

7 September 2023

Dear Sir/Madam,

Firms' preparations to comply with the cryptoasset financial promotions regime and modification to financial promotion rules

On 8 June 2023 we published Policy Statement PS23/6 setting out our rules on financial promotions for cryptoassets. They will have effect from 8 October 2023.

These rules are important for reducing and preventing harm to consumers from investing in cryptoassets that do not match their risk appetite. It is up to consumers to decide whether they buy crypto, but they should do so on the basis of fair and accurate information that helps them make effective investment decisions. The rules will also create a fairer and more consumer-focused landscape in which firms can compete and innovate. Firms can most effectively compete in the interests of consumers where consumers have the information that helps them make effective investment decisions.

Ahead of the financial promotions rules coming into force we met various cryptoasset firms to understand their preparations. This letter sets out the findings from those meetings and additional actions we are taking to support firms in complying with this regime.

This letter is addressed to all firms we are aware of that intend to communicate or approve cryptoasset financial promotions. This includes firms registered with the FCA under the Money Laundering, Terrorist Financing and Transfer of Funds (information on the Payer) Regulations 2017 ('MLRs') who intend to communicate financial promotions and authorised firms intending to communicate or approve cryptoasset financial promotions. The letter will also

be relevant to any other firm that is involved in communicating or approving cryptoasset financial promotions to UK consumers, or is likely to in the future.

Findings from review of firm preparations

We met with various cryptoasset firms to understand their preparations. This covered a range of firms of differing sizes and business models.

Our key findings from this review were:

- **Most firms have faced significant challenges in preparing for the financial promotions' regime.** The challenges have been concentrated in preparing for the 'back end' financial promotion rules i.e. personalised risk warnings, 24-hour cooling off period, client categorisation and appropriateness assessments. These rules require significant system builds and operational changes. In contrast the 'front end' financial promotions are more straightforward to implement. The challenges with the 'back end' rules have been compounded by difficulties cryptoasset firms have faced in implementing the Travel Rule, which entered into force on 01 September 2023 following the Government legislating to implement this requirement. Given the earlier implementation date, we understand firms have prioritised compliance with the Travel Rule.
- **Firms in global group structures are having to make significant changes to their business models to comply with the regime.** These firms must significantly restructure how they provide services to UK customers to ensure they comply with the financial promotions regime. They must also implement effective systems and controls in their wider group to prevent UK consumers being promoted to by unauthorised/unregistered firms, or risk committing a criminal offence.
- **Firms have under appreciated the broad scope and nature of the financial promotion regime.** The regimes covers not only 'traditional' promotional material but also applies to a wide range of customer communications including websites and apps.
- **Firms were not sufficiently considering how certain rules apply to the specifics of the cryptoasset services they provide.** In particular, how their risk summaries and appropriateness assessments should be tailored to the specific cryptoassets being promoted.

We have set out in detail the [good and poor practices](#) we have observed on firms' preparations for the financial promotions regime.

Modification by consent for 'back end' financial promotion rules

We understand the challenges firms have faced in preparing for the financial promotions regime. This will be the first conduct regime for the sector and represents a fundamental change to how cryptoasset activities are regulated in the UK. We appreciate that firms' preparations for this regime have been complicated by preparing for other changes, in particular the Travel Rule.

In response to this feedback we are announcing that crypto firms registered with us under the Money Laundering Regulations (MLR) and those firms otherwise authorised by us can apply for a modification by consent to our financial promotion rules. This modification is available to MLR-registered firms intending to communicate cryptoasset financial promotions and authorised firms intending to communicate or approve cryptoasset financial promotions.

The effect of the modification will be to delay the implementation of the 'back end' Direct Offer Financial Promotion (DOFP) rules by three months. Specifically rules in COBS 4.10.2AR, COBS 4.12A.15R and COBS 10.1.2R related to personalised risk warnings, 24-hour cooling off period, client categorisation and appropriateness assessments.

For firms who are granted this modification the rules will not apply from the date the modification is formally consented to. The DOFP rules will enter into force on 8 January 2024 when the modification expires. A copy of the modification which is being offered is Annexed to this letter and firms should refer to that for further detail.

Firms should be aware that the rules related to client categorisation and appropriateness assessments apply to existing customers wishing to engage in further investment activity. Firms who are granted the modification must comply with these rules from 8 January 2024, including for their existing customers. Further details on how our rules apply to new and existing customers are set out in [PS23/6](#) (see page 37 - 39).

MLR registered and authorised firms can apply for the modification by consent by emailing centralwaiversteam@fca.org.uk

We encourage firms to apply as soon as possible. The email should contain:

- the firm's name and firm reference number; and
- confirmation that the firm intend to consent to the modification proposed by the FCA.

We will then write to firms in scope to confirm that the modification has been granted and publish each modification we grant against the firm's entry on the Financial Services Register.

Please note that this email address is solely intended for MLR registered and authorised firms intending to apply for the modification by consent. It should not be used by any other person or for any other purpose.

All other financial promotion rules will still apply from 8 October 2023.

