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CUMMINGS PEPPERDINE ON FINANCIAL SERVICES AND MARKETS BILL

TABLE OF CONTENTS

Introduction	2
Designated activities	3
Financial promotions - the new regime	4
Cryptocurrencies – what next?	6
Revoking eu law – not just how, but also how long?	8
Playing in the sandbox	9
New and additional objectives for the fca	10
The impact on the wholesale markets	11

CUMMINGS PEPPERDINE

+44 7734 057 327

Green Park House, 15 Stratton Street,
London W1J 8LQ

www.cummingspepperdine.com

CRYPTOCURRENCIES – WHAT NEXT?

CHAPTER FOUR

The Financial Services and Markets Bill 2022-2023 ("FS Bill") is on the horizon and, as we promised, we are helping you to prepare with a series of short notes on some of the key measures, telling you what the changes might be and how you can prepare for them.

In this note, we look at the proposed matters in relation to cryptocurrencies.

THE CURRENT STATE OF PLAY

The existing UK legislative framework was not developed with the regulation of cryptoassets in mind, a point which the regulators understand and are working on.

At the moment, the FCA has applied the existing legislation to cryptoassets in certain circumstances. It has also joined HM Treasury and the Bank of England (joined to form the Cryptoassets Taskforce) to develop a regime for cryptoassets (including stablecoins). As a first step, the Cryptoassets Taskforce has given us their definition of cryptoassets (to be amended by the FS Bill, as set out below) and the FCA has produced guidance to categorise tokens.

The FS Bill makes significant changes to the regulation of cryptoassets. This was always going to be the case, and indeed HM Treasury made clear in a January 2021 paper, that changes were coming, saying that any adjustments to the regulation of cryptoassets should be incremental, phased and proportionate to regulation that is sensitive to risks posed and responsive to new market developments. HM Treasury stated that this approach must be rooted in the principle of "same risk, same regulatory outcome".

THE FS BILL

We saw mention of developments to create a cryptoassets regulatory regime in the Queen's Speech of 2022 which talked about as "harnessing the opportunities of innovative technologies in financial services, including supporting safe adoption of cryptocurrencies".

DEFINITION OF CRYPTOASSETS

The Bill will redefine cryptoassets with a very wide technology neutral definition which is intended to catch all types of cryptoassets. This is a clear demonstration of HM Treasury's intention for all cryptoassets to be regulated under FSMA.

The new, intended definition of cryptoassets will be:

"any cryptographically secured digital representation of value or contractual rights that— (a) can be transferred, stored or traded electronically, and (b) that uses technology supporting the recording or storage of data (which may include distributed ledger technology)."

DEFINITION OF DIGITAL ASSET SETTLEMENT

The FS Bill also gives us a new concept of a digital settlement asset, which is defined as a digital representation of value or rights, whether or not cryptographically secured, that satisfies the following conditions:

- it can be used for the settlement of payment obligations;

- it can be transferred, stored or traded electronically;
- it uses technology supporting the recording or storage of data (which may include distributed ledger technology).

The FS Bill includes sections on the regulation of payment systems using digital settlement assets, digital settlement asset service providers and service providers to digital settlement asset systems. The Payment Services Regulator will be the body which will regulate payment systems using digital settlement assets.

STABLECOINS

Stablecoins are also a feature of the FS Bill, which follows a commitment by the Government to bringing activities facilitating the use of certain stablecoins, where used as a means of payment, into the UK regulatory perimeter.

While there is no mention in the Bill itself of stablecoins per se, it is clear from the explanatory note that the definition has been drafted widely enough to cover both stablecoins and other digital assets. In addition, HM Treasury will be given the power to amend this definition to reflect developments.

WHAT POWERS WILL REGULATORS BE GIVEN?

The Bill, when enacted, will give HM Treasury the power to establish an FCA authorisation and supervision regime, which draws broadly on existing electronic money and payments regulation, to mitigate conduct, prudential and market integrity risks for issuers of, and payment service providers using, stablecoins.

In addition, it will enable HM Treasury to recognise the operators of systemic payment systems and systemic service providers using digital settlement assets for regulation by the BoE, subject to meeting relevant thresholds

and following HM Treasury's publication of a recognition order. The aim here is to allow the Bank of England to regulate and supervise systemically important stablecoin payment systems and related service providers to mitigate financial stability risk.

As far as changes to the existing rules go, HM Treasury will be given the power to amend or disapply existing FCA or PRA rules in areas which relate to financial stability, the aim being to avoid relevant systemic stablecoin firms being subject to conflicting requirements.

OTHER LEGISLATIVE CHANGES

The nature of the proposed changes is such that HM Treasury will need to amend the Financial Services and Markets Act 2000 (Financial Promotion) Order 2005 and the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 to bring cryptoassets within the regulatory perimeter.

These will include extending the financial promotion regime to encompass the promotion of certain types of unregulated cryptoassets and bringing in new financial promotion rules for high-risk investments, which includes cryptoassets that are being brought within scope of the regime.

THE TEAM

Cummings Pepperdine is a leading advisor in crypto. We are one of a select few that advises a large and diverse global client base in the crypto space and the only to provide a complete crypto solution building on the three key areas of law, tax and FCA with legal underpinning at every point.

In law, we have a team of qualified and regulated solicitors and a barrister who retains right of audience.

In tax, we have one of the only crypto tax advisors who is both a qualified solicitor and qualified chartered accountant.

In regulation, our team comprises specialists in crypto compliance monitoring structures and governance oversight who are known to the FCA for the quality of their work.

The team is led by Claire Cummings, a leading solicitor specialising in crypto law and the current and evolving regulation. Claire is on the advisory boards of a crypto exchange and an NFT gaming guild and is also a member of the Global Digital Finance working group on



Claire Cummings

stablecoins. Claire has also acted as compliance officer, MLRO and director of an FCA regulated fund manager and qualified under SIB to trade derivatives. As a leading expert in crypto, Claire is a sought after speaker and has published multiple articles on the legal and regulatory issues surrounding cryptocurrencies and the crypto eco-system. Claire is named at the Top 10 influencer in London for hedge funds (2&20, 2022) and is included in the CityWealth Crypto Top 100

The Cummings Pepperdine Online Training Programme, includes sections focussing on Financial Services and Markets Bill, has been designed by a specialist board of compliance consultants, solicitors, chartered accountants, tax advisors and regulatory consultants. We believe that we are the only firm which offers training created by this range of qualified advisors.

[Click here now to make it all work](#)

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claire.cummings@cummingspepperdine.com
michael.borrelli@cummingspepperdine.com
serena.joseph@cummingspepperdine.com
nathalie.hankey@cummingspepperdine.com

samantha.fitter@cummingspepperdine.com
nigel.tobin@cummingspepperdine.com
pa@cummingspepperdine.com
ryan.ottman@cummingspepperdine.com

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