



**DRAFT DECLARATION OF CRYPTO ASSETS AS A  
FINANCIAL PRODUCT UNDER THE FINANCIAL  
ADVISORY AND INTERMEDIARY SERVICES ACT**

***Submission template***

**PRIVACY STATEMENT**

Please take note that information collected in this template will be used for the purposes outlined in the Template. In so doing, the identities of the entities and persons commenting on behalf of the entity will be identifiable.

The FSCA publishes all comments received and responses on its website with the names of persons that commented, and entities they represent. This is to ensure transparency and openness in the response to comment process. All collected information will be processed in line with the FSCA's Privacy Policy which can be found on [www.fsc.co.za](http://www.fsc.co.za).

**IMPORTANT INSTRUCTIONS**

Please note the following instructions for completing the Template:

- For referencing purposes please use the numbering as contained in the draft Declaration of crypto assets as a financial product
- Commentators are requested to answer the questions relating to the expected impact of the draft Declaration of crypto assets as a financial product under Section C. If you wish to provide a qualitative response in this regard, please attach the response to the template as an Annexure.
- For any other general comments, please use Section D.
- Please send the completed template, in word format, to: [FSCA.RFDStandards@fsc.co.za](mailto:FSCA.RFDStandards@fsc.co.za).

Please note that no PDF or scanned documents or late submissions will be accepted unless agreed to in writing by the Authority.

## SECTION A - DETAILS OF COMMENTATOR

Name of organisation/individual:	Cryptoassets.co.za
If the commentator is an organisation, provide the name and designation of the contact person:	Bretton Vine (General Manager)
Email address:	REDACTED@cryptoassets.co.za
Contact number:	REDACTED

## SECTION B - COMMENTS ON THE DRAFT DECLARATION

No	Section of the instrument	Comment
<b>1. DEFINITIONS</b>		
1.	1.	<ul style="list-style-type: none"> <li>The proposed definition is not the same definition as agreed by IFWG earlier in 2020.</li> <li>Use of “<i>any digital representation</i>” versus previously agreed “<i>a digital representation</i>” is confusing</li> <li>“Value” is not defined in the FAIS Act</li> <li>We expand on this in <i>Cryptoassets.co.za Detailed Response</i> appended in section D.</li> </ul>
<b>2. DECLARATION OF CRYPTO ASSETS AS A FINANCIAL PRODUCT</b>		
2.	2.	<ul style="list-style-type: none"> <li>Crypto assets have not been appropriately defined; thus cannot be declared a financial product.</li> <li>We expand on this in <i>Cryptoassets.co.za Detailed Response</i> appended in section D.</li> </ul>
<b>3. SHORT TITLE, COMMENCEMENT AND TRANSITIONAL ARRANGEMENTS</b>		
3.	3.	
4.	3(1)	<ul style="list-style-type: none"> <li>no comment</li> </ul>
5.	3(2)	<ul style="list-style-type: none"> <li>Q: Does this refer to the published date of the draft (20 November 2020<sup>1</sup>) or to a future published date?</li> </ul>
6.	3(3)	<ul style="list-style-type: none"> <li>“Any person... renders financial services in relation to crypto assets” is problematic because it would apply to node operators who aren’t handling fiat sums.</li> <li>“Financial services” as applied to crypto assets is too broad and includes many actors outside the shared focus of “advisors, exchanges and intermediaries”.</li> <li>We expand on this in <i>Cryptoassets.co.za Detailed Response</i> appended in section D.</li> </ul>
7.	3(3)(a)	<ul style="list-style-type: none"> <li>4 months is too short for operating businesses, it should be at least 2 years due to the lack of clarity over suitable qualifications, since none currently exist.</li> <li>First suitable qualifications must be established, then parties must obtain them, then an FSP application can proceed with some chance of success.</li> <li>Thus, it is unreasonable to expect applicants to obtain a non-existent qualification within the next 4-6 months.</li> <li>We expand on this in <i>Cryptoassets.co.za Detailed Response</i> appended in section D.</li> </ul>
8.	3(3)(b)	<ul style="list-style-type: none"> <li>no comment</li> </ul>
9.	3(3)(b)(i)	<ul style="list-style-type: none"> <li>no comment</li> </ul>

