Public consultation document

Crypto-Asset Reporting Framework and Amendments to the Common Reporting Standard

22 March – 29 April 2022

OECD
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Crypto-Asset Reporting Framework and Amendments to the Common Reporting Standard

Public Consultation Document

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Background

In recent years, financial markets have witnessed the development of new technologies and products that are changing investment and payment practices. One notable technology, cryptography, has enabled the creation of an entirely new asset type, Crypto-Assets, which can be transferred and held without interacting with traditional financial intermediaries and without any central administrator having full visibility on either the transactions carried out, or the location of Crypto-Asset holdings. In addition to Crypto-Assets, certain new payment products (i.e. digital money products, including both crypto-based and other electronic money products, as well as Central Bank Digital Currencies) also provide electronic storage and payment functions similar to money held in a traditional bank account and are frequently offered by actors that are not covered by the Common Reporting Standard (CRS).

Against this background, the OECD is advancing work to modernise the tax transparency instruments available to tax administrations. Firstly, the OECD is developing a new global tax transparency framework which provides for the automatic exchange of tax information on transactions in Crypto-Assets in a standardised manner (hereinafter referred to as the "Crypto-Asset Reporting Framework" or "CARF").

Secondly, the OECD is proposing a set of amendments to the CRS, in order to bring new financial assets, products and intermediaries in scope, because they are potential alternatives to traditional financial products, while avoiding duplicative reporting with that foreseen in the CARF.

Finally, after seven years since its adoption, the OECD has launched the first comprehensive review of the CRS, with the aim of further improving the operation of the CRS, based on the experience gained by governments and business.

Public consultation instructions

Questions for the public consultation are listed on pages 7 and 61 of this document.

The views and proposals included in this document neither represent the consensus views of the Committee on Fiscal Affairs (CFA) or its subsidiary bodies nor prejudice the decision as to the expected implementation of the proposals, but are intended to provide stakeholders with substantive proposals for analysis and comment.

Interested parties are invited to send their comments no later than **29 April 2022** by email to taxpublicconsultation@oecd.org in Word format (in order to facilitate their distribution to government officials). All comments should be addressed to the International Co-operation and Tax Administration Division, Centre for Tax Policy and Administration. Comments in excess of ten pages should attach an executive summary limited to two pages.

Please note that all written comments received will be made publicly available on the OECD website. Comments submitted in response to this invitation will be posted on the OECD website. Comments submitted in the name of a collective "grouping" or "coalition", or by any person submitting comments on behalf of another person or group of persons, should identify all enterprises or individuals who are members of that collective group, or the person(s) on whose behalf the commentator(s) are acting. Speakers and other participants at the upcoming public consultation meeting will be selected from among those providing timely written comments.

Crypto-Asset Reporting Framework

Introduction

Crypto-Assets: The Impact on Financial Markets

1. The market for Crypto-Assets (including cryptocurrencies, as well as cryptography-based tokens) is growing rapidly. This is also affecting tax administrations, which must adapt to the growing role of Crypto-Assets. In particular, several characteristics of Crypto-Assets are likely to pose novel challenges in tax administrations' efforts to ensure taxpayer compliance.

2. Firstly, Crypto-Assets' reliance on cryptography and distributed ledger technology, in particular blockchain technology, means they can be issued, recorded, transferred and stored in a decentralised manner, without the need to rely on traditional financial intermediaries or central administrators.

3. In addition, the Crypto-Asset market has given rise to a new set of intermediaries, such as Crypto-Asset exchanges and wallet providers, which may currently only be subject to limited regulatory oversight. Crypto-Asset exchanges typically facilitate the purchase, sale and exchange of Crypto-Assets for other Crypto-Assets or fiat currencies. Wallet providers offer digital "wallets", which individuals can use to store their Crypto-Assets via authorisation through public and private keys. These services may either be provided in online (i.e. "hot") wallets, or via service providers offering products allowing individuals to store their Crypto-Assets offline on downloaded (i.e. "cold") wallets. Both types of products are relevant for tax authorities.

Repercussions of Crypto-Assets on Global Tax Transparency

4. The Crypto-Asset market, including both the Crypto-Assets offered, as well as the intermediaries involved, poses a significant risk that recent gains in global tax transparency will be gradually eroded. In particular, the Crypto-Asset market is characterised by a shift away from traditional financial intermediaries, the typical information providers in third-party tax reporting regimes, such as the Common Reporting Standard (CRS), to a new set of intermediaries which only recently became subject to financial regulation and are frequently not subject to tax reporting requirements with respect to their clients. Furthermore, the ability of individuals to hold Crypto-Assets in wallets unaffiliated with any service provider and transfer such Crypto-Assets across jurisdictions, poses a risk that Crypto-Assets will be used for illicit activities or to evade tax obligations. Overall, the characteristics of the Crypto-Asset sector have reduced tax administrations' visibility on tax-relevant activities carried out within the sector, increasing the difficulty of verifying whether associated tax liabilities are appropriately reported and assessed.

5. The CRS, published by the OECD in 2014, is a key tool in ensuring transparency on cross-border financial investments and in fighting offshore tax evasion. The CRS has improved international tax

transparency by requiring jurisdictions to obtain information on offshore assets held with financial institutions and automatically exchange that information with the jurisdictions of residence of taxpayers on an annual basis. However, Crypto-Assets will in most instances not fall within the scope of the CRS, which applies to traditional financial assets and fiat currencies. Even where Crypto-Assets do fall within the definition of financial assets, they can be owned either directly by individuals in cold wallets or via Crypto-Asset exchanges that do not have reporting obligations under the CRS, and are therefore unlikely to be reported to tax authorities in a reliable manner.

6. Therefore, the current scope of assets, as well as the scope of obliged entities, covered by the CRS do not provide tax administrations with adequate visibility on when taxpayers engage in tax-relevant transactions in, or hold, Crypto-Assets.

Increasing Global Tax Transparency with respect to Crypto-Assets

7. Recognising the importance of addressing the above-mentioned tax compliance risks with respect to Crypto-Assets, the OECD is developing the Crypto-Asset Reporting Framework (the "CARF"), designed to ensure the collection and exchange of information on transactions in Crypto-Assets. The CARF consists of three building blocks:

- The CARF rules and commentary that can be transposed into domestic law to collect information from resident Crypto-Asset intermediaries;
- A framework of bilateral or multilateral competent authority agreements or arrangements for the automatic exchange of information collected under the CARF with jurisdiction(s) of residence of the Crypto-Asset Users, based on relevant tax treaties, tax information exchange agreements, or the Convention on Mutual Administrative Assistance in Tax Matters; and
- Technical solutions to support the exchange of information.

8. This document contains the current draft of the first building block, i.e. the rules and commentary. Once the work on the rules and commentary is completed, the second and third building blocks will be further developed.

The rules and commentary of the Crypto-Asset Reporting Framework

9. The rules and commentary of the CARF have been designed around four key building blocks: i) the scope of Crypto-Assets to be covered; ii) the intermediaries subject to data collection and reporting requirements; iii) the transactions subject to reporting as well as the information to be reported in respect of such transactions; and iv) the due diligence procedures to identify Crypto-Asset users and the relevant tax jurisdictions for reporting purposes.

Scope of Crypto-Assets to be covered

10. The proposed definition of Crypto-Assets under the CARF focuses on the use of cryptographically secured distributed ledger technology, as this is a distinguishing factor underpinning the creation, holding and transferability of Crypto-Assets. The definition also includes a reference to "similar technology" to ensure it can include new asset classes that emerge in the future and that operate in a functionally similar manner to Crypto-Assets. The definition of Crypto-Assets thereby targets those assets that can be held and transferred in a decentralised manner, without the intervention of traditional financial intermediaries, including stablecoins, derivatives issued in the form of a Crypto-Asset and certain non-fungible tokens (NFTs).

11. The definition of Crypto-Assets is meant to ensure that all assets covered under the new tax reporting framework also fall within the scope of the FATF Recommendations, ensuring intermediaries' due diligence requirements can build on existing AML/KYC obligations.

12. The term Relevant Crypto-Assets (i.e. Crypto-Assets that give rise to reporting on Relevant Transactions) excludes from reporting requirements two categories of Crypto-Assets that pose limited tax compliance risks. The first category are Closed Loop Crypto-Assets intended to be redeemed against goods or services within a clearly defined, limited setting. The second category are Central Bank Digital Currencies, representing a claim in Fiat Currency on an issuing Central Bank, or monetary authority, which function similar to money held in a traditional bank account. Reporting on Central Bank Digital Currencies will therefore be included within the scope of the CRS.

Intermediaries in scope

13. As noted above, intermediaries facilitating exchanges between Crypto-Assets, as well as between Crypto-Assets and Fiat Currencies, play a central role in the Crypto-Asset market. As such, it is proposed that those intermediaries that as a business provide services effectuating Exchange Transactions in Relevant Crypto-Assets, for or on behalf of customers, would be considered Reporting Crypto-Asset Service Providers under the CARF.

14. Such intermediaries are expected to have the best and most comprehensive access to the value of the Crypto-Assets and the Exchange Transactions carried out. These intermediaries also fall within the scope of obliged entities for FATF purposes (i.e. virtual asset service providers). As such, they are in a position to collect and review the required documentation of their customers, including on the basis of AML/KYC documentation.

15. The above functional definition would cover not only exchanges, but also other intermediaries providing exchange services such as brokers and dealers in Crypto-Assets and operators of Crypto-Asset ATMs. Further, taking into account the October 2021 updated guidance of the FATF on virtual asset service providers, the commentary clarifies the scope of application of the CARF to decentralised exchanges and decentralised finance more broadly.

16. With respect to the reporting nexus, Reporting Crypto-Asset Service Providers will, in principle, be subject to the rules when they are (i) tax resident in, (ii) both incorporated in, or organised under the laws of, and have legal personality or are subject to tax reporting requirements in, (iii) managed from, (iv) disposing of a regular place of business in, or (v) effectuating Relevant Transactions through a branch based in, a jurisdiction adopting the rules. The CARF also contains rules to avoid duplicative reporting in case a Reporting Crypto-Asset Service Provider has links to more than one jurisdiction.

Reporting requirements

17. The following four types of Relevant Transactions are reportable under the CARF:

- exchanges between Crypto-Assets and Fiat Currencies;
- exchanges between one or more forms of Crypto-Assets;
- Reportable Retail Payment Transactions; and
- transfers of Crypto-Assets.

18. Transactions will be reported on an aggregate basis by type of Crypto-Asset and distinguishing outward and inward transactions. In order to enhance the usability of the data for tax administrations, the reporting on Exchange Transactions is to be distinguished between Crypto-to-Crypto and Crypto-Asset-to-fiat transactions. Reporting Crypto-Asset Service Providers will also categorise transfers by transfer type (e.g. airdrops, income derived from staking or a loan), in instances where they have such knowledge.

19. The CARF foresees that for Crypto-Asset-to-fiat transactions, the fiat amount paid or received is reported as the acquisition amount or gross proceeds. For Crypto-to-Crypto transactions it is proposed that the value of the Crypto-Asset (at acquisition) and the gross proceeds (upon disposal) must (also) be reported in Fiat Currency. In line with this approach, in respect of Crypto-to-Crypto transactions, the

transaction would be split into two reportable elements, i.e.: (i) a disposal of Crypto-Asset A (the reportable gross proceeds based on the market value at the time of disposal); and (ii) an acquisition of Crypto-Asset B (the reportable acquisition value based on the market value at the time of acquisition).

20. Taxpayers' holdings and transfers of Crypto-Assets outside the scope of intermediaries subject to reporting are relevant to tax authorities. In order to increase visibility on these, the CARF also allows tax authorities to opt-in to receive reporting on the list of external wallet addresses to which the Reporting Crypto-Asset Service Provider transfers Relevant Crypto-Assets for the Crypto-Asset User, unless the Reporting Crypto-Asset Service Provider knows or has reason to know that such address is associated with another Reporting Crypto-Asset Service Provider.

21. Finally, the CARF also applies to certain instances where a Reporting Crypto-Asset Service Provider processes payments on behalf of a merchant accepting Crypto-Assets in payment for goods or services (i.e. Reportable Retail Payment Transactions). In such instances, the Reporting Crypto-Asset Service Provider is required to also treat the customer of the merchant as its customer, and report with respect to the value of the transaction on that basis.

Due diligence procedures

22. The CARF contains the due diligence procedures to be followed by Reporting Crypto-Asset Service Providers in identifying their Crypto-Asset Users, determining the relevant tax jurisdictions for reporting purposes and collecting relevant information needed to comply with the reporting requirements under the CARF. The due diligence requirements are designed to allow Reporting Crypto-Asset Service Providers to efficiently and reliably determine the identity and tax residence of their Individual and Entity Crypto-Asset Users, as well as of the natural persons controlling certain Entity Crypto-Asset Users.

23. The due diligence procedures build on the self-certification-based process of the CRS, as well as existing AML/KYC obligations enshrined in the 2012 FATF Recommendations, including updates in June 2019 with respect to obligations applicable to virtual asset service providers. To the extent possible and appropriate, the due diligence procedures are consistent with the CRS due diligence rules, to minimise burdens on Reporting Crypto-Asset Service Providers, in particular when they are also subject to CRS obligations as Financial Institutions.

Questions for public consultation

The OECD invites input on the following key aspects of the draft Crypto-Asset Reporting Framework:

Crypto-Assets in scope

1. Does the CARF cover the appropriate scope of Crypto-Assets? Do you see a need to either widen or restrict the scope of Crypto-Assets and, if so, why?
2. Does the definition of Closed-Loop Crypto-Assets contain the correct criteria for identifying Crypto-Assets that operate in a closed-loop environment?
3. Are you aware of existing types of Crypto-Assets, other than Closed-Loop Crypto Assets or Central Bank Digital Currencies that present a low risk from a tax compliance perspective and should therefore be excluded from the scope?
4. An NFT is in scope of the FATF Recommendations as a virtual asset if it is to be used for payment or investment purposes in practice. Under the Crypto-Asset Reporting Framework, an NFT would need to represent value and be tradable or transferable to be a Crypto-Asset. On that basis it is expected that relevant NFTs would generally be covered under both the CARF (as a Crypto-Asset) and the FATF Recommendations (either as a virtual asset or a financial asset). Are you aware of any

circumstances where this would not be the case, in particular, any NFTs that would be covered under the definition of Crypto-Assets and that would not be considered virtual assets or financial assets under the FATF Recommendations or vice versa?

Intermediaries in scope

1. Do you see a need to either widen or restrict the scope of the intermediaries (i.e. Reporting Crypto-Asset Service Providers)?
2. Are there any circumstances in which multiple (affiliated or unaffiliated) Reporting Crypto-Asset Service Providers could be considered to effectuate the same Relevant Transaction with respect to the same customer? If so, which types of intermediaries (e.g. the one with the closest relationship with the client) would be best placed to ensure reporting?
3. Do the nexuses described in paragraph A of Section I of the CARF ensure a comprehensive coverage of all relevant Reporting Crypto-Asset Service Providers? If not, under what circumstances would relevant Reporting Crypto-Asset Service Providers not have a nexus in any jurisdiction? In your view, should this be a potential concern, and if so, what solutions could be considered to address it?

Reporting requirements

The CARF requires reporting with respect to Relevant Transactions in Crypto-Assets on the basis of their fair market value, determined and reported in a single Fiat Currency at the time of each Relevant Transaction.

1. Do intermediaries maintain valuations on the equivalent Fiat Currency fair market values of Crypto-Assets? Do you see challenges in reporting on the basis of such fair market value? If yes, what do you suggest to address them?
2. Are there preferable alternative approaches to valuing Relevant Transactions in Crypto-Assets?
3. Are there specific difficulties in applying the valuation rules for illiquid tokens, for example, NFTs or other tokens that may not be listed on a marketplace, to identify a fair market value? If so, please provide details of any preferable valuation methods that could be adopted within the CARF.
4. Regarding Reportable Retail Payment Transactions, what information would be available to Reporting Crypto-Asset Service Providers pursuant to applicable AML requirements (including the FATF travel rule, which foresees virtual asset service providers collecting information on originators and beneficiaries of transfers in virtual assets) with respect to the customers of merchants in particular where the customer does not have a relationship with a Reporting Crypto-Asset Service Provider, for whom it effectuates Reportable Retail Payment Transactions? Are there any specific challenges associated with collecting and reporting information with respect to Reportable Retail Payment Transactions? What measures could be considered to address such challenges? Would an exclusion of low-value transactions via a *de minimis* threshold help reducing compliance burdens? If so, what would be an appropriate amount and what measures could be adopted to avoid circumvention of such threshold by splitting a transaction into different transactions below the threshold?
5. Concerning the requirement to report transfers based on certain pre-defined transfer types (e.g. hard-forks, airdrops due to other reasons, loans or staking), do Reporting Crypto-Asset Service Providers have the knowledge necessary to identify, and classify for reporting purposes, transfers effectuated according to such transfer types? Are there any other transfer types that typically occur and that are separately identified for customers or for other purposes?
6. Concerning the proposal for reporting with respect to wallet addresses, are there any specific challenges for Reporting Crypto-Asset Service Providers associated with the proposed requirement to report wallet addresses that are the destination of transfers sent from a customer's wallet maintained by a Reporting Crypto-Asset Service Provider? Do Reporting Crypto-Asset Service Providers have, or

are they able to obtain, information to distinguish wallet addresses associated with other Reporting Crypto-Asset Service Providers from wallet addresses that are not associated with another Reporting Crypto-Asset Service Provider? The OECD is also considering to require, in addition, reporting with respect to wallet addresses that are the origins of transfers to a customer's wallet maintained by a Reporting Crypto-Asset Service Provider. Is this information available and would providing it materially increase compliance burdens for Reporting Crypto-Asset Service Providers? Are there alternative requirements (e.g. reporting of the public keys associated with Crypto-Asset Users instead of wallet addresses) that could be considered to more efficiently increase visibility over transactions carried out without the intervention of the Reporting Crypto-Asset Service Provider?

7. Information pursuant to the CARF is to be reported on an annual basis. What is the earliest date by which information on the preceding year could be reported by Reporting Crypto-Asset Service Providers?

Due diligence procedures

1. The due diligence procedures of the CARF are in large part based on the CRS. Accordingly, the CARF requires Reporting Crypto-Asset Service Providers to determine whether their Entity Crypto-Asset Users are Active Entities (corresponding largely to the definition of Active NFE in the CRS) and, on that basis, identify the Controlling Persons of Entities other than Active Entities. Would it be preferable for Reporting Crypto-Asset Service Providers to instead document the Controlling Persons of all Entity Crypto-Asset Users, other than Excluded Persons? Are there other elements of the CRS due diligence procedures that should be included in the CARF to ensure that Reporting Financial Institutions that are also Reporting Crypto-Asset Service Providers can apply efficient and consistent due diligence procedures?
2. An Entity Crypto-Asset User qualifies as an Active Entity if less than 50% of the Entity's gross income is passive income and less than 50% of the assets held by the Entity produce, or are held for the production of, passive income. The Commentary on the term "Active Entity" provides that passive income includes "income derived from Relevant Crypto-Assets". Are there any specific instances in which such income (e.g. income from mining, staking, forks or airdrops) should qualify as active income?
3. The CARF removes the information collection and reporting obligations with respect to Crypto-Asset Users which are Excluded Persons. The OECD is still considering whether Reporting Crypto-Asset Service Providers should be included in the definition of Excluded Persons. Against this background, would Reporting Crypto-Asset Service Providers have the ability to obtain sufficient information on clients that are Reporting Crypto-Asset Service Providers to verify their status?
4. Section III.D enumerates effective implementation requirements in instances where a Reporting Crypto-Asset Service Provider cannot obtain a self-certification from a Crypto-Asset User or Controlling Person. Notably, these requirements specify that the Reporting Crypto-Asset Service Provider must refuse to effectuate any Relevant Transactions on behalf of the Crypto-Asset User until such self-certification is obtained and its reasonableness is confirmed. Are there potential alternative effective implementation measures to those listed in Section III.D? If so, what are the alternative or additional effective implementation measures and which persons or Entities would be best-placed to enforce such measures?

Other elements of the proposal

1. Comments are also welcomed on all other aspects of the Crypto-Asset Reporting Framework.

Technical Proposals

Rules

Section I: Obligations of Reporting Crypto-Asset Service Providers

A. A Reporting Crypto-Asset Service Provider is subject to the due diligence and reporting requirements in Sections II and III in [Jurisdiction], if it is:

1. an Entity or individual resident for tax purposes in [Jurisdiction];
2. an Entity that (a) is incorporated or organised under the laws of [Jurisdiction] and (b) either has legal personality in [Jurisdiction] or has an obligation to file tax returns or tax information returns to the tax authorities in [Jurisdiction] with respect to the income of the Entity;
3. an Entity managed from [Jurisdiction]; or
4. an Entity or individual that has a regular place of business in [Jurisdiction].

B. A Reporting Crypto-Asset Service Provider is subject to the due diligence and reporting requirements in Sections II and III in [Jurisdiction] with respect to Relevant Transactions effectuated through a Branch based in [Jurisdiction].

C. A Reporting Crypto-Asset Service Provider that is an Entity is not required to complete the due diligence and reporting requirements in Sections II and III in [Jurisdiction] it is subject to pursuant to subparagraphs A(2), (3) or (4), if such requirements are completed by such Reporting Crypto-Asset Service Provider in a Partner Jurisdiction by virtue of it being resident for tax purposes in such Partner Jurisdiction.

D. A Reporting Crypto-Asset Service Provider that is an Entity is not required to complete the due diligence and reporting requirements in Sections II and III in [Jurisdiction] it is subject to pursuant to subparagraph A(3) or (4), if such requirements are completed by such Reporting Crypto-Asset Service Provider in a Partner Jurisdiction by virtue of it being an Entity that (a) is incorporated or organised under the laws of such Partner Jurisdiction]and (b) either has legal personality in Partner Jurisdiction or has an obligation to file tax returns or tax information returns to the tax authorities in Partner Jurisdiction with respect to the income of the Entity.

E. A Reporting Crypto-Asset Service Provider that is an Entity is not required to complete the due diligence and reporting requirements in Sections II and III in [Jurisdiction] it is subject to pursuant to subparagraph A(4), if such requirements are completed by such Reporting Crypto-Asset Service Provider in a Partner Jurisdiction by virtue of it being managed from such Partner Jurisdiction.

F. A Reporting Crypto-Asset Service Provider that is an individual is not required to complete the due diligence and reporting requirements in Sections II and III in [Jurisdiction] it is subject to pursuant to subparagraph A(4), if such requirements are completed by such Reporting Crypto-Asset Service Provider in a Partner Jurisdiction by virtue of it being resident for tax purposes in such Partner Jurisdiction.

G. A Reporting Crypto-Asset Service Provider is not required to complete the due diligence and reporting requirements in Sections II and III in [Jurisdiction] with respect to Relevant Transactions it effectuates through a Branch in a Partner Jurisdiction, if such requirements are completed by such Branch in such Partner Jurisdiction.

H. A Reporting Crypto-Asset Service Provider is not required to complete the due diligence and reporting requirements in Section II and III in [Jurisdiction] it is subject to pursuant to subparagraph A(1), (2), (3) or (4), if it has lodged a notification with [Jurisdiction] in a format specified by [Jurisdiction] confirming

that such requirements are completed by such Reporting Crypto-Asset Service Provider under the rules of a Partner Jurisdiction pursuant to criteria that are substantially similar to subparagraphs A(1), (2), (3) or (4), respectively.

Section II: Reporting Requirements

A. For each relevant calendar year or other appropriate reporting period, and subject to the obligations of Reporting Crypto-Asset Service Providers in Section I and the due diligence procedures in Section III, a Reporting Crypto-Asset Service Provider must report the following information with respect to its Crypto-Asset Users:

1. the name, address, jurisdiction(s) of residence, TIN(s) and date and place of birth (in the case of an individual) of each Reportable User and, in the case of any Entity that, after application of the due diligence procedures, is identified as having one or more Controlling Persons that is a Reportable Person, the name, address, jurisdiction(s) of residence and TIN(s) of the Entity and the name, address, jurisdiction(s) of residence, TIN(s) and date and place of birth of each Reportable Person, as well as the role(s) by virtue of which each Reportable Person is a Controlling Person of the Entity;
2. the name, address and identifying number (if any) of the Reporting Crypto-Asset Service Provider;
3. for each type of Relevant Crypto-Asset with respect to which it is has effectuated Relevant Transactions during the relevant calendar year or other appropriate reporting period:
   a) the full name of the type of Relevant Crypto-Asset;
   b) the aggregate gross amount paid, the aggregate number of units and the number of Relevant Transactions in respect of acquisitions against Fiat Currency;
   c) the aggregate gross amount received, the aggregate number of units and the number of Relevant Transactions in respect of disposals against Fiat Currency;
   d) the aggregate fair market value, the aggregate number of units and the number of Relevant Transactions in respect of acquisitions against other Relevant Crypto-Assets;
   e) the aggregate fair market value, the aggregate number of units and the number of Relevant Transactions in respect of disposals against other Relevant Crypto-Assets;
   f) the aggregate fair market value, the aggregate number of units and the number of Reportable Retail Payment Transactions;
   g) the aggregate fair market value, the aggregate number of units and the number of Relevant Transactions, and subdivided by transfer type where known by the Reporting Crypto-Asset Service Provider, in respect of Transfers to the Reportable User not covered by subparagraphs A(3)(b) and (d);
   h) the aggregate fair market value, the aggregate number of units and the number of Relevant Transactions, and subdivided by transfer type where known by the Reporting Crypto-Asset Service Provider, in respect of Transfers by the Reportable User not covered by subparagraphs A(3)(c), (e) and (f);
   i) insofar as the relevant Reportable Jurisdiction is included on [list], the wallet addresses to which the Reporting Crypto-Asset Service Provider has effectuated a Transfer for the Reportable User and that are not associated with such Reporting Crypto-Asset Service Provider or with an individual or Entity that such Reporting Crypto-Asset Service provider knows, or has reason to know, is also a Reporting Crypto-Asset Service Provider.

B. Notwithstanding subparagraph A(1), the TIN is not required to be reported if (i) a TIN is not issued by the relevant Reportable Jurisdiction or (ii) the domestic law of the relevant Reportable Jurisdiction does not require the collection of the TIN issued by such Reportable Jurisdiction.

C. Notwithstanding subparagraph A(1), the place of birth is not required to be reported unless the Reporting Crypto-Asset Service Provider is otherwise required to obtain and report it under domestic law.

D. For the purposes of subparagraphs A(3)(b) and (c), the amount paid or received must be reported in the Fiat Currency in which it was paid or received. In case the amounts were paid or received in multiple Fiat Currencies, the amounts must be reported in a single currency, converted at the time of each Relevant Transaction in a manner that is consistently applied by the Reporting Crypto-Asset Service Provider.

E. For the purposes of subparagraphs A(3)(d) through (h), the fair market value must be determined and reported in a single Fiat Currency, valued at the time of each Relevant Transaction in a manner that is consistently applied by the Reporting Crypto-Asset Service Provider.

F. The information reported must identify the Fiat Currency in which each amount is reported.

G. The information pursuant to paragraph A must be reported by xx/xx of the calendar year following the year to which the information relates.

Section III: Due Diligence Procedures

A Crypto-Asset User is treated as a Reportable User beginning as of the date it is identified as such pursuant to the due diligence procedures described in this Section.

A. Due Diligence Procedures for Individual Crypto-Asset Users

The following procedures apply for purposes of determining whether the Individual Crypto-Asset User is a Reportable User.

1. When establishing the relationship with the Individual Crypto-Asset User, or with respect to Preexisting Individual Crypto-Asset Users by [12 months after the effective date of the rules], the Reporting Crypto-Asset Service Provider must obtain a self-certification that allows the Reporting Crypto-Asset Service Provider to determine the Individual Crypto-Asset User's residence(s) for tax purposes and confirm the reasonableness of such self-certification based on the information obtained by the Reporting Crypto-Asset Service Provider, including any documentation collected pursuant to AML/KYC Procedures.

2. If at any point there is a change of circumstances with respect to an Individual Crypto-Asset User that causes the Reporting Crypto-Asset Service Provider to know, or have reason to know, that the original self-certification is incorrect or unreliable, the Reporting Crypto-Asset Service Provider cannot rely on the original self-certification and must obtain a valid self-certification, or a reasonable explanation and documentation supporting the validity of the original self-certification.

B. Due Diligence Procedures for Entity Crypto-Asset Users

The following procedures apply for purposes of determining whether the Entity Crypto-Asset User is a Reportable User or an Entity, other than an Excluded Person, with one or more Controlling Persons who are Reportable Persons.

1. Determine Whether the Entity Crypto-Asset User is a Reportable User.

a) When establishing the relationship with the Entity Crypto-Asset User, or with respect to Preexisting Entity Crypto-Assets Users by [12 months after the effective date of the rules], the Reporting Crypto-Asset Service Provider must obtain a self-certification that allows the Reporting Crypto-Asset Service Provider to determine the Entity Crypto-Asset User's residence(s) for tax purposes and confirm the reasonableness of such self-certification based on the information obtained by the Reporting Crypto-Asset Service Provider, including any documentation collected pursuant to AML/KYC Procedures. If the Entity Crypto-Asset User certifies that it has no residence for tax purposes, the Reporting Crypto-Asset Service Provider may rely on the place of effective management to determine the residence of the Entity Crypto-Asset User.

b) If the self-certification indicates that the Entity Crypto-Asset User is resident in a Reportable Jurisdiction, the Reporting Crypto-Asset Service Provider must treat the Entity Crypto-Asset User as a Reportable User, unless it reasonably determines based on the self-certification or on information in its possession or that is publicly available, that the Entity Crypto-Asset User is an Excluded Person.

2. **Determine Whether the Entity has one or more Controlling Persons who are Reportable Persons.** With respect to an Entity Crypto-Asset User, other than an Excluded Person, the Reporting Crypto-Asset Service Provider must determine whether it has one or more Controlling Persons who are Reportable Persons, unless it determines that the Entity Crypto-Asset User is an Active Entity, based on a self-certification from the Entity Crypto-Asset User.

   a) **Determining the Controlling Persons of the Entity Crypto-Asset User.** For purposes of determining the Controlling Persons of the Entity Crypto-Asset User, a Reporting Crypto-Asset Service Provider may rely on information collected and maintained pursuant to AML/KYC Procedures, provided that such procedures are consistent with the 2012 FATF Recommendations (as updated in June 2019 pertaining to virtual asset service providers). If the Reporting Crypto-Asset Service Provider is not legally required to apply AML/KYC Procedures that are consistent with the 2012 FATF Recommendations (as updated in June 2019 pertaining to virtual asset service providers), it must apply substantially similar procedures for the purpose of determining the Controlling Persons.

   b) **Determining whether a Controlling Person of an Entity Crypto-Asset User is a Reportable Person.** For purposes of determining whether a Controlling Person is a Reportable Person, a Reporting Crypto-Asset Service Provider must rely on a self-certification from the Entity Crypto-Asset User or such Controlling Person that allows the Reporting Crypto-Asset Service Provider to determine the Controlling Person's residence(s) for tax purposes and confirm the reasonableness of such self-certification based on the information obtained by the Reporting Crypto-Asset Service Provider, including any documentation collected pursuant to AML/KYC Procedures.

   c) Notwithstanding subparagraphs (a) and (b), a Reporting Crypto-Asset Service Provider is not required to identify or report the Controlling Persons of the Entity Crypto-Asset User, on whose behalf it solely effectuates Reportable Retail Payment Transactions.

3. If at any point there is a change of circumstances with respect to an Entity Crypto-Asset User or its Controlling Persons that causes the Reporting Crypto-Asset Service Provider to know, or have reason to know, that the original self-certification is incorrect or unreliable, the Reporting Crypto-Asset Service Provider cannot rely on the original self-certification and must obtain a valid self-certification, or a reasonable explanation and documentation supporting the validity of the original self-certification.

C. Requirements for validity of self-certifications

1. A self-certification provided by an Individual Crypto-Asset User or Controlling Person is valid only if it is signed or otherwise positively affirmed by the Individual Crypto-Asset User or Controlling Person, it

is dated at the latest at the date of receipt and it contains the following information with respect to the Individual Crypto-Asset User or Controlling Person:

a) first and last name;

b) residence address;

c) Jurisdiction(s) of residence for tax purposes;

d) TIN with respect to each Reportable Jurisdiction; and

e) date of birth.

2. A self-certification provided by an Entity Crypto-Asset User is valid only if it is signed or otherwise positively affirmed by the Crypto-Asset User, it is dated at the latest at the date of receipt and it contains the following information with respect to the Entity Crypto-Asset User:

a) legal name;

b) address;

c) Jurisdiction(s) of residence for tax purposes;

d) TIN with respect to each Reportable Jurisdiction;

e) in case of an Entity Crypto-Asset User other than an Active Entity or an Excluded Person, the information described in subparagraph C(1) with respect to each Controlling Person of the Entity Crypto-Asset User, unless such Controlling Person has provided a self-certification pursuant to subparagraph C(1), as well as the as well as the role(s) by virtue of which each Reportable Person is a Controlling Person of the Entity; and

f) if applicable, information as to the criteria it meets to be treated as an Active Entity or Excluded Person.

3. Notwithstanding subparagraphs C(1) and (2), the TIN is not required to be collected if the jurisdiction of residence of the Reportable Person does not issue a TIN to the Reportable Person.

4. In order for a self-certification to remain valid, the information specified in subparagraphs C(1) and C(2), as appropriate, must be confirmed by the Crypto-Asset User or the Controlling Person at least once every 36 months.

