

Guidance consultation GC23/1

Guidance on cryptoasset financial promotions

June 2023

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Chapter 1

Introduction

- 1.1** The Government has legislated to bring cryptoassets within scope of the financial promotion regime. This is an important measure for ensuring consumers understand the risks of investing in cryptoassets. We want cryptoassets to only be promoted within a robust framework which remains fit for purpose in a changing investment environment. We want consumers to receive timely, accurate information that allows them to make effective investment decisions without being pressured, misled or inappropriately incentivised to invest in products that do not meet their needs.
- 1.2** We have set out our rules for cryptoasset promotions in [PS23/6](#). A central requirement of our financial promotion rules is that financial promotions are fair, clear and not misleading (COBS 4.2 and where applicable, Principle 7 and PRIN 2A.5.3). To ensure firms clearly understand the implications of this requirement for cryptoasset promotions, we are publishing this consultation on guidance as to how firms might comply with this requirement. This proposed guidance will also form an important component of our approach to supervising cryptoasset financial promotions.
- 1.3** The fair, clear and not misleading rule is a core element of the financial promotion rules which will apply to cryptoasset financial promotions. However, firms will need to ensure that promotions comply with all of the relevant financial promotion rules. As we have categorised cryptoassets as restricted mass market investments, firms communicating or approving financial promotions involving cryptoassets will need to ensure that such promotions comply with the detailed requirements in COBS 4.12A. We discuss these requirements in detail in [CP22/2](#) and [PS23/6](#).

Why we are consulting

- 1.4** This consultation seeks feedback on proposals for guidance on how we approach, and how firms comply with, our requirement that cryptoasset financial promotions must be fair, clear and not misleading. Annex 1 contains the draft guidance on which we are consulting. Our rules for financial promotions read with this guidance will help prevent firms from misleading consumers with false or unsubstantiated claims communicated through financial promotions and give cryptoasset firms greater clarity about our standards for financial promotions. We also expect the guidance to give clarity on how we expect firms to comply with our rules.
- 1.5** This guidance is relevant to all cryptoasset financial promotions. It has a particular focus on cryptoassets and related models/arrangements that can cause significant consumer harm. For example, cryptoassets that claim to be stable and financial promotions for complex yield models such as cryptoasset borrowing, lending and staking models/arrangements. However, the guidance is relevant to all firms marketing cryptoassets to retail consumers in the UK.

- 1.6** This guidance should be considered alongside our Policy Statement on Financial promotion rules for cryptoassets ([PS23/6](#)).
- 1.7** We have also included a chapter setting out further discussion questions on complex yield cryptoasset models/arrangements such as borrowing, lending and staking to inform our future regulation of these activities. The purpose of the discussion questions is to better understand how cryptoasset borrowing, lending and staking models/arrangements currently operate in the industry, the benefits of these models/arrangements and their risks. We want to work collaboratively with the cryptoasset sector to develop future regulation in this area. We are seeking industry input to make sure we get future regulation right.

Who this applies to

- 1.8** This guidance and discussion questions will be directly relevant to:
- consumers investing, or who are considering investing, in cryptoassets
 - cryptoasset businesses registered, or considering becoming registered, with the FCA
 - overseas cryptoasset firms marketing to UK consumers
 - authorised firms considering communicating or approving cryptoasset financial promotions
 - trade bodies for the cryptoasset sector
 - other persons involved in communicating cryptoasset financial promotions to UK consumers.
- 1.9** The guidance and discussion questions will also be of interest to:
- any authorised firm or trade body in the consumer investments sector

How this links to our objectives

- 1.10** This guidance builds on [PS23/6](#). The rationale for how our rules (which we previously consulted on) link to our objectives remains relevant for this guidance.
- 1.11** This guidance aims to support our consumer protection objective. It has been designed to reduce the risk of consumers being harmed by misleading financial promotions and to ensure consumers are able to properly understand and assess the risks before investing.

Equality and Diversity considerations

- 1.12** We have considered the equality and diversity issues through the different stages of policy development. In CP22/2 we said that overall, we do not consider that the proposals will have a negative impact on any of the groups with protected characteristics under the Equality Act 2010. In [PS23/6](#) we note that our latest

cryptoassets consumer research shows that cryptoassets owners are more likely to be male and younger – aged under 45. Ownership is highest in London and Northern Ireland. Those who own cryptoassets are also more likely to have a higher-than-average household income. Respondents to CP22/2 did not identify any equality or diversity issues with our proposals. Overall, we consider that consumers across all groups will benefit from the protection of our requirement for financial promotions to be fair, clear and not misleading. The proposed guidance will enable firms to better understand our expectations on how they should implement this requirement in practice and so reinforce consumer protection. We will continue to consider the equality and diversity implications of the proposals.

- 1.13** As outlined in [PS23/6](#), as part of finalising this regime we have also included guidance that we expect firms to take account of the latest version of the international [Web Content Accessibility Guidelines \(WCAG\)](#) accessibility standards when designing digital financial promotions and, in particular, how the risk warning will be displayed. We would also expect firms to consider the intended recipients of their promotions. Where firms communicate financial promotions to consumers that are unlikely to have a good understanding of the English language, risk warnings and the risk summary should be provided in an appropriate language as well as English.

Costs and benefits of our proposals

- 1.14** As we are not making any new rules, our statutory cost benefit analysis (CBA) obligations under Financial Services and Markets Act (FSMA) do not apply. This proposed guidance seeks to clarify existing and incoming rules, as well as FCA Principles, rather than establish new policy.
- 1.15** We consider that the expectations set out in this guidance are reasonably predictable from those rules and Principles. In '[How we analyse the costs and benefits of our policies](#)' we said that 'we do not produce a CBA if the detailed steps mentioned in the guidance are the kind of detailed steps that followed predictably from the rule and that one would reasonably expect firms to take to comply with the rule'. This is because, where guidance clarifies existing expectations rather than creating new ones, firms won't incur new costs. We therefore do not provide a CBA for this guidance.

Next steps

- 1.16** We will review all responses to this consultation and, subject to responses received, intend to publish final guidance in autumn 2023.
- 1.17** We will keep this guidance under review and consider if changes are needed due to market events and as the wider regulatory regime for cryptoassets develops. The discussion questions will help inform our approach to regulating complex yield models/arrangements.

How to respond

- 1.18** Please review the proposals outlined in this guidance. We welcome views from respondents on our proposed guidance by 10 August 2023. Where respondents do not agree with our proposed guidance, we would appreciate further detail about their concerns and potential solutions.
- 1.19** We also welcome views on the discussion items by 10 August 2023.
- 1.20** You can send us your comments using the [form](#) on our website. If you are not able to use the form, contact us at gc23-1@fca.org.uk to discuss alternative ways to respond.
- 1.21** In summary we are asking for views on the following questions:

Consultation questions

- Q1:** Do you agree with our proposed guidance on the context of the cryptoasset financial promotions regime? Please explain your answer, highlighting any other issues that would be useful to consider.
- Q2:** Do you agree with our proposed guidance on ensuring that cryptoasset financial promotions are fair, clear and not misleading? Please explain your answer, highlighting any other issues that would be useful to consider.
- Q3:** Do you agree with our proposed guidance for financial promotions of cryptoassets that claim a form of stability, or which claim their value is linked to a fiat currency? Please explain your answer, highlighting any other issues that would be useful to consider.
- Q4:** Do you agree with our proposed guidance for financial promotions of cryptoassets that claim to be backed by a commodity or an asset? Please explain your answer, highlighting any other issues that would be useful to consider.
- Q5:** Do you agree with our proposed guidance for financial promotions of complex yield models or arrangements? Please explain your answer, highlighting any other issues that would be useful to consider.

