

The Distributed Ledger

Blockchain, Digital Assets and Smart Contracts

August 12, 2024

If you have any questions regarding the matters discussed in this memorandum, please contact the following attorneys or call your regular Skadden contact.

Sebastian J. Barling

Partner / London
44.20.7519.7195
sebastian.barling@skadden.com

Simon Toms

Partner / London
44.20.7519.7085
simon.toms@skadden.com

Joseph A. Kamyar

European Counsel / London
44.20.7519.7325
joseph.kamyar@skadden.com

David Y. Wang

Associate / London
44.20.7519.7149
david.y.wang@skadden.com

This memorandum is provided by Skadden, Arps, Slate, Meagher & Flom LLP and its affiliates for educational and informational purposes only and is not intended and should not be construed as legal advice. This memorandum is considered advertising under applicable state laws.

One Manhattan West
New York, NY 10001
212.735.3000

22 Bishopsgate
London EC2N 4BQ
44.20.7519.7000

FCA Reports Spotty Compliance With Crypto Financial Promotions Rules, More Interventions

On 7 August 2024, the UK Financial Conduct Authority (FCA) published an update regarding its ongoing assessment of crypto firms' adherence to the cryptoasset financial promotions rules introduced in October 2023. See our 23 October 2023 client alert "UK Cryptoasset Financial Promotions: FCA Takes Firm Stance on Enforcing New Rules".

These rules require that financial promotions are either made by (a) authorised or registered cryptoasset firms, or (b) approved by an authorised firm. The rules aim to ensure consumers are better informed about the risks of crypto investments, and they mandate clear risk warnings, a cooling-off period and appropriateness assessments.

In the update, the FCA reported that it found both good and poor practices among cryptoasset firms. "Some firms still needed to make significant improvements to reach the levels of compliance we have seen in other sectors", it stated, adding that "[f]irms should not rely on comparisons with industry peers to benchmark what is acceptable practice".

Read together, this reiterates the need for crypto firms marketing into the UK to have developed their own compliance framework based on the underlying FCA rules and guidance (rather than adopting risk-based approaches as against peers), and this should be subject to periodic testing and review (including against best practices in marketing in other comparable sectors).

The FCA emphasised that non-compliance could jeopardise future applications for authorisation under the future financial services regulatory framework for cryptoassets. The FCA reiterated the importance of its June 2023 guidance (GC23/1) on "back end" crypto financial promotions rules and guidance on crypto promotions to ensure firms are in compliance with its requirements.

In addition, on 7 August 2024, the FCA published its report on financial promotions for Q2 of 2024, describing an increase in financial promotions intervention, particularly in retail investments, retail lending and cryptoassets. There were 413 cases where firms voluntarily withdrew or amended promotions, and a notable rise in cases where the FCA had to step in directly.

The FCA also warned the industry about the practice of firms registered under the UK's money laundering regulations (MLRs) offering access to cryptoasset on/off ramp services via an API-integrated widget (a "partner" firm). It stated that many such partners (typically non-custodial wallet providers) are illegally issuing promotions in breach of the financial promotions rules.

FCA Reports Spotty Compliance With Crypto Financial Promotions Rules, More Interventions

To address these risks, the FCA expects the MLR-registered cryptoasset firms to thoroughly understand the financial promotions rules, review their partners' compliance with those, and implement ongoing monitoring to detect breaches. Such firms must ensure they do not imply that partners are exempt from compliance on the basis of their own MLR registration and should take action if partners are non-compliant.

In its quarterly review, the FCA highlighted an issue with a large overseas non-custodial wallet firm deemed to be illegally promoting crypto investments to UK consumers without proper controls in breach of section 21 of the Financial Services and Markets Act 2023 (FSMA). After FCA intervention, the

firm restricted UK users to purchasing crypto assets only from FCA-registered firms and removed unauthorised promotions. The firm is now working with an authorised entity to approve its promotions in compliance with the requirements of section 21 of the FSMA.

The rise in interventions and specific messaging to cryptoasset firms is part of the FCA's broader strategy to enhance consumer protection by ensuring transparency and accuracy in financial promotions. These developments highlight the FCA's determination to enforce high standards in financial promotions in the cryptoasset sector and reflect the FCA's ongoing concerns about the potential risks posed to consumers.