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19 May 2026

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Submitted via email to: cp26-13@fca.org.uk

Response to FCA Consultation Paper CP26/13: Cryptoasset Perimeter Guidance

(Consent to publication: The British Blockchain Association (BBA) consents to publication of our name as a respondent. We are responding as an organisation and do not request confidential treatment for this submission.)

Introduction and Summary of Position:

The British Blockchain Association (BBA) is the United Kingdom's longest-standing professional body for blockchain, digital assets and distributed ledger technologies (established 2017), and serves as the Secretariat of the All-Party Parliamentary Group on Blockchain Technologies. This response has been prepared by the BBA's research community, its members, its policy advisory board across academia and industry, and members of the BBA's Centre for Evidence Based Blockchain.

We welcome the FCA's effort in CP26/13 to clarify the perimeter ahead of the regime commencing on 25 October 2027. However, the BBA cannot agree with all of the FCA's proposed positions. In several areas, the draft guidance is insufficiently evidenced, may create interpretive inconsistency, and is likely to produce outcomes contrary to the FCA's secondary international competitiveness and growth objective. We set out our principal disagreements below, in each case supported by published evidence.

We propose the FCA revisit (i) the "identifiable person" doctrine as applied to permissionless infrastructure (Q1); (ii) the scope of the qualifying stablecoin definition and the absence of effects-based safeguards (Q2); (iii) the over-broad safeguarding "control" test, the categorical treatment of crypto lending as dealing, and the artificially narrow QCATP scope (Q3); (iv) the wholesale removal of the overseas persons exclusion for institutional flows (Q4); (v) the duplicative MLR/FSMA architecture (Q5); and (vi) the empirical effectiveness of the financial promotions regime as currently constituted (Q6).



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Question 1: Introduction section

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

1.1 We agree with the five-question analytical framework and the FCA's reliance on substance over form. However, we disagree with several elements of the Introduction that, taken together, risk over-extending the perimeter beyond what the legislation supports and beyond what is sustainable on the evidence.

1.2 First, the proposed "identifiable person" doctrine at paragraphs 2.10–2.11 of the consultation is, in its current formulation, too elastic. By stating that the analysis "depends on the facts" but then listing indicators that include any person who "operates or maintains the service", "sets key parameters", or "receives fees or some other commercial benefit", the guidance risks capturing software developers, open-source contributors, individual validators, and routine node operators who are remunerated only by protocol-level rewards. Independent empirical research has shown that decentralised systems exhibit a wide spectrum of control and economic concentration, and that simple indicator-based tests risk systematically misclassifying the boundary (Zetsche, Arner & Buckley, 2020; Aramonte, Huang & Schrimpf, 2021). We invite the FCA to (i) replace the open-ended indicator list with a closed test centred on discretionary control over consumer-facing risk parameters, and (ii) state expressly that mere receipt of protocol-distributed validator rewards or open-source contribution does not amount to "commercial benefit" for these purposes [9].

1.3 Second, the FCA's statement that "the fact that an arrangement involves smart contracts, public blockchains or some elements of decentralisation does not determine the perimeter position or place the arrangement outside of regulation" is correct as a matter of legal principle, but the converse (that the existence of decentralisation should not enlarge the perimeter) is not stated with equal clarity. The current text reads as a one-way ratchet. The BBA suggests that the FCA articulates the symmetric proposition: where, on the facts, no person exercises discretionary control over consumer-facing risk, the perimeter does not attach merely because economic value is generated.

1.4 Third, we are not persuaded that the decision tree at Annex 1, taken with paragraphs 2.10–2.11, will be workable for the cross-border firms most likely to engage with PERG 19. Comparative analysis of MiCAR Article 3, MAS PSA and FINMA guidance shows that the UK's approach is materially broader in stated scope, while being less prescriptive in operational tests (Zetsche, Buckley, Arner & van Ek, 2023). This combination (a wide stated perimeter married to fact-specific application) places a disproportionate burden on firms and undermines the FCA's secondary international competitiveness and growth objective. We invite the FCA to publish, alongside the final guidance, at least six fully worked, end-to-end case studies (covering a UK retail app, an overseas DEX front-end, a tokenised deposit, a non-custodial wallet provider, a validator-as-a-service operator, and a DAO with a UK-based foundation), with clear answers on each of the five perimeter questions.



