

2023 No. 612

FINANCIAL SERVICES AND MARKETS

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

Made - - - -

7th June 2023

Coming into force in accordance with article 1

The Treasury, in exercise of the powers conferred by section 21(5), (6), (9), (10) and (11) of, and paragraph 25 of Schedule 2 to, the Financial Services and Markets Act 2000(a), make the following Order.

In accordance with section 429(3) and (4) of the Financial Services and Markets Act 2000, a draft of this Order was laid before Parliament and approved by a resolution of each House of Parliament.

PART 1

General

Citation, commencement and extent

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

(2) This Order comes into force—

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

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

Interpretation

2. In this Order—

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

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

(a) 2000 c. 8; paragraph 25 of Schedule 2 was amended by the Financial Services Act 2012 (c. 21), section 8(2). See section 21(14) of the Act for the meaning of “investment” and section 21(15) for the meaning of “specified”.

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

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

“registered person” means a person who is—

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

PART 2

Amendment of the Financial Promotion Order

Amendment of the Financial Promotion Order

3. The Financial Promotion Order is amended as follows.

Amendment of article 2 (interpretation: general)

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

““qualifying cryptoasset” has the meaning given by paragraph 26F of Schedule 1;

“registered person” has the meaning given by article 73ZA;”.

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

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

(a) the existing text becomes paragraph (1);

(b) after paragraph (1), insert—

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

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

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

(a) after sub-paragraph (c), omit “or”;

(b) after sub-paragraph (d), insert—

“; or

(e) a qualifying cryptoasset.”.

New article 73ZA

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

(a) S.I. 2017/692. Regulation 14A was inserted by S.I. 2019/1511. There are other amending instruments but none is relevant.
(b) Regulation 54 was amended by S.I. 2019/1511.

“Certain promotions of qualifying cryptoassets

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

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

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

- (a) a requirement imposed by the FCA under section 55L (imposition of requirements by FCA) of the Act; or
- (b) a direction given under section 137S (financial promotion rules: directions given by FCA) of the Act, as those provisions have been applied and modified by the Schedule to the Financial Services and Markets Act 2000 (Financial Promotion) (Amendment) Order 2023.

(3) In this article, a “registered person” means a person who is—

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

Amendment to Schedule 1, Part 1 (controlled activities)

8. In Schedule 1, in Part 1 (controlled activities)—

- (a) in paragraph 3 (dealing in securities and contractually based investments)—
 - (i) in the heading, after “securities”, insert “, qualifying cryptoassets”;
 - (ii) in sub-paragraph (1), after “structured deposits”, insert “, qualifying cryptoassets”;
- (b) in paragraph 4 (arranging deals in investments)—
 - (i) in sub-paragraph (1), after paragraph (aa), insert—
“**(ab)** a qualifying cryptoasset.”;
 - (ii) in sub-paragraph (2), after “**(aa)**,”, insert “**(ab)**,”;
- (c) in paragraph 5(a) (managing investments), after “structured deposit”, insert “, a qualifying cryptoasset”;
- (d) in paragraph 7(1)(b)(i) (advising on investments), after “structured deposit”, insert “, a qualifying cryptoasset”.

Amendment to Schedule 1, Part 2 (controlled investments)

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

“Qualifying cryptoasset

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

- (a) fungible; and

(b) transferable.

(2) For the purposes of sub-paragraph (1)(b), the circumstances in which a cryptoasset is to be treated as “transferable” include where—

- (a) it confers transferable rights; or
- (b) a communication made in relation to the cryptoasset describes it as being transferable or conferring transferable rights.

(3) A cryptoasset does not fall within sub-paragraph (1) if it is—

- (a) a controlled investment falling within any of paragraphs 12 to 26E or, so far as relevant to any such investment, paragraph 27;
- (b) electronic money;
- (c) fiat currency;
- (d) digitally issued fiat currency; or
- (e) a cryptoasset that—
 - (i) cannot be transferred or sold in exchange for money or other cryptoassets, except by way of redemption with the issuer; and
 - (ii) can only be used in a limited way and meets one of the following conditions—
 - (aa) it allows the holder to acquire goods or services only from the issuer;
 - (ab) it is issued by a professional issuer and allows the holder to acquire goods or services only within a limited network of service providers which have direct commercial agreements with the issuer; or
 - (ac) it may be used only to acquire a very limited range of goods or services.

