Re: Response to FCA Consultation on Perimeter Guidance for Cryptoassets (PERG 19)

03 June 2026

Dear Sir or Madam,

Aave Labs welcomes the opportunity to respond to this consultation. We are a software development company active in the decentralised finance space, best known for being a core service provider to the open-source Aave Protocol. Aave Labs does not operate the Aave Protocol, custody user assets, or act as an intermediary in any transaction with respect to the Protocol.

This response is submitted by Aave Labs on behalf of the wider Aave group. The group includes two UK entities that are regulated by the FCA, Push Labs Ltd (FRNs: 900984 and 1031720) and Push Virtual Assets Ltd (FRN: 1031721). This response draws on the group's experience of regulated financial services activity in the UK and decentralised finance infrastructure globally. However, unless expressly stated otherwise, it is submitted by Aave Labs and should not be treated as a formal response by either FCA-regulated entity in its individual regulated capacity.

We commend the FCA for undertaking this consultation and for the quality of the proposed PERG 19 guidance. The effort to provide structured, activity-by-activity perimeter guidance for the new cryptoasset regime is a significant step forward, and we support many elements of the approach. Our responses are offered in a constructive spirit: we are not suggesting that the FCA has sought to capture DeFi infrastructure within the intermediary perimeter, but rather that the current drafting – particularly in relation to the "added value" concept in PERG 19.8 – creates unintended consequences that, if left uncorrected, would have serious effects on DeFi infrastructure development in the UK. We believe targeted amendments can resolve these issues while fully preserving the regulatory perimeter for genuine intermediaries.

Our detailed responses to the consultation questions are set out below. We would welcome the opportunity to discuss any aspect of our response with FCA staff.

Sincerely,

Linda Jeng

Chief Legal & Policy Officer • Aave Labs

Detailed Responses to Specific Questions

Summary

- Aave Labs is a core service provider to the Aave Protocol, the largest decentralised lending protocol globally by total value locked. The Protocol is foundational infrastructure for on-chain credit markets. Aave Labs does not operate the Protocol, custody user assets, or act as an intermediary in any transaction.
- Building a functional on-chain financial system requires decentralised technologies at its foundation. The decentralised base layer and the DeFi protocols built on top are **non-discretionary infrastructure**: permissionless, open source and rule-bound, they execute identically for all users and cannot select counterparties, refuse orders, or influence execution outcomes. They execute; they do not intermediate. Regulatory perimeters should be drawn around those who interpose themselves between parties and control transaction outcomes, not around the non-discretionary infrastructure on which on-chain finance is built.
- We support the overall structure and many elements of PERG 19, particularly the emphasis on substance over form, the narrower "business of engaging" test and the effort to articulate territorial scope.
- **We would draw the FCA's attention to what we believe may be an unintended consequence of the draft guidance on "arranging" in PERG 19.8.** As currently drafted, the guidance could treat wallets, APIs, smart routers, connectivity tools, and technical service providers as "arrangers" under article 9Y of the RAO in a way that we do not believe reflects the FCA's intent. We appreciate that this is not the FCA's intention, and we hope the targeted amendments proposed below will assist the FCA and HMT in resolving this when finalising PERG 19.
- **We would draw the FCA's attention to what we believe may be an unintended drafting issue in PERG 19.8.19.** The concept of "added value" does not appear in article 9Y of the RAO or any of its exclusions; the statutory exclusion in article 9Z3 of the RAO simply provides that a person does not carry on arranging merely by providing means by which one party to a transaction is able to communicate with other parties. We appreciate that the FCA's intention is to give practical guidance on the scope of that exclusion, but we would respectfully suggest that grounding the analysis in the statutory language rather than an "added value" concept would better reflect the legislation and avoid inadvertently narrowing an exclusion that Parliament did not qualify.
- **We propose targeted amendments to PERG 19.8** (including new guidance on intermediation vs technical services and a narrower concept of "added value") that would keep genuine intermediation firmly in scope while allowing non-discretionary DeFi infrastructure and the technical services that connect users to it to remain outside the perimeter.