1.5 Finally, we propose that the FCA revisit its implicit position that perimeter guidance should remain materially static until the next legislative cycle. Cryptoasset business models evolve at a cadence that the traditional regulatory cycles cannot match. The BBA recommends a published commitment to biennial PERG 19 review, with a separate fast-track procedure for adding worked examples in the intervening period.

Question 2: New specified investments

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

2.1 While we understand the rationale for clearly delineating qualifying cryptoassets from other regulated instruments, we note that an overly narrow interpretation of qualifying cryptoassets could create opportunities for regulatory arbitrage. In particular, firms may seek to structure products so that they fall outside the regulatory perimeter while maintaining substantially similar economic characteristics or consumer risk profiles. This could result in inconsistent regulatory outcomes and reduce the effectiveness of the regime over time. Similar concerns regarding technology-neutral and function-based regulation have been raised in international policy discussions on stablecoins and digital asset regulation (Arner, Auer & Frost, 2020).

2.2 For example, the proposed exclusion of algorithmic stablecoins from the definition of qualifying stablecoins may create potential perimeter gaps. Some algorithmic or hybrid stabilisation models may still present significant risks relating to liquidity, volatility, redemption expectations, contagion and market confidence, notwithstanding the absence of reserve backing assets. There is therefore a risk that firms may structure products to fall outside the qualifying stablecoin definition while continuing to market them as stable or low-volatility cryptoassets. Research has also suggested that stablecoin fragility may not depend solely on reserve structure or protocol design (Gadzinski, Castello & Mazzorana, 2023).

2.3 If algorithmic stablecoins fall outside the proposed definition of qualifying stablecoin, it may also be appropriate to consider whether additional safeguards are needed around the use of the term “stablecoin” in relation to such products. The use of stability-related terminology may create consumer expectations regarding value stability, redemption rights or reserve backing that are not supported in practice.

2.4 Additional clarification may be helpful regarding hybrid or interoperable arrangements involving CBDCs, tokenised deposits and privately issued payment tokens, particularly where these products may perform economically similar functions to qualifying stablecoins.

2.5 We therefore encourage the FCA to continue monitoring market developments and to consider whether additional guidance or future perimeter adjustments may be necessary to



address evolving token structures and hybrid models. In this context, it may also be appropriate to consider whether limitations or conditions should apply to the use of the term “stablecoin” for cryptoassets that rely solely on algorithmic stabilisation mechanisms.

Question 3: New regulated cryptoasset activities

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

3.1 We disagree with the FCA’s proposed scope on several points. The three principal ones are: (a) the breadth of the safeguarding “control” test as applied to non-custodial and threshold-cryptography arrangements; (b) the categorical treatment of cryptoasset lending and borrowing as dealing in qualifying cryptoassets; and (c) the artificial restriction of the QCATP definition to spot exchange. We address each in turn, with additional concerns on QCATP conflicts management, staking, and technical-service exclusions below.

3.2 On safeguarding, the FCA’s “requisite degree of control... through any means” test at PERG 19.6.2 is, in our view, broader than the statutory text requires and broader than the harm justifies. Read with PERG 19.6.3, the test risks capturing legitimate non-custodial wallet providers offering social-recovery or multi-party computation services in which no single party can unilaterally transfer the cryptoasset. The harm rationale for regulating custody, that the firm could initiate a transfer prejudicial to the customer, is absent in these architectures (Allen, Rauchs, Blandin & Bear, 2020; Aramonte, Huang & Schrimpf, 2021). We therefore invite the FCA to confirm that the “control” test is satisfied only where the firm, acting alone or with parties it nominates and remunerates, can in fact effect a transfer of the benefit of the cryptoasset. Mere participation in a threshold scheme, for example, holding one of three or more independent key shards under a true threshold or social-recovery arrangement, should not in itself constitute control.

3.3 On cryptoasset lending and borrowing, the FCA’s view that lending or borrowing transactions “will generally amount to deals, not loans” (PERG 19.9.1) is difficult to reconcile with traditional distinctions in English law. In English law, a loan and a sale are distinct legal concepts. A loan involves transfer of property subject to an obligation to return equivalent property; a sale involves transfer for valuable consideration without such obligation [3, 5].

