

APCC Crypto Working Group Minutes

Friday 18th October 2019, 10.00am – 12.00pm
Eight Club Bank, 8 Change Alley, Bank, EC3V 3LL

Attendees

Ben Mason - Chair

Mark Kelly

Richard Farr (by phone)

Nick Andrews

Joshua Page

Munim Choudhry (by phone)

Introductions

Everyone provided a summary of themselves and what their involvement has been in Crypto to date.

Recent shared (regulatory) experiences

- It was agreed that the regulator was currently very slow with crypto related applications, with many not getting through. This reflects the FCA's current risk appetite, which has hardened recently anyway, and the perception of the firms already authorised and issues such as failing to clearly disclose to customers which activities they carry out are regulated and which are not regulated
- This impasse is clearly causing regulatory arbitrage with many crypto companies setting up in jurisdictions more sympathetic to crypto and with regulatory regimes in place to support crypto firms
- HMRC have made large data requests asking for all client data between April 2017 and April 2019, perhaps with a view to trying to obtain tax on profits made from Crypto
- The opening of bank accounts was also causing an additional challenge for firms applying to be authorised
- International regulators were discussed. Some others were accepting applications more readily, such as Estonia, Malta, Gibraltar etc
- The presence of crypto exchanges trading security tokens in some EU jurisdictions without an MTF licence was noted
- In reviewing the task forces' commitment to next activity, the massive gap was HMT consulting on a new perimeter and regulatory framework for crypto. This was due in early 2019 and has not happened and appears to be underpinning much of the market and the FCA's nervousness

APCC Crypto Survey

- The survey had been circulated to APCC members with circa 20 responses received
- The general response could be summarised in two bullets:
 - Everyone agreed something should be done
 - What that should be there was not a consensus for, however, specifically around the perimeter for exchange tokens
- A discussion then followed on what the best option might be, starting with the regulation of exchange token trading. Two contrasting views were expressed, both referencing the current regulatory framework:
 - View 1: Exchange tokens are a currency. Spot currency trading is not regulated. Spot trading of Exchange Tokens therefore should not be regulated – the perimeter is fine where it is, noting derivatives are already within the perimeter.
 - View 2: Exchange tokens are traded on a speculative basis in the same way that securities are traded. Additionally, most people trading exchange tokens are doing it on the basis of

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ongoing trading activity, in the way that (regulated) rolling spot is traded. If it looks and feels like securities/derivatives trading it should be regulated as such

- A number of different views were also expressed by respondents, including:
 - Is international cooperation required before redefining the perimeter:
 - View 1: yes, this is inherently international as an industry
 - View 2: no, international cooperation is very difficult to come by, and this would take a long time, leading directly to the UK being last to respond, which is where it already is with so many other jurisdictions having already defined some sort of crypto regulatory framework... without needing international cooperation
 - Should utility tokens be regulated? The group agreed this was complex as some can convert into a regulatory activity, but others fall outside. One suggestion was that standardising the legal frameworks, in the way that ISDAs do, might provide a welcome reference point
 - One respondent to the survey thought it was time to regulate technology. This was not a view commonly shared
 - Stable coins position it was recognised was also complex and not 100% clear
 - The potential for utility tokens and ICOs to be classified as UCIS was also recognised

5AMLD

- Surprise was expected that the FCA was charging £5,000 application fee, based on their assessment of the number of firms they believe will apply for registration (which the meeting felt was understated.) This seems unbalanced when other sectors are £1500 and the meeting discussed if the driver might be the FCA's expectations of additional supervisory oversight as well as market size
- The meeting was not sure of the application process and the extent to which a registration application was guaranteed rather than properly assessed like an authorisation, given the climate. It was noted that the application forms were not yet available
- It was noted that firms are having to register for Crypto MLD registration and pay again even if they are already registered for 4MLD
- It was expected that the "travel rule" would be implemented, despite fierce opposition from within the industry. Industry level initiatives to address this are in evidence
- The UK is not the only member state to have gold plated the rule. In Germany anyone who deals with Crypto from January and wants to sell to German people will need a physical presence in Germany as well as a registration
- The meeting took the view that many smaller firms would not have the capability of implementing the full requirements of 5MLD, presenting an opportunity to APCC members

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Sandbox

The meeting noted that some crypto firms entering the sandbox had not come out of it.

Outcomes

Ben will look to resource drafting a CP response and circulate to the group.

APCC will approach the FCA and HMT to enquire about dialogue, using the survey collateral.

Next steps beyond that really needed to around 5MLD and HMT's consultation – or not – as per the taskforce.