

FEES (CRYPTOASSET BUSINESS) (PERIODIC FEES) INSTRUMENT 2021

Powers exercised

- A. The Financial Conduct Authority (the “FCA”) makes this instrument in the exercise of:
- (1) the following powers and related provisions in the Financial Services and Markets Act 2000:
 - (a) section 139A (Power of the FCA to give guidance);
 - (2) the following provisions in the Money Laundering Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 (SI 2017/692, as amended) (the “Money Laundering Regulations”):
 - (a) regulation 74A(1)(b) (Reporting requirements: cryptoasset businesses);
 - (b) regulation 101 (Recovery of charges and penalties through the court);
and
 - (c) regulation 102 (Costs of supervision).

Commencement

- B. This instrument comes into force on 1 April 2021.

Amendments to the Handbook

- C. The Fees manual (FEES) is amended in accordance with the Annex to this instrument.

Notes

- D. In this instrument, the “notes” (indicated by “**Note:**”) after a provision indicates, for the convenience of readers, that it is a provision pursuant to the relevant regulation of the Money Laundering Regulations.
- E. In this instrument, notes shown as “**Note:**” are intended for the convenience of the reader but do not form part of the legislative text.

Citation

- F. This instrument may be cited as the Fees (Cryptoasset Business) (Periodic Fees) Instrument 2021.

By order of the Board
25 March 2021

Annex

Amendments to the Fees manual (FEES)

In this Annex, underlining indicates new text and striking through indicates deleted text, unless otherwise stated.

- 1 Fees Manual**
- 1.1 Application and Purpose**
- ...
- 1.1.1G G *FEES* Appendix 3 (Fees payable by persons registered under the Money Laundering Regulations that are not cryptoasset businesses) applies to ~~MLR persons~~ persons registered with the *FCA* under the Money Laundering Regulations that are not:
- (1) authorised persons, or
- (2) cryptoasset businesses, or
- (3) otherwise registered with the FCA.
- 1.1.1H G *FEES* Appendix 4 (Fees payable by cryptoasset businesses registered under the Money Laundering Regulations) applies to cryptoasset businesses registered with the FCA under the Money Laundering Regulations.
- ...
- App 3 Fees payable by persons registered under the Money Laundering Regulations that are not cryptoasset businesses**
- App 3.1 Fees for persons registered under the Money Laundering Regulations that are not cryptoasset businesses**
- Application and Periodic Fees
- App 3.1.1 G Regulation 102 of the *Money Laundering Regulations* provides the *FCA* with the power to charge fees to ~~MLR persons~~ persons registered with the *FCA* under the Money Laundering Regulations to recover the cost of carrying out its functions under those regulations. The *FCA* charges a fee for registration forms submitted to it. The *FCA* ~~will also charge~~ charges an annual periodic fee. ~~These charges are set out in this Appendix.~~ The purpose of this Appendix is to set out the charges relating to persons registered with the FCA under the Money Laundering Regulations that are not authorised persons or cryptoasset businesses or otherwise registered with the FCA. The fees for cryptoasset businesses

registered with the FCA under the Money Laundering Regulations are set out in FEES Appendix 4.

App 3.1.2

...

(2) Periodic fee:		
Activity group	Fee-payer falls in the activity group if:	Fee payable in 2020/21
...	it is registered with the <i>FCA</i> under the <i>Money Laundering Regulations</i> or any predecessor legislation <u>and it is not an authorised person or a cryptoasset business or otherwise registered with the FCA.</u>	...

[**Note:** Regulation 102 of the *Money Laundering Regulations*]

App 3.1.3

~~A person making an application to the FCA to be registered as a cryptoasset business must pay to the FCA, in full and without deduction, the fee specified in FEES Appendix 3.1.4. An application for registration will be treated as incomplete and the FCA will not issue a decision until the relevant fee is paid in full. [deleted]~~

App 3.1.4

(1)	Registration fee:
Cryptoasset business with revenue up to and including £250,000	£2,000
Cryptoasset business with revenue over £250,000	£10,000 [deleted]
[Note: Regulation 102 of the Money Laundering Regulations]	

After FEES Appendix 3 (Fees payable by persons registered under the Money Laundering Regulations that are not cryptoasset businesses) insert the following new Appendix. The text is not underlined.

