IRSG
INTERNATIONAL REGULATORY STRATEGY GROUP

International Regulatory Strategy Group (IRSG)

RESPONSE TO HM TREASURY ON THE FINANCIAL SERVICES AND MARKETS ACT 2000 (REGULATED ACTIVITIES AND MISCELLANEOUS PROVISIONS) (CRYPTOASSETS) ORDER 2025 – DRAFT STATUTORY INSTRUMENT

Introduction

The International Regulatory Strategy Group (IRSG) is a joint venture between TheCityUK and the City of London Corporation. Its remit is to provide a cross-sectoral voice to shape the development of a globally coherent regulatory framework that will facilitate open and competitive cross-border financial services. We welcome the opportunity to respond to HM Treasury (HMT) on the Draft Statutory Instrument (SI) – 'the Financial Services and Markets Act 2000 (Regulated Activities and Miscellaneous Provisions) (Cryptoassets) Order 2025'.

Overall, we support the aim of creating a clear and proportionate regulatory framework for cryptoasset activities that recognises the UK's ambition to lead globally in financial innovation.

While the proposed legislative draft is a step forward, there are areas where clarity, scope, and alignment with current regulations could be improved. Without some adjustments, the current approach might create unnecessary complexity and overlap, potentially leading to confusion and uncertainty. This response highlights key areas where small changes could help create a more effective and streamlined framework. However, we recommend a more extended consultation period to capture the significant refinements required to meet HMT's policy outcomes.

We wish to thank Clifford Chance LLP for their support in drafting this response.

Points for consideration

Definitions

Broad definition of issuing activities

The current definition of "issuing activities" for stablecoins is too broad, as it includes both offering and arranging activities. These are typically considered to fall under separate prohibitions under the Financial Services and Markets Act (FSMA), the financial promotions restriction and the general prohibition. By changing this, the SI is making a fundamental structural change to the wider UK perimeter creating uncertainty and which in the IRSG's view could lay the ground to blur the lines between the general prohibition and the financial promotions restriction.

Separately, the way trading platforms are grouped under the term "issuing" instead of "dealing" does not align with established regulatory practices. We suggest adjusting the definition to match the current legal understanding. This would help clear up the regulatory framework and align it with existing financial regulations.

Definition of "no consideration" for transaction fees and free airdrops

We would welcome clarification on the exclusions set out in Articles 9W(2)a, 9Y(2)(a), and 9Z6(2)(a), which exclude certain activities from the scope where cryptoassets are provided for "no consideration." While this appears to cover free airdrops, there is some uncertainty regarding situations where recipients are required to pay gas fees – small, standard transaction costs necessary to transfer cryptoassets on the digital ledger. These fees are not paid to the issuer and reflect the underlying infrastructure rather than a commercial transaction. However, as currently drafted, there is a risk that the existence of such fees could inadvertently bring otherwise free airdrops within the scope of regulation. To ensure these exclusions operate as intended, we recommend clarifying that transaction fees, such as gas fees, do not constitute "consideration", provided the cryptoassets itself is made available free of charge.

Definition of "qualifying stablecoin"

The way "qualifying stablecoin" is defined creates significant uncertainty, particularly with the carve-out (through Art. 88F(4)(b) in the definition of "qualifying cryptoassets") for electronic money (e-money), where both definitions may apply. As drafted, existing it would not be possible to determine under which regime an e-money token under the MiCA regulation could be offered in the UK. For UK issuers, given the less stringent nature of the e-money framework, entities will likely push to opt for this definition, unintentionally narrowing the scope of applicable regulations. Additionally, leaving the creation and design of stablecoins out of regulatory oversight could cause misunderstandings about the difference between "arranging" and "designing." To make the regulatory approach more practical, we recommend narrowing the scope to avoid overlap with e-money regulations and focusing on the most important activities.

Furthermore, we note that deposits are specified investments under the Article 74 of Regulated Activities Order (RAO) and that Article 88F(4) of the Draft SI excludes from the scope of "qualifying cryptoasset" any "specified investment cryptoassets". As such, to the extent that a deposit could fall within the scope of qualifying cryptoasset it would automatically be excluded under Article 88F(4). In that case, Article 88G(2) becomes redundant. More generally, we are of the view that the aforementioned analysis would achieve the correct policy outcome on the basis that Article 88F(4) excludes from the scope of qualifying cryptoassets any specified investment cryptoassets regardless of the place in which they have been created. In this context, tokenised deposits received in other jurisdictions (but held by persons in the UK) would be excluded. We urge HMT to remove the exclusion in Article 88G(2) and to clarify that the intended policy outcome has been achieved via Article 88F.

