

**FG23/3**

# Finalised non-handbook guidance on Cryptoasset Financial Promotions

**November 2023**

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## Chapter 1

# Summary

- 1.1** On 8 June 2023, following the Government making the relevant legislation, we published our final rules ([PS23/6](#)) for cryptoasset financial promotions. A central requirement of our financial promotion rules is that financial promotions must be fair, clear, and not misleading. To ensure firms clearly understand the implications of this requirement for cryptoasset promotions, alongside our final rules, we also published a consultation on our proposed Guidance.
- 1.2** The consultation on Guidance closed on 10 August 2023. Having considered the feedback received, the finalised Guidance can be found in Chapter 2 below. The Feedback Statement in the Annex gives a summary of this feedback, along with our responses.
- 1.3** The Guidance set out below does not create new obligations for firms, but relates to firms existing regulatory obligations. The Guidance need not be followed to achieve compliance with the relevant rule or requirement. However, if a person acts in accordance with this Guidance in circumstances contemplated by the Guidance, we will treat that person as having complied with the rule or requirement to which that guidance relates.
- 1.4** We now have a secondary international competitiveness objective, which came into force on 29 August 2023. The objective was not in effect when we published our final rules. However, as set out in [PS23/6](#), we considered the spirit of the secondary objective when finalising the rules to which this Guidance relates. Paragraphs 6.48-6.51 of [PS23/6](#) outlines our approach that our overall policy for cryptoassets financial promotions is to protect consumers while allowing for beneficial innovation, which can support long-term economic growth in the UK.
- 1.5** While the secondary objective was not in force when we initially consulted on this Guidance, it has now come into effect ahead of the Guidance being finalised. This Guidance continues to focus on our primary objective of reducing consumer harm and clarifies our expectations of firms, helping to support better compliance with the relevant rules and deliver better overall consumer outcomes. These actions aim to support long-term economic growth in the UK by reducing the instances of loss of trust in financial services caused by customers not fully understanding the risk when purchasing cryptoassets. Clearer and fairer promotions will enable consumers to be better informed to make appropriate decisions aligned with their needs and risk profile.

## Chapter 2

# Guidance on Cryptoasset Financial Promotions

## Introduction

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- 2.1** This Guidance provides information on, and sets out our expectations of, the communication and approval of financial promotions relating to qualifying cryptoassets. The Guidance does not create new obligations for firms but relates to firms' existing regulatory obligations.
- 2.2** Within this Guidance, we set out our views of how firms may approach ensuring that financial promotions relating to qualifying cryptoassets comply with our rules as set out in [PS23/6 \(Financial promotion rules for cryptoassets\)](#). In particular, the requirement that a financial promotion is fair, clear and not misleading.
- 2.3** Authorised persons communicating or approving financial promotions also need to consider their obligations under the Consumer Duty ('the Duty'). This Guidance highlights the type of steps which authorised persons may need to consider taking to meet these obligations under the Duty.

## Who should read this Guidance?

- 2.4** This Guidance is relevant to:
- authorised persons who 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') ('MLR registered persons') and who communicate financial promotions relating to qualifying cryptoassets relying on the exemption in Article 73ZA of the Financial Services and Markets Act 2000 (Financial Promotion) Order 2005 ('FPO')
  - other persons involved in the communication of financial promotions relating to qualifying cryptoassets, including cryptoasset firms who are not MLR registered persons, social media influencers and platforms
- 2.5** In this Guidance references to 'firms' are to both authorised persons and MLR registered persons.
- 2.6** This Guidance will also be relevant for other firms, individuals and unauthorised persons who are seeking to understand or comply with our rules or are considering communicating cryptoasset financial promotions to UK consumers.

- 2.7** Our cryptoasset financial promotion rules apply to:
- authorised persons communicating or approving financial promotions relating to qualifying cryptoassets
  - MLR registered persons communicating financial promotions relating to qualifying cryptoassets in reliance on the exemption in Article 73ZA of the FPO
- 2.8** This Guidance is designed to help firms comply with our cryptoasset financial promotion rules, in particular, the core requirement that promotions are fair, clear and not misleading (COBS 4.2.1 R, Principle 7, PRIN 2A.5.3 R). This requirement applies to all promotions communicated or approved by authorised persons or communicated by MLR registered persons. While this Guidance is primarily designed to help firms comply with this core requirement in relation to promotions to retail investors, firms communicating cryptoasset promotions to professional investors may also find it helpful to consider this Guidance.
- 2.9** Authorised persons communicating or approving financial promotions also need to consider their obligations under the Duty, set out in Principle 12 and PRIN 2A. This Guidance highlights the type of steps which authorised persons may need to consider taking to meet their obligations under the Duty.
- 2.10** We know 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

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- 2.11** 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. A breach of this restriction is a criminal offence punishable by up to 2 years imprisonment, an unlimited fine, or both.
- 2.12** The 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 FPO applies

For these purposes, references to an 'authorised person' are to 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.

- 2.13** A financial promotion is an invitation or inducement to engage in investment activity. It can take many forms, including adverts placed in print, broadcast or online media, marketing brochures, emails, websites, apps or social media posts.
- 2.14** Chapter 8 of our Perimeter Guidance Manual ('PERG') gives guidance on the scope of the financial promotion regime.

## Extending the financial promotion regime to qualifying cryptoassets

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- 2.15** The definition of 'qualifying cryptoassets' 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 are transferable and fungible. They do not include cryptoassets which meet the definition of electronic money or an existing controlled investment.
- 2.16** The definition of 'qualifying cryptoassets' is broad and so it can cover many different types of cryptoassets (e.g. fiat-backed stablecoins). As a result, the extension of the financial promotion regime will apply to the communication of a wide range of promotions involving cryptoassets and related services and arrangements.
- 2.17** Beyond the financial promotion restriction, firms will also need to consider whether any of their activities involving cryptoassets are regulated and whether they have the required authorisation and appropriate permissions to conduct their business in the UK. For example, the Government has not, at this time, extended the regulatory perimeter to 'qualifying cryptoassets', and so they do not constitute a specified investment under the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 ('RAO'). However, an arrangement relating to investment in, or which references, cryptoassets, might constitute a Collective Investment Scheme ('CIS') or units in a CIS. Derivatives relating to qualifying cryptoassets might also be specified investments. Activities carried out in relation to such derivatives might be regulated activities and firms carrying out these activities may need to be authorised under FSMA. We have published guidance on what cryptoassets are likely to constitute a specified investment and there is more detail about specified investments and regulated activities in Chapter 2 of PERG.
- 2.18** It is vital that those engaged in business relating to cryptoassets understand the regulatory characterisation of the investment or business in which they are engaged. This is because the characterisation will have serious implications for the person engaged in that investment or business.
- 2.19** Activities relating to cryptoassets, especially cryptoassets that are within the definition of a specified investment, such as derivatives or units in a CIS, may be regulated activities. 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 2 years imprisonment, an unlimited fine, or both.** Subject to section 28, under section 26 of FSMA, an agreement which is entered into 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 using in relation to such breaches, including action under the Proceeds of Crime Act 2002 to recover benefit from criminal activity.

