



Spanish National Securities Market Commission (CNMV) Circular 1/2022 of 10 January, on the advertising of crypto-assets presented as a means of investment

I

Crypto-assets are becoming increasingly common in the financial system. While their development in the Spanish market offers significant opportunities, it also poses challenges in the area of investor protection as there is currently no comprehensive regulation in place which properly addresses the risks inherent to these assets.

The gains made by some crypto-assets have enhanced their investment appeal, compounded by the numerous advertising campaigns that have successfully persuaded minority investors to buy into these new assets with insufficient information about their characteristics and the risks they entail. The Spanish National Securities Market Commission (CNMV) and the Bank of Spain published a joint statement on 9 February 2021, building on another statement from 2018, in which they warned about the risks that these new types of assets pose for participants in the financial system and, in particular, for small investors. The statement highlighted the complexity, volatility and potential lack of liquidity of these investments.

In this context, Royal Decree-Law 5/2021, of 12 March, on extraordinary measures to support business solvency in response to the COVID-19 pandemic, introduced a new article 240 bis in the Spanish Securities Market Act (LMV) to strengthen the legal framework for the protection of citizens and investors with regard to the advertising of new instruments and financial assets in the digital area. In particular, the CNMV has been granted powers to subject the advertising of crypto-assets, and other assets and instruments that are not regulated by the LMV and that are offered as investments, to administrative control. The CNMV is also empowered to develop through Circular the scope of application and parties subject to the regulation, as well as the control mechanisms and procedures that will be applied to these advertising activities. As these are powers granted directly through a legally-binding standard, on 5 April 2021, the CNMV launched the required public consultation prior to the preparation and publication of a text for the Circular. This process ended on 16 April and conclusions were drawn, which have been taken into account in the preparation of this standard.

In exercise of the powers granted directly to the CNMV under article 240 bis of the LMV, the purpose of the Circular is to develop the rules, principles and criteria to which the advertising of crypto-assets shall be subject, in particular, to delimit the scope of application and the parties subject to such regulation, specify the advertising that shall be submitted to a prior notification regime and establish the tools and procedures that shall be used to effectively supervise the advertising of crypto-assets. It is important to note that this Circular does not contain any rules governing the products themselves, nor on their suppliers or characteristics, but relates exclusively to the requirements that the advertising aimed at offering these assets as a potential investment shall adhere to.

As for all forms of advertising, the products included in this Circular shall comply with the provisions of the General Advertising Act 34/1988, of 11 November, Law 3/1991, of 10 January, on unfair competition and other general regulations governing advertising.

It should also be noted that, even though the use of crypto-assets as a means of exchange is very limited, this rule should be understood to include all advertising that promotes the acquisition of crypto-assets that are in the scope of application of this Circular, even though they could occasionally be used as a means of exchange. Crypto-assets that are considered financial instruments, and therefore do not fall within the scope of this Circular, shall be governed by the Circular 2/2020 of 28 October of the CNMV, on the advertising of investment products and services.

II.

This Circular contains seven rules, one final provision and two annexes.

After the first and second rules, referring to purpose and definitions, the third rule establishes the scope of application of the Circular and defines the activities that are considered to be advertising. Additionally, the activities that are not considered to be advertising activities are established and will therefore be excluded from the scope of the Circular. These include certain professional activities (such as white papers, publications on crypto-assets issued by independent analysts or commentators that are not sponsored or endorsed), or certain non-fungible tokens or those which, due to their characteristics are not likely to be a means of investment.

The fourth rule establishes the parties subject to the regulation. In addition to crypto-asset service providers when they carry out advertising activities, advertising service providers shall also comply with this Circular, alongside any other natural or legal person who, on their own initiative or through third parties, engages in the advertising of crypto-assets.

The fifth rule sets out the requirements for advertising campaigns in terms of their format and content, as well as the information that commercial communications shall include regarding the risks of the products they advertise. It states that advertising should be clear, balanced, impartial and not misleading and, in the case of commercial communications and advertising that provide information on the cost or return of a crypto-asset, they should contain clear, accurate, sufficient and updated information that is appropriate for its nature and complexity, the characteristics of the method of dissemination used and the target audience. This is developed in Annex I of this Circular.

