Code of good practices for investors: questions and answers

23 November 2023

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This is not a regulatory document. It is intended to provide proxy advisors, institutional investors and asset managers with interpretative criteria for the proper application of the principles of the voluntary Code of good practices for institutional investors, asset managers and proxy advisors regarding relation to their duties in respect of assets entrusted to or services provided by them.

INTRODUCTION

The clarifications provided in this document are meant to serve as indicators, and it is the responsibility of institutions to exercise their professional judgement in implementing the principles and evaluating the expectations and clarifications. The same principle applies to the examples mentioned in some of the answers.

The *Code of good practices for institutional investors, asset managers and proxy advisors in relation to their duties in respect of assets entrusted to or services provided by them* ("Stewardship Code") was approved on 22 February 2023, after a period of public consultation, by the Board of the CNMV, with the aim of improving the quality of corporate governance and investment practices of these entities, in discharge of their fiduciary duties and to encourage a focus on long-term performance.

The Code is not regulatory and its adoption is entirely voluntary. The chosen approach is one of implementation and explanation, i.e. after adoption and the expiry of the three-year transition period, the affiliated entities must implement all seven principles of the Code. Since its approval, several collective investment schemes and pension fund managers as well as one proxy advisor have adopted the Code. It is assumed that further institutions will adopt the Code over time.

The CNMV currently has no supervisory powers over the application of the Code conferred on it by any regulation. This does not prevent the CNMV from removing any company from the public list of affiliated companies, which is publicly available on the CNMV's website, if said affiliated company is found not to be applying the principles of the Code and not taking the appropriate measures to ensure future compliance with the Code.

I. GENERAL QUESTIONS

1. Partial adoption and the possibility of non-application in certain cases. Page 11 of the Code states: "there is no provision for partial adoption". Also, there will be certain assets, in relation to the affiliated entities, where the voting right cannot be exercised if the voting right belongs to the owner of the assets, or where it must be exercised in accordance with the delegator's policy. Similarly, the affiliated entity may exclude certain assets, funds, or vehicles from relevant engagement and voting activities based on their specific nature, such as being part of the trading book. What would be the implications for adoption of these assets? And what would be their potential impact on the implementation of the Code's principles?

Reply by the CNMV

The Code states: "It should be noted that there is no provision for partial adoption, excluding certain assets, funds or other investment vehicles, for example, depending on the nature of their assets or their investment strategy." As also indicated in question 4, this does not necessarily mean that the affiliated entity must take part in dialogue, engage and vote in all companies in which it invests.

In other words, the investor/manager must fully comply in relation to all its assets and investment/management activities. It is therefore not possible to exclude certain assets, funds or other investment instruments from the scope of adoption.

As the Code explicitly states, this also does not prevent an affiliated entity from subjecting some of its assets, funds or vehicles to a short-term investment policy, involving them in a trading activity or generally having a high degree of rotation. In these cases, the principle of proportionality fully applies, which could justify a lower or even no engagement, or a decision not to vote, in relation to a part of the entities in which only such an investment is made.

Regarding assets associated with discretionary portfolio management, where specific instructions are provided or voting is to be carried out according to the delegator's policy, the institution is naturally required to adhere to the instructions it receives from the owner of the assets. Nevertheless, the principles of the Code should still be applied to the extent not explicitly covered by those instructions or policies.

2. Transitional regime and publication of plan and schedule. When should the adaptation plan and schedule be published? At the time of adoption or in the report of the first annual report and subsequent reports? Clarification is requested as to whether any validation by the CNMV is planned prior to publication. Further, what are the consequences when delays or deviations in the progress of the plan and the schedule for compliance with the Code become apparent?

Reply by the CNMV

The formal adoption of the Code involves the interested company submitting two documents, one public and one non-public, following the content and procedure outlined in the following link:

https://www.cnmv.es/docportal/Buenas-practicas/CBPinstrucciones.pdf

Entities opting to apply the transitional period must publicly demonstrate their commitment to implementing all principles within three years. This is achieved by publishing a specific plan and schedule for implementation, except for Principle 6 (Conflict of interest management policy), which must be implemented immediately.

