

Circular 3/2017, of 29 November, of the National Securities Market Commission, on disclosure obligations of investment firms through the website in matters of corporate governance and remuneration policy, which amends Circular 7/2008 of 26 November of the National Securities Market Commission on accounting standards, annual accounts and confidential information statements of investment firms, collective investment scheme management companies and management companies of venture capital entities.

EXPLANATORY MEMORANDUM

I

Article 31 ter of Royal Decree 217/2008, of 15 February, on the legal regime of investment firms and other entities providing investment services which partially amends the Regulation of Law 35/2003, of 4 November, of collective investment scheme management companies, approved by Royal Decree 1309/2005, of 4 November, introduced by Royal Decree 358/2015, of 8 May, regulates the disclosure obligations on the website of investment firms in matters of corporate governance and remuneration policy.

Paragraph 6 of that provision indicates that the National Securities Market Commission shall specify the terms of the website configuration and the information that investment firms must conform to and include on corporate governance and remuneration policy, in accordance with their nature, scale and complexity.

In accordance with section 5 of Article 31 ter, such disclosure obligations do not apply to investment firms which do not provide auxiliary custodian services and only provide one or more of the services of reception and transmission of orders, execution, discretionary portfolio management and investment advice, and which are not authorized to hold money or securities of clients and that for this reason can never be in debt with respect to such clients.

In this respect, this Circular stipulates that investment firms subject to such obligations publish on their website, in a section called "Corporate Governance and Remuneration Policy", various kinds of information, including most notably the one referring to their articles of association and other internal organization rules, their organizational structure and internal control procedures, and the composition of the various governing bodies of which they are endowed. With regard to information on remuneration policy, the information provided on this subject may be included in this Circular in the section entitled "Corporate Governance and Remuneration Policy" or otherwise a direct link to the document entitled "Information on solvency", referred to in Article 191 of the consolidated text of the Securities Market Law, may be included in the section.

The third final provision of Royal Decree 358/2015 grants the National Securities Market Commission powers to issue, in accordance with its area of competence, the precise provisions for the proper execution of said royal decree. As established in the fourth final

provision of Royal Decree 358/2015, the entry into force of these disclosure obligations will occur three months after the publication of this Circular.

Use of these authorizations, this Circular develops the information on corporate governance and remuneration policy that investment firms must publish on their website, as well as some aspects of its configuration.

II

On the other hand, the additional provision of this Circular modifies Circular 7/2008, dated 26 November, of the National Securities Market Commission, on accounting standards, annual accounts and statements of confidential information of Investment firms, Collective Investment Schemes Management Companies and Management Companies of Capital-Risk Entities, to incorporate the new accounting treatment of intangible assets, in order, inter alia, to establish a harmonized regulation. Specifically, this amendment aligns the accounting treatment of intangible assets, in particular Goodwill, with the new wording of Article 39.4 of the Commercial Code, introduced by Act 22/2015, of 20 July, on Auditing, and its regulatory development through Article 1 of Royal Decree 602/2016, of 2 December, which amends the General Accounting Plan approved by Royal Decree 1514/2007 of 16 November. Intangible assets are considered to be assets with a definite useful life, which must therefore be amortized.

The authorization to regulate this matter is found in Article 1 of Order ECC/2515/2013, of 26 December, which establishes Article 86.2 of Law 24/1988, of 28 July, on the Securities Market, which empowers CNMV to establish, modify and regulate the accounting standards and standards relating to the annual or intermediate financial statements as well as those related to compliance with the coefficients established by investment firms. This authorization should be understood as referring to Article 241.2 of the consolidated text of the Securities Market Law.

In the case of CIS management companies, the authorization is set out in the Second Additional Provision of the Ministerial Order of 31 July 1991, on the transfer of securities lent by Collective Investment Scheme Management Companies and system of own resources, of information and accounting of Collective Investment Scheme Management Companies.

Finally, in the case of the CIS management companies, the authorization is set out in the Final Provision 7 of Law 22/2014, of 12 November, regulating venture capital entities, other type of collective closed-end investment companies and closed-end collective investment companies, which amends Law 35/2003, of 4 November, on Collective Investment Scheme Management Companies, and in the Second Order of the Order of 17 June, 1999, partially implementing Law 1/1999, of 5 January, regulating risk capital entities and their management companies, empowering the National Securities Market Commission to issue provisions regarding the authorization procedure for new entities, accounting standards and information obligations of venture capital entities and their management companies.

