

21 September 2023

Dear Sir/Madam,

**Final warning for cryptoasset firms marketing to UK consumers and those supporting them to get ready for the financial promotion regime**

The UK Government has legislated to bring certain cryptoassets within scope of the financial promotion regime. All firms marketing cryptoassets to UK consumers, including firms based overseas, must comply with this regime.

The [definition](#) of a financial promotion is intentionally broad and would include communications made through a website or an app. We expect that the vast majority, if not all cryptoasset firms providing services to UK consumers will be in scope of this regime when it comes into force.

This regime is 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 regime 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. The rules we have applied to cryptoasset promotions are consistent with those that apply to promoting other high-risk investments.

**Engagement with unregistered firms promoting to UK consumers**

We have warned firms promoting cryptoassets to UK consumers that they must get ready for this regime. This has included [statements](#) on our website, multiple [letters](#) to firms and numerous industry engagements.

We have had constructive and productive conversations with some firms about how they can meet the requirements of this regime. We have carefully listened to feedback and taken steps to support firms in preparing for this significant change. For example, announcing that a [modification](#) is available for FCA registered and authorised firms to give them more time to comply with rules that require greater technical development. We also published feedback on [good and poor practices](#) on firms' preparations.

However, we are concerned by the poor engagement from many unregistered, overseas cryptoasset firms who have UK customers on this important change. Many of these firms have refused to engage with the FCA despite our best efforts. For example, only 24 firms responded to a survey that was sent to over 150 firms.

This lack of engagement gives us serious concerns about unregistered firms' readiness to comply with the new regime. UK customers depend on communications from firms to access and deal with their cryptoassets and so it is important that all firms are ready to comply with the new regime when it comes into force.

Once the regime is in force, unauthorised and unregistered crypto businesses will only be able to communicate financial promotions which have been approved by an authorised person or are within the scope of certain narrow exemptions in the Financial Promotion Order. We will take robust action where we identify that firms are communicating cryptoasset promotions in breach of the regime.

Consumers are encouraged to check the Warning List, which will be continually updated once the regime takes effect, before engaging with a firm. We will also continue to remind UK consumers that purchasing cryptoassets remains high-risk and that they should be prepared to lose all their money.

### **Action against firms illegally promoting to UK consumers**

If unregistered cryptoasset firms continue to promote cryptoassets to UK consumers once the regime enters into force, without having an authorised person approve the promotion, they are likely to be in breach of section 21 of the Financial Services and Markets Act 2000 (FSMA). This would be a **criminal offence punishable by up to 2 years imprisonment, an unlimited fine, or both.**

We will take action against firms illegally promoting to UK consumers including, but not limited to, placing firms on our Warning List and taking steps to remove or block any illegal financial promotions such as websites, social media accounts and apps.

In certain cases, we will consider enforcement action, which may include applying to a Court for injunctions, seeking payment of compensation or, in the most serious cases, criminal prosecution.

Firms should be aware that under section 30 of FSMA contracts entered into as a result of unlawful communications by them may be legally unenforceable against a UK consumer.

We continue to work with global partners, including regulatory counterparts in other jurisdictions and international standard setting bodies, to seek co-operation and assistance against firms breaching UK regulation.

### **Expectations of those supporting unregistered firms marketing to UK consumers**

Unregistered cryptoasset firms do not operate in isolation. They are supported and facilitated by a host of intermediaries who play a critical role in enabling these firms to target UK consumers. For example:

- Social media platforms and search engines enable ads to be targeted at UK consumers.
- App stores and domain name registrars host apps and websites, which are often the main form of communications with UK consumers.
- Payments firms enable consumers to invest money with these firms.

All these intermediaries have a crucial role to play in protecting UK consumers from illegal promotions. We expect these firms to play their part in ensuring that illegal financial promotions are not communicated to UK consumers by unregistered cryptoasset firms.

We remind all businesses supporting unregistered cryptoasset firms that they should carefully consider their obligations under the Proceeds of Crime Act 2002 (POCA).