App 4 Fees payable by cryptoasset businesses registered under the Money Laundering Regulations

App 4.1 Introduction

Application

- App 4.1.1 G Regulation 102 of the *Money Laundering Regulations* provides the *FCA* with the power to charge fees to *persons* registered with the *FCA* under the *Money Laundering Regulations* to recover the cost of carrying out its functions under those regulations. The *FCA* charges a fee for registration forms submitted to it. The *FCA* also charges an annual periodic fee. The purpose of this Appendix is to set out the fees relating to *cryptoasset businesses* registered with the *FCA* under the *Money Laundering Regulations*. The fees for *persons* registered under the *Money Laundering Regulations* that are not *cryptoasset businesses*, *authorised persons* or otherwise registered with the *FCA* are set out in *FEES* Appendix 3.
- App 4.1.2 G (1) The application fee which will be payable by a *cryptoasset business* applying for registration in the register maintained by the *FCA* under regulation 54(1A) of the *Money Laundering Regulations* is set out in *FEES* Appendix 4 Annex 1.
- (2) The detail of the periodic fees which will be payable by *cryptoasset businesses* registered with the *FCA* under the *Money Laundering Regulations* is set out in *FEES* Appendix 4 Annex 2.
- App 4.1.3 G In this Appendix:
- (1) a “note” (indicated by “Note:”) after a provision indicates, for the convenience of readers, that it is a provision made pursuant to the *Money Laundering Regulations*;
- (2) a “G” in the margin indicates that the provision is guidance, which is designed to throw light on a particular aspect of a direction or the provisions imposing charges, but is neither binding nor an exhaustive description of a *cryptoasset business’s* obligations; and
- (3) a “D” in the margin indicates that the provision contains a direction made pursuant to the *Money Laundering Regulations*. Directions are binding upon the *person* or categories of *persons* to whom they are addressed.

Glossary

- App 4.1.4 G In this Appendix, except where we indicate otherwise, an expression in italics has the meaning given in the *FCA’s Glossary*.

App 4.2 Application fees

General

- App 4.2.1 A *cryptoasset business* making an application to register with the *FCA* under the *Money Laundering Regulations* must pay to the *FCA*, in full and without deduction, the fee specified in *FEES* Appendix 4 Annex 1.

[**Note:** Regulation 102 of the *Money Laundering Regulations*]

- App 4.2.2 G (1) (a) The registration fee is an integral part of a *cryptoasset business's* registration with the *FCA* under the *Money Laundering Regulations*.
- (b) Any application received by the *FCA* without payment made of the fee specified in *FEES* Appendix 4 Annex 1, in full and without deduction, will not be treated as an application made under the *Money Laundering Regulations*.
- (c) Where this is the case, the *FCA* will contact the applicant to point out that the application cannot be progressed until the fee payable under *FEES* Appendix 4.2.1 has been received. If the fee, in full and without deduction, is not received, the application will be returned to the applicant and no application will have been made.

Method of payment

- App 4.2.3 The sum payable under *FEES* Appendix 4.2.1 must be paid in pounds sterling online by Maestro, Visa Debit or credit card (Visa/Mastercard/American Express only). If this is not possible for technical or other reasons, the *FCA* may accept payment by banker's draft, cheque or other payable order.

[**Note:** Regulation 102 of the *Money Laundering Regulations*]

Due Dates

- App 4.2.4 A *person* making an application to register with the *FCA* under the *Money Laundering Regulations* as a *cryptoasset business* must pay the application fee on, or before, making the application.

[**Note:** Regulation 102 of the *Money Laundering Regulations*]

Refunds

- App 4.2.5 G Application fees paid under this Appendix are not refundable.

