

FCA Publishes Letter on Preparations for Cryptoasset Financial Promotion Rules

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On 7 September 2023, the Financial Conduct Authority (“**FCA**”) published a letter (“**Letter**”) setting out its findings from meetings with various cryptoasset businesses (“**CBs**”), and additional actions it is taking to support CBs in their compliance with the FCA’s new cryptoasset financial promotions rules coming into force on 8 October 2023.

From such date, the existing UK financial promotions rules will apply to all firms that market cryptoassets to UK consumers, regardless of whether the firm is based outside or inside the UK, or the type of technology used to make the promotion.

The Letter lists the following four key observations following its assessment on how firms are preparing for compliance:

1. Most firms have faced significant challenges in preparing for the financial promotions rules. The challenges have been concentrated in preparing for the ‘back end’ financial promotion rules *i.e.*, personalised risk warnings, the 24-hour cooling off period, client categorisation and appropriateness assessments.
2. Firms in global group structures are having to make significant changes to their business models to comply with the rules.
3. Firms have underappreciated the broad scope and nature of the

financial promotions rules. The rules cover not only ‘traditional’ promotional material but also apply to a wide range of customer communications including websites and apps.

4. 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.

The Letter provides that CBs registered with the FCA under the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 and firms otherwise authorised by the FCA that intend to communicate or approve cryptoasset financial promotions can apply to the FCA for a modification by consent to the financial promotion rules.

The effect of the modification will be to delay the implementation of the ‘back end’ Direct Offer Financial Promotion (“**DOFP**”) rules by three (3) months (*i.e.*, until 8 January 2024). The delay will specifically affect rules relating to personalised risk warnings, the 24-hour cooling-off period, client categorisation and appropriateness assessments. Further information on how such rules will apply to new and existing customers are set out in the FCA’s policy statement ‘*Financial promotion rules for cryptoassets*’ (“**PS23/6**”). For more information on PS23/6, please see our recent article (available [here](#)).

The Letter clarifies that all other financial promotion rules will still apply from 8 October 2023, and encourages in-scope firms to apply for the modification as soon as possible.

Alongside the Letter, the FCA has published examples of good practice, and areas where firms need to improve when preparing for the financial promotions rules, on a new webpage (the “**Webpage**”).

Lastly, the FCA has also published a statement (“**Statement**”) setting out its expectations for CBs when complying with the upcoming financial promotions deadline. From 8 October 2023, CB marketing must be ‘clear, fair and not misleading’, labelled with prominent risk warnings and must

not inappropriately incentivise people to invest.

Firms should carefully consider the content of each of the above and how the financial promotions rules will impact their business. The FCA emphasised that it will take robust action against firms illegally promoting to UK consumers, including by placing firms on its warning list, removing or blocking illegal financial promotions and enforcement action.

Firms should also consider the material set out in the FCA's recent guidance consultation '*Guidance on cryptoasset financial promotions*' ("**GC23/1**"). For more information on GC23/1, please see our recent article (available [here](#)).

The Letter, Webpage and Statement are available [here](#), [here](#) and [here](#), respectively.

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