

I. GENERAL PROVISIONS

COMISIÓN NACIONAL DEL MERCADO DE VALORES (CNMV)

10830 *CNMV Circular 2/2011, of 9 June, on information of foreign collective investment schemes (CIS) registered with the Comisión Nacional del Mercado de Valores.*

30 June 2011 was the deadline for transposition of Directive 2009/65/EC of the European Parliament and of the Council, of 13 July 2009, on the coordination of laws, regulations and administrative provisions relating to Undertakings for Collective investment in Transferable Securities (UCITS), which, among other aspects, establishes a new notification procedure for harmonised foreign CIS in order to facilitate their access to the markets of other Member States.

Similarly, Commission Regulation (EU) No. 584/2010 and Commission Directive 2010/42/EU, which detail the new procedure, apply as from 1 July 2011.

CNMV Circular 2/2006, of 27 June, regulated the information and documentation to be sent to the CNMV relating to harmonised and non-harmonised foreign CIS marketed in Spain, the information requirements to members and unit-holders, the communication of the number of shareholders and assets in accordance with article 52 of the Personal Income Tax Regulation, as well as the statistical information to be sent.

This Circular, which repeals and substitutes the aforementioned Circular 2/2006, under the authority conferred to the CNMV in article 19 of the Regulation of the CIS Act 35/2003, of 4 November, and article 52 of the Personal Income Tax Regulation, simplifies the notification procedure and streamlines the information which must be sent to the CNMV.

The new notification procedure means that CIS must present the pertinent documentation to the competent authority of the home Member State. This documentation includes the notification letter, which contains, on the one hand, Part A, with the data of the CIS, and, on the other hand, Part B, which is non-harmonised, which details the information on the provisions for marketing CIS in the host State. In this regard, this Circular determines the specific information which the foreign CIS must include in part B of the notification letter, establishing a standardised format for the marketing memorandum. Furthermore, it establishes the obligation of the designated entity to update certain information about the foreign CIS by electronic means.

Similarly, it amends the obligations for sending documentation of the CIS to the CNMV and it introduces certain adjustments in the information requirements to investors.

Finally, it eliminates the requirements to register compartments in the CNMV Registry, and it extends the content of the communications to be made to the CNMV in accordance with article 52 of the Personal Income Tax Regulation so as to include the details of the compartments and/or classes referred to in the tax information.

With regard to non-harmonised CIS, the requirement to send information by electronic means is cancelled.

By virtue thereof, the Board of the National Securities Market Commission (CNMV), following a report from the Advisory Committee, in its meeting held on 9 June 2011, provided:

Rule one. *Sending information to the CNMV relating to harmonised foreign CIS*

1. The foreign CIS referred to in point 1 of section 15 of Act 35/2003, of 4 November, on collective investment schemes (hereinafter, CIS Act) which intend to market their shares or units in Spain must include the following information in Part B of the notification letter defined in Annex 1 of Commission Regulation (EU) No. 584/2010 to be sent to the competent authorities of the home Member State:

- a) Details of the entity entrusted with representing the CIS before the CNMV and, in particular, with sending the information referred to in number 3 of this Rule.
- b) In the event that the CIS is established as an investment company, details of the distributor established in Spain designated by the CIS or its management company to carry out the communication referred to in Rule four herein.
- c) Details of the entity registered in Spain with subsidiary liability for payment of the fees to the CNMV in accordance with the provisions of Section 47 of General Tax Act 58/2003, of 17 December, as well as an estimation of the total amount to be marketed in Spain.

2. The entity mentioned in the letter a) of number 1 above may be the foreign CIS itself or its management company, or the distributor or the legal person which it designates, and must have the capacity and technical resources necessary to meet the obligations established herein.

This entity shall be responsible before the CNMV for aspects relating to the information communicated under this Circular. Said entity may designate a natural person established in Spain to act as its representative before the CNMV.

3. Once the foreign CIS has been registered in the corresponding Registry, the designated entity referred to in number 2 above must communicate by electronic means using at all times the forms and technical requirements established for this purpose by the CNMV:

- a) The registrations and de-registrations of marketing entities of the CIS in Spain.
- b) Modifications to the data of the CIS.
- c) Modifications relating to the entities mentioned in letters a), b) and c) of number 1 above.
- d) Modifications in the estimation of the total amount to be marketed in Spain.
- e) Where appropriate, the application for de-registration of the CIS from the corresponding CNMV Registry.

The information indicated in sections a), b), c), d) and e) above must be communicated in a maximum period of seven days following the date on which the modification has taken place.

The CNMV may include other additional information which it considers necessary in the communication form.

4. In exceptional cases, foreign CIS may present the information by means other than electronic means if authorised by the CNMV after having made a request detailing the reasons.

Rule two. *Information to members and unit-holders relating to harmonised foreign CIS.*

1. With regard to the foreign CIS referred to in point 1 of Section 15 of the CIS Act included in the corresponding CNMV registry, the entity delegated to represent the CIS before the CNMV, as well as all the distributors, must maintain in their head office for a minimum period of six years, and available to the CNMV, the successive economic reports, whatever the period of time they refer to, as well as the success of annual reports which are prepared following registration with the CNMV.

2. The distributors in Spain of foreign CIS registered in the corresponding CNMV Registry must provide to each unit-holder or shareholder, prior to subscribing units or shares, a copy of the simplified prospectus or the document substituting it in the home State of the CIS and a copy of the latest published economic report. In addition, a copy of the report on the planned types of marketing in Spain must be provided using the form published on the CNMV website.

