

Consultation Response

FCA CP26/4 Application of FCA Handbook for Regulated Cryptoassets Activities II

March 2026

The Association for Financial Markets in Europe (AFME) welcomes the opportunity to comment on **FCA CP26/4 Application of FCA Handbook for Regulated Cryptoassets Activities II**. AFME represents a broad array of European and global participants in the wholesale financial markets. Its members comprise pan-EU and global banks as well as key regional banks, brokers, law firms, investors and other financial market participants. We advocate for stable, competitive, sustainable European financial markets that support economic growth and benefit society.

AFME is the European member of the Global Financial Markets Association (GFMA) a global alliance with the Securities Industry and Financial Markets Association (SIFMA) in the US, and the Asia Securities Industry and Financial Markets Association (ASIFMA) in Asia.

The response has been supported by Linklaters LLP.

Executive Summary

We welcome the FCA's continued proposals to implement the UK's cryptoasset regime. However, as currently designed, the proposed regime would introduce significant challenges to the operations of existing regulated institutions in a number of areas in undertaking cryptoasset activities, and therefore stifle their activities and potential market developments.

We therefore support the following key changes:

- **Proportionate treatment of international firms:** the FCA should provide 1) flexibility in operating legal structure (including operating through an existing branch), subject to substantive compliance with proposed rules, and 2) streamlined variation of permission process for financial services firms that are already licensed by the FCA.
- **Consistent regulatory treatment for safeguarding of specified investment cryptoassets (SICs):** to avoid disrupting the functioning and growth of the market for DLT-based capital markets, the FCA should retain existing CASS 6 rules for SICs.

AFME details its response to a select number of questions below.

Questions

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

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

We agree that firms seeking authorisation to conduct cryptoasset activities in the UK should maintain an identifiable and substantive presence in the UK either operating through a UK legal entity or through a UK branch. This policy enables effective FCA oversight and helps ensure that UK consumers are not exposed to additional risks arising from differences in overseas supervisory regimes or insolvency frameworks.

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The FCA's draft approach to international cryptoasset firms in Annex 4 CP26/4 explains that the FCA's baseline expectation is for firms to carry out regulated cryptoasset activities from a UK legal entity, subject to specific exceptions relating to operating a cryptoasset trading platform. We would support the FCA taking a more flexible approach to assessing operating structures involving a branch.

We would support the FCA explicitly allowing international firms that are permitted to provide traditional financial services through a UK branch to also provide cryptoasset services through that existing branch structure. International firms that already provide regulated financial services through a UK branch are already well known to the FCA and have demonstrated that they are capable of effective supervision, and so should not be required to restructure their UK operations to provide comparable regulated cryptoasset activities.

We acknowledge the FCA's concern that retail consumers may not fully understand the legal risks associated with engaging with a firm based overseas versus a UK firm. We would support the FCA allowing international firms to provide cryptoasset services through existing branch structures where those services are only provided to professional and institutional investors. We would note that the way in which the regulatory perimeter has been framed means that such firms could simply choose to locate themselves entirely overseas. Such firms may well nevertheless have a preference for a substantial physical UK presence, but requirements for that to be on a subsidiary rather than branch basis could prove unattractive when compared with an entirely overseas setup. We would therefore query the compatibility of the FCA's proposed approach with promoting the international competitiveness of the UK economy and its growth, given the risk of driving innovative and high-growth propositions offshore even in circumstances where there is no risk of consumer harm.

We support the FCA in assessing applications from international firms on a case-by-case basis. We would encourage the FCA to consider the merits of allowing some international firms to continue operating through a branch. Being required to establish a separate entity for the purpose of carrying out regulated cryptoasset activities would severely disincentivise international firms which have a long-established presence in the UK from participating in the UK cryptoasset market, including the safekeeping of relevant specified investment cryptoassets (SICs).

The FCA's baseline position is particularly challenging to reconcile for international firms whose activity under the incoming UK regime is limited to safeguarding SICs. Firms can currently hold the relevant underlying assets (securities or contractually based investments) through a branch structure. If those assets were then tokenised in a way which brings them into the scope of the cryptoasset regime, firms would need to subsidiarise to continue holding them. This approach is not technologically neutral, and could lead to significant consumer confusion.

