

## Senate Select Committee on Financial Technology and Regulatory Technology

### Australian Securities and Investments Commission Answers to Questions on Notice

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#### Additional Response

##### Question No 001

**Topic** Digital and crypto assets

**Committee Member** Senator Bragg

**Reference** Hansard page 37

##### Question

**CHAIR:** There's no other information. I don't want to get too much into one particular fund; I don't think that's appropriate. But it's more that products like this—

**Ms Armour:** What sort of—

**CHAIR:** For digital assets or crypto based products, what is holding back these products from going to market if they're available in other comparable jurisdictions to retail investors?

**Ms Armour:** I guess that's another thing—

**CHAIR:** What is it exactly? It's not clear to me.

**Ms Armour:** It's not clear to me that they are available in the way that you're talking about—in other comparable markets. So that's the first thing.

**CHAIR:** Maybe you can provide that evidence on notice.

**Ms Armour:** I'm happy to provide evidence. We'll have to select the markets; we won't do a global search. But we're happy to provide that evidence. These products can be made available to Australians through our managed investment scheme regime. Australians can invest in these products in that way.

**CHAIR:** Okay—if you can take that on notice. You can probably do this through—what's it called—IOSCO or something? Is that what it's called?

**Ms Armour:** Yes.

**CHAIR:** You can probably give us something on notice about what the position is in comparable jurisdictions.

**Ms Armour:** We'll do it, but more abbreviated.

**CHAIR:** It's as far as you can.

**Ms Armour:** Yes. IOSCO is a-hundred-and-something countries, but we'll do something.

**CHAIR:** I understand that. Clearly, there has been a lot of correspondence and engagement with this committee on these questions, and we just want to try to present some of the information in the report.

**Ms Armour:** Sure.

#### United Kingdom | Financial Conduct Authority | FCA

The Financial Conduct Authority is the conduct regulator for nearly 60,000 financial services firms and financial markets in the UK and the prudential supervisor for 49,000 firms, setting specific standards for 19,000 firms. There are focuses on protecting consumers, enhancing market integrity and promoting competition.

1. *What is the nature and scale of regulated financial products/securities/derivatives where the underlying is crypto-assets that are offered to retail clients in your jurisdiction? Further, please indicate if there are listed or quoted products. Do your financial markets rules contemplate potential listed or quoted products of this kind?*

In October 2020, the FCA published final rules banning the sale of derivatives and exchange traded notes (ETNs) that reference certain types of cryptoassets to retail consumers from 6 January 2021. The prohibition includes unregulated transferable cryptoassets that are defined as;

- (a) capable of being traded on or transferred through any platform or other forum;
- (b) not limited to being transferred to its issuer in exchange for a good or service, or to an operator of a network that facilitates its exchange for a good or service;
- (c) not electronic money, or Central Bank Digital Currency or a commodity, and
- (d) not a specified investment.

Prior to the prohibition and in terms of the scale of the UK market, CFDs are the main derivative product that reference cryptoassets. Based on figures obtained from firms, between August to October 2017, there was c £3.4bn in retail client trading volume, representing 0.7% of total retail CFD trading volumes. This fell to £77m in the same three months in 2018. The decline in trading volumes is partly linked to the introduction of ESMA's temporary intervention measures restricting leverage to 2:1 from 1 August 2018, as well as a significant decline in the price of cryptoassets during this period.

Two UK firms offer futures contracts on exchange tokens versus US Dollar. They reported having just over 13,000 retail clients trading these products monthly between June 2017 and December 2018.

Three firms offer retail clients access to ETNs on exchange tokens that are listed on the Nordic Nasdaq. They reported c.11,000 clients with c.£97m invested as of the end of January 2019 and 30 December 2018 respectively.

2. *What is the nature and scale of regulated financial products/securities/derivatives where the underlying is crypto-assets that are offered to wholesale clients in your jurisdiction? Further, are there listed or quoted products that are not accessible to retail clients given suitability or other limitations – e.g.: future contracts.*

Mainstream authorised retail funds, Undertakings for Collective Investments in Transferable Securities (UCITS) schemes and non-UCITS retail schemes (NURS), cannot currently invest in unregulated cryptoassets directly, or in derivatives and ETNs referencing them. This is due to restrictions on the types of 'eligible' assets such funds can invest in. That situation might change over time if the cryptoasset market evolves such that eligibility standards can be met.

Qualified investor schemes (QIS) and unauthorised alternative investment funds (AIFs) could potentially invest in derivatives referencing unregulated tokens. Unauthorised AIFs could also invest in the tokens themselves if permitted by their investment mandate. However, QIS and unauthorised AIFs are subject to rules that restrict promotion of non-mainstream pooled investments to certified high net worth or sophisticated retail clients. We view the combination of existing restrictions on the promotion of unauthorised AIFs, the diversification of risk in a pooled fund structure and existing regulatory obligations on AIF managers, as sufficient to protect the limited subset of retail clients who can access them.

3. *To the extent not answered by the above, what is the nature and scale of current financial market platforms authorised to list or quote financial products where the underlying is crypto-assets?*

Answered in relation to question 2.