• Swiss Banking

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SBA comments on the new Crypto-Asset Reporting Framework (CARF) and amendments to the Common Reporting Standard (CRS)

Dear Madam, Dear Sir

The Swiss Bankers Association (SBA) would like to thank you for the opportunity to provide comments on the consultation regarding the new tax transparency framework for crypto-assets and amendments to the Common Reporting Standard (CRS). Our answer is separated into three parts:

- First, we provide an executive summary of our comments
- Second, we provide general comments on the proposed Crypto-Asset Reporting Framework (CARF), followed by our answers to the CARF-specific consultation questions deemed most relevant for our member banks.
- Third, we provide general comments on the proposed amendments to the CRS, followed by our answers to the CRS-specific consultation questions deemed most relevant for our member banks.

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1. Executive Summary

SBA welcomes the overall aim of CARF to create a level playing field for all types of assets and all types of financial service providers. However, the current CARF proposal in our view does not appropriately acknowledge CRS as an existing and well-functioning global tax information exchange regime applicable to a broad range of financial services providers.

The purpose of CARF is to close the gap where CRS does not apply. Generally, CRS Reporting FIs report all assets held in Financial Accounts maintained by them. Creating a new regime for a certain type of asset would not be necessary if CRS is applied coherently. Instead, clarity could be achieved by amending the CRS Financial Asset definition to explicitly cover all relevant virtual assets and clearly stating that virtual assets are reportable under CRS if held by a CRS FI for the account of a Reportable Person. Any virtual assets that are held by a CRS FI for the account of its account holders should be excluded from due diligence and reporting under the CARF.

If overlaps between CARF and CRS persist, it is essential that CRS Reporting FIs can rely on CRS due diligence procedures for CARF. The CARF Standard and the Commentary should explicitly refer to existing CRS procedures and CRS Reporting FIs should be able to rely on the determinations made and documentation collected for their CRS Individual and Entity Accounts. Core CRS information like a person's residence for tax purposes or an entity's controlling persons are the same for CRS and for CARF. In a mass market where virtual assets and other assets more and more converge, it is not acceptable that fully compliant CRS financial Institutions have to adhere to deviating procedures solely based on the type of asset they offer to their clients. Please see below for our detailed suggestions on how to minimize the overlap between CARF and CRS.

A critical assessment of CRS after it has been in force for several years is generally welcomed by SBA. Overall, it can be stated that CRS has been implemented successfully and that each year information on millions of Reportable Accounts is exchanged across a world-spanning network of Participating Jurisdictions. Industry has put tremendous efforts into implementing CRS and establishing the required infrastructure to collect, maintain and report the required information. The biggest burden of this effort has been borne by banks across Participating Jurisdictions.

We therefore want to emphasize that any change to this complex and well-functioning system has far-reaching consequences, in particular for banks which operate in a highly automated mass market. We therefore stress that only the most necessary and useful changes to CRS should be made. Any change must be weighed against the costs for changing existing processes, a cost notably borne by the industry, and the benefits of these changes for the fight against tax evasion and the protection of the integrity of tax systems. While we welcome some of the proposed changes, others in our view are "nice-to-haves" that do not stand this test. Please see below for our detailed comments on the proposed changes.

2. CARF

a) General comments

In general, the SBA welcomes the OECD's aim to create a level playing field for all types of assets and all financial service providers, new and established ones. This is in the interest of all participants in the financial market and thus also of our member banks.

As SBA's members are all fully regulated banks that are subject to the Common Reporting Standard CRS (and the Foreign Tax Compliance Act FATCA, for that matter), we looked at the CARF proposal from the perspective of a Financial Institution (FI) that has successfully implemented CRS and is fully compliant with existing international tax information exchange regimes. From that perspective, CARF is an additional tax transparency regime that our members have to implement on top of existing regimes, once they individually decide to offer virtual asset services.

We are therefore particularly concerned about potential overlaps between CARF and CRS. From our perspective, the introductory statements in the CARF proposal do not necessarily apply to our members and to tens of thousands fully compliant CRS Reporting FIs. If a bank offers virtual asset services to its clients, it acts as the central administrator and as a "traditional financial intermediary" it reports all assets held by its clients under CRS and FATCA. Compared to some new entrants, banks are subject to extensive regulatory oversight. Virtual assets maintained by CRS Reporting FIs on behalf of customers should be treated as being held in CRS Financial Accounts and their value and proceeds be reported accordingly. Consequently, there is no gap and virtual assets held with fully compliant CRS Reporting FIs do not pose any risk to erode recent gains in global tax transparency and therefore there is no loophole that needs to be closed with CARF.

We therefore urge the OECD to reconsider the CARF proposal as an add-on to CRS rather than a fully-fledged new tax transparency regime on top of CRS:

1. Crypto-Assets should have been fully integrated into CRS. CRS is a well-functioning global regime that ensures tax transparency across more than one hundred jurisdictions that could have easily been adjusted to accommodate new types of assets, including virtual assets, and respective providers.
2. If CARF as a standalone regime is inevitable, it should focus on the described gap where no regulated "traditional" FIs are involved. FIs subject to CRS that comply with local CRS legislation should be able to report Crypto-Assets under CRS and thus be "carved-out" from CARF. Consequently, on behalf of all traditional financial institutions subject to CRS, we suggest that (a) the CRS Financial Asset definition is amended to explicitly cover all relevant virtual assets and thus make them reportable under CRS if held by a CRS FI for the account of a Reportable Person and (b) any virtual assets that are held by a CRS FI for the account of its account holders should be excluded from due diligence and reporting under the CARF. In other words, such a "carve-out" would only apply to virtual assets held in a CRS Financial Account that requires CRS reporting if held by a Reportable Person or Passive NFE with one or more Controlling Persons who are Reportable Persons. To benefit from this "carve-out", the FI would of course need to be a CRS Reporting FI with all associated obligations.

3. Within the current CARF proposal, CRS is mentioned in various instances, and it is stated that burdens on Reporting Crypto-Asset Service Providers that are also subject to CRS should be minimized. In our view, the current proposal does not fulfil this promise. Once CARF applies to them, CRS Reporting FIs have to be able to fully rely on existing CRS due diligence procedures and in particular on the determinations made and documentation collected for their CRS Individual and Entity Accounts. The CARF Standard and the Commentary should therefore explicitly refer to existing CRS procedures, for example regarding the validity of self-certifications or the definitions for Active Entities and Excluded Accounts. We provide specific comments below in our answers to the respective consultation questions.

