



## Joint Response to the FCA's Consultation Paper 25/40: Regulating Cryptoasset Activities

February 10, 2026

### Executive Summary

This response is a joint effort by the [IOTA Foundation](#), the [Sui Foundation](#), the [Cardano Foundation](#), and the [Avalanche Policy Coalition](#), to provide industry input to the FCA's Consultation Paper CP25/40. As organizations actively operating within the cryptoasset and blockchain technology ecosystem, we find it important to ensure that the regulatory framework in the UK is robust, proportionate and forward-looking. We appreciate the FCA's continued engagement with the industry and its objective of strengthening consumer protection while supporting the UK's position as a competitive and innovative market for cryptoasset activities.

In this submission, we focus on staking and decentralized finance (DeFi), as these are the areas where the current regulatory proposals raise the most significant questions of scope, proportionality and technical interpretation. Both staking and DeFi involve a wide range of operational models, from fully custodial and intermediary-based services to non-custodial and protocol-native mechanisms, and therefore require particular regulatory precision to avoid unintended consequences. We believe that clarity in these areas is essential to ensure that regulatory obligations are aligned with actual sources of risk, while preserving the UK's ability to support innovation in decentralized and non-custodial technologies.

A consistent theme across our feedback on both staking and decentralized finance is the importance of clearly distinguishing between infrastructure functions and intermediary functions. We recommend that regulatory obligations remain focused on entities that exercise custody, discretion, or commercial intermediation, while

preserving the neutrality of public blockchain infrastructure. Actors that provide software development, validation, communications, or other protocol-level services without controlling client assets or exercising unilateral decision-making are performing infrastructure roles rather than financial intermediation, and warrant a proportionate and differentiated regulatory treatment.

With respect to staking, we strongly recommend the FCA to include a clear and explicit distinction between custodial and non-custodial staking models. Where staking is provided through a custodial arrangement, and the firm safeguards client assets and intermediates the staking process, we recommend applying the proposed requirements on information provision, key contractual terms, express prior consent for retail clients, and record-keeping. We also recommend that these requirements apply only to retail clients, and in particular only in custodial contexts, as this is where information asymmetries, operational risk and counterparty exposure are most acute. Consequently, we strongly believe that non-custodial staking must be treated differently. For non-custodial and delegated staking arrangements, where firms do not control client assets or private keys, we recommend that such activities remain outside the scope of regulated staking activity, as this maintains proportionality and aligns regulatory obligations with the actual sources of risk. Non-custodial and delegated staking arrangements happen on-chain, without the staking provider taking custody of the user's assets. This means that it is entirely different from custodial staking, where the user's assets are directly controlled by the staking provider.

With respect to decentralized finance, we recognise the FCA's intention in CP25/40 to capture situations where a clearly identifiable controlling person is effectively carrying on regulated cryptoasset activities. At the same time, we recommend that the concept of a "clear controlling person" be defined in a technically precise and objective manner. DeFi systems are structurally different from custodial or intermediary-based models, relying on self-custody, automated execution and open participation. These characteristics change both how risks arise and how they are mitigated. We therefore recommend that regulatory expectations scale with demonstrable, unilateral control over protocol operation, governance or economic outcomes, and not be triggered by development activity, governance participation or infrastructure provision alone.

Overall, we recommend that regulatory obligations are anchored to the presence of custody, discretion and unilateral control, while preserving space for non-custodial and decentralized systems to operate within a proportionate and innovation-friendly framework. We firmly believe this approach would strengthen legal certainty, enhance consumer protection where it is most needed, and reinforce the UK's position as a jurisdiction that understands the architectural realities of decentralized

technologies. We would welcome the opportunity to engage further with the FCA to discuss these recommendations and to support the development of guidance that reflects both regulatory objectives and technical realities.