- **These changes are consistent with the legislation**, with the Money Laundering Regulations (MLRs) and JMLSG Sector 22 precedent, and with the FCA's statutory objectives – and they are necessary if the UK is to avoid offshoring DeFi development and losing connectivity to the rapidly evolving on-chain capital markets being built across the US, Asia, the Middle East and the EU. Without them, the UK risks constructing a digital finance ecosystem that is a walled garden: regulated in isolation, but cut off from the vibrant on-chain financial systems emerging globally. The question is not whether on-chain finance will develop – it will – but whether UK firms and consumers will be connected to it, or locked out of it.

Question 1: Do you agree with our proposed guidance set out in the Introduction section? If not, please explain why.

The overall structure of the proposed PERG 19 chapter and the decision tree in PERG 19 Annex 2 provide a clear route through the core questions of whether an activity is regulated, carried on in the UK, by way of business, and subject to any exclusion or exemption.

We particularly support:

- the explicit focus on substance over form (e.g. that labels such as “exchange”, “wallet”, “platform” or “protocol” are not determinative); and
- the recognition that the new cryptoasset activities use a narrower “business of engaging” test, which is intended to distinguish between business models and end-users.

From the perspective of an open-source DeFi protocol ecosystem, we believe that some additional clarity is needed so that this introduction gives meaningful certainty to developers and other protocol-level participants, and avoids pushing DeFi development out of the UK.

(a) Substance-over-form and the DeFi infrastructure stack

We strongly agree that perimeter analysis must focus on what a person actually does, not on market labels. In DeFi this is critical, because the ecosystem must be understood in terms of its underlying infrastructure architecture. The foundation consists of the decentralised base layer and the DeFi protocols built on top.

These layers are **non-discretionary infrastructure**: permissionless, open source and rule-bound. They execute identically for all users and cannot select counterparties, refuse orders, or influence execution outcomes. Protocols execute; they do not intermediate.

Above that infrastructure layer sit genuine intermediaries: entities that interpose themselves between parties, exercise discretion over transaction terms, control user assets, or operate custody services.

We note that protocol-level developers are sometimes viewed as interchangeable with intermediaries. That is a category error: protocol developers build and maintain non-discretionary infrastructure; they do not intermediate.

We would therefore welcome explicit language in PERG 19.1 recognising that, in a DeFi context, the perimeter analysis must distinguish between:

- entities that publish or maintain open-source protocol code that is non-discretionary by design – permissionless, rule-bound, unable to select counterparties or influence execution – which are infrastructure providers, not intermediaries; and

- entities whose business models involve genuine intermediation, through which they interpose themselves in user transactions, exercise discretion, or control user assets.

Without that distinction being made explicit, there is a risk that non-discretionary protocol development could be treated as regulated intermediary activity by association, with the unintended effect of offshoring DeFi infrastructure development from the UK.

(b) "By way of business" – targeting the right actors

We welcome the confirmation that the new regulated cryptoasset activities only apply where a person is "carrying on the business of engaging in" one or more such activities, which is intended to be narrower than the general business test in the Financial Services and Markets Act (FSMA).

For DeFi, that distinction is essential: users interacting with a self-custodial protocol for their own account should not be treated as carrying on a business merely because they transact frequently. Similarly, protocol developers whose code is open-sourced and, once deployed, run autonomously by the blockchain without ongoing operation or control by the developer have a very different business model from centralised intermediaries.

We would encourage the FCA to add examples in PERG 19.2 to illustrate that:

- publishing or maintaining open-source smart contracts that others may choose to use, without controlling user assets, will not normally amount to "the business of engaging" in dealing, arranging or safeguarding; and
- the business test is instead focused on firms which interpose themselves in the transactional chain (e.g. a centralised app or custodial service).

Absent clearer examples, an open-ended "case by case" application of the business test creates significant uncertainty for UK-based DeFi development teams, and is likely to incentivise them to relocate development functions to other jurisdictions.

