Crypto Council for Innovation

Friday May 23
EMAIL SUBMISSION TO: cryptoasset.legislation@hmtreasury.gov.uk

To whom it may concern

Re: Feedback on Draft Statutory Instrument *The Financial Services and Markets Act 2000 (Regulated Activities and Miscellaneous Provisions) (Cryptoassets) Order 2025*, and accompanying Policy Note *Future financial services regulatory regime for cryptoassets (regulated activities)*

About Global Digital Finance (GDF) and Crypto Council for Innovation (CCI)

GDF and CCI are the two leading global members' associations representing firms delivering crypto and digital assets solutions. Our members span the digital asset ecosystem and include the leading global crypto exchanges, stablecoin issuers, digital asset Financial Market Infrastructure providers, innovators, and investors operating in the global financial services sector.

Our members share the goal of encouraging the responsible global regulation of crypto and digital assets to unlock economic potential, improve lives, foster financial inclusion, protect security, and disrupt illicit activity.

We believe that achieving these goals requires informed, evidence-based policy decisions realised through collaborative engagement between regulators and industry. It also requires recognition of the transformative potential of crypto and digital assets, as well as new technologies, in improving and empowering the lives of global consumers.

We support and encourage a comprehensive UK digital asset regulatory approach which is robust, proportionate, and pro innovation. Appropriate regulatory guardrails are crucial to ensure the continued growth of the UK ecosystem, to further attract the predominantly global industry, and to realising the goal of making the UK a digital finance hub.

The input to this response has been curated through a series of member discussions, industry engagement, and roundtables, and both GDF and CCI are grateful to their members who have taken part.

As always, we remain at your disposal for any further questions or clarifications you may have, and we would welcome a meeting with you to further discuss these matters in more detail with our members.

Yours faithfully,

Elise Soucie – Executive Director – GDF

Laura Navaratnam - UK Policy Lead, CCI

GDF GLOBAL DIGITAL FINANCE

Crypto Council for Innovation

Response to the Draft Statutory Instrument: Introductory Remarks

Overall, GDF and CCI are supportive of the overarching policy aims of the Draft Statutory Instrument ('SI') on the future financial services regulatory regime for cryptoassets (regulated activities). We are heartened by the UK Government's commitment to continuing to drive innovation for the future of financial services and agree that establishing a robust regime for cryptoassets will be critical for the UK to be a hub for digital growth.

This legislation marks a pivotal moment in the UK's journey towards becoming a global leader in the digital economy. As the architecture of tomorrow's digital financial markets is being built, distributed ledger technologies - powered by cryptoassets - increasingly form the rails of the infrastructure that will underpin everything from payments to capital markets activity. A clear, proportionate, and forward-looking regulatory framework will be essential to ensuring that this innovation can thrive in a safe, trusted environment.

Realising the full potential of this opportunity for the UK will depend not only on regulating the marketplaces in which cryptoassets are traded, but also on the extent to which the outcome of this new regulatory regime is a healthy, competitive market in the cryptoassets that support the underlying infrastructure, particularly public blockchain networks. These markets are essential to incentivising innovation, securing decentralised infrastructure, and ensuring open access to the technologies that will underpin the next generation of financial services.

In this context, it is crucial that the core legislative architecture is carefully constructed to enable proportionate and targeted regulation that can evolve with technological innovations. This will in turn allow the necessary flexibility for regulators to tailor rules and supervision in line with actual risks and market developments, giving firms the clarity they need to continue to invest, build and grow in the UK.

Summary of Key Points

GDF and CCI have worked with members to provide constructive feedback on the SI, and also aimed to identify options to overcome key challenges as the government works towards progressing innovation and modernising the financial services ecosystem. Through this process GDF and CCI members identified key areas that may require further drafting consideration as well as proposed solutions for the purposes of adding clarity, proportionality, and enabling the effective scaling of the UK's digital markets. The core areas and proposed solutions identified are:

1. Subcategorisation: We would welcome clarification from HMT, ideally formally via the SI's Explanatory Note, that the characterisation of qualifying stablecoins as qualifying cryptoassets neither precludes nor prohibits their future use in the scenarios discussed in our response, and that the FCA will have appropriate powers to apply exclusions and exemptions to qualifying stablecoins where requirements broadly applicable to qualifying cryptoassets and their associated activities would not achieve outcomes either relevant to or appropriate for qualifying stablecoins and their associated service providers.

2. Payments-Specific Considerations: (1) We encourage HM Treasury and the FCA to consider a carve-out or proportional approach for stablecoin-based payment services, (2) We would strongly encourage adding language to the SI which would mandate the eventual provision of technical guidance on how key PSR concepts will apply in the context of regulated qualifying stablecoins for payments, (3) We encourage adding clarification for wallet providers and stablecoin transfer systems so that the regime explicitly clarifies the conditions under which these activities trigger PSRs authorisation requirements, and (4) We recommend that HMT includes an additional exemption with the SI which would exempt from the dealing and arranging regulated activities a payment service provider that is facilitating a payment transaction in a qualifying stablecoin.

3. Fiat Currency: We would welcome clarification from HMT, ideally formally via the SI's Explanatory Note on what constitutes "fiat currency" for the purposes of the Article 88G provision.

4. Global Considerations: To ensure UK-issued stablecoins are interoperable and recognised under such frameworks, we encourage HMT to consider how the proposed regime will interoperate with global standards and equivalence determinations.

5. Definition of Issuer and Offering: We would encourage the simplification and clearer delineation of the role of the stablecoin issuer specifically, which is the person responsible for offering to the public a stablecoin that that person has themself created. This would reflect the nature of the global stablecoin market and also to ensure that the definition captures the right market players to reach the appropriate regulatory outcomes. We would also encourage amendments along with clarification as to how the activity of "offering" a qualifying stablecoin differs from, for example, dealing as principal or agent, or arranging a transaction in the qualifying stablecoin. It would also be more aligned with other international definitions (e.g., MAS, MiCA).

