

Securities and Exchange Commission of Brazil CVM Statement on Initial Coin Offering (ICO)

Considering the growth of the so-called Initial Coin Offerings, the CVM clarifies it is carefully watching recent technological innovations on global and Brazilian financial markets and seeking to better understand associated benefits and risks, either through internal forums such as the Risk Management Committee (“CGR”) and the Fintech Hub or through discussions held at international organizations such as IOSCO.

In line with its mission provided by Law No. 6,385/76 (the “Securities Act”), the CVM seeks to stimulate entrepreneurship and the introduction of technological innovations in the securities market whenever aligned with investor safety and market integrity.

Therefore, the CVM would like to caution investors against the following risks arising from ICOs and their relationship with the regulatory regime applicable to securities:

1. ICOs can be understood as a form of raising funds from the investing public, the counterpart being the issuance of virtual assets (tokens or coins), which, depending on the economic context of issuance and on the rights conferred to investors, may meet the definition of securities pursuant to article 2 of the Securities Act.
2. In this context, the CVM clarifies that certain ICO transactions may be characterized as securities transactions thus subject to specific rules and regulations already in place. Such rules and regulations also apply to companies (whether publicly held or not) or other issuers that raise funds through ICOs whose economic essence is consistent with securities issuance and trading.
3. Offers of virtual assets that meet the definition of securities and are not compliant with regulation will be considered as illicit and, as such, subject to applicable sanctions and penalties. **The CVM informs that, up to date, no ICO has been registered or exempted from registration in Brazil.**
4. On the other hand, there are ICO transactions that are not under the jurisdiction of the CVM, since they do not constitute public offerings of securities.
5. The CVM also clarifies that securities offered through ICOs cannot be legally traded on virtual currency exchanges, since the latter are not authorized by the CVM to provide securities trading platforms in Brazil.
6. Regarding the participation of potential investors in ICOs, the following risks are inherent to such investments (in particular with respect to issuers or offers not registered with the CVM):
 - a. Fraud and Ponzi schemes;
 - b. Lack of suitability rules;
 - c. Money laundering and tax evasion;
 - d. service providers noncompliant with regulation;
 - e. Promotional advertising material that does not comply with CVM rules and regulations;
 - f. Operational risks in trading environments not monitored by the CVM;
 - g. Cybernetic risks (including attacks to infrastructure, systems and access credentials impairing access to assets, as well as partial or total loss of assets) associated with management and custody of virtual assets;
 - h. Operational risk associated with virtual assets and their respective systems;
 - i. Volatility associated with virtual assets;
 - j. Liquidity (i.e. risk stemming from the lack of marketability of an investment that cannot be bought or sold quickly enough to prevent or minimize a loss at a quoted price); and
 - k. Legal and operational challenges in cases of litigation with issuers, considering the virtual and cross-border nature of the operations with virtual assets.

7. As a means to avoid fraud risk, the CVM recommends that, when faced with ICO announcements, investors check on CVM's website whether issuers and offerings are registered with the CVM or exempted from registration. In addition, CVM's investor assistance channels are available to receive complaints about possible violations in such operations.
8. Investors should carefully evaluate the characteristics of ICOs in order to identify indications of violations such as: guaranteed high profit promises, pressure to join transactions immediately, issuers or offers not registered with the CVM, absence of minimum requirements for joining such operations, among other.

The CVM remains attentive to the evolution of ICOs and, if considered necessary, will take appropriate measures under its legal competence to ensure stability and ongoing orderly development of Brazilian capital markets.

Related Links

	Original statement (in Portuguese)
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