connecting the future

Future financial services regulatory regime for cryptoassets

Consultation and call for evidence

HM Treasury
February 2023

Response from
The Payments Association
April 2023

Introduction

The Payments Association welcomes the opportunity to contribute to HMT "*Future financial services regulatory regime for cryptoassets. Consultation and call for evidence".*

The community's response contained in this paper reflects views expressed by our members and industry experts recommended by them who have been interviewed and who are referenced below. As The Payment Association's membership includes a wide range of companies from across the payments value chain, and diverse viewpoints across all job roles, this response cannot and does not claim to fully represent the views of all members.

We are grateful to the contributors to this response, which has been drafted by Robert Courtneidge, Board Advisor for digital currencies, and Riccardo Tordera, our Head of Policy & Government Relations. We would also like to express our thanks to HMT for their continuing openness in these discussions. We hope it advances our collective efforts to ensure that the UK's payments industry continues to be progressive, world-leading, and secure, and effective at serving the needs of everyone who pays and gets paid.

With special thanks to:

- Aleksander Tsuiman, Head of Regulatory (Privacy & Product), Veriff
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Members “responses to the questions” set out in the consultation:

The section numbering below corresponds to the numbering of the ‘questions for respondents’ in this paper.

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

There is currently an issue with so many different definitions for the same words and phrases across multiple legislation and consultations in the UK, let alone in the wider world. For “cryptoassets” to be included under the definition of “specified investments”, the underlying “asset” of the cryptoasset in question would need to be evaluated and a determination made as to whether it could be included. It seems unlikely that all cryptoassets would be specified investment assets so perhaps a sub-category needs to be created that are. The UK Forum for Digital Currencies is working on a new glossary which may help and can be shared with HM Treasury when it is completed.

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

Whilst it is likely that cryptocurrencies should be considered as financial instruments, not all cryptocurrencies are cryptoassets (e.g., identity tokens, NFTs, and smart contracts). Hence there may be a need, as mentioned above, to create sub-categories of cryptoassets, some of which may be securities others that may be financial instruments. In Switzerland they have outcome-based legislation in this area - if a crypto asset is used for spending, then it would be a financial instrument. Perhaps something similar could work here.

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

Under designated activities regime (DAR) referred to in FSM Bill this has the same issues as in 1 above.

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

Considering the current MLR registration covers a high proportion of the information required to obtain an EMI, there should be both a grandfathering of MLR registered firms for up to a year whilst they complete their application for stablecoin money (s-money) licence, and the existing documentation used for their registration should be pre-populated into the new application form.

So:
1)streamline the application process to enable faster and more efficient processing; and
2)if they are already registered, grandfather for registration

S-money is different to e-money in a number of ways but mainly in its non-redeemability on P to P transfers. However, it could work, if the s-money issuers (SMIs) were required to offer their customers validated wallets and the s-money issued was interoperable between SMI wallets. In this way, s-money issued by SMI ‘X’ would be redeemed when received into a

wallet of SMI 'Y' and new s-money issued by 'Y' on receipt. On a practical front this would mean that SMI 'X' transfers to SMI 'Y' the funds equal to the s-money transferred. In this way, you could use current regulation to continue to work with adaptions for s-money rather than creating a whole new regime.

Our members felt that, for e-money laws to expand to s-money activities, then some prudential level of requirements would also be required. The "second leg" would be to expand registered tools, to capital transparency etc, wider than simply having AML.

Notwithstanding the above, it was felt that as the majority of stablecoins today are USDT and USDC, a degree of interoperability will be needed for them to continue to fit within the new ringfenced s-money regime. Education will be required to help consumers understand the differences between regulated and unregulated stablecoins. The new crypto promotion regulations which follow financial promotion regulation would assist in this education process. We must not simply try to block third country stablecoins in the UK but instead recognise them as part of a wider payments' ecosystem.

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

As stated above, so long as the crypto promotion regime is in place and there is good consumer education to differentiate between them, then this is acceptable.

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

Having a phased approach is sensible provided there is ongoing industry participation and workshops to ensure everything done is properly implemented and works and, if it does not, then there is a framework set to enable changes.

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

Our members have some concerns about how the overseas regime is going to be feasible in practice. Supervision and enforcement are going to be challenging. The scope is fine, but it requires regulators to work together on the enforcement side globally, given the nature of the assets. Furthermore, our members concur with the consultation that firms should be able to rely on third countries authorities when appropriate.

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

Our members agree the asset referenced cryptoasset is fine. However, in respect of algorithmic based stablecoins, the question is how could they be supervised? The real problem would be how much liquidity backing is required and how to enable transparency on the consumer side.

