

SUBMITTED VIA EMAIL TO: cp25-16@fca.org.uk

To whom it may concern,

Re: FCA Lifting the ban on retail access to certain cryptoasset exchange traded notes (cETNs)

About Global Digital Finance (GDF) and Crypto Council for Innovation

GDF and CCI are the two leading global members' associations representing firms delivering crypto and digital assets solutions. Our members span the digital asset ecosystem and include the leading global crypto exchanges, stablecoin issuers, digital asset Financial Market Infrastructure providers, innovators, and investors operating in the global financial services sector. We also leverage the expertise of CCI's Proof of Stake Alliance (POSA) whose members represent all corners of the staking industry.

Together, our members share the goal of encouraging the responsible global regulation of crypto and digital assets to unlock economic potential, improve lives, foster financial inclusion, protect security, and disrupt illicit activity.

We believe that achieving these goals requires informed, evidence-based policy decisions realised through collaborative engagement between regulators and industry. It also requires recognition of the transformative potential of crypto and digital assets, as well as new technologies, in improving and empowering the lives of global consumers.

We support and encourage a comprehensive UK digital asset regulatory approach which is robust, proportionate, and pro innovation. Appropriate regulatory guardrails are crucial to ensure the continued growth of the UK ecosystem, to further attract the predominantly global industry, and to realising the goal of making the UK a digital finance hub.

The input to this response has been curated through a series of member discussions, industry engagement, and roundtables, and both GDF and CCI are grateful to their members who have taken part.

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

Yours faithfully,

Elise Soucie – Executive Director – GDF

Laura Navaratnam - UK Policy Lead, CCI

Response to the Public Consultations: Executive Summary

GDF and CCI are grateful for the opportunity to continue to engage with the Financial Conduct Authority (FCA) Consultation Paper on FCA Lifting the ban on retail access to certain cryptoasset exchange traded notes (cETNs) (referred to henceforth as the CP) as well as through their targeted roundtables and industry association engagement.

Overall, we are supportive of the aim of the proposals within the CP. GDF and CCI developed this response on behalf of joint membership as part of our ongoing commitment to supporting the work of the FCA in developing their overarching regulatory framework for crypto assets, as well as our shared mission to support the development of best practices and governance standards across the digital finance industry.

The following letter summarises the responses submitted in response to the below questions and highlights the key points of feedback that the board would wish to provide to FCA on the CP. The executive summary concisely sets out our key points of feedback on the proposals. Our overarching feedback can be summarised as follows:

- 1. We encourage the FCA to consider reviewing UK UCITS provisions more broadly extending similar access to regulated crypto ETFs in due course, as part of the broader roadmap for responsibly expanding retail access;**
- 2. We encourage the FCA to work with HMRC and HMT to provide clear guidance on tax treatment. Failure to provide clarity, or treating cETNs as different to other exchange-traded notes, could result in a distortion in the market, reducing the growth potential for these types of exchange-traded products compared to direct crypto purchases, despite its relative advantages in terms of security, transparency, and investor protection; and**
- 3. We encourage the FCA to revisit the appropriateness of the RMMI classification, as well as undertaking a broader review of the Financial Promotions regime, in light of this evolving regulatory framework. Where products are issued and promoted under full FCA authorisation, with proper disclosures, governance, and investor safeguards in place, they should be treated accordingly.**

We believe this proposal also advances the FCA's statutory secondary objective to promote the international competitiveness of the UK economy and its growth in the medium to long term. Aligning the UK's approach with global regulatory standards on structured cryptoasset products, while embedding strong protections through the financial promotions regime and listing rules, supports a balanced and progressive retail access framework.

Introductory remarks

In the current environment in the UK, cETNs are solely available to professional investors. Broader derivative-based exchange-traded products are however well-used by retail investors, for example as a manner of gaining access to conventional assets, such as gold, silver, and other commodities. This is commonly enacted via regulated investment platforms.

UK retail investors currently gain exposure to cryptoassets primarily through direct ownership models, including spot market purchases via exchanges and decentralised platforms. Lifting the ban on cETNs would offer an alternative structure that aligns with regulated fund access models already familiar to investors, offering retail investors access to the asset class via a well understood and regulated instrument type. It is worth noting that, for retail investors, a major draw of such a structure may be the potential for its inclusion within a tax wrapper, such as an ISA – a point that should be clarified with HMRC and HMT.

