



The Trusted Advisor in  
Digital Asset Compliance

**FINANCIAL PROMOTIONS REGIME FOR  
CRYPTOASSET BUSINESSES IN THE UK:  
A COMPREHENSIVE ANALYSIS**

**JJC**  
FINTECH

**Digitising Compliance**



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## 1.1 INTRODUCTION:

### 1.1 BACKGROUND ON CRYPTOASSETS

The emergence of cryptoassets in the financial landscape represents a paradigm shift, unlike anything seen in traditional markets. Originating with the Bitcoin in 2009, these digital assets operate on a decentralised system, utilising blockchain technology to facilitate secure, peer-to-peer transactions without intermediaries like banks or other financial institutions.

Unlike conventional fiat currencies, cryptoassets are not governed by central authorities but rely on cryptographic algorithms and consensus mechanisms, offering users unprecedented control over their funds while reducing transaction costs and enhancing efficiency.

The cryptoasset ecosystem has expanded dramatically in recent years, encompassing various forms such as altcoins, stablecoins, utility tokens, and security tokens, each serving unique purposes within the digital economy.

At the core of this transformation is blockchain technology, a transparent and tamper-proof ledger that records all transactions across a network of computers. This technology ensures data integrity and security, forming the backbone of cryptoasset operations. Cryptoassets have the potential to revolutionise multiple sectors, providing benefits like increased financial inclusion, expedited and cost-effective cross-border transactions, heightened transparency, and enhanced security.

Furthermore, the programmability of certain cryptoassets enables the development of decentralised applications and smart contracts, automating and streamlining diverse processes. As the cryptoasset ecosystem evolves, it is imperative for individuals and businesses to grasp the opportunities and risks associated with this ground-breaking technology, as it reshapes the future of finance and extends its influence far beyond traditional market boundaries.



## 1.2 IMPORTANCE OF FINANCIAL PROMOTION REGULATION

Regulating cryptoassets is crucial to ensure market stability, investor protection, and protection from illicit activities to create a safer environment for both market participants and consumers.

The implementation of regulatory frameworks by the UK Financial Regulator - the Financial Conduct Authority (FCA) pertaining to Financial Promotions holds profound significance for the cryptoasset market. The establishment of clear and comprehensive regulations serves as a cornerstone, offering crucial clarity to industry participants and investors alike.

By delineating standards for Financial Promotions within the crypto sector, the FCA plays a pivotal role in upholding market integrity, curtailing the risks associated with deceptive advertisements, and fostering an environment of equitable competition. This regulatory endeavour not only shields investors from potential fraudulent activities but also nurtures a reliable ecosystem that promotes responsible innovation. Furthermore, these regulations instil a sense of confidence among consumers and institutional investors, thereby facilitating broader acceptance of cryptoassets. In essence, these measures contribute substantially to the market's enduring stability and credibility.

Well-defined regulations not only safeguard investors and consumers but also encourage innovation and responsible growth within the crypto industry. These guidelines strike a balance, allowing the benefits of digital assets while ensuring necessary consumer protections, fostering a robust and enduring market environment. The FCA wants cryptoasset businesses to provide accurate and transparent information to potential investors, allowing individuals to make informed decisions about their investments. Through the introduction of the Financial Promotion Regime in October 2023, the FCA encourages firms to operate in a fair and ethical manner towards their consumers.

The FCA's regulatory oversight instils confidence in consumers, encouraging wider adoption of cryptoassets. Through establishing a framework that promotes responsible behaviour and compliance, this will solidify further the trust between consumers and cryptoasset businesses and in turn further solidify a more sustainable ecosystem, attracting more participants and investment in this space.



Cryptoassets are associated with unique risks, including price volatility, cybersecurity threats, and regulatory uncertainties. The Financial Promotion Regime introduced by the UK regulator helps mitigate these risks by ensuring that businesses provide accurate risk disclosures and warnings to potential investors.

The global reception of the FCA's Financial Promotion Regime has been favourable, as international stakeholders have commended the regime and acknowledged its contribution to enhancing market transparency and investor trust.

### 1.3 OBJECTIVES OF THE WHITEPAPER

This whitepaper aims to provide a comprehensive analysis of the Financial Promotions regime for cryptoasset businesses in the United Kingdom. With the rapid growth of the cryptoasset industry, it is crucial to understand the regulatory framework surrounding Financial Promotions to ensure compliance and protection for investors. This paper explores the key regulations, requirements, and challenges faced by cryptoasset businesses when promoting their products and services in the UK.



## 2. REGULATORY FRAMEWORK:

### 2.1 FINANCIAL CONDUCT AUTHORITY (FCA)

The cryptoasset industry has witnessed exponential growth in recent years, presenting both opportunities and challenges. The FCA is the regulatory body responsible for overseeing the cryptoasset industry in the UK. Its primary objective is to protect consumers, enhance market integrity, and promote competition. The FCA's regulatory oversight extends to various aspects of the cryptoasset ecosystem, including exchanges, custodian wallet providers, initial coin offerings (ICOs), and cryptoasset investment products.

To operate legally in the UK, cryptoasset businesses must register with the FCA. This process ensures that businesses meet specific regulatory requirements, including anti-money laundering (AML) and counter-terrorism financing (CTF) obligations. By enforcing registration, the FCA aims to prevent illicit activities and promote a transparent and accountable industry.

The FCA employs a risk-based strategy in supervising the cryptoasset industry, concentrating its resources on areas that pose significant risks to consumers and market integrity. By focusing on high-risk activities such as unregulated Initial Coin Offerings (ICOs) and market manipulation, the FCA ensures effective risk mitigation, safeguarding investors and upholding market confidence. This targeted approach allows the FCA to allocate its supervisory efforts efficiently, ensuring a robust regulatory framework for the rapidly evolving cryptoasset market.

In recognition of the global reach of the cryptoasset industry, the FCA actively engages with international counterparts to tackle cross-border challenges. Through active participation in international forums and collaboration with regulators worldwide, the FCA contributes to the formulation of global standards and best practices. This collaborative effort not only creates a consistent regulatory environment but also promotes fairness for market participants on a global scale. As the cryptoasset sector continues to advance, the FCA's proactive supervision remains essential, serving as a linchpin for the sector's enduring success and sustainability.



