12 September 2024

SENT VIA EMAIL ONLY

Rt Hon Tulip Siddiq MP
City Minister
HM Treasury
1 Horse Guards Road
London
SW1A 2HQ

Dear Minister,

We write further to our correspondence with your predecessor as City Minister (letter dated 3 January 2024 and attached as Annex 1), to which the Minister responded on 5 February 2024 (full details here and attached as Annex 2).

As part of this correspondence, we highlighted how FCA policies have prevented residents of the United Kingdom from accessing certain Bitcoin ETF products offered by companies registered in England and Wales.

In light of: 1) recent regulatory activity in the US, with the SEC approving the Bitcoin ETFs[1]; 2) the launch on the London Stock Exchange of Bitcoin ETNs for professional investors only; and 3) the advent of a new Labour government, Bitcoin Policy UK (BPUK) now writes to request that this government review the regulatory environment in the UK as it relates to the Bitcoin ETFs and ETNs, to allow both UK retail and institutional investors access to them.

Our view is that the FCA's refusal to approve retail investor access to Bitcoin products is a position that diminishes the standing of the FCA as a regulator, diminishes the status of the United Kingdom as a sophisticated market for financial products, and denies UK investors the ability to allocate their portfolios as they choose in a regulated market.

Inconsistency between US and UK regulatory environments

On 10 January 2024, the United States Securities and Exchange Commission approved 11 Bitcoin ETF proposals, offering retail investors in the US the opportunity to invest in such funds. These ETFs are now widely accepted as "the most successful ETF launches ever in the US, by a large margin.[2]"

As part of the SEC's approval of the Bitcoin ETFs, Chair Gensler stated that investors will benefit from: 1) the disclosures included in public registration statements and periodic filings; and 2) reduced risk of fraud and manipulation as a consequence of stringent rules put in place for these ETFs[3]. Such safeguards make the Bitcoin ETFs an ideal vehicle for retail customers who may not be comfortable purchasing Bitcoin from specialised exchanges.

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[1] UK Undermines 'Crypto Hub' Vision As US Approves Bitcoin Spot ETF
[2] Matt Hougan, Chief Investment Officer at Bitwise, speaking at the Blockworks Digital Asset Summit 2024 in London
[3] Statement on the Approval of Spot Bitcoin Exchange-Traded Products

The approval of these Bitcoin ETFs in the US, places the regulatory position of the US in stark contrast to that of the UK, with the FCA's current position being that such Bitcoin ETFs are 'ill-suited for retail consumers'. Hargreaves Lansdown, one of the UK's largest financial services organisations, have stated (see detail in Annex 3), that even though these products have been approved by the *stringent requirements* of the United States Securities and Exchange Commission, that they will not be able to offer exposure to the US ETFs via their platform.

BPUK maintains that this clear inconsistency between the regulatory position of the UK and the US, as it relates to the Bitcoin ETFs, is untenable, and we request that the Labour government work closely with the FCA to rectify it, by bringing the UK regulatory position in line with that of the US.

Inconsistency in regulatory position toward Bitcoin ETF and the underlying asset

Retail investors within the UK are currently able to purchase Bitcoin via any number of exchanges[4], but are not allowed to purchase the Bitcoin ETFs nor the ETNs. This is a glaring inconsistency that diminishes the reputation of both the FCA, and of the UK as a sophisticated jurisdiction in which to offer financial products. It is almost unheard of for a retail investor to be able to purchase an underlying asset (in this case, Bitcoin) but not to be permitted to purchase a regulated product that tracks the performance of that asset.

If, as the FCA argue, this asset is 'ill-suited[5]' for retail investors due to risk of harm, why does the FCA itself provide a registration regime[6] so that firms may offer these very same 'ill suited' assets to retail investors, who, by the FCA's own reasoning, would be harmed by them?

Reputation of the UK as a centre for investment

The ongoing refusal of the FCA to approve retail investor access to the Bitcoin ETFs and ETNs, together with the inconsistencies already cited in this letter, put the UK in a difficult and precarious position as a centre for finance and investment. The growth and influence of Bitcoin will only continue to grow, and the UK needs to be properly positioned for this.

In January 2024, when the SEC approved the United States Bitcoin ETFs, Commissioner Hester Peirce made a detailed statement.[7] We agree with her that the "*arbitrary and capricious treatment of applications in this area will continue to harm our reputation far beyond crypto. Diminished trust from the public will inhibit our ability to regulate the markets effectively. This saga will taint future interactions between the industry and our staff and will dampen the rich, informative dialogue that best protects investors*."