The FCA’s reliance on the breadth of the words “buying” and “selling” to characterise all lending as dealing collapses that distinction and produces a categorical answer in an area that the academic and bankruptcy literature shows require case-by-case analysis (Allen, 2023; Federal Reserve Bank of Chicago, 2023; Better Markets, 2025). The BBA invites the FCA to replace the categorical statement at PERG 19.9.1 with a graduated analysis that distinguishes (i) collateralised secured lending; (ii) rehypothecation-based “earn” products; and (iii) protocol-level over-collateralised lending pools, each of which engages different perimeter outcomes.



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3.4 On QCATPs, the prohibition on offering derivatives, exchange-traded notes and other linked financial instruments on the same venue as the spot product (PERG 19.7.1(6)) warrants reconsideration. Internationally, integrated venues that offer spot, derivatives and structured products on a single regulated platform are the prevailing model — see, for instance, the structures permitted in Singapore (MAS), the United States (post-CFTC reform), and the EU (where MiCAR coexists with MiFIR-regulated trading venues). The UK proposal forces UK-authorized QCATPs to fragment their order books across two separately authorized entities for spot and derivative trading, increasing operational risk, raising costs to consumers, and undermining UK competitiveness. We invite the FCA to permit, by rule modification or future legislative amendment, the integrated operation of a QCATP and a trading venue under a single legal entity subject to robust segregation of order books and conflicts management.

3.5 On the operation of a QCATP more generally, we welcome the recognition of vertical-integration risk in the post-FTX literature (Allen, 2023; Cong, Li, Tang & Yang, 2023). However, the consultation under-states the risk that an authorized firm holding combined permissions (operating a QCATP, dealing as principal, safeguarding) will continue to exhibit the same conflicts that contributed to consumer harm in 2022–23. PERG 19 is not the appropriate vehicle for prudential rules, but the perimeter guidance should at least cross-refer to the conflicts management obligations under CRYPTO 6 and signpost firms to the FCA's expectations on operational segregation.

3.6 On arranging qualifying cryptoasset staking, the consultation's breadth contrasts sharply with international comparators. The US Securities and Exchange Commission's Division of Corporation Finance issued a Staff Statement in May 2025 concluding that certain protocol staking activities, including the operation of a validator node and the receipt of protocol-level rewards, do not constitute securities transactions, on the basis that they do not involve a "reasonable expectation of profits derived from the entrepreneurial or managerial efforts of others" (SEC, 2025). The FCA's contrary position, that pooled custodial staking and reward distribution are categorically within the perimeter, will leave UK-authorized firms unable to offer products that overseas peers offer outside any equivalent securities-law obligation. We invite the FCA to align with the SEC's functional distinction between protocol-level participation (outside perimeter) and intermediated, discretionary staking services (within perimeter).

3.7 Finally, the technical-service exclusion at article 9Z9 is too narrowly drawn. The criterion that the service provider "does not hold itself out as offering to arrange qualifying cryptoasset staking to the public" will, on a strict reading, deny the exclusion to validator operators whose websites describe the validator's availability, performance and fees in commercial terms — without those operators having any user-facing involvement. We invite the FCA to replace the "holding out" limb with a substantive test based on whether the provider sets validator selection policy, pools customer assets, or markets yield.



Question 4: Exclusions relevant to the activities

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

4.1 We agree with the principle that exclusions should be tailored to the new regulated cryptoasset activities. We disagree, however, with the FCA's blanket disapplication of the overseas persons exclusion (OPE) and with the narrow construction of the article 9Z11 "incidental to profession or business" exclusion.

4.2 The complete disapplication of the overseas persons exclusion (OPE) for the new regulated cryptoasset activities (PERG 19.3.5) is, in our view, materially over-broad. The harm rationale for the section 418(6C) deeming provision is consumer protection and is explicitly framed by reference to dealings with UK consumers. The OPE in PERG 2.9.17 has historically operated, in traditional finance, to permit overseas counterparties to deal with UK authorised firms acting on their own account or for wholesale clients, without triggering an authorisation requirement. The CP26/13 architecture eliminates that mechanism for cryptoassets without articulating a corresponding harm. The predictable result is that overseas market-makers, OTC desks and institutional liquidity providers will withdraw from servicing UK wholesale clients, with a measurable adverse impact on UK market depth, spreads and execution quality (Zetsche, Buckley, Arner & van Ek, 2023). We invite the FCA to support, including through legislative recommendation to HM Treasury, a tailored cryptoasset OPE that operates in respect of dealings with UK authorised firms acting on their own account or for non-consumer clients.