- Q6:** Do you agree with our proposed guidance for financial promotions on social media? Please explain your answer, highlighting any other issues that would be useful to consider.
- Q7:** Do you agree with our proposed guidance on due diligence before a financial promotion is communicated? Please explain your answer, highlighting any other issues that would be useful to consider.
- Q8:** Do you agree with our proposed guidance on disclosing legal and beneficial ownership of cryptoassets? Please explain your answer, highlighting any other issues that would be useful to consider.
- Q9:** Do you agree with our proposed guidance on disclosing the firm's regulated status? Please explain your answer, highlighting any other issues that would be useful to consider.
- Q10:** Are there any other topics you believe our guidance should cover?

Discussion questions on complex yield models/arrangements

- Q1:** What are the benefits and opportunities of cryptoasset borrowing, lending and staking models/arrangements for consumers?
- Q2:** Which type of cryptoasset borrowing, lending and staking models/arrangements provide the greatest benefit to consumers?
- Q3:** What are the risks associated with cryptoasset borrowing, lending and staking models/arrangements for consumers?
- Q4:** Which types of cryptoasset borrowing, lending and staking models/arrangements present the greatest risks to consumers?

- Q5:** If you are a firm that provides cryptoasset borrowing, lending or staking models/arrangements to retail investors please provide information on:
- a.** The different types of cryptoasset borrowing, lending and staking models/arrangements you offer to consumers and the form of related financial promotions.
 - b.** What data your firm collects to calculate advertised rates of return?
 - c.** What modelling your firm undertakes to calculate advertised rates of return?
 - d.** What steps your firm takes to assess and mitigate the risks to consumers associated with these models/arrangements?
- Q6:** Please provide any data, including details of the source and time period for the data, you have or are aware of related to:
- a.** The number of UK consumers who invest in cryptoasset borrowing, lending and staking models/arrangements and the average amount invested.
 - b.** The number of firms who provide cryptoasset borrowing, lending and staking models/arrangements to UK consumers.
 - c.** Gains or losses experienced by UK consumers in relation to cryptoasset borrowing, lending and staking models/arrangements.
- Q7:** Are there any other issues we should take account of when considering our approach when developing regulatory requirements for cryptoasset borrowing, lending and staking models/arrangements?

Chapter 2

Summary

- 2.1** This chapter summarises the proposed non-Handbook guidance set out in Annex 1. In summary we are proposing guidance on the following topics:
- 1.** Context of the cryptoasset financial promotion regime
 - 2.** Ensuring that cryptoasset financial promotions are fair, clear and not misleading for:
 - a.** all cryptoasset financial promotions
 - b.** cryptoassets that claim a form of stability or which claim their value is linked to a fiat currency
 - c.** cryptoassets that claim to be backed by a commodity or an asset
 - d.** complex yield cryptoasset models or arrangements e.g. borrowing, lending and staking
 - 3.** Financial promotions on social media
 - 4.** Due diligence before a financial promotion is communicated
 - 5.** Disclosing legal and beneficial ownership of cryptoassets
 - 6.** Disclosing a firm's regulated status

Context of the cryptoasset financial promotion regime

- 2.2** This section sets out the context of the cryptoasset financial promotion regime. It summarises the key features of the financial promotion regime, including the financial promotion restriction set out in section 21 of the Financial Services and Markets Act 2000 ('FSMA'), the type of cryptoassets within scope of this regime and the applicable FCA rules.
- 2.3** We highlight that some cryptoasset investments already constitute a 'specified investment', for the purposes of the UK regulated activity regime, such as those which amount to a derivative or a unit in a Collective Investment Scheme (CIS). It is vital that persons engaged in business involving cryptoassets understand the regulatory characterisation of the investment, activity or business in which they are engaged. This characterisation will have serious implications for the person engaged in that investment or business. In particular, firms may be committing a breach of the general prohibition in section 19 FSMA if they are engaged in regulated activities by way of business in the UK relating to a type of cryptoasset that constitutes a specified investment. Breach of the general prohibition is a criminal offence subject to a term of imprisonment of up to 2 years, the imposition of a fine, or both.
- 2.4** We remind firms that are considering approving cryptoasset financial promotions that they must comply with the relevant regulatory requirements before doing so. This includes the rules in COBS 4.10. In particular, our rule that firms must not communicate or approve financial promotions unless they have appropriate competence and experience (COBS 4.10.9A). Firms approving promotions should also consult our updated [guidance](#)

on approving financial promotions. Firms approving promotions should also familiarise themselves with the implications of the incoming gateway for firms approving promotions as provided for in the Financial Services and Markets Bill which is currently making its way through Parliament. We expect firms to notify us before they approve cryptoasset financial promotions in accordance with Principle 11 (relations with regulators) and SUP 15.

Ensuring that cryptoasset financial promotions are fair, clear and not misleading

- 2.5** This section of the guidance explains how we interpret our requirements in COBS 4.2 and, where applicable, Principle 7 and PRIN 2A.5.3 that cryptoasset financial promotions must be fair, clear and not misleading. This section has been broken down into parts that involve cryptoasset financial promotions generally and those that apply to particular types of cryptoassets.

For all cryptoasset financial promotions

- 2.6** This part of the guidance will be relevant to all cryptoasset financial promotions. The intention is to ensure firms carefully consider their promotions and ensure that they provide consumers with information that enables them to make effective investment decisions.
- 2.7** The relatively recent emergence of cryptoassets as an asset class means that investment in cryptoassets is often subject to novel risks (eg technological failures and hacks) which are unlikely to be widely understood by consumers. The variety of cryptoasset and cryptoasset-related models, and the potentially opaque nature of these investments, that are marketed to consumers also increases the risk that individuals might not fully understand the investments that are promoted to them.
- 2.8** We continue to see cryptoasset financial promotions that fall short of our expectations. In many cases promotions: fail to clearly outline the underlying risks of the product, offer very high rates of return with no evidence of how these can be achieved or warning of the risks associated with them and use exaggerated, unbalanced or misleading claims. The Advertising Standards Authority (ASA) has issued over 50 enforcement notices to firms over misleading cryptoasset adverts.

Financial promotions for cryptoassets that claim a form of stability or which claim their value is linked to a fiat currency

- 2.9** This section of the guidance sets out our expectations of firms communicating financial promotions for cryptoassets that claim a form of stability or that the cryptoasset's value is linked to the value of a fiat currency to ensure they are fair, clear and not misleading. These cryptoassets are commonly referred to as 'stablecoins'. We have intentionally not focused on the term 'stablecoins' but instead referred to any cryptoasset that markets itself in a way that claims a form of stability or the value of which is linked to that of a fiat currency. This is to focus on the function and key characteristics of these types of cryptoassets, regardless of the name given to them.

- 2.10** There are many potential uses to these types of cryptoassets, such as providing innovation, competition and efficiencies in the payments landscape. However, these also have risks, particularly from misleading financial promotions. We continue to see very poor-quality promotions for this type of cryptoasset. Financial promotions will often claim the cryptoassets are 'stable' or represent a 'store of value' with little to no evidence or explanation behind these claims, such as supporting detail around how stability is achieved or the nature, or value, of any backing assets. Where an explanation is provided, it is often unclear or difficult for a consumer to understand. This can lead to poor investment decisions with consumers investing in cryptoassets which have no realistic prospect of maintaining stability.
- 2.11** There are particular concerns with so called 'algorithmic' and 'crypto-backed' stablecoins when considering how the characteristics, risks and benefits of these products are communicated to consumers. These concerns have been raised by a number of international bodies, such as the [International Monetary Fund \(IMF\)](#) and [Financial Stability Board \(FSB\)](#), and global central banks like the [Federal Reserve System \(FED\)](#) and [European Central Bank](#). For the purposes of this guidance, an 'algorithmic' or 'crypto-backed' stablecoin is a cryptoasset that aims to maintain a fixed price largely, or in some part, through an algorithm that facilitates a change in supply and demand between the coin and one or more cryptoassets that support it. The stability of such cryptoassets largely relies on the confidence of the market and the activities of exchanges. These types of cryptoasset often promote themselves as achieving a form of stability, but often cannot be considered stable or linked to a fiat currency due to the vulnerabilities and weaknesses inherent with the type of mechanisms they use. That is, there may be sudden uncontrollable market developments in the value of an underlying cryptoasset. This has been demonstrated by numerous failures resulting in significant consumer harm (eg through loss of investments), such as the de-pegs of Terra/Luna and IRON as explored by the [IMF](#) and [FED](#) respectively.
- 2.12** By promoting themselves as 'stable' these types of cryptoasset create a false sense of security for consumers who may mistakenly believe that these assets are as reliable and stable as traditional fiat currencies. This false sense of security can lead to consumers making uninformed decisions and exposing themselves to significant and unexpected losses.
- 2.13** We want to use this guidance to set out the high standards we expect of financial promotions that claim a form of stability or value which is linked to the value to a fiat currency. In particular the due diligence that we would expect firms to undertake before making promotions to consumers and the information firms should provide.
- 2.14** We generally expect that financial promotions are 'stand-alone compliant'. This means that each stage of a financial promotion must comply with our rules. However, promotions of complex investments might require a high volume of supporting information or disclosure to ensure that they are fair, clear and not misleading. In this case, firms may include supporting hyperlinks or separate pathways for a consumer to access this information to make an informed decision. Links to additional information should be clearly and prominently brought to the consumer's attention and should give consumers enough information to make an informed decision.

- 2.15** We note that the guidance in this section is less detailed compared to our proposed approach to so called commodity-linked cryptoassets. The Treasury is in the process of legislating to introduce a regulatory regime for fiat-backed stablecoins with the propensity to be used for payments. We will keep this guidance under review and consider whether we need to make changes as the details of this regime are confirmed or in light of market developments.

Financial promotions for cryptoassets that claim to be backed by a commodity or an asset

- 2.16** This section of the guidance sets out our expectations of firms communicating or approving financial promotions for cryptoassets that claim to be backed by a commodity (eg gold) or an asset, to ensure they are fair, clear and not misleading. For the purposes of this guidance, we will refer to cryptoassets that claim to be backed by a commodity/asset as a commodity-linked cryptoasset.
- 2.17** Commodity-linked cryptoassets can take many forms. Some aim to maintain a stable value against the underlying commodity price by being collateralised with one or more commodities or real-world assets. Others act as a digital representation of an underlying real-world asset such as gold, property or oil. Some are also structured and marketed as 'stablecoins', by being pegged to a given commodity.
- 2.18** As noted in the [Treasury's Consultation on the future financial services regulatory regime for cryptoassets](#), these are currently a relatively small proportion of the market, representing less than 1% of daily trading volumes and market capitalisation. While commodity-linked cryptoassets have a range of use cases, they are often used by the holder to access the market of the underlying commodity in a way that may be cheaper and more flexible than buying the commodity outright.
- 2.19** We continue to see poor quality financial promotions for this type of cryptoasset. Promotions are often unclear as to how the particular cryptoasset operates, such as tracking or referencing the price of the commodity or acting as a digital record of ownership. The relationship between the underlying commodity and the issued token is often unclear. Promotions also often include bold claims around ownership and wealth protection, with little evidence to support these claims.
- 2.20** We want to use this guidance to set out the high standards we would expect from firms promoting these types of cryptoasset. In particular, the information firms would need to give consumers to ensure they can make informed investment decisions and understand all the relevant risks.

Financial promotions for complex yield cryptoasset models or arrangements

- 2.21** This section of the guidance explains our expectations of firms communicating financial promotions of complex yield cryptoasset models/arrangements to ensure they are fair, clear and not misleading.

- 2.22** For the purposes of this guidance, a financial promotion for a complex yield cryptoasset model/arrangement is a financial promotion where a person (A) advertises the possibility for another person (B) to transfer or make available their cryptoassets to A to use (either directly or indirectly). In return, B will receive a rate of return, for example, engaging in staking, borrowing and lending arrangements.
- 2.23** Lending and borrowing makes up a significant amount of activity in the cryptoasset and decentralised finance (DeFi) market. Dedicated lending platforms offer a variety of business models, some of which have similarities to traditional activities such as: collateralised lending; peer-to-peer lending; securities lending (eg exchanges providing margin loans); investment management; and unsecured credit products. There are also novel business models, including those where customers contribute to a platform's liquidity pool in return for variable yield, usually remaining as the beneficial owner of their assets. Cryptoasset lending and borrowing can look like a mix of these, though in most cases there is a platform – either centralised or decentralised – sitting between those lending and borrowing. The recent collapse of high-profile crypto borrowing and lending firms (eg Celsius, Voyager, BlockFi) highlighted the risks from these business models (eg lack of clarity of beneficial ownership of cryptoassets and high risk collateralised lending) and the harms to consumers who may lose all or most of their cryptoassets and become unsecured creditors in the insolvency process.
- 2.24** Cryptoasset 'staking' is primarily a term used to refer to the holding/locking of cryptoassets for a set period of time to help verify layer 1 blockchain transactions under a proof of stake consensus mechanism. Under this system, network participants who want to support the blockchain by validating new transactions and adding new blocks, must 'stake' set sums of a cryptoasset. A winner is then picked at random to add the new block and is paid a reward in return. In return for staking their cryptoassets, a consumer may earn more cryptoassets.
- 2.25** While there are noticeable differences within and between so-called staking, borrowing and lending business models, the way these arrangements are advertised through financial promotions can be very similar. Many of these promotions are of very poor quality. Promotions often advertise very high rates of return of up to 30%, with little to no evidence of whether the rate can be achieved or the evidence used to calculate these rates. Promotions are often unbalanced, using exaggerated claims about the benefits of these models/arrangements with little description of the risks. The information on the legal and beneficial ownership of the cryptoasset once these arrangements/models are entered into is also often unclear.
- 2.26** We want to use this guidance to set out the high standards we would expect of firms promoting these types of cryptoasset arrangements/models. In particular, the standards we would expect around promoting high rates of return.
- 2.27** We have seen many cases where these models/arrangements involve what is highly likely to amount to a specified investment, such as a unit in a collective investment scheme (CIS). It is vital that persons engaged in business relating to cryptoassets understand the regulatory characterisation of the investment or business in which they are engaged. This characterisation will have serious implication for firms, including potential breaches of the general prohibition which is a criminal offence punishable by up to 2 years imprisonment, an unlimited fine, or both. We are continuing to consider how these complex models/arrangements interact with our existing perimeter.

Financial promotions on social media

- 2.28** This section of the guidance sets out our expectations of firms communicating financial promotions on social media. In particular, that the financial promotions regime is technologically neutral and also applies to social media communications.

Due diligence before a financial promotion is communicated

- 2.29** This section of the guidance sets out our expectations of the due diligence firms should undertake before communicating a cryptoasset financial promotion. Authorised firms considering approving these promotions should also consider the relevant guidance on due diligence set out in our guidance on [approving financial promotions](#).
- 2.30** We understand that the firm that communicates the cryptoasset financial promotion will often not be the issuer or creator of the underlying cryptoasset. In these cases, we expect firms to carry out adequate due diligence and have sufficient evidence of the underlying cryptoasset to ensure the financial promotion is fair, clear and not misleading.
- 2.31** To ensure a financial promotion is fair, clear and not misleading firms should disclose the risks relevant to the financial promotion and the underlying cryptoassets. It is important that all relevant risks are sufficiently clear and prominent in all financial promotions. To accurately disclose all relevant risks within a financial promotion or supporting material, a firm should conduct all necessary due diligence on the underlying cryptoasset to understand the relevant risks.
- 2.32** We want to use this guidance to set out the factors we would expect firms to consider as part of their due diligence. The extent and substance of the due diligence needed to disclose the relevant risks will vary from case-to-case and will depend on, amongst other things: i) the form of the promotion; ii) the content of the promotion; and iii) the nature of the cryptoasset. We are aware there is no one size fits all approach when conducting due diligence on cryptoassets and expect firms to take a pragmatic approach.

Disclosing legal and beneficial ownership of a cryptoasset

- 2.33** This section of the guidance sets out our expectations of how firms should disclose the legal and beneficial ownership of cryptoassets. Existing financial promotions for cryptoassets are often unclear about the legal and beneficial ownership of a consumers cryptoasset once they enter into an agreement. We have seen several cases, such as the collapse of FTX, where consumer assets in custody appear to have been used, and subsequently lost, without their knowledge or consent.
- 2.34** We expect firms to clearly and prominently disclose the legal and beneficial ownership of a cryptoasset before a consumer enters into an agreement with a firm. In particular, firms should clearly and prominently disclose 'who' owns the legal and beneficial rights to the cryptoasset.

Disclosing the firm's regulated status

- 2.35** This section of the guidance sets out our expectations of firms in disclosing their regulated status. There is significant potential for consumer confusion over a firm's regulated status, particularly given the bespoke exemption for cryptoasset businesses registered with the FCA under the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 ('MLRs') and the regulated status of cryptoassets.
- 2.36** We expect firms to minimise any potential for confusion by clearly and prominently disclosing their regulated status to consumers. In particular, MLR registered firms should not suggest or imply that they are authorised by the FCA or that their MLR status is equivalent to being authorised. Firms should not suggest or imply that their underlying cryptoasset activities or the cryptoassets themselves are regulated by the FCA.

Chapter 3

Discussion questions on complex yield models/arrangements

- 3.1** This section sets out our discussion questions on complex yield cryptoasset models/arrangements eg borrowing, lending and staking. This is separate, though related, to our proposed guidance set out in Annex 1. We are seeking feedback to help us better understand the underlying business model for these models/arrangements. We are also seeking views on their benefits and risks to consumers to help inform our approach when considering future regulatory requirements for these models/arrangements. We want to work collaboratively with the cryptoasset sector on this issue. We are seeking industry input to make sure we get future regulation right.
- 3.2** We are interested in better understanding the potential benefits and opportunities that these complex yield cryptoasset models/arrangements provide to consumers. We recognise the cryptoasset industry's increasing take up of layer 1 proof of stake consensus mechanisms as the industry seeks to further develop web3 and move away from the energy intensive proof of work consensus mechanism. We support innovation in financial services where the risks to consumer protection and market integrity are adequately addressed. We are keen to hear how the benefits and risks may differ between different complex yield arrangements given the variety of structures in the market that use terms such as 'staking', 'borrowing' and 'lending'.
- 3.3** As set out in Chapter 2, we continue to see many complex yield models/arrangements being marketed to retail consumers that offer high rates of return but provide little to no evidence of whether the rate can be achieved, the business model of the firm and the relevant risks of the models or arrangements.
- 3.4** There have been several high-profile cases of borrowing and lending platforms running into difficulty, such as Celsius, Voyager and Three Arrows Capital. These cases highlight the significant harm that can emerge from these products and the care firms should take when promoting them. We want to gain a better understanding of how cryptoasset borrowing and lending models work in practice, particularly how firms calculate advertised rates of return and the risks and benefits of these models for consumers.
- 3.5** Financial promotions offering so-called cryptoasset staking arrangements/models to consumers have increased significantly over recent years with the wider adoption of proof of stake consensus mechanisms. Staking is vital for the functioning of blockchains that operate a proof of stake consensus mechanism. However, we are keen to understand what role consumers should play in this process and the models/arrangements firms are marketing to consumers. We are particularly interested in understanding how firms consider the unique risks of staking when calculating the targeted rates of return to be included in financial promotions, eg understanding the risk to 'cool down periods' and 'validators going down', as well as the probability of winning a staking reward.

3.6 These topics were also covered in HM Treasury's recent consultation on a future financial services regulatory regime for cryptoassets. In the consultation, the Government proposed to create a regulated activity of operating a cryptoasset lending platform. The Government also proposed to consider staking services as part of a potential phase 3 of regulation. We know these proposals have generated significant interest from respondents. We are working closely with the Treasury to consider the responses received. The questions in this discussion section will complement the Government's consultation and enable UK authorities to develop an informed and considered approach to these activities and their promotion. We are seeking industry input to make sure we get future regulation right. We are also continuing to consider how these complex models/arrangements interact with our existing perimeter.

