

Policy Statement

PS23/6

Financial promotion rules for cryptoassets

June 2023

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Chapter 1

Summary

- 1.1** In January 2022, the Government published a consultation response setting out its intention to legislate to bring certain promotions of 'qualifying cryptoassets' (referred to as cryptoassets in the rest of this document for simplicity) within the FCA's remit. The proposed legislative approach was updated in a policy statement published on 1 February 2023. The financial promotions regime will apply to all firms marketing cryptoassets to UK consumers, regardless of whether the firm is based overseas or what technology is used to make the promotion.
- 1.2** In January 2022, we consulted on financial promotion rules for high-risk investments including cryptoassets (CP22/2). In August 2022, we published our final rules for other high-risk investments excluding cryptoassets (PS22/10). We noted that we would make our rules for cryptoassets once the relevant legislation had been made and that we intended to take a consistent approach to cryptoassets to that taken for other high-risk investments.
- 1.3** Now that the relevant legislation has been made, we are publishing this Policy Statement (PS). The PS summarises the feedback we received to CP22/2 on cryptoassets and sets out our final policy position and near final Handbook rules. Having considered the feedback we intend to proceed with categorising cryptoassets as 'Restricted Mass Market Investments' and applying the associated restrictions on how they can be marketed to UK consumers. We are making targeted changes to our consultation proposals to align with the rules set out in PS22/10 for other high-risk investments. We believe these changes are also appropriate for cryptoasset financial promotions. We are also publishing a Guidance Consultation (GC) (Refer to GC23/1) on non-Handbook guidance, so firms clearly understand our expectations around the requirement that financial promotions are fair, clear and not misleading.
- 1.4** Since we published CP22/2, this work has become even more important. Events in the cryptoasset sector have continued to highlight the riskiness of these assets. Cryptoasset prices have fallen sharply, down ~75% between November 2021 and June 2022 (see data from CoinMarketCap). There have been several firm failures resulting in significant losses for consumers. Many of these cases involved misleading promotions such as offering high rates of return with no evidence of how these could be achieved and promoting high-risk, complex products as 'stable' such as the algorithmic stablecoin project Terra/Luna.
- 1.5** Even when the financial promotions regime comes into force, cryptoassets will remain high risk and largely unregulated. Consumers should only invest in cryptoassets if they understand the risks involved and are prepared to lose all their money. Consumers should not expect protection from the Financial Service Compensation Scheme (FSCS) or Financial Ombudsman Service (the ombudsman service) if something goes wrong.

- 1.6** The near final rules are in Appendix 1. We have published the rules as near final immediately after the relevant legislation has been made to give firms as much time as possible to prepare for this regime. The FCA Board has approved the rules as near final and we expect to confirm final rules shortly. Subject to exceptional circumstances, no further changes are expected to what has been published. We expect the rules will have effect from 8 October 2023.
- 1.7** We will take robust action against firms breaching these requirements. This may include, but it is not limited to, requesting take downs of websites that are in breach, placing firms on our warning list, placing restrictions on firms to prevent harmful promotions and enforcement action. Firms illegally communicating financial promotions to UK consumers will be committing a criminal offence punishable by an unlimited fine and/or 2 years in jail.

Who this affects

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

The wider context of this policy statement

UK Government approach to regulation of cryptoasset promotions

- 1.10** A 2018 report by the Cryptoassets Taskforce (CATF) identified several risks cryptoassets pose to consumers. This included the potential for harm where consumers buy cryptoasset products without appropriate awareness of the risks involved. The report also found that cryptoasset advertising is often targeted at retail investors and is typically not fair or clear, and can be misleading.
- 1.11** The Government has now legislated to bring promotions of qualifying cryptoassets within scope of the financial promotion regime. This has been implemented by the Financial Services and Markets Act 2000 (Financial Promotion) (Amendment) Order 2023. This follows the Government's Consultation Response and Policy Statement

setting out its approach to regulating cryptoasset financial promotions. The definition of 'qualifying cryptoasset' that is in scope of this regime is set out in paragraph 26F of Schedule 1 to the Financial Promotion Order (FPO). Very broadly, a 'qualifying cryptoasset' is any cryptographically secured digital representation of value or contractual rights that is transferable and fungible, but does not include cryptoassets which meet the definition of electronic money or an existing controlled investment. For simplicity we refer to 'qualifying cryptoassets' as 'cryptoassets' for the rest of this document.

- 1.12** The Government has amended the following controlled activities related to the buying and selling of investments to include reference to qualifying cryptoassets. This means that invitations or inducements to engage in these activities in relation to cryptoassets will be within scope of the financial promotions regime:
- dealing in securities and contractually based investments
 - arranging deals in investments
 - managing investments
 - advising on investments
 - agreeing to carry on specified kinds of activity
- 1.13** The Government has introduced a bespoke exemption in the FPO for cryptoasset businesses registered with the FCA under the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 ('MLRs'). This exemption, set out in Article 73ZA of the FPO, will enable cryptoasset businesses which are registered with the FCA under the MLRs, but which are not otherwise authorised persons (referred to as 'registered persons') to communicate their own cryptoasset financial promotions to UK consumers.
- 1.14** This exemption is intended to address concerns that requiring financial promotions to be made or approved by authorised persons would significantly restrict, or amount to an effective ban on, cryptoasset financial promotions.
- 1.15** There will be 4 routes to legally promoting cryptoassets to consumers:
- i. The promotion is communicated by an authorised person.
 - ii. The promotion is made by an unauthorised person but approved by an authorised person. Legislation is currently making its way through the UK Parliament which, if made, would introduce a regulatory gateway that authorised firms will need to pass through to approve financial promotions for unauthorised persons.
 - iii. The promotion is communicated by (or on behalf of) a cryptoasset business registered with the FCA under the MLRs in reliance on the exemption in Article 73ZA of the FPO.
 - iv. The promotion is otherwise communicated in compliance with the conditions of an exemption in the Financial Promotion Order.
- 1.16** For these purposes, a firm only authorised under the Electronic Money Regulations, or the Payment Services Regulations is not considered an 'authorised person' so cannot communicate or approve financial promotions. This is set in legislation and cannot be modified by FCA rules.

- 1.17** Existing exemptions in the FPO will generally apply to promotions of cryptoassets in line with their existing scopes. However, the Article 48 (high net worth individual) and Article 50A (self-certified sophisticated investor) exemptions will not apply to promotions of cryptoassets. This is because these exemptions only apply to promotions relating to a specific set of controlled investments set out in the legislation, broadly investments related to unlisted securities. The Government has expressly legislated to disapply the Article 51 (Associations of high net worth or sophisticated investors) and Article 61 (Sale of goods and supply of services) exemptions to cryptoassets.
- 1.18** Promotions that are not made using one of these 4 routes will be in breach of section 21 of the Financial Services and Markets Act 2000 (FSMA), which is a **criminal offence punishable by up to 2 years imprisonment, the imposition of a fine, or both**.
- 1.19** The Government had initially indicated that it would introduce a 6-month transition period to ensure compliance with the regime. The final legislation, however, provides for a 4-month transition, reflecting recent volatility in the cryptoasset sector and the risks this presents to consumers. The legislation will enter into force on 8 October 2023.

Our consultation

- 1.20** We issued CP22/2 to consult on rules for how cryptoassets can be promoted to UK consumers. We want consumers to receive timely, high-quality information that enables them to make effective investment decisions without being pressured, misled or inappropriately incentivised to invest in products that do not meet their needs. This means a rules framework that is robust and remains fit for purpose in a changing investment environment, where promotions are distributed to a mass audience at increasing speed via online platforms and through social media.
- 1.21** Our consumer research has shown that ownership of cryptoassets has grown since the 2018 CATF report and that adverts play an important role in consumer purchasing behaviour. One of the main ways consumers build their understanding of the risks of, and regulatory protections relating to, investments is through the information they get in financial promotions. For high-risk investments, our requirement that promotions must be fair, clear and not misleading may not be enough to adequately protect consumers. A promotion may meet these requirements, but a consumer may still not be able to properly assess whether the underlying investment meets their needs. In these cases, we can use our financial promotion rules to give consumers further protections, as set out in our consultation proposals.

How it links to our objectives

- 1.22** Our rules will advance our consumer protection, market integrity and competition objectives:
- **Consumer protection:** Our rules seek to reduce and prevent harm to consumers from investing in cryptoassets that do not match their risk appetite. We want consumers to only invest in cryptoassets where they understand the risks involved and can absorb potential losses. We do not want consumers to be pressured, misled or inappropriately incentivised to invest.

- **Market integrity:** Failures and unexpected losses for consumers undermine confidence in UK financial markets. This may impact the soundness, stability and resilience of the UK financial system. Facilitating consumer understanding and good investment decisions increases trust in the overall financial system.
- **Effective competition in the interests of consumers:** Our rules will create a fairer and more consumer-focused landscape in which firms can compete and innovate. Competition can more effectively act in the interests of consumers where consumers are given clear, accurate information that helps them make effective investment decisions. Our rules will help achieve a level playing field and prevent overseas firms, who may be currently subject to fewer regulatory standards, from undercutting UK firms with misleading advertising.

What we are changing

- 1.23** In CP22/2 we proposed to classify cryptoassets as 'Restricted Mass Market Investments'. This would allow them to be mass marketed to UK consumers subject to certain restrictions, in addition to the overarching requirement that financial promotions must be fair, clear and not misleading. The restrictions proposed included: clear risk warnings, banning incentives to invest, positive frictions, client categorisation requirements and appropriateness assessments.
- 1.24** We are proceeding largely as consulted. We are making targeted changes to our consultation proposals as summarised in Table 1 below.

Outcome we are seeking

- 1.25** Our near final rules are designed so that firms communicating and approving financial promotions for cryptoassets do so to a high standard.
- 1.26** Our consumer research shows there is a growing mismatch between consumers' investment decisions and their stated risk tolerance, including for cryptoassets. This has the potential to cause significant harm to consumers, including unexpected financial loss that cannot easily be absorbed. A significant unexpected loss from an investment can have knock on effects of further financial difficulty and poorer wellbeing, especially in the current economic climate. The harm is likely to be more acute among individuals with characteristics of vulnerability.
- 1.27** Our rules will help alert consumers to the risks from cryptoassets by differentiating the journey a consumer takes when looking to invest in these high-risk investments, compared to the journey undertaken when investing in a mainstream investment.

Measuring success

- 1.28** Our ambition for the financial promotions regime is for consumers to only invest in cryptoassets where they understand the risks involved and can afford to absorb potential losses. A key success measure will be reducing the number of consumers investing in cryptoassets who have a low-risk tolerance or who have characteristics of vulnerability. This will be monitored through the Financial Lives survey and other consumer research. This is aligned with the objectives of our Consumer Investment Strategy.
- 1.29** The implementation of this regime should mean that fewer firms who are not authorised or registered with the FCA are promoting cryptoassets to UK consumers. One success measure is to reduce the proportion of UK consumers accessing Cryptoassets through a firm that is not authorised or registered with us.
- 1.30** In line with our Business Plan, these rules will also enable consumers to help themselves. A success measure is helping to achieve our target metrics for this outcome, in particular: i) increasing the number of interventions on non-compliant financial promotions by regulated firms; ii) increasing the number of warnings on our website related to unregulated entities, which often involve breaches of the financial promotions regime.

Summary of feedback and our response

- 1.31** We received 66 responses to CP22/2 from a diverse range of respondents. This included authorised firms, MLR registered cryptoasset businesses, trade bodies, consultancies, law firms and individual consumers. PS22/10 provides a summary of responses (see paragraphs 1.26–1.27).
- 1.32** On our proposals for cryptoassets, respondents generally disagreed with our proposal to categorise cryptoassets as Restricted Mass Market Investments (RMMI). The majority of respondents agreed that some rules around financial promotion of cryptoassets were necessary to protect consumers and improve the quality of cryptoassets promotions. Many argued that the approach should be less restrictive and more bespoke, with marketing restrictions and positive frictions applying only to some types of cryptoassets. In particular, they argued that different cryptoassets have different risk profiles and called for a greater differentiation in our approach. Several respondents thought that cryptoassets should be treated the same as listed or exchange traded securities. Other respondents, predominantly from mainstream financial services firms, believed our proposals did not go far enough and called for further restrictions on the marketing of cryptoassets.
- 1.33** Having considered the feedback, we intend to proceed as consulted with categorising cryptoassets as 'Restricted Mass Market Investments' and applying the associated restrictions on how they can be marketed to UK consumers. We believe this strikes the right balance between consumer protection and promoting potentially beneficial innovation. We are making targeted changes to our consultation proposals. Table 1 summarises these changes and includes changes made as part of PS22/10 (see Table 1 of PS22/10) for completeness and to help firms understand their obligations. Changes highlighted in bold are unique to this PS and were not previously covered in PS22/10.

Table 1: Summary of key changes from CP22/2 proposals

Topic	Change
Risk warnings and associated risk summaries	We will shorten the main risk warning. We will also modify the risk warning and risk summary wording relating to what protections consumers have when investing in cryptoassets. This will set out that consumers should not expect to be protected by the FSCS or the ombudsman service if something goes wrong. We will allow firms to vary the prescribed risk summary where they have a good reason. For example, if the wording would be misleading or irrelevant. Equally firms can include any key investment risks that are not covered by the template. Firms must make an adequate record of any divergence from the template and the rationale behind any change. Firms must ensure their risk summary is accurate and stays up to date with market developments and business model changes.
Ban on incentives to invest	We will not apply the 'shareholder benefits' exemption set out in PS22/10. We will provide greater clarity on what is covered by this ban.
Direct Offer Financial Promotion (DOFP) rules	We will provide greater clarity on how firms can comply with the DOFP and consumer journey rules. We will clarify that the DOFP rules relate to promotions which include a manner of response or include a form by which any response may be made (ie, a mechanism by which consumers can respond in order to invest their money). They should not limit the information firms can otherwise provide about a cryptoasset.
Cooling-off period	We will clarify that the 24-hour cooling-off period starts from when the consumer requests to view the Direct Offer Financial Promotion. Firms can proceed with other parts of the consumer journey while the cooling-off period 'applies' such as Know Your Customer /Anti-Money Laundering (KYC/AML) checks, client categorisation and the appropriateness assessment. If these other processes take more than 24 hours to complete, firms will not need to introduce an additional pause in the consumer journey. However, the consumer will still need to give their active consent that they wish to proceed with the investment.
Client categorisation	We will clarify that where consumers must state their income/net assets to confirm they are high net worth they can provide these figures to the nearest £10,000/£100,000 respectively. We will clarify what level of checks we expect firms to conduct on the information provided by the consumer in the investor declaration. We will not apply the self-certified sophisticated investor category.
Appropriateness assessment	We will modify our rules so that consumers must wait at least 24 hours before undertaking the appropriateness test again from their second assessment onward. We will update the guidance on topics we expect firms to cover as part of this assessment.

Topic	Change
Record keeping requirements	We will only introduce requirements to record the metrics proposed in CP22/2 that relate to client categorisation and the appropriateness assessment.
Approach to implementation	We will align with the reduced implementation period of 4 months set in legislation. We will clarify how the regime applies to communications with existing customers and that we generally expect the new regime to impact communications which seek to encourage new investments in cryptoassets.
Date and time stamp for authorised firms approving financial promotions	We will allow an alternative format for the date and time stamp for approved promotions where it is not possible to include these due to the space available in the financial promotion being limited by a third-party provider. In these circumstances firms must display the Firm Reference Number (FRN) of the approver, instead of the full name and date of approval. This text must link to a web page where the firm's full name, and the date of the approval, must be displayed.
Consumer Duty	We will clarify that the Consumer Duty applies to authorised firms communicating or approving cryptoasset financial promotions. We will clarify which parts of the Duty apply given cryptoassets are only within the financial promotion perimeter. We will clarify that the Consumer Duty does not yet apply to financial promotions made by MLR registered cryptoasset businesses.

Equality and diversity considerations

- 1.34** We have considered the equality and diversity issues that may arise from the proposals in this Policy Statement. In CP22/2 we said that overall, we do not consider that the proposals will have a negative impact on any groups with protected characteristics under the Equality Act 2010. Our latest [cryptoassets consumer research](#) shows that cryptoassets owners are more likely to be male and younger – aged under 45. Ownership is highest in London and Northern Ireland. Those who own cryptoassets are more likely to have a higher-than-average household income. Respondents to CP22/2 did not identify any equality or diversity issues with our proposals. Overall, we consider that consumers across all groups will benefit from the protection afforded by our requirement for financial promotions to be fair, clear and not misleading. We will continue to consider the equality and diversity implications of the proposals during the implementation period.
- 1.35** We have included guidance that we expect firms to take account of the latest international [Web Content Accessibility Guidelines \(WCAG\)](#) when designing digital financial promotions and, in particular, how the risk warning will be displayed. We would also expect firms to consider the intended recipients of the promotions they communicate or approve. Where firms communicate financial promotions to

consumers that are unlikely to have a good understanding of the English language, risk warnings and the risk summary should be provided in an appropriate language in addition to English.

Next steps

- 1.36** All firms marketing cryptoassets to UK consumers, including those based overseas, must get ready for this regime. Firms should review the statutory instrument giving effect to this regime alongside this PS. If firms intend to continue marketing to UK consumers once the regime comes into force they must consider which of the 4 routes they will use to lawfully communicate their promotions and how they will meet the relevant requirements of that route. We encourage firms to take all necessary advice as part of their preparations.
- 1.37** We will take robust action against firms breaching these requirements. This may include, but it is not limited to, requesting take downs of websites that are in breach, placing restrictions on firms to prevent harmful promotions and enforcement action.
- 1.38** Firms intending to apply for registration with the FCA under the MLRs should consider the information on our website about the anti-money laundering and counter-terrorist financing (AML/CTF) regime and information for firms seeking registration under the MLRs. Firms should also review information regarding good and poor quality applications before submitting an application. More information on our approach to MLR registered cryptoasset businesses communicating financial promotions is set out in Chapter 5.
- 1.39** We expect authorised firms considering approving cryptoasset financial promotions to notify us of their intention to do so in line with Principle 11 (relations with regulators) and SUP 15.
- 1.40** We encourage responses to our Guidance Consultation by 10 August 2023. We will consider all feedback and, depending on the responses, intend to publish our Final Guidance in Autumn 2023.

