

ANENXURE A

RESPONSE TO COMMENTS SUBMITTED ON THE DRAFT EXEMPTION OF PERSONS RENDERING A FINANCIAL SERVICE IN RELATION TO CRYPTO ASSETS FROM CERTAIN REQUIREMENTS

FINANCIAL ADVISORY AND INTERMEDIARY SERVICES ACT, 2002

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SECTION A - COMMENTATOR

No	Commentator	Acronym
1.	Alexander Forbes	Alexforbes
2.	The Banking Association South Africa	BASA
3.	The Financial Intermediaries Association of Southern Africa	FIA
4.	The Financial Planning Institute of Southern Africa NPC	FPI
5.	Maitland Group South Africa Limited	Maitland
6.	Money Doc (Pty) Ltd	Money Doc
7.	OVEX (Pty) Limited	OVEX
8.	Provenance	Provenance
9.	South African Association of Treasury Advisors	SAATA
10.	The South African Institute of Financial Markets	SAIFM
11.	The South African Institute of Stockbrokers	SAIS

SECTION B - COMMENTS ON THE DRAFT EXEMPTION NOTICE

No	Commentator	Section of the notice	Issue/Comment/Recommendation	FSCA Response
1.	BASA	Section 1	<ul style="list-style-type: none"> • Definition of “Crypto Asset FSP”: BASA notes that the definition refers to “Crypto Asset FSP” and in this regard we recommend that an additional Financial Advisory and Intermediary Services Act (37 of 2002) (FAIS) subcategory be created for Crypto Assets under categories I, II, IIA and III. • Definition of “crypto asset academic credential requirement”: BASA suggests that the reference to paragraph 3(3) is incorrect. It should refer to paragraph 3(2), with reference to qualifications. Hence same to be amended to read as follows – <p align="center"><i>“crypto asset academic credential requirement” means to obtain adequate and appropriate academic credentials that focus on or specialise in crypto assets to such an extent that is necessary for the person to discharge his or her responsibilities under the Act, as contemplated in paragraph 3(2).”</i></p> <p>Please refer to item number 7 below. BASA suggests that since more expertise is required when rendering advice, intermediary and/or management services in relation to investments in and/or issuance of cryptocurrencies or (fungible) tokens, representatives should be required to have a thorough understanding of the underlying assets in this regard. Therefore, we recommend that the crypto assets academic credential requirement be limited to non-payments related crypto asset applications, e.g., the credentials requirement will apply to advice pertaining to activities such as investments in and/or issuance of cryptocurrencies or (fungible) tokens.</p>	<ul style="list-style-type: none"> • This definition only applies to the Exemption and the purpose of the definition is to differentiate crypto asset FSPs from FSPs that are not rendering financial services in respect of crypto assets. In terms of the Declaration that was made in terms of paragraph (h) of the definition of “financial product”, the Authority has included crypto assets as an additional subcategory of financial product in terms of the FAIS Act. Lisencing and all other affected forms will also be updated with the additional sub-category to further clarify. • The Authority agrees that the reference to paragraph 3(3) was incorrect. However, this becomes a moot point as the Authority is propping to align the approach with regards to qualifications, to the approach usually followed As was indicated in the Table in paragraph 5.6.3 of the Policy Document, the Authority inially proposed to exempt Crypto Asset FSPs, their key individuals and representatives from section 23 of the Determination and to replace it with the crypto asset academic credential requirement. Section 23 requires a person to have a qualification recognised by the Authority in terms of section 24 of the Determination. At the time, qualifications recognised in terms of section 24 had not focussed on crypto asset related criteria and it would therefore be difficult to, in the short-term, identify crypto related qualifications. However, after publication of the draft Exemption, the Authority embarked on a process to evaluate the existing qualifications on the list of recognised qualifications to identify if

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				<p>and to what extent there might be qualifications on the list that can be recognised for purposes of crypto assets. Consequently the list of appropriate qualifications has been updated with qualifications that are also appropriate for the crypto assets sub-category. Section 23 of the Determination will therefore apply as is to Crypto Asset FSPs, their key individuals and representatives meaning they are required to have a qualification recognised by the Authority. The exemption from section 23 of the Determination is consequently no longer required. As a result of the removal of this exemption, the Supervision Exemption will apply to a representative of a Crypto Asset FSP who does not comply with section 23 of the Determination. The definition of “crypto asset academic credential requirements”, as well as all references thereto, has been removed from the Exemption.</p>
2.	FPI	Section 1	<ul style="list-style-type: none"> • Definition of “crypto asset academic credential requirement”: Who will determine this? <p>It is recommended that professional bodies assist with this as it is currently assisting with CPD activities. The academic qualification and / or credential (designation) should map back to a minimum NQF 6 level.</p> <p>We have to focus on what cognitive/academic level is required to deliver financial services for/on crypto asset’s. This is directly linked to the National Qualification Framework level descriptors. It is recommended that a minimum of at least an NQF 6 level (Occupational Certificate, Diploma or Advance Certificate) should apply.</p>	<ul style="list-style-type: none"> • Please refer to the 2nd response to item 1 above.

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			<p>Reflecting on BN 106 of 2008 (we know it is repealed) – it was not a bad idea to state, per licensing category, what NQF level qualification was needed as it spoke to level descriptors.</p> <p>Herewith the details on NQF 6 specifically as extracted from SAQA's NQF Level Descriptors:</p> <p>NQF Level Six</p> <p>a. Scope of knowledge, in respect of which a learner is able to demonstrate: detailed knowledge of the main areas of one or more fields, disciplines or practices, including an understanding of and the ability to apply the key terms, concepts, facts, principles, rules and theories of that field, discipline or practice to unfamiliar but relevant contexts; and knowledge of an area or areas of specialisation and how that knowledge relates to other fields, disciplines or practices.</p> <p>b. Knowledge literacy, in respect of which a learner is able to demonstrate an understanding of different forms of knowledge, schools of thought and forms of explanation within an area of study, operation or practice, and awareness of knowledge production processes.</p> <p>c. Method and procedure, in respect of which a learner is able to demonstrate the ability to evaluate, select and apply appropriate methods, procedures or techniques in investigation or application processes within a defined context.</p> <p>d. Problem solving, in respect of which a learner is able to demonstrate the ability to identify, analyse and solve problems in unfamiliar contexts, gathering evidence and applying solutions based on evidence and procedures appropriate to the field, discipline or practice.</p> <p>e. Ethics and professional practice, in respect of which a learner is able to demonstrate an understanding of the ethical implications of decisions and actions within an organisational or professional context, based on an awareness of the complexity of ethical dilemmas.</p> <p>f. Accessing, processing and managing information, in respect of which a learner is able to demonstrate the ability to evaluate different sources of information, to select information appropriate to the task,</p>	

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			<p>and to apply well-developed processes of analysis, synthesis and evaluation to that information.</p> <p>g. Producing and communicating information, in respect of which a learner is able to demonstrate the ability to present and communicate complex information reliably and coherently using appropriate academic and professional or occupational conventions, formats and technologies for a given context.</p> <p>h. Context and systems, in respect of which a learner is able to demonstrate the ability to make decisions and act appropriately in familiar and new contexts, demonstrating an understanding of the relationships between systems, and of how actions, ideas or developments in one system impact on other systems.</p> <p>i. Management of learning, in respect of which a learner is able to demonstrate the ability to evaluate performance against given criteria, and accurately identify and address his or her task-specific learning needs in a given context, and to provide support to the learning needs of others where appropriate.</p> <p>j. Accountability, in respect of which a learner is able to demonstrate the ability to work effectively in a team or group, and to take responsibility for his or her decisions and actions and the decisions and actions of others within well-defined contexts, including the responsibility for the use of resources where appropriate.</p> <ul style="list-style-type: none"> • Definition of “crypto asset competency requirements” AND Policy Document Supporting the Declaration of a Crypto Asset as a Financial Product under the FAIS Act: Should include Class of Business and Product Specific training as well. 	<ul style="list-style-type: none"> • As was indicated in the the Policy Document, currently Annexure 4 of the Determination sets out specific subcategories of financial products which do not include crypto assets. The class of business training requirements will therefore not be applicable to persons rendering financial services in respect of crypto assets. We do not in principle necessarily disagree that class of business training in respect of crypto assets should be provided for. However, including crypto assets as a subcategory in Annexure 4 will require an amendment to the Determination of Fit and Proper Requirements. As the

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			<ul style="list-style-type: none"> We miss reference to what the Key Individuals' competency requirements should be in the Proposed Exemption document (it is in the Policy Document supporting the Declaration of a Crypto Asset as a Financial Product under the FAIS act clause 5.6.3 though) <p>Class of Business Training (COB) and Product Specific Training (PST): When BN 194 of 2017 came out half a decade ago – Crypto Assets were not declared a Financial Product under any act. It is now (under FAIS act). Crypto Assets should therefore be added to Tier 1 Financial Products (annexure 3 in BN 194 of 2017) and Class of Business (Annexure 4 of BN 194 of 2017). We should not let the complexities</p>	<p>Determination of Fit and Proper Requirements is a regulatory instrument, such an amendment is subject to the process set out in Chapter 7 of the Financial Sector Regulation Act and will take time to complete. Class of business training in respect of crypto assets will therefore only be considered once there is an opportunity, in future, to make amendments to the Determination of Fit and Proper Requirements.</p> <ul style="list-style-type: none"> For the same reason the Supervision Exemption, insofar it relates to class of business training requirements, can also not apply to a supervised representative of a Crypto Asset FSP. <p>With regards to the product specific training requirements, the Authority indicated in the Policy Document that, as the Supervision Exemption do not apply to a representative insofar it relates to product specific training, it would also not apply to a supervised representative of a Crypto Asset FSP. A representative of a Crypto Asset FSP will, as is the case with any other representative, need to undergo the training before financial services can be rendered.</p> <p>It was therefore correct to exclude the class of business and product specific training requirements from the definition of “crypto asset competency requirements”. However, in light of the fact that the exemption from the experience requirements in respect of a crypto asset supervised representative (paragraph 3(1) of the Draft Exemption) as well as the definition of “experience” have been removed from the</p>

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			<p>of having subordinate regulations updated / amended or reviewed detract us from ensuring that consumers are protected. COB and PST is especially needed where existing NQF 6 and higher qualifications do not include enough academic knowledge on Crypto Assets, cryptographic techniques and distributed ledger technology as well as Decentralized Finance (DeFi) – which includes the understanding that Crypto assets are not issued by a central bank.</p> <p>Product specific training: BN 194 of 2017 (section 28 (3) (b)) states that Key Individuals do not have to complete Product Specific Training – this is then either and oversight in BN 194 of 2017 or, the FSCA is now suggesting that PST should apply to Key Individuals as well. We need to find and maintain consistency in the application of regulation and sub-ordinate regulations as it relates to all financial products. We support that PST should apply to FSP’s, its key individuals and representatives.</p>	<p>Exemption, the definition of “crypto asset competency requirements” became redundant and was removed. The definition of “competency requirements” in the Exemption of Services under Supervision, 2018, will equally apply to a crypto asset supervised representative. See also response to item 20 below for the rationale for the removal of paragraph 3(1) from the Exemption.</p> <ul style="list-style-type: none"> • It is not appropriate to list the competency requirements applicable to a key individual of a Crypto Asset FSP in the Exemption. The fit and proper requirements set out in the Determination apply equally to a key individual of a Crypto Asset FSP, unless specifically exempted by the Exemption. <p>The comment regarding the updating/amendment of subordinate legislation is noted, however, as was indicated in the Policy Document, no short-term proposals are considered at this stage as the Declaration and the Exemption were implemented as a critical <u>interim step</u> towards protecting consumers in the crypto asset environment, pending the conclusion of broader regulatory developments through, for example, the COFI Bill.</p> <p>The comment regarding section 28(3)(b) of the Determination is noted, however, the Authority disagrees. Section 28(3)(b) is correct as the product specific training requirements do not apply to a key individual. Section 28(1) is <i>subject</i> to subsection (3)(b).</p>
3.	Maitland	Section 1	<ul style="list-style-type: none"> • Definition of “crypto asset academic credential requirement”: 	<p>The Authority agrees that more clarity is required and have proposed an alternative approach with</p>