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## Detailed Explanation

### Staking

It is essential that the regulatory framework draws a clear and explicit distinction between custodial and non-custodial staking. As currently drafted, the wording blurs these models, even though they involve materially different risk profiles and levels of intermediation. Without clearer scoping, there is a risk that requirements intended for custodial services are inadvertently read as applying to arrangements where firms neither control client assets nor intermediate staking arrangements.

Within the scope of custodial staking, we broadly agree with the proposal to require regulated staking firms to provide retail clients with information about the firm and its staking service, to set out the key terms of the agreement, and to obtain express prior consent. We also agree that these requirements regarding information provision, key terms and express prior consent should apply only to retail clients and not to non-retail clients, as the latter are generally better placed to assess and manage operational and counterparty risks without the need for prescriptive consumer-style protections. In addition, we agree with the proposed record-keeping requirements on regulated staking firms, where those requirements apply to custodial staking models. These requirements are only appropriate and proportionate where staking is offered through a custodial model, where the firm safeguards assets, performs or delegates validation, intermediates rewards, and exposes clients to operational and counterparty risk. Explicit disclosure of asset use, reward mechanics, fees, restrictions on access, ownership transfer and insolvency treatment, combined with express consent before assets are committed and robust internal record-keeping, materially improves retail client understanding and accountability in custodial staking services.

However, the application of these obligations must remain tightly linked to the presence of custody or safeguarding. As set out in the cost benefit analysis, cryptoasset staking can take several distinct forms, including staking-as-a-service (delegated staking), dedicated (single) staking, pooled custodial staking and liquid staking, as well as “pure” protocol-level staking where a user stakes directly with the protocol (for example, by running their own validator or staking directly through the network’s native mechanisms) without using a third-party provider at all. In staking-as-a-service (delegated staking), users retain custody and control of their cryptoassets and delegate only the operation of the validator node to a third-party provider, typically in return for a fee. By contrast, dedicated (single) staking and pooled custodial staking involve a custodial model in which a firm safeguards client assets and stakes them on the client’s behalf, either individually or through pooling.

From a regulatory perspective, delegated staking and protocol-level staking should therefore be treated differently from custodial staking models, as they do not involve asset custody or control by the service provider.

In delegated staking arrangements, validators do not take custody of client assets, nor do they control private keys; the staked cryptoassets remain under the ownership and control of the user at all times, with only validator operation rights assigned at the protocol level. In that context, the drafting of CRYPTO 10.4.3R(b), which refers to “whether the qualifying cryptoassets are safeguarded by or on behalf of the firm and if so, by whom” and the paragraph 6.8 of the consultation paper, is unsuitable and confusing. Record-keeping and consent obligations should arise only where safeguarding or custody is actually taking place and therefore where a regulated activity is being performed.

We would also like to note that the staking definitions described in the consultation paper, while helpful in describing commercial service models, risk conflating fundamentally different technical and legal activities under a single “staking” label. In particular, the current categorization mixes protocol-level participation in consensus with custody-based financial intermediation, even though these activities have materially different risk profiles and degrees of control. We recommend aligning the conceptual framing of staking more closely with the approach set out in the recent statement of the US Securities and Exchange Commission’s Division of Corporation Finance on Protocol Staking Activities. That framework draws a clear functional distinction between protocol-native staking, where assets are staked directly in a proof-of-stake network and ownership and control remain with the user, and custodial staking, where an intermediary takes custody of assets and stakes them on the user’s behalf. This distinction provides a cleaner and more technically accurate foundation for regulation, as it anchors regulatory obligations to asset custody and intermediation rather than to participation in the consensus mechanism itself.<sup>1</sup>

If no custody is involved, the staking arrangement is, in substance, a peer-to-peer interaction with the firm providing technical facilitation rather than asset control. Where staking is non-custodial, and the firm merely provides front-end infrastructure enabling communication between parties or interaction with a protocol, the activity should fall outside the scope of regulated staking, consistent with the exemption in article 9Z9. That provision correctly recognizes that a person does not carry on a qualifying cryptoasset staking activity merely by providing the means for parties to communicate or interact. Preserving this distinction is critical to maintaining proportionality, legal certainty, and alignment between regulatory obligations and the actual risks borne by retail clients.

