

Hogan
Lovells



Digital Assets
and **Blockchain**

Financial Promotions Toolkit

September 2023

Hogan Lovells

Adapting to the new Financial Promotions Rules

The UK's Financial Promotions Rules will soon come into effect

By 8th October 2023, all firms which market cryptoassets to UK consumers, including firms that are based overseas, will need to comply with new rules on financial promotions that apply to cryptoassets. These new rules are part of wider reforms to ensure that customers are receiving timely and high quality information that enables them to make effective investment decisions across industries.

The newly defined term of 'qualifying cryptoassets' brings much of the digital assets industry within scope for the first time. As is the case with any new regime, it comes with uncertainty as we have yet to see how it will be applied in practice.

The Hogan Lovells solution

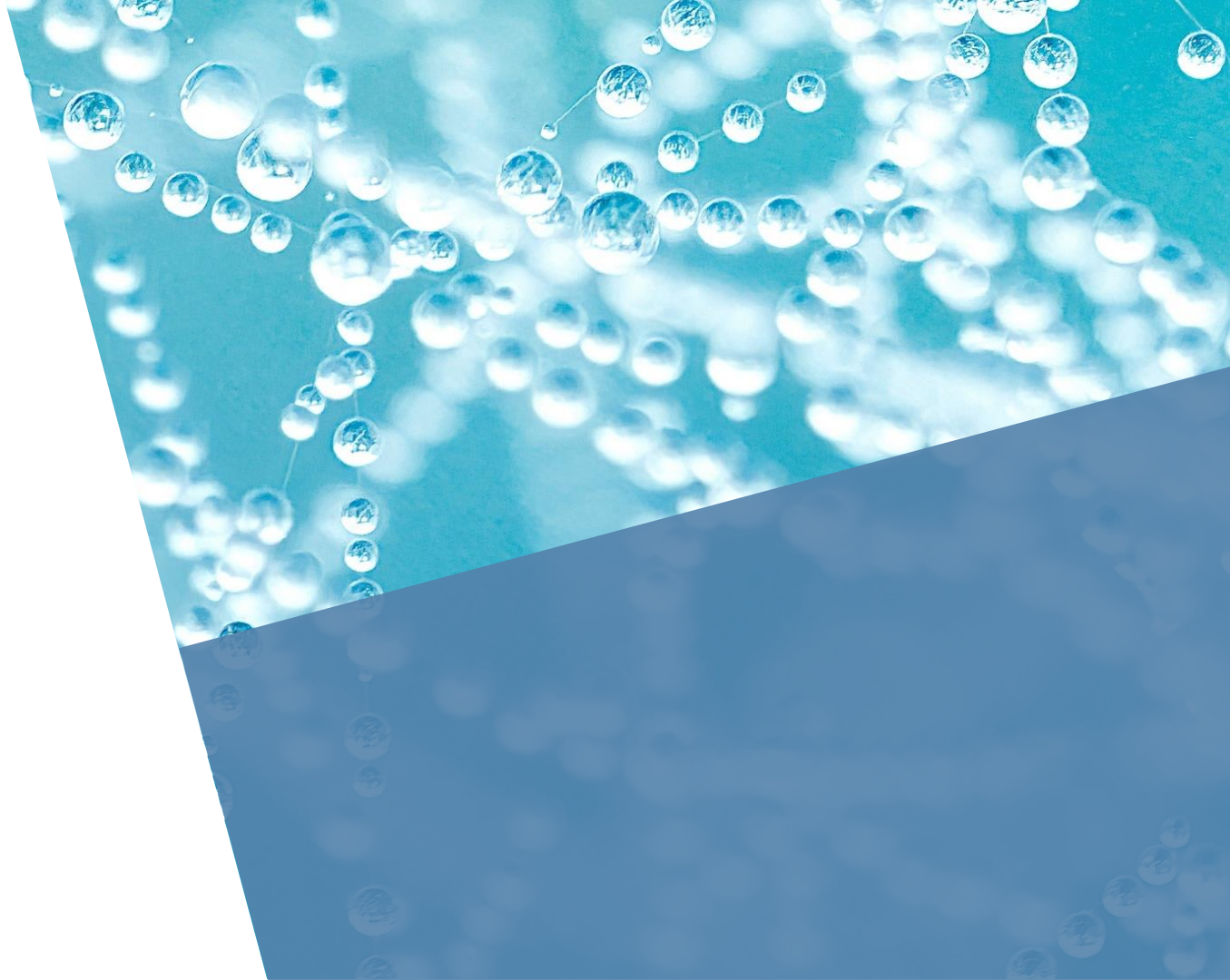
Our Financial Promotions Toolkit helps guide clients through this new regime and ensure that they are able to confidently operate in the UK under the correct permissions.