More generally, we are concerned that CARF might stifle innovation in a very dynamic field of the financial market, innovation that goes way beyond crypto currencies. By focusing solely on the risks of certain aspects of the virtual asset universe, the CARF proposal limits the scope for all types of promising innovations for financial markets. This innovation to a large extent aims at modernizing existing elements at the core of financial markets, rather than creating something entirely new. In other words, cryptography and distributed ledger technology for example have the potential to make existing products and processes more efficient. Already today, securities such as shares and bonds can be created in the form of cryptos. Such endeavours have enormous potential benefits for the entire financial industry. In our view, risks currently associated with certain types of crypto currencies are more than outweighed by potential long-term benefits for the economy as a whole.

b) Questions for public consultation

Crypto-Assets in scope

3. Other types of Crypto-Assets that present a low risk from a tax compliance perspective and should therefore be excluded from the scope

Banks offering virtual asset services often use their own stablecoins to facilitate internal transactions. In our view, such coins present a low risk from a tax compliance perspective to the extent that they do not have investment-character, are functionally similar to the referenced fiat currency or other stable underlying asset and as such are reported under CRS. They therefore should be added as an additional low risk category excluded from the Relevant Crypto-Asset definition.

Such provider-internal stablecoins are characterized by their direct link to an underlying asset and the possibility to buy or redeem only within the relevant financial institution subject to AML/KYC requirements. Such a stablecoin can only be “minted” if it is backed by an equivalent amount of fiat currency or other stable underlying asset such as gold. Such provider-internal stablecoins can only be used to facilitate transactions within the same financial institutions network, meaning that only onboarded clients have access to such stablecoins (e.g. to buy investment products or to receive dividends within the same financial institution). They cannot be used for investment purposes as their value is identical to the one of the underlying stable asset.

Generally, we are convinced that CARF should focus on the described gap where no regulated “traditional” FIs are involved, also in regard to the Crypto-Assets in scope. FIs subject to CRS that comply with local CRS legislation should be able to report Crypto-Assets under CRS. Consequently, we suggest that (a) the CRS Financial Asset definition is amended to explicitly cover all relevant virtual assets and thus make them

reportable under CRS if held by a CRS FI for the account of a Reportable Person and (b) any virtual assets that are held by a CRS FI for the account of its accounts holders should be excluded from due diligence and reporting under the CARF. In other words, such a "carve-out" would only apply to virtual assets held in a CRS Financial Account that requires CRS reporting if held by a Reportable Person or Passive NFE with one or more Controlling Persons who are Reportable Persons. To benefit from this "carve-out", the FI would of course need to be a CRS Reporting FI with all associated obligations.

4. Definition of Crypto-Assets and what is considered a virtual asset or financial assets under the FATF Recommendations

We understand that the aim of CARF is to cover a very broad array of virtual assets. However, from a tax compliance perspective, it is problematic that the burden of identifying, characterising, and assigning the right attributes to a growing number of virtual assets is put solely on the Reporting Crypto-Asset Service Provider. Compared to CRS, CARF proposes an extremely broad definition of relevant assets that will be very onerous to apply in practice. For example, how would a Reporting Crypto-Asset Service Provider know and operationalize that a Crypto Currency is a Closed Loop Crypto-Asset or a Central Bank Digital Currency according to the CARF definition?

We therefore ask the OECD to provide clear guidance on how this characterization should be made. As a priority, it should be acknowledged that the virtual asset field is evolving rapidly pushing the border of what can be a virtual asset further and further. We therefore think that it is absolutely essential that CARF relies on local AML/KYC Procedures in line with the 2012 FATF Recommendations (as updated in June 2019 pertaining to virtual asset service providers) to determine what constitutes a Relevant Crypto-Asset. The CARF Relevant Crypto-Asset definition should have the same scope as the corresponding FATF Recommendations. From the perspective of a regulated bank subject to strict local regulations, it would be unacceptable if CARF created a separate set of rules to characterize additional types of virtual assets. AML/KYC procedures in line with FATF Recommendations should be relied upon because they are established, enforced and regularly adopted to cover relevant developments in financial markets. This gets particularly evident where tax evasion is considered a preparatory offence to money laundering.

Intermediaries in scope

1. Definition of Reporting Crypto-Asset Service Providers

We understand that the proposed definition is very broad and intended to capture any intermediary involved in an exchange transaction. From the perspective of a CRS Reporting FI, we want to emphasize that the line between CRS and CARF must be absolutely clear cut to make sure there is no doubt when CARF applies in addition to CRS and thereby to provide legal certainty to FIs and other involved parties. For example, our member banks active in the field of virtual assets do not act as exchanges but may be a counterparty in an exchange transaction. Hence there is some interpretation needed to determine whether such a bank is in scope of CARF.

The term "effectuating" may be understood in a way that any involvement with virtual assets will put an FI in scope of CARF. However, more clarity is needed with regard to this term. A bank subject to CRS must exactly understand which service offerings trigger CARF. Practical examples of relevant activities are needed.

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As the virtual asset sector is very new, it is not yet clear which business models do emerge as a bridge between traditional financial institutions such as banks and new offerings and new providers in this field. Such business models could likely involve partnerships between providers, the outsourcing of certain activities to third parties or simply buying “crypto-banking-as-a-service” offerings.

In this regard, it is for example not clear whether CARF would apply to an FI that offers custody-like services with regard to virtual assets by simply allowing clients to hold virtual assets in their CRS Custodial Account without being actively involved in an exchange:

- Such virtual assets could be brought in by the client himself/herself. Would the CRS Reporting FI providing custody-like services with respect to these virtual assets become a Reporting Crypto-Assets Services Provider or simply report the virtual asset under CRS?
- A CRS Reporting FI could work with a broker to which clients are referred if they want to buy virtual assets. The virtual assets would be bought via the broker and “stored” in the client’s Custodial Account at the CRS Reporting FI. Would that make the CRS Reporting FI a Reporting Crypto-Assets Services Provider?
- The CRS Reporting FI could also work directly with a broker to fulfil the purchase of a virtual asset on behalf of a client. Would in such a scenario the CRS Reporting FI be considered a Reporting Crypto-Asset Services Provider?

If the answer to any of these questions is yes, additional clarification is needed that only the broker would submit a CARF report and the CRS Reporting FI would report the virtual assets as part of the Custodial Account under CRS.

Furthermore, we request the OECD to clarify that equity and debt interest holders of professionally managed Investment Entities do not qualify as “customers” for purposes of the Reporting Crypto-Asset Service Provider definition in subparagraph B(1) of Section IV (as well as the Crypto-Asset User definition in subparagraph D(2)). However, if they do and the term “effectuating” is not clearly narrowed, professionally managed Investment Entities investing in Relevant Crypto-Assets may qualify as Reporting Crypto-Asset Service Provider. As a consequence, non-reporting categories analogous to the CRS would be required (e.g. for pension arrangements, widely held investment funds, etc.). This would ensure that retirement funds for example would not have the duty to report under CARF. In particular, the CRS concept that jurisdictions can introduce country-specific low risk entities in line with the CARF definition should be made available also under CARF.

