



**CNMV CIRCULAR 1/2021 ON ACCOUNTING STANDARDS, ANNUAL ACCOUNTS AND FINANCIAL STATEMENTS OF IFs AND THEIR CONSOLIDATED GROUPS, CISMCS AND CLOSED-ENDED CISMCS
ASSESSMENT OF THE COMMENTS RECEIVED DURING THE PUBLIC CONSULTATION PROCESS**

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1. Introduction

On 18 January 2021, the Spanish National Securities Market Commission (CNMV) submitted for public consultation the draft Circular on accounting standards, annual accounts and financial statements of investment firms and their consolidated groups, collective investment scheme management companies and closed-ended collective investment scheme management companies. The deadline for submitting comments ended on 15 February 2021.

The draft regulation for the preparation of this circular, which amends the accounting regime for investment firms (IFs) and their consolidated groups (IF CGs), collective investment scheme management companies (CISMCS) and closed-ended collective investment scheme management companies (closed-ended CISMCS), had two basic objectives:

- On the one hand, to establish, in general, a direct reference to the Spanish General Chart of Accounts (GAP) and to the Standards for the Preparation of Consolidated Annual Accounts, in the case of consolidated groups.
- And on the other hand, to establish the templates for financial statements that firms must prepare, which in essence have not been substantially modified with respect to the previous templates.

This Circular replaces and repeals Circular 7/2008, which followed a different approach in that it included its own regulatory content which, nevertheless, in practice was very similar to that of the GAP.

Order ECC/2515/2013, of 26 December, which sets out the CNMV's power to establish accounting standards and financial statement templates, establishes the duty to comply with the provisions contained, inter alia, in the GAP. With the approach of direct reference to the GAP, it was considered that this adjustment is assured, and that the application of the accounting regulations is simplified and easier for the firms subject to it. It also avoided the existence of possible regulatory divergence as a result of delays in updating accounting standards.

During the public consultation period, comments were received from five individuals or entities, including two professional associations, two firms and the CNMV's advisory committee. In addition, the mandatory reports were received from the Bank of Spain, the Directorate-General for Insurance and Pension Funds (DGSFP) and the Spanish Accounting and Audit Institute.

Section 2 summarises the comments received and indicates whether they have been considered and have led to changes in the draft regulation.

Finally, section 3 refers to the next step in this standard-setting initiative, which consists of making the corresponding adjustments to the manuals for the completion of the financial statements.

The CNMV would like to thank all those who have commented on the draft for their contribution to the improvement of the circular, which was finally approved by its Board on 25 March 2021.

2. Analysis of comments received

The main comments received during the public consultation period on the draft accounting circular are set out below and assessed. It is important to note that they did not call into question the basic objectives of the circular to make a direct reference to the GAP or the proposed financial statement templates.

Application of accounting criteria not included in the GAP

Some comments received proposed including the option of applying Bank of Spain Circular 4/2017 in the case of firms that consolidate under IFRS, for reasons of operating costs and the need to make standardisation adjustments when consolidating, pointing out that the GAP does not include all of the IFRS.

CNMV assessment: As mentioned above, Order ECC/2515/2013, which sets out the regulatory powers granted to the CNMV, establishes the duty to comply with the provisions of the GAP. Furthermore, such a possibility would result in different treatment of firms in the same category, and therefore it has not been considered appropriate to include changes in this respect in the draft.

Statements of contributions to FOGAIN

A number of comments had been received in relation to the statements reserved for the determination of contributions to the Investment Guarantee Fund (FOGAIN) which, in some cases, related to other proposals not strictly related to the statements but to the contribution regime:

- The need to consider in a uniform manner and clarify, where appropriate, with a view to the contribution to the FOGAIN, the computation in the calculation bases of the shares of domestic and foreign investment vehicles that are effectively held in custody by the firm (among others in the case of shares held in global accounts whose ultimate ownership control lies with the firm).

CNMV assessment: This observation has been taken into account and a footnote has been included in the corresponding statements with a clarification in this regard.

- Calculation of the fees received with a discount on the fees payed and not by their gross amount and, in general, clarification of the amount to be included.

CNMV assessment: This proposal has not been followed, as the possibility of applying "net" fees would require the prior amendment of other higher-ranking regulations and is therefore beyond the scope of the circular.

- Exclusion of CISMCS from the obligation to join and contribute to the fund on behalf of the managed portfolios of non-covered clients, especially in cases where only portfolios of non-covered clients are managed.

CNMV assessment: Likewise, this proposal would require the amendment of higher-ranking regulations, and has therefore not been addressed.

- Submission by the branches of firms outside the European Economic Area of information for the calculation of contributions, in the event that they join the fund.

CNMV assessment: Other alternatives have been chosen to obtain this information, in view of the subjective scope of the circular and the small number of firms that would be in this situation which, in any case, can be covered by *ad hoc* requests for information.