Developed by our experienced Digital Asset and Blockchain practice, our analysis ensures that you are compliant with the new promotions rules, allowing you to go straight to market with your services.



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Why Hogan Lovells



Why Hogan Lovells



Leaders in digital assets and blockchain

Our **Digital Assets and Blockchain practice is at the heart of the industry.** We deliver briefings, training sessions, and webinars with governments and regulators globally as they look to implement new regulatory regimes. We are the founders of industry associations such as GBBC Digital Finance, Innovate Finance, and Payments20, for which we continue to provide counsel. We keep close to the discussions that are driving regulatory and legislative change.

Our market leading lawyers and consultants leverage a wealth of experience and expertise to provide our clients with the best possible service to tackle the most complex and first-in-kind matters arising in the industry. Spanning our offices worldwide, the Digital Assets and Blockchain team gives truly global, cross-jurisdictional representation.



Your one-stop shop

Our one-team approach means you only have one relationship to manage on the legal side, providing a consistent approach across the board on all legal and regulatory issues and freeing you to focus on growing your business. Our cross-border legal team collaborate seamlessly to apply our forward-thinking, problem-solving approach to your needs across each aspect of a project, making us a true 'one-stop shop' for the support you need on a project.



Innovative solutions

Consistently ranked as one of the most innovative law firms in Europe by the *Financial Times*, we have extensive experience of navigating complex regulatory regimes in order to find innovative and commercial solutions to meet our clients' needs. We support our clients with our innovative tools and products, as well as our practical insights and thought leadership.

FinTech, Blockchain, and Cryptocurrency

When it comes to financial promotions, we were involved in the development of rules for HM Treasury, playing an instrumental role in the creating the exemption for AML-registered firms to authorise their own promotions.

As a firm, we have one of the largest and most experienced international legal and regulatory teams dedicated to the FinTech, virtual currency, blockchain, payments, consumer finance, and transactional banking sectors. We advise on regulation, new products, transactions, and commercial contracts.

Our clients benefit from our knowledge and familiarity of regulators in the UK and across Europe. We know how the regulators think and what concerns them. We've influenced and lobbied for change in several important legislative areas through our lobbying efforts, resulting in changes to key legislation such as to the Directives on Payment Accounts and Payment Services.

Our Digital Assets and Blockchain practice is at the forefront of change and our lawyers play a leading role in the development of emerging regulatory frameworks in this area. Alongside the fact that our diverse client base gives us a broad experience, we have the insights needed to create commercial and innovative solutions.

We recognise that the regulatory position relating to the use of digital assets is still evolving. We are a key participant and advisor to the GBBC Digital Finance group, a non-profit collective of key cryptoasset industry leaders which is working closely with regulators to develop a comprehensive taxonomy and professional code of conduct for cryptocurrencies and token sales.

Innovative Tools and Products

We have created several tools to help financial services clients navigate the legal and regulatory landscapes, including our guide to [Cryptoasset Activity AML Registration](#) and [Digital Assets and Blockchain Hub](#), two of the most comprehensive toolkits of their kind created by a law firm.



There isn't really any niche part of the FinTech industry that they haven't or couldn't advise on.