App 4.3 Periodic fees

General

- App 4.3.1 (1) A *cryptoasset business* registered with the *FCA* under the *Money Laundering Regulations* must pay to the *FCA* the periodic fee applicable to it under *FEES* Appendix 4 Annex 2.
- (2) The payment in (1) must be made:
- (a) in full and without deduction; and

- (b) for every *fee year* during which, or part of which, it is registered with the *FCA* under the *Money Laundering Regulations*.
- (3) This provision is modified where *FEES* Appendix 4.3.5 applies, as stated in *FEES* Appendix 4.3.5.

[**Note:** Regulation 102 of the *Money Laundering Regulations*]

- App 4.3.2 G The *FCA* will issue invoices at least 30 *days* before the dates on which payments fall due.

Method of payment

- App 4.3.3 A periodic fee payable under *FEES* Appendix 4.3.1(1) must be paid in pounds sterling using either direct debit, credit transfer (BACS/CHAPS), cheque, Maestro, Visa Debit or by credit card (Visa/Mastercard only).

[**Note:** Regulation 102 of the *Money Laundering Regulations*]

Modifications for cryptoasset businesses becoming subject to periodic fees during the course of the fee year

- App 4.3.4 (1) A *cryptoasset business* which becomes registered with the *FCA* under the *Money Laundering Regulations* during the course of a *fee year* must pay a fee based on its projected valuation for the first twelve *months* of its new business.
- (2) This is the valuation provided by the *cryptoasset business* in the course of its application or if not provided at that time, the valuation provided subsequently.

[**Note:** Regulation 102 of the *Money Laundering Regulations*]

Calculating the fee in the first year

- App 4.3.5 To calculate its fee in its first year of registration a *cryptoasset business* must apply the formula $(A+B) \times C$, where:
- (1) A = the minimum fee set out in *FEES* Appendix 4 Annex 2, unless already paid in which case this figure is 0;
- (2) B = the amount arrived at by applying the tariff rates to the *cryptoasset business's* projected valuation for the first twelve *months* of its new business, as provided by it in accordance with *FEES* Appendix 4.3.4; and
- (3) C = the number of calendar *months* (inclusive) between the calendar *month* during which the *cryptoasset business* was registered with the *FCA* under the *Money Laundering Regulations* and the last *month* of that *fee year* $\div 12$.

[**Note:** Regulation 102 of the *Money Laundering Regulations*]

Calculating fees in the second fee-year where the cryptoasset business is registered between 1 January and 31 March in its first fee year

App 4.3.6 When a *cryptoasset business* is registered with the *FCA* under the *Money Laundering Regulations* between 1 January and 31 March, its fee for the following *fee year* starting 1 April will be calculated from:

- (1) the projected valuation for the first twelve *months* of its new business that it provided in accordance with *FEES* Appendix 4.3.4; or
- (2) an annualised figure based on actual data provided by 30 April in the *fee year* following obtaining its registration.

The annualised figure referred to in (2) is calculated by applying the formula $(A \div B) \times 12$, where:

A = the total income from the date of registration up to the *cryptoasset business's* financial year end or 31 March (whichever is sooner) of its first *fee year*; and

B = the number of *months* in the period referred to in A.

[**Note:** Regulation 102 of the *Money Laundering Regulations*]

Calculating all other fees in the second and subsequent years of registration where a full year of tariff data is not available

App 4.3.7 D If it can, a *cryptoasset business* must provide data from a complete period that begins on or after the date that it was registered with the *FCA*.

[**Note:** Regulation 74A of the *Money Laundering Regulations*]

App 4.3.8 If a *cryptoasset business* does not have sufficient tariff data to enable the periodic fee to be calculated in respect of that *fee year*, it must calculate an annualised figure based on actual data where possible, applying the formula $(A \div B) \times 12$, where:

A = the total income from the date of registration with the *FCA* under the *Money Laundering Regulations* up to the *cryptoasset business's* financial year end or 31 December (whichever is sooner); and

B = the number of *months* in the period referred to in A.