(4) In this paragraph—

“cryptoasset” means any cryptographically secured digital representation of value or contractual rights that—

- (a) can be transferred, stored or traded electronically, and
- (b) uses technology supporting the recording or storage of data (which may include distributed ledger technology);

“digitally issued fiat currency” means fiat currency issued in digital form;

“electronic money” has the meaning given by regulation 2(1) (interpretation) of the Electronic Money Regulations 2011(a).”.

Application and modification of primary legislation

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

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

(a) S.I. 2011/99; relevant amending instruments are S.I. 2017/752, 2018/1201.

PART 3

Transitional provision

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

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

Andrew Stephenson

Steve Double

7th June 2023

Two of the Lords Commissioners of His Majesty's Treasury

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

Application and modification of primary legislation

Application without modification of provisions of the Act

1. The following provisions of the Act apply in relation to registered persons—
- (a) section 55N (requirements under section 55L or 55M)(a);
 - (b) sections 55T (persons whose interests are protected) to 55V (determination of applications)(b);
 - (c) section 55X (determination of applications: warning notices and decision notices)(c);
 - (d) section 55Z4 (interpretation of Part 4A)(d);
 - (e) section 138C (evidential provisions)(e);
 - (f) sections 138E (limits on effect of contravening rules) to 138H (verification of rules)(f);
 - (g) section 139B (notification of FCA guidance to the Treasury)(g);
 - (h) section 168 (appointment of persons to carry out investigations in particular cases)(h);
 - (i) section 169 (investigations etc. in support of overseas regulator)(i);
 - (j) sections 170 (investigations: general) to 175 (information and documents: supplemental provisions)(j);
 - (k) section 176A (retention of documents taken under section 176)(k);
 - (l) section 177 (offences)(l);
 - (m) section 204A (meaning of “relevant requirement” and “appropriate regulator”)(m);
 - (n) section 210 (statements of policy)(n);
 - (o) section 211 (statements of policy: procedure)(o);

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- (a) Section 55N was inserted by section 11(2) of the Financial Services Act 2012 (c. 21).
 - (b) Sections 55T to 55V were inserted by section 11(2) of the Financial Services Act 2012. Section 55V was amended by S.I. 2013/1773, 2018/546.
 - (c) Section 55X was inserted by section 11(2) of the Financial Services Act 2012 and amended by S.I. 2018/135, 2018/1149.
 - (d) Section 55Z4 was inserted by section 11(2) of the Financial Services Act 2012.
 - (e) Section 138C was inserted by section 24(1) of the Financial Services Act 2012.
 - (f) Sections 138E to 138H were inserted by section 24(1) of the Financial Services Act 2012. Section 138E was amended by section 35(3) of the Bank of England and Financial Services Act 2016. Section 138F was amended by paragraph 7 of Schedule 3 to the Pension Schemes Act 2015, paragraph 35 of Schedule 2 to the Bank of England and Financial Services Act 2016 (c. 14) and section 121(3) of the Pension Schemes Act 2021 (c. 1).
 - (g) Section 139B was inserted by section 24(1) of the Financial Services Act 2012.
 - (h) Section 168 was amended by paragraph 33(3) of Schedule 7 to the Counter-Terrorism Act 2008 (c. 28), paragraph 16 of Schedule 2 to the Financial Services Act 2010, paragraph 8 of Schedule 12 to the Financial Services Act 2012, paragraph 18 of Schedule 3 to the Financial Guidance and Claims Act 2018, paragraph 8(1) of Schedule 2 to the Financial Services Act 2021 (c. 22) and S.I. 2007/126, 2012/2554, 2013/1773, 2016/225, 2016/680, 2017/1255, 2018/1149, 2019/632.
 - (i) Section 169 was amended by the Financial Services Act 2012 and S.I. 2016/680, 2019/632.
 - (j) Section 170 was amended by the Financial Services Act 2012, Schedule 12, paragraph 11. Section 171 was amended by the Financial Services Act 2021, Schedule 2, paragraph 8(3) and (4) and S.I. 2007/126. Section 174 was amended by the Financial Services Act 2012, Schedule 12, paragraph 12 and S.I. 2016/680. Section 175 was amended by paragraph 13 of Schedule 12 to the Financial Services Act 2012 and paragraph 9 of Schedule 2 to the Investigatory Powers Act 2016 (c. 25).
 - (k) Section 176A was amended by the Financial Services Act 2012, Schedule 12(1), paragraph 15.
 - (l) Section 177 was amended by paragraph 8 of Schedule 18 to the Financial Services Act 2012 and S.I. 2001/1090, 2016/680.
 - (m) Section 204A was inserted by paragraph 10 of Schedule 9 to the Financial Services Act 2012 and amended by section 23(5) of the Bank of England and Financial Services Act 2016, section 11(10) of the Civil Liability Act 2018 (c. 29) and S.I. 2013/1773, 2015/1864, 2016/255, 2019/632.
 - (n) Section 210 was amended by paragraph 20 of Schedule 2(1) to the Financial Services Act 2010 and paragraph 17 of Schedule 9 to the Financial Services Act 2012.
 - (o) Section 211 was amended by the Financial Services Act 2012, Schedule 9(4), paragraph 18.

