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Financial Conduct Authority
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09 August 2023

By email: gc23-1@fca.org.uk

Dear FCA,

Financial Services Consumer Panel response to GC23/1: Guidance on cryptoasset financial promotions

The Panel welcomes the FCA's consultation on guidance on crypto financial promotions. The quality of financial promotions, their associated risk warnings and the suitability for those viewing and acting on such promotions has been a longstanding concern of the Panel, especially within the crypto space.

The Panel thanks the FCA for the opportunity to respond to this consultation and would like to make the following general points:

1. Financial promotions should be limited to professional investors. This will reduce the harms faced by consumers who may enter into an unsuitable investment after seeing a financial promotion for a product they do not fully understand. Certainly self-certification as a sophisticated or high net worth investor should not be permitted as a route to demonstrate suitability.
2. Financial promotions should be communicated in the appropriate mediums. Given all of the information that needs to be shared with consumers, the Panel is not convinced that it is possible for financial promotions to be made on social media. Social media adverts are by nature limited: in terms of the content they can include, the way in which content is displayed and the time during which any content is viewed and read. We recommend the FCA make it clear within the guidance that social media promotions are unlikely to comply with the guidance.
3. Purchases should be supported by tools such as cooling off periods in order to allow them additional time to digest the often-complex information that comes with crypto purchases.

4. In addition to the factors set out in paragraphs 35-41 of the proposed guidance, the Panel considers that it would be worth repeating the factors set out in paragraph 45 (proof of ownership, evidence of the custodian, clear terms of redemption, risk of consumers losing some or all of their money, and other foreseeable dependencies), as these are also relevant.
5. The Panel would expect firms issuing financial promotions to do so in line with the principles under the Consumer Duty and considers that the FCA Guidance should make this clear.

We would further like to underscore that a 'halo' effect will be given to these novel products by this regulation – an effect that will be enhanced by the regulator's use of any terms like "asset", "investment", "value" and "worth". We consider that the use of such language is unhelpful. We would therefore like to stress the importance of getting the regulation and its supporting language right, testing it with a wide range of consumers and monitoring firms' adherence to it on an ongoing basis. We note that the crypto industry itself is increasingly using the term "cryptotoken", rather than "cryptoasset" and consider that the FCA should also use this terminology.

Please find our responses to the questions posed in Annex A, below.

Yours sincerely,

Helen Charlton
Chair, Financial Services Consumer Panel

Annex A – Response to consultation questions

Q1. Do you agree with our proposed guidance on the context of the cryptoasset financial promotions regime? Please explain your answer, highlighting any other issues that would be useful to consider.

The Panel broadly agrees with the FCA’s proposed guidance on the context of the crypto financial promotions regime. However, the Panel would prefer the guidance to avoid terms like “asset” and “investment” where possible, to better reflect the risks associated with cryptotokens. It notes that the crypto industry itself is increasingly using the term cryptotoken (rather than cryptoasset or cryptocurrency) and considers that this better reflects the nature of the product. The Panel would also encourage the FCA to go further to ensure consumers understand their rights.

Q2. Do you agree with our proposed guidance on ensuring that cryptoasset financial promotions are fair, clear and not misleading? Please explain your answer, highlighting any other issues that would be useful to consider.

The Panel broadly agrees with the FCA’s proposed guidance on ensuring that crypto financial promotions are fair, clear, and not misleading. However, the Panel considers that the FCA’s Consumer Duty should provide even stronger protection for consumers, namely that firms should act to deliver good outcomes for consumers. The Panel therefore considers that this expectation should be made clear in the guidance. Whilst the Panel supports the FCA’s proposed guidance, it is important that the FCA get the right balance of information provided. Consumer risks should be made at the very least, as prominent as any performance-related information.

The Panel considers that the Guidance should make clear that the FCA would expect firms to undertake consumer testing, in order to ensure consumers will understand the information they are provided with and will use it to make effective decisions. The Panel would also encourage the FCA to undertake consumer testing to get feedback on such financial promotions. This would be able to help identify consumer issues and potential areas for harm that can then be used to update the proposed guidance.

The Panel would therefore stress that beyond the performance-related information (i.e., telling consumers that the value of the purported asset could fall to zero) the promotions should include: financial-related risks (i.e., custodial, staking related) and technical risks (i.e., cybercrime, risk of hacking) and other risks consumers may face.

Given all of the information that needs to be shared with consumers, it may not be possible for appropriate, balanced financial promotions to be made on social media. Social media adverts are by nature limited: in terms of the content they can include, the way in which content is displayed and the time during which any content is viewed and read. We would question whether all the necessary information can truly be conveyed in a way that consumers can accurately understand. The Panel noted the guidance states:

"Firms should take account of the means of communication, the information that is intended to be conveyed and the type of consumer receiving this information"

The Panel agree that the guidance could go further and be more explicit – i.e., promoters should ensure not just that the information provided is correct and clear, but that (1) the medium through which it is providing this information is appropriate for consumers to digest and comprehend the information and (2) that the promotion is only reaching the appropriate intended audience.

Based on the above, we recommend that the FCA make it clear in the guidance that social media promotions are unlikely to comply with the guidance.

Q3. Do you agree with our proposed guidance for financial promotions of cryptoassets that claim a form of stability, or which claim their value is linked to a fiat currency? Please explain your answer, highlighting any other issues that would be useful to consider.