Discussion questions

- Q1:** What are the benefits and opportunities of cryptoasset borrowing, lending and staking models/arrangements for consumers?
- Q2:** Which type of cryptoasset borrowing, lending and staking models/arrangements provide the greatest benefit to consumers?
- Q3:** What are the risks associated with cryptoasset borrowing, lending and staking models/arrangements for consumers?
- Q4:** Which types of cryptoasset borrowing, lending and staking models/arrangements present the greatest risks to consumers?
- Q5:** If you are a firm that provides cryptoasset borrowing, lending or staking models/arrangements to retail investors please provide information on:
- a.** The different types of cryptoasset borrowing, lending and staking models/arrangements you offer to consumers and the form of related financial promotions.
 - b.** What data your firm collects to calculate advertised rates of return?
 - c.** What modelling your firm undertakes to calculate advertised rates of return?
 - d.** What steps your firm takes to assess and mitigate the risks to consumers associated with these models/arrangements?

- Q6:** Please provide any data, including details of the source and time period for the data, you have or are aware of related to:
- a.** The number of UK consumers who invest in cryptoasset borrowing, lending and staking models/arrangements and the average amount invested.
 - b.** The number of firms who provide cryptoasset borrowing, lending and staking models/arrangements to UK consumers.
 - c.** Gains or losses experienced by UK consumers in relation to cryptoasset borrowing, lending and staking models/arrangements.
- Q7:** Are there any other issues we should take account of when considering our approach when developing regulatory requirements for cryptoasset borrowing, lending and staking models/arrangements?

Annex 1

Draft non-handbook guidance: Cryptoasset financial promotions

Introduction

1. The guidance provides information on, and sets out the FCA's expectations in relation to, the communication and approval of financial promotions relating to cryptoassets.
2. Within this guidance, we set out our views of how firms should approach ensuring that financial promotions relating to qualifying cryptoassets comply with the FCA's rules, in particular the requirement that a financial promotion is fair, clear and not misleading.

Who should read this guidance?

3. This guidance is particularly relevant to:
 - Authorised persons which communicate or approve financial promotions relating to qualifying cryptoassets
 - Persons registered with the FCA under the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 (the 'MLRs') and which communicate financial promotions relating to qualifying cryptoassets
 - Other persons involved in the communication of financial promotions relating to qualifying cryptoassets, including cryptoasset firms not registered with the FCA under the MLRs, social media influencers and platforms
4. In this guidance references to 'firms' should be read as referring both to authorised persons and cryptoasset businesses registered under the MLRs. This guidance will also be of relevance for other firms seeking to comply with our rules, including firms considering promoting to UK consumers.
5. We recognise that the cryptoasset market is evolving rapidly and will keep this guidance under review as market practice and regulation develops.

Context of the cryptoasset financial promotion regime

6. Under section 21 of the Financial Services and Markets Act 2000 ('FSMA'), a person must not, in the course of business, communicate an invitation or inducement to engage in investment activity (a financial promotion). This is known as the financial promotion restriction.

7. Financial promotions can take a wide variety of forms, including adverts placed through print, broadcast or online media, marketing brochures, emails, websites, apps or social media posts.
8. This financial promotion restriction does not apply if:
 - the promotion is communicated by an authorised person
 - the content of the promotion is approved by an authorised person
 - an exemption in the Financial Promotion Order 2005 ('FPO') applies.
9. For these purposes, references to an 'authorised person' are to those persons who are authorised for the purposes of section 31 of FSMA. It does not include persons who are only authorised under the Electronic Money Regulations 2011 or the Payment Services Regulations 2017. Unless they are also authorised under FSMA, these persons cannot communicate or approve financial promotions except where the promotion is approved by a FSMA authorised person or an exemption in the FPO applies.
10. Breach of the financial promotion restriction is a criminal offence which is punishable by up to two years imprisonment, the imposition of an unlimited fine, or both.
11. Guidance on the scope of the financial promotion regime is contained in Chapter 8 of the FCA's Perimeter Guidance Manual ('[PERG](#)').

Extension of the financial promotion regime to qualifying cryptoassets

12. With effect from 08 October 2023, promotions relating to 'qualifying cryptoassets' (referred to as 'cryptoassets' in the rest of this guidance) are within the scope of the financial promotion regime.
13. The definition of 'qualifying cryptoasset' that is in scope of this regime is set out in paragraph 26F of Schedule 1 to the FPO. Very broadly, 'qualifying cryptoassets' are any cryptographically secured digital representation of value or contractual rights that is transferable and fungible, but do not include cryptoassets which meet the definition of electronic money or an existing controlled investment.
14. This definition is broad and can apply to many different types of cryptoassets (eg fiat-backed stablecoins) as well as certain investment arrangements (eg 'so called' cryptoasset 'staking' and 'lending' and 'borrowing' models).
15. The effect of this extension is broadly that promotions to buy or sell qualifying cryptoassets or to engage in certain investment services relating to qualifying cryptoassets are subject to the financial promotion restriction.
16. However, it is important to be aware that not all investments which refer to, or involve, cryptoassets will be 'qualifying cryptoassets'. Firms will need to consider whether other regulations apply and whether they have the authorisation and appropriate permissions to conduct their business in the UK. For example, an arrangement relating to investment in, or which references, cryptoassets might constitute a Collective Investment Scheme

('CIS'), a derivative or other type of specified investment. The FCA has published [guidance](#) on what cryptoassets are likely to constitute a specified investment and you can also understand more about specified investments by reading [Chapter 2 of PERG](#).

17. It is vital that persons engaged in business relating to cryptoassets understand the regulatory characterisation of the investment or business in which they are engaged. This is because this characterisation will have serious implications for the person engaged in that investment or business.
18. Activities relating to cryptoassets, especially those that constitute a specified investment, may constitute a regulated activity. Under section 19 of FSMA a person cannot carry out regulated activities by way of business in the UK, or purport to do so, unless that person is authorised or exempt. This is known as the general prohibition. **A breach of the general prohibition is a criminal offence and punishable by up to two years imprisonment, an unlimited fine, or both.** Under section 26 of FSMA an agreement made in breach of the general prohibition by an unauthorised person is unenforceable against the other party. The other party to the agreement is entitled to recover: a) any money or other property paid or transferred by them under the agreement; and b) compensation for any loss sustained by them as a result of the agreement. The FCA has a comprehensive suite of civil, regulatory and criminal enforcement powers which it may consider deploying in relation to such breaches, including action under the Proceeds of Crime Act 2002 to recover benefit from criminal activity.
19. If the investment amounts to a unit in a CIS this also has implications in terms of the way in which the investment can be promoted. In particular that units in a CIS are subject to restrictions on their promotion under section 238 of FSMA.

Exemption for MLR-registered cryptoasset businesses

20. The Government has provided a bespoke exemption in the FPO (Article 73ZA) for cryptoasset businesses registered with the FCA under the MLRs. This exemption enables cryptoasset businesses which are registered with the FCA under the MLRs, but which are not otherwise authorised persons for the purposes of FSMA, to: i) communicate their own cryptoasset financial promotions; ii) have cryptoasset financial promotions communicated on their behalf, without breaching the financial promotion restriction. Financial promotions can only be made on behalf of MLR-registered firms where the MLR-registered firm has prepared the contents of the communication and it complies with our financial promotion rules.
21. MLR-registered cryptoasset businesses cannot approve cryptoasset promotions or communicate financial promotions in relation to other controlled investments in reliance on the exemption.