<sup>1</sup> [https://twitter.com/FSCA\\_ZA/status/1329733287774982149](https://twitter.com/FSCA_ZA/status/1329733287774982149)

10.	3(3)(b)(ii)	<ul style="list-style-type: none"><li>• There should be a grace period for rejections to re-apply after fixing problems with their application, and at a reduced fee.</li><li>• Very few startups and node operators have the resources for an FSP application, and many won't get it right the first time.</li><li>• It may take several attempts, with education and refinement on both sides, before a good system is in place which addresses the needs of all parties.</li><li>• We expand on this in <i>Cryptoassets.co.za Detailed Response</i> appended in section D.</li></ul>
-----	-------------	---

**SECTION C - QUESTIONS RELATING TO THE ANTICIPATED IMPACT OF THE DRAFT DECLARATION**

No.	Question	Responses
1.	<p><i>The FSCA acknowledges the impact that the draft Declaration will have on businesses that are currently furnishing financial services in relation to crypto assets, and more specifically the fact that such business would not be able to operate legally unless they have obtained a FSP licence in terms of section 8 of the FAIS Act.</i></p> <p>Please motivate any concerns regarding the impact of the draft Declaration of crypto assets as a financial product considering the transitional arrangements.</p>	<ul style="list-style-type: none"> <li>• The next innovation in Blockchain technologies like Bitcoin is scaling the network throughput to facilitate orders of magnitude more transactions. This will rely on smart-contract based “layer 2” solutions like the <b>Bitcoin lightning network</b> which consist of large numbers of professional, hobbyist and volunteer lightning node operators that route payments on the network and collect routing fees.</li> <li>• It is our view that the application of the draft declaration would include node operators as intermediary service providers and add an impossible requirement for registration, thus stifling South Africa’s ability to contribute to the next phase of Bitcoin blockchain innovation.</li> <li>• We expand on this in <i>Cryptoassets.co.za Detailed Response</i> appended in section D.</li> </ul>
2.	<p>Are any other transitional arrangements necessary to implement the draft Declaration of crypto assets as a financial product? If yes, what transitional arrangements do you propose and for which section of the draft Declaration? (Please provide a justification for your response)</p>	<ul style="list-style-type: none"> <li>• There are no transitional arrangements possible, it is not feasible for all local node operators to register with the FSCA.</li> <li>• There are no exceptions provided for. It would be preferable to have clear exception categories, and/or <b>value thresholds</b>, for FSP registration requirements to apply.</li> <li>• We expand on this in <i>Cryptoassets.co.za Detailed Response</i> appended in section D.</li> </ul>