The Panel agrees with the FCA's proposed guidance for financial promotions of cryptotokens that claim a form of stability, or which claim their value is linked to a fiat currency. The Panel strongly supports the proposal that claims of stability that are based on either algorithmic or a reserve of other cryptotokens would be in breach of the requirements.

The Panel also agrees with the FCA that the risks are complex exposures for retail investors to understand whilst also being complex for issuers to explain. The Panel believes that there is a potential need for links in order to explain all of the complex dependencies on which they rely.

The Panel believes:

1. Financial promotions should be limited to professional investors. This will reduce the harms faced by consumers who may enter into an unsuitable investment after seeing a financial promotion for a product they do not fully understand. Certainly self-certification as a

sophisticated or high net worth investor should not be permitted as a route to demonstrate suitability.

2. Financial promotions should be communicated in the appropriate mediums. Given all of the information that needs to be shared with consumers, the Panel is not convinced that it is possible for financial promotions to be made on social media. Social media adverts are by nature limited: in terms of the content they can include, the way in which content is displayed and the time during which any content is viewed and read. We recommend the FCA make it clear within the guidance that social media promotions are unlikely to comply with the guidance.
3. Purchases should be supported by tools such as cooling off periods in order to allow them additional time to digest the often-complex information that comes with crypto purchases.
4. In addition to the factors set out in paragraphs 35-41 of the proposed guidance, the Panel considers that it would be worth repeating the factors set out in paragraph 45 (proof of ownership, evidence of the custodian, clear terms of redemption, risk of consumers losing some or all of their money, and other foreseeable dependencies), as these are also relevant.
5. The Panel would expect firms issuing financial promotions to do so in line with the principles under the Consumer Duty and considers that this expectation should be made clear within the guidance.

Q4. Do you agree with our proposed guidance for financial promotions of cryptoassets that claim to be backed by a commodity or an asset? Please explain your answer, highlighting any other issues that would be useful to consider.

As stated above in our response to question 3, the Panel agrees with the FCA's proposed guidance for financial promotions of cryptotokens that claim to be backed by a commodity or an asset. The Panel would however question how and where such promotions can realistically be made given the amount of information a consumer needs to be presented with and who these promotions can realistically be made to, given the amount of information those consumers need to properly understand.

Q5. Do you agree with our proposed guidance for financial promotions of complex yield models or arrangements? Please explain your answer, highlighting any other issues that would be useful to consider.

The Panel agrees with the FCA's proposed guidance for financial promotions of complex yield models or arrangements however would like to make the following points:

1. Firstly, the aforementioned legal/financial risk and additional complexity that consumers may face given that much of the activity is non-UK based and subject to different legal jurisdictions/supervisory and bankruptcy regimes.
2. Secondly, the Panel is led to understand that staking is done by some (if not many) platforms without offering any “complex yield model” or return to investors. If we are correct in this understanding, we would stress that these risks need to be just as clearly explained to consumers.
3. Thirdly, the Panel would like to ensure that consumers will properly understand the arrangements associated with any margin calls, including the potential for these to be triggered by exchange rate risk.

Q6. Do you agree with our proposed guidance for financial promotions on social media? Please explain your answer, highlighting any other issues that would be useful to consider.

The Panel agrees that there needs to be guidance for financial promotions on social media. However, before considering any detailed guidance the FCA should consider whether promoting products of such novelty and complexity can reasonably be achieved on social media. We are not convinced that: 1) all the necessary information can be properly and clearly displayed on social media nor consumed by social media users; 2) that social media targeting is accurate enough to ensure that promotions only reach the intended target groups and 3) that the viral nature of social media might not compromise any targeting. The Panel would encourage the FCA to consider including in the guidance that social media promotions are highly unlikely to comply.

Q7. Do you agree with our proposed guidance on due diligence before a financial promotion is communicated? Please explain your answer, highlighting any other issues that would be useful to consider.

The Panel agrees with the FCA’s proposed guidance on due diligence before a financial promotion is communicated. However, we have reservations about firms relying on independent professional advisers. From the proposed guidance, it is not clear who would qualify as a valid independent professional adviser on complex cryptotokens and how they would have all the necessary skills and access to verify such promotions.

Q8. Do you agree with our proposed guidance on disclosing legal and beneficial ownership of cryptoassets? Please explain your answer, highlighting any other issues that would be useful to consider.

The Panel agrees with the FCA's proposed guidance on disclosing legal and beneficial ownership of cryptotokens. It is very important that the FCA ensures firms follow the guidance for this to mitigate any consumer confusion or harm.

Guidance issued by the FCA should also stipulate the need for absolute clarity when consumers are not actually buying the stated cryptotoken but are instead buying synthetic exposure to the asset's performance and taking on the platform's credit risk.

Q9. Do you agree with our proposed guidance on disclosing the firm's regulated status? Please explain your answer, highlighting any other issues that would be useful to consider.

The Panel believes the firm's regulated status should be disclosed. The Panel however was unsure from the consultation document on whose regulated status the FCA was proposing this for. In our view the disclosure should cover both the issuing firm *and* the firm approving the promotion.

Q10. Are there any other topics you believe our guidance should cover?

The Panel would like to stress the importance of suitability which was not discussed much in the guidance. It is important that financial promotions are reaching only the intended audience and the Panel would encourage the FCA to strengthen their guidance on this topic and explore how the firms could in practice ensure promotions are limited to their targeted audiences.

Questions 1-7 on complex yield models/arrangements

The Panel has not provided a separate response to these questions, but refers the FCA to its response to Q5 above.