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<sup>1</sup> [U.S. Securities and Exchange Commission, Statement on Certain Protocol Staking Activities, May 29, 2025](#)

In light of the recently announced UK-US cooperation on crypto regulation, we strongly recommend that the FCA considers aligning its approach with the recent guidance issued by the US Securities and Exchange Commission's Division of Corporation Finance on protocol staking, which has been broadly welcomed by industry participants for clearly delineating custodial and non-custodial models. That guidance draws a principled and workable line between staking activities that involve asset custody and intermediation, and protocol-level or self-custodial staking that is administrative or technical in nature and does not rely on managerial discretion. Adopting a similarly clear, function-based distinction would materially improve legal certainty, reduce interpretative risk, and help ensure that regulatory obligations attach only where firms exercise control over client assets or materially shape economic outcomes, rather than where they merely facilitate participation in proof-of-stake networks.<sup>2</sup>

In addition, a similar and equally sound approach has been articulated at EU level in the European Commission's interpretation of MiCAR, which draws a clear functional distinction between protocol-level staking and staking-as-a-service. Under MiCA, staking as such is not prohibited or directly regulated, but where staking services are provided by intermediaries and involve custody of client crypto-assets or private keys, those services are treated as ancillary to custody and fall squarely within the existing custodial regime. This framework appropriately anchors regulatory obligations to asset control and risk transfer, requires explicit client consent where custody-based staking is offered, and avoids extending licensing or conduct requirements to self-staking or non-custodial arrangements. Adopting a similar, custody-linked approach in the UK would promote consistency with MiCAR, enhance legal certainty, and ensure that regulatory intervention remains targeted at the activities that genuinely warrant it.<sup>3</sup>

## Decentralized Finance (DeFi)

We recognize FCA's objective of ensuring that cryptoasset activities posing comparable risks are subject to appropriate regulatory oversight. Where there is a clearly identifiable controlling person exercising material influence over a protocol or service and effectively carrying on one or more regulated cryptoasset activities, it is reasonable for regulatory obligations to attach to that person. However, we remain concerned that the proposed approach risks overextending this principle in a way

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<sup>2</sup> [U.S. Securities and Exchange Commission, Statement on Certain Protocol Staking Activities, May 29, 2025](#)

<sup>3</sup> [European Securities Markets Authority, "Does MiCA prohibit staking-related services or are staking activities exempt from the application of MiCA?", June 20, 2024](#)

that mischaracterises the structure, risk profile and systemic role of genuinely decentralized finance.

As we set out in our response to DP25/1, DeFi is not simply “traditional finance implemented on a blockchain”, nor is it a spectrum that inevitably collapses into regulated intermediation. Properly designed DeFi systems represent a fundamentally different financial architecture, built around self-custody, on-chain transparency, deterministic execution and permissionless access. These characteristics materially alter both the source of risk and the mechanisms through which risk is mitigated. Any regulatory framework that does not start from this architectural distinction risks regulating outcomes without understanding causes.

We therefore support the FCA's decision to rely primarily on guidance, rather than prescriptive rules, when addressing DeFi. Given the composability, global nature and rapid evolution of decentralized systems, rigid rulebooks are unlikely to remain effective or even suitable over time. Guidance, by contrast, allows the FCA to articulate supervisory expectations in a way that can evolve alongside technology, reflect different degrees of decentralization, and avoid forcing fundamentally different systems into a single compliance model.

That said, the effectiveness of such an approach depends critically on clarity around scope, particularly the concept of a “clear controlling person”. As currently framed, the proposals risk creating legal uncertainty by relying on an undefined and potentially expansive notion of control. In DeFi ecosystems, influence is often distributed across token holders, DAOs, multisig committees, validators, or open-source contributor communities. Control may be constrained by code, subject to on-chain governance thresholds, or intentionally fragmented to prevent unilateral intervention. Without a technically precise definition, there is a real risk that the concept of “control” becomes discretionary and inconsistently applied.

