

PUBLICATION

CSA Staff Notice 21-33 Guidance for Crypto-Trading Platforms: Requirements relating to Advertising, Marketing and Social Media Use

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The gamification of investing presents an opportunity and risk to both investors and trading platforms. Consumers can now invest via social media and trading platforms are accessible on a consumer's smartphone. The streamlining of this process has created an advertising arms race as trading platform endeavour to reel in new customers and increase trading activity. This has stripped away the stereotypical boredom of watching stock tickers and made investing more accessible. However, securities regulators are concerned that this same gamification is leading to risky investment activity on crypto trading platforms ("CTPs").

On September 23, 2021 the Canadian Securities Administrators ("CSA") and Investment Industry Regulator Organization of Canada ("IIROC") released Staff Notice 21-330 *Guidance for Crypto-Trading Platforms: Requirements relating to Advertising, Marketing, and Social Media Use* ("21-330" or the "Notice"). This staff notice applies to CTPs that are subject to securities laws because either a) the crypto assets are securities, or b) the crypto assets and associated contracts are derivatives. The following is a summary of 21-330.

False or Misleading Statements

The CSA is concerned that some CTPs are making false or misleading statements in their advertising or marketing materials; this is prohibited by securities legislation. A CPT should be wary of using language that suggests the CTP is registered with a securities regulator when it is not in fact registered. CTPs should also refrain from language that implies a regulator has approved or endorsed a CTP, CTP product, or other representation by that CPT when no regulator has done so. Further, CTPs should not make statements which a reasonable investor would consider important when deciding to enter or maintain a trading or advising relationship with a CTP. This includes false, or misleading statements, or statements that omit information.

"Gambling Style" Promotions and Schemes

Following the theme of investment gamification, the CSA cautions against "gambling style" promotions or schemes. These include incentives or promotions that encourage investors to act within a certain time frame to receive some kind of reward or bonus. As an example, a marketing pitch that offers a financial reward for investment in a particular crypto asset within a specified amount of time may create a sense of urgency for the consumer, which may in turn be a violation of securities regulations.

The CSA and IIROC believe these kinds promotions incentivize otherwise risky behaviour that investors may not

typically undertake were it not for the bonuses or rewards. This may violate a registered CTPs obligation to act honestly and in good faith towards its clients.

Staff Notice 21-330 further notes that incentivising trading with the promise of rewards may amount to solicitation or an invitation to trade. This could trigger suitability obligations, although some CTPs may be exempted from such obligations. Exempt CTPs should be cautious that any activities do not violate the terms of their exemption.

Social Media

Many CTPs interact with clients on social media. CTPs and their employees should exercise caution in how they interact with customers and the public through social media. Records of business activities, financial affairs, and client transactions need to be accurately maintained even if these activities take place over social media.

Policies

In 21-330, CTPs are advised to create policies and procedures for how social media marketing takes place relative to their platform. Policies should consider oversight and a review of marketing materials and activities on social media. CTPs should designate an individual to supervise these marketing activities for compliance and develop a system to monitor their social media presence. This includes retaining records of online activities.

Conclusion

The decentralized nature of crypto assets makes them difficult to supervise. However, any crypto platform with Canadian consumers CTPs should consult with their legal counsel and local securities authorities on best practices and ways to comply with legislation. If you require any assistance in drafting advertising and marketing policies and procedures, or if you have any general or specific questions pertaining to the Notice, we would be pleased to assist.

The writer gratefully acknowledges the efforts of [Kai Yee](#) in the publication of this article.