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Response to CAR WG Consultation paper on crypto assets

For the attention of
Arif Ismail, Head of Fintech
Crypto Assets Regulatory Working Group

Dear WG Members

Thank you for the opportunity to respond to the Crypto Assets Regulatory Working Group's proposed crypto assets regulations.

A clear regulatory environment is beneficial to any industry, especially new industries like crypto assets.

Unfortunately, the 30 days given for comment is not sufficient to prepare a detailed reply, however, we'd love a further opportunity to do so.

About Cryptoassets.co.za

Cryptoassets.co.za is a recently-formed body of concerned industry participants affected by the proposed regulations.

As an organisation, cryptoassets.co.za feels that regulation cannot substitute for consumer education, as the burden of unnecessary legislation hampers innovation, in favour of a self-justifying "nanny state".

Membership in cryptoassets.co.za is represented by the CRYPTOASSETS token, issued as an "asset"[1] created using Counterparty (XCP) tokens over the Bitcoin blockchain.

We accept membership fees in Bitcoin, and allocate a token to represent a membership card. These fees are utilised to obtain legal representation for industry interests, and to advance the adoption and understanding of crypto assets within South Africa.

Membership is open to all who share a vision for South Africa's role in the financial paradigm shift.

[1] https://counterparty.io/docs/assets/

Membership cards/tokens are not divisible, and are transferable to anyone with a Counterparty wallet[2]. Although 100 cards/tokens have currently been issued, more may be issued in future to accommodate additional members.

We feel that our use of Counterparty assets represents an “eat your own dogfood” approach towards crypto assets.

Membership cards/tokens can serve additional purposes, including entry to events, secure voting, or signing messages to prove identity.

In this respect, CRYPTOASSETS tokens are a record-keeping tool, no different from a gym membership card, except you can do a lot more.

With the multi-sig functionality of a Counterparty wallet, a board could assign budget to expenses on a 3-of-5 signatures required basis, ensuring to the membership that spend was agreed to by a majority, who can be held accountable via public record-keeping.

In this respect, CRYPTOASSETS is a governance tool for the fiscally responsible. We feel that this model can be extended to almost any level of governance, even to the level of national government.

The transparency benefits should be readily apparent given our country’s history.

Resources

We have provided resources to potentially interested parties on our website at https://cryptoassets.co.za, including group exercises, collection forms, document templates and educational material.

Membership

Our list of members is represented by the single-token addresses listed on the **holders** tab at https://xchain.io/asset/CRYPTOASSETS

Membership expertise

Unless further detail is given, members are identified via the funding address of their CRYPTOASSETS membership token. Some members choose to remain partially or fully anonymous at this stage.

[REDACTED]

Bretton is a cryptocurrency veteran of 6 years, maintains a curated archive of cryptocurrency news dating back to 2013, is the co-author of South Africa’s

[2] https://counterparty.io/wallets/

response to the Commonwealth Virtual Currencies Survey in 2015, and runs the NANOPARTICLE fund.

He is an active community member in the Lightning Network and runs testnet and mainnet nodes, maintains documentation, provides user support, and is a moderator on the Lightning Makers group. He says:

> *"your first instant Lightning Network payment will be the most exciting thing you've experienced with technology to date".*

[REDACTED]

Kevin is a cryptocurrency veteran of 6 years, and more recently a blockchain developer for 2+ years. His areas of focus are payment systems, enterprise blockchain deployments, and ongoing research into incorporating privacy in blockchain transactions.

He has been an active participant for several years in various South African online communities relating to crypto assets. He additionally maintains several South African-based full nodes for the Bitcoin blockchain.

Objections

We would object to having to go through a registration process in order to create a *membership database* with *membership cards/tokens* which convey *voting rights* and other features.

We would object to having to go through a registration process in order to effectively self-govern expenditure in an honest and secure manner.

Preamble

We do not believe 30 days is sufficient time to respond to problematic regulations, with no clear industry-agreed definitions.

