. By deploying interim ISO and CFI classifications via an industry protocol to deploy this under the "Commodity" asset class and "Other" CFI classification, this should not pose a reference data and regulatory reporting barrier.

Chapter 4 – Crypto Activities

7. Do you agree with the proposed territorial scope of the regime? If not, then please explain why and what alternative you would suggest.

No, EVIA does not concur with the proposals because we find the potential application of the proposed territorial scope of the regime difficult to fully comprehend. Rather, for wholesale market participants the current regime is adequate.

The effect of the proposals in paragraphs 4.6 and 4.7 such that overseas trading venues may need to subsidiarise onshore in order to admit UK participants would likely create barriers not seen to date under the operation of the Overseas Persons Exclusion, and may likely create a fragmentation of liquidity (which is disproportionate/generally undesirable in wholesale markets). It is likely that the proposals are couched in the consideration solely of service provision to retail clients and 'natural persons,' but the effect could be disproportionate and unintended. Clearly these proposals should be in

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line with the TradFi markets for Legal persons in the UK who are not classified as retail clients. Any separate retail considerations may be appropriate, but these are outside our use-cases.

By adopting an approach that encompasses both the wholesale and the retail markets, the HMT proposals appear to take little account of the existing Overseas Persons Exclusions available for TradFi financial instruments and which would presumably therefore be available for any forwards and derivatives on specified investments, especially if admitted to MTFs and to OTFs.

We are not clear as to how the "reverse solicitation" approach could be put into practice and policed, given that it is not a legal term in FSMA nor the current FCA handbook. We do not consider that it is straightforward and compatible with the OPE.

Furthermore, we consider that the proposed wide scope would present considerable challenge for the FCA to supervise. By entering cryptoassets under the scope of the current FCA Handbook provisions, a broad and open capacity for wholesale activities to be carried out across third countries is created, whilst still requiring a "with and through" intermediary clause, to remains appropriately restrictive for any non-licenced counterparties other than the DAR provisions.

We again reiterate the AFME comments on this topic.

8. Do you agree with the list of economic activities the government is proposing to bring within the regulatory perimeter?

We do agree with the proposals that it is those financial services activities that will be regulated, rather than the asset itself.

EVIA also reiterates the point made in answer to question 1, that for wholesale markets, a deferential pathway through MiFID2/MiFIR should be a normal and usual alternative to any prescriptive activities such as those suggested in question 8. It is currently not clear to us whether the intention is to bring this activity within the regulatory perimeter by following the approach for MTFs or OTFs (i.e., to introduce a new article 25DB to the RAO), or whether the proposed approach is a parallel domestic regime primary for retail deployment.

Notwithstanding the point above, EVIA does not agree with the terminology used in table 4A, of "*Exchange activities*" because the term is broad and unspecified. As the consultation paper itself sets out, *cryptoasset exchanges* conduct many more activities than solely operating a trading venue. Therefore the proposed approach is immediately inconsistent with MiFIR and any overseas regulations that specify trading venues. This is another example of the requirement for a Brightline delineation between retail activities and wholesale markets.

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The approach suggested also omits order transmission activities such as arranging and bringing-about. This approach is immediately inconsistent with the current FCA work to specify the multilateral perimeter. This is important because the scope to supervise the same activities under the same regulation would be nullified as set out in the intent behind the current multilateral perimeter work by the FCA (and by other third country competent authorities).

We would advocate that the term "exchange" be removed, and an approach that defers to the MiFIR structure be deployed wherein arranging activities are specified alongside the multilateral perimeter that sets forth trading venues. Other activities carried out under the broad term of "exchange", such as trade registration, trade settlement, allocations, novation and clearing should be specified separately as they are currently for TradFi. It may be that a more specific combined service could be provided for retail distribution, but this should neither be conflated with the terms "exchange" nor "trading venue".

In addition to being unspecific, we note that the proposed umbrella activity delineation of "exchange activities" carries with it potential conflicts of interest as the consultation paper refers to as "*vertical integration*" or "*agglomeration*[5]". This should likely present a set of supervisory hurdles to the FCA, firstly in the form of conflicts of interest and PFOF; secondly by unregulated activities that self-characterise as outside the multilateral perimeter; and thirdly in the form of inadequate competition, open access, and data provision. A functional and MiFID based set of activity references would make the UK marketplace more fair and effective by being more straightforward to supervise.