The sixth rule refers to the supervisory functions of the CNMV, distinguishing between mass campaigns aimed at the general public that will be subject to the prior notification regime described in the seventh rule and all other advertising activities which shall also be subject to the supervisory control of the CNMV. This includes the procedures and deadlines for collecting information from the parties subject to the regulation, requesting the termination or rectification of the campaign if it does not comply with the provisions of the Circular and applying sanctions where necessary.

The seventh rule establishes the prior notification regime that mass advertising campaigns shall comply with. For this purpose, the parties subject to the regulation shall provide a document of prior notification of the mass advertising campaign at least ten business days before its execution. This document shall adhere to the template included for this purpose on the CNMV website, in addition to the other documentation detailed in the aforementioned rule. For classification as a mass campaign, a scale based on the foreseeable scope of the campaign has been established, which may be adjusted by the CNMV based on the experience acquired in the application of this Circular. The text of the Circular also

clarifies that the lack of response from the CNMV within the indicated period of ten business days should not, under any circumstance, imply that the institution considers that the advertising that has been the subject of prior notification adequately complies with the standards established in this Circular.

The annexes to this Circular contain the general principles and criteria to which advertising must comply, as well as the minimum content of the information on the nature and risks that must be provided to potential investors in crypto-assets.

The CNMV Board, by the powers vested in it, and making use of the authorisation set down in article 240 bis of the Royal Legislative Decree 4/2015 of 23 October, approving the recast text of the Spanish Securities Market Act, introduced by the second final provision of Royal Decree-Law 5/2021, of 12 March, on extraordinary measures to support business solvency in response to the COVID-19 pandemic, pursuant to a report from the CNMV Advisory Committee and having heard the Council of State, has approved this Circular, which contains the following rules:

CHAPTER I

General provisions

Rule 1. Purpose.

The purpose of this Circular is to develop the rules, principles and criteria to which the advertising of crypto-assets shall be subject, in particular, to delimit the scope of application and parties subject to the regulation, as well as the powers of the CNMV in matters of supervision and control of the advertising of crypto-assets, in accordance with the provisions of article 240 bis of the recast text of the Securities Market Act approved by Royal Legislative Decree 4/2015, of 23 October.

Rule 2. Definitions.

For the purposes of the provisions of this Circular, these meanings shall be understood for the following terms:

a) "Advertising activity": any form of advertising, as defined in article 2 of the General Advertising Act 34/1988, of 11 November, carried out by parties subject to the regulation within the scope of their activity, regardless of the communication media, advertising media and formats used, such as television, cinema, radio, press, online advertising (in any of its forms, including social media, video channels, audios, news, blogs, search engines, specialised platforms or web pages) or mobile devices, all kinds of external advertising, direct mail, advertising at the point of sale, brochures, catalogues, promotional gifts, loyalty campaigns, sponsorship events, home visits, sponsored press articles or any other form of commercial communication.

b) "Advertising campaign": the actions carried out with the intention of advertising a product through a single advertisement or set of different advertising pieces published over a specified time period, although not necessarily simultaneously, which are related to each other, disseminated using different channels or tools over a specific period.

c) "Mass advertising campaign": advertising campaigns aimed at more than 100,000 people, using any advertising media and the following measurement criteria based on information from sources that are widely used in the advertising sector:

- Television: programme audiences by number of viewers.
- Radio: programme audiences by number of listeners.
- Printed media (newspapers, magazines and supplements): by number of readers.
- Outdoor advertising (on street furniture, means of transport or other media): estimated number of people who would view the advertising message or, if this estimate does not exist, the number of people who appear in the register of the towns and cities in which the outdoor advertising is installed.
- Digital media and search engines: by estimated audiences and visitors.
- Social media: the highest of the number of estimated users of the advertising campaigns and the number of followers of the accounts used.
- Sponsored videos: by the number of followers of the video issuer.

d) "Commercial communication": any form of transmission of verbal or visual information, intended to promote, directly or indirectly, through texts, images and/or sounds, the products included in rule 3.

e) "Crypto-asset": digital representation of value, a right, or an asset that can be transferred or stored electronically, using distributed ledger technologies or other similar technology.

f) "Advertising piece": the specific format (spot, television advertisement, banner, poster, podcast, etc.) through which an advertising message is transmitted depending on the communication or advertising medium used.