- (p) section 380 (injunctions)(a);
- (q) section 382 (restitution orders)(b);
- (r) section 385 (warning notices) to 391 (publication)(c);
- (s) sections 392 (application of sections 393 and 394) to 395 (the FCA’s and PRA’s procedures)(d);
- (t) Schedule 15 (information and investigations: connected persons)(e).

Modification to section 55L (imposition of requirements by FCA)

2. Section 55L (imposition of requirements by FCA)(f) applies as if—

- (a) subsection (1) was omitted;
- (b) for subsection (2) there was substituted—
 - “(2) The FCA may exercise its power under subsection (3) in relation to a registered person if it appears to the FCA that—
 - (a) it is desirable to exercise the power in order to advance one or more of the FCA’s operational objectives; or
 - (b) it is desirable to exercise the power in order 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.”;
- (c) in subsection (5), for “an authorised person with a Part 4A permission” there was substituted “a registered person”;
- (d) for subsection (6) there was substituted—
 - “(6) The FCA may refuse an application under subsection (5) if—
 - (a) it appears to it that it is desirable to do so in order to advance any of its operational objectives; or
 - (b) it appears to it that it is desirable to do so in order 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.”;
- (e) for subsection (7) there was substituted—
 - “(7) “Engage in investment activity” has the same meaning as in section 21.”.

Modification to section 55P (prohibitions and restrictions)

3. Section 55P (prohibitions and restrictions) applies as if—

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- (a) Section 380 was amended by paragraph 19 of Schedule 9 to the Financial Services Act 2012, paragraph 3(2) of Schedule 10 to the Financial Services (Banking Reform) Act 2013 (c. 33) and S.I. 2013/1773, 2015/1755, 2016/255, 2019/632.
 - (b) Section 382 was amended by paragraph 21 of Schedule 9 to the Financial Services Act 2012, paragraph 3 of Schedule 10 to the Financial Services (Banking Reform) Act 2013 and S.I. 2013/1773, 2019/632.
 - (c) Sections 385 to 391 were amended by paragraphs 24 to 30 of Schedule 9 to the Financial Services Act 2012. Sections 387 and 388 were also amended by paragraphs 12 and 13 of Schedule 3 to the Financial Services (Banking Reform) Act 2013. Section 390 was also amended by the Transfer of Tribunal Functions Order 2010, Schedule 2, paragraph 47 and S.I. 2010/22. Section 391 was also amended by section 13(3) of, and paragraph 28 of Schedule 2 to, the Financial Services Act 2010, section 4(3) of the Financial Services (Banking Reform) Act 2013 and S.I. 2013/1388, 2013/3115, 2014/2879, 2016/680, 2016/715, 2017/701, 2017/1127, 2019/632, 2019/1043, 2019/1234.
 - (d) Section 392 was amended by paragraph 8(3) of Schedule 13 to the Financial Services Act 2012, section 25(7)(a) of the Financial Services Act 2021, paragraph 6 of Schedule 9 and paragraph 5(b) of Schedule 11 to that Act and S.I. 2007/126, 2013/1388. Sections 393 to 395 were amended by paragraphs 32 to 34 of Schedule 9 to the Financial Services Act 2021. Section 394 was also amended by paragraph 11 of Schedule 4 to the Regulation of Investigatory Powers Act 2000 (c. 23) and paragraph 43 of Schedule 10 to the Investigatory Powers Act 2016. Section 395 was also amended by sections 17(3), 18(6), 19(2) and 24(3) of the Financial Services Act 2021, paragraph 14 of Schedule 2 and paragraph 7 of Schedule 9 to that Act, paragraph 14 of Schedule 3 to the Financial Services (Banking Reform) Act 2013 and S.I. 2005/1433, 2007/1973, 2009/534, 2013/1388, 2016/680, 2016/1239, 2017/701, 2018/135, 2019/325, 2020/1406.
 - (e) Section 55L was inserted by section 11(2) of the Financial Services Act 2012.
 - (f) Section 55P was inserted by section 11(2) of the Financial Services Act 2012.