This proposed policy could also lead to negative implications for the UK's prime brokerage sector. If a custodian offering prime brokerage services through a branch structure cannot safeguard SICs on behalf of clients, as clients typically expect custodians to service both traditional and DLT-based assets through one unified operating model, those clients may be forced to migrate their entire portfolios to a small number of UK-incorporated providers. This could quickly lead to rapid market concentration, reducing both choice and competition. We note that prime brokerage is also particularly dependent on branches' ability to hold collateral, including collateral referencing or consisting of SICs, so they can extend financing to hedge funds. The proposed rule would stop branches from performing this custody function, essentially preventing them from providing lending when SIC-linked collateral is posted. This would further constrain the UK's already shrinking prime brokerage sector, dampen market liquidity and impact economic growth. Reduced financing capacity for hedge funds would weaken liquidity provision, price discovery, and risk-absorbing capacity. Ultimately, this could raise funding costs for issuers and dampen primary market activity, undermining the regulators' secondary objectives of promoting competitiveness and growth.

We also believe that global coordination and cooperation should help provide further assurance to the FCA on effective supervision and regulation of international firms, regardless of the type of legal structure through which they operate in the UK. In addition, we support the UK Government and authorities to create an outcomes-based equivalence regime with highly supervised third country markets, such as the EU, to facilitate the development of international markets.

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

Yes, we support the proposed approach to the application of the Duty for CATPs in line with that for MTFs. While there is some merit in applying the Duty to professional-to-retail trading, given possible

information asymmetries and varying levels of investor sophistication, our overall view is that the consistent application of the Duty remains of utmost importance.

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

Members agree that the Financial Ombudsman Scheme (FOS) should consider complaints for all UK authorised cryptoasset activities. This approach will help to build consumer trust and ensure consistent treatment across regulated sectors. The FCA should ensure that the FOS has the suitable expertise and resource to respond to any complaints that it handles.

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

We believe that the FCA should be cautious in any differences in geographic coverage of its proposed requirements. Any decision to not extend the voluntary jurisdiction of the FOS could present jurisdictional arbitrage for firms and result in confusion for customers as to whether they have recourse to this body. We believe that the FCA should ensure consistent application of the FCA's regime and help provide greater confidence and certainty for firms and consumers.

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

Yes, we agree with the current policy decision of not extending FSCS coverage to cryptoassets and cryptoasset activities, with the exception of SICs per Q14 below.

In the long term, we would support the FCA to consider with the PRA the implications of extending or not extending the FSCS to different assets and liabilities and, relatedly, necessary and clear disclosure on FSCS scope to UK consumers and investors. The policy should overall achieve a comparable level of production for comparable DLT-based products (e.g. tokenised deposits).

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

We disagree with the decision to withhold FSCS protection from SICs. This approach is not technologically neutral, and will lead to uneven economic and consumer protection outcomes for SICs in contrast to traditional specified investments even where both formats represent the same financial instrument and structure.

It is critical that DLT-based securities are subject to the same protections as traditional securities. Failing to do so will act as a significant impediment to the uptake of DLT-based securities in the UK, which will likely have a negative impact on the UK's growth and competitiveness. In addition, there would likely be a significant risk of confusion amongst customers regarding the protections that they benefit from.

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

It remains unclear how SM&CR will apply for dual-regulated firms undertaking cryptoasset activities, and we would support further guidance on this matter.

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

In line with our [response](#) to FCA CP25/14, we continue to strongly disagree with the approach to apply a new set of CASS 17 rules to SIC custodians.

As we detail below, our views remain that, rather than seeking to create a new CASS regime for cryptoassets, the FCA should instead apply existing CASS rules as appropriate, with additions for cryptoasset specific requirements (e.g. around private key management). The proposals as they stand fail to take an outcomes-based, technology-neutral approach, and instead risk leading to divergence of

treatment between holders of traditional assets and cryptoassets and causing significant disruption to existing markets.

Additionally, many custody clients will have both traditional assets and DLT-based assets in custody with the same provider. A single, consistent treatment would lead to better customer outcomes, with clearer understanding, consistent reporting of positions and equal treatment across the portfolio.

Imposing separate regimes for cryptoassets and traditional assets will also introduce significant additional cost and operational complexity (with associated increased operational risk), as well as creating difficulty in managing unified collateral pools.

In particular, proceeding with the proposal to require that safeguarded assets be held in trust represents a significant departure from the equivalent treatment for traditional assets (or for e-money institutions). The FCA still has not provided any clear rationale for why an outcomes-based approach would not be sufficient, and why such a different approach is appropriate for cryptoassets. We would highlight that the number of exemptions to the trust requirements which the FCA have proposed highlights the risk of unintended consequences. Given the dynamic nature of cryptoassets, it is highly unlikely that all necessary exemptions have been identified at this point, and there is a significant likelihood that these requirements will unduly restrict innovation as market practice evolves.

