



Dear Mr John Glen MP
HM Treasury
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Sent via Email: CEU.Enquiries@hmtreasury.gov.uk

22 March 2022

Cryptoasset promotions

We and our members are concerned that the proposed amendments to the financial promotions (FPO) gateway authorisations would, when operating in conjunction with the proposals set out in the FCA consultation paper *CP22/2: Strengthening our financial promotion rules for high risk investments, including cryptoassets* amount to a de facto ban on financial promotions relating to qualifying cryptoassets. In order to fully understand why this is the case it is important to consider the broader context to the proposals.

In our consultation response ([link here](#)) we highlight in detail the reasons the proposed changes will be a full prohibition for firms wishing to promote their services in the UK. Below is a summary of the key components that we wish to draw your attention to.

Section 21 Approver of Financial Promotions

- The proposed amendments to the FPO for the first time divorce the application of the regulated activities regime from the application of the financial promotions regime in the case of a particular product or service. Unless an exemption applies (which is very limited), a financial promotion concerning qualifying cryptoassets can only be made if approved by an authorised person (AP). It has made clear by the FCA that the AP cannot be a cryptoasset firm regulated either as an e-money institution through the PSR or licenced through the FCA's money laundering regime.
- The fact that firms who both possess Part 4A permissions and can satisfy competence and expertise requirement in respect of qualifying cryptoassets is at this point extremely limited and may in practice be unwilling to approve any financial promotions made by others or charge uncompetitive risk premium for approving.



Restricted Mass Market Investments

- It is not clear why the FCA proposes to include cryptoassets in the same category as non readily realisable securities and P2P agreements. Both of those are characterised by a lack of liquidity, with the FCA saying at paragraph 3.5 of the CP “the common feature of NRRS and P2P investments is that consumers may not have frequent opportunities to sell these investments on a secondary market that offers continuous trading.” In our view, cryptoassets are in many ways the exact opposite of this. Most major cryptoassets traded on an exchange have a good level of liquidity and low bid/offer spreads, and furthermore have 24-hour trading that even traditional equity markets cannot compete with.
- Under the FPO, exemptions are available for high-net worth and self-certified investors for unlisted shares. This means that the COBS exemptions that the FCA suggests would apply to RMMI would not bite on such instruments if they have already benefited from the FPO exemption.
- These exemptions are not proposed to be available to cryptoassets under the HMT consultation, though it is not clear why this difference in treatment should exist. As a result of this, we do not believe that the FCA's proposals provide any meaningful relief. Nevertheless, we welcome any exemptions that the FCA proposes to minimise the impact of the marketing restrictions that are being proposed.

This will inevitably have a deleterious effect on the market for cryptoassets in the UK, on competition and on consumer choice. It will destroy thriving businesses and the employment they provide in the UK and will stifle innovation. It will also have a detrimental impact on the image of the UK as a welcoming and innovative jurisdiction in which to do business, which could have a wider impact on the UK's standing as a financial centre more broadly. We understood that post-Brexit, the UK would be seeking to develop its position in this respect, rather than diminish it.

The FCA intends to provide a very limited transitional period for firms to comply with the new requirements. We are not aware that the FCA has treated any other newly regulated sector with such rapid implementation of FCA Handbook rules, triggering significant changes to the business operations of the firms concerned. This would leave the UK crypto industry at a significant disadvantage compared to other jurisdictions, including those are Member States of the EU.



Our members understand that greater regulation of Qualifying Cryptoassets is necessary for consumer protection and would welcome the introduction of clear and consistent regulation of their sector. In the majority of instances our members are in favour of what is proposed by CP22/2 in respect of Qualifying Cryptoassets. However, the well-crafted regulation of cryptoasset promotions will ultimately be entirely redundant if no firm is in a position to lawfully make *any* financial promotions. For this reason, while we have provided what we believe to be constructive and positive responses to the questions in CP22/2, we wish to be clear that those responses are premised upon a solution being found to the impasse described above.

Governments around the world are establishing regulatory frameworks and legislation to both establish clear “rules of the road” and capitalise on the increasing economic opportunities created by digital assets. For example, the Biden Administration recently called for a “whole of government approach” and focus on international cooperation within the [Executive Order on Ensuring Responsible Development of Digital Assets](#) to maintain leadership in innovation. Our closest neighbours in Europe are readying to implement the Markets in Crypto Assets regulation, which will propose an end-to-end, holistic regulatory approach for all market actors, and will potentially establish a lasting competitive advantage in attracting innovators and capital investment to the region.

We have grave concerns that the UK is woefully behind in its’ digital asset competitiveness stance, and is continuing to establish policy which will only set us back further, and thus erode our position as a world leader in Fintech. CryptoUK is currently working with our partners in academia and industry to develop a “Cryptoasset Economic Impact Study”, which we would welcome the opportunity to discuss with you and colleagues in government.

A binary, complete prohibition of all cryptoasset promotions, coupled with 150 UK firms being asked to withdraw from the UK FCA Money Laundering Regime, and with no transparent explanation as to why, is resulting in a stigma that the UK is not open for business and innovative companies are leaving the UK - taking their capital, tax revenue and talent with them. We are rapidly losing the opportunity to make a real positive impact on the UK macro economy, especially in light of the threats of rising living costs.

Yours faithfully,

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