6. Definition of Creation: We would encourage clarification in the definition of 'creation' as it relates to issuers that the mere design of a qualifying stablecoin is not regulated, in the absence of that entity also then offering the stablecoin to the public.

7. Definition of Redemption: We would propose explicit clarification that only the entity responsible for the creation of the stablecoin is captured by the issuance activity, and not entities that are engaged by the issuer to facilitate the redemption process with end users. FCA requirements in respect of redemption could then sit with the stablecoin issuer, with outsourcing rules governing the involvement of any additional entities.

8. Maintaining the Value of the Qualifying Stablecoin: It should be clarified that secondary trading of a stablecoin (e.g., by liquidity providers) is not caught by this limb of the definition (or the issuance regulated activity more generally) as liquidity provision activities could potentially be caught by the very wide concept of "activities designed to maintain the value of the qualifying stablecoin".

9. Definition of Staking: Activities that involve locking tokens solely for yield—such as yield farming, liquidity provision, or DeFi vault strategies—should be expressly excluded from the scope of staking.

10. Direct Staking: We recommend that direct staking be explicitly excluded under Article 9Z7.

11. Solo & Non-Custodial Staking: We recommend Article 9Z8 be revised to add additional exclusions for self-directed (solo) staking and non-custodial staking.

12. Safeguarding Provisions: (1) Ideally, the additional limb under Article 9O(2)(b)(iii) would be removed, but otherwise specific provision should be made in the drafting to ensure the specific use cases of borrowing and collateral arrangements are not caught under the scope of regulated safeguarding activity, (2) We would encourage the provision of explicit guidance on activities under this definition of safeguarding regulated activity, including confirmation that self-hosted and other non-custodial activities are exempted from the definition of safeguarding where they meet this test, including MPC wallets, and (3) The definition of "control" under Article 9O(3) should be clarified to explicitly exclude non-controlling key shards and technical implementations that do not confer transactional authority.

13. Dealing as a Principal and Agent: (1) We would recommend to exclude from the definition of "members of the public" any non-UK firms carrying on activities that would require authorisation if carried on in the UK, (2) We recommend clarifying that non-public sales include, but are not limited to, all sales not made via a CATP and private placements that would not constitute an offer to the public, (3) We recommend to exclude dealing as agent for a member of the same group from the regulated activity (as has been done for the arranging activity), and (4)We support further guidance on policy intention with reference to limited scenarios where necessary, for instance confirming that exchange information accessible by a self-hosted wallet interface screen would fall under such an

14. Arranging Deals: We encourage the incorporation of exclusions into the SI which are equivalent to the exemptions in Article 29 or 32 of the RAO.

15. Territorial Scope: (1) Cross border provision of cryptoasset services not covered by s418 should be clearly excluded from regulation under the SI. This could be done using similar language to the existing OPE to ensure that cross-border services involving non-retail customers are carved out of scope, (2) We also consider that the existing RAO concept of "with or through" be used, such that services provided from overseas "with or through" an authorised person should not be captured. In addition, authorised persons dealing as agent or arranging should qualify as "intermediaries" given that UK consumers served by them will still receive UK regulatory protections. This will provide flexibility for a broader range of global business models.

16. DeFi: We would recommend extending the exemption for enabling parties to communicate to clarify that the mere making available of a technology does not amount to regulated "arranging" in circumstances where a party does not have control over the qualifying crypto assets involved in a transaction. By confirming that DeFi models do not fall within the scope of the SI where there is no legal person exercising meaningful control - and that future guidance will be developed in support of this position - policymakers can continue to support innovation while maintaining regulatory coherence and leaving space for innovation while HMT and FCA develop their regulatory approach to DeFi.

17. Qualifying Cryptoasset Trading Platform: We recommend amending the definition of "qualifying cryptoasset trading platform" to align it more closely with the definition of a "multilateral trading facility" under the existing UK financial services regime. Specifically, we suggest limiting the scope to systems where multiple third-party trading interests can actually interact within the system to form contracts.

18. Cryptoasset Transitional Provision: We recommend that the final SI explicitly extends the current Article 73ZA exemption to firms within the temporary authorisation regime.

19. New Definition of Consumer: We urge HMT to avoid embedding new, standalone definitions within primary legislation and instead support consistency by building on the regulatory lexicon already in use. At a minimum, the SI should clarify that the definition of a "consumer" does not include "investment professionals" (under the Financial Promotions Order) and "professional clients" (under the FCA Handbook Glossary).

Section 1: Comments on categorisation of a qualifying stablecoin as a qualifying cryptoasset (Article 88G)

Subcategorisation

GDF and CCI welcome HMT's continued efforts to develop a proportionate and innovation-enabling regulatory regime for crypto and digital assets, including stablecoins. As emphasised in previous engagement with UK authorities we firmly believe in the importance of these assets being brought into the regulatory perimeter. However, the current approach of classifying a "qualifying stablecoin" as a subcategory of a "qualifying cryptoasset" raises several practical and interpretive challenges which may hinder regulatory clarity and consistent implementation. We would propose technical amendments - outlined below - to the draft SI in order to mitigate ambiguity and enable the continued growth of responsible innovation within the UK's financial services ecosystem.

We note that a stablecoin having the characteristics of a qualifying stablecoin, once issued and in circulation, is capable of being used in a variety of contexts and for a range of activities, including but not limited to use as a payment instrument (either bilaterally or via a regulated payment services provider or payments network), as a currency in an FX spot trading pair (e.g., on-chain cable - GBP/USD), as a digital settlement asset (for the settlement of trades in digital / tokenised assets, including but not limited to tokenised equities, tokenised bonds, and derivative smart contracts), or as collateral (in a range of contexts, from lending through to clearing). Whilst a given issuer may to some extent, through the partnerships and market participants that they cultivate, influence the way in which a stablecoin is used, it is important to note that as a bearer instrument, any stablecoin may be used for any of these aforementioned purposes, and others which we have not foreseen.