(c) Territorial reach and focus on services to UK consumers

We support the effort to articulate when activities are treated as carried on "in the UK", including the crypto-specific deeming provisions in section 418 FSMA for operating a qualifying CATP, dealing, arranging, safeguarding and arranging staking.

We agree that UK consumers should be protected even where services are offered cross-border, but would encourage the FCA to ensure the guidance in PERG 19.3 consistently targets the firm that actually provides or arranges the consumer-facing service, and only where that firm is able to influence consumer outcomes (e.g. by controlling interfaces, asset lists, order routing, or custody).

In particular, we would welcome clarification that:

- a protocol developer whose role is limited to publishing and maintaining non-discretionary open-source code is not treated as "operating" a facility in the UK solely because UK users choose to interact directly with that code on-chain.

Otherwise, a "case by case" approach will leave developers uncertain whether continuing to build and maintain DeFi infrastructure from a UK base is compatible with the perimeter, and will encourage offshoring of core development work.

(d) Overseas Persons Exclusion (OPE) and SIC activity

We note and accept the statement in PERG 19.3.5 that the Overseas Persons Exclusion does not apply to the new regulated cryptoasset activities. However, many DeFi-related activities may involve specified investment cryptoassets (SICs), such as tokenised debt or equity instruments used as collateral. In those cases, existing RAO activities (e.g. dealing in investments as principal) remain relevant. We ask the FCA to state clearly in PERG 19 (or cross-refer from PERG 2.9) that the OPE continues to apply on its existing terms where a person carries on regulated activities in relation to SICs. This would avoid any implication that overseas SIC activity had silently lost the benefit of the OPE merely because it involves cryptoassets, and would support international connectivity in tokenised capital markets.

(e) "Consumer" vs client categorisation and treatment of professionals

We agree with the explanation that "consumer" is a statutory concept used only for the territorial analysis in section 418 and is distinct from the FCA's client categorisation framework. The perimeter should be set using the statutory "consumer" test, but once in-scope, the protections applied should be tailored by reference to the client category under the Handbook.

In our view this distinction should be reflected more consistently across the FCA's broader cryptoasset rulemaking. Failing to preserve a meaningful distinction between retail and elective professional clients risks driving more sophisticated users to less safe, unregulated channels – including direct interaction with DeFi protocols without the benefit of any FCA-regulated risk filter.

Question 2: Do you agree with our proposed guidance set out in the new specified investments section? If not, please explain why.

We generally support the proposed guidance on the distinctions between qualifying cryptoassets (QCAs), qualifying stablecoins, and specified investment cryptoassets (SICs). From a DeFi perspective, further clarification would improve legal certainty and support innovation.

(a) Fungibility and transferability

We agree that fungibility and transferability are questions of substance, not labels, and welcome the recognition that mechanisms such as token lock-ups or “burn and mint” structures do not, of themselves, prevent an asset from being transferable. We recommend that PERG 19.4 also make clear that compliance-driven restrictions, such as KYC-gated transfers or whitelisting, do not prevent a cryptoasset from being “transferable” where, in principle, it or the rights it confers can be transferred when conditions are satisfied. Protocols increasingly explore “compliance-by-design” features at asset level; those features should not inadvertently take instruments outside the QCA perimeter.

(b) “Solely a record” exclusion and DeFi building blocks

We welcome the FCA’s statement that liquid staking tokens (LSTs) and certain wrapped tokens are unlikely to be “solely a record of value or rights” and therefore will not be excluded from being QCAs. To reduce residual uncertainty, it would be helpful if the final guidance included more concrete examples of cryptoassets that would fall within the “solely a record” exclusion, such as cryptographically secured internal records used purely for back-office purposes or internal settlement records that are not themselves traded.

