CLEVELAND & CO
External in-house counsel

New financial promotion rules for crypto assets

Background

On 8 June 2023, the Financial Conduct Authority ("**FCA**") published a policy statement on financial promotion rules for cryptoassets (PS23/6), which will have an impact on investment firms trading in or active in the crypto markets space. The FCA has recently expressed concern about the increasing number of individuals in the UK that hold cryptoassets, who may not fully understand the potential risks e.g., the possibility of losing their investments. The FCA aims to address such consumer protection concerns and ensure consumers receive accurate information about the volatile nature of cryptoassets, enabling them to make sound investment choices.

Key Proposals

1 Changes to categorisation

Cryptoassets will now be categorised as Restricted Mass Market Investments, allowing them to be marketed to retail investors under specific conditions. Additionally, they are classified as high-risk investments due to the potential for large and unforeseen losses, risks associated with crypto firm failure, commingling of client funds, financial crimes, and cyber-attacks.

2 Risk warnings, risk summaries, and personalised risk warning pop-ups

Firms must provide a risk warning and a risk summary for each crypto product. This ensures that investors understand the risks involved in cryptoassets, including not having the protection of the Financial Services Compensation Scheme or Financial Ombudsman Service in case of significant financial losses. Additionally, a personalised risk warning pop-up ensures investors understand the risks involved in cryptoassets.

3 Ban on incentives to invest

Firms will be unable to use incentives when marketing cryptoassets. The FCA asserts that both monetary and non-monetary benefits unduly influence investors, leading them to make risky investments without adequate consideration.

4 Cooling-off period

Firms should implement a 24-hour cooling-off period for initial investors who receive a Direct Offer Financial Promotion ("**DOFP**"). This means that after requesting to invest, investors would need to wait 24 hours before receiving the DOFP and proceeding with their investment.

5 Appropriateness assessment

Firms involved in selling cryptocurrency units must conduct an appropriateness assessment to confirm the suitability of the specific Risk Mitigation and Management Information for the client. This entails evaluating whether the client possesses sufficient knowledge and experience regarding the desired product or service.

Impact on Firms

These proposals will take effect from 8 October 2023, requiring firms to obtain full authorisation or register under money laundering regulations. The FCA has issued a Guidance Consultation to provide clarity on these new rules and is seeking feedback until 10 August 2023.

Cleveland & Co are well-placed to provide assistance in analysing regulatory obligations for investment firms operating within the cryptocurrency industry and we can help you get prepared ahead of the October deadline.

if you need any further assistance or information, please contact:
Leela Fair - Managing Director, General Counsel EMEA
+44 7412 502985
lfair@cleveland-co.com

https://cleveland-co.com/
https://uk.linkedin.com/company/cleveland-co