

**CONDUCT OF BUSINESS (CRYPTOASSET PRODUCTS) (AMENDMENT) AND
ASSOCIATED EXITING THE EUROPEAN UNION AMENDMENTS INSTRUMENT
2020**

Powers exercised

- A. The Financial Conduct Authority (“the FCA”) makes this instrument in the exercise of:
- (1) regulation 3 of the Financial Regulators’ Powers (Technical Standards etc.) (Amendment etc.) (EU Exit) Regulations 2018;
 - (2) the following powers and related provisions in 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); and
 - (e) 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 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 as follows:
- (1) Annex A comes into force on 6 October 2020; and
 - (2) Annex B comes into force on the later of:
 - (a) 6 January 2021 immediately after the Conduct of Business (Cryptoasset Products) Instrument 2020 (FCA 2020/34), as amended by Annex A, comes into force; or
 - (b) IP completion day as defined in the European Union (Withdrawal Agreement) Act 2020.

Amendment to instrument commencement date

- E. The commencement date of the Conduct of Business (Cryptoasset Products) Instrument 2020 (FCA 2020/34) is amended in accordance with Annex A to this instrument.

Amendments to the Handbook

- 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) (Amendment) and Associated Exiting the European Union Amendments Instrument 2020.

By order of the Board
30 September 2020

Annex A

Instrument coversheet

Amend the commencement date of the following instrument as shown. Underlining indicates new text and striking through indicates deleted text.

Conduct of Business (Cryptoasset Products) Instrument 2020 (FCA 2020/34)

Commencement

D. This instrument comes into force on ~~28 October 2020~~ 6 January 2021.

Annex B

Amendments to the Conduct of Business sourcebook (COBS)

In this Annex, underlining indicates new text and striking through indicates deleted text.

22 Restrictions on the distribution of certain complex investment products

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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~~ This section applies to:

~~(a)~~ *MiFID investment firms, with the exception of collective portfolio management investment firms;*

(1)

~~(b)~~ *branches of third country investment firms; and*

(2)

~~(c)~~ *MiFID optional exemption firms; and*

(3)

(4) *TP firms which are EEA MiFID investment firms with the exception of collective portfolio management investment 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.

In addition to the *persons* listed above, *persons* (including *unauthorised persons*) who benefit from a temporary exemption or exclusion from the *general prohibition* under:

- (1) Part 7 of the *EU Exit Passport Regulations*; or
- (2) Part 4 of the *Electronic Commerce and Solvency 2 (Amendment etc.) (EU Exit) Regulations 2019 (SI 2019/1361)*

are required to comply with the *rules* in this section as a consequence of:

- (3) regulation 59 of the *EU Exit Passport Regulations*; or
- (4) regulation 19 of the *Electronic Commerce and Solvency 2 (Amendment etc.) (EU Exit) Regulations 2019*.

22.6.3 G *Firms and TP 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*.

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Prohibitions

22.6.5 R (1) *A firm or TP firm* must not:

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