Chapter 2

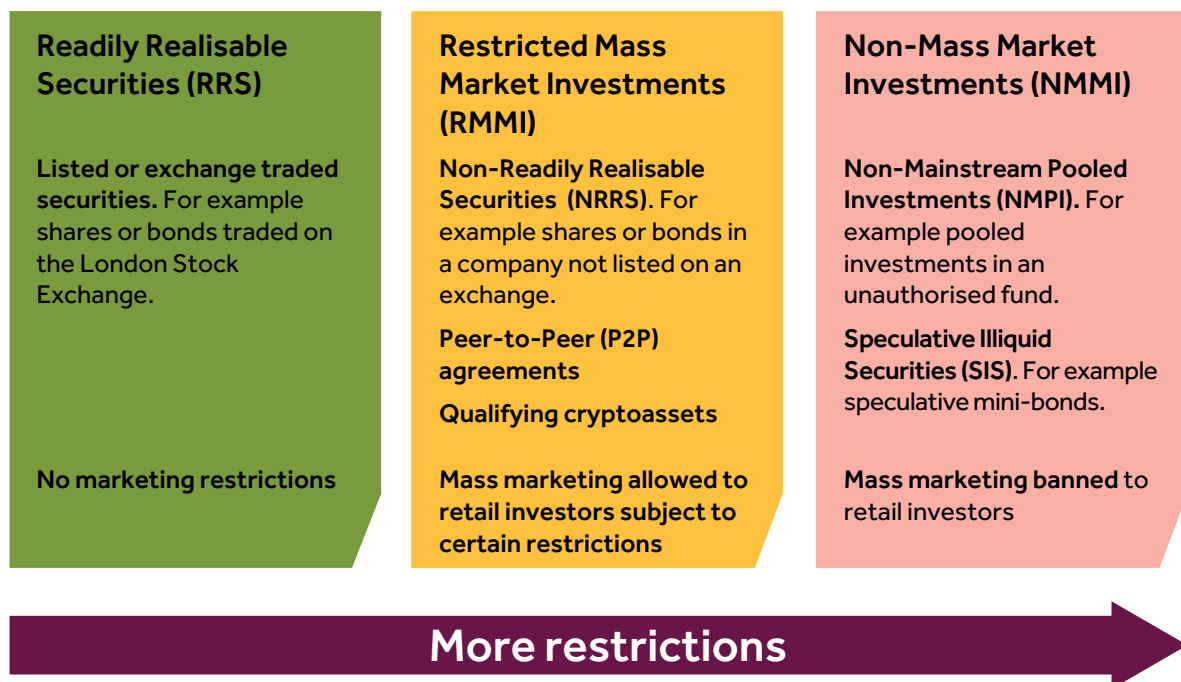
Our categorisation of cryptoassets

- 2.1** This chapter summarises the feedback on our proposed categorisation of cryptoassets as 'Restricted Mass Market Investments' (question 25 of CP22/2).

CP proposals

- 2.2** CP22/2 sought to rationalise our rules for high-risk investments and set out 3 clear categories of marketing restrictions that apply to promotions of investments. Figure 1 summarises these categories.

Figure 1: Financial promotion marketing restrictions product categories



- 2.3** We proposed to categorise cryptoassets as 'Restricted Mass Market Investments' and subject them to similar regulatory requirements as those that apply to other investments within this category. This would allow cryptoassets to be mass marketed to consumers, subject to certain restrictions. This categorisation reflects our judgement of the risks cryptoassets pose to consumers. In particular, risks from sudden, large and unexpected losses due to volatility, firm failure, comingling of funds, cyber-attacks and financial crime. Poor quality and misleading promotions, combined with pressure selling tactics, can exacerbate these risks and lead to consumers buying cryptoassets that are not aligned to their risk tolerance and do not meet their needs.

- 2.4** Given the high-risk nature of cryptoassets, we do not believe it is appropriate to categorise them as 'Readily Realisable Securities' and allow them to be mass marketed to consumers without restriction. Equally we do not believe it would be proportionate to classify cryptoassets as 'Non-Mass Market Investments' at this stage and subject them to a ban on marketing to ordinary retail investors. The industry is still developing, and we are looking to encourage, not stifle, innovation that may be beneficial to consumers where there is appropriate consumer protection. This is aligned with the response from the Treasury to their consultation on cryptoasset promotions.

Feedback received

- 2.5** We received 46 responses to this question. Respondents had a net negative view on the proposed categorisation of cryptoassets (37% agreed 17% were neutral and 45% disagreed).
- 2.6** Where respondents agreed with our proposal their main argument was that our proposed categorisation struck the right balance between promotion of innovation and protection of consumers that choose to invest in a relatively nascent and developing asset class. These respondents highlighted the risks of cryptoassets but believed that, if promoted in a compliant manner, some cryptoassets may not be as opaque as other complex investments subject to tighter marketing restrictions eg binary options or mini-bonds.
- 2.7** Respondents also argued that applying our financial promotion rules to cryptoassets would help achieve fair and consistent marketing to consumers.
- 2.8** Where respondents disagreed with our proposals the most common argument was that there should be greater differentiation in our treatment of cryptoassets (11 respondents). These respondents believed different cryptoassets had different risk profiles and so should be subject to different levels of marketing restrictions. They highlighted asset-backed cryptoassets (eg cryptoassets backed by gold), fan tokens and stablecoins as examples of cryptoassets that they believe have lower risk profiles and so should be subject to less stringent marketing restrictions.
- 2.9** Respondents from the cryptoasset sector argued that cryptoassets shared similar characteristics with listed or exchange traded securities so should be categorised as Readily Realisable Securities and not be subject to marketing restrictions (7 respondents). They argued that cryptoassets had higher levels of liquidity, high degrees of market capitalisation and the availability of 24/7 continuous trading which made them materially different to other investments categorised as RMML.
- 2.10** Other respondents, predominantly from the mainstream finance sector, argued our proposals did not go far enough and that cryptoassets should be classified as Non-Mass Market Investments (NMML) and subject to the highest level of marketing restriction (5 respondents). They argued that cryptoassets had greater risks than other investments categorised as RMML. For example, risks related to volatility and technological risks associated with cryptoassets. They highlighted the largely unregulated nature of the sector, even once subject to the financial promotions regime, as reasons for applying more stringent marketing restrictions.

- 2.11** A few respondents noted that the proposals are likely to increase the cost of customer acquisition. They believed our rules should only apply above a minimum level of investment. Without this, they believed our rules would drive an increase in the minimum investment amounts firms impose, resulting in financial exclusion.
- 2.12** A few respondents believed the proposals would limit the promotion of cryptoassets to high net worth and sophisticated investors.

Our response

Having carefully considered the feedback, we intend to proceed as we consulted and categorise cryptoassets as RMML. We continue to believe this approach strikes the right balance between consumer protection and promoting responsible innovation and competition.

Events since we consulted have not altered our views of the riskiness of cryptoassets. Indeed, cryptoassets have continued to demonstrate the significant risks that we highlighted in CP22/2. This includes:

- **Sudden, large and unexpected losses:** Cryptoasset prices have fallen sharply, down from a total market capitalisation of roughly \$3trillion in November 2021 to \$800bn in June 2022. Individual cryptoassets have seen spectacular collapses, such as Terra/Luna and FTT.
- **Firm failure:** 2022 saw several high-profile failures of firms operating in the cryptoasset market. This included, among others, the collapse of algorithmic 'Stablecoin' project Terra/Luna; borrow/lending platforms such as Celsius, Voyager and Three Arrows Capital and the exchange FTX.
- **Comingling of funds:** These firm failures have highlighted severe deficiencies in governance, risk management and operational resilience frameworks of cryptoassets firms, including the co-mingling of client and own funds. For example, FTX is alleged to have diverted customers' assets to a related crypto hedge fund (Alameda Research LLC) and then used those co-mingled customers' funds at Alameda to make undisclosed venture investments, lavish real estate purchases, and large political donations.
- **Financial crime:** Cryptoasset markets continue to be characterised by high degrees of fraud, money laundering and financial crime. For example, research from Solidus Labs suggest that up to 8% of tokens on the Ethereum blockchain and 12% of tokens on the BNB chains are 'hard rug pull' scam tokens whereby a scam is programmed directly into the token. For example, the way in which a token is programmed may mean it is only possible to buy, but not sell, the token. Between September 2020 and December 2020, 200,000 scam tokens are estimated to have been created on these networks. Similarly, research from Chainalysis suggests that 24% of actively traded tokens on the Ethereum and BNB blockchains display characteristics of 'pump and dump' fraud, losing more than 90% of their value in the first week of trading after launch.

- **Cyber-attacks:** 2022 was the biggest year ever for crypto cyber-attacks and hacking, with data from [Chainalysis](#) estimating that \$3.8bn was stolen from cryptoasset businesses.

Given these significant risks it would not be appropriate to categorise cryptoassets as 'Readily Realisable Securities' and allow them to be mass marketed to consumers without restriction. Our categorisation of cryptoassets is based on a holistic judgement of the risks they pose to consumers and is not solely based on liquidity risk.

We agree that not all investments subject to the RMMI rules have the same risk profile. For example, some have greater levels of liquidity risk while others have greater levels of complexity or information asymmetry. The common feature of investments subject to our RMMI rules is that they are only likely to be appropriate for consumers as a small part of a diversified portfolio and they have characteristics which represent a higher risk to retail investors. This means they should only be accessed when consumers understand the risks involved. Inevitably this will apply to a broad range of investments. However, we believe the specific restrictions placed on the promotion of these investments, in particular that ordinary retail investors confirm that they will limit their exposure to such investments to no more than 10% of their net assets and that the investment must be considered appropriate for them, remain relevant for the risk posed by a wide range of cryptoassets.

With respect to the specific types of cryptoassets which respondents argued presented a lower risk profile and so should be subject to fewer marketing restrictions:

- **Stablecoins:** Market events, including the collapse of so-called algorithmic 'stablecoins' have highlighted the significant risks inherent in these types of cryptoassets. Even where a cryptoasset claims to maintain its stability by being backed by traditional assets there is often little transparency around these backing assets and how stability is maintained. This is important because the financial promotions regime will only enable us to set rules for how these cryptoassets can be marketed to consumers. It does not allow us to make rules to address other risks to consumers and market integrity such as rules related to backing assets, redemptions rights, prudential, operational resilience or governance requirements. The Government has confirmed its intention to legislate to bring fiat backed stablecoins with the propensity to be used for payments into the regulatory perimeter. As part of the development of this regime we will consider what the appropriate financial promotion rules are for cryptoassets that are subject to additional regulatory requirements.
- **Asset backed tokens eg commodity tokens:** The structure of these assets and the ability to buy and sell them on cryptoasset trading venues, among other features, means that they also share characteristics with, and pose similar operational, market integrity and consumer risks as, 'unbacked' crypto tokens. For example, susceptibility to cyber-attacks and risk of consumer losses and fraud. For this reason,

the Treasury did not consider that a bespoke regulatory regime was necessary for this type of cryptoasset in its recent [consultation](#) on a future financial services regulatory regime for cryptoassets. We agree with this assessment.

- **‘Fan tokens’:** In practice, most fan tokens are a hybrid utility-investment type token and as a result, there are still significant risks attached to their purchase. The ecosystem within which fan tokens are bought, sold and used is unregulated. It is unclear how prices are determined. Consumers are also often required to first purchase a different cryptoasset and use this to purchase fan tokens. There is a secondary market for both these cryptoassets and the fan tokens themselves, and many of these markets can be illiquid and the prices volatile. Given the characteristics we do not believe it would be appropriate to carve-out fan tokens as described from the RMMI classification.

We understand concerns raised by respondents that cryptoassets may pose higher risks than other investments characterised as RMMI. However, we believe that it would not be appropriate to categorise all cryptoassets as NMMI and subject them to a mass marketing ban at this time. We recognise the potential positive impact that Distributed Ledger Technology (DLT) and certain cryptoassets might have in the future on financial services. In particular, we see potential benefits for regulated firms in using DLT and similar technologies in relation to products and services associated with their regulated activities. It may lower their costs, increase efficiency, enable faster payments and settlements and help better monitor transactions. We are looking to encourage, not stifle, responsible innovation that may be beneficial for consumers, where there is appropriate consumer protection.

We recognise that our proposals will increase costs to firms marketing cryptoassets and may lead to an increase in minimum investment amounts. However, that is an inevitable consequence of what we are trying to achieve, namely ensuring consumers only invest in cryptoassets where they understand the risks involved and can absorb potential losses. We do not apply minimum investment thresholds in our financial promotion rules for other investments and we do not see a compelling reason to treat cryptoassets differently.

We published a robust CBA on our proposals in CP22/2 (see Annex 2 of CP22/2). We have revised the CBA in light of feedback which can be found in Chapter 6 of this PS.

We wish to clarify that our rules do not limit promotions of cryptoassets to only high net worth or sophisticated investors. Firms can communicate financial promotions for cryptoassets to all consumers, subject to complying with the relevant requirements. Firms can only make DOFPs to consumers who have been categorised as Restricted, High net worth or certified sophisticated investors, in addition to complying with other requirements. We expect that most consumers investing in cryptoassets will be categorised as a Restricted Investor. More details on

our proposed rules on client categorisation can be found in Chapter 3, paragraphs 3.36 - 3.46.

In addition to this PS we have issued a [Guidance Consultation](#) which aims to clarify our expectations of financial promotions for cryptoassets, particularly for cryptoasset models and arrangements that can pose significant harm to consumers. As part of this Guidance Consultation, we are also seeking views on the risks and benefits of certain types of cryptoasset models, and whether further restrictions are needed on their marketing to adequately protect consumers. We welcome views from respondents on these proposals by 10 August 2023.

Chapter 3

The consumer journey for investing in cryptoassets

- 3.1** This chapter summarises the feedback on our proposed rules for the consumer journey when investing in cryptoassets (Chapter 3 of CP22/2, questions 2-8), our proposed approach to exemptions for cryptoassets (question 26 of CP22/2) and our approach to implementation (question 11 of CP22/2). The rules in this chapter are only relevant where a firm communicates or approves a financial promotion to a retail client.

Risk warnings and risk summaries

CP22/2 proposals and PS22/10 amendments

- 3.2** In CP22/2 we proposed a standard risk warning to be included on all financial promotions for Restricted Mass Market Investments and Non-Mass Market Investments, and a set of prescribed format requirements for how this should be displayed. We also proposed that a standard summary of risk information for the particular investment type (a 'risk summary') would need to be linked to from the 'Take 2 min to learn more' text, or be provided to the consumer in a durable medium where possible outside of digital settings. The risk warning we consulted on was as follows:

Don't invest unless you're prepared to lose all your money invested. This is a high-risk investment. You could lose all the money you invest and are unlikely to be protected if something goes wrong. Take 2 min to learn more.

- 3.3** The risk warning wording, risk warning prominence and the format of linking to a risk summary were all tested and found to be effective at improving consumers' perception and understanding of key investment risks in a behavioural science setting.
- 3.4** In PS22/10 we made several amendments to these proposals. First, we adjusted the risk warning wording slightly to ensure it reads as smoothly as possible while retaining the core behavioural features that were found to be effective in our testing. As in our consultation proposals, we allowed firms to use a shorter version of the risk warnings when there are character limits on the financial promotion imposed by a third-party marketing provider. The new standard risk warning is:

Don't invest unless you're prepared to lose all the money you invest. This is a high-risk investment and you are unlikely to be protected if something goes wrong. Take 2 mins to learn more.

- 3.5** Second, we introduced different risk warnings for different products. For example, requiring the 'unlikely to be protected' wording to be removed where the activity of issuing or providing the investment involves an authorised person (or an appointed representative) and could give rise to an FSCS claim.
- 3.6** Third, we amended our rules to allow firms to tailor the risk summary to their investment offering. Firms can diverge from the prescribed risk summary if they have a valid reason for doing so. For example, if a certain bit of text would be irrelevant or misleading, or if there is another risk that firms think should be included. Firms must record their rationale for each change, and we will draw on this if we have concerns with a firm's changes to a risk summary. The firm's amended risk summary must still summarise the key risks of the investment in a consumer-friendly way and take around 2 minutes to read.
- 3.7** This change was introduced to allow firms to ensure their risk summary is relevant to their offering, and remains relevant as their business changes over time. Firms must be able to explain to us what changes they're making to their risk summary and why if challenged.
- 3.8** Fourth, we introduced additional prominence requirements for how the risk warning and risk summaries must be displayed to provide greater clarity on how our rules apply for promotions made in different mediums. For example, where a promotion is made in a digital medium firms should not require the consumer to take any further action to see the full risk summary after they have clicked the hyperlink from the risk warning. Where the promotion is made in a durable medium (ie in a non-digital setting) the risk summary should be prominently displayed alongside other information in the promotion. The text should be legible, and not hidden within other forms of disclosure. This is intended to ensure that risk warnings and risk summaries are given sufficient prominence, regardless of the medium used to make the promotion. Table 2 summarises these prominence requirements.

Table 2: Provisions for the risk warning and associated risk summary, for digital and non-digital mediums of communication

	Digital medium (eg website, mobile application)	Non-digital medium (eg TV/radio, phone call, postal communication)
Provisions for the risk warning text		
Shorter risk warning	Can be used if the full risk warning would exceed the character limits permitted by a third-party marketing provider.	Can be used if the full risk warning would exceed the character limits permitted by a third-party marketing provider.
'Take 2 mins to learn more' text at the end of the risk warning	Must be included, unless: - inclusion would exceed the character limits permitted by a third-party marketing provider - the digital medium doesn't allow text to be linked	Does not need to be included.

	Digital medium (eg website, mobile application)	Non-digital medium (eg TV/radio, phone call, postal communication)
Provisions for the presentation of the risk warning		
How it must be provided	Must always feature within the financial promotion in line with the relevant prominence requirements, no matter what medium is used.	Must always feature within the financial promotion in line with the relevant prominence requirements, no matter what medium is used.
Prominence requirements	Risk warning prominence requirements apply for all mediums. It must be: • prominent • legible and contained in its own border, with the right bold/underlined text • without a design feature that reduces visibility/prominence Additional requirements apply for websites/mobile applications. Must be: • visible and statically fixed at the top of the screen, below anything else that also stays static, even when the client scrolls up/down the page • on every linked page from the promotion that relates to the investment	Risk warning prominence requirements apply for all mediums. It must be: • prominent • if in writing, legible and contained in its own border, with the right bold/underlined text • without a design feature that reduces visibility/prominence For television broadcasts, it must be prominently fixed on the screen for the duration of broadcast.
Provisions for the accompanying risk summary		
How it must be provided	Must be hyperlinked from 'Take 2 mins to learn more' in the warning unless: • 'Take 2 mins...' is excluded as it would exceed the character limits permitted by a third-party marketing provider. In this case, the risk summary must be linked to from the risk warning text instead. • 'Take 2 mins...' is excluded as the digital medium doesn't allow text to be linked. The risk summary does not need to be provided in this case.	Must be provided in a durable medium, unless the medium means this is not possible (eg television or radio broadcast), in which case the risk summary does not need to be provided. If it is a real time financial promotion, the summary should still be provided in a durable medium on or around the time of the promotion being communicated.

	Digital medium (eg website, mobile application)	Non-digital medium (eg TV/radio, phone call, postal communication)
Prominence requirements	Pop-up (or equivalent) prominence requirements apply. It must be: • prominently brought to the consumers attention • legible and contained in its own border, with the right bold/underlined text • statically fixed in the middle of the screen • the focus of the screen • without a design feature that reduces visibility/prominence	Risk warning prominence requirements apply to the summary. It must be: • prominent • legible and contained in its own border, with the right bold/underlined text • without a design feature that reduces visibility/prominence

Feedback received

- 3.9** PS22/10 summarises the feedback to the risk warning proposals in CP22/2. This includes feedback from respondents representing the cryptoasset sector (see paragraphs 3.4–3.13).
- 3.10** In terms of cryptoasset specific responses, several respondents recognised the importance of stronger risk warnings but argued against the prescribed format. Instead, they argued the FCA should leave some flexibility for firms to tailor and adapt the text of the risk warnings and risk summary to reflect specific characteristics of services and cryptoassets they offer.
- 3.11** Several respondents highlighted that the wording of the risk warning should be kept under regular review, and potentially subject to further consumer testing to ensure they remain relevant and do not become so-called ‘white noise’, which consumers ignore once they become used to it.
- 3.12** A few respondents argued that we should remove the word ‘invest’ from the risk warning to avoid giving what they considered to be a false legitimacy to cryptoassets and making them seem equivalent to mainstream investments.
- 3.13** One respondent asked that we strengthen the risk warning wording related to what protection is available to consumers. This respondent highlighted that as cryptoassets are only being brought within the financial promotions regime, but not the regulated activity regime, there are very few, if any, circumstances in which a consumer could make a protected claim to the FSCS in relation to cryptoassets.

Our response

PS22/10 sets out our response to the feedback on the CP22/2 risk warning proposals. This includes feedback from respondents representing the cryptoasset sector.