D. Effective implementation requirements

1. If a Reporting Crypto-Asset Service Provider is unable to obtain a valid self-certification:

a) with respect to new Individual and Entity Crypto-Asset Users, upon establishment of the relationship with the Crypto-Asset User; or

b) with respect to Preexisting Individual and Entity Crypto-Asset Users, by [12 months after the effective date of the rules]; or

c) upon the expiry of the validity of a self-certification pursuant to subparagraph C(4) or within 90 days of a change of circumstances with respect to the self-certification of an Individual Crypto-Asset User, or an Entity Crypto-Asset User or its Controlling Persons; then

the Reporting Crypto-Asset Service Provider must refuse to effectuate any Relevant Transactions on behalf of the Crypto-Asset User until such self-certification is obtained and its reasonableness is confirmed.

Section IV: Defined Terms

A. Relevant Crypto-Asset

1. The term **"Relevant Crypto-Asset"** means any Crypto-Asset that is not a Closed-Loop Crypto-Asset or a Central Bank Digital Currency.
2. The term **"Crypto-Asset"** means a digital representation of value that relies on a cryptographically secured distributed ledger or a similar technology to validate and secure transactions.
3. The term **"Closed-Loop Crypto-Asset"** means a Crypto-Asset that:
   a) is issued as a means of payment with Participating Merchants for the purchase of goods or services;
   b) can only be transferred by or to the issuer or a Participating Merchant; and
   c) can only be redeemed for Fiat Currency by a Participating Merchant redeeming with the issuer.
4. The term "**Participating Merchant**" means a merchant that has an agreement with an issuer of a Closed Loop Crypto-Asset to accept such Crypto-Asset as a means of payment.
5. The term **"Central Bank Digital Currency"** means any digital Fiat Currency issued by a Central Bank.

B. Reporting Crypto-Asset Service Provider

1. The term "**Reporting Crypto-Asset Service Provider"** means any individual or Entity that, as a business, provides a service effectuating Exchange Transactions for or on behalf of customers, including by acting as a counterparty, or as an intermediary, to such Exchange Transactions, or by making available a trading platform.

C. Relevant Transaction

1. The term **"Relevant Transaction"** means any:
   a) Exchange Transaction;
   b) Reportable Retail Payment Transaction; and
   c) other Transfer of Relevant Crypto-Assets.
2. The term **"Exchange Transaction"** means any:
   a) exchange between Relevant Crypto-Assets and Fiat Currencies; and
   b) exchange between one or more forms of Relevant Crypto-Assets.
3. The term **"Reportable Retail Payment Transaction"** means a Transfer of Relevant Crypto-Assets in consideration of goods or services [for a value exceeding USD xxx].
4. The term "**Transfer**" means a transaction that moves a Relevant Crypto-Asset from or to the Crypto-Asset address or account of one Crypto-Asset User, other than one maintained by the Reporting Crypto-Asset Service Provider on behalf of the same Crypto-Asset User, where, based on the knowledge available to the Reporting Crypto-Asset Service Provider at the time of transaction, the Reporting Crypto-Asset Service Provider cannot determine the transaction is an Exchange Transaction.
5. The term "**Fiat Currency**" means the official currency of a jurisdiction, issued by a jurisdiction or by a jurisdiction's designated Central Bank or monetary authority, as represented by physical banknotes or

coins or by money in different digital forms, including bank reserves, commercial bank money, electronic money products and Central Bank Digital Currencies.

D. Reportable User

1. The term **"Reportable User"** means a Crypto-Asset User that is a Reportable Person.
2. The term "**Crypto-Asset User**" means an individual or Entity that is a customer of a Reporting Crypto-Asset Service Provider for purposes of carrying out Relevant Transactions. An individual or Entity, other than a Financial Institution or a Reporting Crypto-Asset Service Provider, acting as a Crypto-Asset User for the benefit or account of another individual or Entity as agent, custodian, nominee, signatory, investment advisor, or intermediary, is not treated as a Crypto-Asset User, and such other individual or Entity is treated as the Crypto-Asset User. Where a Reporting Crypto-Asset Service Provider provides a service effectuating Reportable Retail Payment Transactions for or on behalf of a merchant, the Reporting Crypto-Asset Service Provider must also treat the customers that are the counterparties to the merchant for such Reportable Retail Payment Transactions as the Crypto-Asset Users with respect to such Reportable Retail Payment Transactions.
3. The term **"Individual Crypto-Asset User"** means a Crypto-Asset User that is an individual.
4. The term "**Preexisting Individual Crypto-Asset User**" means an Individual Crypto-Asset User that has established a relationship with the Reporting Crypto-Asset Service Provider as of [xx/xx/xxxx].
5. The term **"Entity Crypto-Asset User"** means a Crypto-Asset User that is an Entity.
6. The term "**Preexisting Entity Crypto-Asset User**" means an Entity Crypto-Asset User that has established a relationship with the Reporting Crypto-Asset Service Provider as of [xx/xx/xxxx].
7. The term **"Reportable Person"** means a Reportable Jurisdiction Person other than an Excluded Person.
8. The term **"Reportable Jurisdiction Person"** means an Entity or individual that is resident in a Reportable Jurisdiction under the tax laws of such jurisdiction, or an estate of a decedent that was a resident of a Reportable Jurisdiction. For this purpose, an Entity such as a partnership, limited liability partnership or similar legal arrangement that has no residence for tax purposes shall be treated as resident in the jurisdiction in which its place of effective management is situated.
9. The term **"Reportable Jurisdiction"** means any jurisdiction (a) with which an agreement or arrangement is in effect pursuant to which [Jurisdiction] is obligated to provide the information specified in Section II with respect to Reportable Persons resident in such jurisdiction, and (b) which is identified as such in a list published by [Jurisdiction].
10. The term "**Controlling Persons**" means the natural persons who exercise control over an Entity. In the case of a trust, such term means the settlor(s), the trustee(s), the protector(s) (if any), the beneficiary(ies) or class(es) of beneficiaries, and any other natural person(s) exercising ultimate effective control over the trust, and in the case of a legal arrangement other than a trust, such term means persons in equivalent or similar positions. The term "Controlling Persons" must be interpreted in a manner consistent with the 2012 Financial Action Task Force Recommendations, as updated in June 2019 pertaining to virtual asset service providers.
11. The term **"Active Entity"** means any Entity that meets any of the following criteria:
    a) less than 50% of the Entity's gross income for the preceding calendar year or other appropriate reporting period is passive income and less than 50% of the assets held by the Entity during the preceding calendar year or other appropriate reporting period are assets that produce or are held for the production of passive income;

b) substantially all of the activities of the Entity consist of holding (in whole or in part) the outstanding stock of, or providing financing and services to, one or more subsidiaries that engage in trades or businesses other than the business of a Financial Institution, except that an Entity does not qualify for this status if the Entity functions (or holds itself out) as an investment fund, such as a private equity fund, venture capital fund, leveraged buyout fund, or any investment vehicle whose purpose is to acquire or fund companies and then hold interests in those companies as capital assets for investment purposes;

c) the Entity is not yet operating a business and has no prior operating history, but is investing capital into assets with the intent to operate a business other than that of a Financial Institution, provided that the Entity does not qualify for this exception after the date that is 24 months after the date of the initial organisation of the Entity;

d) the Entity was not a Financial Institution in the past five years, and is in the process of liquidating its assets or is reorganising with the intent to continue or recommence operations in a business other than that of a Financial Institution;

e) the Entity primarily engages in financing and hedging transactions with, or for, Related Entities that are not Financial Institutions, and does not provide financing or hedging services to any Entity that is not a Related Entity, provided that the group of any such Related Entities is primarily engaged in a business other than that of a Financial Institution; or

f) the Entity meets all of the following requirements:

   i) it is established and operated in its jurisdiction of residence exclusively for religious, charitable, scientific, artistic, cultural, athletic, or educational purposes; or it is established and operated in its jurisdiction of residence and it is a professional organisation, business league, chamber of commerce, labour organisation, agricultural or horticultural organisation, civic league or an organisation operated exclusively for the promotion of social welfare;

   ii) it is exempt from income tax in its jurisdiction of residence;

   iii) it has no shareholders or members who have a proprietary or beneficial interest in its income or assets;

   iv) the applicable laws of the Entity's jurisdiction of residence or the Entity's formation documents do not permit any income or assets of the Entity to be distributed to, or applied for the benefit of, a private person or non-charitable Entity other than pursuant to the conduct of the Entity's charitable activities, or as payment of reasonable compensation for services rendered, or as payment representing the fair market value of property which the Entity has purchased; and

   v) the applicable laws of the Entity's jurisdiction of residence or the Entity's formation documents require that, upon the Entity's liquidation or dissolution, all of its assets be distributed to a Governmental Entity or other non-profit organisation, or escheat to the government of the Entity's jurisdiction of residence or any political subdivision thereof.

E. Excluded Person

1. The term **"Excluded Person"** means (a) an Entity the stock of which is regularly traded on one or more established securities markets; (b) any Entity that is a Related Entity of an Entity described in clause (a); (c) a Governmental Entity; (d) an International Organisation; (e) a Central Bank; or (f) a Financial Institution other than an Investment Entity described in Section IV E(5)(b).

2. The term "**Financial Institution**" means a Custodial Institution, a Depository Institution, an Investment Entity, or a Specified Insurance Company.

3. The term "**Custodial Institution**" means any Entity that holds, as a substantial portion of its business, Financial Assets for the account of others. An Entity holds Financial Assets for the account of others as a substantial portion of its business if the Entity's gross income attributable to the holding of Financial Assets and related financial services equals or exceeds 20% of the Entity's gross income during the shorter of: (i) the three-year period that ends on 31 December (or the final day of a non-calendar year accounting period) prior to the year in which the determination is being made; or (ii) the period during which the Entity has been in existence.

4. The term "**Depository Institution**" means any Entity that**:**

   a) accepts deposits in the ordinary course of a banking or similar business; or

   b) holds Specified Electronic Money Products or Central Bank Digital Currencies for the benefit of customers.

5. The term "**Investment Entity**" means any Entity:

   a) that primarily conducts as a business one or more of the following activities or operations for or on behalf of a customer:

      i) trading in money market instruments (cheques, bills, certificates of deposit, derivatives, etc.); foreign exchange; exchange, interest rate and index instruments; transferable securities; or commodity futures trading;

      ii) individual and collective portfolio management; or

      iii) otherwise investing, administering, or managing Financial Assets, money, or Relevant Crypto-Assets on behalf of other persons; or

   b) the gross income of which is primarily attributable to investing, reinvesting, or trading in Financial Assets or Relevant Crypto-Assets, if the Entity is managed by another Entity that is a Depository Institution, a Custodial Institution, a Specified Insurance Company, or an Investment Entity described in subparagraph E(5)(a).

   An Entity is treated as primarily conducting as a business one or more of the activities described in subparagraph E(5)(a), or an Entity's gross income is primarily attributable to investing, reinvesting, or trading in Financial Assets or Relevant Crypto-Assets for purposes of subparagraph E(5)(b), if the Entity's gross income attributable to the relevant activities equals or exceeds 50 per cent of the Entity's gross income during the shorter of: (i) the three-year period ending on 31 December of the year preceding the year in which the determination is made; or (ii) the period during which the Entity has been in existence. For the purposes of subparagraph E(5)(a)(iii), the term "otherwise investing, administering, or managing Financial Assets, money, or Relevant Crypto-Assets on behalf of other persons" does not include the provision of services effectuating Exchange Transactions for or on behalf of customers. The term "Investment Entity" does not include an Entity that is an Active Entity because it meets any of the criteria in subparagraphs D(11)(b) through (e).

   This paragraph shall be interpreted in a manner consistent with similar language set forth in the definition of "financial institution" in the Financial Action Task Force Recommendations.

6. The term "**Specified Insurance Company**" means any Entity that is an insurance company (or the holding company of an insurance company) that issues, or is obligated to make payments with respect to, a Cash Value Insurance Contract or an Annuity Contract.

7. The term "**Governmental Entity**" means the government of a jurisdiction, any political subdivision of a jurisdiction (which, for the avoidance of doubt, includes a state, province, county, or municipality), or

any wholly owned agency or instrumentality of a jurisdiction or of any one or more of the foregoing. This category is comprised of the integral parts, controlled entities, and political subdivisions of a jurisdiction.

a) An "integral part" of a jurisdiction means any person, organisation, agency, bureau, fund, instrumentality, or other body, however designated, that constitutes a governing authority of a jurisdiction. The net earnings of the governing authority must be credited to its own account or to other accounts of the jurisdiction, with no portion inuring to the benefit of any private person. An integral part does not include any individual who is a sovereign, official, or administrator acting in a private or personal capacity.

b) A controlled entity means an Entity that is separate in form from the jurisdiction or that otherwise constitutes a separate juridical entity, provided that:

   iv) the Entity is wholly owned and controlled by one or more Governmental Entities directly or through one or more controlled entities;

   v) the Entity's net earnings are credited to its own account or to the accounts of one or more Governmental Entities, with no portion of its income inuring to the benefit of any private person; and

   vi) the Entity's assets vest in one or more Governmental Entities upon dissolution.

c) Income does not inure to the benefit of private persons if such persons are the intended beneficiaries of a governmental programme, and the programme activities are performed for the general public with respect to the common welfare or relate to the administration of some phase of government. Notwithstanding the foregoing, however, income is considered to inure to the benefit of private persons if the income is derived from the use of a governmental entity to conduct a commercial business, such as a commercial banking business, that provides financial services to private persons.

8. The term "**International Organisation**" means any international organisation or wholly owned agency or instrumentality thereof. This category includes any intergovernmental organisation (including a supranational organisation) (a) that is comprised primarily of governments; (b) that has in effect a headquarters or substantially similar agreement with the jurisdiction; and (c) the income of which does not inure to the benefit of private persons.

9. The term "**Central Bank**" means an institution that is by law or government sanction the principal authority, other than the government of the jurisdiction itself, issuing instruments intended to circulate as currency. Such an institution may include an instrumentality that is separate from the government of the jurisdiction, whether or not owned in whole or in part by the jurisdiction.

10. The term "**Specified Electronic Money Product**" means any product that is:

    a) a digital representation of a single Fiat Currency;

    b) issued on receipt of funds for the purpose of making payment transactions;

    c) represented by a claim on the issuer denominated in the same Fiat Currency;

    d) accepted by a natural or legal person other than the issuer; and

    e) by virtue of regulatory requirements to which the issuer is subject, redeemable at any time and at par value for the same Fiat Currency upon request of the holder of the product.

11. The term **"Financial Asset"** includes a security (for example, a share of stock in a corporation; partnership or beneficial ownership interest in a widely held or publicly traded partnership or trust; note, bond, debenture, or other evidence of indebtedness), partnership interest, commodity, swap (for example, interest rate swaps, currency swaps, basis swaps, interest rate caps, interest rate floors,

commodity swaps, equity swaps, equity index swaps, and similar agreements), Insurance Contract or Annuity Contract, or any interest (including a futures or forward contract or option) in a security, Relevant Crypto-Asset, partnership interest, commodity, swap, Insurance Contract, or Annuity Contract. The term "Financial Asset" does not include a non-debt, direct interest in real property.

12. The term "**Equity Interest**" means, in the case of a partnership that is a Financial Institution, either a capital or profits interest in the partnership. In the case of a trust that is a Financial Institution, an Equity Interest is considered to be held by any person treated as a settlor or beneficiary of all or a portion of the trust, or any other natural person exercising ultimate effective control over the trust. A Reportable Person will be treated as being a beneficiary of a trust if such Reportable Person has the right to receive directly or indirectly (for example, through a nominee) a mandatory distribution or may receive, directly or indirectly, a discretionary distribution from the trust.

13. The term "**Insurance Contract**" means a contract (other than an Annuity Contract) under which the issuer agrees to pay an amount upon the occurrence of a specified contingency involving mortality, morbidity, accident, liability, or property risk.

14. The term "**Annuity Contract**" means a contract under which the issuer agrees to make payments for a period of time determined in whole or in part by reference to the life expectancy of one or more individuals. The term also includes a contract that is considered to be an Annuity Contract in accordance with the law, regulation, or practice of the jurisdiction in which the contract was issued, and under which the issuer agrees to make payments for a term of years.

15. The term "**Cash Value Insurance Contract**" means an Insurance Contract (other than an indemnity reinsurance contract between two insurance companies) that has a Cash Value.

16. The term "**Cash Value**" means the greater of (i) the amount that the policyholder is entitled to receive upon surrender or termination of the contract (determined without reduction for any surrender charge or policy loan), and (ii) the amount the policyholder can borrow under or with regard to the contract. Notwithstanding the foregoing, the term "Cash Value" does not include an amount payable under an Insurance Contract:

    a) solely by reason of the death of an individual insured under a life insurance contract;

    b) as a personal injury or sickness benefit or other benefit providing indemnification of an economic loss incurred upon the occurrence of the event insured against;

    c) as a refund of a previously paid premium (less cost of insurance charges whether or not actually imposed) under an Insurance Contract (other than an investment-linked life insurance or annuity contract) due to cancellation or termination of the contract, decrease in risk exposure during the effective period of the contract, or arising from the correction of a posting or similar error with regard to the premium for the contract;

    d) as a policyholder dividend (other than a termination dividend) provided that the dividend relates to an Insurance Contract under which the only benefits payable are described in subparagraph E(16)(b); or

    e) as a return of an advance premium or premium deposit for an Insurance Contract for which the premium is payable at least annually if the amount of the advance premium or premium deposit does not exceed the next annual premium that will be payable under the contract.

F. Miscellaneous

1. The term **"Partner Jurisdiction"** means any jurisdiction that has put in place equivalent legal requirements and that is included in a list published by [Jurisdiction].

2. The term **"AML/KYC Procedures"** means the customer due diligence procedures of a Reporting Crypto-Asset Service Provider pursuant to the anti-money laundering or similar requirements to which such Reporting Crypto-Asset Service Provider is subject.

3. The term "**Entity**" means a legal person or a legal arrangement, such as a corporation, partnership, trust, or foundation.

4. An Entity is a "**Related Entity**" of another Entity if either Entity controls the other Entity, or the two Entities are under common control. For this purpose control includes direct or indirect ownership of more than 50% of the vote and value in an Entity.

5. The term "**TIN**" means Taxpayer Identification Number (or functional equivalent in the absence of a Taxpayer Identification Number).

6. The term **"Branch"** means a unit, business or office of a Reporting Crypto-Asset Service Provider that is treated as a branch under the regulatory regime of a jurisdiction or that is otherwise regulated under the laws of a jurisdiction as separate from other offices, units, or branches of the Reporting Crypto-Asset Service Provider. All units, businesses, or offices of a Reporting Crypto-Asset Service Provider in a single jurisdiction shall be treated as a single branch.

Commentary

Commentary on Section I: Obligations of Reporting Crypto-Asset Service Providers

1. This Section sets out the criteria pursuant to which a Reporting Crypto-Asset Service Provider is subject to the due diligence and reporting requirements in Sections II and III in [Jurisdiction].

2. Paragraph A contains four distinct criteria that link a Reporting Crypto-Asset Service Provider to [Jurisdiction]:

   - the Entity or individual it is resident for tax purposes in [Jurisdiction];
   - the Entity is (a) incorporated or organised under the laws of [Jurisdiction], and (b) either has legal personality in [Jurisdiction] or has an obligation to file tax returns or tax information returns to the tax authorities in [Jurisdiction] with respect to the income of the Entity. As such, this criterion captures situations where an Entity Reporting Crypto-Asset Service Provider selects the law of a certain jurisdiction for purposes of establishing its organisation, including through the act of incorporation. However, in addition to being incorporated or organised under the laws of [Jurisdiction], the Entity must also either have legal personality in [Jurisdiction] or be subject to an obligation to file tax returns or tax information returns to the tax authorities in [Jurisdiction] with respect to its income. This condition is intended to ensure that [Jurisdiction]'s tax administration will be able to enforce the reporting requirements. For the purposes of subparagraph A(2), a tax information return is any filing used to notify the tax administration regarding part or all of the income of the Entity, but which does not necessarily state a pursuant tax liability of the Entity.
   - the Entity it is managed from [Jurisdiction]. This criterion includes situations where a trust (or a functionally similar Entity) that is a Reporting Crypto-Asset Service Provider is managed by a trustee (or functionally similar representative) that is tax resident in [Jurisdiction]. This criterion captures the place of effective management, as well as any other place of management of the Entity; or
   - the Entity or individual has a regular place of business in [Jurisdiction]. In this respect, any Branch is to be considered a regular place of business. This criterion captures the principal, as well as other regular places of business.

3. Paragraph B provides that an Entity also has due diligence and reporting obligations in [Jurisdiction] with respect to Relevant Transactions effectuated through a Branch based in [Jurisdiction].

4. A Reporting Crypto-Asset Service Provider must report the information to each jurisdiction for which it fulfils the criteria of paragraphs A and B, subject to the rules in paragraphs C through H to prevent duplicative reporting. For that purpose, , paragraphs C through F introduce a hierarchy among the four criteria in paragraph A that link a Reporting Crypto-Asset Service Provider to [Jurisdiction]. This hierarchy ensures that the due diligence and reporting requirements in [Jurisdiction] do not apply in instances where there is a stronger link with another jurisdiction.

5. As such, paragraph C foresees that an Entity that is a Reporting Crypto-Asset Service Provider which is linked to [Jurisdiction] on the basis of the criteria set out in subparagraphs A(2), (3) or (4) (i.e. it is incorporated, or organised under the laws of [Jurisdiction] and has either legal personality or has an obligation to file tax returns or tax information returns to the tax authorities in [Jurisdiction] with respect to the income of the Entity, or is managed from [Jurisdiction], or it has a regular place of business in [Jurisdiction]), is not required to complete the due diligence and reporting requirements in Sections II and III in [Jurisdiction] if it is tax resident in a Partner Jurisdiction and completes the due diligence and reporting requirements in such Partner Jurisdiction.

6. In addition, paragraph D foresees that an Entity that is a Reporting Crypto-Asset Service Provider is not required to complete the due diligence and reporting requirements in Sections II and III in [Jurisdiction] it is subject to pursuant to subparagraph A(3) or (4) (i.e. it is managed from [Jurisdiction], or has a regular place of business in [Jurisdiction]), to the extent it has legal personality or has an obligation to file tax returns or tax information returns to the tax authorities in [Jurisdiction] with respect to the income of the Entity and is incorporated, or organised under the laws of such Partner Jurisdiction and completes the due diligence and reporting requirements in such Partner Jurisdiction.

7. Paragraph E foresees that an Entity that is a Reporting Crypto-Asset Service Provider is not required to complete the due diligence and reporting requirements in Sections II and III in [Jurisdiction] it is subject to pursuant to subparagraph A(4) (i.e. its regular place of business is in [Jurisdiction]), to the extent such due diligence and reporting requirements are completed by such Reporting Crypto-Asset Service Provider in a Partner Jurisdiction, by virtue of it being managed from such Partner Jurisdiction.

8. Paragraph F foresees that an individual that is a Reporting Crypto-Asset Service Provider is not required to complete the due diligence and reporting requirements in Sections II and III in [Jurisdiction] it is subject to pursuant to A(4) (i.e. its regular place of business is in [Jurisdiction]), to the extent such due diligence and reporting requirements are completed in a Partner Jurisdiction, where the individual Reporting Crypto-Asset Service Provider is resident for tax purposes.

9. Finally, paragraph G foresees that a Reporting Crypto-Asset Service Provider is not subject to the due diligence and reporting requirements in Sections II and III in [Jurisdiction], to the extent these are completed in a Partner Jurisdiction, by virtue of effectuating Relevant Transactions for Crypto-Asset Users through a Branch in such Partner Jurisdiction. A Reporting Crypto-Asset Service Provider that maintains one or more Branches fulfils the due diligence and reporting requirements with respect to a Crypto-Asset User, if any one of its Branches in [Jurisdiction] or a Partner Jurisdiction fulfils such requirements.

10. Finally, paragraph H foresees that a Reporting Crypto-Asset Service Provider is not required to complete the due diligence and reporting requirements in Section II and III in [Jurisdiction] it is subject to pursuant to subparagraph A(1), (2), (3) or (4), to the extent it has a lodged a notification with [Jurisdiction] in a format specified by [Jurisdiction] confirming that such due diligence and reporting requirements are completed by such Reporting Crypto-Asset Service Provider under the rules of a Partner Jurisdiction pursuant to criteria that are substantially similar to subparagraphs A(1), (2), (3) or (4) respectively.

11. Paragraph H only applies to instances where a Reporting Crypto-Asset Service Provider is subject to the same nexus in two or more jurisdictions. For example, a Reporting Crypto-Asset Service Provider

that is tax resident in two or more jurisdictions, may rely on paragraph H to select one of the two jurisdictions of tax residence where it complies with the due diligence and reporting requirements. Similarly, a Reporting Crypto-Asset Service Provider that has a regular place of business in two or more jurisdictions may rely on paragraph H to select one of these jurisdictions where it complies with the due diligence and reporting requirements; however, such reliance is not permitted if the Reporting Crypto-Asset Service Provider has nexus in a jurisdiction pursuant to subparagraphs A(1), (2), or (3).

Commentary on Section II: Reporting Requirements

1. Section II describes the general reporting requirements applicable to Reporting Crypto-Asset Service Providers. Paragraph A specifies the information to be reported with respect to Crypto-Asset Users and Controlling Persons as a general rule, and subject to the due diligence procedures in Section III, while paragraphs B and C provides for a series of exceptions in connection with TIN, date of birth and place of birth. Paragraphs D and E contain the valuation and currency translation rules. Paragraph G specifies the timing of the reporting.

Paragraph II (A) – Information to be reported

Subparagraph A(1) – Information on Reportable Persons

Jurisdiction(s) of residence

2. The jurisdiction(s) of residence to be reported with respect to a Reportable Person is (are) the jurisdiction(s) of residence identified by the Reporting Crypto-Asset Service Provider pursuant to the due diligence procedures in Section III. In the case of a Reportable Person that is identified as having more than one jurisdiction of residence, the jurisdictions of residence to be reported are all the jurisdictions of residence identified by the Reporting Crypto-Asset Service Provider for the Reportable Person.

TIN

3. The TIN to be reported is the TIN assigned to the Reportable Person by its jurisdiction of residence (i.e., not by a jurisdiction of source). In the case of a Reportable Person that is identified as having more than one jurisdiction of residence, the TIN to be reported is the Reportable Person's TIN with respect to each Reportable Jurisdiction. In this respect, the term "TIN" includes a functional equivalent in the absence of a Taxpayer Identification Number.

Subparagraph A(2) – Information on the Reporting Crypto-Asset Service Provider

4. Subparagraph A(2) requires that the Reporting Crypto-Asset Service Provider must report its name, address and identifying number (if any). Identifying information on the Reporting Crypto-Asset Service Provider is intended to allow the identification of the source of the information reported and subsequently exchanged in order to allow the providing jurisdiction to, e.g. follow-up on an error that may have led to incorrect or incomplete information reporting. The "identifying number" of a Reporting Crypto-Asset Service Provider is one of the following types of numbers assigned to a Reporting Crypto-Asset Service Provider for identification purposes: a TIN, a business/company registration code/number, or a Global Legal Entity Identifier (LEI). If no identifying number is assigned to the Reporting Crypto-Asset Service Provider, then only the name and address of the Reporting Crypto-Asset Service Provider are required to be reported.

Subparagraph A(3) – Information on Relevant Transactions and certain wallet addresses

5. Subparagraph A(3) contains the financial reporting requirements applicable to Reporting Crypto-Asset Service Providers, whereby Reporting Crypto-Asset Service Providers must report certain information items with respect to Relevant Transactions effectuated for each relevant calendar year or other appropriate reporting period and in relation to each Reportable User. In this respect, subparagraph A(3) specifies the information to be reported, while paragraphs D and E contain the applicable valuation and currency translation rules.

6. Reflecting the different categories of Relevant Transactions, Reporting Crypto-Asset Service Providers must, for each type of Relevant Crypto-Asset, report on:

   - the full name of the type of Relevant Crypto-Asset under subparagraph A(3)(a);
   - acquisitions and disposals of Relevant Crypto-Assets against Fiat Currency under subparagraphs A(3)(b) and A(3)(c), respectively;
   - acquisitions and disposals of Relevant Crypto-Assets against other Relevant Crypto-Assets, under subparagraphs A(3)(d) and A(3)(e), respectively;
   - Reportable Retail Payment Transactions, under subparagraph A(3)(f);
   - other Transfers of Relevant Crypto-Assets to and by the Reportable User, under subparagraphs A(3)(g) and A(3)(h), respectively; and
   - the wallet addresses to which the Reporting Crypto-Asset Service Provider has effectuated a Transfer, under subparagraph A(3)(i), where such wallet addresses are not associated with such Reporting Crypto-Asset Service Provider or with an individual or Entity that such Reporting Crypto-Asset Service Provider knows, or has reason to know, is also a Reporting Crypto-Asset Service Provider, but only to the extent the relevant Reportable Jurisdiction is included on a published list.

7. Transfers to and by Reportable Users, reported upon under subparagraphs A(3)(g) and A(3)(h), include acquisitions and disposals in respect of which the Reporting Crypto-Asset Service Provider has no actual knowledge of the consideration paid or received, as well as Transfers that are not acquisitions or disposals (e.g. a Transfer of Crypto-Assets by a user to his private wallet or to his account with another Reporting Crypto-Asset Service Provider).

8. The applicable valuation rules vary between the reporting categories. In the case of crypto-to-fiat transactions under subparagraphs A(3)(b) and A(3)(c), Reporting Crypto-Asset Service Providers must report the amount paid or received by the Reportable User net of transaction fees. Paragraph D provides that such amounts must be reported in the Fiat Currency in which they were paid or received. However, in case amounts were paid or received in multiple Fiat Currencies, they must be reported in a single currency, converted at the time of each Relevant Transaction in a manner that is consistently applied by the Reporting Crypto-Asset Service Provider.

9. For Crypto-to-Crypto transactions under subparagraphs A(3)(d) and A(3)(e), Reportable Retail Payment Transactions under subparagraph A(3)(f) as well as other Transfers under subparagraphs A(3)(g) and A(3)(h), in light of the absence of (known) consideration, Reporting Crypto-Asset Service Providers must report the fair market value of the Relevant Crypto-Assets acquired and disposed or transferred, net of transaction fees. Paragraph E provides that such amounts must be determined and reported in a single currency, valued at the time of each Relevant Transaction in a manner that is consistently applied by the Reporting Crypto-Asset Service Provider. For the purposes of paragraphs D and E, a jurisdiction may require reporting in a particular Fiat Currency, for example its local currency.

10. For all reporting categories under subparagraphs A(3)(b) through A(3)(h), the rules require the aggregation, i.e. summing up, of all transactions attributable to each reporting category for each type of Relevant Crypto-Asset, as converted and valued pursuant to paragraphs D and E. For example, if units of a Relevant Crypto-Asset can be mutually substituted for corresponding units of the same

Relevant Crypto-Asset, then they should all be treated as the same type of Relevant Crypto-Asset for aggregation purposes. If, however, a Relevant Crypto-Asset is non-fungible, and different variations of the Relevant Crypto-Asset do not have the same value among fixed units, each unit should be treated as a separate type of Relevant Crypto-Asset.

Appropriate reporting period

11. The information to be reported under paragraphs A(1) through A(3) must be that in respect of the end of the relevant calendar year or other appropriate reporting period. In determining what is meant by "appropriate reporting period", reference must be made to the meaning that the term has at that time under each jurisdiction's reporting rules.

Type of Relevant Crypto-Asset

12. The information under subparagraphs A(3)(b) through A(3)(h) must be reported by type of Relevant Crypto-Asset. For these purposes, the full name of the type of Relevant Crypto-Asset is required to be reported under subparagraph A(3)(a), rather than a Relevant Crypto-Asset's "ticker" or abbreviated symbol that a Reporting Crypto-Asset Service Provider uses to identify a specific type of Relevant Crypto-Asset.

Crypto-to-fiat transactions

13. Subparagraph A(3)(b) requires that, in the case of acquisitions of Relevant Crypto-Assets against Fiat Currency, Reporting Crypto-Asset Service Providers must report the aggregate amount paid net of transaction fees by the Reportable User for each type of Relevant Crypto-Assets acquired by the Reportable User.

14. An acquisition is any transaction effectuated by the Reporting Crypto-Asset Service Provider where the Reportable User obtains a Relevant Crypto-Asset, irrespective of whether such asset is obtained from a third-party seller, or from the Reporting Crypto-Asset Service Provider itself.

15. In the case of disposals of Relevant Crypto-Assets against Fiat Currency, subparagraph A(3)(c) requires that the Reporting Crypto-Asset Service Provider must report the aggregate amount received in Fiat Currency net of transaction fees for any Relevant Crypto-Assets alienated by the Reportable User.

16. A disposal is any transaction effectuated by the Reporting Crypto-Asset Service Provider where the Reportable User alienates a Relevant Crypto-Asset, irrespective of whether such asset is delivered to a third-party purchaser, or to the Reporting Crypto-Asset Service Provider itself.

17. There may be instances where a Reportable User acquires or disposes of a Relevant Crypto-Asset against Fiat Currency, although the Reporting Crypto-Asset Service Provider does not have actual knowledge of the underlying Fiat Currency consideration. This would, for example, be the case if the Reporting Crypto-Asset Service Provider only conducted the Transfer of the Relevant Crypto-Assets to and from the Reportable User, without actual knowledge over the Fiat Currency leg of the transaction. Such transactions should be reported upon as Transfers sent to or by a Reportable User under subparagraphs A(3)(g) and A(3)(h), respectively.

