



Electronic Money Association
Surbiton
Surrey
KT6 4BN
United Kingdom
Telephone: +44 (0) 20 8399 2066
Facsimile: +44 (0) 870 762 5063
www.e-ma.org

Financial Conduct Authority

By email to cp22-27@fca.org.uk

07 February 2023

Dear Sir/Madam

Re: Consultation on Introducing a gateway for firms who approve financial promotions.

We welcome the opportunity to provide input on FCA's consultation on a gateway for firms who approve financial promotions. The EMA represents payments, crypto asset and FinTech firms, engaging in the provision of innovative payment services, including the issuance of e-money, e-money tokens, open banking payment services, and cryptoasset related services including stable coins. A full list of our members is provided in the appendix to this document.

The EMA was established some 20 years ago and has a wealth of experience in regulatory policy relating to payments, electronic money and more recently crypto assets.

We would be grateful for your consideration of our comments, which are set out below.

Yours faithfully,

A handwritten signature in black ink, appearing to read 'Thaer Sabri', with a long horizontal flourish underneath.

Dr Thaer Sabri
Chief Executive Officer
Electronic Money Association

Q1: Do you agree with our proposed approach to assessing applications?

The FCA's proposed approach involves applying a series of extensive requirements to applicant firms. Whilst they may appear reasonable in isolation, when combined with the Financial Services and Markets Act (FSMA) authorisation that applicant firms will already have completed, the approach seems disproportionate in light of the risk posed.

The proposal to implement a 12-month window for the FCA to determine applications also appears excessive, and the lengthy time period is likely to lead to considerable capacity issues, given the high number of unauthorised firms who will have to seek approval for all of their financial promotions almost immediately following the adoption of the regime. We would advocate for a streamlined assessment process, with the ability for the FCA to use existing supervisory tools to monitor for compliance.

The likely consequence is that fewer firms apply to the Gateway, or are successful in being granted permission to approve financial promotions. This will result in reduced choice for those firms who are dependent on the S21 approver firms, which may impact on the cost of the service for those firms. This approach also creates an additional barrier for firms seeking to build up their internal knowledge and understanding of the Financial Promotions regime.

In terms of the application requirements and process, it is unclear how the FCA will determine and assess 'competent individuals', and what qualifications or competencies the FCA will expect them to have. It is also unclear how much detail will be required on the systems and controls a firm should have, and how the FCA will ensure the requirements are proportionate to the size and risk of the firm. Finally, in the specific context of cryptoasset financial promotions, it is not clear how the FCA will make use of their experience of 'supervising already-authorized firms that provide similar financial services', as these services are not yet supervised by the FCA.

We do however welcome the FCA's proposed approach to apply the Financial Promotions regime exemptions to the Gateway, and the proposal for a transitional regime to allow for the market to adjust to the new framework.

Q2: Do you agree with our proposed approach to determining whether to refuse an application or to grant permission on terms which are different from those for which application has been made?

The FCA's proposed approach for refusing an application based on the broad grounds that it might be "desirable to do so in order to advance one or more of the FCA's

operational objectives” is discretionary and will leave the FCA open to challenge. It will also remove the ability for firms to review and improve their internal processes to meet the conditions of the Gateway at a later date. The grounds to refuse an application should be clearly defined.

In addition, where the FCA is not minded to grant permission to approve financial promotions on the terms for which the applicant has applied, it may indicate the granting of permission on different terms. The criteria under which the FCA approves a narrower set of permission than that which the firm has applied for should be clarified, and the process and justification for doing so provided.

Where the FCA refuses an application, it will follow the existing process as set out under DEPP. More clarity is needed around whether the warning notice and decision notice issued as part of a refusal will be published, and the circumstances under which this may occur. The possibility of warning/refusal decision notices being published is an important consideration for applicant firms, as the related reputational impact of a public refusal may be significant.

Q3: Do you agree with our proposal not to make changes to the Financial Ombudsman Service for complaints about the approval of a financial promotion?

The proposal to not extend the jurisdiction of the Financial Ombudsman Service to cover the approval of financial promotions is a sensible approach. Including such activity within the scope of eligible FOS complaints may create an unrealistic expectation for consumers about the level of redress that might be available from the approver of the financial promotion.

The FCA already has the power to secure redress in appropriate cases where a firm is not meeting regulatory standards; this presents a strong incentive for approving firms to ensure they comply with the relevant requirements.

Q4: Do you agree with our proposal for s21 approvers to submit a notification to us within 1 week of every approval, withdrawal or amendment of a financial promotion?

The obligation to report on every approval, withdrawal or amendment of a financial promotion within 1 week will place an unnecessary and disproportionate administrative burden on s21 approver firms. This is exacerbated by the already extensive nature of the

proposed reporting requirements (see paragraph below). Firms will be disincentivised from becoming an S21 approver firm, reducing the number of firms that can offer such a service to other firms currently unable to obtain S21 approver status, and thus reducing competition in the market. We suggest the FCA consider whether a 1-week window is necessary for monitoring and supervisory purposes, and instead consider a longer reporting window.

We recommend the FCA consider reporting in line with other supervisory reporting, i.e. once annually, or alternatively take the approach of periodic returns, including the option to submit nil returns. The implementation of such a short reporting window creates an unnecessary administrative burden on both reporting firms, and on the FCA to review. The FCA's proposed approach already includes several mitigating requirements that will lower the risk of unfair financial promotions; these include the establishment of the S21 approver Gateway, the requirement for firms to be 'competent', and regular reporting of financial promotions data and complaints data. The addition of the 1-week reporting requirement is disproportionate and will not enable more effective supervision or risk mitigation but merely place a greater burden on firms, diverting effort and firms' resources away from the primary activity of ensuring compliance with the financial promotions regime.