We intend to apply the amendments made in PS22/10 to our risk warning and risk summary for cryptoassets. In particular the amendments related to allowing firms to tailor the risk summary to the specifics of the investment and additional prominence requirements for different mediums.

We recognise the diverse range of cryptoassets that will be within scope of our rules. We appreciate that there may be instances where some of the risk summary wording in our template may not be relevant to, or right for, a particular cryptoasset. Equally our template risk summary may not capture the key risks relevant to a particular type of cryptoasset. Given the diverse range of cryptoassets, we expect firms will need to frequently amend the risk summary to the specifics of the cryptoasset they are promoting. We will monitor and challenge firms where we believe their risk summary does not accurately reflect the key risks relevant to the particular cryptoasset they are promoting. Firms must keep a record of any changes to risk summaries that they make and ensure they have a valid reason for each change. We expect any amended risk summaries to still be in the spirit of the template in our handbook, in particular using FAQ style consumer friendly language and not taking more than 2 minutes to read.

We have further considered the risk warning wording for cryptoassets. Even when cryptoassets come within the financial promotions regime they will still be largely unregulated. The type of cryptoassets that are being brought within the financial promotions regime are not within the scope of the regulated activities regime. Given this, consumers should not expect to be able to make a claim to the FSCS if the cryptoasset they are invested in, or the firm providing services to them in relation to cryptoassets, fails. Similarly, consumers investing through an unauthorised firm, including firms who are only MLR registered with the FCA, will not be able to make an eligible complaint to the ombudsman service. So we will amend our risk warning for cryptoassets to help consumers better understand this lack of protection. We will also amend our risk summary template. The new risk warning for cryptoassets will be:

Don't invest unless you're prepared to lose all the money you invest. This is a high-risk investment and you should not expect to be protected if something goes wrong. Take 2 mins to learn more.

We will keep this wording under review and consider if changes are needed as the wider regulatory regime for cryptoassets is developed. We will monitor the effectiveness of the risk warning over time using our Financial Lives Survey and conduct further behavioural testing when appropriate. We also encourage firms to monitor this themselves.

We understand the concerns around the use of the word 'invest' in relation to cryptoassets. However, both the Treasury, the FCA and international regulators have routinely referred to cryptoassets as 'investments' in past publications. Our consumer research shows that consumers treat

cryptoassets as an investment so we believe it is appropriate to describe them as such. The consumer journey rules set out in this chapter will help differentiate cryptoassets from mainstream investments.

We would like to remind firms that the risk summary should relate to the investment type or types featured in the financial promotion. There is no requirement for the risk summary to be the same for a particular firm the whole way through the journey.

Banning incentives to invest

CP22/2 proposals and PS22/10 amendments

- 3.14** In CP22/2 we proposed to ban financial promotions for high-risk investments from offering any monetary or non-monetary benefits that incentivise investment activity, such as 'refer a friend' or new joiner bonuses. This is modelled on a similar ban that applies to the marketing and distribution of Contracts for Difference (see [COBS 22.5.20](#)).
- 3.15** In PS22/10 we amended this proposal to exclude 'shareholder benefits' from the ban, namely products and services produced or provided by the issuer of, or borrower under, the relevant investment. For example, to allow a brewing company raising funds on a crowdfunding platform to provide discounts to investors on the beer it produces.

Feedback received

- 3.16** PS22/10 summarises the feedback to the proposed ban on incentives to invest in CP22/2. This includes feedback from respondents representing the cryptoasset sector (see paragraphs 3.15 – 3.23).
- 3.17** In terms of cryptoasset specific responses, respondents from the cryptoassets sector disagreed with the proposals to ban incentives to invest. These respondents argued that 'refer a friend' is a valid marketing tool used by many legitimate firms to grow their clientele and expand their business. They argued that a complete prohibition of inducement to invest will create barriers for firms while having a limited impact on reducing consumer harm.
- 3.18** On the other hand, respondents from consumer organisations, strongly supported the proposal to ban incentives to invest as they may encourage investments that are not aligned to the investor's risk tolerance. There is a risk that a recommendation from a friend is received with inappropriate confidence about the suitability of an investment. These respondents argued that incentives such as 'early bird offers' create time pressure to invest and increase the risk that investors do not review relevant information, risk warnings and so make inappropriate decisions to invest.

One respondent, asked for further clarification as to what constitutes an incentive to invest.

Our response

PS22/10 sets out our response to the feedback on the CP22/2 proposals to ban incentives to invest. This includes feedback from respondents representing the cryptoasset sector.

We intend to proceed with applying the ban on incentives to cryptoasset promotions. We do not intend to apply the 'shareholder benefit' exemption to cryptoasset promotions. Due to the inherently programmable nature of cryptoassets compared with securities, applying this exemption would create an unacceptably high risk of firms arbitraging this rule and using the exemption to promote benefits that distort consumers investment decisions.

We continue to believe that incentives to invest can unduly influence consumers' investment decisions and cause them to invest without fully considering the risks involved. Given the evidence from our consumer research which shows how social and emotional factors can have a powerful impact on investment decisions we will be proceeding with applying this ban to cryptoasset financial promotions.

We wish to clarify that we would not consider benefits that are intrinsic to the cryptoasset or exclusively bound up with its function and/or business model to be considered an 'incentive'. This might include features or benefits that are part of the terms and conditions associated with a particular cryptoasset. For example, cryptoassets that serve to provide the owner with voting rights, and which are used for the purpose of establishing governance arrangements for a particular platform or project would not be considered an incentive.

However, a benefit that is not intrinsic to the cryptoasset, or exclusively bound up with its function or business model, and which is used to motivate a consumer to buy that cryptoasset is likely to be considered an incentive. For example, offering additional 'free' cryptoassets is likely to be considered an incentive. Furthermore, a feature or benefit is likely to be considered an incentive where it is only available for a limited time period.

On 2 June 2023, we published a [consultation](#) on additional guidance and targeted amendments to the scope of this ban for all promotions of RMMIs and NMMIs. These proposals will also be relevant to promotions for cryptoassets. We welcome responses from firms operating in the cryptoasset sector to these proposals by 10 July 2023.

Cooling-off period

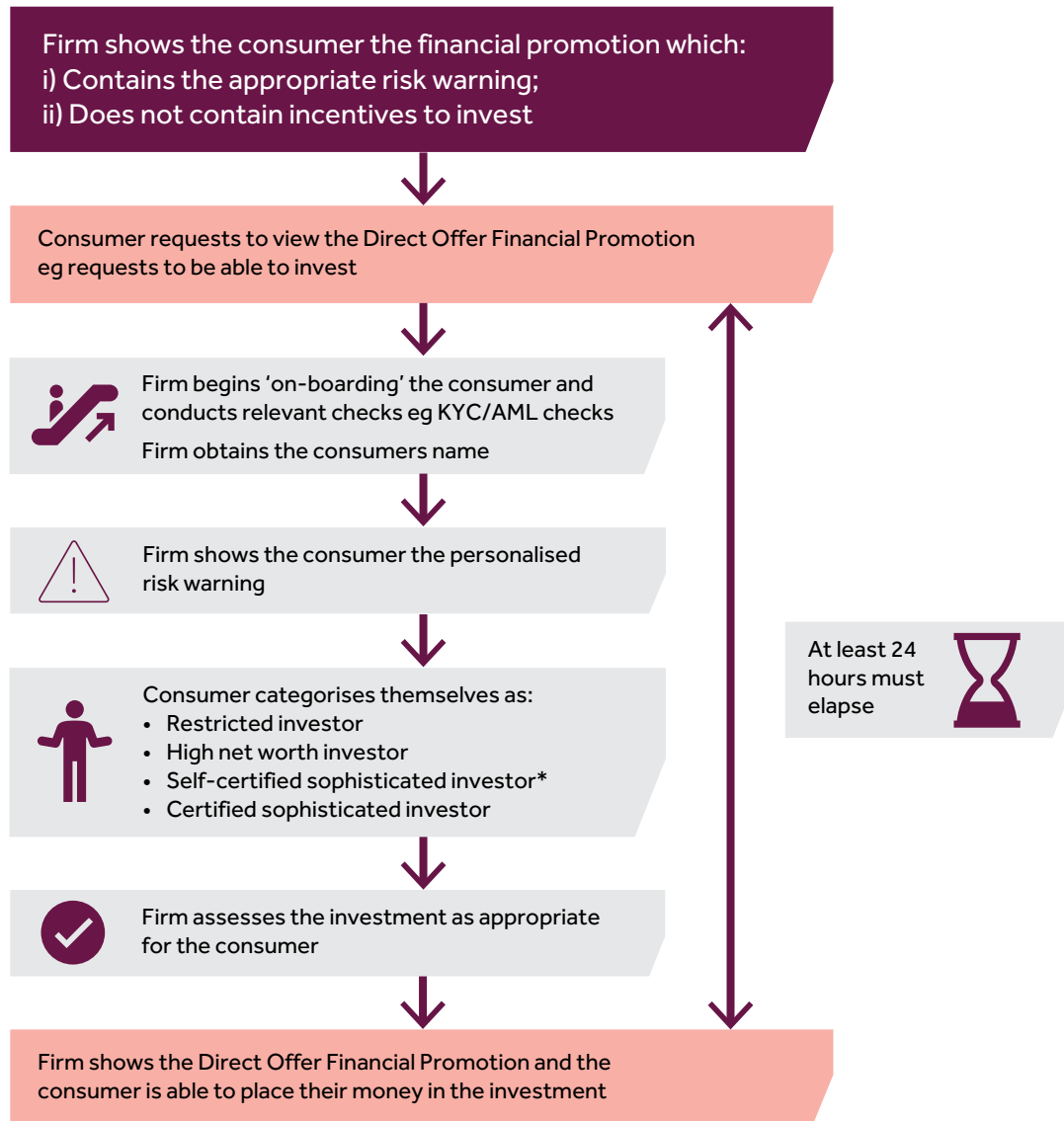
CP22/2 proposals and PS22/10 clarifications

- 3.19** In CP22/2 we proposed a minimum 24-hour cooling-off period for first-time investors with a firm. This would mean that the consumer could not receive a Direct Offer Financial Promotion (DOFP) unless they reconfirmed their request to proceed after waiting at least 24 hours.
- 3.20** In PS22/10 we provided greater clarity as to how we expect this rule to work in practice and on how our DOFP rules work more generally.
- 3.21** As set out in our Handbook [Glossary](#) a DOFP is defined as:
- a financial promotion that contains:
- a.** an offer by the firm or another person to enter into a controlled agreement with any person who responds to the communication; or
 - b.** an invitation to any person who responds to the communication to make an offer to the firm or another person to enter into a controlled agreement

and which specifies the manner of response or includes a form by which any response may be made.

- 3.22** So a DOFP arises where the financial promotion specifies the manner of response or includes a form by which any response may be made. This is intended to ensure that extra protections kick in before consumers are in a position (as a result of the DOFP) to take the crucial step towards placing their money in the investment. A manner of response can take many forms. Examples might include a promotion containing a 'buy now' button which enables the consumer to invest or a form asking the consumer to provide their bank account details. An assessment of whether a particular financial promotion constitutes a DOFP will depend on the specific circumstances. However, anything that promotes an investment and contains a mechanism which enables consumers to place their money in that investment is likely to constitute a DOFP.
- 3.23** Firms must apply the additional consumer journey protections outlined in this PS before they can make a DOFP. We expect most firms will implement these proposals as part of a consumer 'on-boarding' journey alongside any other checks the firms may complete such as AML/KYC checks. Once the consumer has been on-boarded, and the relevant conditions for communicating DOFPs have been satisfied, the firm can show the consumer the DOFP. Figure 2 provides a stylised example of how our DOFP rules could be applied.

Figure 2: Stylised example of how firms could apply the DOFP rules



* the self-certified sophisticated investor category is not applicable to cryptoassets.

3.24 The DOFP rules are not intended to limit the information firms can otherwise provide to consumers about the investment. For example, a financial promotion can contain information about the investment opportunity such as potential rates of return and the business model of the cryptoasset being promoted. This information alone, without a 'manner of response' or 'form by which any response may be made' would not trigger the additional protections. This is aligned with guidance we have previously provided in PS19/14 to P2P firms on how to apply the DOFP rules. In particular that to avoid being a DOFP the communication should not contain details of how to apply or to make an offer, or an application form (see paragraph 2.28 of [PS19/14](#)).

3.25 For RMMIs the 24-hour cooling-off period starts from when the consumer requests to view the DOFP. Firms must not show the DOFP until at least 24 hours have elapsed since the consumer requested to view the DOFP. However, firms may proceed with other parts of the client on-boarding process while the cooling-off period is in effect. For example, performing KYC/AML checks, showing the personalised risk warning, client

categorisation and the appropriateness assessment (including any lock-out period from the investment being assessed as being inappropriate for the investor). If these processes take more than 24 hours then firms will not need to wait an additional period before showing the DOFP, though consumers must still give their active consent that they wish to proceed with the consumer journey.

Feedback received

- 3.26** PS22/10 summarises the feedback to the proposed cooling-off period in CP22/2. This includes feedback from respondents representing the cryptoasset sector (see paragraphs 3.25-3.34).
- 3.27** In terms of cryptoasset specific responses, respondents from the cryptoasset sector thought the proposal will make the investment process unnecessarily burdensome and may drive customers offshore.
- 3.28** One respondent noted that the 24-hour cooling-off period is not practical in the context of a web or mobile-based trading platform due to the liquid nature of cryptoasset investments. They noted that the price of the investment is likely to move during the cooling-off period, so we should provide further clarity as to when in the consumer journey it will apply, and whether consumers would be prevented from seeing the cryptoassets and prices available, or basic functionalities of the platform during the cooling-off period. Two respondents noted that the cooling-off period should be implemented before the customer is able to trade and should not be used to reverse the trade.

Our response

PS22/10 sets out our response to the feedback on the CP22/2 cooling-off period proposals. This includes feedback from respondents representing the cryptoasset sector.

We intend to proceed with applying the cooling-off period to DOFPs of cryptoassets. We continue to believe this measure is important to help consumers have sufficient time to consider whether the investment is appropriate for them. We expect most firms will implement this proposal as part of their wider consumer onboarding process. This includes conducting AML/KYC checks on customers. The guidance provided in PS22/10 and repeated above should provide sufficient clarity for firms on how to apply this rule and the DOFP rules more broadly.

We wish to clarify that the cooling-off period does not apply to each individual transaction in a cryptoasset. We recognise that applying this rule on a transaction-by-transaction basis could itself result in consumer harm. This rule only applies to first-time investors with a specific firm ie where a consumer has not previously received a DOFP from the firm. It also does not otherwise restrict the information firms can provide to consumers during the cooling-off period, such as information on prices.

Personalised risk warning pop-up

CP22/2 proposals and PS22/10 amendments

- 3.29** In CP22/2 we proposed introducing a personalised risk warning pop-up (or equivalent) for first-time investors with a firm. For 'Restricted Mass Market Investments', this would appear before a Direct Offer Financial Promotion could be communicated.

[Client name], this is a high-risk investment. How would you feel if you lost the money you're about to invest? [Take 2 min to learn more.](#)

- 3.30** The 'Take 2 min to learn more' would link to the same product specific risk summary as in the main risk warning. Where the financial promotion does not appear on a website, mobile application or other digital medium, firms would need to provide the personalised risk warning to the consumer, accompanied by the risk summary in a durable medium.
- 3.31** This intervention was informed by the findings of our [behavioural research](#). We did not test the intervention in this exact format, but the testing did show that personalised messages and prominent directions to further information were the most effective intervention in getting consumers to click on the risk summary. So, we believe this intervention would be effective in getting consumers to read the risk summary and that the risk summary would be effective in influencing consumers' understanding of the investment.
- 3.32** In PS22/10 we made a few amendments to this proposal. First, we aligned with the changes to our main risk warning and allowed firms to tailor the risk summary linked to in the personalised risk warning to the specifics of the investment being promoted. Firms would be required to record their rationale for any changes.
- 3.33** Second, we introduced additional prominence requirements on how the personalised risk warning and risk summary must be displayed in different mediums. This is intended to ensure that personalised risk warnings are given sufficient prominence, regardless of the medium used make the promotion. Table 3 summarises these prominence requirements.

Table 3: Provisions for the personalised risk warning and the associated risk summary, for digital and non-digital mediums of communication

	Digital medium (eg website, mobile application)	Non-digital medium (eg phone call)
Provisions for the personalised risk warning		
How it must be provided	Must be clearly brought to the retail client's attention by means of a pop-up box (or equivalent).	Must be communicated.
Prominence requirements	Pop-up (or equivalent) prominence requirements apply. It must be: • prominently brought to the client's attention • legible and contained in its own border, with the right bold/underlined text • statically fixed in the middle of the screen • the focus of the screen • without a design feature that reduces visibility/prominence	No specific requirements.
'Take 2 mins to learn more' text at the end of the warning	Must be included.	Does not need to be included.
Next step	Personalised risk warning must be accompanied by an invitation to the retail client to specify whether they wish to leave, or continue with, the investment journey.	Following the communication of the personalised risk warning and the provision of the risk summary in a durable medium, the retail client must be invited to specify whether they wish to leave, or continue with, the investment journey.
Provisions for the accompanying risk summary		
How it must be provided	Must be linked to from 'Take 2 mins to learn more' in the personalised risk warning.	Must be provided in a durable medium.
Prominence requirements	Pop-up (or equivalent) prominence requirements apply. It must be: • prominently brought to the client's attention • legible and contained in its own border, with the right bold/underlined text • statically fixed in the middle of the screen • the focus of the screen • without a design feature that reduces visibility/prominence	Risk warning prominence requirements apply to the summary. It must be: • prominent • legible and contained in its own border, with the right bold/underlined text • without a design feature that reduces visibility/prominence

Feedback received

- 3.34** PS22/10 summarises the feedback to the proposed personalised risk warning in CP22/2. This includes feedback from respondents representing the cryptoasset sector (see paragraphs 3.38–3.43).
- 3.35** In terms of cryptoasset specific response, respondents from the cryptoasset sector did not raise major concerns regarding personalised risk warnings. However, several respondents generally thought that standard risk warnings in combination with existing marketing restrictions provided enough frictions in the journey.

Our response

PS22/10 sets out our response to the feedback on the CP22/2 proposals for personalised risk warnings. This includes feedback from respondents representing the cryptoasset sector.

We intend to proceed with applying the personalised risk warning to DOFPs of cryptoassets. We also intend to apply the amendments made in PS22/10. We continue to believe that this intervention is important to help consumers understand the risks of an investment. Given the evidence from behavioural testing which supported this as a key element in helping consumers understand the risks of an investment, we continue to believe that this intervention is needed to protect consumers.

Client categorisation

CP22/2 proposals and PS22/10 amendments

- 3.36** Before a DOFP can be made in relation to an RMMI the consumer must be categorised as a Restricted, High Net Worth, Self-certified Sophisticated or Certified Sophisticated investor. This requires the investor to sign a declaration stating that they meet the relevant criteria to be categorised as such.
- 3.37** In CP22/2 we proposed to implement an evidence component to the investor declaration forms whereby consumers would be required to state why they met the relevant criteria to be categorised. For example, stating their income to show they are high net worth. This was informed by our [behavioural testing](#) which found that adding this evidence component reduced rates of self-certification by 36%. We also proposed to simplify the declaration using 'plain English' and to add a 'none of the above' option to the declarations.
- 3.38** We proposed to apply the Restricted, High Net Worth and Certified Sophisticated investor categories to promotions of cryptoassets. We did not propose to apply the self-certified sophisticated investor category. The current criteria for self-certification of sophistication are based on the investment relating to an unlisted security and include

criteria, such as being a member of a syndicate or business angel network, that are not relevant for the purpose of demonstrating sophistication in relation to cryptoassets.