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

Our members support this but need to better understand how innovative activities uncovered by this would be treated. It is assumed that there will be ongoing industry contact and

engagement throughout to ensure no unintended consequences occur and to achieve the four overarching policy objectives.

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

Vertically integrated business which provide services that cover a variety of activities which cross a number of regulations should, as the consultation suggests, comply with all the regulations that apply to each activity. Our members concur with this. The challenge will be how to educate businesses to know what regulations they are required to comply with and to work with those businesses to ensure the regulations don't conflict or become unmanageable when applied to a single firm.

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

As we move towards a great variety of commodity-linked tokens coming into the marketplace (currently less than 1% with the majority of those being gold or other recognised tradeable commodities), then we will need to review them on a case by case basis. How would a real estate based token as a share of equity or debt (mortgage) be treated? What if it was for the development of commercial real estate for example? All we can say is we do not know what assets or liabilities will form the bases of future tokens so we must leave sufficient flexibility in the regulation for the law to adapt accordingly.

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

Our Members concur with the HM Treasury proposal that so-called "algorithmic stablecoins" are not capable of maintaining sufficient stability that is necessary to be treated as fiat-backed stablecoins. Algorithmic stablecoins are highly susceptible to bank-run dynamics and share many of the same risks as unbacked cryptoassets. The stabilisation mechanisms used by these arrangements are also not able to maintain the reliable stability necessary to support a payment system. However, if they are classified as a stablecoin then the new regulations for stablecoins will apply to them and they will be stablecoins howsoever they peg their price (i.e. if they are a stablecoin the safeguarding and other requirements will be applied irrespective of their means of pegging). There is a separate difficulty where the underlying currency is neither a fiat currency nor a basket of fiat currencies mixed with crypto. As soon as non-fiat currencies are part of the peg, then it is difficult to see how stablecoin regulation could apply and therefore they can only be treated like an unbacked cryptoasset as currently suggested. Perhaps in a phase 2 additional categorisation and regulation can be created to deal with them.

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

Our members agree that where a NFT is a genuine, unique and non-fungible representation of a real-world object (such as digital art or a collectable), the activities and services related to it should not fall within a financial services activity remit. However, they also acknowledge that there may be instances where NFTs or classes of NFTs could start to take on characteristics that begin to resemble a financial asset. This could occur if, for example, a NFT becomes fractionalised and the particular structure and characteristics of those fractionalised interests start to resemble collective interests in a scheme or investment. That

said, we would encourage regulators therefore to identify and distinguish different attributes of NFTs and how their related activities would constitute the provision of financial services. Further clarity would be important to achieve the overall aim of creating regulatory clarity and trust into the crypto ecosystem.

Utility tokens, on the other hand, could easily fall into many categories of financial service or investment and hence should be dealt with on a case-by-case basis. As you suggest, regulation should be linked to the activity, not to the token.

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

Our members concur that the same principles should apply – namely issuing rules, alignment around a clear rule book on how the exchange should operate and ensuring digital assets venues that operate in the UK are soundly governed.

15. **Do you agree with the proposal for trading venues to be responsible for defining the detailed content requirements for admission and disclosure documents, as well as performing due diligence on the entity admitting the cryptoasset? If not, then what alternative would you suggest?**

The venues need to ensure their requirements are sound. The UK is the leading global market, and everything coming in has to be regulated in the same way. The big challenge will be price discovery. The only clarity at the moment is around Bitcoin, as you can see different trading volumes everywhere, but in general this is a tricky point for transparency in digital assets price discovery.

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

Generally, yes.

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

Generally, yes.

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

Generally, we agree with the premise but there is a need to have proportionality and some exemptions. As we move towards drafting there should be full industry workshops to go through real world examples to avoid unintended consequences.

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

Generally, yes. It goes hand in hand with the view of applying the same standards and same procedure for operating trading venues

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

Generally our members concur. Outsourcing will need to follow the same FCA implementing guidance. Currently these come from EBA but, post-Brexit, it is important to keep alignment as there will be point of exchange with EU. EBA won't change much of its approach anyway, and it works. It is key though that, beyond the EU, the UK is aligned with international practise as much as possible

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

It is important that the different nature of cryptoassets is considered, such as those used for payments and those used for investments i.e. not a blanket approach. On MiFID there is an equivalence alignment, and this should be kept harmonised in the future.

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

The FCA must ensure either a distinctive exchange regime updating e-money, or that a new digital assets regime is created (s-money). The importance will be in the calibration of the exact prudential requirements which is where detailed industry input will be needed.