[**Note:** Regulation 102 of the *Money Laundering Regulations*]

App 4.3.9 G For example, the valuation date specified in *FEES* Appendix 4 Annex 2 is based on income for the financial year ending during the calendar year ending 31 December before the relevant *fee year* starting the following April. If the *cryptoasset business* is registered in October

and its financial year ends in June, by April it will not have been able to report on the basis of its financial year. The value of A would therefore cover the period from October to December and the value of B would be two i.e. November and December.

If the *cryptoasset business* was registered in June and its financial year ended in October, the value of A would cover June to October and the value of B would be four i.e. July to October.

Time of payment

App 4.3.10 If a *cryptoasset business*'s periodic fee paid under this appendix for the previous *fee year* was £50,000 or more, it must pay its periodic fee for the current *fee year* in two instalments as follows:

- (1) an amount equal to 50% of the periodic fee payable for the previous *fee year* by:
 - (a) 1 April; or
 - (b) if the fee is payable after 1 April, within 30 *days* of the date of the invoice, in the *fee year* to which that sum relates; and
- (2) the balance of the periodic fee due for the current *fee year* by:
 - (a) 1 September; or
 - (b) if the fee is payable after 1 September, within 30 *days* of the date of the invoice, in the *fee year* to which that sum relates.

[**Note:** Regulation 102 of the *Money Laundering Regulations*]

App 4.3.11 If a *cryptoasset business*' periodic fee paid under this appendix for the previous *fee year* was less than £50,000, it must pay the periodic fee within 30 *days* of the date of the invoice for the *fee year* to which that sum relates.

[**Note:** Regulation 102 of the *Money Laundering Regulations*]

Late payment

App 4.3.12 If a *cryptoasset business* registered with the *FCA* under the *Money Laundering Regulations* does not pay the total amount of the relevant periodic fee before the end of the date on which it is due, it must pay an additional amount as follows:

- (1) if the fee was not paid in full before the end of the due date, an administrative fee of £250; plus
- (2) interest on any unpaid part of the fee at the rate of 5% per annum above the Official Bank Rate from time to time in force, accruing on a daily basis from the date on which the amount concerned became due.

[**Note:** Regulation 102 of the *Money Laundering Regulations*]

Recovery of Fees

- App 4.3.13 (1) Regulation 101 of the *Money Laundering Regulations* permits the *FCA* to recover charges imposed on *cryptoasset businesses* by the *FCA* under the *Money Laundering Regulations* as a debt owed to the *FCA*.
- (2) The *FCA* will consider taking action for recovery through the civil courts.

[**Note:** Regulation 101 of the *Money Laundering Regulations*]

Information on which fees are calculated

- App 4.3.14 D A registered *cryptoasset business* must submit to the *FCA* in writing the income information prescribed in *FEES* Appendix 4 Annex 2 as soon as reasonably practicable, and in any event, within two *months* of the valuation date. The *FCA* will use this information to calculate the periodic fee payable by the *cryptoasset business*.

[**Note:** Regulation 74A of the *Money Laundering Regulations*]

App 4 Annex 1 **Application fee payable by cryptoasset businesses registered under the Money Laundering Regulations**

(1)	Registration fee:
<i>Cryptoasset business</i> with revenue up to and including £250,000	£2,000
<i>Cryptoasset business</i> with revenue over £250,000	£10,000
[Note: Regulation 102 of the <i>Money Laundering Regulations</i>]	

App 4 Annex 2 **Periodic fees payable by cryptoasset businesses registered under the Money Laundering Regulations**

[**Note:** Regulation 102 of the *Money Laundering Regulations*]

- (1) This table sets out the tariff base relating to the fee-block for *cryptoasset businesses* registered with the *FCA* under the *Money Laundering Regulations*. The tariff base in this Part is the means by which the *FCA* calculates the annual periodic fee payable to it by a *cryptoasset business* registered with the *FCA* under the *Money Laundering Regulations*.