- 3.39** In PS22/10 we amended this proposal by changing the high net worth investor declaration to enable consumers to state their income/net assets to the nearest £10,000 /£100,000 respectively.

Feedback received

- 3.40** We received 37 responses on our proposed approach to client categorisation for cryptoassets. Respondents had a net negative view of the proposals (27% agreed 35% were neutral, 38% disagreed).
- 3.41** Where respondents agreed with our proposals, the main argument was that the current criteria for establishing sophistication were not appropriate to any high-risk investment, including cryptoassets. These respondents suggested that previous investment does not indicate sophistication and other factors eg, level of risk comprehension, level of diversification or net investible worth could be considered as alternative criteria for demonstrating sophistication. Some respondents supported the inclusion of the high net worth investor category, arguing that it helps ensure investors who can absorb losses are not dissuaded from investing in cryptoassets.
- 3.42** Where respondents disagreed with our proposals, their main argument was that there should be an option for sophisticated cryptoasset investors to self-certify as such (6 respondents). These respondents, mostly from the cryptoasset sector, suggested the existing criteria could be adapted to produce criteria that work eg, proof of investment in cryptoasset products above a certain threshold in the previous 2 years, or proof of historical or current employment in the cryptoasset sector.
- 3.43** Some respondents argued that we should not apply the high net worth investor category. They argued that the high net worth investor threshold is too low, so this category should not be applied unless this is changed.
- 3.44** Some respondents argued that the certified sophisticated investor category is not widely used and does not work in practice, especially as the firm certifying the individual cannot subsequently promote to them.
- 3.45** Several respondents from the cryptoasset industry thought that the proposed approach to client categorisation, including the 'evidence declaration' was too burdensome, and may drive customers offshore.
- 3.46** PS22/10 summarises the feedback received on the proposed changes to the investor declarations in CP22/2. This includes feedback from respondents representing the cryptoasset sector (see paragraphs 3.46 –3.53).

Our response

We intend to proceed as consulted with applying the Restricted, High Net Worth and Certified Sophisticated investor categories to DOFPs of cryptoassets. We also intend to apply the amendments made in PS22/10 to the investor declarations. We do not propose to apply the self-certified sophisticated investor category to DOFPs of cryptoassets.

We remind firms that the investor declarations are only valid for a 12-month period. This is to account for changes in life circumstances such as employment losses, which may affect the way in which an individual consumer can be categorised. Firms will need to categorise consumers again after the 12-month period has expired if they wish to make further direct DOFPs.

With the addition of cryptoassets to the RMMI category, this increases the possibility that an investor may be deemed 'sophisticated' for some investments (such as equity crowdfunding) but be a Restricted Investor for other types of investments (such as cryptoassets). To mitigate potential unintended consequences of this we will add guidance that where an investor is categorised as certified or self-certified sophisticated for some RMMIs, these investments do not count toward the 10% restricted investor limit for other RMMIs.

We do not believe the criteria suggested by respondents, such as previous investments in cryptoassets or employment in the cryptoasset industry, are robust criteria with which to demonstrate sophistication. Particularly given that the cryptoasset sector is still developing, and the diverse range of cryptoassets in the market.

We share respondents' concerns that the current high net worth investor thresholds are too low. We have repeatedly set out these concerns in our [perimeter reports](#). We welcome the Treasury's [consultation](#) on increasing these thresholds. Depending on the outcome of that consultation, we may consider changing the threshold for this category in our Handbook.

The criteria for the certified sophisticated investor category are based on those in legislation ([Article 50](#) of the FPO). We believe that ensuring the firm that assesses the consumer as 'sophisticated' cannot subsequently promote to them is an important protection to reduce the likelihood of this category being abused.

Appropriateness assessment

CP22/2 proposals and PS22/10 amendments

- 3.47** Before an application or order for an RMMI can be processed in response to a DOFP the firm must assess the specific RMMI as appropriate for the consumer. This requires the firm to assess that the consumer has the necessary experience and knowledge to understand the risks involved in relation to the specific product or service offered or demanded. In practice this requirement is often met through an interactive set of questions put to the consumer online, without any human involvement of the firm.
- 3.48** In CP22/2 we proposed a package of measures to strengthen our appropriateness rules for promotions of RMMIs. These were designed so that consumers must always be subject to a robust assessment of their knowledge and experience before investing in RMMIs and to minimise opportunities for 'gaming' this assessment. In summary we proposed to:
- Introduce guidance on the types of questions to be covered by an appropriateness assessment for RMMIs, building on the existing guidance for P2P agreements. We also proposed to extend the guidance discouraging binary yes/no answers.
 - Amend our rules so that an investment must always be assessed as appropriate for a consumer, before an order or application for the 'Restricted Mass Market Investment' is fulfilled in response to a Direct Offer Financial Promotion.
 - Introduce a rule that where an investment is assessed as being inappropriate for a consumer, the firm cannot re-assess the appropriateness of that investment for the same client for at least 24 hours. We also proposed to introduce a rule that the questions firms ask must be different each time a consumer is subject to the assessment. Further, consumers should only be told the broad areas that caused the investment to be assessed as inappropriate rather than the specific questions.
 - Introduce guidance stating that firms should not, in their communications with consumers, encourage them to retake the test after the investment has been assessed as inappropriate for them if they have not attempted to do so on their own initiative.
- 3.49** In PS22/10 we made several amendments and clarifications to these proposals. First, we provided greater clarity on the position of the appropriateness assessment in the consumer journey. Our rules require that the RMMI must be considered appropriate before a client's application or order for a RMMI in response to a DOFP can be processed. However, our rules allow firms to gather the information necessary to conduct the assessment, and complete the assessment, before the DOFP is shown. We expect that most firms will conduct their appropriateness assessment before the DOFP is shown so that they can implement this as part of their client on-boarding alongside other requirements in the consumer journey such as showing the personalised risk warning, client categorisation and any AML/KYC checks that may be required. Conducting the assessment before showing the DOFP also allows the time taken for the assessment to be counted against the 24-hour cooling-off period.

- 3.50** Second, we amended our proposed 24-hour lock after an investment is deemed inappropriate for a consumer such that it only applies from the consumer's second assessment onwards. However, this is a minimum requirement and firms should still implement this from the first attempt if they deem it appropriate.
- 3.51** Third, we provided greater clarity on the methods that firms can use to differentiate questions even on topics where the question itself might be difficult to ask particularly differently. For example, firms can also give different formulations of answers for the consumer to choose from in each attempt, and/or have a different number of correct answers that need to be selected in each. We understand that it may be difficult to come up with many different iterations of questions. But firms should consider whether they think the investment is likely to be appropriate for consumers if many attempts are required. Firms can decide what technology they use to offer these different questions. For example, having a different set of questions that is used for each attempt in sequence, or having a question bank from which one question on each topic is drawn on each attempt. It is also up to firms how many attempts they offer, and therefore how many questions they write.
- 3.52** Fourth, we provided further guidance on the proposed rules that firms should not inform consumers of the specific answers that caused an investment to be assessed as inappropriate for them. In particular that this measure does not prevent firms from explaining to consumers the reason why the investment was assessed as being inappropriate for them, so consumers are made aware of their misconceptions. However, firms should not simply highlight the specific questions that were answered incorrectly. This trivialises the misunderstanding and encourages an approach of immediately taking the test again to switch the answer on those topics in the next test, without reflecting on it.
- 3.53** Fifth, we provided further guidance on the proposal that firms should not encourage consumers to retake the appropriateness assessment after the investment has been assessed as inappropriate. We understand firms may be unclear on where the line is between encouragement and informing consumers of their options. As we stated in the consultation, firms can inform consumers of the facts – such as the option to retake the assessment, or that a 24-hour lock-out period has ended. However, this communication should be in no way persistent or persuasive in nature. It should not tell or suggest to the consumer what to do in this scenario, or place any other form of pressure on the consumer such as giving them a time limit. Firms should ensure the consumer understands what the conclusion of the appropriateness test meant, so they can then make an informed decision on whether to undergo the assessment again. Firms should also consider pointing the consumer towards educational material, so they can improve their knowledge on the risks if they're still interested in continuing.

Feedback received

- 3.54** PS22/10 summarises the feedback received to the proposals to strengthen the appropriateness assessment in CP22/2. This includes from respondents representing the cryptoasset sector (see paragraphs 3.55–3.66).

- 3.55** In terms of cryptoasset specific responses, respondents from the cryptoasset sector noted that introducing an appropriateness test will create additional cost, make the process burdensome and may drive consumers overseas. One respondent suggested that the assessment should not be required for established, straightforward cryptoassets such as bitcoin. They also expressed concern that information unauthorised firms will be required to share with S21 approvers as part of appropriateness assessment may be commercially sensitive so may impact on competition. Some respondents said it was not clear what constitutes sufficient knowledge to invest in cryptoassets and asked for further guidance as to what should be included in the test.

Our response

PS22/10 sets out our response to the feedback on the CP22/2 appropriateness assessment proposals. This included from respondents representing the cryptoasset sector.

We intend to proceed with applying the appropriateness assessment requirements to DOFPs of cryptoassets. We also intend to apply the amendments made in PS22/10. We continue to believe this measure is vital to ensuring consumers only invest where they understand the risks involved. Other high-risk investments are subject to these requirements and we do not see a compelling reason to treat cryptoassets differently.

The guidance on the topics we would expect firms to include as part of the assessment is intended to help firms understand their obligations. We will introduce some targeted amendments to our guidance on the topics firms should cover as part of the assessment to reflect market developments since CP22/2. This guidance is intended to set a baseline standard. Firms may need to ask additional or alternative questions to ensure that the retail client has the necessary knowledge to understand the risks involved in the specific type of cryptoasset offered.

Record keeping requirements

CP22/2 proposals and PS22/10 amendments

- 3.56** In CP22/2 we proposed that firms should record various metrics throughout the consumer journey, to help us monitor the effect of our proposals. We proposed the following data items, to be used alongside total transactions with retail consumers:
- the number of users who are presented with the risk warning for RMMI, and the number of users that click on the 'take 2 mins to learn more' within the risk warning
 - the number of users that click to proceed to the DOFP, ie express interest in responding to the financial promotion

- the number of consumers the personalised risk warning is presented to, and the number of consumers who click on the 'take 2 mins to learn more' within the personalised risk warning
- the number of consumers who do not proceed with the consumer journey after the personalised risk warning
- the number of consumers that are subject to the 24-hour cooling-off period, and the number of consumers who do not proceed with the consumer journey after the 24-hour cooling-off period
- the outcome of client categorisation (ie the number of consumers categorised as high net worth, sophisticated and restricted and the reason why they believe they meet those criteria)
- the number of consumers who do not proceed with the consumer journey at client categorisation (ie do not get categorised)
- the outcome of the appropriateness assessment (ie the final outcome of the appropriateness assessment for each consumer and the number of times they were subject to the assessment for the same investment, the number of assessments that determined the investment to be appropriate and inappropriate, and the total number of assessments undertaken).

3.57 In PS22/10 we significantly reduced the number of metrics to only those relating to client categorisation and appropriateness assessments. We also amended the scope of the required metrics. Previously, this record keeping was only required for authorised firms communicating financial promotions. We have extended this to require firms which approve DOFP for RMMI to take reasonable steps to ensure that adequate records of this data are made and shared with the approving firm. Approving firms should consider using this data as part of their ongoing monitoring. This formalises the guidance to do this within the non-Handbook guidance for s21 approvers on client categorisation and appropriateness.

Feedback received

PS22/10 summarises the feedback received to the proposed record keeping requirements in CP22/2. This includes from respondents representing the cryptoasset sector (see paragraphs 3.68–3.75). Respondents from the cryptoasset sector did not raise any new points not covered in the feedback provided in PS22/10.

Our response

PS22/10 sets out our response to the feedback on the CP22/2 record keeping requirement proposals. This includes from respondents representing the cryptoasset sector.

We intend to proceed with applying the record keeping requirements to financial promotions for cryptoassets. We also intend to apply the amendments made in PS22/10 and reduce the number of metrics to only those relating to client categorisation and appropriateness assessments. This measure is important to help monitor compliance with the client categorisation and appropriateness assessment requirements.

We are not mandating that firms record other metrics, such as whether consumers access the risk summaries linked to from the risk warnings. But we would encourage firms to consider voluntarily recording this data. Firms collecting this data will also have evidence on the impact of our proposals. We encourage firms to collect and share this data with us so we have as much data as possible with which to inform any amendments to our rules over time.

Approach to implementation

CP22/2 proposals

- 3.58** In CP22/2 we proposed to apply our financial promotion rules from the point at which cryptoassets are brought within the financial promotion regime. We noted at the time the Government had proposed a 6-month implementation period from when the relevant legislation is made.
- 3.59** We noted that rules related to 'positive frictions' (personalised risk warning and 24- hour cooling-off period) were designed for first-time investors with a firm. So we proposed to not apply these rules to existing customers.
- 3.60** As cryptoassets have until now been outside of our financial promotions regime, consumers will not have been previously categorised or subject to an appropriateness test in connection with the promotion of cryptoassets. Firms should note that under our proposals, firms communicating or approving DOFPs will need to ensure clients are both categorised appropriately and an appropriateness test is undertaken. This includes when DOFPs are to be communicated to existing customers wanting to engage in further investment activity.

Feedback received

- 3.61** We received 48 responses on our proposed approach to implementation for cryptoassets. Respondents had a net positive view of our proposals (33% agreed, 42% were neutral and 25% disagreed).
- 3.62** Where respondents agreed with our proposals, they tended to not provide detailed reasons as to why. Some respondents agreed that the proposals relating to positive frictions should only apply to first-time investors. A few respondents requested additional clarification on what was meant by 'first time investor' ie first time in the asset class or first time with the firm.
- 3.63** Where respondents disagreed with the approach their main argument was that 6-months was an insufficient implementation period. Some respondents argued that the positive frictions, especially the personalised risk warnings, should apply to existing investors because previous investment does not indicate appropriate understanding of the risks involved.

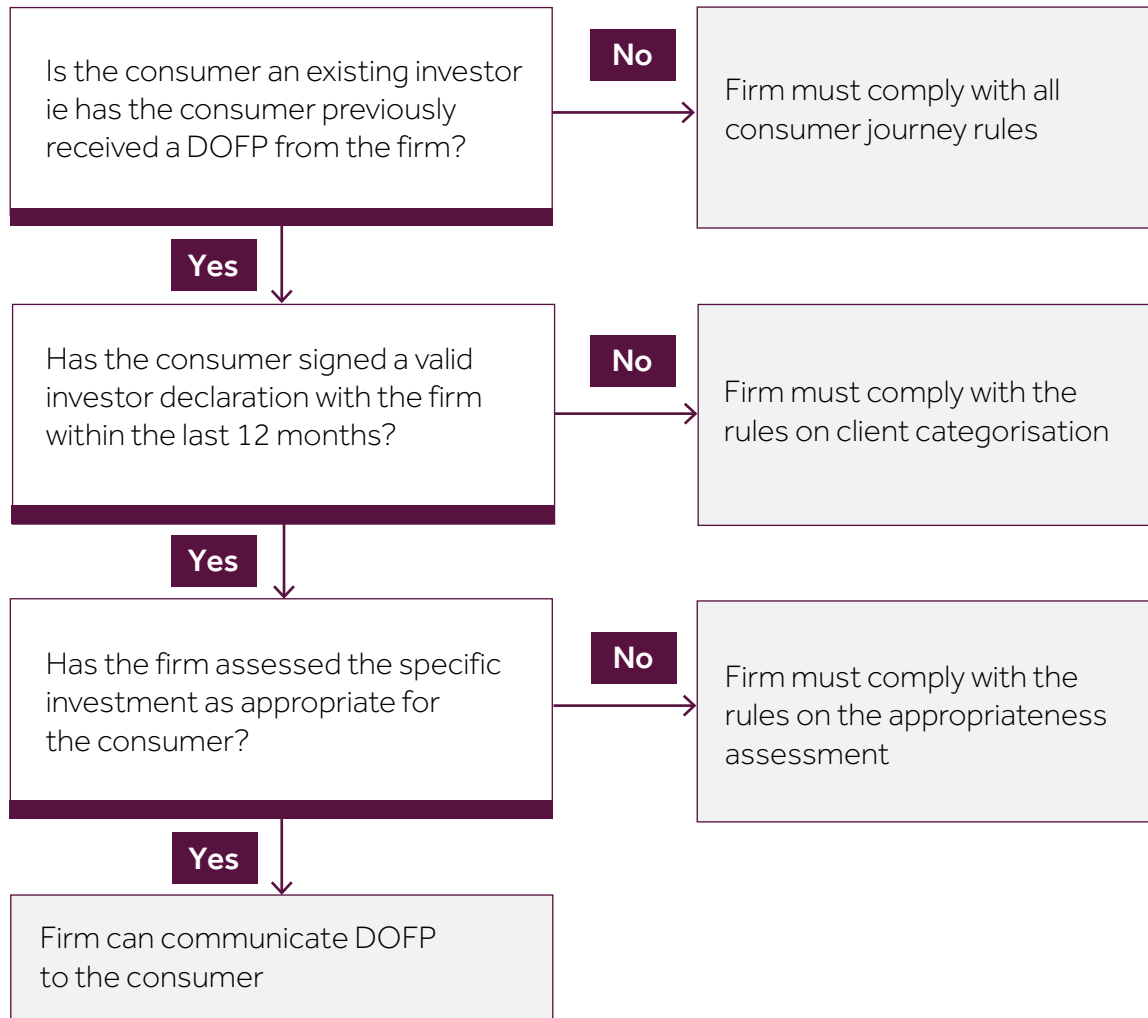
Our response

We note the Government has legislated for an implementation period of 4 months rather than the 6 months previously signalled, reflecting recent market volatility. Having considered the feedback received, we intend to proceed as consulted and apply our rules from when cryptoassets are brought within the financial promotions regime.

We have set out below additional clarity on how our rules apply to new and existing customers. Figure 3 summarises how these requirements work.

- a.** Rules related to positive frictions (personalised risk warning and 24-hour cooling-off period) will apply to first-time investors with the firm seeking to view a DOFP. They will not apply to existing clients of the firm.
- b.** Other consumer journey rules related to DOFPs (client categorisation and appropriateness assessment) will apply where a firm wishes to make a DOFP to an existing customer. This includes in relation to a cryptoasset the consumer has previously invested in. Before a consumer can engage in further investment activity the firm must categorise the consumer and assess the specific investment as appropriate.
- c.** We note that the investor declarations are only valid for a 12-month period. This is to account for changes in life circumstances such as employment losses, which may affect the way in which an individual consumer can be categorised. Firms will need to categorise consumers again after the 12-month period has expired if they wish to make further direct DOFPs.
- d.** Our rules on appropriateness assessments require that the firm must ensure that the client has sufficient knowledge and experience of the specific type of product or service offered or demanded (COBS 10.2.1). Firms must ensure that their appropriateness assessments provide a robust assessment of consumers' knowledge and experience by reference to the particular type of cryptoasset for which they are communicating DOFPs. Given the diverse range of cryptoassets and related cryptoasset models, firms offering a wide range of products will likely need to create additional appropriateness assessments to meet this requirement. Particularly if the product has distinct risks or unique features. For example, those based on a complex yield model such as lending, borrowing or staking models.
- e.** These rules are not intended to restrict or otherwise prevent consumers from being able to sell their existing investments. The clear purpose of these rules is to protect consumers when investing in RMMI. Preventing consumers from being able to sell their existing investments would itself cause harm.