9. Do you agree with the prioritisation of cryptoasset activities for regulation in phase 2 and future phases?

Yes, EVIA generally agrees, but we note our comments in response to question 6 such that either a temporary regime may be needed to preview the stage 2 aspects where necessary, or where the stage 2 instruments are admitted onto MiFIR trading venues in advance of that stage, then the FCA be provided with the scope to make the necessary time-limited and contingent derogations to the scope of permissions and to supervision.

10. Do you agree with the assessment of the challenges and risks associated with vertically integrated business models? Should any additional challenges be considered?

[5] 4.10 (pp 29) – " *Exchanges which combine a number of regulated activities may present conflicts of interest as well as complex and sometimes reinforcing risk profiles, as demonstrated by the recent failure of FTX.* "

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Yes, EVIA firmly agrees risks associated with vertically integrated business models and refers to the points already made. Since the appropriate controls and mitigations frameworks are already in operation for authorised firms under the provisions in FCA handbook, we reiterate that a Brightline segregation of a domestic regime for retail facing activities should be delineated together with the inclusion under MiFID2/MiFIR for wholesale activities which will be cross-border and institutional in nature.

In respect of wholesale activities, we would encourage HMT to reinstate the "Open Access" provisions that were originally within the onshored MiFID2, into any extending scope for cryptoasset services. This would separate the widespread vertical integration and siloed business models currently observed in either a retail service offering, or the institutional services could be open to competition with horizontal and specialist business models. We believe that beyond the competition and innovation benefits, this would create a peer-to-peer transparency, offer choice and shopping-around, and mitigate any emergent systemic risks by encouraging the development of both trust mechanisms and competitive choice.

We again reiterate the AFME comments on this topic.

11. Are there any commodity-linked tokens which you consider would not be in scope of existing regulatory frameworks?

We do not currently recognise any commodity-linked tokens falling out of the scope but reiterate the necessary deference to a MiFID2/MiFIR pathway.

12. Do you agree that so-called algorithmic stablecoins and crypto backed tokens should be regulated in the same way as unbacked cryptoassets?

We agree with the HMT approach but reiterate the necessary deference to a MiFID2/MiFIR/SFTR/EMIR pathway where more appropriate for wholesale markets.

13. Is the proposed treatment of NFTs and utility tokens clear? If not, please explain where further guidance would be helpful.

We consider that wholesale markets any use-case for NFTs and for Utility tokens remains either de-minimis or otherwise unclear.

Chapter 5 – Regulatory Outcomes for Cryptoasset Issuance and Disclosures

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14. Do you agree with the proposed regulatory trigger points – admission (or seeking admission) of a cryptoasset to a UK cryptoasset trading venue or making a public offer of cryptoassets?

EVIA supports the high-level regulatory outcomes set out in paragraph 5.5 and broadly agrees with the proposed regulatory trigger points. We would however ask that a functional condition be applied to the rules both in terms of secondary markets venues that do not issue cryptoassets, and regarding a "*parallel pathway*[6]*"* for such instruments to be traded on existing MTFs and OTFs. As operators of secondary markets on MTFs and OTFs EVIA members are not usually involved with listing or public offer arrangements but need to fulfill the MiFIR requirements around making instruments available for trading for wholesale market participants.

We would add a further trigger point, which would be the admission of a cryptoasset to a UK trading venue (as opposed to being constrained to only a *cryptoasset trading venue*). This is in line with our earlier comments that a wholesale regime should encompass a parallel pathway into the broader scope of MiFID2/MiFIR and enables appropriate flexibility to the FCA.

We note the proposed rules do not consider any derivatives or forwards on cryptoassets which otherwise are assumed to be reserved for MiFID2/MIFIR. Similarly members currently admit financial instruments by their ISIN, it may be more appropriate for the UK regime to enable the admission of a cryptoasset by either its ISIN (ISO 6166) or UPI (ISO 4914).

