



CUMMINGS PEPPERDINE ON INITIAL COIN OFFERINGS (ICOS) AND THE FCA

WHAT IS AN INITIAL COIN OFFERING (ICO)?

An initial coin offering (ICO), really, what it says on the tin. It is the cryptocurrency industry's equivalent to an offer for shares in traditional finance.

A company which wants to raise money to fund a new coin, app, or service can offer coins to certain members of the public as a way of raising those funds.

This means that interested investors can buy an initial coin and in return receive a new cryptocurrency token issued by the company. The nature of this token will vary as it will be related to the business of the issuing company. For example, some tokens may have a utility related to the product or service that the company is offering, or the token may just represent a stake in the company or project.

The most notable use of ICOs to date has been in the launch of new cryptocurrencies. In the UK, the FCA's response has been to recognise ICOs as an innovative way of raising capital which regulators need to explore and understand better, while at the same time ensuring that investors are protected.

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THE FCA'S REGULATORY PERIMETER

Whether an ICO falls within the FCA's regulatory perimeter or not depends on the nature of the tokens issued, and the legal and regulatory position of each ICO proposition must be assessed on a case-by-case basis.

Although many ICOs will fall outside the regulated arena, some (such as security tokens) may be, or may stray into a grey area, of being regulated investments. Where tokens which are regulated as part of an ICO, the firm involved may be conducting regulated activities and require FCA authorisation.

In addition to FCA authorisation, firms should also consider whether their activities are caught by The Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 (MLRs 2017).

EASY TO READ GUIDES

Always keen to help, we have produced a number of publications on these regulatory issues which you can find on our website under the tab "Pep Publications" at cumingspepperdine.com/pep-publications

And there is also The Cummings Pepperdine Cryptionary to dip into for information: cumingspepperdine.com/the-cryptionary

WHAT THE FCA SAYS

The FCA has given perimeter guidance on cryptoassets which outlines the extent to which issuers of cryptoasset tokens, including those issued through ICOs, are likely to fall within its regulatory ambit.

They have explained that the majority of tokens issued through ICOs to the market tend to be marketed as utility tokens, which are outside its regulation, but make it clear that firms must consider every nuance of their offering to consider whether and/or when their tokens may

be considered securities, and therefore fall within the FCA's regulatory perimeter as security tokens.

The FCA has also put the financial world on warning, making it very clear that pays increasing attention to ICO, especially where it believes that firms may be offering ICOs in an attempt to avoid regulation by marketing securities as utility tokens.

ANY OTHER CONCERNS?

It is possible for a token to change its characteristics during its life and therefore change its regulatory status. The same is true of the tax treatment of different types of tokens.

It is also important to look at issues such as the private placement of securities, crowdfunding, the potential creation of a collective investment scheme and the prospectus regime.

The developing regulation of all digital assets is an issue which should be kept under constant review.

FCA CONSUMER WARNINGS

The FCA has warned consumers of the risks of ICOs, citing their very high-risk as speculative investments due to, among other things, their price volatility, lack of access to UK regulatory protections such as the Financial Services Compensation Scheme (FSCS) or the Financial Ombudsman Service (FOS), potential for fraud, and the lack of adequate documentation.

THE FCA'S INNOVATION HUB

A limited number of ICOs have engaged with the FCA in its Innovation Hub. This is an initiative taken by the FCA to allow it assess where there is the potential for consumer benefit. To achieve this, products must be designed to satisfy the "consumer benefit" criterion for access to hub facilities.

This is required for the ICO to fall within one of the following criteria:

- the ICO must fall within the FCA's regulatory perimeter and be fully compliant with UK and other relevant regimes; or
- if outside the FCA's regulatory perimeter, the ICO must be designed, promoted and governed in line with best practice, so that potential acquirers are properly informed about the proposition that is being marketed to them.

The FCA is not anti-ICOs. It has stated its view that a well-functioning ICO market in which the issuers are both sensitive to any regulatory obligations they have and actively take appropriate steps to manage the risk of harm to the public and the markets more broadly, can materially contribute to the development of digital ledger technology in the UK.

Critical to this is that the promoters of ICOs allow fully informed decision-making by potential investors.

For more information, visit our website to read our [Pep Publications](#) and listen to [The Hugely Popular Cummings Pepperdine Crypto Questions](#)



The Cummings Pepperdine Online Training Programme, includes sections focussing on Initial Coin Offerings (ICOS) and the FCA, 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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