The subcategorisation of qualifying stablecoins as qualifying cryptoassets, absent further and more granular scope for exclusions and exemptions, could inadvertently lead to an outcome in which the entire body of future regulation applicable to qualifying cryptoassets also applies to qualifying stablecoins. We are concerned that, without due consideration for the variety and nature of the activities that may be undertaken using qualifying stablecoins - and indeed are widely undertaken at present - the future potential of qualifying stablecoins may be hindered by their treatment as qualifying cryptoassets. In summary, we note that the decision to include qualifying stablecoins under the broader category of qualifying cryptoassets may not fully reflect their differentiated economic and functional profile, particularly as this nascent market continues to scale at pace.

To illustrate this challenge, we would note the example of FX spot, the trading of which is not a regulated activity in the UK at present. If undertaken using qualifying stablecoins, then the trading of FX would constitute the regulated activity of dealing in qualifying cryptoassets as principal or agent. We are concerned that this could then result in the application of regulatory requirements that are disproportionate to the risks of using regulated stablecoins for FX which, as currently assessed, we do not believe present significantly different risks to undertaking FX spot trading by conventional execution and settlement means.

We note that HMT has stated that it does not intend to proceed with amending the Payment Services Regulation (PSRs) 2017 to bring UK-issued stablecoins into regulated payments at this time (though this also does not preclude, nor does it prohibit the use of stablecoins in payments at this time). We welcome this breathing space to work with HMT and the FCA in developing a better common understanding of the distinction between qualifying stablecoins as a qualifying cryptoasset, the use of qualifying stablecoins in the course of undertaking regulated activities associated with cryptoassets, and the use of qualifying stablecoins in the course of undertaking activities currently beyond the scope of the cryptoassets regime, such as in the context of a digital settlement asset, a payment instrument, an accepted form of collateral, and a means of effecting and settling on-chain FX spot transactions.

Proposed solution: We welcome clarification from HMT, ideally via the SI's Explanatory Note, that the characterisation of qualifying stablecoins as qualifying cryptoassets neither precludes nor prohibits their future use in the aforementioned scenarios, and that the FCA will have appropriate powers to apply exclusions and exemptions to qualifying stablecoins where requirements broadly applicable to qualifying cryptoassets and their associated activities would not achieve outcomes either relevant to or appropriate for qualifying stablecoins and their associated service providers.

Payments-specific considerations

This is particularly relevant for firms using stablecoins to facilitate value transfers that are functionally equivalent to payments. In the absence of amendments to the PSRs to bring such use within the payments regime, these services may instead be treated as FSMA-regulated cryptoasset activities, despite posing similar or lower risks than traditional payment services. Without appropriate exclusions or regulatory discretion, this could lead to disproportionate regulatory treatment and stifle innovation in payment models that abstract away crypto complexity for end users. We encourage HMT and the FCA to consider a carve-out or more proportional approach for stablecoin-based payment services, ensuring that regulatory outcomes are consistent with functional risk and do not unintentionally disadvantage firms developing the next generation of secure, efficient payment infrastructure.

In order to mitigate confusion or lack of clarity in the interim period, we would strongly encourage adding language to the SI which would mandate the eventual provision of technical guidance on how key PSR concepts such as safeguarding of client funds, timely redemption at par, and settlement finality will apply in the context of regulated qualifying stablecoins for payments. Furthermore, it will likely also be beneficial in the future to provide guidance on how new regimes for stablecoins will interoperate with the

PSRs. Without such alignment, there is a risk of regulatory friction, potential for duplication, or inconsistent supervision.

In addition to this, we believe it remains unclear whether and in what circumstances wallet providers or stablecoin transfer systems would be deemed to be carrying out regulated payment services under the PSRs, or whether they will fall solely under cryptoasset service provider authorisation. GDF and CCI recommend that the regime explicitly clarify the conditions under which these activities trigger PSRs authorisation requirements, and whether a consolidated authorisation framework under FSMA can be adopted to avoid duplicative oversight.

We also encourage HM Treasury and the FCA to consider service models where stablecoins are used purely as a technical means of facilitating fiat-equivalent payments, with no direct user interaction with or exposure to the underlying cryptoassets. In such models, often described as a "stablecoin sandwich", the user experience is functionally identical to that of a conventional payment, with value sent and received in fiat terms. From an economic and risk perspective, these transactions should be treated as payments, not as cryptoasset-related activities. Regulatory treatment should align with the substance of the service rather than the technology used in its implementation, to avoid disincentivising innovative approaches that enhance user experience, reduce costs, and improve payment efficiency. For this reason, we recommend that HMT includes an additional exemption with the SI which would exempt from the dealing and arranging regulated activities a payment service provider that is facilitating a payment transaction in a qualifying stablecoin.

Proposed solutions: (1) We encourage HM Treasury and the FCA to consider a carve-out or proportional approach for stablecoin-based payment services, (2) We would strongly encourage adding language to the SI which would mandate the eventual provision of technical guidance on how key PSR concepts will apply in the context of regulated qualifying stablecoins for payments, (3) We encourage adding clarification for wallet providers and stablecoin transfer systems so that the regime explicitly clarifies the conditions under which these activities trigger PSRs authorisation requirements, and (4) We recommend that HMT includes an additional exemption with the SI which would exempt from the dealing and arranging regulated activities a payment service provider that is facilitating a payment transaction in a qualifying stablecoin.

Fiat currency references

We note that Article 88G requires a stablecoin issuer to hold either fiat currency, or a combination of fiat currency and other assets, as backing for the issued tokens. However, we are concerned by the lack of a clear definition of what constitutes "fiat currency" in this context. It is not clear whether this is intended to mean central bank money (i.e., central bank reserves or physical cash), thereby excluding commercial bank deposits, or whether it is intended to cover both; however, the policy rationale is not articulated and remains unclear.