The FCA and the UK face exactly these same risks.

Investors of sound mind should be free to express their own thoughts on investment products by buying and selling them on regulated exchanges. While we note that the FCA remains an independent regulator, in light of the points highlighted within this letter, we urge

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[4] https://www.coinbase.com/en-gb/, https://www.kraken.com/, https://www.coincorner.com/, https://strike.me/
[5] PS20/10: Prohibiting the sale to retail clients of investment products that reference cryptoassets | FCA
[6] Cryptoassets: AML / CTF regime - Registering with the FCA
[7] Out, Damned Spot! Out, I Say!: Statement on Omnibus Approval Order for List and Trade Bitcoin-Based Commodity-Based Trust Shares and Trust Units

all relevant parties to review and revise their current position on the Bitcoin ETF and ETN products in the UK, so that they can be made accessible to both institutional and retail investors alike.

We remain at your disposal to assist in any discussion or the provision of any advice and expertise that you may require in relation to the matters raised in this letter.

Yours sincerely,

Freddie New
Co-Founder and Head of Policy
Bitcoin Policy UK

Cc. Nikhil Rathi, Financial Conduct Authority, 12 Endeavour Square, London E20 1JN

Annex 1

Letter to City Minister dated 3 January 2024

Rt. Hon Bim Afolami, MP (City Minister, Economic Secretary (HM Treasury))
HM Treasury
1 Horse Guards Road
London
SW1A 2HQ

3 January 2024

Dear Minister,

RE: Jacobi FT Wilshire Bitcoin ETF (the "Fund")

We are writing to you following a review of certain financial products offered or to be offered by Jacobi Asset Management Holdings Limited ("**Jacobi**"). We undertook this review in order to highlight what we feel is an unintended negative consequence of the United Kingdom's regulatory regime, both on Jacobi as a British business and on those UK retail customers who are currently being denied the opportunity to invest in certain regulated products that Jacobi offers. It is arguable that retail customers are therefore exposed to an increased risk of harm, which the regulations would originally have been intended to avoid.

We refer specifically to the ETF product above, namely the Fund. Jacobi is a company registered in the United Kingdom, and the Fund is a cell of Jacobi Investment Funds PCC Limited, authorised as an open-ended collective investment scheme by the Guernsey Financial Services Commission (the "**GFSC**") under The Authorised Collective Investment Schemes (Class B) Rules, 2021 made in accordance with The Protection of Investors (Bailiwick of Guernsey) Law, 2020. The Fund has also been approved by the Dutch Authority for the Financial Markets (the "**AFM**") for distribution in the Netherlands and listing on Euronext Amsterdam.

You will note that while Jacobi is incorporated in England and Wales, with its management team resident here, the Fund's regulators are nevertheless not the FCA and the UKLA but are the GFSC and the AFM. Additionally, despite the high degree of regulatory scrutiny to which both Jacobi and the Fund are subject, shares in the Fund cannot currently be offered to UK retail investors, and access is limited to certain qualified investors, **excluding retail investors entirely from access to the product.** We note that while the GFSC will also permit only certain 'qualified investors' to access the Fund, there is a possibility for exchange traded notes or ETNs to be offered to retail investors, with the benefits of security and custody for retail investors that we shall further outline herein. This is of course still not possible given the UK's current regulatory approach.

We are particularly concerned by the apparent contradiction between stated HM Government policy regarding digital assets (particularly Bitcoin) and the practical realities facing good faith actors in this space - realities which may also indirectly increase the risk of customer harm rather than reduce it.

Current HMG Policy

As I have noted in previous correspondence with HM Treasury, it has been and remains the stated policy of this Government that the UK become a crypto asset hub. The Government has made a clear commitment to fostering a supportive environment for the growth and innovation of crypto assets. This is evidenced by the statements and actions of former Economic Secretaries to the Treasury, emphasising the UK's openness to crypto businesses, and by the subsequent release of regulatory proposals that have reaffirmed the Government's dedication to enabling technological advancement in this field.

In line with this commitment, the UK has of course taken concrete steps towards regulating the crypto asset market. These include the future financial services regime consultation, the incorporation of the resultant FSMA amendments into the Financial Services and Markets Act 2023, and the issuance of recent guidance by the FCA in both GC23/1 and GC23/2.

