

FCA sends a final warning on cryptoasset financial promotion

AT A GLANCE

September 2023

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What's new?

- The FCA issued a [final warning](#) to cryptoasset firms marketing to UK consumers and those supporting them to get ready for the financial promotion regime, on 21 September 2023.
- The FCA is concerned by the poor engagement from many unregistered, overseas cryptoasset firms who have UK customers, and their readiness to comply with the new regime from 8 October 2023.
- The FCA also reminds all businesses which act as intermediaries to unregistered cryptoasset firms (e.g. payments firms, social media platforms and search engines) to carefully consider their obligations under the Proceeds of Crime Act 2002 (POCA).

What does this mean?

- The FCA's new rules on cryptoasset financial promotions are designed to make the marketing of the products clearer and more accurate. The rules were confirmed in a June 2023 [policy statement](#).
- The new regime will come into force on 8 October 2023. The regulator has previously [confirmed](#) that those firms which are registered with the FCA under the Money Laundering Regulations (MLRs) or otherwise authorised by the FCA, can apply for certain modifications to allow extensions up until 8 January 2024.
- In September 2023, the FCA also [issued](#) a good and poor practice guidance for firms preparing for the new regime.
- From 8 October 2023, there will be four routes to lawfully communicate cryptoasset promotions to UK consumers:
 - 1) The promotion is communicated by an authorised person.
 - 2) The promotion is made by an unauthorised person but approved by an authorised person.
 - 3) The promotion is communicated by a cryptoasset business registered with the FCA under the MLRs.
 - 4) The promotion otherwise complies with the conditions of limited exemptions.
- The FCA notes that many of unregistered, overseas firms have refused to engage with the regulator. For example, only 24 firms responded to a survey sent to over 150 firms.
- The lack of engagement raises serious concerns about unregistered firms' readiness to comply with the new regime. The FCA reminds crypto firms that noncompliance to the new regime will be a criminal offence.
- The FCA encourages consumers to check the [Warning List](#), which will be continually updated once the regime takes effect, before engaging with a firm.

Supporting unregistered firms

- The FCA expects all related firms to play their part in ensuring that illegal financial promotions are not communicated to UK consumers by unregistered cryptoasset firms.

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- The FCA notes that its expectations apply to, in particular, 1) payments firms enable consumers to invest money with these firms, 2) social media platforms and search engines, which enable ads to be targeted at UK consumers, as well as 3) app stores and domain name registrars host apps and websites, which are often the main form of communications with UK consumers.
- The FCA makes a list of warnings to supporting firms, which should consider their obligations under POCA and the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017.
- Benefits obtained by unregistered cryptoasset businesses from illegal financial promotions could be criminal property, and intermediaries are at risk of receiving and dealing with this criminal property through income generated and any investments made.
- Businesses supporting unregistered cryptoasset firms may be at risk of committing money laundering offences under POCA and are also obliged to report any suspicious activity under POCA.
- The upcoming Online Safety Bill will also place duties on search engine and social media companies to mitigate the risks to users posed by the presence and dissemination of illegal content on their sites, including illegal financial promotions.

What do firms need to do?

- From October 2023, unregistered cryptoasset firms can legally communicate financial promotions to UK consumers if those promotions are approved by an authorised firm.
- Authorised firms considering approving cryptoasset financial promotions must notify the FCA before doing so.
- Firms which cannot legally communicate financial promotions to UK consumers must 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.
- These should be supplemented by controls in the KYC/AML and onboarding and ongoing monitoring processes.
- Firms supporting cryptoasset firms must ensure that they have systems and procedures in place to monitor and detect firms which may be committing a criminal offence against the new regime, as well as clear procedures in place to off-board noncompliant firms.
- Firms supporting cryptoasset firms as intermediaries must also understand their obligations to report any suspicious activity under the POCA and to the FCA.

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Next steps

The FCA strongly recommends firms to seek advice to avoid committing a criminal offence and exposing themselves to potential enforcement action.



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