- (a) in subsection (1)—
 - (i) paragraph (a) was omitted;
 - (ii) in paragraph (b), for “an authorised person” there was substituted “a registered person”;
- (b) in subsection (4), “or 55M” was omitted.

Modification to section 55Q (exercise of power in support of overseas regulator)

4. Section 55Q (exercise of power in support of overseas regulator)(a) applies as if, in subsection (1) for “an authorised person” there was substituted “a registered person”.

Modification to section 55R (persons connected with an applicant)

5. Section 55R (persons connected with an applicant)(b) applies as if, in subsection (1)—
- (a) paragraphs (a) and (b) were omitted;
 - (b) in the words after paragraph (d), for “applicant or a person given permission” there was substituted “registered person”.

Modification to section 55Y (exercise of own-initiative power: procedure)

6. Section 55Y (exercise of own-initiative power: procedure)(c) applies as if, in subsection (1) for “an authorised person” there was substituted “a registered person”.

Modification to section 55Z3 (right to refer matters to the Tribunal)

7. Section 55Z3 (right to refer matters to the Tribunal)(d) applies as if—
- (a) in subsection (2), for “An authorised person” there was substituted “A registered person”;
 - (b) subsection (3) was omitted.

Modification to section 137R (financial promotion rules)

8. Section 137R (financial promotion rules)(e) applies as if—
- (a) for subsections (1) to (5A) there was substituted—
 - “(1) The FCA may make rules applying to registered persons about the communication by them of invitations or inducements to engage in investment activity relating to qualifying cryptoassets where the rules are the same as, or substantially equivalent to, rules which would apply to an authorised person communicating an invitation or inducement to engage in investment activity relating to qualifying cryptoassets.
 - (2) Rules under this section may, in particular, make provision about the form and content of communications.”;
 - (b) for subsection (7) there was substituted—
 - “(7) Rules made under this section may apply to registered persons such other rules made under this Act as would apply to an authorised person in relation to the communication of an invitation or inducement to engage in investment activity in relation to qualifying cryptoassets.”;
 - (c) after subsection (7) there was inserted—

(a) Section 55Q was inserted by section 11(2) of the Financial Services Act 2012 and amended by S.I. 2018/1149, 2019/632.
 (b) Section 55R was inserted by section 11(2) of the Financial Services Act 2012 and amended by S.I. 2018/1149, 2019/632.
 (c) Section 55Y was inserted by section 11(2) of the Financial Services Act 2012.
 (d) Section 55Z3 was inserted by section 11(2) of the Financial Services Act 2012 and amended by S.I. 2018/135.
 (e) Section 137R was inserted by section 24(1) of the Financial Services Act 2012 and amended by section 27(5) of the Financial Guidance and Claims Act 2018 (c. 10) and S.I. 2019/632.

“(8) Section 138I (consultation) does not apply to rules made under this section.”.

Modification to section 137S (financial promotion rules: directions given by FCA)

- 9.** Section 137S (financial promotion rules: directions given by FCA)(a) applies as if—
- (a) in subsection (1)—
 - (i) for paragraph (a) there was substituted—

“(a) a registered person has made, or proposes to make, a communication, and”;
 - (ii) in paragraph (b), “or approval” was omitted;
 - (b) in subsection (2)—
 - (i) in the words before paragraph (a), for “authorised person” there was substituted “registered person”;
 - (ii) in paragraph (a), “or approval” was omitted;
 - (iii) in paragraph (b)—
 - (aa) “or giving the approval” was omitted;
 - (bb) “or given” was omitted;
 - (iv) in paragraph (d), “or approval” was omitted;
 - (c) in subsection (3), “or approving” were omitted in both places;
 - (d) in subsection (5)—
 - (i) in the words before paragraph (a), for “an authorised person” there was substituted “a registered person”;
 - (ii) in paragraph (a), for “authorised person, and” there was substituted “registered person.”;
 - (iii) paragraph (b) was omitted;
 - (e) in subsection (8)—
 - (i) in paragraph (a), for “persons mentioned in subsection (5)(a) or (b)” there was substituted “registered person”;
 - (ii) in paragraph (b), “any” was omitted;
 - (f) in subsection (10), for “those persons” there was substituted “that person”;
 - (g) subsection (12) was omitted.

