
CNMV Draft Circular on advertising investment products and services

Legal flash

August, 2020

The Spanish Securities and Exchange Commission (“CNMV”) has opened a public consultation on the mechanisms to regulate and monitor the advertising of investment products and services (the “[Circular](#)”). The Circular is based on Circular 4/2020, of the Bank of Spain, on advertising banking products and services. The deadline to return comments is September 11, 2020.



The CNMV considers that the proposed Circular is essential at a time when advertising activities related to complex financial products have increased, and believes that the criteria adopted for supervising the content of advertising messages should be disseminated. Highlights:

- The Circular will apply to all institutions supervised by the CNMV that carry out advertising activities related to investment products and services and that operate in Spain under the freedom to provide services regime, and to other institutions not supervised by the CNMV that carry out advertising activities targeting investors resident in Spain.
- It lays down the general principles concerning the **content and format** of advertising messages.
- It specifies the **internal organization requirements**, particularly those regarding the commercial communications policy, the responsibility of the governing body of institutions and the **internal records** of their advertising activities.
- It establishes a procedure under which the CNMV can order the **cessation or rectification** of advertising that does not comply with the Circular.



Subjective scope of application

- The Circular will apply to institutions that carry out advertising activities related to investment products and services **targeting investors or potential investors resident in Spain**:
 - (a) Investment services companies.
 - (b) Credit institutions, which will be considered to have fulfilled the requirements on internal monitoring and advertising records, as long as they apply the procedures, internal monitoring systems and rules on recording advertising activities set out in Circular 4/2020, of the Bank of Spain, on advertising banking products and services.
 - (c) Collective investment undertaking management companies and companies managing closed-ended collective investment vehicles.
 - (d) Crowdfunding and crowdlending platforms.
 - (e) **Branches in Spain** of the institutions specified in (a), (b) and (c) above, authorized in a Member State of the European Union or a third state.
 - (f) Institutions specified in (a), (b) and (c) above that are authorized in a Member State of the European Union **and that operate in Spain through an agent** established in Spanish territory.
 - (g) Institutions specified in (a), (b) and (c) above that are authorized in a Member State of the European Union and that operate in Spain under the **freedom to provide services regime**, and institutions authorized in a third state and that operate in Spain without a branch, which must apply the rules on the content and format of advertising messages, self-regulation systems, the supervisory role of the CNMV, and the principles and criteria governing advertising on investment services and products.
 - (h) Any party interested in a takeover bid or a public offering for the subscription or sale of securities, other than the financial intermediaries listed above, with the exceptions provided under Order EHA/1717/2010, which must apply the rules on the content and format of advertising messages, the supervisory role of the CNMV, and the principles and criteria governing these advertising activities.
 - (i) Any other institutions, other than those listed above, that carry out or ask third parties to carry out advertising activities promoting products and services targeting potential investors resident in Spain, which must apply the rules on the content and format of advertising messages, the supervisory role of the CNMV, and the principles and criteria governing these advertising activities.



Control of advertising

General principles and criteria on content and format

- > The annex of the draft Circular sets out the general principles and criteria regarding the content and format of advertising messages. **The nature and complexity of the product or service offered must be taken into account, as well as media used for dissemination and the target audience.**
- > Advertising on investment products and services must be **clear, balanced, objective and not misleading, using language that is simple and easy to understand.** It must avoid using ambiguous, biased, incomplete and contradictory information that may lead to confusion. The information provided in commercial communications must be coherent and cannot contradict the information or warnings that institutions are obliged to give clients when advertising their products or services.
- > **Advertising messages and how they are delivered must enable the adequate understanding of the advertising piece,** bearing in mind the target audience for the product or service, and must avoid creating any false or disproportionate expectations. The typeface and font of the message must be easily legible.
- > Also, advertising broadcast through **audiovisual or radio media** must satisfy the criteria laid down in the Circular. In these cases, the audience must be given enough time to properly assimilate the most relevant information. If advertising is broadcast through **social networking platforms**, the institution must meet the principles and criteria provided in the annex of the Circular when it forwards texts or contents shared by a third party, particularly clients, that support or highlight the benefits of the product or service the institution is advertising, even if the institution did not create the original content of that message.

Procedure and internal monitoring

- > **Institutions must have a commercial communications policy,** including the appropriate procedures and internal monitoring systems to comply with the Circular, which must be **proportional to the scale and complexity of its advertising activity,** to the complexity of the products or services offered, and to the characteristics of the target audience and the advertising media used.
- > The commercial communications policy must specifically describe, among others, the institution's advertising activity, the functional areas of the institution in charge of internal review of the advertising pieces, and the procedures and internal monitoring systems adopted to manage the risks derived from the advertising activity.
- > The governing body of each institution will be in charge of establishing **the commercial communications policy,** which must have received a favorable report on the tasks of



regulatory compliance, or the corresponding monitoring tasks if there are no regulatory compliance requirements, and **must be kept updated and available to the CNMV**.

- Institutions must keep **internal records, duly updated and at the disposal of the CNMV**, which must contain all the information on advertising campaigns they have launched, ensuring it is in order and in separate files. These records will be filed and kept available to the CNMV for five years from the beginning of the advertising campaign.
- Under the Circular, institutions can adhere to **self-regulation systems**, considered a way to demonstrate they comply with the rules on the content and format of advertising messages, as long as they adequately use their tools for prior advice, which in no case relieves them, among others, of their obligation to carry out an internal review of their advertising pieces.

Monitoring of advertising activities

Supervisory role of the CNMV

- Advertising activities targeting investors resident in Spain **will not require the CNMV's previous authorization, although** in carrying out its supervisory functions, **it may ask institutions for specific information on their advertising campaigns or pieces** so that it can make sure they are in line with Order EHA/1717/2010 and the Circular.
- The CNMV can order the cessation or rectification of the advertising activity if it detects any violations.

For additional information, please contact Cuatrecasas.

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