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				<p>utility tokens. Utility tokens are considered regulated tokens or future regulated tokens in many jurisdictions for example the EU Regulation proposals through Markets in Crypt-Assets (MiCA). The Australian Securities and Investments Commission provided clarity that a token described as a “utility” does not mean it is not a financial product and regulated as such. The IFWG: CAR WG Position Paper on Crypto Assets did not exclude utility tokens and as such this type of token is captured under the definition of “crypto asset”, recommendation 21 also recommended including utility tokens in the future framework under the COFI Bill.</p>
5.	BASA	Section 2(1)	<p>Section 13 of the General Code of Conduct states: Insurance.—<i>A provider, excluding a representative (emphasis), must, if, and to the extent, required by the registrar maintain in force suitable guarantees or professional indemnity or fidelity insurance cover. It is to be noted that in terms of section 5 of the General Code of Conduct that there are a number of</i></p> <p>BN 123 of 21 September 2009: Notice on requirements for Professional Indemnity and Fidelity Insurance Cover for Providers, 2009 (<i>Government Gazette</i> No. 32587). Please note per section 2 of this schedule to the Act, this only applies to providers and not representatives. We note the proposal to exempt Crypto Asset Financial Service Providers (FSPs) from the requirement to hold Professional Indemnity and Fidelity Insurance Cover, however, we refer you to the commentary as set out under item 1 above and wish to highlight the following –</p> <p>Whether a Crypto Asset FSP is intended to be a new category of FSP or if crypto assets is intended to be a sub-category under Categories of FSPs, then as contemplated under this Exemption it would only be exempted from the requirement to hold Professional and Indemnity and Fidelity insurance (section 13 and BN 123 of 2009) and</p>	<ul style="list-style-type: none"> • It has always been the intention of the Authority to include crypto assets as a new subcategory of financial products and not to create a new category of FSP. Please refer to the first response of item 1 above.

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			<p>accordingly would be required to comply with the Act and all the other Sections of the General Code of Conduct. However, in so complying with the requirements of the General Code of Conduct, the said FSP would be subject to advice risk and/or risk from an operational process perspective. Accordingly, BASA suggests that a Crypto Asset FSP, should not be exempt from the requirement to hold Professional Indemnity and Fidelity Insurance Cover, as this aims to mitigate the risk as part of effective risk management. Alternatively, we are of the view that another form of guarantee should be considered given that this is a high-risk environment and that there is a possibility that if anything untoward were to occur, it may be detrimental to the customer.</p> <p>Furthermore, we also suggest that the exemption should be subject to a period of time, either stated in the notice or the exemption withdrawn or amended to remove such exemption within a reasonable period of time.</p>	<ul style="list-style-type: none"> The concerns regarding the exemption from section 13 of the General Code of Conduct read with Board Notice 123 of 2009 is noted. However, as was indicated in paragraphs 5.5.2 to 5.5.4 of the Policy Document, crypto assets are inherently risky in nature and is still considered a new product in the industry and the Authority is therefore, at this stage, unclear whether there would be capacity and/or willingness in the insurance market to provide guarantees or professional indemnity or fidelity insurance cover to Crypto Asset FSPs. The Authority therefore decided to temporarily exempt Crypto Asset FSPs from this requirement until further investigation has been conducted at which stage this part of the Exemption may be amended or withdrawn.
6.	FIA	Section 2(1)	<p>By way of background, the purpose and/or intention behind Professional Indemnity (PI) cover, is to protect a financial advisor from any act of negligence resulting in a legal liability as brought about by an aggrieved client.</p> <p>Similarly, Fidelity Guarantee coverage would afford cover for employee theft or fraud of the financial advisor's own monies and, if extended, for third party funds held and or administered by the advisor/firm.</p> <p>In the absence of the abovementioned protections, the client is at risk.</p> <p>This will be the case for this new class of business (crypto assets) where there is no track record and further, it being riskier than the traditional non-life/life products normally advised on.</p> <p>As crypto assets are now a regulated asset class, it would therefore be assumed that they are now also exposed to risk as are all other</p>	<p>The concerns regarding the exemption from section 13 of the General Code of Conduct read with Board Notice 123 of 2009 is noted. However, as was indicated in paragraphs 5.5.2 to 5.5.4 of the Policy Document, crypto assets are inherently risky in nature and is still considered a new product in the industry. The Authority is therefore, at this stage, unclear whether there would be capacity and/or willingness in the insurance market to provide guarantees or professional indemnity or fidelity insurance cover to Crypto Asset FSPs. The Authority therefore decided to temporarily exempt Crypto Asset FSPs from this requirement until further investigation has been conducted at which stage this part of the Exemption may be amended or withdrawn.</p>

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			<p>regulated classes that require financial advice. We therefore, request clarity from the Regulator as to reasoning/rationale behind this particular exemption.</p> <p>With regard to the availability of PI cover, provided the financial advisor meets with the Underwriter’s criteria, i.e. skills, governance, controls, etc. there should also be no reason why they (the financial advisor) would not get cover.</p>	
7.	FPI	Section 2(1)	<p>If FSP’s rendering financial services for/on Crypto Assets are exempted from section 13 of the General Code of Conduct – how does this protect the consumer who may have a possible claim against the FSP? Will they have to follow costly court procedures – go to the ombud? It is recommended that the reserves and/or financial strength of VASP’s / Crypto Providers are critically assessed by the FSCA at application stage. Will any Prudential Authority and/or SAM solvency requirements come in here?</p>	<p>The exemption from section 13 of the General Code of Conduct is temporary pending further investigation. Please refer to the response provided in line 6 above. Please note that the remainder of the General Code of Conduct as well as other fit and proper requirements, including honesty, integrity and good standing, operational ability and financial soundness still apply to Crypto Asset FSPs and will be assessed by the Authority at application stage. Consumers are able to approach the FAIS Ombud.</p> <p>The Prudential Authority does not oversee crypto assets currently.</p>
8.	OVEX	Section 2(1)	<p>OVEX supports this exemption as it would be difficult to obtain professional indemnity / fidelity insurance given the negative perceptions regarding the Crypto Asset industry.</p>	<p>The comment is noted, no response is required.</p>
9.	BASA	Section 2(2) and 2(3)	<p>If a Crypto Asset FSP, its Key Individuals (KIs) and representatives are exempt from having a mandatory qualification recognized by the Registrar, BASA seeks clarity on what type of qualification or credential is/will be assessed as being sufficient for this category of FSP.</p> <p>Please refer to our comments below at item number 7 in respect of the crypto asset academic credential requirement that would ‘discharge his or her responsibilities under the Act’.</p> <p>BASA suggests that because the definition of an FSP licence in this category becomes a Crypto Asset Service Provider, none of the</p>	<p>The Authority has proposed an alternative approach with regards to qualifications - Please refer to the 2nd bullet response to item 1 above.</p> <p>The comment in respect of Board Notice 123 of 2009 and the definition of FSP is noted, however the Authority disagrees. The term “Crypto Asset FSP” used in the Exemption and the section 7(1) Exemption is used only to distinguish these FSPs</p>

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			<p>provisions of BN 123 of 2009 apply to all categories of their business. Crypto Asset Service providers should rather only be exempt from the fit and proper requirements that relate to this product category (not all fit and proper requirements).</p> <p>For ease of reference section 23 of the Determination states 'General requirement.—An FSP, a KI and a representative must have a qualification recognised by the Registrar in terms of section 24'. However, it is noted that this exemption is subject to the condition that the Crypto Asset FSP, its KI's and representatives. Meet the crypto asset academic credential requirements. We refer you to commentary sent out in item number 5 and 7.</p> <p>We note that the Financial Sector Conduct Authority (FSCA) has advised that they would <u>consider whether</u> it is necessary to issue a Guidance Notice to further clarify what academic credentials would be regarded as "adequate and appropriate" in the context of rendering a financial service in respect of crypto assets. BASA suggests that it is necessary to issue a Guidance Notice to further clarify which academic credentials would be regarded as "adequate and appropriate" in the context of rendering a financial service in respect of crypto assets. This would ensure clear understanding and consistent application of this requirement.</p>	<p>from other FSPs that are not rendering services in respect of crypto assets. It refers to an FSP that renders financial services in relation to crypto assets (alone or together with other financial products) and is therefore still considered an FSP as defined in the FAIS Act. Consequently, Board Notice 123 of 2009 do apply to crypto asset FSPs, however they are temporarily exempted from the requirements therein. The Authority further disagrees with the comment that Crypto Asset FSPs should not be exempted from all the fit and proper requirements. Crypto asset FSPs are exempted only from certain requirements to the extent set out in the Exemption. All other requirements, including honesty, integrity and good standing, operational ability and financial soundness still apply to Crypto Asset FSPs.</p>
10.	FPI	Section 2(2) and 2(3)	<p>This with respect, makes no sense as Crypto Asset Academic Credential is ill defined. A Crypto Asset FSP, its key individuals and representatives should not be exempted from section 23 of the determination and should meet a minimum of an NQF 6 level qualification (see above) or have a credential (SAQA registered designation or Foreign Professional Body designation) that is linked to an underlying NQF 6 qualification or part-qualification and/or Professional Programme as defined in the Determination.</p>	<p>The Authority has proposed an alternative approach with regards to qualifications - Please refer to the 2nd bullet response to item 1 above. The exemption is no longer required as the usual qualifications requirements will apply to these FSPs as well.</p>
11.	OVEX	Section 2(2) and 2(3)	<p>OVEX supports this exemption, but believes that further clarity will have to be provided by the FSCA in relation to the precise qualifications required to meet the crypto asset academic credentials requirement.</p>	<p>Please note that the Authority is proposing an alternative approach with regards to qualifications - Please refer to the 2nd bullet response to item 1 above. The exemption is no</p>

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				longer required as the usual qualifications requirements will apply to these FSPs as well.
12.	SAIFM	Section 2(2) and 2(3)	SAIFM supports a proposal that a minimum academic credential should be at a degree (NQF level 7) level. However, SAIFM also believes that recognition of prior learning and alternate opportunities should exist. As such, and as with the existing criteria for, say shares, a crypto assets module, coupled with both the Introduction to Financial Markets and Regulation and Ethics of the SA Financial Markets modules of the registered persons examinations should be considered an equivalent academic credential.	Please note that the Authority is proposing an alternative approach with regards to qualifications - Please refer to the 2nd bullet response to item 1 above. The exemption is no longer required as the usual qualifications requirements will apply to these FSPs as well.
13.	OVEX	Section 2(4)	Ovex supports this exemption but proposes that the regulatory exemption should be increased to 24 months in order to provide key individuals and representatives enough time to arrange their affairs in order to comply with regulatory examination requirement.	The comment is noted; however, the Authority disagrees that the exemption period should be increased to 24 months. A person who sought approval as a key individual or authorisation as an FSP in respect of any other financial product must successfully pass the applicable regulatory examination <u>prior to</u> approval or authorisation. The same would be required of a Crypto Asset FSP or its key individuals if not exempted. The Authority acknowledged that many Crypto Asset FSPs may be new to the financial services industry regulation and would not have completed the examinations previously. To apply the examination requirements immediately might cause significant disruption to persons who were already, prior to the Declaration, rendering crypto asset services. The Authority therefore allows these persons an 18-month exemption from the regulatory examination requirements to allow them to continue with the services, whilst completing the examinations. The Authority is of the view that the 18-months period is reasonable as this is an indulgence that is only applicable to Crypto Asset FSPs, and its key individuals as explained above. It should also be noted that the 18-month exemption only applies to Crypto Asset