The letter of adoption should explicitly mention the intention to implement the transitional period. Also, it is preferable to publish the plan and schedule at the beginning or as soon as possible in an ad-hoc document within a short time frame.

However, regardless of when and how the schedule is published, the first and subsequent annual reports should detail the progress made and any changes to the plan or schedule, providing updates and explanations to the market.

In general, there is no prior validation by the CNMV, without prejudice to subsequent measures that the CNMV may take if it becomes aware of an incident that could imply the non-application of one or more principles of the plan.

With regard to the extent to which institutions comply with the provisions of the adaptation plan and schedule, if an institution realises in any year of the transition period that it will not be able to comply fully with the provisions, it must publish an updated version for the following years as soon as possible. Nevertheless, it must continue to comply with all principles after the end of the three-year transition period and report on any changes in subsequent annual reports.

II. PRINCIPLE 1 – LONG-TERM STRATEGY

3. Compatibility with the existence of short-term investment policies. Is an adoption of the Code compatible with the affiliated entity having certain short-term investment policies?

Reply by the CNMV

The Code acknowledges that the adoption of short-term investment policies is permissible and aligns with both compliance and effective implementation. In fact, the Code exemplifies how the principle of proportionality enables the customisation of the principles to suit short-term investments.

This matter is particularly important in the context of asset managers, as they oversee a range of investment vehicles with specific policies designed to cater to the diverse profiles and preferences of end-investors, including ones with very short-term investment horizons.

It should be noted that the investor or manager in the companies in which he will exercise his voting right will in any case exercise it taking into account the total number of shares

over which he has voting discretion, including shares subject to a short-term time horizon, while complying with the restrictions and provisions of the applicable regulations.

III. PRINCIPLE 2 – KNOWLEDGE AND MONITORING OF COMPANIES

4. Monitoring and knowledge of the companies invested in. Scope of the proportionality criterion in relation to the application of this Principle 2 in the companies subject to investment.

Reply by the CNMV

The Code states that "Entities deciding voluntarily to adopt the Code must indicate in their annual report how they have applied the various principles of the Code in the previous year, in accordance with the proportionality criterion and taking into account, therefore, their particular conditions and circumstances [...]. The proportionality criterion also means taking into account the complexity, size and resources available for engagement with the entities in which they invest".

In this way, the degree of "adequacy" of knowledge about the companies in which investments are made can be adjusted in accordance with the proportionality criterion, allowing a more comprehensive understanding of the companies that are more relevant to the affiliated entity's strategy, and a lower level of knowledge of the companies with less relevance.

The proportionality criterion would mean the affiliated entity would not have to monitor each and every one of the companies in which it invests. However, it would be contradictory to adoption and the proper implementation of Principle 2 if it does not monitor any of the companies in which it holds investments. In this regard, it is recommended that affiliated entities define their monitoring and engagement measures for a number of companies that are compatible with the necessary overall perspective in terms of effective implementation of the Code in relation to their overall investment, based on the proportionality criterion and the gradualness of the transition period.

IV. PRINCIPLE 3 – DEVELOPMENT AND PUBLICATION OF THE ENGAGEMENT POLICY

5. General questions. The Code, on page 18, states that investors and managers "should be in a position to enter into a communication and, where appropriate, into a fluid dialogue with them and with the members of their administrative body and senior management, in those situations in which it is considered necessary". Additional clarifications are requested regarding the above paragraph – in quotation marks – in the context of an adequate application of Principle 3.

Reply by the CNMV

Firstly, it should be noted that, based on the monitoring activities carried out, engagement can take place in different ways (written submissions to the investee, virtual or physical meetings with representatives of the entity, etc.) and with different intensity, depending on the proportionality criterion.

There may be occasions where it is deemed suitable or favourable to initiate a dialogue with the entity. This could involve expressing concerns regarding management, the governance practices of the entity, or its notable exposure to specific risks.

