# RocaJunyent Informs

Banking and Finance Department
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## Circular 1/2022, of 10 January, of the National Stock Market Commission (CNMV), regarding the advertising of cryptoassets presented as investment objects (the "Circular 1/2022")

Circular 1/2022 sets out the rules, principles and criteria to which the advertising of cryptoassets presented as investment objects must be subject, defining the objective and subjective scope of application, as well as the CNMV's powers to supervise and control the advertising of cryptoassets.

The main aspects of Circular 1/2022 to be taken into account are the following:

### 1. What is understood by advertising activity?

It is any advertising aimed at investors or potential investors in Spain that implicitly or explicitly offers or draws attention to cryptoassets as an investment object.

In particular, when their acquisition is promoted or any reference is made to their current or future profitability, price or value, which could suggest an opportunity to invest in such cryptoassets, even if they may eventually be used as a means of exchange.

## 2. When is the activity deemed to be carried out in Spain?

It is presumed to be aimed at investors in Spain when it is carried out (i) by physical means within the Spanish territory, (ii) through Spanish media (including websites/domains), as well as (iii) when they use Spanish or official languages unless measures are established to prove that the services or products offered are not aimed at or accessible to investors in Spain.

## 3. What type of advertising is not subject to Circular 1/2022?

- The following forms of advertising are excluded from the scope of the Circular:
    - Advertising of cryptoassets that have the nature of financial instruments under the Securities Market Law (LMV), which will be governed by CNMV Circular 2/2020, on the advertising of investment products and services.
    - Advertising of cryptoassets which, due to their characteristics and nature, are not suitable for investment purposes.
    - Advertising of pure utility tokens: those whose sole use is digital access to a product or service and are accepted only by the issuer or a limited group of related providers, provided that there is no expectation of revaluation and the volume of the issue is in line with the rights offered.
    - Advertising of certain "NFTs" (Non-Fungible Tokens): those that are unique and not fungible with other cryptoassets, provided that they represent collectible assets, works with intellectual property or assets whose sole purpose is their use in games or competitions, so that they are not massively offered as a mere investment object.
    - "White papers", i.e., the explanatory documentation for a new issue.
    - Corporate advertising campaigns containing exclusively generic information about a regulated entity or its corporate purpose, intended to make itself known to the public, provided that:
        - No reference is made to cryptoassets or the provision of services on cryptoassets.
- Any advertising message included on the website of the obliged entity must comply with the rules contained in Circular 1/2022.
    - Documentation or information provided in presentations intended for analysts or institutional investors only.

- Publications issued by financial analysts or independent commentators, which are not sponsored or promoted, on cryptoassets.

- Advertising of certain technical seminars, courses and conferences on crypto-assets that in no case encourage investment in them. It should be noted that in cases where these are provided free of charge or for a symbolic price and are promoted or held by the regulated entities or parties related to them, it shall be presumed that they are intended to promote such investment and, therefore, they shall be subject to the provisions of Circular 1/2022.

## 4. Which persons or entities are subject to Circular 1/2022?

The Circular shall apply to:

- Providers of cryptoasset services;
- Providers of advertising services; and
- Any other natural or legal person who carries out advertising activities on cryptoassets on their own or on behalf of third parties (this includes the so-called "influencers" or content creators).

## 5. What are the requirements for the advertising activity regulated in Circular 1/2022?

All advertising campaigns must contain clear, balanced and impartial information and comply with the provisions of Annex I of Circular 1/2022, taking into account in all cases the nature and complexity of the product advertised, the characteristics of the media used and the target audience.

In addition, all commercial communications must provide information on the risks of the advertised product and in particular:

- The warning "Investment in cryptoassets is unregulated, may not be suitable for retail investors and the full amount invested may be lost" should be prominently displayed.

- In addition, a link or indication of the location of the additional information shall include at least a reference to the information and risks identified in Annex II of Circular 1/2022 where applicable to the advertised product, including the statement: "It is important to read and understand the risks of this investment, which are explained in detail in this location".

## 6. Is prior notification to the CNMV of advertising activity required?

As a general rule, prior notification to the CNMV of an advertising activity regulated in Circular 1/2022 is not required.

However, prior notification to the CNMV is required in the following cases:

- In the case of mass advertising campaigns: those targeting more than 100,000 people using any advertising means.
- In the case of all advertising campaigns of those obliged entities in which the CNMV considers it appropriate due to the impact they may have on the target audience (even if they are not massive campaigns in the strict sense of the term).

Such prior notice must be given within 10 working days before implementation.

## 7. What other powers are attributed to the CNMV?

In the exercise of its supervisory function, the CNMV may require obliged entities to provide specific information on advertising campaigns or pieces. To this end, obliged entities must keep a register with certain information on the campaigns carried out in the last two years.

Likewise, the CNMV may require the advertising to cease or be amended.

## 8. When does Circular 1/2022 enter into force?

Within one month from its publication in the Official State Gazette (BOE), i.e., on 17 February 2022.