Authorised firms considering approving cryptoasset-related financial promotions

- 22.** Authorised persons must not approve cryptoasset financial promotions unless they have the appropriate competence and experience to do so (COBS 4.10.9A). Authorised firms which intend to approve cryptoasset financial promotions should also refer to our separate updated [guidance](#) on approving financial promotions.
- 23.** Authorised persons approving the financial promotions of unauthorised persons may require specific permission from the FCA to be able to do so (section 55NA FSMA). Until such time as the new gateway regime is in force, we would expect authorised firms considering approving cryptoasset financial promotions to notify us before doing so in accordance with Principle 11 (relations with regulators) and SUP 15.

FCA rules

- 24.** The FCA's cryptoasset financial promotion rules apply to:
- authorised persons communicating or approving financial promotions relating to qualifying cryptoassets
 - MLR-registered persons communicating financial promotions in reliance on the exemption in Article 73ZA of the FPO.
- 25.** These rules are set out in [PS23/6](#) and primarily consist of:
- Principle 7 (Communications with clients)
 - Relevant parts of GEN (Statements about authorisation and regulation by the appropriate regulator, use of FCA logo)
 - COBS 4 (Communicating with clients, including financial promotions)
 - COBS 10 (Assessing appropriateness).
- 26.** The requirement which underpins these rules is that a financial promotion must be fair, clear and not misleading (COBS 4.2.1 R).
- 27.** Authorised persons are also reminded of their obligations under Principle 12 and PRIN 2A.

Ensuring that cryptoasset promotions are fair, clear and not misleading

- 28.** The relatively recent emergence of cryptoassets as an asset class means that investment in cryptoassets is often subject to novel risks which are unlikely to be widely understood by prospective retail investors. In addition, the variety of cryptoassets and cryptoasset related models, and the potentially opaque nature of these investments that are marketed to consumers increases the risk that individuals do not fully understand the investments that are communicated to them. We continue to believe that cryptoassets are high risk investments and that investors may lose all the money they invest.

- 29.** Given the lack of transparency regarding the purpose/functionality of some cryptoassets and cryptoasset related models, we expect firms to undertake significant due diligence of the underlying cryptoassets and take particular care in the information that is communicated, and the way in which it is communicated, to ensure that financial promotions are fair, clear and not misleading. We expect firms communicating financial promotions, or approving financial promotions for communication to, consumers relating to cryptoassets, to give careful consideration to their information needs. In developing and reviewing financial promotions, firms should be particularly mindful of the need to ensure that recipients of promotions are well equipped to take informed decisions as to the appropriateness, or otherwise, of an investment for them. Consumers should be presented with information that enables them to take clear and considered decisions and to determine when an investment is unlikely to be appropriate for them.
- 30.** Against this background, the following sections of this guidance consider some implications of our rules in relation to promotions of particular types of cryptoassets and cryptoasset related models.

All cryptoasset financial promotions

- 31.** Firms should apply our rule that all cryptoasset financial promotions must be fair, clear and not misleading (COBS 4.2 and where applicable, Principle 7 and PRIN 2A.5.3) in a way which is appropriate and proportionate. Firms should take account of the means of communication, the information that is intended to be conveyed and the type of consumer receiving this information. The information must be sufficient for, and presented in a way that is likely to be understood by, the consumer to whom it is directed or by whom it is likely to be received (COBS 4.5).
- 32.** When assessing whether a financial promotion is fair, clear and not misleading firms should consider both the substance and presentation of the promotion. A firm may need to consider at least the following factors when assessing whether a promotion is fair, clear and not misleading:
- a.** Clarity and comprehension of the promotion. Firms should ensure that all promotional materials are presented in a way that is easy to understand by consumers, having regard to the information needs of the likely recipients of the promotion. Firms should avoid using unnecessary jargon or complex language that may confuse or mislead consumers. Important information, statements or warnings should not be disguised, diminished or obscured. We recommend firms review our previous [non-Handbook guidance on prominence for financial promotions](#) as well as the specific prominence requirements for risk warnings and risk summaries set out in COBS 4.12A.
 - b.** Providing a balanced view of information. Firms should provide a balanced view of the potential risks and rewards associated with cryptoassets. Firms should avoid giving a prominent promotion of the benefits without providing an equally prominent indication of the risks involved.
 - c.** Exaggerated claims. Firms should avoid making exaggerated claims about the potential benefits of cryptoassets. For example, claims about the return generated

from investing in a cryptoasset or cryptoasset related model when the claim itself is not a true representation of what a consumer can reasonably expect to make.

- d.** Omission of relevant information. Firms should not omit relevant information that would affect the ability of consumers to make an informed decision about the overall investment proposition. For example, promoting a firm's services as 'commission free' without giving an equally prominent indication of other costs, fees and charges that may apply.
- e.** Accuracy of information. Firms should ensure that all supporting information in the financial promotion, such as facts, figures, and statements, are accurate, up-to-date, and substantiated. Firms that rely on graphics and images should ensure they are current and not produced in a way that would give a misleading impression about the investment.
- f.** Past and future performance. Where the information contains an indication of future performance, firms should ensure that information is based on reasonable assumptions supported by up-to-date data. Where a financial promotion refers to past performance, there should be an adequate risk warning that past performance is not a reliable indicator of future results. Where a firm uses information on future performances, the information should be based on performance scenarios in different market conditions (both negative and positive scenarios) and reflect the nature and risks of the specific types of instruments included in the analysis. COBS 4.6 sets out rules firms must comply with when communicating about past and future performance.
- g.** Disclosure of costs, fees and charges. Firms should clearly outline any costs, fees and charges associated with their products. This could include transaction fees, exchange fees, platform fees, and any other charges. Firms should present this information in a straightforward and transparent manner so potential investors can make informed investment decisions.
- h.** Effective systems and controls. Firms should have effective systems and controls to monitor the compliance of their promotions with relevant rules and be able to amend or withdraw promotions in light of market developments or other events that can affect the fairness of claims made.

33. A firm should also consider our existing guidance in COBS 4. In particular, firms are reminded of our guidance in COBS 4.2.5G that a financial promotion should not describe a feature of a product or service as 'guaranteed', 'protected' or 'secure', or use a similar term unless:

- that term is capable of being a fair, clear and not misleading description of it; and
- the firm communicates all of the information necessary, and presents that information with sufficient clarity and prominence, to make the use of that term fair, clear and not misleading.

34. Firms are reminded of our guidance in COBS 4.2.4G (3) that a financial promotion that promotes an investment or service whose charging structure is complex, or in relation to which the firm will receive more than one element of remuneration, includes the information necessary to ensure that it is fair, clear and not misleading and contains sufficient information taking into account the needs of the recipients.