Therefore, while the Code recognises and provides that bilateral dialogue with investee companies is not the only route, investors and managers should be ready and willing to use this route in accordance with their engagement and voting policy if the investor or manager considers it appropriate or suitable.

In any case, any engagement with a company must respect the various applicable legal frameworks.

In this respect, the Code expressly states in Section 2.2 ("Characteristics of the Code – Voluntary nature and proportionality") that "The principles must be applied, in any case, with respect to and subject to such general or sectoral regulations as may be applicable in each situation. Likewise, the Code must be applied so as not to impede fulfilment of contractual or legal obligations, including the obligation to respect both due confidentiality and the limitations on disclosure of inside information, and with due consideration being given to the extent to which the publication of information could harm the financial situation, competitive position or value creation of the investor or manager, or of the companies in which they invest. These limitations must be especially taken into account in the application of Principles 3 and 5."

While the above reference is not limited to Principles 3 and 5, it highlights the specific connection between the provision mentioned in the previous paragraph and the latter two, and in particular with regard to Principle 3, which would mean that the ability of investors and managers to "be in a position to enter into a communication and, where appropriate, into a fluid dialogue with them and with the members of their administrative body and senior management" must be compatible with the legal framework.

Notwithstanding the above, it should be noted that current legislation generally not only does not prevent, but even seeks to encourage, appropriate engagement by institutional investors and managers in the listed companies in which they invest, as explicitly stated in the explanatory memorandum to the Shareholder Rights Directive.[1]

6. Definition of measurable criteria and concept of joint approach. Page 18 of the Code indicates that "It is recommended that investors' and managers' engagement policy be clear, precise and complete, contain measurable criteria and objectives and reflect a joint approach to the total investment". Additional clarifications are requested regarding the above paragraph and, specifically, the reference to the "joint approach", in the context of an adequate application of Principle 3.

[1] Directive (EU) 2017/828 of the European Parliament and of the Council, of 17 May, amending Directive 2007/36/EC as regards the encouragement of long-term shareholder engagement (SRD III).

Reply by the CNMV

Entities are advised to clearly outline the objectives they aim to accomplish through their engagement activities in their engagement policies. Additionally, it is recommended to establish appropriate deadlines when needed and to provide specific criteria for selecting companies. Also, it would be advisable for entities to include in their annual report the criteria adopted in the final selection of companies for their engagement strategy, along with highlighting the most significant issues that were addressed.

The objectives can include both quantitative and qualitative aspects, with the latter being assessed using indicators or Key Performance Indicators (KPIs) that can be defined by each entity as required. The criteria for measurement and evaluation can be defined either in the policy itself or in specific action plans to be implemented as required.

In any case, it is the responsibility of each entity to determine the nature of the objectives and their measurement, as well as the degree of specificity, which can vary. Entities are allowed sufficient flexibility in the definition and assessment of objective fulfilment to allow for adaptation to factors such as the macroeconomic or geopolitical situation, regulatory updates or the information available at a given time.

Regarding the mention of a "joint approach to the total investment", it is important to emphasise that this relates to the obligation to fully adopt the principles of the Code. Hence, the investor or manager must make a comprehensive and holistic commitment to apply the principles of the Code from an overall investment perspective. However, they retain the flexibility to adapt each principle to the specific circumstances and characteristics of each case or type of asset. In this context, it is considered appropriate for the affiliated entity to take into account the totality of its investments when selecting companies to be the subject of its engagement policy, for example in relation to climate change.

Therefore, the reference to "joint approach" should not be understood as a single or equal approach for all assets, funds and investment vehicles, but compliance with this principle is compatible with the existence of differences due to different circumstances or situations, including differences in investment policies or in the subjects of engagement activities. For example, an investor could develop a specific engagement policy for its thematic funds, focusing specifically on certain environmental or technology-related themes, which would form an integral part of the investment strategy for these funds.