## 2.2 THE FINANCIAL SERVICES & MARKETS ACT 2000 (FSMA)

The rapid growth of the cryptoasset industry has prompted regulators worldwide to establish frameworks that address the unique challenges and risks associated with these digital assets. The Financial Services and Markets Act 2023 introduces into the Financial Services and Markets Act 2000 (FSMA) a definition of cryptoassets. In the United Kingdom, the FSMA serves as a cornerstone legislation governing financial services and markets regulation.

The FSMA, originally enacted in 2000, provides the legal framework for regulating financial services and markets in the UK. Its primary objective is to ensure the protection of consumers, maintain market integrity, and promote competition. The Act empowers the Financial Conduct Authority (FCA) as the regulatory authority responsible for overseeing and enforcing compliance within the financial sector.

While the FSMA was not specifically designed to regulate cryptoassets, its broad scope encompasses various activities related to these digital assets. The classification of cryptoassets under the FSMA depends on their specific characteristics and the activities conducted with them. The Act primarily focuses on three categories of cryptoassets: exchange tokens, security tokens, and utility tokens.

### 1. Exchange Tokens:

Exchange tokens, such as Bitcoin and Litecoin, are typically used as a medium of exchange or store of value. Under the FSMA, exchange tokens are not considered as “specified investments” and, therefore, fall outside the regulatory perimeter. However, certain activities involving exchange tokens, such as operating a cryptoasset exchange or providing custodial wallet services, may require registration with the FCA under AML regulations.

### 2. Security Tokens:

Security tokens represent ownership or rights in an underlying asset, similar to traditional securities. If a cryptoasset qualifies as a security token, it may be subject to regulation under the FSMA. Issuers of security tokens may need to comply with prospectus requirements, financial promotion rules, and other obligations outlined in the Act. Additionally, platforms facilitating the trading of security tokens may require authorisation from the FCA as regulated activities.





### 3. Utility Tokens:

Utility tokens provide access to specific products or services within a blockchain-based ecosystem. In most cases, utility tokens do not fall within the regulatory scope of the FSMA, as they do not possess the characteristics of traditional financial instruments. However, if utility tokens exhibit features of security tokens or involve regulated activities, they may be subject to relevant provisions of the Act.

The FSMA places significant emphasis on investor protection and market integrity. Market participants involved in activities related to cryptoassets must adhere to the regulatory requirements outlined in the Act. This includes conducting proper due diligence, providing accurate and transparent information to investors, and complying with AML and CTF regulations. Failure to comply with these obligations may result in regulatory enforcement action, including fines, sanctions, or criminal prosecution.

## 2.3 THE FINANCIAL PROMOTIONS ORDER (FPO)

In the United Kingdom, the introduction of the Financial Promotions (Amended) Order 2023 (FPO) plays a vital role in ensuring that promotional activities related to cryptoassets adhere to strict standards.

The FPO, established under the Financial Services and Markets Act 2000, sets out the rules and requirements for Financial Promotions in the UK. Its primary objective is to ensure that promotional materials provide accurate and clear information to potential investors, enabling them to make informed decisions. The FPO applies to a wide range of financial products and services, also including cryptoassets.

Cryptoassets and tokens, are subject to the FPO if they fall within the definition of a “controlled investment.” The FPO defines controlled investments as those specified in the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001. This includes investments such as shares, debentures, and units in collective investment schemes.

Under the FPO, any person or entity involved in promoting cryptoassets must ensure compliance with specific requirements. These include:



- Approval: All Financial Promotions must be approved by an authorised person or be exempt from the requirement for approval. This ensures that promotions meet the necessary regulatory standards and provide accurate information to potential investors.
- Clear and Fair Presentation: Promotions must be presented in a clear, fair, and not misleading manner. They should provide a balanced view of the risks and rewards associated with the cryptoasset, avoiding exaggerated claims or misleading statements.
- Target Audience: Promotions must be directed at appropriate recipients, ensuring that they are suitable for the intended audience. This helps prevent vulnerable or inexperienced investors from being exposed to high-risk investments without adequate understanding.
- Risk Warnings: Promotions must include clear and prominent risk warnings, highlighting the potential risks involved in investing in cryptoassets. This ensures that investors are fully aware of the volatility, regulatory uncertainties, and other inherent risks associated with these assets.

The FPO grants the FCA the authority to enforce compliance with its regulations. The FCA possesses the jurisdiction to investigate and initiate enforcement actions against individuals or entities found breaching the FPO's requirements, leading to penalties such as fines, public censures, and restrictions on future promotional efforts.

Significantly, the FPO plays a vital role in safeguarding investors within the cryptoasset realm. By imposing stringent regulations on promotional activities, it acts as a deterrent against deceptive or fraudulent promotions, protecting unsuspecting investors from potential financial losses. The FPO's focus on transparent and equitable presentation, appropriate targeting, and comprehensive risk warnings ensures investors have access to accurate information, enabling them to make well-informed investment decisions.

Moreover, as the cryptoasset industry continually evolves, the FPO demonstrates adaptability to emerging developments. The FCA proactively revises and enhances its guidelines to effectively address the distinct challenges posed by cryptoassets. This proactive approach ensures the FPO remains relevant and effective in regulating promotional activities within this sector.



## 2.4 FCA NON-HANDBOOK GUIDANCE ON FINANCIAL PROMOTIONS

The FCA released non-handbook guidance on the promotion of cryptoassets in November 2023, less than a month after the Financial Promotions regime came into force. The guidance aims to provide clarity on the regulatory requirements for firms when promoting cryptoassets to consumers. It covers various aspects such as the classification of different types of cryptoassets, the risks associated with investing in them, and the need for clear and fair communication in promotional materials.

The non-handbook guidance warns that failure to comply with the regulatory requirements outlined in the guidance may result in enforcement action. This could include fines, public censures, or even criminal prosecution. The FCA's intention is to protect consumers and maintain the integrity of the financial system by holding firms accountable for their promotional activities.

## 3. DEFINITION OF FINANCIAL PROMOTIONS:

Drawing back to the FPO, The UK regulator defines a financial promotion as any communication that is made to an individual or a group of individuals, which:

- Relates to a financial product or service: A financial promotion can include information about investments, insurance, mortgages, loans, and other financial products or services including cryptoassets.
- Is communicated by a person in the course of business: The communication must be made by an individual or entity acting in a professional capacity or as part of their business activities.
- Is an invitation or inducement to engage in investment activity: The communication must encourage or persuade individuals to take part in investment activities, such as buying, selling, subscribing to, or underwriting financial products including cryptoassets.

