



ESMA WARNS OF THE RISKS OF WHAT ARE KNOWN AS ICOS (INITIAL COIN OFFERINGS)

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The European Securities and Markets Authority (ESMA) has issued two communications on what are known as ICOs (Initial Coin Offerings), one related to investor risks and the other to recommendations and rules aimed at the entities considering participating in them.

Given the proliferation in some countries of these types of transactions, ESMA estimates that investors are not aware of the high risk they would be assuming if they were to participate in them. Furthermore, ESMA expresses its concern about the possibility that the entities that promote or participate in ICOs are not complying with the relevant European legislation in this regard.

CNMV has participated in the analysis carried out by ESMA on these products and in the preparation of these communications.

Investors

ESMA warns investors of the high risk of losing the capital invested in these types of offers, since they are generally very speculative high-risk investments about which inadequate information is provided in most cases. The price of the *coin* or *token* could be very volatile and investors may not have the possibility of recovering their investment over a prolonged period. Another key risk arises from the fact that, depending on how they are structured, ICOs may not be provided for by EU regulations, in which case investors could not benefit from the protection that European legislation offers. Certain ICOs could also entail the risk of fraud and money laundering.

If you are an investor who is assessing the possibility of participating in an ICO, please contact CNMV to resolve any doubts you may have (<http://www.cnmv.es/portal/inversor/Consultas.aspx>)

Entities

Certain ICOs can be considered to refer, according to their circumstances and characteristics, to financial instruments, in which case it is probable that the entities involved are carrying out regulated investment activities, the consequence of which is that they have to comply with the relevant legislation in each case related to certain European directives, such as for example and mainly the following:

- The brochure directive
- The markets in financial instruments directive (MiFID)
- The alternative investment fund managers directive (AIFMD)
- The fourth anti-money laundering directive.

ESMA stresses that entities that participate in ICOs must take into account whether their activities are regulated. Any failure to comply with the appropriate rules could constitute an infringement.

If you are a promoter or an entity interested in comparing the legal implications of the termed ICOs or similar initiatives, you can contact CNMV through its FinTech Portal (<http://www.cnmv.es/portal/Fintech/Innovacion.aspx>)

Background

The termed ICOs are presented as a new way to raise funds from the public using "cryptocurrencies" or tokens (they can also be called initial token offering or token sale) and using the "blockchain" decentralized registration technology. In an ICO a company or a person issues *coins* or *tokens* and puts them up for sale in exchange for traditional currencies (for example, euros) or, more commonly, for virtual currencies such as Bitcoin or Ether.

The characteristics and purposes of *coins* or *tokens* vary from one ICO to another:

- Some of these *coins* or *tokens* are used to access or buy a service or product developed by the issuer using the benefits of the ICO.
- Others grant voting or participation rights in the future income of the issuing entity.
- Some do not have a tangible value.
- Some *coins* or *tokens* are traded and/or can be exchanged for traditional or virtual currencies on specialized currency platforms after they are issued.

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