We wish to enquire which industry stakeholders were involved in developing the regulations? Who were the representatives from local exchanges? What about local developers who lead global crypto assets projects? Who is representing the users, who are actively mining & trading and form the economic powerhouse behind crypto assets?

If registration is the process through which this engagement is to be facilitated, we recommend a voluntary/opt-in basis, open to any affected participant, and beginning this regulatory process from scratch to include their viewpoints as the foundation regulatory stance.

We'd like to point out this is an engineering problem of catering to user needs, and not a regulatory matter.

We express our grave concern over the lack of local research citations in the CAR WG proposal.

In this respect we would like to direct the WG to a curated listing of local research papers on our website: https://cryptoassets.co.za/za-research/

Response to the Proposed Regulations

Our clause-by-clause feedback follows:

> 8. Proposals for regulatory actions for crypto assets
>
> 8.1 It is envisaged that the proposals will be implemented as appropriate by the relevant and respective South African regulatory authorities, and operationalised through the issuing of policy instruments. The proposals are as follows:

We suggest the following re-write:

> "Is is envisaged that the proposals will be implemented by an industry representative body, formed by industry stakeholders, and operationalised through supportive self-regulatory instruments in government policy. The proposals are as follows:"

> 8.2 It is recommended that crypto assets remain without legal tender status and are not recognised as electronic money either.

We suggest the following rewrite:

> "It is recommended that the legal tender status, or electronic money status, of crypto assets, be revisited annually, with more research and understanding, and a view towards wider adoption."

We justify this position on the following basis:

a. If Bitcoin was made legal tender, then all the rules which apply to fiat would apply to Bitcoin. This is efficient.

b. If Bitcoin is not legal tender, then the SARB has no further role to play, because the South African Constitution defines the Central Bank[3] as:

> **Central Bank**

[3] https://www.gov.za/documents/constitution-republic-south-africa-1996-chapter-13-finance#224

> **223. Establishment**
>
> The South African Reserve Bank is the central bank of the Republic and is regulated in terms of an Act of Parliament.
>
> **224. Primary object**
>
> 1. The primary object of the South African Reserve Bank is to protect the value of the currency in the interest of balanced and sustainable economic growth in the Republic.
>
> 2. The South African Reserve Bank, in pursuit of its primary object, must perform its functions independently and without fear, favour or prejudice, but there must be regular consultation between the Bank and the Cabinet member responsible for national financial matters.
>
> **225. Powers and functions**
>
> The powers and functions of the South African Reserve Bank are those customarily exercised and performed by central banks, which powers and functions must be determined by an Act of Parliament and must be exercised or performed subject to the conditions prescribed in terms of that Act.

And according to the South African Reserve Bank's website[4]:

> **Mandate**
> The Reserve Bank is required to achieve and maintain price stability in the interest of balanced and sustainable economic growth in South Africa.
>
> The achievement of price stability is quantified by the setting of an inflation target by Government that serves as a yardstick against which price stability is measured. The achievement of price stability is underpinned by the stability of the financial system and financial markets. For this reason, the Bank is obliged to actively promote financial stability as one of the important determinants of financial system stability.
>
> At present, sections 223 to 225 of the Constitution of the Republic of South Africa, 1996, the South African Reserve Bank Act, 1989 as amended and the regulations framed in terms of this Act, provide the enabling framework for the Bank's operations. The

[4] https://www.resbank.co.za/AboutUs/Mandate/Pages/Mandate-Home.aspx

> Bank has a considerable degree of autonomy in the execution of its duties.
>
> In terms of section 224 of the Constitution, 1996, "the South African Reserve Bank, in pursuit of its primary object, must perform its functions independently and without fear, favour or prejudice, but there must be regular consultation between the Bank and the Cabinet member responsible for national financial matters." The independence and autonomy of the Bank are therefore entrenched in the Constitution. The Bank has been entrusted with the overarching monetary policy goal of containing inflation. The Bank can use any instruments of monetary policy at its disposal to achieve this monetary policy goal. This implies that the Bank has instrument independence in monetary policy implementation but not goal independence in the selection of a monetary policy goal.
>
> The Governor of the Bank holds regular discussions with the Minister of Finance and meets periodically with members of the Parliamentary Portfolio and Select Committees on Finance. In terms of section 32 of the South African Reserve Bank Act, 1989, the Bank publishes a monthly statement of its assets and liabilities and submits its Annual Report to Parliament. The Bank is therefore ultimately accountable to Parliament.