g) "Advertising message": information included in a commercial communication that is aimed at capturing the attention of the recipients to persuade them to acquire or use any of the products included in rule 3.

h) "Advertising service provider": third party that performs a process, service or activity for another party subject to the regulation, or related to them, in the area of advertising through an advertising contract, as regulated by the General Advertising Act 34/1988, of 11 November, a contract for the provision of services or an outsourcing agreement. Individuals who are perceived as influencers or experts in social or audio-visual media who, through referral programmes, offers or commissions of any kind, disseminate content that highlights the advantages of crypto-assets as an investment option shall also be included.

i) "Crypto-asset service provider": any natural or legal person whose professional or business activity consists of providing one or more services relating to crypto-assets to third parties.

j) "Crypto-asset services": professional or business activities related to crypto-assets, including the following:

- Trading crypto-assets on platforms.
- The purchase, sale or swap of crypto-assets.
- Advice on crypto-asset investments.

- The management of crypto-asset portfolios.
- Any form of remuneration of crypto-assets.
- Any other services or activities for the distribution of crypto-assets.

Rule 3. Scope of application

1. The Circular governs the advertising of crypto-assets that are the means of investment. For these purposes, any advertising directed at investors or potential investors in Spain which, implicitly or explicitly, offers or draws attention to crypto-assets as a means of investment will be considered to be advertising activity.

In all circumstances, it will be presumed that a crypto-asset is offered or attention is drawn to it as a possible means of investment when its acquisition is promoted or any reference to its return, price or value, current or future is made, which might suggest an opportunity to invest in such crypto-asset, even though it may occasionally be used as a means of exchange.

Likewise, in all circumstances, advertising will be understood to be aimed at investors in Spain when it is provided on physical media in Spain, through Spanish media (including web pages/domains) and when it is provided in Spanish or other official languages, unless it contains a statement that the services or products offered are not aimed at or accessible to investors in Spain.

2. For the purposes of this Circular, the following will not have the consideration of advertising of crypto-assets, and therefore will be excluded from its scope:
 - a) The advertising of crypto-assets that have the nature of financial instruments included in the annex to the recast text of the Spanish Securities Market Act, approved by Royal Legislative Decree 4/2015 of 23 October.
 - b) The advertising of crypto-assets, which due to their characteristics and nature are not suitable as a means of investment.
 - c) The advertising of crypto-assets, the only use of which is digital access to a product or service and which is accepted only by its issuer or by a limited set of commercial providers with whom the issuer maintains a contractual relationship, provided that there are no expectations of gain and the volume offered and conditions of the offer are in accordance with the actual rights that the crypto-asset would offer.
 - d) The advertising of unique and non-fungible tokens with other crypto-assets, when they represent collectible assets, works with intellectual property or assets whose sole purpose is for use in games or competitions, therefore not being offered massively as a mere means of investment .
 - e) Explanatory documentation for new issuances (“white paper”).
 - f) Corporate advertising campaigns, defined as those that only contain generic information about an entity subject to the regulation or its corporate purpose and that is intended to be made public, provided that:
 - No reference is made to the crypto-assets or the provision of services related to them.
 - Any advertising message that is included on the entity's website complies with the rules of this Circular.

- g) Documentation or information that is provided in presentations addressed only to analysts or institutional investors, made by the offeror, its representatives or third parties that perform this service on behalf of the offeror on a new issuance of crypto-assets for the purpose of gauging the interest of institutional investors in the issuance.
- h) Publications on crypto-assets which are not sponsored or endorsed, issued by independent financial analysts or commentators.
- i) The advertising of technical seminars, courses and conferences on crypto-assets that under no circumstances encourage investment therein. If they are provided free of charge or for a symbolic price and are promoted or held by the parties subject to this regulation or parties related thereto, it will be presumed that they are intended to promote such investment and shall be subject to this Circular.

Rule 4. Parties subject to this regulation.

This Circular will be applicable to the following parties:

- a) Crypto-asset service providers when they engage in crypto-asset advertising activities.
- b) Advertising service providers.
- c) Any natural or legal person, other than those indicated in previous points, who on their own initiative or on behalf of third parties, engages in an activity of advertising of crypto-assets.

CHAPTER II
Control of advertising

Rule 5. Content and format of the advertising message.

