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Targeted response to:

- the FCA's CP 26/13 on Cryptoasset Perimeter Guidance (the "Draft Crypto PERG"); and
- HM Treasury's consultation and policy note dated April 2026 proposing a package of amendments to The Financial Services and Markets Act 2000 (Regulated Activities and Miscellaneous Provisions) (Cryptoassets) Order 2025 (the "Cryptoasset SI").

1 Introduction

Our members welcome the extensive work HM Treasury and the FCA have done to develop a comprehensive and coherent new regulatory framework for cryptoassets and to outline the perimeter of that regime. We are writing this letter to set out how our members understand the perimeter is intended to apply, and to propose certain targeted refinements to the Draft Crypto PERG and Cryptoasset SI to clarify that position, in relation to the following areas:

- (a) **Scope of SICs and RSICs:** the scope of the categories of "specified investment cryptoassets" ("**SICs**") and "relevant specified investment cryptoassets" ("**RSICs**") as defined in the Cryptoasset SI, including the application of the carve-out for cryptoassets that are "solely a record";
- (b) **Scope of safeguarding activity in the context of specified investments:** the scope of the new regulated activity of safeguarding "qualifying cryptoassets" as defined in the Cryptoasset SI ("**QCs**") and RSICs, in the context of (i) record-keeping and registrar type functionalities and arrangements; and (ii) activities of authorised custodians that safeguard interests in RSICs through custody chains and do not hold or store the means of access to those RSICs or appoint anyone to do so; and
- (c) **Scope of disapplication of MLRs registration requirement:** the interaction between The Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 ("**RAO**") framework and the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 (the "**MLRs**") framework, and in particular the scope of the disapplication of the MLRs

registration requirement for firms authorised to conduct regulated activities under the RAO other than activities in respect of QCs or RSICs.

The proposals set out in this letter are deliberately limited in scope. They are focused on giving effect to the policy intent, as articulated by HM Treasury and the FCA, in relation to a small number of high-priority matters for which there is strong concern among our members that a failure to act would create substantial downside risk for the UK financial industry and the competitiveness of the UK as a jurisdiction more broadly. In particular, our proposals are designed to minimise the scope for harmful legal uncertainty and to avoid placing a significant burden on firms and regulators in circumstances where there is no discernible policy benefit.

We expect that a number of the concerns in relation to points (a) and (b) above can be addressed through clarifications to the Draft Crypto PERG alone, and we consider that the FCA should be able to make those clarifications under the Cryptoasset SI as it currently stands. However, there are certain narrow areas where an intervention by HM Treasury is necessary or desirable to achieve the intended outcome. Given that HM Treasury is currently proposing to amend the Cryptoasset SI with a package of ad hoc amendments, it would be expedient to use that opportunity to make those legislative amendments. These would serve to further clarify the policy intent and avoid the need for many authorised firms to engage in costly perimeter analysis to determine whether they need to submit variation of permission applications, in circumstances where there is no clear policy benefit to them doing so in any case.

In relation to point (c), we appreciate that the FCA may be unable to address concerns through perimeter guidance, in light of the current wording of the MLRs, as amended by the Cryptoasset SI. As such, it would be helpful for HM Treasury to include a targeted amendment to the Cryptoasset SI itself to give full effect to the policy rationale it has articulated.

Our understanding of the legislative intent and clarification proposals in relation to each of these areas are set out in paragraphs 2, 3 and 4 below, respectively, with some specific drafting suggestions in respect of the Draft Crypto PERG set out in Schedule 1 and some specific drafting suggestions in respect of the Cryptoasset SI set out in Schedule 2, where relevant.

2 Scope of SICs and RSICs

2.1 Our understanding of the policy intent

The RAO, as amended by the Cryptoasset SI, provides that cryptoassets¹ that are “*solely a record of value or contractual rights, including rights in another cryptoasset*” are not QCs, SICs or RSICs.² We understand this to mean that a cryptographically secured digital representation of value or contractual rights, that might otherwise meet the

¹ As defined in the Financial Markets and Services Act 2000 (“**FSMA**”).