Accepting deposits – whether in tokenised or traditional form – requires a firm to be authorised. As such, the institution will already be subject to the Financial Conduct Authority's (FCA) Money Laundering Regulations (MLR) rules. To avoid the need to dual register, HMT should clarify that there is no requirement on authorised deposit-takers with Part 4A permissions to be registered under the MLRs, putting those firms in the same position as firms authorised for cryptoassets activities.

Definition of "qualifying cryptoasset trading platform"

We are concerned that "or facilitates the bringing together of" could capture technology providers, such as the application layer in decentralised finance models. Rather than aligning with the Markets in Financial Instruments Directive (MiFID) definition of "regulated market", the more the definition of a multilateral trading facility under MiFID, which focuses on platforms that "bring together buying and selling interests resulting in a contract", would be more appropriate. Alternatively, there should be an exclusion for providers of purely technology services.

Given the quasi-regulatory role that cryptoasset trading platform operators are expected to play in admitting cryptoassets to trading, HMT should consider introducing an immunity provision for these platform operators, similar to that which exists under FSMA for recognised investment exchanges.

Staking activities

The current definition of staking activities, particularly the inclusion of "making arrangements for qualifying cryptoasset staking" without any limitation, risks capturing any steps that may eventually lead to the staking activity being provided and would therefore encompass wide range of activities, including, among others, the actual blockchain validation by nodes as well as any arrangements which would lead to staking in the context of institutional products. By way of illustration, custodians of cryptoassets safeguarding assets for institutional clients or special purpose vehicles (SPVs) may be required to act on instructions made by third parties (e.g. advisors, investors, portfolio managers, etc). As currently drafted, the staking activity would potentially capture the entire chain of advisers and third parties who have considered the staking activity and provided input or agreed to the staking on behalf of the institutional client / SPV. A more targeted approach should focus on the entity that brings about the staking arrangements specifically, i.e. the entity that makes the arrangements for the specific validation, rather than all "arrangements" connected to staking. It is imperative that relevant exclusions are introduced, at least in respect of node operators that validate transactions and in respect of persons not bringing about the specific staking arrangement.

We also recommend narrowing the definition to apply only to providers who have custody or control over the staked assets, excluding purely technical or software service providers. Alternatively, staking could be treated within custody activities, ensuring regulated custodians who stake assets on behalf of clients remain fully responsible and subject to FCA oversight.

While section FSMA 418(6C) allows overseas custodians to operate under the direction of a UK-authorised custodian, there is no equivalent provision permitting overseas staking providers to act under the direction of a UK-authorised staking provider. The rationale behind this distinction is unclear, and the current framework could result in a more restrictive regime that unnecessarily limits UK staking providers from utilising overseas staking services, including within corporate groups.

Transferability and fungibility of cryptoassets

The current definition of "transferability" ("the circumstances…include where") is too broad and may also not align well with the unique characteristics of cryptoassets. Meanwhile, the important concept of "fungibility" is not defined. These terms, which are difficult to apply in the context of decentralised technologies, should be better defined to ensure they are clear and practical. The interpretation of these concepts should be consistent with existing regulatory frameworks, such as those governing securities under MiFID.

Safeguarding

Expanded scope of safeguarding

As drafted, Article 9O(1) brings firms into scope simply for safeguarding cryptoassets, even without administering them. This differs from the existing rules for traditional assets, which require both safeguarding and administration to trigger regulation. Since similar activities for securities are already covered under RAO Article 40, we suggest either adapting those existing rules to include cryptoassets or amending the new drafting to match the current, well-understood approach. We would also welcome further clarity on HMT's rationale for not independently carrying forward the 'administering' component.

Exemption for nominees and trustees

As certain exemptions exist for agents who hold title for others, it would be beneficial to extend similar exemptions to entities involved in safeguarding cryptoassets, in line with current regulatory practices for traditional financial instruments. This would prevent regulatory burdens on entities already operating within established legal frameworks for nominee and trustee arrangements.