We query the absence of the OTF under the proposals. Noting that the UK FRF intention is to remove both MTF and OTF from the FSMA derogation and replace these as permissions in the FCA Handbook, the proposed language would be better serves by referring to UK trading venues. We further note that the language in the consultation derives from UK equity listing rules, yet the UK FRF intention is to allow for OTFs to facilitate the trading of cash equities currently disallowed under the onshored REUL.

Financial promotions as such are not relevant in the case of wholesale market MTFs and OTFs, where a UK trading venue only admits wholesale market counterparties. Therefore the requirement for a trading venue to provide a prospectus or a disclosure document should not be applicable where the MiFID2/MIFIR venue organisation requirements form the parallel pathway and the requirements, including suitability, under FCA Handbook are applicable.

15. Do you agree with the proposal for trading venues to be responsible for defining the detailed content requirements for admission and disclosure documents, as well as

[6] A parallel pathway considers both *cryptoasset trading venues* and *MiFIR trading venues offering cryptoassets*

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performing due diligence on the entity admitting the cryptoasset? If not, then what alternative would you suggest?

EVIA supports the high-level regulatory outcomes set out in paragraph 5.5 and would suggest that a functional condition be applied to the rules both in terms of secondary markets venues that do not issue cryptoassets, and regarding a parallel pathway for such instruments to be traded on existing MTFs and OTFs. We query the absence of the OTF under the proposals, and advocate that the high-level approach should specify authorised trading venues in order to apply the core principals between RMs and other venues.

The proposals for trading venues to make detailed content requirements for admission and disclosure documents appear to be more related to an equity listing environment than to a fixed income and derivatives model. For instance, security tokens are securities and should therefore be treated consistently with securities and the same applies to derivatives. They should be limited to the relevant situations where such processes are appropriate, but which would not include the trading of many Security Tokens or Referential Tokens, nor of their forwards and derivatives by institutional counterparties. The most straightforward way to accommodate a UK specific regime alongside the requirements for wholesale markets in securities and derivatives would be to facilitate a parallel pathway directly into MiFID2/MiFIR.

As operators of secondary markets on MTFs and OTFs EVIA members are not usually involved with listing or public offer arrangements, but they do need to fulfill the MiFIR and MAR requirements around making instruments available for trading for wholesale market participants. Under the domestic UK cryptoassets regime it may be helpful to specify a '*primary MTF*'. By creating burdensome requirements such as imposing liability on the trading venue in respect of the content requirements or requiring the trading venue to take on the responsibilities of the issuer, this would disincentivise the establishment of venues in the UK and instead operate via intermediating brokers.

Clearly where the instrument is a cryptoasset-derivative or forms a package, spread, or index, requirements to perform due diligence on the entity admitting the cryptoasset would not be appropriate. In this regard the proposed rules should have a Brightline segregation of a domestic regime for retail facing activities versus the derogation for the FCA to apply functional and activities-based proportionality to attain the high-level regulatory outcomes set out in paragraph 5.5.

16. Do you agree with the options HM Treasury is considering for liability of admission disclosure documents?

EVIA supports the high-level regulatory outcomes set out in paragraph 5.5 and would suggest that a functional condition be applied to the rules both in terms of secondary markets venues that do not issue cryptoassets, and regarding a parallel pathway for

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such instruments to be traded on existing MTFs and OTFs as opposed to a specified UK domestic regime for retail functionality.

17. Do you agree with the proposed necessary information test for cryptoasset admission disclosure documents?

We consider that the proposals for cryptoasset admission disclosure documents, should be only applicable for a retail-facing UK domestic regime.

18. Do you consider that the intended reform of the prospectus regime in the Public Offers and Admission to Trading Regime would be sufficient and capable of accommodating public offers of cryptoassets?

EVIA supports the high-level regulatory outcomes set out in paragraph 5.5 and would suggest that a functional condition be applied to the rules both in terms of secondary markets venues that do not issue cryptoassets, and regarding a parallel pathway for such instruments to be traded on existing MTFs and OTFs as opposed to a specified UK domestic regime for retail functionality.

Chapter 6 – Regulatory Outcomes for Operating a Cryptoasset Trading Venue

19. Do you agree with the proposal to use existing RAO activities covering the operation of trading venues (including the operation of an MTF) as a basis for the cryptoasset trading venue regime?

