

19 March 2022

The Economic Secretary
HM Treasury
1 Horse Guards Road
London
SW1A 2HQ

VIA EMAIL

Dear Economic Secretary,

Re: Proposed financial promotion rules for cryptoassets

I am writing on behalf of the members of Global Digital Finance (“**GDF**”), the leading global industry association that promotes the adoption of market standards for the use of crypto and digital assets, through the development of best practice and governance standards in a shared engagement forum with industry, policymakers and regulators.

Following a series of industry wide discussions, GDF is in the process of drafting its response to the Financial Conduct Authority (“**FCA**”) Consultation on strengthening financial promotion rules for high-risk investments, including cryptoassets¹ (the “**Consultation**”). However, over the course of discussions it was apparent that the GDF community had great concerns over aspects of the proposed financial promotion rules for cryptoassets and as such deemed it important to engage directly with the HM Treasury (“**HMT**”) Cryptoassets team on these matters. The core concerns are as follows, the:

1. Insufficient transition period to establish an appropriate market of authorised firms;
2. Need for an exemption in the Financial Promotions Order to broaden the scope of approvers of financial promotions; and
3. Need for a clear approach attracting firms whilst maintaining high standards.

These are set out in greater detail below.

1. Insufficient transition period to establish an appropriate market of authorised firms

The Consultation is proposing much stricter rules regarding approving financial promotions, in particular, around the competence and expertise of authorised firms approving financial promotions:

“Where the promotion is related to a regulated activity for which the firm has a Part 4A permission (e.g. dealing in investments), we would generally expect the firm to have met the C&E requirement by virtue of its regulated business.”

As cryptoasset activities are not regulated activities, aside from the fact that cryptoasset firms themselves will not be able to approve their own promotions, it also means that they will have a very small number of (if any) firms who are able to approve their promotions due to this new high standard. This is acknowledged by the FCA who state that:

“As cryptoassets currently sit outside the financial promotion regime, there is unlikely to be an existing population of s21 approver firms. We recognise that the population of authorised firms

¹ <https://www.fca.org.uk/publication/consultation/cp22-2.pdf>

with sufficient competence and expertise to approve cryptoasset financial promotions is likely to be limited at first.”

Considering this impact, GDF proposes that the transition period for this amendment to the financial promotion rules be increased to 18 months, with a review by HMT after 12 months to assess whether there is an appropriate market of authorised firms to approve cryptoasset financial promotions. The current proposal of 6 months by HMT and 3 months by the FCA is unworkable.

2. Need for an exemption in the Financial Promotions Order to broaden the scope of approvers of financial promotions

GDF notes that HMT state in their consultation response on a Regulatory Framework for Approval of Financial Promotions² (the “**Response**”) that it is intended for a restriction to be imposed on all authorised firms not to approve the financial promotions of unauthorised firms unless a variation of this restriction has been sought from, and granted by, the FCA (referred to as the Financial Promotion Requirement in the Response). This Financial Promotion Requirement will further reduce the population of potential approvers of financial promotions.

Whilst the rationale behind this decision is understood, there is a significant impact on the cryptoasset market, effectively stalling it.

As such, GDF proposes that HMT creates a new exemption under the Financial Services and Markets Act 2000 (Financial Promotion) Order 2005 (the “FPO”) for cryptoassets service providers (“CASPs”) who:

- 1. Are registered with the FCA under the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations (the “MLRs”); and**
- 2. Follow the rules under the FPO.**

This exemption would allow those CASPs, who are registered with the FCA under the MLRs and who follow the rules under the FPO to act as approvers of cryptoasset financial promotions. This would fulfil the policy aims of protecting consumers by ensuring responsible advertising (by bringing firms within the remit of the FPO) whilst allowing the market to continue to develop. This proposal would also prevent the need to amend the Regulated Activity Order, which in itself would create greater complications. GDF also proposes that the wording should be as such that this exemption would apply to both CASPs registered under the MLRs but also would cover CASPs under any future cryptoasset regime.

3. Need for a clear approach attracting firms whilst maintaining high standards.

Notwithstanding the proposed exemption stated above, cryptoasset firms cannot approve their own financial promotions but would be dependent on authorised firms to approve their financial promotions for them. GDF cannot identify a situation where the primary business is separated from the communications part of the business in any other part of the financial sector. This seems unfairly punitive on the cryptoasset industry and GDF questions the cost benefit analysis that the FCA has conducted on this. The assumptions made on costs to the industry are extremely

2

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/995565/HMT_WR_113_Consultation_Response.pdf

conservative and does not take into consideration the competitive challenges the industry faces, especially when considering cryptoasset firms will have to pay a third party to approve its promotions.

Of particular concern is that firms who have already gone through a vetting process with the FCA to acquire an MLRs registration to carry on cryptoasset activities would effectively be prevented from marketing their own services to retail clients, but would also be unable to get authorised to carry on and promote their cryptoasset activities under the supervision of the FCA. This will have a stifling effect on the UK cryptoassets market and will put UK firms and those considering locating in the UK, at a competitive disadvantage compared to overseas competitors.

Taking into account the practical limitations of enforcing the UK financial promotions regime against overseas firms, this may also end up reducing consumer protection in the UK. Onshore regulated firms will be prevented from marketing services to UK customers, whilst offshore unregulated firms will continue, and likely increase, their marketing activities to UK customers from abroad.

GDF proposes that HMT brings the financial promotions obligations for cryptoassets within the remit of the bespoke regime for cryptoassets that GDF called for in its consultation response to the HMT Consultation and Call for Evidence on UK Regulatory Approach to Cryptoassets and Stablecoins.³

Rather than attempting to broaden the scope of existing legislation, stifling the market and attracting unintended consequences, a new bespoke regime should be implemented. This regime would include obligations for how cryptoasset promotions should be communicated and more generally would provide clarity on how cryptoasset firms should conduct themselves and how regulators should supervise them. CASPs would be able to approve their own promotions and this would provide a more cost effective regime whilst maintaining the same regulatory outcomes. This clarity in approach would attract cryptoasset firms to domicile in the UK, delivering the jobs and growth the sector can bring whilst maintaining high standards of investor protection.

As always, GDF remains at your disposal for any further questions or clarifications you may have and we would welcome a meeting with you to discuss these matters in more detail with our members.

Yours Sincerely,

Lavan Thasarathakumar
Director of Government and Regulatory Affairs, Global Digital Finance

³ <https://www.gdf.io/wp-content/uploads/2021/03/GDF-HMT-Consultation-Response.pdf>