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Joint press statement by CNMV and Banco de España on "cryptocurrencies" and "initial coin offerings" (ICOs)

Lately, there has been a worldwide proliferation of certain assets generally known as "virtual currencies" or "cryptocurrencies", among which the bitcoin is the most prominent one. These cryptocurrencies are not backed by a central bank or any other public authority, and while they are occasionally presented as an alternative to legal tender, their characteristics differ greatly from the latter:

- The acceptance as a mean of payment of a debt or other obligations is not mandatory.
- Their circulation is very limited.
- Their value fluctuates widely, meaning that they cannot be considered as a sound store of value or a stable unit of account.

Debate on this type of asset has, in recent months, seized the attention of the media and the public at large essentially for two reasons. The first is that cryptocurrencies have appreciated strongly, following typical speculative bubble patterns, accompanied by extreme price changes. By way of example, the average value of the bitcoin on its main (unregulated) trading platforms increased in 2017 from approximately €850 per unit at the start of the year to over €16,000 by mid-December. Since then, it has moved on a declining trend, with falls in just a single day of up to 20%. As at 5 Frebuary, its price stood below €5.500, down more than 65% from its December peak. Anybody who had bought bitcoins in late 2017 and were to sell them today would incur very heavy losses[1].

Additionally, numerous investor fund-raising initiatives are under way to finance projects through what are known as "initial coin offerings", or ICOs, an acronym that evokes the IPO (Initial Public Offering) used in relation to stock market flotations.

An ICO may refer both to the issue per se of cryptocurrencies and to the issue of rights of diverse nature generally called "tokens". These assets are put on sale in exchange for cryptocurrencies, such as bitcoins or ethers, or for official currency (such as euro).

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[1] Source: blockchain.info

The uses and characteristics of these "tokens" vary, yet the most common classification distinguishes between two types or categories:

- "Security tokens": these generally provide a share in the future revenues or increased value of the issuing venture or of a business.
- "Utility tokens": these entitle access to a service or to receive a product, without prejudice to which mention is usually made on the occasion of the offering to appreciation and liquidity expectations or to the possibility of trading them on specific markets.

CNMV and Banco de España note that, to date, no cryptocurrency issue or ICO has been registered, authorised or verified by any supervisory agencies in Spain. This means that there are no ICO-issued cryptocurrencies or tokens purchased or held in Spain that may avail of any of the guarantees or safeguards envisaged under the regulations on banking or investment products.

These phenomena are not particular to Spain but are arising in many countries and have a clear international dimension. Cryptocurrencies are offered on the Internet globally and their issuance and marketing commonly affects several jurisdictions. Therefore, it is desirable to address this matter at international level and advisable for regulators and supervisors from the highest possible number of jurisdictions to adopt common positions.

Many national and international authorities have already published warnings on this matter. In this connection one of the most significant statements in Europe was the one published by the European Securities and Markets Authority (ESMA) in November 2017.

At global level, there was also a recent statement by IOSCO which, additionally, provides access to those released by numerous national supervisory agencies.

One of the priorities of CNMV and Banco de España is to offer information to the public so that investors and financial-services users are in a position to confidently face the growing complexity of the financial environment. Accordingly, both authorities believe that the publication of this statement, aimed at investors and at retail financial users at large, is timely.

It is vital that whoever decides to purchase these types of digital assets or invest in products tied to them considers all the inherent risks and assesses whether they have sufficient information to understand what is being offered. There is a high risk of loss or fraud in this type of investment.

In particular, before purchasing cryptocurrencies or taking part in an ICO, the following should be taken into account:

Non-regulated space

Cryptocurrencies and the various market participants directly involved in marketing them are not regulated in the European Union. This means that individuals who purchase or hold cryptocurrencies will not benefit from the guarantees and safeguards associated with regulated financial products.

In addition, whether because of how they are structured or where their issuers reside, the tokens issued in an ICO or the financial products tied to cryptocurrencies might not be subject to regulation.

Purchasers or investors would thus lack the safeguards provided under Spanish Law and, generally, European Union legislation in respect of regulated investments, and would be particularly vulnerable to fraud, price-fixing or other illicit activities. For instance, in some countries scams and Ponzi-like schemes related to ICOs have been detected in which the funds raised were used for purposes other than those announced. There have also been cases of cryptocurrencies being used to launder money.

Problems arising from the cross-border nature of the phenomenon

On many occasions the various market participants involved in the issuance, custody and marketing of cryptocurrencies (exchange platforms, ICO issuers, digital portfolio suppliers, etc.) are not located in Spain, meaning that the resolution of any conflict might lie outside the remit of the Spanish authorities, being subject to the regulations of the country in question.

High risk of loss of the capital invested

Cryptocurrencies lack any intrinsic value and are thus highly speculative investments. Also, their heavy dependence on as-yet not consolidated technologies leaves open the possibility of operating failures and cybernetic threats that might entail the temporary non-availability or, in extreme cases, total loss of the amounts invested.

In the main, ICOs are associated with business projects at a very early stage of development, without a consolidated business model in place and with uncertain cash flows. These initiatives may be highly prone to failure.

Investment in unregulated cryptocurrencies or ICOs is not protected by any mechanism similar to that which protects the cash or securities deposited at credit institutions and investment firms (in the case of cash or securities deposited at credit institutions or investment firms, subject to certain conditions, the related guarantee schemes ensure amounts of up to €100,000).

Problems of illiquidity and extreme volatility

The absence of markets with a status equivalent to that of organised securities markets subject to regulation may hamper the sale of cryptocurrencies or tokens issued in ICOs to obtain conventional cash. Their owners may not have options at the desired time to convert their cryptocurrencies into conventional currency or to recoup their investment. And when there is a possibility of selling these assets, there may be a lack of transparency regarding the fees applicable and, moreover, their price usually fluctuates substantially without any apparent objective cause.

Inadequate information

In the case of ICOs, the information made available to investors is not usually audited and it is often incomplete. Generally, it stresses the potential benefits, keeping references to the risks at a minimum. Moreover, the language used is usually very technical and, occasionally, unclear, meaning it is not easy to obtain knowledge about the entity and the nature of the risks that would be assumed with the investment. As a result, the investment may be ill-suited to customers' needs and risk profiles.

More info:
Departamento de Comunicación del Banco de España +34 91 338 50 44
Dirección de Comunicación de la CNMV +34 91 585 15 30