Legal 500



FinTech
Legal 500 UK, 2023

Areas of focus

- Disruptive exchanges and trading platforms
- Payments, including virtual currencies, infrastructure, mobile, and wearables
- Alternative finance, online lending, crowd-funding, and other forms of Peer-to-peer (P2P) financing
- Blockchain
- Data and analytics
- Robo-advice
- AI

Our Proposal

What to expect

A bespoke analysis of your options for promoting in the UK

Whether or not you are operating in the UK, we will give you the clarity you need to ensure compliance requirements not interrupt the delivery of your products and services. We will:



Provide an overview of the new financial promotions rules, setting out what a financial promotion is and what the levers of the definition are



Outline what is required should you wish to restrict promotions to UK customers



Analyse whether you fall within the definition, and outlining what is and is not a financial promotion, assessing whether or not the product is dealing with a qualifying cryptoasset



Outline the crypto-specific rules you need to adhere with



Outline the perimeter of promoting to UK customers, including:

- What constitutes reaching UK customers
- Digital marketing
- Websites
- Reverse solicitation



Detail what enforcement action is likely to be taken and outline the consequences of a potential breach

Approach

Ways of Working

1. Scoping Call

After conducting our due diligence and prep, we will set up an initial call with you to confirm the factual background and the scope of the regulatory analysis to be addressed by HL. This will include any specific questions which you would like us to address. We will use this call to better understand your commercial objectives so as to ensure we present the best possible options to you.

2. Memorandum of Advice

Following the initial call, we will bring together our expert team who not only have worked with HMT and the FCA on developing this regime but have also advised a number of clients on the applicability of it to their businesses. We will conduct regulatory analysis on your business and set out methodologically what the levers of this regime are and how it applies to you. We will set out options on how you can proceed and what you will need to consider when making financial promotions.

3. Follow-Up Call and Clarificatory Questions

After we send over the memorandum of advice, we will arrange a follow up call with you to discuss it and provide any clarificatory comments that are needed. This call will provide an opportunity for you to ensure that we have addressed all the areas that we set out in initial call and assess whether you require any further advice from us on this matter or any other that may have arisen.

Fees and Assumptions

Fees

	Scope of work	Fee (excluding VAT)
1.	Scoping Call	Free
2.	Memorandum of Advice	GBP 12,000
3.	Follow-up call and clarificatory questions	GBP 3,000
	Total	GBP 15,000

Assumptions

Our suggested approach and fee proposal are based on the following assumptions:

- We are conducting our advice from a UK perspective only.
- We will not be reviewing specific promotions that are currently being made or will be made in the future.
- We are not required to attend any additional lengthy calls or meetings.
- This fee is based on a promotion to one type of investor promoted through one medium of marketing.
- We will not assess whether you are required to be authorised in the UK in relation to performing regulated financial services activities.
- We will not assess whether you are required to be registered in the UK for money laundering purposes.

For any matters that fall outside of our capped fee proposal, we will agree a fixed fee beforehand based on your needs. Above all, we will always ensure that our final legal fee is competitive and aligned to your firm's commercial objectives and the legal issue at stake.

Hogan Lovells Resources

Digital Assets and Blockchain (DAB) Resources



DAB Hub

A one-stop legal shop to investigate, review, compare and delve into digital assets and blockchain and how it is shaking up industries. The 300+ regulators; 120+ jurisdictions and supranational organizations; and 20+ applications, topics and industry sectors.

Sign up (for free!) to our [Digital Assets and Blockchain Hub here](#).



2023 Key Trends

In this publication, we've set out our top 10 digital assets and blockchain trends that we've seen this year.

[Access our publication here](#).



DriveChain

We have implemented an ecosystem-scale document and contract automation technology which will drive efficiencies within commercial transactions for our clients. If you would like to see a demo of DriveChain and discuss how it could be used by your business, please get in touch.



Engage

Engage is the Hogan Lovells online thought leadership platform available exclusively for our clients. Engage brings together our latest legal, market and regulatory news, industry insights and analysis from across our global network.

Sign up (for free!) to [Engage here](#).

Digital Assets and Blockchain Hub

The **Hogan Lovells Engage Digital Assets and Blockchain Hub** is a one-stop-shop for all of your questions. Whether it's to find out the latest regulatory developments or learn about new applications of the technology, the DAB Hub has you covered.



The Digital Assets and Blockchain Hub covers

300+

regulators

120+

jurisdictional and
supranational organizations

20+

applications, topics
and
industry sectors

“

Hogan Lovells FinTech offering is drawn from the firm's strengths in financial services regulation, IP, technology, corporate transactions and data protection.

John Salmon is knowledgeable about the legal and regulatory issues related to blockchain technology.

The practice counts start-ups, alternative lending companies, global banks and other financial institutions among its clientele.

