

October 25, 2020



Consultation on cryptoasset promotions  
Cryptoassets branch  
Payments and FinTech (1 Blue)  
Financial Services Group  
1 Horse Guards Road  
London  
SW1A 2HQ  
Email: [crypto.finproms@hmtreasury.gov.uk](mailto:crypto.finproms@hmtreasury.gov.uk)

Dear Sir or Madam,

Ripple welcomes the opportunity to comment on HM Treasury's Cryptoassets promotions: Consultation (the "Consultation").

With over approximately institutional customers globally as of the date of this letter, Ripple's software products allow financial institutions to send money globally, on a real-time basis, at a fraction of the cost of traditional services available to market participants. Using blockchain technology, Ripple allows financial institutions to process payments instantly, reliably, cost-effectively, and with end-to-end visibility anywhere in the world. In fact, Ripple was recently featured as the only blockchain company in a list of the top 100 cross-border payment providers.<sup>1</sup>

Ripple's aim is not to replace fiat currencies, but rather to enable a faster, less expensive, and more transparent method of making cross-border payments that is in the public's best interest. Unlike the large majority of companies seeking to leverage cryptoassets, Ripple's customers and partners are regulated financial institutions, both banks and payment service providers, who operate within the contours of the existing financial system.

RippleNet, our enterprise software solution which is powered by a standardized application programming interface and built on the market-leading and open standard, Interledger Protocol, enables financial institutions to facilitate faster and less costly cross-border payments, demonstrating that deep interoperability between commercial financial institutions can make payments truly efficient, particularly in eliminating the

---

<sup>1</sup> See <https://www.fxcintel.com/research/reports/the-top-100-cross-border-payment-companies>.

uncertainty and risk historically involved in moving money across borders using interbank messaging alone. In addition, Ripple offers these entities an On-Demand Liquidity (“ODL”) capability which leverages XRP - the cryptoasset native to the XRP Ledger, a distributed ledger platform that is decentralized, open source, and based on cryptography - as a bridge between currencies, further reducing the friction and costs for commercial financial institutions to transact across multiple global markets. Ripple utilizes XRP because of its speed, scalability, energy efficiency, and cost.

With that background, Ripple respectfully submits the following response to questions 1, 2, and 7 of the Consultation, which seeks comments on the proposed definition of cryptoassets, whether the correct tokens have been excluded from scope under this proposal, and possible exemptions therefrom.

**Q1: Do you have any comments on the proposed definition of qualifying cryptoassets?**

**Q2. Do you agree that the correct tokens have been excluded from scope under this proposal**

In the UK currently, exchange tokens, which “can be used to facilitate regulated payment services”<sup>2</sup> and utility tokens, which “provide[s] consumers with access to a current or prospective product or service and often grant[s] rights similar to pre-payment vouchers”<sup>3</sup> are both considered to be “unregulated tokens” (i.e., tokens that do not provide rights or obligations akin to specified investments) that fall outside the Financial Conduct Authority’s (“FCA”) regulatory perimeter.<sup>4</sup> The FCA has acknowledged that while exchange tokens “can be acquired and held for the purpose of speculation rather than exchange,” it did “not view this as being sufficient for exchange tokens to constitute specified investments. The analogy would be an individual holding different fiat currency or a commodity, both of which are unregulated, in the hope of a gain.”<sup>5</sup> Within the UK, XRP has been described as a hybrid exchange/utility token,<sup>6</sup> leaving it outside of the FCA’s regulatory perimeter.

In its Consultation, the government is proposing to add certain unregulated cryptoassets to the list of controlled investments in Part 2 of Schedule 1 to the Financial

---

<sup>2</sup> <https://www.fca.org.uk/publication/policy/ps19-22.pdf>, § 2.15. The FCA went on to note that unregulated tokens, which include exchange tokens, “can be used to facilitate regulated payment services such as international money remittance” and it had seen several cases where such tokens were used “to make things cheaper and faster on a small scale.” *Id.* Appendix 1, § 57.

<sup>3</sup> *Id.* § 2.21.

<sup>4</sup> *Id.* Appendix 1, §§ 43, 50.

<sup>5</sup> *Id.* Appendix 1, § 42.

<sup>6</sup> <https://www.fca.org.uk/publication/consultation/cp19-22.pdf>, § 2.7.