Chapter 4 – Lifting the ban on retail access to certain cryptoasset exchange traded notes (cETNs)

1) Question 4.1: Do you agree with our overall proposal (outlined above and in Appendix 3) to the lifting of the ban on retail access to cETNs which are admitted to UK RIEs, so that retail consumers may access UK RIE cETNs in the same way as professional investors? Please explain.

GDF and CCI are highly supportive of the FCA’s proposal to lift the current ban on retail access to cryptoasset exchange traded notes (cETNs) that are admitted to trading on UK recognised investment exchanges (RIEs). This is a proportionate and welcome step that brings the UK more closely in line with international jurisdictions and allows retail investors to access crypto markets through regulated instruments. This would also mirror developments in markets such as the United States, where crypto ETPs have recently become available to retail investors; the European Union, where ETPs trade under MiFID II and MiCA-aligned frameworks; and Switzerland, which has supported retail access under a structured regulatory perimeter.

ETP structures offer clear advantages for retail market access: they are regulated, non-custodial, and subject to market-wide standards around pricing, disclosure, and governance. The demand for these products is significant, and global markets have already demonstrated how cETNs can provide efficient and secure access to crypto exposure.¹

Furthermore, we view this proposal as well-aligned with the FCA’s statutory secondary objective to support the UK’s international competitiveness and medium-to long-term growth in financial

¹ https://www.business-standard.com/markets/cryptocurrency/blackrock-s-bitcoin-fund-becomes-greatest-launch-in-etf-history-124123001046_1.html

services. Allowing access to cETNs via regulated exchanges provides a pathway that meets investor demand while reinforcing the UK's leadership in responsible innovation.”

As such, we strongly welcome this policy intervention as a constructive first step towards building a coherent and proportionate regulatory framework for retail access to cryptoassets, which recognises the different risk profiles of various instruments, enables access through regulated and transparent channels, and aligns the UK with international best practice.

However, we do offer the following points for consideration as part of implementation.

1. Retail access to other crypto derivatives.

While outside the immediate scope of this proposal, we believe there is merit in reviewing whether other regulated crypto-linked instruments, including centrally cleared derivatives, may also warrant reconsideration over time, in line with proportionality and evolving investor protections. In the long term, we believe that differentiating between cETNs and other crypto derivatives may inadvertently create a degree of inconsistency in regulatory approach. Under the current regime, a retail investor may purchase a cryptoasset directly for example via a regulated exchange, and take on all the associated operational, technical, and custody risks, but the same investor will not be permitted to invest in other regulated financial instruments designed to manage risk. For example, that investor could not access exposure via a centrally cleared, exchange-listed futures contract, or even hedge using a regulated options product. This is in contrast to the treatment of traditional asset classes, for which UK retail investors may access exchange-traded futures and options products on commodities, indices, and equities via regulated platforms and intermediaries such as brokers, demonstrating that access to standardised derivative instruments is not inherently unsuitable for retail use. Internationally, jurisdictions such as the US and EU are also evolving their approaches to crypto derivatives, allowing regulated retail access to a broader set of structured products when supported by appropriate safeguards.

This fragmented approach risks sending mixed messages about the FCA's risk framework. Retail investors are already exposed to the underlying assets, often through less secure or less regulated channels, however, are restricted from accessing familiar and professionally managed structures that may reduce their risk exposure. We believe the FCA should revisit its broader position on crypto derivatives for retail as part of its evolving regulatory roadmap, to ensure a coherent and proportionate framework.

Over time, we encourage the FCA to explore the regulatory viability of allowing retail access to cryptoasset exchange traded funds (ETFs) admitted to trading on UK RIEs. ETFs typically offer additional investor safeguards through portfolio diversification, structural transparency, and robust fund governance. These characteristics, along with high investor familiarity, suggest that ETFs may represent a logical next phase in regulated product access. We recommend that the FCA, in coordination with HMT, assess how existing UCITS and listing frameworks might accommodate such products under proportionate standards.

