



New Questions and Answers intended for FinTech companies on activities and services that may be related to CNMV

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What is the scope of action of an authorised entity to provide investment services in the case to in Article 35(3) of the consolidated text of the Securities Market Act in certain offers intended for the general public using any form of advertising exempted from prospectus requirements?

CNMV's reply

CNMV considers that this requirement of involvement of an authorised entity can be met in two ways:

- by intervening the entity authorised to provide investment services on the occasion of each individual subscription or acquisition of the securities or financial instruments as a placement agent, broker or adviser, subject to the rules applicable in each case,
- or by the intervention of the entity authorised to provide investment services validating and supervising in general the offer, in particular, the information provided to investors and the placement or marketing procedure used (without the need for intervention by an authorised entity on the occasion of each subscription or acquisition). With regard to the validation of information, the authorised entity must ensure that such information is clear, impartial and not misleading and that it refers to the characteristics and risks of the securities issued, as well as the company's legal, economic and financial situation, in a sufficiently detailed manner to allow the investor to make a well-informed investment decision.

What are the requirements for establishing a trading platform (exchange) for cryptocurrencies or other cryptoassets?

CNMV's reply

Currently there is no specific regulation on the so called trading platforms for cryptocurrencies or other cryptoassets or their activity.

However, CNMV considers that, as a minimum, these types of platforms should be subject to rules related to custody, registration, management of conflicts of interest between clients and transparency on fees (in addition to anti-money laundering regulations)¹. Therefore, CNMV recommends that these platforms voluntarily apply the principles of securities market regulations relating to the aforementioned matters in order to ensure the proper functioning of their activity.

The foregoing, however, only refers to cases in which the platform's activity focuses on cryptocurrencies or other cryptoassets that are not considered financial instruments. Insofar as the assets with respect to which these platforms carry on brokerage or trading activities should be considered financial instruments (in accordance with Article 2 of the consolidated text of the Securities Market Act), securities market regulations should be applied to them. One of the consequences would be that in such a case authorisations should have been granted to these platforms in order to carry on their activity, including where appropriate, authorisation as trading venue (such as a regulated market, a multilateral trading system or an organised trading facility) or as an investment firm (IF) or credit institution that operates as a systematic internaliser. The management of the trading venue should be carried out by an IF or a market operator and would be subject in general to market regulations and CNMV's supervisory scope.

¹ The fifth revision of the European Anti-Money Laundering Directive, which will enter into force in 2020, specifically extends its scope to virtual currency exchange service providers to fiat currency exchange service providers – exchanges – and to e-wallet custodial service providers.