4.3 On article 9Z11, the carve-outs for issuing qualifying stablecoin, dealing as principal and arranging qualifying cryptoasset staking from the section 327 designated professional body regime are disproportionate. Members of the regulated professions (solicitors, accountants) routinely provide incidental services to corporate clients that involve qualifying cryptoassets, for example, advising on the receipt of a token settlement or on the structuring of an employee reward arrangement. Excluding these activities entirely from the section 327 regime will force routine professional services through the FSMA authorisation regime without commensurate consumer benefit. We invite the FCA to recommend that HM Treasury narrow the carve-out so that it operates only where the activity is offered to retail or unsophisticated clients.

4.4 On the article 9Z10 "sale of goods or supply of services" exclusion, we agree with the consultation's general framing. We disagree, however, that the four indicative factors at PERG 19.11.5 (turnover, profit, capital employed, headcount, time spent) are by themselves sufficient. They are easily engineered. We invite the FCA to add an explicit anti-avoidance principle to the effect that the exclusion is unavailable where, on a substance basis, the cryptoasset activity contributes a material part of the firm's revenue, customer base or



marketing message, and to publish a non-exhaustive list of indicators drawn from supervisory experience.

4.5 Finally, on the technical-service and introducer exclusions, we agree with the FCA's broad direction but consider the drafting at PERG 19.6.11, 19.8.18 and 19.10.4 too narrow. The exclusions should expressly be unavailable where (i) the introducer or technical provider is in the same group as, or commercially incentivised by, the destination service; (ii) the introducer handles customer onboarding, KYC or remuneration flows; or (iii) the introducer holds itself out, expressly or by implication, as the customer's counterparty.

Question 5: Interaction with the current cryptoasset framework for Money Laundering Regulations (MLRs)

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.

5.1 We do not agree that the dual-regime architecture set out in PERG 19.12 is the optimal long-term solution. The FCA's position that the MLRs and FSMA will operate concurrently, with firms required to be authorised under FSMA and additionally to comply with the MLRs, replicates the existing model, a model that has been criticised as duplicative, supervisorily fragmented and uncompetitive. Comparable jurisdictions including Singapore (MAS Payment Services Act) and Switzerland (FINMA digital assets framework) have moved towards consolidated authorisation regimes that integrate prudential, conduct and AML obligations under a single rulebook. We invite the FCA to work with HM Treasury to recommend the consolidation of MLR registration into FSMA authorisation for in-scope cryptoasset firms, with the MLRs retained only for firms that fall outside the new perimeter.

5.2 We also disagree that the definitional divergence between the MLR "cryptoasset" definition (capturing limited-network tokens, NFTs and other broader assets) and the FSMA "qualifying cryptoasset" definition is merely a matter for clarification. The divergence creates a potential structural supervisory blind spot. Firms operating in the LNT or NFT market segments will face an MLR obligation but no FSMA conduct framework, despite FATF's 2025 finding that NFT and LNT-adjacent flows have grown materially in illicit finance typologies (FATF, 2025). The BBA invites the FCA either (i) to support legislative alignment of the two definitions, or (ii) to publish concrete supervisory expectations for firms operating in the divergence.

5.3 On the "by way of business" test, we note that the FCA's narrower formulation for the new regulated cryptoasset activities (PERG 19.2) sits alongside the unchanged MLR test (regulation 14A). The FCA accepts at PERG 19.12.11 that the tests are not identical. We disagree that this is acceptable in steady state. A firm may, on the same facts, be inside the



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MLR perimeter and outside the FSMA perimeter or vice versa. We invite the FCA to publish a binding interpretive note aligning the two tests.

5.4 On the travel rule and FATF Recommendation 15, we note that as of June 2025, 85 jurisdictions have passed implementing legislation, but that supervision and enforcement remain uneven (FATF, 2025). The CP26/13 perimeter guidance is silent on how travel-rule obligations attach to QCATPs interacting with un-hosted wallets and overseas counterparties. We invite the FCA to include explicit guidance in the final text.