Crypto-to-Crypto transactions

18. A Crypto-to-Crypto transaction that is effectuated by a Reporting Crypto-Asset Service Provider will give rise to reporting under both subparagraphs A(3)(d) and A(3)(e). In this respect, subparagraph A(3)(d) provides that in the case of acquisitions against other Relevant Crypto-Assets, the Reporting Crypto-Asset Service Provider must report the fair market value of the Relevant Crypto-Assets acquired net of transaction fees. Similarly, subparagraph A(3)(e) requires that in the case of disposals against other Relevant Crypto-Assets, the Reporting Crypto-Asset Service Provider must report the fair market value of the Relevant Crypto-Assets disposed net of transaction fees.

19. By way of an example, in respect of an exchange of Relevant Crypto-Asset A for Relevant Crypto-Asset B, the Reporting Crypto-Asset Service Provider must report both the fair market value of Relevant Crypto-Asset A, i.e. the Relevant Crypto-Asset disposed, under subparagraph A(3)(e) and the fair market value of Relevant Crypto-Asset B, i.e. the Relevant Crypto-Asset acquired, under subparagraph A(3)(d), valued at the time of the Relevant Transaction and both net of transaction fees.

20. All Crypto-to-Crypto transactions conducted by the same Reporting Crypto-Asset Service Provider are subject to reporting under both subparagraphs A(3)(d) and A(3)(e). As for Crypto-to-fiat transactions, there may be instances where a Reportable User effectuates a Crypto-to-Crypto transaction, although the Reporting Crypto-Asset Service Provider does not have actual knowledge of the Relevant Crypto-Asset acquired or disposed. This would, for example, be the case when the Reporting Crypto-Asset Service Provider only effectuates the Transfer of either the Relevant Crypto-Assets disposed or acquired, without actual knowledge of the other leg of the transaction. Depending on which leg of the transaction the Reporting Crypto-Asset Service Provider has actual knowledge of, such transactions should be reported upon as Transfers sent to or by a Reportable User under subparagraphs A(3)(g) and A(3)(h), respectively.

21. Example: A Reportable User acquires Relevant Crypto-Asset D in exchange for Relevant Crypto-Asset C. The Reporting Crypto-Asset Service Provider effectuates the Transfer of Relevant Crypto-Asset C to the wallet of the seller of Relevant Crypto-Asset D. In exchange, the seller of Crypto-Asset D transfers Relevant Crypto-Asset D directly to a cold wallet controlled by the Reportable User. Unless the Reporting Crypto-Asset Service Provider has actual knowledge of the consideration, i.e. the Relevant Crypto-Asset D Transfer, it should report the transaction as a Transfer by a Reportable User of Relevant Crypto-Asset C under subparagraph A(3)(h).

Reportable Retail Payment Transactions

22. Pursuant to subparagraph A(3)(f), aggregate information on Transfers that constitute Reportable Retail Payment Transactions is required to be reported as a separate category of Relevant Transactions. With respect to such Reportable Retail Payments Transactions, the customer of the merchant for, or on behalf of, whom the Reporting Crypto-Asset Service Provider is providing a service effectuating Reportable Retail Payment Transactions must be treated as the Crypto-Asset User, and therefore as the Reportable User, in addition to the merchant. Aggregate information with respect to Reportable Retail Payment Transactions by the customer of the merchant must not be included in the aggregate information reported with respect to Transfers under subparagraph A(3)((h). Aggregate information with respect to transfers that do not constitute Reportable Retail Payment Transactions solely by virtue of not meeting the de minimis threshold, should be included in the aggregate information reported with respect to Transfers under A(3)(g) and (h). [The following examples illustrate the application of subparagraphs A(3)(f) and A(3)(g).

23. Example 1 (Reportable Retail Payment Transaction): To facilitate the use of Crypto-Assets by customers to purchase goods, a merchant has entered into an agreement with a Reporting Crypto-Asset Service Provider, to process payments to the merchant made in Crypto-Assets by the

merchant's customers. The Reporting Crypto-Asset Service Provider does not maintain a separate relationship with the merchant's customers.

The customer makes a payment in Crypto-Assets for goods acquired from the merchant for a value [exceeding USD xxx]. This transaction is a Reportable Retail Payment Transaction. The Reporting Crypto-Asset Service Provider should therefore treat the merchant's customer as the Crypto-Asset User, and report the payment in Crypto-Assets as specified under subparagraph A(3)(f) (Reportable Retail Payment Transactions). The Reporting Crypto-Asset Service Provider should also treat the merchant as the Crypto-Asset User of this transaction, and the transaction is reportable as a Transfer to the merchant under subparagraph A(3)(g).

24. Example 2 (transaction that is not a Reportable Retail Payment Transaction by virtue of de minimis threshold): The customer engages in another transaction with the merchant that is identical to the transaction described in Example 1, except that the transaction amount is less than [USD xxx]. The transaction is not a Reportable Retail Payment Transaction. The Reporting Crypto-Asset Service Provider should therefore treat the merchant as the Crypto-Asset User of this transaction, and the transaction is reportable as a Transfer to the merchant under subparagraph A(3)(g).]

Other Transfers

25. Subparagraphs A(3)(g) and A(3)(h) require that Reporting Crypto-Asset Service Providers must report the fair market value of other Transfers sent to, and by, a Reportable User, respectively. Furthermore, the Reporting Crypto-Asset Service Provider should subdivide the aggregate fair market value, aggregate number of units and number of Transfers effectuated on behalf of a Reportable User, during the Reporting Period, per underlying transfer type, where such transfer type is known by the Reporting Crypto-Asset Service Provider. For instance, where a Reporting Crypto-Asset Service Provider is aware that Transfers effectuated on behalf of a Reportable User are due to an airdrop (resulting from a hard-fork), an airdrop (for reasons other than a hard-fork), income derived from staking, the disbursement, reimbursement or associated return on a loan, it should indicate the aggregate fair market value, aggregate number of units and number of Transfers effectuated for each transfer type.

External Wallet Addresses

26. Subparagraph A(3)(i) requires the Reporting Crypto-Asset Service Provider to report the wallet address to which the Reporting Crypto-Asset Service Provider has transferred Relevant Crypto-Assets with respect to a Reportable User, provided the Reportable Jurisdiction of such user is included on a specified list maintained by the OECD. Reporting of the wallet address is not required in case the address is associated with the Reporting Crypto-Asset Service Provider or the Reporting Crypto-Asset Service provider knows, or has reason to know, that such address is associated with another Reporting Crypto-Asset Service Provider. The reference to a specified list refers to Reportable Jurisdictions that have indicated to their exchange partners that they wish to receive information on wallet addresses, and are included on a list maintained and published by the OECD. In case Transfers with respect to Relevant Crypto-Assets are effectuated to multiple addresses, all such addresses are required to be reported.

Paragraphs II (B) and (C) – Exceptions

TIN

27. Paragraph B contains an exception pursuant to which a TIN is not required to be reported if either:

- a TIN is not issued by the relevant Reportable Jurisdiction; or

- the domestic law of the relevant Reportable Jurisdiction does not require the collection of the TIN issued by such Reportable Jurisdiction.

28. A TIN is considered not to be issued by a Reportable Jurisdiction (i) where the jurisdiction does not issue a Taxpayer Identification Number nor a functional equivalent in the absence of a Taxpayer Identification Number, or (ii) where the jurisdiction has not issued a TIN to a particular individual or Entity. As a consequence, a TIN is not required to be reported with respect to a Reportable Person that is resident in such a Reportable Jurisdiction, or with respect to whom a TIN has not been issued. However, if and when a Reportable Jurisdiction starts issuing TINs and issues a TIN to a particular Reportable Person, the exception contained in paragraph B no longer applies and the Reportable Person's TIN would be required to be reported if the Reporting Crypto-Asset Service Provider obtains a self-certification that contains such TIN, or otherwise obtains such TIN.

29. The exception described in clause (ii) of paragraph B focuses on the domestic law of the Reportable Person's jurisdiction. Where a Reportable Jurisdiction has issued a TIN to a Reportable Person and the collection of such TIN cannot be required under such jurisdiction's domestic law (e.g., because under such law the provision of the TIN by a taxpayer is on a voluntary basis), the Reporting Crypto-Asset Service Provider is not required to obtain and report the TIN. However, the Reporting Crypto-Asset Service Provider is not prevented from asking for, and collecting the Reportable Person's TIN for reporting purposes if the Reportable Person choses to provide it. In this case, the Reporting Crypto-Asset Service Provider must report the TIN. In practice, there may be only a few jurisdictions where this is the case (e.g., Australia).

30. Jurisdictions are expected to provide Reporting Crypto-Asset Service Providers with information with respect to the issuance, collection and, to the extent possible and practical, structure and other specifications of taxpayer identification numbers. The OECD will endeavour to facilitate its dissemination.

Place of birth

31. Paragraph C contains an exception with respect to place of birth information, which is not required to be reported, unless the Reporting Crypto-Asset Service Provider is otherwise required to obtain and report it under domestic law and it is available in the electronically searchable data maintained by the Reporting Crypto-Asset Service Provider. Thus, the place of birth is required to be reported if, with respect to the Reportable Person, both:

   - the Reporting Crypto-Asset Service Provider is otherwise required to obtain the place of birth and report it under domestic law; and
   - the place of birth is available in the electronically searchable information maintained by the Reporting Crypto-Asset Service Provider.

Paragraphs II (D), (E) and (F) – Valuation and Currency

Valuation and Currency Translation Rules for Crypto-to-fiat transactions

32. Paragraph D provides that, for the purposes of subparagraph A(3)(b) and A(3)(c), the amounts must be reported in the Fiat Currency in which they were paid. However, in case amounts were paid or received in multiple fiat currencies, they must be reported in a single Fiat Currency, converted at the time of each Relevant Transaction in a manner that is consistently applied by the Reporting Crypto-Asset Service Provider. For example, the Reporting Crypto-Asset Service Provider may apply the spot rate(s) as at the time of the transaction(s) to translate such amounts into a single Fiat Currency determined by the Reporting Crypto-Asset Service Provider. The information reported must also identify the Fiat Currency in which each amount is reported.

33. Further, for the purposes of reporting under subparagraphs A(3)(b) and A(3)(c), the Reporting Crypto-Asset Service Provider must aggregate, i.e. sum up, all transactions attributable to each reporting category for each type of Relevant Crypto-Asset, as converted pursuant to paragraph D.

Valuation and Currency Translation Rules for Crypto-to-Crypto transactions

34. For the purposes of subparagraphs A(3)(d) and A(3)(e), the fair market value must be determined and reported in a single currency, valued at the time of each Relevant Transaction in a reasonable manner that is consistently applied by the Reporting Crypto-Asset Service Provider. In this respect, a Reporting Crypto-Asset Service Provider may rely on applicable crypto-to-fiat trading pairs that it maintains to determine the fair market value of both Relevant Crypto-Assets. For instance, in respect of a disposal of Relevant Crypto-Asset A against Relevant Crypto-Asset B, the Reporting Crypto-Asset Service Provider may, at the time the transaction is executed: (i) perform an implicit conversion of Relevant Crypto-Asset A to Fiat Currency to determine the fair market value of the disposed Relevant Crypto-Asset A for the purposes reporting under subparagraph A(3)(e); and (ii) perform an implicit conversion of the acquired Relevant Crypto-Asset B to Fiat Currency to determine the fair market value of the acquired Relevant Crypto-Asset B for the purposes of reporting under subparagraph A(3)(d).

35. Further, for the purposes of reporting under subparagraphs A(3)(d) and A(3)(e), the Reporting Crypto-Asset Service Provider must aggregate, i.e. sum up, all transactions attributable to each reporting category, as converted pursuant to paragraph D.

Valuation and Currency Translation Rules for Reportable Retail Payment Transactions and other Transfers

36. For the purposes of subparagraphs A(3)(f), A(3)(g) and A(3)(h), the fair market value must be determined and reported in a single currency, valued at the time of each Relevant Transaction in a manner that is consistently applied by the Reporting Crypto-Asset Service Provider. In performing such valuation, the Crypto-Asset Service Provider may use as a reference the values of applicable Crypto-Asset and Fiat Currency trading pairs it maintains to determine the fair market value of the Relevant Crypto-Asset at the time it is transferred. The information reported must also identify the Fiat Currency in which each amount is reported.

37. Further, for the purposes of reporting under subparagraphs A(3)(f), A(3)(g) and A(3)(h), the Reporting Crypto-Asset Service Provider must aggregate, i.e. sum up, all transactions attributable to each reporting category for each type of Relevant Crypto-Asset, as converted pursuant to paragraph D.

Paragraph II (G) – Timing of Reporting

38. Paragraph G provides the time by which the information pursuant to paragraph A needs to be reported. While the selection of the date by which information is to be reported by the Reporting Crypto-Asset Service Provider is a decision of the jurisdiction implementing the rules, it is expected that such date will allow the jurisdiction to exchange the information within the timelines specified in the Competent Authority Agreement.

Commentary on Section III: Due Diligence Procedures

1. Section III contains the due diligence procedures for identifying Reportable Persons. These requirements are split into four paragraphs:

   - paragraph A sets out the procedures for Individual Crypto-Asset Users;

- paragraph B sets out the procedures for Entity Crypto-Asset Users;
- paragraph C specifies the validity requirements for self-certifications of Individual Crypto-Asset Users, Controlling Persons and Entity Crypto-Asset Users; and
- paragraph D specifies the effective implementation requirements to be applied if a Reporting Crypto-Asset Service Provider is unable to obtain a valid self-certification.

Paragraph A – Due Diligence Procedures for Individual Crypto-Asset Users

2. Paragraph A sets out that a Reporting Crypto-Asset Service Provider must collect a self-certification, and confirm its reasonableness, in respect of its Individual Crypto-Asset Users.

3. Subparagraph A(1) specifies that, upon the establishment of a relationship with the user, which may include a one-off transaction, Reporting Crypto-Asset Service Providers must:

   - obtain a self-certification, when establishing a relationship with the user, that allows the Reporting Crypto-Asset Service Provider to determine the Individual Crypto-Asset User's residence for tax purposes; and
   - confirm the reasonableness of such self-certification based on the information obtained by the Reporting Crypto-Asset Service Provider in connection with the establishment of a relationship with the user. Such information includes information the Reporting Crypto-Asset Service Provider maintains or already collected for AML/KYC Procedures, as part of its on-boarding or re-documentation procedures, for payment purposes or other commercial or regulatory purposes.

4. With respect to Preexisting Individual Crypto-Asset Users, subparagraph A(1) clarifies that Reporting Crypto-Asset Service Providers must obtain a valid self-certification and confirm its reasonableness at the latest 12 months after the jurisdiction introduces the rules.

Obtaining a self-certification

5. The self-certification obtained under subparagraph A(1) must allow determining the Individual Crypto-Asset User's residence(s) for tax purposes. See Commentary on subparagraph C(1) of Section III for further details on the required contents of self-certifications for Individual Crypto-Asset Users. The domestic laws of the various jurisdictions lay down the conditions under which an individual is to be treated as fiscally "resident". They cover various forms of attachment to a jurisdiction which, in the domestic taxation laws, form the basis of a comprehensive taxation (full liability to tax). They also cover cases where an individual is deemed, according to the taxation laws of a jurisdiction, to be resident of that jurisdiction (e.g. diplomats or other persons in government service). Generally, an individual will only have one jurisdiction of residence. However, an individual may be resident for tax purposes in two or more jurisdictions. In those circumstances, the expectation is that all jurisdictions of residence are to be declared in a self-certification and that the Reporting Crypto-Asset Service Provider must treat the Individual Crypto Asset User as a Reportable User in respect of each jurisdiction.

6. Reportable Jurisdictions are expected to help taxpayers determine, and provide them with information with respect to, their residence(s) for tax purposes. That may be done, for example, through the various service channels used for providing information or guidance to taxpayers on the application of tax laws. The OECD will endeavour to facilitate the dissemination of such information.

Reasonableness of self-certifications

7. Subparagraph A(1) specifies that, the Reporting Crypto-Asset Service Provider must confirm the reasonableness of the self-certification.

8. A Reporting Crypto-Asset Service Provider is considered to have confirmed the "reasonableness" of a self-certification if, in the course of establishing a relationship with an Individual Crypto-Asset User and upon review of the information obtained in connection with the establishment of the relationship (including any documentation collected pursuant to AML/KYC Procedures), it does not know or have reason to know that the self-certification is incorrect or unreliable. Reporting Crypto-Asset Service Providers are not expected to carry out an independent legal analysis of relevant tax laws to confirm the reasonableness of a self-certification.

9. The following examples illustrate the application of the "reasonableness" test:

   - Example 1: A Reporting Crypto-Asset Service Provider obtains a self-certification from the Individual Crypto-Asset User upon the establishment of the relationship. The jurisdiction of the residence address contained in the self-certification conflicts with that contained in the documentation collected pursuant to AML/KYC Procedures. Because of the conflicting information, the self-certification is incorrect or unreliable and, as a consequence, it fails the reasonableness test.
   - Example 2: A Reporting Crypto-Asset Service Provider obtains a self-certification from the Individual Crypto-Asset Service Provider upon the establishment of the relationship. The residence address contained in the self-certification is not in the jurisdiction in which the Individual Crypto-Asset User claims to be resident for tax purposes. Because of the conflicting information, the self-certification fails the reasonableness test.

10. In the case of a self-certification that fails the reasonableness test, it is expected that the Reporting Crypto-Asset Service Provider would obtain either (i) a valid self-certification, or (ii) a reasonable explanation and documentation (as appropriate) supporting the reasonableness of the self-certification (and retain a copy or a notation of such explanation and documentation) before providing services effectuating Relevant Transactions to the Individual Crypto-Asset User. Examples of such "reasonable explanation" include a statement by the individual that he or she (1) is a student at an educational institution in the relevant jurisdiction and holds the appropriate visa (if applicable); (2) is a teacher, trainee, or intern at an educational institution in the relevant jurisdiction or a participant in an educational or cultural exchange visitor program, and holds the appropriate visa (if applicable); (3) is a foreign individual assigned to a diplomatic post or a position in a consulate or embassy in the relevant jurisdiction; or (4) is a frontier worker or employee working on a truck or train travelling between jurisdictions. The following example illustrates the application of this paragraph: A Reporting Crypto-Asset Service Provider obtains a self-certification for the Individual Crypto-Asset User upon the establishment of the relationship. The jurisdiction of residence for tax purposes contained in the self-certification conflicts with the residence address contained in the documentation collected pursuant to AML/KYC Procedures. The Individual Crypto-Asset User explains that she is a diplomat from a particular jurisdiction and that, as a consequence, she is resident in such jurisdiction; she also presents her diplomatic passport. Because the Reporting Crypto-Asset Service Provider obtained a reasonable explanation and documentation supporting the reasonableness of the self-certification, the self-certification passes the reasonableness test.

Reliance on self-certifications

11. Subparagraph A(2) specifies that if, at any point, there is a change of circumstances with respect to an Individual Crypto-Asset User that causes the Reporting Crypto-Asset Service Provider to know, or have reason to know, that the original self-certification is incorrect or unreliable, the Reporting Crypto-Asset Service Provider cannot rely on the original self-certification and must obtain a valid self-certification, or a reasonable explanation and documentation (as appropriate) supporting the validity of the original self-certification.

Standards of knowledge applicable to self-certifications

12. A Reporting Crypto-Asset Service Provider has reason to know that a self-certification is unreliable or incorrect if its knowledge of relevant facts or statements contained in the self-certification or other documentation is such that a reasonably prudent person in the position of the Reporting Crypto-Asset Service Provider would question the claim being made. A Reporting Crypto-Asset Service Provider also has reason to know that a self-certification or is unreliable or incorrect if there is information in the documentation or in the Reporting Crypto-Asset Service Provider's files that conflicts with the person's claim regarding its status.

13. A Reporting Crypto-Asset Service Provider has reason to know that a self-certification provided by a person is unreliable or incorrect if the self-certification is incomplete with respect to any item on the self-certification that is relevant to the claims made by the person, the self-certification contains any information that is inconsistent with the person's claim, or the Reporting Crypto-Asset Service Provider has other information that is inconsistent with the person's claim. A Reporting Crypto-Asset Service Provider that relies on a service provider to review and maintain a self-certification is considered to know or have reason to know the facts within the knowledge of the service provider.

14. A Reporting Crypto-Asset Service Provider may not rely on documentation provided by a person if the documentation does not reasonably establish the identity of the person presenting the documentation. For example, documentation is not reliable if it is provided in person by an individual and the photograph or signature on the documentation does not match the appearance or signature of the person presenting the document. A Reporting Crypto-Asset Service Provider may not rely on documentation if the documentation contains information that is inconsistent with the person's claim as to its status, the Reporting Crypto-Asset Service Provider has other information that is inconsistent with the person's status, or the documentation lacks information necessary to establish the person's status.

Change of circumstances

15. A "change of circumstances" includes any change that results in the addition of information relevant to an Individual Crypto-Asset User's status or otherwise conflicts with such user's status (including the addition, substitution, or other change of a Reportable User) or any change or addition of information to any profile associated with such profile if such change or addition of information affects the status of the Individual Crypto-Asset User. For these purposes, the Reporting Crypto-Asset Service Provider should determine whether new information that is obtained with respect to the Individual Crypto-Asset User's profile in accordance with re-documentation undertaken in accordance with AML/KYC Procedures or other regulatory obligations includes new information that constitutes a change of circumstances. A change of circumstances affecting the self-certification provided to the Reporting Crypto-Asset Service Provider will terminate the validity of the self-certification with respect to the information that is no longer reliable, until the information is updated.

16. When a change of circumstances occurs, according to subparagraph A(2), the Reporting Crypto-Asset Service Provider cannot rely on the original self-certification and must obtain either (i) a valid self-certification that establishes the residence(s) for tax purposes of the Individual Crypto-Asset User, or (ii) a reasonable explanation and documentation (as appropriate) supporting the validity of the original self-certification (and retain a copy or a notation of such explanation and documentation). Therefore, a Reporting Crypto-Asset Service Provider is expected to institute procedures to ensure that any change that constitutes a change in circumstances is identified by the Reporting Crypto-Asset Service Provider. In addition, a Reporting Crypto-Asset Service Provider is expected to notify any person providing a self-certification of the person's obligation to notify the Reporting Crypto-Asset Service Provider of a change in circumstances.

17. A self-certification becomes invalid on the date that the Reporting Crypto-Asset Service Provider holding the self-certification knows or has reason to know that circumstances affecting the correctness of the self-certification have changed. However, a Reporting Crypto-Asset Service Provider may choose to treat a person as having the same status that it had prior to the change in circumstances until the earlier of 90 calendar days from the date that the self-certification became invalid due to the change in circumstances, the date that the validity of the self-certification is confirmed, or the date that a new self-certification is obtained. A Reporting Crypto-Asset Service Provider may rely on a self-certification without having to inquire into possible changes of circumstances that may affect the validity of the statement, unless it knows or has reason to know that circumstances have changed. For instance, where the Reporting Crypto-Asset Service Provider obtains information pursuant to its AML/KYC Procedures or other regulatory requirements that information contained in the self-certification is no longer accurate or reliable, the Reporting Crypto-Asset Service Provider must update the self-certification with respect to the information identified, before the self-certification can be relied on.

18. A Reporting Crypto-Asset Service Provider may retain an original, certified copy, or photocopy (including a microfiche, electronic scan, or similar means of electronic storage) or electronic copy of the self-certification. The self-certification (including the original) may also exist solely in electronic format.

Curing self-certification errors

19. A Reporting Crypto-Asset Service Provider may treat a self-certification as valid, notwithstanding that the self-certification contains an inconsequential error, if the Reporting Crypto-Asset Service Provider has sufficient documentation on file to supplement the information missing from the self-certification due to the error. In such case, the documentation relied upon to cure the inconsequential error must be conclusive. For example, a self-certification in which the Individual Crypto-Asset User submitting the form abbreviated the jurisdiction of residence may be treated as valid, notwithstanding the abbreviation, if the Reporting Crypto-Asset Service Provider has government issued identification for the person from a jurisdiction that reasonably matches the abbreviation. On the other hand, an abbreviation for the jurisdiction of residence that does not reasonably match the jurisdiction of residence shown on the person's passport is not an inconsequential error. A failure to provide a jurisdiction of residence is not an inconsequential error. In addition, information on a self-certification that contradicts other information contained on the self-certification or in the files of the Reporting Crypto-Asset Service Provider is not an inconsequential error.

Documentation collected by other persons

20. [Jurisdiction] may allow Reporting Crypto-Asset Service Providers to use service providers to fulfil their reporting and due diligence obligations. In such cases, Reporting Crypto-Asset Service Providers may use the documentation (including a self-certification) collected by service providers, subject to the conditions described in domestic law. The reporting and due diligence obligations remain, however, the responsibility of the Reporting Crypto-Asset Service Providers.

21. A Reporting Crypto-Asset Service Provider may rely on documentation (including a self-certification) collected by an agent of the Reporting Crypto-Asset Service Provider. The agent may retain the documentation as part of an information system maintained for a single Reporting Crypto-Asset Service Provider or multiple Reporting Crypto-Asset Service Providers provided that under the system, any Reporting Crypto-Asset Service Provider on behalf of which the agent retains documentation may easily access data regarding the nature of the documentation, the information contained in the documentation (including a copy of the documentation itself) and its validity, and must allow such

Reporting Crypto-Asset Service Provider to easily transmit data, either directly into an electronic system or by providing such information to the agent, regarding any facts of which it becomes aware that may affect the reliability of the documentation. The Reporting Crypto-Asset Service Provider must be able to establish, to the extent applicable, how and when it has transmitted data regarding any facts of which it became aware that may affect the reliability of the documentation and must be able to establish that any data it has transmitted has been processed and appropriate due diligence has been exercised regarding the validity of the documentation. The agent must have a system in effect to ensure that any information it receives regarding facts that affect the reliability of the documentation or the status assigned to the customer are provided to all Reporting Crypto-Asset Service Providers for which the agent retains the documentation.

22. A Reporting Crypto-Asset Service Provider that acquires the business of another Reporting Crypto-Asset Service Provider that has completed all the due diligence required under Section III with respect to the Individual Crypto-Asset Users transferred, would generally be permitted to also rely upon the predecessor's or transferor's determination of status of a an Individual Crypto-Asset User until the acquirer knows, or has reason to know, that the status is inaccurate or a change in circumstances occurs.

Paragraph B – Due Diligence Procedures for Entity Crypto-Asset Users

23. Paragraph B contains the due diligence procedures for Entity Crypto-Asset Users.. Such procedures require Reporting Crypto-Asset Service Providers to determine:

- whether the Entity Crypto-Asset User is a Reportable User; and
- whether an Entity Crypto-Asset User has one or more Controlling Persons who are Reportable Persons, unless the Entity Crypto-Asset User is an Excluded Person or an Active Entity.

24. With respect to Preexisting Entity Crypto-Asset Users, subparagraph B(1)(a) clarifies that Reporting Crypto-Asset Service Providers must obtain a valid self-certification and confirm its reasonableness at the latest 12 months after the jurisdiction introduces these rules.

Review procedure for Entity Crypto-Asset Users

25. Subparagraph B(1) contains the review procedure to determine whether an Entity Crypto-Asset User is a Reportable User. In order to determine whether an Entity Crypto-Asset User is a Reportable User, subparagraph B(1)(a) requires that, when establishing a relationship with the Entity Crypto-Asset User, or with respect to Preexisting Entity Crypto-Assets Users by 12 months after the introduction of the rules, the Reporting Crypto-Asset Service Provider:

- obtains a self-certification that allows the Reporting Crypto-Asset Service Provider to determine the Entity Crypto-Asset User's residence(s) for tax purposes; and
- confirms the reasonableness of such self-certification based on the information obtained by the Reporting Crypto-Asset Service Provider in connection with the establishment of the relationship with the Entity Crypto-Asset User, including any documentation collected pursuant to AML/KYC Procedures. If the Entity Crypto-Asset User certifies that it has no residence for tax purposes, the Reporting Crypto-Asset Service Provider may rely on the place of effective management to determine the residence of the Entity Crypto-Asset User.

26. If the self-certification indicates that the Entity Crypto-Asset User is resident in a Reportable Jurisdiction, then, as provided in subparagraph B(1)(b), the Reporting Crypto-Asset Service Provider must treat the Entity Crypto-Asset User as a Reportable User unless it reasonably determines based on the self-certification or information in its possession or that is publicly available, that the Entity Crypto-Asset User is an Excluded Person.

27. “Publicly available” information includes information published by an authorised government body (for example, a government or an agency thereof, or a municipality) of a jurisdiction, such as information in a list published by a tax administration; information in a publicly accessible register maintained or authorised by an authorised government body of a jurisdiction; or information disclosed on an established securities market. In this respect, the Reporting Crypto-Asset Service Provider is expected to retain a notation of the type of information reviewed, and the date the information was reviewed.

28. In determining whether an Entity Crypto-Asset User is a Reportable User, the Reporting Crypto-Asset Service Provider may follow the guidance on subparagraphs B(1)(a) and (b) in the order most appropriate under the circumstances. That would allow a Reporting Crypto-Asset Service Provider, for example, to determine under subparagraph B(1)(b) that an Entity Crypto-Asset User is an Excluded Person and, thus, is not a Reportable User.

29. The self-certification must allow determining the Entity Crypto-Asset User’s residence(s) for tax purposes. The domestic laws of the various jurisdictions lay down the conditions under which an Entity is to be treated as fiscally “resident”. They cover various forms of attachment to a jurisdiction which, in the domestic taxation laws, form the basis of a comprehensive taxation (full tax liability). Generally, an Entity will be resident for tax purposes in a jurisdiction if, under the laws of that jurisdiction, it pays or should be paying tax therein by reason of its place of management or incorporation, or any other criterion of a similar nature, and not only from sources in that jurisdiction. If an Entity is subject to tax as a resident in more than one jurisdiction, all jurisdictions of residence are to be declared in a self-certification and the Reporting Crypto-Asset Service Provider must treat the Entity Crypto-Asset User as a Reportable User in respect of each jurisdiction.

30. Reportable Jurisdictions are expected to help taxpayers determine, and provide them with information with respect to, their residence(s) for tax purposes. That may be done, for example, through the various service channels used for providing information or guidance to taxpayers on the application of tax laws. The OECD will endeavour to facilitate the dissemination of such information.

31. An Entity such as a partnership, limited liability partnership or similar legal arrangement that has no residence for tax purposes shall be treated as resident in the jurisdiction of its place of effective management.

Reasonableness of self-certifications

32. Upon the establishment of the relationship with the Crypto-Asset User, once the Reporting Crypto-Asset Service Provider has obtained a self-certification that allows it to determine the Entity Crypto-Asset User’s residence(s) for tax purposes, the Reporting Crypto-Asset Service Provider must confirm the reasonableness of such self-certification based on the information obtained in connection with the establishment of the relationship, including any documentation collected pursuant to AML/KYC Procedures.

33. A Reporting Crypto-Asset Service Provider is considered to have confirmed the “reasonableness” of a self-certification if, in the course of establishing a relationship with the Entity Crypto-Asset User and upon review of the information obtained in connection with the establishment of the relationship (including any documentation collected pursuant to AML/KYC Procedures), it does not know or have reason to know that the self-certification is incorrect or unreliable. Reporting Crypto-Asset Service Providers are not expected to carry out an independent legal analysis of relevant tax laws to confirm the reasonableness of a self-certification.

34. The following examples illustrate the application of the “reasonableness” test:

- Example 1: A Reporting Crypto-Asset Service Provider obtains a self-certification from the Entity Crypto-Asset User upon the establishment of the relationship. The address contained in the self-

certification conflicts with that contained in the documentation collected pursuant to AML/ KYC Procedures. Because of the conflicting information, the self-certification is incorrect or unreliable and, as a consequence, it fails the reasonableness test.

- Example 2: A Reporting Crypto-Asset Service Provider obtains a self-certification from the Entity Crypto-Asset User upon the establishment of the relationship. The documentation collected pursuant to AML/KYC Procedures only indicates the Entity Crypto-Asset User's place of incorporation. In the self-certification, the Entity Crypto-Asset User claims to be resident for tax purposes in a jurisdiction that is different from its jurisdiction of incorporation. The Entity Crypto-Asset User explains to the Reporting Crypto-Asset Service Provider that under relevant tax laws its residence for tax purposes is determined by reference to place of effective management, and that the jurisdiction where its effective management is situated differs from the jurisdiction in which it was incorporated. Thus, because there is a reasonable explanation of the conflicting information, the self-certification is not incorrect or unreliable and, as a consequence, passes the reasonableness test.

35. In the case a self-certification that fails the reasonableness test, it is expected that the Reporting Crypto-Asset Service Provider obtains a valid self-certification before providing services effectuating Relevant Transactions to the Entity Crypto-Asset User. Further guidance in this respect can be found in the Commentary to paragraph A of Section III.

Review procedure for Controlling Persons

36. Subparagraph B(2) contains the review procedure to determine whether an Entity Crypto-Asset User, other than an Excluded Person, is held by one or more Controlling Persons that are Reportable Persons, unless it determines that the Entity Crypto-Asset User is an Active Entity. Such determination should be made based on a self-certification, the reasonableness of which should be confirmed based on any relevant information available to the Reporting Crypto-Asset Service Provider. When the Reporting Crypto-Asset Service Provider has not determined that the Entity Crypto-Asset User is an Active Entity, then the Reporting Crypto-Asset Service Provider must follow the guidance in subparagraphs B(2)(a) through (c) in the order most appropriate under the circumstances. Those subparagraphs are aimed at:

- determining the Controlling Persons of an Entity Crypto-Asset User;
- determining whether any Controlling Persons of the Entity Crypto-Asset User are Reportable Persons; and
- relieving Reporting Crypto-Asset Service Providers of the obligation to identify Controlling Persons when it solely effectuates Reportable Retail Payment Transactions on behalf of the Entity Crypto-Asset User.