We are concerned that benefits obtained by unregistered cryptoasset businesses from illegal financial promotions could be criminal property, and that intermediaries are at risk of receiving and dealing with this criminal property through, for example: the fees generated by app stores, social media platforms, search engines and domain name registrars from hosting illegal financial promotions; investments made due to illegal financial promotions; and fees charged by payments firms or other intermediaries for services to unregistered cryptoasset businesses that generate income through illegal financial promotions.

We are concerned that businesses supporting unregistered cryptoasset firms may be at risk of committing money laundering offences under POCA. Firms must carefully consider their arrangements with unregistered cryptoasset firms and ensure that they are not engaged in, supporting or facilitating money laundering.

We also remind all businesses supporting unregistered cryptoasset firms of their obligation under POCA to report suspicious activity. Failing to disclose suspicious activity is a criminal offence.

Intermediaries that support unregistered cryptoasset firms to make illegal financial promotions should also consider their obligations under the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 to ensure that they remain compliant, if applicable.

Additionally, once in force, the Online Safety Bill (OSB) will place duties on search engines and social media companies to put in place systems and processes to mitigate the risks to users posed by the presence and dissemination of illegal content on their sites, including illegal financial promotions. This new regime will be overseen by Ofcom who we have worked closely with to create a shared understanding of how platforms' obligations under the OSB will interact with the financial promotions regime.

## **Complying with the financial promotions regime**

Once the regime enters into force, unregistered cryptoasset firms must cease making illegal financial promotions to UK consumers.

Unregistered cryptoasset firms can legally communicate financial promotions to UK consumers if those promotions are approved by an authorised firm. In approving a promotion, an authorised firm must comply with the relevant rules, including those requiring them to have the relevant competence and expertise. We expect authorised firms considering approving cryptoasset financial promotions to notify us before doing so, in line with Principle 11 (relations with regulators) and SUP 15.

We expect cryptoasset firms which cannot legally communicate financial promotions to UK consumers to have robust systems and procedures to prevent UK consumers accessing and responding to promotions they provide. For example, by geo-blocking UK consumers and including clear statements that their services are not available to people based in the UK. This should be supplemented by controls in the KYC/AML and onboarding and ongoing monitoring processes to ensure UK consumers (such as those giving a UK address or using a UK-based payment method) are not promoted to. Failure to have these systems in place may result in firms committing a criminal offence.

We recognise the challenges of dealing with existing customers where a firm cannot legally communicate financial promotions to UK consumers. The regime was not intended to harm consumers by leaving them unable to access their existing assets and does not represent a complete restriction on communicating with UK customers.

The new regime extends the restriction on communicating invitations or inducements to engage in investment activity (promotional communications rather than those of purely factual information) to certain promotions relating to cryptoassets. Unregistered cryptoasset firms may communicate with their existing UK consumers, including for the purpose of allowing consumers to transfer, withdraw or sell their existing assets. However, they will need to take care to do so in a way that does not breach the requirements of the financial promotions regime. Where these communications relate to the transfer, withdrawal or sale of existing assets, we would expect them to clearly explain how consumers can use each option and any fees, costs and charges associated with each option. We would generally expect these communications to solely be directed at existing customers and for the purpose of facilitating access to existing assets. Firms must strictly refrain from promoting further investment activity as part of these communications or they risk committing a criminal offence.

We anticipate that such communications would be for a limited time only. We believe it would be unsustainable for unregistered cryptoasset firms to maintain a longer-term relationship with UK consumers who they cannot legally communicate financial promotions to.

Unregistered cryptoasset firms should also carefully review their sponsorship deals to ensure they comply with the financial promotions regime. Firms may find our recently published [feedback on good and poor practices](#) useful to consider (see paragraph 5.1).

### **Next steps**

If firms believe they are going to be in breach after the regime comes into force, they need to urgently consider their position. They must stop or block illegal promotions. If firms fail to comply with the requirements of the regime it is likely we will issue an alert against them on our website and we will seek to remove or block those financial promotions. We strongly recommend firms seek legal advice to avoid committing a criminal offence and exposing themselves to potential enforcement action.

We expect those supporting unregistered cryptoasset firms illegally promoting to take their responsibilities seriously and to play their part in protecting UK consumers.

Yours sincerely,

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