² Article 88F(2)(c) RAO and paragraph (b) of the definition of “specified investment cryptoasset” in Article 3 RAO.

definition of “cryptoasset” under FSMA, will not qualify as a SIC or RSIC if it merely evidences interests in an asset that is characterised as a specified investment,³ rather than itself *constituting a component* of such asset. Our understanding is that even if such evidence serves as the root of title or legally authoritative evidence in relation to entitlements to such asset, it will be treated as “solely a record” for these purposes. This is the only rational interpretation, as any alternative interpretation would potentially bring into scope of the SIC category centralised cryptographically secured legal registers, or the books and records of regulated entities (such as central securities depositories among others), that have for many years been used to evidence dematerialised interests in specified investments.⁴

This understanding is supported by commentary from HM Treasury and the FCA that explains the rationale for applying a different scoping definition as to what constitutes “safeguarding” in the context of RSICs (compared to other specified investments), and for considering applying a different CASS⁵ regime for RSICs (compared to other specified investments), albeit that the FCA has now committed not to apply a different CASS framework at this stage. In particular, both HM Treasury and the FCA point to specific or unique risks that arise from the novel legal nature of SICs, such as their ability to be transferred peer-to-peer by way of a change of practical control and the absence of a central registrar or recordkeeper to oversee transfers or rectify erroneous transfers, as the basis for this policy decision.⁶ These are not features of specified investments that are evidenced in a cryptographically secured legal register or other legally authoritative record, for which a registrar or recordkeeper (including a central securities depository) accepts legal and / or regulatory responsibility to oversee and maintain the register, including to rectify errors. Those types of specified investment are fundamentally the same in nature as other dematerialised specified investments, and do not pose the same risks as cryptoassets that are capable of direct peer-to-peer transfer by way of change of control, including from a safeguarding perspective. As far as we are aware, neither HM

³ Including a right in a specified investment that is itself characterised as a specified investment under the RAO.

⁴ It is worth noting that the “solely a record” carve-out is particularly important because we understand that HM Treasury interprets the FSMA definition of “cryptoasset”, including the words “can be transferred, stored, or traded electronically”, broadly so as to include digital representations of value that are merely *stored* electronically (in the way that any digital representation necessarily is) without themselves being capable of being transferred and traded as distinct assets, and the FCA has adopted a similar interpretation in the Draft Crypto PERG. Under that interpretation, any cryptographically secured spreadsheet could be treated as a cryptoasset for FSMA purposes. While we do not necessarily share that interpretation, and have concerns it could lead to unintended consequences, we have taken it as given for the purposes of commenting on the Crypto PERG guidance.

⁵ Client Asset Sourcebook.

⁶ See, for example: paragraph 2.7 of HM Treasury’s policy note dated April 2025 on the future financial services regime for cryptoassets (regulated activities); paragraph 4.6 of the FCA’s CP 25/14 which cites the following ways in which cryptoasset custody operates differently to custody in traditional finance: “[c]ryptoasset custody involves taking control over a client’s cryptoassets, often by holding or storing the means of access to the cryptoasset [...]” and “*In traditional finance, external third parties such as central securities depositories, register the ownership of assets, enabling the verification of ownership of these assets*”; and paragraph 10.10 of the FCA’s CP 26/4, which states that the FCA proposes applying CASS 17 (as opposed to CASS 6) to SIC custody because “CASS 17 is better suited to address the unique risks of the SIC market, such as those arising from private key management, and the use of third parties, compared with traditional custody models” and “CASS 17 recognises that for many cryptoassets, there is no external party such as a registrar, Central Securities Depository, or Digital Securities Depository that ensures legal ownership is accurately recorded and updated.” See also paragraph 19.3.2 of the Draft Crypto PERG which reemphasises that the concept of “control” is crucial to the way the safeguarding cryptoassets activity is specified.

Treasury nor the FCA has articulated any policy rationale for differentiating the scope of the custody regime or the custody rules for these types of specified investment.