Delivery of this report will be mandatory and cannot be waived by the unit-holder or shareholder. In addition, an updated copy of the other official documentation of the institution must be provided upon request. At any event, at least one of the distributors will make available by electronic means all the documents, as well as the net asset values corresponding to the shares or the units marketed in Spain.

The distributors in Spain will send, at no cost, to the unit-holders or shareholders, to the address which they provide, the successive economic reports and annual reports which are prepared subsequent to registration with CNMV, in a period of one month from their publication in the home country, unless said unit-holders or shareholders have waived their right to receive said information in a separate and duly signed document following receipt of the first periodic reports. Nevertheless, the distributor must send said documents to the unit-holder or shareholder, even if said right has been previously waived, if so requested. The waiver will be revocable.

Similarly, they must send, at no cost, to the unit-holders or shareholders which have acquired their units or shares in Spain, all the information provided in the legislation of the State in which they have their head office, in addition to that indicated in this point, in the same terms and deadlines provided in the legislation of the home country.

When the unit-holder or shareholder expressly requests, said economic reports will be sent by electronic means.

Rule three. Sending the documentation relating to non-harmonised foreign CIS to the CNMV and information to shareholders and unit-holders.

1. With regard to non-harmonised foreign CIS, the legal person which the foreign CIS designates must inform the CNMV of any information which may be relevant for marketing the CIS in Spain, as well as any change in the CIS which affects the essential elements of the offer of the CIS in Spain or its registration with the CNMV. It must also present all the modifications which take place in the register documentation with the translation requirements referred to in point 2 of section 15 of the CIS Act.

2. The legal person designated by the foreign CIS, as well as all the distributors, must keep in their head office for a minimum period of six years, and available for the CNMV, the successive economic reports, whatever the period they refer to, as well as the successive annual reports prepared subsequent to registration with CNMV.

These documents must meet the translation requirements of point 2 section 15 of the CIS Act and must be available from the month following their preparation in the home country.

3. In the event of essential changes in the offer, the marketing in Spain of actions and units of the CIS shall be dependent on express prior authorisation from the CNMV. For these purposes, essential changes are considered as those which significantly affect suitable investor protection and, at any event, those provided as such for Spanish CIS.

4. The distributors of non-harmonised foreign CIS must comply with the obligations for availability of information, delivery of information prior to subscription and periodic sending of information included in Rule 2.2 above, with the exception of the marketing memorandum, which shall be substituted by the particular conditions which the distributor applies.

Rule four. Communication of the number of shareholders and unit-holders for the purposes of article 52 of the Personal Income Tax Regulation

1. The communication which must be made with regard to the verification of the number of shareholders, assets and maximum percentage of a shareholding in a company, which, in accordance with the provisions of article 52 of the Personal Income Tax Regulation, must be sent to the CNMV, must be made electronically in the form established for said purpose by the CNMV. It must be sent to the CNMV before the end of the maximum validity period of the latest communication sent.

2. The entity responsible for sending information by electronic means relating to the number of shareholders and the assets of the foreign CIS established as an investment company will be the distributor designated in accordance with the provisions in letter b) of number 1 of Rule one.

3. The communication must include the following information:

- a) Identification data of the foreign CIS.
- b) Denomination of the compartments or sub-funds marketed in Spain with over 500 shareholders and the share classes which make up said compartments or sub-funds.
- c) ISIN codes of the CIS, compartments and sub-funds and, as the case may be, share classes.
- d) Total number of shareholders of the compartment or sub-fund.
- e) Total assets of the foreign CIS or compartment or sub-fund.
- f) Reference date of the information communicated.

In the event that the foreign CIS does not have compartments or sub-funds, this information will refer to the foreign CIS.

Rule five. Statistical statements of foreign CIS.

1. The legal person designated by the foreign CIS or, as the case may be, each one of the distributors of foreign CIS included in the corresponding Registry of the CNMV, must send to the CNMV every quarter the completed form included in the Annex to this Circular.

2. The information referred to in the previous point must be presented electronically, no later than the last calendar day of the month following the end of each calendar quarter.

Repealing rule.

CNMV Circular 2/2006, of 27 June, on the Securities Market, on information of foreign CIS registered in the CNMV Registries is repealed.

Final rule.

This Circular shall enter into force on 1 July 2011.

Madrid, 9 June 2011.—The President of the Comisión Nacional del Mercado de Valores, Julio Segura Sánchez.

OFFICIAL STATE GAZETTE

No. 148

Wednesday 22 June 2011

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ANNEX

Comisión Nacional del Mercado de Valores

STATEMENT A01		Page 1		Month/Year			Stamp and Signature					
STATISTICAL STATEMENT OF FOREIGN CIS MARKETED IN SPAIN							Date;					
Distributor:							Signed pp					
MARKETED FOREIGN CIS												
CIS NAME REG No. CIS Type			No. UNITHOLDER/SHAREHOLDERS				MARKETED AMOUNT				INVESTMENT VOLUME	
Name	Reg. No.	Type	Situation start of quarter	Subscriptions	Redemptions	Situation end of quarter	Situation start of quarter	Additions	Withdrawals	Situation end of quarter	Situation end of quarter	
CIS 1												
CIS 2												
.....												
CIS n												
TOTAL CIS												

Amounts in thousands of euros

N.B.:

The Marketed Amount is the result of multiplying the number of units/shares acquired or sold by their value on the trade date for all the compartments which make up the CIS.

The Investment Volume is the result of multiplying the number of units/shareholders held by investors at the end of the quarter by their value at the end of the quarter for all the compartments which make up the CIS.