



CUMMINGS PEPPERDINE ON HOW TO ACHIEVE FCA REGISTRATION FOR CRYPTOASSET BUSINESS

INTRODUCTION

The Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 (MLRs 2017) are a wide-ranging set of regulations which form part of the UK's AML and counter-terrorist financing (CTF) regime.

Importantly for cryptoasset businesses, the MLRs 2017 apply to a wide range of businesses identified as most vulnerable to the risk of being used for money laundering and terrorist financing and this includes certain types of cryptoasset business.

The FCA supervises a wide range of financial institutions under the MLRs 2017. While some are financial institutions carry on "regulated activities", others are do not carry on regulated activities but are in scope. This includes businesses which carry on the activities of being a cryptoasset exchange provider and/ or a custodian wallet provider. Details of these activities are provided below.

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BUT WHAT ARE CRYPTOASSETS AND CRYPTOASSET ACTIVITIES?

Cryptoassets

For the purposes of the MLRs 2017, cryptoasset means a cryptographically secured digital representation of value or contractual rights that uses a form of distributed ledger technology and can be transferred, stored or traded electronically, and includes a right to, or interest in, a cryptoasset. It is important to note however that HM Treasury and FATF have widened their scope of cryptoassets caught by the MLRs 2017.

Cryptoasset exchange providers

A cryptoasset exchange provider is a firm or sole practitioner who, by way of business, provides one or more of the following services, including where the firm or sole practitioner does so as creator or issuer of any of the cryptoassets involved, when providing these services:

- exchanging, or arranging or making arrangements with a view to the exchange of, cryptoassets for money or money for cryptoassets. (In this context, money means money in sterling, in any other currency, or in any other medium of exchange, but does not include a cryptoasset;
- exchanging, or arranging or making arrangements with a view to the exchange of, one cryptoasset for another;
- operating a machine that uses automated processes to exchange cryptoassets for money or money for cryptoassets.

Do note the potentially wide-ranging implications of the words "arranging or making arrangements".

Custodian wallet providers

A custodian wallet provider is a firm or sole practitioner who, by way of business, provides services to safeguard, or to safeguard and administer, either of the following when providing these services:

- Cryptoassets on behalf of its customers;
- Private cryptographic keys on behalf of

its customers to hold, store and transfer cryptoassets.

MAKING AN APPLICATION FOR FCA REGISTRATION

Applicants for registration need to complete the FCA's online registration form and submit it fully completed on the Connect system, with an extensive amount of supporting document and pay a registration fee.

The supporting documentation is critical. If the FCA takes the view that an applicant does not have the systems and controls needed to comply with the MLRs 2017 on an ongoing basis it will refuse to register an applicant.

The registration form asks for information about the applicant, its business and all of the key individuals in the business. All information requested must be provided. The FCA will consider an application incomplete until the applicant answers fully all the questions in the application forms, discloses all relevant information which the FCA requires and provides any documentation requested as part of the registration assessment.

It is critical that applicants fully disclose any information the FCA asks for, as well as notifying the FCA of details of any material changes or corrections to the information provided, within 30 days of the change or discovering the inaccuracy, or within a later time if agreed with the FCA. Failing to disclose information that could impact on the FCA's assessment is taken very seriously, especially when there is an apparent attempt to mislead. This could affect the success of an application. If in doubt, disclose rather than withhold information.

The FCA has advised that applications that are incomplete, of poor quality, or do not contain all requested information or provide any further information when requested where the applicant has failed to disclose all, may be refused.

Once the FCA has all the information it needs and decides that the application is complete

and meets the conditions for registration it has up to three months within which to assess the application.