Essentially SARB's role involves ensuring price stability of ZAR and inflation targeting.

If Bitcoin[5] is not legal tender or electronic money, then what influence does it have on the stability of ZAR, or inflation targeting?

To illustrate, what effect does in-game currency in a computer game have on the Rand or inflation? Examples of such currencies are Fortnite V-Bucks, or World of Warcraft Gold.

We would like to point out the lack of clear definitions in the proposed regulations, and suggest a review of the following resources:

- https://bitcoinexchangeguide.com/cryptocurrency-cryptoasset-types/
- https://medium.com/ethex-market/the-token-taxonomy-act-and-the-future-of-useful-tokens-59376fee9531
- https://www.scribd.com/document/396096529/Token-Taxonomy-Act-of-2018?campaign=SkimbitLtd&ad_group=100652X1574425X95ba6665b04fa55618ce0b93cc8bf849&keyword=660149026
- https://www.dfs.ny.gov/legal/regulations/adoptions/dfsp200t.pdf

We would like to see a clear justification of SARB's authority in terms of fulfilling their mandate here. How is Bitcoin/cryptocurrency affecting stability of the Rand or inflation targeting?

[5] or crypto assets

If consumers are borrowing Rands beyond their means to buy Bitcoin, that is a credit management issue at the banks, and not the fault of Bitcoin.

If consumers are buying USD to arbitrage from lower priced bitcoin overseas, that's a supply issue here in South Africa. In other words, a secure and stable electricity supply would facilitate local mining. Similarly, relaxation of capital/exchange controls would eliminate arbitrage opportunities. The presence of the incentive to purchase Bitcoin overseas is not Bitcoin's fault. It is rather a symptom of the local economy's status quo. We additionally note that South Africans are legally allowed to make use of their R1m annual discretionary allowances as they see fit within the confines of the law.

If there are concerns about money laundering, the math doesn't add up. The local trade volumes are low, and prices are too high, resulting in a constant loss in value when converting back to fiat elsewhere. Exchanges have stringent AML/KYC policies already, so the potential for anonymity is almost nonexistent. Practically, it is not a good mechanism to launder money within South Africa. Consider in particular that the most liquid markets locally are the South African exchanges, which are compelled to comply with the FIC Act requirements. Outside of the exchanges there isn't enough liquidity to make it a viable and reliable mechanism for laundering.

It is therefore not logical to presume that Bitcoin/cryptocurrencies can influence Rand stability or inflation targets any more than other asset classes. Bitcoin is, in essence, merely transferrable trust, bought and sold at fair market prices. It is no different from other digital goods such as software licenses, digital books and computer game currency. These can all be used as a medium for exchange of value.

The only thing Bitcoin threatens is the function of a central bank, because there is no longer a requirement for this trusted third party. It would appear that the potential for greater transparency and cost-effectiveness in the national payment system is highly beneficial to the people of South Africa.

Correspondingly trust in Bitcoin will be favoured over trust in legacy payment systems because of the inherent transparency, low cost and mathematically sound security.

