

April 28, 2022

Japanese Bankers Association

JBA Comments on "Crypto-Asset Reporting Framework and Amendments to the Common Reporting Standard Public consultation document"

We, the Japanese Bankers Association (JBA), appreciate the opportunity to provide comments on Organisation for Economic Co-operation and Development documents "Crypto-Asset Reporting Framework and Amendments to the Common Reporting Standard Public consultation document" dated March 22, 2022.

We hope that our comments will contribute to further discussions.

Comments on the Consultative Report "Crypto-Asset Reporting Framework and Amendments to the Common Reporting Standard Public consultation document"

	Questions for public consultation	Applicable Page	Our comments
CARF			
1	<p>Crypto-Assets in scope</p> <p>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?</p>		<p>Although the public consultation document implies security token as an example of crypto-assets, we suggest that financial assets' digital representations maintained at financial accounts of reporting financial institutions (FIs) under the CRS be explicitly excluded from the definition of the crypto-assets despite its usage of a cryptographically secured distributed ledger or a similar technology. There are three reasons behind this suggestion.</p> <p>First, we consider that the case above does not link to the concerns outlined in the consultation document, which states "...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." (page3), "are frequently offered by actors that are not covered by the Common Reporting Standard (CRS). Against this background, the OECD is advancing..." (page3) and "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" (page5). In other words, financial assets' digital representations maintained at financial accounts of reporting FIs under CRS are not within the scope of the CARF's objective.</p> <p>Second, the CARF and CRS seek to be consistent with the FATF recommendations, whose "Updated Guidance for a Risk-Based Approach to Virtual Assets and Virtual Asset Service Providers" defines the relevant assets describing "Virtual assets do not include digital representations of fiat currencies, securities, and other financial assets that are already covered elsewhere in the FATF Recommendations" (item 44) and "That is, they should be applied based on the basic characteristics of the asset or the service, not the technology it employs." (item 47) Thus, our suggestion is considered to be consistent with the FATF recommendations.</p> <p>Third, in the case where the financial assets we mentioned are classified as crypto-assets, the establishment and implementation of relevant due diligence procedures will be complicated for both customers and reporting FIs and, thus, will not be effective and efficient, because reporting FIs will need to deal with the differences between the definitions under the CARF, CRS and FATCA (e.g. Active Entity & Excluded Person in CARF vs Active NFE & Reportable Person in CRS vs Active NFFE and Reportable Person in FATCA, etc.) , including explaining the differences to the customers who trade both the traditional financial assets and crypto-assets and asking for self-certifications hoping that the customers understood the complex definitions.</p> <p>Therefore, we would like to suggest excluding financial assets' digital representations maintained at financial accounts of reporting FIs under the CRS from the definition of crypto-assets despite its usage of a cryptographically secured distributed ledger or a similar technology, from the viewpoints of the CARF's objective, consistency with the FATF Recommendations, effectiveness and efficiency.</p>
2	<p>Reporting requirements</p> <p>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?</p>		<p>In order not to hinder the widely adoption of the use of low-value payment products, a threshold of "Reportable Retail Payment Transaction " should be set (e.g. \$1,000), for example, following the FATF recommendation,</p>

3	<p>Due diligence procedures</p> <p>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 selfcertification is obtained and its reasonableness is confirmed. Are there potential alternative effective mplementation 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?</p>		<p>There is no problem with adding conditions and deadlines to the performance of transactions by the reporting crypto asset service provider. In addition, given the view that crypto assets have a higher ML risk than ordinary assets, this provision, which stipulates that transactions shall be refused unless a legitimate self-certification is submitted (i.e., payment reservation with a condition precedent), is also appropriate. However, it is considered necessary to fully inform the market of the withholding of settlement funds, as there is a risk of confusion in the trading market without sufficient explanation in advance.</p>
4	<p>Other elements of the proposal</p> <p>1. Comments are also welcomed on all other aspects of the Crypto-Asset Reporting Framework.</p>	<p>About the whole</p>	<p>Compared to CRS, due diligence and records/reporting required under CARF are very burdensome. It is expected that a considerable time will be required for the development of this business procedure and system, and the standards should be gradually tightened to be equivalent to CRS at first.</p>
5	<p>Other elements of the proposal</p> <p>1. Comments are also welcomed on all other aspects of the Crypto-Asset Reporting Framework.</p>	<p>【P12】Section III: Due Diligence Procedures A. Due Diligence Procedures for Individual Crypto-Asset Users “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” (Same for page 30.)</p>	<p>As under CRS, RCASPs should have 24 months to obtain self-certifications for pre-existing accounts as 12 months is not enough.</p>
6	<p>Other elements of the proposal</p> <p>1. Comments are also welcomed on all other aspects of the Crypto-Asset Reporting Framework.</p>	<p>【 P28 】 Paragraphs II (D), (E) and (F) – Valuation and Currency Valuation and Currency Translation Rules for Crypto-to-fiat transactions 32. 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.</p>	<p>The conversion of each transaction into fiat currency should be allowed, not only at the spot rate but also at the average rate for a given period.</p>
7	<p>Other elements of the proposal</p> <p>1. Comments are also welcomed on all other aspects of the Crypto-Asset Reporting Framework.</p>	<p>【P40】Subparagraph A(2) – 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. F</p>	<p>If the definition of a crypto asset includes tokens that are highly individualized (for example, cryptoart or game items), it is not clear how to determine fair market value of these items. Highly specific tokens should be excluded.</p> <p>Furthermore, stablecoins linked to legal tender are similar to digital currencies issued by central banks in a sense that monetary value compared to legal tender will not change and no gain or loss on transfer occurs. Therefore, they should be subject to CRS, not CARF.</p>
8	<p>Other elements of the proposal</p> <p>1. Comments are also welcomed on all other aspects of the Crypto-Asset Reporting Framework.</p>	<p>【P43】Paragraph IV (B) – Reporting Crypto-Asset Service Provider</p>	<p>Reporting Crypto-Asset Service Provider is defined as any individual or Entity that, as a business, provides a service effectuating Exchange Transactions for or on behalf of customers, including an entity which makes available a trading platform. However, a platform provider should not be included in the definition of Reporting Crypto-Asset Service Provider if it is not part of the transaction.</p>
<p>CRS改訂</p>			
1	<p>Specified Electronic Money Products</p> <p>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 emoney products?</p>		<p>The threshold should be at a level that excludes electronic money used exclusively for cost-of-living payments from reporting.For example, accounts that do not exceed the \$10,000 threshold could be exempted from reportable items and accounts that are designed not to exceed \$10,000 may be exempted from regulation.</p> <p>Electronic money that cannot be charged from ordinary currency and is acquired only by paying back a certain percentage of the settlement amount should be excluded.</p>

2	<p>Collection of TIN for Preexisting Accounts</p> <p>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?</p>		<p>• Financial institutions are already making sufficient efforts to obtain information from existing accounts. Therefore, it is important for governments to inform customers of the need to respond to requests for information from financial institutions.</p>
3	<p>Other comments</p> <p>2. Comments are also welcomed on all other aspects of amendments to the CRS.</p>	<p>[P63]</p> <p>Section I: General Reporting Requirements</p> <p>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</p>	<p>Adding information as to whether account holders provide valid self-certification to the reporting items would have a significant impact on banking operations. Therefore, the Commentary should clearly state the significance and purpose of adding such information to the reporting items.</p> <p>Does this addition intend that, regardless of Preexisting or New Accounts, applying “due diligence procedures for Preexisting Accounts” to account holders with no valid self-certification is just only a temporary measure, which shall be updated by valid self-certification?</p> <p>If you have any other reasons for this addition, be sure to clarify them. If there is no clear and reasonable reason in this regard, this additional requirement shall be deleted from proposals.</p>
4	<p>Other comments</p> <p>2. Comments are also welcomed on all other aspects of amendments to the CRS.</p>	<p>[P63]</p> <p>Section I: General Reporting Requirements</p> <p>A. 2. [...] whether the account is a Preexisting Account or a New Account</p>	<p>The addition of reporting items has a significant impact on banking practices. Therefore, the Commentary should clearly state the significance and purpose of adding such information to the reporting items.</p> <p>Does this addition intend to pay careful attention to the New Account holders with no valid self-certification as it is highly likely that Reporting Financial institutions fail to obtain TIN from them in this situation?</p> <p>If you have any other reasons for this addition, be sure to clarify them. If there is no clear and reasonable reason in this regard, this additional requirement shall be deleted from proposals.</p>
5	<p>Other comments</p> <p>2. Comments are also welcomed on all other aspects of amendments to the CRS.</p>	<p>[P88]</p> <p>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), <u>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.</u></p>	<p>The criteria for listed companies that are exempt from reporting are too detailed, Such criteria should be more practicable and identifiable in light of KYC of financial institutions.</p>