



11 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 Our response here is with regards to the first question, as well as overarching comments.

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 conversations with regulators and developed through open, inclusive working groups of industry participants, legal, regulatory and compliance experts, financial services

¹ <https://www.fca.org.uk/publication/consultation/cp19-29.pdf>

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.

Consultation Inputs

Overarching Observations

Definition of Cryptoasset Activities

Referring to the scope of cryptoasset activities in section 2.7 of the consultation and with particular reference to inclusion of 'Publication of open-source software e.g. Non-Custodian Wallet providers' as an activity that may potentially fall within the regulatory perimeter, we reference our response to the HM Treasury consultation of 10 June 2019 where we stated:

The survey of the GDF community conducted in October 2018 viewed smart contract developers, creators of open-source software and technology providers as needing to be outside the remit of the AML regime.²

Smart contract developers and technology providers should not be financial institutions (FIs) if they merely create a smart contract that is published and exists on a public blockchain.

Also, decentralised open-source protocols are not FIs. Protocols are software and by implication entirely and irrevocably deterministic. The rules are set in the code with no possibility to do anything other than what is laid out in the code.

Notwithstanding the foregoing, in order to mitigate possible AML/CTF risks associated with coding (e.g. a nefarious actor could create code that creates, embeds or heightens such risks), regulated FIs should exercise due care, skill and diligence when selecting, appointing and overseeing smart contract developers or technology providers, or when utilising existing smart contracts (e.g. open source code).

Where AML/CTF obligations do exist, it should be recognised that it may be reasonable in some circumstances to use the enhanced coordination/ communication capabilities of public blockchains to satisfy in whole or part the applicable KYC/CDD obligations.

Dual Licensing

The FCA approach to licensing states that even if a VASP holds another authorisation with the FCA it will still be required to apply for authorisation to operate as a VASP. However, in the Interpretive Note to Recommendation 15, the FATF states:

A country need not impose a separate licensing or registration system with respect to natural or legal persons already licensed or registered as financial institutions (as defined by the FATF Recommendations) within that country, which, under such license or registration, are permitted to perform VASP activities and which are already subject to the full range of applicable obligations under the FATF Recommendations.

² See also P4-5 <https://www.gdf.io/wp-content/uploads/2018/10/GDF-Letter-to-FATF-dated-October-9-2018.pdf>

We consider that the FCA should take note of the FATF guidance in this respect to ensure that existing licensees with appropriate existing authorisations from the FCA are not subject to requiring a further license and incurring further cost and resource overhead.

Question 1: Do you have any comments on our proposed registration fee of £5,000 for crypto-asset businesses? Please provide any supporting evidence.

The calculation of the registration fee originates from a calculation that 80 exchanges operate from/with the UK. However, it is not clear where the figure of 80 has been calculated from, and whether this number included overseas exchanges operating within the UK.

The registration fee, although small enough not to significantly stifle innovation favours larger existing firms who may be extending their market reach into the UK over newer start-up firms entering the market. Such start-ups would likely be UK-based, given start-ups often target their home jurisdiction at the outset, and as such, the fee may be disproportionately unfair to UK start-ups. We consider that a more sophisticated and potentially tiered registration fee structure may be more appropriate that takes account of size and / or age of the applicant.

Additionally, cryptoasset revenue depends upon the type of activities being supplied. For example, revenue generated from custody is vastly different from a cryptoasset exchange.

We consider that the closest equivalency would be fees that apply to Authorised Payment Institutions, as found in the Section 3, Annex 8 of the FCA Fees Handbook, where the lower end fees commence at 500GBP rising to 5,000GBP.

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	Chief Compliance Officer, Diginex AML Working Group Co-Chair, GDF
Jack Gavigan	Head of Regulatory Affairs, Electric Coin Company AML Working Group Co-Chair, GDF
David Carlisle	Head of Community, Elliptic
Stephen Ryan	Chief Operating Officer & Founder, CipherTrace
Simon Roberts	Managing Director, SCP Consultants