## SECTION D - GENERAL COMMENTS

No.	Issue	Comment/input
<b>ANY OTHER GENERAL COMMENTS</b>		
1.	Detailed response	
2.		<p style="text-align: center;"><b>CRYPTOASSETS.CO.ZA DETAILED RESPONSE</b></p> <p>Dear Financial Sector Conduct Authority</p> <p>Thank you for the opportunity to provide comment on the “DRAFT DECLARATION OF CRYPTO ASSETS AS A FINANCIAL PRODUCT”.</p> <p>In principle we understand the need for regulation in the “Crypto Asset” space to ensure that people are given the correct advice, and bad actors are prevented from taking advantage of financially vulnerable people.</p> <p>South Africa is considered an early adopter of blockchain related innovations, with many startups being founded here, which are now leading world class people and institutions.</p> <p>However, we have broad concerns as to the draft regulation as it currently stands of which are highlighted below.</p> <ol style="list-style-type: none"> <li>1. We consider the definition and scope proposed in the document as unclear and therefore creates uncertainty as to who and how it will be applied. It engulfs more entities than the widely shared target of “advisors, exchanges and intermediaries” by including node operators, as well as organisations such as ours.</li> <li>2. We believe the proposed regulation will stifle local innovation and entrepreneurship in blockchain-related technology, and impede growth of the crypto asset ecosystem in South Africa.</li> <li>3. FSP registration is potentially onerous, and a barrier to entry for smaller and entrepreneurial ventures, where the qualification requirements are not defined, and may be impossible to meet.</li> </ol> <p style="text-align: center;"><b>About cryptoassets.co.za</b></p> <p>cryptoassets.co.za is an intermediary provider of crypto asset services, and provider of crypto asset advice, affected by the proposed declaration.</p> <p>Established early 2019, our goal is to facilitate and promote blockchain-related technology innovation in South Africa, by providing valuable information and neutral, trusted opinion.</p> <p>It is our view that cryptoassets.co.za infrastructure may be considered an <i>ideal model</i> for measuring regulatory overstep.</p> <p>Membership in cryptoassets.co.za is represented by the CRYPTOASSETS token, issued as an “asset”<sup>2</sup> by burning Counterparty (XCP) tokens, a type of meta-coin protocol on the Bitcoin blockchain.</p> <p>CRYPTOASSETS transactions are Bitcoin transactions, and incur Bitcoin transaction fees.</p>

<sup>2</sup> <https://counterparty.io/docs/assets/>

We accept membership fees in Bitcoin, and allocate a CRYPTOASSETS token to represent a membership card.

In the background this involves operating our own Bitcoin full node, and Lightning Network node, for membership payments and donations<sup>3</sup>.

One hundred (100) CRYPTOASSETS tokens have been issued<sup>4</sup>, and four (4) have been allocated to members. More tokens may be issued in future if members exceed one hundred (100).

The list of members is represented by the addresses with a single token listed on the **holders** tab at <https://xchain.io/asset/CRYPTOASSETS>

CRYPTOASSETS tokens are not divisible, and are transferable whole to anyone with a Counterparty wallet<sup>5</sup>. They have no known fiat value, and are not traded on any third party platform.

They can serve additional purposes, such as authenticating entry to events, secure voting, or signing messages to prove identity.

In this respect, CRYPTOASSETS tokens are an authentication and record-keeping tool.

With the multi-sig functionality of a Counterparty wallet, our board can approve Bitcoin expenses on a 3-of-5 signatures required basis, ensuring that spend was agreed to by a majority, who can be held accountable by members through public record-keeping.

In this respect, the Counterparty wallet for the CRYPTOASSETS tokens is a governance tool for the fiscally responsible.

We provide advice in terms of technology choices, such as which Counterparty wallet to use, or which Lightning Network node, or Lightning Network wallet.

We provide advice on Lightning Network liquidity and routing fees.

We also provide advice to members in terms of network statistics, such as immediate notifications of Bitcoin hash rate all time highs to our telegram group, for example:



We provide intermediary services through our use of the Lightning Network, a second layer network over the Bitcoin blockchain utilising smart contracts. We commit funds in *channels* to 3rd parties, and other parties commit funds in *channels* to us. We sell incoming liquidity with

<sup>3</sup> We run our own node to remain independent in the management of our Bitcoin infrastructure, and suitably skilled to be considered experts in the field.

<sup>4</sup> This is by design in the issuance of the CRYPTOASSETS token. Alternative options are available for new XCP assets.

<sup>5</sup> <https://counterparty.io/wallets/>

contractual obligations and a person to contact. Transactions are routed along these *channels* with an optional fee.

Members mobile and desktop clients can connect to our node, using us for upstream liquidity.

We provide input on regulatory processes and share our submissions on our website. For example, on 15 February 2019 we submitted a response to the CAR WG's proposed crypto asset regulations.<sup>6</sup>

These regulatory response activities form a foundation for general advice to members and the public.