(c) Qualifying stablecoins and financial promotions

We agree that qualifying stablecoins form a subset of QCAs and agree with the exclusion of multi-currency “basket” tokens and algorithmic or unbacked stabilisation mechanisms. Given the deliberately narrow definition, and the further protections that will apply under the FCA’s stablecoin and conduct regimes, we continue to believe it is disproportionate to treat all non-UK-issued qualifying stablecoins as Restricted Mass Market Investments for financial promotions purposes. We would urge the FCA to extend equivalent treatment to the broader qualifying stablecoin category. This is particularly important for DeFi, where qualifying stablecoins are a core piece of financial infrastructure.

(d) SICs, “digitally native” instruments and safeguarding

We agree that a cryptoasset should be treated as a specified investment cryptoasset (SIC) where, in substance, it falls within an existing specified investment category in the RAO. However, we are concerned that the emerging distinction between “digitally native” and ”non-digitally native” SICs is not reflected in legislation and risks creating unnecessary complexity. Identical economic rights should be treated consistently whether recorded on-chain or in traditional form, in line with the FCA’s stated technology-neutral approach. We

encourage the FCA to expand PERG 19.4.7 and 19.6 to explain how firms should reconcile the article 9N of the RAO boundary with the intended CASS outcome, and to work with HM Treasury to align the scope of safeguarding activities across technologies.

Question 3: Do you agree with our proposed guidance set out in the new regulated cryptoasset activities section? If not, please explain why.

We welcome the FCA's effort to provide activity-by-activity guidance on the new cryptoasset activities. The FCA has done significant work in developing a structured framework and we commend that effort. We broadly support the approach to issuing stablecoins, safeguarding, operating QCATPs, dealing, and arranging staking, and our detailed comments on those activities are set out below. Our principal concern — and where targeted improvements would make the greatest difference — is the treatment of "arranging deals in qualifying cryptoassets" (article 9Y of the RAO).

Issuing qualifying stablecoins (article 9M of the RAO)

We agree with the FCA's three-limb interpretation of issuing qualifying stablecoins and welcome the clarification that persons providing only technology or minting infrastructure are not issuers. We recommend PERG 19.5 confirm that where a firm outsources particular functions, that firm remains the issuer, and that independent DeFi protocols allowing secondary market trading are not part of the issuing activity.

Safeguarding and arranging safeguarding (article 9N of the RAO)

We broadly agree with the FCA's functional approach and especially support the confirmations that "negative control" alone is not sufficient; that providing self-custody tools where the user alone controls keys does not amount to safeguarding; and that safeguarding can apply even if the client does not own the asset. We suggest PERG 19.6.6 treats the "24 hours" indication as a benchmark, not a hard limit.

Operating a QCATP (article 9S of the RAO)

Although Aave Labs does not operate an order-book QCATP, we support the FCA's functional definition. We welcome the clarification that bulletin boards which do not themselves bring about execution are outside scope.

Dealing in QCAs as principal or agent (articles 9T and 9W of the RAO)

We agree that dealing in qualifying cryptoassets (QCAs) is intentionally broad, and support the tailored exclusions. We also welcome the "absence of holding out" exclusion (article 9U of the RAO), particularly the confirmation that the MiFID-style article 4(4) of the RAO override does not apply to this new exclusion.

Arranging deals in QCAs (article 9Y of the RAO) — principal concern

This is the area of greatest concern for Aave Labs. We recognise that the FCA's objective is to regulate genuine intermediaries, not protocol infrastructure. The scope of article 9Y of the RAO is however the critical decision point for whether the UK can host DeFi infrastructure development, and we believe the current PERG 19.8 drafting — in particular the "added value" concept — creates unintended consequences that would treat the builders and maintainers of non-discretionary DeFi infrastructure as intermediaries simply because transactions execute through the protocols they build.

PERG 19.8 correctly notes that arranging has two limbs — bringing about deals and making arrangements with a view to deals — and that the second limb is broad. However:

- the current examples in PERG 19.8.3(6)–(9) imply that any software or interface that allows users to place orders or send transactions, and provides any form of UX "added value", may be arranging; and
- PERG 19.8.19 suggests that many realistic enhancements to user experience or connectivity can suffice to lose the "mere communications" exclusion.