We would like to point out the following places where Bitcoin is legal tender, electronic money, "as good as money", or private money, based on a curated list on Wikipedia[6]:

[6] https://en.wikipedia.org/wiki/Legality_of_bitcoin_by_country_or_territory

- Argentina: "Bitcoins may be considered money, but not legal currency."
- Australia: "Australia has officially confirmed it will treat bitcoin “just like money” on 1 July 2017 and it will no longer be subject to double taxation."
- Belarus: Bitcoin is effectively money
- Czech Republic: "intangible asset" yet effectively money
- Estonia: Bitcoin is effectively money
- European Union: legally "a means of payment" and "traditional financial sector regulation is not applicable to bitcoin because it does not involve traditional financial actors"
- Finland: "private contract"
- France: Bitcoin is effectively money
- Germany: "private money"
- Jamaica: Bitcoin is effectively money
- Japan: Bitcoin is effectively money
- Luxembourg: treated like a currency
- Iceland: Bitcoin is effectively money
- Malta: Bitcoin is effectively money
- Norway: Bitcoin is effectively money
- Spain: treated like barter
- Sweden: Bitcoin is effectively money
- Switzerland: effectively money, including paying for local govt services
- United Kingdom: "private money"
- USA:
    - Arizona:
        - Passed a bill to allow people to pay taxes in cryptocurrency (since vetoed)[7]
    - Florida:
        - Court rules Bitcoin is money, requires money transmitter licence[8]
    - Georgia:
        - Was going to pass a bill to allow tax payments in cryptocurrencies, yet seems to have stalled.[9]
    - Illinois:
        - Bill proposed to allow paying taxes in cryptocurrency.[10]
    - Ohio:
        - Allows paying taxes in cryptocurrency, has a portal at https://ohiocrypto.com
    - Pennsylvania:
        - “The act states crypto exchanges “never directly handle” fiat currency and the transactions are conducted through a bank account, these “are not money transmitters” that require the license, according to the guidance. Other businesses in the sector, such as cryptocurrency kiosk, ATM

[7] https://legiscan.com/AZ/text/SB1091/id/1789462
[8] https://bitcoinist.com/florida-judge-overturns-bitcoin-money/
[9] https://legiscan.com/GA/bill/SB464/2017
[10] https://legiscan.com/IL/text/HB5335/id/1732008

and vending machine providers are also not money transmitters."[11]

- Wyoming:
  - "The US State of Wyoming has introduced two new bills to clarify the legal stance on digital assets and Blockchain technology. The bills give Cryptocurrencies the same status as money which allows banks to provide custody solutions to Crypto."[12] [13]

8.3 It is proposed that an appropriate regulatory framework is developed through three phases: a. Phase 1: Registration process for crypto asset service providers. b. Phase 2: Review of existing regulatory frameworks followed by new regulatory requirements or amendments to existing regulations. c. Phase 3: Assessment of regulatory actions implemented.

We suggest the following re-write:

> "It is proposed that an appropriate regulatory framework is developed through five phases:
>
> a. Phase 1: Solicit feedback from industry stakeholders regarding their needs.
> b. Phase 2: Create a specification for a solution, which may be legislative or technical in nature.
> c. Phase 3: Solicit feedback from all citizens on the proposed specifications.
> d. Phase 4: Implement specifications after revision.
> e. Phase 5: Maintenance (review, update)."

We justify this position on the following basis:

a. Registration fails to address global players, who will simply ignore the requirement.

b. Broad registration is costly. How many staff, IT and security systems, tendered service providers, bank accounts and payment options will be required to maintain a register of millions of records in a state of constant flux? Who will pay for this? It does not appear to be in the interests of the fiscus to impose these additional burdens.

c. Registration doesn't prevent loss, nor assist in recovery of funds:

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[11] https://www.dobs.pa.gov/Documents/Securities%20Resources/MTA%20Guidance%20for%20Virtual%20Currency%20Businesses.pdf