Figure 3: When do firms need to comply with the consumer journey rules?



Chapter 4

The role of authorised firms communicating and approving cryptoasset financial promotions

- 4.1** This chapter summarises the feedback on our proposed rules for authorised firms communicating and approving cryptoasset financial promotions (Chapter 5 of CP22/2). It also summarises how the proposed gateway for authorised firms who approve the financial promotions of unauthorised firms (s21 approvers) and the Consumer Duty will apply to these firms.

Requirements for authorised firms communicating and approving financial promotions

CP22/2 proposals and PS22/10 amendments

- 4.2** In CP22/2, we proposed a package of measures to strengthen the role of authorised firms approving and communicating financial promotions of financial products regulated under COBS 4 rules. First, we proposed that all approved promotions must include the name of the authorised firm approving the promotion, as well as the date of approval. These measures were aimed at both helping the consumer to determine whether a promotion had been approved (and which firm provided approval), as well as helping our enforcement efforts against firms in breach of our rules.
- 4.3** Second, we proposed to strengthen the rules on a firm having the relevant competence and expertise (C&E) in the type of investment being promoted, when communicating or approving a financial promotion. If a firm wished to communicate a promotion but did not have the relevant competence and expertise in-house, they would need to find an authorised person that did. In this circumstance, an authorised firm with the necessary C&E would need to confirm compliance of the promotion with the financial promotion rules, before the promotion may be communicated.
- 4.4** Third, we proposed to require approvers to play a more active role in ensuring approved promotions remained compliant for the lifetime of the promotion – not just at a single point in time. This was intended to move s21 approvers away from a 'once and done' approach. An approver would need to take reasonable steps to monitor the continuing compliance of approved promotions throughout the lifetime of the promotion. They would need to consider whether, among other factors, there had been any changes which may affect whether the promotion continued to be fair, clear and not misleading. This would include considering the ongoing commercial viability of the proposition described in the promotion.

- 4.5** Fourth, as part of our requirement for ongoing monitoring, approver firms would be required to get attestations of 'no material change' from clients with approved promotions every 3 months, for the lifetime of the approved promotion. These attestations were intended to serve as an early warning to s21 approvers of any changes or issues with approved promotions. Approvers would need to consider any changes disclosed in an attestation and, where necessary, withdraw approval as soon as reasonably practicable.
- 4.6** Fifth, we proposed to clarify that a s21 approver's responsibility for ensuring compliance with the appropriateness rules should not be limited to a one-off assessment on approval of the promotion. In particular that s21 approvers should take reasonable steps to ensure that the relevant processes for appropriateness tests comply with our rules for the lifetime of the promotion.
- 4.7** Sixth, we proposed to extend existing 'conflicts of interest' obligations to firms approving financial promotions for unauthorised persons and to firms confirming compliance of a financial promotion for an authorised firm. It may be that a firm that can approve financial promotions will be asked to do so by competitors or competitors of their group businesses. It is not appropriate for firms to use their position as a s21 approver to gain a competitive advantage over their rivals. This proposal would reduce the likelihood of anti-competitive behaviour by ensuring that firms take all appropriate steps to identify and manage conflicts of interest.
- 4.8** In PS22/10 we made 2 amendments to these proposals. First, a firm approving a promotion is permitted to replace our standard disclosure with text that refers to the authorised firm'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. 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.
- 4.9** Second, we clarified that our proposed C&E requirements mean a firm must self-assess that it has the necessary C&E for the investment product itself, but not necessarily C&E for the specific commercial sector/s to which the underlying investments relate. For example, a firm approving a promotion of an unlisted equity share should have C&E in unlisted equities but is not required to assess whether it has necessary C&E in farming or mining business if the underlying investments within the unlisted equity structure are in these sectors.

Feedback received

- 4.10** PS22/10 summarises the feedback to the proposed requirements for authorised firms communicating and approving financial promotions. This includes from respondents representing the cryptoasset sector (see paragraphs 3.68–3.75).
- 4.11** Respondents from the cryptoasset sector raised significant concerns with the proposed requirements for authorised firms approving financial promotions. They highlighted that the vast majority of cryptoasset firms are not authorised and so would need to have their promotions approved by an authorised person or else rely on an exemption. They also believed that there would be a very limited number of firms who: i) could meet

the requirements proposed in CP22/2 for approving promotions, particularly those relating to C&E; and ii) would be willing to approve promotions even if they did have the relevant C&E, as they may be approving promotions for their competitors. In practice these respondents believed the proposed approach would result in a de-facto ban on cryptoasset promotions in the UK.

Our response

PS22/10 sets out our response to the feedback on the proposed requirements for authorised firms communicating and approving financial promotions. This includes from respondents representing the cryptoasset sector.

We intend to proceed as consulted and apply these requirements to authorised firms communicating and approving financial promotions for cryptoassets. Historically, we have seen too many poor quality and noncompliant promotions being approved and communicated to consumers. We have seen approved promotions with inadequate due diligence by s21 approvers including, for example, promising unrealistic rates of return. Consumer harm has arisen when these promotions are made to consumers for whom the underlying investment product is unsuitable, eg when not aligned to the consumer's risk appetite. In the worst cases, the investments underperformed or failed and led to significant and unexpected losses for retail investors. We believe these measures are important to prevent these harms occurring in relation to cryptoassets.

We understand the concerns raised about a limited number of firms willing and able to approve cryptoasset promotions. We did not intend a de-facto ban on cryptoasset promotions. In response to these concerns the Government has introduced a bespoke exemption in the FPO to allow MLR registered cryptoasset businesses to communicate their own financial promotions (discussed in more detail in paragraphs 1.13 – 1.16 and in Chapter 5). This measure will significantly expand the number of firms able to communicate cryptoasset financial promotions and provides a clear and credible path for unauthorised firms to be able to communicate their own promotions.

A new gateway for authorised firms approving financial promotions ('s21 approvers')

- 4.12** In July 2022, the Treasury introduced the Financial Services and Markets Bill ('the FS Bill') to Parliament. This Bill includes provisions to amend the Financial Services and Markets Act 2000 ('FSMA') to create an authorisations gateway for s21 approvers. Currently, any authorised person can generally approve a financial promotion for an unauthorised person if they are satisfied it complies with FCA financial promotion rules, including

that it is fair, clear and not misleading. Once the gateway comes into effect, all firms that want to continue to be able to approve promotions will need to apply to the FCA for permission to do so (subject to certain exemptions). Firms that don't apply for, and get, permission to do so, will not be permitted to approve financial promotions once this legislation comes into force. The Treasury envisioned that this gateway would lead to several improvements to the regulatory framework in this area. This included enhanced oversight of the approval market by the FCA and an improved standard of approvals.

4.13 The Treasury have proposed the following exemptions from the s21 gateway:

- persons providing approvals for group entities or their appointed representatives
- authorised persons approving their own promotions for communication by an unauthorised person

4.14 In December 2022, we consulted (CP22/27) on how we plan to operationalise this gateway. The consultation included our approach to assessing applications at the gateway and proposed required regulatory reporting for firms that apply. We will publish our final rules in due course subject to the Bill completing the legislative process.

4.15 Authorised persons that want to approve cryptoasset financial promotions for unauthorised persons will have to apply at the gateway for permission to do so once this regime comes into force. Included in our proposed requirements for applicants will be to demonstrate that they have the necessary C&E in the financial products for which they want to approve promotions, and that they have adequate systems, controls and processes to ensure compliance with our rules.

4.16 Under the draft provisions in the Bill, we would be able to refuse an application for permission to approve promotions where we considered this desirable in order to advance any of our operational objectives.

4.17 We also proposed that applicants at the gateway be required to submit reports to us on their approval activity:

- We have proposed to require approvers to submit a notification to us within 7 days of approving a promotion. The notification metrics include the client name, the type of product being promoted and the size of the issuance (where applicable).
- We have also proposed to require a bi-annual report, which would include metrics such as a firm's revenue from approval activity, and any complaints received related to their approval activity.

The Consumer Duty

4.18 In July 2022, the FCA published final rules (PS22/9) and guidance (FG22/5) for a Consumer Duty (the Duty). This sets higher and clearer standards of retail consumer protection across financial services and requires firms to put their customers' needs first. The rules come into force on 31 July 2023 for products and services that are open to sale or renewal, and on 31 July 2024 for closed products and services.

4.19 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 under Principle 12
- a suite of rules under 4 outcomes for products and services, price and value, consumer understanding, and consumer support

4.20 Since the introduction of the Duty, in our subsequent work and discussion with firms we have identified areas where certain rules require clarification. This includes which aspects of the Duty apply when firms are communicating or approving financial promotions.

4.21 In December 2022, we published a quarterly consultation paper (CP22/26) with proposed amendments to the application of the Duty. We have subsequently published the final rules in Handbook Notice 108. In this consultation, we consulted on making clear that the Duty applies to authorised firms approving or communicating financial promotions, as well as firms conducting regulated activities or ancillary activities, payment services or issuing e-money. However, as our current regulatory perimeter for cryptoassets only covers promotions and requirements under the MLRs, only aspects of the Duty related to financial promotions will apply to firms in this sector. These aspects relate to authorised firms communicating or approving financial promotions for cryptoassets, where they are targeted at retail clients.

4.22 In addition, the Duty only applies to firms to the extent they can determine or materially influence retail customer outcomes. The Consumer Duty is also underpinned by the concept of reasonableness. So, what is expected under the Duty will be interpreted in light of what is reasonable in the circumstances. In practice, this means that firms that are remote from retail customers, with no direct customer relationship, may have more limited obligations under the Duty.

4.23 In relation to their approval or communication of a financial promotion, we would, in particular, expect authorised firms to have due regard to their responsibilities under the Duty's general obligations for firms and the consumer understanding outcome. The cross-cutting rules include obligations to act in good faith, avoid causing foreseeable harm, and enable and support retail consumers to pursue their financial objectives.

4.24 Acting in good faith requires authorised firms to take into account customers' interests when presenting information. In particular, an authorised firm communicating or approving a financial promotion should act in good faith and not exploit or manipulate retail customer's behavioural biases to mis-lead or create demand for a product. They should not take advantage of retail customer's vulnerabilities and cause harm.

4.25 Authorised firms communicating their own financial promotions must enable and support retail customers to pursue their financial objectives. This includes providing retail customers with timely information and support to ensure they make informed decisions.

- 4.26** Authorised firms approving financial promotions of others need to ensure that the financial promotions they approve support retail customers' understanding. They should ensure that the promotions meet the information needs of customers, are likely to be understood by customers intended to receive them, and equip them to make decisions that are effective, timely and properly informed. They should also ensure that the financial promotions are tailored to the characteristics of the customers intended to receive the financial promotion. This includes by reference to any characteristics of vulnerability, the complexity of products, the communication channel used, and the role of the firm.
- 4.27** The Duty requires authorised firms, where appropriate to test, monitor and adapt their communications on an ongoing basis in order to respond to relevant feedback and support good customer outcomes. However, these rules are more likely to be relevant for authorised firms responsible for producing and communicating their own financial promotions. In particular, authorised firms testing and monitoring activity should focus on whether communications, including promotions, support consumer understanding, taking into account consumer's informational needs, characteristics of vulnerability and whether there is scope for harm to retail customers. Our Finalised Guidance on the Duty includes further information for firms on how to meet expectations in this area.
- 4.28** Where retail customers suffer harm as a result of a firm's acts or an omission, the firm must act in good faith and take appropriate action to remedy this, including by providing redress where appropriate. However, this does not apply where the harm identified was caused by risks inherent in a product, provided the firm has clearly communicated these risks and reasonably believed that retail customers understood and accepted those risks.

MLR registered businesses communicating cryptoassets financial promotions

- 4.29** We are not proposing to apply the Consumer Duty to unauthorised MLR-registered firms communicating their own promotions at this point. The exemption that grants the FCA rule making powers over MLR registered cryptoasset businesses in relation to financial promotions was intended to be a temporary and narrow exemption. The Government has recently consulted on bringing a wide range of cryptoasset activities within the FCA's remit. The Government intends to remove this exemption when the wider crypto regime comes into force, as cryptoasset firms will be authorised and therefore able to communicate their own promotions without the need of an exemption.
- 4.30** We will carefully monitor this situation and consider whether changes are needed to mitigate harms to consumers.

Chapter 5

Our approach to MLR registered cryptoasset businesses communicating financial promotions

- 5.1** This chapter summarises our approach to registration of cryptoasset businesses under the MLRs. We expect to see more firms applying for registration as a result of the financial promotions regime. It also outlines our approach to rule making, supervision and enforcement for MLR-registered businesses communicating financial promotions that rely on the new exemption in Article 73ZA of the FPO.
- 5.2** Registered cryptoasset businesses are subject to other obligations beyond those discussed in this Chapter. In particular, we remind registered cryptoasset businesses of their obligation to report suspicious activity under the Proceeds of Crime Act 2002 (POCA).

Our approach at the gateway

- 5.3** Cryptoasset exchange providers and custodian wallet providers (collectively referred to as 'cryptoasset businesses' for the purpose of this chapter) seeking to carry on business in the UK must register with us under the MLRs. There is information on our website about [registration](#) and we have also published [feedback](#) regarding good and poor quality applications. Cryptoasset businesses should review this material before applying, and ensure that they answer the questions on the application form fully and provide all the information requested. Omissions may result in a business' application being rejected.
- 5.4** When we review an application, we may ask for additional information and applicants should factor in this possibility along with the time this may take. Once, and only once, we have all the information we need, we have up to 3 months to give notice of a decision to register or give a Warning Notice setting out that we are minded to refuse the application.
- 5.5** We expect cryptoasset businesses to be ready, willing and organised at the point of submitting their application. This will include having a bona fide UK presence as per [Regulation 8](#) and [Regulation 9](#) of the MLRs. Applicants should be able to show that they understand the UK's AML/CTF regime and evidence compliance with the requirements set out in the MLRs. Applicants may also find Chapter 22 of The Joint Money Laundering Steering Group [guidance](#) helpful.
- 5.6** Cryptoasset businesses and any person who is an officer, manager or beneficial owner of the business will be subject to the fit and proper requirements under [Regulation 58A](#) of the MLRs. We will take into account all relevant matters when assessing fitness and propriety and we will consider whether the firm and its officers, managers or beneficial owners have acted and may be expected to act with probity.

- 5.7** As part of our fitness and propriety assessment we will consider an applicant's previous and/or planned financial promotions. We will also expect applicants to be able to show how they will comply with the financial promotions regime as part of their application.

FCA powers in relation to registered cryptoasset businesses communicating financial promotions

- 5.8** The Financial Services and Markets Act 2000 (Financial Promotion) (Amendment) Order 2023 has created a new exemption (Article 73ZA) in the FPO. This exemption allows registered cryptoasset businesses to communicate financial promotions for cryptoassets without the need to have those promotions approved by an authorised person, subject to complying with the conditions of the exemption. Registered cryptoasset businesses will not have to apply for any further permission to communicate their own cryptoasset financial promotions. The exemption will also enable non-real time promotions to be communicated on behalf of registered cryptoasset businesses where the registered cryptoasset business prepares the content of the promotion.
- 5.9** Cryptoasset businesses that are not registered under the MLRs will not be able to rely on this exemption to communicate cryptoasset financial promotions. Unless those firms can rely on another route to lawfully communicate their financial promotions, they will be unable to communicate financial promotions to UK consumers.
- 5.10** In connection with the creation of this new exemption, the legislation also extends certain FCA powers in relation to registered cryptoasset businesses communicating cryptoasset financial promotions. These include rule-making, supervisory and enforcement powers. The extended powers will enable us to regulate the financial promotion activity of registered cryptoasset businesses in broadly the same way as the financial promotions of authorised persons.

Our approach to applying financial promotion rules

- 5.11** Our financial promotion rule-making power has been extended to enable us to apply financial promotion rules to registered cryptoasset businesses communicating cryptoasset financial promotions.
- 5.12** The legislation grants us powers to make rules applying to registered cryptoasset businesses about the communication by them of cryptoasset financial promotions which are the same as, or substantially equivalent to, rules which would apply to an authorised person communicating a cryptoasset financial promotion. Financial promotions which are communicated by, or on behalf, of registered cryptoasset businesses in reliance on this new exemption will need to comply with relevant FCA rules.
- 5.13** We are not obliged to consult on the rules which we apply to registered cryptoasset businesses. So the near final Handbook instrument at Appendix 1 contains provisions applying relevant rules to registered cryptoasset businesses communicating financial promotions in reliance on the new exemption.

5.14 The following broad Handbook provisions will apply to registered cryptoasset businesses when communicating financial promotions in reliance on the new exemption:

- Principle 7 (Communications with clients)
- Relevant parts of GEN (Statements about authorisation and regulation by the appropriate regulator)
- COBS 4 (Communicating with clients, including financial promotions)
- COBS 10 (Assessing appropriateness)

5.15 In each case, the relevant rules are stated to apply to a registered cryptoasset business as they would to an authorised person communicating a financial promotion relating to cryptoassets. So registered cryptoasset businesses communicating financial promotions in reliance on the new exemption will need to comply with the rules described elsewhere in this PS.

Our approach to supervision and enforcement

5.16 Many of our supervisory and enforcement powers which apply to authorised firms have been extended to apply to MLR registered cryptoasset businesses relying on the cryptoasset financial promotion exemption. These powers are drawn from FSMA and applied to registered cryptoasset businesses, who are not otherwise authorised, with necessary amendment to ensure they operate appropriately. These powers are an important part of our approach to the supervision of, and enforcement relating to, firms' cryptoasset financial promotions. This section is intended to help firms understand this approach and the powers we may use to mitigate harm from financial promotions.

Identification of harm

5.17 We use a combination of business model analyses, firm regulatory histories and assessments of financial soundness to identify areas of potential harm to focus our supervisory and enforcement action. We identify actual harm using several sources including reports from consumers, whistle-blowers and other firms in the market. We also take a proactive approach to identifying potential and actual harm. One tool we rely on is web scraping to identify potential scams. We are scanning an average of 100,000 websites every day to identify newly registered domains that exhibit characteristics which are commonly associated with scams or fraud. Where we identify a fraudulent or illegal website, we publish a warning to consumers and write to the website's registrar to request it is taken down.

Diagnostic tools

5.18 To support our supervisory and enforcement functions, we use a range of tools to diagnose harm and its impact on consumers or markets. We use these tools to gather information and conduct our assessment to identify the root cause of issues. For activities related to the financial promotions of cryptoasset businesses this may include, but is not limited to:

- Section 165 FSMA – information request – Where we determine that we need additional information to support our enquiries, we have the power under s165 to require registered persons to give us any information, documents and data that we determine is reasonably required.
- Section 166 FSMA – skilled person review – Where we are concerned about aspects of a registered person's activities or require further analysis to be conducted, we have the power under s166 to get a report from a third party on the matter (known as a 'skilled persons report'). We can choose which third party to appoint and provide us with a report on their findings. Our rules also mean we can require the registered person to pay the costs of the skilled person report, as a fee.

Remedy tools

5.19 Rule breaches, big and small do happen, and can be a result of mistakes rather than malicious intent. In the first instance, it is the registered cryptoasset business' role to try to prevent breaches and to remedy them where they occur. When a breach has occurred, and the registered cryptoasset business becomes aware of it, we expect it to notify us and to take prompt action to put things right.