Applied literally, this would treat almost any self-custodial DeFi front-end, wallet, connectivity tool or technical service provider as an arranger, even where: users sign and broadcast their own transactions; the provider neither holds assets nor chooses venues or counterparties; and the provider has no discretion over execution or settlement.

In our view, this approach:

May go further than HM Treasury intended. HM Treasury intentionally created standalone crypto arranging activities rather than amending article 25 of the RAO, and emphasised capturing "sufficiently controlling parties" while leaving "truly decentralised" activity out of scope. Treating the developers and maintainers of non-discretionary DeFi infrastructure as arrangers appears inconsistent with that intent. (Notably, in the United States, the CLARITY Act explicitly incorporates developer protections through the Blockchain Regulatory Certainty Act (BRCA), codifying that software developers and infrastructure providers who do not control customer funds are not money transmitters or financial institutions — drawing precisely the same distinction between infrastructure providers and intermediaries that we propose here.)[footnote 1]

Introduces a concept — "added value" — that has no basis in the statute and lacks a limiting principle. The concept of "added value" does not appear in article 9Y of the RAO or any of its exclusions. It is a construct added in the FCA guidance. The statutory exclusion in article 9Z3 of the RAO — which provides that a person does not carry on arranging merely by providing means by which one party to a transaction is able to communicate with other parties — contains no such qualification. PERG 19.8.19 should not introduce a threshold that narrows a statutory exclusion beyond what the legislation provides. To the extent the FCA wishes to give guidance on when the exclusion is lost, that guidance must be grounded in the

statutory language of article 9Y of the RAO — i.e. whether a person is "making arrangements" — not in a freestanding concept with no basis in the text.

The FCA plainly does not intend to bring validators, node operators, or oracle providers within article 9Y of the RAO — those participants do not make arrangements for anyone to transact, have no client relationship, and are outside scope on the face of the statute. But if "added value" is read broadly enough to mean any contribution to the infrastructure on which transactions occur, there is no principled basis for excluding them. Adding value to a network is not the same as intermediating a transaction. The absence of a limiting principle in the current guidance is itself an indicator that the concept needs to be grounded in the statutory language.

Is also in tension with crypto-specific precedent under the Money Laundering Regulations (MLRs). Joint Money Laundering Steering Group (JMLSG) Sector 22 guidance — endorsed by HMT — treats neutral self-custodial wallets and DeFi interfaces as outside the scope of "cryptoasset exchange provider", even though they permit users to initiate transactions. The arranging language in the Cryptoasset Regulations closely mirrors the MLRs. We would welcome a clear policy rationale if the FCA intends to interpret it more broadly under FSMA.

Would create significant operational challenges the FCA is unlikely to intend. Under CP25/40, all firms within article 9Y of the RAO would be subject to the full intermediary rulebook, including executing retail client orders only on UK-authorised venues and limiting retail access to assets admitted to a UK QCATP. Permissionless DeFi protocols are not UK venues, and interface providers do not choose the assets listed or control protocol execution. Requiring a neutral DeFi interface to ensure execution occurs only on UK-authorised venues is akin to requiring Google Maps to obey the speed limit. The tool offers options for navigation but does not drive the car.

Risks offshoring DeFi development and reducing connectivity between UK digital assets markets and global on-chain financial markets. UK-based protocol teams will have strong incentives to move key functions overseas if publishing and maintaining non-discretionary protocol code risks being treated as arranging. If that infrastructure cannot be developed from the UK, the UK risks constructing a digital finance ecosystem that is a walled garden: regulated in isolation, but cut off from the vibrant on-chain financial systems being built across the US, Asia, the Middle East and the EU. The question is not whether on-chain finance will develop globally (it will) but whether UK firms and consumers will be connected to it, or locked out of it.

Proposed PERG amendments: how we can help resolve this

We believe these issues can be resolved without changing the underlying legislation and in a way that is fully consistent with the FCA's objectives. We offer these in a constructive spirit and would welcome the opportunity to discuss them with FCA staff.

