

CONDUCT OF BUSINESS (CRYPTOASSET PRODUCTS) INSTRUMENT 2020

Powers exercised

- A. The Financial Conduct Authority (“the FCA”) makes this instrument in the exercise of the following powers and related provisions in the Financial Services and Markets Act 2000 (“the Act”):
- (1) section 137A (The FCA’s general rules);
 - (2) section 137D (FCA general rules: product intervention);
 - (3) section 137R (Financial promotion rules);
 - (4) section 137T (General supplementary powers); and
 - (5) section 139A (Power of the FCA to give guidance).
- B. The rule-making provisions listed above are specified for the purposes of section 138G(2) (Rule-making instruments) of the Act.
- C. The Financial Conduct Authority also makes the prohibitions contained within this instrument in the exercise of the power under article 42 (product intervention by competent authorities) of Regulation (EU) No 600/2014 of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Regulation (EU) No 648/2012.

Commencement

- D. This instrument comes into force on 28 October 2020.

Amendments to the Handbook

- E. The Glossary of definitions is amended in accordance with Annex A to this instrument.
- F. The Conduct of Business sourcebook (COBS) is amended in accordance with Annex B to this instrument.

Citation

- G. This instrument may be cited as the Conduct of Business (Cryptoasset Products) Instrument 2020.

By order of the Board
23 July 2020

Annex A

Amendments to the Glossary of definitions

Insert the following new definitions into the appropriate alphabetical positions. The text is not underlined.

<i>cryptoasset derivative</i>	a <i>derivative</i> where the underlying is, or includes, an <i>unregulated transferable cryptoasset</i> or an index or <i>derivative</i> relating to an <i>unregulated transferable cryptoasset</i> .
<i>cryptoasset exchange traded note</i>	a <i>debt security</i> : <ol style="list-style-type: none"> (a) which is traded on a <i>trading venue</i> or a market operated by a <i>ROIE</i>; (b) which features no periodic coupon payments; and (c) whose return tracks the performance of an <i>unregulated transferable cryptoasset</i>, minus applicable fees, whether featuring delta 1, inverse or leveraged exposure or other exposure to the <i>unregulated transferable cryptoasset</i> being tracked.
<i>unregulated transferable cryptoasset</i>	a cryptographically secured digital representation of value or contractual rights that uses distributed ledger technology and which: <ol style="list-style-type: none"> (a) is capable of being traded on or transferred through a platform or other forum; (b) is not limited to being transferred to its issuer in exchange for a good or service, or to an operator of a network that facilitates its exchange for a good or service; (c) is not <i>electronic money</i>; (d) is not a <i>specified investment</i>; (e) is not a representation of ownership or other property right in a <i>commodity</i>; and (f) is not <i>money</i> issued by a central bank.

Amend the following definition as shown.

commodity ...

- (2) (for the purpose of calculating *position risk requirements* and for the purposes of *COBS 22.5*) any of the following (but excluding gold):

...

...

Annex B

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**
- ...
- 4.7** **Direct offer financial promotions**
- ...
- 4.7.6A G ...
- 4.7.6B G *Firms are reminded of the prohibitions in relation to the marketing, distribution and sale of cryptoasset derivatives and cryptoasset exchange traded notes in COBS 22.6.*
- ...
- 22** **Restrictions on the distribution of certain complex investment products**
- ...
- 22.5** **Restrictions on the retail marketing, distribution and sale of contracts for differences and similar speculative investments**
- ...
- 22.5.5 R The *rules* in this section do not apply to: ~~*derivative instruments for the transfer of credit risk to which article 85(3) of the Regulated Activities Order applies.*~~
- (1) *derivative instruments for the transfer of credit risk to which article 85(3) of the Regulated Activities Order applies; or*
- (2) *cryptoasset derivatives.*
- 22.5.5A G *Firms are reminded of the prohibitions in relation to the marketing, distribution and sale of cryptoasset derivatives in COBS 22.6.*
- ...
- 22.5.11 R A *firm* must require a *retail client* to post *margin* to open a position of at least the following amounts:

...

- (3) 10% of the value of the exposure that the trade provides when the underlying asset is a *minor stock market index* or a *commodity* other than gold; or
- (4) ~~50% of the value of the exposure that the trade provides when the underlying asset is a cryptocurrency; or~~ [deleted]

...

Insert the following new section, COBS 22.6, after COBS 22.5 (Restrictions on the retail marketing, distribution and sale of contracts for differences and similar speculative investments). The text is not underlined.

22.6 Prohibition on the retail marketing, distribution and sale of cryptoasset derivatives and cryptoasset exchange traded notes

Application

- 22.6.1 R (1) Subject to (2), this section applies to:
- (a) *MiFID investment firms*, with the exception of *collective portfolio management investment firms*;
 - (b) *branches of third country investment firms*; and
 - (c) *MiFID optional exemption firms*,
- in relation to the marketing, distribution or sale of *cryptoasset derivatives* and *cryptoasset exchange traded notes* in or from the *United Kingdom* to a *retail client*.
- (2) This section does not apply to the marketing, distribution or sale of *cryptoasset derivatives* and *cryptoasset exchange traded notes* to a *retail client* in another *EEA State* to the extent that those activities are subject to stricter requirements imposed under article 42 of *MiFIR* by the *competent authority* of that *EEA State*.
- 22.6.2 G The *rule* in COBS 22.6.1R(2) means that a *firm* must comply with the *rules* in this section unless there are stricter requirements in the *EEA State* where the *retail client* is. Given that the *rules* in this section are prohibitions, *firms* will, in practice, always need to comply with them when they are marketing, distributing or selling a *cryptoasset derivative* or a *cryptoasset exchange traded note* in or from the *United Kingdom* to a *retail client*. However, *firms* will also need to comply with requirements in the *EEA State* where the *retail*

client is if those requirements go beyond the scope of the *rules* in this section.

- 22.6.3 G *Firms* are reminded that the *Glossary* definition of *MiFID investment firm* includes *CRD credit institutions* when those institutions are providing an *investment service or activity*.
- 22.6.4 G For the avoidance of doubt, in *COBS 22.6.1R*, “marketing” includes *communicating* and/or *approving financial promotions*, and “distribution or sale” includes *dealing* in relation to *cryptoasset derivatives* and *cryptoasset exchange traded notes*.

Prohibitions

- 22.6.5 R (1) A *firm* must not:
- (a) sell a *cryptoasset derivative* or a *cryptoasset exchange traded note* to a *retail client*; or
 - (b) distribute a *cryptoasset derivative* or a *cryptoasset exchange traded note* to a *retail client*; or
 - (c) market a *cryptoasset derivative* or a *cryptoasset exchange traded note* if the marketing is addressed to or disseminated in such a way that it is likely to be received by a *retail client*.
- (2) “Marketing” includes, but is not limited to, *communicating* and/or *approving financial promotions*.