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				FSPs and its key individuals as representatives fall under the regulatory examination exemption applicable to crypto asset supervised representatives – see amendment made to the Exemption.
14.	SAIFM	Section 2(4)	<p>SAIFM supports the temporary exemption, given that no such examinations currently have accreditation. However, we also support this exemption expiring as soon as such examinations exist and after a reasonable time for the examinations to be undertaken.</p> <p>SAIFM has, in the past, participated in the development of the knowledge and skills criteria for all products and classes of business. Together with the asset class-specific expertise within SAIFM and contributing stakeholders and specific members, we have the requisite expertise to give input on the knowledge and skills criteria for crypto assets. SAIFM commits to, and requests inclusion in, any working group defining such criteria.</p> <p>SAIFM has both the competencies within the organisation, and the systems established to create and administer examinations. SAIFM commits to working with the FSCA to create and implement any required modules of the registered persons examinations for crypto assets, once the knowledge and skills criteria have been agreed, and to the level of SP status as per our existing accreditation.</p>	The comment is noted. However, please note that the rationale for the 18-month exemption was not because such examinations do not currently exist. Persons rendering financial services in respect of crypto assets are required to write the same regulatory examination/s as any other person rendering services in respect of any of the other financial products. Please refer to the response to item 13 above for the rationale behind the exemption. The content of the existing regulatory exams focuses on the requirements of the FAIS Act and its subordinate legislation and it not specific to a particular financial product.
15.	BASA	Section 2(5)	<p>BASA suggests that the crypto asset FSP CPD requirements should align to the existing CPD principles in the fit and proper Board Notice (Chapter 4).</p> <p>BASA notes that this paragraph provides that a Crypto Asset FSP must complete a minimum of 6 hours of CPD activities relating to crypto assets per CPD cycle. We seek clarity on whether these 6 hours would be allocated separately from the amount of CPD hours a representative may already have to do in terms of BN194 of 2017. For example, if a representative is required to do CPD in terms of Investments and Long-Term Insurance and crypto related financial services is added, would the representative be required to do 18</p>	The 6 hours CPD activities referred to in the Exemption must be read together with the requirements in section 33(1) of the Determination. In other words, if a person renders financial services in relation to crypto assets, then 6 hours of CPD activities relating to crypto assets are required. If a person renders financial services in respect of crypto assets AND other financial products, then the person needs to complete 6 hours of CPD activities relating to crypto assets in addition to the requirements in section 33(1) of the Determination, as applicable.

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			<p>hours, or would it now be 24 hours due to this paragraph stating 6 hours are required for the crypto related activities. We suggest that the current wording may leave room for interpretational variances.</p> <p>BASA recommends that the proposed 6 hours of CPD should be included in the total hours noted in Section 33(1) of the abovementioned Board Notice.</p> <p>{For easy reference - Minimum CPD hours</p> <p>33. (1) An FSP, key individual and representative authorised, approved or appointed to render or manage or oversee the rendering of financial services in respect of -</p> <p><i>(a) a single subclass of business within a single class of business must complete a minimum of 6 hours of CPD activities per CPD cycle.</i></p> <p><i>(b) more than one subclass of business within a single class of business must complete a minimum of 12 hours of CPD activities per CPD cycle: or</i></p> <p><i>(c) more than one class of business must complete a minimum of 18 hours of CPD activities per CPD cycle.}</i></p>	<p>The Authority agrees with your example as it corresponds to what is set out above. The person would need to complete 6 hours of CPD activities relating to crypto assets in addition to the 18 hours for the 2 other classes of business (section 33(1)(c) of the Determination.</p> <p>However, in an attempt to clarify what was set out above, the Authority has removed paragraph 2(5) from the Exemption and merely stated the CPD requirements that would apply to a Crypto Asset FSP, its key individuals and representatives (including a crypto asset supervised representative) under the paragraph that deals with additional conditions. Please see amendments made to the Exemption.</p> <p>The Authority disagrees that the 6 hours of CPD required for Crypto Asset FSPs should be included in section 33(1) of the Determination. As was elaborated on in the table in paragraph 5.6.3 of the Policy Document, the requirements in section 33(1) of the Determination are calculated in relation to the subclasses of the classes of business in Table 1 of Annexure 4 of the Determination. Table 1 of Annexure 4 sets out very specific financial product categories which do not include crypto assets. The Declaration and Exemption were implemented as critical <u>interim steps</u> towards protecting customers in the crypto asset environment, pending the conclusion of amendments and broader regulatory developments through, for example, the COFI Bill.</p>

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16.	FPI	Section 2(5)	Agree, but this proves the point that Crypto Assets must be added as a Tier 1 Financial Product in Annexure 3 and a class of business in Annexure 4 of the Determination (BN 194 of 2017)	<p>The comment is noted. However, as was previously communicated, the Declaration and the Exemption are implemented as critical <u>interim step</u> towards protecting customers in the crypto asset environment, pending the conclusion of amendments and broader regulatory developments surrounding crypto assets through, for example, the COFI Bill.</p> <p>Please also refer to the response to the previous item insofar it relates to the removal of paragraph 2(5) from the Exemption.</p>
17.	Maitland	Section 2(5)	With reference to s33(1) of the Determination, where a FSP, key individuals and representatives was already authorised, approved or appointed to render or manage or oversee the rendering of financial services and is required to complete CPD in respect of (a), (b) or (c), and has been authorised, approved or appointed in relation to the crypto asset product category as well, how would the exemption apply to that FSP, key individual or representative? Would the minimum of 6 hours of CPD activity relating to crypto assets be required in addition to the required minimum CPD hours in s33(1)?	Correct. Please refer to the response to item 15 above, particularly the fact that paragraph 2(5) was removed from the Exemption in an attempt to clarify the CPD requirements applicable to CPD FSPs, its key individuals and representatives.
18.	OVEX	Section 2(5)	Ovex is in agreement with this exemption, but proposes that the CPD Cycle should only commence the year after the Crypto Asset FSP has been granted a licence.	<p>The comment is noted but the Authority disagrees with the proposal. The requirement is the same as is currently the case for any other person who enters the financial industry for the first time in relation to other subcategories of financial products. In addition, the number of CPD hours is calculated on a pro-rata basis. A person will in any event have time until the end of the applicable CPD cycle (31 May) to complete the 6 hours.</p> <p>Please also refer to the response to item 15 above, particularly the fact that paragraph 2(5) was removed from the Exemption in an attempt to clarify the CPD requirements applicable to CPD FSPs, its key individuals and representatives.</p>

SECTION B - COMMENTS ON THE DRAFT EXEMPTION NOTICE

No	Commentator	Section of the notice	Issue/Comment/Recommendation	FSCA Response
19.	SAIFM	Section 2(5)	<p>SAIFM currently offers two relevant workshops that are duly accredited for CPD and believe that such workshops could and should be considered amongst the appropriate CPD offerings. These are Crypto Currencies and Blockchain Technology respectively. The workshop outlines and content of each are attached to this submission.</p> <p>SAIFM, in its role as a SAQA-recognised professional body, has the expertise and regulatory authority to review and accredit CPD offered by other providers. SAIFM commits to making such facilities available for crypto assets CPD.</p>	<p>The comment is noted, and the commentator is thanked for the additional information provided.</p> <p>Please also refer to the response to item 15 above, particularly the fact that paragraph 2(5) was removed from the Exemption in an attempt to clarify the CPD requirements applicable to CPD FSPs, its key individuals and representatives.</p>
20.	BASA	Section 3(1)	<p>Please note that BASA's response to this paragraph is applicable after the exemption period has ended.</p> <p>BASA suggests that a timeline should be provided within which the supervised representatives are assessed by the Crypto Asset FSP to determine if they are in compliance with section 15 of the Determination.</p> <p><i>{for easy reference - General experience requirement</i> <i>15. (1) An FSP and representative must have adequate and appropriate experience in the rendering of a particular financial service in respect of a -</i> <i>(a) particular financial product; and</i> <i>(b) particular category of FSP,</i> <i>for which it is authorised or appointed or in respect of which authorisation or appointment is sought.</i> <i>(2) A key individual must have adequate and appropriate experience to manage or oversee the rendering of a particular financial service in respect of a particular category of FSP for which it is approved or in respect of which approval is sought.</i> We note that the general requirements as per section 15 still requires "adequate and appropriate" experience, however, we are uncertain as to how this may be determined and how it will be determined whether supervision is required and how long the supervision period</p>	<p>Noted.</p> <p>Section 15 of the Determination should be read together with the definition of "experience" in the Determination - this would assist in assessing whether the experience is adequate and appropriate and whether supervision is required. In addition, as was indicated in the Table in paragraph 5.6.3 of the Policy Document, the Authority will consider whether it is necessary to issue a Guidance Notice to further clarify what experience would be regarded as "adequate and appropriate experience" in the context of rendering a financial service in respect of crypto assets.</p> <p>However, the Authority believes that Condition 2(7)(b) of the Exemption of Services under</p>

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No	Commentator	Section of the notice	Issue/Comment/Recommendation	FSCA Response
			<p>must be. BASA recommends that a minimum experience period should be prescribed as is the case for other product sub-categories. In this regard we recommend for minimum experience in relation to Crypto Assets to align with shares sub-category: Category I advice – 24 months, Category I intermediary – 12 months, Category II – 3 years. BASA is concerned that the industry may not have sufficient experts to oversee these requirements in the beginning. Furthermore, guidance should be provided on how FSPs should identify a fit and proper supervisor and/or KI to supervise and oversee representatives with this new product and that 'adequate and appropriate' should cover what the experience should be, how it can be gained and that gaining knowledge through appropriate courses will enable the supervisor and KI to perform their duties adequately and what level of qualification would be required (NQF).</p>	<p>Supervision, 2018 which provides that the representative will remain under supervision until being assessed as having the required experience in respect of the particular financial product for which it is appointed, will equally apply to a crypto asset supervised representative. Paragraph 3(1) of the draft Exemption is therefore redundant as the exemption from the experience requirements in the Exemption of Services under Supervision, 2018, would apply to a crypto asset supervised representative who does not meet the experience requirements in section 15 of the Determination. For this reason, paragraph 3(1) of the draft Exemption as well as the definition of 'experience requirement' were removed.</p>
21.	FPI	Section 3(1)	<p>Agreed, but the minimum advice experience should be 24 months and intermediary services experience should be 12 months – this aligns with Class of Business categories (like CAT 1 Hedge Funds') complexity levels.</p>	<p>The Authority will consider whether it is necessary to issue a Guidance Notice to further clarify when experience would be regarded as "adequate and appropriate experience" in the context of rendering a financial service in respect of crypto assets.</p> <p>Please also refer to the response to the previous item.</p>
22.	Maitland	Section 3(1)	<p>There is no minimum experience requirement for crypto assets in Determination.</p> <p>On what basis will the FSP assess whether the supervised representative is compliant with the experience requirements, where there are no experience requirements recorded in relation to crypto assets.</p> <p>Is it the intention of the Authority to include a minimum experience requirement for crypto assets per category of FSP.</p>	<p>Please refer to the response to item 20 above.</p> <p>No amendments or proposals are considered at this stage. Please refer to the response to item 20 above.</p>