Chambers & Partners 2022 UK

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Use the DAB Hub to...



Keep up to date with the latest legal and regulatory developments.



See where blockchain is shaking up industries.



View the legal positions and restrictions for cryptocurrency and the FATF travel rule in various countries.



Compare regulatory developments across the world and see how regulatory approaches are evolving over time.



Create bespoke reports with developments across multiple countries.



Access useful blockchain resources, including reports, in-depth articles and more.

Your main contacts

John Salmon

Partner, London

Listed in Legal500's [Fintech Hall of Fame](#) 2023, John is a highly experienced technology lawyer with a market-leading reputation in the financial services sector, and head of our Digital Assets and Blockchain practice. John advises clients across the industry on their strategic technology projects and the implementation of innovative blockchain solutions whilst managing legal and regulatory risks.

John has a successful track record of advising major banks and start-ups on complex commercial technology and regulatory matters in this area. He spends a great deal of time educating regulators, policymakers and clients in the area of blockchain and crypto and has spoken to the European Parliament, IOSCO and many governments on this topic.

Widely recognised for his involvement in cutting-edge developments across the sector, John is ranked as a leading lawyer in FinTech by the industry's leading publications and directories.

Relevant experience includes the assistance to:

- Advising a major blockchain company on a global review of all NFT legislation.
- Advising a major global tech company on an enterprise-grade NFT platform aimed at their corporate clients.
- Advising a consortium of international banks developing a multicurrency institutional payments system using Distributed Ledger Technology.
- Advising a major global banking client on proposed membership arrangements with RippleNet, a blockchain-based worldwide payment messaging system, and associated settlement arrangements with two other global banks.
- Advising various blockchain businesses on the regulatory characterisation of their token offerings and the regulatory considerations for operation of their proposed businesses.
- Advising a leading global bank on a potential custody solution for cryptoassets, including in relation to the legal treatment of cryptoassets.
- Advising a number of leading global cryptoasset exchanges on regulatory issues including AML registration.



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Rankings

“John is by far the best outside counsel with whom I have worked in the FinTech and blockchain space.” – Chambers FinTech Legal, 2023

Notable Practitioner – Chambers FinTech Legal, 2023

“He’s been consistently at the top of his game.” – Chambers FinTech Legal: Blockchain & Cryptocurrencies, 2023

Band 1 – Chambers FinTech Legal: Blockchain & Cryptocurrencies, 2023

Michael Thomas

Partner, London

Michael Thomas leads our Investments and Markets practice in the UK. The core of Michael's practice is the provision of financial services regulatory advice. Michael advises all types of financial institutions on how financial services regulation will apply to them from their initial set-up, to their on-going business, and in relation to key events such as corporate transactions, outsourcing arrangements or strategic restructuring.

His extensive regulatory experience has enabled Michael to understand and steer the development of a wide range of cutting-edge projects in the arena of digital assets, including the world's first issuance of company shares on a blockchain; advising on the feasibility and implementation of a wide range of digital asset business models; and assisting clients to launch their digital asset businesses in multiple jurisdictions. His digital asset expertise ranges from: advising blockchain start-ups, to advising existing financial institutions seeking to apply the new technology, to assisting the development of new models of operation for FMI's seeking to apply digital asset and blockchain ledger technology.

In addition to regulatory advice, Michael advises financial institutions on commercial transactions, such as major outsourcing arrangements, investment agreements and distribution deals. Michael has extensive experience of advising financial market infrastructure, and regularly advises UK and non-UK investment exchanges, CCPs and CSDs.

Relevant experience includes:

- Advising a consortium of international banks on development of a multicurrency institutional payments system using distributed ledger technology.
- Advising a range of digital asset entities including exchanges, wallets, and technology providers on financial services regulatory issues including authorisation requirements to carry out regulated activities, the financial promotions regime, and anti-money laundering issues.
- Advising a leading global cryptoasset exchanges on preparing draft FCA applications and underlying documents required, as well as submitting and coordinating the FCA applications and responses to FCA feedback.
- Advising private capital markets platform on the issuance of digital tokens representing shares in the platform, and advice on the development of the platform for the issuance of UK company shares on a blockchain ledger.
- Advising a digital asset custody provider on developing a novel custody arrangement with digital asset exchanges and drafting bespoke contractual documentation.