The Fund

As noted above, the Fund is regulated both by the GFSC and by the AFM. Attempts have been made to communicate with the FCA in relation to a LSE listing of the Fund but these have not been successful and we understand that Jacobi's representatives have at the date of writing not even received a response or acknowledgement. **The Fund is the first and as at the date of writing the only regulated Bitcoin spot ETF product in Europe.** Bitcoin is the oldest digital asset in the space, with the deepest liquidity and the longest trading record. Furthermore, it is the only asset in respect of which a broad consensus has been reached that it is a digital commodity[1] and not controlled by one or more powerful groups or individuals. A Bitcoin spot ETF allows investors to gain exposure to this asset in a familiar way, via incorporating an investment in ETF shares into their portfolio, while at the same time reducing the risks of user error, exchange failures and hacks that can arise via individual and direct spot purchases of the asset - legal and legitimate though such purchases may be.

Additionally, and through collaboration with Zumo Oxygen,[2] Jacobi have taken great pains to ensure that any investment in the Fund is matched with renewable energy solutions, enabling their clients to match the electricity consumption associated with digital assets with 100% renewables, transparently and verifiably.

Negative consequences for UK retail consumers arising from the inaccessibility of the Fund

We need not highlight here all the numerous incidents of severe financial harm experienced by UK retail consumers over the past few years in the crypto asset space. Suffice it to say that UK customers have been involved in the collapses of Celsius, BlockFi and FTX, to note just three examples, and in each case customers faced significant counterparty risk arising from the actions of the corporate entities with which they had to interact in order to purchase assets such as Bitcoin on the spot markets, and/or use each of these named entities as a custodian for their assets upon purchase. At such time as these companies entered financial distress, UK customers attempted to withdraw their assets and were unable to do so, being therefore subjected to significant loss and harm. In no sense did any of these corporate collapses affect the validity or functionality of the underlying asset - Bitcoin the network and as an asset continued to function throughout, and remained pristine. **In each case, the risk was the presence in the market of an unregulated seller and custodian of Bitcoin**, rehypothecating customer funds, and using those funds arguably in breach of terms and conditions to the detriment of consumers in each case.

[1] https://www.cftc.gov/sites/default/files/2019-12/oceo_bitcoinbasics0218.pdf
[2] https://zumo.tech/sustainability/

Such re-hypothecation is not possible with the Fund. Jacobi conduct, via their sub-administrator Apex Fund Services, a daily valuation of the Fund, and investors' counterparty risk is limited; if Jacobi becomes insolvent the Fund is bankruptcy-remote and would be unaffected. Custody of the Bitcoin assets held by the Fund is with Fidelity Digital Assets[3] (one of the most well-respected and longest-established businesses in the space), where the Fund holds an omnibus account, spreading client funds across multiple wallets so as to minimise risk. Additionally, Fidelity carries substantial insurance cover in respect of third party assets, including such Bitcoin as would be held by the Fund. In short, Fund investors do not face counterparty risk arising from Jacobi's own insolvency, and they do not face rehypothecation risk arising from any non-permitted use of the underlying assets owing to the robust custody regime operated by Fidelity.

It is, and is likely to remain, legal to buy and hold Bitcoin in the UK. At present, retail customers who wish to do so are required to buy Bitcoin from firms like Celsius, like BlockFi, or like FTX, thereby exposing themselves (i) to risks that have become extremely apparent in the past eighteen months, and (ii) also to the likely possibility of extreme customer harm.

The primary goal of retail and consumer-facing regulation should be to prevent customer harm, and it is arguable that by denying UK retail investors the opportunity to invest in regulated products like the Fund or alternatively in relevant ETNs, offered by regulated entities like Jacobi, the UK regulatory regime is in fact both denying UK citizens the opportunity to participate in a growing and developing industry, **in contradiction of its own stated policies**, and also **is significantly increasing the risk of customer harm**, by forcing customers to seek out alternative, unregulated, and likely far less safe and secure alternatives to regulated products like the Fund.

In short, the present situation where UK customers are able to purchase and hold Bitcoin via unregulated foreign entities, but not permitted to buy a share in a regulated product like the Fund, appears to be a contradictory, arbitrary and illogical policy decision, which as noted above is likely to increase and not to reduce the risk of customer harm.

We urge the Minister and the Government to review the current rules and restrictions, particularly in light of the stated policy aims of this Government and the risks to UK customers we have highlighted here. We and Jacobi would be only too happy to discuss this matter further at your convenience, and to assist in any review of, or comment on, the current regulatory regime that might take place in future.