2. Intermediary best placed to ensure reporting

In general, reporting should be ensured by the FI closest to the client. This logic is applied under CRS and ensures that the burden to report is at the FI that has the best knowledge of the client and is in a position to conduct the required due diligence procedures. The concept should align with local AML/KYC rules, i.e. the FI that has the reporting obligation under CARF should be the same entity that is required to adhere to local AML/KYC rules.

As the business models in the virtual asset field are evolving rapidly, we propose to allow Reporting Crypto-Asset Service Providers to rely on service providers to fulfil their reporting and due diligence obligations. This allows flexibility and would accommodate various business models. The CRS rules regarding reliance on service providers should be introduced also to CARF.

3. Nexus

The following points are of concern regarding the nexus rules:

- The nexus rules are not aligned with CRS where residence and the location of a branch are the sole nexuses. An alignment is absolutely critical to ensure that financial intermediaries face CRS and CARF obligations in the same jurisdictions. Further, as we are not aware of any gaps in the CRS reporting resulting from its nexus rules, we cannot think of any convincing justification for not using the same standard for CARF purposes.
- Should an alignment with CRS not be possible, we request that the nexus "obligation to file tax returns or tax information returns in [Jurisdiction] with respect to the income of the Entity" is deleted, narrowed down or downgraded in hierarchy.
- The way the nexuses are currently drafted, where a Reporting Crypto-Asset Service Provider operates through a foreign Branch, we anticipate conflicts between the CARF rules in the residence country and privacy, professionally secrecy or similar laws in the branch jurisdiction. It is therefore crucial that obligations solely effectuated by a foreign Branch are excluded from CARF obligations in the residence jurisdiction. Technically, there are multiple options to achieve this.
- Finally, we request the deletion of the requirement to lodge a notification in paragraph H of Section I.

Further details on our concerns regarding the nexus rules and suggestions for improvement can be found in the Annex.

Reporting requirements

1. Fair market values of Crypto-Assets

First of all, from our experience with CRS we can conclude that reporting on a transaction-by-transaction basis, which is essentially what CARF requires, would be an extremely onerous endeavour in a mass-market for financial institutions with millions of clients and billions of transactions. We are convinced that semi-aggregate reporting as described in the CARF proposal has a low cost-benefit ratio as the added value for tax authorities to assess potential tax liability of residents does not necessarily increase with the amount of data received. To the contrary, the sheer amount of data that would be sent according to the CARF proposal might make it harder to come to meaningful conclusions with regard to potential tax liability. We therefore think that some sort of effectively consolidated reporting should be envisaged under CARF, similar to the existing CRS reporting rules.

As of today, there are numerous virtual assets and the market is growing rapidly. Some Crypto-Assets are highly liquid and, if they are broadly used, even part of third-party data feeds. Other Crypto-Assets are less liquid and thus determining a fair value for them is difficult.

In our view, the ambiguity with regard to valuation should be addressed more generally by requiring the reporting of a value only for Crypto-Assets that are regularly traded. We do however want to point out that for operational reasons it must be clear what assets are considered "regularly traded". We therefore suggest that only assets whose valuation is provided by recognized third-party data providers are considered "regularly traded". Implementing jurisdictions should be free to determine which data providers are deemed "recognized" in their market. As CARF requires the reporting of very detailed information on each type of Crypto-Asset including its exact name and the number of units, we think that for illiquid Crypto-Assets this provides

sufficient information to tax authorities to assess tax consequences. Unreliable and potentially meaningless values do not make this picture any clearer. It is also reasonable to assume that in the medium-term, the relevance of illiquid assets will decrease.

4. Reportable Retail Payment Transactions

We have substantial objections against the introduction of retail transactions into a tax transparency reporting regime. As the retail merchant clearly is not in a position to apply CARF due diligence and reporting obligations, the obligation to do this falls back to the Reporting Crypto-Asset Service Provider.

However, there are multiple practical obstacles when redirecting these obligations by default to a Reporting Crypto-Asset Service Provider that holds custody of the Crypto-Assets. Please note that in a payment process, the Reporting Crypto-Asset Service Provider is a third party to the payor and the payee, between which the identification has to take place. Also, payment monitoring is extremely complex, in particular in view of the enormous number of retail transactions that occur every second. Further, it is hard to imagine how in such a mass market a substantiated identification of each payment recipient could take place. Furthermore, even if a threshold is applied, banks know from CRS and FATCA that implementing threshold monitoring procedures in a mass market is an onerous endeavour.

5. Requirement to report transfers

The number of possible transfer types in the crypto sphere is evolving rapidly. Apparently, a categorisation of these types has not yet been established and crypto services providers are not in possession of this information. We therefore propose to postpone the introduction of this reporting item until an established categorisation has evolved. As of today, this reporting item will not provide tax authorities with useful information.

6. Reporting with respect to wallet addresses

We think that this requirement is not feasible for the following reasons:

- Distinguishing reporting requirements per Reportable Jurisdiction is not implementable in practice. CRS proves that reporting to multiple jurisdictions is already a very complex matter, even with a one-size-fits-all approach. Jurisdiction-specific reporting requirements would add a completely new layer to reporting systems. It must be acknowledged that financial services are a mass market where systems have to work for millions of client relationships.
- Further, it is not clear where the information which jurisdiction is interested in additional reporting information would come from. Would such a list be provided by the OECD? Would this be a static information, or can jurisdictions change their preferences? In our view, if at all, this is only implementable if the list of jurisdictions is published latest by 30 June and will become effective by 1 January of the following year (i.e. providing sufficient time to adjust processes accordingly).
- Moreover, it is not clear how a Reporting Crypto-Asset Service Provider should be able to determine whether a wallet address is associated with another Reporting Crypto-Asset Service Provider, as no self-certification has been obtained from such third-party. Would there be a publicly available register of Reporting Crypto-Asset Service Provider similar to the GIIN-List for FATCA purposes?

7. Timing of CARF information reporting

From the perspective of CRS FIs, it is essential that the reporting timeline is aligned with CRS. We assume such an alignment is not only in the interest of CRS Reporting FIs but also in the interest of tax authorities.