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“[His] vast knowledge encompasses UK and EU regulations, MiFID II, EMIR, Benchmark Regulation, initial financial services set-ups and outsourcing arrangements.”

Legal 500 UK, 2023

Lavan Thasarathakumar

Senior Advisor, London

Lavan is a Senior Advisor at Hogan Lovells, based in London. As a former UK adviser at the European Parliament, he is a highly experienced public policy professional and leads the Hogan Lovells Digital Asset and Blockchain policy offering. Lavan's main focus area at the EU was on Economic and Monetary Affairs, within which he focused on emerging technologies advising on a number of FinTech, Cryptoasset and DLT files. Most notably, he advised the rapporteur of the EU Crowdfunding Service Providers Regulation and the Comprehensive European Industrial Policy on Artificial Intelligence and Robotics. However, as the principal adviser to the leader of the UK delegation, Lavan has experience in advising on a wide range of areas.

Lavan also holds the position of Director of Government and Regulatory Affairs at GBBC Digital Finance, where he is responsible for representing the views of the industry to policymakers and regulators across the globe as well as distil and disseminate policy and regulatory positions to the industry. Lavan chairs the MiCA Working Group, the Private Market Digitisation Steering Group and sits on the IOSCO crypto and digital assets taskforce. He is also leading the establishing of the All-Party Parliamentary Group on Digital Finance chaired by Lord Hammond and Sir Stephen Timms, aimed to help shape the UK's policy in this area.

Lavan's ability to navigate the EU and UK legislative process enables him to help clients understand the incomings regulatory requirements that will impact their business. He also has experience in drafting legislation, policy recommendations and a strong understanding of the industry which he brings to the firm.

Relevant experience includes the assistance to:

- Advising a regulatory body of a foreign jurisdiction on its cryptoasset regulation and drafted updates to the existing cryptoasset legislation.
- Advising a jurisdiction on developing a regulatory framework for digital assets.
- Advising a major NFT platform on the impact of the proposed EU Anti-Money Laundering Regulation.
- Advising various blockchain businesses on the regulatory characterisation of their token offerings and the regulator considerations for the operation of their proposed businesses.
- Advising a crypto-exchange on developing a decentralised price discovery mechanism.
- A digital asset firm on launching a liquidity staking solution on ETH 2.0.
- A digital asset firm on the applicability of the UK's new financial promotions rules.



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Christina Wu

Associate / Knowledge Lawyer, London

Christina is an associate in the commercial technology team with experience in transactional and regulatory matters. Her current role includes a focus on advising financial services entities on their digital and technological solutions. She has experience in a variety of projects including outsourcing arrangements, licensing agreements, legal due diligence support on IT aspects of M&A deals, and advising on regulatory developments in the cryptoasset and distributed ledger technology (DLT) space, as well as in-house experience through client secondments.

Relevant experience includes the assistance to:

- Advising a regulatory body of a foreign jurisdiction on its cryptoasset regulation and drafted updates to the existing cryptoasset legislation.
- Advising a global bank on legal issues in developing a retail digital cash instrument in the context of UK stablecoin and e-money regulation.
- Advising a UK-based investment management company on potential regulatory issues regarding a bank-issued stablecoin, including licensing and AML/CTF requirements.
- Advising clients in both the public (e.g. policymakers) and private sectors on the regulation of cryptoassets in multiple jurisdictions, including with respect to anti-money laundering and counter-terrorist financing (AML/CTF) regimes, cryptoasset exchange providers, cryptoasset custody, non-fungible tokens, and decentralised finance.
- Advising on, negotiated and drafted contracts with respect to technology services (including DLT, market data, and artificial intelligence services) and outsourcing arrangements for financial institutions in the UK and internationally.
- Provided legal due diligence and general transactional support in connection with mergers and acquisitions on aspects related to technology, intellectual property and data protection.

Secondment experience

- Secondment to in-house legal team at Apple Pay.
- Secondment to in-house IT Procurement and Technology & IP legal teams at BNP Paribas.



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"Hogan Lovells" or the "firm" is an international legal practice that includes Hogan Lovells International LLP, Hogan Lovells US LLP and their affiliated businesses.

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