1. When designing their advertising campaigns and each of the advertising pieces that comprise them, parties subject to this regulation shall comply with the provisions of Annex I of this Circular. For this purpose, they shall take into account the nature and complexity of the advertised product, the characteristics of the communications media used and the target audience.
2. All commercial communications must include information on the risks of the product they advertise, specifically:
 - a) The following warning shall be included in the commercial communication, using a format and positioning that ensures its relevance in the advertising piece and not as secondary information or as a footnote: *"Investment in crypto-assets is unregulated, may not be suitable for retail investors and the entire amount invested may be lost."*
 - b) A link or reference to the location of the additional information shall be included, in accordance with the provisions of point 8 of Annex I, which shall, as a minimum, refer to the information and risks identified in Annex II, when they apply to the advertised product. The link must be identified with the following text: *"It is*

important to read and understand the risks of this investment, which are explained in detail in this site”.

When the medium used only allows for a reference, an indication must be given of where information about the risks can be found and the importance of reading that information.

CHAPTER III

Supervision of advertising activity

Rule 6. Supervisory function of the CNMV. Procedure to request the termination or rectification of the advertising activity.

1. Advertising activity aimed at investors in Spain shall not require prior CNMV notification, except in the case of mass advertising campaigns as referred to in rule 2c) of this Circular. However, even when they are not mass advertising campaigns in the strictest sense, some parties subject to the regulation may be required to provide prior notification for all their advertising campaigns, where it is considered necessary due to the potential impact on their target audience.
2. In the exercise of its supervisory function, the CNMV can ask the parties subject to the regulation to provide specific information on advertising campaigns or pieces in order to assess their compliance with the requirements set forth in this Circular. This type of request must be answered by the entity within a period of three business days.
3. Specifically, the parties subject to the regulation shall be obliged to keep a register of the following information and documentation relating to ongoing advertising campaigns and those carried out in the past two years:
 - a) General information on the campaign: starting and end date, territorial scope, description of the target audience, list of the media and advertising channels used for dissemination and a quantitative estimate of the number of people to which it is being targeted, according to the calculation parameters specified in rule 2c).
 - b) Specific information on the advertising pieces: a copy must be kept of all advertising pieces with a different message (including clarifications or legal warnings) or format (radio spot, television advertisement, banner, poster, etc.) broadcast during the campaign, in the original format or in electronic format that can be accessed.
 - c) Identification of the advertising service providers and the advertising contracts or agreements entered into.
4. The CNMV can inform the parties subject to this regulation of any non-compliance noticed in their advertising activity and request its termination or rectification.
5. If a party subject to this regulation receives a request for termination or rectification, it must act, as rapidly as possible and in any case within a maximum period of two business days, to either demonstrate its compliance to the CNMV, or object to the decision, in which case it will put forward the reasons on which its objection is based. The CNMV can establish a different response time depending on the content of the

advertising message, the means of communication and formats used or the potential risks of the advertising campaign or piece involved.

6. Once the pleas submitted by the parties subject to the regulation have been assessed or the deadlines established in section 5 above have elapsed with no pleas having been presented, the CNMV will notify the party either of the confirmation of the request, or the required modifications, or that the case has been closed, which will put an end to the proceedings.
7. If the resolution that puts an end to the proceeding confirms the request for termination or rectification in all or some of its terms, the party subject to the regulation shall comply within a maximum period of two business days, unless the CNMV establishes a different period in its notification, through the same means used for the dissemination of the advertising campaign or piece and with the same scope, all without prejudice to the possibility of filing the corresponding administrative appeal.
8. The measures established in this rule must be implemented without prejudice to the application, where appropriate, of the sanctions provided for in the applicable regulations.

Rule 7. Mandatory prior notification for mass advertising campaigns.