[12] https://www.wyoleg.gov/Legislation/2019/SF0125

[13] https://legiscan.com/IL/text/HB5335/id/1732008

i. Our member [REDACTED] had funds stolen by the owner of a FINCEN-registered exchange. It was reported to FINCEN, yet went without a reply. A three-year class action failed to result in apprehension, prosecution, or significant recovery of stolen funds. While some assets were liquidated and a few clients were able to lodge successful claims, the majority saw nothing.
ii. The authorities knew exactly who the participants were, and yet failed to act when alerted, and have continued to fail to act on this particular matter in the time since.
iii. All legal action has been victim-driven, civil, and at 30% fee.
iv. In this instance how has registration as an MSB achieved the policy intent in terms of AML/KYC? All it did was put a database of verified customer identification information into the hands of a criminal, along with customers' funds.
v. Similarly, how will registration achieve the outcomes the SARB seeks? Our view is it won't, it cannot.
vi. Archiving stale information from a poorly complying market is a "designed by committee" dead-end and must be converted to a voluntary process to avoid wastage in capital expenditure.
vii. This will also reduce red tape and improve the competitiveness of local businesses against ruthless international counterparts.

d. Phase 2 in the original suggestions should precede Phase 1. How can everyone be registered in a vacuum of knowing who needs to register? First establish the legal grounding, then apply policy as legal grounding allows.

e. If an entity is not required to register as an FSP, then why should they be required to register as a crypto asset service provider[14]?

i. Payfast processes fiat transactions and is not required to register as an FSP. https://support.payfast.co.za/article/91-are-you-a-registered-financial-services-provider-fsp
ii. They also process crypto assets payments, and would then be required to register as a crypto assets payment provider.
iii. This seems inconsistent and overly burdensome on new technology to favour legacy platforms.
iv. It is our view that new technology is the mechanism whereby efficiencies can be gained in the payment infrastructure, empowering a wider range of merchants in the economic spectrum to participate in the sending and receiving of funds, at lower cost.

[14] *Crypto Asset Service Provider* is not clearly defined in the proposed regulations. Please see a more detailed explanation further in this document.

> 8.4 A useful starting point for regulatory intervention at this stage is through registration. The objective of the registration process is to specifically gain further insights from the market participants. South African authorities propose to implement the registration requirements for crypto asset service providers, as defined below in paragraph 8.7. The phased approach, starting with the registration requirement, could lead to formal authorisation and designation as a registered/licensed provider for crypto asset services operating in South Africa at a later stage. The details of the registration process will be set out in a policy paper to be published by the SARB in 2019. This first phase is expected to be implemented by first quarter of 2019 and the subsequent phases will follow thereafter.

We suggest the following rewrite:

> "A useful starting point for regulatory intervention at this stage is through industry self-regulation, with a voluntary participation process."

We justify this position on the following basis:

a. Other models of registering parties have completely failed to operate at scale, for example FIC Act and RICA have multiple stale records, frequent churn, and fail to get used (RICA), let alone fulfil the policy objectives. A case in point is the prevalence of SIM-swap fraud.

b. Ideas, projects, companies in the cryptocurrency space can launch and dissolve in weeks to months. The startup nature of these endeavours, and frequent pivoting, means that recorded information is stale quickly.

   i. An example of an entire cryptocurrency's development ceasing abruptly: https://ethereumworldnews.com/ethereum-classic-etc-development-team-shuts-down-operations-due-to-funding/
   ii. An example of an exchange shutting down: https://liqui.io/

c. Global entities will simply ignore any registration requirements, as this is seen as friction, and it's more economical to engineer work-arounds than it is to endure friction. They may also simply disregard South Africa as a viable market, further exacerbating lack of foreign investment, and local employment opportunities.

An alternative is a voluntary or opt-in system of providing information to a central party, and generating reports based on this. We feel that it is clearly in the interests of industry participants to ensure that the

reputation of the industry is upheld. This is where self-regulation becomes both viable and desirable.

Civic minded entities with a long term view will almost certainly participate if there is a benefit to doing so, in addition to a willingness to carry the costs. These costs are therefore not imposed on the fiscus at large, and as industry participants are for the most part footing the bill, they are incentivised by market forces to do so as cheaply as possible.