Due diligence procedures

1. CRS due diligence procedures and CARF

If our requests regarding a full integration of Crypto-Assets into CRS or a "carve-out" for virtual assets held in a CRS Financial Account (see under "General comments" and "Crypto-Assets in scope" above) are not adopted, it is crucial that Reporting Crypto-Asset Service Providers that are also subject to CRS can at least fully rely on CRS due diligence procedures. From the perspective of our member banks that are subject to CRS, it is not sufficient that the CARF due diligence procedures are only to a certain extent based on CRS. Our members operate in a mass market. For them it is essential that they can leverage the documentation and information that they obtained for CRS purposes without the need to conduct additional CARF due diligence. Where possible, CARF should explicitly state that CRS due diligence procedures are deemed equivalent and thus can be relied upon also for CARF. In practice, this means that:

- It should be clearly stated that the tax residence(s) determined for Individual Accounts under the CRS procedures can be relied upon for CARF purposes and that no additional CARF due diligence must be applied, as long as the CRS Reporting FI and Reporting Crypto-Asset Service Provider treats the CRS Financial Account and the crypto relationship as a consolidated obligation for purposes of monitoring changes in circumstances.
- With regard to Entity Accounts, it should be made clear that:

  a) Active NFEs identified under CRS rules can be considered Active Entities for CARF (except for active NFEs clearly designated as publicly traded NFEs, Governmental Entities, International Organisations, Central Banks or their wholly owned Entities),

  b) Publicly traded NFEs, Governmental Entities, International Organisations, Central Bank or their wholly owned Entities as well as FIs identified under CRS rules can be considered Excluded Persons for CARF,

  c) Passive NFEs identified under CRS rules can be considered Entities that are neither Active Entities nor Excluded Persons,

  d) Controlling Persons identified under CRS rules, including their role(s) by virtue of which they are a Controlling Persons, can be considered Controlling Persons with the identical roles under CARF, and

  e) Tax residence(s) determined for Entity Account Holders and Controlling Persons under the CRS procedures can be relied upon for CARF purposes,

without the application of addition CARF due diligence procedures, as long as the CRS Reporting FI and Reporting Crypto-Asset Service Provider treats the CRS Financial Account and the Crypto relationship as a consolidated obligation for purposes of monitoring changes in circumstances.

- An exemption from reporting TIN(s) or date of birth equivalent to the one in paragraph C of Section I of the CRS would need to be implemented in the CARF, at least for situations where the Reporting Crypto-Asset

Service Provider relies on the CRS due diligence for CARF purposes and has already applied reasonable efforts to obtain a TIN.

- The current proposal foresees that a Reporting Crypto-Asset Service Provider has to look through professionally managed Investment Entities even if they are resident in a CRS Participating Jurisdiction. This would be a major deviation from CRS and consequently would mean that new self-certifications would need to be obtained with respect to many Entity Crypto-Users (in particular to document the tax residence(s) of the Controlling Persons). Furthermore, this would require the identification of the Controlling Persons of low-risk entities such as pension arrangements, widely held investment funds, professionally managed tax-exempt charities, and similar institutions. We oppose this proposal and strongly advocate relying on established CRS concepts and consider all types of FIs Excluded Persons.
  - If this such a proposal (or similar) prevails, it should be made clear that professionally managed Investment Entities identified under CRS rules can be considered as Entities that are neither Active Entities nor Excluded Persons without the application of addition CARF due diligence procedures, as long as the CRS Reporting FI and Reporting Crypto-Asset Service Provider treats the CRS Financial Account and the Crypto relationship as a consolidated obligation for purposes of monitoring changes in circumstances.
- Furthermore, a Reporting Crypto-Asset Service Provider needs more time than the proposed 12 months to redocument Preexisting Accounts. 24 months in line with CRS procedures would be required for such an onerous endeavour.
- We further are convinced that CRS procedures with regard to Change in Circumstances, including the ongoing monitoring of indicia, should be leveraged. These procedures are effectively applied by all CRS Reporting FIs and do fulfil the same goal as the proposed periodic re-confirmation requirement. It is not understandable to us why irrespective of the Change in Circumstances procedures FIs would now in addition be required to ask Account Holders/users to re-certify their status every three years. In a mass market, such a requirement would cause substantial implementation costs that are not justified if the same goal – keeping information up to date – is already achieved by the Change in Circumstances procedures.
  - If this such a proposal (or similar) prevails, it is essential that FIs do not need to monitor individual forms' expiry dates but instead know the year by which a re-certification has to be obtained. Similar to FATCA, the rule should refer to "the last day of the third succeeding calendar year unless a change in circumstances occurs that makes any information on the form incorrect".
- Subparagraph C(2)(e) of Section III states that the self-certification for an Entity Crypto-Asset User other than an Active Entity or an Excluded Person must include the role(s) by virtue of which each Reportable Person is a Controlling Person. On the other hand, subparagraph B(2)(a) of Section III states that a Reporting Crypto-Asset Service Provider may rely on compliant AML/KYC procedures to determine the Controlling Persons. For CRS purposes, where the same Controlling Person identification through compliant AML/KYC procedures is foreseen, the proposed amendments to the CRS Commentary (paragraph 7bis of Section I) states that the "requirements to identify Controlling Persons, as well as their roles in respect to the Entity, are governed by AML/KYC Procedures". We recommend the same rule to apply for CARF purposes to avoid any discrepancies between CARF on one side, and AML/KYC procedures and CRS on the other side.

3. Reporting Crypto-Asset Service Providers as Excluded Persons

In line with our answer above, we are convinced that like for CRS, reporting should be ensured by the FI closest to the client. This should also be the entity subject to AML/KYC requirements. That outcome would be achieved by making the Reporting Crypto-Asset Service Provider an Excluded Person, in line with the CRS logic where FIs are not Reportable Persons. Similar to CRS, such status would be verified based on available information or by obtaining a self-certification where the Reporting Crypto-Asset Service Provider confirms its status.

In addition, we strongly recommend to introduce additional categories of Excluded Persons to ensure that no CARF due diligence and reporting is required even Relevant Crypto-Assets are held in CRS Excluded Accounts such as:

- retirement and pension accounts;
- non-retirement tax-favoured accounts;
- term life insurance contracts;
- estate accounts;
- escrow accounts; or
- substantially similar low-risk excluded accounts according to local law.

We are aware that CARF does not mention “accounts”, but it must still be ensured that transactions in relation with such low-risk types of crypto-relationships do not lead to a reporting obligation.

4. Effective implementation requirements

We strongly advocate the deletion of the existing subparagraph D(1) and replacing it with the respective rules from the CRS Standard.

The proposed rule forces the Reporting Crypto-Asset Service Provider to collect a self-certification when establishing a relation with the user and go beyond CRS requirements where the account opening is the trigger. For CRS it is acknowledged that in a mass market, the validation of self-certifications often takes place in a “day two” process by a backoffice function within the FI. CARF should acknowledge these circumstances and adhere to established CRS principles.

