

Regulated Businesses Under FCA
(PERG)

and

The Financial Services and Markets Act 2000
(Regulated Activities) Order 2001

For a Bitcoin Exchange (Trading Platform)

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BRIEF

The business model of a 'Bitcoin Exchange/Trading Platform' is **not** regulated as a Money Services Business (MSB), under the FCA regulations.

As per the Financial Conduct Authorities ("FCA") regulations, as viewable in the FCA's The Perimeter Guidance Manual (PERG).

<http://fshandbook.info/FS/html/handbook/PERG>

Section PERG 2 – Authorisation and regulated activities

<http://fshandbook.info/FS/html/handbook/PERG/2>

PERG 2.6 – Specified investments: a broad outline

<http://fshandbook.info/FS/html/handbook/PERG/2/6>.

What we are looking at specifically here is with regards to how a digital currency trading platform that operates with Bitcoin and Litecoin (and other similar alt-coins) are concerned with regards to the FCA.

POINTS OF LAW AND REGULATION

PERG 2.6.2 – Deposits

01/07/2005

FCA

"A deposit is defined in article 5(2) of the Regulated Activities Order. This focuses on a sum of money paid by one person to another on terms that it will be repaid when a specified event occurs (for example, a demand is made)."

- The fiat amounts deposited for the purposes on a bitcoin trading platform are considered deposits. Deposit and withdrawal requests can be made, and the Terms of Service agree that when a demand (withdrawal request) is made, monies will be returned. But it is not guaranteed that a customer will ever request a withdrawal, or even a deposit, whilst simultaneously conducting the opposite activity.
- Accepting deposits for the purposes of trading on an online platform is **not** covered by article 5 of the Regulated Activities Order (<http://www.legislation.gov.uk/ukxi/2001/544/article/5/made>)
- Meaning that banks do **not** require businesses of this model to have an MSB.

PERG 2.6.3

10/02/2011

FCA

"Certain transactions are excluded. The definition of deposit itself excludes money paid in connection with certain transactions such as advance payments for the provision of goods or services and sums

paid to secure the performance of a contract. The circumstances in which payments are excluded from the definition itself are exhaustively stated in article 5(3) of the [Regulated Activities Order](#) (Accepting deposits). In addition, there is a separate exclusion in article 9 of the Order (Sums received in consideration for the issue of debt securities) and another in article 9A (Sums received in exchange for electronic money).¹ [PERG 3A](#) Q4 contains guidance¹ on the exclusion relating to [electronic money](#).”

- Funds deposited for purpose of use on a trading platform are not considered ‘advanced payments for the provision of goods or services, nor for any contract purposes’.
- Bitcoins (and Litecoins) **are** considered “Electronic money.” As per the FCA’s handbook. <http://fshandbook.info/FS/glossary-html/handbook/Glossary/E?definition=G346>)

PERG 2.6.4A – Electronic Money

10/02/2011

FCA

[Electronic money](#) is specified as an *investment* in article 74A of the [Regulated Activities Order](#)¹, but only when issued by:¹

- (1) a *full credit institution*, a *credit union* or a municipal bank; or
- (2) a *person* deemed to have been granted authorisation under regulation 74 of the [Electronic Money Regulations](#); or a *person* who falls within regulation 76(1) of the [Electronic Money Regulations](#) (see [PERG 3A](#), Q30 and 31).

The authorisation and registration requirements for any other *person* intending to issue [electronic money](#) are governed by the [Electronic Money Regulations](#). Guidance on these regulations is available in [PERG 3A](#).¹

- Whilst bitcoin is considered **Electronic Money**, it is **not** considered an **investment** under article 74A, as they are not issued by a credit institution, union or municipal bank, nor by any individual, or entity that has been granted authorisation under Electronic Money Regulations.
- They are produced by a mathematical computer ‘bitcoin’ protocol (software). That has no central figure or entity, in that it is decentralised.

SUMMARY

1. Deposits should be considered legitimate deposits.
2. Depositing for online trading platforms is not a regulated activity.
3. Bitcoin is “Electronic Money”.
4. Being decentralised, it does not fall under the “Electronic Money Regulations”.
5. Bitcoin (or any other decentralised “electronic money”) is not a regulated market.

SOURCES

The Financial Services and Markets Act 2000 (Regulated Activities) Order 2001
<http://www.legislation.gov.uk/uksi/2001/544/article/5/made>

Financial Conduct Authority – Handbook
<http://fshandbook.info/FS/html/FCA>