We are concerned by the arbitrary distinction created by the requirement that qualifying stablecoins must be backed, at least in part, by fiat currency, regardless of the quality or liquidity of other reserve assets. As noted in discussions with HM Treasury, this could lead to scenarios where a stablecoin fully backed by high-quality liquid assets (HQLA), including instruments recognised as cash-equivalent at present by the market and regulators, and used as such by regulated FMIs such as central counterparties (CCPs), would fall outside the regulatory perimeter, while another with a minimal and nominal (e.g., £1) fiat reserve could qualify. This undermines the coherence of the regime by disconnecting regulatory treatment from economic substance and prudential quality.

While we acknowledge that the detailed requirements on backing assets will be set by the FCA, using the requirement for a fiat component to backing assets - irrespective of materiality - as a gateway condition for qualification risks excluding credible, prudently structured stablecoins from the category of qualifying stablecoins, without clear policy justification. We encourage HMT to reconsider this condition, or alternatively, provide for FCA discretion to assess equivalent forms of reserve quality in determining qualifying status.

Proposed solution: As an interim step, we recommend that HMT provides additional clarity, ideally formally via the SI's Explanatory Note on what constitutes "fiat currency" for the purposes of the Article 88G provision. In due course, we urge HMT to formally establish a single, statutory definition of "fiat currency". This definition should be clear, technology-agnostic, and future-proof, ensuring consistent interpretation across the broader UK financial services regulatory framework. Such a step would enhance regulatory coherence and support innovation by removing unnecessary interpretive risk.

We also recommend that HMT removes the requirement for a qualifying stablecoin to be backed in part by fiat currency, providing the FCA discretion in assessing appropriately liquid backing assets for inclusion in a stablecoin's reserves.

<u>Global Considerations</u>

Finally, we note that international regulatory coherence will be essential to support the cross-border usability of UK-issued stablecoins.

Proposed Solution: To ensure UK-issued stablecoins are interoperable and recognised under such frameworks, we encourage HMT to consider how the proposed regime will interoperate with global standards and equivalence determinations.

Section 2: Comments on issuing a qualifying stablecoin (Article 9M)

GDF and CCI also wish to highlight some of the technical challenges with Article 9M which creates the activity of issuing a "qualifying stablecoin" in the UK. As currently drafted, there are three components to this activity: offering, redemption, and maintaining the value of the qualifying stablecoin. Undertaking any one of these three activities (in respect of a stablecoin created by the same firm) from an establishment in the UK for qualifying stablecoin would bring firms within the regulatory perimeter for issuance.

While HMT has clarified that these activities, when undertaken by a given entity, will only fall within the issuer perimeter where they are accompanied by the creation (and minting) of the relevant qualifying stablecoin, there remains some scope for confusion in the text as-is. It is our view that, consistent with the treatment and definition of stablecoin "issuance" as a regulated activity in other jurisdictions, the core activities which define an issuer are the creation (minting) and offering of the stablecoin as a bearer instrument. Redemption and maintaining the value of the backing assets are then activities which a regulated stablecoin issuer must undertake, and to the expected regulatory standards. The inclusion of these activities within the definition of an issuer gives rise to potential conflicts of law with other jurisdictions, at an early and deeply embedded stage of the legal framework, which may in future preclude the type of regulatory convergence and mutual recognition frameworks that are necessary for qualifying stablecoins to be used in a compliant manner across multiple jurisdictions.

To further delineate these activities, and the challenges with the current definition we expand on each activity below:

<u>Offering</u>

Our understanding - as discussed with HMT at the recent Roundtable on Stablecoins - is that the act of creating (designing and minting) a stablecoin alone is not sufficient to bring a UK firm into scope as a qualifying stablecoin issuer. It must be accompanied by one or more of the activities of offering, redemption or maintaining the value of the stablecoin, being undertaken alongside that creation activity. As currently articulated in the draft SI, "offering, or arranging for another to offer" could be read as capturing the activities of technology service providers who create a stablecoin for issuance by a regulated firm (the "arranging"). We note as well that the entity responsible for creating and offering a qualifying stablecoin might be within the same group as an entity then operating a cryptoasset exchange on which that qualifying stablecoin is traded. Multiple firms within a group could therefore be perceived as "offering" the stablecoin, and hence be considered its issuer which may lead to duplicative categorisation and regulatory friction.

Furthermore, we also request further clarification on the scope and interpretation of the phrase "created on behalf of" used within each prong of the definition of a qualifying stablecoin issuer. As currently drafted, it is unclear whether firms that integrate a third-party stablecoin into their service offerings, such as for payments or trading purposes, under a contractual or distribution arrangement with the creator, would be deemed to have "offered" or "created" that stablecoin. Without clear boundaries, there is a risk of capturing firms with no involvement in the issuance process, purely by virtue of integration or commercial partnership. We recommend that the final SI or accompanying guidance clearly distinguish between genuine issuers and service providers that utilise stablecoins created and issued independently by third parties, to ensure regulatory obligations are appropriately targeted.

Proposed Solution: Overall, we would encourage the simplification of the definition to more clearly delineate the role of the stablecoin issuer specifically, which is the person (by way of business) responsible for offering to the public a stablecoin that that person has themself created. This would reflect the nature of the global stablecoin market and also to ensure that the definition captures the right market players to reach the appropriate regulatory outcomes. We would also encourage amendments along with clarification as to how the activity of "offering" a qualifying stablecoin differs from, for example, dealing as principal or agent, or arranging a transaction in the qualifying stablecoin. By including such amendments, the definition would also be more aligned with other international definitions (e.g., MAS, MiCA).

<u>Creation</u>

There appears to be an inconsistency where Article 9M(5)(b) states that "the creation of a qualifying stablecoin includes the design of that qualifying stablecoin" whereas Article 9N(a) states that the regulated activity under Article 9M does not include "the creation, including the design, of a qualifying stablecoin".

Similar to the point above regarding offering, multiple firms could be involved in the offering, or equally partnerships between offers and technology providers (e.g., a local exchange offeror and a partner distributing). The SI as drafted currently would capture all parties under the issuance requirements despite their potentially tangential involvement in certain aspects of issuance (e.g., maintaining the backing assets).