Furthermore, we think it is inacceptable that a Reporting Crypto-Asset Service Provider must refuse to effectuate new transactions of existing customers under subparagraphs D(1)(b) and D(1)(c) if no valid self-certification is available. Instead, in such cases the same presumption rules as applicable for CRS purposes should also apply under CARF. We think this would address serious concerns from both a Crypto-Asset User and a Reporting Crypto-Asset Service Provider perspective. From a Crypto-Asset User perspective, there may be valid reasons why a person may not be able to provide a self-certification on time (e.g. sickness, military duty, absence of the country, etc.). On the other side, banks and other financial intermediaries may not even be able to discontinue certain services during the term of the relationship without breaching their duty of care, risking penalties and reputation damages.

Other elements of the proposal

1. Comments on other aspects of the CARF

- We noted certain discrepancies in the use of the terms “Transfer”, “other Transfer” and “transfer”, which should be clarified:
  - The “Transfer” definition in subparagraph C(4) of Section IV refers to transactions that cannot be determined to be Exchange Transactions. On the other hand, the Commentary (paragraph 24 on Section IV) refers to transactions that cannot be determined to be Exchange Transactions or Reportable Retail Payment Transactions. In our view, the Commentary is correct and the definition in the CARF should be amended accordingly.
  - If our view above is correct, the term “Transfer” in the Reportable Retail Payment Transaction definition in subparagraph C(3) of Section IV should be decapitalized (because only transactions that cannot be determined to be Reportable Retail Payment Transactions qualify as Transfers, see bullet point above).
  - In addition, the “other” before “Transfer” in subparagraphs C(1)(c) of Section IV can be deleted. This would also be consistent with the fact that subparagraphs A(3)(g) and A(3)(h) of Section I solely refer to “Transfers” and not to “other Transfers”.
- Subparagraph C(3) of Section III should be aligned with the reporting exception in paragraph B of Section II by adding “or the domestic law of the relevant Reportable Jurisdiction does not require the collection of the TIN issued by such Reportable Jurisdiction” at the end of subparagraph C(3).
- There are several instances where additional detail that is currently included in the Commentary should also be mentioned in the CARF to ensure legal certainty:
  - Subparagraphs A(2) and B(3) of Section III should be aligned with the Commentary by adding “(as appropriate)” after “supporting documentation”.
  - Subparagraphs C(1) and C(2) of Section III should be aligned with the Commentary (paragraphs 47 and 52) by adding “or any other person authorised to sign on its behalf” after “Controlling Person” (in subparagraph C(1)) and “Crypto-Asset User” (in subparagraph C(2)).
  - Subparagraphs C(1)(d) and C(2)(d) of Section III should be aligned with the Commentary (paragraph 47) by either adding “(only for Reportable Users)” at the end of both subparagraphs or adding “or the person providing the self-certification is not a Reportable User” at the end of subparagraph C(3) of Section III.
- A clarification regarding trusts that have no residence for tax purposes is required in subparagraph B(1)(b) of Section III or in the respective part of the Commentary. We propose that in case of a trust that is a Crypto-Asset User and certifies that it has no residence for tax purposes, the Reporting Crypto-Asset Service Provider may rely on the address of the trustee(s) to determine the residence of the trust.
- The introductory sentence of paragraph B of Section III should be amended by adding “or an Active Entity” after “other than an Excluded Person”.
- We note that subparagraph E(12) of Section IV includes a definition of the term “Equity Interest”, which is not used anywhere in the CARF. Even though the term is used twice in the Commentary (paragraphs 50 and 57 of Section IV), we recommend to delete the definition from the CARF. If a definition is required in the context of the afore-mentioned paragraphs of the Commentary, the definition should be included in the Commentary.

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3. Amendments to CRS

a) General comments

In general, we understand the aim to critically assess the CRS since several years have passed since its implementation. We therefore firstly want to point out that in particular banks across CRS Participating Jurisdictions have put tremendous efforts into implementing CRS over the last years. Together with the tax authorities, banks provide the infrastructure to successfully collect, process and report an overwhelming quantity of client and financial information across a world-spanning network of Participating Jurisdictions. Understandably, the OECD proudly reports each year how successful CRS has been in strengthening tax compliance and how much additional taxes have been collected as a consequence.

Swiss banks stand behind these efforts. We have put a lot of effort into establishing the required technical infrastructure, set up dedicated tax compliance teams and since 2017 successfully prepared and sent millions of CRS reports.

With this in mind, we want to point out that any change to this complex system has far-reaching consequences, in particular for banks which operate in a highly automated mass market. We therefore stress that only the most necessary and useful changes to the CRS should be made. Any change to the highly complex and – according to the OECD – smoothly running CRS system must be weighed against the costs for changing existing processes, a cost notably borne by FIs, and the benefits of these changes for the fight against tax evasion and the protection of the integrity of tax systems. “Nice-to-have” proposals would definitely not stand this test. Furthermore, making changes to run-the-bank processes and systems is complex and thus needs time. Based on our experience from implementing changes to the QI and FATCA rules while they were already in force, we estimate that process and system changes need at least a 24-month lead time.

Our second general remark concerns the interaction between CRS and CARF. When looking a few years ahead, it is possible that tokenised assets become the new normal. For now, however, the CARF is a new regime and if our requests regarding a full integration of Crypto-Assets into CRS or a “carve-out” for virtual assets held in a CRS Financial Account (see under “General comments” above) are not adopted, a bank has to implement CARF on top of CRS as soon as it decides to offer any type of service involving virtual assets. The line between these two regimes, CRS and CARF, must be absolutely clear-cut to make sure there is no doubt when CARF applies in addition to CRS and thereby to provide legal certainty to FIs and other involved parties. If an FI decides to offer crypto-services and must comply with CARF, it should be able to rely to the largest extent possible on processes and procedures in place for CRS, in particular with regard to the due diligence requirements applicable to account holders/users (see our detailed comments above). We further want to make clear that the interdependence between CRS and CARF means that some of the proposed changes to CRS also have an impact on CARF, e.g. regarding non-profit Entities. From the perspective of a bank applying both regimes in a mass market, it is important that the two regimes are clearly definable but fully aligned.

b) Questions for public consultation

Specified Electronic Money Products

The proposed definition for Specified Electronic Money Products is reasonable because it assumes that these types of accounts are Depository Accounts. We therefore welcome the clarification with regard to Specified Electronic Money Products.

To make the definition clearer, we suggest that the facilitation of "peer-to-peer" transactions should be added as an acceptable purpose in lit. b of the "Specified Electronic Money Product" definition.