## Our Comment

1. Review of the Definition
2. Broad scope of Application
3. Our Services as Advice
4. Our Infrastructure as Intermediary Services
5. Suggestions

## Instructions

*"Commentators are requested to answer the questions relating to the expected impact of the draft Declaration of crypto assets as a financial product under Section C."*

- Page 1 of the Response Template, Important Instructions

*"Comment is specifically requested on the scope of the proposed definition of crypto assets. In particular, any insights into potential unintended consequences of the definitions are welcomed as this will assist the FSCA in further refining the definition and to ensure that the definition is fit for purpose."*

- Page 2 of the response Template, Section B, 1. Definitions

## Definition

*"crypto assets" means any digital representation of value that can be digitally traded, or transferred, and can be used for payment or investment purposes, but excluding digital representations of fiat currencies or securities that already fall within the definition of financial product.*

A. The proposed definition doesn't match the previously agreed definition from the IFWG<sup>7</sup>, where item 2.1.4 on page 9 says:

"The following definition of crypto assets is adopted by the regulatory authorities, through the IFWG:

---

6

[http://cryptoassets.co.za/wp-content/uploads/2019/02/Cryptoassets.co\\_za-response-CAR-WG-proposed-crypto-regs\\_20190215-redacted-version.pdf](http://cryptoassets.co.za/wp-content/uploads/2019/02/Cryptoassets.co_za-response-CAR-WG-proposed-crypto-regs_20190215-redacted-version.pdf)

7

[http://www.treasury.gov.za/comm\\_media/press/2020/20200414%20IFWG%20Position%20Paper%20on%20Crypto%20Assets.pdf](http://www.treasury.gov.za/comm_media/press/2020/20200414%20IFWG%20Position%20Paper%20on%20Crypto%20Assets.pdf)

*A crypto asset is a digital representation of value that is not issued by a central bank, but is traded, transferred and stored electronically by natural and legal persons for the purpose of payment, investment and other forms of utility, and applies cryptography techniques in the underlying technology”*

This is problematic because of the multiple definitions in use, as outlined on the cryptoassets.co.za website<sup>8</sup>, which creates confusion instead of clarity.

i.e. Not only has *virtual currencies* become replaced by *crypto assets*, but the definition of *crypto assets* has no consistency between local authorities vying for the opportunity to regulate them.

To illustrate: the use of “**any** digital representation...” in the FSCA draft declaration versus “**a** digital representation...” agreed to in the IFWG processes, introduces confusion by including in-game currencies<sup>9 10</sup>, and perhaps even domain names, as these are also traded like any other digital asset.

B. “Value” is not defined in the FAIS Act.

The word “value” doesn’t appear at all in the Financial Advisory and Intermediary Services Act 37 of 2002<sup>11</sup>, nor does it have a clear definition assigned.

However a dictionary definition contains:

*“value”:*

- 1. the monetary worth of something : market price*
- 2. a fair return or equivalent in goods, services, or money for something exchanged*
- 3. relative worth, utility, or importance*
  - a good value at the price*
  - the value of base stealing in baseball*
  - had nothing of value to say*
- 4. something (such as a principle or quality) intrinsically valuable or desirable*
  - sought material values instead of human values*
- 5. a numerical quantity that is assigned or is determined by calculation or measurement*

“Any digital representation of value...” needs clear examples for the contexts which apply.

For example, a CRYPTOASSETS token is valuable for membership purposes, yet it has no current fiat value. It is a digital representation of membership, which can be transferred between digital wallets supporting the Counterparty protocol. CRYPTOASSETS tokens have value to a niche group, and no-one else.

## Broad Scope of Application

The draft declaration applies to any person who “renders financial services”:

<sup>8</sup> <https://cryptoassets.co.za/why-crypto-assets/>

<sup>9</sup> <https://www.ledgerinsights.com/imvu-launches-in-game-tokenized-digital-currency-with-sec-no-action-letter/>

<sup>10</sup> <https://venturebeat.com/2021/01/12/imvu-launches-vcoin-transferable-digital-currency/>

<sup>11</sup> [https://www.gov.za/sites/default/files/gcis\\_document/201409/a37-020.pdf](https://www.gov.za/sites/default/files/gcis_document/201409/a37-020.pdf)



