

Thought Leadership: FCA Authorisation required for firms offering Cryptocurrency regulated products and services



Last week, 06 April 2018, the FCA published a statement defining their current position on cryptocurrencies and cryptocurrency-related assets.

Although cryptocurrencies are not currently regulated by the FCA, or recognised as currencies or commodities for regulatory purposes under the Markets in Financial Instruments Directive II (“MIFID II”), they are capable of becoming regulated when they form part of other regulated products or services. Cryptocurrency derivatives for example are capable of being financial instruments under MIFID II.

Consequently, firms conducting regulated activities in cryptocurrency derivatives must comply with all applicable rules in the FCA’s Handbook and any relevant provisions in directly applicable European Union regulations.

The FCA expanded this guidance to set out that in its opinion it is likely that dealing in, arranging transactions in, advising on or providing other

services that amount to regulated activities in relation to derivatives that reference either cryptocurrencies or tokens issued through an Initial Coin Offering (“ICO”), will require authorisation by the FCA.

Such activity includes:

- **cryptocurrency futures** – a derivative contract in which each party agrees to exchange cryptocurrency at a future date and at a price agreed by both parties
- **cryptocurrency Contracts For Differences (“CFDs”)** – a cash-settled derivative contract in which the parties to the contract seek to secure a profit or avoid a loss by agreeing to exchange the difference in price between the value of the cryptocurrency CFD contract at its outset and at its termination
- **cryptocurrency options** – a contract which grants the beneficiary the right to acquire or dispose of cryptocurrencies

As firms are responsible for ensuring that they have the appropriate authorisation and permission to carry on the regulated activities they offer, it is imperative that any firm conducting a regulated activity in relation to ‘crypto derivatives’ ensures that they are suitably authorised.

If your firm is not authorised by the FCA and is offering products or services requiring



authorisation this is a criminal offence. Similarly, authorised firms carrying out activities in relation to such products without the appropriate permission are likely to be in breach of their permissions.

Contacts

If you are unsure whether your firm requires authorisation for its cryptocurrency activities; or if you wish to discuss any area of the FCA's conduct rules; and your own firm's business activities or operational model, please get in touch directly by email or by leaving a message on our website.

As both industry participants and regulatory bodies get to grips with these exciting disruptive technological developments, it is imperative to get assistance from advisors that you can trust,

with experience in managing the legal, regulatory and business challenges such developments create.

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