- 2.20** If the investment amounts to a unit in a CIS this also has implications for the way that the investment can be promoted. Units in a CIS are subject to specific restriction on their promotion by authorised persons under section 238 of FSMA.

## Exemption for MLR-registered cryptoasset businesses

- 2.21** 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 MLR registered persons, which are not otherwise authorised persons for the purposes of FSMA, to: i) communicate **their own** cryptoasset financial promotions; and 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 persons where the MLR registered person has prepared the contents of the communication. In communicating financial promotions, or preparing financial promotions for communication on their behalf, MLR registered persons must comply with the relevant financial promotion rules.
- 2.22** MLR registered persons can only communicate their own financial promotions about cryptoassets based on this exemption. They cannot approve cryptoasset promotions (whether their own or those of other firms) or communicate their own financial promotions involving other controlled investments (as set out in [Schedule 1 to the FPO](#)) based on the exemption.
- 2.23** Unauthorised firms that are not registered in the UK under MLRs, cannot rely on this exemption.

## Authorised persons considering approving cryptoasset-related financial promotions

- 2.24** Authorised persons must not approve cryptoasset financial promotions unless they have the appropriate competence and expertise to do so (COBS 4.10.9AR). Authorised persons that intend to approve cryptoasset financial promotions should also read our separate [guidance](#) on approving financial promotions.
- 2.25** From 7 February 2024, authorised persons approving the financial promotions of unauthorised persons can only do so within the scope of: a) a specific permission granted by the FCA; or b) a relevant exemption (section 55NA FSMA). Authorised persons considering approving cryptoasset financial promotions for unauthorised persons need to consider whether they require our permission to do so.
- 2.26** Authorised persons must ensure that the promotion they are approving complies with the relevant financial promotion rules (COBS 4.10.2 R (1)) as well as the relevant rules under the Consumer Duty and must act to deliver good outcomes for the retail consumers who will see the promotion.

## Application of FCA rules to firms communicating or approving financial promotions

**2.27** Our cryptoasset financial promotion rules apply to:

- authorised persons communicating or approving financial promotions relating to qualifying cryptoassets MLR registered persons communicating financial promotions relating to qualifying cryptoassets in reliance on the exemption in Article 73ZA of the FPO. These rules are set out in PS23/6 and primarily consist of:
  - Principle 7 (Communications with clients) applies to: i) authorised persons communicating financial promotions, or approving financial promotions for communication, to professional investors; and ii) MLR registered persons
  - Principle 12 and PRIN 2A applies to authorised persons communicating or approving financial promotions addressed to, or likely to be received by, retail customers
  - 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).

**2.28** The requirement which underpins these rules is that a financial promotion must be fair, clear and not misleading (COBS 4.2.1 R, Principle 7, PRIN 2A.5.3 R).

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

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**2.29** The relatively recent emergence of cryptoassets as an asset class means these investments are often subject to novel risks which are unlikely to be widely understood by prospective retail consumers. The variety of cryptoassets and cryptoasset related models, and the relative opaque nature of these investments, also increases the probability that individuals do not fully understand the investments promoted to them and the associated risks. We continue to believe that cryptoassets are high risk investments and that consumers should understand they may lose all the money they invest.

**2.30** Given the lack of transparency about the purpose/functionality of some cryptoassets and cryptoasset related models, we expect firms to undertake significant due diligence on the cryptoassets to be promoted. We expect firms to take particular care with the information they give, and the way in which it is communicated, to ensure financial promotions are fair, clear and not misleading. We expect firms communicating or approving cryptoasset financial promotions to carefully consider consumers' information needs. In developing and reviewing financial promotions, firms should be particularly aware of the need to ensure that those receiving promotions are well equipped to take clear, considered and informed decisions as to whether investing in cryptoassets is right for them.



**2.31** Against this background, the following sections of this Guidance consider some of the implications of our rules for promotions of particular types of cryptoassets and cryptoasset-related models.

## All cryptoasset financial promotions

**2.32** All cryptoasset financial promotions must be fair, clear and not misleading (COBS 4.2 and, where applicable, Principle 7 or Principle 12 and PRIN 2A.5.3R where the Duty applies). In meeting this standard, firms should consider the means of communication, the information that is intended to be conveyed and the type of consumer intended or expected to receive the information. The information must be sufficient for and presented in a way that is likely to be understood by the type of consumer to whom it is directed, or who is likely to receive it (COBS 4.5).

**2.33** When assessing whether a financial promotion is fair, clear and not misleading firms should consider both the promotion's substance and presentation. A firm may need to consider the following factors when assessing this:

- 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, considering 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 in financial promotions](#) as well as the specific prominence requirements for risk warnings and risk summaries in COBS 4.12A.
- b.** Consumers' understanding of risks. Firms should ensure that the promotion enables consumers to take an informed view on the risks of investing in cryptoassets. Promotions should not trivialise the risks involved or take advantage of consumers' lack of experience or knowledge.
- c.** Providing a balanced view of information. Firms should provide a balanced view of the potential risks and rewards associated with cryptoassets. Firms should avoid prominently promoting the benefits without providing an equally prominent indication of the risks involved.
- d.** 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.
- e.** Omitting relevant information. Firms should not omit information that would affect consumers' ability 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. Omitting relevant information will mean that the promotion is not fair, clear and not misleading.

- f.** 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.
- g.** Past and future performance. COBS 4.6 sets out rules which firms must comply with when communicating or approving financial promotions which include information about past performance. Firms should also have regard to the rules in that section on communicating information about future performance. Where a financial promotion refers to past performance, it must include an adequate risk warning that past performance is not a reliable indicator of future results. Where the information includes an indication of future performance, firms should ensure that information is based on reasonable assumptions supported by up-to-date data. The information should be based on performance scenarios in different market conditions (both negative and positive) and reflect the nature and risks of the specific types of investments included in the analysis.
- h.** Disclosing costs, fees and charges. Financial promotions should clearly outline any costs, fees and charges for the products or services promoted. This could include transaction fees, exchange fees, platform fees, and any other charges. Firms should present this information in a straightforward and transparent way so potential consumers can make informed investment decisions.
- i.** Effective systems and controls. Firms should have effective systems and controls to monitor the compliance of their promotions or promotions they approve with relevant rules and be able to amend or withdraw promotions in light of market developments or other events that could affect the fairness of claims made (in relation to the responsibilities of approvers, see COBS 4.10.2 R (1A)).

**2.34** Firms should also consider our existing guidance in COBS 4. In particular, we remind firms of our guidance in COBS 4.2.5 G 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 it with sufficient clarity and prominence, to make the use of the term fair, clear and not misleading.