5.5 Finally, on transition, we are concerned that the planned application window (30 September 2026 to 28 February 2027) is too short for firms moving from MLR registration to full FSMA authorisation, particularly where business models require additional permissions for safeguarding, dealing and arranging. We invite the FCA to extend the window or to operate a flexible “rolling” savings provision for firms whose applications are made in good faith but not determined before 25 October 2027.

Question 6: PERG 1, PERG 2 and PERG 8

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

6.1 We agree with the structural integration into PERG 1 and PERG 2. We disagree, however, with the FCA’s implicit assumption in PERG 8 that the current financial promotions regime for cryptoassets, particularly the Restricted Mass Market Investment (RMMI) classification introduced by PS23/6, is delivering its intended consumer protection outcome and should be carried forward unchanged.

6.2 Empirically, the evidence base is mixed. The FCA reports having issued over 2,300 alerts and taken down more than 1,000 scam sites since October 2023. However, the FCA’s own Cryptoassets Consumer Research 2025 (Wave 6) shows that UK adult ownership fell from 12% to 8% (Wave 5 to Wave 6 = approximately 2.5 million fewer UK holders) while average holdings rose, consistent with some users withdrawing from regulated UK channels while committed users hold larger positions. Approximately 25% of cryptoasset users say they would be more likely to invest if the UK regime were stronger. The displacement question — whether a non-trivial share has moved to overseas, unregulated venues in response to the perceived burden of risk warnings, cooling-off periods and personalised risk assessments — therefore deserves explicit empirical examination. The BBA respectfully invites the FCA to publish a structured post-implementation review of the RMMI classification, with explicit attention to displacement effects and to whether the regime has narrowed or widened the gap between authorised UK firms and unregulated overseas alternatives.



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6.3 On the article 73ZA registered-person regime for cryptoasset financial promotions, the BBA notes that only a small number of firms have been approved as promotion-approvers under this route. The result has been an effective bottleneck on UK firms' ability to communicate compliant financial promotions on commercial terms. We invite the FCA to publish (i) the number of section 21 approver applications received, granted, refused and withdrawn since the regime commenced; (ii) the average time to determination; and (iii) the FCA's intended supervisory cadence for approved approvers. Without this transparency, the regime's effect on UK competitiveness cannot be objectively assessed.

6.4 We disagree with the implicit narrowness of the "mere communication" exclusion at PERG 8.32 as proposed to be applied to PERG 19.8.19. The line between "merely facilitating communication" and "making arrangements with a view to transactions" is, on the current drafting, almost entirely consumed by the algorithmic curation, recommendation and amplification practices that are routine on every major digital platform. As drafted, the exclusion may be unavailable to any platform that ranks content, runs paid endorsement, or operates an affiliate scheme, including platforms with no cryptoasset-specific functionality. We invite the FCA to articulate a narrower exclusion-narrowing test based on whether the platform actively promotes specific qualifying cryptoassets, rather than the broader question of whether it ranks content.

6.5 Finally, on the proposed application of the controlled activity list at PERG 8.36.3, we welcome the inclusion of qualifying cryptoasset activities but query why advising on qualifying cryptoassets has not been brought within the perimeter at all. The empirical literature on consumer harm from cryptoasset advice, whether via influencers, robo-advisers or vertically integrated platforms, is now substantial and shows material consumer detriment (FCA, 2024; Better Markets, 2025). We invite the FCA, in conjunction with HM Treasury, to consider whether a dedicated regulated activity of advising on qualifying cryptoassets should be added in a subsequent legislative cycle.

Concluding Observations

The British Blockchain Association supports the FCA's overall objective of clarifying the cryptoasset perimeter. However, on the points set out above we respectfully disagree with some of the FCA's proposed positions. In summary: the "identifiable person" doctrine is too elastic and risks capturing legitimate decentralised infrastructure; the safeguarding control test should be narrowed to true unilateral control; the categorical treatment of crypto lending as dealing is difficult to reconcile with established legal distinctions; the QCATP scope is operationally restrictive by international comparison; the blanket disapplication of the OPE will damage UK wholesale market depth; the dual MLR/FSMA architecture is duplicative and uncompetitive; and the financial promotions regime requires a properly structured post-implementation review. Each of these positions is supported by published data and supervisory evidence to develop a perimeter that is protective of consumers, proportionate to firms, and competitive on the international stage.



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Yours faithfully,

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