Modification to section 138A (modification or waiver of rules)

- 10.** Section 138A (modification or waiver of rules)(b) applies as if—
- (a) subsection (2) was omitted;
 - (b) in subsection (4), for paragraph (b) there was substituted—

“(b) the direction would not adversely affect—

 - (i) the securing of an appropriate degree of protection for persons who receive, have received or may receive invitations or inducements to engage in investment activity in relation to qualifying cryptoassets, and
 - (ii) the advancement of any of the regulator’s objectives.”.

(a) Section 137S was inserted by section 24(1) of the Financial Services Act 2012.

(b) Section 138A was inserted by section 24(1) of the Financial Services Act 2012 and amended by paragraph 8 of Schedule 3 to the Financial Services (Banking Reform) Act 2013 and S.I. 2013/1388.

Modification to section 138B (publication of directions under section 138A)

11. Section 138B (publication of directions under section 138A)(a) applies as if, in paragraph (4)(b) for “an authorised person” there was substituted “a registered person”.

Modification to section 138D (actions for damages)

12. Section 138D (actions for damages)(b) applies as if—

- (a) in subsection (2), for “an authorised person” there was substituted “a registered person”;
- (b) in subsection (4), “(1) or” was omitted;
- (c) subsection (5) was omitted;
- (d) “(and so the contravention by an authorised person of a rule is actionable at the suit of a person who falls within that definition and who suffers loss as a result of that contravention)” was omitted from regulation 6 (rules) of the Financial Services and Markets Act 2000 (Rights of Action) Regulations 2001.

Modification to section 139A (power of the FCA to give guidance)

13. Section 139A (power of the FCA to give guidance)(c) applies as if—

- (a) subsection (4) was omitted;
- (b) for subsection (5) there was substituted—

“(5) Where this subsection applies, the FCA must, unless it considers that the delay in complying with this subsection would be prejudicial to the interests of persons who receive, have received or may receive invitations or inducements communicated by registered persons to engage in investment activity in relation to qualifying cryptoassets—

 - (a) publish a draft of the proposed guidance in the way appearing to the FCA to be best calculated to bring it to the attention of the public;
 - (b) publish a notice that representations about the proposals may be made to the FCA within a specified time; and
 - (c) before making the proposed guidance, have regard to any representations made to it in accordance with paragraph (b).”.

Modification to section 165 (regulators’ power to require information: authorised persons etc.)

14. Section 165(d) applies as if—

- (a) in the heading, for “authorised persons” there was substituted “registered persons”;
- (b) references to “an authorised person” were read as references to “a registered person”;
- (c) in subsection (4), paragraph (b) was omitted;
- (d) in subsection (7), paragraphs (b) to (e) were omitted;
- (e) in subsection (8), for “Authorised person” there was substituted “Registered person”;
- (f) subsection (8A) was omitted;
- (g) in subsection (11)—

(a) Section 138B was inserted by section 24(1) of the Financial Services Act 2012.
(b) Section 138D was inserted by section 24(1) of the Financial Services Act 2012 and amended by paragraph 8 of Schedule 3 to the Financial Services (Banking Reform) Act 2013 and S.I. 2013/1388.
(c) Section 139A was inserted by section 24(1) of the Financial Services Act 2012 and amended by paragraph 16 of Schedule 3 to the Financial Guidance and Claims Act 2018 and S.I. 2016/680, 2019/632.
(d) Section 165 was amended by paragraph 15 of Schedule 2 to the Financial Services Act 2010 (c. 28), paragraph 1 of Schedule 12 to the Financial Services Act 2012 (c. 21), paragraph 36 of Schedule 2 to the Bank of England and Financial Services Act 2016, paragraph 5 of Schedule 2 and paragraph 4 of Schedule 9 to the Financial Services Act 2021 and S.I. 2015/575, 2022/466.