37. For the purposes of determining the Controlling Persons of an Entity Crypto-Asset User, according to subparagraph B(2)(a), a Reporting Crypto-Asset Service Provider may rely on information collected and maintained pursuant to AML/KYC Procedures, provided that such procedures are consistent with the 2012 FATF Recommendations (as updated in June 2019 pertaining to virtual asset service providers). If the Reporting Crypto-Asset Service Provider is not legally required to apply AML/KYC Procedures that are consistent with the 2012 FATF Recommendations (as updated in June 2019 pertaining to virtual asset service providers), it must apply substantially similar procedures for the purpose of determining the Controlling Persons.

38. For the purposes of determining whether a Controlling Person of an Entity Crypto-Asset User is a Reportable Person, a Reporting Crypto-Asset Service Provider must, pursuant to subparagraph B(2)(b), rely on a self-certification from either the Entity Crypto-Asset User or the Controlling Person and confirm the reasonableness of such self-certification based on the information obtained by the

Reporting Crypto-Asset Service Provider, including any documentation collected pursuant to AML/KYC Procedures.

Requirements in respect of Entity Crypto-Asset Users completing Reportable Retail Payment Transactions

39. Subparagraph B(2)(c) specifies that, notwithstanding subparagraphs B(2)(a) and B(2)(b), a Reporting Crypto-Asset Service Provider is not required to identify or report the Controlling Persons of the Entity Crypto-Asset User that is the customer of the merchant, provided that the Reporting Crypto-Asset Service Provider solely effectuates Reportable Retail Payment Transactions for the customer of the merchant. As a consequence, where the customer of the merchant is a Crypto-Asset User in respect of other Relevant Transactions, it is not a Crypto-Asset User for which the Reporting Crypto-Asset Service Provider solely effectuates Reportable Retail Payment Transactions.

40. Instances where an Entity Crypto-Asset User is effectuating a Reportable Retail Payment Transaction are intended to be captured under the FATF "travel rule", as it applies to virtual asset service providers pursuant to FATF Recommendation 15 (as updated in June 2019). The travel rule foresees that virtual asset service providers obtain and hold information on the originators and beneficiaries to transfers of virtual assets. However, the travel rule does not necessarily require virtual asset service providers to include information on Controlling Persons as part of such transfers. Therefore, a Reporting Crypto-Asset Service Provider solely conducting Reportable Retail Payment Transactions on behalf of an Entity Crypto-Asset User would not necessarily have information on the Entity Crypto-Asset User's Controlling Persons pursuant to AML/KYC Procedures. It is therefore foreseen that in this instance the Reporting Crypto-Asset Service Provider may fulfil its identification and reporting obligations with respect to the Entity Crypto-Asset User, without needing to identify the Controlling Persons.

Change of circumstances

41. Subparagraph B(3) specifies that if, at any point, there is a change of circumstances with respect to an Entity Crypto-Asset User or its Controlling Person(s) that causes the Reporting Crypto-Asset Service Provider to know, or have reason to know, that the self-certification or other documentation associated with an Entity Crypto-Asset User or its Controlling Person(s) is incorrect or unreliable, the Reporting Crypto-Asset Service Provider cannot rely on the original self-certification and must re-determine their status in accordance with the procedures set forth in the Commentary on paragraph A of Section III (i.e. it must obtain a valid self-certification, or a reasonable explanation and documentation supporting the validity of the original self-certification). (See also paragraph(s) 19 - 22 relating to the curing of multiple profiles and documentation collection by others, which also apply to Entity Crypto-Asset Users).

Paragraph C – Requirements for validity of self-certifications

42. Paragraph C sets out the requirements for obtaining valid self-certifications with respect to Individual and Entity Crypto-Asset Users, as well as Controlling Persons.

Validity of self-certifications for Individual Crypto-Asset Users and Controlling Persons

43. A self-certification referred to in subparagraph C(1) is a certification by the Individual Crypto-Asset User or Controlling Person that provides the Individual Crypto-Asset User's or Controlling Person's status and any other information that may be reasonably requested by the Reporting Crypto-Asset

Service Provider to fulfil its reporting and due diligence obligations, such as whether the Individual Crypto-Asset User or the Controlling Person is resident for tax purposes in a Reportable Jurisdiction. A self-certification is valid only if it is signed (or otherwise positively affirmed) by the Individual Crypto-Asset User or Controlling Person, it is dated at the latest at the date of receipt, and it contains the following information with respect to the Individual Crypto-Asset User or Controlling Person:

a) first and last name;

b) residence address;

c) jurisdiction(s) of residence for tax purposes;

d) TIN with respect to each Reportable Jurisdiction; and

e) date of birth.

44. The self-certification may be pre-populated by the Reporting Crypto-Asset Service Provider to include the Individual Crypto-Asset User's or Controlling Person's information, except for the jurisdiction(s) of residence for tax purposes, to the extent already available in its records. Further, the Reporting Crypto-Asset Service Provider may rely on a self-certification collected in respect of the Individual Crypto-Asset User or Controlling Person under the Common Reporting Standard, to the extent it contains all of the information referred to in subparagraph C(1).

45. If the Individual Crypto-Asset User or Controlling Person is resident for tax purposes in a Reportable Jurisdiction, the self-certification must include the Individual Crypto-Asset User's or Controlling Person's TIN with respect to each Reportable Jurisdiction, subject to subparagraph C(3).

46. The self-certification may be provided in any manner and in any form. If the self-certification is provided electronically, the electronic system must ensure that the information received is the information sent, and must document all occasions of user access that result in the submission, renewal, or modification of a self-certification. In addition, the design and operation of the electronic system, including access procedures, must ensure that the person accessing the system and furnishing the self-certification is the person named in the self-certification, and must be capable of providing upon request a hard copy of all self-certifications provided electronically.

47. A self-certification may be signed (or otherwise positively affirmed) by any person authorised to sign on behalf of the Individual Crypto-Asset User or Controlling Person under domestic law.

48. Subparagraph C(3) specifies that, notwithstanding the requirements under subparagraphs C(1) and (2) to obtain a TIN in respect of Reportable Users and of Controlling Persons of Entity Crypto-Asset Users that are Reportable Persons, the TIN is not required to be collected if the jurisdiction of residence of the Reportable Person does not issue a TIN to the Reportable Person.

49. Subparagraph C(4) specifies that, in order for a self-certification under either C(1) or C(2) to remain valid, the information contained therein must be confirmed by the Crypto-Asset User or the Controlling Person at least once every 36 months from the date the validity of such self-certification was last determined by the Reporting Crypto-Asset Service Provider. This confirmation can be completed remotely (e.g. via push notification messages sent to the client) and the Reporting Crypto-Asset Service Provider must keep records of such confirmation.

Validity of self-certifications for Entity Crypto-Asset Users

50. A self-certification is a certification by the Entity Crypto-Asset User that provides the Entity Crypto-Asset User's status and any other information that may be reasonably requested by the Reporting Crypto-Asset Service Provider to fulfil its reporting and due diligence obligations, such as whether the Entity Crypto-Asset User is resident for tax purposes in a Reportable Jurisdiction. A self-certification is valid only if it is dated at the latest at the date of receipt, and it contains the Entity Crypto-Asset User's:

a) legal name;

b) address;

c) jurisdiction(s) of residence for tax purposes; and

d) TIN with respect to each Reportable Jurisdiction; and

e) in case of an Entity Crypto-Asset User other than an Active Entity or an Excluded Person, the information described in subparagraph C(1) with respect to each Controlling Person of the Entity Crypto-Asset User, unless such Controlling Person has provided a self-certification pursuant to subparagraph C(1), as well as the role(s) by virtue of which each Reportable Person is a Controlling Person of the Entity; and

f) if applicable, information as to the criteria it meets to be treated as an Active Entity or Excluded Person.

51. The self-certification may be pre-populated by the Reporting Crypto-Asset Service Provider to include the Entity Crypto-Asset User's information, except for the jurisdiction(s) of residence for tax purposes, to the extent already available in its records. Further, the Reporting Crypto-Asset Service Provider may rely on a self-certification collected in respect of the Entity Crypto-Asset User under the Common Reporting Standard, to the extent it contains all of the information referred to in subparagraph C(2).

52. A self-certification may be signed (or otherwise positively affirmed) by any person authorised to sign on behalf of the Entity Crypto-Asset User under domestic law. A person with authority to sign a self-certification of an Entity Crypto-Asset User generally includes an officer or director of a corporation, a partner of a partnership, a trustee of a trust, any equivalent of the former titles, and any other person that has been provided written authorisation by the Entity Crypto-Asset User to sign documentation on such person's behalf.

53. The requirements for the validity of self-certifications with respect to Individual Crypto-Asset Users or Controlling Persons in paragraphs 48 and 49 of this section are also applicable for the validity of self-certifications with respect to Entity Crypto-Asset Users.

Paragraph D – Effective implementation requirements

54. Paragraph D specifies the effective implementation requirements to be applied in instances where Reporting Crypto-Asset Service Providers are not able to obtain a valid self-certification for a Reportable User. Paragraph D specifies that these requirements apply to Reporting Crypto-Asset Service Providers who are not able to obtain a valid self-certification on Crypto-Asset Users with respect to the following three scenarios:

a) new Individual and Entity Crypto-Asset Users, upon establishment of the relationship with the Crypto-Asset User; or

b) Preexisting Individual and Entity Crypto-Asset Users, by [12 months after the effective date of the rules]; or

c) upon the expiry of the validity of a self-certification pursuant to subparagraph C(4) or within 90 days of a change of circumstances with respect to the self-certification of an Individual Crypto-Asset User, or an Entity Crypto-Asset User or its Controlling Persons.

55. In the event a Reporting Crypto-Asset Service Provider is unable to obtain a valid self-certification in any of the above circumstances, the Reporting Crypto-Asset Service Provider must refuse to effectuate any Relevant Transactions on behalf of the concerned Crypto-Asset User until such self-certification is obtained and the reasonableness of such self-certification is confirmed.

Commentary on Section IV: Defined Terms

Paragraph IV (A) – Relevant Crypto-Asset

Subparagraph A(1) – Relevant Crypto-Assets

1. Relevant Crypto-Assets are Crypto-Assets in respect of which Reporting Crypto-Asset Service Providers must fulfil reporting and due diligence requirements. The term Relevant Crypto-Assets applies to all Crypto-Assets except Closed-Loop Crypto-Assets and Central Bank Digital Currencies. If an individual or Entity is a Reporting Crypto-Asset Service Provider (e.g. because it otherwise carries out exchanges in Relevant Crypto-Assets), it would nevertheless not be required to report information with respect to exchanges carried out in Crypto-Assets that are not Relevant Crypto-Assets.

Subparagraph A(2) – Crypto-Asset

2. The term "Crypto-Asset", as defined in subparagraph A(2), refers to a digital representation of value that relies on a cryptographically secured distributed ledger or a similar technology to validate and secure transactions.

3. In this context, a "digital representation of value" means that a Crypto-Asset must represent a right to value, and that the ownership of, or right to, such value can be traded or transferred to other individuals or Entities in a digital manner. For instance, a token based on cryptography that allows individuals to store value, engage in payments and that does not represent any claims or rights of memberships against a person, rights to property or other absolute or relative rights is a Crypto-Asset.

4. Furthermore, a cryptographic token that represents claims or rights of membership against an individual or Entity, rights to property or other absolute or relative rights (e.g. a security token or a derivative contract or right to purchase or sell an asset, including a Financial Asset and a Crypto-Asset, at a set date, price or other pre-determined factor), and that can be digitally exchanged for Fiat Currencies or other Crypto-Assets, is a Crypto-Asset. For instance, the following examples illustrate the reporting requirements in respect of derivatives:

- **Example 1** (Crypto-Derivative A, a cryptographic token, purchased with Relevant Crypto-Assets (i.e. stablecoins)): Crypto-Derivative A, represents a leveraged interest in an underlying Relevant Crypto-Asset, such that, the value of Crypto-Derivative A will mirror changes in the price of the underlying Relevant Crypto-Asset (either upwards or downwards) at three times the change in market price.

  User 1 purchases one unit of Crypto-Derivative A through consideration in the form of stablecoins. As Crypto-Derivative A is a Relevant Crypto-Asset, it is reportable under the Crypto-Asset Reporting Framework, provided the trade is carried out through a Reporting Crypto-Asset Service Provider. The trade entails the following Relevant Transactions:

  1. Disposal of the stablecoin by User 1, reported in Fiat Currency at the fair market value, along with the number of units; and
  2. Acquisition of Crypto-Derivative A by User 1, reported in Fiat Currency at the fair market value, along with the number of units.

- **Example 2** (Redeeming Crypto-Derivative A, with settlement paid in stablecoins): Further to the trade in Example 1, User 1 redeems Crypto-Derivative A with the issuer. When User 1 redeems Crypto-Derivative A, the market price of the underlying Relevant Crypto-Asset has gained 10% since User 1 purchased Crypto-Derivative A. User 1's gains are magnified by the leverage of the token, and User 1 redeems Crypto-Derivative A with the issuer for a value 30% greater than the

initial purchase price. The Reporting Crypto-Asset Service Provider pays this redemption amount to User 1's wallet in stablecoins. The trade entails the following Relevant Transactions:

1. Disposal of Crypto-Derivative A, valued in Fiat Currency at its fair market value, along with the number of units; and
2. Acquisition of stablecoin, valued in Fiat Currency at their fair market value, along with the number of units.

- **Example 3** (Traditional derivative contract settled by physical delivery of a Relevant Crypto-Asset): Two counterparties, Buyer and Seller, enter into opposing positions of a futures contract to, respectively, purchase and sell Relevant Crypto-Asset B on a specified date. The settlement of the derivative requires Buyer to purchase Relevant Crypto-Asset B from Seller on a specified date and at a pre-determined price, paid in Fiat Currency. Seller is then obliged to physically deliver Relevant Crypto-Asset B to Buyer's wallet address. On the specified date, Buyer and Seller conduct the transaction, by using a Reporting Crypto-Asset Service Provider to facilitate the following Relevant Transactions in respect of Relevant Crypto-Asset B:
  1. Disposal of Relevant Crypto-Asset B by Seller, reported at the Fiat Currency received, along with the number of units; and
  2. Acquisition of Relevant Crypto-Asset B by Buyer, reported at the Fiat Currency paid, along with the number of units.

5. The term "Crypto-Asset" is intended to cover any digital representation of value that relies on a cryptographically secured distributed ledger or a similar technology to validate and secure transactions, where the ownership of, or right to, such value can be traded or transferred to other individuals or Entities in a digital manner. As such, the term "Crypto-Asset" encompasses both fungible and non-fungible tokens and therefore includes non-fungible tokens (NFTs) representing rights to collectibles, games, works of art, physical property or financial documents that can be traded or transferred to other individuals or Entities in a digital manner.

6. Other uses of cryptographic technology that are not digital representations of value, are not Crypto-Assets. Examples include the use of cryptography to:
   - create a decentralized immutable record of activities or materials involved in making, storing, shipping or delivering a product, where the record does not convey any ownership rights in such product; or
   - a declarative record of ownership of assets (such as a real estate ledger or similar agreement) where the record does not convey any ownership rights in the assets represented by such record.

7. In addition to having value that is digitally tradable or transferable, a Crypto-Asset must rely on a cryptographically secured distributed ledger or similar technology to validate and secure transactions whether or not the transaction is actually recorded on such distributed ledger or similar technology. A distributed ledger is a decentralised manner for recording transactions in Crypto-Assets in multiple places and at the same time. Cryptography refers to a mathematical and computational practice of encoding and decoding data that is used to validate and secure transactions in a decentralised or non-intermediated manner. The cryptographic process is used to ensure, in a decentralised manner, the integrity of Crypto-Assets, the clear assignment of Crypto-Assets to users, and the disposal of Crypto-Assets.

8. This cryptographic process allows multiple parties to engage in disintermediated validations of transactions in the Crypto-Asset, often by verifying public and private cryptographic keys to a transaction. This validation ensures that users in possession of a Crypto-Asset have not already exchanged the same Crypto-Asset in another transaction. The cryptographic process also secures transactions made in Crypto-Assets by compiling each transaction within a block of other transactions.

The block of transactions is then added to the official, publicly accessible, transaction ledger (such as a blockchain) once the user completes a cryptographic hash.

9. Crypto-Assets may also rely on similar technology that allows for the disintermediated holding or validating of Crypto-Assets. Regardless of the type of software used, if the technology underpinning the Crypto-Asset allows for validating and securing digital transactions in a decentralised or disintermediated manner, it is considered a similar technology to a cryptographically secured distributed ledger.

Subparagraph A(3) – Closed-Loop Crypto-Asset

10. The term "Closed-Loop Crypto-Asset" refers to Crypto-Assets which are issued to users as a means of payment with Participating Merchants for the purchase of goods or services; can only be transferred by or to the issuer or a Participating Merchant and can only be redeemed for Fiat Currency by a Participating Merchant redeeming with the issuer. This term captures Crypto-Assets which can only be exchanged or redeemed within a fixed network or environment for specified goods and services, such as food, book, travel and restaurant vouchers. In this context, the term "goods and services" also applies where the Crypto-Asset is redeemed for digital goods and services, such as digital music, games, books or other media, as well as tickets, software applications and online subscriptions. A Closed-Loop Crypto-Asset is characterised by operating in a fixed network or environment that may include one or more of the following elements:

- a permissioned blockchain that restricts users' redemption rights, such that the Closed-Loop Crypto-Assets can only be redeemed for specified goods or services;
- customer identification mechanisms that ensure users acquiring and redeeming Closed-Loop Crypto-Assets are the same persons;
- redemption rights providing that Crypto-Assets can only be redeemed for Fiat Currency or other Relevant Crypto Assets with the issuer by Participating Merchants; or
- features embedded in the Closed-Loop Crypto-Asset, explained in the Crypto-Asset's whitepaper, the terms and conditions made available by its issuer, or as part of the contract conferring rights associated with the Crypto-Asset (whether a traditional contract or smart contract), that ensure the Closed-Loop Crypto-Asset can only be redeemed by users for specified goods or services.

Subparagraph A(4) – Participating Merchant

11. Subparagraph A(4) defines a "Participating Merchant" as a merchant that has an agreement with an issuer of a Closed-Loop Crypto-Asset to accept such Crypto-Asset as a means of payment. In this context, an "agreement" refers to acceptance by the Participating Merchant with the issuer of a Closed-Loop Crypto-Asset, whether contractually or otherwise, that individuals or Entities in possession of such Closed-Loop Crypto-Assets can redeem them in return for specified goods or services provided by the Participating Merchant.

Subparagraph A(5) – Central Bank Digital Currency

12. The term "Central Bank Digital Currencies" means any digital Fiat Currency issued by a Central Bank. Central Bank Digital Currencies are not considered Relevant Crypto-Assets, given that they are a digital form of Fiat Currency.

Paragraph IV (B) – Reporting Crypto-Asset Service Provider

Subparagraph B(1) – Reporting Crypto-Asset Service Provider

13. The term "Reporting Crypto-Asset Service Provider" refers to any individual or Entity that, as a business, provides a service effectuating Exchange Transactions for or on behalf of customers (which for purposes of this definition includes users of services of Reporting Crypto-Asset Service Providers), including by acting as a counterparty, or as an intermediary, to Exchange Transactions, or by making available a trading platform.

14. The phrase "as a business" excludes individuals or Entities who carry out a service on a very infrequent basis for non-commercial reasons. In determining what is meant by "as a business", reference can be made to each jurisdiction's relevant rules.

15. A service effectuating Exchange Transactions includes any service through which the customer can receive Relevant Crypto-Assets for Fiat Currencies, or vice versa, or exchange Relevant Crypto-Assets for other Relevant Crypto-Assets. The activities of an investment fund investing in Relevant Crypto-Assets do not constitute a service effectuating Exchange Transactions since such activities do not permit the investors in the fund to effectuate Exchange Transactions.

16. An individual or Entity effectuating Exchange Transactions will only be a Reporting Crypto-Asset Service Provider if it carries out such activities for or on behalf of customers. This means, for example, that an individual or Entity that is solely engaged in validating distributed ledger transactions in Relevant Crypto-Assets is not a Reporting Crypto-Asset Service Provider, even where such validation is remunerated.

17. An individual or Entity may effectuate Exchange Transactions for or on behalf of customers by acting as a counterparty or intermediary to the Exchange Transactions. Examples of individuals or Entities that may provide services effectuating Exchange Transactions as a counterparty, or as an intermediary, include:

    - dealers acting for their own account to buy and sell Relevant Crypto-Assets to customers;
    - operators of Crypto-Asset ATMs, permitting the exchange of Relevant Crypto-Assets for Fiat Currencies or other Relevant Crypto-Assets through such ATMs;
    - Crypto-Asset exchanges that act as a market makers and take a bid-ask spread as a transaction commission for their services;
    - brokers in Relevant Crypto-Assets where they act on behalf of clients to complete orders to buy or sell an interest in Relevant Crypto-Assets; and
    - intermediaries subscribing one or more Relevant Crypto-Assets. While the sole creation and issuance of a Relevant Crypto-Asset would not be considered a service effectuating Exchange Transactions as a counterparty or intermediary, the direct purchase of Relevant Crypto-Assets from an issuer, to resell and distribute such Relevant Crypto-Assets to customers would be considered effectuating an Exchange Transaction.

18. An individual or Entity may also effectuate Exchange Transactions for or on behalf of customers by making available a trading platform that provides the ability for such customers to effectuate Exchange Transactions on such platform. A "trading platform" includes any software program or application that allows users to effectuate (either partially or in their entirety) Exchange Transactions. An individual or Entity that is making available a platform that solely includes a bulletin board functionality for posting buy, sell or conversion prices of Relevant Crypto-Assets would not be a Reporting Crypto-Asset Service Provider as it would not provide a service allowing users to effectuate Exchange Transactions. For the same reason, an individual or Entity that solely creates or sells software or an application is not a Reporting Crypto-Asset Service Provider, as long as it is not using such software or application for the provision of a service effectuating Exchange Transactions for or on behalf of customers.

19. An individual or Entity will be considered to make available a trading platform to the extent it exercises control or sufficient influence over the platform, or otherwise having sufficient knowledge (e.g. by virtue of acting as an interface providing access to the platform for purposes of an Exchange Transaction or acting as an aggregator), allowing it to comply with the due diligence and reporting obligations with respect to Exchange Transactions concluded on the platform. Such control or sufficient influence includes cases where:

    - the individual or Entity is subject to AML/KYC regulations, or subject to supervision, in respect of the platform pursuant to domestic rules that are consistent with the FATF Recommendations; or
    - the individual or Entity has the ability to develop or amend software or protocols governing conditions, pursuant to which, Exchange Transactions can be concluded on the platform.

20. An individual or Entity may be a Reporting Crypto-Asset Service Provider by carrying out activities other than acting as a counterparty, or intermediary, to an Exchange Transaction, or making available a trading platform, as long as it functionally provides a service, as a business, effectuating Exchange Transactions for or on behalf of customers. The technology involved in providing such service is irrelevant to determine whether an individual or Entity is a Reporting Crypto-Asset Service Provider.

Paragraph IV (C) – Relevant Transaction

Subparagraph C(1) – Relevant Transaction

21. The term “Relevant Transaction” refers to any exchange of Relevant Crypto-Assets and Fiat Currencies, any exchange between one or more forms of Relevant Crypto-Assets, any Reportable Retail Payment Transaction and other Transfers of Relevant Crypto-Assets. This definition targets those transactions likely to give rise to taxation events (i.e. capital gains and income taxation).

Subparagraph C(2) – Exchange Transaction

22. An Exchange Transaction, as defined in subparagraph C(2), refers to any exchange between Relevant Crypto-Assets and Fiat Currencies as well as any exchange between one or more forms of Relevant Crypto-Assets. For this purpose, an exchange includes the movement of a Relevant Crypto-Asset from one wallet address to another, in consideration of another Relevant Crypto-Asset or Fiat Currency.

Subparagraph C(3) – Reportable Retail Payment Transaction

23. Subparagraph C(3) defines the term “Reportable Retail Payment Transaction” as a transfer of Relevant Crypto-Assets in consideration of goods or services [for a value exceeding USD xxx]. This term covers situations where a Reporting Crypto-Asset Service Provider transfers Relevant Crypto-Assets used by a customer to purchase goods or services from a merchant. For example, a Reporting Crypto-Asset Service Provider may carry out Relevant Transactions between a merchant and its customers to allow payment for goods or services with Relevant Crypto-Assets. Where a Reporting Crypto-Asset Service Provider transfers payment made in Relevant Crypto-Assets from a customer to the merchant for a value above the specified threshold, the Reporting Crypto-Asset Service Provider should report such Transfer as a Reportable Retail Payment Transaction. With respect to such transfers, the Reporting Crypto-Asset Service Provider is required to also treat the customer of the merchant as the Crypto-Asset User.

Subparagraph C(4) –Transfers

24. The term “Transfer” means a transaction that moves a Relevant Crypto-Asset from or to the Crypto-Asset address or account of one Crypto-Asset User, other than one maintained by the Reporting Crypto-Asset Service Provider on behalf of same Crypto-Asset User. A Reporting Crypto-Asset Service Provider can only classify a Relevant Transaction as a Transfer if, based on the knowledge of the Reporting Crypto-Asset Service Provider at the time of transaction, the Reporting Crypto-Asset Service Provider cannot determine the transaction is an Exchange Transaction or a Reportable Retail Payment Transaction. Such knowledge should be determined by reference to the Reporting Crypto-Asset Service Provider’s actual knowledge based on readily available information and the degree of expertise and understanding required to conduct the Relevant Transaction. For example, there may be instances where a Crypto-Asset User acquires or disposes of a Relevant Crypto-Asset against Fiat Currency, although the Reporting Crypto-Asset Service Provider does not have actual knowledge of the underlying consideration. This would, for example, be the case if the Reporting Crypto-Asset Service Provider only conducted the Transfer of the Relevant Crypto-Assets to and from the Crypto-Asset User’s account, without visibility over the Fiat Currency leg of the transaction. Such transactions would still be considered Relevant Transactions, but the Reporting Crypto-Asset Service Provider would need to report such Relevant Transactions as Transfers.

25. A “Transfer” would also include the instance where a Reporting Crypto-Asset Service Provider facilitates an individual or Entity receiving a Relevant Crypto-Asset by means of an airdrop when the Crypto-Asset is newly issued. For instance, in the context of a “hard-fork” a new Relevant Crypto-Asset diverges from a legacy Relevant Crypto-Asset. As a result, developers of the hard fork typically send an airdrop of new Relevant Crypto-Assets to all holders of the legacy Relevant Crypto-Asset and such Crypto-Asset Users will hold the new Relevant Crypto-Assets in addition to the legacy Relevant Crypto-Assets. For example, the receipt of an airdrop of a new Relevant Crypto-Asset is considered an inbound Transfer to the receiving Crypto-Asset User.

Subparagraph C(5) – Fiat Currency

26. The term Fiat Currency refers to the official currency of a jurisdiction, issued by a jurisdiction or by a jurisdiction’s designated Central Bank or monetary authority, as represented by physical banknotes or coins or by money in different digital forms, including bank reserves, commercial bank money, electronic money products and Central Bank Digital Currencies.

Paragraph IV (D) – Reportable User

Subparagraph D(1) – Reportable User

27. The term “Reportable User”, as defined in subparagraph D(1), means a Crypto-Asset User that is a Reportable Person.

Subparagraph D(2) – Crypto-Asset User

28. Subparagraph D(2) defines the term “Crypto-Asset User” as a customer of a Reporting Crypto-Asset Service Provider for purposes of carrying out Relevant Transactions. Any individual or Entity identified by the Reporting Crypto Asset Service Provider for purposes of carrying out Relevant Transactions is treated as a Crypto Asset User, irrespective of whether the Reporting Crypto-Asset Service Provider is safekeeping the Relevant Crypto-Assets on behalf of the Crypto-Asset User or the legal characterisation of the relationship between the Reporting Crypto-Asset Service Provider and such individual or Entity.

29. An individual or Entity, other than a Financial Institution or Reporting Crypto-Asset Service Provider, acting as a Crypto-Asset User for the benefit or account of another individual or Entity as agent, custodian, nominee, signatory, investment advisor, or intermediary, is not treated as a Crypto-Asset User, and such other individual or Entity is treated as the Crypto-Asset User. For these purposes a Reporting Crypto-Asset Service Provider may rely on information in its possession (including information collected pursuant to AML/KYC Procedures), based on which it can reasonably determine whether the individual or Entity is acting for the benefit or account of another individual or Entity. In confirming whether a Crypto-Asset User may be a Reporting Crypto-Asset Service Provider or a Financial Institution, a Reporting Crypto-Asset Service provider may, for instance, rely on cross-checking the information provided by its Crypto-Asset User with regulated institutions lists that indicate other Reporting Crypto-Asset Service Providers or Financial Institutions, where available.

30. The following examples illustrate the application of this definition:

- F holds a power of attorney from U that authorises F to establish a relationship as a Crypto-Asset User at Reporting Crypto-Asset Service Provider X for carrying out Relevant Transactions on behalf of U. F has established a relationship at Reporting Crypto-Asset Service Provider X as the person who can carry out Relevant Transactions. However, because F is not a Financial Institution or Reporting Crypto-Asset Service Provider and the Reporting Crypto-Asset Service Provider has information in its AML/KYC files indicating that F acts as an agent for the benefit of U, the Reporting Crypto-Asset Service Provider must treat U as the Crypto-Asset User;
- Reporting Crypto-Asset Service Provider A uses the services of Reporting Crypto-Asset Service Provider B to effectuate Relevant Transactions on the exchange platform maintained by B. Therefore, A is a Crypto-Asset User for B, and B will report the Relevant Transactions effectuated by A. Because A is a Reporting Crypto-Asset Service Provider, it is immaterial whether A effectuates such Relevant Transactions in its own name or as an agent, custodian, nominee, signatory, investment advisor or intermediary.

31. A Reporting Crypto-Asset Service Provider may conduct Relevant Transactions that allow a merchant to offer its customers payment in the form of Relevant Crypto-Assets, or to allow such customers to purchase goods or services with Relevant Crypto-Assets and then converting the Relevant Crypto-Assets received from the customer into fiat currency for the merchant. In those instances, [and provided that the value of the transaction exceeds USD xxx,] the transaction is considered a Relevant Transaction by virtue of being a Reportable Retail Payment Transaction. See Commentary to subparagraph C(3). For Reportable Retail Payment Transactions, the Reporting Crypto-Asset Service Provider must treat the customer of the merchant as the Crypto-Asset User and the transaction should be reported as a Reportable Retail Payment Transaction pursuant to subparagraph A(3)(f) of Section II.

Subparagraphs D(3) through (6) – Preexisting, Individual and Entity Crypto-Asset Users

32. Subparagraphs D(3) through (6) contain the various categories of Crypto-Asset Users classified by reference to date of the establishment of the relationship or type of Crypto-Asset User: “Individual Crypto-Asset User”, “Preexisting Individual Crypto-Asset User”, “Entity Crypto-Asset User”, “Preexisting Entity Crypto-Asset User”.

33. A Crypto-Asset User is classified, firstly, depending on whether it is an individual or an Entity and, secondly, depending on the date it established a relationship as such with a Reporting Crypto-Asset Service Provider. Thus, a Crypto-Asset User can be either a “Preexisting Individual Crypto-Asset User”, a “Preexisting Entity Crypto-Asset User”, an “Individual Crypto-Asset User” and/or an “Entity Crypto-Asset User”.

34. As such, Preexisting Individual Crypto-Asset Users and Preexisting Entity Crypto-Asset Users are Crypto-Asset Users that have established a relationship as a customer of the Reporting Crypto-Asset Service Provider as of [xx/xx/xxxx] and are therefore a subset of Individual Crypto-Asset Users and Entity Crypto-Asset Users, respectively.

Subparagraph D(7) – Reportable Person

35. Subparagraph D(7) defines the term "Reportable Person" as a Reportable Jurisdiction Person other than an Excluded Person

Subparagraph D(8) – Reportable Jurisdiction Person

36. As a general rule, an individual or Entity is a "Reportable Jurisdiction Person" if it is resident in a Reportable Jurisdiction under the tax laws of such jurisdiction.

37. Domestic laws differ in the treatment of partnerships (including limited liability partnerships). Some jurisdictions treat partnerships as taxable units (sometimes even as companies) whereas other jurisdictions adopt what may be referred to as the fiscally transparent approach, under which the partnership is disregarded for tax purposes. Where a partnership is treated as a company or taxed in the same way, it would generally be considered to be a resident of the Reportable Jurisdiction that taxes the partnership. Where, however, a partnership is treated as fiscally transparent in a Reportable Jurisdiction, the partnership is not "liable to tax" in that jurisdiction, and so cannot be a resident thereof.

38. An Entity such as a partnership, limited liability partnership or similar legal arrangement that has no residence for tax purposes shall be treated as resident in the jurisdiction in which its place of effective management is situated. For these purposes, a legal person or a legal arrangement is considered "similar" to a partnership and a limited liability partnership where it is not treated as a taxable unit in a Reportable Jurisdiction under the tax laws of such jurisdiction.

39. The "place of effective management" is the place where key management and commercial decisions that are necessary for the conduct of the Entity's business as a whole are in substance made. All relevant facts and circumstances must be examined to determine the place of effective management.

40. The term "Reportable Jurisdiction Person" also includes an estate of a decedent that was a resident of a Reportable Jurisdiction. In determining what is meant by "estate", reference must be made to each jurisdiction's particular rules on the transfer or inheritance of rights and obligations in the event of death (e.g. the rules on universal succession).

