

Guidance on Cryptoassets: UK Financial Conduct Authority Issues Consultation Paper

Friday, March 1, 2019

On January 23, 2019, the UK Financial Conduct Authority (“FCA”) issued its widely anticipated [“Guidance on Cryptoassets” consultation paper CP19/3](#) (the “Consultation”). The Consultation followed the UK Cryptoassets Task Force’s publication last October, which set out the UK’s policy and regulatory approach to cryptoassets and distributed ledger technology and called for the FCA to issue guidance on its regulatory perimeter. The purpose of the Consultation is to provide guidance on the proposed rules that the FCA intends to implement in relation to cryptoassets and to provide market participants with the opportunity to provide initial feedback.

Amongst other things, the Consultation provided some helpful clarification as to where cryptoassets would fall within the FCA’s regulatory perimeter.

Which cryptoassets are within the FCA’s regulatory perimeter?

The FCA’s guidance clarifies whether different types of cryptoassets would fall within the FCA’s regulatory scope and, in particular, outlines whether cryptoassets are likely to fall within one or more of the following categories:

- “specified investments” under the [Financial Services and Markets Act 2000 \(Regulated Activities\) Order 2001](#);
- “financial instruments” under [Directive 2014/65/EU \(“MiFID II”\)](#);
- “e-money” under the [E-Money Regulations 2011 \(“EMR”\)](#); or
- a payment service under the [Payment Services Regulations 2017 \(“PSR”\)](#).

This is relevant because if a cryptoasset falls within one of the above categories, it could mean that the relevant firm carrying out certain activities in relation to cryptoassets is engaging in a regulated activity. Firms that carry on regulated activities in the UK are required to obtain authorisation from the FCA in order to do so.

In addition, the FCA has highlighted that, while issuers of tokens may not need to be authorised themselves, other regulatory requirements may apply (e.g., under the UK financial promotion regime and/or the [Prospectus Directive \(2003/71/EC\)](#)).

In this respect, the FCA has stated the following in its Consultation:

- “security tokens” (which the FCA defines to be a token which has the specific features of a typical security such as a share, debenture or unit in a collective investment scheme) are likely to fall within the definition of a “specified investment” and therefore fall within the FCA’s regulatory scope; and
- on the other hand, “exchange tokens” (such as Bitcoin, Ether or Litecoin) and “utility tokens” (which grant holders access to a current or prospective product or service but do not grant holders rights to profit or ownership) would be unlikely to constitute a “specified investment”.

The FCA also stated in its Consultation that, while exchange tokens and utility tokens would probably not amount to a “specified investment”, they may still be brought into the FCA’s regulatory perimeter under the PSRs or EMRs depending on the specific features of the tokens.



Article By [Amar Unadkat](#)
[John Verwey](#) Proskauer Rose LLP
[Blockchain and the Law](#)

[Financial Institutions & Banking](#)
[Global](#)
[Communications, Media & Internet](#)
[United Kingdom](#)

The FCA ultimately reminded firms that due to the complexity of many tokens, firms should consider a number of factors to determine if the relevant token is a specified investment. Ultimately, this can only be assessed on a case by case basis and legal advice should be sought.

Impact on Firms

The Consultation provides some welcome clarity as to when cryptoassets may fall within or outside the FCA's regulatory scope.

Firms that carry on cryptoasset business which is within the regulatory scope of the FCA will need to seek authorisation to carry on the relevant regulated activities. In addition, where a cryptoasset is a transferable security and will be either offered to the public in the UK or admitted to trading on a regulated market, the issuer would need to publish a prospectus approved by the FCA, unless an exemption applies.

Next Steps

The Consultation will remain open until April 5, 2019, with the FCA aiming to provide final guidance in summer 2019. HM Treasury is also expected to publish a consultation paper in early 2019 on exploring legislative change to potentially broaden the FCA's regulatory remit to bring further types of cryptoassets within its regulatory scope.

© 2019 Proskauer Rose LLP.

Source URL: <https://www.natlawreview.com/article/guidance-cryptoassets-uk-financial-conduct-authority-issues-consultation-paper>