

NEW CNMV CIRCULAR ON THE ADVERTISING OF CRYPTO-ASSETS FOR INVESTMENT PURPOSES

17 January 2022

- The new circular defines the rules on the content and format of the promotional messages of crypto-asset campaigns
- They shall include clear, balanced, fair and non-misleading content and information on the risks in a prominent manner, as well as the following warning: *“Investments in crypto-assets are not regulated. They may not be appropriate for retail investors and the full amount invested may be lost”*
- It establishes a mandatory procedure for prior communication to the CNMV of mass advertising campaigns addressed to 100,000 people or more
- It establishes the tools and procedures to make the supervision of the advertising activity of crypto-assets effective
- The crypto-assets themselves, their issuance and the services provided relating to them are not regulated

The Spanish Official State Gazette (BOE) has today published the [new CNMV Circular on the advertising of crypto-assets for investment purposes](#), which establishes the rules, principles and criteria to which this advertising activity must be subject. The aim is to ensure that the advertising of the products offers true, understandable and non-misleading content, and includes a prominent warning of the associated risks. This is particularly relevant in the field of crypto-assets as the absence of a complete regulation is a challenge for investor protection.

To this end, it defines the scope, specifies the advertising activity that must be subject to a prior communication regime and establishes the tools and procedures to be used to make the supervision of the crypto-asset advertising activity effective.

The new Circular establishes that the advertising of crypto-assets must be clear, balanced and fair, and the messages shall provide **information on the risks of the product which is easily understandable and visible**. Specifically, the following warning must be included: *“Investments in crypto-assets are not regulated. They may not be appropriate for retail investors and the full amount invested may be lost”*. In addition, links

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[CNMV](#) Communications Department

Tel.: 91 5851530 - comunicacion@cnmv.es



or indications to access further information shall be included, with expressions such as: *“It is important to read and understand the risks of this investment, which are explained in detail at this link”*.

The Circular defines the way in which the CNMV shall supervise and establishes a mandatory **prior communication regime** for mass advertising campaigns, defined as being those addressed to 100,000 people or more, which must be communicated to the CNMV at least ten days in advance. The remaining promotional activities shall also be subject to the supervisory action of the CNMV, but prior communication shall not be required. The Circular includes the procedures and deadlines for gathering information, opposing the commencement, demanding cessation or rectification of the advertising by the CNMV.

The Circular does not contain any rules related to the products themselves, or on their suppliers or the services provided in respect of these assets, but rather exclusively related to the requirements that the advertising activity intended for investment purposes must comply with.

The new Circular shall be applicable to crypto-asset service providers when they carry on these advertising activities, to advertising service providers and to any other natural or legal persons who carry on such activity on their own initiative or on behalf of third parties. These include natural persons who are paid to advertise and promote crypto-assets (products or services promoted via influencers).

The Circular establishes exemptions to the scope, such as the cases where crypto-assets have the nature of financial instruments (in which case the CNMV Circular 2/2020 on the advertising of investment products and services shall be applicable), when they are not used for investment purposes, certain “utility tokens” and solely non-fungible tokens, “white papers” of new issuances, certain presentations and publications of analysts or workshops, and corporate advertising campaigns when they comply with certain requirements.

The new Circular has been submitted to two rounds of public consultation; the last one was held between 14 June and 31 August 2021. The comments received have been borne in mind for the final draft of the Circular. The new Circular has been approved by virtue of the competences granted under Spanish Royal Decree-Law 5/2021, of 12 March, on extraordinary measures to support business solvency in response to the COVID-19 pandemic, incorporating a new Article 240 bis into the Spanish Securities Market Act (SMA) to reinforce the legal framework protecting citizens and investors with regard to the

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advertising of new financial assets and instruments in the digital sphere.

This Circular shall enter into force one month after its publication in the Spanish Official State Gazette (BOE), that is, on February 17, 2022.