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

Our members believe we should try to avoid an overly prescriptive regime and the regulation should relate to the type of crypto held. Risk is a blanket approach could be adopted (due to cases like FTX scaring the markets) which takes everything to the highest level and makes it difficult for firms to work in the UK market. We propose a proportionate approach varying dependant on the level of risk associated with the cryptoasset in the same way that there is a range of regulation in payment services and e-money.

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

Our members suggested HMT consider applying consumer protection to the financial instrument side. It doesn't seem to be covered yet in the consultation. Also, it depends on the type of service/regulation behind it. It is not clear whether this proposal would trigger a modification of the FSCS regime itself. Any changes here require careful consideration. On a simplistic level, anything to do with deposits should be left for the banking industry, not crypto custodians.

In relation to operational resilience, cyber security and audits should also be considered. The Cryptocurrency Security Standard (CCSS) Qualified Service Provider Level 3 certification by the Cryptocurrency Certification Consortium (C4) could be a good starting place. Record keeping should be 'clear' in terms of legal certainty (immutable), auditability (C4) and visibility to regulators and authorities (ability to offer full view of transactions).

In respect of the way in which custody wallets are managed, both 'omnibus' account and 'individual sub-wallet' solutions should be allowed. However, proper clarity and education is needed for users so that they understand the differences and the cost and risks associated with each solution.

Even though the paper says "The government is exploring taking a proportionate approach which may not impose full, uncapped liability on the custodian", our members do not believe 'uncapped liability' has any precedent in payments law to date so do not believe it is something that should be considered here as it could have a negative impact on the UK as a place to set up business.

The concept of an equivalent of FSCS cover is a good idea but needs proper thought and industry participation especially on how levies are determined and the level of protection.

In respect of managing firms, our members believe a document similar to the "Payment Services and Electronic Money – Our Approach" would be valuable in order to give greater clarity and understanding to all the new players coming into regulation.

Finally, but certainly not least, in the same way as it is dealt with in payments regulation, pure technology service providers should not be subject to any regulation – only the regulated entities who may make use of technology and outsource should be regulated.

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

There is a role for technology in supervision related to market abuse, and the policy maker should consider enabling technology to discover market abuse. Crypto assets offer potential improvements as well as challenges. Our members urge both domestic and international coordination in this space.

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

Trying to make the regime go beyond the UK borders will always be tricky without international harmonisation of market abuse regimes and collaboration. The adoption of the financial promotions regime will keep some bad players out of the UK and the enforcement regime against trading venues will put a lot of pressure on them to thoroughly vet all cryptoassets on their venue.

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

Our members broadly agree that MAR is a good basis for this new area.

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

It is difficult to see which other players could be brought in here. It is the venue that brings the cryptoasset into the market.

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

There are various steps, from deploying trading patterns analysis tools, etc; AI type analytic solutions that can analyse behavioural changes; and broader AI to analyse different kind of risks, and to allow trading algorithms to improve the overall process.

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

Again, this follow existing financial securities laws and makes sense to be followed.

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

The risk of connecting lending to other activities (people borrow money to further invest in crypto) lending/depositing link in the crypto ecosystem must be monitored (people were leveraging themselves as they got better rates in the investing side)

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

If we start seeing cryptocurrencies in the same way as fiat currencies, the regulatory framework is already there, and fairly adequate.

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

In a traditional lending regime, you have transparency/disclosure; the traditional regime is quite robust, so better to keep it that way than to come up with new ideas that have not been tested and could backfire.

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

Better education to end users of collateralised lending transactions about the risks involved is always best practice.

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

As before, education of end users in this new world of staking and cryptoasset lending is key.

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

Our members agree that there is a need to establish and enforce clear and high standards of security and compliance for DeFi activities. This is particularly true due to the rapid

proliferation of DeFi service providers which has been accompanied by a significant increase in the frequency of attacks.

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

None of our members had any comments on this.

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

HM Treasury's core design principles of 'same risk – same regulatory outcome', is crucial from a level playing field perspective and to avoid the risk of regulatory arbitrage between centralised and decentralised systems. As a general rule, regulatory obligations should be imposed on the party in the best position to manage the risk stemming from DeFi applications. However, it is important to ensure that regulation is on the risks of the activities not the technology used.

Some of our members felt that, given the complexity, it may be better to consider DeFi separately and more slowly.

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

To regulate this, a very detailed review is needed of the governance would be required. Who is the decision maker? And does the technology execute the governance?