We agree with the FCA's guidance in the Draft Crypto PERG⁷ that a cryptoasset is solely a record if it *“does not function in practice as an asset in its own right”* and that in determining whether a cryptoasset is solely a record, it is relevant to consider *“whether [the cryptoasset]⁸ is used and traded as the object of exchange in markets”* and *“whether transferring control of the cryptoasset is, in practice, the mechanism by which value or contractual rights are transferred (as opposed to the cryptoasset being merely evidential of rights that are transferred or constituted by other means)”*. In our view, the statement that it is also relevant to consider *“whether market participants rely on it as the authoritative basis for taking commercial risk”* must be read in the context of these other examples and not as suggesting that a cryptoasset that forms part of a legal register or authoritative record (which market participants may rely on as the authoritative basis for taking commercial risk) is not capable of being “solely a record”. However, as discussed in paragraph 2.2, the reference to *“the authoritative basis for taking commercial risk”* here is potentially very open-ended and, unaltered, risks being misinterpreted and thereby giving rise to unnecessary uncertainty.

The legal and regulatory characterisation of the arrangement (including whether it gives rise to a register or record under the oversight of a registrar or operator as opposed to a QC or SIC that is capable of peer-to-peer transfer) will flow from exactly how the arrangements are structured, including from a legal, technological and operational perspective. Those involved in developing digital platforms in respect of specified investments will typically need to obtain extensive legal advice to ensure they achieve the intended legal and regulatory outcomes, including by reference to a myriad of structuring permutations. It is worth emphasising that similar technologies can be deployed in different ways to give rise to different legal outcomes, and the term “tokenisation” is used in the market to cover a range of alternative legal structures which may or may not give rise to a cryptoasset that is transferred by way of a change of practical control.

2.2 Proposed clarifications

While it is clear from the Cryptoasset SI and certain elements of the Draft Crypto PERG that certain tokenisation models in respect of specified investments will not give rise to a SIC, some of the wording in the Draft Crypto PERG is overly generalised and has introduced some perceptions of uncertainty and confusion in the market. To clarify the legislative intent, we recommend certain surgical refinements. In particular, generic references to “tokenised deposits” or “tokenised securities” falling in scope of the SIC definition should be refined to make clear that not all means of tokenisation in respect of specified investments will necessarily give rise to a SIC. Likewise, it would be helpful to refine certain drafting to distinguish between cryptoassets that themselves embody specified investments (including rights or interests in specified investments that are

⁷ At paragraph 19.4.4.

⁸ Notably, not the specified investment.

themselves characterised as specified investments) and cryptoassets that merely evidence entitlements to specified investments. See Schedule 1 for specific drafting proposals.

It would also be helpful to clarify that in assessing “*whether market participants rely on [the cryptoasset] as the authoritative basis for taking commercial risk*”, one should consider whether market participants rely on the locus of practical control of the cryptoasset as the authoritative basis for taking commercial risk, as opposed to the evidentiary status of a record or register, as determined by the legal and / or contractual arrangements underpinning it. It may also be helpful to make clear that “mere informational records” include records that have some legal significance. See Schedule 1 for specific drafting proposals.

While these types of clarifications to the Draft Crypto PERG should be sufficient to address any perceptions of uncertainty, HM Treasury may wish to consider a targeted amendment to Article 88F(2)(c) RAO to make clear that the reference to “a record” in the carve-out includes a legal register. See Schedule 2 for specific drafting proposals.

3 Application of safeguarding activity in the context of specified investments

3.1 Our understanding of the policy intent

As touched on in paragraph 2 above, our understanding of the policy rationale behind creating a new regulated activity for safeguarding RSICs (while all other activities in respect of specified investments are addressed through existing categories of regulated activities) was: (i) to allow the FCA to apply different safeguarding rules to custodians with practical control over RSICs, in order to address the novel risks associated with holding such control in relation to assets that are capable of transfer by way of a change of such control and outside the oversight of any central registrar or recordkeeper; and (ii) to cast a broader scoping definition in order to catch within this regulated activity institutions that provide services that involve them maintaining control over RSICs, which they hold on behalf of another, where such services would not otherwise bring them within the scope of the existing regulated activity of safeguarding and administering specified investments (for example, because the arrangements are structured such that the user has no proprietary interest in the RSIC).