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No	Commentator	Section of the notice	Issue/Comment/Recommendation	FSCA Response
23.	OVEX	Section 3(1)	Ovex supports this exemption.	The comment is noted. However, please refer to the response to item 20 above.
24.	BASA	Section 3(2)	<p>For ease of reference the definition of academic credentials requirement states <i>“crypto asset academic credential requirement” means to obtain adequate and appropriate academic credentials that focus on or specialise in crypto assets to such an extent that is necessary for the person to discharge his or her responsibilities under the Act, as contemplated in paragraph 3(2).</i> We furthermore note section 23 of the Determination states <i>‘General requirement. —An FSP, a key individual and a representative must have a qualification recognized by the Registrar in terms of section 24’.</i> Whilst BASA supports the exemption, we do not support that the specific requirements in section 24 should apply more specifically sections 24(2)(c), (d) and (e) which are highly prescriptive around required modules and subjects in an appropriate subject list.</p> <p>BASA suggests that guidelines should be provided regarding what is meant by <i>“adequate and appropriate academic credentials”</i> that focus or specialise in crypto assets and more specifically:</p> <ol style="list-style-type: none"> 1. What programme would be considered a crypto asset credential; 2. Whether such programmes should be NQF approved or a list of recognised crypto asset qualifications. We are concerned that general courses may be considered as meeting the requirements that may not necessarily cover the complex nature of crypto assets; 3. How “appropriateness” would be measured; 4. If the Crypto Asset FSP, KI’s, Representatives and supervised representatives have a recognised qualification, whether the representative would be required to obtain an additional qualification (contemplated in point 1 above) to meet the crypto asset academic credentials requirement; and 5. Whether FSPs, KI’s, representatives and supervised representatives that provide financial services on multiple financial products are required to complete the crypto asset 	Please refer to the 2nd response to item 1 above.

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No	Commentator	Section of the notice	Issue/Comment/Recommendation	FSCA Response
			<p>academic credentials requirement in addition to section 23 of the determination.</p> <p>Being cognisant of the definition of crypto asset, (inserted for ease of reference states <i>“crypto asset” means a digital representation of value that – (a) is not issued by a central bank, but is capable of being traded, transferred or stored electronically by natural and legal persons for the purpose of payment, investment and other forms of utility; (b) applies cryptographic techniques; and (c) uses distributed ledger technology</i>). BASA recommends that the crypto assets academic credential requirements should –</p> <ol style="list-style-type: none"> 1. Be limited to non-payments related crypto asset applications due to there being no requirement to provide advice in this regard, it should be limited to advice pertaining to activities such as investments in and/or issuance of cryptocurrencies or (fungible) tokens; 2. Not be applied to accredited stablecoin related domestic payment applications. It is envisaged that accredited stablecoins would meet regulator-imposed hurdles such as being fully reserved, audited and denominated in ZAR. Stablecoins not meeting these requirements, or when put to applications other than payment, would require advisors to have credentials. <p>Furthermore, BASA suggests that the FSCA engage further with the industry to compile a list of specific recognised criteria which meets the <i>“academic credentials”</i> requirement. Affordability should also be considered to ensure that it doesn't hinder entry into the market, more specifically sections 24(2)(c), (d) and (e) which are highly prescriptive concerning required modules and subjects in an appropriate subject list. We also refer you our comments made at item number 1 of Section C below.</p>	
25.	FPI	Section 3(2)	The Crypto Asset Academic Credentials requirement, as stated above, needs more clarification. As per comments by FSCA in the Policy Document supporting the declaration of Crypto Asset as a Financial Product under the FAIS act: 5.6.3: the FSCA should	Please refer to the 2nd response to item 1 above.

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No	Commentator	Section of the notice	Issue/Comment/Recommendation	FSCA Response
			consider issuing a General Notice to further clarify what academic credentials actually mean. FSCA should take note of other definitions in the Determination like “part-qualification” “professional programme” “professional designation – in NQF act”	
26.	OVEX	Section 3(2)	Ovex supports this exemption, but believes that further clarity will have to be provided by the FSCA in relation to the precise qualifications required to meet the crypto asset academic credentials requirement.	Please refer to the 2nd response to item 1 above.
27.	BASA	Section 3(3)	<p>BASA seeks to confirm if its understanding is correct regarding the following: If a representative is conducting financial services but is subject to the provision in Section 25(b) of the Determination, it is our understanding that the representative will be given a two-year period to obtain the relevant regulatory exam if their profile changes to provide financial services on crypto assets.</p> <p>{For easy reference - Application of Part 25. The competence requirements relating to regulatory examinations contained in this Part-</p> <p><i>(a) subject to paragraph (b), apply to all FSPs, key individuals and representatives.</i></p> <p><i>(b) do not apply to -</i></p> <p><i>(i) a Category I FSP, its key individuals and representatives that are authorised, approved, or appointed only to render financial services or manage or oversee financial services in respect of the financial products: Long-term Insurance subcategory A and/or Friendly Society Benefits; and</i></p> <p><i>(ii) a representative of a Category I FSP that is appointed only to –</i></p> <p><i>(aa) perform the execution of sales in respect of a Tier 1 financial product provided that the requirements in section 22(b)(ii) are complied with; and/or</i></p> <p><i>(bb) render financial services in respect of a Tier 2 financial product.}</i></p> <p>BASA notes that Section 25(b)(ii) of the Fit and Proper Determination states that regulatory exams do not apply to certain Category 1 FSPs where only execution of sales is provided in respect of Tier 1 product and/or where financial services are</p>	<p>Correct. Please see amendment made to the Exemption to clarify.</p> <p>The comment and suggestion are noted. No short-term amendments or proposals are considered at this stage to include crypto assets in Table 1 of Annexure 3 of the Determination. As</p>

SECTION B - COMMENTS ON THE DRAFT EXEMPTION NOTICE

No	Commentator	Section of the notice	Issue/Comment/Recommendation	FSCA Response
			provided in respect of Tier 2 products. However, we note furthermore, that crypto assets have not been defined as a FAIS tier 1 or tier 2 product. BASA suggests that clarity be provided on the product Tier that a crypto asset will fall into. In this regard, we recommend that the same principles relating to fit and proper apply as per the current principles in <u>sub-paragraph (b) above</u> applicable to the different tiers of existing products (i.e., less stringent requirements for Tier 2 products <u>and execution of sales in respect of Tier 1 products</u>).	communicated previously, the Declaration and Exemption were implemented as a critical <u>interim step</u> towards protecting customers in the crypto asset environment, pending the conclusion of amendments and broader regulatory developments surrounding crypto assets through, for example, the COFI Bill.
28.	OVEX	Section 3(3)	Ovex is in agreement with these exemptions.	The comment is noted.
29.	BASA	Section 3(4)	If the supervised representative provides financial services on multiple products, clarity is sought on whether the representative would be required to complete CPD in respect of Section 33 of the Determination and complete an additional six hours of CPD activities relating to crypto assets. Refer to our comments made at item number 4 above.	Yes, your understanding is correct. Please refer to the response to item 15 above.
30.	OVEX	Section 3(4)	Ovex is in agreement with these exemptions.	The comment is noted. However, please refer to the response to item 15 above.
31.	SAIFM	Section 3(4)(a) and (b)	<p>SAIFM currently offers two relevant workshops that are duly accredited for CPD and believe that such workshops could and should be considered amongst the appropriate CPD offerings. These are Crypto Currencies and Blockchain Technology respectively. The workshop outlines and content of each are attached to this submission.</p> <p>SAIFM, in its role as a SAQA-recognised professional body, has the expertise and regulatory authority to review and accredit CPD offered by other providers. SAIFM commits to making such facilities available for crypto assets CPD.</p>	<p>The comment is noted, and the commentator is thanked for the additional information provided.</p> <p>Please refer to the response to item 15 above.</p>
32.	Maitland	Section 3(5)(b)	This only refers to conditions 3 – 7. Does the remainder of Board Notice 86 of 2018 apply to crypto asset supervised representatives?	To prevent unnecessary misunderstanding, paragraphs 3(5)(a) and (b) of the draft Exemption was removed as the Exemption of Services under Supervision, 2018, in its entirety, will apply to a crypto asset supervised representative.
33.	OVEX	Section 3(5)	Ovex is in agreement with these exemptions.	The comment is noted. Please refer to the response to the previous item.

SECTION C - GENERAL COMMENTS

No	Commentator	Issue	Comment/Recommendation	FSCA Response
1.	Alexforbes	Paragraph 4.6 of the Policy Document	While a unique identification code may exist for an NFT reducing the money laundering risk as addressed in the FATF MER, these are ultimately instruments that can be traded for a value between members of the public. Should these members of the public not be afforded protection that regulation brings? Notwithstanding the market for NFT's are in their infancy, this is a field which is rapidly evolving and regulation should aim to be proactive	The Declaration is an interim step affording protection to customers while also balancing the appropriateness of the requirements from existing legislation on Crypto Asset FSPs, pending the conclusion of broader developments surrounding crypto assets. Although we note that there has been an increase in NFT market places and use of NFTs in other jurisdictions, locally the use of NFTs are still in its infancy and limited to certain use cases (e.g. used to represent ownership of a digital item for instance a digital kitten or video game collectibles etc.). These highlight the argument that NFT's not having a similar use as other types of crypto assets and traditional financial products currently in the local landscape. The FSCA also considered regulatory approaches internationally. Following extensive consideration internally and also taking into account the local landscape, we concluded that it would be unreasonable to require that persons rendering financial services in respect of NFTs only to apply for a FSP licence under the FAIS Act at the moment. Numerous requirements would apply to these entities if included in the Declaration for instance largely the Determination would apply once licensed and most of the requirements in the General Code of Conduct. It must be noted that the use of an exemption in this regard allows for an agile response to a changing environment, where the exemption can be withdrawn at any time. Further, your comment focuses AML/CTF risk, and we agree that AML/CFT risk exist in the NFT context. In this regard it is important to note that Schedule 1 of the FIC Act has been amended to include Crypto Asset Services Providers

SECTION C - GENERAL COMMENTS

No	Commentator	Issue	Comment/Recommendation	FSCA Response
				(CASP) as accountable institutions. CASPs that deal in NFT's have not been excluded from being accountable institutions, and therefore AML/CFT requirements will apply in the NFT context. The FAIS Act serves a different purpose and, as explained above, we do not believe it is necessary to regulate NFT activities from the FAIS Act perspective at this time.
2.	Alexforbes	Paragraph 4.8 to 4.12 of the Policy Document	The implications of crypto derivatives warrants a much broader discussion. The inherent volatility in an asset class which is very much still within its developmental stages poses a grave risk to markets facilitating leverage and where pricing of derivative instruments is driven by volatility of the underlying asset. Within the scope of affording protection to consumers, the applicability and use of derivatives on such instruments should be called into question until such a point in time where greater adoption, more efficient pricing and settled regulation brings a greater degree of stability to the underlying crypto instruments.	The concerns raised are noted and ongoing discussions are underway in respect of any identified risk. In respect of derivatives, the Financial Markets Act, 2012 (Act No. 19 of 2012) (FMA) defines a "derivative instrument" as a financial instrument or contract that creates rights and obligations and whose value depends on or is derived from the value of one or more underlying asset, rate or index, on a measure of economic value or on a default event. Financial services rendered in relation to crypto asset derivatives have always been subject to the FAIS Act and the Declaration do not affect this. We do, however, agree that crypto asset derivatives pose a grave risk.
3.	Alexforbes	Paragraph 5.5.1(e) of the Policy Document	Should more stringent requirements around adequately disclosing the volatility of crypto investments not be implemented for all crypto related advertising?	The General Code of Conduct already requires risk disclosures that must be appropriate in the context of the financial product concerned. In our opinion it could therefore be argued that robust volatility disclosure would already be required in terms of the General Code of Conduct, and we will supervise disclosures made by Crypto Assets FSPs in that context.
4.	Alexforbes	Paragraph 5.5.4 of the Policy Document	The inherent volatility of the crypto market is crucial here. So while professional indemnity may be a challenge in the current environment should Crypto Asset FSPs not be subject to more onerous working capital requirements to ensure the protection of clients in the event of an adverse event for the business requiring a business unwind?	The exemption from section 13 of the General Code of Conduct is only temporary pending further investigation and can be withdrawn if the need arises. Please note that the remainder of the requirements of the General