Proposed Solution: We would encourage clarification that the mere design of a qualifying stablecoin is not regulated, in the absence of that entity also then offering the stablecoin to the public on commercial grounds.

<u>Redemption</u>

When considering the global stablecoin market, at this time we would note that many stablecoin issuers do not offer direct redemption to the public. Some only allow the public to redeem via an on-boarded market intermediary. These intermediaries might fulfil this function by facilitating actual redemption (burning) of the stablecoin with the issuer and reimbursement of funds, or they might fulfil it through market making / offering conversion from the stablecoin to fiat or another digital currency. For example, retail users typically redeem USDC through intermediaries like Coinbase, and institutional clients typically redeem PYUSD through Paxos.

As currently defined, these types of market intermediaries could also be considered issuers, in which case there could be multiple regulated "issuers" for a single stablecoin. This would produce duplicative and illogical results, with multiple entities being responsible for the same obligations in respect of the same stablecoin, and requirements not being appropriate for the particular role played by an entity, e.g., entities solely responsible for facilitating the redemption process being subject to backing asset requirements. This would also result in market and consumer confusion as to who owes obligations to stablecoin holders.

Proposed Solution: We would propose explicit clarification that only the entity responsible for the creation of the stablecoin is captured by the issuance activity, and not entities that are engaged by the issuer to facilitate the redemption process with end users. FCA requirements in respect of redemption could then sit with the stablecoin issuer, with outsourcing rules governing the involvement of any additional entities. Note that entities facilitating redemption may also be caught themselves by the dealing regulated activity with respect to the client-facing activity undertaken.

Maintaining the value of the qualifying stablecoin

Proposed Solution: It should be clarified that secondary trading of a stablecoin (e.g., by liquidity providers) is not caught by this limb of the definition (or the issuance regulated activity more generally) as liquidity provision activities could potentially be caught by the very wide concept of "activities designed to maintain the value of the qualifying stablecoin".

Section 3: Comments on Qualifying Cryptoasset Staking (Article 9Z7)

We welcome HMT's efforts to bring clarity to the regulation of cryptoasset staking through this draft statutory instrument, and strongly support the principle of proportionate regulation aligned with the underlying risks and technical functions of different staking models. This is a significant and thoughtful step forward in establishing a clear, activity-based framework for cryptoasset services in the UK. By recognising the diversity of staking models and aligning regulatory obligations with actual risk, HMT has the opportunity to foster innovation while safeguarding market integrity.

However, we have some concerns regarding the currently broad definition of ‘qualifying cryptoasset staking’ in Article 9Z7. We believe it is essential to ensure that only activities presenting genuine intermediary or consumer protection risks are brought within scope.

Further to this point, we encourage HMT to recognise and explicitly exclude protocol-level technology functions—such as transaction validation, block proposal, token bridging, minting, and burning, and related infrastructure operations—from the scope of regulated activities where these do not entail financial intermediation or customer-facing risk. These functions are essential to the operation and security of public blockchain networks and do not, in themselves, create a financial service or constitute a securities transaction. Many of these activities are akin to operating internet infrastructure or database management systems. Including them within scope could inadvertently stifle innovation, increase legal uncertainty, and discourage participation in decentralised network development. We recommend that HMT provide explicit clarity—whether in the SI or accompanying guidance—that such functions fall outside the regulatory perimeter. To that end, we offer the following clarifications and proposals for refinement of Article 9Z7 and its exclusions.

<u>Clarifying the Definition of Staking: Focus on Protocol Security</u>

Staking should be defined strictly as the act of committing any qualifying cryptoassets towards a proof-of-stake (PoS) network to secure that network, typically through validation of transactions and proposal of blocks, in return for protocol-generated rewards. This is consistent with the definition implicitly adopted in the FCA’s Discussion Paper (DP25/1), which treats staking as a mechanism tied directly to the consensus and integrity of distributed ledger protocols.

Proposed Solution: Activities that involve locking tokens solely for yield—such as yield farming, liquidity provision, or DeFi vault strategies—should be expressly excluded from the scope of staking. While we appreciate these may raise other regulatory considerations, they do not represent staking activity as technically understood and should not be captured under Article 9Z7.

<u>Exclusion of Direct Staking</u>

Solo staking refers to the scenario in which a token holder sets up and operates their own validator node independently, using their own hardware, software, and private keys. Direct staking typically requires the technical proficiency to run a node independently. In this model:

- The user does not interact with any third party;
- No custody or delegation of control occurs;
- All operational and other risks are borne by users directly.

This activity does not introduce counterparty, prudential, or intermediary risk and is better characterised as private participation in network infrastructure. It is consistent with the FCA's view in DP25/1 that truly self-directed activity is unlikely to constitute a regulated business activity under FSMA Section 19. We do not believe it is HMT's intention to include direct staking, however the current scope leaves room for legal ambiguity and application challenges.

Proposed Solution: We therefore recommend that direct staking (not performed by way of business by private individuals) be explicitly excluded under Article 9Z7.

Exclusion of Non-Custodial Staking as a Service

Staking services provide the technical infrastructure necessary to help token holders contribute to staking by engaging directly with that system. StaaS Systems are typically either operated by a corporate entity that has developed the necessary technical infrastructure and on-boards clients or offered on a permissionless basis pursuant to protocols.

Regardless of the specific service used, token holders stake assets by delegating validator responsibilities to a third-party infrastructure provider. The key features of this model are:

- Users retain control over their private keys (including withdrawal keys);
- Validator operators may run the infrastructure, but do not take custody of or have access to the staked assets. The user retains ownership of the staked assets and receives rewards, less any fees due to the StaaS System that are withheld by the StaaS System pursuant to the relevant terms and conditions. The fees retained by the StaaS System, or any other Staking Service, are analogous to licensing fees charged by software-as-a-service platforms, cloud storage, and cloud compute service providers to customers for using their technical infrastructure.
- Users can stake, unstake, and claim rewards unilaterally by signing transactions themselves when they choose.