III

The Circular consists of two rules, an additional provision, a transitional provision and a final provision.

By virtue of the authorization received, CNMV's Board, following a report from its Consultative Committee and the Spanish Accounting and Audit Institute (ICAC), at its meeting on 29 November 2017, approved the following Circular:

First rule. *Information configuration on corporate governance and remuneration policy on the website of investment firms.*

1. The information referred to in the second standard will be collected on the website of investment firms in a full, clear, comprehensible and up-to-date way and will be accessible from the website's homepage, in a section named "Corporate Governance and remuneration policy". All content in that section should be no more than three navigation clicks from the home page and prior authentication of the person making the consultation shall not be required.

2. The information required in the second standard that is already published in other sections of the website, or is offered free of charge on the online terms of the public registers of CNMV or of other organizations, and it may be offered through direct links to such sections or registers.

3. The content must be presented in a structured and hierarchical manner in order to allow quick and direct access to each of them. Titles must be clear, concise and meaningful, and the language appropriate, avoiding the use of technical jargon and abbreviations as much as possible.

4. The technical structure of the website and the content files will allow for navigation and access with commonly used computer devices in the Internet and with an operational query response.

5. If the website offers versions for different platforms (computers, tablets, mobile phones, etc.), its content and presentation must be reasonably uniform.

6. Investment firms shall ensure the security of their website, the authenticity and accuracy of the information and documents published on it, their free access and the possibility of downloading and printing them.

7. The information obligations contained in the first and second Rules of this Circular shall not apply to investment firms that meet the following requirements:

a) Not being authorized to provide the auxiliary service referred to in Article 141 a) of the consolidated text of the Securities Market Law.

b) Providing only one or more of the investment services or activities listed in Article 140. a), b), d) and g) of the consolidated text of the Securities Market Law.

c) Not being authorized to have money or securities of their clients in deposit and, for this reason, never indebted to such clients.

Nor shall it apply to those investment firms authorized exclusively to provide the service referred to in Article 140.h).

Second rule. *Information on corporate governance and remuneration policy on the website of investment firms.*

The website referred to in Article 185.4 of the consolidated text of the Securities Market Law and Article 31 ter of Royal Decree 217/2008 shall include at least the following information:

a) The articles of association.

- b) The regulations and other organizational rules of its governing bodies and, as the case may be, of the commissions of the board of directors.
- c) The organizational structure of the investment firms, the lines of responsibility in decision-making, the distribution of functions in the organization and the criteria for the prevention of conflicts of interest.
- d) A brief description of the procedures established for the identification, measurement, management, control and internal communication of the risks to which the investment firms are or may be exposed.
- e) A brief description of the internal control mechanisms of investment firms, including administrative and accounting procedures.
- f) The board of directors' composition and the identification of executive, non-executive and independent directors, as the case may be.
- g) Identification of the persons who hold the positions of chairman of the board of directors and chief executive officer. In the case of the same person exercising both positions, this circumstance must be indicated.
- h) If they exist, the composition of the appointments committee and the remuneration committee or, where appropriate, the joint appointments and remuneration committee, and the functions attributed to each of these bodies.
- i) If they exist, the composition of the risk committee and the audit committee or, where appropriate, the joint committee of risk and audit, including a description of the functions attributed to each one.
- j) Indication as to whether or not the appointments of members of the board of directors and general or equivalent directors have been approved by a favourable report from the nomination committee or, as the case may be, the appointments and remuneration committee.
- k) Information on the total remuneration accrued in each financial year by the members of the board of directors, reflecting the total amount of remuneration paid and an individualized breakdown by reference to the amount of fixed remuneration components and allowances, as well as to the variable remuneration concepts. This information shall contain any accrued remuneration, whatever its nature or the entity of the group that satisfies it, including the remuneration accrued by the members of the board of directors for their membership in boards of other group companies or companies in which it operates in representation of the group.

Alternatively, a direct link to the document called "Solvency Information" may be included, as referred to in Article 191 of the consolidated text of the Securities Market Law.

- l) Information on the procedures established to ensure the suitability of the members of the board of directors, general managers and similar, as well as the mechanisms established to comply with the rules on incompatibilities.