- (i) “or” was inserted after paragraph (c);
- (ii) after paragraph (d), the “or” was omitted;
- (iii) paragraph (e) was omitted;
- (h) subsections (12) and (13) were omitted.

Modification to section 166 (reports by skilled persons)

15. Section 166 (reports by skilled persons)(a) applies as if—

- (a) in subsection (2)(a), for “an authorised person” there was substituted “a registered person”;
- (b) subsections (10) to (14) were omitted.

Modification to section 167 (appointment of persons to carry out general investigations)

16. Section 167 (appointment of persons to carry out general investigations)(b) applies as if—

- (a) in subsection (1)—
 - (i) in paragraph (a), for “person to whom subsection (1A) applies or an appointed representative” there was substituted “registered person”;
 - (ii) in paragraph (c), for “person to whom subsection (1A) applies” there was substituted “registered person”;
- (b) subsection (1A) was omitted;
- (c) in subsection (2)—
 - (i) after paragraph (a), “or” was inserted;
 - (ii) paragraph (c) and the “or” before it were omitted;
- (d) in subsection (4A), for “an authorised person or a person described in subsection (1A)(c) or (d)” there were substituted, in both places, “a registered person”;
- (e) subsection (4B) was omitted;
- (f) in subsection (5), “even if it does not consist of carrying on regulated activities” was omitted;
- (g) in subsection (5A)—
 - (i) paragraphs (a), (c) and (d) were omitted;
 - (ii) in paragraph (b), for the words from “an authorised person” to the end there were substituted “a registered person or a former registered person, the FCA.”;
- (h) subsection (6) was omitted.

Modification to section 176 (entry of premises under warrant)

17. Section 176 (entry of premises under warrant)(c) applies as if, in subsection (3A)—

- (i) in paragraph (a), for “an authorised person” there was substituted “a registered person”;
- (ii) paragraphs (b) to (d) were omitted.

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- (a) Section 166 was amended by paragraph 5 of Schedule 12 to the Financial Services Act 2012, paragraph 6(3) of Schedule 2 to the Financial Services Act 2021 and S.I. 2022/466.
 - (b) Section 167 was amended by paragraph 7(2) and (3) of Schedule 12 to the Financial Services Act 2012, paragraph 7(2) to (4) of Schedule 2 to the Financial Services Act 2021 and S.I. 2007/126, 2015/575, 2019/632.
 - (c) Section 176 was amended by paragraph 17 of Schedule 2 to the Financial Services Act 2010, paragraph 14 of Schedule 12 to the Financial Services Act 2012 and paragraph 9(2) and (3) of Schedule 2 to the Financial Services Act 2021.

Modification to section 205 (public censure)

18. Section 205 (public censure)(a) applies as if, for “an authorised person” there was substituted “a registered person”.

Modification to section 206 (financial penalties)

19. Section 206 (financial penalties)(b) applies as if, in subsection (1) for “an authorised person” there was substituted “a registered person”.

Modification to section 207 (proposal to take disciplinary measures)

20. Section 207 (proposal to take disciplinary measures)(c) applies as if—

- (a) in subsection (1)—
 - (i) in paragraphs (a) and (b), for “an authorised person” there were substituted “a registered person” in both places;
 - (ii) paragraph (c) was omitted;
 - (iii) in the words after paragraph (c), for “authorised person” there was substituted “registered person”;
- (b) subsection (4) was omitted.

Modification to section 208 (decision notice)

21. Section 208 (decision notice)(d) applies as if—

- (a) in subsection (1)—
 - (i) paragraph (c) was omitted;
 - (ii) in the words after paragraph (c), for “authorised person” there was substituted “registered person”;
- (b) subsection (3A) was omitted;
- (c) in subsection (4)—
 - (i) in paragraphs (a) and (b), for “an authorised person” there were substituted “a registered person” in both places;
 - (ii) paragraph (c) was omitted;
 - (iii) in the words after paragraph (c), for “authorised person” there was substituted “registered person”.