However, given that the FCA has now committed to assess applicants in respect of the new safeguarding activity against the existing CASS 6 regime (rather than the new CASS 17 regime for QCs), there is no longer any clear policy rationale for requiring firms that are already authorised to safeguard and administer specified investments to seek a variation of permission in order to be authorised to safeguard RSICs. Requiring authorised firms to assess whether they need such a permission within the gateway timelines, and to engage in the burdensome process of seeking a permission, imposes a very significant cost on the industry, as well as on the regulators, for no discernible benefit. It also makes the UK an outlier compared with other jurisdictions, that do not distinguish the licensing framework for RSICs, and risks placing the UK jurisdiction at a

competitive disadvantage relative to its peers. The policy objective articulated above would still be achieved if firms authorised to safeguard and administer specified investments under article 40 of the RAO were deemed to have permission to safeguard RSICs (although notably not QCs) under article 9N. To the extent that the FCA does then adjust its rules in the future, such firms could still be caught under those rules to the extent that they are in fact safeguarding RSICs within the scope of the article 9N activity, and firms could determine their compliance by reference to specific structures at the time.

In relation to exactly what types of activity concerning specified investments are caught within the new article 9N activity, we have outlined below certain types of activity which we understand, based on the wording of existing Cryptoasset SI, would fall out of scope. While we consider that to be sufficiently clear from the Cryptoasset SI (and that nothing in the Draft Crypto PERG directly interferes with that), the industry would welcome further clarity in the Draft Crypto PERG that the FCA shares this interpretation.

As outlined in paragraph 2 above, our understanding is that cryptoassets that merely record or evidence interests in specified investments, and which are not themselves distinct assets capable of being transferred by way of a change of control, will not be QCs or RSICs, and therefore will not fall within the scope of the new cryptoasset safeguarding activity. That said, as the FCA has set out in its recent policy statement on progressing fund tokenisation,⁹ there are various different ways in which cryptoassets could be used in relation to the maintenance of a register or record. In some cases, those cryptoassets may not themselves be “solely a record” in nature (in the sense that they are, in and of themselves, capable of being the object of exchange and of being transferred directly peer-to-peer by way of a change of control). Such cryptoassets could be QCs according to the RAO definition. However, they may be deployed and used as part of a broader set of arrangements concerning the maintenance of a register or record in respect of specified investments, where entitlements are determined by reference to a register or record that remains under the control and oversight of a registrar or record-keeper, rather than by reference to practical control of the QC. Our understanding is that if those QCs are controlled by the registrar or operator *not* on behalf of the investors or participants, but in a principal capacity as part of its own record-keeping functions (for example, so that it is empowered to reverse or prevent transfers in accordance with its role as registrar or recordkeeper), this activity will not fall within the scope of the regulated activity of safeguarding QCs (or RSICs) on behalf of another under the RAO, regardless of whether the registrar or operator benefits from an explicit exception from this regulated activity under the RAO. This appears to be consistent with the policy intention, which we understand is to require entities to be regulated for cryptoasset safeguarding activities if they are in a position to transfer, by way of a change of control, the benefit of QCs or RSICs in relation to which an investor that has some type of claim (whether proprietary or merely contractual). Of course, a separate question will need to be considered as to whether the registrar or record-keeper is safeguarding and

⁹ PS 26/7.

administering the underlying specified investments (and / or benefits from any exception from that activity).

Likewise, we understand that, were a third party custodian to perform safeguarding type activities in relation to specified investments that are evidenced and transferred by way of an update to a register or record involving cryptoassets, such custodian would be treated as safeguarding and administering the *underlying specified investment*, and not as safeguarding any QC or RSIC (assuming the safeguarding and administration activity is otherwise being conducted). This is on the assumption that (i) the cryptoasset would remain at all times under the control of the registrar or central securities depository (and the third party custodian would not have the requisite degree of control to trigger the safeguarding activity); and (ii) the cryptoasset merely evidences the specified investment, rather than constituting a component of the asset that is characterised as a specified investment, and so would not be characterised as an RSIC.