Subparagraph D(9) – Reportable Jurisdiction

41. Subparagraph D(9) defines "Reportable Jurisdiction" as any jurisdiction (a) with which an agreement or arrangement is in effect pursuant to which [Jurisdiction] is obligated to provide the information specified in Section II with respect to Reportable Persons resident in such jurisdiction, and (b) which is identified as such in a list published by [Jurisdiction]. Subparagraph D(9) therefore requires that the jurisdiction is identified in a published list as a Reportable Jurisdiction. Each jurisdiction must make such a list publicly available, and update it as appropriate (e.g. every time the jurisdiction signs an agreement with respect to exchanging information under these rules, or such an agreement enters into force).

Subparagraph D(10) – Controlling Persons

42. Subparagraph D(10) sets forth the definition of the term "Controlling Persons". This term corresponds to the term "beneficial owner" as described in Recommendation 10 and the Interpretative Note on Recommendation 10 of the Financial Action Task Force Recommendations (as adopted in February 2012), and must be interpreted in a manner consistent with such Recommendations, with the aim of protecting the international financial system from misuse including with respect to tax crimes.

43. For an Entity that is a legal person, the term "Controlling Persons" means the natural person(s) who exercises control over the Entity. "Control" over an Entity is generally exercised by the natural person(s) who ultimately has a controlling ownership interest in the Entity. A "controlling ownership interest" depends on the ownership structure of the legal person and is usually identified on the basis of a threshold applying a risk-based approach (e.g. any person(s) owning more than a certain percentage of the legal person, such as 25%). Where no natural person(s) exercises control through ownership interests, the Controlling Person(s) of the Entity will be the natural person(s) who exercises control of the Entity through other means. Where no natural person(s) is identified as exercising control of the Entity, the Controlling Person(s) of the Entity will be the natural person(s) who holds the position of senior managing official.

44. In the case of a trust, the term "Controlling Persons" means the settlor(s), the trustee(s), the protector(s) (if any), the beneficiary(ies) or class(es) of beneficiaries, and any other natural person(s) exercising ultimate effective control over the trust. The settlor(s), the trustee(s), the protector(s) (if any), and the beneficiary(ies) or class(es) of beneficiaries, must always be treated as Controlling Persons of a trust, regardless of whether or not any of them exercises control over the trust. It is for this reason that the second sentence of subparagraph D(10) supplements the first sentence of such subparagraph. In addition, any other natural person(s) exercising ultimate effective control over the trust (including through a chain of control or ownership) must also be treated as a Controlling Person of the trust. With a view to establishing the source of funds in the account(s) held by the trust, where the settlor(s) of a trust is an Entity, Reporting Crypto-Asset Service Providers must also identify the Controlling Person(s) of the settlor(s) and report them as Controlling Person(s) of the trust. For beneficiary(ies) of trusts that are designated by characteristics or by class, Reporting Crypto-Asset Service Providers should obtain sufficient information concerning the beneficiary(ies) to satisfy the Reporting Crypto-Asset Service Provider that it will be able to establish the identity of the beneficiary(ies) at the time of the pay-out or when the beneficiary(ies) intends to exercise vested rights. Therefore, that occasion will constitute a change in circumstances and will trigger the relevant procedures.

45. In the case of a legal arrangement other than a trust, the term "Controlling Persons" means persons in equivalent or similar positions as those that are Controlling Persons of a trust. Thus, taking into account the different forms and structures of legal arrangements, Reporting Crypto-Asset Service Providers should identify and report persons in equivalent or similar positions, as those required to be identified and reported for trusts.

46. In relation to legal persons that are functionally similar to trusts (e.g. foundations), Reporting Crypto-Asset Service Providers should identify Controlling Persons through similar customer due diligence procedures as those required for trusts, with a view to achieving appropriate levels of reporting.

Subparagraph D(11) – Active Entity

47. An Entity is an Active Entity, provided that it meets any of the criteria listed in subparagraph D(11).

48. Subparagraph D(11)(a) describes the criterion to qualify for the Active Entity status by reason of income and assets as follows: less than 50% of the Entity's gross income for the preceding calendar year or other appropriate reporting period is passive income and less than 50% of the assets held by

the Entity during the preceding calendar year or other appropriate reporting period are assets that produce or are held for the production of passive income.

49. In determining what is meant by "passive income", reference must be made to each jurisdiction's particular rules. Passive income would generally be considered to include the portion of gross income that consists of:

    a) dividends;

    b) interest;

    c) income equivalent to interest or dividends;

    d) rents and royalties, other than rents and royalties derived in the active conduct of a business conducted, at least in part, by employees of the Entity;

    e) annuities;

    f) income derived from Relevant Crypto-Assets;

    g) the excess of gains over losses from the sale or exchange of Relevant Crypto-Assets or Financial Assets;

    h) the excess of gains over losses from transactions (including futures, forwards, options, and similar transactions) in any Relevant Crypto-Assets or Financial Assets;

    i) the excess of foreign currency gains over foreign currency losses;

    j) net income from swaps; or

    k) amounts received under cash value insurance contracts.

    Notwithstanding the foregoing, passive income will not include, in the case of an Entity that regularly acts as a dealer in Relevant Crypto-Assets or Financial Assets, any income from any transaction entered into in the ordinary course of such dealer's business as such a dealer. Further, income received on assets to invest the capital of an insurance business can be treated as active income.

50. Subparagraph D(11)(b) describes the criterion to qualify for the Active Entity status for "holding Entities that are members of a nonfinancial group" as follows: substantially all of the activities of the Entity consist of holding (in whole or in part) the outstanding stock of, or providing financing and services to, one or more subsidiaries that engage in trades or businesses other than the business of a Financial Institution, except that an Entity does not qualify for this status if the Entity functions (or holds itself out) as an investment fund, such as a private equity fund, venture capital fund, leveraged buyout fund, or any investment vehicle whose purpose is to acquire or fund companies and then hold interests in those companies as capital assets for investment purposes.

51. With respect to the activities mentioned in subparagraph D(11)(b), "substantially all" means 80% or more. If, however, the Entity's holding or group finance activities constitute less than 80% of its activities but the Entity receives also active income (i.e. income that is not passive income) otherwise, it qualifies for the Active Entity status, provided that the total sum of activities meets the "substantially all test". For purposes of determining whether the activities other than holding and group finance activities of the Entity qualify it as an Active Entity, the test of subparagraph D(11)(a) can be applied to such other activities. For example, if a holding company has holding or finance and service activities to one or more subsidiaries for 60% and also functions for 40% as a distribution centre for the goods produced by the group it belongs to and the income of its distribution centre activities is active according to subparagraph D(11)(a), it is an Active Entity, irrespective of the fact that less than 80% of its activities consist of holding the outstanding stock of, or providing finance and services to, one or more subsidiaries. The term "substantially all" covers also a combination of holding stock of and

providing finance and services to one or more subsidiaries. The term “subsidiary” means any entity whose outstanding stock is either directly or indirectly held (in whole or in part) by the Entity.

52. One of the requirements listed in subparagraph D(11)(f) for “non-profit Entities” to qualify for the Active Entity status is that the applicable laws of the Entity’s jurisdiction of residence or the Entity’s formation documents do not permit any income or assets of the Entity to be distributed to, or applied for the benefit of, a private person or non-charitable Entity other than pursuant to the conduct of the Entity’s charitable activities, or as payment of reasonable compensation for services rendered, or as payment representing the fair market value of property which the Entity has purchased. In addition, the income or assets of the Entity could be distributed to, or applied for the benefit of, a private person or noncharitable Entity as payment of reasonable compensation for the use of property.

Paragraph IV (E) – Excluded Person

Subparagraph E(1) – Excluded Person

53. Subparagraph E(1) defines the term “Excluded Person” as (a) an Entity the stock of which is regularly traded on one or more established securities markets; (b) any Entity that is a Related Entity of an Entity described in clause (a); (c) a Governmental Entity; (d) an International Organisation; (e) a Central Bank; or (f) a Financial Institution other than an Investment Entity described in Section IV E(5)(b). Those Entities that are covered by the term “Excluded Person” are not subject to reporting under the Crypto-Asset Reporting Framework, in light of the limited tax compliance risks these Entities represent and/or the other tax reporting obligations certain of these Entities are subject to, including pursuant to the Common Reporting Standard. As such, the scope of Excluded Persons is, wherever adequate, aligned to the exclusions from reporting foreseen in the Common Reporting Standard.

Subparagraphs E(2)-(4) – Financial Institution, Custodial Institution, and Depository Institution

54. The terms “Financial Institution”, “Custodial Institution” and “Depository Institution” in subparagraphs E(2), (3) and (4), respectively, should be interpreted consistently with the Commentary of the Common Reporting Standard.

Subparagraph E(5) – Investment Entity

55. The term “Investment Entity” includes two types of Entities: Entities that primarily conduct as a business investment activities or operations on behalf of other persons, and Entities that are managed by those Entities or other Financial Institutions.

56. Subparagraph E(5)(a) defines the first type of “Investment Entity” as any Entity that primarily conducts as a business one or more of the following activities or operations for or on behalf of a customer:

    a) trading in money market instruments (cheques, bills, certificates of deposit, derivatives, etc.); foreign exchange; exchange, interest rate and index instruments; transferable securities; or commodity futures trading;

    b) individual and collective portfolio management; or

    c) otherwise investing, administering, or managing Financial Assets, or money (including Central Bank Digital Currencies), or Relevant Crypto-Assets on behalf of other persons.

57. Such activities or operations do not include rendering non-binding investment advice to a customer. For purposes of subparagraph E(5)(a), the term “customer” includes the Equity Interest holder of a collective investment vehicle, whereby the collective investment vehicle is considered to conduct its activities or operations as a business. For purposes of subparagraph E(5)(a)(iii), the term "investing,

administering, or trading" does not comprise the provision of services effectuating Exchange Transactions for or on behalf of customers.

58. Subparagraph E(5)(b) defines the second type of “Investment Entity” as any Entity the gross income of which is primarily attributable to investing, reinvesting, or trading in Financial Assets or Relevant Crypto-Assets, if the Entity is managed by another Entity that is a Depository Institution, a Custodial Institution, a Specified Insurance Company, or an Investment Entity described in subparagraph E(5)(a). An Entity is ‘managed by’ another Entity if the managing Entity performs, either directly or through another service provider, any of the activities or operations described in subparagraph E(5)(a) on behalf of the managed Entity. However, an Entity does not manage another Entity if it does not have discretionary authority to manage the Entity’s assets (in whole or part). Where an Entity is managed by a mix of Financial Institutions and individuals or Entities other than Financial Institutions, the Entity is considered to be managed by another Entity that is a Depository Institution, a Custodial Institution, a Specified Insurance Company, or an Investment Entity described in subparagraph E(5)(a), if any of the managing Entities is such another Entity. For example, a private trust company that acts as a registered office or registered agent of a trust or performs administrative services unrelated to the Financial Assets, Relevant Crypto-Assets or money of the trust, does not conduct the activities and operations described in subparagraph E(5)(a) on behalf of the trust and thus the trust is not “managed by” the private trust company within the meaning of subparagraph E(5)(b). Also, an Entity that invests all or a portion of its assets in a mutual fund, exchange traded fund, or similar vehicle will not be considered “managed by” the mutual fund, exchange traded fund, or similar vehicle. In both of these examples, a further determination needs to be made as to whether the Entity is managed by another Entity for the purpose of ascertaining whether the first-mentioned Entity falls within the definition of Investment Entity, as set out in subparagraph E(5)(b).

59. An Entity is treated as primarily conducting as a business one or more of the activities described in subparagraph E(5)(a), or an Entity’s gross income is primarily attributable to investing, reinvesting, or trading in Financial Assets or Relevant Crypto-Assets for purposes of subparagraph E(5)(b), if the Entity’s gross income attributable to the relevant activities equals or exceeds 50 per cent of the Entity’s gross income during the shorter of:

- the three-year period ending on 31 December of the year preceding the year in which the determination is made; or
- the period during which the Entity has been in existence.

60. For the purposes of the gross income test, all remuneration for the relevant activities of an Entity is to be taken into account, independent of whether that remuneration is paid directly to the Entity to which the test is applied or to another Entity.

61. The term “Investment Entity”, as defined in subparagraph E(5), does not include an Entity that is an Active Entity because it meets any of the criteria in subparagraphs D(11)(b) through (e).

62. An Entity would generally be considered an Investment Entity if it functions or holds itself out as a collective investment vehicle, mutual fund, exchange traded fund, private equity fund, hedge fund, venture capital fund, leveraged buy-out fund or any similar investment vehicle established with an investment strategy of investing, reinvesting, or trading in Financial Assets or Relevant Crypto-Assets. An Entity that primarily conducts as a business investing, administering, or managing non-debt, direct interests in real property on behalf of other persons, such as a type of real estate investment trust, will not be an Investment Entity.

63. Subparagraph E(5) also states that the definition of the term “Investment Entity” shall be interpreted in a manner consistent with similar language set forth in the definition of “financial institution” in the Financial Action Task Force Recommendations.

Subparagraphs E(6)-(16) – "Specified Insurance Company", "Governmental Entity", "International Organisation", "Central Bank", "Specified Electronic Money Product", "Financial Asset", "Equity Interest", "Insurance Contract", "Annuity Contract", "Cash Value Insurance Contract" and "Cash Value"

64. The terms "Specified Insurance Company", "Governmental Entity", "International Organisation", "Central Bank", "Specified Electronic Money Product", "Financial Asset", "Equity Interest", "Insurance Contract", "Annuity Contract", "Cash Value Insurance Contract", and "Cash Value" in subparagraphs E(6) through (16) should be interpreted consistently with the Commentary of the Common Reporting Standard.

Paragraph IV (F) – Miscellaneous

Subparagraph F(1) – Partner Jurisdiction

65. The term "Partner Jurisdiction" means any jurisdiction that has put in place equivalent legal requirements and that is included in a public list issued by [Jurisdiction].

Subparagraph F(2) – AML/KYC Procedures

66. The term "AML/KYC Procedures", as defined in subparagraph F(2), means the customer due diligence procedures of a Reporting Crypto-Asset Service Provider pursuant to the anti-money laundering or similar requirements to which such Reporting Crypto-Asset Service Provider is subject (e.g. know your customer provisions). These procedures include identifying and verifying the identity of the customer (including the beneficial owners of the customer), understanding the nature and purpose of the transactions, and on-going monitoring.

Subparagraph F(3) and (4) – Entity and Related Entity

67. Subparagraph F(3) defines the term "Entity" as a legal person or a legal arrangement. This term is intended to cover any person other than an individual (i.e. a natural person), in addition to any legal arrangement. Thus, e.g. a corporation, partnership, trust, *fideicomiso*, foundation (*fondation*, *Stiftung*), company, co-operative, association, or *asociación en participación*, falls within the meaning of the term "Entity".

68. An Entity is a "Related Entity" of another Entity, as defined in subparagraph F(4), if either Entity controls the other Entity, or the two Entities are under common control. For this purpose control includes direct or indirect ownership of more than 50% of the vote and value in an Entity. In this respect, Entities are considered Related Entities if these Entities are connected through one or more chains of ownership by a common parent Entity and if the common parent Entity directly owns more than 50% of the stock or other equity interest in at least one of the other Entities. A chain of ownership is to be understood as the ownership by one or more Entities of more than 50 percent of the total voting power of the stock of an Entity and more than 50 percent of the total value of the stock of an Entity, as illustrated by the following example:

Entity A owns 51% of the total voting power and 51% of the total value of the stock of Entity B. Entity B in its turn owns 51% of the total voting power and 51% of the total value of the stock of Entity C. Entities A and C are considered "Related Entities" pursuant to subparagraph F(4) of Section IV because Entity A has a direct ownership of more than 50 percent of the total voting power of the stock and more than 50 percent of total value of the stock of Entity B, and because Entity B has a direct ownership of more than 50 percent of the total voting power of the stock and more than 50 percent of total value of the stock of Entity C. Entities A and C are, hence, connected through chains of ownership.

Notwithstanding the fact that Entity A proportionally only owns 26 percent of the total value of the stock and voting rights of Entity C, Entity A and Entity C are Related Entities.

Subparagraph F(5) – TIN

69. According to subparagraph F(5), the term "TIN" means Taxpayer Identification Number (or functional equivalent in the absence of a Taxpayer Identification Number). A Taxpayer Identification Number is a unique combination of letters or numbers, however described, assigned by a jurisdiction to an individual or an Entity and used to identify the individual or Entity for purposes of administering the tax laws of such jurisdiction.

70. TINs are also useful for identifying taxpayers who invest in other jurisdictions. TIN specifications (i.e. structure, syntax, etc.) are set by each jurisdiction's tax administrations. Some jurisdictions even have a different TIN structure for different taxes or different categories of taxpayers (e.g. residents and non-residents).

71. While many jurisdictions utilise a TIN for personal or corporate taxation purposes, some jurisdictions do not issue a TIN. However, these jurisdictions often utilise some other high integrity number with an equivalent level of identification (a "functional equivalent"). Examples of that type of number include, for individuals, a social security/insurance number, citizen/personal identification/service code/number, and resident registration number; and for Entities, a business/company registration code/number.

72. In addition, some jurisdictions may also offer government verification services for the purpose of ascertaining the identity and tax residence of their taxpayers. Such government verification services are electronic processes made available by the jurisdiction to entities or individuals with third party reporting obligations (such as Reporting Crypto-Asset Service Providers) for the purposes of ascertaining the identity and tax residence of reportable persons (such as Crypto-Asset Users or their Controlling Persons). Where a tax administration opts for identification of Crypto-Asset Users or Controlling Persons based on an Application Programming Interface (API) solution, it would normally make an API portal accessible to Reporting Crypto-Asset Service Providers. Subsequently, if the Crypto-Asset User's or Controlling Person's self-certification indicates residence in that jurisdiction, the Reporting Crypto-Asset Service Provider can direct the Crypto-Asset User or Controlling Person to the API portal which would allow the jurisdiction to identify the Crypto-Asset User or Controlling Person based on its domestic taxpayer identification requirements (for example a government ID or username). Upon successful identification of the Crypto-Asset User or Controlling Person as a taxpayer of that jurisdiction, the jurisdiction, via the API portal, would provide the Reporting Crypto-Asset Service Provider with a unique reference number or code allowing the jurisdiction to match the Crypto-Asset User or Controlling Person to a taxpayer within its database. Where the Reporting Crypto-Asset Service Provider subsequently reports information concerning that Crypto-Asset User or Controlling Person, it would include the unique reference number or code to allow the jurisdiction receiving the information to enable matching of the Crypto-Asset User or Controlling Person. In this respect, a unique reference number, code or other confirmation received by a Reporting Crypto-Asset Service Provider in respect of a Crypto-Asset User or a Controlling Person via a government verification service is also a functional equivalent to a TIN.

73. Jurisdictions are expected to provide Reporting Crypto-Asset Service Providers with information with respect to the issuance, collection and, to the extent possible and practical, the structure and other specifications of taxpayer identification numbers and their functional equivalents. The OECD will endeavour to facilitate its dissemination. Such information will facilitate the collection of accurate TINs by Reporting Crypto-Asset Service Providers.

Subparagraph F(6) – Branch

74. The term “Branch” means a unit, business or office of a Reporting Crypto-Asset Service Provider that is treated as a branch under the regulatory regime of a jurisdiction or that is otherwise regulated under the laws of a jurisdiction as separate from other offices, units, or branches of the Reporting Crypto-Asset Service Provider. All units, businesses, or offices of a Reporting Crypto-Asset Service Provider in a single jurisdiction shall be treated as a single branch.

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Amendments to the Common Reporting Standard

Introduction

1. The CRS was designed to promote tax transparency with respect to financial accounts held abroad, and requires the collection and automatic exchange of information of the identity of account holders, as well as the balance and the income paid or credited to the accounts. Since the CRS was adopted in 2014, over seven years have passed, in which over 100 jurisdictions have implemented the CRS.

2. As such, there is now solid experience with the CRS both by governments and financial institutions. The OECD is therefore conducting the first comprehensive review of the CRS, with the aim of improving the operation of the CRS. To that end, the OECD has taken on board input from jurisdictions that have implemented the CRS, as well as from financial institutions reporting under the CRS, in order to determine areas meriting a review. This has resulted in two key work streams.

3. Firstly, the review seeks to bring new, digital financial products within scope of the CRS, as they may constitute a credible alternative to holding money or financial assets in an account that is currently subject to CRS reporting. In this regard, the proposal extends the scope of the CRS to cover electronic money products and Central Bank Digital Currencies. In light of the development of the CARF, the proposals also include changes to the definitions of Financial Asset and Investment Entity, to ensure that derivatives that reference Crypto-Assets and are held in Custodial Accounts and Investment Entities investing in Crypto-Assets are covered by the CRS. At the same time, the proposal contains new provisions to ensure an efficient interaction between the CRS and the CARF, in particular to limit instances of duplicative reporting.

4. Secondly, the review seeks to improve the due diligence procedures and reporting outcomes under the current CRS, with a view to increasing the usability of the information for tax administrations and limiting burdens on financial institutions, where possible.

Covering new digital financial products

Digital money products

5. Certain e-money products, as well as Central Bank Digital Currencies (CBDCs) representing a digital fiat currency issued by a Central Bank, can be considered functionally similar to a traditional bank account from the perspective of customers and may therefore entail tax compliance concerns similar to those associated with bank accounts currently covered by the CRS. To ensure a level-playing field between digital money products and traditional bank accounts and to ensure consistent reporting outcomes, the following amendments to the CRS are proposed:

- the term Specified Electronic Money Product is introduced, covering digital representations of a single fiat currency that are issued on receipt of funds for the purpose of making payment transactions, that are represented by a claim on the issuer denominated in the same fiat currency, that are accepted by a natural or legal person other than the issuer; and that, by virtue of regulatory requirements to which the issuer is subject, are redeemable at par for the same fiat currency upon request of the holder of the product;
- the term Central Bank Digital Currency (CBDC) is introduced, covering any official currency of a jurisdiction, issued in digital form by a Central Bank;
- the definition of Depository Institution and the related Commentary are amended to include those e-money providers that are not already Depository Institutions under the current definition and that are relevant from a CRS perspective by virtue of holding Specified Electronic Money Products or CBDCs;
- the definition of Depository Account is amended to include accounts that hold Specified Electronic Money Products and CBDCs for customers. Further clarifications are included in the commentary to describe the conditions under which digital money products can be considered to be "held" in a Depository Account by a Depository Institution both in the scenario where a relevant e-money product is held in a centralised manner (whereby the digital money may only be held by and spent via its issuer) and a decentralised manner (whereby the digital money can be held without the issuer's intermediation);
- two new categories of Excluded Accounts are added to bring out of scope low-risk digital money products that represent a low-risk in light of the limited capacity to store monetary value over time, namely Specified Electronic Money Products whose value does not exceed a certain de-minimis amount, as well as Specified Electronic Money Products that are created solely to facilitate a funds transfer pursuant to instructions of a customer and that cannot be used to store value.
- additional wording is included on the definition of Non-reporting Financial Institution to clarify that a Central Bank is not considered a Non-reporting Financial Institution when it holds CBDCs on behalf of Non-Financial Entities or individuals.

Coverage of derivatives referencing Crypto-Assets and Investment Entities investing in Crypto-Assets

6. In order to ensure consistency between derivatives referencing Crypto-Assets and derivatives referencing (other) Financial Assets, the latter of which are already covered under the CRS, it is proposed to include derivative contracts referencing Crypto-Assets in the definition of Financial Assets, thereby allowing Financial Institutions to apply the same due diligence and reporting procedures to derivatives referencing different types of assets.

7. Beyond the direct transacting in and holding of Crypto-Assets, investors can alternatively invest in Crypto-Assets through funds and other wealth management vehicles, whose purpose is to acquire and hold Relevant Crypto-Assets for investment purposes. By doing so, investors can obtain exposure to price fluctuations of the fund's underlying Crypto-Assets, without directly owning any Crypto-Assets.

8. Interests in funds and wealth management vehicles are already subject to reporting under the CRS, either as Equity or Debt Interests in Investment Entities or as Financial Assets held in Custodial Accounts. However, the definition of Investment Entity does not currently contain Crypto-Assets as a category of eligible investments that would bring the Entity in scope of the CRS, as the definition presently only encompasses Financial Assets and money. It is therefore proposed to expand the definition of Investment Entity to include the activity of investing in Crypto-Assets.

Addressing duplicative reporting on Financial Assets in crypto-form

9. One feature of the emergence of cryptography is that Financial Assets, as defined in the CRS, can be issued in the form of a Crypto-Asset. This gives rise to a potential duplicative reporting issue, whereby the Crypto-Asset framework's scope includes all Crypto-Assets, while the scope of the CRS includes all Financial Assets held in Custodial Accounts, regardless of the manner in which such Financial Asset is issued or its ownership is recorded (e.g. on the blockchain, in a shareholder register or a by book entry record with a Custodial Institution).

10. It is proposed to include language in the CRS Commentary which confirms that the enumerations of assets under the Financial Asset definition do not fall outside of its scope purely by virtue of being issued or recorded as a Crypto-Asset. As certain assets may simultaneously be subject to reporting as Crypto-Assets under the new Crypto-Asset Reporting Framework and Financial Assets under the CRS, the proposal also foresees that where the disposal of a Financial Asset is reported upon under the new Crypto-Asset Reporting Framework, then no gross proceeds reporting is required under the CRS.

Further amendments to improve CRS reporting

11. As set out above, the OECD is proposing to make a set of further amendments to the CRS and Commentary with a view to improving the quality and usability of CRS reporting. Each of the proposed changes is briefly outlined and motivated below. Each proposed change also includes a reference to the relevant sections of the CRS.

Expansion of the reporting requirements in respect of Account Holders, Controlling Persons and the Financial Accounts they own (Section I – Reporting requirements)

12. When the CRS was designed, the reporting requirements set out in Section I were primarily focussed on the transmission of key identification items in respect of Account Holders and Controlling Persons, as well as on information related to the income realised and balances present on Financial Accounts.

13. At the same time, Financial Institutions may have knowledge of a set of other facts and circumstances surrounding the Account Holders, Controlling Persons and the Financial Accounts they own, which, if reported, would allow tax administrations to better contextualise the information they receive under the CRS and to facilitate the use of the data for tax compliance purposes. It is therefore proposed that the reporting requirements under the CRS are expanded to cover the following:

- the role of Controlling Persons in relation to the Entity Account Holder – this would ensure that tax administrations have visibility on the role(s) a Controlling Person plays with respect to the Entity holding the account, allowing a distinction between those Controlling Persons that have an interest through ownership, control or as beneficiaries, as opposed to those that have a managerial role (e.g. senior management officials, protectors, trustees). Furthermore, in the case of any Equity Interest held in an Investment Entity that is a legal arrangement, the role(s) by virtue of which the Reportable Person is an Equity Interest holder. Tax administrations have highlighted that this information would be very helpful in understanding ownership and control structures and to assess whether taxable income or wealth is to be allocated to the Controlling Person;
- whether the account is a Preexisting Account or a New Account and whether a valid self-certification has been obtained – this information would give tax administrations visibility with respect to the due diligence procedures applied, and therewith give insights into the reliability of the information;
- whether the account is a joint account, as well as the number of joint Account Holders – this information would allow tax administrations to take the fact into account that the income and

balance on joint accounts may not be attributable in full to each Account Holder, but would rather need to be apportioned, as appropriate, between the holders; and

- the type of Financial Account – this distinction between Depository Accounts, Custodial Accounts, Equity and debt Interests and Cash Value Insurance Contracts will allow tax administrations to better understand the financial investments held by their taxpayers.

Reliance on AML/KYC Procedures for determining Controlling Persons (Sections V and VI – Due diligence requirements)

14. The conditions under which a Financial Institution can rely on AML/KYC Procedures to determine the Controlling Persons of an Entity Account Holder have been moved into the text of the CRS itself. In addition, since the 2012 FATF Recommendation have now been in place for a prolonged period, it is specified for both Preexisting and New Entity Accounts that AML/KYC Procedures must be in line with 2012 FATF Recommendations. Finally, it is clarified that, if AML/KYC Procedures are not consistent with 2012 FATF Recommendations, the Financial Institution must apply substantially similar procedures.

Exceptional due diligence procedure for cases where a valid self-certification was not obtained, in order to ensure reporting with respect to such accounts (Sections II – VII – Due diligence requirements)

15. As the CRS requires Financial Institutions to obtain and validate self-certifications for all New Accounts, the CRS does not foresee any fall-back due diligence procedure to be applied in exceptional cases where a Reporting Financial Institution did not comply with the requirement to obtain a valid self-certification.

16. It is therefore proposed to require Reporting Financial Institutions to temporarily determine the residence of the Account Holders and/or Controlling Persons on the basis of the due diligence procedures for Preexisting Accounts. It should be noted that this is not a standard procedure and is not an alternative to the requirement to obtain a valid self-certification.

Qualification of certain capital contribution accounts as Excluded Accounts (Section VIII(C)(17)(e) – Definition of Excluded Account)

17. At present, the Excluded Account category with respect to escrow accounts only covers instances where amounts are put on escrow for purposes of (i) a court order or judgement, (ii) a sale, exchange or lease of real or personal property under certain conditions and (iii) to cover a future payment of insurance premiums or taxes.

18. As such, the category does currently not cover instances of so-called capital contribution accounts, the purpose of which is to block funds for a limited period of time in view of the incorporation of a new company or a pending capital increase.

19. It is proposed to include these accounts as Excluded Accounts, provided that adequate safeguards are in place to avoid the misuse of such accounts. This would for instance be the case where such transactions are subject to regulation and, as a matter of law, are required to take place via a dedicated bank account, whereby the underlying funds are frozen until the capital contribution has taken place and, in the case of an incorporation, when the company has been legally established and registered in the jurisdiction's commercial register. As soon as the company is legally established and registered, the capital contribution account is then transformed into a regular Depository Account or the capital amount is transferred to a Depository Account and the initial capital contribution account is closed. On the contrary, if the company is not established, the contributions would be refunded to the subscriber(s) on Depository Account(s) subject to the CRS due diligence obligations.

20. In order to ensure that such accounts are only used for the completion of an imminent capital contribution transaction, it is proposed that such an account is treated as an Excluded Account only where the use of such accounts is prescribed by law and for a maximum period of 12 months.

Broadening of the scope of Depository Institution (Commentary to Depository Institution definition)

21. The Commentary on the term Depository Institution has been amended to expand the scope to include entities that are merely licensed to engage in certain banking activities but are not actually so engaged.

Notions of customer and business in the context of Investment Entities (Commentary to Investment Entity definition)

22. With respect to Investment Entities pursuant to subparagraph a of the definition, doubts have arisen as to the interpretation of the term "customer", as well as the condition that the activities listed in subparagraph must be conducted "as a business". This question is in particular relevant with respect to funds.

23. It is therefore proposed to clarify the scope of the definition via the terms "customer" and "business", by explicitly confirming in Commentary that investors of funds can be considered "customers" and the funds themselves can be considered to conduct activities "as a business". This is consistent with the interpretation of the definition of Financial Institution in the FATF Recommendations, on which subparagraph a is based.

Reporting in respect of dual-resident account-holders (paragraphs 4 and 7 to the Commentary on Section IV and VII, respectively)

24. The Commentary to the CRS acknowledges that an Entity or individual Account Holder may be resident for tax purposes in two or more jurisdictions. The Commentary also specifies that, in the context of the self-certification process, such dual-residents may rely on the tie-breaker rules contained in applicable tax conventions to determine their residence for tax purposes.

25. This may result in prematurely treating the Account Holder as tax resident in a single jurisdiction for the purposes of the CRS, leading to the CRS information with respect to the Account Holder not being reported to the other jurisdiction(s).

26. It is therefore proposed to revise the Commentary to state that, in dual-residence (or multi-residence) scenarios, all countries of tax residence should be self-certified by the Account Holder and the Account Holder should be treated as tax resident in all identified jurisdictions. The proposal further foresees the deletion of the Commentary language in relation to the tiebreaker rules to determine the jurisdiction of residence for self-certification purposes.

Reflecting Government Verification Services within the CRS due diligence procedures

27. At present, the CRS due diligence procedures are based on AML/KYC documentation, self-certifications and other account-related information collected by Financial Institutions. At the same time, technology is evolving in a direction that can potentially drastically simplify the documentation of taxpayers in a highly-reliable manner. Specifically, so-called Government Verification Services (GVS) may allow a third-party information provider, such as a Financial Institution, to obtain a direct confirmation in the form of an IT-token or other unique identifier from the tax administration of the jurisdiction of residence of the taxpayer in relation to their identity and tax residency.

28. It is therefore proposed to also allow Financial Institutions to rely on a GVS procedure to document an Account Holder or Controlling Person in the CRS due diligence procedures, with the aim of making the CRS future-proof for future IT-developments. In this respect, it is proposed that the confirmation of an Account Holder's or Controlling Person's identity and tax residence via a GVS or similar IT-driven process is recognised as a functional equivalent to a TIN.

Look-through requirements in respect of Controlling Persons of publicly traded Entities (paragraphs 21 and 19 to the Commentary on Section V and VI, respectively)

29. The CRS due diligence procedures in respect of both Pre-existing and New Entity Accounts require Reporting Financial Institutions to look-through Passive NFEs to determine their Controlling Persons. In doing so, Reporting Financial Institutions may rely on information collected and maintained pursuant to AML/KYC procedures. In this respect, the interpretative note to FATF Recommendation 10 (customer due diligence) provides that financial institutions are not required to request information on the beneficial owner(s) of publicly traded companies if such company is already otherwise subject to disclosure requirements ensuring adequate transparency of beneficial ownership information. It is proposed to expressly acknowledge this exclusion within the CRS, given the priority to maintain alignment with the FATF Recommendations and the limited utility of such information for tax risk assessment purposes.