It may also be counterproductive: having subjected Gateway applicants to a lengthy process of demonstrating their expertise and competence to independently approve promotions of unauthorised firms, the FCA then proposes to collect so much data on each firm's financial promotions, that the FCA might as well take on the role of approving of financial promotions itself.

Q5: Do you agree with our proposal for s21 approvers to submit regular reports to us on financial promotions approved for unauthorised firms?

The FCA is also proposing to collect bi-annual reports, with detailed information requirements, in addition to the 1-week notification for every approval, withdrawal or amendment as outlined above.

We agree that the FCA should require the reporting of data in order to ensure appropriate oversight of s21 approvers. However, the notification and reporting requirements should not be overly cumbersome and place a disproportionate burden on firms. This will likely reduce the number of firms interested in seeking S21 approver status, and reduce the options for firms reliant on access to a large S21 approver marketplace. Those that do achieve S21 approver status may seek to cover the cost of their approval and other

compliance-related costs from the firms whose financial promotions they will be approving, so the greater the compliance burden, the higher the cost for firms relying on S21 approvers.

We note that the bi-annual reporting will be submitted on the RegData platform, while the on-going, 1-week notification will be submitted through Connect. The proposal to use multiple reporting platforms and windows will create an additional burden on firms.

Q6: Do you agree with the proposed metrics and bi-annual report frequency?

A number of specific metrics required in the bi-annual report appear to be duplicates of data provided through the general on-going notification requirement, e.g. reporting the total number of approvals issued in a 6-month period. This is not efficient and will require firms to dedicate extra resources towards reporting. The FCA should remove any duplicative data reporting requirements, and should set out the purpose and use of each data point being collected. For example, number of customer complaints is already separately reported in an annual return to the FCA, and it may be more efficient to consider if the existing Complaints Return can be extended to cover financial promotions.

A Bi-annual reporting requirement is already onerous for smaller firms, and out of sync with the reporting frequency for other regulatory data, such as the Complaints Return.

In addition, the requirement to report revenue, particularly the s21 approver's total revenue related to both regulated and unregulated activity, appears excessive. This information is not relevant to mitigating risk and effectively supervising approver firms. It is unclear what the objective or rationale is for this particular data request, and how this data will be used.

Q7: Do you intend to apply for permission to approve financial promotions?

N/A



Members of the EMA, as of February 2023

[AAVE LIMITED](#)

[Airbnb Inc](#)

[Airwallex \(UK\) Limited](#)

[Allegro Group](#)

[Amazon](#)

[American Express](#)

[ArcaPay Ltd](#)

[Banked](#)

[Bitstamp](#)

[BlaBla Connect UK Ltd](#)

[Blackhawk Network EMEA Limited](#)

[Boku Inc](#)

[Booking Holdings Financial Services](#)

[International Limited](#)

[BVNK](#)

[CashFlows](#)

[Checkout Ltd](#)

[Circle](#)

[Citadel Commerce UK Ltd](#)

[Contis](#)

[Corner Banca SA](#)

[Crypto.com](#)

[Curve](#)

[eBay Sarl](#)

[ECOMMPAY Limited](#)

[Em@ney Plc](#)

[emerchantpay Group Ltd](#)

[Etsy Ireland UC](#)

[Euronet Worldwide Inc](#)

[Facebook Payments International Ltd](#)

[Financial House Limited](#)

[First Rate Exchange Services](#)

[FIS](#)

[Flex-e-card](#)

[Flywire](#)

[Gemini](#)

[Global Currency Exchange Network
Limited](#)

[Globepay Limited](#)

[GoCardless Ltd](#)

[Google Payment Ltd](#)

[HUBUC](#)

[IDT Financial Services Limited](#)

[Imagor SA](#)

[Ixaris Systems Ltd](#)

[MANGOPAY](#)

[Modulr FS Europe Limited](#)

[MONAVATE](#)

[Moneyhub Financial Technology Ltd](#)

[Moorwand](#)

[MuchBetter](#)

[myPOS Payments Ltd](#)

[Nuvei Financial Services Ltd](#)

[OFX](#)

[OKTO](#)

[One Money Mail Ltd](#)

[OpenPayd](#)

[Own.Solutions](#)

[Park Card Services Limited](#)

[Paymentsense Limited](#)

[Paynt](#)

[Payoneer Europe Limited](#)

[PayPal Europe Ltd](#)

[Paysafe Group](#)

[Paysend EU DAC](#)

[Plaid](#)

[PPRO Financial Ltd](#)

[PPS](#)



[Ramp Swaps Ltd](#)

[Remitly](#)

[Revolut](#)

[Ripple](#)

[Sable International FX Limited](#)

[Securiclick Limited](#)

[Skrill Limited](#)

[Soldo Financial Services Ireland DAC](#)

[Square](#)

[Stripe](#)

[SumUp Limited](#)

[Swile Payment](#)

[Syspay Ltd](#)

[Transact Payments Limited](#)

[TransferMate Global Payments](#)

[TrueLayer Limited](#)

[Trustly Group AB](#)

[Uber BV](#)

[VallettaPay](#)

[Vitesse PSP Ltd](#)

[Viva Payments SA](#)

[Weavr Limited](#)

[WEX Europe UK Limited](#)

[Wirex Limited](#)

[Wise](#)

[WorldFirst](#)

[WorldRemit LTD](#)

[Yapily Ltd](#)