(A) New cross-cutting clarification in PERG 19.8

We propose a new paragraph immediately after PERG 19.8.-1 G:

19.8.-1A G. For the purposes of PERG 19.8, an important distinction can be drawn between: (1) **Non-discretionary infrastructure**: the decentralised base layer (e.g. public blockchain networks) and the DeFi protocols. These are permissionless and rule-bound: they execute identically for all users and cannot select counterparties, refuse orders, or influence execution outcomes. They execute; they do not intermediate. Protocol developers who publish and maintain such code, without operating it or controlling user assets, are infrastructure providers, not intermediaries. (2) **Technical services**: APIs, wallets, connectivity tools, and other services that connect users to non-discretionary infrastructure. The question for these services is whether they interpose themselves in transactions — by receiving and transmitting client orders as agent, exercising discretion over execution, or controlling user assets — or whether they provide a connection through which users transact directly with the underlying infrastructure. (3) **Intermediation**: activities where a person stands between a client and a trading venue or counterparty, is involved in bringing about or facilitating particular transactions, and exercises control or discretion over those transactions. In the FCA's view: (a) a person whose role is confined to publishing or maintaining non-discretionary infrastructure will generally not be regarded as carrying on the regulated activity of arranging deals in qualifying cryptoassets under article 9Y of the RAO, even where UK users choose to interact with that infrastructure on-chain; and (b) a person providing technical services that connect users to such infrastructure will generally not be regarded as arranging under article 9Y of the RAO where they do not: (i) directly receive or transmit client orders as agent; (ii) negotiate or exercise discretion over the terms or execution of any transaction; or (iii) hold themselves out as a broker or intermediary. This reflects the architectural reality of on-chain finance: that infrastructure executes; it does not intermediate.

(B) Rebalancing PERG 19.8.3(6)–(9) on technical services

We suggest amending PERG 19.8.3(6)–(9) G to acknowledge that non-discretionary infrastructure and the technical services connecting users to it are generally outside article 9Y of the RAO. The key consideration in (8A) should be whether the firm is directly interposed between the client and a trading venue or counterparty. Factors indicating arranging include: receiving client orders as agent and transmitting them for execution; holding itself out as a broker; or having a role in determining the counterparties, venues or essential terms of execution. By contrast, where a firm publishes or maintains non-discretionary infrastructure, or provides a technical connection through which a client transmits orders directly to a third-party venue or service provider without the firm standing in the chain of intermediation, this will generally fall within the "mere communications" concept in PERG 19.8.19G and not amount to arranging under article 9Y of the RAO.

(C) Narrowing "added value" in PERG 19.8.19

The concept of "added value" does not appear in article 9Y of the RAO or any of its exclusions. It is an FCA guidance construct with no statutory foundation. The relevant statutory exclusion — article 9Z3 of the RAO — contains no such qualification. PERG 19.8.19 should not introduce a threshold that narrows a statutory exclusion beyond what the legislation provides. To the extent the FCA wishes to give guidance on when the article 9Z3 of the RAO exclusion is lost, that guidance must be grounded in the statutory language of article 9Y of the RAO — i.e. whether a person is "making arrangements" — not in a freestanding concept that has no basis in the text.

We propose inserting a new paragraph:

(19A) G "Added value" for these purposes means value added to the intermediation of a qualifying cryptoasset transaction — for example, where a person selects or recommends counterparties or venues, receives and transmits client orders as agent, or negotiates or has discretion over the terms on which a transaction is executed. It does not mean value added to the network or protocol infrastructure through which transactions occur. The FCA plainly does not intend to bring validators, node operators, or oracle providers within article 9Y of the RAO. Their contribution — maintaining, securing, and processing transactions within decentralised protocols — is network-level value, not intermediation-type value. "Added value" for the purposes of PERG 19.8.19 should not be read so broadly as to capture network-level contributions the FCA does not intend to regulate as arranging. The relevant question is whether a person stands between a client and a counterparty and exercises control or discretion over the terms or execution of a specific transaction. By contrast, features inherent to the provision of non-discretionary infrastructure or to connecting users to such infrastructure — including formatting, user experience, security, connectivity, or order routing controlled by the user or an authorised firm — will not, of themselves, amount to the kind of "added value" that takes a service outside the article 9Z3 of the RAO exclusion.