Integrating CBI/RBI guidance within the CRS (paragraph 3bis to Commentary on Section VII)

30. In October 2018, the OECD released explanatory guidance for Reporting Financial Institutions aimed at addressing the misuse of certain citizenship and residence by investment (CBI/RBI) schemes, allowing foreign individuals to obtain citizenship or temporary or permanent residence rights on the basis of local investments or against a flat fee, to circumvent the CRS.

31. The explanatory guidance reiterates that a Financial Institution may not rely on a self-certification or Documentary Evidence where it knows or has reason to know, that it is incorrect or unreliable. In making this determination, Financial Institutions should take into account the information of potentially high-risk CBI/RBI schemes. The guidance also includes a number of additional questions that Financial Institutions may raise to determine the appropriate jurisdiction(s) of CRS reporting. It is proposed to include the explanatory guidance in the Commentary.

Incorporating FAQs

32. Since the CRS was adopted in 2014, the OECD has been regularly asked to provide guidance on the interpretation of the CRS. This has been typically done through the development of frequently-asked questions (FAQs) that are published on the OECD website. In order to reflect the substantive guidance given through the FAQs in the CRS itself, language has been added to the Commentary in several places. FAQs not explicitly incorporated into the Commentary still remain valuable guidance for interpreting the CRS.

Transitional measures

33. Transitional measures are needed to provide Financial Institutions sufficient time to fully operationalise the changes to the CRS. Such measures are particularly important with respect to the proposal to include digital money products in scope of the CRS, which would subject entirely new Entities with existing account relationships to CRS reporting obligations, but also other Financial Institutions that are already subject to the CRS will have new Reportable Accounts in respect of the digital money products they offer. The proposal therefore provides the same transitional measures for these Financial Institutions and Financial Accounts as when the CRS was initially implemented. This is achieved by treating accounts

that are Financial Accounts solely by virtue of the amendments to the CRS and maintained by the Reporting Financial Institutions prior to the effective date of the revised CRS as Preexisting Accounts, and such accounts opened on or after this date are treated as New Accounts.

34. Further, with respect to reporting on the role(s) by virtue of which each Reportable Person is a Controlling Person, it is understood that such information may not necessarily be collected or maintained in a readily available, electronic manner. It is therefore proposed to provide for a two year transition period during which a Reporting Financial Institution is only required to collect such information with respect to Financial Accounts maintained prior to the effective date of the revised CRS, if such information is available in the electronically searchable data of the Reporting Financial Institution.

Questions for public consultation

The OECD invites input on the following key aspects of the draft amendments to the Common Reporting Standard:

Specified Electronic Money Products

1. Taking into account that the definition of "Specified Electronic Money Product" aims to cover products that do not give rise to gain or loss by reference to the underlying fiat currency, would the proposed definition cover the correct e-money products and be practically implementable? Do you see a need to either widen or restrict the scope or amend the criteria? If so, why and in which manner?
2. What would in your view be the appropriate account balance threshold to exclude low-risk e-money products from the scope of the CRS and why? Are there any alternative criteria to define low-risk e-money products?
3. Consistent with other provisions of the CRS, the de minimis thresholds for e-money would be subject to the account aggregation rules contained in paragraph C of Section VII of the CRS to avoid circumvention of CRS reporting by spreading amounts over multiple e-money products. Alternatively, a (significantly) lower threshold could be considered, that would not be subject to the account aggregation rules. Which of the two would be the most workable option and why?

Excluded Accounts

1. Do you consider the above proposal to qualify certain capital contribution accounts as Excluded Accounts useful? Are the conditions sufficiently clear and practically implementable?
2. Are there any other types of accounts or financial instruments that present low tax compliance risks and that should be added to the Excluded Account definition?

Treatment of non-profit Entities under the Active / Passive NFE distinction

1. While most Active NFEs are not treated as Investment Entities even if they meet the Investment Entity definition, this carve-out does not apply to Entities that are Active NFEs by virtue of being a non-profit Entity as defined in subparagraph D(9)(h) of Section VIII. Representatives from the philanthropy sector have highlighted that this can lead to highly undesirable outcomes, requiring genuine public benefit foundations to apply due diligence procedures in respect of all beneficiaries of grant payments and report on grant payments to non-resident beneficiaries, such as for instance disadvantaged students receiving scholarships. At the same time, concerns have been expressed by governments that simply extending the carve out from the Investment Entity definition to all non-profit Entities described in Subparagraph D(9)(h) of Section VIII could give rise to situations where Investment Entities would circumvent their reporting obligations under the CRS by improperly claiming the status of non-profit

Entities. Are there other measures or criteria that could be envisaged to ensure that genuine non-profit Entities are effectively excluded from reporting obligations as an Investment Entity in a manner that would not give rise to potential circumvention?

Reliance on AML/KYC Procedures for determining Controlling Persons

1. Are there still instances where Financial Institutions do not apply AML/KYC Procedures that are consistent with 2012 FATF Recommendation for the purpose of determining Controlling Persons of Entity Account Holders?

Collection of TIN for Preexisting Accounts

1. The inclusion of the TIN of Reportable Persons (if issued by the jurisdiction of residence) significantly increases the reliability and utility of the CRS information for tax administrations. Although not included in the current proposal, the OECD is still exploring feasible measures to ensure the collection and reporting of TINs with respect to Pre-Existing Accounts. What approaches could Financial Institutions take to collect TIN information in respect of Pre-Existing Accounts, while mitigating potential burdens for Reporting Financial Institutions?

Dual-resident Account Holders

1. The proposed changes to the Commentary foresee that Account Holders that are resident for tax purposes in two or more jurisdictions under the domestic laws of such jurisdictions declare all jurisdictions of residence in the self-certification and that Reporting Financial Institution must treat the account as a Reportable Account in respect of each jurisdiction. The OECD is still considering whether an exception to this rule should apply where the Account Holder provides the Reporting Financial Institution with government-issued documentation to resolve cases of dual residence under applicable tax treaties. Are there instances where Reporting Financial Institutions have received such documentation and, if so, in what form (e.g. a letter issued by one or more competent authorities)?

Integrating CBI/RBI guidance within the CRS

1. Are there any additional and/or alternative questions, other than those already in the CBI/RBI guidance, that would be useful to include in the Commentary to the CRS, for purposes of requiring Financial Institutions to determine the jurisdiction(s) of residence of a CBI/RBI holder?

Transitional Measures

1. Are the proposed transitional measures in Section X appropriate for Reporting Financial Institutions to update their processes and systems to comply with the proposed amendments to the CRS?

Other comments

1. Are there any other measures that could be taken to ensure the seamless integration of the CRS with the Crypto-Asset Reporting Framework?
2. Comments are also welcomed on all other aspects of amendments to the CRS.

Technical proposals

Rules

Section I: General Reporting Requirements

A. Subject to paragraphs C through F, each Reporting Financial Institution must report the following information with respect to each Reportable Account of such Reporting Financial Institution:

1.

a) the name, address, jurisdiction(s) of residence, TIN(s) and date and place of birth (in the case of an individual) of each Reportable Person that is an Account Holder of the account *and whether the Account Holder has provided a valid self-certification*;

b) in the case of any Entity that is an Account Holder and that, after application of the due diligence procedures consistent with Sections V, VI and VII, is identified as having one or more Controlling Persons that is a Reportable Person, the name, address, jurisdiction(s) of residence and TIN(s) of the Entity and the name, address, jurisdiction(s) of residence, TIN(s) and date, and place of birth of each Reportable Person, *as well as the role(s) by virtue of which each Reportable Person is a Controlling Person of the Entity and whether a valid self-certification has been provided for each Reportable Person; and*

c) *whether the account is a joint account, including the number of joint Account Holders.*

2. the account number (or functional equivalent in the absence of an account number*), the type of account and whether the account is a Preexisting Account or a New Account*;

3. the name and identifying number (if any) of the Reporting Financial Institution;

4. the account balance or value (including, in the case of a Cash Value Insurance Contract or Annuity Contract, the Cash Value or surrender value) as of the end of the relevant calendar year or other appropriate reporting period or, if the account was closed during such year or period, the closure of the account;

5. in the case of any Custodial Account:

    a) the total gross amount of interest, the total gross amount of dividends, and the total gross amount of other income generated with respect to the assets held in the account, in each case paid or credited to the account (or with respect to the account) during the calendar year or other appropriate reporting period; and

    b) the total gross proceeds from the sale or redemption of Financial Assets paid or credited to the account during the calendar year or other appropriate reporting period with respect to which the Reporting Financial Institution acted as a custodian, broker, nominee, or otherwise as an agent for the Account Holder.

6. in the case of any Depository Account, the total gross amount of interest paid or credited to the account during the calendar year or other appropriate reporting period;

6bis. in the case of any Equity Interest held in an Investment Entity that is a legal arrangement, the role(s) by virtue of which the Reportable Person is an Equity Interest holder; and

7. in the case of any account not described in subparagraph A(5) or (6), the total gross amount paid or credited to the Account Holder with respect to the account during the calendar year or other appropriate reporting period with respect to which the Reporting Financial Institution is the obligor

or debtor, including the aggregate amount of any redemption payments made to the Account Holder during the calendar year or other appropriate reporting period.

B. The information reported must identify the currency in which each amount is denominated.

C. Notwithstanding subparagraph A(1), with respect to each Reportable Account that is a Preexisting Account, the TIN(s) or date of birth is not required to be reported if such TIN(s) or date of birth is not in the records of the Reporting Financial Institution and is not otherwise required to be collected by such Reporting Financial Institution under domestic law. However, a Reporting Financial Institution is required to use reasonable efforts to obtain the TIN(s) and date of birth with respect to Preexisting Accounts by the end of the second calendar year following [xx/xx/xxxx].

D. Notwithstanding subparagraph A(1), the TIN is not required to be reported if (i) a TIN is not issued by the relevant Reportable Jurisdiction or (ii) the domestic law of the relevant Reportable Jurisdiction does not require the collection of the TIN issued by such Reportable Jurisdiction.

E. Notwithstanding subparagraph A(1), the place of birth is not required to be reported unless the Reporting Financial Institution is otherwise required to obtain and report it under domestic law and it is available in the electronically searchable data maintained by the Reporting Financial Institution.

F. Notwithstanding paragraph A, the information to be reported with respect to [xxxx] is the information described in such paragraph, except for gross proceeds described in subparagraph A(5)(b).

G. *Notwithstanding subparagraph A(5)(b), the gross proceeds from the sale or redemption of a Financial Asset are not required to be reported to the extent such gross proceeds from the sale or redemption of such Financial Asset are reported by the Reporting Financial Institution under the [Crypto-Asset Reporting Framework].*

[…]

Section V: Due Diligence for Preexisting Entity Accounts

The following procedures apply for purposes of identifying Reportable Accounts among Preexisting Accounts.

[…]

D. Review Procedures for Identifying Entity Accounts With Respect to Which Reporting Is Required

[…]

2. Determine Whether the Entity is a Passive NFE with One or More Controlling Persons Who Are Reportable Persons

[…]

b) **Determining the Controlling Persons of an Account Holder.** For the purposes of determining the Controlling Persons of an Account Holder, a Reporting Financial Institution may rely on information collected and maintained pursuant to AML/KYC Procedures, *provided that such procedures are consistent with the 2012 FATF Recommendations. If the Reporting Financial Institution is not legally required to apply AML/KYC Procedures that are consistent with the 2012 FATF Recommendations, it must apply substantially similar procedures for the purpose of determining the Controlling Persons*.

[…]

Section VI: Due Diligence for New Entity Accounts

The following procedures apply for purposes of identifying Reportable Accounts among New Entity Accounts.

[…]

A. Review Procedures for Identifying Entity Accounts With Respect to Which Reporting Is Required

[…]

2. Determine Whether the Entity is a Passive NFE with One or More Controlling Persons Who Are Reportable Persons

[…]

b) **Determining the Controlling Persons of an Account Holder**. For the purposes of determining the Controlling Persons of an Account Holder, a Reporting Financial Institution may rely on information collected and maintained pursuant to AML/KYC Procedures, *provided that such procedures are consistent with the 2012 FATF Recommendations. If the Reporting Financial Institution is not legally required to apply AML/KYC Procedures that are consistent with the 2012 FATF Recommendations, it must apply substantially similar procedures for the purpose of determining the Controlling Persons.*

[…]

Section VII: Special Due Diligence Rules

The following additional rules apply in implementing the due diligence procedures described above:

A. Reliance on Self-Certifications and Documentary Evidence

A Reporting Financial Institution may not rely on a self-certification or Documentary Evidence if the Reporting Financial Institution knows or has reason to know that the self-certification or Documentary Evidence is incorrect or unreliable.

Abis. Temporary lack of Self-Certification

In exceptional circumstances where a self-certification cannot be obtained by a Reporting Financial Institution in respect of a New Account in time to meet its due diligence and reporting obligations with respect to the reporting period during which the account was opened, the Reporting Financial Institution must apply the due diligence procedures for Preexisting Accounts, until such self-certification is obtained and validated.

[…]

Section VIII: Defined Terms

A. Reporting Financial Institution

[…]

5. The term "**Depository Institution**" means any Entity that**:**

a) accepts deposits in the ordinary course of a banking or similar business*; or*

b) holds Specified Electronic Money Products or Central Bank Digital Currencies for the benefit of customers.

[…]

6. The term "**Investment Entity**" means any Entity:

a) that primarily conducts as a business one or more of the following activities or operations for or on behalf of a customer:

i. trading in money market instruments (cheques, bills, certificates of deposit, derivatives, etc.); foreign exchange; exchange, interest rate and index instruments; transferable securities; or commodity futures trading;

ii. individual and collective portfolio management; or

iii. otherwise investing, administering, or managing Financial Assets*,* ~~or~~ money *, or Relevant Crypto-Assets* on behalf of other persons; or

b) the gross income of which is primarily attributable to investing, reinvesting, or trading in *Financial Assets or Relevant Crypto-Assets, if the Entity is managed by another Entity that is a Depository Institution, a Custodial Institution*, a Specified Insurance Company, or an Investment Entity described in subparagraph A(6)(a).

An Entity is treated as primarily conducting as a business one or more of the activities described in subparagraph A(6)(a), or an Entity's gross income is primarily attributable to investing, reinvesting, or trading in Financial Assets *or Relevant Crypto-Assets* for purposes of subparagraph A(6)(b), if the Entity's gross income attributable to the relevant activities equals or exceeds 50 per cent of the Entity's gross income during the shorter of: (i) the three-year period ending on 31 December of the year preceding the year in which the determination is made; or (ii) the period during which the Entity has been in existence. *For the purposes of subparagraph A(6)(a)(iii), the term "otherwise investing, administering, or managing Financial Assets, money, or Relevant Crypto-Assets on behalf of other persons" does not include the provision of services effectuating Exchange Transactions for or on behalf of customers*. The term "Investment Entity" does not include an Entity that is an Active NFE because it meets any of the criteria in subparagraphs D(9)(d) through (g).

This paragraph shall be interpreted in a manner consistent with similar language set forth in the definition of "financial institution" in the Financial Action Task Force Recommendations.

[…]

7. The term **"Financial Asset"** includes a security (for example, a share of stock in a corporation; partnership or beneficial ownership interest in a widely held or publicly traded partnership or trust; note, bond, debenture, or other evidence of indebtedness), partnership interest, commodity, swap (for example, interest rate swaps, currency swaps, basis swaps, interest rate caps, interest rate floors, commodity swaps, equity swaps, equity index swaps, and similar agreements), Insurance Contract or Annuity Contract, or any interest (including a futures or forward contract or option) in a security*, Relevant Crypto-Asset*, partnership interest, commodity, swap, Insurance Contract, or Annuity Contract. The term "Financial Asset" does not include a non-debt, direct interest in real property.

[…]

*9. The term **"Specified Electronic Money Product"** means any product that is:*

a) a digital representation of a single Fiat Currency;

b) issued on receipt of funds for the purpose of making payment transactions;

c) represented by a claim on the issuer denominated in the same Fiat Currency;

d) accepted by a natural or legal person other than the issuer; and

e) by virtue of regulatory requirements to which the issuer is subject, redeemable at any time and at par value for the same Fiat Currency upon request of the holder of the product.

*10. The term "**Central Bank Digital Currency**" means any digital Fiat Currency issued by a Central Bank.*

*11. The term **"Fiat Currency"** means the official currency of a jurisdiction, issued by a jurisdiction or by a jurisdiction's designated Central Bank or monetary authority, as represented by physical banknotes or coins or by money in different digital forms, including bank reserves, commercial bank money, electronic money products and Central Bank Digital Currencies.*

*12. The term **"Crypto-Asset"** means a digital representation of value that relies on a cryptographically secured distributed ledger or a similar technology to validate and secure transactions.*

*13. The term **"Relevant Crypto-Asset"** means any Crypto-Asset that is not a Closed-Loop Crypto-Asset or a Central Bank Digital Currency.*

*14. The term **"Closed-Loop Crypto-Asset"** means a Crypto-Asset that:*

a) is issued as a means of payment with Participating Merchants for the purchase of goods or services;

b) can only be transferred by or to the issuer or a Participating Merchant; and

c) can only be redeemed for Fiat Currency by a Participating Merchant redeeming with the issuer.

*15. The term **"Participating Merchant**" means a merchant that has an agreement with an issuer of a Closed Loop Crypto-Asset to accept such Crypto-Asset as a means of payment.*

*16. The term "**Exchange Transaction**" means any:*

a) exchange between Relevant Crypto-Assets and Fiat Currencies; and

b) exchange between one or more forms of Relevant Crypto-Assets.

[…]

B. Non-Reporting Financial Institution

1. The term **"Non-Reporting Financial Institution"** means any Financial Institution that is:

a) a Governmental Entity, International Organisation or Central Bank, other than:

i) with respect to a payment that is derived from an obligation held in connection with a commercial financial activity of a type *engaged in by a Specified Insurance Company, Custodial Institution, or Depository Institution; or*

ii) with respect to the activity of maintaining Central Bank Digital Currencies for Account Holders which are not Financial Institutions, Governmental Entities, International Organisations or Central Banks.

[…]

C. Financial Account

[…]

2. The term "**Depository Account**" includes any commercial, checking, savings, time, or thrift account, or an account that is evidenced by a certificate of deposit, thrift certificate, investment certificate, certificate of indebtedness, or other similar instrument maintained by a *Depository Institution* ~~Financial Institution in the ordinary course of a banking or similar business~~. A Depository Account also includes:

a) an amount held by an insurance company pursuant to a guaranteed investment contract or similar agreement to pay or credit interest therein*;*

b) an account that holds one or more Specified Electronic Money Products for the benefit of customers; and

c) an account that holds one or more Central Bank Digital Currencies for the benefit of customers.

[…]

9. The term **"Preexisting Account"** means a Financial Account maintained by a Reporting Financial Institution as of [xx/xx/xxxx] *or, if the account is treated as a Financial Account solely by virtue of the amendments to the CRS, as of [effective date of the revised CRS-1].*

10. The term **"New Account"** means a Financial Account maintained by a Reporting Financial Institution opened on or after [xx/xx/xx] *or, if the account is treated as a Financial Account solely by virtue of the amendments to the CRS , on or after [effective date of the revised CRS].*

[…]

17. The term **"Excluded Account"** means any of the following accounts:

[…]

e) an account established in connection with any of the following:

[…]

v) a foundation or capital increase of a company provided that the account satisfies the following requirements:

i) the account is used exclusively to deposit capital that is to be used for the purpose of the foundation or capital increase of a company, as prescribed by law;

ii) any amounts held in the account are blocked until the Financial Institution obtains an independent confirmation regarding the foundation or capital increase;

iii) the account is closed or transformed into an account in the name of the company after the foundation or capital increase;

iv) any repayments resulting from a failed foundation or capital increase, net of service provider and similar fees, are made solely to the persons who contributed the amounts; and

v) the account has not been established more than 12 months ago.

(ebis) A Depository Account that holds one or more Specified Electronic Money Products:

i. with an aggregate account balance or value that does not exceed USD […]; or

ii. created solely to facilitate the transfer of funds from the customer to another person pursuant to instructions of the customer, whereby the Reporting Financial Institution has implemented policies and procedures to ensure that the funds are returned to the customer in case the transfer is not carried out, within the period set by local law, but in any case within 60 days after receipt of instructions to facilitate the transfer.

D. Reportable Account

[…]

6. The term **"Controlling Person"** means the natural persons who exercise control over an Entity. In the case of a trust, such term means the settlor(s), the trustee(s), the protector(s) (if any), the beneficiary(ies) or class(es) of beneficiaries, and any other natural person(s) exercising ultimate effective control over the trust, and in the case of a legal arrangement other than a trust, such term means persons in equivalent or similar positions. The term "Controlling Persons" must be interpreted in a manner consistent with the Financial Action Task Force Recommendations.

E. Miscellaneous

[…]

*7. The term **"Government Verification Service"** is an electronic process made available by a Reportable Jurisdiction to a Reporting Financial Institution for the purposes of ascertaining the identity and tax residence of an Account Holder or Controlling Person.*

[…]

Section X: Transitional Measures

A. The amendments to the CRS are effective as of [effective date of the revised CRS].

B. Notwithstanding paragraph A, under subparagraph A(1)(b) of Section I, with respect to each Reportable Account that is maintained by a Reporting Financial Institution as of [effective date of the revised CRS -1] and for reporting periods ending by the second calendar year following such date, information with respect to the role(s) by virtue of which each Reportable Person is a Controlling Person of the Entity is only required to be reported if such information is available in the electronically searchable data maintained by the Reporting Financial Institution.

Commentary

Commentary on Section I

[…]

Paragraph A – Information to be reported

3. Pursuant to paragraph A, each Reporting Financial Institution must report the following information with respect to each Reportable Account of such Reporting Financial Institution:

a) in the case of any individual that is an Account Holder and a Reportable Person: the name, address, jurisdiction(s) of residence, TIN(s) and date and place of birth, *whether the Account Holder has provided a valid self-certification and whether the account is a joint account, including the number of joint Account Holders*;

b) in the case of any Entity that is an Account Holder and a Reportable Person: the name, address, jurisdiction(s) of residence and TIN(s), *whether the Account Holder has provided a valid self-certification and whether the account is a joint account, including the number of joint Account Holders*;

c) in the case of any Entity that is an Account Holder and that is identified as having one or more Controlling Persons that is a Reportable Person:

1. the name, address, jurisdiction(s) of residence and TIN(s) of the Entity; and

2. the name, address, jurisdiction(s) of residence, TIN(s), date and place of birth of each Controlling Person that is a Reportable Person, *as well as the role(s) by virtue of which the Reportable Person is a Controlling Person of the Entity and whether a valid self-certification has been provided for such Reportable Person;*

d) the account number (or functional equivalent in the absence of an account number)*, the type of account and whether the account is a Preexisting Account or a New Account*;

e) the name and identifying number (if any) of the Reporting Financial Institution; and

f) the account balance or value (including, in the case of a Cash Value Insurance Contract or Annuity Contract, the Cash Value or surrender value) as of the end of the relevant calendar year or other appropriate reporting period or, if the account was closed during such year or period, the closure of the account.

4. In addition, the following information must be reported:

[…]

bbis) in the case of any Equity Interest held in an Investment Entity that is a legal arrangement, the role(s) by virtue of which the Reportable Person is an Equity Interest holder.

[…]

Subparagraph A(1) – Role(s) of the Controlling Person

7bis. The role(s) of each Reportable Person that is a Controlling Person in respect of an Entity are required to be reported. The requirements to identify Controlling Persons, as well as their roles with respect to the Entity, are governed by AML/KYC Procedures, as set out in paragraphs 132 et seq. of the Commentary to Section VIII. Where a Reportable Person is a Controlling Person by virtue of more than one role in respect of the Entity, the Reporting Financial Institution must report each role, provided the identification of the role is required by AML/KYC Procedures.

[…]

Subparagraph A(2) – Account number, type of account, Preexisting or New Account

8bis. The Reporting Financial Institution must also report whether an account is a Preexisting Account or a New Account as defined under subparagraphs C(9) and C(10) of Section VIII, respectively.

8ter. The account type to be reported with respect to an account is the type of Financial Account maintained by the Reporting Financial Institution for the Account Holder, as described under subparagraph C(1) of Section VIII.

[…]

Subparagraph A(4) – Account balance or value

[…]

14. In the case of an account closure, the Reporting Financial Institution has no obligation to report the account balance or value before or at closure, but must report that the account was closed. In determining when an account is "closed", reference must be made to the applicable law in a particular jurisdiction. If the applicable law does not address closure of accounts, an account will be considered to be closed according to the normal operating procedures of the Reporting Financial Institution that are consistently applied for all accounts maintained by such institution. For example, an equity or debt interest in a Financial Institution would generally be considered to be closed upon termination, transfer, surrender, redemption, cancellation, or liquidation. An account with a balance or value equal to zero or that is negative will not be a closed account solely by reason of such balance or value. *Similarly, if a discretionary beneficiary of a trust that is a Financial Institution receives a distribution from the trust in a given year, but not in a following year, the absence of a distribution does not constitute an account closure, as long as the beneficiary is not permanently excluded from receiving future distributions from the trust.*

[…]

Subparagraph A(5)(b) – Gross proceeds

17. In the case of a Custodial Account, information to be reported includes the total gross proceeds from the sale or redemption of Financial Assets paid or credited to *or with respect to* the account during the calendar year or other appropriate reporting period with respect to which the Reporting Financial Institution acted as a custodian, broker, nominee, or otherwise as an agent for the Account Holder. The term "sale or redemption" means any sale or redemption of Financial Assets, determined without regard to whether the owner of such Financial Assets is subject to tax with respect to such sale or redemption.

[…]

19. With respect to a sale that is effected by a broker that results in a payment of gross proceeds, the date the gross proceeds are considered paid is the date that the proceeds of such sale are credited to *or with respect to* the account of or otherwise made available to the person entitled to the payment.

20. The total gross proceeds from a sale or redemption means the total amount realised as a result of a sale or redemption of Financial Assets. In the case of a sale effected by a broker, the total gross proceeds

from a sale or redemption means the total amount paid or credited to *or with respect to* the account of the person entitled to the payment increased by any amount not so paid by reason of the repayment of margin loans; the broker may (but is not required to) take commissions with respect to the sale into account in determining the total gross proceeds. In the case of a sale of an interest bearing debt obligation, gross proceeds includes any interest accrued between interest payment dates.

[…]

Paragraph C through G - Exceptions

TIN and date of birth

[…]

25. Paragraph C contains an exception applicable to Preexisting Accounts: the TIN or date of birth is not required to be reported if (i) such TIN or date of birth is not in the records of the Reporting Financial Institution, and (ii) there is not otherwise a requirement for such TIN or date of birth to be collected by such Reporting Financial Institution under domestic law. Thus, the TIN or date of birth is required to be reported if either:

• the TIN or date of birth is in the records of the Reporting Financial Institution (whether or not there is an obligation to have it in the records); or

• the TIN or date of birth is not in the records of the Reporting Financial Institution, but it is otherwise required to be collected by such Reporting Financial Institution under domestic law (e.g. AML/ KYC Procedures).

26. The “records” of a Reporting Financial Institution include the customer master file and electronically searchable information (see paragraph 34 below). A “customer master file” includes the primary files of a Reporting Financial Institution for maintaining account holder information, such as information used for contacting account holders and for satisfying AML/KYC Procedures. Reporting Financial Institutions would generally have a two-year period to complete the review procedures for identifying Reportable Accounts among Lower Value Accounts (see paragraph 51 of the Commentary on Section III) and, thus, could first review their electronic records (or obtain TIN or date of birth from the Account Holder) and then review their paper records.

27. In addition, even where a Reporting Financial Institution does not have the TIN or date of birth for a Preexisting Account in its records and is not otherwise required to collect such information under domestic law, the Reporting Financial Institution is required to use reasonable efforts to obtain the TIN and date of birth with respect to Preexisting Accounts by the end of the second calendar year following the year in which such Accounts were identified as Reportable Accounts, unless one of the exceptions in paragraph D applies with respect to the TIN and it is not required to be reported.

28. “Reasonable efforts” means genuine attempts to acquire the TIN and date of birth of the Account Holder of a Reportable Account. Such efforts must be made, at least once a year, during the period between the identification of the Preexisting Account as a Reportable Account and the end of the second calendar year following the year of that identification. Examples of reasonable efforts include contacting the Account Holder (e.g. by mail, in-person or by phone), including a request made as part of other documentation or electronically (e.g. by facsimile or by e-mail); and reviewing electronically searchable information maintained by a Related Entity of the Reporting Financial Institution, in accordance with the aggregation principles set forth in paragraph C of Section VII. However, reasonable efforts do not necessarily require closing, blocking, or transferring the account, nor conditioning or otherwise limiting its use. Notwithstanding the foregoing, reasonable efforts may continue to be made after the abovementioned period.

[…]

Financial Assets subject to reporting under [Crypto-Asset Reporting Framework]

36. Paragraph G contains an exception for reporting with respect to the gross proceeds from the sale or redemption of a Financial Asset, to the extent such gross proceeds from the sale or redemption of such Financial Asset are reported by the Reporting Financial Institution under the [Crypto-Asset Reporting Framework], as illustrated by the following example:

An individual, A, holds a Custodial Account with C, a custodial Crypto-Asset exchange that is a Reporting Financial Institution. At the beginning of the year, A holds 5 units of security token X in the Custodial Account with C. Throughout the year, A acquires an additional 3 units of security token X and disposes of 2 units. C reports the account balance of the Custodial Account under subparagraph A(4). C reports the disposals and acquisitions of security token X under the Crypto-Asset Reporting Framework and is therefore not required to report the gross proceeds from the disposals of security token X under subparagraph A(5)(b).

[…]

Commentary on Section IV

1. This Section contains the due diligence procedures for New Individual Accounts and provides for the collection of a self-certification (and confirmation of its reasonableness).

2. According to paragraph A, upon account opening, the Reporting Financial Institution must:

- obtain a self-certification, which may be part of the account opening documentation, that allows the Reporting Financial Institution to determine the Account Holder's residence(s) for tax purposes; and
- confirm the reasonableness of such self-certification based on the information obtained by the Reporting Financial Institution in connection with the opening of the account, including any documentation collected pursuant to AML/KYC Procedures.

2bis. While as a general rule a self-certification must be obtained on the day of the account opening, there may be a limited number of circumstances, where due to the specificities of a business sector it is not possible to obtain a self-certification on 'day one' of the account opening process. For example, this may be the case where an insurance contract has been assigned from one person to another, where an account holder changes as a result of a court order, where a newly created company is in the process of obtaining a TIN or where an investor acquires shares in an investment trust on the secondary market. In addition, it is acknowledged that, even where a self-certification is obtained at account opening, validation of the self-certification may not always be completed on the day of the account opening (e.g. in circumstances where validation is a process undertaken by a back-office function within the Financial Institution). In these circumstances, the self-certification must be both obtained and validated by the Reporting Financial Institution as quickly as feasible, and in any case within a period of 90 calendar days and in time to be able to meet its due diligence and reporting obligations with respect to the reporting period during which the account was opened. In this respect, it is expected that jurisdictions have strong measures in place to ensure that valid self-certifications are always obtained for New Accounts (as described in paragraph 18 to the Commentary on Section IX).

[…]

4. The self-certification must allow determining the Account Holder's residence(s) for tax purposes. Generally, an individual will only have one jurisdiction of residence. However, an individual may be resident for tax purposes in two or more jurisdictions under the domestic laws of such jurisdictions. *In those circumstances, the expectation is that all jurisdictions of residence are to be declared in a self-certification and that the Reporting Financial Institution must treat the account as a Reportable Account in respect of each jurisdiction.* The domestic laws of the various jurisdictions lay down the conditions under which an

individual is to be treated as fiscally 'resident'. They cover various forms of attachment to a jurisdiction which, in the domestic taxation laws, form the basis of a comprehensive taxation (full liability to tax). They also cover cases where an individual is deemed, according to the taxation laws of a jurisdiction, to be resident of that jurisdiction (e.g., diplomats or other persons in government service). ~~Dual resident individuals may rely on the tiebreaker rules contained in tax conventions (if applicable) to solve cases of double residence for determining their residence for tax purposes (see paragraph 23 below).~~

[…]

Requirements for validity of self-certification

7. A "self-certification" is a certification by the Account Holder that provides the Account Holder's or status and any other information that may be reasonably requested by the Reporting Financial Institution to fulfil its reporting and due diligence obligations, such as whether the Account Holder is resident for tax purposes in a Reportable Jurisdiction. With respect to New Individual Accounts, a self-certification is valid only if it is signed (or otherwise positively affirmed) by the Account Holder, it is dated at the latest at the date of receipt, and it contains the Account Holder's:

a) name;

b) residence address;

c) jurisdiction(s) of residence for tax purposes; d) TIN with respect to each Reportable Jurisdiction (see paragraph 8 below); and

e) date of birth (see paragraph 8 below).

The self-certification may be pre-populated by the Reporting Financial Institution to include the Account Holder's information, except for the jurisdiction(s) of residence for tax purposes, to the extent already available in its records.

[…]

11. A self-certification may be signed (or otherwise positively affirmed) by any person authorised to sign on behalf of the Account Holder under domestic law. A person authorised to sign a self-certification generally includes an executor of an estate, any equivalent of the former title, and any other person that has been provided written authorisation by the Account Holder to sign documentation on such person's behalf.

11bis. A self-certification is otherwise positively affirmed if the person making the self-certification provides the Financial Institution with an unambiguous acknowledgement that they agree with the representations made through the self-certification. In all cases, the positive affirmation is expected to be captured by the Financial Institution in a manner such that it can credibly demonstrate that the self-certification was positively affirmed (e.g., voice recording, digital footprint, etc.). The approach taken by the Financial Institution in obtaining the self-certification is expected to be in a manner consistent with the procedures followed by the Financial Institution for the opening of the account. The Financial Institution will need to maintain a record of this process for audit purposes, in addition to the self-certification itself.