Modification to section 209 (publication)

22. Section 209 (publication)(e) applies as if, for “authorised person” there was substituted “registered person”.

Modification to section 384 (power of the FCA or PRA to require restitution)

23. Section 384 (power of the FCA or PRA to require restitution)(f) applies as if—

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- (a) Section 205 was amended by the Financial Services Act 2012, Schedule 9, paragraph 11(a) and (b).
 - (b) Section 206 was amended by section 10 of the Financial Services Act 2010 and paragraph 12(2)(a) and (b) of Schedule 9 to the Financial Services Act 2012.
 - (c) Section 207 was amended by paragraph 18 of Schedule 2 to the Financial Services Act 2010 and paragraph 14 of Schedule 9 to the Financial Services Act 2012.
 - (d) Section 208 was amended by paragraph 19 of Schedule 2 to the Financial Services Act 2010 and paragraph 15 of Schedule 9 to the Financial Services Act 2012.
 - (e) Section 209 was amended by the Financial Services Act 2012, Schedule 9(4), paragraph 16.
 - (f) Section 384 was amended by paragraph 23 of Schedule 9 to the Financial Services Act 2012, paragraph 3(4) of Schedule 10 to the Financial Services (Banking Reform) Act 2013 and S.I. 2007/126, 2013/1773, 2016/680, 2019/632.

- (a) in subsection (1), in the words before paragraph (a)—
 - (i) for “appropriate regulator” there was substituted “FCA”;
 - (ii) for “an authorised person or recognised investment exchange” there was substituted “a registered person”;
- (b) in subsection (7), paragraph (c) was omitted;
- (c) subsections (9) to (13) were omitted.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order amends the Financial Services and Markets Act 2000 (Financial Promotion) Order 2005 (S.I. 2005/1529) (“the FPO”). The FPO sets out a number of exemptions from the restriction on financial promotions provided for by section 21(1) of the Financial Services and Markets Act 2000 (c. 8) (“FSMA”).

Articles 4 to 6 extend certain existing exemptions to communications in relation to qualifying cryptoassets.

Article 7 creates an exemption which applies to cryptoasset exchange providers and custodian wallet providers (as defined in regulation 14A of the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 (S.I. 2017 / 692)) who are included on the FCA’s register pursuant to regulation 54(1A) of those Regulations and who are not authorised persons (defined as “registered persons”). The effect of the exemption is to permit registered persons to communicate their own financial promotions in respect of qualifying cryptoassets without the requirement for them either to be authorised under Part 4A of FSMA, or to have their financial promotions approved by a person who is authorised under Part 4A. Registered persons relying on the exemption will not be permitted to approve the financial promotions of other businesses or to communicate their own financial promotions in relation to other controlled investments.

Article 8 amends relevant existing controlled activities in Part 1 of Schedule 1 to incorporate activities in relation to qualifying cryptoassets. This means that those activities are specified for the purposes of section 21(9) of FSMA.

Article 9 amends Part 2 of Schedule 1 to the FPO by creating a new controlled investment (a “qualifying cryptoasset”), inserted at paragraph 26F of the FPO.

Article 10 and the Schedule to this Order provide that certain provisions of FSMA apply, with or without modification, in relation to registered persons. This means that registered persons, and communications by them of invitations or inducements to engage in investment activity in relation to qualifying cryptoassets, are subject to the Financial Conduct Authority’s (“FCA”) financial promotion rules and enforcement regime, in a similar way as they apply to communications in respect of other controlled investments and activities. Article 10 also makes clear that exercise by the FCA of functions carried out under the provisions of FSMA applied by the Schedule to the Order, constitute functions conferred on the FCA by or under that Act. Therefore provisions of FSMA that operate in respect of the FCA’s functions under the Act (for example, the FCA’s exemption from liability in damages as provided for by paragraph 25 of Schedule 1ZA to FSMA) apply in respect of functions carried out in relation to registered persons.

Article 11 is a transitional provision relating to FCA consultation in respect of its rules and guidance.

A full impact assessment has not been produced for this instrument as no, or no significant, impact on the private, voluntary or public sector is foreseen. A de minimis impact assessment is available

from HM Treasury, 1 Horse Guards Road, London, SW1A 2HQ and is published with the Explanatory Memorandum alongside this instrument at www.legislation.gov.uk.

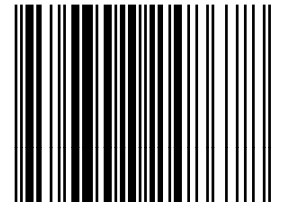
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