5.20 We have 4 main objectives when things go wrong:

- to stop actual harm quickly and proportionately
- to ensure firms put things right (including providing redress to customers affected, where appropriate)
- to address the root causes of harm
- to hold the firm and/or individuals in the firm to account, where there has been misconduct

5.21 To achieve these objectives, we will rely on our powers over registered cryptoasset businesses relying on the cryptoasset financial promotions exemption. We may exercise these powers in relation to a registered person to advance any of our operational objectives or to advance the protection of persons who receive, have received or may receive invitations or inducements to engage in investment activity in relation to qualifying cryptoassets. Key powers we may use include:

- Section 55L FSMA– VREQ/OIREQ – Where we identify that the behaviour of a registered cryptoasset business is causing or may cause harm, or where we have evidence that a registered cryptoasset business is not meeting our standards, we may invite them to apply voluntarily for the imposition of a requirement ('VREQ') to prevent or stop harm to consumers or markets from continuing. Where a registered cryptoasset business does not voluntarily agree to such a requirement, or where we think the situation warrants it, we may impose an Own Initiative

Requirement ('OIREQ') on the registered cryptoasset business to prevent or stop harm. We have the power to impose new requirements, vary existing requirements, or cancel requirements on our own initiative. Under Section 55N FSMA, we can also extend these requirements to cover unregulated activities and/or activities carried out by other members of the registered cryptoasset business' group.

- Section 55P FSMA– Asset prohibitions or restrictions – Where we have concerns with a registered cryptoasset business' activity, to maximise their ability to repay consumers, we have the power under s55P to put an asset restriction in place. This means that a registered cryptoasset business must not dispose of, withdraw, transfer, deal with or diminish the value of any of its own assets, whether held in the UK or elsewhere.
- Section 137S FSMA– Where we identify that a financial promotion is or is likely to be in breach of our financial promotion rules, we have the power under 137S FSMA to direct a registered cryptoasset business to withdraw the promotion or refrain from communicating the promotion in the first place. We also have the power to direct a registered cryptoasset business to publish details of the direction, including publishing a copy of the promotion and the reasons behind our action, as well as to do anything else specified in the direction in relation to the communication.

- 5.22** A registered cryptoasset business will not be able to rely on the exemption in article 73ZA of the FPO to communicate cryptoasset promotions where to do so would breach a requirement under section 55L or a direction under s137S.

Approach to enforcement

- 5.23** Where we have reason to believe that serious misconduct may have taken place an enforcement investigation will usually be appropriate. During an investigation, we aim to find out whether serious misconduct has occurred and get a full understanding of the facts so we can decide whether to act and, if so, what kind of action may be necessary. The opening of an investigation doesn't mean we believe misconduct has occurred or that anyone involved in the investigation is necessarily guilty of misconduct.
- 5.24** We will only make a decision about the outcome, including whether the case merits criminal, civil or regulatory action once there is sufficient evidence to justify such a decision at the end of an investigation. If there is, we will take into account the evidential merits of the case, whether there is a proper foundation for bringing the case and the public interest in deciding to start proceedings to get the appropriate remedy or sanction.
- 5.25** We can take a number of routes to reach an appropriate outcome. The route taken will depend on whether we decide to take disciplinary action, or criminal or civil proceedings through the courts. We will consider the use of our powers to impose a disciplinary sanction, including public censures and financial penalties as well as our powers to obtain redress and restitution. We will publish the results of our decisions wherever possible (subject to the requirements of FSMA). Any published Decision Notices or Final Notices will make clear the basis for our findings. This will include the facts and our reasons for concluding there has been serious misconduct and a breach of Principle 7 and/or our Handbook rules.

- 5.26** Registered cryptoasset businesses should not wait for an investigation to begin, let alone end, or for us to impose a sanction, before acting in a way they think is right. This includes taking proactive steps to put right any harm or damage that may have been caused to consumers. This doesn't mean that if a firm or individual has taken remedial action we won't investigate or take enforcement action where serious misconduct appears to have occurred. We need to make sure there is full accountability for serious misconduct.

Chapter 6

Cost benefit analysis (CBA)

- 6.1** In [CP 22/2](#) we provided a cost benefit analysis (CBA) for a policy package on financial promotions for high-risk investments, that included proposals for promotions of cryptoassets. In PS22/10, we split out the costs and benefits for high-risk investments but excluded the cryptoassets element of the proposals consulted upon in CP22/2.
- 6.2** In this chapter, we set out how the costs and benefits presented in CP22/2 for our proposals for cryptoasset financial promotion rules have been revised due to:
- feedback received on the elements of the CBA for rules on financial promotions in CP22/2 that apply to cryptoassets
 - the Treasury's recently introduced exemption that allows Money Laundering Regulation 2017 (MLR) registered firms, who are not otherwise authorised, to communicate their own cryptoasset financial promotions
 - the latest data from our recent 2023 [cryptoasset consumer research](#).
- 6.3** We also provide a breakeven analysis for the updated costs and benefits for our final promotion rules for cryptoassets. Finally, we give an assessment of how our proposals are consistent with the FCA's Secondary international competitiveness and growth objective.

Feedback provided to the cryptoasset elements of the CBA in CP22/2

- 6.4** In this section we summarise the feedback to the CP22/2 CBA that related to the proposed financial promotion rules for cryptoassets, and our responses to the points raised.

Familiarisation and legal costs

- 6.5** One respondent raised that the advisory costs associated with understanding and implementing the new regime are likely to be higher than our estimate of £2,200 as a one-off cost per firm. One respondent suggested the on-going costs for all legal advice could reach between £30,000-£50,000 due to the complexity of the rules and how they are applied to web and mobile based platforms. The same respondent further noted that more complex and larger firms could face larger costs.

Our response

Our calculated per firm estimation of £2,200 was an average one-off cost for cryptoasset firms to read and familiarise themselves with the requirements of the new rules and to check their current practices against these expectations. We used our standardised cost model to calculate this

estimation. We might expect further legal costs as firms seek to implement changes to their systems to meet our requirements. We believe that these additional costs would be captured in our other estimates for other types of costs in the CBA, such as costs due to IT changes. When applying our standardised cost models for cryptoasset firms we assessed the potential costs for larger cryptoasset firms. Noting the feedback received, we still believe our familiarisation and gap analysis are appropriate when measuring the familiarisation and legal costs in this CBA.

IT changes

- 6.6** We received feedback from 1 respondent noting that the technological costs to implement the consumer journey would reach 6 or possibly 8 figures in total costs. They also raised that smaller firms may be subject to larger costs as they are unlikely to have existing infrastructure in place.

Our response

We used our standardised cost model to estimate that the costs of IT changes for cryptoasset firms would be around £84,500 per firm. We recognise that firms may incur higher or lower IT costs than the average cost we reported. Our estimate is an average across firms of different sizes and takes into account the need to build new infrastructure by assuming 'major' scale costs according to our standardised cost model. We note that respondents did not provide any evidence to lead us to question our estimates regarding the cost of IT changes and have therefore continued to rely on our standardised cost model. To have done so, they would have needed to provide evidence on the distribution of costs across firms affected. We continue to believe our estimates of the IT costs are appropriate.

Increased costs for individuals who do not rely on online methods of communication

- 6.7** Some respondents noted that individuals who are high net worth individuals or ultra high net worth individuals do not always use online methods to receive financial promotions for high-risk investments. It was noted that firms that interact with these individuals with non-online methods will need to commit more time and cost for financial advisers and wealth managers.

Our response

In our CBA in CP22/2, we have assumed that most individuals will use digital means to access financial promotions. We recognise that some individuals, eg high net worth individuals and ultra high net worth

individuals, may receive financial promotions through physical means and that this may mean there are some additional costs associated with explaining a financial promotion. However, we do not have information available to us to estimate the number of individuals receiving financial promotions through physical means, or the increase in time incurred as a result of the rules we are implementing. So we do not think it is reasonably practicable to estimate these costs. We continue to expect most financial promotions are received digitally and therefore these costs are limited.

Burdensome costs for firms that do not rely on online distribution

- 6.8** Some respondents noted that the costs of changing IT systems to generate personalised risk warnings and to monitor the consumer journey will be burdensome for firms that don't rely heavily on online distribution.

Our response

In our CBA in CP22/2, we have assumed that most individuals will use digital means to access financial promotions. As a consequence, most firms will incur IT costs from changing their IT systems to enable personalised risk warnings. We recognise that not all financial promotions will be communicated through online means. We would expect these firms to tailor their approach to meeting the new rules to their existing business structure. These firms may find it cheaper to provide risk warnings using other means. For example, they may provide risk warnings by providing documents on the risks arising from an investment. We think that these approaches will be relatively uncommon for cryptoassets. Where firms used these alternative ways, we think that the costs of these alternative approaches would not be significantly more expensive than implementing IT changes that automate warnings. Consequently, we do not expect that these firms will have materially different costs to other cryptoasset firms.

Limited evidence regarding the impact to different types of firms

- 6.9** Some respondents noted that the CBA did not assess the impact of the measures for firms of different sizes or types. For example, scale up or start-up firms may face a greater impact of these measures as the costs of implementing the rules may have a more significant impact to overall costs.

Our response

In our CBA, we did account for firms of different sizes. We assumed that 20% of cryptoasset firms are equivalent to 'medium' and 80% 'small' sized regulated firms according to our Standardised Costs Model (see Annex 1 of [How we analyse the costs and benefits of our policies](#)). We do not believe that the effect of implementing our financial promotion rules will vary differently considering whether a small firm is a start-up or scale up. For the purposes of this CBA, we have assessed the impact to costs depending on size. We also note that a significant proportion of the costs incurred for firms will be proportional to the number of financial promotions made and the complexity of the financial promotion itself.

Ongoing costs for firms promoting cryptoassets using a s21 approver

- 6.10** Respondents noted that the CBA failed to acknowledge the competitive costs faced by cryptoasset firms who have to pay for a limited number of s21 approvers. They also noted that the fee charged by s21 approvers would likely be higher and into 5 figures for a one-off financial promotion. A respondent suggested the cost for going to a s21 approver, assuming a 5-figure cost per month and applied across all 300 affected cryptoasset firms, would be around £36m.

Our response

Based on our previous supervisory work, we continue to estimate that firms may charge between £5,000 and £15,000 for approving a financial promotion, depending on the nature and complexity of the product. This estimation is in line with the respondent's estimation that approvals for a one-off financial promotion could be into the 5 figures. It is highly possible for one-off s21 fees to be lower than the 5 figures estimated by the respondent and in the lower end of our bracket. However, given the lack of information we have on cryptoasset financial promotions and the underlying cost structures of cryptoasset firms, we do not believe it is reasonably practicable to predict the overall cost of s21 approval nor how the market structure of cryptoasset firms might change as a consequence of our proposals.

- 6.11** We acknowledge that the potential for there to be a limited number of s21 approvers in the market, and the additional cost of using a s21 approver, may have some impact on the competitive dynamics between cryptoasset firms that can afford to use an approver or not. However, we think these impacts could be mitigated to some extent, such as through the bespoke exemption for MLR registered cryptoasset firms.

- 6.12** Moreover, if the costs for s21 approval were as high as suggested by the respondent (e.g. £36m), we would expect most firms to use another avenue (eg the MLR registration) to communicate a financial promotion. Therefore, the fees of using a s21 approver are unlikely to have an appreciable effect on competition between cryptoasset firms. We note that the resources required to ensure that financial promotions are compliant (regardless of the avenue used to check) are variable per promotion.

The cost benefit analysis does not attempt to quantify the overall costs across the industry

- 6.13** Some respondents believed that the CBA unfairly focused on the costs to individual firms rather than considering the overall costs to the full cryptoasset industry, given the high price of approval and significant number of cryptoasset firms affected.

Our response

The purpose of this CBA is to focus solely on the costs and benefits of the financial promotions regime to firms that may wish to communicate financial promotions and not the wider cryptoasset market. For the CBA itself, we provided costs estimates where it was reasonably practicable to do. We were not able to gather market-wide estimates of the number of financial promotions communicated. This meant that we could not provide market level estimates of the costs.

Lack of acknowledgment for different cryptoasset types

- 6.14** Respondents noted that the CBA captures all cryptoassets under the term 'qualifying cryptoasset' and does not consider the consequence of the measures to different cryptoasset types. For example, utility tokens which are not promoted as investments will still need to go through the same consumer journey and be subject to the same rules.

Our response

In our CBA, our analysis did not differentiate between 'types' of cryptoassets. We do not think the compliance costs of the proposed rules varies substantially for different types of cryptoassets. Nor can we reasonably predict whether different cryptoassets will be affected differently by our proposals due to the fluid and changing trends within cryptoassets. For example, there may be types of cryptoassets at the time of writing the CBA that would be in trend but no longer exist by publication, or where the use of a particular type of cryptoasset changes over time.

Lack of a definition for qualifying cryptoassets

- 6.15** Some respondents questioned whether the lack of a definition for 'qualifying cryptoassets' made the CBA hard to measure.

Our response

We are aware that a definition for a 'qualifying cryptoasset' was not provided in the previous CBA. We have included a definition for a qualifying cryptoasset in the body of the policy statement that has been included in the legislation by the Treasury. We believe that the definition of a qualifying cryptoasset will have little effect to the analysis in the CBA as most firms that will seek to communicate financial promotions for cryptoassets will be captured.

Limited acknowledgement of wider updates to the financial promotions regime

- 6.16** Some respondents felt the CBA did not attempt to assess the overall impact of the measures in combination with other changes to the wider financial promotions regime. For example, the Government's proposal to amend the exemptions under the Financial Promotions Order, and proposed introduction of the s21 regulatory gateway.

Our response

For the purposes of the previous CBA, we focused solely on the upcoming changes for cryptoassets due to the uncertainty concerning the final positions of these policy proposals. We note that all financial promotions for cryptoassets should take into account other necessary requirements that apply to financial promotions for high-risk investments.

No costs represented the lack of competitiveness to the UK market

- 6.17** Some firms noted that the CBA did not acknowledge the costs to UK competitiveness due to the proposals. For example, UK firms now paying third parties to approve promotions. Others suggested the proposals would affect the UK's competitiveness as a centre of blockchain based market infrastructure.

Our response

Our financial promotion rules will apply to all UK and non-UK firms in the same way and will have an effect whether a firm is based in the UK or not. We do however recognise that some international firms may not communicate financial promotions to UK consumers due to their failure to comply with the new regime. As addressed through the policy

statement, our rules will create a fairer and more consumer-focused landscape on which firms can compete and innovate. Competition can more effectively act in the interests of consumers where consumers are given clear, accurate information that helps them make effective investment decisions. We believe this policy strikes the right balance between consumer protection and promoting potentially beneficial innovation, which could support long-term economic growth. A further potential outcome of the financial promotions regime is to reduce the number of inappropriate cryptoassets and cryptoasset related models being communicated to consumers and the most vulnerable members of society. The impact of not protecting consumers against misleading financial promotions could ultimately hinder medium to longer term economic growth in the UK (eg consumers lose money or lose trust in interacting with the UK's financial services sector), and impact the UK's wider international competitiveness from being a safe and reputable jurisdiction to communicate cryptoasset financial promotions. Furthermore, we do not believe this policy will affect the UK's attractiveness for blockchain based market infrastructure as this is unrelated to financial promotions policy.

Consumer evidence taken from habits during the Covid-19 pandemic

- 6.18** Some respondents believed consumer habits during the Covid-19 pandemic were not a true representation of 'normal' habits.

Our response

We are aware that consumer habits during the pandemic were slightly different compared to pre-pandemic behaviours. However we believe this is not a sufficient argument to discredit our consumer evidence and made the decision to only use conservative estimates from our previous research. Our 2023 [cryptoasset consumer research](#) was gathered post-pandemic and continues to show similar UK consumer trends for cryptoassets and supports our previous conclusions.

Impact of bespoke exemption for MLR registered firms

- 6.19** In this section we discuss the impact of the Treasury's exemption for cryptoasset businesses which are registered with the FCA under the MLRs to communicate their own cryptoasset financial promotions to UK consumers.
- 6.20** At the time of writing CP22/2 there were 3 routes for communicating financial promotions of cryptoassets:
- the promotion is communicated by an FCA authorised person,
 - the promotion is communicated by an unauthorised person but approved by an FCA authorised person (a s21 approver),
 - or the promotion otherwise complies with conditions of an exemption in the Financial Promotion Order (FPO).
- 6.21** As discussed in Chapter 4, respondents to CP22/2 were concerned that there would be very few authorised firms who could approve cryptoasset promotions, alongside the limited authorised cryptoasset firms that are able to communicate their own financial promotions. They argued that this could significantly restrict promotion of cryptoassets.
- 6.22** In response to this feedback, the Treasury has introduced a new exemption through legislation, enabling cryptoasset businesses which are registered with the FCA under the MLRs, but who are not otherwise authorised persons, to communicate their own cryptoasset financial promotions to UK consumers. We consider the impact to consumers to be small given the additional powers we will have over these firms and that the financial promotion rules will be the same.

The impact on costs

- 6.23** The bespoke exemption for MLR registered firms has the effect of providing cryptoasset firms with an additional route for communicating cryptoasset financial promotions. This additional route may have the effect of reducing the costs of the regime as we would expect firms to choose the route that is most cost effective for them.
- 6.24** There are currently 41 cryptoasset firms registered under MLRs. These firms will not need to use an s21 approver and will not incur the additional costs of gaining approval.
- 6.25** We would expect that other cryptoasset firms will seek to become registered under the MLRs to avoid s21 costs. This will mean that they will avoid using s21 approvers, they will incur the costs of registering. The registration fees for the MLRs are currently around £10,000. Firms who take this route will incur additional costs from completing the application process.
- 6.26** It is important to note that MLR registered firms will still incur the other costs arising from our financial promotions rules. This includes marketing restrictions (such as not using incentives to invest) and the prescribed consumer journey comprising risk warnings, risk summaries, the appropriateness test and the 24-hour cooling-off period.

- 6.27** In addition, the option of using the bespoke exemption for MLR registered firms may reduce the number of s21 firms approving cryptoasset financial promotions given the lower demand and the costs associated with those firms meeting our rules. Consequently, the effect of this alternative route may reduce the overall costs of the regime as there will be a reduction in the total costs incurred by cryptoasset firms. We are unable to predict how many cryptoasset firms will become MLR registered and therefore by how much the cost we originally estimated might be reduced. Nor were we able to estimate the overall costs of s21 approval in our CBA as we do not have information on the number of promotions. So, we still expect that some cryptoasset firms will seek to use a s21 approver to communicate their financial promotions. We have therefore not updated our lower bound and upper bound assumptions for the number of s21 approvers (32-100). This is because as we cannot be certain about the number of s21 approvers that may apply to communicate financial promotions for qualifying cryptoassets. As we have not changed our estimates of the number of s21 firms, the total costs for s21 firms remains unchanged from those set out in CP22/2.

Impact on competition

- 6.28** Relative to our original CBA, the introduction of the MLR route may reduce the number of cryptoasset firms seeking s21 approval and affect the number of firms considering being s21 approvers for cryptoasset firms. In theory, the reduced demand, relative to our CBA, for s21 approvers may mean that there may be fewer s21 approvers that come forward for cryptoasset financial promotions. On the other hand, the fewer s21 approvers may have some additional market power, and therefore the ability to raise prices to those seeking approval. We note that the alternative routes to communicate promotions will provide a constraint on prices. In addition, we do not believe there are significant barriers to entry to become an s21 approver. If s21 approvers were in greater demand due to some cryptoasset firms being unwilling to become MLR registered, approvers may be able to make significant profits and we might expect additional s21 approvers to come forward. Consequently, we don't expect less competition relative to our CBA in CP22/2.