The FCA's definition of a financial promotion is crucial for several reasons:

- **Investor Protection:** The primary objective of the FCA is to protect consumers and ensure they receive fair treatment. By defining Financial Promotions, the FCA aims to regulate



the information provided to investors, ensuring it is accurate, clear, and not misleading. This helps investors make informed decisions and reduces the risk of falling victim to fraudulent or misleading promotions.

- **Market Integrity:** Financial Promotions play a significant role in shaping market behaviour and investor sentiment. By setting clear guidelines, the FCA helps maintain market integrity, preventing market abuse, and ensuring fair competition among financial service providers.
- **Regulatory Compliance:** The FCA's definition of a financial promotion establishes the scope of regulatory requirements for businesses. Financial service providers must comply with specific rules and regulations when creating and disseminating Financial Promotions. This includes obtaining necessary approvals, providing accurate information, and adhering to relevant disclosure requirements.
- The FCA has the authority to enforce compliance with financial promotion regulations. If a financial service provider breaches the rules, the FCA is at liberty to evoke enforcement action, implement restrictions on future promotional activities or impose fines financially harming firms in breach of the rules.

### 3.1 EXEMPTIONS AND EXCLUSIONS

The FCA has identified certain exemptions that relieve certain entities or activities from the full scope of the Financial Promotions regime. These exemptions include:

- **Exempt Persons:** Certain individuals or entities, such as authorised persons, appointed representatives, and exempt professional firms, may be exempt from the Financial Promotions regime when communicating Financial Promotions. These entities are subject to other regulatory requirements and oversight, which provide investor protection.
- **Non-Promotional Communications:** Communications that are not considered promotional in nature, such as factual statements or responses to specific queries, may be exempt from the Financial Promotions regime. These communications do not actively encourage or induce individuals to engage in investment activity.
- **Unsolicited Communications:** If a communication is unsolicited, meaning it is not initiated by the person making the communication, it may be exempt from the Financial



Promotions regime. However, the communication must still comply with other regulatory requirements, such as being fair, clear, and not misleading.

In addition to exemptions, the FCA has identified certain exclusions that fall outside the scope of the Financial Promotions regime. These exclusions include:

- **Business-to-Business (B2B) Communications:** Communications made exclusively to recipients who are classified as professional clients or eligible counterparties are generally excluded from the Financial Promotions regime. This exclusion recognises that professional clients have a higher level of knowledge and expertise, reducing the need for the same level of regulatory protection.
- **Non-Real Time Communications:** Non-real time communications, such as print advertisements or website content, may be excluded from the Financial Promotions regime. However, these communications must still comply with other regulatory requirements, including being fair, clear, and not misleading.
- **Non-Promotional Activities:** Activities that are not considered promotional in nature, such as providing general market commentary or educational materials, may be excluded from the Financial Promotions regime. These activities aim to inform and educate individuals without actively encouraging investment activity.

Market participants involved in promoting cryptoassets must carefully navigate the exemptions and exclusions within the FCA's Financial Promotions regime. While certain activities may be exempt or excluded, it is crucial to ensure compliance with other regulatory requirements, such as providing accurate and transparent information, avoiding misleading statements, and considering the appropriateness of the communication for the intended audience.

Understanding the specific exemptions and exclusions applicable to their activities will help market participants navigate the regulatory landscape effectively, ensuring that promotional activities related to cryptoassets are fair, clear, and not misleading. By adhering to these regulations, market participants can contribute to a responsible and sustainable cryptoasset ecosystem.



## 4. REGULATORY REQUIREMENTS FOR CRYPTOASSET BUSINESSES:

In the United Kingdom, the FCA is the regulatory body responsible for overseeing cryptoasset businesses. Under the supervision of the FCA, there are mandatory steps that cryptoasset businesses need to take to ensure regulatory compliance.

### 4.1 AUTHORISATION & REGISTRATION

FCA registration is a mandatory requirement for cryptoasset businesses that fall within the scope of the UK's regulatory framework. The registration process aims to ensure that businesses meet specific standards and adhere to regulatory obligations, ultimately safeguarding investors and maintaining market integrity.

Below are the steps which are required to obtain FCA registration as a cryptoasset business:

- **Determine Regulatory Scope:** Cryptoasset businesses must first determine whether they fall within the regulatory scope of the FCA. This involves assessing the nature of their activities and the types of cryptoassets they deal with. The FCA provides guidance and resources to help businesses understand whether they require registration.
- **Prepare Application Documentation:** Once it is established that registration is required, businesses must prepare the necessary documentation for the application process. This typically includes detailed information about the business, its ownership structure, key personnel, compliance procedures, and risk management frameworks.
- **Anti-Money Laundering (AML) Compliance:** Cryptoasset businesses must demonstrate robust AML procedures and compliance with the Money Laundering, Terrorist Financing, and Transfer of Funds (Information on the Payer) Regulations 2017. This involves implementing appropriate customer due diligence measures, record-keeping, and reporting suspicious activities to relevant authorities.
- **Fit and Proper Assessment:** The FCA conducts a fit and proper assessment of key individuals within the business, such as directors and senior management. This assessment evaluates their competence, integrity, and financial soundness to ensure they are suitable for their roles.



- **Regulatory Fees:** Cryptoasset businesses are required to pay regulatory fees to cover the costs associated with the registration process and ongoing supervision by the FCA. The fee structure varies depending on the size and nature of the business.
- **Ongoing Compliance and Reporting:** Once registered, cryptoasset businesses must maintain ongoing compliance with FCA regulations. This includes submitting regular reports, complying with reporting obligations, and undergoing periodic assessments by the FCA to ensure continued adherence to regulatory requirements.

Obtaining FCA registration offers several benefits for cryptoasset businesses, including:

- **Enhanced Credibility:** FCA registration demonstrates a commitment to regulatory compliance and provides reassurance to investors and customers. It enhances the credibility and reputation of the business within the cryptoasset industry.
- **Access to UK Market:** FCA registration allows cryptoasset businesses to operate legally in the UK market. It opens doors to partnerships, collaborations, and potential investors who prioritise working with regulated entities.
- **Investor Protection:** FCA registration ensures that businesses meet specific standards and regulatory obligations, providing a higher level of investor protection. This helps build trust and confidence in the cryptoasset industry.