EVIA does agree with this approach. Again we note the absence of any reference to the OTF alongside those to the MTF, and the points made above in seeking a generic venue reference in respect of the proposed changes to the MTF and OTF legislative position under the FRF, level playing field criteria and ease for overseas mutual recognition.

We would also note the forthcoming UK policy guidance around the establishment of the multilateral perimeter which would additionally set out the regulatory perimeter, but which will not sit inside the RAO.

20. Do you have views on the key elements of the proposed cryptoassets trading regime including prudential, conduct, operational resilience, and reporting requirements?

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We support the nine categories of controls and requirements set out by HMT, and it is appropriate for the FCA to develop these in further detail beyond the 'high level outcomes' with specific regard to the principle of, "*same activity, same risk, same regulatory outcome*."

As per prior, further considerations should be, a high-level requirement for open access, reference to the FCA guidance on the perimeter conditions for a multilateral trading system, and parallel pathway for such instruments to be traded on existing MTFs and OTFs as opposed to a specified UK domestic regime for retail functionality.

21. Do you agree with HM Treasury's proposed approach to use the MiFID derived rules applying to existing regulated activities as the basis of a regime for cryptoasset intermediation activities?

Yes, EVIA are fully supportive of the five requirements under paragraph 7.4, but we would again reiterate that adding permissions for cryptoassets to existing trading venues under a parallel pathway would encompass the full set of trading venue organisation requirements and outcomes which are more appropriate to a wholesale and cross border regime. To avoid regulatory arbitrage and the inclusion of functionality similar technologies, we would also advocate that reference is also made to the FCA guidance on the multilateral perimeter when it is published in the near future.

We are also supportive of paragraph 7.5 for transposing the approach under Art 25 of the RAO regarding "arranging deals in investments" and "making arrangements with a view to transactions in investments." Again where a parallel pathway would be accommodated, we underline that the RAO, including its overseas persons exemptions, would ordinarily apply to existing wholesale activities and trading venues.

22. Do you have views on the key elements of the proposed cryptoassets market intermediation regime, including prudential, conduct, operational resilience, and reporting requirements?

The inclusion of Table 7.A for the design features for cryptoasset market intermediation regime is appropriate for the creation of a UK domestic regime and as such we are supportive of the nine categories of controls and requirements set out in the proposals. As per prior we would advocate for the addition to derogate a parallel pathway for a wholesale regime wherein authorised firms arranging deals in investments" and "making arrangements with a view to transactions in investments," who do not offer services to retail customers already fall under the full scope of the ROA.

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Chapter 8 – Regulatory Outcomes for Cryptoasset Custody

23. Do you agree with HM Treasury's proposal to apply and adapt existing frameworks for traditional finance custodians under Article 40 of the RAO for cryptoasset custody activities?

No comment.

24. Do you have views on the key elements of the proposed cryptoassets custody regime, including prudential, conduct and operational resilience requirements?

No comment.

Chapter 9 – General Market Abuse Requirements

25. Do you agree with the assessment of the challenges of applying a market abuse regime to cryptoassets? Should any additional challenges be considered?

Whilst the challenges presented in the consultation are valid, we would refer to the work describing patterns of poor behaviour and types of misconduct published by the UK Financial Markets Standards Board (FMSB) and updated in May 2022 for new digital asset classes, including crypto assets and nonfungible tokens[7]. Set out below, we underline the FMSB premise that these are types of misconduct are longstanding and unchanging in their basic premise.

This is why we believe that the inclusion of cryptoassets and their derivatives into the current wholesale regime under a parallel pathway to a bespoke domestic regime does not present new and insurmountable risks.