Regarding a reasonable threshold and ways to ensure that "Specified Electronic Money Products" are "low risk", we strongly advocate relying on existing concepts in the CRS. CRS namely foresees a mandatory repayment mechanism for Qualified Credit Card Issuers (see subparagraph B(8) of Section VIII) and for certain Depository Accounts due to not-returned overpayments (see subparagraph C(17)(f) of Section VIII). In both instances, there is a USD 50'000 threshold and a requirement to repay within 60 days. This concept is an integral part of CRS and acknowledges that overpayments may be prohibited but cannot technically be prevented from happening. We therefore advocate for a USD 50'000 threshold and a mandatory repayment mechanism in line with the existing CRS rules for Qualified Credit Card Issuers and certain Depository Accounts due to not-returned overpayments. For our members, a higher threshold in combination with account aggregation rules would clearly be preferrable over a substantially lower threshold without the need to consolidate. Even if a lower threshold is defined compared to Qualified Credit Card Issuers and for certain Depository Accounts due to not-returned overpayments, it is crucial that the repayment mechanism is added to the definition of low-risk e-money products.

In addition, the attractiveness of "Specified Electronic Money Products" to store value could be further decreased if they would be prevented from paying interest on the funds held in such products.

Excluded Accounts

We strongly support the proposal to add certain capital contribution accounts to the Excluded Accounts and find the proposed wording sufficiently clear and practically implementable. We nevertheless propose a 24-month period – rather than 12 – for the exclusion to apply. Only with a two-year period the vast majority of relevant accounts could benefit from this exception. Moreover, the 24-month period is a well-known concept in the CRS (e.g. for start-up NFEs).

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

We are highly concerned that such a useful and reasonable proposal is not accepted by delegates. Not carving out non-profit Entities from the Investment Entities definition reflects a distrust in domestic laws overseeing non-profit entities and a distrust in the due diligence of FIs that confirm non-profit entity status by obtaining official confirmation of the tax-exempt status of such entities.

It is common practice that non-profit entities, in particular Swiss non-profit foundations, enter into a discretionary mandate with their local custodian in order to manage their financial assets (in whole or in part). In many cases, the existence of such a mandate alone would determine whether the entity classifies as active NFE or as Investment Entity. When made aware of these rules, or when enforced by their local custodian,

many non-profit entities will abstain from entering a discretionary asset management mandate in order to avoid the due diligence and reporting obligations associated with the classification as Investment Entity. Such a consequence would have a disruptive economic impact on both the financial industry as well as the philanthropy sector.

Furthermore, by generally including certain non-profit entities into the definition of an active NFE (provided they meet a strict catalogue of requirements), we understand that these entities are considered low risk and unsuitable for misuse and tax evasion. This is further emphasized by the fact that these entities are exempt from income taxation in their country of residence. An increase of the risk of tax evasion just because of the existence of a discretionary asset management mandate is unsubstantiated and does not justify the significant efforts that an entity has to undertake in order to comply with the due diligence and reporting obligations of a FI. We also want to point out that under FATCA, non-profit Entities are defined in the same manner as for CRS and are not subject to reporting obligations because they are (a) excluded from the FI definition in the US Treasury Regulations (§1.1471-5(e)(5)(E)(vi)), (b) by-default classified as Non-Financial Foreign Entity (NFFE) in most IGA (cf. latest versions of Annex I to Model 1, which were all last updated in 2014) or (c) considered Deemed Compliant FIs as in Swiss IGA.

We strongly support the proposal to extend the carve out from the Investment Entity definition to all non-profit Entities described in Subparagraph D(9)(h) of Section VIII. Alternatively, we propose a separate category of Non-Reporting FIs to be included in Subparagraph B of Section VIII.

Reliance on AML/KYC Procedures for determining Controlling Persons

The number of Entity Accounts not documented according to AML/KYC Procedures that are consistent with 2012 FATF Recommendations consistently decreases due to various types of redocumentation efforts. We therefore think it should be clarified that the procedure whereby the requirement that the Controlling Persons may only be determined based on AML/KYC Procedures that are consistent with 2012 FATF Recommendation only applies prospectively, i.e. to new account openings and re-documentation of existing accounts, e.g. due to a Change in Circumstance.

Dual-resident Account Holders

To make this proposed change feasible it is important that FIs can continue to rely on documentation collected in line with the current CRS rules where it was possible that clients relied on tiebreaker rules. In line with our general proposal regarding AML/KYC Procedures for determining Controlling Persons (see above), it should be made clear that the new requirement only applies prospectively. We are, however, opposed to leave an exception for the account holder to provide government-issued documentation relating to tie-breaker rules. As mentioned previously, we are in a mass business and can therefore only work with clear and simple to implement rules. Allowing account holders to provide documentation relating to such a complex issue as dual-residency would require from FIs an internal tax expertise that most smaller institutions do not have.

Integrating CBI/RBI guidance within the CRS

First, we acknowledge the fact that RBI/CBI schemes could be used to undermine CRS reporting. However, we strongly advocate simple and clear rules for the application of the reasonableness test, which is often

conducted by non-tax specialists within banks (e.g. relationship managers or back office personnel). The current version of the CRS Commentary largely meets this standard. For example, it states that a self-certification is not reasonable if the address on the self-certification conflicts with that contained in the AML/KYC documentation (Sec. VI, para. 14, Example 1). Based on clear rules like this, non-tax specialists are able to conduct the reasonableness test.

On the other side, the current proposal suggests that FIs should ask four questions to persons claiming residence in a jurisdiction offering a potentially high-risk CBI/RBI scheme and consider the client's answers when finally applying the reasonableness test. In order to apply such an "ask-follow-up-questions" approach in the mass market, there would need to be a clear rule such as "if the answer to question X is 'yes', the self-certification fails the reasonableness test" or "if the answer to question Y is 'no' and the answer to question Z is 'yes, the self-certification passes the reasonableness test". Furthermore, the uncertainty regarding the application of the rules will inevitably result in an unwanted fragmentation of the standard.

With respect to the specific questions:

- First, it should be made clear that only high-risk CBI/RBIs schemes (as per the OECD list) are to be taken into account. In addition, if changes are made to the list, they should only apply after a certain time (e.g. 6 months after publication of the updated list) and only for new account relationships.
- Even if the client affirms that he/she obtained residence rights under a CBI/RBI scheme, this does not necessarily mean that he/she is also resident in another jurisdiction.
- Asking the client whether he/she also holds residence rights in another jurisdiction in our view is obsolete because the client is clearly instructed when completing the self-certification that all countries of residence must be listed (and that the incorrect completion of a self-certification is subject to penalty).
- Even if the client affirms that he/she spent 90 days in another jurisdiction, this does not necessarily mean that he/she is also resident in another jurisdiction. There are numerous jurisdictions with higher thresholds and jurisdictions may apply different counting mechanism, which an FI cannot be expected to know and verify.
- Even if the client affirms that he/she filed a tax return in another jurisdiction in the previous year, this does not mean that he/she is (still) tax resident there. Equally likely, this could simply be the result of a move of domicile or the tax filing obligation was due to certain investments or real property in that jurisdiction.