New 2023 cryptoassets consumer research

- 6.29** In CP22/2, we estimated that there were 2.3m cryptoasset holders in the UK using FCA Consumer Research 2021. Our most recent research (2023) suggests that there has been a substantial increase in the cryptoasset holdings of UK consumers. The table shows how our estimates have changed. Given these changes in the number of consumers holding cryptoassets, in this section we consider how these changes affect the costs and benefits and breakeven analysis we presented in CP22/2.

Table 4: Changes in the 2023 cryptoassets consumer research

	2021 Consumer Survey	2023 Consumer Survey
Number of cryptoasset holders in the UK	4.4% (Total UK adult pop 2021) 2.3m	10% (Estimated total UK adult pop 2023) 4.97m
Change in UK cryptoassets holders, year on year change (relative to previous survey)	400k+	2.67m+
Number of UK cryptoasset holders who will either increase their holdings of cryptoassets or will buy cryptoassets for the first time	1.48m	4.61m

- 6.30** We now estimate that 1.94 million cryptoassets owners said they would purchase cryptoassets again, alongside the 2.67 million estimated new cryptoasset owners annually. This makes an estimate of 4.61 million in total that would either increase their holdings or buy cryptoassets for the first time. There has been a change to the methodology between the 2021 and 2023 cryptoasset consumer research but the changes do not result in material differences. We are conscious that the 2.67 million figure for new UK cryptoasset owners annually is a substantial increase on the previous year and subject to considerable uncertainty considering the recent developments in the cryptoasset market. However, based on the underlying data from the 2023 consumer research, it is clear there is still a strong interest for cryptoassets in the UK.
- 6.31** Given the size of the changes in the number of consumers holding or purchasing cryptoassets in the UK, we have considered how these changes have affected the costs and benefits we estimated in CP22/2 for cryptoassets. We also consider how these changes affect the proportionality of our proposals by updating the breakeven analysis we completed in CP22/2 for cryptoassets only.

Updating costs to consumers

- 6.32** Our consumer journey rules will cause a time cost to consumers who wish to access cryptoassets as the rules will slow down the purchase process. The total costs incurred by consumers are proportional to the number of consumers purchasing cryptoassets. So we have updated the costs to consumers in light of the increase of the numbers of consumers intending to purchase cryptoassets.
- 6.33** In CP22/2 we estimated that there was an 8-minute sales time increase for each consumer for cryptoassets. Using Department for Transport Transport & Analysis Guidance, we assumed that the cost of an hour of consumers' time is £6.45. So we estimated that the additional cost of a consumer's time is around £0.86. In CP22/2, we applied this cost per consumer to our estimated 1.48 million transactions. Transactions are our best estimate from the available Consumer Research data and assumed from consumers who will either increase their holdings of cryptoassets or will purchase cryptoassets for the first time. This resulted in an overall cost estimate of £1.27m. Using the same approach for the estimated 4.61 million transactions from the 2023 Consumer Survey, results in an updated cost of £4.12m.

- 6.34** We also estimated the costs to consumers of the loss of inducements in CP22/2. We again updated these numbers for the change in our estimates of the number of consumers. In CP22/2, we estimated that the cost to consumers of losing inducements was £1.46m for all HRI investments, of which £0.8m was for cryptoassets. The cryptoassets costs were calculated by assuming that 0.7% of the 1.48 million consumers who will either increase their holdings of cryptoassets or will buy cryptoassets for the first time benefited from inducements. Each of these consumers would lose on average £78.
- 6.35** Using this same approach for the updated number of consumers of 4.61 million (but otherwise identical assumptions), we calculate the cost to consumers of losing inducements of £2.52m.

Updated break-even analyses

- 6.36** To help illustrate the proportionality of our proposal, we presented a break-even analysis in CP22/2.

Break-even analysis 1

- 6.37** The breakeven analysis estimated the benefits per consumer that would need to be realised for the proposed package to be 'net beneficial', given the compliance costs. We estimated that for our interventions to break-even in monetary terms, each new potential HRI consumer or existing holder increasing their holdings (estimated to be 142,000 for HRIs excluding cryptoassets plus 1,481,000 for cryptoassets) would need to realise or make a saving of £38 on average. Applied to cryptoassets only, the benefits given the information provided in CP22/2 would need to be £28.
- 6.38** Using the updated information on the number of consumers affected from our Cryptoasset Consumer Research Survey, we calculate the breakeven benefits per consumer for our cryptoasset rules. As the total quantifiable one-off cost has not been amended, we again use the costs of £41.28m as set out in CP22/2. The number of consumers potentially affected are 4.61 million. This implies that each new or existing cryptoasset holder increasing their holdings (estimated to be 4.61 million people) would need to realise or make a saving of £8.95, in benefits on average.

Break-even analysis 2

- 6.39** CP22/2 also presented the number of consumers that would need to be dissuaded from investing for the benefits to exceed the costs. The table below shows the position in the CBA for CP22/2 and in the updated analysis here.

Table 5: Updated breakeven figures reflecting the 2023 Cryptoasset Consumer Research Survey

	CP22/2 CBA figures	Updated figures
Median holdings of cryptoassets per consumer	£300	£175
Total one-off costs for cryptoassets in terms of new purchases	137,600	235,885
Number of UK cryptoasset users who regretted their purchase of cryptoassets, who saw adverts and were encouraged or led to buy as a result	151,800	229,614

- 6.40** In our CBA in CP22/2, we used the median holdings of cryptoassets per consumer of £300 (taken from our Consumer Research). The costs of £41.28m were equivalent to 137,600 consumers purchasing cryptoassets. This was below the 151,800 consumers who reported that they regretted their purchase of cryptoassets, who saw adverts and were encouraged or led to buy as a result.
- 6.41** Our consumer research estimates that the current median holdings of cryptoassets is now £175 per consumer. Expressing the costs in the number of consumers purchasing cryptoassets, the costs are now purchases equivalent to 235,885 consumers purchases of cryptoassets. This is now slightly above the 229,614 consumers who now regret purchasing cryptoassets. This is because the median holding of cryptoassets per consumer has fallen from £300 to £175. We note, however, that the survey numbers are broadly similar and are statistical estimates subject to a level of variability. Further, the recent large increase in the numbers of consumers holding cryptoassets may mean that consumers may only have recently purchased their cryptoassets and not had time yet to experience poor outcomes and therefore regret their purchase. In addition, regret does not fully encompass the harm that may arise from unsuitable cryptoasset sales.

Break-even analysis 3

- 6.42** Our previous consultation also examined the number of consumers that would need to be dissuaded from investing over a 10-year period for the benefits to exceed the costs. We have updated this analysis here. The table below shows the comparison.
- 6.43** In CP22/2, we found that 13,760 consumers per year over 10 years would need to be dissuaded from purchasing cryptoassets for the benefits to exceed the costs. This was 3.4% of consumers who we expect to purchase cryptoassets over this 10-year period in the baseline.
- 6.44** We have not updated the number of new UK cryptoasset users from the 2023 cryptoasset consumer research used in our breakeven analysis over time (a 10-period reflecting the long-term impact). This is because such large increases are unlikely to be sustained over a 10-year period (2.67m per year). So we have decided to follow our existing assumptions of 400,000 new holders of cryptoasset owners per year as a conservative estimate.

- 6.45** We now find that a minimum of 5.9% of consumers per year (23,588 consumers out of 400,000 new investors in cryptoassets per year) would need to be dissuaded from making inappropriate purchases for the benefits of the policy proposal to exceed its costs over 10 years. This figure is higher than was estimated in CP22/2 due to a smaller potential loss to consumers from a lower median cryptoasset holding. If, as a result of the policy, the number of consumers that are dissuaded from investing in cryptoassets is greater than the breakeven amount, then the benefits will exceed the costs sooner than in 10 years.

Table 6: Break-even analysis (10 years)

	2021 CP CBA figures	Updated figures
Number of consumers that need to be dissuaded per year	13,760	23,588
Year-on-year change in UK cryptoassets holders	400,000	400,000 (no change as using 2021 figures)
Percent of new consumers need to be dissuaded per year for a 10-year breakeven	3.4% (13,760 out of 400,000)	5.9% (23,588 out of 400,000)

Concluding remarks on the CBA

- 6.46** We have considered how the Treasury's recently introduced MLR exemption for registered cryptoasset firms affected our CBA. We also updated our breakeven analyses to take into account recent changes in the number of consumers that hold and purchase cryptoassets. We expect that the MLR exemption will have (at least) not raised the overall costs of our rules, and, in all likelihood, will have reduced the overall cost of the regime. This change may have made our proposals less costly relative to when we published CP22/2.
- 6.47** The findings of the breakeven analyses are broadly similar to those we previously presented in CP22/2. The increase in consumers means that there are more consumers who will benefit from the regime and so the benefits are proportionately larger. Hence this increases benefits relative to the costs. Overall, we still believe that the regime is proportionate.

Compliance with the FCA's Secondary international competitiveness and growth objective

- 6.48** The Treasury on 9 December 2022 published a new [Remit Letter](#) which broadly speaking requires us to 'have regard' to growth and international competitiveness, bearing in mind the upcoming secondary international competitiveness growth objective which is currently passing through Parliament at the time of writing. The remit letter particularly notes the Government's commitment to securing better outcomes for all consumers, including through improved competition in the interests of consumers and having regard to the needs of different consumers who use or may use financial services;

and to support innovation and new developments in financial markets and the active embracing of the use of new technology in financial services, such as cryptoasset technologies, artificial intelligence and machine learning.

- 6.49** Our new secondary objective is about facilitating the international competitiveness of the UK economy as a whole and its growth in the medium to long-term. This includes fostering competition in financial markets as a driver of productivity and innovation.
- 6.50** Our 2022 consultation to bring qualifying cryptoassets into scope of our financial promotion rules was made before the announcement of the secondary objective, however in the spirit of the new objective we have considered this as part of this updated CBA.
- 6.51** Our financial promotions rules are focused on ensuring UK consumers remain protected from misleading financial promotions, from both UK and overseas firms. Many financial products that are advertised to UK consumers are often not suitable for all retail consumers and we want to ensure that before consumers invest into any high-risk investment, they are fully aware of the risks and that they may lose all their money. For this reason, we have focused primarily on securing better outcomes for all consumers as addressed through the remit letter, and to align with our primary objective to protect consumers. We believe this policy strikes the right balance between consumer protection and promoting potentially beneficial innovation, which could support long-term economic growth. A further potential outcome of the financial promotions regime is to reduce the number of inappropriate cryptoassets and cryptoasset related models being communicated to consumers and the most vulnerable members of society. The impact of not protecting consumers against misleading financial promotions could ultimately hinder medium to longer term economic growth in the UK (eg consumers lose money or lose trust in interacting with the UK's financial services sector), and impact the UK's wider international competitiveness as a safe and reputable jurisdiction to communicate cryptoasset financial promotions.

Annex 1

List of non-confidential respondents

4thWay

Advanced Analytica

Aimichia Technology Co., Ltd.

ArchOver

Association of British Insurers

Aviation and Tech Capital Ltd

Barton Brown Limited

British Venture Capital Association

CryptoUK

CrowdProperty

Electronic Money Association

Enterprise Investment Scheme Association

Fiat Republic Ltd

Financial Services Consumer Panel

FOLK2FOLK Ltd

Global Digital Finance

Gunnercooke LLP

HNW Lending Ltd

Ignacio Corral

Interactive Investor Services Limited

Invest and Fund Limited

James Matthews

Jay sharma

Kuflink Ltd

Martyn Rich
MCBorrelli Advisors Limited
Memery Crystal
Par Fund Management Limited
Prosper Capital LLP
ShareIn Ltd
Simple Property Limited
SimplyBiz
Society of Trust and Estate Practitioners
Socios Technologies AG
Sturgeon Ventures LLP
The Investing and Saving Alliance
The Investment Association
UK Business Angels Association
UK Crowdfunding Association
Wealth Club Limited

Annex 2

Abbreviations used in this paper

Abbreviation	Description
CBA	Cost benefit analysis
CP	Consultation Paper
COBS	Conduct of Business Sourcebook
DP	Discussion Paper
FCA	Financial Conduct Authority
FSCS	Financial Services Compensation Scheme
FOS	Financial Ombudsman Service
FPO	Financial Promotion Order
FSMA	Financial Services and Markets Act
MLR	Money Laundering Regulation
NMMI	Non-Mass Market Investment
NMPI	Non-Mainstream Pooled Investment
NRRS	Non-Readily Realisable Security
OIREQ	Own Initiative imposition of requirements
P2P	Peer-to-Peer
POCA	Proceeds of Crime Act
RMMI	Restricted Mass Market Investment
RRS	Readily Realisable Security
SIS	Speculative Illiquid Security
SME	Small and Medium-sized Enterprises

Abbreviation	Description
S21 approver	Section 21 Approver
UCIS	Unregulated Collective Investment Scheme
VREQ	Voluntary imposition of requirements

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Appendix 1

Near final rules – Legal instrument

CRYPTOASSET FINANCIAL PROMOTIONS INSTRUMENT 2023

Powers exercised

- A. The Financial Conduct Authority (“the FCA”) makes this instrument in the exercise of the powers and related provisions in or under:
- (1) the following sections of the Financial Services and Markets Act 2000 (“the Act”):
 - (a) section 137A (The FCA’s general rules);
 - (b) section 137D (FCA general rules: product intervention);
 - (c) section 137R (Financial promotion rules);
 - (d) section 137T (General supplementary powers);
 - (e) section 138C (Evidential provisions);
 - (f) section 138D (Action for damages);
 - (g) section 139A (Power of the FCA to give guidance); and
 - (2) those sections of the Act specified in (1) as applied, with or without modification, by article 10 of the Financial Services and Markets Act 2000 (Financial Promotion) (Amendment) Order 2023 (“the Order”) in relation to registered persons (as defined in the Order).
- B. The rule-making powers listed above are specified for the purpose of section 138G (Rule-making instruments) of the Act.

Commencement

- C. This instrument comes into force on *[date]*.

Amendments to the Handbook

- D. The modules of the FCA’s Handbook of rules and guidance listed in column (1) below are amended in accordance with the Annexes in this instrument listed in column (2) below.

(1)	(2)
Glossary of definitions	Annex A
Principles for Businesses (PRIN)	Annex B
General Provisions (GEN)	Annex C
Conduct of Business sourcebook (COBS)	Annex D

- E. The Financial Conduct Authority confirms and remakes in the Glossary of definitions the defined expression “Financial Promotion Order”.

Amendments to material outside the Handbook

- F. The Perimeter Guidance manual (PERG) is amended in accordance with Annex E to this instrument.

Notes

- G. In the Annexes to this instrument, the “notes” (indicated by “**Note:**” or “*Editor’s note:*”) are included for the convenience of readers but do not form part of the legislative text.

Citation

- H. This instrument may be cited as the Cryptoasset Financial Promotions Instrument 2023.

By order of the Board
[date]

Annex A

Amendments to the Glossary of definitions

In this Annex, underlining indicates new text and striking through indicates deleted text, unless otherwise stated.

Insert the following new definitions in the appropriate alphabetical position. The text is not underlined.

*qualifying
cryptoasset*

(as defined in paragraph 26F (Qualifying cryptoasset) of Schedule 1 to the *Financial Promotion Order*):

- (1) Any cryptoasset (other than a cryptoasset falling in (2)) which is:
 - (a) fungible; and
 - (b) transferable.
- (2) A cryptoasset does not fall within (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 of Schedule 1 to the *Financial Promotion Order*;
 - (b) electronic money (as defined in regulation 2(1) (Interpretation) of the *Electronic Money Regulations*);
 - (c) fiat currency;
 - (d) fiat currency issued in digital form; 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:
 - (1) it allows the holder to acquire goods or services only from the issuer;
 - (2) 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

(3) it may be used only to acquire a very limited range of goods or services.

(3) For the purposes of this definition, a cryptoasset is 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).

registered person

(as defined in article 73ZA of the *Financial Promotion Order*) 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 Regulations*;
- (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*.

Amend the following definitions as shown.

controlled activity

...

- (d) dealing in securities, qualifying cryptoassets and contractually based investments as principal or agent (paragraph 3(1));

...

restricted mass market investment

any of the following:

- (a) a *non-readily realisable security*;
- (b) a *P2P agreement*;
- (c) a *P2P portfolio*;
- (d) a *qualifying cryptoasset*.

Annex B

Amendments to the Principles for Businesses (PRIN)

In this Annex, underlining indicates new text.

3 Rules about application

3.1 Who?

...

3.1.1A R ...

3.1.1B R (1) Principle 7 applies to a registered person communicating a financial promotion relating to one or more qualifying cryptoassets (in reliance on the exemption in article 73ZA of the Financial Promotion Order) as it applies to an authorised person communicating a financial promotion relating to one or more qualifying cryptoassets (PRIN 3.2.2R), disregarding the effect of PRIN 3.2.10R.

(2) For the purpose of (1), relevant references in this sourcebook to a firm include reference to a registered person.

...

Annex C

Amendments to the General Provisions (GEN)

In this Annex, underlining indicates new text.

1 FCA approval and emergencies

1.1 Application

...

1.1.1 R ...

(3) GEN 1.2 also applies to a *registered person* communicating a *financial promotion* relating to one or more *qualifying cryptoassets* (in reliance on the exemption in article 73ZA of the *Financial Promotion Order*).

(4) For the purpose of (3), references in GEN 1.2 to a *firm* include reference to a *registered person*.

...

2 Interpreting the Handbook

...

2.2 Interpreting the Handbook

...

2.2.20 G ...

Registered persons

- 2.2.20A G (1) *Registered persons* are able to communicate financial promotions relating to *qualifying cryptoassets* in reliance on an exemption in article 73ZA of the *Financial Promotion Order*.
- (2) The Financial Services and Markets Act 2000 (Financial Promotion) (Amendment) Order 2023 applies certain powers in the *Act* in relation to *registered persons* in connection with their communication of financial promotions in reliance on this exemption.
- (3) In order to ensure that *registered persons* are subject to appropriate FCA oversight and enforcement in relation to their communication of financial promotions, the FCA is able to exercise certain supervisory and enforcement powers under the *Act* in relation to *registered persons*. Where the *Handbook* contains guidance on the exercise of these powers in relation to *authorised persons* (in

particular, in *SUP*), that *guidance* should be read as also being relevant to *registered persons* (and references to *firms* should be construed accordingly).

...

4 Statutory status disclosure

...

4.5 Statements about authorisation and regulation by the appropriate regulator

Application

4.5.1 R ...

4.5.1A R (1) This section also applies to a *registered person communicating a financial promotion* relating to one or more *qualifying cryptoassets* (in reliance on the exemption in article 73ZA of the *Financial Promotion Order*).

(2) For the purpose of (1), references in this section to a *firm* include reference to a *registered person*.

4.5.1B G As *unauthorised persons, registered persons* must also ensure that they do not contravene section 24 of the Act (False claims to be authorised or exempt).

...

5 Regulators' logos and the Key facts logo

5.1 Application and purpose

...

The FCA logo

...

5.1.11 R GEN 5.1.10R also applies to a *registered person communicating a financial promotion* relating to one or more *qualifying cryptoassets* (in reliance on the exemption in article 73ZA of the *Financial Promotion Order*). The reference in that *rule* to a *firm* must be read accordingly.

...

Annex D

Amendments to the Conduct of Business sourcebook (COBS)

In this Annex, underlining indicates new text and striking through indicates deleted text, unless otherwise stated.

4 Communicating with clients, including financial promotions

4.1 Application

Who? What?

...

