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Buyer Beware – FCA Publishes Financial Promotion Rules for Cryptoassets

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Background

On 8 June 2023, the UK Financial Conduct Authority ("**FCA**") published a policy statement (PS23/6) on the financial promotion rules for cryptoassets (the "**Policy Statement**"). This is accompanied by a guidance consultation (GC23/1), where the FCA is seeking feedback on proposed guidance to the Policy Statement.

The Policy Statement follows on from the FCA's previous consultation paper (CP22/2) setting out its proposals to strengthen its financial promotion rules for high-risk investments (including cryptoassets), as well as for authorised firms which approve and communicate such financial promotions. This was followed in August 2022 by the FCA's policy statement (PS22/10) on the financial promotion rules for other high-risk investments excluding cryptoassets (which we wrote about here).

Key Rules

Some of the key rules include:

- **Categorisation:** The FCA has categorised cryptoassets as "*Restricted Mass Market Investments*". This means that mass-marketing to retail investors will be permitted, subject to restrictions.
- **Ban on incentives to invest:** Monetary and non-monetary benefits which incentivise investment in cryptoassets will be banned.
- **Risk warnings:** Firms promoting crypto products to retail investors must include the following risk warning:

  "*Don't invest unless you're prepared to lose all the money you invest. This is a high-risk investment and you are unlikely to be protected if something goes wrong. Take 2 mins to learn more.*"

- **Cooling-off period:** For first-time investors with a firm, firms must adhere to a 24-hour "cooling off" period after the consumer requests to view the financial promotion.

Applicability

The Policy Statement and subsequent final rules will be directly relevant to:

- consumers investing, or who are considering investing, in cryptoassets;
- cryptoasset businesses currently registered with the FCA or those considering, or in the process of, registration;
- overseas cryptoasset firms marketing, or considering marketing, to UK consumers;
- authorised firms considering communicating or approving cryptoasset financial promotions;
- trade bodies for the cryptoasset sector; and
- other persons involved in communicating cryptoasset financial promotions to UK consumers.

They will also be of interest to any authorised firm or trade body in the consumer investments sector.

Next steps

The FCA is not expecting any further changes to the rules in the Policy Statement at this stage.

The final rules will be confirmed by the FCA Board "*shortly*" and are expected to have effect from **8 October 2023**.

For further information, please reach out to UKRegulatory@proskauer.com.

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