

## Financial Promotion of Crypto Assets Update

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**PRACTICES** Financial Regulatory, FinTech Virtual Currency and Blockchain, International, Investment Management

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Currently, the UK's restriction on the marketing of financial services and products (the "**financial promotion restriction**") would not apply to a number of digital assets. Certain types of cryptoasset (to use the UK regulators' terminology) may be caught by the existing financial promotion restriction.

However, the Financial Services and Markets Act 2000 (Financial Promotion) (Amendment) Order 2023 has now brought "qualifying cryptoassets" into regulatory ambit of the FCA financial promotion regime.

The new rules will take effect on **8 October 2023**. However, cryptoasset businesses marketing to UK consumers, including firms based overseas, must get ready for this regime now. Indeed the FCA recently sent the first reminder to FCA authorised firms about the changes on 4 July.

Promotions that relate to qualifying cryptoassets that are not made using one of the permitted routes after this date will be in breach of section 21 of the Financial Services and Markets Act 2000 ("FSMA"), which is a criminal offence punishable by up to 2 years imprisonment.

It should be noted that the exemptions from the financial promotion restriction for "associations of high net worth or sophisticated investors" and for "sale of goods and supply of services" will not apply if the financial promotion relates to a qualifying cryptoasset.

A new temporary exemption has been introduced that will enable cryptoasset businesses registered with the FCA under the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 (the "**MLRs**"), who are not otherwise FCA authorised persons, to communicate their own financial promotions in relation to qualifying cryptoassets. The intention is that, after the wider crypto regime is brought within the FCA's remit, this exemption will be removed, because cryptoasset businesses will need to be authorised by the FCA and will be able to communicate their own financial promotions without the need for this exemption.

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