We are particularly concerned as the proposals appear to conflate technological neutrality with regulatory symmetry. While we agree that activities presenting the same risks should attract appropriate safeguards, decentralization changes not only the magnitude but also the nature of risk. In non-custodial DeFi systems, users retain control of their assets, execution is automated, and enforcement is embedded in code rather than exercised through discretion. Applying frameworks designed for custodial intermediaries, principal dealers or credit providers to such systems does not achieve neutrality, it erases the architectural advantages that decentralization was designed to deliver.

The proposal to apply the proposed measures to DeFi where a controlling person is identified therefore requires much tighter calibration. These proposals were drafted

with identifiable controlling firms, bilateral client relationships and discretionary control in mind. Extending expectations around matters such as client asset segregation, suitability or affordability assessments, or explicit consent mechanisms to autonomous protocols and smart contracts risks creating obligations that cannot be meaningfully complied with, even where there is no consumer protection benefit to doing so.

We also note that the consultation places significant emphasis on operational resilience risks associated with smart contracts. While operational risk is a legitimate concern, the framing risks overstating the fragility of decentralized systems relative to centralized ones. In practice, all of the leading DeFi protocols are subject to extensive third-party audits, formal verification, public code review and real-time on-chain monitoring. The most severe failures in the crypto market to date have overwhelmingly arisen from opaque leverage, custodial misuse and discretionary governance, risks that decentralized systems are explicitly designed to minimize.

Importantly, we support a graduated and proportionate approach where decentralized systems do include strong controlling components. Custodial wrappers and protocol operators with unilateral upgrade rights, or entities that intermediate execution or credit flows justify targeted regulatory expectations. However, those expectations should be narrowly tailored to the specific function performed, rather than triggering wholesale application of a framework designed for centralised firms.

## **Proposed guidance on assessing “control” in DeFi systems**

We recommend that the FCA adopt a clear, technology-informed and internationally aligned framework for assessing “control” in decentralized systems, grounded in objective and verifiable criteria. In our view, the most credible approaches emerging globally converge on a common principle: regulatory obligations should scale with the actual degree of control or influence an actor can exercise over a system’s operation, governance, or economic outcomes, rather than being triggered by mere participation or contribution.

### **1. Adoption of a “common control” test, aligned with the US market structure approach**

We recommend that the FCA draws on the US market structure approach reflected in recent legislative proposals, which centre on a Common Control Test. Under this approach, a decentralized network should be considered under common control

only where one or more related persons are able to exercise material, unilateral influence over the system. Relevant criteria should include: a) the ability of any person or group to unilaterally alter, pause, restrict or direct protocol operation or governance, b) the concentration and distribution of voting or governance power, c) whether the system is open-source and permissionless in practice, d) the degree of economic or technical influence exercised by any actor, and e) any other relevant factor indicating effective control. Critically, this framework should be accompanied by safe harbours that clearly identify circumstances in which a network is not under common control.<sup>4</sup>

Consistent with this approach, it should be made explicit that non-controlling developers, contributors, and infrastructure providers do not, by default, trigger regulated activity obligations merely by writing code, proposing upgrades, or participating in governance processes without unilateral authority. This distinction is essential to avoid chilling legitimate open-source development and public-goods infrastructure.

## **2. Public permissionless infrastructure exemption**

We also recommend that the FCA adopts an explicit exemption for public, permissionless digital infrastructure, in line with the Australian Treasury's approach. Where a system allows anyone to participate in consensus, validation or transaction processing without permission, and where merely facilitating or arranging direct participation does not involve intermediation, such activity should fall outside the scope of regulated cryptoasset activities.<sup>5</sup>

Importantly, smart-contract-based protocols such as automated market makers, wrapping mechanisms or liquidity pools should be treated as infrastructure rather than financial products, where they operate autonomously according to predefined rules and do not involve custody or discretion. This distinction reflects the functional reality of these systems and avoids conflating neutral infrastructure with regulated intermediation.