Should the FCA decide to continue with imposing a separate CASS treatment, we would encourage the FCA to seek maximal alignment in the operational details of CASS 6 and CASS 17 to minimise differentiated treatment and achieve the most seamless possible customer experience.

Finally, there should be provision for professional investors and institutional clients to opt-out of certain custody arrangements to allow for greater flexibility.

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

We do not agree with the requirement for an express non-statutory trust. Under CASS 6, other models of segregation are used, such as nominee structures. Similarly, the new CASS 15 rules demonstrate that a trust arrangement is not necessarily required to offer appropriate segregation.

Imposing non-statutory trusts is not consistent with the 'same risk, same regulatory outcome' approach and will create additional obligations on firms under CASS 17 that do not apply under CASS 6. In addition, trust law is not recognised in all jurisdictions, and requiring that third parties acknowledge trusts may prevent firms from holding certain assets.

We agree with firm assets being held with client assets in limited circumstances. This is consistent with the approach in CASS 6 and prudent segregation in CASS 7.

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

We agree that the recordkeeping requirements in CASS 17 should only be applied to client cryptoassets.

We have some concerns around the practical implications of the proposed recordkeeping requirements:

- The proposed rules require a daily review of the means of access record. It is unclear what steps would be required to constitute this review.
- It is unclear what form the 'trust record' should take. We would welcome confirmation that this information does not need to be maintained in a single record, and that firms may maintain the separate types of information in different locations.

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

We do not believe the FCA's proposals on making good shortfalls in cryptoassets are appropriate, and instead would support an approach aligned with the existing CASS 6 rules.

Draft CASS 17.5.3R states such records must be accurate “at all times”, which is not reflective of any equivalent requirements under CASS 6. Members would welcome clarity around how “at all times” would apply to cryptoassets. For example, a traditional custodian would not typically be expected to update its independent internal records over the weekend, especially if such records are independent of the DLT ledger in which the relevant assets are recorded. In the context of cryptoassets, a wallet may receive an ‘air drop’ where tokens are paid into a wallet without instruction from the wallet holder, which would require investigation by the custodian prior to updating books and records.

Under the current CASS 6 arrangements, firms are required to promptly investigate shortfalls, and - where another person is not responsible for the shortfall - appropriate sufficient assets or client money to cover the shortfall. We believe this is a proportionate approach also for cryptoassets.

We do not believe it will be possible to procure the same class of assets in all scenarios, and therefore requiring that shortfalls are topped up in this way places clients at additional risk. In addition, firms may resolve shortfalls using cash or other assets temporarily while investigating and resolving discrepancies, or in acquiring replacement assets for less liquid cryptoassets. It is not clear why this flexibility is acceptable for traditional assets, but not for cryptoassets.

The proposed CASS 17 rules require the resolution of shortfalls within 24 hours of identifying discrepancies and the resolution of excesses by the next reconciliation (effectively the next business day) is significantly more prescriptive than the requirements for traditional securities under CASS 6. There are many factors which can lead to discrepancies without underlying issues with the custody provided, and it is critical that firms have the time to properly investigate and remediate discrepancies. Furthermore, the requirement to segregate assets within 24 hours may not be viable on bank holidays and weekends.

Finally, under the proposed CASS 17, firms must notify the FCA of any shortfall not addressed within 24 hours, regardless of the materiality or reason, whereas CASS 6 requires reporting to the FCA only where there is a material failure to meet the shortfall funding requirement. The reason for this difference isn’t clear, and it may lead to an undue reporting burden for cryptoasset custody providers, as well as additional operational complexity for firms offering both traditional and cryptoasset custody.

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

We note that the controls included in CASS 17.4 go beyond those related to client assets. In particular, including whistleblowing, fraud, operational resilience and culture in the scope of CASS will duplicate other FCA rules and create significant additional burden, as this will require testing by CASS auditors. Where possible, the rules should defer to other relevant parts of the FCA rulebook instead of duplication.

We also observe that CASS 17.4.6R requires that firms identify inoperability of a wallet. It is unclear how firms would identify this for a cold wallet without making the wallet hot, presenting additional risks to the assets.

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

We welcome the adaptations the FCA has made to proposed CASS 17.6 to facilitate the indirect or intermediated custody models that are common in wholesale capital markets. In particular, we note the removal of the “necessity” and “best interests” conditions for third-party appointments, the alignment of due diligence requirements with the established CASS 6.3.1R approach, and the explicit accommodation of safeguarding chains whereby firms may rely on appointed third parties to conduct due diligence on further appointees. These changes are especially important if the FCA applies CASS 17, rather than the existing custody rules in CASS 6, to the safeguarding of specified investment cryptoassets.