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No	Commentator	Issue	Comment/Recommendation	FSCA Response
			Higher working capital availability could ensure such a process is more orderly with less detriment to clients.	Code of Conduct as well as other fit and proper requirements, including honesty, integrity and good standing, operational ability and financial soundness still apply to Crypto Asset FSPs and will be assessed by the Authority at application stage. As mentioned, the current proposal is an interim step. More fit for purpose requirements applicable to Crypto Asset FSPs will be considered at a future stage.
5.	Alexforbes	Paragraph 5.6.3 of the Policy Document	This guidance note is critical with respect to maintaining the quality of Key Individuals, Representatives and FSPs within the financial services environment.	The comment is noted.
6.	BASA	Competence/minimum qualifications	BASA recommends that the FSCA consider issuing a Guidance Notice to further clarify which academic credentials would be regarded as “adequate and appropriate” in the context of rendering a financial service in respect of crypto assets. Alternatively, we recommend that the current list of recognised qualifications in FAIS be updated to include those relevant to crypto assets. BASA also supports further industry consultation to define appropriate credentials in this regard, and we avail ourselves to the FSCA to unpack this issue further through industry engagement.	Please refer to the response in Section B above in this regard.
7.	BASA	Debarments	BASA notes that Section 7(1) of FSCA FAIS Notice 90 of 2022 provides that: “A person who as a regular feature of the business of such person renders a financial service in relation to crypto assets, is exempted from section 7(1) of the Act insofar it relates to the rendering of a financial service in relation to crypto assets”. However, BASA notes that the conditions of the exemption provide that: “(1) The exemption referred to in paragraph 2 is subject thereto that the person, excluding a crypto asset miner, node operator and a person rendering financial services in relation to non-fungible tokens, must – (a) submit an application to the Authority between 1 June 2023 and 30 November 2023; and (b) comply with – i Chapter 2 of the Determination as from the effective date of the Declaration;	

SECTION C - GENERAL COMMENTS

No	Commentator	Issue	Comment/Recommendation	FSCA Response
			<p><i>ii section 2 of the of General Code of Conduct as from the effective date of the Declaration; and</i></p> <p><i>iii all other requirements in the General Code of Conduct, with the exclusion of section 13 of the General Code of Conduct, by 1 December 2023, as if such person is a Crypto Asset FSP or a representative of a Crypto Asset FSP, as the case may be.”</i></p> <p>The “Determination” above refers to the fit and proper Board Notice 194 of 2017. The Declaration refers to the General Notice 1350 of 2022 (declaration of a crypto assets as a financial product under FAIS). BASA notes that Notice 90 of 2022 provides for a transitional period to apply for a license / approval of crypto FSPs. The honesty, integrity and good standing requirements in Chapter 2 of the fit and proper requirements become applicable from the date of the Declaration being 19 October 2022. However, the debarment provisions in the FAIS Act do not apply in the transitional period, pending a crypto license being issued. We therefore suggest that the debarment process that should be followed for debarments of KI’s and representatives should be that the FSP will not be in a position to debar, that the FSCA should debar the representative in terms of s153 of the Financial Sector Regulation Act, 9 of 2017.</p>	<p>An existing FSP that adds crypto assets to its licence will be able to debar an existing representative in terms of the FAIS Act. However, applicants that falls within the ambit of the section 7(1) Exemption would not be able to debar the person and the Authority will have to do that in terms of section 153 of the FSR Act. The Authority will only be able to do so when it is provided with all relevant information and conducts its own investigation.</p>
8.	BASA	Transitional period until licence application period commences	BASA requests clarity on whether an entity that starts performing crypto asset related activities after the effective date of the Declaration Notice, would also be allowed to continue conducting those activities until it applies for approval from the FSCA during the period 1 June 2022 – 30 November 2022. We suggest that the FSCA permit FSPs to render services in relation to crypto assets prior to the license application period. Additionally, BASA seeks clarity on whether FSPs may begin to sell Crypto Assets now or whether the start date is in June 2023.	Yes, the exemption applies to any person who as a regular feature of the business of that person renders a financial service in relation to crypto assets, irrespective of whether that services were rendered before or after the effective date of the exemption. The exemption is valid until such time as the license application is approved or declined. The exemption only applies if the conditions of the exemption is met.
9.	BASA	Execution of Sales	BASA requests that clarity be provided on whether execution of sales would be permitted for crypto assets. BASA recommends that the financial services type which are currently provided for in FAIS – such as automated advice, as well as in the future Conduct of Financial Institutions Bill (such as execution of sales) should be included as financial services in relation to crypto assets.	In terms of the definition of “execution of sales” in the Determination, execution of sales can be performed in respect of one or more financial product, which will now include crypto assets. The FSP will however have to assess whether this sales method is appropriate considering that

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No	Commentator	Issue	Comment/Recommendation	FSCA Response
				nature and complexity of the product and the interest of the consumer.
10.	BASA	Crypto asset derivatives	The declaration does not apply to or affect financial services rendered in relation to crypto asset derivatives. Therefore, FSPs providing financial services in relation to crypto asset derivatives are already subject to the FAIS Act, and providers of crypto asset derivatives remain subject to the Financial Markets Act. While the latest notice published by the FSCA confirmed our understanding regarding the current regulatory framework for intermediating derivatives referencing Crypto-Assets, BASA's members are uncertain as to whether any specific requirements apply, should an Over The Counter Derivative Provider (ODP) license holder wish to also provide/issue crypto asset referenced derivatives (i.e. the current ODP conduct standard, as an example includes in annexure A different schedules for the different underlying asset classes such as interest rates, credit, FX, Equities and commodities, but make no provision for Crypto Assets) . BASA seeks clarity on whether the intention is to include same in the schedule, or if the intention is to not include Crypto Assets. (i.e., that the issuance of derivatives on crypto assets will not be regulated under the ODP regulations).	This is separate issue and does not apply to or effect the exemption. However, further clarity will be provided in due course
11.	BASA	Experience exemption	BASA suggests that clarity be provided on whether corporate bank traders would be exempted from Fit and Proper requirements considering their experience in trading other securities for example Corporate and Investment Banking (CIB) Traders. Please refer to our comments above at Item 5 of General Comments on crypto asset derivatives. BASA recommend that the same principle be applied for crypto as with over-counter derivatives.	No, the Authority does not intend to exempt corporate bank traders from the fit and proper requirements.
12.	BASA	Third Party Management Products	BASA notes that there appears to be no mention made of guidance concerning third-party products on Crypto Assets. BASA recommends that guidance should be provided on requirements concerning a scenario where a bank only provides access to the third party's platform (i.e., the buying, selling and fulfilment is dealt directly with the third party by the customer). We suggest that the definition of intermediary service should provide for this type of platform. Furthermore, please also consider at item 5 of our General	The comment is noted, however, the context hereof is unclear. As the definition of an intermediary service is not being proposed to be amended this is not a development that will be taken into consideration at this stage. The existing definition of an intermediary service will need to be applied to the scenario at hand.

SECTION C - GENERAL COMMENTS

No	Commentator	Issue	Comment/Recommendation	FSCA Response
			Comments concerning 'Execution of Sales' (whether a third party allowed to act as a broker or not)	
13.	BASA	Applicability of Exemption	BASA suggests that this exemption cannot be applied to all FSP's who are Crypto Asset FSPs as it will lead to the existing fit and proper requirements being suspended across the board. BASA recommends that the exemption should only be applied to the fit and proper requirements for the crypto asset product class.	The Authority disagrees with the comment. The fit and proper requirements (Determination) applies to Crypto Asset FSPs, their key individuals and representatives except where exemptions from certain provisions were granted for the reasons set out in the Policy Document. Please refer to paragraph 5 of the Policy Document for details in this regard. The exemption from any fit and proper requirements only applies to Crypto Asset FSPs, their key individuals and representatives to the extent that they render financial services in relation to crypto assets. Put differently, the exemption does not apply to Crypto Asset FSPs, their key individuals and representatives where they render financial services in relation to financial products that are not crypto assets.
14.	BASA	Key Individuals and COB	BASA notes that Crypto Assets are not included under any COB yet, however Key Individuals would need to determine CPD hours based on classes of business requirements. BASA requests clarity on what COB crypto assets will fall under. Once this clarity is provided, the industry will be able to determine what the minimum number of CPD hours are and the COB requirements for Key Individuals to complete.	See response to item 2 (second bullet) above.
15.	FPI	Policy Document Supporting the Declaration of Crypto Asset as a Financial Product under the FAIS act (Policy Document)	<p>With regards to exemption of persons rendering certain types of crypto asset financial services:</p> <p>Non-fungible tokens: what if a person (whether licenced with FSCA or not) recommend that the NFT is replaced with a Financial Product as defined in FAIS/FSR/Future Cofi regulations? Is it considered a financial service and replacement as per the General Code of Conduct? NFT's can form part of Estate Planning and Tax Planning that falls under professional bodies Code of Ethics. But replacements of NFT's (generating possible GCT for example) with financial products could potentially be seen as a matter that falls under the jurisdiction of the FSCA and the relevant Ombudsman scheme.</p>	<p>Non-fungible tokens meeets the definition of "crypto assets" in the Declaration and is therefore still a financial product. The Exemption, while in force, exempts a person that only renders financial services in respect of NFTs from the licencing requirement and other requirements in the FAIS Act.</p> <p>In respect of the scenario provided: Where a financial product is to replace an existing financial product (NFT) wholly or partially. There needs to be compliance with the requirements in respect of the replacement product (refer to section 8(1)(d)</p>