While third-party infrastructure is involved, it is not analogous to financial intermediation. The validator operator has no control or access to user funds, nor do they bear any obligation of safekeeping or return. Risks are largely technical in nature and largely confined to validator uptime and slashing penalties, both of which are native protocol risks that do not affect asset custody.

The FCA's DP25/1 rightly emphasises that proportionality and actual consumer risk must guide the application of regulated activity rules. Protocol staking does not introduce the consumer protection concerns typically associated with regulated financial services, and in our view should remain outside scope of Article 9Z7.

There are two further reasons to exclude non-custodial staking services. First, a UK-based infrastructure provider that provides non-custodial staking services solely to institutional customers would be within the UK regulatory perimeter because of their presence within the UK but an infrastructure provider located outside of the UK that provides such services would be outside the UK regulatory perimeter. This puts UK providers at a disadvantage and creates an incentive for providers to operate from outside of the UK.

Second, non-custodial staking services can be, and often are, offered on a permissionless basis. On certain blockchains that use delegated proof of stake, including blockchains like Solana or Cosmos, any user of the blockchain can delegate tokens to a validator. This delegation is addressed solely by the protocol, does not require the delegator and the validator to have any commercial or other relationship, and does not involve any transfer of custody or control of the delegated tokens to the validator. The validator may have no ability to reject or prevent the delegation.

If non-custodial staking services are not excluded, then a validator operating from outside of the UK on delegated proof of stake blockchain would be subject to UK regulation simply because a UK consumer opts to delegate tokens to that validator - even if the validator did not solicit the delegation or even know the location of the delegator.

Exclusion of Non-Custodial Liquid Staking

Liquid Staking involves users supplying digital assets to a protocol to allow them to be staked and receiving Receipt Tokens or Liquid Staking Tokens (LSTs) representing the staked digital assets plus any pro-rata share of rewards earned programmatically from staking (over time). This enables users to retain exposure to and utilization of the underlying staked digital assets without being constrained by any native lock-up constraints imposed by the underlying PoS network or protocol. Receipt Tokens generally represent a user's legal and beneficial interest in the staked tokens and any associated network rewards and can be redeemed or transferred, subject to protocol-specific conditions. The Receipt Tokens represent and are redeemable for an identified amount of actual staked crypto assets in the liquid staking protocol.

Liquid Staking is typically facilitated through two different models. Under the non-custodial "protocol model," a decentralized smart contract autonomously handles the staking of deposited tokens and the issuance and redemption of Receipt Tokens, without reliance on an intermediary or any other third-party having custody or control of the staked tokens. Under a "provider model," a service provider—such as a custodial exchange—stakes user tokens to a liquid staking protocol, generates corresponding Receipt Tokens, and manages redemptions on request, typically pursuant to a service agreement.

The advantage of Liquid Staking is that it delivers all of the benefits associated with staking and other Staking Services and provides the additional benefit of capital efficiency and utility by providing the owner of the staked assets with Receipt Tokens liquidity of the staked tokens. This encourages more participation in staking by persons that would otherwise be discouraged by the lack of utility during the staking period.

Like protocol staking, liquid staking facilitated by the "protocol model" does not introduce the consumer protection concerns typically associated with intermediated financial services, and in our view should remain outside scope of Article 9Z7.

We are also concerned by comments in the Policy Note that "the issuance of liquid staking tokens is covered by the dealing activity". Liquid staking tokens are essentially receipts - analogous to warehouse receipts or other documents of title - that confirm the holder's ownership and control of cryptoassets that have been staked.

This receipt token model is commonly used in other cryptoasset protocols or applications. For example:

- Certain automated market maker (AMM) protocols will automatically create a receipt token for cryptoassets that have been deposited into an AMM pool. This receipt token confers the ability to withdraw the cryptoassets from the pool, and it can be bought, sold, transferred and stored like any other token.
- Certain systems that allow cryptoassets to be "bridged" from one blockchain to another function by locking cryptoassets on one of the blockchains and automatically creating a receipt token on the other blockchain. This receipt can be redeemed for locked cryptoassets to return across the "bridge".

The inclusion of automatically generated receipt tokens within the scope of the dealing activity would potentially bring various technical services within the regulatory perimeter, even though these services are very different from, and do not raise the same risks as, the intermediated activities that are the focus of the SI.

We recommend article 9W be amended to add the following item at the end of the list in part (2)

(2) The regulated activity specified by article 9U does not include—

…

(e) the distribution of a qualifying cryptoasset that was automatically created as a receipt or other evidence of title for other qualifying cryptoassets.

Proposed Exclusions Text – Article 9Z7: We recommend Article 9Z8 be revised to add additional exclusions for self-directed (solo) staking and non-custodial staking, such as:

9Z8. (1) The regulated activity specified by article 97Z (qualifying cryptoasset staking) does not include—

(a) the provision of services solely for the purpose of introducing a person to an authorised person that is authorised to carry on the regulated activity specified by article 9Z7;
(b) a person engaging in qualifying cryptoasset staking exclusively using qualifying cryptoassets owned by that person and where no other person has control of the qualifying cryptoassets;
(c) services that facilitate qualifying cryptoasset staking by other persons where the person providing the services has no control of other persons' cryptoassets.

(2) For the purposes of paragraph, a person ("C") has control of a cryptoasset if C has control through any means that would enable C to bring about a transfer of the benefit of the cryptoasset to another person, including to C.

We believe that this wording preserves HMT's policy objective of bringing meaningful intermediation into scope, while excluding infrastructure-only and self-directed activities that do not introduce financial services risks.

Section 4: Comments on Safeguarding (Article 9O)

In respect of the safeguarding regulated activity (Article 9O), we are concerned by the extended definition of "on behalf of another" under Article 9O(2)(b)(iii) which covers rights against another person for the return of a qualifying cryptoasset or relevant specified investment contract. This contrasts with the well understood scope of safeguarding under Article 40 of the RAO which relates to assets "belonging to another". We are concerned that the new definition would bring in scope cryptoasset borrowing, which is not suited to custody style regulation (given assets are transferred on a full title transfer basis) and which is captured in any event under the new regulated dealing activity.