Services and Markets Act 2000 (“Financial Promotion”) Order (“FPO”) 2005. Specifically, a “qualifying cryptoasset” would mean “any cryptographically secured digital representation of value or contractual rights that uses a form of distributed ledger technology and which – (a) is fungible; (b) is transferable or confers transferable rights, or is promoted as being transferable or as conferring transferable rights; (c) is not any other controlled investment as described in this Part; (d) is not electronic money within the meaning given in the Electronic Money Regulations 2011; and (e) is not currency issued by a central bank or other public authority.”<sup>7</sup>

While we appreciate the rationale for this intervention - i.e., to ensure that retail investors receive clear and candid information about the risks involved in purchasing cryptoassets - we believe the proposed definition could well “stifle innovation without a proportionate benefit to consumer protection.”<sup>8</sup>

XRP is arguably both fungible (i.e., interchangeable) and transferable. Yet, it is not intended to function in the same way as money or stocks.<sup>9</sup> Rather, XRP’s primary use case is to enable a faster, less expensive, and more transparent method of making payments for institutional and regulated customers.

Unlike specified investments or electronic money, XRP does not present any counterparty risk and does not grant the holder any claim against or control over an “issuer.” That some individuals choose to speculate in XRP, as the FCA recognized they might,<sup>10</sup> does not alter the basic function it was intended to serve nor does it distinguish XRP from any other asset that also presently falls outside the scope of the FCA regulatory perimeter.

We believe that application of the government’s proposed definition of “qualifying cryptoasset” to XRP could well result in customers being reluctant to adopt Ripple’s suite of products due to the regulatory burden associated with the need to ensure that any advertising related to RippleNet or ODL is in compliance with the financial promotions regime even though both products are ultimately intended to benefit, not hurt, consumers by providing regulated financial institutions an alternative way to make cross-border payments. Accordingly, we would ask the government to consider carving out from the definition of a “qualifying cryptoasset” hybrid utility/exchange tokens (such as XRP) where the cryptoasset is not used for investment or speculative purposes.

---

<sup>7</sup> Consultation, § 4.17.

<sup>8</sup> *Id.* § 4.21.

<sup>9</sup> *Id.* § 4.24.

<sup>10</sup> <https://www.fca.org.uk/publication/policy/ps19-22.pdf>, Appendix 1, § 42.

We also consider that bringing “qualifying cryptoassets” within the scope of the financial promotion regime as proposed has unintended consequences. Section 21 of the Financial Services and Markets Act 2000 (“FSMA”) does not apply where the person communicating the financial promotion is authorised by the FCA or Prudential Regulation Authority in accordance with section 31 of FSMA.

If the proposals are implemented and are deemed to capture XRP then this would create an uneven playing field, with the potential for contradictory and inconsistent communications about our blockchain based product that leverages the cryptoasset XRP to facilitate cross-border payments. This is because some of our customers, which are authorized as credit institutions, would not fall foul of the financial promotion regime but authorized electronic money and payment institutions may believe they would need to comply with the regime as such entities are not authorized persons under FSMA, notwithstanding that those customers are using the cryptoasset for its intended functionality and use to facilitate cross-border payments.

**Q7: Do you have any views on the government’s proposed treatment of exemptions?**

In the Consultation, the government also proposes a limited exemption to its proposal, excluding “any communication which merely states that a person is willing to accept or to offer qualifying cryptoassets in consideration for the supply of goods and services.”<sup>11</sup>

We respectfully request that the government consider making clear that this exemption would cover institutional customers who are transacting in a cryptoasset for its intended functionality and use (e.g., cross-border payments). In the alternative, we request that the government consider adding a limited exemption making clear that where the demonstrated purpose of an unregulated token is not speculation - but rather, for example, to facilitate payment transactions - advertising related to its usage should not be subject to its financial promotions regime.

Absent such an exemption, advertising related to products like ODL, which leverages XRP as a bridge currency to facilitate cross-border payments, arguably falls within the scope of the government’s policy proposal given its broad proposed definition of “qualifying cryptoassets.” Yet, that advertising is not intended or designed to encourage retail investors to speculate in XRP. Rather, it is meant to promote services that enable a faster, less expensive, and more transparent method of making payments which benefits the public through the incorporation of a cryptoasset into a blockchain based product.

---

<sup>11</sup> Consultation, § 4.37.

Put differently, advertisements that promote Ripple's suite of products should not automatically be viewed as encouragement to speculate in XRP simply because those products leverage XRP for their functionality. An exemption that makes clear unregulated tokens utilised in the first instance by institutional regulated customers, and not retail investors, for their intended functionality and use do not fall within the financial promotions regime would not only continue to encourage innovation by industry participants, but better serve consumers by giving them access to a wider variety of products and services intended to benefit them.

Finally, Ripple respectfully submits that if the amendments to the FPO come into force, a short transition time would be appropriate (e.g., a minimum of 6 months).

\*\*\*

Ripple appreciates the opportunity to comment on the Consultation as the government considers whether certain types of cryptoassets should be brought within scope of financial promotions regulation. Should you wish to discuss any of the issues raised in this letter, please contact Susan Friedman at [sfriedman@ripple.com](mailto:sfriedman@ripple.com).

Sincerely,

Ripple Labs, Inc.