
STATUTORY INSTRUMENTS

2023 No. 612

**The Financial Services and Markets Act 2000
(Financial Promotion) (Amendment) Order 2023**

PART 1

General

Citation, commencement and extent

1.—(1) This Order may be cited as the Financial Services and Markets Act 2000 (Financial Promotion) (Amendment) Order 2023.

(2) This Order comes into force—

- (a) on the day after the day on which this Order is made for the purpose of enabling the FCA to make rules and to give guidance;
- (b) on the day four months after the day on which it is made, for all other purposes.

(3) This Order extends to England and Wales, Scotland and Northern Ireland.

Interpretation

2. In this Order—

“the Act” means the Financial Services and Markets Act 2000;

“Financial Promotion Order” means the Financial Services and Markets Act 2000 (Financial Promotion) Order 2005(1);

“qualifying cryptoasset” has the meaning given by paragraph 26F (qualifying cryptoassets) of Schedule 1 to the Financial Promotion Order;

“registered person” means a person who is—

- (a) a cryptoasset exchange provider or custodian wallet provider, as defined in regulation 14A (cryptoasset exchange providers and custodian wallet providers) of the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017(2);
- (b) included on the register maintained by the FCA pursuant to regulation 54(1A)(3) (duty to maintain registers of certain relevant persons) of those regulations; and
- (c) not an authorised person.

(1) [S.I. 2005/1529](#); relevant amending instruments are [S.I. 2005/3392](#), [2010/905](#), [2011/1265](#), [2013/1881](#), [2014/366](#), [2016/392](#), [2017/488](#), [2019/1361](#), [2021/90](#).

(2) [S.I. 2017/692](#). Regulation 14A was inserted by [S.I. 2019/1511](#). There are other amending instruments but none is relevant.

(3) Regulation 54 was amended by [S.I. 2019/1511](#).

PART 2

Amendment of the Financial Promotion Order

Amendment of the Financial Promotion Order

3. The Financial Promotion Order is amended as follows.

Amendment of article 2 (interpretation: general)

4. In article 2 (interpretation: general), in paragraph (1), after the definition of “qualifying credit”, insert—

- ““qualifying cryptoasset” has the meaning given by paragraph 26F of Schedule 1;
- “registered person” has the meaning given by article 73ZA;”.

Amendment of article 51 (associations of high net worth or sophisticated investors)

5. In article 51 (associations of high net worth or sophisticated investors)—

- (a) the existing text becomes paragraph (1);
- (b) after paragraph (1), insert—

“(2) The exemption in paragraph (1) does not apply if the communication relates to a qualifying cryptoasset.”.

Amendment of article 61 (sale of goods and supply of services)

6. In article 61(3) (sale of goods and supply of services)—

- (a) after sub-paragraph (c), omit “or”;
- (b) after sub-paragraph (d), insert—

“; or

- (e) a qualifying cryptoasset.”.

New article 73ZA

7. In Part 6, after article 73 (advice centres), insert—

“Certain promotions of qualifying cryptoassets

73ZA.—(1) The financial promotion restriction does not apply to any communication which relates only to one or more qualifying cryptoassets and which is communicated—

- (a) by a registered person; or
- (b) on behalf of a registered person provided that—
 - (i) the communication is a non-real time communication; and
 - (ii) the registered person prepared the content of the communication.

(2) Subsection (1) does not apply where a registered person makes or directs the communication, or causes it to be made or directed, in breach of—

- (a) a requirement imposed by the FCA under section 55L (imposition of requirements by FCA) of the Act; or

- (b) a direction given under section 137S (financial promotion rules: directions given by FCA) of the Act, as those provisions have been applied and modified by the Schedule to the Financial Services and Markets Act 2000 (Financial Promotion) (Amendment) Order 2023.
- (3) In this article, a “registered person” means a person who is—
 - (a) a cryptoasset exchange provider or a custodian wallet provider as defined in regulation 14A (cryptoasset exchange providers and custodian wallet providers) of the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017;
 - (b) included on the register maintained by the FCA pursuant to regulation 54(1A) (duty to maintain registers of certain relevant persons) of those Regulations; and
 - (c) not an authorised person.”.