Thus, we suggest to not incorporate the proposed wording into the CRS Commentaries but that the OECD and the Global Forum continue to solve the matter of CBI/RBI schemes with the relevant jurisdictions directly. FIs will of course continue to apply the existing due diligence and where a client claiming residence under a CBI/RBI scheme would e.g. provide a residence address in a different jurisdiction, the FI will either fail the reasonableness test (at account opening) or trigger the change in circumstances process (if identified during the course of the client relationship).

Transitional Measures

Any transitional measures should be aligned with established procedures under CRS. It is not clear to us why these transitional rules would only apply to one reporting item, i.e. the role(s) by virtue of which each Reportable Person is a Controlling Person of an Entity. FIs will need time to implement all proposed changes to the reporting items in their systems. As the proposed changes affect client documentation systems and reporting systems, we strongly advocate for a transition period of 24 months for all new reporting items

starting from the effective date of the revised CRS legislation and once the revised XML Reporting Schema is available.

Other comments

a) General Reporting Requirements

Overall, we understand the aim for reliable information and are open towards suggested changes that improve the quality and usability of the CRS report. With regard to the following three information items, we understand this rationale and are in a position to make the required information available:

- Whether the Account Holder has provided a valid self-certification according to the applicable due diligence rules. We nevertheless want to point out that CRS due diligence foresee various ways to determine an account's CRS status without obtaining a self-certification, e.g. with regard to Active NFEs. Hence it is unclear what value will arise from distinguishing between accounts documented with a self-certification and those that are not.
- The role(s) by virtue of which each Reportable Person is a Controlling Person of an Entity
- Whether the account is a joint account. The number of joint Account Holders in our view provides little added value because the ownership ratios are not known by FIs

The following two information items do not meet these requirements, meaning that they are not readily available at an FI, do not add clarity to the CRS report and are not reliable in their usability:

- Type of account
- Whether the account is a Preexisting Account or a New Account

We want to strongly point out that these metrics are not clear cut and have not been maintained by FIs as data fields in a systematic way. In particular regarding the latter, we want to point out that the distinction between PreexistingAccount and New Account has been made to determine which due diligence procedures has to be applied, was highly dependent on whether a jurisdiction has applied the so called "Wider Approach" and have not necessarily been maintained as a data field since. In addition, the Preexisting Account and New Account definition is not static, as proven by this proposal that suggests changes to both definitions.

b) "Carve-out" for Gross Proceeds Reporting

The proposed "carve-out" according to which the gross proceeds from the sale or redemption of a Financial Asset are not required to be reported if they are reported under the CARF is not necessary. As mentioned above in the general comments, any change to existing CRS systems is very complex as well as cost- and time intense. We are convinced that any bank reporting under CRS and CARF will refrain from making any changes to existing CRS reporting processes that do not provide any effective relief. The application of this carve-out should therefore be optional. If our requests regarding a full integration of Crypto-Assets into CRS or a "carve-out" for virtual assets held in a CRS Financial Account (see under "General comments" regarding CARF above) are adopted, this comment regarding Gross Proceeds Reporting is obsolete.

c) Line edits in the proposed Depository Account definition

We suggest that the two additional criteria in the Depository Account definition should say "an account that contains" instead of "an account that holds". In our view in the CRS as a whole only a customer can "hold" an account or product.

The two lines should read as follows:

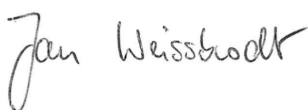
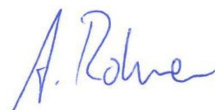
> *"b) an account that ~~holds~~ contains one or more Specified Electronic Money Products for the benefit of customers; and*
> *c) an account that ~~holds~~ contains one or more Central Bank Digital Currencies for the benefit of customers.*

d) Additional Example 4 regarding Account Holder (Para. 142)
We understand that by adding this additional example, the OECD FAQ regarding "usufructs" should be integrated into CRS. However, we want to point out that according to the FAQ the usufructuary may be considered as joint Account Holders. The prosed wording makes this mandatory. This causes practical implementation problems because FIs implemented the in a way best suited to their existing procedures and in line with the open wording of the FAQ. Making this treatment mandatory would require some FIs to change their processes. The benefits from introducing such a requirement for the overall purpose of CRS would in our view not outweigh the implementation costs, in particular because such an additional Account Holder would not have a tax liability in relation to the underlying object. We therefore think that this additional example should not be added.

We thank you for taking due consideration of our comments.

Yours sincerely,

Swiss Bankers Association

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ANNEX

Further elaborations regarding nexus (question 3, Intermediaries in scope)

With respect to the nexuses described in paragraph A of Section I of the CARF, we strongly advocate **a close alignment with CRS** where **residence and the location of a branch are the sole nexuses** (see our detailed comments regarding branches further below) and **each jurisdiction defined "residence" in accordance with local laws and circumstances**. Allowing jurisdictions to define the applicable residence criteria locally ensures that existing supervision and enforcement can be leveraged. Furthermore, traditional financial institutions are familiar with the reporting systems and communication channels in the jurisdictions where they report under CRS. In order to reduce the CARF implementation burden for financial institutions that have implemented already CRS (and FATCA notably) and spent large sums of money to do so, it should be ensured that the CARF nexus rules allocate the reporting obligation towards the same jurisdiction as under CRS. Finally, we are not aware of any gaps in the CRS reporting resulting from its nexus rules and thus cannot think of any convincing justification for not using the same standard for CARF purposes.

> New proposal for paragraph A of Section I (to replace current draft wording): "A Reporting Crypto-Asset Service Provider is subject to the due diligence and reporting requirements in Sections II and III in [Jurisdiction]
> (i) if it is an Entity or Individual that is resident in [Jurisdiction], but excluding any Relevant Transactions effectuated solely through any branch of that Reporting Crypto-Asset Service Provider that is located outside [Jurisdiction], and
> (ii) with respect to any Relevant Transactions effectuated through any branch of the Reporting Crypto-Asset Service Provider that it is not resident in [Jurisdiction], if that branch is located in [Jurisdiction]."
>
> CRS definition of the "[Jurisdiction A] Financial Institution" (for reference purposes): "the term "[Jurisdiction A] Financial Institution" means
> (i) any Financial Institution that is resident in [Jurisdiction A], but excludes any branch of that Financial Institution that is located outside [Jurisdiction A], and
> (ii) any branch of a Financial Institution that is not resident in [Jurisdiction A], if that branch is located in [Jurisdiction A]."