8.5 Following registration, in the second phase, authorities will assess whether crypto asset activities could fit into existing regulatory frameworks. Where no legal authority or mandate exists for certain crypto assets-related activities, the regulatory framework will be assessed to determine what amendments are required to bring the relevant activity into the supervisory ambit. Should it be impractical to amend existing regulations appropriately, new regulations can be drafted. The specific framework, the legislative amendments required, the supervisory approach, the services covered and the level of protection afforded will be addressed in this phase. Insights will be drawn from the approach taken regarding AML/CFT requirements, ensuring consistency in regulatory consideration.

This is assuming *a priori* that such a mandate is within the ambit of the proposed regulatory bodies.

We suggest the following rewrite:

> “In the first phase, authorities will assess which legal frameworks apply to crypto assets. Where no legal authority or mandate exists for certain crypto assets-related activities, the regulatory framework will be assessed to determine what amendments are required to bring the relevant activity into the supervisory ambit of an industry self-regulatory body.”

8.6 A final phase will assess the effectiveness of the regulatory actions that were implemented and if the regulatory actions meet the intended objectives.

We suggest the removal of this clause (8.6). The market will inform an industry self-regulatory body of problems, with the judicial system as a fall back mechanism.

8.7 Registration is required for all entities performing the following crypto asset activities:
- a. Crypto asset trading platforms (or any other entity facilitating crypto asset transactions)
  - i. Provide intermediary services for the buying and selling crypto assets, including through the use of crypto asset vending machine facilities.
  - ii. Trading, conversion or exchange of fiat currency or other value into crypto assets.
  - iii. Trading, conversion or exchange of crypto assets into fiat currency or other value.
  - iv. Trading, conversion or exchange of crypto assets into other crypto assets.
- b. Crypto asset digital wallet providers (custodial wallets)
  - i. Entity offering a software program with the ability to store private and public keys that are used to interact with various digital protocols that enable the user to send and receive crypto assets with the ability to monitor balances.
- c. Crypto asset safe custody service providers (custodial services)
  - i. Safeguarding, storing, holding or maintaining custody of crypto assets belonging to another party.
- d. Crypto asset payment service providers
  - i. All payment services provided when using crypto assets as a medium of exchange

It is our view that this clause is exceedingly broad, and will almost certainly hamper innovation in this space. Also note the previous comments made regarding foreign entities, and how they will either ignore the requirements or ignore South Africa as a market.

There is already ample legislation constraining operators in the legacy financial system. The introduction of additional requirements on top of that is a waste of judicial capacity.

It is also unclear how it should be determined where an entity is domiciled for the purposes of registration or other proposed regulatory requirements. Again, this would most effectively be resolved via dialogue with an industry self-regulatory body.

The requirement for wallet providers to have to register demonstrates a possible lack of understanding of the crypto landscape. The implication is that a private individual, running their own wallet software on their own computing devices, could fall under this definition. This would be absurd. This is analogous to making children register their piggy banks. We further note that potential theft or misappropriation of custodial funds is still theft, for which there are well-established judicial processes. Registration cannot prevent malicious entities from attempting to flout the law.

Ultimately, if an entity is not handling fiat currency (and the CAR WG proposal currently does not appear to regard crypto assets as currency), then we believe that it should not be subject to mandatory registration requirements.

We recommend that the scope of clause 8.7 be refined in consultation with an industry self-regulatory body.

8.8 It is recommended that the following entities are registered at a central point, as stipulated by the Crypto Assets Regulatory Working Group of the IFWG:
a. Crypto asset trading platforms, and vending machine owners and providers.
b. Crypto asset digital wallet providers.
c. Crypto asset safe custody service providers (custodians).
d. Crypto asset payment service providers.
e. Merchants and service providers accepting payments in crypto assets.

We suggest the following rewrite:

> “It is recommended that a voluntary registration process be encouraged for stakeholders within South Africa, under the auspices of an industry self-regulatory body.”

Alternatively limit the proposed clause to South Africa, and only where the FIC Act applies to parties.

