

**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 8 October 2023.

**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  
29 June 2023

## 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));

...

*limited protection LTAF investor* an investor in a *long-term asset fund* who is:

- (1) a *professional client*; or
- (2) a *retail client* who is:
  - (a) (i) a *certified high net worth investor*; or
  - (ii) an investor who has been certified as a ‘high net worth investor’ in accordance with *COBS 4.12A.21R(1)* 4.12A.21R(1)(a) and *COBS 4.12A.22R* (Third condition: categorisation);
  - (b) (i) a *certified sophisticated investor*; or

(ii) an investor who has been certified as a ‘sophisticated investor’ in accordance with ~~COBS 4.12A.21R(2)~~ 4.12A.21R(1)(b) and *COBS 4.12A.22R* (Third condition: categorisation); or

(c) (i) a *self-certified sophisticated investor*; or

(ii) an investor who has self-certified as a ‘sophisticated investor’ in accordance with ~~COBS 4.12A.21R(3)~~ 4.12A.21R(2) and *COBS 4.12A.22R* (Third condition: categorisation).

*restricted mass market investment* any of the following:

- (a) a *non-readily realisable security*;
- (b) a *P2P agreement*;
- (c) a *P2P portfolio*;
- (d) a *unit in a long-term asset fund*;;
- (e) 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 1.2.2AR(1) 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), reference in GEN 1.2.2AR(1) 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).

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## 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).

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## 5 Regulators' logos and the Key facts logo

### 5.1 Application and purpose

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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.

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## 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.

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## 4.10 Approving and confirming compliance of financial promotions

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### Approving financial promotions

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- 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, P2P portfolio* or a *unit in a long-term asset fund*.

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Risk warning

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

...

(c) ...

(d) 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*:

...

...

- (5) (a) A *firm* must omit the words “and you are unlikely to be protected if something goes wrong” from the risk warnings required by (1)(a), ~~or (1)(b)~~ or (1)(d) if the conditions in (5)(b) apply.

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### 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*, a *P2P portfolio* or a *unit in a long-term asset fund*, 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

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4.12A.28 R (1) The fourth condition applies where the *firm* itself or the *person* who will:

...

(c) *arrange or deal* in relation to a *unit* in a *long-term asset fund*, or *issue* such a *unit*; or

(d) 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 8 of COBS 4 Annex 1R.]
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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 <i>non-readily realisable securities</i> which are <i>arranged</i> by a <i>firm</i> by way of an online platform
...	
8	<u>Risk summary for <i>qualifying cryptoassets</i></u>
	<p><b><u>Estimated reading time: 2 min</u></b></p> <p><u>Due to the potential for losses, the Financial Conduct Authority (FCA) considers this investment to be high risk.</u></p> <p><b><u>What are the key risks?</u></b></p> <p><b><u>1. You could lose all the money you invest</u></b></p> <ul style="list-style-type: none"> <li>• <u>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.</u></li> <li>• <u>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.</u></li> </ul> <p><b><u>2. You should not expect to be protected if something goes wrong</u></b></p> <ul style="list-style-type: none"> <li>• <u>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. [<a href="https://www.fscs.org.uk/check/investment-protection-checker/">https://www.fscs.org.uk/check/investment-protection-checker/</a>]</u></li> <li>• <u>[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. [<a href="https://www.financial-ombudsman.org.uk/consumers">https://www.financial-ombudsman.org.uk/consumers</a>]</u></li> </ul> <p><b><u>3. You may not be able to sell your investment when you want to</u></b></p> <ul style="list-style-type: none"> <li>• <u>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.</u></li> <li>• <u>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.</u></li> </ul> <p><b><u>4. Cryptoasset investments can be complex</u></b></p>

	<ul style="list-style-type: none"> <li>• <u>Investments in cryptoassets can be complex, making it difficult to understand the risks associated with the investment.</u></li> <li>• <u>You should do your own research before investing. If something sounds too good to be true, it probably is.</u></li> </ul> <p><b>5. <u>Don't put all your eggs in one basket</u></b></p> <ul style="list-style-type: none"> <li>• <u>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></li> <li>• <u>A good rule of thumb is not to invest more than 10% of your money in high-risk investments. [<a href="https://www.fca.org.uk/investsmart/5-questions-ask-you-invest">https://www.fca.org.uk/investsmart/5-questions-ask-you-invest</a>]</u></li> </ul> <p><b><u>If you are interested in learning more about how to protect yourself, visit the FCA's website here. [<a href="https://www.fca.org.uk/investsmart">https://www.fca.org.uk/investsmart</a>]</u></b></p> <p><b><u>For further information about cryptoassets, visit the FCA's website here. [<a href="https://www.fca.org.uk/investsmart/crypto-basics">https://www.fca.org.uk/investsmart/crypto-basics</a>]</u></b></p>
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**4 Annex R Restricted investor statement**  
**5**

This Annex belongs to *COBS* 4.12A.22R.

<b>RESTRICTED INVESTOR STATEMENT</b>	
	<p>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.</p> <p>You should not invest more than 10% of your net assets in high-risk investments. Doing so could expose you to significant losses.</p> <p>For the purposes of this statement, <b>net assets do NOT include:</b> your home (primary residence), your pension (or any pension withdrawals) or any rights under qualifying contracts of insurance.</p> <p>For the purposes of this statement <b>high-risk investments are:</b> peer-to-peer (P2P) loans; investment based crowdfunding; units in a long-term asset fund; <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).</p>
	<p>Please confirm whether you qualify as a restricted investor on the basis that <b>A and B</b> apply to you.</p> <p>A) In the <b>past twelve months</b> have you invested less than 10% of your net assets in high-risk investments (as defined above)?</p> <p><input type="checkbox"/> Yes (I have invested <i>less</i> than 10% of my net assets)</p> <p><input type="checkbox"/> No (I have invested <i>more</i> than 10% of my net assets)</p>



	<p>If yes, over the last twelve months roughly what percentage of your net assets have you invested in high-risk investments (as defined above)?</p> <p>_____</p> <p><b>and</b></p> <p>B) In the <b>next twelve months</b> do you intend to limit your investment in high-risk investments (as defined above) to less than 10% of your net assets?</p> <p><input type="checkbox"/> Yes (I intend to invest <i>less</i> than 10% of my net assets)</p> <p><input type="checkbox"/> No (I intend to invest <i>more</i> than 10% of my net assets)</p> <p>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)?</p> <p>_____</p>
	<p><b>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.</b></p> <p>Signature:</p> <p>Date:</p>

...

## 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) *issues a unit in a long-term asset fund to a retail client*; or
- (d) 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

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### 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:
- ...
- (b) *COBS 10 Annex 2G in relation to P2P agreements or P2P portfolios; ~~or~~*
- ...
- (m) *COBS 10 Annex 3G in relation to units in a long-term asset fund; or*
- (n) *COBS 10 Annex 4G in relation to qualifying cryptoassets.*

...

Insert the following new annex COBS 10 Annex 4, after COBS 10 Annex 3 (Assessing appropriateness: units in a long-term asset fund). The text is not underlined.

## 10 Annex 4 G Assessing appropriateness: qualifying cryptoassets

This Annex belongs to *COBS 10.2.9G(1)(n)*.

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*.

## 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*.

...

**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.

...