Financial Promotion of Crypto Assets

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The United Kingdom has now brought "qualifying cryptoassets" into the regulatory ambit of the Financial Conduct Authority's financial promotion regime. In this article, the authors explain the new rules, and advise cryptoasset businesses marketing to UK consumers, including firms based overseas, to get ready for the new regime.

Until recently, the UK's restriction on the marketing of financial services and products (the financial promotion restriction) did not apply to a number of digital assets. Certain types of cryptoasset (to use the UK regulators' terminology) were caught by the previous financial promotion restriction.1 However, the Financial Services and Markets Act 2000 (Financial Promotion) (Amendment) Order 2023 has now brought all "qualifying cryptoassets" into the regulatory ambit of the Financial Conduct Authority's (FCA) financial promotion regime.

BACKGROUND

The new rules took effect on October 8, 2023. Cryptoasset businesses marketing to UK consumers, including firms based overseas, must be compliant with this regime. Indeed, the FCA issued 146 alerts about Cryptoasset promotions on the first day of the new regime.

Promotions that relate to qualifying cryptoassets that are not made using one of the permitted routes 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 authorized 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 authorized by the FCA and will be able to communicate their own financial promotions without the need for this exemption.

Read the full article in *The Banking Law Journal* here.

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