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/