**2.35** We also remind firms of our guidance in COBS 4.2.4 G (3) that a financial promotion:

- that promotes an investment or service whose charging structure is complex, or
- for 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 recipients' needs (ie the needs of the consumers to whom the promotion is directed).

**2.36** 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, we know that promotions of complex investments might require a high volume of supporting information or disclosure to ensure they communicate all the information a consumer

might need. In this case, firms may include supporting hyperlinks or separate pathways for a consumer to access this information to make an informed decision. Firms should clearly and prominently bring links to additional information to the consumer's attention and give them enough information to make an informed decision. Only including information on key risks in the later stages of the financial promotion consumer journey would not be sufficient to comply. [PS23/6](#) provides further detail on the requirements for the prescribed risk warning and associated risk summary, for digital and non-digital mediums of communication.

## Applying the Consumer Duty to cryptoasset financial promotions

- 2.37** We remind authorised persons communicating or approving cryptoasset financial promotions that the Duty (see [FG22/5](#) for further information) applies to them and came into force on 31 July 2023. Where applicable, the Duty will build upon the core requirement for communications to be fair, clear and not misleading and strengthen our expectations of authorised firms communicating or approving cryptoassets financial promotions.
- 2.38** The Duty sets high standards across retail financial services markets. In particular, the Duty consists of:
- a new Consumer Principle (Principle 12) for firms to act to deliver good outcomes for retail customers
  - cross-cutting rules
  - a suite of rules under 4 outcomes for products and services, price and value, consumer understanding, and consumer support
- 2.39** Authorised persons communicating or approving financial promotions will need to consider their responsibilities under the Duty's general obligations for firms, particularly the cross-cutting rules and the consumer understanding outcome.
- 2.40** The cross-cutting rules include obligations to act in good faith towards retail customers, to avoid causing them foreseeable harm and to enable and support them to pursue their financial objectives.
- 2.41** Acting in good faith and avoiding foreseeable harm requires authorised persons to take into account customers' interests when presenting information. In particular, an authorised person communicating or approving a cryptoasset financial promotion should act in good faith and not exploit or manipulate retail customers' behavioural biases and/or information asymmetries to mislead or create demand for a product. They should not take advantage of retail customers' vulnerabilities and avoid causing foreseeable harm. For example, cryptoasset financial promotions should not present communications in an unbalanced way where benefits are given undue prominence over risks or costs, or which trivialise risks to customers.
- 2.42** Foreseeable harm can be both a result of an act and an omission in the authorised firm's relationship with retail customers, such as, a failure to communicate clearly and in a timely way on the promoted cryptoassets's potential risks.

- 2.43** The Duty does not require firms to ensure customers always receive good investment returns: clearly cryptoassets carry a risk of loss. We do not expect firms to protect their customers from risks that they reasonably believed the customer understood and accepted. By the same measure, however, if, for example, all customers were losing money, we would generally expect firms to consider whether the continued promotion of the relevant cryptoasset was consistent with the Duty's outcomes.
- 2.44** The Duty rules build on, and go further than previous FCA disclosure rules, for example those in COBS 4, and requires authorised persons to support retail customers' understanding by ensuring that financial promotions:
- meet the information needs of customers
  - are likely to be understood by customers intended to receive them
  - equip customers to make decisions that are effective, timely and which are properly informed
  - are tailored to the characteristics of the customers intended to receive the financial promotion, having regard to any characteristics of vulnerability, the complexity of the relevant products, the communication channel to be used, and the role of the firm in communicating or approving the promotion
- 2.45** Authorised persons communicating and approving financial promotions should also consider the overall product or service and what the relevant target customers can reasonably be expected to understand. There are a wide variety of cryptoasset products and services with different structures and risk profiles, and the medium of communication used may also add to the risk or complexity of a particular campaign.
- 2.46** Some cryptoassets may have a range of complex features and risks that can be hard for customers to understand. Authorised persons will need to consider whether customers are likely to understand the information on risks and complexity of the promoted cryptoasset. Where the promotion and/ or the complexity of the cryptoasset are not likely to be understood, communicating or approving promotions for the relevant cryptoasset is unlikely to be compliant with firms' obligations under the Duty.
- 2.47** Firms should also consider how appropriate the method of communication is, particularly for promotions on social media. This will involve considering factors such as the likely audience on social media and the complexity of a product or service. Firms may want to use social media to signpost potential customers towards other channels where more comprehensive information can be provided.

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

- 2.48** 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'. Firms should take particular care when communicating or approving financial promotions involving cryptoassets which claim a form of stability or the value of which is linked to that of a fiat currency.

- 2.49** To ensure promotions of these cryptoassets are fair, clear and not misleading we would expect firms communicating or approving a financial promotion to conduct due diligence on claims about stability or links to a fiat currency. We would expect such 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.
- 2.50** We also expect firms to consider the potential harm to consumers and be confident that any claims regarding stability are genuine and can be substantiated. Firms should not use terms that could mislead consumers such as 'inflation resistant'.
- 2.51** Where the relevant cryptoasset primarily relies on an algorithm or holdings of other cryptoassets to make such claims, we would likely consider a financial promotion making claims of stability to be in breach of the requirements in COBS 4.2 and, where applicable, the Duty. 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 R, where such claims primarily rely on an algorithm or a reserve of other cryptoassets.
- 2.52** As part of the wider consumer journey requirements outlined in [PS23/6](#), we would expect firms to disclose risks specific to cryptoassets that claim a form of stability in the risk summary. We would also expect firms to robustly assess consumers against their understanding of these risks as part of the appropriateness assessment as part of the consumer journey requirements. The assessment should be designed to test the consumer has sufficient knowledge and experience of the specific type of service or cryptoassets being promoted.
- 2.53** We will keep this Guidance under review and consider if changes are needed in light of market or regulatory developments.

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

- 2.54** We expect firms that communicate or approve a financial promotion for a cryptoasset that claims to be backed by a commodity (for example, gold) or an asset to have sufficient evidence to ensure that any claim of commodity or asset backing is fair, clear and not misleading.
- 2.55** We expect firms to clearly set out what particular model or arrangement the cryptoasset uses. For example, whether the cryptoasset only tracks or references the value of the underlying commodity or asset, or whether it acts as a digital representation of ownership of the underlying commodity or asset.
- 2.56** A financial promotion relating to 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 or asset, such as through disclosures, independent audits or proof of deposits. Firms should make evidence of the underlying commodity or asset available to potential consumers, such as through the consumer journey, before they make an investment.

- Evidence of any custodian responsible for the underlying asset and details of the underlying custody agreement, including where the commodity or asset is held. In particular, it should be clear to consumers 'who' the custodian is, its relationship with the issuer and what services they are providing. When approving or communicating a financial promotion, firms should consider whether the custodian has relevant permissions to provide custody services in the relevant jurisdiction.
- Clear terms of redemption for consumers, including the timescales for redemption, fees, proof of ownership requirements of the cryptoasset redeemed and set out what asset is returned to the consumer. Firms should make information on redemption available to potential consumers throughout the consumer journey, including before consumers make an investment.
- The risk that the consumer will lose some or all of their money if the issuer or custodian(s) becomes insolvent.
- Any further reasonably foreseeable dependencies that may significantly affect the value or volatility of the underlying asset.

**2.57** As part of the wider consumer journey requirements outlined in [PS23/6](#), we would expect firms to disclose risks specific to this type of cryptoasset in the risk summary and to robustly assess consumers against their understanding of these risks as part of the appropriateness assessment as part of the consumer journey requirements. The assessment should be designed to test the consumer has sufficient knowledge and experience of the specific type of service or cryptoassets being promoted.

**2.58** Some of these cryptoassets and associated models/arrangements may constitute or involve a specified investment (for the purposes of the RAO), such as a derivative or a unit in a CIS. As the start of this Guidance sets out, 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.

## **Financial promotions for complex yield cryptoasset models or arrangements**

**2.59** For the purposes of this Guidance, a financial promotion for a complex yield cryptoasset model or arrangement is a financial promotion where a person (Person A) markets the possibility for another person (Person B) to transfer or make available (e.g. give control of) their cryptoassets to Person A to use (either directly or indirectly). In return, Person B will receive a rate of return.

**2.60** The activities underlying the financial promotions of complex yield models or arrangements for which consumers will receive a return may take a variety of forms. As a result, there will be differences in the complexity of such models and associated risks for consumers. For example, there will be distinct considerations within and between staking, borrowing or lending models or arrangements.

- 2.61** For financial promotions relating to lending and borrowing models there may be specific risks that should be disclosed, for example counterparty risk, credit risk, investment risk and general transparency of onward arrangements.
- 2.62** We also note there is no industry agreed terminology to define staking and there are a broad range of models that use the language of staking when communicating financial promotions. Notwithstanding this firms should consider the risks of the staking models or arrangements they are promoting, and whether today they may fall within the definition of a CIS.
- 2.63** Cryptoassets can sometimes be promoted as part of complex yield models or arrangements that claim certain rates of return can be achieved. In ensuring such claims are fair, clear and not misleading, we would expect firms to conduct appropriate due diligence before communicating or approving a financial promotion containing claims of this nature.
- 2.64** Given the complexity and risks associated with these models or arrangements, firms should take particular care when promoting these to consumers. We would expect firms to consider the possible harms these models or arrangements could expose consumers to, and whether they are likely to be appropriate for retail consumers.
- 2.65** We expect firms to clearly communicate the risks with these models or arrangements and demonstrate their ability to meet any promoted rates of return through documentation and publicly available evidence. Firms can use past performance information to support assertions about potential rates of return. However, it is important that any such use of past performance data complies with the relevant rules in COBS 4.6 and, in particular, that it is clear to recipients that past performance is not a reliable indicator of future results.
- 2.66** A financial promotion of a complex yield model or arrangement would be unlikely to be considered as fair, clear and not misleading, unless it set out with sufficient clarity and prominence the following:
- Clear evidence of how the advertised rates of return could be achieved. Evidence of achieving the advertised rates of return should be made available to potential consumers before an investment is made. We would generally expect an indication of future performance to be based on conditions including reasonable assumptions supported by objective data. Firms should consider the supporting documentation they should make available. This may include modelling, rationales and assumptions. The key is to make clear to consumers that there is evidence of how the rates of return have been calculated and that all relevant risks are accounted for. Advertised rates should not be promoted as 'guaranteed'.
  - Clear and prominent disclosure of the legal and beneficial ownership of a consumer's cryptoassets before they enter into an arrangement and the consequences if something goes wrong (for example, failure of the issuer or custodian).
  - Clear and prominent disclosure of any fees, fixed and or variable rates, commissions, or other charges within the investment's structure or elsewhere that could materially affect the provider's ability to deliver advertised or targeted rates of return.



- Firms of communicating or approving a promotion stating a target rate of return should be able to demonstrate they have appropriate access to data and systems and controls in place to ensure they keep all targeted rates of return up to date. In the case of an approved promotion, the approver must take reasonable steps to monitor the continuing compliance of the financial promotion for the lifetime of the promotion (COBS 4.10.2 R (1A)). An approver must withdraw approval if it becomes aware that the promotion no longer complies, for example, if the promoted rate of return is no longer deemed achievable (COBS 4.10.2 R (2)). Firms communicating their own promotions are reminded that the financial promotion rules apply for as long as a financial promotion is being communicated.
- That the consumer is aware of the business model and all relevant risks associated with the complex yield cryptoasset model or arrangement. For example, risks if there is rehypothecation of assets, additional onward transactions, if associated contractual arrangements fail, potential depreciation of the value of tokens, for example, from new minting, potential loss or hack of private keys held by firms.

**2.67** Investments that offer high yields are often high risk and consumers should be comfortable with the risks before making an investment decision. As part of the wider consumer journey outlined in [PS23/6](#), we would expect firms to prominently disclose risks specific to these types of cryptoasset models or arrangements in the risk summary. We would also expect firms to robustly assess consumers against their understanding of these risks as part of the appropriateness assessment as part of the consumer journey requirements. The assessment should be designed to test the consumer has sufficient knowledge and experience of the specific type of service or cryptoassets being promoted.

**2.68** Firms should be aware that 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 and/or the activities carried on in relation to them may constitute regulated activities that require authorisation under FSMA. As set out at the start 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 2 years imprisonment, an unlimited fine, or both.

## Financial promotions on social media

**2.69** We remind firms communicating or approving financial promotions intended for this type of channel of our existing Guidance on our approach to financial promotions on social media (FG15/4). Given the potentially broad reach of social media to different types of consumers in the UK, we also want to remind firms of the guidance set out in Para 1.35 of [PS23/6](#) regarding equality and diversity considerations. This includes accessibility guidelines and the expectation for firms to consider the intended recipients of the promotions they communicate or approve for example in the language used in the promotion.



- 2.70** We would like to remind all persons promoting on social media that the financial promotion regime and our financial promotion rules are technology neutral. They apply to financial promotions regardless of format or type of communication made on social media platforms (including, for example, YouTube, Reddit, X, Discord and Telegram). Therefore, the financial promotion restriction (set out at the start of this Guidance) also applies to communications through these platforms. Unauthorised persons who want to promote on social media may find it helpful to consider our [infographic](#) designed to help influencers when they are approached with the opportunity to promote a financial product or service as well as highlighting when they may be at risk of communicating financial promotions illegally.
- 2.71** Financial promotions on social media (including those communicated by, so called, finfluencers) should disclose any relevant commercial relationships, for example if they have been paid or commissioned to promote a cryptoasset or cryptoasset service.
- 2.72** We will keep this Guidance under review and consider if changes are needed in light of market or regulatory developments, including the upcoming broader Guidance on financial promotions on social media following consultation [GC23/2](#). Firms and individuals should also familiarise themselves with this draft Guidance.