This would therefore not rule out special cases, such as short-term or passively managed vehicles, which are less tied to such objectives defined on a general investment-wide basis in terms of engagement and voting policies.

7. Concept of significant percentage of votes against and scope of obligations. Page 20 of the Code states that "it seems advisable that the investor or manager engagement policy include an expectation of how they consider that the entities in which they invest, and their directors, should address and follow up on proposals that are submitted to the meeting and that may have a significant percentage of votes against." Clarification is requested regarding the concept of "significant percentage of votes against" in the context of an adequate application of Principle 3.

Reply by the CNMV

This provision of the Code for investors is reflected in certain codes of good governance for listed companies, such as the current UK Code of 2018, which recommends the following in section 1, paragraph 4:

When 20 per cent or more of votes have been cast against the board recommendation for a resolution, the company should explain, when announcing voting results, what actions it intends to take to consult shareholders in order to understand the reasons behind the result. An update on the views received from shareholders and actions taken should be published no later than six months after the shareholder meeting. The board should then provide a final summary in the annual report and, if applicable, in the explanatory notes to resolutions at the next shareholder meeting, on what impact the feedback has had on the decisions the board has taken and any actions or resolutions now proposed.

Hence, it is considered a commendable corporate governance practice, which similarly applies inversely or reciprocally to the role of investors and managers in fostering effective corporate governance in the entities they invest in. Therefore, this recommendation is commonly regarded as a positive practice by major institutional investors when delegating management responsibilities to third parties.

Each investor or manager will have to establish a minimum threshold of when a percentage against is considered significant, and must be clearly below 50%, since what is at stake is to analyse the reasons why a resolution of the meeting would have been approved, but with the opposition of a relevant percentage of shareholders. One could consider the 20% used by the British Code or anything below 50% that the investor deems appropriate.

It is also the responsibility of the affiliated entity to establish its policy on how it expects the institutions in which it invests to address proposals that have faced significant opposition at the shareholder meeting level. The affiliated entity may choose to limit its engagement and follow-up actions in its engagement policy, focusing only on proposals that pertain to specific issues of greater relevance to the affiliated entity.

8. Frequency of review of the engagement policy. Pages 18 and 19 of the Code recommend the periodic review of the engagement policy. Additional guidance on recommended revision frequency is requested.

Reply by the CNMV

Each affiliated entity must establish the frequency of review of its engagement policy and the appropriateness of the participation in said review of an external advisor, taking into account the content of its policy, its characteristics and its nature, among others.

Of course, circumstances may arise that would require a review within a shorter timeframe than generally foreseen. For example, if there are corporate changes in the affiliated entity that are of major importance (mergers, demergers, acquisitions, etc.) and that entail very significant changes not only in the structure but also in the investment strategies and policies of the entity.

Entities that have availed themselves of the transitional period should – even if it depends on the individual institution and the transitional period set – review their various policies, including those related to engagement and voting, at the conclusion of this period. This

review is essential for the appropriate implementation of this principle and the other principles outlined in the Code.

However, it is not mandatory to make updates following the review if it is determined that the existing policy remains valid.

V. PRINCIPLE 4 – EXERCISE OF THE VOTING RIGHT

9. Degree of specificity of the voting policy. In relation to the expectations for action of investors/asset managers, the Code, on page 21, recommends that they "establish clearly and precisely, and with a sufficient level of detail, what their voting policy is [...]". Additional clarifications are requested regarding the above paragraph in the context of an adequate application of Principle 4.

Reply by the CNMV

As far as the expectation of the content of the voting policy is concerned, the principle is considered to be fulfilled with the establishment of guidelines, criteria or principles for the exercise of voting rights. For example, by determining the cases in which votes are cast against the approval of the annual financial report or the dismissal of a member of the board. It is also advisable to specify the scope of application and the cases in which the non-exercise of voting rights is generally prescribed, e.g. in the case of insignificant investments, even if there may be exceptions in which voting is nevertheless appropriate. For instance, an investor may establish an objective to actively vote on a certain percentage of their investments, determined by their net asset value, or alternatively, by selecting a sample of companies based on specific criteria. These criteria will guide the investor's selection process and should be made publicly available.