[…]

Reasonableness of self-certifications

[…]

25. In the case of a self-certification that would otherwise fail the reasonableness test, it is expected that in the course of the account opening procedures the Reporting Financial Institution would obtain either (i) a valid self-certification, or (ii) a reasonable explanation and documentation (as appropriate) supporting the reasonableness of the self-certification (and retain a copy or a notation of such explanation and documentation). Examples of such "reasonable explanation" include a statement by the individual that he

or she (1) is a student at an educational institution in the relevant jurisdiction and holds the appropriate visa (if applicable); (2) is a teacher, trainee, or intern at an educational institution in the relevant jurisdiction or a participant in an educational or cultural exchange visitor program, and holds the appropriate visa (if applicable); (3) is a foreign individual assigned to a diplomatic post or a position in a consulate or embassy in the relevant jurisdiction; or (4) is a frontier worker or employee working on a truck or train travelling between jurisdictions. The following example illustrates the application of this paragraph: A Reporting Financial Institution obtains a self-certification for the Account Holder upon account opening. The jurisdiction of residence for tax purposes contained in the self-certification conflicts with the residence address contained in the documentation collected pursuant to AML/KYC Procedures. The Account Holder explains that she is a diplomat from a particular jurisdiction and that, as a consequence, she is resident in such jurisdiction; she also presents her diplomatic passport. Because the Reporting Financial Institution obtained a reasonable explanation and documentation supporting the reasonableness of the self-certification, the self-certification passes the reasonableness test.

25bis. Similarly, where an Individual Account Holder indicates on a self-certification that he or she does not have a residence for tax purposes, the Financial Institution is required to confirm the reasonableness of the self-certification on the basis of other documentation, including any documentation collected pursuant to AML/KYC Procedures that is at its disposal. For instance, the fact that the self-certification indicates that the Account Holder has no residence for tax purposes but the other documentation on file contains an address constitutes a reason to doubt the validity of the self-certification. In such cases, the Financial Institution must ensure that it obtains a reasonable explanation and documentation, as appropriate, that supports the reasonableness of the self-certification. If the Financial Institution does not obtain a reasonable explanation as to the reasonableness of the self-certification, the Financial Institution may not rely on the self-certification and must obtain a new, valid self-certification from the Account Holder.

[…]

Commentary on Section V

[…]

Paragraph D – Review procedures

[…]

Subparagraph D2 – Review procedure for Controlling Persons

[…]

20. For purposes of determining whether the Account Holder is a Passive NFE, according to subparagraph D(2)(a), the Reporting Financial Institution must obtain a self-certification from the Account Holder to establish its status, unless it has information in its possession or that is publicly available (see paragraph 12 above), based on which it can reasonably determine that the Account Holder is an Active NFE or a Financial Institution other than a non-participating professionally managed investment entity (i.e. an Investment Entity described in subparagraph A(6)(b) of Section VIII that is not a Participating Jurisdiction Financial Institution). For example, a Reporting Financial Institution could reasonably determine that the Account Holder is an Active NFE where the Account Holder is legally prohibited from conducting activities or operations, or holding assets, for the production of passive income (see paragraph 126 of the Commentary on Section VIII). The self-certification to establish the Account Holder's status must comply with the requirements for the validity of self-certification with respect to Preexisting Entity Accounts (see paragraphs 13-17 above). A Reporting Financial Institution that cannot determine the status of the Account Holder as an Active NFE or a Financial Institution other than non-participating professionally managed investment entity must presume that it is a Passive NFE.

21. For the purposes of determining the Controlling Persons of an Account Holder, according to subparagraph D(2)(b), a Reporting Financial Institution may rely on information collected and maintained pursuant to AML/KYC Procedures, *provided that such AML/KYC Procedures are consistent with FATF Recommendations 10 and 25 (as adopted in February 2012). If the Reporting Financial Institution is not legally required to apply AML/KYC Procedures that are consistent with the 2012 FATF Recommendations, it must apply substantially similar procedures for the purpose of determining the Controlling Persons. Consistent with FATF Recommendation 10, where a publicly listed company exercises control over an Account Holder that is a Passive NFE there is no requirement to determine the Controlling Persons of such company, if such company is already subject to disclosure requirements ensuring adequate transparency of beneficial ownership information.*

[…]

Commentary on Section VI

[…]

4bis. In a limited number of circumstances where a self-certification cannot be obtained or validated upon account opening, the self-certification must be both obtained and validated by the Reporting Financial Institution as quickly as feasible and in any case within a period of 90 calendar days and in time to be able to meet its due diligence and reporting obligations with respect to the reporting period during which the account was opened (see paragraph 2bis of the Commentary on Section IV).

[…]

7. The self-certification must allow determining the Account Holder's residence(s) for tax purposes. It may be rare in practice for an Entity to be subject to tax as a resident in more than one jurisdiction, but it is, of course, possible. *In those circumstances, the expectation is that all jurisdictions of residence are to be declared in a self-certification and that the Reporting Financial Institution must treat the account as a Reportable Account in respect of each jurisdiction.* The domestic laws of the various jurisdictions lay down the conditions under which an Entity is to be treated as fiscally 'resident'. They cover various forms of attachment to a jurisdiction which, in the domestic taxation laws, form the basis of a comprehensive taxation (full tax liability). ~~To solve cases of double residence, tax conventions contain special rules which give the attachment to one jurisdiction a preference over the attachment of the other jurisdiction for purposes of those conventions. Generally, an Entity will be resident for tax purposes in a jurisdiction if, under the laws of that jurisdiction (including tax conventions), it pays or should be paying tax therein by reason of his domicile, residence, place of management or incorporation, or any other criterion of a similar nature, and not only from sources in that jurisdiction. Dual resident Entities may rely on the tiebreaker rules contained in tax conventions (if applicable) to solve cases of double residence for determining their residence for tax purposes (see paragraph 13 below).~~

[…]

Paragraph A(2) – Review procedure for Controlling Persons

[…]

19. For the purposes of determining the Controlling Persons of an Account Holder, according to subparagraph A(2)(b), a Reporting Financial Institution may rely on information collected and maintained pursuant to AML/KYC Procedures, *provided that such AML/KYC Procedures are consistent with FATF Recommendations 10 and 25 (as adopted in February 2012. If the Reporting Financial Institution is not legally required to apply AML/KYC Procedures that are consistent with the 2012 FATF Recommendations, it must apply substantially similar procedures for the purpose of determining the Controlling Persons.*

Consistent with FATF Recommendation 10, where a publicly listed company exercises control over an Account Holder that is a Passive NFE, there is no requirement to determine the Controlling Persons of such company, if such company is already subject to disclosure requirements ensuring adequate transparency of beneficial ownership information.

[…]

Commentary on Section VII

[…]

Paragraph A – Reliance on Self-Certification and Documentary Evidence

2. Paragraph A contains the standards of knowledge applicable to a self-certification or Documentary Evidence. It provides that a Reporting Financial Institution may not rely on a self-certification or Documentary Evidence if the Reporting Financial Institution knows (i.e. has actual knowledge) or has reason to know that the self-certification or Documentary Evidence is incorrect or unreliable.

3. A Reporting Financial Institution has reason to know that a self-certification or Documentary Evidence is unreliable or incorrect if its knowledge of relevant facts or statements contained in the self-certification or other documentation, including the knowledge of the relevant relationship managers, if any (see paragraphs 38-42 and 50 of the Commentary on Section III), is such that a reasonably prudent person in the position of the Reporting Financial Institution would question the claim being made. A Reporting Financial Institution also has reason to know that a self-certification or Documentary Evidence is unreliable or incorrect if there is information in the documentation or in the Reporting Financial Institution's account files that conflicts with the person's claim regarding its status.

3bis. In confirming the reasonableness of a self-certification, Reporting Financial Institutions may be confronted with instances where an Account Holder or Controlling Person has provided documentation issued under a citizenship or residence by investment scheme (CBI/RBI scheme), which allows a foreign individual to obtain citizenship or temporary or permanent residence rights on the basis of local investments or against a flat fee. Certain high-risk CBI/RBI schemes may be potentially misused to circumvent reporting under the CRS. Such potentially high-risk CBI/RBI schemes are those that give a taxpayer access to a low personal income tax rate on offshore financial assets and do not require significant physical presence in the jurisdiction offering the CBI/RBI scheme. The OECD endeavours to publish information on such potentially high-risk CBI/RBI schemes on its website. It is expected that Financial Institutions rely on the OECD-published information in making the determination of whether they have a reason to know that the self-certification is incorrect or unreliable. In particular, where the Reporting Financial Institution has doubts as to the tax residency(ies) of an Account Holder or Controlling Person related to the fact that such person is claiming residence in a jurisdiction offering a potentially high-risk CBI/RBI scheme, the Reporting Financial Institution should not rely on such self-certification until it has taken further measures to ascertain the tax residency(ies) of such persons, including through raising further questions. Examples of such questions may include whether the Account Holder (1) has obtained residence rights under an CBI/RBI scheme; (2), holds residence rights in any other jurisdiction(s); and (3) has spent more than 90 days in any other jurisdiction(s) during the previous year, as well as (4) the jurisdictions in which the Account Holder has filed personal income tax returns during the previous year. The responses to these questions, accompanied by the relevant supporting documentation where applicable, should assist the Reporting Financial Institution in ascertaining whether the self-certification passes the reasonableness test.

Standards of knowledge applicable to self-certifications

4. A Reporting Financial Institution has reason to know that a self-certification provided by a person is unreliable or incorrect if the self-certification is incomplete with respect to any item on the self-certification that is relevant to the claims made by the person, the self-certification contains any information that is inconsistent with the person's claim, or the Reporting Financial Institution has other account information

that is inconsistent with the person's claim. A Reporting Financial Institution that relies on a service provider to review and maintain a self-certification is considered to know or have reason to know the facts within the knowledge of the service provider.

4bis. A Reporting Financial Institution will have reason to know that a self-certification is unreliable or incorrect if the self-certification does not contain a TIN and the information disseminated by the OECD indicates that the Reportable Jurisdiction issues TINs to all tax residents. The Standard does not require a Reporting Financial Institution to confirm the format and other specifications of a TIN with the information disseminated by the OECD. However Reporting Financial Institutions may nevertheless wish to do so in order to enhance the quality of the information collected and minimise the administrative burden associated with any follow up concerning reporting of an incorrect TIN. In this case, they may also use regional and national websites providing a TIN check module for the purpose of further verifying the accuracy of the TIN provided in the self-certification.

4ter. There may be instances where the AML/KYC Procedures to be applied by Financial Institutions change. In this respect, Section VIII(E)(2) provides that the term "AML/KYC Procedures" means the customer due diligence procedures of a Reporting Financial Institution pursuant to the anti-money laundering or similar requirements to which such a Reporting Financial Institution is subject. Consequently, for carrying out the due diligence procedures of Sections III-VII, the applicable AML/KYC Procedures are those to which a Financial Institution is subject at a given moment in time, as long as, for New Accounts, such procedures are consistent with the 2012 FATF Recommendations. Where there is an amendment to the applicable AML/KYC Procedures (e.g. upon a jurisdiction implementing new FATF Recommendations), Financial Institutions may be required to collect and maintain additional information for AML/KYC purposes in that jurisdiction. For the purposes of the due diligence procedures set out in Sections III-VII and in line with paragraph 17 of the Commentary on Section III, the additional information obtained under such amended AML/KYC Procedures must be used to determine whether there has been a change of circumstances in relation to the identity and/or reportable status of Account Holders and/or Controlling Persons. As explained in paragraph 4, above, if the additional information obtained is inconsistent with the claims made by a person in a self-certification, then there has been a change in circumstances and a Financial Institution will have a reason to know that a self-certification is unreliable or incorrect.

[…]

Paragraph Abis – Temporary lack of Self-Certification

10bis. Paragraph Abis contains the special due diligence procedure that must be temporarily applied in exceptional circumstances where a self-certification cannot be obtained and validated by a Reporting Financial Institution in respect of a New Account in time to meet its due diligence and reporting obligations with respect to the reporting period during which the account was opened. Where the self-certification cannot be obtained and validated in respect of a New Individual Account, the Reporting Financial Institution must temporarily apply the due diligence procedures for Preexisting Individual Accounts under Section III. Similarly, where a self-certification cannot be obtained and validated in respect of a New Entity Account, the Reporting Financial Institution must temporarily apply the due diligence procedures for Preexisting Entity Accounts under Section V.

10ter. Notwithstanding the above, for the purposes of subparagraph A(2) of Section I, such accounts should be reported upon as New Accounts.

[…]

Commentary on Section VIII

[…]

Paragraph A – Reporting Financial Institution

[…]

Subparagraph A(3) through (~~8~~11) – Financial Institution

[…]

Custodial Institution

9. Subparagraph A(4) defines the term "Custodial Institution" as any Entity that holds, as a substantial portion of its business, Financial Assets for the account of others.

10. It further establishes the 'substantial portion' test. An Entity holds Financial Assets for the account of others as a substantial portion of its business if the Entity's gross income attributable to the holding of Financial Assets and related financial services equals or exceeds 20 per cent of the Entity's gross income during the shorter of:

- the three-year period that ends on 31 December (or the final day of a non-calendar year accounting period) prior to the year in which the determination is being made; or
- the period during which the Entity has been in existence.

'Income attributable to holding Financial Assets and related financial services' means custody, account maintenance, and transfer fees; commissions and fees earned from executing and pricing securities transactions with respect to Financial Assets held in custody; income earned from extending credit to customers with respect to Financial Assets held in custody (or acquired through such extension of credit); income earned on the bid-ask spread of Financial Assets held in custody; and fees for providing financial advice with respect to Financial Assets held in (or potentially to be held in) custody by the entity; and for clearance and settlement services.

10bis. Income attributable to related financial services also includes commissions and fees from holding, transferring and exchanging of Relevant Crypto-Assets held in custody.

10ter. For the purposes of the gross income test, all remuneration for the relevant activities of an Entity is to be taken into account, independent of whether that remuneration is paid directly to the Entity to which the test is applied or to another Entity. For example, in certain instances, a professional accounting or law firm sets up a trust for a client and, as part of that process, appoints a corporate trustee. The client then pays the accounting or law firm for all services rendered in relation to the set-up of the trust, including the appointment of the corporate trustee and other trustee services. As such, the corporate trustee itself does not receive a direct remuneration for its services as these are paid to the accounting or law firm as part of the overall package. This issue can also arise in the context of Entities that provide custodial services if the fees for such services are paid to another Entity. In both instances, such remuneration should be taken into account for the purposes of the gross income test.

11. Entities that safe keep Financial Assets for the account of others, such as custodian banks, brokers and central securities depositories, would generally be considered Custodial Institutions. Entities that do not hold Financial Assets for the account of others, such as insurance brokers, will not be Custodial Institutions.

11bis. For Financial Assets issued in the form of a Relevant Crypto-Asset, "safekeeping" is understood to also include the safekeeping or administration of instruments enabling control over such assets (for example, private keys), to the extent that the Entity has the ability to manage, trade or transfer to third

parties the underlying Financial Assets on the user's behalf. Consequently, an Entity that solely offers storage or security services for private keys to such Financial Assets, would not be considered a Custodial Institution.

Depository Institution

12. Subparagraph A(5) defines the term "Depository Institution" as any Entity that *a)* accepts deposits in the ordinary course of a banking or similar business**;** *or b) holds Specified Electronic Money Products or Central Bank Digital Currencies for the benefit of customers.*

13. An Entity is considered to ~~be engaged in~~ *accept deposits in the ordinary course* of a 'banking or similar business' if, in the ordinary course of its business with customers, the Entity accepts deposits or other similar investments of funds and regularly engages in, *or is licenced to engage in*, one or more of the following activities:

a) mak*ing*~~es~~ personal, mortgage, industrial, or other loans or provid*ing*~~es~~ other extensions of credit;

b) purchas*ing*~~es~~, selli*ng*~~s~~, discount*ing*~~s~~, or negotiat*ing*~~es~~ accounts receivable, instalment obligations, notes, drafts, checks, bills of exchange, acceptances, or other evidences of indebtedness;

c) issu*ing*~~es~~ letters of credit and negotiat*ing*~~es~~ drafts drawn thereunder;

d) provid*ing*~~es~~ trust or fiduciary services;

e) financ*ing*~~es~~ foreign exchange transactions; or

f) enter*ing*~~s~~ into, purchas*ing*~~es~~, or dispos*ing*~~es~~ of finance leases or leased assets.

An Entity is not considered to ~~be engaged in~~ accept deposits in the ordinary course of a banking or similar business if the Entity solely accepts deposits from persons as a collateral or security pursuant to a sale or lease of property or pursuant to a similar financing arrangement between such Entity and the person holding the deposit with the Entity.

~~14. Savings banks, commercial banks, savings and loan associations, and credit unions would generally be considered Depository Institutions. However, whether an Entity conducts a banking or similar business is determined based upon the character of the actual activities of such Entity.~~

[…]

14bis. An Entity is also considered a Depository Institution if it holds Specified Electronic Money Products or Central Bank Digital Currencies for the benefit of customers. In most instances, such Entity will be the issuer of the Specified Electronic Money Products or Central Bank Digital Currencies. With respect to Specified Electronic Money Products issued in the form of a Crypto-Asset, the Depository Institution that holds such product will typically be a custodial Crypto-Asset exchange or an online (i.e. hosted) wallet provider.

[…]

Investment Entity

[…]

16. Subparagraph A(6)(a) defines the first type of "Investment Entity" as any Entity that primarily conducts as a business one or more of the following activities or operations for or on behalf of a customer:

a) trading in money market instruments (cheques, bills, certificates of deposit, derivatives, etc.); foreign exchange; exchange, interest rate and index instruments; transferable securities; or

commodity futures trading;

b) individual and collective portfolio management; or

c) otherwise investing, administering, or managing Financial Assets, ~~or~~ money *(including Central Bank Digital Currencies), or Relevant Crypto-Assets* on behalf of other persons.

Such activities or operations do not include rendering non-binding investment advice to a customer. *For purposes of subparagraph A(6)(a), the term "customer" includes the Equity Interest holder of a collective investment vehicle, whereby the collective investment vehicle is considered to conduct its activities or operations as a business. For purposes of subparagraph A(6)(a)(iii), the term "investing, administering, or trading" does not comprise the provision of services effectuating Exchange Transactions for or on behalf of customers.*

17. Subparagraph A(6)(b) defines the second type of "Investment Entity" as any Entity the gross income of which is primarily attributable to investing, reinvesting, or trading in Financial Assets *or Relevant Crypto-Assets,* if the Entity is managed by another Entity that is a Depository Institution, a Custodial Institution, a Specified Insurance Company, or an Investment Entity described in subparagraph A(6)(a). An Entity is 'managed by' another Entity if the managing Entity performs, either directly or through another service provider, any of the activities or operations described in subparagraph A(6)(a) on behalf of the managed Entity. However, an Entity does not manage another Entity if it does not have discretionary authority to manage the Entity's assets (in whole or part). Where an Entity is managed by a mix of Financial Institutions, NFEs or individuals, the Entity is considered to be managed by another Entity that is a Depository Institution, a Custodial Institution, a Specified Insurance Company, or an Investment Entity described in subparagraph A(6)(a), if any of the managing Entities is such another Entity. *For example, a private trust company that acts as a registered office or registered agent of a trust or performs administrative services unrelated to the Financial Assets, Relevant Crypto-Assets or money of the trust, does not conduct the activities and operations described in subparagraph (A)(6)(a) on behalf of the trust and thus the trust is not "managed by" the private trust company within the meaning of subparagraph (A)(6)(b). Also, an Entity that invests all or a portion of its assets in a mutual fund, exchange traded fund, or similar vehicle will not be considered "managed by" the mutual fund, exchange traded fund, or similar vehicle. In both of these examples, a further determination needs to be made as to whether the Entity is managed by another Entity for the purpose of ascertaining whether the first-mentioned Entity falls within the definition of Investment Entity, as set out in subparagraph (A)(6)(b).*

18. An Entity is treated as primarily conducting as a business one or more of the activities described in subparagraph A(6)(a), or an Entity's gross income is primarily attributable to investing, reinvesting, or trading in Financial Assets *or Relevant Crypto-Assets* for purposes of subparagraph A(6)(b), if the Entity's gross income attributable to the relevant activities equals or exceeds 50 per cent of the Entity's gross income during the shorter of:

- the three-year period ending on 31 December of the year preceding the year in which the determination is made; or
- the period during which the Entity has been in existence.

As clarified in paragraph 10ter, above, for the purposes of the gross income test, all remuneration for the relevant activities of an Entity is to be taken into account, independent of whether that remuneration is paid directly to the Entity to which the test is applied or to another Entity.

19. The term "Investment Entity", as defined in subparagraph A(6), does not include an Entity that is an Active NFE because it meets any of the criteria in subparagraphs D(9)(d) through (g) (i.e. holding NFEs and treasury centres that are members of a nonfinancial group; start-up NFEs; and NFEs that are liquidating or emerging from bankruptcy).

20. An Entity would generally be considered an Investment Entity if it functions or holds itself out as a collective investment vehicle, mutual fund, exchange traded fund, private equity fund, hedge fund, venture

capital fund, leveraged buy-out fund or any similar investment vehicle established with an investment strategy of investing, reinvesting, or trading in Financial Assets *or Relevant Crypto-Assets*. An Entity that primarily conducts as a business investing, administering, or managing non-debt, direct interests in real property on behalf of other persons, such as a type of real estate investment trust, will not be an Investment Entity.

[…]

Financial Asset

[…]

24. Within that context, subparagraph A(7) provides that the term "Financial Asset" includes a security (for example, a share of stock in a corporation; partnership or beneficial ownership interest in a widely held or publicly traded partnership or trust; note, bond, debenture, or other evidence of indebtedness), partnership interest, commodity, swap (for example, interest rate swaps, currency swaps, basis swaps, interest rate caps, interest rate floors, commodity swaps, equity swaps, equity index swaps, and similar agreements), Insurance Contract or Annuity Contract, or any interest (including a futures or forward contract or option) in a security, *Relevant Crypto-Asset,* partnership interest, commodity, swap, Insurance Contract, or Annuity Contract. However, the term "Financial Asset" does not include a non-debt, direct interest in real property; or a commodity that is a physical good, such as wheat.

[…]

25bis. In each case, the determination of whether an asset is a Financial Asset is independent from the form in which such asset is issued. Therefore, an asset issued in the form of a Crypto-Asset may simultaneously be a Financial Asset.

[…]

Specified Electronic Money Product

29bis. Subparagraph A(9) defines the term "Specified Electronic Money Product" as any product that is:

a) a digital representation of a single Fiat Currency;

b) issued on receipt of funds for the purpose of making payment transactions;

c) represented by a claim on the issuer denominated in the same Fiat Currency;

d) accepted by a natural or legal person other than the issuer; and

e) by virtue of regulatory requirements to which the issuer is subject, redeemable at any time and at par value for the same Fiat Currency upon request of the holder of the product.

29ter. Subparagraph A(9)(a) requires that a product must be a digital representation of a single Fiat Currency, in order to be a Specified Electronic Money Product. A product will be considered to digitally represent and reflect the value of the Fiat Currency that it is denominated in. Consequently, a product that reflects the value of multiple currencies or assets is not a Specified Electronic Money Product.

29quater. Subparagraph A(9)(b) provides that the product must be issued on receipt of funds. This part of the definition means that a Specified Electronic Money Products is a prepaid product. The act of "issuing" is interpreted broadly to include the activity of making available pre-paid stored value and means of payment in exchange for funds. In this respect, both electronically and magnetically stored products may be "issued", including online payment accounts and physical cards using magnetic stripe technology. In

addition, this subparagraph provides that the product must be issued for the purpose of making payment transactions.

29quinquies. Subparagraph A(9)(c) requires that, in order to be a Specified Electronic Money Product, a product must be represented by a claim on the issuer denominated in the same Fiat Currency. In this respect, a "claim" includes any monetary claim against the issuer, reflecting the value of the Fiat Currency represented by the electronic money product issued to the customer.

29sexies. Under subparagraph A(9)(d), a product must be accepted by a natural or legal person other than the issuer in order to be a Specified Electronic Money Product, whereby such third parties must accept the electronic money product as a means of payment. Consequently, monetary value stored on specific pre-paid instruments, designed to address precise needs that can be used only in a limited way, because they allow the electronic money holder to purchase goods or services only in the premises of the electronic money issuer or within a limited network of service providers under direct commercial agreement with a professional issuer, or because they can be used only to acquire a limited range of goods or services, are not considered Specified Electronic Money Products.

29septies. Subparagraph A(9)(e) provides that the issuer of the product must be subject to supervision to ensure the product is redeemable at any time and at par value for the same Fiat Currency upon request of the holder of the product, in order to be a Specified Electronic Money Product. In this respect, the "same" Fiat Currency refers to the Fiat Currency that the electronic money product is a digital representation of. When proceeding to a redemption, it is acknowledged that the issuer can deduct from the redemption amount any fees or transaction costs.

Central Bank Digital Currency, Fiat Currency, Crypto-Asset, Relevant Crypto-Asset, Closed-Loop Crypto-Asset, Participating Merchant and Exchange Transaction

The terms "Central Bank Digital Currency", "Fiat Currency", "Crypto-Asset", "Relevant Crypto-Asset", "Closed-Loop Crypto-Asset", "Participating Merchant", and "Exchange Transaction" should be interpreted consistently with the Commentary of the Crypto-Asset Reporting Framework.

[…]

Paragraph B – Non-Reporting Financial Institution

[…]

Subparagraph B(1) – In general

30. Subparagraph B(1) sets out the various categories of Non-Reporting Financial Institutions (i.e. Financial Institutions that are excluded from reporting). "Non-Reporting Financial Institution" means any Financial Institution that is:

a) a Governmental Entity, International Organisation or Central Bank, other than:

i) with respect to a payment that is derived from an obligation held in connection with a commercial financial activity of a type engaged in by a Specified Insurance Company, Custodial Institution, or Depository Institution; or

ii) with respect to the activity of maintaining Central Bank Digital Currencies for Account Holders which are not Financial Institutions, Governmental Entities, International Organisations or Central Banks.

Subparagraphs B(2) through (4) – Governmental Entity, International Organisation and Central Bank

31. According to subparagraph B(1)(a), a Financial Institution that is a Governmental Entity, International Organisation or Central Bank is a Non-Reporting Financial Institution. However, under subparagraph

B(1)(a)(i), the exclusion does not apply with respect to a payment that is derived from an obligation held in connection with a financial activity of a type engaged in by a Specified Insurance Company, Custodial Institution, or Depository Institution. *Equally, under subparagraph B(1)(a)(ii), the exclusion does not apply with respect to the activity of maintaining Central Bank Digital Currencies for Account Holders which are not Financial Institutions, Governmental Entities, International Organisations or Central Banks.*

32. Thus, for example, a Central Bank that conducts a financial activity, such as acting as an intermediary on behalf of persons other than in the bank's capacity as a Central Bank, is not a Non-Reporting Financial Institution under subparagraph B(1)(a)(i) with respect to payments received in connection with an account held in connection with such activity. *Equally, under subparagraph B(1)(a)(ii), maintaining Central Bank Digital Currencies for Account Holders which are not Financial Institutions, Governmental Entities, International Organisations or Central Banks, is also an activity in respect of which a Central Bank is not a Non-Reporting Financial Institution.*

[…]

Subparagraphs B(5) through (7) - Funds

36. Subparagraph B(5) defines the term "Broad Participation Retirement Fund" as a fund established to provide retirement, disability, or death benefits, or any combination thereof, to beneficiaries that are current or former employees (or persons designated by such employees) of one or more employers in consideration for services rendered, provided that the fund:

a) does not have a single beneficiary with a right to more than five per cent of the fund's assets;

b) is subject to regulation and provides information reporting to the tax authorities; and

c) satisfies at least one of the four requirements listed in subparagraph B(5)(c) (i.e. the fund is tax-favoured; most contributions are received from sponsoring employers; distributions or withdrawals are only allowed upon the occurrence of specified events; and contributions by employees are limited by amount).

36bis. Section VIII(B)(5)(a) of requires that, in order for a Financial Institution to be able to qualify as a Non-Reporting Financial Institution under the Broad Participation Retirement Fund category, the Financial Institution needs, inter alia, to ensure that it has no single beneficiary with a right to more than five percent of the fund's assets. In case the fund is compartmentalised into sub-funds that are in practice working as separated pension products, including through the segregation of the assets, risks and income attributed to such sub-funds, the test of whether a single beneficiary has a right to more than five percent of the fund's assets is to be applied at the level of each sub-fund.

Paragraph C – Financial Account

[…]

Subparagraph C(2) – Depository Account

66. The term "Depository Account"[…] includes any commercial, checking, savings, time, or thrift account, or an account that is evidenced by a certificate of deposit, thrift certificate, investment certificate, certificate of indebtedness, or other similar instrument maintained by a *Depository Institution* ~~Financial Institution in the ordinary course of a banking or similar business~~. A Depository Account also includes:

a) an amount held by an insurance company pursuant to a guaranteed investment contract or similar agreement to pay or credit interest therein*;*

b) an account that holds one or more Specified Electronic Money Products for the benefit of customers; and

c) an account that holds one or more Central Bank Digital Currencies for the benefit of customers.

[…]

67bis. Any arrangement where an Entity holds a Specified Electronic Money Product or Central Bank Digital Currency for the benefit of a customer will be regarded as a Depository Account. In cases where a Specified Electronic Money Product or Central Bank Digital Currency has been issued as a Crypto-Asset, an Entity is considered to hold such asset for the benefit of a customer to the extent it safekeeps or administers the instruments enabling control over the asset (for example, private keys) and the Entity has the ability to manage, trade or transfer to third parties the underlying asset on behalf of such customers.

[…]

Subparagraph C(3) – Custodial Account

68. Subparagraph C(3) defines the term "Custodial Account" as an account (other than an Insurance Contract or Annuity Contract) for the benefit of another person that holds one or more Financial Assets.

68bis. An arrangement to safe keep or administer the instrument enabling control over one or more Financial Assets issued in the form of a Crypto-Asset for the benefit of another person is also a Custodial Account, to the extent that the Entity has the ability to manage, trade or transfer to third parties the underlying Financial Assets on the person's behalf.

Subparagraph C(4) – Equity Interest

69. The definition of the term "Equity Interest" specifically addresses interests in partnerships and trusts. In the case of a partnership that is a Financial Institution, the term "Equity Interest" means a capital or profits interest in the partnership. In the case of a trust that is a Financial Institution, an "Equity Interest" is considered to be held by any person treated as a settlor or beneficiary of all or a portion of the trust, or any other natural person exercising ultimate effective control over the trust. The same as for a trust that is a Financial Institution is applicable for a legal arrangement that is equivalent or similar to a trust, or foundation that is a Financial Institution.

70. Under subparagraph C(4), a Reportable Person will be treated as being a beneficiary of a trust if such Reportable Person has the right to receive, directly or indirectly (for example, through a nominee), a mandatory distribution or may receive, directly or indirectly, a discretionary distribution from the trust. *Indirect distributions by a trust may arise when the trust makes payments to a third party for the benefit of another person. For example, instances where a trust pays the tuition fees or repays a loan taken up by another person are to be considered indirect distributions by the trust. Indirect distributions also include cases where the trust grants a loan free of interest or at an interest rate lower than the market interest rate or at other non-arm's length conditions. In addition, the write-off of a loan granted by a trust to its beneficiary constitutes an indirect distribution in the year the loan is written-off. In all of the above cases the Reportable Person will be person that is the beneficiary of the trust receiving the indirect distribution (i.e. in the above examples, the debtor of the tuition fees or the recipient of the favourable loan conditions).* ~~For these purposes, a~~ *A* beneficiary who may receive a discretionary distribution from the trust only will be treated as a beneficiary of a trust if such person receives a distribution in the calendar year or other appropriate reporting period (i.e. either the distribution has been paid or made payable). The same is applicable with respect to the treatment of a Reportable Person as a beneficiary of a legal arrangement that is equivalent or similar to a trust, or foundation.

71. Where Equity Interests are held through a Custodial Institution, the Custodial Institution is responsible for reporting, not the Investment Entity. The following example illustrates how such reporting must be done: Reportable Person A holds shares in investment fund L. A holds the shares in custody with custodian Y. Investment fund L is an Investment Entity and, from its perspective, its shares are Financial Accounts (i.e. Equity Interests in an Investment Entity). L must treat custodian Y as its Account Holder. As Y is a Financial Institution (i.e. a Custodial Institution) and Financial Institutions are not Reportable Persons, such shares

are not object of reporting by investment fund L. For custodian Y, the shares held for A are Financial Assets held in a Custodial Account. As a Custodial Institution, Y is responsible for reporting the shares it is holding on behalf of A.

[…]

Subparagraphs C(9) through (16) – Preexisting and New, Individual and Entity Accounts

81. Subparagraphs C(9) through (16) contain the various categories of Financial Accounts classified by reference to date of opening, Account Holder and balance or value: "Preexisting Account", "New Account", "Preexisting Individual Account", "New Individual Account", "Preexisting Entity Account", "Lower Value Account", "High Value Account" and "New Entity Account".