*any person who, immediately before the effective date of this Declaration, as a regular feature of the business of such person, renders financial services in relation to crypto assets*

“Financial service” as defined in the FAIS Act includes those who provide advice and intermediary services:

“financial service” means any service contemplated in paragraph (a), (b) or (c) of the definition of “financial services provider”, including any category of such services;

“financial services provider” means any person, other than a representative, who as a regular feature of the business of such person-

- (a) furnishes advice; or
- (b) furnishes advice and renders any intermediary service; or
- (c) renders an intermediary service;

To expand:

“advice” means, subject to subsection (3)(a), any recommendation, guidance or proposal of a financial nature furnished, by any means or medium, to any client or group of clients-

- (a) in respect of the purchase of any financial product; or
  - (b) in respect of the investment in any financial product; or
  - (c) on the conclusion of any other transaction, including a loan or cession, aimed at the incurring of any liability or the acquisition of any right or benefit in respect of any financial product; or
  - (d) on the variation of any term or condition applying to a financial product, on the replacement of any such product, or on the termination of any purchase of or investment in any such product,
- and irrespective of whether or not such advice-

(i) is furnished in the course of or incidental to financial planning in connection with the affairs of the client;

(ii) results in any such purchase, investment, transaction, variation, replacement or termination, as the case may be, being effected;

...

“intermediary service” means, subject to subsection (3)(6), any act other than the furnishing of advice, performed by a person for or on behalf of a client or product supplier-

(a) the result of which is that a client may enter into, offers to enter into or enters into any transaction in respect of a financial product with a product supplier; or

(b) with a view to-

(i) buying, selling or otherwise dealing in (whether on a discretionary or non-discretionary basis), managing, administering, keeping in safe custody, maintaining or servicing a financial product purchased by a client from a product supplier or in which the client has invested;

(ii) collecting or accounting for premiums or other moneys payable by the client to a product supplier in respect of a financial product; or

(iii) receiving, submitting or processing the claims of a client against a product supplier;

Thus if we render financial services (including advice) with respect to crypto assets, we must register as an FSP and meet requirements on the financial and qualifications side.

These *requirements to be met* range from impractical costs, to impossible qualification requirements, because no qualifications exist for this sector, nor do existing blockchain-related courses accurately measure aptitude and experience in the space.

Costs

The financial aspect of complying will be challenging given we have no revenue at this stage. Membership growth is slow, and income from our Lightning Node transaction routing is around 300 satoshis, or just under R1.

Furthermore, bad party actors (with access to capital) will simply continue operating via means of increasing sophistication to avoid notice or capture.

Qualifications

From the FSCA website<sup>12</sup>:

You must have a suitable qualification listed in the Qualifications requirements list, which includes:

- Blockchain
- Crypto Banking
- Crypto Currencies

What qualification in either of the 3 topics listed above is relevant to crypto assets?

What qualification exists in either of the 3 topics that would be relevant to being considered an expert for the purposes of FSP registration of a crypto assets company?

We run Bitcoin and Lightning Network full nodes. There are no qualifications in this, yet we are still experts because we have an operating node, routing transactions and accepting donations.

These are not yet common skills, despite the documentation some members have freely shared. How would we pass the qualifications requirements? There are no formal qualifications.

**Our Services as Advice**

cryptoassets.co.za use of our own issued Counterparty asset CRYPTOASSETS:

*any person who [...] renders advice (and/or renders any intermediary service) in relation to any membership token (digital representation of value) that can be digitally traded, or transferred, and can be used for payment or investment purposes, but excluding digital representations of fiat currencies or securities that already fall within the definition of financial product, must [register as FSP]*

We provide advice on suitable Counterparty wallets to use, as well as Bitcoin transaction fees, and wallet balances to maintain.

We hold and process organisation funds and tokens through Counterparty, and this could be deemed an intermediary service.