A list of some of the information we will need to provide to the FCA is set out below;

- A programme of operations, setting out the specific cryptoasset activities for the business;
- A business plan which sets out the business objectives, customers, employees, governance, plans and projections. This must provide enough detail to show that the proposal has been carefully thought through and that the adequacy of financial and non-financial resources has been considered. It should also include details on the volume and value of transactions, number and type of customers, pricing and the main lines of income and expenses;
- A marketing plan, including a description of customers and distribution channels;
- Details of the structural organisation. This is a description of how the applicant's business is structured and organised, and must include a description of relevant outsourcing arrangements, if there are any. The FCA may ask for a copy of any relevant outsourcing agreements;
- Details of all systems and controls. This includes details of the key IT systems the applicant will use to run the business, including details of IT security policies and procedures;
- Information on beneficial owners, close links and individuals:
 - directors and any other persons who are or will be responsible for the applicant's management must satisfy the FCA that they have a good reputation, and have the appropriate knowledge and experience to act in this capacity. They must be fit and proper; and
 - details of the person appointed to be responsible for compliance with the MLRs 2017 (generally referred to as a "nominated officer" or a "money laundering reporting officer" (MLRO)) to monitor and manage compliance with policies, procedures and controls relating to money laundering and terrorist financing, and to act as the nominated officer under the Proceeds of Crime Act 2002. The FCA expects those persons appointed to have appropriate knowledge, experience and training, as well as a level of authority and independence, and sufficient access to resources and information, to enable them to carry out these functions;
- Details of all governance arrangements and internal control mechanisms. The applicant will need to provide details of governance arrangements, the internal control mechanisms in place to identify and assess money laundering and terrorist financing risks, as well as a description of money laundering and terrorist financing control measures in place;
- An AML and CTF framework and risk assessment. This should highlight the risks specific to the applicant's business model activities and provide details on how it mitigates those risks. The applicant should also include its AML and CTF staff training material;
- A business-wide risk assessment and a client risk assessment, each with monitoring and mitigation policy;
- All cryptoasset public keys/wallet addresses. This should include all of the cryptoasset addresses controlled by the business and used in the activity of the business for each cryptoasset with which that the business deals;
- Details of the customer on-boarding agreements and process;
- Details of customer due diligence (CDD) and enhanced due diligence (EDD) procedures, meeting the minimum standards required in the MLRs 2017;
- Transaction monitoring procedures;
- Record-keeping and recording procedures;
- A business continuity plan;
- Outsourcing arrangements policy and service license agreements;
- Budget forecasts and financials for the first three financial years;

- Money Laundering Reporting Individual forms for all directors, executives and officers; and
- Beneficial Owner forms for shareholders.

The business plan is a key document, along with supporting policies and procedures. The information to be included in the business plan includes:

- How you will take appropriate steps to identify and assess the risks of money laundering and terrorist financing to which the business is subject;
- How you will assess the money laundering and terrorist financing risks related to any new technologies prior to launch and take appropriate measures to manage and mitigate those risks;
- Whether you have in place policies, systems and controls appropriate to mitigate the risk of the business being used for the purposes of money laundering or terrorist financing. This risk-based approach should seek to mitigate the risks identified in the business's risk assessment;
- How you will, with regard to the size and nature of its business, appoint an individual who is a member of the board or senior management to be responsible for compliance with the MLRs and the nominated officer. Please note that the nominated officer is also the person responsible for reporting suspicious activity to the National Crime Agency under part 7 (money laundering) of the Proceeds of Crime Act 2002. The FCA will expect this individual to have necessary experience and be interviewed by the FCA as part of the application process;
- How you will, where appropriate with regard to the size and nature of its business, establish an independent internal audit function with responsibility for examining and evaluating the adequacy and effectiveness of the policies, controls and procedures, and making recommendations, as well as monitoring the controls;
- How you will undertake screening of employees;

- How you will undertake customer due diligence when entering into a business relationship or occasional transactions;
- How does the Applicant apply more intrusive due diligence, known as enhanced due diligence, when dealing with customers who may present a higher ML/TF risk. This includes customers who meet the definition of a politically exposed person;
- How you will undertake ongoing monitoring of all customers to ensure that transactions are consistent with the business' knowledge of customer, the customer's business and risk profile.

All information must be up-to-date, specific and fit for purpose.

We will need to be sure that we answer every question on the application form fully and provide all the information which the FCA asks for. An omission will result in further information requests, causing delays, while any continued failure to provide requested information may lead to the application being refused.

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 how to achieve FCA registration for cryptoasset business, 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](#)

[Watch our introductory video](#)

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