29 November 2019

VIA EMAIL:
cp19-29@fca.org.uk

David Cheesman
Financial Conduct Authority
12 Endeavour Square
London E20 1JN

Re: Recovery of costs of supervising cryptoasset businesses under the proposed anti-money laundering regulations: fees proposals

Dear Mr Cheesman,

Global Digital Finance support efforts by global standard setters, national authorities and regulators to consult and work with the nascent global digital/virtual asset industry.

To that end, we are hereby providing input to the Consultation regarding the proposed recovery of costs of supervising cryptoasset businesses under the proposed anti-money laundering regulations: fees proposals .[1]

The input has been drafted and led by the GDF Anti-Money Laundering Working Group. Contributors who wish to be named are listed at the end of this document.

About GDF

Global Digital Finance ("GDF") is a not-for-profit industry body that promotes the adoption of best practices for crypto and digital assets and digital finance technologies through the development of conduct standards, in a shared engagement forum with market participants, policymakers and regulators.

Established in 2018, GDF has convened a broad range of industry participants, with 300+ global community members—including some of the most influential digital asset and token companies, academics and professional services firms supporting the industry. GDF is proud to include Circle, ConsenSys, DLA Piper, Diginex, Hogan Lovells, Huobi and R3 as patron members.

The GDF Code of Conduct is an industry-led initiative driving the creation of global best practices and sound governance policies, informed by close

[1]

conversations with regulators and developed through open, inclusive working groups of industry participants, legal, regulatory and compliance experts, financial services incumbents and academia. Code principles undergo multiple stages of community peer review and open public consultation prior to ratification.

For consistency, we have used the terms 'virtual assets' and 'virtual asset service providers' in our response, in line with the FATF Glossary.

In this response we are answering Question 2 of the consultation alongside general observations.

Consultation Inputs

Question 2: Do you have any comments on our proposals for periodic fees, including minimum fees, the minimum fee threshold and the draft definition of income? Please provide any supporting evidence.

Periodic fees are grouped according to fee blocks. The FCA has determined a single fee block to cover all cryptoasset firms. However, there are multiple business models that can be conducted within cryptoasset activities such as exchanges, custody, money transmission, token offering, and so forth. Each of these business models can have vastly different income streams and a broad single fee block does not take account of this. The FCA may wish to consider multiple fee blocks that are more aligned to the different business models, perhaps grouping by the five VASP activities defined by the FATF. In circumstances where multiple activities are performed, then the fee for the activity with the highest proposed income stream would apply. Such an approach would apply greater equality to firms participating in cryptoasset activities.

This consultation also does not make clear whether overseas entities that provide services into the UK will be required to establish a legal entity within the UK in order to serve UK consumers. The draft definition of cryptoasset income implies that the fees will apply to UK legal entities which would infer overseas firms may be able to operate either without license or without being required to establish a UK-based legal entity. The FCA should consider clarifying this position to ensure fairness of competition and that overseas firms do not have an unfair advantage by either being able to operate without a license or not be required to establish a UK legal entity.

It is noted in 3.10, bullet 6 of the consultation that invoices for the periodic fees will be issued in July 2020. However, the licensing regime does not fully come into force until January 2021, given the timeline for license applications, we question whether periodic fee invoices will be due from June 2021 after the registration process is complete and trading history has been established. Otherwise, there is an incentive for firms to delay registration with the FCA for as long as possible to avoid June 2020 fees. Further, firms could find they are subject to both registration fees and immediately afterwards periodic fees which carries the risk of such fees adding substantial financial burden at the outset of their business.

It is noted that the periodic charging cycle will not be published until the April 2020 consultation. We believe that this does not give applicants sufficient information to be able to determine whether they wish to enter the UK market should they be required to file an application in January 2020. They may, for example, determine that the periodic fees would be cost prohibitive and withdraw from the UK but will first have to pay the registration fee in January 2020 only to wait until April to determine whether this is what they wish to do.

Given this is a transitional year, we propose the FCA addresses this by allowing firms that register in January 2020 and subsequently wish to withdraw their application due to the period fees to receive a refund of their registration fee. Or, the FCA should provide indicative guidance by the 10 January on the fee bands and probably scale of fees.

In addition to the comments in the opening paragraph to this response regards payment blocks and potentially different income streams and business models, the FCA may also wish to consider the minimum fee and minimum fee threshold. Using a Large Payment Institution (LPI) as a baseline equivalent to a cryptoasset exchange, a 100,000GBP income threshold for variable fees would seem comparative and reasonable. However, it is noted that the fee for an LPI where income is below 100,000GBP is lower than the proposed 1,000GBP at 525GBP.

We hope you may find our response helpful. Please do not hesitate to contact our Executive Director, Teana Baker-Taylor (Teana@gdf.io) or either of our AML working group co-chairs, Malcolm Wright (malcolm@gdf.io) or Jack Gavigan (jackgavigan@z.cash) for further questions or comment.

Consultation Response Contributors

The following table lists contributors to this response who wish to be identified. The full list of contributions from the GDF AML Working Group may be larger.

Name	Organisation
Malcolm Wright	CCO, Diginex AML Working Group Co-Lead, GDF
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David Carlisle	Elliptic
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