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No	Commentator	Issue	Comment/Recommendation	FSCA Response
				of the General Code of Conduct) for example disclosing the financial implications of the replacement product and the terms and conditions of the replacement product. The advice provided on the replacement product does not only relate to the NFT in the example but to the replaced financial product that is not a NFT and the exemption is therefore not applicable.
16.	FPI	General	<p>FPI supports some of the exemptions, but not all. We have to find consistent application of the Competency and CPD requirements as FSCA did state in the Policy Document that</p> <ul style="list-style-type: none"> • there is mounting risk in the crypto asset environment; • we have to focus on protecting the customers and • FSCA had interrogated the legality of the declaration and identified numerous similarities between crypto assets and traditional financial products. <p>The competency framework as it relates to qualifications, experience, class of business training, product specific training, regulatory examinations and CPD should therefore not differ vastly from each other.</p> <p>The Determination should be updated to include Crypto Assets as a Class of Business and Tier 1 Financial Product.</p> <p>Please do not hesitate to contact us should you need any further clarifications or additional input.</p>	<p>The comment is noted. As was previously communicated, the Declaration and the Exemption were implemented as a critical interim step towards protecting customers in the crypto asset environment, pending the conclusion of amendments and broader regulatory developments through, for example, the COFI Bill. An alternative, of having no requirements in place, no protection for the consumer is also an untenable situation. The Fit and proper requirements (Determination) applies to Crypto Asset FSPs, their key individuals and representatives except where exemptions from certain provisions had to be granted for the reasons set out in the Policy Document. Class of business training etc requirements in respect of crypto assets will be considered once there is an opportunity, in future, to make amendments to the Determination of Fit and Proper Requirements.</p>
17.	Maitland	The application of the draft exemption on existing FSPs	<p>A Crypto Asset FSP is a person licensed to render financial services in relation to crypto assets. The draft exemption, exempts Crypto Asset FSP from certain requirements. It is unclear how the exemption would apply to an existing FSP, who submits an application to have product categories amended to include crypto assets. Would that existing FSP be deemed a Crypto Asset FSP, to which the exemption applies?</p>	<p>The term "Crypto Asset FSP" used in the Exemption refers to an FSP that renders financial services in relation to crypto assets (<u>alone or together with other financial products</u>). The term is used for purposes of the Exemption to distinguish these FSPs from other FSPs that are not rendering services in respect of crypto assets. A Crypto Asset FSP is still considered as an FSP</p>

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				as defined in the FAIS Act. To answer your question, yes the existing FSP will be deemed a Crypto Asset FSP to which the Exemption applies, but it will still have to comply with the relevant requirements in the FAIS Act (without the benefit of any exemptions) when it renders financial services in relation to financial products that are not crypto assets.
18.	Maitland	Product Specific Training and Class of Business training in relation to Crypto Asset FSPs, its key individuals and representatives	The exemption is silent on the Product Specific Training and Class of Business Training for representatives and Key Individuals. Until such time the Determination is amended, what Class of Business does crypto assets fall into?	Insofar as the comment regarding the class of business training is concerned, please refer to the response to item 14 above. With regards to the comment in respect of the product specific training, as elaborated on in terms of the Policy Document, as product specific training requirements refer generally to 'financial products', it can include crypto assets. The product specific training requirements in the Determination therefore <u>apply</u> to Crypto Asset FSPs, their key individuals and representatives.
19.	Money Doc	General	We are interested in taking advantage of the Crypto Assets as far as: <ul style="list-style-type: none"> • Tokenization • Nft and dealing with an Exchange 	The comment is noted.
20.	Provenance	Paragraph 3(1)(a) of the section 7(1) Exemption	<ul style="list-style-type: none"> • It is noted that this exclusion and application only makes provision for current service providers that are applying for an exclusion. Would it also be applicable on new applications for FSP licensing or how would they be treated? • Are there any remedies or relief available for a person that failed to submit an application within the prescribed time frame? • Would the application mentioned in 3(1)(a) only apply to current crypto asset FSP or would a new FSP application also need to have to apply in terms of section 3, or would that be included in the new FSP application? 	<ul style="list-style-type: none"> • To clarify, in order to qualify for the section 7(1) exemption, a person that renders financial services in relation to crypto assets must submit a licence application between 1 June 2023 and 30 November 2023. This could entail a provider that started rendering financial services in relation to crypto assets before the Declaration became effective or after the Declaration (up until 30 November 2023). Any person that starts rendering financial services in relation to crypto assets after the transitional period has expired will have to obtain a licence before it starts to render financial services in relation to crypto assets.

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				<ul style="list-style-type: none"> • No. Paragraph 4(1) of the section 7(1) Exemption provides that failure to comply with the conditions will automatically result in the exemption no longer being applicable to the person referred to in paragraph 2 of the exemption. If the person then continues rendering services in relation to crypto assets, it will be in contravention of the FAIS Act and regulatory action can be taken, unless persons are individually exempted. Such person will therefore have to cease business and first apply for a licence, and can only continue business after the licence has been approved. • See first bullet above.
21.	Provenance	Paragraph 3(2) of the section 7(1) Exemption	This clause specifically refers to information that would be crucial and would fall under “any information”? Any information is quite vague and ambiguous and clarity would be recommended.	The Authority has the power to request any information from persons who are subject to the Exemption to ensure that the necessary protection is afforded to financial customers in the crypto asset environment. It is for this reason that the Authority intentionally provides for a wide interpretation. As indicated in the Exemption, if information is required, it will only be information that is relevant to the financial services and/or similar activities rendered by such person and the reasons for such a request will then be provided.
22.	Provenance	Definition of “NFT” of the section 7(1) Exemption	The definition of non-fungible tokens has been provided, but not specifically what fungible tokens are defined as. Essentially, tokens - fungible and non-fungible - are digital representations of a "thing", not necessarily an asset, and by way of including fungible tokens as financial assets without a clear definition of such will trigger debate and bring confusion to the table.	Without a specific example as to what type of token would create confusion as to whether it should be classified as a non-fungible token and fall under the section 7(1) Exemption provided currently, makes this comment difficult to respond to . The FSCA can be engaged on a case by case basis if any uncertainty in respect of a specific example is present.
23.	Provenance	The section 7(1) Exemption: NFT	When will regulation come into force on these tokens as there are many use cases that have arisen. Consideration should be made on	The landscape is evolving rapidly and as such analysed on an ongoing basis to ensure that the necessary protections are afforded to financial

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			how to regulate these tokens in future as it will provide regulatory certainty for many actors in the space.	customers. As with other regulatory developments the future framework developments are consulted on providing an opportunity to consider the developments.
24.	Provenance	The section 7(1) Exemption: Mining and Node Operators	When will regulation come into force on exemptions? Consideration should be made on how to regulate in future as it will provide regulatory certainty to many actors in the space.	Please see above responses. The landscape is assessed on an ongoing basis for the need for regulatory interventions. The mining and node operators are exempted from the framework by an exemption that can be withdrawn at any time, if the need arises.
25.	Provenance	The section 7(1) Exemption: General	What are some of the key factors that the FSP would look at in order to determine whether such a person would be successful with the application to be exempted? Is there an internal policy that will be made available to the public?	This is a general exemption that applies to any person who as a regular feature of the business of such person renders a financial service in relation to crypto assets. There is no need to submit an application. License applications for crypto asset FSPs (utilizing the 7(1) exemption) must be made between 1 June 2023 and 30 November 2023.
26.	SAATA	Paragraph 2.9 of the Policy Document	SAATA Proposes FSCA make it mandatory that all CASPs immediately register as Accountable Institutions with FIC. This would go a long way to satisfy FATF that South African Regulators have taken necessary steps to mitigate the AML/CFT risks highlighted in the Mutual Evaluation Report as it immediately imposes a globally accepted duty to report into supervisory bodies. In terms of the FIC Act, they are required to formulate and implement internal rules concerning: <ul style="list-style-type: none"> • The establishment and verification of the identity of persons whom the institution must identify; • the information of which records must be kept; • the manner in which and place at which such records must be kept; • the steps to be taken to determine when a transaction is reportable to ensure the institution complies with its duties; and • any other matters as may be prescribed. 	Please take note of the publication on 29 November 2022 of Government Gazette 47596 to amend Schedules 1, 2 and 3 of the Financial Intelligence Centre Act 38 of 2001 (FIC Act). In terms of the Notice, crypto asset services providers have been classified as “accountable institutions” and accordingly included in Schedule 1 of the FIC Act.
27.	SAATA	Paragraph 4.1 of the Policy Document	SAATA suggests that the period proposed to apply for the new FSP category (June '23 – Nov '24) and the likely period that the Authority	To clarify, licence applications must be submitted between 1 June 2023 and 30 November 2023 and

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			will need to process and approve/decline the vast number of applications will result in an extremely long “transition period”. SAATA therefore proposes the establishment of a set of transitional “stepping stone” requirements for a CASP to continue providing services while they compile, submit and wait for approval. See Section C below.	not November 2024. The Authority is of the view that the 6-month period is sufficient and reasonable especially in light of the fact that the exemption will remain valid until the licence application has been approved or declined.
28.	SAATA	Paragraph 4.4 of the Policy Document	In order to protect the consumer and have accurate records of the operators and their personnel during the “transition period”, SAATA proposes a similar approach to that taken with Treasury Outsourcing Companies (TOCs) where they were required to register with SARB Financial Surveillance Dept (Finsurv) while formal regulations were being finalised. This would provide Regulators with all necessary details of each operator so that a degree of oversight and enforcement is possible during the transition period. Perhaps applicants could complete relevant sections of the existing FSP 1 – 13 Forms to gather this data in a standard format	The comment is noted. Crypto asset applicants will follow the same licencing application process as is currently the case with any other FAIS licence application, including the completion and submission of the licence application forms (FSP Forms 1-13). Application forms were amended to include crypto assets as a financial product and will be available for use once the license period opens. The Authority will obtain all necessary information of the provider through the licensing process and supervisory activities thereafter.
29.	SAATA	Paragraph 4.5 of the Policy Document	SAATA suggests that the period proposed to apply for the new FSP category (June '23 – Nov '24) and the likely period that the Authority will need to process and approve/decline the vast number of applications will result in an extremely long “transition period”. SAATA therefore proposes the establishment of a set of transitional “stepping stone” requirements for a CASP to continue providing services while they compile, submit and wait for approval. See Section C below.	Please refer to the response to item 27 above.
30.	SAATA	Paragraph 4.12 of the Policy Document	In the provision of crypto arbitrage services, service providers will often utilise some form of hedging (pls refer to their websites and brochures). It is widely accepted in the financial markets that any form of “hedging” is regarded as a derivative instrument. It, therefore, needs to be made clear that an FSP license already exists for providing advice and services on derivative instruments such as hedging, and that a service provider is in contravention of the FAIS Act if they provide such services without FSP Cat 1.13.	The Policy Document already explained that derivatives with crypto assets as the underlying asset already falls within the definition of “derivative instrument” under the Financial Markets Act, 2012 (Act No. 19 of 2012). ¹
31.	SAATA	Paragraph 5.5 of the Policy Document	<ul style="list-style-type: none"> Without an immediate <i>formal</i> requirement to comply with the FAIS General Code, and Chapter 2 in particular, it is unlikely that 	<ul style="list-style-type: none"> It's not clear what is meant by “formal requirement” and it is therefore difficult to respond to that part of the comment. However,

¹ <https://www.fsca.co.za/Regulatory%20Frameworks/Temp/Policy%20Document%20supporting%20the%20Declaration%20of%20crypto%20assets%20as%20a%20financial%20product.pdf>