Obtaining FCA registration is a crucial step for cryptoasset businesses operating in the UK. It demonstrates a commitment to regulatory compliance, enhances credibility, and provides access to the UK market. By following the registration process, businesses can ensure they meet the necessary standards and obligations set by the FCA, ultimately contributing to a responsible and sustainable cryptoasset market.

## 4.2 COMPLIANCE WITH FCA HANDBOOK

Adhering to the FCA Handbook is indispensable for cryptoasset firms in the UK, offering significant advantages such as regulatory approval, enhanced reputation within the industry and customer trust. The Handbook outlines essential rules and principles, ensuring fair treatment of consumers and promoting integrity in financial dealings.



Compliance with these regulations is crucial for multiple reasons: firstly, it safeguards investors by reducing the risk of misconduct and fraudulent activities, promoting transparency and honesty. Secondly, it preserves market integrity by ensuring fair competition, preventing market abuse, and fostering trust among participants.

Additionally, adherence to the Handbook aids in risk mitigation, offering guidance on risk management and compliance procedures, shielding both firms and customers from financial harm. Moreover, compliance is not only a legal requirement but also a demonstration of ethical conduct and professionalism, enhancing a firm's reputation, attracting new customers, fostering long-term relationships, and instilling trust and confidence among customers.

Conversely, non-compliance can result in severe penalties, fines, and reputational damage, making adherence to the Handbook imperative for sustained success and growth in the cryptoasset industry.

To ensure ongoing compliance with the FCA Handbook, cryptoasset firms should:

1. **Stay Informed:** Keep abreast of regulatory updates, changes, and new requirements issued by the FCA. Regularly review the Handbook to ensure compliance with the latest regulations.
2. **Implement Robust Compliance Procedures:** Establish and maintain robust compliance procedures and internal controls. This includes conducting regular risk assessments, monitoring activities, and implementing appropriate governance structures.
3. **Training and Education:** Provide training and education to staff members to ensure they understand and adhere to the regulatory requirements outlined in the Handbook. This helps foster a culture of compliance within the organisation.
4. **Seek Professional Advice:** Engage with legal and compliance professionals who specialise in FCA regulations. They can provide guidance and support in interpreting and implementing the requirements of the Handbook.





### 4.3 CLEAR, FAIR, & NOT MISLEADING REQUIREMENT

In the cryptoasset industry, effective communication is crucial to provide consumers with accurate and transparent information about financial products and services. The FCA in the UK has established requirements for Financial Promotions, focusing on clarity, fairness, and accuracy.

These principles form the basis of the FCA's Financial Promotion Regime, designed to protect consumers. By ensuring Financial Promotions deliver precise and transparent information, consumers can make informed decisions regarding cryptoasset-related financial products, safeguarding them from potential financial harm.

To meet the FCA's requirements, cryptoasset Financial Promotions should encompass the following key elements:

1. **Clarity:** Financial Promotions should be clear and easily understandable to the target audience. They should avoid jargon, complex language, or technical terms that may confuse or mislead consumers. The information provided should be concise, well-structured, and presented in a manner that facilitates comprehension.
2. **Accuracy:** Financial Promotions must provide accurate and up-to-date information. Any claims, statements, or representations made in the promotion should be supported by evidence and based on reliable data. Misleading or false information can lead to incorrect consumer decisions and undermine market integrity.
3. **Balance:** Financial Promotions should present a balanced view of the product or service being promoted. This means providing both the benefits and risks associated with the offering. Firms should avoid emphasising potential benefits while downplaying or omitting important risks or limitations.
4. **Transparency:** Financial Promotions should be transparent in terms of costs, fees, charges, and any other relevant information that may impact the consumer's decision-making process. All material information should be disclosed in a clear and prominent manner, ensuring consumers have a comprehensive understanding of the product or service being promoted.



Adherence to the Financial Promotions regime ensures that financial firms provide consumers with accurate and transparent information, enhancing consumer protection and maintaining market integrity.

#### 4.4 RISK WARNINGS & DISCLAIMERS

Risk warnings and disclaimers are integral components of the FCA's Financial Promotions regime, serving as crucial safeguards for consumers. These cautionary statements have been designed to ensure individuals are fully informed about the risks associated with financial products and services, particularly in the context of cryptoasset marketing.

The FCA mandates the inclusion of clear and concise risk warnings in various promotional mediums, such as television ads, online banners, and social media posts. These warnings spotlight potential risks, offering consumers a comprehensive understanding of the products or services in question.

Additionally, disclaimers are important in delineating the firm's limitations of liability, shielding them from legal claims and clarifying their responsibilities to consumers. Crafting appropriate risk warnings and disclaimers necessitates careful consideration of the target audience, the complexity of the product, and the level of risk involved.

Equally significant is the presentation of these warnings and disclaimers, demanding prominent placement and easy readability. Firms must employ techniques like bold text or larger font sizes to ensure conspicuousness. Compliance with these regulations is paramount; failure to adhere to the FCA's standards can result in severe consequences, including fines and sanctions. The FCA's commitment to consumer protection and market integrity underscores the importance of adhering to these vital requirements in Financial Promotions.

#### 4.5 APPROVAL & RECORD-KEEPING

Approval and record-keeping requirements are fundamental elements of the FCA's Financial Promotions regime for cryptoasset firms. These regulations are intricately crafted to ensure adherence to the FCA's rules and regulations, establishing a transparent and accountable framework for promoting financial products and services.



Firms must obtain approval from an authorised person within an authorised firm before communicating Financial Promotions to consumers. The approval process involves a detailed review of content, presentation, and target audience to ensure accuracy, fairness, and transparency. Additionally, firms must maintain records of all Financial Promotions made, including content, target audience, and approval process details, for a specified period, typically five years.

These records serve as evidence of compliance, enabling the FCA to monitor firms' adherence to regulations and maintain market integrity. Firms failing to comply with these requirements face regulatory actions, underscoring the FCA's commitment to consumer protection and ensuring a fair and transparent financial industry.