It would be helpful to have further clarity that where an entity provides custody services in respect of specified investments that are characterised as RSICs in circumstances where it does not hold the means of access, or appoint someone to do so (for example, because the RSICs are immobilised with a CSD or other top-tier entity that is not appointed by the custodian), it would not be caught under the article 9N activity for safeguarding RSICs (but could be caught under the article 40 activity of safeguarding and administering specified investments). Such custodians would not have any control over the *cryptoasset* (in the sense that they do not hold or store the means of access to the cryptoasset, or appoint anyone to do so, as per the indicators of control in 9N(4) RAO). However, they would generally be able to bring about a transfer of the *benefit* of the cryptoasset (which the FCA frames as the operative question under 19.6.2 of the Draft Crypto PERG, notwithstanding that 9N(2) refers to control in respect of the “cryptoasset”, by any means that would enable C to bring about a transfer of the benefit of the cryptoasset). Given this context, and that the indicators in 9N(4) are framed in non-exhaustive terms (and are interpreted as such by the FCA), it would be helpful to have further clarity in relation to this issue.

Ideally this would be addressed through amendments to the Draft Crypto PERG to clarify that the relevant question is whether the person has control of the “cryptoasset” in a way that enables them to bring about a transfer of the benefit of the cryptoasset (and not merely an ability to bring about a transfer of the benefit of the cryptoasset by means other than a change of control in respect of the cryptoasset). However, we understand there may be policy reasons for retaining the flexibility to adopt a broader interpretation in the context of QCs, where intermediating parties may otherwise fall outside the scope of any regulated activity.

That policy argument does not stand in relation to custody services provided by authorised article 40 custodians that provide identical services in relation to a range of specified investments, and may not even know if the specified investment held at the top of the chain would be characterised as an RSIC for the purposes of the UK licensing framework (particularly where it is constituted under the laws of another jurisdiction). For

this reason, other policymakers have also sought to distinguish the treatment of arrangements where interests in cryptoassets representing securities are held only through custody chains and not directly.¹⁰ This issue could be addressed through a targeted amendment to the Cryptoasset SI to clarify that authorised custodians conducting activities in relation to RSICs will only be treated as safeguarding RSICs if they hold the means of access to the RSIC or appoint someone to do so.

3.2 Proposed clarifications

In relation to the Draft Crypto PERG (in respect of the existing Cryptoasset SI), it would be helpful to include an additional clarificatory question in the Draft Crypto PERG in relation to registrar or record-keeping functionalities. In particular, it would be helpful to clarify in this particular context that:

- (a) in assessing whether a firm has the requisite degree of control for the purposes of the new cryptoasset safeguarding activity, the FCA will only consider control in respect of the relevant cryptoasset (i.e. a cryptoasset that is a QC or RSIC) and not in respect of an underlying specified investment that is not itself an RSIC;
- (b) similarly, in assessing whether a firm is safeguarding QCs or RSICs “on behalf of another”, the FCA will again consider whether the cryptoassets themselves are being held on behalf of another (i.e. whether any other person has a proprietary or contractual claim in respect of the cryptoasset, or an equivalent cryptoasset) and not whether any underlying specified investment that is not itself an RSIC is being safeguarded on behalf of another; and
- (c) a person that holds QCs in a principal capacity in connection with its registrar or record-keeping functionalities concerning specified investments will not be considered to be safeguarding those QCs on behalf of the investors in respect of those underlying specified investments.

In relation to the Cryptoasset SI, we propose HM Treasury make targeted amendments to address the following:

- (a) *Grandfathering of authorised custodians into article 9N activity*: we propose HM Treasury make such amendments to the Cryptoasset SI as are necessary to provide that persons authorised under article 40 of the RAO are automatically deemed to be authorised to conduct activities under article 9N with regard to RSICs (but not with regard to QCs), without obtaining a variation of permission, as outlined in Schedule 2.
- (b) *Clarifications to ensure that authorised custodians that do not have control (or appoint someone that has control) of an RSIC will fall out of scope of the article 9N activity*: we propose that the Cryptoasset SI is amended to provide that any person that is authorised under article 40 RAO and carries on an activity in relation to RSICs will *only* be treated as having “control” of the asset for the

¹⁰ See, for example, question 6 to the OECD Reporting Framework FAQ <https://www.oecd.org/content/dam/oecd/en/topics/policy-issues/tax-transparency-and-international-co-operation/faqs-crypto-asset-reporting-framework.pdf>.

purposes of article 9N if it falls within 9N(4)(a) or (b), and not simply by means of an ability to effect a transfer of the benefit of the RSIC, as outlined in Schedule 2.