We are also concerned that the extended definition of safeguarding under Article 9O(2)(b), which includes control where a person has a right to the return of the asset, may inadvertently capture arrangements such as collateral reuse or repo-style transactions. These arrangements involve a transfer of title and are not typically treated as custody, yet under the current drafting of the SI could fall within scope of the regulated activity. Finally, given that this new regulated activity also covers "specified investment contracts", we are concerned that a misalignment in scope will cause consumer and market confusion, as identical arrangements conducted with tokenised and non-tokenised versions of the same instrument will be regulated in one case and not the other.

Proposed solution: Ideally, the additional limb under Article 9O(2)(b)(iii) would be removed, but otherwise specific provision should be made in the drafting to ensure the specific use cases of borrowing and collateral arrangements are not caught.

Furthermore, whilst we welcome that the definition of the safeguarding regulated activity - Article 9O(2)(a) - explicitly focuses on 'control' as the test for coverage, underlying activities that could be caught or excluded under this article are broad and nuanced - especially in relation to non-custodial participants -and require further clarification. This is especially true when 9O(2)(a) is read in conjunction with 9O(3)(i) and 9O(4)(c), which without clarification could be read to cover such activities.

Proposed solution: We would encourage the provision of explicit guidance on activities under this definition of safeguarding regulated activity, including confirmation that self-hosted and other non-custodial activities are exempted from the definition of safeguarding where they meet this test, including MPC wallets.

In addition, we are concerned that the current drafting of Article 9O(3) may unintentionally bring non-custodial software service providers into scope of the safeguarding regulated activity, in particular where key sharding or multi-party computation (MPC) models are used. Under these models, (which are increasingly popular in their use across industry) service providers may hold a partial key shard, but that does not correspond to any ability to initiate or authorise transactions, meaning they do not satisfy the test of "control" in any meaningful operational or risk-based sense. We feel that to include them within the scope of safeguarding regulated activity would contrast with the policy intent and could also represent a material departure from international comparators such as MiCA, which limits custody obligations to those with the ability to control client assets or their means of access.

Proposed solution: The definition of "control" under Article 9O(3) should be clarified to explicitly exclude non-controlling key shards and technical implementations that do not confer transactional authority.

Section 5: Comments on Dealing as Principal and Agent (Articles 9U-9Z)

We are generally supportive of these provisions, which track the analogous RAO activities closely. We have the following technical comments:

We would note that currently the definition "members of the public" in Article 9V(2) does not extend to non-UK firms carrying on financial services activities.

Proposed solution: We recommend excluding from the definition of "members of the public" any non-UK firms carrying on activities that would require authorisation if carried on in the UK.

We also have concerns that the concept of a "non-public sale" in Article 9W(2)(d) is not defined.

Proposed solution: Clarify that non-public sales include, but are not limited to, all sales not made via a CATP and private placements that would not constitute an offer to the public.

We would also note that there is no exclusion for dealing as agent performed for a member of the same group. This will unnecessarily limit international groups' abilities to structure their trading arrangements in the most suitable way.

Proposed solution: Exclude dealing as agent for a member of the same group from the regulated activity (as has been done for the arranging activity).

Additionally, the technical exclusion in Article 9Z(2) and clarified by 9Z(3) is welcome but given the variety of arrangements that could fall on or near the regulatory perimeter as defined, further clarity on drafting intention is needed.

Proposed solution: Provide further guidance on policy intention with reference to limited scenarios where necessary, for instance confirming that exchange information accessible by a self-hosted wallet interface screen would fall under such an exclusion.

Section 6: Comments on Arranging Deals in Qualifying Cryptoassets (Articles 9Z-9Z6)

A number of important exclusions have been limited or omitted which we think unintentionally extends the definition of arranging. For example, Article 29 of the RAO "arranging deals with or through authorised persons" has been excluded as has Article 32 of the RAO "provision of finance". The exclusion of these exemptions could lead to unintended consequences where a service provider that acts as a technical facilitator between two parties to a transaction could fall within the scope of the definition of arranging, even when one of those parties is an authorised firm providing services directly to the other party (for example, a payments platform which provides a payment service which allows one party to pre-fund balances with the authorised firm or a lender which allows a party to fund a transaction with the authorised person).

Proposed solution: Incorporate exclusions into the SI which are equivalent to the exemptions in Article 29 or 32 of the RAO.

Section 7: Comments on Territorial Scope (amendments to s418 FSMA)

GDF and CCI support responsible openness of the UK market to overseas firms, including the ability for overseas firms to serve the non-retail market on a cross border basis without authorisation. However, we would suggest several technical changes are needed to the drafting of the SI in order to achieve the intended policy outcome:

We recognise that HMT does not intend to apply the Overseas Persons Exemption ("OPE") to crypto. However, the SI still needs to explicitly provide that the cross-border provision of services which does not fall within the provisions of s418 FSMA is not regulated. s418 extends the territorial scope of the FSMA general prohibition to circumstances which might not otherwise be captured but does not provide a safe harbour in respect of other cross border services.

Proposed solution: Cross border provision of cryptoasset services not covered by s418 should be clearly excluded from regulation under the SI. This could be done using similar language to the existing OPE to ensure that cross-border services involving non-retail customers are carved out of scope.

The concept of providing services "indirectly" to a UK consumer also requires clarification. It will be impossible for firms to get comfortable that their counterparties are not dealing with UK consumers.

Proposed solution: We consider that the existing RAO concept of "with or through" be used, such that services provided from overseas "with or through" an authorised person should not be captured. In addition, authorised persons dealing as agent or arranging should qualify as "intermediaries" given that UK consumers served by them will still receive UK regulatory protections. This will provide flexibility for a broader range of global business models.