#### 4.6 SOCIAL MEDIA & INFLUENCER MARKETING

The FCA's Financial Promotions regime has evolved to address the challenges posed by social media and influencer marketing, especially within the cryptoasset industry. With the rise of social media platforms and the increasing influence of influencers, the FCA has recognised the need to ensure that Financial Promotions in these mediums are fair, clear, and not misleading.

Social media platforms have become powerful tools for marketing and communication, allowing cryptoasset firms to reach a wide audience quickly and easily. However, the fast-paced nature of social media present unique challenges when it comes to complying with the FCA's rules and regulations.

The FCA's Financial Promotions regime applies to all forms of communication, including social media posts and influencer marketing. Cryptoasset firms must ensure that their promotions on social media platforms comply with the same standards as other forms of advertising.

One of the key challenges with social media promotions is the limited space available for content. Platforms like Twitter (X) and Instagram have character limits, making it difficult to include all the necessary information and disclosures. However, the FCA expects firms to find creative ways to ensure that promotions are still compliant, even within these constraints.



To address this challenge, cryptoassets firms often use techniques such as using shortened URLs that direct consumers to a webpage with more detailed information, or including prominent risk warnings and disclaimers within the limited space available. Firms may also use hashtags or other visual cues to indicate that a post is a financial promotion and provide additional information or disclosures.

In the realm of cryptoasset firms, influencer marketing has emerged as a prevalent strategy to engage their target demographic. Influencers, renowned for their substantial followings and persuasive sway, are frequently enlisted to endorse cryptoasset products or services. Nevertheless, the FCA mandates that firms rigorously oversee influencers to guarantee their adherence to the same stringent regulations governing the firms themselves.

Cryptoasset enterprises are obligated to ascertain that influencers transparently divulge their affiliations with the firm and explicitly acknowledge that their posts serve as a Financial Promotion. This transparency can be achieved through unequivocal and conspicuous disclosures within the content or through the utilisation of hashtags such as #ad or #sponsored. Furthermore, the FCA insists on the formulation of comprehensive agreements between firms and influencers, meticulously outlining their roles and responsibilities to ensure steadfast adherence to the FCA's stringent regulations.

Additionally, the FCA underscores the necessity for cryptoasset firms to maintain a vigilant stance by continuously overseeing and supervising social media and influencer marketing initiatives to ensure perpetual compliance. This oversight encompasses a systematic review of posts, diligent monitoring of comments and interactions, and the prompt initiation of corrective measures upon identification of any non-compliant content, thereby upholding the highest standards of regulatory compliance.



## 5. CHALLENGES & CONSIDERATIONS:

The lack of historic clarity and consistency in regulatory compliance within the cryptoasset industry presents significant challenges for businesses and individuals operating in this space. The absence of universally accepted definitions and guidelines, coupled with the rapid pace of innovation, creates an uncertain global regulatory environment. To address these challenges, regulatory authorities need to develop comprehensive frameworks that provide clarity and consistency.

### 5.1 LACK OF CLARITY AND CONSISTENCY

The decentralised nature of cryptoassets, operating independently of traditional financial institutions and regulatory frameworks, has posed a considerable challenge for regulatory authorities worldwide. One of the primary hurdles lies in the absence of a universally accepted definition for cryptoassets, leading to divergent classifications across jurisdictions. Some nations view cryptoassets as currency, while others categorise them as commodities or securities, resulting in regulatory inconsistencies and confusion among businesses and individuals striving to comply with regulations.

Moreover, the rapid advancements in the cryptoasset space frequently outpaced regulatory developments, making it arduous for authorities to keep pace and offer clear directives. The continuous emergence of new cryptoasset types and technologies further complicates matters, leaving businesses and individuals uncertain about navigating the regulatory landscape, including marketing and financial promotion regulations across multiple jurisdictions.

The global nature of cryptoassets, enabling borderless transactions without intermediaries, creates additional enforcement challenges for regulators. Decentralisation gives rise to jurisdictional complexities, creating uncertainties about the regulatory authority governing these assets. This ambiguity may incentivise businesses to operate in regions with lenient regulations, exploiting regulatory disparities.

The lack of clarity and consistency in regulatory compliance within the cryptoasset realm poses significant risks to consumers and investors. Absence of clear guidelines exposes individuals to



scams, fraudulent schemes, and unregulated platforms. The absence of investor protection measures, such as deposit insurance or recourse mechanisms, exacerbates these risks.

## 5.2 GLOBAL NATURE OF CRYPTOASSETS

The international reach of cryptoassets, operating on decentralised networks, transcends national borders, offering borderless transactions and fostering financial inclusion. With the ability to facilitate direct peer-to-peer transactions, cryptoassets reduce costs and enhance cross-border transfer speed, empowering unbanked populations worldwide.

This global nature also fuels innovation, enabling collaboration on a global scale, leading to revolutionary applications across industries. However, this decentralised paradigm poses challenges in security, and fraud prevention. The lack of global regulatory consensus results in a varied regulatory landscape, creating uncertainties for businesses and investors. Additionally, the anonymity associated with cryptoassets attracts illicit activities, demanding a delicate balance between security and innovation.

## 5.3 EVOLVING REGULATORY LANDSCAPE

The regulatory landscape surrounding cryptoassets has been quickly evolving as governments and regulatory bodies around the world grapple with how to effectively oversee this emerging asset class. The decentralised and global nature presents unique challenges for regulators, but there is a growing recognition of the need to establish clear guidelines to protect investors, ensure market integrity, and prevent illicit activities.

In the early days of cryptoassets, regulatory responses varied widely. Some countries took a cautious approach, issuing warnings about the risks associated with investing in cryptoassets and advising consumers to exercise caution. Others embraced the potential of blockchain technology and cryptoassets, creating supportive regulatory environments to foster innovation and attract businesses in this space.

However, as the popularity and market capitalisation of cryptoassets grew, regulators began to take a more active role in establishing frameworks to govern their use. Many jurisdictions have



introduced, or are in the process of introducing specific legislation and regulations to address the unique characteristics and risks associated with cryptoassets.