HM Treasury may also wish to consider enabling firms that fall within the scope of article 40 in respect of activities concerning RSICs, but not within the scope of article 9N (on the basis that they do not have the requisite degree of control over the RSIC), to rely on an article 9N permission to conduct this activity.

4 Scope of disapplication of MLRs registration requirement

4.1 Our understanding of the policy intent

The Cryptoasset SI amended the MLRs to alleviate “authorised cryptoasset firms” and “specified investment cryptoasset firms” (as defined in the amended MLRs) from the requirement to register with the FCA if they are conducting activities that bring them within the scope of the definitions of “cryptoasset exchange providers” and “custodian wallet providers” as defined under the MLRs.

Our understanding of the policy intent behind this, as articulated in the Explanatory Memorandum to the Cryptoasset SI and HM Treasury’s consultation response on improving the effectiveness of the MLRs,¹¹ is that it was designed to remove unnecessary and duplicative compliance burdens and was formulated in response to wide support for aligning the MLR registration and FSMA authorisation processes. However, on its face, firms that are already authorised under Part 4A FSMA and are conducting activities in relation to specified investments that are not QCs or RSICs (including those involving cryptoassets that evidence interests in specified investments but are not themselves SICs), do not benefit from this alleviation.

No policy rationale has been articulated for requiring such authorised firms still to be separately registered with the FCA. Such firms are already subject to the comprehensive anti-money laundering obligations under the MLRs by virtue of their authorisation under FSMA, and are subject to supervision by the FCA and / or Prudential Regulatory Authority, including general reporting obligations. Requiring such firms to register separately as cryptoasset businesses under the MLRs imposes an additional administrative burden without any clear corresponding regulatory benefit. It also creates an unlevel playing field with those firms whose activities are regulated under the new cryptoasset regime.

The decision to limit the alleviation to firms authorised for cryptoasset activities under the RAO may have been made on an assumption that only firms requiring such authorisation could fall within the scope of the “cryptoasset exchange provider” or “custodian wallet provider” definitions under the MLRs. In many cases, firms may be able to reach that conclusion. However, given the broad definitions of these activities under the MLRs, and the differences in scope with the regulated cryptoasset activities under the RAO, firms often require extensive and costly legal advice to do so. This complexity also requires the

¹¹ Dated July 2025.

FCA to spend time and resource on enquiries and registration assessments, for which we see no clear benefit. Extending the carve-out to all firms authorised under Part 4A FSMA would be far more efficient for all concerned, and more effectively deliver the stated policy objective.

4.2 Proposed clarifications

We propose this issue is addressed initially through a targeted amendment to the Cryptoasset SI itself, following which the FCA can amend its guidance. There are various alternative drafting formulations that could be used to apply the carve-out to all FSMA- authorised firms. We have suggested one approach in Schedule 2.

SCHEDULE 1
Proposed drafting amendments to the Draft Crypto PERG

1 Paragraph 2.5

We propose the refinements shown below to the existing text:

The Cryptoasset Regulations also provide a definition for cryptoassets that have always been within the perimeter, namely “specified investment cryptoassets”, which are cryptoassets that are specified investments (and meet the requirements set out in PERG 19.4.6), like certain models of tokenised shares

2 Paragraph 19.4.4

We propose the refinements shown below to the existing text:

Relevant considerations that would suggest it is not solely a record may include whether it is used and traded as the object of exchange in markets, whether market participants rely on ~~it~~ practical control of the cryptoasset as the authoritative basis for taking commercial risk, and whether transferring control of the cryptoasset is, in practice, the mechanism by which value or contractual rights are transferred (as opposed to the cryptoasset being merely evidential of rights that are transferred or constituted by other means).

Mere informational records, such as a cryptographically secured or encrypted spreadsheet, database or ledger (or an entry within them), on the other hand, do not function as an asset in their own right, even where they serve as legally authoritative evidence in respect of entitlements to an underlying asset. Even though these cryptoassets are cryptographically secured, electronically transferable or storable, and possibly fungible, they are only a record of value or rights that exist independently elsewhere, rather than representing or being treated as the asset that holds value itself.