2. Tax treatment

At present, it is not clear if cETNs would be treated in the same way as other exchange-traded products (such as equity ETNs or UCITS funds) for capital gains tax purposes. Specifically, certain ETNs and collective investment vehicles benefit from specific exemptions or allowances that make them more tax-efficient for retail investors.

We encourage the FCA to work with HMRC and HMT to provide clear guidance on tax treatment. Failure to provide clarity or treating cETNs as different to other exchange-traded notes, could result in a distortion in the market, reducing the growth potential for these types of exchange-traded products compared to direct crypto purchases, despite its relative advantages in terms of security, transparency, and investor protection. Clear guidance from HMRC and HMT is essential to ensure that tax treatment does not inadvertently discourage uptake of regulated products, distort investor preferences, or reduce the utility of wrappers such as ISAs for crypto-linked exposures.

2) Question 4.2: Do you agree that UK RIE cETNs should be subject to broadly the same financial promotions rules as qualifying cryptoassets and classified as restricted mass market investments?

We agree that cETNs should be subject to the same Financial Promotions Regime as other specified investment products, including qualifying cryptoassets given that both will be specified investment products once qualifying cryptoassets are subject to full FSMA regulation. This ensures consistency across specified investment products, including cryptoasset instruments, and avoids creating regulatory arbitrage between direct and structured forms of exposure. Providing access to regulated cETNs, with prospectus disclosures, listing oversight, and enhanced risk warnings, that are consistent with measures put in place for other types of regulated derivatives, offers a clearer path to achieving the good outcomes envisioned by the Consumer Duty. This approach empowers informed consumer choice while reducing reliance on less transparent alternatives.

In addition to enhanced disclosure, firms distributing cETNs are already required to apply appropriateness testing under the Financial Promotions Regime to ensure that consumers understand the nature and risks of the product. Retail clients would also generally retain access to the Financial Ombudsman Service, further reinforcing the oversight and recourse mechanisms available under a regulated distribution model.

However, we do not agree that cETNs, or indeed other qualifying cryptoassets, (in particular qualifying stablecoins, which are currently a sub-set of qualifying cryptoassets under proposed legislation), should be classified as Restricted Mass Market Investments (RMMIs) on an ongoing basis.

We also note that, if implemented this year, as we understand is the intention of this proposal, cETNs and by extension other crypto derivatives such as futures and options, would be aligned to a regime applicable to currently *unregulated* qualifying cryptoassets.

By definition, cETNs are derivative instruments and are not qualifying cryptoassets under the proposed FSMA regime. They are already regulated as financial instruments under the UK's existing framework for securities and derivatives and are subject to extensive requirements around prospectus disclosure, listing rules, and governance. Their treatment should therefore be aligned, at least for the time being, with the broader approach to regulated exchange-traded derivatives, rather than conflated with rules designed specifically for currently unregulated cryptoassets. Once qualifying cryptoassets are fully within the FCA's regulatory perimeter, this position can be reviewed and adjusted as appropriate.

Regarding the broader classification of soon to be regulated qualifying cryptoassets as RMMIs, in our view, this classification was introduced as a prudent and proportionate response to the risks associated with cryptoassets being outside the FCA's regulatory perimeter. At the time, the lack of authorisation, disclosure standards, and oversight made it appropriate to impose heightened restrictions on promotions to protect retail consumers from potentially risky products over which the FCA had limited visibility or control.

However, with the upcoming changes to the Financial Services and Markets Act 2000 (FSMA), as proposed by HMT, cryptoasset service providers will be brought fully within the FCA's regulatory perimeter. Once implemented, qualifying cryptoassets, as well as all existing specified investment products including cETNs, will be subject to the same authorisation, conduct, prudential, and disclosure requirements as traditional financial services. We therefore believe that the rationale for retaining the RMMI classification therefore falls away.

To ensure the RMMI classification remains proportionate and evidence-based, we recommend the FCA commit to a formal review of this designation ahead of the new regime becoming operational. This review could assess the market conduct of authorised firms, product performance data, and consumer comprehension metrics as part of determining whether the restrictions remain justified under the Consumer Duty framework.