One area of focus for regulators is investor protection. Given the volatility and speculative nature of cryptoassets, regulators are keen to ensure that investors are adequately informed and protected. This has led to the implementation of know-your-customer (KYC) and anti-money laundering (AML) requirements for cryptoasset exchanges and service providers. Regulators are also increasingly scrutinising initial coin offerings (ICOs) to ensure that they comply with securities laws and provide investors with accurate and transparent information.

Market integrity is another key concern for regulators. Manipulation, fraud, and insider trading can undermine trust in the cryptoasset market and harm investors. Regulators are working to establish surveillance mechanisms and enforce rules to detect and prevent such activities. They are also exploring the potential use of distributed ledger technology (DLT) to enhance transparency and traceability in the cryptoasset market.

Regulators are also grappling with the question of how to classify and regulate different types of cryptoassets. While some cryptoassets clearly fall under existing regulatory frameworks, such as securities or commodities, others do not fit neatly into existing categories. This has led to debates and discussions around the world about whether new regulatory frameworks are needed to address the unique characteristics of cryptoassets.

International cooperation and coordination among regulators are crucial in this evolving landscape. Given the global nature of cryptoassets, regulatory actions in one jurisdiction can have implications for the entire market. Regulators are increasingly collaborating and sharing information to address cross-border challenges, such as money laundering and terrorist financing risks.

As the regulatory landscape continues to evolve, it is important for businesses and investors to stay informed and comply with applicable regulations. This includes understanding the regulatory requirements in their jurisdiction, implementing robust compliance measures, and engaging with regulators to provide input and feedback on proposed regulations.



## 5.4 BALANCING INNOVATION & INVESTOR PROTECTION

The cryptoasset industry has been a hotbed of innovation, revolutionising the way we think about finance, transactions, and decentralised systems. However, with innovation comes the need to strike a delicate balance between fostering innovation and ensuring investor protection. Regulators and industry participants alike face the challenge of creating a regulatory framework that encourages innovation while safeguarding the interests of investors.

One of the key aspects of balancing innovation and investor protection is establishing clear regulatory guidelines. Clarity in regulations provides businesses and investors with a framework within which they can operate and make informed decisions. Uncertainty and ambiguity can hinder innovation and deter investors from participating in the market. Regulators need to provide clear guidelines that address the unique characteristics and risks associated with cryptoassets, such as volatility, security, and fraud prevention.

At the same time, regulations should not stifle innovation. Overly burdensome regulations can hinder the development of new technologies and applications. Regulators need to strike a balance by implementing regulations that address risks without stifling innovation. This can be achieved through a flexible and adaptive regulatory approach that allows for experimentation and iteration.

Another important aspect of balancing innovation and investor protection is implementing robust investor protection measures. The cryptoasset industry has been plagued by scams, fraudulent schemes, and market manipulation. Regulators need to ensure that investors are adequately protected from these risks. This includes implementing know-your-customer (KYC) and anti-money laundering (AML) requirements for cryptoasset exchanges and service providers, as well as enforcing rules to prevent market manipulation and insider trading.

Education and awareness are also crucial in balancing innovation and investor protection. Many investors are still unfamiliar with the intricacies and risks associated with cryptoassets. Regulators should invest in educational initiatives to help investors understand the technology, risks, and potential rewards of investing in cryptoassets. This can empower investors to make informed decisions and protect themselves from scams and fraudulent schemes.





Collaboration between regulators, industry participants, and other stakeholders is essential in achieving the delicate balance between innovation and investor protection. Regulators should engage with industry participants to understand the unique challenges and opportunities presented by cryptoassets. This collaboration can help regulators develop regulations that are effective, practical, and adaptable to the rapidly evolving cryptoasset landscape.

Furthermore, self-regulatory organisations within the cryptoasset industry can play a crucial role in balancing innovation and investor protection. These organisations can establish industry standards, best practices, and codes of conduct that promote transparency, security, and investor protection. By self-regulating, the industry can demonstrate its commitment to responsible practices and build trust among investors and regulators.

## 6. REGULATORY BREACHES & CONSEQUENCES

Failure to comply with the regulators' regulations can have severe consequences for businesses and individuals involved in promoting cryptoassets. This section explores the potential regulatory breaches and the consequences of not being compliant with the FCA's cryptoasset Financial Promotions regime.

### 6.1 UNAUTHORISED PROMOTION:

One of the key regulatory breaches is engaging in unauthorised promotion of cryptoassets. The FCA requires businesses and individuals to obtain proper authorisation before promoting cryptoassets to the public. Unauthorised promotion can include advertising, marketing campaigns, or any communication that encourages individuals to invest in cryptoassets. Authorised cryptoasset promotions can only be approved by an approved person in an FCA authorised firm. Engaging in unauthorised promotion can result in enforcement action by the FCA, including fines, penalties, and even criminal charges.

### 6.2 MISLEADING OR INACCURATE INFORMATION:

The FCA places great emphasis on ensuring that Financial Promotions related to cryptoassets are fair, clear, and not misleading. Providing inaccurate or misleading information about the



nature, risks, or potential returns of cryptoassets can lead to regulatory breaches. This includes making exaggerated claims, omitting important information, or misrepresenting the risks associated with investing in cryptoassets. Breaching these requirements can result in enforcement action, fines, and reputational damage.

### 6.3 FAILURE TO INCLUDE APPROPRIATE RISK WARNINGS:

The FCA requires Financial Promotions related to cryptoassets to include appropriate risk warnings. These warnings should clearly communicate the potential risks involved in investing in cryptoassets, such as volatility, market manipulation, and the potential loss of the entire investment. Failure to include these risk warnings or providing inadequate warnings can lead to regulatory breaches and enforcement action by the FCA.

### 6.4 CONSEQUENCES OF NON-COMPLIANCE:

The consequences of not being compliant with the FCA's cryptoasset Financial Promotions regime can be severe. Aside from fines and restrictions, non-compliance can also result in reputational damage, loss of investor trust, and potential legal action from affected investors.

Compliance with the FCA's cryptoasset Financial Promotions regime is crucial for businesses and individuals operating in, or marketing to, the cryptoasset industry in the UK.

The FCA have already shown how actively they are monitoring breaches by sending 146 alerts on the 9<sup>th</sup> October 2023 against crypto firms which were not registered or regulated to promote cryptocurrencies on the first day of the Financial Promotion regime going live.