However, we remain unclear as to the policy rationale for the requirements of proposed CASS 17.6 (Appointing third parties to safeguard cryptoassets) to differ from the existing requirements in CASS 6.3 (Depositing assets and arranging for assets to be deposited with third parties). This concern is particularly acute in scenarios where client cryptoassets are held for institutional clients by existing FCA-regulated global custodians on an indirect or intermediated basis through a sub-custodian or similar safekeeping delegate. We would respectfully request that the FCA clarify its policy rationale for maintaining this divergence, given the principle of “same risk, same regulatory outcome” that underpins its approach to cryptoasset regulation.

Moreover, if CASS 17.6 is retained as a separate set of requirements for custodians appointing sub-custodians or other safekeeping delegates for client cryptoassets, we remain unconvinced that there will be no circumstances in which a custodian may be required—for reasons outside of its control—to grant certain liens or rights over client cryptoassets. As the FCA has already contemplated in its existing sub-custody delegation rules in CASS 6.3.6A R to CASS 6.3.9 R, in traditional securities markets there may be rules or requirements outside of the UK (for example, for securities constituted under the law of a jurisdiction, or otherwise located, outside of the UK) which require, or otherwise automatically provide for, a custodian or its agents to grant a security interest, lien, or right of set-off over a given asset to a third party—such as a central securities depository, securities settlement system, or central counterparty.

This concern is not merely theoretical. Access to central clearing and settlement infrastructure for cryptoassets, or least relevant specific investment cryptoassets, may be contingent upon the ability of the custodian or settlement agent to grant such rights to the infrastructure provider. For example, central counterparties may require security interests over margin to enforce their default management procedures. Similarly, central securities depositories and settlement agents typically require rights to recover fees and charges arising from the operation of accounts in which client assets are recorded. The FCA already permits UK custodians to grant a security interest, lien, or right of set-off to a third party over client assets that are specified investments. We do not see any policy rationale for taking a different approach where a UK custodian is safeguarding cryptoassets, including relevant specified investment cryptoassets. We would urge the FCA to reconsider this prohibition and introduce into CASS 17.6 equivalent provisions to CASS 6.3.6A R to CASS 6.3.9 R that permit certain limited liens or rights over client assets, subject to appropriate conditions and safeguards.

Finally, where firms hold assets with third parties, segregation is not normally enforced throughout the custody chain. We request that the FCA confirms that CASS 17.3.16G (2) (d) does not prohibit third parties from holding assets in different trusts at a single address.

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

We do not agree with the proposed approach of applying CASS 17 rules to SICs. These assets are currently subject to CASS 6, and a technologically neutral approach should apply the same CASS requirements to specified investments regardless of technology. CASS 6 covers both bearer and registered certificated assets, dematerialised assets and immobilised assets with some minor variation depending on the form of the asset. We do not see any reason this approach could not be taken for SICs.

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

As above (and in line with our [response](#) to FCA CP25/14), our view remains that DLT-based securities should be treated the same as traditional securities from a regulatory perspective. As such, we disagree with the FCA's decision to apply the amended CASS 17 rules to both qualifying cryptoasset custodians and SIC custodians. Our primary suggestion would be, instead, to subject SICs to CASS 6, with the possibility that CASS 6 be updated to include certain requirements that are specific to safeguarding DLT-based securities (e.g. around the handling of private keys under CASS 17.4) where appropriate. Modifications to CASS 6 instead of the implementation of CASS 17 would prevent duplication for firms already held to CASS 6 rules.

This is particularly important to ensure market continuity and growth, given ongoing industry discussions about the legal and regulatory delineation between SICs and traditional specified investments; creating a separate rulebook for the former would further exacerbate certainty surrounding the legal and regulatory treatment of specified investment cryptoassets and reinforce an approach that does not follow the principles of technological neutrality. This would detract from the competitiveness of the UK's regime for SICs, especially given that other jurisdictions (e.g. EU) have already implemented legal and policy frameworks that ensure equivalent treatment of the definition of traditional and DLT-based securities.