To prevent duplicative reporting under the above-proposed approach, we advocate that a Reporting Crypto-Asset Service Provider that is resident in two or more Partner Jurisdictions can choose in which jurisdiction to report, which could be implemented by amending paragraph H of Section I accordingly (see our detailed comments regarding the requirement to lodge a notification further below), while the current paragraphs B through G would become obsolete and could be deleted.

Should our above-proposed approach not be accepted, we strongly advocate that second half of subparagraph A(2) regarding the "obligation to file tax returns or tax information returns in [Jurisdiction] with respect to the income of the Entity" is either (in the order of our preference):

1. Deleted completed,
2. Amended by specifying that only the returns with respect to the Entity's worldwide income are relevant, or
3. Deleted from subparagraph A(2) and added as a new subparagraph A(5), which has lower hierarchy than the subparagraphs A(1) through A(4).

Without such amendment, Reporting Crypto-Asset Service Providers will e.g. become subject to the CARF rules in jurisdictions where they own real property (and thus have to file a tax return) or similar situations. Furthermore, all non-US financial institutions acting as Qualified Derivatives Dealers (QDDs) must file tax returns regarding certain parts of their income with the US Internal Revenue Service to comply with their

Sec. 871(m) obligations. We are sure that it was not intended when drafting the CARF Standard that these non-US financial institutions, if also acting as Reporting Crypto-Asset Service Providers, are subject to the CARF implementation in the US solely because of their QDD status.

Even more critical than our comments regarding paragraph A of Section I are the n**ecessary clarifications regarding branches**, which we already teased above. It must be clarified that the due diligence and reporting obligations of a Reporting Crypto-Asset Service Provider in Jurisdiction X **do not extend to Relevant Transactions effectuated solely through one or more Branches outside Jurisdiction X**. This would be consistent with the functioning of the CRS Standard where the "[Jurisdiction A] Financial Institution" definition (which we already inserted above for reference purposes) excludes Branches located outside [Jurisdiction A]. If such limitation is not included in the CARF and assuming a staggered CARF implementation (similar to CRS where the first jurisdictions started in 2016 and there are still new jurisdictions joining), **the CARF rules may result in conflicts with local laws in the branch jurisdiction**. For example, when the residence jurisdiction of a Reporting Crypto-Asset Service Provider has already implemented the CARF whereas the jurisdiction where its foreign Branch is located has not (yet), the current draft of the CARF results in a due diligence and reporting obligation in the residence jurisdiction, however, there may be privacy, professionally secrecy or similar laws in the branch jurisdiction which prevent the cross-border transfer of client information to the home office to fulfil its CARF obligations. Consequently, without the requested exclusion of Relevant Transactions effectuated through Branches outside the residence jurisdiction (or jurisdiction with another relevant nexus if our proposal above regarding paragraph A of Section I of the CARF is not accepted), Reporting Crypto-Asset Service Providers may face the dilemma to decide between non-compliance with CARF in the residence jurisdiction or non-compliance with the privacy, professionally secrecy or similar laws in the branch jurisdictions. We think this is not acceptable, especially considering that this dilemma will mainly result from jurisdictions having different implementation timelines for the CARF standard rather than jurisdictions not implementing CARF at all (assuming that all CRS jurisdictions as well as the US will sooner or later implement CARF). Thus, we strongly propose either (a) accepting our above-explained proposal to redraft paragraph A of Section I, including the deletion of paragraphs B through G, or (b) amending paragraph B of Section I as proposed below and deleting paragraphs C through G, which become obsolete.

> Proposed amendments to paragraph B of Section I (highlighted in bold/italics): "A Reporting Crypto-Asset Service Provider is ***not*** subject to the due diligence and reporting requirements in Sections II and III in [Jurisdiction] with respect to Relevant Transactions effectuated ***solely*** through ~~a~~ ***one or more*** Branch***es*** based ~~in~~ ***outside*** [Jurisdiction]."

Where both the residence and the branch jurisdiction have implemented CARF and the residence jurisdiction treats the branch jurisdiction as a Partner Jurisdiction, we acknowledge that the above-described dilemma can be solved through paragraph G of Section I. However, we know from CRS (and FATCA) that not all jurisdictions will implement CARF with the same effective date and thus paragraph G will not effectively address our concern during the first years of CARF implementation. Furthermore, paragraph B of Section I in its current form is not needed anyway because the branch jurisdiction is already captured through the nexus rule in subparagraph A(4) of Section I (cf. Commentary, para. 3 on Section I: "any Branch is to be considered a regular place of business").

Alternatively, should our above-proposed approach regarding branches not be accepted, our concern could at least be partially addressed through a temporary "white list" approach and a corresponding change to paragraph G of Section I. For example, a jurisdiction implementing CARF could be allowed, during the first three years following the CARF effective date, to include other jurisdictions in its published Partner Jurisdictions list, even though such other jurisdictions have not put in place equivalent legal requirements yet. We expect that implementing jurisdictions have a strong aim to safeguard the integrity of the CARF standard and thus only deem jurisdictions as Partner Jurisdiction if they expect such other jurisdictions to implement the CARF standard within a reasonable time horizon.

Proposed amendment to paragraph G of Section I (highlighted in bold/italics): “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***~~.”

Proposed amendment to subparagraph F(1) of Section IV (highlighted in bold/italics): The term “Partner Jurisdiction” means any jurisdiction that has put***, or is treated as having,*** in place equivalent legal requirements and that is included in a list published by [Jurisdiction].

Finally, we request **the deletion of the requirement to lodge a notification in paragraph H of Section I**. This is particularly important if our above-explained proposal to redraft paragraph A of Section I is not accepted. For example, we do not understand why an Entity that has tax return filing obligations in Jurisdictions X and Y (both CARF implementing jurisdictions) but has no nexus to a CARF implementing jurisdiction under subparagraph A(1) or A(2) should lodge a notification with Jurisdiction Y if it complies with the CARF obligations in Jurisdiction X while another Entity that has tax return obligations in Jurisdictions X and Y and is also tax resident Jurisdiction X would be exempted from any CARF obligations in Jurisdiction Y without lodging such notification. It should be sufficient if the Reporting Crypto-Asset Service Provider is able to provide upon request proof of compliance in Jurisdiction X to the tax authorities of Jurisdiction Y.