Unclear scope of safeguarding

The provisions in Article 9O(2) and (3) appear to broaden the scope of safeguarding activities to include scenarios where an entity is granted authority to control or transfer cryptoassets, even without holding them. This could unintentionally capture arrangements such as mandates or powers of attorney, which are not typically regarded as safeguarding activities. We are particularly concerned in respect of the effective scope of the wording in Article 9O(2)(a), which refers to a person who "has control of the cryptoasset through any means that would enable C to bring about a transfer of the benefit of the cryptoasset to another person". There are many scenarios in which third parties, may instruct a custodian including as a result of an investment management mandate, in the context of the provision of arranger services to entities such as Exchange-Traded Product (ETP_-issuing SPVs or who as a result of collateral arrangements may hold an account control arrangement with the ability to instruct a custodian and who could potentially be brought into the scope of this activity. This issue is exacerbated by the fact that the definition of "control" in Article 9O(3) is not exhaustive, leaving a significant amount of uncertainty that persons who instruct a custodian would not be in scope. We recommend revising these provisions to focus specifically on situations where the entity is holding or controlling cryptoassets on behalf of others, with other related activities governed by the general law.

Exclusion for agents

The exclusion for agents under Article 9S(1) raises practical challenges, as it places an obligation on agents to confirm the relationship between the custodian and their principals. This may be impractical, as agents may not always have the necessary information to verify such relationship. We suggest amending 9O(3) to ensure agents are not unfairly burdened with responsibilities outside their scope or control. More generally, we suggest that the exclusion is extended to cover all activities under 9O(1), rather than just 9O(1)(a), this would enable, persons described in our comments above to benefit from the exclusion. As a result of the broad definition of safeguarding in Article 9O, the scope this exclusion, which we understand should mirror Article 41 RAO, is too narrow.

Safeguarding of relevant specified investment cryptoassets

The draft SI defines a "relevant specified investment cryptoasset" as a specified investment cryptoasset that is a security or contractually based investment, as those terms are defined in the RAO (7A(9)(b)(c)). This moves away from the distributed ledger technology (DLT) based definition that HMT has previously proposed.[1] This new definition risks inadvertently capturing traditional dematerialised securities, such as those held on the CREST system or other central securities depositories (CSD), which may use encryption but are not specified investment cases. As a result, UK firms safeguarding and administering existing dematerialised securities would need to carry out burdensome due diligence on each international securities identification number (ISIN) they hold to understand if the technology used by the relevant CSD (or sub-custodians in their holding chain) might involve cryptographic security. To avoid this overlap, we suggest clarifying that dematerialised securities using cryptographic records for maintaining title do not fall within the scope of cryptoasset regulations. It is important to distinguish between securities that are in a "digital bearer" form (i.e., the security is itself a cryptoasset) and those that are simply recorded on a digital ledger. This would ensure that the new regulatory regime applies specifically to digital assets, without affecting existing securities laws, thereby ensuring technology neutrality and consistent regulatory treatment for instruments that are inherently the same but only processed on different technology.

In addition, the inclusion of a tokenised form of an investment within the scope of a "specified investment cryptoasset" would create duplicative regulation by bringing the token into the regulatory perimeter in addition to the underlying asset, which is already within the RAO. This breaches the concept of technology neutrality. Furthermore, requiring firms that are already authorised to provide these activities to gain re-authorisation to provide such services in a tokenised form would create unnecessary burdens for both firms and regulators, hindering innovation and progress towards widespread asset tokenisation. If the UK is to position itself as a leading centre, then we would welcome a simplified regulatory framework for tokenised assets, ensuring they are regulated according to the risks of the underlying asset. This might be achieved by removing tokenised assets from the "cryptoasset" definition in FSMA Article 417.

[1] FSMA s.417(1) defines "cryptoasset" as *"any cryptographically secured digital representation of value or contractual rights that (a) can be transferred, stored or traded electronically, and (b) that uses technology supporting the recording or storage of data (which may include distributed ledger technology)".*

A token that signifies a contractual instruction in relation to an underlying asset but does not confer rights to an underlying asset would also be in scope.[2] We ask that HMT consider an exemption for cryptoassets that are cryptographically secured contractual instructions but that do not confer rights to an underlying asset. Without this, the consequences 'grey area' could inhibit innovation.