## 7. CASE STUDIES:

### 7.1 SUCCESSFUL FINANCIAL PROMOTIONS IN THE CRYPTOASSET INDUSTRY

#### 7.1.1 INTRODUCTION:

In recent years, the cryptoasset industry has witnessed significant growth and innovation. However, promoting cryptoassets in a responsible and compliant manner remains a challenge. This case study explores a successful example of a cryptoasset financial promotion in the United Kingdom, highlighting the key factors that contributed to its success.

#### 7.1.2 BACKGROUND:

Company X, a UK-based cryptoasset exchange, aimed to raise awareness and attract new users to its platform through a financial promotion campaign. The campaign focused on promoting the benefits of investing in cryptoassets while ensuring compliance with the regulatory requirements set by the FCA.

#### 7.1.3 KEY FACTORS FOR SUCCESS:

##### **1. Compliance with Regulatory Requirements:**

Company X recognised the importance of complying with the FCA's Financial Promotions regime to maintain trust and credibility among potential investors. They thoroughly reviewed and adhered to the FCA's guidelines on Financial Promotions, ensuring that all promotional materials were clear, fair, and not misleading. This included providing appropriate risk warnings and disclaimers to potential investors.

##### **2. Transparent and Educational Content:**

The financial promotion campaign emphasised transparency and education. Company X provided clear and concise information about the nature of cryptoassets, their risks, and potential rewards. They avoided making exaggerated claims or promises of guaranteed returns, focusing instead on educating potential investors about the technology and its potential applications.



### **3. Targeted Marketing Strategy:**

Company X developed a targeted marketing strategy to reach its desired audience. They identified specific demographics and interests that aligned with the potential benefits of investing in cryptoassets. By tailoring their messaging and channels to reach these specific groups, they were able to maximise the impact of their financial promotion campaign.

### **4. Collaboration with Influencers and Experts:**

To enhance credibility and reach a wider audience, Company X collaborated with reputable influencers and experts in the cryptoasset industry. These influencers provided insights, testimonials, and educational content, which helped build trust and attract potential investors. The collaboration also helped Company X tap into the existing networks and communities of these influencers, expanding their reach beyond their own customer base.

### **5. Ongoing Communication and Support:**

Company X recognised the importance of ongoing communication and support for potential investors. They provided multiple channels for potential investors to seek clarification, ask questions, and receive support. This included a dedicated customer support team, educational resources, and regular updates on market trends and developments. By maintaining open lines of communication, Company X built trust and demonstrated their commitment to investor satisfaction.

#### **7.1.4 RESULTS AND IMPACT:**

The successful financial promotion campaign by Company X resulted in a significant increase in user registrations and trading volumes on their platform. The targeted marketing strategy, compliance with regulatory requirements, transparent content, and collaboration with influencers contributed to the campaign's success. The campaign not only attracted new investors but also helped educate the public about cryptoassets, fostering a better understanding of the industry.

#### **7.1.5 CONCLUSION:**

This case study highlights the importance of responsible and compliant financial promotion in the cryptoasset industry. By adhering to regulatory requirements, providing transparent and



educational content, targeting the right audience, collaborating with influencers, and offering ongoing support, companies can successfully promote cryptoassets while safeguarding investor interests. Such practices contribute to the growth and maturation of the cryptoasset industry, fostering trust and credibility among investors and regulators alike.

## 8. FUTURE OUTLOOK:

### 8.1 REGULATORY DEVELOPMENTS & UPDATES

In 2018, the UK government established the Cryptoasset Taskforce, comprising the FCA, the Bank of England, and the Treasury. The taskforce aimed to assess the risks and benefits of cryptoassets and develop an appropriate regulatory framework.

In January 2020, the FCA introduced a comprehensive regulatory framework for cryptoassets, mandating businesses in the sector to adhere to anti-money laundering (AML) and counter-terrorist financing (CTF) regulations.

The framework categorises cryptoassets into three types: exchange tokens (e.g., Bitcoin, Ethereum), security tokens (representing ownership rights akin to traditional securities), and utility tokens (providing access to specific products or services, not considered traditional securities).

#### Exchange Tokens:

Firms dealing in exchange tokens, widely used for exchange and investment but not considered legal tender or e-money, must register with the FCA and comply with AML and CTF regulations.

#### Security Tokens:

Security tokens, mirroring traditional securities, are subject to existing financial regulations, encompassing prospectus requirements and market abuse rules.

#### Utility Tokens:

Utility tokens offer access to specific services and products and lack traditional securities' attributes. They remain unregulated unless falling under other financial regulations' purview.



Additionally, in October 2020, the FCA imposed a ban on retail consumers' sale of cryptoasset derivatives. This measure aimed to shield retail investors from the intricate and volatile nature of these products, potentially saving them £53 million (\$73 million) annually. To mitigate money laundering and terrorist financing risks, the FCA extended AML and CTF regulations to all cryptoasset businesses operating in the UK. This mandates mandatory registration with the FCA and compliance with rigorous protocols, including customer due diligence, transaction monitoring, and reporting suspicious activities.

The UK government is committed to fostering innovation in the cryptoasset sector, presently, the FCA is engaged in consultations to explore additional regulatory measures. These include potential modifications to the regulatory perimeter, stablecoin regulation, and the utilisation of distributed ledger technology in financial markets.

## 8.2 INTERNATIONAL COOPERATION & HARMONIZATION

Cryptoassets will prove difficult to regulate in isolation. International collaboration between regulators is required to successfully regulate cryptoassets. Collaborative efforts among regulators enhance understanding of the cryptoasset industry and its risks.

Knowledge exchange facilitates the development of robust frameworks, adaptation to emerging trends, and effective handling of evolving technologies. Global standards set by organisations like the Financial Action Task Force (FATF) guide countries in implementing Anti-Money Laundering (AML) and Counter-Terrorist Financing (CTF) measures, ensuring consistency across jurisdictions.

Standardising regulations prevents fragmentation, fosters a level playing field for cryptoasset businesses, and encourages innovation. International cooperation aligns regulatory frameworks, simplifying complexity and promoting cross-border activities.

Harmonisation boosts market confidence, attracts investments, and stimulates innovation. Illustrating this, the European Union's Markets in Crypto-Assets Regulation (MiCA) aims for unified regulation, ensuring legal clarity, investor protection, market integrity, and innovation in the European cryptoasset market.