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			<p>operators will comply with, or even be aware of these conduct standards, putting the consumer at risk.</p> <ul style="list-style-type: none"> • Since “most of the requirements in the General Code of Conduct are product agnostic... and can be applied regardless of the products concerned”, SAATA submits that CASPs should sign “Statements of Commitment” to the General Code of Conduct sooner than the deadline of 1st Dec 2023 (Clause 4.5). Without this measure, it is unlikely that operators will comply with, or even be aware of these conduct standards, putting the consumer at risk. 	<p>Chapter 2 of the Determination as well as section 2 of the General Code of Conduct came into effect on the effective date of the Declaration, i.e. on 19 October 2022 and all other requirements in the General Code of Conduct (excluding section 13) must be complied with by 1 December 2023. The Authority is therefore of the view that consumers have far more protection than they would have had if the Declaration was not made as the Authority now has the power to take regulatory action against Crypto Asset FSPs.</p> <ul style="list-style-type: none"> • The Authority disagrees with the commentator’s view that consumers would be at risk if Crypto Asset FSPs fails to sign a “Statement of Commitment”. It is also not clear what legal force such a Statement would have. As was indicated above, regulatory action can be taken against Crypto Asset FSPs who are not complying with Chapter 2 of the Determination and section 2 of the General Code of Conduct. The reason why the remainder of the General Code of Conduct only comes into effect on 1 December 2023 is to provide a Crypto Asset FSP who submits a license application to the Authority reasonable time to get all their systems and processes in order to ensure compliance with the requirements. If condition 3(1)(b)(iii) was not included, the Crypto Asset FSP would only have to comply with the other requirements of the General Code of Conduct once authorised. The Authority is therefore of the view that the effective date of 1 December 2023 is fair towards Crypto Asset FSPs and provides consumers with sufficient protection. It is unclear why the commentator believes that the

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				<p>publication and signing of a “Statement of Commitment” is necessary as the regulatory requirements that has been put in place can be enforced and regulatory action taken against a crypto asset FSP, where a provider fails to adhere to the requirements. .</p>
32.	SAATA	Paragraph 5.5.3 of the Policy Document	<p>Given “that crypto assets are inherently risky in nature...”, SAATA suggests that this exemption be scrapped and that CASPs should comply with the requirements laid out in Board Notice 123 of 2009. In SAATA’s experience, opening a dialogue with underwriters to more clearly explain the services and products will increase the likelihood of them providing cover.</p>	<p>The exemption from section section 13 of the General Code of Conduct is temporary pending further investigation. Please refer to the last response to item 5 of Section B above.</p>
33.	SAATA	Paragraph 5.5.5 of the Policy Document	<ul style="list-style-type: none"> • SAATA strongly urges the Authority to reconsider allowing currently-unregulated and uninsured operators to receive and/or hold client assets until they have obtained their FSP licenses. See further comments below. • Allowing currently-unregulated entities (with numerous exemptions relating to insurance, qualifications, experience and RE exams) to hold or receive financial products (including money) on behalf of clients during the transition period puts the client and the markets in general, at exceptional and unnecessary risk. SAATA submits that this needs to be more closely investigated and only once clearer guidelines have been established, and operators have obtained their FSP licenses and fall fully within a formal regulated framework, should this be considered. In the context of TOC’s, the custody of clients’ assets has always been strictly (and rightly) forbidden by SARB. It also opens the question of the operator “acting as Principal” and becoming a market/price maker, amongst other important risk considerations that require further thought. 	<ul style="list-style-type: none"> • The comments are noted. As the licensing of Crypto Asset FSPs will be commencing from 1 June 2023, it was necessary to provide for a transitional period to allow these previously unregulated entities not to be unduly disrupted, and to provide these entities with an appropriate time to compile and submit a licence application under section 8 of the FAIS Act. It could even be argued that not allowing a transitional period would be unconstitutional. • Within the transitional period all Crypto Asset FSPs that benefit from the transitional period must immediately comply with Chapter 2 of the Determination. Chapter 2 sets out the honesty, integrity and good standing requirements that apply to all FSPs, key individuals and representatives. Furthermore, these Crypto Asset FSPs must immediately comply with section 2 of the General Code of Conduct as if it is a licensed FSP. Section 2 of the General Code provides that an FSP must at all times render financial services honestly, fairly, with due skill, care and diligence, and in the interests of clients and the integrity of the financial

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				services industry. The above requirements imposed as conditions to the section 7(1) Exemption also extend to financial services being rendered in respect of holding crypto assets on behalf of financial customers.
34.	SAATA	Paragraph 5.6 of the Policy Document	<ul style="list-style-type: none"> • Crypto assets are far more complex and volatile than most financial products available in South Africa, and as such are open to scam, abuse and risk. Therefore, SAATA maintains that the current Fit and Proper requirements should apply immediately and in their entirety. It is possible that some current operators may not meet the criteria laid out in Chapter 2, and have no intention of submitting an FSP application by 30 Nov 2023, but could be in the clear to carry on operating up to that date. • To protect the consumer during the transition period, SAATA suggests some sort of firm measure that enables the Authority to enforce immediate compliance with the FAIS Code, and Chapter 2 in particular. 	See responses to similar comments you made above.
35.	SAATA	Paragraph 5.6.3 of the Policy Document	<ul style="list-style-type: none"> • SAATA does not agree that a special, albeit conditional, exemption should be applied to minimum qualifications for the KI. This requirement should fall in line with all FSP categories, many of which apply to far simpler products than crypto. • SAATA submits that 18 months for any staff (especially KI and Reps) to obtain RE exams is far too long. The RE exams are product-agnostic and ensure a good understanding of important areas such as AML/CFT, TCF, etc, all of which are of particular importance to the provision of services around this under-regulated and emerging financial product. 	<ul style="list-style-type: none"> • The comment regarding the qualifications is noted. Please refer to the 2nd response to item 1 of Section B above. • The comment regarding the RE exams is noted. The Authority acknowledged that many Crypto Asset FSPs may be new to the financial services industry regulation and would not have completed the examinations previously. To apply the examination requirements immediately might cause significant disruption to persons who were already, prior to the Declaration, rendering crypto asset services. The Authority is therefore allowing these persons an 18-month period to comply with the regulatory examination requirements. The Authority is of the view that it is a reasonable period, especially considering that other new entrants to the sector (working under

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				supervision) has a period of 24 months to complete the regulatory examination.
36.	SAATA	Paragraph 6.1.4 of the Policy Document	SAATA strongly urges the Authority to reconsider these exemptions during the transition period.	The comment is noted. Please refer to the amendments made to the Exemption. The exemption from the minimum qualification requirements was removed - please refer to the 2nd response to item 1 of Section B above. See also the response to the previous item as well as the responses to items 15 and 20 of Section B above.
37.	SAATA	Paragraph 6.4 of the Policy Document	SAATA suggests that the Authority urge CASPs to create a representative industry body – similar to SAATA – with an elected Executive, who can work with Regulators to establish “fit for purpose requirements applicable to the crypto environment” including their own Code of Conduct.	The comment is noted. However, the creation of a representative body falls within the purview of the industry itself and not a dependency for the regulatory framework to be put in place. The Declaration and the Exemption were implemented as a critical interim step towards protecting customers in the crypto asset environment, pending the conclusion of broader regulatory developments surrounding crypto assets through, for example, the COFI Bill. That being said, it is our understanding that a representative body has been created by the crypto asset industry,
38.	SAATA	AML/CFT monitoring	One of the highest risks posed by crypto assets in SA is the ease with which they can be transferred from an onshore wallet to an offshore wallet, bypassing any cross-border monitoring and reporting systems. This is massive AML and CFT risk and probably the one that FATF is most concerned about. SAATA suggests that the Authority urgently discuss with Finsurv what reporting obligations should be placed on CASPs, with immediate effect, to monitor and report the movement of CA’s from onshore wallets to offshore wallets. This would require operators to implement simple Transaction Monitoring technology which should be a given anyway, and breaches could easily be submitted as suspicious transactions via FIC’s existing goAML platform. This further supports our proposal that CASPs immediately become Accountable Institutions under FIC, to enforce this obligation to monitor and report.	The comments are noted. The comments are not responded to in detail here as they do not pertain to the draft Exemption and the proposed framework in respect of the FAIS Act and its subordinate legislation. On 29 November 2022 Government Gazette 47596 was published to amend Schedules 1, 2 and 3 of the Financial Intelligence Centre Act 38 of 2001 (FIC Act). In terms of the Notice, crypto asset services providers have been classified as “accountable institutions” and accordingly included in Schedule 1 of the FIC Act. The FIC Act, inter alia, requires accountable institutions to:

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				<ul style="list-style-type: none"> • identify and verify the identity of a prospective client before the accountable institution enters into a transaction and/or business relationship with such a client, • perform on-going identification verification on their clients and • submit reports to the Financial Intelligence Centre (FIC). The FIC Act also prohibits accountable institutions from establishing a business relationship or concluding a transaction with an anonymous client or a client using a fictitious name. <p>Further to this, accountable institutions must monitor all crypto asset transactions to identify suspicious and unusual activity, this includes all crypto-to-crypto transactions as well as crypto to fiat, etc.</p>
39.	SAATA	SARS Tax Clearance Certificates	SAATA is aware of possibly nefarious practices undertaken to prove “source of funds” to obtain Tax Clearances from SARS e-filing under the guise of loans in order that an individual may avail of their annual cross border transfer allowances to invest in crypto products. It is strongly suggested that the Authority work with SARS and Finsurv to investigate the common market practice of CASPs providing loans to individuals who may not meet normal-market lending criteria.	The comment and concerns are noted. However, the Authority is not in a position to provide a response in this document as the comment falls beyond the scope of the Exemption. The Authority recommends that the commentator provides the necessary detailed information to the mentioned Authorities, using the appropriate channels, to enable the Authorities to investigate the allegations made.
40.	SAATA	Recourse and protection during the Transition Period	Has the Authority given thought to whether consumers will have any protection or recourse during the Transition period or how complaints against bad actors should be handled? This would need to be communicated to the general public.	Please refer to the responses to items 7 and 31 above.
41.	SAIFM	General	The purpose of the fit and proper requirements is to protect the interests of consumers and to professionalise the financial services industry, thereby also supporting the objectives of financial stability, market integrity and financial inclusion. SAIFM argues that this can	The comment is noted. The Declaration and the Exemption were implemented as a critical interim step towards protecting customers in the crypto asset environment, pending the conclusion of

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			only be achieved, for any asset class, with the full application of existing requirements. Any exemptions should, therefore, be considered temporary and not be unreasonably extended.	amendments and broader regulatory developments surrounding crypto assets through, for example, the COFI Bill.
42.	SAIS	Exemptions	<p><u>SAIS Summary relating to proposed exemptions</u></p> <ul style="list-style-type: none"> • <i>The main exemptions, in the Draft Exemption are for Crypto FSPs. The exemptions relate to the competency requirements for FSPs, the key individuals and representatives. They are detailed below:</i> <p><i>Exemptions applicable to Crypto Asset FSPs, their key individuals, and representatives</i></p> <ul style="list-style-type: none"> • <i>The Determination provides that an FSP, key individual and representative must:</i> <ul style="list-style-type: none"> ○ <i>have adequate, appropriate and relevant skills, knowledge and expertise in respect of the financial services, financial products and functions that it performs;</i> ○ <i>comply with the minimum requirements set out in Parts 3, 4 and 5 of Chapter 3 of the Determination; and</i> ○ <i>maintain their competence.</i> <p><i>A FSP must have a qualification recognized by the Registrar for the specific FSP Category (Categories I, II, IIA, and III). For this specific requirement Crypto Services Providers have been exempted from Section 23 of the Determination which requires FSPs, KIs and representatives to have a qualification recognised by the FSCA.</i></p> <p><i>The proposed exemption from this section is subject to the crypto asset FSPs, KIs and representatives meeting the “crypto asset academic credential requirement”. The draft exemption defines a “crypto asset academic credential requirement” as obtaining “adequate and appropriate academic credentials that focus on or specialize in crypto assets to such an extent that is necessary for the person to discharge his or her responsibilities” under the FAIS Act.</i></p> <p><u>SAIS Comment</u></p>	