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

The possible regulatory hooks discussed with our members are set out below:

The governing DAO

Whilst the DAO is the obvious regulatory hook, if the DAO is truly decentralised then regulation of the DAO smart contract could be included in any future quality marking/standards adopted. However, it is not clear how the actual governing of the DAO through token votes could be regulated especially where the tokens are distributed as part of DeFi protocol user activity rather than being sold on secondary markets etc.

DeFi protocol or dApp 'owner'

- would be possible if the protocol owner is, in effect, operating a centralised control over the protocol
- Also possible if the protocol owner is, in effect, the majority owner of the DAO tokens (i.e. decentralised in name only)
- And even more possible if, on review of the code, the protocol owner is actually using back doors to centrally control how the protocol operates (again decentralised in name only and perhaps regulation here would encourage actual decentralisation)

DeFi Wallet

- Regulation of wallet providers would be a workable option, especially for those offered by the players who want to encourage mass adoption (with an improved customer UX)

Oracles

- More left field but these could be regulated to make sure they are providing correct and honest data

Stablecoins

- Regulation of stablecoins could be used to indirectly regulate (or influence) DeFi, i.e. non-regulated stablecoins would lose Total Value Locked (TVL) if DeFi wants to achieve mass adoption through user confidence

Tokenisation of Real World Assets (RWA)

- As with stablecoins, if RWA become a large part of DeFi TVL in future, then regulated RWA could indirectly regulate DeFi in similar ways

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

When it comes to establishing regulatory frameworks for DeFi, our members would highlight the importance of international coordination and alignment of standards. Internationally, the FSB's ongoing work on DeFi, given that DeFi is globalised and borderless in nature, with participants operating across many jurisdictions, is a good starting point looking at best practise. The FSB is currently assessing which DeFi activities and entities fall or should fall within that perimeter including whether to subject such entities to additional prudential and investor protection requirements or to step up enforcement of existing requirements. It also examines the extent to which the FSB's proposed policy recommendations for the international regulation of crypto-asset activities may need to be enhanced to acknowledge DeFi-specific risks and facilitate the application and enforcement of rules.

Separately, some of our members believed that there was also the opportunity to create global standards for DeFi to follow with the ability to have certified audits of the code being used, and, if we look back at the previous question where it is the wallet provider being regulated, they could be responsible for ensuring the DeFi aligns to such standards in order to continue to be linked to that DeFi protocol.

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

The only existing one is KYC and AML for whoever enters a pool. Further thinking on monitoring has to be carried out; and beyond that, embed other principles like transparency in the design

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

Our members agree that crypto investment advice should be a regulated activity in the same way as general financial investment advice. However, the definitions of what advice should be tight so that unintended consequences are avoided.

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

There are two key reasons why this has merit, namely:
1) preventing abuse; and
2) because you can't have an effective regulatory framework if you leave mining on the side. Mining is an intrinsic part of the industry and cannot be left out.

The outcome would be better control of the blockchain system offering greater operational resistance and ability to combat cybercrime.

With reference to sustainability, not all validations are unsustainable: there are many differences between proof of work, proof of stake and consensus. In addition, other regulatory outcomes beyond sustainability would be achieved through a more competitive landscape in mining.

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

None of our members had any comments on this.

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

None of our members had any comments on this.

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

Whilst sustainability is extremely important and there are valid energy concerns around the mining of some blockchains, the way this question is framed is unfair for the crypto industry because of the disparity of treatment of such topics in traditional finance. Currently there are no sustainability targets for the use of traditional payment rails and, whilst there have been a few studies suggesting up to a 10x cost over that of crypto, no standards have been set. If the UK wants to promote itself as the hub for this industry, extreme caution must be taken that any new regulations are proportionate and ensure a level playing field with the traditional banking.

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

As in 47 above, unless the same conditions can apply to traditional banking this could create unfair competition.

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

If it is felt necessary to calculate these indicators, then standards will need to be set and experts brought it to ensure fair and accurate measurements are taken.

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

This should tie in with international reporting standards for other industries to enable comparisons and a level playing field.

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

This will depend on the investors who will all have their own rating methodology when assessing investing. For the end users, standardisation on a global basis will be necessary but may take time to achieve. Care must be taken to ensure end consumers are not confused by too much varying information.

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

None of our members had any comments on this.

Members “other views on the proposed approach to regulating cryptoassets”:

Overall, our members wholly support HMT’s view of:

*“Taking proactive steps to harness the opportunities of new financial technologies…[to]…*strengthen our position as a world-leader in fintech, unlock growth and boost innovation.”

