

NEW RESTRICTIONS ON CRYPTO-ASSET MARKETING

Martina Hoffard, Head of Marketing, Spectrum Markets, explains Spain's move to control the promotion of crypto-assets



Not too long ago, we spoke with Martina Hoffard, Head of Marketing at Spectrum Markets, about regulation applicable to financial advice. Now we have to speak again since Spain has placed restrictions on influencers' promotion of crypto-assets. As this is the first time such ban has been imposed in the European Union, we want to discuss the details, the rationale and the ramifications.

Martina, what exactly is the ban imposed by the Spanish government?

Rather than imposing an outright ban on the promotion of crypto-assets, the Spanish National Securities Market Commission (CNMV) has obliged marketing and PR firms, individuals with more than 100,000 followers on social channels in Spain and their sponsors to notify the authority at least 10 days in advance of advertising crypto-assets. Influencers are explicitly addressed by the legislation: where they receive payments or non-monetary benefits for their promotion of crypto-assets, they must disclose this fact as well as providing a "Clear, balanced, impartial and non-misleading" warning about the risks of crypto-assets. They must also include a statement explaining that investments in crypto-assets aren't regulated.

They aren't regulated yet...

Which is the same from a legal standpoint. But I know you refer to the upcoming European MiCA regulation. And that's an important point because with this step, the Spanish government has entitled the CNMV to regulate crypto-assets before the European Commission (EC) has adopted a common framework that incorporates the rules of conduct regarding communication to clients.

Will that become a problem further on down the line?

I don't think so. If you read the CNMV's line "Clear, balanced, impartial and non-misleading" and compare this with MiFID II's "Fair, clear and not misleading information requirements" – which will very likely be adopted by MiCA – the similarities are clear. Should MiCA include other wording or details, there would need to be an alignment, which will be quite straightforward. It may well be that the EC will stipulate fines other than the maximum EUR 300,000 that is imposed by the CNMV for breaching the rules. Otherwise, I don't see potential conflicts. What I find remarkable is that the CNMV has ruled on the basis of a legislative framework that was adopted by the European Union for traditional financial instruments a few years ago. This is a sign of a strong regulatory convergence.

Why did Spain take this step now?

The trigger was a dispute between the CNMV and a Spanish soccer star who promoted a bitcoin exchange on Twitter. The CNMV replied to his tweet, warning that crypto-assets are unregulated products with significant risks attached. But the issue goes far beyond this dispute.

What is the issue?

There are two points. First and most importantly, it is notable that the focus has been put on social media influencing. This demonstrates that the influence of social media is being taken seriously by authorities and governments. And it addresses a phenomenon referred to as FOMO - or Fear of Missing out - which is a key element of social media advertising. Like with doorstep selling or phone marketing, FOMO is understood to push consumers to make decisions quickly, without the chance to reflect the risks inherent to that decision. The second point is that, in almost every other area – not just in capital market related issues – European legislation, be it national or supranational, has responded to the risks attached to quick decisions by private consumers with cancellation options, restrictions or bans. And since investment decisions always come with relevant risks, this ban by CNMV is understandable. Finally, it is noteworthy that Spain is not alone with its decision.

Who else has put similar restrictions in place?

In the United Kingdom, the ASA had similar experiences to the Spanish CNMV with crypto-asset advertisers. As a result, the UK government intends to treat crypto-asset advertising like other financial promotions and subject it to the financial promotion regime of the FCA. As the British government announced in January, it is important that consumers are not being sold products with misleading claims". Interestingly, the "Fair, clear and not misleading" principle can also be found in the British draft legislation. While European countries are about to restrict but not prohibit crypto-asset ads, Singapore went farther. The city-state has banned crypto advertising where it is directed at the general public, i.e., in public areas and social media. In its dedicated guidelines, the Monetary Authority of Singapore said it "has consistently warned the public that the trading of digital payment tokens (DPTs) is highly risky and not suitable for the general public. The public should not be encouraged to engage in the trading of DPTs".

Let's not forget Google. The search engine operator changed its advertising policy in August, 2021. In March 2018, Google prohibited all crypto advertising. In September of the same year, Google reversed this general ban and allowed cryptocurrency exchanges to advertise in the United States and in Japan.

Now, cryptocurrency wallets are also allowed to advertise so long as they have a FinCEN registration as a Money Services Business and with at least one state as a money transmitter (or a registration by a federal or state chartered bank entity). However, ads for ICOs, Blockchain-based trading or lending protocols and, similar to the recent European bans, celebrity cryptocurrency endorsements remain forbidden. By the way, these rules apply to Google clients worldwide and include affiliated platforms such as YouTube or Gmail.

Which impacts do you expect from these new rules?

The cumulative effect of these various bans and restrictions remains to be seen. The current focus on public safety, however, should always be a priority. The establishment of consistent supranational rules – as we are seeing in Europe – will provide welcome clarity for investors and issuers alike, providing space for safe and sustainable growth in the field of crypto-assets.

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