

PUBLICATION OF THE NEW CNMV CIRCULAR 2/2020 OF 28 OCTOBER ON THE ADVERTISING OF INVESTMENT PRODUCTS AND SERVICES

On 13 November, Circular 2/2020 of 28 October on the advertising of investment products and services (the “Circular”), of the Spanish National Securities Market Commission (the “CNMV”), was published in the Official State Bulletin (BOE). This Circular complements and develops Order EHA/1717/2010, of 11 June, on the regulation and control of advertising of investment services and products, of the Ministry of Economy and Finance (the “Order”).

In order to standardise the regime for the advertising of investment and banking services (recently developed by the Bank of Spain’s Circular 4/2020 on advertising of banking products and services, more information on which can be found in our Information Briefing [here](#)), the Circular develops and extends the obligations already provided for by the Order as follows:

A. Delimitation of the content of advertising

Firstly, the Circular defines the scope of the advertising communications that are subject to it which, in summary, are communications addressed to investors or potential investors resident in Spain and related to any aspect linked to financial products, services or activities subject to the supervision of the CNMV.

Secondly, the Circular **excludes certain informative content from its scope**, such as information provided to investors prior to contracting (including warnings on the characteristics and risks of the products or services), corporate advertising campaigns, the publication of objective data on a financial instrument or documentation provided in presentations to professional investors or analysts.

In any case, information or a communication published in the media will be deemed to be advertising if it concerns the **products and services of a given entity and such entity pays or provides any type of remuneration for its distribution**.

Furthermore, advertising directed at retail investors or the general public is not permitted when it concerns a product or service which cannot be provided to retail clients.

B. Entities affected

In relation to regulated entities, the Circular includes within its scope both those entities which traditionally provide investment services (investment services companies, credit institutions and management companies of collective investment schemes, whether

Spanish or a branch of a foreign entity in Spain, and to a more limited extent, those entities authorised to operate in Spain under the regime of freedom to provide services) and crowdfunding platforms.

On the other hand, the Circular establishes that some of its provisions will also be applicable to other types of entities if they carry out advertising activities in relation to the products and services provided for in the Circular aimed at investors or potential investors that are resident in Spain, including any party interested in a public offer for the purchase or sale of securities, as well as any entity that on its own initiative carries out advertising of investment services.

C. Advertising: format and content control

Similarly to the regulation on the advertising of banking services, the Circular covers both traditional formats and digital media or social networks.

Likewise, commercial communications must in all cases be **consistent** with the informative content - including warnings - required in the context of the marketing of products and services, as well as by virtue of a specific decision or requirement of the CNMV.

The annex to the Circular sets out the criteria to which the advertising activity to be carried out by the entities must conform. Among other things, the **annex** sets out conditions regarding the minimum information that communications must include (including their relationship to secondary messages included in the same communication, and the responsibility of the entities for the content distributed) as well as specific criteria regarding the language and format of the messages.

With regard to the **commercial communication policy** - already provided for in the Order - the obligation to have an internal policy is extended to all entities that fall under the scope of the Circular, and the content of such policy is developed more extensively and specifically.

D. Recording advertising and joining advertising self-regulation systems

The Circular specifies the **characteristics and minimum content of the internal record** on the various advertising activities carried out by each entity, which must be kept up to date.

The **possibility for entities to voluntarily join** advertising self-regulation systems is also maintained.

E. Supervision of advertising

The Circular regulates the procedure by which the CNMV, in the exercise of its supervisory function, may order the cessation or rectification of advertising that does not comply with the established requirements, without prejudice to the application, where appropriate, of the penalty system provided for in the regulations applicable to the entities concerned.

F. Entry into force

The Circular will generally enter into force on 28 January 2021, except for the obligations relating to the internal advertising records (rule seven), which will enter into force six months after the Bank of Spain publishes its technical specifications in this regard.

In short, the new Circular aims to strengthen the control of advertising in the field of investment products and services, as well as to adapt advertising to the changes in the sector and new players.

This Legal Briefing was prepared by Carlos Pérez Dávila and Adriana Ordoño, Partner and Associate in the Banking and Finance practice.

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