3 Paragraph 19.4.6

We propose the refinements shown below to the existing text:

This involves assessing, among other things, the rights and obligations it confers, how holders obtain value or returns (for example, ownership rights, repayment and interest, or exposure to price or index movements), ~~and~~ whether it functions as an investment rather than a payment, utility or purely commercial arrangement and whether it functions as an asset in its own right rather than as a record or register that evidences interests in underlying specified investments (see 19.4.4 above). Specified investment cryptoassets may be non-digitally native, meaning they are backed by or represent traditional finance specified investments, or they can be digitally native, meaning they are issued initially and solely on a blockchain/distributed ledger technology network and are not backed by nor represent traditional finance specified investments.

An example of a specified investment cryptoasset would be a tokenised debt security where the cryptoasset embodies the debt security or embodies rights or interests in the debt security. This would be a specified investment cryptoasset, regardless of whether the asset represents entitlements in respect of an underlying ~~a~~ specified investment ~~that exists off-chain~~ or itself has the features of a specified investment without reference to any underlying specified investment ~~native to a blockchain~~. This is the effect of article 89 of the Regulated Activities Order, which provides that rights to or interests in a specified investment are themselves treated as a specified investment for perimeter purposes. Accordingly, where a cryptoasset confers rights that represent a debt security (or other specified investment), the cryptoasset can fall within the relevant specified investment definitions, regardless of whether the relevant rights arise in relation to an off-chain instrument or are constituted and recorded on-chain.

Another example of a specified investment cryptoasset is a tokenised share where the cryptoasset embodies the share or rights or interests in respect of the share. ~~Both~~ Such types of tokenised debt securities and tokenised shares (among some other tokenised specified investments) would once have been called 'security tokens'. Where these cryptoassets meet the definition of both a qualifying cryptoasset (disregarding article 88F(4)(a) to (c)) and a specified investment, they would constitute specified investment cryptoassets.

4 Paragraph 19.6.12 / 19.6.13

We propose the FCA either broaden the scope of the question at 19.6.12 (in relation to depositories of UK UCITS and AIFs) or introduce an additional question in 19.6.13 to address the comment raised in paragraph 3.2 of this letter.

5 Paragraph 19.12.1

We propose the FCA consider revisiting this section if HM Treasury amends the Cryptoasset SI to address the points outlined in Schedule 2.

SCHEDULE 2
Proposed drafting amendments to the Cryptoasset SI

1 Regulation 40 (Amendment of the RAO in relation to qualifying cryptoassets)

HM Treasury may wish to consider amending Regulation 40 of the Cryptoasset SI such the 88F(2) of the RAO reads as follows:

(2) A “qualifying cryptoasset” means a cryptoasset which is—

(a) fungible,

(b) transferable,

*(c) not solely a record **or register** of value or contractual rights, including rights in another cryptoasset, and*

(d) not excluded by paragraph (4).

2 General grandfathering provision

HM Treasury may wish to consider such amendments to the Cryptoasset SI as are necessary to provide that an authorised person with a Part 4A permission to carry on the regulated activity specified in article 40 of the RAO is deemed to have a Part 4A permission to carry on the regulated activity under article 9N, with respect to RSICs (but not QCs).

3 Regulation 40 (Amendment of the RAO in relation to safeguarding)

HM Treasury may wish to consider amending Regulation 40 of the Cryptoasset SI to include an additional provision in article 9N of the RAO to clarify that an authorised person with a Part 4A permission to carry on the regulated activity specified in article 40 shall only be treated as having control of an RSIC for the purposes of article 9N if it has control of the RSIC within the meaning of 9N(4)(a) or (b), and will not (without limitation) be treated as having control of the RSIC if it is merely able to bring about a transfer of the benefit of the RSIC through other means.

4 Regulation 48 (Amendment of the MLRs)

We propose that Regulation 48 of the Cryptoasset SI is amended such that regulation 54 of the MLRs reads as follows:

“(1A) The FCA must maintain a register of those relevant persons who—

(a) are—

(i) cryptoasset exchange providers, or

(ii) custodian wallet providers, but

(b) are not authorised persons who have permission under Part 4A of FSMA to carry on a regulated activity under Part 2 (specified activities) of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001

~~*(i) authorised cryptoasset firms, or*~~

~~*(ii) specified investment cryptoasset firms.”*~~