It is therefore about providing guidelines and criteria that help clients, participants and other users to understand the investor's or manager's objectives and intentions when voting and the underlying guidelines or criteria. A detailed voting policy would also benefit companies by enabling them to understand the expectations and voting intentions of their shareholders, thus minimising the potential for arbitrary voting decisions. It also provides its clients, participants and beneficiaries with valuable information on how their voting rights are exercised by the manager or institution that manages their investments.

While it may not always be feasible to determine the exact direction of future votes at general meetings, it is essential to emphasise the significance of providing specific guidelines and criteria. For example, some proxy advisors publish annually and for each region the criteria they will use in their voting recommendations, and these can be quite specific in some respects.

The degree of specificity is particularly important and beneficial when delegating voting rights to third parties. Clearly defined guidelines or criteria can avoid the need to issue specific instructions for every entity and each agenda item, so allowing the investor or manager to fulfil their fiduciary responsibility. Specific guidelines help to minimise the discretionary scope of the mandated company with regard to relevant agenda items.

VI. PRINCIPLE 5 - TRANSPARENCY OF THE ENGAGEMENT AND VOTING ACTIONS CARRIED OUT AND THEIR RESULTS

10. First report to be published. In relation to the entities that adopt the Code throughout 2023, when should the first annual report referred to in Principle 5 be published?

Reply by the CNMV

The general criterion is to publish the actions carried out, in each closed financial year, within a maximum period of 12 months after the end of each closed financial year.

In this respect, it should start reporting on the measures taken, on the adoption, if any, of the transitional period, and on the schedule adopted in that case, as well as on the progress made in the year, from the first year in which the adoption takes place.

Thus, if an entity adopted the Code in March 2023, it should report on the measures taken in the last 9 months of 2023 and on its transition plan by the end of 2024 at the latest.

It is therefore crucial to consider the need to report on the measures implemented in the first year of adoption. This is because it is equally important to understand the measures that have been implemented from the time of adoption.

An important aspect to consider is whether the institution has opted to use the transitional period. In such cases, it is important to assess the progress made in the first year of adoption.

11. Publication of examples of engagement actions. Page 23 of the Code indicates that the annual report "should contain examples and specific actions carried out by investors or managers". Clarification is sought on this issue in the context of a proper application of Principle 5.

Reply by the CNMV

The purpose of this provision is to enable customers, beneficiaries, participants and other users to understand the nature and extent of the monitoring, engagement and voting activities undertaken.

It is important to ensure that the report provides sufficient information to enable the reader to properly understand the application of Principle 5 without having to refer to other reports and documents, and that a summary is provided with sufficient information to enable readers of the report to understand the main features of its policies. If reference is made to other documents, these should be easily accessible and, if possible, linked in the report.

It is recommended that an overall assessment of the actions is made, e.g. by describing the number of engagements and the number of companies involved for each of the pre-defined objectives, as well as the overall results achieved.

On page 12 the Code states that "the Code must be applied so as not to impede fulfilment of contractual or legal obligations, including the obligation to respect both due confidentiality and the limitations on disclosure of inside information, and with due consideration being given to the extent to which the publication of information could harm

the financial situation, competitive position or value creation of the investor or manager, or of the companies in which they invest".

For these purposes, it is not necessary for the affiliated entities to specifically describe each action in each company. The affiliated entity should aim to strike a balance between maintaining confidentiality of sensitive information and ensuring sufficient transparency regarding its engagement activities. This includes providing adequate information about sectors, frequency and topics of dialogue, and highlighting any relevant achievements, as appropriate. Considering the aforementioned points, it is important to carefully balance both aspects. With the given guidelines in mind, it may be acceptable to share examples of specific engagement actions without explicitly naming the companies involved; for instance, discussing successful and unsuccessful cases of engagement while only indicating the sector and geographic location of the companies.