## Due diligence before communicating a financial promotion

- 2.73** To comply with the existing requirements of the financial promotion regime firms will need to conduct due diligence on both the cryptoasset or cryptoasset service they are promoting (or in relation to which they are approving promotions), and any claims made in the promotion. There are 3 main reasons why firms will need to conduct due diligence.
- **Disclosing of risks.** To ensure a financial promotion is fair, clear and not misleading firms will need to conduct due diligence on the cryptoasset or cryptoasset service to understand its relevant risks. This is to enable firms to accurately and clearly disclose those risks in the promotion, including in the required risk summaries, and to assess consumers' understanding of those risks as part of the appropriateness assessment through the customer journey.
  - **Accuracy and fairness of claims made.** To ensure a financial promotion is fair, clear and not misleading firms should conduct due diligence on any claims made in the promotion. For example, claims about how a form of stability is maintained and claims on how advertised rates of return are achieved.
  - **Supporting good consumer outcomes.** Beyond being able to ensure that a promotion is fair, clear and not misleading, authorised persons communicating or approving cryptoasset financial promotions may need to conduct additional due diligence. This is to meet their obligations under the Duty, where relevant, to ensure promotions support good consumer outcomes and avoid causing foreseeable harm.
- 2.74** The extent and substance of the analysis and due diligence needed will vary from case-to-case. It will depend on, among other things: i) the form of the promotion; ii) the content of the promotion; iii) the nature of the cryptoasset and iv) the likely

characteristics of the prospective recipients. In conducting due diligence for a particular cryptoasset a firm needs to consider (amongst other things):

- a.** The authenticity and accuracy of the proposition 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 whitepaper and other documentation associated with the cryptoasset to ensure the proposition described in the promotion is accurate.
- b.** The steps necessary to ensure the cryptoasset is not linked to fraudulent activity, scams, money laundering or other financial crime.
- c.** 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 it uses and understanding its vulnerability to hacks or code exploits. Any operational or technological risks should be clearly conveyed to consumers.
- d.** 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 verifiable or can reasonably be supported with evidence. Firms should also take reasonable steps to understand the risks to the cryptoasset from decisions approved through an underlying governance protocol or directly by the issuer.
- e.** Conducting relevant legal and compliance checks. For example, to be satisfied that the cryptoasset does not constitute a specified investment and that the firm's activities involving the cryptoasset do not constitute regulated activities, which requires permission or exemption under FSMA.

**2.75** Firms should form their own view of the risks of a cryptoasset to confirm that the requirements of the financial promotion rules are satisfied in relation to promotions for that cryptoasset. It is unlikely to be appropriate to accept at face value information provided by an unregulated person. However, 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 suitability of relying on this type of information on a case-by-case basis.

**2.76** Authorised persons considering approving a cryptoasset financial promotion should also consider the relevant guidance on due diligence set out in our guidance on [approving financial promotions](#).

## **Disclosing legal and beneficial ownership of a cryptoasset**

**2.77** Ownership of a cryptoasset can change, for example, under certain complex yield models or arrangements. In such cases firms should clearly and prominently disclose the changes to legal and beneficial ownership of the cryptoasset before a consumer proceeds to enter into a relevant agreement. In particular, firms should clearly and prominently disclose 'who' owns the legal and beneficial rights to the cryptoasset as part of the financial promotion.

**2.78** 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 involving the cryptoasset. For example, risks to the consumer if the firm becomes insolvent.

## Disclosing the firm's regulated status

- 2.79** Firms should ensure that any promotion they communicate or approve does not give an inaccurate impression of the regulated status either of the firm or the cryptoasset to which the promotion relates. In particular, MLR registered persons, which are not otherwise authorised by us, must not suggest or imply that they are authorised by the FCA or that their MLR status is equivalent to being authorised. Further, firms must not indicate or imply that their underlying cryptoasset activities or the cryptoassets themselves are regulated by the FCA (GEN 4.5).
- 2.80** Firms should not use their regulated status in a promotional way. For example, by using their regulated status to claim or imply a competitive advantage over other firms. Firms must not claim or imply that their regulated status is an endorsement of the services they provide (GEN 1.2).
- 2.81** We remind firms that our existing rules and guidance in COBS 4 and GEN on firms disclosing and referring to their regulated status also apply to cryptoasset financial promotions. In particular:
- A firm must not, expressly or by implication, claim that its affairs, or any aspect of them, have the approval or endorsement of the FCA or another regulator (GEN 1.2)
  - A firm must not indicate or imply that it is authorised by the FCA for business it is not authorised for (GEN 4.5).
  - A firm must not indicate or imply that it is regulated or otherwise supervised by the FCA for business for which it is not regulated or supervised by the FCA (GEN 4.5).
  - It is a criminal offence for a firm that is not authorised by the FCA (or PRA) to state or imply that it is so authorised (section 24 of FSMA). 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 (COBS 4.2.4 G).

## Complying with FCA requirements

- 2.82** 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 them for 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 set out in [PS23/6](#).

# Annex 1

## Feedback Statement

### GC23/1: Guidance on cryptoassets financial promotions

**Date of consultation: 8 June 2023 – 10 August 2023**

### Summary

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1. 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 them for 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 set out in [PS23/6](#).
2. In June 2023, we consulted on proposed Guidance which sets out how firms may comply with the core requirement of the financial promotions regime for financial promotions for cryptoassets to be fair, clear and not misleading.
3. We received 21 responses from a range of stakeholders, including trade bodies, cryptoasset firms, e-money firms and a consumer advocacy group. We would like to thank all respondents for their feedback. A list of non-confidential respondents is given in Annex 2.
4. The following statement summarises the feedback we received and our responses. The updated Guidance reflects our response to feedback and remains largely unchanged. It includes several amendments which are summarised at the end of the statement. We present the feedback to consultation and our response under each of the questions posed in our Guidance consultation. To avoid duplication, where similar comments were received across several questions, we have grouped the feedback and our response together.
5. Key themes are that respondents mostly agreed with our proposed Guidance and noted that it will be a valuable resource for firms, steering firms' understanding on how they should comply with the fair, clear and not misleading rules. Where respondents disagreed, the main concerns were the treatment of complex yield models or arrangements and the proportionality and clarity of due diligence requirements. Two respondents suggested that the Guidance should reference the Consumer Duty and remind authorised persons of their obligation to act to deliver good outcomes for retail consumers. Several respondents suggested that the proposed Guidance should be expanded to include additional perimeter guidance.