This includes rules related to risk warnings, risk summaries, the ban on incentives to invest and the requirement that financial promotions must be fair, clear and not misleading. The restriction, set in legislation, on who can legally promote to UK consumers will also still apply.

We are disappointed by the lack of engagement from overseas, unregistered cryptoasset firms on the incoming financial promotions regime. We are concerned that many of these firms will be unable to comply with the regime and will therefore be committing a criminal offence if they continue promoting cryptoassets to UK consumers. We will take robust action against firms illegally promoting to UK consumers. This may include, but is not limited to, placing firms on our warning list, taking steps to remove or block any illegal financial promotions such as websites, social media accounts and apps, and enforcement action.

Next steps

All firms intending to communicate or approve cryptoasset financial promotions should carefully consider this letter and the detailed feedback on [good and poor practices](#) as part of their implementation plans. Firms should also consider the material set out in our guidance consultations [GC23/1](#) 'Guidance

on cryptoasset financial promotions’ and [GC23/2](#) ‘Financial promotions on social media’.

We encourage MLR registered and authorised firms to apply for the modification as soon as possible. Firms must ensure they can comply with the financial promotion rules by the relevant dates. We will be pro-actively supervising firms' compliance from the relevant dates and will not hesitate to take robust action against firms breaching our rules. This may include, but it is not limited to, requiring firms to amend or withdraw non-compliant promotions, placing restrictions on firms to prevent harmful promotions and enforcement action.

Yours sincerely,

Lucy Castledine
Director
Consumer Investments
Supervision, Policy and Competition

Matthew Long
Director
Payments & Digital Assets
Supervision, Policy and Competition

Annex: Modification by consent on cryptoasset financial promotion rules
Direction

To: (the "Firm")

Ref: XXXXXXXX

Of:

Date: XX XX XXXX

Handbook version as in force at the date of this direction

Power

1. This direction is given by the *FCA* under section 138A of the *Act* (including as applied by article 10 of the Financial Services and Markets Act 2000 (Financial Promotion) (Amendment) Order 2023 ("the Order") in relation to registered persons (as defined in the Order)).

o Duration

- 2. (1) This direction takes effect on 08 October 2023.
- (2) This direction ends at 00:01am on 08 January 2024.

Rule modified

- 3. The **FCA** directs that the **rules** listed below apply to the Firm with the modifications shown.
- 4. In this direction underlining indicates the insertion of new text and strikethrough indicates the deletion of existing **Handbook** text.

Rule	Modification
COBS 4.10.2AR	(1) This rule applies to a firm that approves : (a) a direct offer financial promotion relating to a restricted mass market investment <u>other than a qualifying cryptoasset</u> ; or

	<p>(b) a financial promotion relating to a non-mass market investment, for communication to a retail client.</p> <p>...</p>
<p>COBS 4.12A.15R</p>	<p>(1) Unless permitted by COBS 4.12A.17R and subject to (2), (3) and (4), a firm must not:</p> <p>(a) communicate a direct offer financial promotion relating to a restricted mass market investment <u>other than a qualifying cryptoasset</u> to a retail client unless the conditions in COBS 4.12A.18R (cooling off period), COBS 4.12A.20R (personalised risk warning), COBS 4.12A.21R (categorisation) and COBS 4.12A.28R (appropriateness) are satisfied; or</p> <p>(b) approve a direct offer financial promotion relating to a restricted mass market investment <u>other than a qualifying cryptoasset</u> for communication to a retail client unless the firm is satisfied that the conditions in COBS 4.12A.18R (cooling off period), COBS 4.12A.20R (personalised risk warning), COBS 4.12A.21R (categorisation) and COBS 4.12A.28R (appropriateness) will be satisfied in relation to each communication of the direct offer financial promotion.</p> <p>...</p>
<p>COBS 10.1.2R</p>	<p>(1) This chapter applies to a firm which:</p> <p>(a) arranges or deals in relation to a:</p> <p>(i) non-readily realisable security;</p> <p>(ii) speculative illiquid security;</p> <p>(iii) derivative;</p> <p>(iv) warrant; or</p> <p>(v) unit in a long-term asset fund, with or for a retail client, other than in the course of MiFID or equivalent third country business;</p> <p>(b) facilitates a retail client becoming a lender under a P2P agreement; <u>or</u></p> <p>(c) issues a unit in a long-term asset fund to a retail client; or</p> <p>(d) transacts in a qualifying cryptoasset with or for a retail client,</p>

	<p>and the firm is aware, or ought reasonably to be aware, that the application or order is in response to a direct offer financial promotion.</p> <p>...</p> <p>(3)</p> <p>(a) This chapter also applies to a registered person which transacts in qualifying cryptoassets with or for a retail client where the registered person is aware, or ought reasonably to be aware, that the application or order is in response to a direct offer financial promotion, as it applies to an authorised person.</p> <p>(b) For the purpose of (3)(a), in this chapter, relevant references to a firm include reference to a registered person.</p>
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Interpretation

- 5. Interpretative provisions (including definitions) of the **Handbook** apply to this Direction in the same way as they apply to the **Handbook**.

[FCA Individual]

Waivers Team
Financial Conduct Authority