<sup>12</sup> <https://www.fsca.co.za/Regulated%20Entities/Pages/Qualifications%20Requirements.aspx>

We provide advice to members in terms of network critical information, such as Telegram notices of Bitcoin hash rate all time highs.

*Decisions to buy or sell are informed by hash rate extremes.  
Rapid access to significant changes in hash rate can indicate looming market volatility, and/or affect bitcoin transaction fees. This is a service we provide members, based on information from our node.*

What exceptions will be provided for community organisations, startups and user groups?

## Our Infrastructure as Intermediary Services

cryptoassets.co.za uses a Bitcoin full node, and Lightning Network node:

*(with expanded definitions)  
any person who [...] renders advice (and/or renders any intermediary service) in relation to any bitcoin smart contract (digital representation of value) that can be digitally traded, or transferred, and can be used for payment or investment purposes, but excluding digital representations of fiat currencies or securities that already fall within the definition of financial product, must [register as FSP]*

The nature of a Lightning Network node is one to many non-finalised bitcoin transactions, which are referred to as *channels*. Channels are established using **Bitcoin smart contracts**. Nodes open channels to other nodes, with the understanding that funds sent across can be claimed when the channel is closed. Other nodes open channels to ours on the same basis.

*"Bitcoin's Lightning Network is a technical innovation that allows its users to send bitcoin faster and more cheaply than if they were using Bitcoin's primary network. These transactions use bitcoin but take place on a "secondary network" with different rules for accounting payments than Bitcoin's blockchain (these transactions are eventually settled and recorded on Bitcoin's blockchain when a user is done using the network)."<sup>13</sup>*

Transactions are routed between peers along channels, and a fee may be charged. When a channel is closed, the transaction is finalised, with the funds split between smart contract Bitcoin wallet addresses.

We currently make use of Lightning Network to accept Bitcoin donations, or payment for membership, in an instantaneous manner.

We may in future wish to have light wallets on mobile phones or desktop apps connect to our Lightning Network node, so members only need to have a single channel to us, and can pay anyone via our well connected node.

We would be providing an intermediary or custodial service for tens of Rands in LN microtransactions to members. This is part of building appropriate infrastructure over the Lightning Network where regular users are encouraged to use upstream routing nodes:

*"Choose your own peers, ideally routing peers, don't make a public node as your main node. This is similar to a network firewall approach where you connect out but don't allow inbound connections and it has a similar security rationale." - Alex Bosworth, Lightning Labs, from the weekly "Ind mail" newsletter 2020-12-18.*

<sup>13</sup> <https://www.coindesk.com/kraken-exchange-integrate-bitcoin-lightning-2021>

	<p>We may in future sell liquidity via temporary channels, via services such as Lightning Labs Loop. This could range from R1000 to R10,000 channels. Technically it's possible for R1million channels, however this would be risky and expensive to secure the node.</p> <p>What exemptions will be provided for node operators?</p> <p style="text-align: center;"><b>Further clarification and suggestions</b></p> <ul style="list-style-type: none"> <li>● We require further clarification on the definitions provided, and the qualifications requirements that would apply for FSP registration.</li> <li>● Detailed information and costing for what would be required to be a registered FSP for “Crypto Assets” is sought. How will small teams with no budget be assisted with registration? How will they hire appropriate compliance managers? Can this function be outsourced to a vendor? Must they shut down if they cannot comply?</li> <li>● Will re-application be allowed at a reduced fee, after remedies are applied?</li> <li>● How are the smaller but valuable, not-for-profit entities protected under the new regulation?</li> <li>● Consider adding an exception category for node operators, community groups and startups to ensure ecosystem growth.</li> <li>● A possible solution could look at thresholds to the registration requirement. If financial thresholds were applied, similar to the discretionary allowance for moving Rands out of the country, then only entities above this threshold would be required to register.</li> <li>● If companies are unable to afford regulatory compliance costs, will regulators be happy if the intellectual property is sold to another company (whether onshore or offshore), as regulations with financial implications could cripple local businesses (particular, start-ups who have taken investment funding from third parties).</li> </ul>
3.	