Financial promotions for cryptoassets that claim a form of stability or which claim their value is linked to a fiat currency

35. Certain cryptoassets are promoted on the basis that they offer a form of stability or that their value is linked to fiat currency. These are commonly referred to as 'stablecoins'.
36. To ensure promotions of these cryptoassets are fair, clear and not misleading we would expect firms communicating a financial promotion to conduct due diligence to ensure that claims regarding stability or links to a fiat currency are capable of being fair, clear and not misleading. We would also expect firms to have regard to our guidance in COBS 4.2.5, ensuring that a firm communicates all of the information necessary, and presents that information with sufficient clarity and prominence, to meet the requirements to be fair, clear and not misleading.
37. We would expect firms to be able to demonstrate that claims of stability or links to a fiat currency are bona fide. For example, by providing details of how the form of stability is maintained and any assets used to maintain the stability. We also expect firms to consider the potential harm to consumers and be confident that any claims made by the issuer are genuine. Firms should not use terms that could mislead consumers such as "inflation resistant".
38. We generally expect that financial promotions are 'stand-alone compliant'. This means that each stage of a financial promotion must comply on its face with our rules. However, we recognise that promotions of complex investments might require a high volume of supporting information or disclosure in order to ensure that they are fair, clear and not misleading. In this case, firms may include supporting hyperlinks or separate pathways for a consumer to access this information to make an informed decision. Links to additional information should be clearly and prominently brought to the consumer's attention and should provide consumers with enough information to make an informed decision.
39. For the avoidance of doubt, we would consider a cryptoasset claiming a form of stability or whose value is linked to that of a fiat currency to be in breach of the requirements in COBS 4.2 and, where applicable Principle 7 and PRIN 2A.5.3, where the cryptoasset primarily relies on an algorithm or a reserve of other cryptoassets to achieve this claim. We would also consider claims that these cryptoassets can be a 'store of value' to be in breach of the requirements in COBS 4.2 and, where applicable Principle 7 and PRIN 2A.5.3, where it primarily relies on an algorithm or a reserve of other cryptoassets.
40. As part of the wider consumer journey requirements outlined in [PS23/6](#), we would expect risks specific to this type of cryptoasset to be disclosed in the risk summary and consumers robustly assessed against their understanding of these risks as part of the appropriateness assessment.
41. We will keep this guidance under review and consider if changes are needed in light of market or regulatory developments, such as the forthcoming regulatory framework for stablecoins.

Financial promotions for cryptoassets that claim to be backed by a commodity or an asset

- 42.** A financial promotion for a cryptoasset that claims to be backed by a commodity (eg gold) or an asset will be assessed against our rules that require financial promotions to be fair, clear and not misleading.
- 43.** To comply with this requirement, we would expect firms that communicate or approve a financial promotion to have sufficient evidence to ensure that any claim of commodity or asset backing is capable of being fair, clear and not misleading. Firms should also have regard to our guidance in COBS 4.2.5, ensuring that a firm communicates all of the information necessary, and presents that information with sufficient clarity and prominence, to meet the requirements for being fair, clear and not misleading. As part of this, we would expect firms to provide evidence to consumers, either directly in the promotion or through supporting hyperlinks, about the ownership of the commodity or assets.
- 44.** We would expect firms to clearly set out what particular model/arrangement the cryptoasset uses. For example, whether the cryptoasset only tracks or references the value of the underlying commodity or asset, or whether the cryptoasset acts as a digital representation of ownership of the underlying commodity or assets.
- 45.** For greater certainty, a financial promotion for any cryptoasset that claims to be backed by a commodity or asset would be unlikely to be considered to be fair, clear and not misleading, unless it sets out with sufficient clarity and prominence the following:
- Proof of ownership of the underlying commodity/asset, such as through disclosures, independent audits or proof of deposits. Evidence of the underlying commodity/asset should be made available to potential consumers, such as through the consumer journey, before an investment is made.
 - Evidence of the custodian (if any) responsible for the underlying assets and the relationship with the issuer, including where the commodity/asset is held. In particular, it should be clear to consumers 'who' the custodian is and what services they are providing. When approving or communicating a financial promotion, consideration should be given to whether the firm has relevant permissions to custody in the UK.
 - Clear terms of redemption for consumers, including the timescales for redemption, fees and the asset that is redeemed. Information on redemption should be made available to potential consumers, such as through the consumer journey, before an investment is made.
 - The risk that the consumer will lose some or all of their money in the event that the issuer becomes insolvent or otherwise fails.
 - Any further reasonably foreseeable dependencies that may significantly impact the value or volatility of the underlying asset.
- 46.** As part of the wider consumer journey requirements outlined in [PS23/6](#), we would expect risks specific to this type of cryptoasset to be disclosed in the risk summary and consumers should be robustly assessed against their understanding of these risks as part of the appropriateness assessment.

- 47.** Some of these cryptoassets and associated models/arrangements may constitute or involve a specified investment, such as a derivative or a unit in a CIS. As set out at the beginning of this guidance, it is vital that persons engaged in business relating to cryptoassets understand the regulatory characterisation of the investment or business in which they are engaged. This characterisation will have serious implication for firms, including potential breaches of the general prohibition which is a criminal offence punishable by up to two years imprisonment, an unlimited fine, or both.
- 48.** We will keep this guidance under review and consider if changes are needed in light of market or regulatory developments.

Financial promotions for complex yield cryptoasset models or arrangements

- 49.** For the purposes of this guidance, a financial promotion for a complex yield cryptoasset model/arrangement is a financial promotion where a person (A) advertises the possibility for another person (B) to transfer or make available their cryptoassets to A to use (either directly or indirectly). In return, B will receive a rate of return, for example, engaging in staking or borrowing and lending arrangements. To provide additional clarity, cryptoasset 'staking' is primarily a term used to refer to the holding/locking of cryptoassets for a set period of time to help verify layer 1 blockchain transactions under a proof of stake consensus mechanism. Under this system, network participants who want to support the blockchain by validating new transactions and adding new blocks, must 'stake' set sums of a cryptoasset. A winner is then picked at random to add the new block and is paid a reward in return. In return for staking their cryptoassets, a consumer may earn more cryptoassets.
- 50.** Cryptoassets can sometimes be promoted as part of complex yield models or arrangements that claim that certain rates of return can be achieved. In ensuring that such claims are fair, clear and not misleading, we would expect firms to conduct appropriate due diligence before communicating a financial promotion containing claims of this nature.
- 51.** Given the inherent complexity and risks associated with these models/arrangements, firms should take particular care when promoting these to consumers. We would expect firms to consider the possible harms these models/arrangements could expose consumers to and whether they are likely to be appropriate for consumers.
- 52.** We expect firms to clearly communicate the risks with these models/arrangements and demonstrate their ability to meet any rates of return through documentation and publicly available evidence (eg such as through past performance). Any use of data on past performance must comply with the relevant rules in COBS 4.6.
- 53.** A financial promotion of a complex yield model or arrangement would be unlikely to be considered as fair, clear and not misleading, unless it sets out with sufficient clarity and prominence the following:
- Clear evidence of how the advertised rates of return can be achieved. Evidence of achieving the advertised rates of return should be made available to potential

consumers before an investment is made. Advertised rates should not be promoted as guaranteed.

