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Consultation on cryptoasset promotions
Cryptoassets branch Payments and FinTech (1 Blue)
Financial Services Group
1 Horse Guards Road
HM Treasury
London SW1A 2HQ

23 October 2020

By email: crypto.finproms@hmtreasury.gov.uk

Dear Sir / Madam,

Financial Services Consumer Panel response to HM Treasury cryptoasset promotions consultation

The Financial Services Consumer Panel is an independent statutory body. We represent the interests of individual and small business consumers in the development of policy and regulation of financial services in the UK.

The Panel agrees with HM Treasury's proposals to regulate the promotion of cryptoassets. As HM Treasury identifies, consumer harm has already occurred in this market due to misleading advertisements that overstate benefits and understate risks as well as a general lack of suitable information for consumers. This is increasingly concerning as more consumers – including older consumers who are more likely to be vulnerable – hold, or are interested in holding, cryptoassets. The result is that consumers may end up with a product they do not understand and that does not come with the regulatory protections they may expect.

With this harm in mind, the Panel agrees with HM Treasury's determination that the industry should not be left to self-regulate nor should the status quo be maintained. Therefore, bringing the promotion of cryptoassets within the scope of FCA regulation is an important and necessary step to protect consumers participating in this market.

Harms from online advertising

The Panel has long questioned the effectiveness of the financial promotions regime, particularly the length of time it can take to remove misleading promotions. We recognise the challenges of policing digital promotions, with multiple channels and new adverts emerging as quickly as misleading ones are taken down. But we believe regulators can make greater use of digital solutions, including artificial intelligence, to quickly identify and remove promotions which overstate benefits and understate risks. We would encourage HM Treasury to consider sustained investment in 'RegTech' to address this.

The Panel is especially concerned by firms' use of 'AdTech' to target particular types of consumers. As we set out in our [discussion paper on digital marketing](#), targeted adverts can be used to create an environment for discrimination, manipulation, and exploitation. This risk is acute in relation to cryptoassets because FCA research¹ has shown that 45%

¹ <https://www.fca.org.uk/publication/research/research-note-cryptoasset-consumer-research-2020.pdf>

of all current and previous cryptocurrency owners said they had seen a cryptocurrency related advert, most of which were online and on social media. Of these, 35% or approximately 400,000 adults, stated it made the purchase more likely and 16% said they were influenced by an advert. Importantly, those that were influenced by advertising were more likely to subsequently regret their purchase. It is a reasonable assumption that consumers are more likely to be influenced by an advert when it is specifically targeted at them. We therefore encourage HM Treasury and regulators to conduct further research on personalised ad-targeting and take action accordingly. For example, they could introduce a requirement for authorised firms or individuals to approve the way in which financial promotions target consumers.

It is also critical that the technology industry is made to participate in this effort. As mentioned, most cryptoasset marketing occurs in the online sphere where 'BigTech' firms can and should play a significant role in eliminating the risk of harm. For this reason, we would strongly encourage that digital platform owners are made responsible for ensuring the appropriate approval exists for financial promotions they pass on or host², and that they ensure any consumer targeting is within the boundaries of the approval.

Scope of proposed regulation

The consultation proposes to exempt cryptoassets which are non-transferrable and non-fungible from regulation. This is done on the basis that transferability and fungibility are two critical features which make cryptoassets "significantly more likely" to give rise to consumer protection concerns.

Whilst the Panel appreciates the need to draw the perimeter somewhere and understands the logic behind HM Treasury's proposed exclusion of such assets, it would caution that the distinction between what is fungible and transferrable may not be apparent to all consumers. The generic term 'cryptoasset' does not make this distinction and so, depending on how such an asset is promoted, consumers might not understand that what they've purchased is non-transferrable and non-fungible outside a prescribed 'universe'. Consumers could therefore be buying in to particular universe without realising that the cryptoasset they've purchased has no value outside it.

Even those consumers that *do* understand that what they have purchased is only transferrable and fungible within a prescribed universe might have unrealistic expectations about the exchangeable value of the asset within that universe and/or the size of that universe. Should the universe shrink or fail, or the asset significantly lose exchangeable value, consumers could lose their investments with no regulatory protection or access to redress. It is therefore vitally important that Government and regulators monitor closely what is happening outside the perimeter and stand ready to extend the perimeter if needed.

This consultation coincides with the European Commission's proposed Regulation on Cryptoassets³ which appears to set out a wider basis for cryptoassets falling outside the scope of the Regulation. Notably, it seems to take into consideration: (1) who the assets are sold to (whether qualified investors or not); (2) how many investors the assets are marketed to; and (3) how much investment the assets accrue during a given period. We would encourage HM Treasury to consider whether similar provisions might usefully be incorporated in the UK.

² <https://press.which.co.uk/whichpressreleases/which-calls-for-action-over-emotional-and-financial-toll-of-online-scams-as-tech-giants-fail-to-adequately-protect-users/>

³ 2020/0265 REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on Markets in Crypto-assets, and amending Directive (EU) 2019/1937
https://ec.europa.eu/finance/docs/law/200924-crypto-assets-proposal_en.pdf

On a final note, we observe that HM Treasury does not propose to adjust the territorial scope, meaning that all firms in the UK and overseas that issue promotions to UK consumers are within scope. The Panel questions how this can be effectively supervised and enforced and therefore again would encourage the aforementioned investment in 'RegTech' solutions which might help address the wider issue of financial promotions.

Yours faithfully,

Wanda Goldwag
Chair, Financial Services Consumer Panel