1. Parties subject to the regulation that carry out mass advertising campaigns must provide the documentation and information indicated in this Circular at least ten business days before their execution.
2. They must present a document giving prior notification of the mass advertising campaign that shall adhere to the template included for this purpose on the CNMV's website, in addition to the following documentation, which shall be clear, concise, consistent and sufficient to allow an assessment to be made of the scope and impact it may have on the public:
 - a) General information about the campaign: details of the crypto-assets that are the object of the campaign or the services to be advertised, description of the target audience and a list of the media and advertising media used for their dissemination.
 - b) Specific information on the advertising pieces: a copy of all advertising pieces with a different message (including clarifications or legal warnings and warnings about risks) or format (radio spot, television advertisement, banner, poster, etc.) to be broadcast during the campaign, in the original format or in an electronic format that can be read or accessed.
3. The prior notification referred to in the previous section will allow the advertising campaign to start ten business days after its presentation, unless the CNMV indicates otherwise. Under no circumstances shall a lack of response from the CNMV during the period between the notification and the start of the campaign imply that the CNMV considers that the campaign complies with all the rules contained in this Circular.
4. Failure to submit the prior notification shall result in the impossibility of continuing the affected advertising activity from the moment such events is known, without prejudice to the responsibilities that may arise.

Final Provision One. Authorisation to increase the threshold for mass campaigns.

The Board of the CNMV is empowered to increase the figure used as a reference when classifying a campaign as “mass”, taking into account the circumstances and the experience gathered and after a specific and duly reasoned analysis.

Final Provision Two. Entry into force.

This Law will enter into force one month after its publication in the Official State Gazette (BOE).

ANNEX I

General principles and criteria.

1. Advertising on crypto-assets must be clear, balanced, impartial and not misleading. To this end, it shall use simple and easy to understand language and the omission of relevant information or the inclusion of ambiguous, biased, incomplete or contradictory information that may lead to confusion must be avoided. Articles published using any media or communications that are sponsored or endorsed must include a clear and visible mention of this fact. In the case of videos or audios, it shall be indicated at the beginning.
2. The information contained in commercial communications must be coherent and must not contradict the information or warnings that the regulated parties provide to customers when marketing crypto-assets.
3. Commercial communications and advertising pieces that provide information on the cost or return of a crypto-asset shall contain clear, accurate, sufficient and updated information, in a manner appropriate to its nature and complexity, the characteristics of the medium of dissemination used and the target audience.
4. Commercial communications shall make no reference to substantial past returns and if they do so:
 - a) Any quantitative information on the cost or past performance of the crypto-asset included in the advertising message must expressly indicate the period of time to which it refers. If revaluations are indicated for this period, the same information for the interim period, before or after, in which there would have been higher percentage depreciation shall also be indicated, with the same prominence. When two or more quantities are included, they must refer to the same period of time.
 - b) Information about past performance should not be partial or biased. Returns on periods of less than 12 months must not be included.
 - c) Likewise, returns on periods greater than one year may be provided if it is additional information to the minimum data required in this section. These returns must not appear in a prominent position compared to the rest of the text. The years that have been used to calculate the performance must be clearly and visibly identified (these years shall be the most recent and be consecutive).
 - d) The terms in which the return is expressed must be indicated in a sufficiently visible manner as well as the period of time to which it refers.
 - e) Historical performances must not be the most prominent feature of the communication and must not be presented in a larger font size or highlighted. Furthermore, it should be clearly stated that past performance is not a reliable indicator of future performance.
5. The advertising messages and the way they are presented must allow the advertising piece to be properly understood and not create disproportionate or false impressions or expectations that could be deemed an incentive to trade with the crypto-asset or provide an unrealistic view of the characteristics or duration of the offer.
6. When messages of a secondary or less prominent nature are included in the advertising piece, they shall not contradict the main message.

7. Taking into account the characteristics of the advertising medium used, commercial communications and advertising pieces must be designed in such a way that no information that could be used in the decision-making of the potential investor is omitted or concealed.
8. When the means of communication or the advertising format used imposes space or time limitations so that it is not possible to include all the relevant information or warnings about the crypto-asset in the initial advertising piece, a referral must be made to alternative sources of information or the information must be shown in a secondary advertising piece, to ensure that all the relevant information or warnings about the crypto-asset can be quickly and easily accessed.

When the commercial communications issued through digital or social media, include relevant information in the form of images, videos or other visual, audio or audio-visual formats in order to overcome limitations of space or time, its viewing by the recipient shall be encouraged via the indications included in the advertising message (e.g. "click on the image" or "see this address for more information", a QR code or similar formulas), and include the following message: "It is important to read and understand the risks of this investment, which are explained in detail here".