To be achieved through:

“… clear, effective, timely regulation and proactive engagement with industry”

They concur with HM Treasury’s:

“four overarching policy objectives:

1. *encourage growth, innovation, and competition in the UK*
2. *enable consumers to make well-informed decisions, with a clear understanding of the risks involved*
3. *protect UK financial stability*
4. *protect UK market integrity “*

and the

“core design principles:

- *“Same risk, same regulatory outcome”.*
- *“Proportionate and focused”.*
- *“Agile and flexible”.”*

as well as the phased approach for regulating cryptoassets in the UK.

This constitutes a welcome step towards establishing regulatory clarity for cryptoassets in the UK. The rapid innovation taking place across the crypto asset ecosystem is creating exciting opportunities, but it also involves serious risks. Crypto-asset businesses would generally benefit from regulation, as their growth and safety depend on clear regulatory standards. Thoughtfully applied, these frameworks will accelerate the adoption of socially beneficial innovation, while reducing both criminal and financial risks.

In addition, with a more holistic view of the regulation on a global perspective, it is necessary to look at harmonisation with other regulatory regimes and hence, any legislative proposal around specific regulation directed towards crypto assets should specifically take into account the inter-linked economics between the UK and EU and the (already upcoming) regulatory landscape where the companies are operating as well as other territories like the USA, South America, Asia Pacific, Africa and the Middle East.

Looking specifically at the UK and the EU, their shared economic ties that are based on many years working together and many businesses work across both. Therefore: companies captured by the upcoming legislation are either already operating both in the UK and EU markets; and/or it would be both in the interest of the EU and UK to want them to operate on both markets due to the economic value generated. Considering the economic impact and possibilities around the UK’s proposal for the financial services’ regulatory regime for crypto

assets, it would make sense for the regulatory regime to harmonise, to the extent reasonably possible, to allow as seamless cross-jurisdictional operation as possible.

Although the UK proposals have a significant overlap with the EU's Markets in Crypotassets Regulation (MiCA), there are also important differences between two mentioned regimes, which clearly makes it difficult for affected companies to work in both regulatory environments. Companies that provide affected crypto asset services in the UK and EU will need to evaluate and analyse differences between the UK proposal and the requirements of MiCA and figure out how to satisfy both. For example, UK's proposal and MiCA have differences in their approaches to lending activities (crypto asset lending platforms) and NFTs whereby MiCA does not address those, and they fall outside of MiCA's scope. Also, fundamental effects can come from the approach to regulatory oversight and licensing, e.g., MiCA allows certain authorised companies (e.g., credit institutions) to conduct crypto asset activities based on existing licenses. Contrary to that, under the UK's proposal, companies that are already authorised, would need to apply for a variation of their license and the authorisation is not granted automatically. Therefore, aligning around fundamentals would benefit both the EU and the UK businesses. Having said that a similar approach would be sensible with other regulatory regimes to the extent that businesses are operating between those territories and the core regulatory approaches are similar.

Finally, but certainly not least, the UK needs to look at providing 'best of breed' regulation for the world to follow and stand us apart to create that fertile bed for businesses in this sector to thrive and grow. We can learn from those that have gone before us and avoid unintended consequences learning not least from the development and pitfalls from the e-money and payment services regimes that build some of the best fintech businesses in the UK.

About The Payments Association

The Payments Association (previously the Emerging Payments Association or EPA) is for payments institutions, big & small. We help our members navigate a complex regulatory environment and facilitate profitable business partnerships.

Our purpose is to empower the most influential community in payments, where the connections, collaboration and learning shape an industry that works for all.

We operate as an independent representative for the industry and its interests, and drive collaboration within the payments sector in order to bring about meaningful change and innovation. We work closely with industry stakeholders such as the Bank of England, the FCA, HM Treasury, the Payment Systems Regulator, Pay.UK, UK Finance and Innovate Finance.

Through our comprehensive programme of activities for members and with guidance from an independent Advisory Board of leading payments CEOs, we facilitate the connections and build the bridges that join the ecosystem together and make it stronger.

These activities include a programme of monthly digital and face-to-face events including our annual conference PAY360 and PAY360 Awards dinner, CEO round tables and training activities.

We run seven stakeholder working Project groups: Inclusion, Regulator, Financial Crime, Cross-Border, Digital Currencies, ESG and Open Banking. The volunteers within these groups represent the collective view of The Payments Association members at industry-critical moments and work together to drive innovation in these areas.

We also conduct exclusive industry research which is made available to our members through our Insights knowledge base. These include monthly whitepapers, insightful interviews and tips from the industry's most successful CEOs. We also undertake policy development and government relations activities aiming at informing and influencing important stakeholders to enable a prosperous, impactful and secure payments ecosystem.

See www.thepaymentsassociation.org for more information.

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