Yours sincerely,

Freddie New
Head of Policy, Bitcoin Policy UK

Cc Rt. Hon Lisa Cameron MP, Chair of the Crypto and Digital Assets APPG and Rt. Hon Natalie Elphicke, Chair of the Blockchain Technologies APPG

[3] https://www.fidelitydigitalassets.com/

Bitcoin Policy
UNITED KINGDOM

Annex 2

<u>Letter from City Minister dated 5 February 2024</u>

ECONOMIC SECRETARY TO THE TREASURY

HM Treasury, 1 Horse Guards Road, London, SW1A 2HQ

Mr Freddie New
Bitcoin Policy UK
71-75 Shelton Street
London
WC2H 9JQ

5 Feburary 2024

Dear Freddie,

FCA treatment of ETFs referencing cryptoassets

Thank you for your letter dated 3 January regarding the FCA's prohibition on retail access to exchange traded funds (ETFs) that reference specific cryptoassets.

The government understands the FCA considers these products to be ill-suited for retail consumers due to risk of harm arising from the nature of the underlying assets and markets. Ultimately, the question of whether to list these assets is for the FCA as the independent regulator, working within its statutory objectives.

The government is committed to creating a regulatory environment in which firms can innovate, while crucially maintaining financial stability and clear regulatory standards so that people can use new technologies both reliably and safely. As you noted in your correspondence, we recently published our response to the consultation and call for evidence on the future financial services regulatory regime for cryptoassets. The Government is progressing work on secondary legislation giving effect to these proposals.

The FCA's prohibition is subject to on-going review. While it would not be appropriate for the government to intervene in a decision taken by the independent regulator at this time, the government considers that the introduction of its forthcoming comprehensive financial services regulatory regime for cryptoassets – and in particular the proposed market abuse regime discussed in our recent consultation response - has the potential in future to assist with many of the FCA's concerns. We are working at pace to deliver these proposals as soon as reasonably possible.

I appreciate your time and effort in sharing your concerns and I look forward to continuing to engage on the opportunities and challenges faced by industry in this sector.

BIM AFOLAMI MP

Annex 3

Communications from Hargreaves Lansdown re. Bitcoin ETN investments

" *Thank you for your recent message.*

The iShares Bitcoin Trust is listed on the NASDAQ. We have made the decision not to offer US ETFs on our platform due to Key Investor Documents (KIDs) being unavailable with our data provider. Certain Investments, including ETFs, have been identified as Packaged Retail and Insurance-Retail Investment Products (PRIIPs).

This regulatory classification is aimed at protecting consumers, ensuring that they have all the required information available to them about an investment product, prior to making an investment decision. Investment products classified as a PRIIP need to provide a KID to our third party data provider in order to be added to our platform. This is the case for all US and Canadian incorporated ETFs and is outside of our control.

We're therefore unable to place any purchases in these securities, or offer them on our platform. In addition, the Financial Conduct Authority (FCA) published rules which banned the offering of derivatives and exchange trades notes (ETNs) that reference certain types of crypto-assets to retail consumers with effect from 6 January 2021. As it currently stands, this ETF is likely to fall under these rules. If you have any other questions, please get back to me.

Kind regards

Hargreaves Lansdown"

17:14

Thank you for your message.

In 2020 the Financial Conduct Authority (FCA) published rules which ban the sale of crypto-currency derivatives and Exchange Traded Notes (ETNs). The FCA asked that investment platforms like HL remove these types of investments.

If there was a change in the guidance from the FCA then Hargreaves Lansdown would be able to review allowing purchases of these investments through the platform again.

With regards to US ETFs in general, we have made the decision not to offer US ETFs on our platform due to Key Investor Documents (KIDs) being unavailable with our data providers.

Certain investments, including ETFs, have been identified as Packaged Retail and Insurance-Related Investment Products (PRIIPs). This regulatory classification is aimed at protecting consumers, ensuring that they have all the required information available to them about an investment product, prior to making an investment decision.

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Investment products classified as a PRIIP need to provide a KID to our third party data provider in order to be added to our platform. This is the case for all US and Canadian incorporated ETFs and is outside of our control. We're therefore unable to place any purchases in these securities, or offer them on our platform.

If you have any further questions, please reply by secure message from your HL account or send us an email. Please note that attachments we send will only be available to view on our website and not on the HL App.

Kind Regards,

We refer also in this context to the restrictions set out in the FCA Handbook and relevant COBS:

https://www.fca.org.uk/publications/policy-statements/ps20-10-prohibiting-sale-retail-clients-investment-products-reference-cryptoassets

https://www.handbook.fca.org.uk/handbook/COBS/22/6.html