9. In audio-visual, radio or any other media in which an advertising message is disseminated, the relevant information must be played for a sufficient amount of time to ensure it is properly perceived.
10. No mention shall be made of limitations or exemptions from responsibility of parties subject to the regulation in the advertising content. For advertising disseminated through social media, the party will be responsible for complying with the provisions of this rule when forwarding texts or content shared by a third party, particularly clients, in which the benefits of the advertised crypto-assets are expressly endorsed or highlighted, even if they have not created the original content of the communication.

Other criteria relating to the content and format of advertising messages.

11. Advertised crypto-assets must be clearly identified and the use of words or expressions that may generate uncertainty about their nature and characteristics or about the risks associated with them must be avoided.

Similarly, when an offer is being made that involves trading simultaneously with two or more crypto-assets of different characteristics, this must be clearly indicated.

12. The inclusion in the advertising message of superlative or diminutive adjectives, or expressions that suggest the advantages of the crypto-asset, must be based on objective and verifiable factors or data. Otherwise, they must be avoided, especially in terms of expressions related to their cost or performance. If the advertising message includes a comparison between crypto-assets or with other products, they must have the same purpose or satisfy the same needs, and an objective comparison must be made between one or more of their main characteristics, which must be relevant, verifiable and representative.
13. When an offer has a specific validity period, this must be expressly stated. When the validity is conditional on any other variable (for example, reaching a certain volume), this should be mentioned in the body of the main message with the appropriate relevance.

14. If the advertising message refers to certain tax benefits, it must be clearly stated whether this is of a general nature or whether it depends on the personal situation of the client or potential client.
15. Any mention of the term "gift" or other equivalent terms must be avoided in cases in which there may be a tax impact for the delivery of a good or a sum of money as an incentive to trade in crypto-assets and, in particular, in all transactions which tax regulations qualify as remuneration in kind.
16. The font size, in particular the size used for warnings and clarifications, must be sufficient for the advertising format and the distance at which the text will be read, and the warning and the link mentioned in a and b of point 2 of Rule 5 must occupy no less than one fifth of the total surface area of the piece. The typography of the warning shall be easily readable or visible, paying special attention to the size of the font and the contrast with the background.
17. When using audio or video, the warning shall be long enough to be able to be clearly and completely conveyed. When the audio or video is longer than 60 seconds, the warning must be included at the beginning and end of the broadcast. In all other cases, it must be inserted at the end of the piece.
18. The typeface and fonts used in the advertising message must be easily legible.

ANNEX II

High risk investment product

1. The value of investments and the returns obtained from them may experience significant upward and downward variations and the entire amount invested may be lost.
2. Investments in early-stage projects involve a high level of risk, so it is necessary to properly understand their business model.
3. The crypto-assets in the scope of this Circular are not covered by client protection mechanisms such as the Deposit Guarantee Fund or the Investor Guarantee Fund.
4. The prices of crypto-assets are established without any mechanisms that ensure their correct formation, such as those used in regulated securities markets.
5. Many crypto-assets may lack the liquidity necessary to allow an investment to be unwound without significant losses, since their distribution among investors, both retail and professional, can be very limited.

Technology risks

6. Distributed ledger technologies are still in an early stage of development as many of these networks have been created very recently, so they may not be sufficiently tested and there may be significant failures in their operation and security.
7. The registration of transactions in networks based on distributed ledger technologies is carried out through consensus protocols that may be susceptible to attacks that attempt to modify the register. If they were to be successful there would be no alternative register that backs up the transactions and hence the balances corresponding to the public keys and therefore all the crypto-assets could be lost
8. The anonymity that crypto-assets can make them a target for cyber criminals, since if credentials or private keys are stolen the crypto-assets may be transferred to addresses that make their recovery difficult or impossible.
9. The custody of crypto-assets is a large responsibility since they can be lost in their entirety in the event of theft or loss of private keys. The entity that carries out the custody of the advertised crypto-assets, the country in which it is carried out and the applicable legal framework must be identified.

Legal risks

10. The acceptance of crypto-assets as a means of exchange is still very limited and there is no obligation to accept them.
11. When the service provider is not established in a European Union country, the resolution of any conflict could be costly and fall outside the jurisdiction of the Spanish authorities.
12. When the investor does not have the crypto-assets, as they are in the service provider's digital wallets and with no access to their private keys, this will be indicated and the investor's rights in relation to the crypto-assets duly stated.