- 4.1.1B R (1) *TP firms* must comply with the *rules* in (3) and (4) to the extent that those *rules* do not already apply to those *TP firms* as a result of *GEN 2.2.26R*.
- (2) *Gibraltar-based firms* must comply with the rules in (3) and (4) to the extent that those *rules* do not already apply to such a *Gibraltar-based firm* as a result of *GEN 2.3.1R*.
- (3) ...
- (4) The rules are those in this chapter in so far as they relate to the communication and approval of financial promotions relating to qualifying cryptoassets.

...

4.1.7B G ...

Who? What? Application to registered persons promoting qualifying cryptoassets

- 4.1.7C R (1) This chapter applies to a registered person communicating a financial promotion relating to one or more qualifying cryptoassets (in reliance on the exemption in article 73ZA of the Financial Promotion Order) as it applies to an authorised person communicating a financial promotion relating to one or more qualifying cryptoassets.
- (2) For the purpose of (1), relevant references in this chapter to a firm include reference to a registered person.
- (3) Where a rule in the Handbook applies to a registered person communicating a financial promotion relating to one or more qualifying cryptoassets, relevant references to a client include reference to a person to whom a financial promotion is, or is likely to be, communicated by the relevant registered person.

- (4) A registered person must establish, implement and maintain adequate policies and procedures sufficient to ensure its compliance with its obligations under the rules when communicating financial promotions relating to qualifying cryptoassets.

- 4.1.7D G (1) COBS 4.1.7CR(1) requires a registered person to comply with the relevant rules in this chapter on the form and content of financial promotions (including those in COBS 4.12A). It also requires a registered person to make records of the financial promotions it communicates in compliance with the relevant rules in COBS 4.11 (Record keeping: financial promotion).
- (2) There are other requirements outside this chapter which apply to registered persons communicating financial promotions relating to qualifying cryptoassets, including:
- (a) Principle 7 (Communications with clients);
- (b) GEN 1.2 (Referring to approval by the FCA); and
- (c) GEN 4.5 (Statements about authorisation and regulation by the appropriate regulator).

- 4.1.7E G The exemption in article 73ZA of the Financial Promotion Order does not give rise to a type of excluded communication.

...

4.10 Approving and confirming compliance of financial promotions

...

Approving financial promotions

...

- 4.10.3 G ...
- (7) ...
- (8) A registered person is not able to approve a financial promotion.

...

Competence and expertise

- 4.10.9A R ...
- (3) ...
- (4) A registered person is not permitted to confirm the compliance of a financial promotion for the purpose of COBS 4.10.9AR(3).

...

4.12A Promotion of restricted mass market investments

...

Restrictions on monetary and non-monetary incentives

4.12A.7 R ...

(2) The *rule* in (1) does not apply ~~to~~ where the conditions in paragraph (3) are satisfied.

(3) The conditions are that:

- (a) the relevant incentive is a product or service produced or provided by the *person*, or a member of the *group* of the *person*, who will benefit from the proceeds of the investment; and
- (b) the financial promotion relates to a non-readily realisable security, P2P agreement or P2P portfolio.

...

Risk warning

...

4.12A.11 R (1) For the purposes of COBS 4.12A.10R, the *financial promotion* must contain:

...

(c) the following risk warning if the *financial promotion* relates to one or more *qualifying cryptoassets*:

Don't invest unless you're prepared to lose all the money you invest. This is a high-risk investment and you should not expect to be protected if something goes wrong.

(2) Where the number of characters contained in the risk warning in (1) exceeds the number of characters permitted by a third-party marketing provider:

- (a) the following risk warning must be used if the *financial promotion* relates to one or more *non-readily realisable securities* or *qualifying cryptoassets*:

...

...

...

Third condition: categorisation

- 4.12A.21 R The third condition is that before *communicating the direct offer financial promotion*, the *firm*, or other *person communicating the direct offer financial promotion*, takes reasonable steps to establish that the *retail client* is:
- (1) certified as:
 - (a) a ‘high net worth investor’;
 - (2) ~~(b) certified as a ‘sophisticated investor’; or~~
 - (3) ~~self-certified as a ‘sophisticated investor’; or~~
 - (4) ~~(c) certified as a ‘restricted investor’; or~~
 - (2) if the *direct offer financial promotion* relates to a *non-readily realisable security*, a *P2P agreement* or a *P2P portfolio*, self-certified as a ‘sophisticated investor’,
- in each case in accordance with COBS 4.12A.22R.

...

- 4.12A.25 G (1) Where the restricted investor statement (COBS 4 Annex 5R) refers to a restricted investor not investing more than 10% of their net assets, this refers to the *retail client’s* aggregate investment across all types of *restricted mass market investment*.
- (2) However, a *retail client* may be informed that they need not include in the calculation referred to in (1) any investment in a *restricted mass market investment* made in response to a *direct offer financial promotion* for the purpose of which they were categorised as sophisticated (whether on a certified or self-certified basis).

...

Fourth condition: appropriateness

...

- 4.12A.28 R (1) The fourth condition applies where the *firm* itself or the *person* who will:
- (a) *arrange or deal* in relation to a *non-readily realisable security*; or
 - (b) facilitate the *retail client* becoming a *lender* under a *P2P agreement* or a *P2P portfolio*; or

(c) transact in a *qualifying cryptoasset*,

is aware, or ought reasonably to be aware, that an application or order is in response to the *direct offer financial promotion*.

...

...

Requirements of risk warnings and non-digital risk summaries

...

4.12A.37 G (1) The *FCA* expects *firms* to take account of the latest version of the international Web Content Accessibility Guidelines (WCAG) accessibility standard when designing digital *financial promotions* and, in particular, how the risk warning will be displayed:
<https://www.w3.org/WAI/WCAG21/quickref/>

(2) *Firms* should have regard to the intended or likely recipients of a *financial promotion*. Where a *firm* considers that such *persons* are unlikely to have a good understanding of the English language, a risk warning or risk summary required by the *rules* in this section should be provided in an appropriate language in addition to English.

...

Requirements of digital personalised risk warnings and digital risk summaries

...

4.12A.41 G (1) The *FCA* expects *firms* to take account of the latest version of the international Web Content Accessibility Guidelines (WCAG) accessibility standard when designing digital *financial promotions* and, in particular, how the personalised risk warning or risk summary will be displayed:
<https://www.w3.org/WAI/WCAG21/quickref/>

(2) *Firms* should have regard to the intended or likely recipients of a *financial promotion*. Where a *firm* considers that such *persons* are unlikely to have a good understanding of the English language, a risk warning or risk summary required by the *rules* in this section should be provided in an appropriate language in addition to English.

...

4 Annex R Risk summaries

1

[<i>Editor's note:</i> The words 'here' and 'high-risk investments' are to appear as underlined wherever they are used in section 7 of COBS 4 Annex 1R.]

This Annex belongs to COBS 4.12A.11R, COBS 4.12A.20R, COBS 4.12B.14R and COBS 4.12B.21R.

Where a risk summary in this Annex includes two or three alternative formulations of text in square brackets, the first should be used where the *person* offering the *investment* is not an *authorised person* (including a registered person) and the second where the *person* offering the *investment* is an *authorised person*. The third alternative formulation should be used instead of the first or second formulations where the *investment* is a *unit* in an ~~unregulated collective scheme~~ unregulated collective investment scheme. A *firm* should select the correct statement in the relevant section and omit the statement(s) in that section that are not appropriate. *Firms* should omit square brackets.

Where a risk summary in this Annex includes only one available statement in relation to *unregulated collective investment schemes*, *firms* should use this where the *investment* is a *unit* in an *unregulated collected investment scheme*. This text should not be used when the *investment* is not a *unit* in an *unregulated collective investment scheme*. *Firms* should omit square brackets.

Where a risk summary in this Annex includes a web address in square brackets:

- where the risk summary is provided through a digital medium, this web address and square brackets should be omitted, and the preceding underlined text should link to the web address specified in the square brackets;
- where the risk summary is provided through a non-digital medium, this web address and square brackets should be omitted and *firms* should amend the text to make it appropriate for the non-digital setting, pointing the reader to the relevant web address.

The risk summary in (1) is expected ordinarily to be used where a *financial promotion* will be *communicated* by a *firm* intermediating investment in *non-readily realisable securities* by way of an online platform. The risk summaries in (3) and (4) are expected ordinarily to be used where a *financial promotion* will be *communicated* by an *issuer* of *non-readily realisable securities* or a *firm* intermediating investment in *non-readily realisable securities* other than by way of an online platform.

1	Risk summary for investments in non-readily realisable securities which are arranged by a firm by way of an online platform
...	
<u>7</u>	<u>Risk summary for <i>qualifying cryptoassets</i></u>
	<u>Estimated reading time: 2 min</u>

Due to the potential for losses, the Financial Conduct Authority (FCA) considers this investment to be high risk.

What are the key risks?

1. You could lose all the money you invest

- The performance of most cryptoassets can be highly volatile, with their value dropping as quickly as it can rise. You should be prepared to lose all the money you invest in cryptoassets.
- The cryptoasset market is largely unregulated. There is a risk of losing money or any cryptoassets you purchase due to risks such as cyber-attacks, financial crime and firm failure.

2. You should not expect to be protected if something goes wrong

- The Financial Services Compensation Scheme (FSCS) doesn't protect this type of investment because it's not a 'specified investment' under the UK regulatory regime – in other words, this type of investment isn't recognised as the sort of investment that the FSCS can protect. Learn more by using the FSCS investment protection checker here. [<https://www.fscs.org.uk/check/investment-protection-checker/>]
- [The Financial Ombudsman Service (FOS) will not be able to consider complaints related to this firm] or [Protection from the Financial Ombudsman Service (FOS) does not cover poor investment performance. If you have a complaint against an FCA-regulated firm, FOS may be able to consider it.] Learn more about FOS protection here. [<https://www.financial-ombudsman.org.uk/consumers>]

3. You may not be able to sell your investment when you want to

- There is no guarantee that investments in cryptoassets can be easily sold at any given time. The ability to sell a cryptoasset depends on various factors, including the supply and demand in the market at that time.
- Operational failings such as technology outages, cyber-attacks and comingling of funds could cause unwanted delay and you may be unable to sell your cryptoassets at the time you want.

4. Cryptoasset investments can be complex

- Investments in cryptoassets can be complex, making it difficult to understand the risks associated with the investment.
- You should do your own research before investing. If something sounds too good to be true, it probably is.

5. Don't put all your eggs in one basket

- Putting all your money into a single type of investment is risky. Spreading your money across different investments makes you less dependent on any one to do well.

	• <u>A good rule of thumb is not to invest more than 10% of your money in high-risk investments. [https://www.fca.org.uk/investsmart/5-questions-ask-you-invest]</u> <u>If you are interested in learning more about how to protect yourself, visit the FCA’s website here. [https://www.fca.org.uk/investsmart]</u> <u>For further information about cryptoassets, visit the FCA’s website here. [https://www.fca.org.uk/investsmart/crypto-basics]</u>
--	--

4 Annex R Restricted investor statement
5

This Annex belongs to COBS 4.12A.22R.

RESTRICTED INVESTOR STATEMENT	
	Putting all your money into a single business or type of investment is risky. Spreading your money across different investments makes you less dependent on any one to do well. You should not invest more than 10% of your net assets in high-risk investments. Doing so could expose you to significant losses. For the purposes of this statement, net assets do NOT include: your home (primary residence), your pension (or any pension withdrawals) or any rights under qualifying contracts of insurance. For the purposes of this statement high-risk investments are: peer-to-peer (P2P) loans; investment based crowdfunding; <u>cryptoassets (such as bitcoin)</u>; and unlisted debt and equity (such as in companies not listed on an exchange like the London Stock Exchange).
	Please confirm whether you qualify as a restricted investor on the basis that A and B apply to you. A) In the past twelve months have you invested less than 10% of your net assets in high-risk investments (as defined above)? ☐ Yes (I have invested less than 10% of my net assets) ☐ No (I have invested more than 10% of my net assets) If yes, over the last twelve months roughly what percentage of your net assets have you invested in high-risk investments (as defined above)? _____ and B) In the next twelve months do you intend to limit your investment in high-risk investments (as defined above) to less than 10% of your net assets? ☐ Yes (I intend to invest less than 10% of my net assets) ☐ No (I intend to invest more than 10% of my net assets)

	If yes, in the next twelve months roughly what percentage of your net assets do you intend to invest in high-risk investments (as defined above)? _____
	I accept that being a restricted investor will expose me to promotions for investment where there is a risk of losing all the money I invest. I am aware that it is open to me seek professional advice before making any investment in a high-risk investment. Signature: Date:

...

10 Appropriateness (for non-advised services) (non-MiFID and non-insurance-based investment products provisions)

10.1 Application

...

10.1.2 R (1) This chapter applies to a *firm* which:

...

(b) facilitates a *retail client* becoming a lender under a *P2P agreement*; or

(c) transacts in a *qualifying cryptoasset* with or for a *retail client*,

and the *firm* is aware, or ought reasonably to be aware, that the application or order is in response to a *direct offer financial promotion*.

(2) ...

(3) (a) This chapter also applies to a *registered person* which transacts in *qualifying cryptoassets* with or for a *retail client* where the *registered person* is aware, or ought reasonably to be aware, that the application or order is in response to a *direct offer financial promotion*, as it applies to an *authorised person*.

(b) For the purpose of (3)(a), in this chapter, relevant references to a *firm* include reference to a *registered person*.

...

10.2 Assessing appropriateness: the obligations

...

Restricted mass market investments

- 10.2.9 G (1) When determining whether a *client* has the necessary knowledge to understand the risks involved in relation to a *restricted mass market investment*, a *firm* should consider asking the *client* questions that cover, at least, the matters in:
- (a) COBS 10 Annex 1G in relation to *non-readily realisable securities*; ~~or~~
 - (b) COBS 10 Annex 2G in relation to *P2P agreements* or *P2P portfolios*; or
 - ...
 - (m) COBS 10 Annex 3G in relation to *qualifying cryptoassets*.

...

Insert the following new annex COBS 10 Annex 3, after COBS 10 Annex 2 (Assessing appropriateness: P2P agreements and P2P portfolios). The text is not underlined.

10 G Assessing appropriateness: qualifying cryptoassets
Annex 3

This Annex belongs to COBS 10.2.9G(1)(m).

When determining whether a *retail client* has the necessary knowledge to understand the risks involved in relation to a *qualifying cryptoasset*, a *firm* should consider asking the *client* questions that cover, at least, the matters in (1) to (12).

Firms may need to ask additional or alternative questions to ensure that the *retail client* has the necessary knowledge to understand the risks involved in relation to the specific type of *qualifying cryptoasset* offered.

The matters are:

- (1) the role of the business offering or marketing the *qualifying cryptoasset* (the business) and the scope of its services, including what the business does and does not do on behalf of *clients*, such as what due diligence is and is not undertaken by the business on any underlying investments;
- (2) the nature of the *client's* rights and obligations with the business, in particular the nature of the legal and beneficial ownership of the *qualifying cryptoasset* and the risks associated with those rights;
- (3) that the *client* can lose all of the money that they invest in a *qualifying cryptoasset*;

- (4) the potential complexity of investments in *qualifying cryptoassets* and the associated difficulty of understanding the risks of the investment;
- (5) that the performance of many *qualifying cryptoassets* can be highly volatile and that the value of an investment in a *qualifying cryptoasset* can fall as quickly as it can rise;
- (6) the risk of losing money or any *qualifying cryptoassets* purchased as a result of operational risks (such as through cyber-attacks, loss of private keys, comingling of funds) or *financial crime*;
- (7) the risk to any management and administration of the *client's* investment in the event of the business becoming insolvent or otherwise failing;
- (8) that the *client* may not be able to readily sell their *qualifying cryptoasset* investment, including as a result of market illiquidity or operational outages;
- (9) the regulated status of the business offering or marketing the *qualifying cryptoasset* and the investment activity and the implications of this in relation to *FCA* regulation;
- (10) the extent to which the protection of the *Financial Ombudsman Service* or *FSCS* apply to the investment activity (including the fact that these services do not protect investors against poor investment performance and that the *Financial Ombudsman Service* cannot ordinarily consider complaints in relation to *unauthorised persons*);
- (11) that investing in, and holding, *qualifying cryptoassets* is not comparable to investing in mainstream *investments* such as listed or exchange-traded securities; and
- (12) the benefits of diversification and that *retail clients* should not generally invest more than 10% of their net assets in *restricted mass market investments*.

Amend the following text as shown.

TP2 Other Transitional Provisions

(1)	(2)	(3)	(4)	(5)	(6)
	Material to which the transitional provision applies		Transitional provision	Transitional provision: dates in force	Handbook provisions: coming into force

...					
2.-1B	...				
<u>2.-1C</u>	<u>COBS 4.12A.22R</u>	<u>R</u>	<u>Any change to the rules specifying the form and content of the investor statements in COBS 4 Annex 2R to COBS 4 Annex 5R does not affect the continuing validity of a statement complying with the relevant rule in force at the time that it was completed and signed.</u>	<u>From [date]</u>	<u>From [date]</u>
...					

Annex E

Amendments to the Perimeter Guidance manual (PERG)

In this Annex, underlining indicates new text and striking through indicates deleted text, unless otherwise stated.

8 Financial promotion and related activities

...

8.14 Other financial promotions

...

Associations of high net worth or sophisticated investors (article 51)

8.14.29 G ...

(2) ...

(3) This exemption does not apply to *financial promotions* relating to *qualifying cryptoassets*.

...

8.14.40C G ...

Promotions of qualifying cryptoassets by registered persons (article 73ZA)

8.14.40D G (1) Article 73ZA exempts any *financial promotion* 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 *financial promotion* is a *non-real time financial promotion*; and

(ii) the *registered person* prepared the content of the *financial promotion*.

(2) The exemption does not apply to the extent that a *financial promotion* relates to a *controlled investment* other than a *qualifying cryptoasset*.

(3) The exemption does not apply where the *registered person* makes or directs a *financial promotion*, or causes it to be made or directed, in breach of:

- (a) a requirement imposed on that *registered person* by the *FCA*;
or
- (b) a direction given by the *FCA* under section 137S of the *Act* (Financial promotion rules: directions given by *FCA*).
- (4) The Financial Services and Markets Act 2000 (Financial Promotion) (Amendment) Order 2023 applies certain powers in the *Act* in relation to *registered persons* in connection with their communication of financial promotions in reliance on this exemption.
- (5) In particular, the *FCA* may make *rules* applying to *registered persons* about the communication by them of *financial promotions* relating to *qualifying cryptoassets* which are the same as, or substantially equivalent to, *rules* which would apply to an *authorised person* communicating a *financial promotion* relating to *qualifying cryptoassets*. The *FCA* has exercised this power primarily in applying relevant provisions in *COBS 4* and *COBS 10* to *registered persons*. The effect of this application is that a *registered person* must ensure that it complies with the relevant *rules* when:
- (a) communicating a *financial promotion* relating to one or more *qualifying cryptoassets*; or
- (b) preparing the content of a *non-real time financial promotion* relating to one or more *qualifying cryptoassets* for communication on its behalf,
- in either case in reliance on the exemption.
- (6) *Registered persons* are not able to approve *financial promotions* for the purposes of section 21 of the *Act*.

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8.36 Illustrative tables

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Controlled activities and controlled investments

8.36.2 G These tables list the activities that are *controlled activities* and the *investments* that are *controlled investments* under the *Financial Promotion Order*. It is referred to in *PERG 8.7.2 G*.

8.36.3 G Table Controlled activities

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3.	Dealing in securities, structured deposits, <u>qualifying cryptoassets</u> and contractually based investments
...	

8.36.4 G Table Controlled investments

...	
17C.	...
<u>17D.</u>	<u>Qualifying cryptoassets</u>
18.	Rights to or interests in anything falling under 1 to 14 or <u>17D</u> above.

...