Proposed amendments for aligning cryptoasset safeguarding with existing exemptions

To uphold the principle of 'same risk, same regulatory outcome', existing exemptions for nominees and trustees holding assets on behalf of others should also apply to entities safeguarding cryptoassets. We suggest updating Articles 9P and 9S(2) to align with these exemptions, such as those in Article 41 for nominees and Article 66(4) or (4A) for trustees. These changes should apply to all activities under Article 9O(1), not just part (a), and allow both exempt persons and authorised custodians to be responsible, even if they are not in the same group. We also recommend extending other exemptions to all activities under Article 9O(1), including those in Articles 66, 67, 68, 69, 71, 72AA, and 72C. More generally, HMT should consider including additional exclusions, for example, the existing exclusion under 72AA is helpful for clarifying the position for fund managers. However, there is no equivalent exclusion (existing or proposed in the draft SI) which clarifies the position for entities providing arranger activities for, or acting pursuant to mandates relating to, ETP-issuing SPVs (or similar). These entities will likely be carrying out certain of the other proposed cryptoasset-related regulated activities, but in the absence of clarification or clear exclusion are at risk of being inadvertently caught by others, such as the safeguarding and staking activities.

New specified activity (custody)

The reference to cryptoassets held "on behalf of another" (Art.9O) risks unintentionally capturing lending or collateral arrangements involving title transfer.[3] This exceeds the provision's intended scope, which targets custody services. HMT should clarify that taking an asset as collateral under a title transfer arrangement or borrowing an asset under an asset lending arrangement does not constitute custody services. Similarly, HMT should make clear that power of attorney/mandate arrangements[4] do not themselves constitute a custody service on the basis of amounting to a form of "control" over the assets.

<u>International scope and considerations</u>

Dealing as principal and third-country issuers

The provisions surrounding dealing as principal, particularly in relation to third-country issuers, are not sufficiently clear. It is unclear whether third-country issuers who redeem stablecoins would fall under UK regulations, and there is ambiguity around the broader scope of "issuing" activities. To

[2] We note that the origin of this problem may be the FSMA definition of a crypto asset, which refers to "digital representation of…contractual rights" (FSMA s.417(1))

[3] In such a situation, the security taker/borrower may be deemed to hold custody of that asset on behalf of the asset lender/security provider given that the borrower/collateral taker is under an obligation to return an equivalent cryptoasset.

[4] Where a customer gives authority to another authorised firm to order the execution of transactions on a customer's custody account held with a cryptoassets custodian.

provide more clarity, we recommend reviewing and refining the definition of "issuing" to address the scope of third-country involvement better and ensure that UK regulations are only applied where appropriate.

Territorial scope

We do not believe the current drafting achieves its intended policy outcome. The territorial reach of FSMA s.418(6A), particularly in relation to UK consumers, remains unclear, especially for transactions involving intermediaries. In particular section 418 does not provide certainty that persons dealing with authorised firms are out of scope of the territorial reach of FSMA. In particular, clarity is needed on the extent to which this would apply when dealing with a wholesale entity. We believe that the Overseas Person Exclusion under RAO Art 72 (OPE) (or analogous exclusions) should apply to new regulated activities to offer clarity. This would ensure that overseas entities engaging with UK consumers are subject to the correct regulatory oversight but give certainty that wholesale market operators dealing with authorised firms in the UK are not in scope.

In addition, the SI and accompanying policy note are inconsistent in how they define the territoriality element for the issuing stablecoin activity. While the policy note refers to authorisation being required only where stablecoin issuing is being done “from an establishment in the UK” (paragraph 2.7), the SI refers to a person “established in the [UK]” issuing stablecoin. The SI should align with the language in the policy note to avoid the interpretation that the existence of a UK establishment (e.g. a branch or representative office) is a sufficient connection to permit stablecoin issuance activity taking place outside the UK.

Financial promotions

We are concerned that the financial promotion rules may not align with the new territorial scope for regulated activities. Overseas stablecoin issuers might be restricted from promoting to UK consumers even when their issuance occurs outside the UK and is lawful. Since the current Financial Promotions Order (FPO) was designed for traditional investments, it may need specific exclusions to cover overseas stablecoin promotions and align with the updated RAO and FSMA territorial provisions.

Adopting international best practice Under Art.60 of the European Union’s (EU) Markets in Crypto-Assets Regulation (MiCA), certain already-licensed EU financial institutions can offer crypto-asset services across the EU more easily, without needing to obtain a separate, full crypto-asset service provider (CASP) license. Including a similar statement within this regime could enhance the competitiveness of UK financial institutions in this market and improve the attractiveness of the UK as a destination for further innovation.

Thank you for considering this submission.

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