1. Price manipulation
    a. Spoofing/layering
    b. Ramping
    c. Pools
    d. Corners/squeezes
    e. Bull/bear raids
2. Circular trading
    a. Wash and matched trades

[7] Updated analysis published on misconduct in global financial markets - Financial Markets Standards Board (fmsb.com) & https://fmsb.com/wp-content/uploads/2022/05/22020525_BCA_Report_2022_FINAL.pdf

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   b. Money pass and compensation trades
   c. Parking
3. Misuse of inside information
   a. Insider dealing
   b. Unlawful information disclosure
4. Reference price influence
   a. Manipulation of submissionbased fixes
   b. Manipulation of transactionbased fixes
   c. Portfolio price manipulation / window dressing
   d. Triggering or protecting barriers
5. Improper order handling
   a. Disclosure of client order information
   b. Front running
   c. Cherry picking
   d. Triggering or protecting stop losses and limits
6. Misleading customers and/or markets
   a. Disseminating inaccurate or false information to clients or markets

26. Do you agree that the scope of the market abuse regime should be cryptoassets that are requested to be admitted to trading on a cryptoasset trading venue (regardless of where the trading activity takes place)?

Whilst we broadly support the approach adopted in table 9.A. for the design features for cryptoasset market abuse regime, it is worthwhile to consider where the same instruments may be admitted to ordinary MTFs and OTFs and whether the test for "same activities, regulation, same outcomes" still applies. We note that MTFs and OTFs, have participants rather than members, and do not have the authority to sanction either individuals other than to assess them not to be fit and proper. The example given for the deployment of public blacklists is not a feature of wholesale markets, neither for corporate entities nor for natural persons as individuals which is perhaps more redolent of the FCA public register. Such a proposed framework appears somewhat prescriptive, rather than being constrained to overarching principles and outcomes; and deviates from the current FCA approach as well as that in third countries.

We would also query the simple application of terms such as, "*where the person is based or where the trading takes place,*" since natural persons should be the already provisions LEIs and "trading" should be understood in terms of transmission, arrangements, multilateral venue activities or trade formalisation in a financial market infrastructure whether virtual, on chain or other. In order to make the application more straightforward and competitive in an international context, EVIA would again recommend a wholesale regime, at least as a parallel regime to any bespoke UK domestic approach, wherein the existing market abuse regime should apply in full and there is no capacity for individuals or retail customers.

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27. Do you agree that the prohibitions against market abuse should be broadly similar to those in MAR? Are there any abusive practices unique to cryptoassets that would not be captured by the offences in MAR?

We refer to our answer to Q25 regarding the FMSB opinion on generic patterns of poor behaviour and types of misconduct. It also follows from prior answers that whilst the high retail participation in the cryptoassets market which may require a domestic and retail facing regime, we underscore the need for a parallel path under the wholesale regime for institutional and international market participants as they evolve.

28. Does the proposed approach place an appropriate and proportionate level of responsibility on trading venues in addressing abusive behaviour?

The approach sets out a pragmatic approach for retail facing domestic regime under the appropriate high-level principles for the risks within the vertically integrated exchanges which are currently commonplace in offering services to retail customers.

In practice, we would again advocate for the capability of an institutional regime that is established in parallel path under the existing MAR and MiFID2/MiFIR regime, which is characterised by more horizontal specialisations of trading venues and a number of financial market infrastructures that may not bundle together the issuance and the post -trading capabilities for any on-chain life-cycle events. Clearly these paths require an equivalence in outcomes, but the FCA should have the flexibility to consider the risks and conflicts as it normally does under both conduct and prudential considerations achieve those by the application of its own supervisory proportionality.

29. What steps can be taken to encourage the development of RegTech to prevent, detect and disrupt market abuse?

The adoption of monitoring solutions using Artificial Intelligence and Machine Learning (AI/ML) techniques could make significant changes to the capabilities surrounding market surveillance by trading venues and other aspects of the compliance culture such as data led predictive analysis.

KYC and onboarding requirements have presented challenges, even in respect of institutional participation within the wholesale cross-border environment under more enhanced requirements. The deployment of pseudonymised digital identities of market participants under the LEI regime holds further capabilities for a more effective cross border deployment of MAR. In respect of these and other RegTech frontiers, clearly the Sprints and the ongoing facilitation of regulatory sandboxes, along with and the adoption of mutual recognition to other jurisdictions would appear to be immediate ways to encourage RegTech and SupTech applications.

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30. Do you agree with the proposal to require all regulated firms undertaking cryptoasset activities to have obligations to manage inside information?

While we support the overall principle of the approach, we believe is necessary for there to be clear guidance as to the instances in which information held by a regulated firm in respect of an asset would constitute inside information and how it should be managed.