## **3. No substantial dependence on any person or group**

A core indicator of decentralization should be whether the continued operation and functionality of a system substantially depends on the actions or discretion of any identifiable person or group. Where a protocol can continue to function as intended even if individual developers, operators or governance participants disengage or act

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<sup>4</sup> [U.S. Senate Banking Committee, Responsible Financial Innovation Act of 2025](#)

<sup>5</sup> [Parliament of Australia, Corporations Amendment \(Digital Asset Framework\) Bill 2025](#)

adversarially, this strongly indicates the absence of control. Conversely, systems that rely on ongoing discretionary intervention by a small group to remain functional may warrant closer regulatory scrutiny.

#### **4. Limits on unilateral economic control over token supply**

Across international best practice, a consistent marker of control is the ability to unilaterally dominate a protocol's economic or governance outcomes through token ownership. We therefore recommend that the FCA adopts a clear quantitative threshold, aligned with emerging US proposals, under which no single person or coordinated group should control more than a defined minority share of the token supply relevant to governance or economic decision-making. Exceeding such a threshold should be treated as a strong indicator of potential control, while remaining below it should support a presumption of decentralization, subject to other factors.

#### **5. Alignment with UK industry proposals on decentralized systems**

We also support the approach set out by the UK Crypto Assets Business Council, which emphasises that decentralized DeFi protocols should meet minimum criteria to justify distinct regulatory treatment. These include being non-custodial; operating autonomously according to transparent, predetermined rules; publishing open-source code; lacking any single person or group capable of unilateral alteration, and being economically independent from any development company or controlling user. These criteria provide a pragmatic and verifiable starting point for supervisory assessment and should be developed further in collaboration with industry and technical experts.<sup>6</sup>

#### **6. A risk-based, proportional framework**

Finally, we strongly recommend that the FCA embeds a risk-based and proportional approach to control, consistent with INATBA's policy proposal. Regulatory obligations should scale according to the actual degree of influence an actor can exercise over a network, rather than treating all participants as equivalent intermediaries. Control in decentralized systems typically arises from three sources: economic influence through token ownership or supply dynamics; governance rights attached to tokens; and privileged access rights enabling modification of core protocol parameters. Where none of these sources confer unilateral or dominant influence, regulatory expectations should be correspondingly limited.<sup>7</sup>

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<sup>6</sup> [UK Cryptoassets Business Council, DeFi: A Strategic Opportunity for the UK, September 2025](#)

<sup>7</sup> [INATBA, "A Critique of Regulatory Conflation in the Digital Economy," Policy Paper, December 2025](#)

## 7. Recognition that control and decentralization exist on a spectrum

Finally, we strongly recommend that the FCA explicitly recognizes in its guidance that control and decentralization are not binary concepts, but exist along a spectrum that can evolve over time. DeFi systems may transition from more centralized configurations during early development to increasingly decentralized states as governance is distributed, code is ossified, and economic influence becomes diluted. Conversely, systems may also re-centralize through governance capture, token concentration, or the reintroduction of discretionary control.

A binary classification that forces protocols to be labelled as either “controlled” or “decentralized” risks producing distorted outcomes and regulatory cliff-edges. Instead, supervisory expectations should be calibrated to the current and demonstrable level of control, assessed on an ongoing basis using the objective criteria set out above. This spectrum-based approach would allow the FCA to respond proportionately to real risks, avoid premature regulatory classification of emerging systems, and preserve incentives for protocols to decentralise further over time. Recognising decentralization as a dynamic process, rather than a fixed status, would materially improve regulatory accuracy while remaining fully aligned with the FCA’s consumer protection and market integrity objectives.