We also suggest refining the order-routing example to distinguish pure pass-through routing controlled by the client or authorised firm (which remains within the article 9Z3 of the RAO exclusion) from more sophisticated routers that actually stand in the execution chain (which can still be "arranging" under article 9Y of the RAO).

Cryptoasset lending, borrowing and staking

We recommend PERG 19.9 explicitly illustrate the perimeter difference between centralised custodial lenders (likely in scope of dealing and safeguarding) and self-custodial DeFi lending protocols, where protocol developers are not intermediaries if they do not hold assets. On staking, the same "added value" logic should apply: "added value" is value added to staking intermediation, not generic UX, monitoring, or the infrastructure contribution itself. Only the custodian with the client relationship and discretion should need authorisation.

Application of intermediary rules to firms in scope only under the "with a view" limb

Even where a person is properly regarded as making arrangements with a view to transactions (the second limb of article 9Y of the RAO), applying the full intermediary rulebook is not always appropriate. Rules restricting execution to UK-authorised venues or limiting retail access to admitted assets are structurally incompatible with permissionless DeFi protocols. We encourage the FCA to consider differentiated rule sets or calibrated waivers for firms whose "arranging" role is confined to self-custodial, user-directed interfaces to DeFi protocols, focusing on disclosures and risk warnings rather than venue and asset restrictions that cannot realistically be met in a decentralised environment.

Question 4: Do you agree with our proposed guidance set out in the Exclusions relevant to the activities section? If not, please explain why.

We broadly agree with the proposed guidance on exclusions and welcome: confirmation that only a small number of general RAO exclusions have been imported into the cryptoasset regime; and explicit confirmation that the article 4(4) of the RAO MiFID override does not apply to the new cryptoasset-specific exclusions. This confirmation is important: it means the article 9Y of the RAO perimeter turns on the statutory language, not on FCA discretion to import MiFID concepts. We particularly support the targeted exclusions for managers of AIFs/UCITS and insolvency practitioners, and the statement that activities carried on for the sale of goods or supply of services, and activities incidental to a regulated profession, are excluded across all regulated cryptoasset activities.

Sale of goods / services (article 9Z10 of the RAO)

We welcome the FCA's example of a non-financial firm accepting settlement in QCAs and relying on the article 9Z10 of the RAO exclusion. However, the current drafting only applies the "supplier to customer" limb to dealing and arranging, and explicitly dis-applies it from safeguarding. We ask the FCA to confirm in PERG 19.11 that firms whose main business is selling goods or non-financial services, and who only temporarily control QCAs to receive payment, can rely either on article 9Z10 of the RAO or the temporary settlement exclusion for safeguarding, and will not be treated as providing an ongoing safeguarding service requiring full Part 4A authorisation.

Communications, introducing and neutral software

We support the exclusions for arrangements that do not actually bring about a deal, introducing clients to authorised persons, and providing the "mere means of communication" between parties. As noted under Question 3, implementing the proposed new PERG 19.8.19A G – narrowing "added value" to intermediation-type value and clarifying that features inherent to non-discretionary infrastructure or to connecting users to such infrastructure do not defeat the article 9Z3 of the RAO exclusion – would ensure that genuine intermediation remains within scope while DeFi infrastructure developers and self-custodial wallet providers are not forced into arranging merely because they make it easier for users to send and monitor transactions.

Incidental activities to a regulated profession (article 9Z11 of the RAO)

We agree with the FCA's approach to this exclusion, and suggest PERG 19.11 cross-refer more prominently to the carve-out of issuing qualifying stablecoins, dealing in QCAs as principal and arranging staking from the designated professional bodies exemption, to reduce the risk of professional firms inadvertently relying on the incidental business exclusion for these activities.