**Q1:** *Do you agree with our proposed guidance on the context of the cryptoasset financial promotions regime?*

**Q2: Do you agree with our proposed guidance on ensuring that cryptoasset financial promotions are fair, clear and not misleading?**

6. Many respondents suggested that the Guidance should provide more clarity on perimeter issues including information on territorial scope, which 'qualifying cryptoassets' and related activities are in scope, and further guidance on what amounts to a financial promotion, including whether 'buy and sell' buttons meet the definition, and how the regime applies to decentralised finance (DeFi) activity.
7. Throughout the feedback respondents asked us to provide more guidance in the form of examples to illustrate good and poor promotions which incorporate case-specific scenarios tailored to the intricacies of the cryptoasset industry.
8. Across several of the questions in the consultation, firms asked us to clarify the meaning of promotions being "stand-alone compliant" and raised questions about the sufficiency of using parts of the customer journey, such as the appropriateness assessment, to communicate information to consumers.
9. Respondents were keen to ensure the financial promotions guidance is regularly reviewed and that we consider its interaction with future policy developments, particularly the upcoming stablecoins regime and updated social media Guidance.
10. Two respondents recommended that the Guidance should include reference to expectations under the Consumer Duty for authorised persons communicating or approving cryptoassets financial promotions.

## Response

Our consultation focused on providing clarity on how firms may comply with the core requirement for promotions to be 'fair, clear and not misleading'. It did not aim to test our interpretation of what falls within the scope of the financial promotions regime (for example, what constitutes a 'qualifying cryptoasset') or the scope of the regulated activity perimeter (for example, what constitutes a collective investment scheme). Whether an investment constitutes a controlled investment or specified investment and whether an activity constitutes a controlled activity or regulated activity under FPO and the RAO respectively is a question of fact that can only be determined on a case-by-case basis.

We also remind firms of our existing perimeter guidance on financial promotions (PERG 8) which covers extensively the scope of the financial promotions regime and what amounts to a financial promotion.

On DeFi, the Treasury's January 2022 [consultation response](#) (4.28-4.29) recognised the evolving role and shape of DeFi within the cryptoasset sector and set out that promotions relating to DeFi activity may be within scope. As noted above, we will keep the Guidance under review and will consider whether further guidance on DeFi is needed.

This Guidance also aims to cover a wide range of promotions and business models. So we have chosen not to provide specific examples to illustrate good and poor promotions, as there are too many scenarios, and it would be impractical to attempt to cover them all within the Guidance. However, we want to remind firms of our Good and Poor Practice Feedback, published on 7 September 2023. This is based on a review of a wide range of firms and business models and their preparedness for compliance with the cryptoasset financial promotions regime. The Feedback also clarifies questions stakeholders have asked throughout engagement events, but which have also come through in the Guidance feedback. The Feedback addresses matters such as the scope of the regime, the definition of a financial promotion, brand advertising, promotion on social media and implementation of the consumer journey under the financial promotions rules.

We generally expect that financial promotions are 'stand-alone compliant' as outlined in Para 2.36. This means that each stage of a financial promotion must comply with our rules. For example, deliberately only including information on key risks in the later stages of the financial promotion consumer journey such as in the appropriateness assessment and not in the financial promotion itself would not be sufficient to comply.

We agree with stakeholders' feedback that we should review the Guidance in light of future regulatory and market developments and updated if appropriate. We have stated this at the start of the Guidance in Para 2.10.

The Consumer Duty currently applies to authorised persons communicating or approving cryptoasset financial promotions. It does not apply to promotions communicated by MLR registered persons relying on the new exemption at this stage. While our Policy Statement set out the Consumer Duty obligations on authorised persons, we agree with feedback that we should make these obligations clearer in the Guidance. We have amended the Guidance to remind authorised persons communicating or approving cryptoasset financial promotions of their obligations to act to deliver good outcomes under the Consumer Duty.

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**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?*

**Q4:** *Do you agree with our proposed guidance for financial promotions of cryptoassets that claim to be backed by a commodity or an asset?*

- 11.** Several respondents asked questions about due diligence for promotions of cryptoassets that claim a form of stability, or which claim their value is linked to a fiat currency. In particular, these respondents wanted to know how firms can meet the

threshold of demonstrating that an issuer's claims of stability or links to fiat currency are bona fide and whether this requirement will apply to the firms admitting a cryptoasset to trading.

12. Several respondents sought further clarity on the treatment of promotions of cryptoassets that claim a form of stability primarily relying on an algorithm or a reserve of other cryptoassets. They asked whether promotions of these cryptoassets will effectively no longer be allowed to UK consumers.
13. Respondents raised several points about the timing of the Guidance for stablecoins and concerns that the proposed Guidance may not be futureproof, recommending to keep the Guidance for stablecoins under review.
14. For cryptoassets that claim to be backed by a commodity or an asset, some commented on the expectation that firms consider whether the custodian has the relevant permissions to custody assets in the UK and asked whether all commodity or asset backed tokens must have their underlying assets physically custodied in the UK.

## Response

We recognise the evolving landscape for the regulation of stablecoins in the UK. We agree we need to keep this Guidance under review and consider if changes are needed in light of market or regulatory developments, such as the [Treasury's forthcoming regulatory regime](#).

We remind firms that communications involving cryptoassets admitted to a trading venue are in scope of the financial promotions regime when they amount to an invitation or inducement to engage in investment activity. This means the requirement for promotions to be fair, clear and not misleading applies. As set out in the Guidance, firms' existing regulatory obligations means they should be conducting due diligence to understand and be able to disclose the risks related to the assets and verify the validity of claims made in the promotion. Where firms are unable to verify claims made by an issuer, they should strongly consider whether it is appropriate to promote such cryptoassets to retail consumers.

To demonstrate that claims of stability, such as links to a fiat currency, are bona fide, we expect firms to assess these financial promotions on a case-by-case basis. Firms should use all sources available to them including publicly available information, requesting information from issuers and using professional advisers where appropriate. These expectations on information gathering are also aligned with firms' existing obligations to take necessary steps to ensure they are not facilitating money laundering or other financial crime.

We continue to have concerns with how promotions of so called 'algorithmic' and 'crypto-backed' stablecoins communicate the characteristics, risks and benefits of these cryptoassets to consumers. 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



part, through an algorithm that creates a change in supply and demand between the coin and one or more cryptoassets that support it. The stability of these 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 inherent vulnerabilities and weaknesses of the types 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 (e.g. through loss of investments), such as the de-pegs of Terra/Luna and IRON as explored by the [International Monetary Fund](#) and the [Federal Reserve](#) respectively. By promoting themselves as 'stable', these types of cryptoasset can create a false sense of security for consumers who may mistakenly believe that they 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.

This Guidance is not intended to provide further information on custody arrangements of the underlying qualifying cryptoassets themselves, but we have amended the guidance to make it clearer for firms to give consideration to custody permissions in the relevant jurisdiction.