Chapter 10 – Regulatory Outcomes for Operating a Cryptoasset Lending Platform

31. Do you agree with the assessment of the regulatory challenges posed by cryptoasset lending and borrowing activities? Are there any additional challenges HM Treasury should consider?

No comment as member firms have not discussed operating any Cryptoasset Lending Platform.

32. What types of regulatory safeguards would have been most effective in preventing the collapse of Celsius and other cryptoasset lending platforms earlier this year?

No comment.

33. Do you agree with the idea of drawing on requirements from different traditional lending regimes for regulating cryptoasset lending? If so, then which regimes do you think would be most appropriate and, if not, then which alternative approach would you prefer to see?

No comment.

34. Do you agree with the option we are considering for providing more transparency on risk present in collateralised lending transactions?

No comment.

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35. Should regulatory treatment differentiate between lending (where title of the asset is transferred) vs staking or supplying liquidity (where title of the asset is not transferred)?

No comment.

Chapter 11 – Call for Evidence: Decentralised Finance (DeFi)

36. Do you agree with the assessment of the challenges of regulating DeFi? Are there any additional challenges HM Treasury should consider?

EVIA agrees with the assessment and moreover the embedding of the principle set out such that the regulatory outcomes and objectives described in the preceding chapters should apply to cryptoasset activities regardless of the underlying technology, infrastructure, or governance mechanisms.

Drawing on the experience of the prior UK MiFID ancillary activities regime, so currently we would view the DAR regime as the most appropriate tool to enable a broad and open access approach toward accessing institutional trading venue liquidity via such DeFI protocols as broadly considered in Chapter 11. Beyond institutional participation under legal certainties of establishment and therefore of mutual recognition to a home regulator, the discussion becomes more abstract.

37. How can the size of the "UK market" for DeFi be evaluated? How many UK-based individuals engage in DeFi protocols? What is the approximate total value locked from UK-based individuals?

No comment.

38. Do you agree with HM Treasury's overall approach in seeking the same regulatory outcomes across comparable "DeFi" and "CeFi" activities, but likely through a different set of regulatory tools, and different timelines?

No comment.

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39. What indicators should be used to measure and verify "decentralisation" (e.g., the degree of decentralisation of the underlying technology or governance of a DeFi protocol)?

No comment.

40.Which parts of the DeFi value chain are most suitable for establishing "regulatory hooks" (in addition to those already surfaced through the FCA-hosted cryptoasset sprint in May 2022)?

No comment.

41. What other approaches could be used to establish a regulatory framework for DeFi, beyond those referenced in this paper?

No comment.

42. What other best practices exist today within DeFi organisations and infrastructures that should be formalised into industry standards or regulatory obligations?

No comment.

Chapter 12 – Call for Evidence: Other Cryptoasset Activities

43. Is there a case for or against making cryptoasset investment advice and cryptoasset portfolio management regulated activities? Please explain why.

No comment.

44. Is there merit in regulating mining and validation activities in the UK? What would be the main regulatory outcomes beyond sustainability objectives?

No comment.

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45. Should staking (excluding "layer 1 staking") be considered alongside cryptoasset lending as an activity to be regulated in phase 2?

No comment.

46.What do you think the most appropriate regulatory hooks for layer 1 staking activity would be (e.g., the staking pools or the validators themselves)?

No comment.

Chapter 13 – Call for Evidence: Sustainability

47.When making investment decisions in cryptoassets, what information regarding environmental impact and / or energy intensity would investors find most useful for their decisions?

No comment.

48.What reliable indicators are useful and / or available to estimate the environmental impact of cryptoassets or the consensus mechanism which they rely on (e.g., energy usage and / or associated emission metrics, or other disclosures)?

No comment.

49.What methodologies could be used to calculate these indicators (on a unit-by-unit or holdings basis)? Are any reliable proxies available?

No comment.

50. How interoperable would such indicators be with other recognised sustainability disclosure standards?

No comment.

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51. At what point in the investor journey and in what form, would environmental impact and / or energy intensity disclosures be most useful for investors?

No comment.

52. Will the proposals for a financial services regulatory regime for cryptoassets have a differential impact on those groups with a protected characteristic under the Equality Act 2010?

No comment.

Ends.

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