Fee-block	Fee-payer	Tariff base	Valuation date
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G.23	<i>Cryptoasset business</i> registered with the <i>FCA</i> under the <i>Money Laundering Regulations</i>	Annual income, as defined in <i>FEES</i> Appendix 4 Annex 3	The business's financial year ended in the calendar year ending 31 December before the start of the period to which the fee applies
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- (2) This table sets out the tariff rates applicable to *cryptoasset businesses* registered with the *FCA* under the *Money Laundering Regulations*.

Tariff rates in relation to 2021/22	
Fee payable	Amount payable
Minimum fee, payable by all <i>cryptoasset businesses</i>	£[]
Variable fee, payable in addition to the minimum fee, on income above £100,000	£[] per £1,000 or part-£1,000

App 4 Annex 3

Definition of annual income for the calculation of fees

In this Annex, “cryptoasset” has the meaning given to it in regulation 14A(3)(a) of the *Money Laundering Regulations*.

Part 1 Definition of annual income

- (1) “Annual income” is the gross inflow of economic benefits (i.e. *cash*, receivables and other assets) recognised in the *cryptoasset business's* accounts during the reporting year in respect of, or in relation to, the provision in the *United Kingdom* of the activities for which it is registered as a *cryptoasset business* under the *Money Laundering Regulations*.
- (2) The figure should be reported without netting off the operating costs or business expenses (except under (3) below), but should include:
- (a) all brokerages, commissions, fees, and other related income (for example, administration charges, overrides, profit shares etc.) due to the *cryptoasset business* in respect of, or in relation to, the provision in the *United Kingdom* of the activities for which it is registered as a *cryptoasset business* under the *Money Laundering Regulations* and which it has not rebated to clients or passed on to other registered *cryptoasset businesses* (for example, where there is a commission chain).

PLUS:

- (b) any ongoing commission from previous business received by the *cryptoasset business* during the reporting year.

PLUS:

- (c) the “fair value” of any goods or services the *cryptoasset business* provided to clients. This is the commission equivalent or an estimate of the amount the *cryptoasset business* would otherwise have received, but for which it has made a business decision to waive or discount its charges.
- (3) The following deduction should be made:
- (a) The cost of purchasing a cryptoasset which is subsequently sold. This is to ensure parity between businesses which derive their income from fees and those which derive their income from the margins on sales.

Part 2 **Guidance on reporting income**

Calculating annual income

- (1) For the avoidance of doubt, the only revenue streams reportable are those which relate to the activities for which the fee payer is registered as a *cryptoasset business* under the *Money Laundering Regulations*. Other revenue streams that do not relate to these activities should not be reported.

Reporting period

- (2) The “reporting year” is the *cryptoasset business’s* financial year end during the calendar year prior to the *FCA fee year*. The *fee year* starts on 1 April.
- (3) The income that should be submitted to the *FCA* is the income that was recognised in the accounts of the relevant reporting year. This means that some income due may not be reported until the following year because it has not yet been recognised in the accounts, while other income may be carried forward from previous years.

Fair value

- (4) The *cryptoasset business* should report a “fair value” price for any services for which it has made a business decision not to charge to clients:
-
- (a) We consider fair value to refer to the amount at which goods or services could be exchanged in an arm’s length transaction between informed and willing parties, other than in a forced or liquidation sale.
 - (b) For example, where a *cryptoasset business* has forgone or discounted the commission or fee it would actually have charged but for the business decision to grant a discount in a particular case or on a temporary basis, it should report the amount it would have otherwise have charged for providing equivalent activities.