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**Q5: *Do you agree with our proposed guidance for financial promotions of complex yield models or arrangements?***

- 15.** Some respondents were concerned by our approach to provide the same Guidance for cryptoasset financial promotions relating to staking, borrowing and lending activities under the heading of 'complex yield models/arrangements'. This concern was based on the breadth of activities they could relate to and the different risks and considerations they present to consumers.
- 16.** Several respondents were particularly keen that the Guidance reflect the point that staking is not a singular concept and can comprise different activities, arrangements and business models so we should not take a 'one size fits all' approach in the Guidance.
- 17.** Some respondents also asked for clarity on what would constitute a collective investment scheme (CIS) in the context of complex yield cryptoassets models or arrangements.
- 18.** As with feedback to other questions in this consultation, there were several requests for clarity about disclosure of information, including ensuring clear communication of potential volatility. There were mixed views on the use of the past and future performance data disclosures. Some respondents argued for the use of appropriate modelling of performance as a means of being able to demonstrate how potential returns could be achieved. Others argued that the data was likely to be insufficient to give any meaningful value to past performance indicators.



## Response

There are important differences within and between crypto staking, borrowing and lending models and it was not our intention in the Guidance to imply that they constitute the same activities. However, we want to be clear that the purpose of this Guidance is to help firms ensure that their financial promotions are fair, clear and not misleading. In our Guidance Consultation we chose to provide guidance on complex yield models collectively. This was because we identified issues with promotions that were similar across these types of models or arrangements with related harms posed to consumers, irrespective of the more detailed variations in structure and risks that can exist between the different types of models. We saw a common approach to the promotion of these products, including advertising high rates of return with a lack of clear evidence for consumers as to how these claims were justified. We identified a lack of clear disclosure of associated risks, minimal disclosure of the legal and ownership status of the cryptoassets involved and insufficient explanation of the implications for consumers entering those arrangements. By focusing the Guidance on these common areas of concern in financial promotions and not the underlying business model for these types of cryptoasset models or arrangements we believe the approach is suitable and avoids unnecessary repetition in the Guidance.

However, where appropriate we have amended the Guidance to recognise that there are differences between the underlying activities of complex yield models, such as between staking, borrowing and lending, the distinct risks and complexities of which will need to be communicated to consumers. In response to the feedback we have also updated the Guidance to acknowledge that staking can take many forms which will have implications for how firms ensure promotions are fair, clear and not misleading. We have also amended the Guidance on legal and beneficial ownership to refer to complex yield models more broadly rather than staking specifically.

Claims of high rates of return need to be substantiated and the risks must be clearly communicated to consumers. In response to the feedback, we have added additional detail within the Guidance on providing this evidence and the use of past performance data.

On collective investment schemes (CIS), the Treasury has proposed, but is yet to set out, a legislative definition of cryptoasset staking on a Proof of Stake blockchain. Treasury have also signalled an intent to carve out certain manifestations of staking from the CIS rules subject to appropriate regulation being in place. We do not feel it is appropriate to use this Guidance to further elaborate on the FCA's interpretation of the CIS perimeter (ie whether and how cryptoassets and complex yield models or arrangements might meet the definition of a CIS under section 235 of FSMA), given that the purpose of this Guidance is to provide guidance on our financial promotion rules not the perimeter set by the Treasury.

As we set out in Para 2.17, for general guidance on the perimeter and on what cryptoassets are likely to constitute specified investments (for the purposes of the regulated activity regime) we recommend you read [Chapter 2 of PERG](#) and the [Guidance on Cryptoassets](#). Firms need to consider whether other regulations apply and whether they have the authorisation and appropriate permissions to conduct their business in the UK. We encourage firms to seek independent legal advice on the perimeter implications of their business models to ensure they have the correct permissions.

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**Q6:** *Do you agree with our proposed guidance for financial promotions on social media?*

- 19.** Several respondents noted that the reference to [FG15/4: Social media and customer communications](#) felt out of date and wanted further clarification on the alignment of this Guidance to [GC23/2: Financial promotions on social media](#).
- 20.** Similar to feedback noted on Questions 1 and 2, stakeholders sought further clarity on territorial scope of promotions on social media and when financial promotions could be considered as having an effect in the UK.
- 21.** Some responses also asked for further guidance on the use of brand marketing and cases where this does or does not constitute a financial promotion, and where requirements cannot be fulfilled due to technological limitations on specific social media platforms and posts.
- 22.** Respondents also asked for clarity on the treatment of historic promotions communicated before the regime went live and whether they would fall within the financial promotions regime and therefore have to be removed if not compliant.

### Response

We included specific guidance on social media to make it clear that the requirements for financial promotions to be fair, clear and not misleading applies to these channels. We are concerned about the potential increased risks specifically from promotions on social media. For example, a greater potential for promotions to be shared rapidly and the lack of ability to target promotions to specific consumers or groups of consumers. We reminded any persons promoting on any social media of the need to ensure they understand the rules that apply when promoting financial services and products. We have amended the Guidance to provide additional clarity on expectations of disclosures which may be particularly relevant for 'finfluencers' on social media.

We also recognise and agree with the feedback that the social media landscape has evolved since the [Guidance on social media FG15/4](#) was published. However it is still applicable to financial promotions today. But we have updated this Guidance to reflect that firms should review

and take account of the updated Guidance on social media on which we consulted in [GC23/2](#), in conjunction with our cryptoasset financial promotion Guidance. GC23/2 covers topics including affiliate marketing and applying risk warnings.

Given the global nature of the cryptoassets sector and social media reach, we understand the concerns raised in the consultation feedback, seeking further clarity on when a promotion may be capable of having effect in the UK. In particular, for promotions not intended to be viewed, but which may be seen, by UK consumers. We encourage firms to review our published [Feedback on Good and Poor Practice](#). This gives insights from our recent [engagement on firm preparation and examples to help firms to understand their obligations so they can comply with the regime](#). While not exhaustive, the review highlights that well prepared firms had undertaken actions including identifying which entity would be communicating to UK consumers, having robust controls in place to prevent other firms in their group from communicating promotions to UK consumers (for example geo-blocking or other location-based controls), and controls in the KYC/AML and onboarding process. Guidance on what it means for a promotion to be capable of having an effect in the United Kingdom is also set out in [PERG 8.8](#).

On the use of brand marketing in the context of financial promotions, we urge firms to familiarise themselves with the existing definition of [image advertising](#) as it is a narrowly defined term, referring to a communication that consists only of 1 or more of the following:

- a.** the name of the firm
- b.** a logo or other image associated with the firm
- c.** a contact point
- d.** a reference to the types of regulated activities provided by the firm, or to its fees and commissions

Any brand advertising or marketing material that includes content outside of these specific categories is likely to come under our financial promotion rules. [PERG 8.4](#) sets out guidance in similar terms as to when promotions which are purely profile raising are likely to fall short of constituting an invitation or inducement.

In terms of historic or legacy social media financial promotions, the rules do not apply retrospectively and we would not expect firms to remove content previously communicated, provided that content is no longer being actively communicated. So we would not expect a firm to review its entire history of posts on social media but we would expect a firm to ensure that its website and app was fully compliant as these are being actively communicated to consumers. However, if firms re-share or re-post a promotion (ie there is an active communication of a promotion) that had previously been advertised then this would need to adhere to the new requirements.