Question 5: Do you agree with our proposed guidance set out in the Interaction with the current cryptoasset framework for Money Laundering Regulations (MLRs) section? If not, please explain why.

We broadly agree with the FCA's analysis of how the new FSMA crypto regime will interact with the existing MLR framework. We welcome the clarifications that: the MLR definition of "cryptoasset" is broader than "qualifying cryptoasset"; and once a firm is authorised under FSMA as a cryptoasset firm, it does not need separate MLR registration but must still comply with MLR obligations. We also agree that the narrower "business of engaging" test is not replicated in the MLRs, so firms need to assess both tests separately.

Asset perimeter and business test divergences

We suggest the FCA consider adding explicit examples of: tokens excluded from the QCA definition because they are SICs but that still fall within the MLR cryptoasset definition; and NFTs and limited network tokens that may fall within or outside the MLRs depending on their use. This would help firms operating across both regimes to map their obligations more clearly.

Consistency of "arranging" interpretation across FSMA and MLRs

As highlighted in our answer to Question 3, it is important that the FCA's interpretation of article 9Y of the RAO arranging under FSMA is broadly aligned with crypto-specific precedent under the MLRs, while recognising differences in territorial and business tests. JMLSG Sector 22 guidance treats neutral, self-custodial wallets and DeFi interfaces that do not intermediate or control client assets as outside scope of "cryptoasset exchange provider" activity. The underlying policy rationale – that non-discretionary infrastructure and the technical services connecting users to it are not intermediaries – is shared across both regimes. We therefore encourage the FCA to cross-refer in PERG 19.12 to this JMLSG guidance as a relevant interpretative benchmark, and to ensure that non-discretionary infrastructure and technical services treated as outside scope under the MLRs are not inadvertently brought into scope under FSMA because of the "added value" concept, unless a clear policy justification is articulated.

Question 6: Do you agree with our proposed guidance set out in PERG 1, PERG 2 and PERG 8? If not, please explain why.

We broadly agree with the proposed consequential amendments to PERG 1, PERG 2 and PERG 8, and welcome: the updates to PERG 1 and PERG 2 signposting the new PERG 19 chapter and decision tree; the clarification that regulated cryptoasset activities sit alongside existing RAO activities; and the inclusion in PERG 8.7.3 of the new cryptoasset controlled activities for financial promotions purposes.

However, we are concerned that, if PERG 8 cross-references PERG 19.8 as it stands, the same "added value" issues would be imported into the financial promotions perimeter, with unintended consequences for DeFi.

Financial promotions, DeFi and "arranging"

We remain of the view that treating most QCAs as Restricted Mass Market Investments (RMMIs), combined with broad intermediary obligations, is too blunt in a mature market where FSMA-authorised firms will be subject to comprehensive conduct, prudential and safeguarding rules.

From a DeFi perspective, the more acute concern is that if DeFi infrastructure developers and self-custodial wallets are treated as "arranging" under article 9Y of the RAO, and PERG 8 then applies the full RMMI financial promotions regime to their activities, the practical effect will be to prevent UK-regulated firms from offering any compliant interface to permissionless DeFi. Users who wish to access DeFi will continue to do so directly or via offshore firms; the difference is that they will be forced away from UK-regulated "risk filters" – and further isolated from the on-chain financial systems being built globally.

We therefore think it is important that, when finalising PERG 8:

- the FCA explicitly reflects the infrastructure / intermediation distinction proposed for PERG 19.8 – so that developers and maintainers of non-discretionary DeFi infrastructure are not treated as "arrangers" for financial promotions purposes; and
- promotions rules for any firms that are in scope of the second limb of article 9Y of the RAO solely because they operate a self-custodial UI should be calibrated to focus on clear disclosures and risk warnings, rather than venue and asset restrictions that are structurally incompatible with DeFi.