82. First, a Financial Account is classified depending on the date of opening. Thus, a Financial Account can be either a "Preexisting Account" or a "New Account". Subparagraphs C(9) and (10) define those terms as a Financial Account maintained by a Reporting Financial Institution as of [xx/xx/xxxx], and opened on or after [xx/xx/xxxx] *or if the account is treated as a Financial Account solely by virtue of the amendments to the CRS, as of [effective date of the revised CRS-1] or opened on or after [effective date of the revised CRS],* respectively. However, when implementing the Common Reporting Standard, jurisdictions are free to modify subparagraph C(9) in order to also include certain new accounts of preexisting customers. In such a case, subparagraph C(9) should be replaced by the following:

9. The term "Preexisting Account" means:

a) a Financial Account maintained by a Reporting Financial Institution as of [xx/xx/xxxx] or, if the account is treated as a Financial Account solely by virtue of the amendments to the CRS, as of [effective date of the revised CRS-1];

b) any Financial Account of an Account Holder, regardless of the date such Financial Account was opened, if:

i) the Account Holder also holds with the Reporting Financial Institution (or with a Related Entity within the same jurisdiction as the Reporting Financial Institution) a Financial Account that is a Preexisting Account under subparagraph C(9)(a);

ii) the Reporting Financial Institution (and, as applicable, the Related Entity within the same jurisdiction as the Reporting Financial Institution) treats both of the aforementioned Financial Accounts, and any other Financial Accounts of the Account Holder that are treated as Preexisting Accounts under this subparagraph C(9)(b), as a single Financial Account for purposes of satisfying the standards of knowledge requirements set forth in paragraph A of Section VII, and for purposes of determining the balance or value of any of the Financial Accounts when applying any of the account thresholds;

iii) with respect to a Financial Account that is subject to AML/KYC Procedures, the Reporting Financial Institution is permitted to satisfy such AML/KYC Procedures for the Financial Account by relying upon the AML/KYC Procedures performed for the Preexisting Account described in subparagraph C(9)(a); and

iv) the opening of the Financial Account does not require the provision of new, additional or amended customer information by the Account Holder other than for purposes of the Common Reporting Standard.

Subparagraph C(17) – Excluded Account

86. Subparagraph C(17) contains the various categories of Excluded Accounts (i.e. accounts that are not Financial Accounts and are therefore excluded from reporting), which are:

a) retirement and pension accounts;

b) non-retirement tax-favoured accounts;

c) term life insurance contracts;

d) estate accounts;

e) escrow accounts;

ebis) Low-value and money transfer Specified Electronic Money Products

f) Depository Accounts due to not-returned overpayments; and

g) low-risk excluded accounts.

[…]

93. Subparagraph C(17)(e) generally refers to accounts where money is held ~~by a third party~~ on behalf of transacting parties (i.e. escrow accounts). The accounts can be Excluded Accounts where they are established in connection with any of the following:

[…]

e) a foundation or capital increase of a company provided that the account satisfies all the requirements listed in subparagraph C(17)(e)(v).

94. An Excluded Account, as described in subparagraph C(17)(e)(ii), must be established in connection with a sale, exchange, or lease of real or personal property. Defining the concept of real or personal property by reference to the laws of the jurisdiction where the account is maintained will help to avoid difficulties of interpretation over the question whether an asset or a right is to be regarded as real property (i.e., immovable property), personal property or neither of them.

94bis. An "independent confirmation" means for the purposes of subparagraph C(17)(e)(v)(ii) a written confirmation evidencing the company foundation or capital increase, such as an extract from the commercial register or confirmation from the lawyer, notary, or other service provider facilitating the transaction pursuant to the relevant law.

94ter. Subparagraph C(17)(e)(v)(iv) acknowledges that in some instances where the foundation of a company fails, an account established for this purpose may also be used to make payments to various service providers involved in the incorporation process. As a result, repayments made to persons who contributed the amounts may be made net of service provider and similar fees, which for the purposes of subparagraph C(17)(e)(v)(iv) includes amounts paid to lawyers, notaries, corporate registrars and other payments required to facilitate the incorporation or capital contribution.

Low-value and Money Transfer Specified Electronic Money Products

94quater. Subparagraph C(17)(ebis)(i) provides that a Depository Account that holds one or more Specified Electronic Money Products, with an aggregate account balance or value that does not exceed USD […] is an Excluded Account. For the purposes of determining whether the monetary threshold is met in respect of an Account Holder, a Reporting Financial Institution is required to apply the aggregation rules set out in section VIII, paragraph (c).

94quinquies. Subparagraph C(17)(ebis)(ii) generally refers to Depository Accounts holding a Specified Electronic Money Product that are created solely to facilitate a funds transfer pursuant to instructions of a customer and that cannot be used to store value. This subparagraph requires that the Reporting Financial Institution has implemented policies and procedures to ensure that the funds are returned to the customer in case the transfer is not carried out, within the period set by local law, but in any case within 60 days after receipt of instructions to facilitate the transfer.

[…]

Low-risk Excluded Accounts

[…]

103. The following examples illustrate the application of subparagraph C(17)(g):

[…]

- *Example 7 (Housing cooperative account): a type of account held by or on behalf of a group of owners or by the condominium company for the purpose of paying the expenses of the condominium or housing cooperative which meets the following requirements: (i) it is regulated in domestic law as a specific account for covering the costs of a condominium or housing cooperative, (ii) the account or the amounts contributed and/or kept in the account are tax-favoured, (iii) the amounts in the account may only be used to pay for the expenses of the condominium or housing cooperative and (iv) no single owner can annually contribute an amount that exceeds USD 50,000. Where some of the above requirements (such as the Financial Account being tax-favoured or contributions being limited to USD 50,000) are not met, substitute characteristics or restrictions that assure an equivalent level of low risk could be considered, taking into account domestic specificities. This may include features such as: (i) no more than 20% of the annual and total contributions due in the year being attributable to single person, (ii) the account being operated by an independent professional, (iii) the amounts of the contributions and the use of the money being decided by agreement of owners in accordance with the condominium's or housing cooperative's constituting documents or (iv) disallowing withdrawals from the account for purposes other than the expenses of the condominium or housing cooperative. Because there are overall, substitute requirements that provide equivalent assurance that the account presents a low-risk of tax evasion, this type of account could be defined in domestic law as an Excluded Account.*

Paragraph D – Reportable Account

[…]

Subparagraph D(2) and (3) – Reportable Person and Reportable Jurisdiction Person

[…]

Reportable Person

[…]

112. Whether a corporation that is Reportable Jurisdiction Person is a Reportable Person, as described in subparagraph D(2)(i), can depend on the stock of that corporation being regularly traded on one or more established securities markets. Stock is "regularly traded" if there is a meaningful volume of trading with respect to the stock on an on-going basis, and an "established securities market" means an exchange that is officially recognised and supervised by a governmental authority in which the market is located and that has a meaningful annual value of shares traded on the exchange.

113. With respect to each class of stock of the corporation, there is a "meaningful volume of trading on an on-going basis" if (i) trades in each such class are effected, other than in de minimis quantities, on one or more established securities markets on at least 60 business days during the prior calendar year; and (ii) the aggregate number of shares in each such class that are traded on such market or markets during the prior year are at least 10% of the average number of shares outstanding in that class during the prior calendar year. *For the purposes of the Standard, "each share class of the stock of the corporation" means one or more classes of the stock of the corporation that (i) were listed on one or more established securities markets during the prior calendar year and (ii), in aggregate, represent more than 50% of (a) the total combined voting power of all class of stock of such corporation entitled to vote and (b) the total value of*

the stock of such corporation.

[…]

Subparagraphs D(6) through (9) – NFE and Controlling Persons

[…]

125. Subparagraph D(9)(a) describes the criterion to qualify for the Active NFE status for "active NFEs by reason of income and assets" as follows: less than 50% of the NFE's gross income for the preceding calendar year or other appropriate reporting period is passive income and less than 50% of the assets held by the NFE during the preceding calendar year or other appropriate reporting period are assets that produce or are held for the production of passive income. *The test of whether an asset is held for the production of passive income does not require that passive income is actually produced in the period concerned. Instead, the asset must be of the type that produces or could produce passive income. For example, cash should be viewed as producing or being held for the production of passive income (interest) even if it does not actually produce such income.*

126. In determining what is meant by "passive income", reference must be made to each jurisdiction's particular rules. Passive income would generally be considered to include the portion of gross income that consists of:

a) dividends;

b) interest;

c) income equivalent to interest or dividends;

d) rents and royalties, other than rents and royalties derived in the active conduct of a business conducted, at least in part, by employees of the NFE;

e) annuities;

f) income derived from Relevant Crypto-Assets;

g) the excess of gains over losses from the sale or exchange of Financial Assets *or Relevant Crypto-Assets*;

h) the excess of gains over losses from transactions (including futures, forwards, options, and similar transactions) in any Financial Assets *or Relevant Crypto-Assets*;

i) the excess of foreign currency gains over foreign currency losses;

j) net income from swaps; or

k) amounts received under Cash Value Insurance Contracts.

Notwithstanding the foregoing, passive income will not include, in the case of a NFE that regularly acts as a dealer in Financial Assets *or Relevant Crypto-Assets*, any income from any transaction entered into in the ordinary course of such dealer's business as such a dealer. Further, income received on assets to invest the capital of an insurance business can be treated as active income.

126bis. To facilitate effective implementation of the Standard, a jurisdiction's definition of passive income should in substance be consistent with the list provided in paragraph 126. Each jurisdiction may define in its particular rules the items contained in the list of passive income (such as, income equivalent to interest and dividends) consistent with domestic rules.

[…]

Controlling Persons

132. Subparagraph D(6) sets forth the definition of the term "Controlling Persons". This term corresponds

to the term “beneficial owner” as described in Recommendation 10 and the Interpretative Note on Recommendation 10 of the Financial Action Task Force Recommendations (as adopted in February 2012), and must be interpreted in a manner consistent with such Recommendations, with the aim of protecting the international financial system from misuse including with respect to tax crimes.

133. For an Entity that is a legal person, the term “Controlling Persons” means the natural person(s) who exercises control over the Entity. “Control” over an Entity is generally exercised by the natural person(s) who ultimately has a controlling ownership interest in the Entity. A “controlling ownership interest” depends on the ownership structure of the legal person and is usually identified on the basis of a threshold applying a risk-based approach (e.g. any person(s) owning more than a certain percentage of the legal person, such as 25%). Where no natural person(s) exercises control through ownership interests, the Controlling Person(s) of the Entity will be the natural person(s) who exercises control of the Entity through other means. Where no natural person(s) is identified as exercising control of the Entity, the Controlling Person(s) of the Entity will be the natural person(s) who holds the position of senior managing official.

[…]

137. Where a Reporting Financial Institution relies on information collected and maintained pursuant to AML/KYC Procedures for purposes of determining the Controlling Persons of an Account Holder (see *subparagraphs D(2)(b) of Section V* and A(2)(b) of Section VI), such AML/KYC Procedures must be consistent with Recommendations 10 and 25 of the FATF Recommendations (as adopted in February 2012), including always treating the settlor(s) of a trust as a Controlling Person of the trust and the founder(s) of a foundation as a Controlling Person of the foundation. ~~For purposes of determining the Controlling Persons of an Account Holder of a Preexisting Entity Account (see subparagraph D(2)(b) of Section V), a Reporting Financial Institution may rely on information collected and maintained pursuant to the Reporting Financial Institution’s AML/KYC Procedures~~.

Paragraph E – Miscellaneous

Subparagraph E(1) – Account Holder

140. With respect to a jointly held account, each joint holder is treated as an Account Holder for purposes of determining whether the account is a Reportable Account. Thus, an account is a Reportable Account if any of the Account Holders is a Reportable Person or a Passive NFE with one or more Controlling Persons who are Reportable Persons. When more than one Reportable Person is a joint holder, each Reportable Person is treated as an Account Holder and is attributed the entire balance of the jointly held account, including for purposes of applying the aggregation rules set forth in subparagraphs C(1) through (3) of Section VII.

141. In the case of a Cash Value Insurance Contract or an Annuity Contract, the Account Holder is any person entitled to access the Cash Value or change the beneficiary of the contract. If no person can access the Cash Value or change the beneficiary, the Account Holder is any person named as the owner in the contract and any person with a vested entitlement to payment under the terms of the contract. Upon the maturity of a Cash Value Insurance Contract or an Annuity Contract (i.e. when obligation to pay an amount under the contract becomes fixed), each person entitled to receive a payment under the contract is treated as an Account Holder. *Persons that have the right to access the Cash Value or the right to change the beneficiaries of the contract are to be considered Account Holders with respect to the Cash Value Insurance Contract in all instances, unless they have finally, fully and irrevocably renounced both the right to access the Cash Value and the right to change the beneficiaries of the Cash Value Insurance Contract.*

142. The following examples illustrate the application of subparagraph E(1):

• Example 1 (Account held by agent): F holds a power of attorney from U, a Reportable Person, that authorises F to open, hold, and make deposits and withdrawals with respect to a Depository Account on behalf of U. The balance of the account for the calendar year is USD 100 000. F is listed as the holder of

the Depository Account at a Reporting Financial Institution, but because F holds the account as an agent for the benefit of U, F is not ultimately entitled to the funds in the account. Because the Depository Account is treated as held by U, a Reportable Person, the account is a Reportable Account.

• Example 2 (Jointly held accounts): U, a Reportable Person, holds a Depository Account in a Reporting Financial Institution. The balance of the account for the calendar year is USD 100 000. The account is jointly held with A, an individual who is not a Reportable Person. Because one of the joint holders is a Reportable Person, the account is a Reportable Account.

• Example 3 (Jointly held accounts): U and Q, both Reportable Persons, hold a Depository Account in a Reporting Financial Institution. The balance of the account for the calendar year is USD 100 000. The account is a Reportable Account and both U and Q are treated as Account Holders of the account.

• Example 4 (Jointly held accounts): V, a Reportable Person, holds a Depository Account in a Reporting Financial Institution as its bare owner under a usufruct (a legal right to use and derive profit from property). X, also a Reportable Person, is the usufructuary in respect of the Depository Account. The account is a Reportable Account and both V and X are treated as Account Holders of the account.

[…]

Subparagraphs E(3) and (4) – Entity and Related Entity

144. Subparagraph E(3) defines the term “Entity” as a legal person or a legal arrangement. This term is intended to cover any person other than an individual (i.e. a natural person), in addition to any legal arrangement. Thus, e.g. a corporation, partnership, trust, fideicomiso, foundation (fondation, Stiftung), company, co-operative, association, or asociación en participación, falls within the meaning of the term “Entity”.

145. An Entity is a “Related Entity” of another Entity, as defined in subparagraph E(4), if either Entity controls the other Entity, or the two Entities are under common control. For this purpose control includes direct or indirect ownership of more than 50% of the vote and value in an Entity. *In this respect, Entities are considered Related Entities if these Entities are connected through one or more chains of ownership by a common parent Entity and if the common parent Entity directly owns more than 50% of the stock or other equity interest in at least one of the other Entities. A chain of ownership is to be understood as the ownership by one or more Entities of more than 50 percent of the total voting power of the stock of an Entity and more than 50 percent of the total value of the stock of an Entity, as illustrated by the following example:*

Entity A owns 51% of the total voting power and 51% of the total value of the stock of Entity B. Entity B on its turn owns 51% of the total voting power and 51% of the total value of the stock of Entity C. Entities A and C are considered “Related Entities” pursuant to subparagraph E(4) of Section VIII because Entity A has a direct ownership of more than 50 percent of the total voting power of the stock and more than 50 percent of total value of the stock of Entity B, and because Entity B has a direct ownership of more than 50 percent of the total voting power of the stock and more than 50 percent of total value of the stock of Entity C. Entities A and C are, hence, connected through chains of ownership. Notwithstanding the fact that Entity A proportionally only owns 26 percent of the total value of the stock and voting rights of Entity C, Entity A and Entity C are Related Entities.

Whether an Entity is a Related Entity of another Entity is relevant for the account balance aggregation rules set forth in paragraph C of Section VII, the scope of the term “ Reportable Person” described in subparagraph D(2)(ii), and the criterion described in subparagraph D(9)(b) that an NFE can meet to be an Active NFE.

Subparagraph E(5) – TIN

146. According to subparagraph E(5), the term "TIN" means Taxpayer Identification Number (or functional equivalent in the absence of a Taxpayer Identification Number). A Taxpayer Identification Number is a unique combination of letters or numbers, however described, assigned by a jurisdiction to an individual or an Entity and used to identify the individual or Entity for purposes of administering the tax laws of such jurisdiction.

147. TINs are also useful for identifying taxpayers who invest in other jurisdictions. TIN specifications (i.e. structure, syntax, etc.) are set by each jurisdiction's tax administrations. Some jurisdictions even have a different TIN structure for different taxes or different categories of taxpayers (e.g. residents and non-residents).

148. While many jurisdictions utilise a TIN for personal or corporate taxation purposes, some jurisdictions do not issue a TIN. However, these jurisdictions often utilise some other high integrity number with an equivalent level of identification (a "functional equivalent"). Examples of that type of number include, for individuals, a social security/insurance number, citizen/personal identification/service code/number, and resident registration number; and for Entities, a business/company registration code/number. *In addition, some jurisdictions may also offer Government Verification Services for the purpose of ascertaining the identity and tax residence of an Account Holder or Controlling Person. In this respect, a unique reference number, code or other confirmation received by a Reporting Financial Institution in respect of an Account Holder or Controlling Person via a Government Verification Service is also a functional equivalent to a TIN.*

149. Participating Jurisdictions are expected to provide Reporting Financial Institutions with information with respect to the issuance, collection and, to the extent possible and practical, the structure and other specifications of taxpayer identification numbers *and their functional equivalents for the purposes of the CRS.* The OECD will endeavour to facilitate its dissemination. Such information will facilitate the collection of accurate TINs by Reporting Financial Institutions.

[…]

Subparagraph E(7) – Government Verification Service

163. Subparagraph E(7) defines a "Government Verification Service" as an electronic process made available by a Reportable Jurisdiction to a Reporting Financial Institution for the purposes of ascertaining the identity and tax residence of an Account Holder or Controlling Person.

164. Such services may include the use of Application Programming Interfaces (APIs) and any other government-authorised solutions that allow Reporting Financial Institutions to confirm the identity and tax residence of an Account Holder or Controlling Person.

165. Where a tax administration opts for identification of Account Holders or Controlling Persons based on an API solution, it would normally make an API portal accessible to Financial Institutions. Subsequently, if the Account Holder's or Controlling Person's self-certification indicates residence in that jurisdiction, the Reporting Financial Institution can direct the Account Holder or Controlling Person to the API portal which would allow the jurisdiction to identify the Account Holder or Controlling Person based on its domestic taxpayer identification requirements (for example a government ID or username). Upon successful identification of the Account Holder or Controlling Person as a taxpayer of that jurisdiction, the jurisdiction, via the API portal, would provide the Reporting Financial Institution with a unique reference number or code allowing the jurisdiction to match the Account Holder or Controlling Person to a taxpayer within its database. Where the Reporting Financial Institution subsequently reports information concerning that Account Holder or Controlling Person, it would include the unique reference number or code to allow the jurisdiction receiving the information to enable matching of the Account Holder or Controlling Person.

166. For the purposes of subparagraph E(5), a unique reference number, code or other confirmation received by a Reporting Financial Institution in respect of an Account Holder or Controlling Person via a Government Verification Service is equivalent to a TIN.

167. Participating Jurisdictions are expected to provide Reporting Financial Institutions with information with respect to any Government Verification Services such jurisdictions have made available. The OECD will endeavour to facilitate its dissemination.

Commentary on Section IX

[…] 2. Under Section IX, a jurisdiction must have rules and administrative procedures in place to ensure the effective implementation of, and compliance with, the reporting and due diligence procedures set out in the Common Reporting Standard. The Standard will not be considered effectively implemented unless it is adopted in good faith with consideration to its Commentary which seeks to promote its consistent application across jurisdictions. *It is therefore acknowledged that effective implementation of the CRS may in some instances also necessitate reflecting parts of the Commentary in binding rules.* Since the application of the CRS requires that it be translated into domestic law, there may be differences in domestic implementation. Therefore, in the cross-border context, reference needs to be made to the law of the implementing jurisdiction. For example, the question may arise whether a particular Entity that is resident in a Participating Jurisdiction and has a Financial Account in another Participating Jurisdiction, meets the definition of "Financial Institution". The Entity may meet the "substantial portion" test to be a Custodial Institution in one Participating Jurisdiction, but different measurement techniques for gross income may mean that the Entity does not meet such test in another Participating Jurisdiction. In such a case, the classification of the Entity ought to be resolved under the law of the Participating Jurisdiction in which the Entity is resident. *If an Entity is resident in a jurisdiction that has not implemented the CRS, the rules of the jurisdiction in which the account is maintained determine the Entity's status as a Financial Institution or NFE since there are no other rules available. Further, when determining an Entity's status as an Active or Passive NFE, the rules of the jurisdiction in which the account is maintained determine the Entity's status. However, a jurisdiction in which the account is maintained may permit (e.g. in its domestic implementation guidance) an Entity to determine its status as an Active or Passive NFE under the rules of the jurisdiction in which the Entity is resident provided that the jurisdiction in which the Entity is resident has implemented the CRS.*[…]

18. Subparagraph A(5) requires that a jurisdiction must have effective enforcement provisions to address non-compliance. In some cases, the anti-avoidance rule described in Subparagraph A(1) may be broad enough to cover enforcement. In other cases, there may be separate or more specific rules that address certain enforcement issues on a narrower basis. For example, a jurisdiction may have rules that provide for the imposition of fines or other penalties where a person does not provide information requested by the tax authority. Further, given that obtaining a self-certification for New Accounts is a critical aspect of ensuring that the CRS is effective, it is expected that jurisdictions have strong measures in place to ensure that valid self-certifications are always obtained for New Accounts*, including New Accounts documented on the basis of paragraph Abis of Section VII. What will constitute a "strong measure" in in this context may vary from jurisdiction to jurisdiction and should be evaluated in light of the actual results of the measure. The crucial test for determining what measures can qualify as "strong measures" is whether the measures have a strong enough impact on Account Holders and/or Financial Institutions to effectively ensure that self-certifications are obtained and validated in accordance with the rules set out in the CRS.* An effective way to achieve this outcome would be to introduce legislation making the opening of a New Account conditional upon the receipt of a valid self-certification in the course of account opening procedures. Other jurisdictions may choose different methods, taking into account their domestic law. This could include, for example, imposing significant penalties on Account Holders that fail to provide a self-certification, or on Reporting Financial Institutions that do not take appropriate measures to obtain a self-certification upon account opening, or closing or freezing of the account after the expiry of 90 days.

Commentary on Section X

1. Paragraph A of Section X contains the general effective date in respect of the amendments to the CRS, i.e. [xx/xx/xxxx].

2. Paragraph B contains a limited exception to the general effective date for reporting on the role(s) by virtue of which each Reportable Person is a Controlling Person of the Entity with respect to Financial Accounts opened prior to the effective date of the revised CRS: in respect of reporting periods ending by the second calendar year following the effective date of the revised CRS the Reporting Financial Institution is only required to report such information if it is available in its electronically searchable data.

Glossary of amendments to the CRS

Inclusion of digital money products and CBDCs in scope of the CRS

- **Section VIII(A)(5) and paragraphs 12 and 14bis of the Commentary on Section VIII**: amendment of the definition of Depository Institution and the related Commentary to include those e-money providers that are not already Depository Institutions under the current definition and that are relevant from a CRS perspective by virtue of holding Specified Electronic Money Products or Central Bank Digital Currencies ("CBDCs");
- **Section VIII(A)(9), (10) and (11); paragraphs 29bis-29nonies of the Commentary on Section VIII**: inclusion of definition of Specified Electronic Money Products, CBDCs and Fiat Currency;
- **Section VIII(B)(1) and paragraphs 30 and 32 of the Commentary on Section VIII**: additional wording included in the definition of Non-reporting Financial Institution to clarify that a Central Bank is not considered a Non-reporting Financial Institution when it holds CBDCs on behalf of Non-Financial Entities or individuals;
- **Section VIII(C)(2) and paragraphs 66 and 67bis of the Commentary on Section VIII**: amendment of the definition of Depository Account to include accounts that hold Specified Electronic Money Products and CBDCs for customers. Further clarifications are included in the commentary to describe the conditions under which digital money products can be considered to be "held" in a Depository Account by a Depository Institution both in the scenario where a relevant e-money product is held in a centralised manner (whereby the digital money may only be held by and spent via its issuer) and a decentralised manner (whereby the digital money can be held without the issuer's intermediation); and
- **Section VIII(C)(17)(ebis) and paragraphs 86 and 94quater-quinquies of the Commentary on Section VIII**: two new categories of Excluded Accounts are added to bring out of scope low-risk digital money products that represent a low-risk in light of the limited capacity to store monetary value over time, namely Specified Electronic Money Products whose value does not exceed a certain de-minimis amount, as well as Specified Electronic Money Products that are created solely to facilitate a funds transfer pursuant to instructions of a customer and that cannot be used to store value.

Broadening the definition of Depository Institutions

- **Paragraphs 13 and 14 of the Commentary on Section VIII**: amendment to ensure that the term Depository Institution also covers Entities that are solely using their banking licence for accepting deposits.

Qualification of certain capital contribution accounts as Excluded Accounts

- **Section VIII(C)(17)(e)(v) and paragraphs 93-94ter of the Commentary on Section VIII**: inclusion of capital contribution accounts as a new category of Excluded Accounts.

Expansion of the reporting requirements in respect of Account Holders, Controlling Persons and the Financial Accounts they own

- **Section I(A)(1)(b) and paragraphs 3 and 7bis of the Commentary on Section I**: requirement included to report the role of Controlling Persons in relation to an Entity Account Holder;
- **Section I(A)(1)(a), (b) and (2) and paragraphs 3 and 8bis of the Commentary on Section I**: requirement included to report whether the account is a Preexisting Account or a New Account and whether a valid self-certification has been obtained;
- **Section I(A)(1)(c) and paragraph 3 of the Commentary on Section I**: requirement included to report whether the account is a joint account, as well as the number of joint Account Holders;
- **Section I(A)(2) and paragraphs 3 and 8ter of the Commentary on Section I**: requirement included to report the type of Financial Account (Depository Account, Custodial Account, Equity Interest, debt interest, Cash Value Insurance Contract or Annuity Contract); and
- **Section I(A)(6bis) and paragraph 4 of the Commentary on Section I**: requirement to identify the role(s) by virtue of which a person is an Equity Interest holder of an Investment Entity that is a legal arrangement.

Inclusion of FAQ 22 and special due diligence procedure for cases where a valid self-certification was not obtained

- **Paragraph 2bis of the Commentary on Section IV and paragraph 4bis of the Commentary on Section VI**: insertion of FAQ 22, clarifying that in a limited number of instances where a self-certification cannot be obtained and validated upon account opening, the self-certification should be both obtained and validated as quickly as feasible, and in any case within a period of 90 days;
- **Section VII(Abis) and paragraphs 10bis and 10ter of Commentary on Section VII**: introduction of fall-back due diligence procedure to be applied in exceptional cases where a Reporting Financial Institution did not comply with the requirement to obtain a valid self-certification; and
- **Paragraph 18 of the commentary on Section IX**: clarification of “strong measures” to ensure valid self-certifications.

Required documentation to identify Controlling Persons in case of inadequate AML/KYC Procedures

- **Sections V(D)(2)(b) and VI(A)(2)(b) and paragraphs 21 of Commentary on Section V, 19 of Commentary on Section VI and 137 of Commentary on Section VIII**: Introduction of a requirement to collect documentation that meets the 2012 FATF Recommendations on the identification of beneficial owners, in case the Financial Institution or the Financial Account is not subject to AML/KYC Procedures that are in line with the 2012 FATF Recommendations.

Definition of Investment Entities (Commentary to Investment Entity definition)

- **Paragraph 16 of Commentary on Section VIII**: Clarification that Equity Interest holders of funds can be considered “customers” and the funds themselves can be considered to conduct activities “as a business” for purposes of paragraph a of Section VIII(6).

Reporting in respect of dual-resident account-holders

- **Paragraphs 4 and 7 to the Commentary on Section IV and VII, respectively**: amendment to state that, in dual-residence (or multi-residence) scenarios, all jurisdictions of tax residence should be self-certified by the Account Holder and the Account Holder should be treated as tax resident in all identified jurisdictions without consideration of tiebreaker rules.

Reflecting Government Verification Services within the CRS due diligence procedures

- **Section VIII(E)(7) and paragraphs 163-167 of the Commentary on Section VIII**: addition of the defined term "Government Verification Service"; and
- **Paragraphs 148 and 149 of the Commentary on Section VIII**: amendment of commentary to the definition of TIN, with the aim of clarifying that a unique reference number, code or other confirmation received by a Reporting Financial Institution in respect of an Account Holder via a Government Verification Service is a functional equivalent to a TIN.

Look-through requirements in respect of controlling persons of publicly traded entities

- **Paragraphs 21 and 19 of the Commentary on Section V and VI, respectively***:* amendment clarifying that Financial Institutions are not required to request information on the beneficial owner(s) of a publicly traded companies, if these are already otherwise subject to disclosure requirements ensuring adequate transparency of beneficial ownership information.

Integrating CBI/RBI guidance within the CRS

- **Paragraph 3bis of the Commentary on Section VII***:* inclusion of explanatory guidance for Reporting Financial Institutions aimed at addressing the misuse of certain citizenship and residence by investment (CBI/RBI) schemes (consistent with guidance available on OECD website).

Aligning the CRS with the CARF

- **Paragraph 25bis of the Commentary on Section VIII**: clarification that the enumerations of assets under the Financial Asset definition would not fall outside of its scope purely by virtue of being issued or recorded as a Crypto-Asset;
- **Paragraphs 10bis, 11bis and 68bis of the Commentary on Section VIII**: clarification of the conditions under which Crypto-Assets can be considered to be held in a Custodial Account;
- **Section I(G) and Paragraph 36 of the Commentary on Section I**: new rule to prevent duplicative reporting for certain assets that are simultaneously subject to reporting as Crypto-Assets under the new Crypto-Asset Reporting Framework and Financial Assets held in Custodial Accounts under the CRS;
- **Section VIII(A)(7) and paragraph 24 of the Commentary on Section VIII**: inclusion of traditional derivatives referencing Crypto-Assets in the definition of Financial Assets;
- **Section VIII(A)(6)(a)(iii) and (b) and paragraphs 16 to 18 and 20 of the Commentary on Section VIII**: expansion of the definition of Investment Entity to include the activity of investing in Crypto-Assets;

- **Section VIII(A)(12) through (16) and paragraphs 29decies through 29quaterdecies of the Commentary on Section VIII:** inclusion of definition of Crypto-Asset, Relevant Crypto-Asset, Closed-Loop Crypto-Asset, Participating Merchant and Exchange Transactions; and
- **Paragraph 126 of the Commentary on Section VIII:** Clarification that Crypto-Assets are included in the types of assets considered to generate passive income.

Incorporating certain FAQs and Commentary provisions within the CRS

- Section I: Reporting Requirements
  - **Paragraphs 17-20 of the Commentary on Section I**: Reporting of sales proceeds credited or paid with respect to the Custodial Account (FAQ 4);
  - **Paragraph 14 of the Commentary on Section I**: Intermittent distributions to discretionary beneficiaries of a trust that is a Reporting Financial Institution (FAQ 6); and
  - **Paragraph 142 of the Commentary on Section VIII**: Qualification of usufruct for CRS purposes (FAQ 10).
- Sections II – VII: Due diligence procedures
  - **Paragraph 4bis of the Commentary on Section VII:** AML/KYC Procedures and due diligence for CRS purposes (FAQ 6);
  - **Paragraph 4ter of the Commentary on Section VII**: The validation of TINs (FAQ 8);
  - **Paragraph 11bis of the Commentary on Section IV**: Self-Certification – meaning of "positively affirmed" (FAQ 10);
  - **Paragraph 2 of the Commentary on Section IX**: Determination of CRS status of Entities (FAQ 17); and
  - **Paragraph 25bis of the Commentary on Section IV**: Confirming the validity of self-certifications (FAQ 25).
- Section VIII: Definitions
  - A. Reporting Financial Institution
    - **Paragraph 17 of the Commentary on Section VIII**: Clarification of "managed by" criterion in the definition of Investment Entity (FAQ 3);
    - **Paragraph 10ter of the Commentary on Section VIII**: Treatment of corporate trustees and SPV custodians (FAQ 9);
  - B. Non-Reporting Financial Institution
    - **Paragraph 36bis of the Commentary on Section VIII**: Compartmentalisation of Broad Participation Retirement Funds (FAQ 4);
  - C. Financial Account
    - **Paragraph 103 of the Commentary on Section VIII:** Excluded Accounts – Accounts held for the purpose of condominium or housing cooperative (FAQ 10);
    - **Paragraph 70 of the Commentary on Section VIII:** Indirect distributions by a trust (FAQ 11);
    - **Paragraph 141 of the Commentary on Section VIII**: Account Holders with respect to Cash Value Insurance Contracts (FAQ 12);

- D. Reportable Account
  - **Paragraph 125 of the Commentary on Section VIII**: Passive Non-Financial Entities (FAQ 2);
  - **Paragraph 126 of the Commentary on Section VIII**: Income from insurance business is active income (FAQ 8);
  - **Paragraph 126bis of the Commentary on Section VIII**: Passive Income (FAQ 3);
  - **Paragraph 113 of the Commentary on Section VIII**: Reportable Person – regularly traded definition (FAQ 4); and
- E. Miscellaneous
  - **Paragraph 145 of the Commentary on Section VIII**: Related Entity definition in case of indirect ownership (FAQ 1).

Incorporating Commentary within the Standard

- **Paragraph 2 of the Commentary on Section IX**: additional wording to highlight that effective implementation of the Standard may necessitate translating certain parts of the commentary into binding rules.

Transitional measures

- **Section VIII(C)9 and10 and paragraphs 81 and 82 of the Commentary on Section VIII**: amendment of definition of New and Preexisting Accounts; and
- **Section X and paragraphs 1 and 2 of the Commentary on Section X**: Introduction of effective date and transitional measures of the revised CRS.