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**Q7:** *Do you agree with our proposed guidance on due diligence before a financial promotion is communicated?*

- 23.** There was an overall concern about proportionality and achievability of due diligence expectations with a recommendation around shifting to a 'best endeavours' approach. Respondents also asked for clarity on whether due diligence should be conducted for all relevant risks or limited to claims made in the promotion.
- 24.** Several respondents sought further clarity on various aspects of due diligence including details to be communicated to customers, what would constitute sufficient due diligence and how often firms should undertake due diligence checks. Respondents also asked to what extent exchanges can rely on information from issuers. They noted that in some circumstances, they will have limited ability to verify this information and raised concerns about potential liability.

### Response

To improve the utility of the Guidance we have added additional content clarifying the purpose of due diligence and how it is related to the requirement for promotions to be fair, clear and not misleading.

As set out in the Guidance, the reasons due diligence is necessary are:

- to understand what risks need to be disclosed as part of the promotion.
- to verify any claims made in the promotion.
- for firms subject to the Consumer Duty, to ensure the promotion is consistent with the obligation to act to deliver good outcomes and does not cause foreseeable harm.

We do not agree with proportionality concerns, as the Guidance does not create new obligations, but clarifies the types of steps we would expect firms to take to ensure the promotions they communicate or approve are fair, clear and not misleading. We also want to remind firms that due diligence is already part of the existing requirements under FSMA and the MLRs.

The appropriate amount and frequency of due diligence depends on the type of the promotion, what it contains and the types of recipients to whom it is to be made or directed. It would be impractical to try to cover all scenarios within this Guidance. Our approach seeks to strike the right balance with the level of prescription to future proof what is an emerging sector where business models, technology and appropriate due diligence can change quickly. We recognise the [Treasury's Feedback Statement](#) proposes further future 'issuance and disclosure' obligations for cryptoassets admitted to trading on cryptoasset trading venues.

**Q8:** *Do you agree with our proposed guidance on disclosing legal and beneficial ownership of cryptoassets?*

- 25.** Most respondents agreed that retail consumers should be able to understand their ownership rights and benefits when deciding to buy cryptoassets. Some of the feedback was similar to that on the questions above, with respondents raising concerns about the proportionality and clarity of our expectations, and in which scenarios ownership disclosures should be made. In particular, 1 respondent asked for clarity on whether, where consumers retain legal and beneficial ownership of their cryptoassets, firms would be required to assess whether these consumers understand their legal and beneficial ownership rights.

**Response**

In line with our rules, firms are expected to clearly and prominently communicate various risks associated with the cryptoasset. This should include risks about transfer of legal and beneficial ownership where applicable. It is important for consumers to understand the legal ownership status of cryptoassets and services before and during their agreement. So, we have decided not to significantly amend this Guidance, but have added clarification that firms should clearly and prominently disclose 'who' owns the legal and beneficial rights to the cryptoasset as part of the financial promotion itself.

**Q9:** *Do you agree with our proposed guidance on disclosing the firm's regulated status?*

- 26.** Most of the feedback received relating to firms disclosing their regulated status focused on consumer understanding. In particular, respondents were concerned that consumers will not understand what the status is referring to and that the FCA is only regulating financial promotions rather than the underlying assets.
- 27.** Several respondents sought clarity on the wording that should be used to describe their regulated status, noting this would improve consistency of experiences for consumers, and on whose regulated status the FCA was proposing disclosure.

**Response**

The key message for firms about regulated status is that firms should not mislead consumers about their regulated status and the regulated status of the underlying qualifying cryptoasset or service being promoted. For example, firms should not suggest or imply they are authorised by the FCA or have an equivalent status when this is not the case. Simply saying a firm is 'regulated' can be misleading as it can be interpreted as referring to authorisation. Firms should also not imply that the qualifying cryptoasset referenced in the promotion is regulated by the FCA. We

have amended the Guidance to make this clearer. We do not think it would be necessary to prescribe specific wording for regulated status, as it is clear on the outcome we are seeking.

We also remind firms of the requirement to disclose the approver of a financial promotion, where applicable (COBS 4.5.2 R). A firm approving a promotion is permitted to replace our standard disclosure with text that refers to the authorised person's FRN (Firm Reference Number), where space limitations imposed by a third-party marketing provider do not allow the display of the full name of an approver firm, and the date of approval (COBS 4.5.2A R). The required format is 'Approver FRN xxxxxx', (and the relevant FRN must be inserted). This text must be 'clickable' and must open a page where the firm's full name, and the date of the approval, must be displayed.

## Summary of key changes to the GC23/1 Guidance

Topic	Change
<b>Consumer Duty</b>	Based on feedback from stakeholders, we have added a new section to the Guidance to remind authorised persons communicating or approving cryptoasset financial promotions of their obligations to act to deliver good outcomes under the Consumer Duty.
<b>Complex yield models</b>	<p>We have amended the Guidance to recognise that there are differences between the underlying activities of complex yield models such as between staking, borrowing and lending, and specifically that staking can comprise different activities. The Guidance recognises that there are distinct risks and complexities of different models which should be communicated to consumers.</p> <p>We have added additional detail within the Guidance on providing evidence and use of past performance data.</p>
<b>Social media</b>	<p>We have updated this Guidance to reflect that firms should review and take account of the general Guidance on social media on which we have consulted in GC23/2, together with our cryptoasset financial promotion Guidance.</p> <p>We have also amended the Guidance to provide additional clarity on expectations of disclosures which may be particularly relevant for 'finfluencers' on social media.</p>

Topic	Change
<b>Due diligence</b>	<p>To improve the usefulness of the Guidance, we have added additional content clarifying the purpose of due diligence and how it is related to the fair, clear and not misleading standard.</p> <p>We have also clarified that complying with fair, clear and not misleading requires understanding and disclosing the wider risks of cryptoassets and not just verifying the claims made in the promotion.</p> <p>We have also explained that for authorised persons communicating or approving financial promotions, due diligence is necessary to ensure the promotion is consistent with the obligations under the Consumer Duty, where relevant, to act to deliver good outcomes and not to cause foreseeable harm.</p>
<b>Regulated status</b>	<p>We have refined the Guidance to make it clearer that firms should not mislead consumers about their regulated status and the regulated status of the underlying qualifying cryptoasset that is being promoted.</p>

## Annex 1

# Non-confidential respondents

Amplified Global

BPUK Limited (Bitcoin Policy UK)

Coinbase

CryptoUK

Digital Currencies Governance Group (DCCG)

Electronic Money Association

Geoleaf Limited

Innovate Finance

Investment and Life Assurance Group

Kraken

rebuildingsociety.com ltd

Supra Fin

WAGMI Advisers/Gunnercooke Llp

Zumo