CISMC Confidential Statements

With regard to the confidential statements of the CISMCs, comments have been received requesting clarification on the heading of assets under management accounts in statement Go1 and analysis expenses in statement Go2.

In relation to analysis expenses, a comment was received that recording analysis services on a non-compensated basis (i.e., as expenses on the one hand and as income on the other hand for the part passed on to the vehicles) would lead to an inappropriate increase in the CISMC's required own funds.

It has also been pointed out that it is advisable to correct certain headings relating to the classification of assets in statement Go1 Confidential Balance Sheet.

CNMV assessment: In the update to the manual for the completion of the confidential statements, the appropriate clarifications will be included regarding the heading of assets advised, and the amounts to be reflected as analysis expenses and income. In addition, the statements have also been amended to reflect the proposed corrections (in the areas noted above, the issues were due to the fact that a non-final version of the statement was published for public consultation).

SEAF1 Statement (only statement submitted annually by Financial Advisory Firms, EAFs)

The comments received propose the removal of references to eligible counterparties in the classification of clients in terms of investment financial advice, clarification of certain balance sheet items included in the statement and delaying the deadline for submission to 31 January.

CNMV assessment: The statement template has been modified to include these proposals and, with regard to the deadline for submission, the proposal has been complied with, so that the deadline for submission is now the 30th day of the following month (as opposed to the 20th day which was included in the text for consultation).

Entry into force, first financial year, first confidential statements

Several comments have been received in relation to the date of entry into force, the first year in which the regulations are applicable and the date of submission of the first information according to the statement templates.

CNMV assessment: The articles of the text published for consultation stated that the Circular would enter into force on the day of its publication (although the explanatory memorandum indicated that it would enter into force on 1 January 2021, which was contradictory). It was also indicated that the first statements to be

submitted would be those of June 2021 (December 2021 in the case of EAFs, which submit statements on an annual basis).

In relation to the entry into force and the first year in which it is applicable, when the draft was published for public consultation, we were aware that it was appropriate for the Circular to have rules on first application similar to those contained in the draft regulations that were in the process of amending the GAP. Finally, on 27 January 2021, the Spanish Royal Decree modifying the GAP was published.

Therefore, in line with the provisions of the aforementioned Spanish Royal Decree, the final provision of the Circular has been amended to indicate that it comes into force on the day after its publication and is applicable for fiscal years beginning on or after 1 January 2021.

With regard to the date of the first submission of statements, the comments referred in the case of CISMCS to the short period available to submit the statements corresponding to 30 June 2021. It has been agreed to delay the first submission until the statements for the period ended December 2021 and to extend it to all firms for reasons of uniformity.

Certification capability

One of the comments received refers to the advisability of admitting the possibility of the deputy secretary of the board and the vice-chairman of the firms being able to certify the content of various documents submitted to the CNMV.

CNMV Assessment: This observation has been taken into account, and the text of Rule 4 and the additional provisions have been amended to include a broader reference to the issue of certifications under the terms established in Article 109 of the Spanish Companies Registry Regulations (which also includes other cases, such as certification by the sole director, a frequent situation in the case of EAFs).

Other comments

Other comments received are listed below:

- The appropriateness of including in the explanatory memorandum the enabling rules for establishing rules in the case of CISMCS and closed-ended CISMCS, in a manner similar to that indicated for IFs.
- The desirability of transferring certain additional provisions to the body of the Circular, in the event that their content was the same as that of the Circular itself.
- The need to update the regulatory reference to the auditor's supplementary report established in additional provision one, as a consequence of the publication, during the public consultation period, of the new regulation for the development of the Spanish Auditing Act.
- The need to replace, in the additional provision amending Circular 4/2008, the regulatory reference to Order EHA/596/2008, which was expressly repealed by transitory provision one of Spanish Royal Decree 83/2015, with a reference to Circular 4/2016.

CNMV assessment: The above comments have been addressed insofar as they contribute to the improvement of the draft and, in some cases, were necessary.

3. Next step. Manuals on how to complete the statements

Like Circular 7/2008, Rule 9 of Circular 1/2021 refers to the manuals for completing the confidential statements prepared by the CNMV, establishing that the content of the items in the statements shall be that which is logically deduced from their title, in accordance with accounting and mercantile regulations and the details included in the manuals for completing them.

These manuals are prepared with the aim of making it easier for the firms subject to the Circular to provide the financial information in a homogeneous manner so that it serves the supervisory and statistical purposes for which they are intended.

During the circular public consultation period, some comments have been received which, although due to their nature it is not appropriate to include them in the regulatory text, will be specified in the relevant manuals for completion.

It is planned to publish the amendment to these manuals in the near future, in any case, sufficiently in advance of the obligation to send the first statements.