8.9 It is recommended that crypto asset service providers be required to comply with AML/CFT provisions of the Financial Intelligence Centre Act 38 of 2001 (FIC Act). These provisions would, among other things, require crypto asset service providers to meet the following obligations:
   a. It is recommended that all crypto asset service providers register with the FIC; conduct customer due diligence, including ongoing monitoring; keep records; and file reports on suspicious and unusual transactions, cash transactions of R25 000.00 and above and of control of property that is linked to terrorist activity or terrorist organisations.
   b. Institutions that are subject to the requirements of the FIC Act must apply a risk-based approach in their implementation of measures to meet these requirements. This includes the ability to distinguish between different categories of risk and to apply enhanced customer due diligence where business with customers is deemed as higher risk and simplified customer due diligence where business with customers is deemed as lower risk.
   c. South Africa further proposes that compliance by crypto asset service providers with obligations pursuant to the FIC Act be monitored and that remedial actions be required of crypto asset service providers that fail to meet these requirements. In egregious cases of non-compliance with these requirements or in cases where remedial actions do not have the desired effect of improving compliance with the relevant requirements, administrative sanctions may be imposed.

If we refer to the original document the only entities mentioned are:

- Crypto asset trading platforms
- Crypto asset digital wallet providers (custodial wallets)
- Crypto asset safe custody service providers (custodial services)
- Crypto asset payment service providers

Which of these is a “crypto asset service provider”? Is this an umbrella term for all 4, which still needs to be explicitly clarified?

We acknowledge footnote 20 on page 22 of the consultation paper as offering some guidance on this matter:

> http://www.fatf-gafi.org/publications/fatfrecommendations/documents/regulation-virtual-assets.html. It is noted that during October 2018, the FATF adopted changes to the FATF Recommendations and Glossary that clarify how the Recommendations apply in the case of financial activities involving virtual assets. These changes add to the Glossary new definitions of ‘virtual assets’ and ‘virtual asset service providers’ – such as exchanges, certain types of wallet providers, and providers of financial services for issuers’ offers and/or sale of crypto assets. As a result of these changes, jurisdictions, including

> South Africa, have to ensure that crypto asset service providers are subject to FATF requirements that are aimed at combatting money laundering and terrorist financing, for example, conducting customer due diligence, including ongoing monitoring, record-keeping and reporting of suspicious transactions. Crypto asset providers that fall within the FATF's definition of 'virtual asset service providers' is proposed to be registered and subject to monitoring to ensure compliance with these requirements.

However, we do not believe a footnote with a tailpiece linking to the *Financial Action Task Force (FATF) Recommendations* is a significantly valid definition in the proposed regulations.

Reference has been made to prior definitions, then a newly worded replacement inserted like a drop-in replacement, yet only visible when you have to fact-check your argument. This won't do. It has to be defined under Definitions.

Our suggested rewrite:

> "It is recommended that properly defined and licensed crypto asset service providers who have FIC Act obligations continue to comply with AML/CFT provisions of the Financial Intelligence Centre Act 38 of 2001 (FIC Act). These provisions would, among other things, require properly defined and licensed crypto asset service providers who have FIC Act obligations to meet the following obligations:
>
> a. It is recommended that all properly defined and licensed crypto asset service providers who have FIC Act obligations update their existing registrations with the FIC to include crypto asset fields; continue to conduct customer due diligence, including ongoing monitoring; keeping records; and filing reports on suspicious and unusual transactions, cash transactions of R25 000.00 and above and of control of property that is linked to terrorist activity or terrorist organisations.
>
> b. Institutions that are subject to the requirements of the FIC Act must apply a risk-based approach in their implementation of measures to meet these requirements. This includes the ability to distinguish between different categories of risk and to apply enhanced customer due diligence where business with customers is deemed as higher risk and simplified customer due diligence where business with customers is deemed as lower risk.
>
> c. South Africa further proposes that compliance by properly defined and licensed crypto asset service providers with obligations pursuant to the FIC Act be monitored and that remedial actions be required of properly defined and licensed crypto asset service providers who have FIC Act obligations that fail to meet these requirements. In egregious cases of

non-compliance with these requirements or in cases where remedial actions do not have the desired effect of improving compliance with the relevant requirements, administrative sanctions may be imposed."

Our justification for these changes is that if a party is not required to register as an FSP, then they are not required to comply with these crypto assets regulations.

For the sake of efficiency, existing FSPs can update their registered particulars to include crypto assets services.

8.10 South Africa proposes to continue monitoring crypto assets through the Crypto Assets Regulatory Working Group and to define the specific focus of crypto assets monitoring as follows:

a. Monitoring the overall market capitalisation of crypto assets: As mentioned earlier, a total global crypto assets market capitalisation of US$1 trillion will not be considered as systemic by South Africa, but this will be the first level that could indicate potential significance.
   However, South Africa reiterates its intention to be proactive with regard to crypto assets, and will not wait until this level is reached before it starts preparing for the possible eventuality of crypto assets achieving systemic significance in future.
b. Monitoring crypto asset trading platforms domiciled in South Africa through reporting: This will be done by monitoring issues including, but not limited to, the flow of funds from fiat into crypto and vice versa, functions performed, services offered, crypto assets trading volume, crypto assets traded, number of customers, insurance obtained, governance mechanisms, and record-keeping of transactions. This will include monitoring the volume and value of off-chain transactions performed within the platform, and on-chain transactions where crypto asset transactions involve counterparties not affiliated with the exchange.
c. Monitoring the crypto asset payment service providers and the number of merchants/retailers accepting crypto assets as payment both in South Africa and internationally.
d. Monitoring the volume of crypto assets bought and sold via crypto asset vending machines.

We note with some amusement that even the GDP of South Africa does not meet the systemic significance criteria stated above.

As alluded to previously, the question of how an entity is domiciled is far from trivial to resolve. Ultimately, the "owner" of a crypto asset can be regarded as the set of possessors of the requisite encryption keys. These encryption keys can be configured in a variety of ways, such that entities

located in multiple legal jurisdictions can have joint authority over the assets in question. The proposed regulations do not seem to resolve this. Fundamentally, a digital asset does not appear to truly have a domicile. This is not an issue purely limited to crypto assets.

In terms of the monitoring of market capitalisation, trade volume and activity, there are ample publicly available resources that can facilitate this, both locally and internationally.

Trading volumes and activity are accessible via API or public means such as:

- http://api.bitcoincharts.com/v1/csv/
- https://coinmarketcap.com/api/
- https://www.blockchain.com/
- https://www.blockcypher.com/
- https://www.smartbit.com.au/
- https://bitinfocharts.com/
- https://charts.nanoparticle.space/

We note that all South African companies are required to submit tax returns etc., which have historically constituted sufficient reporting from a compliance perspective.

It is envisioned that an industry self-regulatory body should encourage usage of payment methods that reduce barrier to entry and transactional costs.

There would be incentive for participants in this payment system to encourage broader adoption amongst their peers. Self-reporting of the crypto “market share” amongst members would bolster this feedback loop.

8.11 South African regulatory authorities propose not to impose market entry conditions for registered entities at this stage.

Our suggested rewrite:

> “South African regulatory authorities propose not to impose market entry conditions for properly defined and licensed crypto asset service providers who comply with current FIC Act obligations at this stage.”

Alternative rewrite:

> “South African regulatory authorities propose not to impose market entry conditions at this stage.”

Our justification stems from unresolved questions regarding SARBs authority on these matters.

If crypto assets are a threat to ZAR, this threat must be quantified & verified through peer review before action can be taken within the ambit of defending the stability of the Rand or targeting inflation rate.

We reiterate, if crypto assets are not a threat to the Rand, then the SARB has no role in enforcement outside of fiat transactions.