However, challenges such as diverse legal systems and cultural disparities will persist. The rapid pace of the cryptoasset industry requires regulators to swiftly adapt to new technologies. To overcome these challenges, regulators need robust mechanisms for information exchange, coordination, and collaboration. International organisations like FATF and IOSCO facilitate dialogue among regulators.

In the future, the cryptoasset industry will evolve, introducing new regulatory challenges.

International cooperation and standardisation will remain crucial, requiring regulators to establish shared standards, exchange knowledge, and coordinate efforts. This collaboration ensures a consistent and resilient global regulatory framework for the cryptoasset market.

## 9. CONCLUSION:

In conclusion, the Financial Conduct Authority's (FCA) Financial Promotion Regime has had a significant impact on the UK cryptoasset industry. The FCA has recognised the potential of cryptoassets and the underlying technologies such as blockchain and artificial intelligence (AI), but it has also been proactive in addressing the risks associated with these advancements and the need to protect the consumer.

The FCA's Financial Promotion Regime has provided clarity and protection for consumers by requiring firms to obtain authorisation before promoting certain types of cryptoassets. This ensures that only legitimate and regulated firms can operate in the industry, reducing the risk of fraud and scams.

The FCA has also imposed additional requirements on firms that use AI in their Financial Promotions. This is crucial in ensuring that AI is used responsibly and ethically, and that consumers are not misled or manipulated by AI-driven marketing strategies.

Furthermore, the FCA's Financial Promotion Regime has emphasised the importance of clear and fair information for consumers. This is particularly relevant in the cryptoasset industry, where the complexity and volatility of the market can make it challenging for consumers to make informed decisions. By requiring firms to provide transparent and accurate information, the FCA



is empowering consumers to make educated choices and reducing the likelihood of financial harm.

The scope of the FCA's Financial Promotion Regime extends beyond consumer protection. It also plays a crucial role in fostering innovation and promoting a healthy and sustainable cryptoasset industry. By setting clear guidelines and regulations, the FCA provides a level playing field for firms to operate and compete, while ensuring that they adhere to the highest standards of integrity and compliance.

However, it is important to note that the cryptoasset industry is constantly evolving, and technological advancements will continue to shape its landscape. The FCA's Financial Promotion Regime must remain adaptable and responsive to these changes to effectively regulate the industry and protect consumers.





## 10. AUTHOR: TOM GRIFFITHS



Tom Griffiths is the Co-Founder and Managing Partner of BitCompli, the trusted advisor in digital asset compliance. Tom is also the Managing Director in Regulatory Solutions for JJC Fintech, a provider of digital solutions for AML, Regulatory, and Tax Compliance. He also works in advisory and board-level positions primarily with cryptoasset businesses and technology related firms located globally.

Tom has over 20 years of experience working within regulatory operations and compliance. He spent c.9 of these years in banking and traditional finance before spending the subsequent 9 years working as a management consultant specialising in regulatory projects primarily at a board level within the regulated financial service industry.

Since 2019 Tom has worked primarily within the cryptoasset industry and was the Chief Compliance Officer & MLRO for Digivault, the first standalone cryptoasset custodian registered with the FCA. Tom also works with a range of technology firms focused on regulatory compliance solutions and he was co-chair of the National Crime Agency Cryptoasset Working Group and has worked with the All Party Parliamentary Group (APPG) for cryptoassets.



## 11. CO-AUTHOR: YAS JAFFER



Yas is the Co-Founder and Partner of JJCFinTech. Since the very start of their journey, Yas has laid a solid framework for her teams which has seen them traverse from an Advisory business into a solution-led fintech. Under the guidance of her leadership team, JJC has developed their flagship solution, Cerebro which has revolutionised the way firms think about policy and procedure management – completely digitising compliance.

Most recently, Yas has been focused on generating new revenue streams for the business by developing opportunities in other segments of the Financial Services industry, including payments, cryptos and money services firms.

Prior to JJC, Yas spent 10 years at IHS Markit (now S&P Global) managing the Regulatory Compliance division and as Managing Director, she co-headed a \$20m business line which developed regulator-grade solutions for some of the largest global banks and new economy leaders. Yas thrives on client interaction and has brought together many of the major financial institutions to collaborate and deliver industry group-wide initiatives.

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Edona is the Co-Founder and a Partner at Bitcompli. Edona is an experienced regulatory compliance consultant having worked in financial service firms providing advisory services as well as leading financial crime and regulatory compliance projects.

Since the start of her compliance career, Edona has been working closely with stakeholders, regulators and Skilled Persons during Section 166 reviews. During her career Edona has advised a range of banks, PSPs and most recently Cryptoasset businesses. She also holds an ICA international diploma in Governance, Risk and Compliance.



## 13. ABOUT BITCOMPLI

BitCompli provides expert regulatory and compliance support within the crypto and digital asset sectors. With our expertise, we've successfully streamlined and supported regulatory registrations for diverse cryptoasset institutions in key regions like the UK, EU, EEA, UAE and more.

Our Partners, who are located globally, consists of FCA approved MLROs and CCOs as well as Board Members and Directors of registered cryptoasset businesses throughout the UK, EU/EEA, South East-Asia and the UAE. All our partners have substantial experience within the traditional finance and cryptoasset industries.

All our partners have supported or led successful cryptoasset registrations and payment licence applications. BitCompli's Partners have also supported governmental agencies in relation to the regulation of cryptoassets including the UK National Crime Agency (NCA) and the UK All Party Parliamentary Group (APPG) on Cryptoassets.



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## 14. ABOUT JJCFINTECH

JJC offers a unique and pragmatic approach to digitising compliance through its world leading SaaS solution, 'Cerebro' – Digital Policy Brain.

Our mission is to support our clients in achieving complex, strategic, and transformational outcomes in their AML and Regulatory onboarding businesses.

We serve the largest global banks and new economy leaders, providing deep industry expertise in process, policy and regional nuances through our Advisory practice.

We know what good looks like in AML, onboarding, CLM and the broader ecosystem and where the common pitfalls lie and how to guide our clients through them.

We are one of very few firms operating in this space that can offer real life experience with a leadership team made up from former Global Heads and Managing Director level executives from firms like Goldman Sachs, HSBC, Deutsche Bank and IHS Markit (now S&P Global).

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