

FCA Statement on Cryptocurrency Derivatives

FCA warns providers of cryptocurrency derivatives of their regulatory obligations.

The UK Financial Conduct Authority (FCA) has issued a statement reminding businesses offering cryptocurrency derivatives of the requirement to be authorised..

The FCA explains that, although cryptocurrencies are not themselves regulated in the UK, derivatives that reference cryptocurrencies (such as cryptocurrency futures, cryptocurrency contracts for differences, and cryptocurrency options) are capable of being financial instruments under the Markets in Financial Instruments Directive II (MiFID II) and therefore within scope of regulation. The FCA clarifies that it does not consider cryptocurrencies to be currencies or commodities under MiFID II.

Consequently, the FCA emphasises that firms conducting regulated activities in cryptocurrency derivatives must comply with all applicable EU and UK legislation and regulation. This will include, for example, the activities of dealing in, arranging transactions in, and advising on cryptocurrency derivatives.

The FCA reminds businesses that it is their responsibility to ensure that they have the appropriate regulatory permissions. The FCA highlights that authorised firms without the correct permissions may face enforcement action, and unauthorised firms conducting regulated activities will be committing a criminal offence. However, the FCA does not offer businesses any substantive guidance as to how they determine which regulated activities they may be performing, simply directing them to its pre-existing guidance in the FCA Perimeter Guidance Manual. This is consistent with the FCA's repeated statements endorsing the technology neutrality of regulation.

Although the FCA has previously issued statements warning consumers about the risks of investing in initial coin offerings (ICOs) and cryptocurrency contracts for differences, this is the first time the FCA has articulated its expectations of businesses involved with cryptocurrencies.

The FCA's statement demonstrates the FCA's growing concerns about the ever-increasing number of businesses offering cryptocurrency-based products to consumers. It also highlights that in characterising cryptocurrencies (including tokens issued as part of an ICO), the FCA will not just consider whether the instrument or arrangements constitute a security, but will also consider whether the instrument falls within any of the full range of specified investments that would trigger regulatory obligations (including derivatives). It is, therefore, crucial that cryptocurrency firms and ICO issuers perform a comprehensive regulatory analysis of their business activities and products/tokens issued, to confirm that they understand and fully comply with UK regulatory requirements.

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