

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

Sent by email to: scrutiny@parliament.uk

20 October 2022

Dear Sir/Madam

Re: Call for written evidence: Financial Services and Markets Bill

The EMA has been operating for over 20 years, and represents FinTech, BigTech and technology firms engaging in the provision of alternative digital payment services, including the issuance of e-money, e-money tokens, and cryptoassets. Our members include leading payments and e-commerce businesses providing online payments, card-based products, electronic marketplaces, open banking, and increasingly cryptocurrency exchanges and other cryptocurrency related products and services. A list of our members is attached at the end of this letter, and can also be found on our website: <https://e-ma.org/our-members>

We write to raise concerns about two Sections of the Financial Services and Markets Bill: Section 62 and Section 20.

1. Section 62 Authorised Push Payment (APP) Scams

- 1.1. We fully appreciate the magnitude of the concerns around APP fraud, and in particular the growing nature of this form of fraud, exacerbated by COVID-19. We recognise the heavy losses incurred by victims of APP fraud, not only in monetary terms, but also in terms of emotional and psychological damage.
- 1.2. Section 62 of the Financial Service and Markets Bill directs the Payment Systems Regulator (PSR) to require payment service providers to reimburse their customers for loss sustained from authorised-push-payment scams. Whilst we acknowledge the political context of Clause 62, we write to set out a different point of view, fully supported by our membership, who are concerned about the potential impact on the UK's payments fintech industry.
- 1.3. Section 62 should be deleted.

- 1.4. Directing payment service providers to reimburse customers for authorised-push-payment fraud will incentivise criminals from abroad to target the UK because customers need not be careful because they know they will be reimbursed in any case.
- 1.5. In other words, **the UK will offer easy money to criminals** in comparison to other countries that do not have a reimbursement requirement.
- 1.6. The Payment Systems Regulator has provided no evidence that the reimbursement requirement will not result in customers taking less care and they have not provided any evidence that the UK will not be viewed as an **easy target** for further fraudulent activity. The Payment Systems Regulator's recent consultation CP 21/10 states: *We have seen no compelling evidence that mandatory reimbursement will cause customers to be careless with their payments. In fact, PSPs that have introduced blanket victim reimbursement policies have told us that this did not result in any increase in claims [paragraph 3.45]*
- 1.7. The Payment Systems Regulator has “seen no compelling evidence” because they have not sufficiently researched into the matter. As a competition regulator, this should have been done as a matter of course to substantiate such a significant change in the law.
- 1.8. Instead, reliance has been placed on anecdotal evidence - “Payment Service Providers (PSPs) have told us”. The assertion that reimbursement will not inform the customer's behaviour has only been assessed with respect to customers of PSPs who have a blanket reimbursement policy. There is no evidence that this behavior is representative of customers in general. The customers of the PSP that had the blanket reimbursement policy may not have even known about the policy – the blanket reimbursement policy likely did not inform their behaviour whatsoever.
- 1.9. The reimbursement requirement is not well thought through – it will result in fraudsters specifically targeting the UK over other countries for easy money. So far, despite repeated efforts to raise these concerns, neither the government nor the PSR have provided any evidence that this will not happen.
- 1.10. Further arguments regarding the impact of this change on (1) the Faster Payments Scheme and instant payments in general, (2) Fintech and payments specialist PSPs for whom the cost of this liability shift will be economically unviable, and (3) Open Banking, which is a fledgling market in the UK and reliant on low-cost instant payments to compete with the card schemes, can be found in the EMA's previous submission(s) to this matter:
 - 1.10.1. [EMA letter to John Glen MP, \(former\) Economic Secretary in March 2022](#)
 - 1.10.2. [EMA response to PSR CP on APP Scams January 2022](#)
 - 1.10.3. [EMA response to PSR CP on APP Scams April 2021](#)

