

FSCA COMMUNICATION 30 OF 2022 (FAIS)

PUBLICATION OF DECLARATION OF A CRYPTO ASSET AS A FINANCIAL PRODUCT AND ACCOMPANYING EXEMPTION NOTICES

1 PURPOSE

The purpose of this Communication is to inform stakeholders that the Financial Sector Conduct Authority (“FSCA”) today published the following documents on its website:

- 1.1.1 Declaration of a Crypto Asset as a Financial Product under the Financial Advisory and Intermediary Services Act, 2002 (“FAIS Act”) (“Declaration”);¹
- 1.1.2 Policy Document supporting the Declaration (“including Annexure A – Response matrix to the draft Declaration); and
- 1.1.3 Exemption of Persons rendering Financial Services in relation to Crypto Assets from section 7(1) of the FAIS Act;
- 1.1.4 Draft Exemption of Particular Persons rendering Financial Services in relation to Crypto Assets from Certain Requirements; and
- 1.1.5 Comment Template to draft Exemption of Particular Persons rendering Financial Services in relation to Crypto Assets from Certain Requirements

2 DECLARATION OF A CRYPTO ASSET AS A FINANCIAL PRODUCT

- 2.1 On 20 November 2020, the FSCA published the draft Declaration of a Crypto Asset as a Financial Product under the FAIS Act for public comment.
- 2.2 A total of 94 individual comments on the draft Declaration were received from 22 different commentators.
- 2.3 Following the public consultation process, the FSCA today **published the final Declaration** in the *Government Gazette* and on the FSCA’s website.
- 2.4 The FSCA also **published a Policy Document supporting the Declaration** (“Policy Document”). The Policy Document provides:
 - background and context to the Declaration;
 - an overview of the consultation process that was followed when making the Declaration; and
 - clarity on the effect of the Declaration, including transitional provisions, and the approach the FSCA is taking in establishing a regulatory and licensing framework under the FAIS Act that would be applicable to Financial Services Providers (“FSP”) that render financial services in relation to crypto assets.
- 2.5 To support a smooth transition into the FAIS framework, providers of financial services

¹ The Declaration was also published in the Government Gazette.

related to crypto assets are required to apply for the relevant licence between 1 June 2023 and 30 November 2023, meaning that they have some time to prepare for this licence application process and the more comprehensive regulatory regime.

2.6 In addition to the Declaration and Policy Document, the FSCA also **published a general exemption of persons rendering financial services (advice and/or intermediary services) in relation to crypto assets from section 7(1) of the FAIS Act**. The purpose of this exemption is to –

- further facilitate transitional arrangements for existing providers of crypto asset activities. The transitional arrangements entail that a person may continue to render financial services in relation to crypto assets without being licensed, provided that such person applies for a licence under the FAIS Act within the period specified in 2.5. The exemption is also subject to further conditions as specified in the exemption. The exemption will apply until the licence application submitted has been approved or declined; and
- exempt certain ecosystem participants from the FAIS Act. These participants are crypto asset miners and node operators performing functions in respect of the security and health of the network, as well as persons only rendering financial services in relation to non-fungible tokens.²

2.7 It is important to note that the Declaration does not apply to or affect financial services rendered in relation to crypto asset derivatives. FSPs providing financial services in relation to crypto asset derivatives are already subject to the requirements of the FAIS Act and are not subject to the general exemption referred to above (please refer to paragraphs 4.8 - 4.12 of the Policy Document supporting the Declaration). Further, providers of crypto asset derivatives remain subject to the Financial Markets Act, 2012 (Act No. 19 of 2012).

3 DRAFT EXEMPTION OF PERSONS RENDERING FINANCIAL SERVICES IN RELATION TO CRYPTO ASSETS FROM CERTAIN REQUIREMENTS

3.1 Lastly, the FSCA published a **Draft Exemption of Persons rendering Financial Services in relation to Crypto Assets from Certain Requirements** for public comment. The draft exemption proposes to exempt licensed Crypto Asset FSPs and their key individuals and representatives from certain requirements of, amongst others, the General Code of Conduct for Authorised Financial Services Providers and their Representatives and the Determination of Fit and Proper Requirements, 2017.

3.2 Submissions on the draft Exemption must be made using the submission template available on the FSCA's website and be submitted in writing on or before **1 December 2022** to the FSCA at FSCA.RFDStandards@fsca.co.za.

4 ENQUIRIES

For any queries relating to the information contained in this document please contact the Regulatory Frameworks Department of the FSCA at karien.nel@fsca.co.za or johannvanderlith@fsca.co.za.

² The terms crypto asset miner, node operator and non-fungible token are defined in the published Exemption of persons rendering financial services in relation to crypto assets from section 7(1) of the Financial Advisory and Intermediary Services Act, 2002.



**UNATHI KAMLANA
COMMISSIONER
FINANCIAL SECTOR CONDUCT AUTHORITY**

Date of publication: 19 October 2022