

Financial Conduct Authority Issues New Guidance on Crypto Asset Marketing

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On July 4, 2023, the United Kingdom's Financial Conduct Authority (FCA) issued a [letter](#) regarding crypto-asset financial promotion rules effective as of October 8, 2023. The new guidance supplements the FCA's previously issued [policy statement](#) applying the U.K.'s financial promotions regime "to all firms marketing cryptoassets to UK consumers r,egardless [*sic*] of whether the firm is based overseas or what technology is used to make the promotion."

Promotions of crypto assets will be brought under the purview of the Financial Services and Markets Act 2000 (FSMA) by [The Financial Services and Markets Act 2000 \(Financial Promotion\) \(Amendment\) Order 2023](#) (the "Amendment Order") which is due to come into force on October 8, 2023. As set out in FSMA, financial promotion encompasses a broad range of activity, including electronic communications and communications made from outside the U.K., even when not targeted solely at U.K. consumers, if the communication is capable of having an effect in the United Kingdom. When the Amendment Order comes into force, there will be only four routes to legally market qualifying (fungible and transferrable) crypto assets to U.K. consumers:

1. Promotion by an authorized person (that is (a) a person who has been given permission by the FCA or the Prudential Regulation Authority (PRA) to carry on one or more regulated activities (as defined in the PRA Handbook), (b) an investment company with variable capital, or (c) the Society of Lloyd's);
2. Promotion by an unauthorized person approved by an authorized person;
3. Promotion by a crypto asset business [registered](#) with the FCA under the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017; or
4. Promotion that otherwise complies with the conditions of an exception in [The Financial Services and Markets Act 2000 \(Financial Promotion\) Order 2005](#).

By October 8, firms marketing crypto assets to U.K. consumers should consider which of the above four routes they will use. In its letter, the FCA stated it "expect[s] that most, if not all, crypto asset firms with UK retail customers will be within the scope of the [financial promotions] regime." Persons in violation of these rules will be subject to criminal liability and may face up to two years imprisonment, an unlimited fine, or both. The FCA may also take other steps such as (but not limited to) placing firms on its warning list, taking steps to remove or block illegal financial promotions by requesting website, social media, or app takedowns, and enforcement action.

We will continue to monitor developments in the digital assets and blockchain technology industry and provide friends of the firm with updates as they become available.

Trainee Solicitor Emily Simmons also contributed to this blog post.

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