Further, we note that qualifying cryptoasset staking is captured even if done indirectly on behalf of a UK consumer. Without amendments to the definition of staking as outlined above, this broad territorial scope risks capturing technology providers. For example, operating a validator on a delegated proof of stake chain like Solana could be done anywhere in the world. A UK customer could choose to delegate stake to that specific validator without either party knowing the geographic location of the other party. Because the operator has no direct commercial agreement with the UK customer - it is entirely possible that they do not even know the identity or location of the customer, and certainly do not have the power to prevent access by UK customers. However, as the SI currently is drafted, the node operator would be captured within the RAO, which is both disproportionate and entirely impractical to implement and enforce.

Section 8: Comments on DeFi (policy note 2.10)

We welcome HMT's approach to establishing a proportionate, future-facing regulatory framework for cryptoassets, and are particularly supportive of the decision to exclude DeFi models from the SI where there is no person that could be seen to be undertaking the activity. This will allow HMT and FCA to further consider their approach to the regulation of DeFi as part of a later phase of regulation.

However, we note from the SI references, in paragraph 2.10 of the accompanying policy note, that the FCA will determine on a case-by-case basis, whether activities conducted under a DeFi model are in fact undertaken by a "sufficiently controlling party or parties". While we appreciate the need for regulatory discretion, we are concerned that this language risks creating uncertainty for developers, builders and other participants engaging in decentralised networks. In the absence of published principles to guide such determinations, we are at risk of a patchwork, reactionary approach, which can only result in a chilling effect on innovation in the long term. This risk is increased because of the very broad concept of "making arrangements" which carries uncertainty and does not generally apply in other jurisdictions. It also risks capturing technology and infrastructure providers that are not providing financial services.

Proposed solution: We would recommend extending the exemption for enabling parties to communicate to clarify that the mere making available of a technology does not amount to regulated "arranging" in circumstances where a party does not have control over the qualifying crypto assets involved in a transaction. This would be analogous to the technical service provider exemption in Schedule 1, Part 2 of the Payment Services Regulations 2017 which exempts from the definition of payment services those services provided by technical service providers, which support the provision of payment services, without the provider entering at any time into possession or control of the funds to be transferred, including various data processing, storage, communication and authentication services. In addition, HMT and FCA should provide the market with reassurance that future decisions on decentralisation will be guided by clear, published principles, developed in consultation with industry. By confirming that DeFi models do not fall within the scope of the SI where there is no legal person exercising meaningful control - and that future guidance will be developed in support of this position - policymakers can continue to support innovation while maintaining regulatory coherence and leaving space for innovation while HMT and FCA develop their regulatory approach to DeFi. We stand ready to contribute to the development of such principles through constructive engagement.

The draft definition of “qualifying cryptoasset trading platform” in the Treasury’s proposed legislation is overly broad. It captures not only systems where multiple third-party trading interests interact and execute contracts (akin to a multilateral trading facility in traditional finance) but also systems that merely “facilitate” such interaction. This creates ambiguity about which types of systems fall within scope—particularly decentralized finance (DeFi) applications that do not “facilitate” such activity in that they do not directly bring together trading interests, or exercise custody/discretion over user assets.

Such broad wording risks unintentionally regulating DeFi tools that do not pose the same risks as centralized platforms. For example, interfaces that simply display pricing information could be misinterpreted as trading platforms, despite functioning more like bulletin boards.

Proposed Solution: Amend the definition of "qualifying cryptoasset trading platform" to align it more closely with the definition of a "multilateral trading facility" under the existing UK financial services regime. Specifically, limit the scope to systems where multiple third-party trading interests can actually interact within the system to form contracts. This would:

- Provide legal clarity and consistency with existing financial regulatory concepts.
- Exclude DeFi tools that only enable users to transact in a peer-to-peer manner via software-but do not coordinate or control-trades or user assets.
- Preserve the policy intent while reducing the risk of overreach.
- Maintain a clear distinction between execution platforms and tools that merely facilitate communication or information-sharing.

This solution has broader positive implications than DeFi. The breadth of the definition of “qualifying cryptoasset trading platform” could unintentionally capture other market participants such as those providing brokerage services or other centralized software services, such as smart order routing software. We think that the current drafting casts the net further than intended and should be limited to the bringing together of trading interests “within the system”, rather than capturing activities which facilitate trading outside the system itself which do not directly bring the trading interests together.

Section 9: Part 6 Section 3 - Cryptoasset Transitional Provision

We welcome the inclusion of transitional arrangements for firms entering the new FSMA regime, including temporary permission to operate while authorisation is sought. However, the removal of the current exemption allowing FCA-registered cryptoasset firms to self-approve financial promotions introduces uncertainty, particularly as it is not clear whether firms operating under temporary permission can continue communicating financial promotions without third-party approval. This creates a risk of regulatory cliff edges for firms who may still be captured by the broad financial promotions regime.

Proposed solution: We recommend that the final SI explicitly extends the current Article 73ZA exemption to firms within the temporary authorisation regime.

Section 10: New definition of "consumer"

We note that the Draft SI introduces a bespoke definition of "consumer" that diverges from the well-established Retail / Professional client categorisation used throughout the FCA Handbook. This departure creates unnecessary complexity and risks undermining regulatory coherence across the broader financial services regime. Applying different definitions at the regulator perimeter for different activities would require firms to implement differently calibrated systems to comply, increasing costs and decreasing the competitiveness of the UK market. The term "consumer" as defined in the SI overlaps imperfectly with existing classifications, potentially leading to confusion around firms' obligations and regulators' expectations. Further sub-categorisation of Retail clients should fall within the FCA's remit, where it can be aligned with existing conduct standards and supervisory tools.

Proposed Solution: We urge HMT to avoid embedding new, standalone definitions within primary legislation and instead support consistency by building on the regulatory lexicon already in use. At a minimum, the SI should clarify that the definition of a "consumer" does not include "investment professionals" (under the Financial Promotions Order) and "professional clients" (under the FCA Handbook Glossary).