Amendment to Schedule 1, Part 1 (controlled activities)

- 8.** In Schedule 1, in Part 1 (controlled activities)—
- (a) in paragraph 3 (dealing in securities and contractually based investments)—
 - (i) in the heading, after “securities”, insert “, qualifying cryptoassets”;
 - (ii) in sub-paragraph (1), after “structured deposits”, insert “, qualifying cryptoassets”;
 - (b) in paragraph 4 (arranging deals in investments)—
 - (i) in sub-paragraph (1), after paragraph (aa), insert—

“(ab) a qualifying cryptoasset.”;
 - (ii) in sub-paragraph (2), after “(aa),” insert “(ab),”;
 - (c) in paragraph 5(a) (managing investments), after “structured deposit”, insert “, a qualifying cryptoasset”;
 - (d) in paragraph 7(1)(b)(i) (advising on investments), after “structured deposit”, insert “, a qualifying cryptoasset”.

Amendment to Schedule 1, Part 2 (controlled investments)

9. In Schedule 1, in Part 2 (controlled investments), after paragraph 26E (consumer hire agreements) insert—

“Qualifying cryptoasset

26F.—(1) Subject to sub-paragraph (3), a “qualifying cryptoasset” is any cryptoasset which is—

- (a) fungible; and
 - (b) transferable.
- (2) For the purposes of sub-paragraph (1)(b), the circumstances in which a cryptoasset is to be treated as “transferable” include where—
- (a) it confers transferable rights; or
 - (b) a communication made in relation to the cryptoasset describes it as being transferable or conferring transferable rights.
- (3) A cryptoasset does not fall within sub-paragraph (1) if it is—

- (a) a controlled investment falling within any of paragraphs 12 to 26E or, so far as relevant to any such investment, paragraph 27;
 - (b) electronic money;
 - (c) fiat currency;
 - (d) digitally issued fiat currency; or
 - (e) a cryptoasset that—
 - (i) cannot be transferred or sold in exchange for money or other cryptoassets, except by way of redemption with the issuer; and
 - (ii) can only be used in a limited way and meets one of the following conditions—
 - (aa) it allows the holder to acquire goods or services only from the issuer;
 - (ab) it is issued by a professional issuer and allows the holder to acquire goods or services only within a limited network of service providers which have direct commercial agreements with the issuer; or
 - (ac) it may be used only to acquire a very limited range of goods or services.
- (4) In this paragraph—
- “cryptoasset” means any cryptographically secured digital representation of value or contractual rights that—
- (a) can be transferred, stored or traded electronically, and
 - (b) uses technology supporting the recording or storage of data (which may include distributed ledger technology);
- “digitally issued fiat currency” means fiat currency issued in digital form;
- “electronic money” has the meaning given by regulation 2(1) (interpretation) of the Electronic Money Regulations 2011(4).”.

Application and modification of primary legislation

10.—(1) The provisions of the Act identified in the Schedule to this Order apply, subject to any modifications set out in that Schedule, in relation to registered persons.

(2) Section 1A of the Act applies as if the exercise of functions by the FCA under the provisions applied, with or without modification, by the Schedule to this Order were functions conferred on it by or under the Act.

(4) [S.I. 2011/99](#); relevant amending instruments are [S.I. 2017/752](#), [2018/1201](#).

PART 3

Transitional provision

Qualifying cryptoasset financial promotions related rules and guidance made by the FCA

11. The requirements of section 138I (consultation by the FCA)⁽⁵⁾ of the Act, in so far as they apply to a proposal by the FCA to make rules and guidance in relation to the amendments or modifications made by this Order, may be satisfied by things done (wholly or in part) before the date on which this Order comes into force for the purpose of enabling the FCA to make rules and give guidance.

Andrew Stephenson

Steve Double

Two of the Lords Commissioners of His
Majesty's Treasury

7th June 2023

(5) Section 138I was inserted by section 24(1) of the Financial Services Act 2012 and amended by paragraph 8(a) and (c) of Schedule 3 to the Pension Schemes Act 2015 (c. 8), sections 29(4) and 33(4) of the Bank of England and Financial Services Act 2016 (c. 14), paragraph 14(2) and (3) of Schedule 3 to the Financial Guidance and Claims Act 2018 (c. 10) and paragraph 3 of Schedule 9 to the Financial Services Act 2021 (c. 22).