

Marketing of Cryptoassets Pushed Up on UK Financial Regulator's Agenda

March 16, 2023

In a recent statement, the UK's financial regulator – the Financial Conduct Authority (FCA) – [made it clear that businesses marketing certain cryptoassets in the UK will need to prepare for compliance](#) with the FCA's financial promotions regime. This follows the UK government's proposal to bring cryptoassets within the FCA's regulatory perimeter. These new measures will have a significant impact on how cryptoasset businesses, globally, market their products to customers in the UK.

Scope of financial promotions regime once new measures are in force

Regardless of whether you are in the UK, or the type of technology you use, if you are marketing 'qualifying cryptoassets' to customers in the UK, you will need to comply with the FCA's financial promotions regime.

The proposed definition of 'qualifying cryptoasset' captures most of the commonly used cryptoassets – 'any cryptographically secured digital representation of value or contractual rights which is fungible and transferable'. However, this definition is not set in stone and is still being developed.

What constitutes 'marketing' in this context is fairly broad: It captures any invitation or inducement communicated by a business, in the course of its business, to engage in 'qualifying cryptoassets'.

Importantly, cryptoasset businesses that are in scope should be aware that noncompliance with the financial promotions regime can result in up to two years of imprisonment, monetary fines, taking down websites, issuing public warnings and other FCA enforcement action.

The financial promotions regime

Under the current financial promotions regime, businesses are prohibited from communicating financial promotions (effectively most marketing materials) to UK consumers unless the promotion is communicated, or approved by, an 'authorised person' (i.e., a person authorised by the FCA), or the promotion is exempt from the rules.

However, the UK government is proposing to add a new bespoke exemption to the regime for certain cryptoasset businesses. This exemption is being proposed in response to concerns raised by the crypto industry that most cryptoasset businesses are not authorised by the FCA and will find it challenging to find an authorised person to approve their financial promotions (more on this below).

The financial promotions regime also sets out the FCA's rules and expectations on the content of financial promotions for cryptoassets: Any financial promotion must be 'fair, clear and not misleading' and, in some cases, must include specific risk warnings throughout the customer journey. These issues will need to be considered by whomever is making or approving the financial promotion.

Options available to promote cryptoassets to UK consumers

Including the FCA's new proposal, there will be four potential options for businesses to communicate cryptoasset financial promotions to UK consumers.

Number	Status	Option
1	Current regime	The financial promotion is communicated by an 'authorised person' – a cryptoasset business that is already authorised and regulated by the FCA can approve its own marketing materials.
2	Current regime	The financial promotion is made by an unauthorised cryptoasset business but is approved by an 'authorised person' – an unauthorised cryptoasset business must ask an FCA-authorised person to approve its marketing materials.
3	Current regime	The communication is exempt from the rules – a cryptoasset business must prove that it can rely on one of the limited exemptions under the regime.
4	New proposal	The financial promotion is communicated by a cryptoasset business registered under the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 (MLRs) – a registered cryptoasset business can approve its own marketing materials but not the marketing materials of others.

Note: A business that is only authorised under the Electronic Money Regulations or the Payment Services Regulations is not considered an 'authorised person'.

Options for unauthorised firms

While there are three options available to unauthorised cryptoasset businesses (options 2, 3 and 4), there are challenges and limits to each. Firstly, considering option 2, it is not clear at this point how willing authorised firms will be to approve marketing materials. The approver also will need specific FCA permissions and the appropriate expertise in the cryptoasset product.

For option 3, relying on one of the exemptions means that – among many other requirements – it is unlikely that a business will be able to market to retail customers or (potentially) high net worth individuals.

Lastly, for option 4, becoming registered under the MLRs has proven to be a successful route for some cryptoasset businesses. However, it is a lengthy and complex process, so the benefits of becoming registered may be disproportionate to the time and expense of going through it. For those businesses that are already so registered, it is still important to note the obligation to comply with all the other rules and requirements under the financial promotions regime – such as the 'fair, clear and not misleading' rule – when marketing cryptoassets to UK consumers.

Keep an eye on updates

The FCA is clearly trying to balance the need to protect UK consumers against the risk of crypto-related investments with promoting competition and innovation in the UK. The FCA is not the only authority that has raised concerns in this area; the Advertising Standards Agency published an enforcement notice on the [Advertising of Cryptoassets: Cryptocurrencies](#) in March 2022.

In terms of timelines, the UK government announced that it has reduced the implementation period of cryptoassets being brought into the financial promotions regime from six to four months. The implementation period will start once the new legislation is in effect. We will keep clients updated on any new developments during this process and provide practical tips for how to comply when the rules are in force.

This content is provided for general informational purposes only, and your access or use of the content does not create an attorney-client relationship between you or your organization and Cooley LLP, Cooley (UK) LLP, or any other affiliated practice or entity (collectively referred to as "Cooley"). By accessing this content, you agree that the information provided does not constitute legal or other professional advice. This content is not a substitute for obtaining legal advice from a qualified attorney licensed in your jurisdiction and you should not act or refrain from acting based on this content. This content may be changed without notice. It is not guaranteed to be complete, correct or up to date, and it may not reflect the most current legal developments. Prior results do not guarantee a similar outcome. Do not send any confidential information to Cooley, as we do not have any duty to keep any information you provide to us confidential. This content may be considered **Attorney Advertising** and is subject to our [legal notices](#).

Key Contacts

Yulia Makarova London	ymakarova@cooley.com +44 20 7556 4608
Carolina Ljungwaldh London	cljungwaldh@cooley.com +44 20 7556 4572

This information is a general description of the law; it is not intended to provide specific legal advice nor is it intended to create an attorney-client relationship with Cooley LLP. Before taking any action on this information you should seek professional counsel.

Copyright © 2023 Cooley LLP, 3175 Hanover Street, Palo Alto, CA 94304; Cooley (UK) LLP, 22 Bishopsgate, London, UK EC2N 4BQ. Permission is granted to make and redistribute, without charge, copies of this entire document provided that such copies are complete and unaltered and identify Cooley LLP as the author. All other rights reserved.