Additional provision. *Modification of Circular 7/2008, of 26 November, of the National Securities Market Commission, on accounting standards, annual accounts and confidential information statements of Investment Firms, Collective Investment Scheme Management Companies and Management Companies of Capital-Risk Entities.*

Circular 7/2008 of 26 November of the National Securities Market Commission on accounting standards, annual accounts and confidential information statements of Investment Firms, Collective Investment Scheme Management Companies and Management Companies of Capital-Risk Entities is modified as follows:

1. Paragraph 8 of Rule 29 is worded as follows:

“8. Goodwill is an asset that represents future economic benefits, which are not identifiable or recognizable separately or individually, arising from other items acquired for valuable consideration as a result of a business combination. When recognizing goodwill, it will be recognized and measured in accordance with the provisions of Rule 41 of this Circular. Goodwill must be amortized over its useful life. The useful life will be determined separately for each cash-generating unit to which goodwill has been assigned. It shall be presumed, unless proven to the contrary, that its useful life is ten years and that its recovery is linear.”

2. Paragraph 10 of Rule 29 is worded as follows:

“10. Intangible assets are assets with a defined useful life and will be amortized taking into account the following details:

a) The amortizable amount will be determined considering that the residual value of the intangible asset is nil, unless there is a firm commitment of sale to a third party before the end of its economic life.

b) The useful life of an intangible asset may not exceed the period during which the entity has the right to use it. When the useful lives of these assets cannot be reliably estimated, they will be amortized over a period of ten years, without prejudice to the periods established in the special rules on intangible assets.

c) The amortization method will reflect the consumption pattern expected by the entity from the future economic benefits derived from the intangible asset. If that scheme cannot reliably be determined, a linear depreciation method will be adopted.

d) The amortization of an intangible asset may only be suspended when its book value is nil, off-balance sheet or reclassified as a non-current asset held for sale, in accordance with the provisions of Rule 31 of this Circular.

e) The entity shall review, at least at the end of each year, the period and method of amortization of the intangible assets. When considered to be inadequate, the effects of changes in the amortization period or method will be recognized as a change in an accounting estimate, in accordance with Rule 18 of this Circular.”

3. Paragraph 3 of Rule 30 is worded as follows:

“3. In any event, at least annually, the entity shall analyze whether there are indications of impairment of cash-generating units to which goodwill has been allocated, and, if any, their impairment and will estimate the recoverable amount of intangible assets and assets that are not yet in conditions to be used.”

4. Paragraph 2 (l) of Rule 50 is worded as follows:

“l) Amortization: includes the annual allowance for amortization of tangible assets and intangible assets.”

5. In the individual consolidated report included in Annex III, references to "intangible assets with indefinite useful lives" shall be construed as "intangible assets". Likewise, the estimates made to determine the useful life of the goodwill and the depreciation method used should be reported.

Transitional provision. *First application.*

1. In accordance with the eighteenth rule of Circular 7/2008, entities shall apply the provision in the additional provision of this Circular prospectively as a change in accounting estimates, being disclosed in the individual and consolidated annual financial statements.
2. Notwithstanding the foregoing, entities may choose to amortize the carrying amount of goodwill existing at the end of the previous period and of intangible assets that would have been classified as indefinite useful life, charged to reserves, following a linear recovery criterion and considering a useful life of ten years from the date of acquisition.

The amortization charge resulting from applying this criterion to the initial value of the asset shall be reduced in the impairment loss that the entity would have recognized from the date on which the ten-year computation begins.

The carrying amount will be amortized prospectively. To that end, it shall be presumed, unless proof to the contrary, that the useful life of the goodwill shall be the period remaining until the ten-year term referred to in the first paragraph of this section is completed.

The annual accounts for the year 2017 will be presented including adjusted comparative information for intangible assets if the entity chooses to follow the criterion set out in this section 2.

Final disposition. *Entry into force.*

1. This Circular shall enter into force on the day following its publication in the "Official State Gazette".
2. Notwithstanding the provisions of the previous section, investment firms shall have a term of three months from the publication of this Circular to develop the obligations provided for in standards 1 and 2.
3. The Additional Provision shall enter into force, in any case, for the financial years from 1 January 2017.

Madrid, 29 November 2017. The Chairman of the National Securities Market Commission, Sebastián Albella Amigo.