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02 August 2022

Dear Sir/Madam

**Re: Consultation on Managing the failure of systemic digital settlement asset (including stablecoin) firms.**

We welcome the opportunity to provide input to the HMT consultation paper ("Consultation") on the management of DSA firms in the event of insolvency. The EMA represents FinTech, BigTech and technology firms engaging in the provision of alternative digital payment services, including the issuance of e-money, e-money tokens, and cryptoassets. Our members include leading payments and e-commerce businesses providing online payments, card-based products, electronic marketplaces, and increasingly stablecoins, cryptocurrency exchanges and other cryptocurrency related products and services. The EMA has been operating for over 20 years and has a wealth of experience regarding the regulatory framework for electronic money and payments. A list of current EMA members is provided at the end of this document. We have a monthly cryptoasset working group that meets to discuss issues of regulatory significance for the cryptoasset sector.

We would be grateful for your consideration of our comments, which are set out below.

Yours faithfully

A handwritten signature in black ink, appearing to read 'Iwan Sabin', with a long horizontal flourish extending to the right.



Dr Thaer Sabri  
Chief Executive Officer  
Electronic Money Association

## **EMA Response to Consultation:**

### **1. Do you have any comments on the intention to appoint the FMI SAR as the primary regime for systemic DSA firms which aren't banks?**

In the context of the continued growth of the stablecoin sector, and the UK establishing 'payment stablecoins' as a regulated instrument, the introduction of the FMI SAR regime is welcome. The additional objective covering the return or transfer of customer funds and custody assets will also help to increase consumer trust and confidence in using these assets.

We would appreciate further guidance on how banks, who are not subject to these proposals, but who may issue systemic stablecoins, will be treated, and if there is an alternative regime that will apply to them.

### **2. Do you have any comments on the intention to establish an additional objective for the FMI SAR focused on the return or transfer of customer funds, similar to that found in the PESAR, to apply solely to systemic DSA firms?**

The general objective under FMI SAR requires the administrator to pursue an objective of service continuity even if that is not in the best interests of the creditors. The proposal here is that only DSA firms (and not traditional payment systems) are subject to an additional objective to focus on the return of customer funds.

The establishment of this additional objective is commendable and should increase consumer trust and certainty. We would appreciate further clarity on the process and considerations the Bank of England will have to direct administrators as to which objective (service continuity or return of customer funds) will take priority in the event of insolvency.

### **3. Do you have any comments on the intention to provide the Bank of England with the power to direct administrators, and to introduce further regulations in support of the FMI SAR to ensure the additional objective can be effectively managed, or what further regulation may be required?**

We understand rationale behind the intention to provide the Bank of England with the power to direct administrators in the case of insolvency for systemic DSA firms.

However, it should be considered that the FCA is the current supervisor of cryptoasset businesses' management of the risk of money laundering and counter-terrorist financing, with firms required to register with the FCA in order to carry out cryptoasset activity in the UK. The FCA is also the designated authority responsible for establishing a new authorisation and supervision regime for stablecoins and their use as a means of payment, as outlined in HMT's

consultation response published on 4th April 2022. The FCA is also the authority with the power to direct administrators under the PESAR regime.

As such, given the FCA's existing oversight responsibilities and objectives for firms in this sector, it would be more appropriate for the FCA to have the power to direct administrators of DSA firms as opposed to the Bank of England. The FCA will have unique knowledge and experience of how these firms operate, their key staff, as well as data and intelligence on each firm individually.

This will also prevent any delays, given that the application of such a regime will require a well-informed and time-critical response.

**4. Do you have any comments on the intention to require the Bank of England to consult with the Financial Conduct Authority prior to seeking an administration order or directing administrators where regulatory overlaps may occur?**

As a standalone measure, this is positive, as it requires the Bank of England to consult the FCA, who will be the supervisor of DSA firms, to have a say in how they are administrated in the event of a failure.

Despite this, as per Question 3 above, we suggest the FCA is better place to be the authority with the power to direct administrators in the first place in case of insolvency, as it currently does for payment and electronic money institutions.

## List of EMA members as of July 2022:

[AAVE LIMITED](#)  
[Account Technologies](#)  
[Airbnb Inc](#)  
[Airwallex \(UK\) Limited](#)  
[Allegro Group](#)  
[Amazon Pay](#)  
[American Express](#)  
[ArcaPay Ltd](#)  
[Azimo Limited](#)  
[Banked](#)  
[Bitpanda Payments GmbH](#)  
[Bitstamp](#)  
[BlaBla Connect UK Ltd](#)  
[Blackhawk Network Ltd](#)  
[Boku Inc](#)  
[Booking Holdings Financial Services International Limited](#)  
[CashFlows](#)  
[Circle](#)  
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[Etsy Ireland UC](#)  
[Euronet Worldwide Inc](#)  
[Facebook Payments International Ltd/Meta](#)  
[Financial House Limited](#)  
[First Rate Exchange Services](#)  
[FIS](#)  
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[Flywire](#)  
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[Global Currency Exchange Network Limited](#)  
[Globepay Limited](#)  
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