- Clear and prominent disclosure of any fees, default rates, commissions, or other charges within the investment's structure or elsewhere that could materially affect the ability of the provider to deliver advertised or targeted rates of return.
- Firms offering a target rate of return should be able to demonstrate they have appropriate access to data and systems and controls in place to ensure all targeted rates of return are kept up to date.
- Clear and prominent disclosure of the legal and beneficial ownership of a consumer's cryptoassets once they enter into an arrangement and the consequences if something goes wrong (eg firm failure).
- That the client is aware of the business model of the firm and all relevant risks associated with the model or arrangement, such as risks to the firm if they provide additional onward transactions or if associated contractual arrangements fail.

54. Investments that offer high yields of return are often high risk and consumers should be comfortable with the risks associated with this before making an investment decision. As part of the wider consumer journey outlined in [PS23/6](#), we would expect risks specific to these types of cryptoasset models/arrangements to be disclosed in the risk summary and consumers should be robustly assessed against their understanding of these risks as part of the appropriateness assessment.

55. Firms should be aware that some of these cryptoasset and associated models/arrangements may constitute or involve a specified investment, such as a derivative or a unit in a CIS. As set out at the beginning of this guidance, it is vital that persons engaged in business relating to cryptoassets understand the regulatory characterisation of the investment or business in which they are engaged. This characterisation will have serious implications for firms, including potential breaches of the general prohibition which is a criminal offence punishable by up to two years imprisonment, an unlimited fine, or both.

Financial promotions on social media

56. Firms are increasingly relying on social media and other forms of digital communication to promote their products. Firms communicating or approving financial promotions to be used through this type of channel are reminded of our [guidance](#) on our approach to financial promotions on social media (FG15/4).

57. We would like to remind all persons promoting on social media that the financial promotion regime is technology neutral and applies to financial promotions made on social media platforms (including, for example, Reddit, Discord and Telegram). Therefore, the financial promotion restriction (set out at the beginning of this guidance) also applies to these communications. A breach of the financial promotion restriction **is a criminal offence punishable by up to two years imprisonment, the imposition of a fine, or both**. Persons who do wish to promote on social media are reminded to consider our recent [infographic](#) designed to help influencers when they are approached with the opportunity to promote a financial product.

Due diligence before a financial promotion is communicated

- 58.** To ensure a financial promotion is fair, clear and not misleading firms should disclose the risks relevant to the financial promotion and the underlying cryptoasset. Anyone who communicates a financial promotion for a cryptoasset should have sufficient evidence, and carry out due diligence, on the substance of a promotion and underlying cryptoasset before communicating a financial promotion in order to accurately disclose risks to consumers in way that is fair, clear and not misleading.
- 59.** The extent and substance of the analysis and due diligence needed to disclose the relevant risks will vary from case-to-case and will depend on, amongst other things: i) the form of the promotion; ii) the content of the promotion; iii) the nature of the cryptoasset. A firm may need to consider (amongst other things):
- The authenticity and accuracy of the proposition described in the relevant promotion. This may mean undertaking background checks on the issuer, developers or other key individuals associated with the cryptoasset. It may also include reviewing the white paper and other documentation associated with the cryptoasset to ensure the proposition described in the promotion is accurate and has a reasonable chance of success.
 - Ensuring the cryptoasset is not linked to fraudulent activity, scams, money laundering or other financial crime.
 - Understanding the operational or technological risks. This may require a firm to take reasonable steps to check the technological and operational risks associated with the cryptoasset, such as risks related to the blockchain platform it uses and understand its vulnerability to hacks or code exploits. Any operational or technological risks should be clearly conveyed to consumers.
 - Understanding the environmental, social and governance risks associated with the cryptoasset. This may require a firm to take reasonable steps to check whether any claims promoting potential environmental, social or governance benefits are factual. Firms should also take reasonable steps to understand the risks to the cryptoasset due to decisions approved through an underlying governance protocol or directly by the issuer.
 - Conducting relevant legal and compliance checks, such as whether they are satisfied that the cryptoasset does not constitute a specified investment and that their activities in relation to the cryptoasset do not constitute regulated activities for which permission or exemption under FSMA would be required.
- 60.** Firms should form their own view of the risks associated with a cryptoasset in order to confirm that this requirement is satisfied. It is unlikely to be appropriate to accept at face value information provided by an unregulated person. That said, in carrying out the types of assessment and analysis described here, firms may be able to rely on information and analysis properly prepared by independent professional advisers. Firms should consider the appropriateness of relying on this type of information on a case-by-case basis.
- 61.** Authorised firms considering approving a cryptoasset financial promotion should consider the relevant guidance on due diligence set out in our guidance on [approving financial promotions](#).

Disclosing legal and beneficial ownership of cryptoassets

- 62.** If ownership of a cryptoasset changes, for example, in a staking relationship, firms should clearly and prominently disclose the changes to legal and beneficial ownership of the cryptoasset before a consumer proceeds to enter into an agreement with a firm. In particular, firms should clearly and prominently disclose 'who' owns the legal and beneficial rights to the cryptoasset during the course of the agreement.
- 63.** As part of the appropriateness assessment, we would expect firms to assess whether consumers understand their legal and beneficial rights, and risks associated with these rights, if they enter into an agreement with a firm, such as the risks to the consumer in the event of the firms' insolvency.

Disclosing the firm's regulated status

- 64.** Firms should clearly and prominently disclose their regulated status to consumers. In particular, firms registered under the MLRs should not suggest or imply that they are authorised by the FCA or that their MLR status is equivalent to being authorised. Firms should not suggest or imply that their underlying cryptoasset activities or the cryptoassets themselves are regulated by the FCA.
- 65.** We remind firms that our existing guidance in COBS 4 and GEN in relation to firms disclosing their regulated status also applies to cryptoasset financial promotions. In particular:
- A firm should not indicate or imply that it is authorised by the FCA in respect of business for which it is not so authorised.
 - A firm should not indicate or imply that it is regulated or otherwise supervised by the FCA in respect of business for which it is not regulated by the FCA.
 - It is a criminal offence for a firm that is not authorised by the FCA to state or imply that it is so authorised. It is also likely to be misleading for a firm to state or imply that a client will have recourse to the Financial Ombudsman Service or the Financial Services Compensation Scheme where this is not the case. This is particularly important in relation to cryptoassets.
 - A firm that names the *FCA*, as its regulator and refers to matters not regulated by the *FCA* should make clear that those matters are not regulated by the *FCA*. <https://www.handbook.fca.org.uk/handbook/glossary/G2975.html>

Complying with FCA requirements

- 66.** This guidance is not exhaustive and is not a complete description of the steps which firms should take when communicating cryptoasset financial promotions, or approving such promotions or communication, to consumers. It is up to firms to determine the extent of the analysis or review needed to confirm that a financial promotion complies with our rules.

