

# HMT to impose stronger rules on cryptoasset promotions

## AT A GLANCE

January 2022

### What's new?

- HM Treasury (HMT) [published](#) a consultation response on cryptoasset promotions on 18 January 2022. The response outlines HMT's plans to strengthen the rules on cryptoasset advertisements and protect consumers from misleading claims.
- HMT will bring cryptoasset financial promotions (regardless of whether they are made to retail or wholesale clients) into line with other financial advertising under the Financial Promotion Order.
- The promotion of 'qualifying cryptoassets' will be subject to the same FCA rules as other financial promotions (e.g. stocks, shares, insurance products).

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### What does this mean?

- The Cryptoassets Taskforce [reported](#) in 2018 that misleading cryptoasset advertising and a lack of suitable information was a key consumer protection issue.
- The report led HMT to consult in July 2020 on expanding the scope of the Financial Promotion Order to capture certain cryptoassets.
- HMT has now confirmed it will amend the Order, through secondary legislation, largely as consulted on.
- Under the Financial Services and Markets Act 2000, a business cannot promote a financial product unless it is authorised by the FCA or PRA, or the content is approved by an FCA or PRA authorised firm.
- According to the FCA's [research](#), the number of consumers holding cryptoassets rose from 3.9% to 4.4% between 2020 and 2021.
- HMT proposes to define the scope of 'qualifying cryptoasset' as: 'any cryptographically secured digital representation of value or contractual rights which is fungible and transferable'.
- The definition excludes other controlled investments, electronic money under the Electronic Money Regulations 2011 and central bank money. It also excludes cryptoassets only transferable to one or more vendors or merchants in payment for goods or services (such as loyalty points).
- Non-fungible tokens (NFT), which include many non-financial products, are also out of scope. HMT says it does not have sufficient information on risks and use-cases, but stands ready to take further legislative action if required.

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- A number of Financial Promotion Order controlled activities will apply to qualifying cryptoassets. These are: dealing in securities and contractually based investments, arranging deals in investments, managing or advising on investments and agreeing to carry on specified kinds of activity.
- Activities relating to decentralised finance, or DeFi, are not specifically separated. HMT notes that those are covered by the controlled activities list and could be in scope. This would ultimately depend on the activities carried out and promoted.
- HMT details exceptions to Financial Promotion Order for cryptoassets. Some of these include exemptions for investment professionals, communications to journalists, communications to overseas recipients.
- On 19 January 2022, the FCA [issued](#) its own consultation on strengthening the financial promotion rules for high risk investments, including cryptoassets.

## What do firms need to do?

- Firms should ensure they understand the footprint of their retail and wholesale cryptoasset business activities in the context of:
  - advertising activities, ensuring such activities are fair and clear; and
  - promoting 'qualifying cryptoassets' and applying the same FCA rules as other financial promotions.
- More broadly, firms also need to consider how the changes to financial promotions may impact their business activities relating to stablecoins. The new regulatory framework for stablecoins was consulted in 2021. HMT will publish its response and next steps shortly.

## Next steps

The legislation will be brought forward once parliamentary time allows. The FCA's consultation on rules for cryptoasset promotions closes on 23 March 2022.

HMT will set a transitional period of around six months from both the finalisation and publication of the Financial Promotion Order regime and the complementary FCA rules.



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