Moving DLT-based securities to a different CASS regime will introduce a number of severe issues and disruptive consequences including:

- Unequal regulatory and economic treatment between DLT-based and non-tokenised assets, e.g. with tokenised assets being potential required to be held in trust while traditional assets are not.
- Potential cliff-edge effects and client disruption should traditional custodians currently providing custody services for DLT-based securities not obtain the new regulated activity authorisations in time / be able to implement a new CASS regime in this timeframe
- Significantly increasing the regulatory costs associated with providing custody for DLT-based securities compared to traditional securities, likely impeding uptake and market growth. Migration from CASS 6 to CASS 17 will lead to additional audit costs and compliance documentation to support audits
- Professional and institutional clients are likely to hold a mix of traditional and DLT-based assets. Having these under different CASS regimes will introduce additional operational complexity in portfolio management, inconsistency in client reporting, repapering, and difficulty in unified collateral pools between traditional and tokenised assets. Furthermore, requirements to establish explicit non-statutory trusts and agreements with third parties may conflict with existing arrangements. In particular, where both traditional assets and SICs are held with the same agent new account structures and agreements will be required.
- In addition, the proposed rules appear to be framed around addressing perceived risks from public permissionless blockchains. Should the FCA proceed with introducing technology specific requirements (i.e. CASS 17), then such requirements will need to provide sufficient flexibility for using different forms of blockchains. We note that the majority of institutional-grade DLT-based securities are thus far issued on private- or public- permissioned DLTs. These DLTs are accessible to regulated or allowlisted participants only, and have institutional-grade controls and governance as well as provisions for settlement finality (i.e. in line with traditional CSDs).

In case the FCA proceeds with its decision to impose a separate CASS treatment on SICs, we would advocate for maximal alignment in the operational rules under CASS 6 and CASS 17 to minimise divergence, ensure regulatory certainty, and achieve the most seamless operational integration. Some specific areas of concern stemming from the deviations between proposed CASS 17 and CASS 6 include:

- Reconciliations - Draft CASS 17.5.3R states such records must be accurate “at all times”, which is not reflective of any equivalent requirements under CASS 6. Members would welcome clarity around how “at all times” would apply to cryptoassets. For example, a traditional custodian would not typically be expected to update its independent internal records over the weekend, especially if such records are independent of the DLT ledger in which the relevant assets are recorded. In the context of cryptoassets, a wallet may receive an ‘air drop’ where tokens are paid into a wallet without instruction from the wallet holder, which would require investigation by the custodian prior to updating books and records.
- Discrepancy timings – The proposed CASS 17 rules require the resolution of shortfalls within 24 hours of identifying discrepancies and the resolution of excesses by the next reconciliation (effectively the next business day) is significantly more prescriptive than the requirements for traditional securities under CASS 6. There are many factors which can lead to discrepancies without underlying issues with the custody provided, and it is critical that firms have the time to properly investigate and remediate discrepancies.
- Funding mechanism – The proposed CASS 17 requires the resolution of shortfalls with cryptoassets of the same class, whereas CASS 6 allows for the resolution of shortfalls using cash or other assets. This is important to allow firms to temporarily make up short falls while investigating and resolving discrepancies, or in acquiring replacement assets for less liquid cryptoassets.
- Notification to the FCA – Under CASS 17, firms must notify the FCA of any shortfall not addressed within 24 hours, regardless of the materiality or reason, whereas CASS 6 requires reporting to the FCA only where there is a material failure to meet the shortfall funding requirement. The reason for this difference isn’t clear, and it may lead to an undue reporting burden for cryptoasset custody providers, as well as additional operational complexity for firms offering both traditional and cryptoasset custody.

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

If the FCA does proceed with applying CASS 17 to DLT-based securities, it will need to replicate the same exemptions that currently exist under CASS 6 or risk DLT-based securities being ineligible for key use-cases, e.g. if client are unable to use DLT-based bonds as collateral for lending, there will be no reason for them to hold them, significantly impeding the viability of tokenised securities in the UK.

We are therefore highly supportive of the exclusions, in particular:

- **Title Transfer Collateral Arrangements (TTCAs)** for margin lending and Lombard Loans. In addition, we note that collateral mobilisation is a key benefit of recording assets in DLT format, given the programmability and compressed execution times provided by the technology.
- **Reuse agreements for securities lending programmes**
- **Business in the name of the firm:** this is required for a range of products and services

Our view is that this list of exemptions highlights the potential for unforeseen consequences of applying CASS 17 to SICs, and supports the view that SICs should continue to be subject to CASS 6 to avoid causing disruption to existing markets, and impeding the use of DLT towards the growth of UK capital markets.

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

We believe it is likely that SICs will be used for SFTs in future, and agree that the use of assets requirements applied to SICs should be consistent with CASS 6 to ensure equivalent treatment regardless of technology. If the FCA takes the decision to prohibit the use of SICs for SFTs (i.e. by not including this permission under proposed CASS 17), sufficient rationale needs to be provided otherwise the policy decision would unfairly undermine the future growth of the market.