2. **Section 20 Financial Promotions for qualifying crypto-assets**

- 2.1. Section 20 of the Bill amends a number of existing legislations to allow for greater regulation of financial promotions of cryptoassets. The EMA supports the intention and rationale for these proposals. The targeting of consumers to encourage large-scale investment in cryptoassets without having the requisite knowledge of the risks involved, and sometimes for the purposes of defrauding or scamming such individuals, is reprehensible, and should be addressed as a matter of urgency.
- 2.2. However we have serious concerns regarding the planned approach to advertising and financial promotions of crypto-assets under Clause 20 of the Financial Services and Markets Bill. As currently set out, only firms that are authorised under Part 4A of the Financial Services and Markets Bill (2000), will be able to approve financial promotions for all crypto-asset service providers in the UK. This excludes firms authorised under other limbs of the financial services regime, specifically under payments and electronic money legislation.
- 2.3. We are supportive of a financial promotion regime for crypto-assets - ensuring appropriate advertising and clear communication. The current proposals however exclude the possibility of firms authorised as payment services providers, or registered as crypto-asset service providers from being able to utilise their authorisation or registration, or to vary their authorisation, in order to be able to approve such promotions.
- 2.4. The current proposal results in crypto-asset service providers' financial promotions being made subject to third-party sign off. This is impractical, creates dependencies and is disproportionate to the risk posed. It also runs counter to the objective of developing a culture of compliance within firms.
- 2.5. Many potential third parties do not have the requisite knowledge and understanding to develop informed opinions regarding promotions, and the outcome is likely to be ill-informed. Crypto-asset service providers should not be required to educate other service providers, who may potentially be competitors - such as banking institutions, in the commercial issues that pertain to their business.
- 2.6. The proposed process also raises practical difficulties: crypto-asset firms will be required to contract with FSMA Part 4A authorised firms utilising a new, dedicated FCA gateway. This creates concerns regarding scarcity – there may only be a small number of potential 'approver' firms who are in a position to provide such a service or have the necessary expertise to do so. This naturally gives rise to competition and pricing concerns as a small number of approver firms exercise overall control over the sector's advertising. We urge a reconsideration of this approach which has the potential to disrupt the operations and communications of crypto-asset sector firms in the UK.

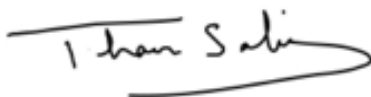
EMA Proposed way forward

- 2.7. We advocate a more pragmatic approach; allowing crypto-asset firms that are registered with the FCA to exercise appropriate controls in assessing their own promotions, and to ensure they fulfil relevant criteria that could be set out in legislation; perhaps with a reporting obligation to the FCA. The FCA, as part of their registration assessment, already

reviews these firms' existing financial promotions, alongside their planned marketing, promotion and distribution channels and policies. Payment services firms authorised by the FCA should also be able to undertake such a role, being subject to a prudential and conduct of business regulatory regime.

- 2.8. As a minimum, we would encourage an amendment in the Bill to ensure that regulation varies according to the risk of the product or the service provider. Low risk products (e.g. fiat backed stablecoins, large cap digital assets, etc) should be able to be provided more easily than higher risk products (e.g. privacy coins, algorithmic stablecoins).

Yours faithfully

A handwritten signature in black ink, appearing to read "Thaer Sabri". The signature is written in a cursive style with a long horizontal stroke at the end.

Dr Thaer Sabri
Chief Executive Officer
Electronic Money Association

A list of current EMA members as at October 2022:

[AAVE LIMITED](#)
[Account Technologies](#)
[Airbnb Inc](#)
[Airwallex \(UK\) Limited](#)
[Allegro Group](#)
[Amazon](#)
[American Express](#)
[ArcaPay Ltd](#)
[Azimo Limited](#)
[Banked](#)
[Bitstamp](#)
[BlaBla Connect UK Ltd](#)
[Blackhawk Network Ltd](#)
[Boku Inc](#)
[Booking Holdings Financial Services International Limited](#)
[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](#)
[NOELSE PAY](#)
[NoFrixion 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](#)
[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](#)
[Syspay Ltd](#)
[Transact Payments Limited](#)
[TransferMate Global Payments](#)
[TrueLayer Limited](#)
[Trustly Group AB](#)
[Uber BV](#)
[Vitesse PSP Ltd](#)
[Viva Payments SA](#)
[Weavr Limited](#)
[WEX Europe UK Limited](#)
[Wirex Limited](#)
[Wise](#)
[WorldFirst](#)
[WorldRemit LTD](#)
[Yapily Ltd](#)