Inclusions

- (5) Annual income should include:
- (a) all amounts due to the *cryptoasset business* arising out of the provision of the activities for which it is registered as a *cryptoasset business* under the *Money Laundering Regulations*, including regular charges and instalments due to it during the reporting year;
 - (b) any payment from a parent to facilitate the discounting or forgoing of any amounts that would otherwise be charged in full to a client, to the extent that the payment exceeds the “fair value” price reported in accordance with paragraph (4) above;
 - (c) administrative charges and any interest from income related to the activities for which it is registered as a *cryptoasset business* under the *Money Laundering Regulations*.

Prohibited deductions

- (6) Deductions should not be made for:
- (a) bad debts;
 - (b) customer benefits such as cash rewards, complimentary travel insurance, air miles vouchers etc.;
 - (c) items such as general business expenses (e.g. employees’ salaries and overheads);
 - (d) fines or penalties levied against the *cryptoasset business*;
 - (e) commission a *cryptoasset business* pays another party to arrange a transaction with a client unless it receives a fee in respect of the same transaction;
 - (f) the difference (if positive) between the fee payable by a *cryptoasset business* to another party for arranging a transaction and the amount payable to the *cryptoasset business* by the end client in respect of that transaction (here, the *cryptoasset business* must net any excess payable by the end client to zero); and
 - (g) payments made to clients by way of redress.

Exclusions

- (7) The following should be excluded from the calculation of annual income:
- (a) The cost of purchasing cryptoassets which are subsequently sold – see Part 1 Note (3).

- (b) To avoid double-counting, amounts which have been passed on to other *cryptoasset businesses* registered under the *Money Laundering Regulations* may be excluded from the calculation of annual income, for example, where there is a commission chain. Transfers of income to other businesses may be especially common within *groups* where, to present a single interface to clients, all amounts due to the *group* may be collected by one business for subsequent redistribution to other businesses within the *group*. It is for *groups* themselves to decide the most convenient way to report such annual income - i.e. whether the business which receives the full amount should declare that full amount, or whether each business in the *group* should report its separate distribution.
- (c) Any payment from a parent to facilitate the discounting or forgoing of any amount that would otherwise be charged in full to a client should be excluded to the extent that the payment does not exceed or equal the “fair value” price reported in accordance with paragraph (4) above.
- (d) Rebates to customers and fees or commissions passed onto other *cryptoasset businesses* registered under the *Money Laundering Regulations*.

Apportioning annual income

- (8) Where a *cryptoasset business* cannot separate its income on the basis of activities, it may apportion the income on the basis of the proportionate split of business that the firm otherwise undertakes. For instance:
 - (a) A *cryptoasset business* may estimate the proportion of its business that is derived from activities for which it is registered as a *cryptoasset business* under the *Money Laundering Regulations* and split its income for individual invoices accordingly.
 - (b) If a *cryptoasset business* receives annual income from a platform-based business it may report this in line with a wider breakdown of its activities.
 - (c) A *cryptoasset business* may allocate ongoing commission from previous business on the basis of the type of business it receives the commission from. This avoids tracking back legacy business which may no longer match the provider’s current business model.
 - (d) If a firm has invested income from the activities for which it has been registered as a *cryptoasset business* under the *Money Laundering Regulations*, then any interest received should be reported as income, in proportion to the volume of business it undertakes to avoid tracking back old payments.

- (9) It is for individual *cryptoasset businesses* to determine how they should calculate the appropriate split of income. The *FCA* is not prescriptive about the methodology. It requires only that:
- (a) The approach should be proportionate - the *FCA* is looking for *cryptoasset businesses* to make their best efforts to estimate the split.
 - (b) The *cryptoasset business* must be able on request to provide a sound and clearly expressed rationale for its approach - for example, if all invoices were analysed over a particular period, it should be able to justify the period as representative of its business across the year.
 - (c) The methodology should be objective - for example, based on random sampling of invoices or random stratified sampling.
 - (d) The *cryptoasset business* must on request be able to provide an audit trail which demonstrates that the choice of methodology was properly considered at an appropriate level or in the appropriate forums within the business, and the decision periodically reviewed at the same level or in an equivalent forum.