12. Concept of the most important votes and scope of the explanations on them. On page 23 of the Code it is stated that "it is considered relevant that investors and managers publicly disclose, on an annual basis, how they have applied their voting policy, including, when they have the power to exercise it at their discretion, a general description of their voting behaviour, an explanation of the most important votes and whether they have used the services of proxy advisors or other providers, and explaining, in the latter case, the degree to which their recommendations were followed". Clarification is sought as to which are considered "most important votes".

Reply by the CNMV

Each affiliated entity must internally determine the materiality of the vote by defining which are the most important votes in accordance with its engagement and voting strategies and policies.

In this respect, the Code distinguishes between those decisions for which a vote must be reported, i.e. whether a vote was cast in favour, against or abstention, without the need to explain the reasons for such a decision, and those decisions for which a qualitative explanation must also be provided stating the specific reasons for the vote.

In the first case, all voting decisions made must be reported, except those that are insignificant. This concept is legally ambiguous and relies on professional judgement. However, it should be noted that even after identifying insignificant decisions, further judgement is necessary to determine which decisions carry additional significance. This means that not only the voting direction should be indicated for such decisions, but qualitative breakdowns must also be provided to explain the reasoning behind this voting direction. And in both cases, professional judgement is required, without it being possible to establish more precise criteria ex ante and on a general basis.

In the same sense, Clause 18 of SRD II establishes that "investors should set their own criteria regarding which votes are insignificant on the basis of the subject matter of the vote or the size of the holding in the company, and apply them consistently".

In the same vein, the CNMV, in consultation 159 *quater* of the question and answer document on the regulations of collective investment schemes, venture capital firms and other closed-ended collective investment vehicles, clarifies the concept of "insignificant

votes" for the purposes of the first of the two cases, that is, in order not to even have to indicate the direction of the vote on certain decisions, in the following terms:

"Art 47ter.1 states that the engagement policy should describe the exercise of voting rights and other rights attached to the shares, which would also mean determining what is meant by insignificant votes. In this regard, whereas Recital 18 of the SRDII establishes the following: 'Institutional investors and asset managers should publicly disclose information about the implementation of their engagement policy and in particular how they have exercised their voting rights. However, with a view to reducing the possible administrative burden, investors should be able to decide not to publish every vote cast if the vote is considered to be insignificant due to the subject matter of the vote or to the size of the holding in the company. Such insignificant votes may include votes cast on purely procedural matters or votes cast in companies where the investor has a very minor stake compared to the investor's holdings in other investee companies. Investors should set their own criteria regarding which votes are insignificant on the basis of the subject matter of the vote or the size of the holding in the company, and apply them consistently'".

VII. PRINCIPLE 6 – CONFLICT OF INTEREST MANAGEMENT POLICY

13. Publication of examples of conflicts of interest without identification of companies. Page 24 of the Code states, "and the annual report should also state how it has been applied in practice in the previous year and indicate, to the extent deemed relevant, specific examples of potential or actual conflicts of interest that have arisen, and how they have been managed and resolved". Additional clarification is sought on this issue in the context of a proper application of Principle 6.

Reply by the CNMV

The purpose of the principle is to make clients, beneficiaries, participants and other users aware of the conflicts of interest policy so that they can satisfy themselves that investors or managers are ultimately acting in the interests of those clients, participants and beneficiaries in fulfilling their fiduciary responsibilities.

On page 12 the Code states that "the Code must be applied so as not to impede fulfilment of contractual or legal obligations, including the obligation to respect both due confidentiality and the limitations on disclosure of inside information, and with due consideration being given to the extent to which the publication of information could harm the financial situation, competitive position or value creation of the investor or manager, or of the companies in which they invest".

Hence, the affiliated entity should consider how to address this dual concern. In this regard, it is permissible to publish examples of conflicts of interest that have been identified, along with information on how they have been managed and resolved, without revealing the specific company or companies involved.

VIII. PRINCIPLE 7 – REMUNERATION POLICY

14. Degree of requirement of the principle on remuneration policy. