
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.