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FCA sets expectations ahead of incoming crypto marketing rules

Of particular interest to: UK and overseas firms advertising cryptoassets to UK consumers

In brief

From 8 October 2023, tough new rules aimed at enhancing the clarity and accuracy of cryptoasset product marketing will come into force. This includes prohibiting incentives such as 'refer a friend' bonuses.

The new marketing rules are designed to ensure greater protection for UK consumers against cryptoasset-related risks.

Summary

On 7 September 2023, the FCA published a statement on its website outlining its expectations for UK and overseas cryptoasset firms on how to comply with new marketing rules coming into effect on 8 October 2023, when these businesses induce or invite UK consumers to engage in the below controlled activities in relation to qualifying cryptoassets:

- dealing as principal and/or agent;
- arranging transactions;
- managing;
- providing investment advice; or
- agreeing to carry on the activities set out above.

A 'qualifying cryptoasset' is any cryptographically secured digital representation of value or contractual rights that is transferable and fungible but does not include cryptoassets which meet the definition of electronic money or an existing controlled investment.

It must be noted that the FCA treats cryptoassets as "Restricted Mass Market Investments" (RMMIs) which can be marketed to UK retail investors, subject to certain restrictions. Please refer to Optima's alert issues on 1 September 2022, which explains in detail what those restrictions are.

From 8 October 2023, UK consumers will have much greater protection as cryptoasset firms' marketing must be 'clear, fair and not misleading', labelled with risk warnings people understand and not inappropriately incentivise people to invest. The new rules are detailed in the FCA's Policy Statement PS23/6. This includes overseas and unregulated crypto firms, come 8 October action will be taken against firms illegally marketing to UK consumers.

The expectations for firms include:

From 8 October 2023, the Government legislated that there will be four routes cryptoasset firms can take when lawfully communicating cryptoasset promotions:

- An authorised person communicates the promotion.
- An authorised person approves the promotion.
- A crypto firm registered under the Money Laundering Regulations (MLR) communicates the promotion.
- The promotion otherwise complies with the conditions of an exemption in the Financial Promotion Order.

Firms are expected to make necessary improvements to marketing, using FCA published examples of good and poor practices.

Penalties

Non-compliance with the new rules may result in criminal offences, punishable by unlimited fines and/or up to 2 years imprisonment.

Additional Information

- The FCA may grant cryptoasset firms an extension (until 8 January 2024) for the implementation of certain specific changes, such as a 24-hour cooling off period, by way of a 'modification by consent' (see Useful Links).
- The FCA will shortly publish final guidance for firms, to provide clarification on 'clear, fair and not misleading' communications.

Useful Links

[Cryptoassets: AML / CTF regime - Registering with the FCA | FCA](#)

[FCA sets expectations ahead of incoming crypto marketing rules | FCA](#)

[PS23/6: Financial promotion rules for cryptoassets | FCA](#)

[FCA: Modification by consent and firms' preparations to comply with the cryptoasset financial promotions regime and modification to financial promotion rules](#)

[FCA: Firms' preparations to comply with the cryptoasset financial promotions regime – feedback on good and poor practice](#)

[Optima Alert: Strengthening of Financial Promotion Rules](#)

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