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			<p><i>Given the complexities and the risk that this market has the potential to introduce, the SAIS is of the opinion that there should be a requirement for the KIs and representatives of Crypto Providers to have a qualification that is recognised by the FSCA in relation to the provision of Crypto Asset Services. This would serve to promote investor confidence and reduce the risk of individuals operating in the market without any relevant and appropriate qualification, or the equivalent thereof, that has been approved by the Regulator. The SAIS however recognises that qualifications for Crypto Assets have not yet been included in Section 24. As a result, the requirements for qualifications cannot be enforced at this point. It should therefore only be temporarily exempted.</i></p> <p><i>The SAIS urges the FSCA to recognise academic credentials that would be regarded as “adequate and appropriate” for Crypto Assets within a reasonable period of time to reduce the risk of unsuitably qualified individuals operating in these markets and introducing risk. The FSCA must provide the market with an approved list of qualifications that are appropriate, to ensure that the risk of non-qualified individuals in the market is negated, as well as ensuring investor protection and confidence in the market. The most important element of a Crypto FSP is a very clear and sufficient ‘risk warning’. It should be noted that Crypto Assets are driven purely by supply and demand. They hold no intrinsic value. The potential problem with regulating Crypto Assets is giving them ‘credibility’ in the eyes of otherwise uninformed prospective investors.</i></p> <p><i>The SAIS believes that it is imperative for the investor to understand the complexities and the risks associated with trading these instruments and trading on platforms that are not regulated and approved. It is essential for Investor education to take place that explains the trading in Crypto Assets and the different platforms, the risks and returns.</i></p>	<p>Please refer to the amendmend proposal in the Exemption Notice as well as the 2nd response to item 1 of Section B above.</p> <p>The Authority agrees with the recommendation.</p> <p>The purpose of the Declaration is to enable the Authority to regulate Crypto Asset FSPs, their key individuals and representatives which affords the Authority power to take regulatory action against them when they contravene the requirements of</p>

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			<p><i>The SAIS is of the opinion that it is important for the investor to understand the limits of FSCA regulation that can practically be undertaken with regard to:</i></p> <ul style="list-style-type: none"> • <i>the FSP giving investment advice;</i> • <i>the trading platform;</i> • <i>execution of transacting; and</i> • <i>where and how Crypto's and funds are kept/stored.</i> <p><i>There must be cognisance of investor protection and measures must be put in place to ensure that investors are protected and are not lulled into a false sense of security over the safety of the investment due to a layer of regulation.</i></p> <p><u><i>SAIS Summary relating to proposed exemptions</i></u> <i>Chapter 3, Part 4 sets out the requirements for regulatory examinations to which certain FSPs and their Key Individuals must adhere. The Draft Exemption proposes to exempt Crypto Asset FSPs, their key individuals and representatives from Part 4 of Chapter 3 of the Determination which makes it mandatory to take specific regulatory examinations. It is proposed that this exemption will be effective for a period of 18 months from the effective date of the Notice.</i></p> <p><i>The Determination lists CPD requirements that FSPs, their key individuals, and representatives are required to adhere to in Chapter 4. The Draft exemptions, however, propose to exempt Crypto Asset FSPs, their key individuals and representatives from section 33(1) of the Determination which provides for the CPD requirements. The exemption is subject to the condition that the Crypto Asset FSP, key individual, or representative, as the case may be, complete a minimum of 6 hours of CPD activities relating to crypto assets per CPD cycle.</i></p> <p><u><i>SAIS Comment</i></u> <i>The SAIS is of the opinion that a temporary 18-month exemption is too long and requests that it be shortened to only one (1) year. The</i></p>	<p>the FAIS Act. This provide consumers with a measure of protection they did not previously have. The Declaration is a critical interim step towards protecting customers in the crypto asset environment, pending the conclusion of amendments and broader regulatory developments surrounding crypto assets through, for example, the COFI Bill.</p> <p>The comment regarding the 18-month exemption is noted. The Authority acknowledged that many Crypto Asset FSPs may be new to the financial services industry regulation and would not have completed the examinations previously. To apply</p>

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			<p>FAIS Regulatory Examinations (REs) are a requirement over and above the qualification requirement. These exams equip people with the knowledge and understanding to fulfil their duties under the FAIS Act and the relevant subordinate legislation. In other words, to be authorized as a FSP or approved as a key individual (responsible for managing and overseeing the business of the FSP) the FSP / KI must have a comprehensive understanding of the FAIS Act under which the authorization (license) is issued. They need to understand what is required to maintain the license and to manage and oversee the business of a FSP under the Act.</p> <p>The SAIS is of the view that the FSCA may need to re-look at the competence exemptions, specifically for qualifications, CPD requirements and regulatory examinations. Crypto Assets are complex by nature and there is a need to ensure that the FSP has the capability and the personnel that are suitably qualified to take the product to market while managing the associated risks.</p> <p>It is proposed that the qualification requirements be implemented on a risk-sensitive basis. This means that the more complex the Crypto Assets, the higher the level of knowledge and experience in the field will be required of certain KIs in the business. These qualifications must be outlined and CASP FSPs must be given time to comply. CPD should also not be less stringent given the high-level risk involved.</p> <p><u>SAIS Summary relating to proposed exemptions</u> <i>Exemptions for crypto asset supervised representatives. The draft lists additional exemptions that pertain to supervised representatives. The draft exemption defines a crypto asset supervised representative as:</i></p> <p><i>A representative of a crypto asset FSP who:</i></p> <ul style="list-style-type: none"> • <i>Renders financial services in relation to crypto assets;</i> • <i>Does not meet one or more of the “crypto asset competency requirements”; and</i> 	<p>the examination requirements immediately might cause significant disruption to persons who were already, prior to the Declaration, rendering crypto asset services. The Authority is therefore allowing these persons an 18-month period to continue with the services, whilst completing the examinations.</p> <p>See also amendments made to the exemption from the qualification requirements. With regards to the qualification exemption, please refer to the 2nd response to item 1 of Section B above. Please also refer to the response to item 15 of Section B above.</p>

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			<ul style="list-style-type: none"> • <i>Renders financial services under supervision.</i> <p><i>The crypto asset competency requirements entail the following:</i></p> <ul style="list-style-type: none"> • <i>Experience requirement (section 15 of the Determination of Fit and Proper Requirements);</i> • <i>Crypto asset academic credential requirement; and</i> • <i>Regulatory examination requirement (Part 4, Chapter 3 of the Determination).</i> <p><i>A FSP and representative must have adequate and appropriate experience in the rendering of a particular financial service in respect of a:</i></p> <p><i>(a) particular financial product; and</i></p> <p><i>(b) particular category of FSP, for which it is authorised or appointed or in respect of which authorisation or appointment is sought.</i></p> <p><i>A key individual must have adequate and appropriate experience to manage or oversee the rendering of a particular financial service in respect of a particular category of FSP for which it is approved or in respect of which approval is sought.</i></p> <p><i>It is proposed in the draft exemption that the supervised representatives will be exempted from the following:</i></p> <ol style="list-style-type: none"> <i>1. Experience requirements: A crypto asset supervised representative will be exempted from section 15 of the Determination which provides for the general experience requirement until the crypto asset supervised representative is assessed by the Crypto Asset FSP as being compliant with section 15 of the Determination.</i> <i>2. Qualification requirements: A crypto asset supervised representative will be exempted from section 23 of the Determination, on the condition that the crypto asset supervised representative, meets the crypto asset academic requirement within 6 years from the date on which the crypto asset supervised representative, was appointed as a crypto supervised representative.</i> 	

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			<p>3. <i>Regulatory examination requirements: A crypto asset supervised representative who, before the publication of the Notice, was never appointed as a representative of an FSP, is exempted from Part 4 of Chapter 3 of the Determination, on the condition that the crypto asset supervised representative completes the relevant regulatory examination within two years from the date on which such a person was first appointed as a representative to render financial services in relation to crypto assets.</i></p> <p>4. <i>CPD requirements: A crypto asset supervised representative is exempted from section 33(1) of the Determination, on the condition that the crypto asset supervised representative complete a minimum of 6 hours of CPD activities relating to crypto assets per CPD cycle.</i></p> <p><i>All exemptions referred to in sub-paragraphs (1) to (3) are subject to: (a) the condition that a crypto asset supervised representative works under the supervision and remains under supervision until the crypto asset supervised representative complies with all applicable crypto asset competency requirements.</i></p> <p><u><i>SAIS COMMENTS</i></u></p> <p><i>The SAIS is of the opinion that six (6) years is too long, and this period should be one (1) to two (2) years at a maximum. Cryptocurrencies present varied risks to the market and to the ultimate users and investors. The fast-evolving blockchain and distributed ledger technologies together with the speed and global reach present various concerns. It is therefore proposed that Regulations, at the start, provide for requirements to have Senior Personnel with specified IT experience and risk management qualifications necessary to deal with cyber and operational risk as well as specialist compliance knowledge to address any criminal threats linked to the business.</i></p>	<p>The six years period is aligned to the existing Supervision Exemption. However, the exemption from the qualification requirements was removed - please refer to the 2nd response to item 1 of Section B above, the usual requirements apply.</p>
43.	SAIS	Care, Custody and Control in relation to	Cryptocurrencies are digital assets that rely on an encrypted network to execute, verify and record transactions, independent of a	The comments are noted. The proposed requirements in respect of custody of crypto

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		KI's and Representatives	centralized authority such as a government or bank. Care, Custody and Control is therefore paramount, despite the intangible and unseen nature of cryptocurrencies and digital assets more generally, one of the single biggest issues plaguing the market is Care, Custody and Control. FSCA must ensure that this is addressed in terms of the requirements.	assets as a financial product and care and control as referred to by the commentator is the same as is currently the case with any other financial products defined in the FAIS Act. For example: Section 21 of the General Code of Conduct which sets high-level requirements relating to the implementation of risk management procedures and internal controls and section 10 of the General Code of Conduct which sets requirements for FSPs who receive or hold financial products or funds for or on behalf of a client.
44.	SAIS	Risk Identification and mitigation in qualification and equivalent academic programmes.	<p>The risks in the assets must be keenly considered and qualifications and experience and approvals of individuals acting in this market is extremely important. Qualifications and education requirements or equivalence approved academic programmes must provide for an in-depth understanding of the risks involved. These include, but it not limited to:</p> <ul style="list-style-type: none"> • Volatility risk: Crypto prices frequently exhibit extreme swings during certain economic or market conditions. • Liquidity risk: Some cryptocurrencies trade with light volume and thus can be easily manipulated by buyers with large capital resources or sellers who have a large stake in a given currency. • Cybersecurity risk: An individual's crypto can be stolen if a bad actor has access to the crypto wallet's private key. • Overnight risk: As a result of crypto trading 24/7, holdings are subject to adverse overnight fluctuations. • Vanishing risk: There are factors that have caused certain crypto coins to vanish; these instances are rare and unique to particular coins. <p>The market and the FSCA should therefore be very careful of the exemptions being provided and the potential unforeseen</p>	<p>The comment is noted. The Authority is cognisant of the risks associated with crypto assets. In fact, it was for this reason that the Authority implemented the Declaration and the Exemption as a critical interim step towards protecting customers in the crypto asset environment.</p> <p>The current interim measure (as explained above) uses the existing framework, further developments would be more bespoke and provide for requirements that are more particular to some of the risks that the commentator mentioned that are not relevant to other regulated financial products.</p> <p>The Authority is of the view that the interim steps of the Declaration and Exemption would provide investors more protection and consequently more confidence as opposed to no regulation in the crypto asset environment.</p>

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			circumstances that could negatively impact the market and investor confidence.	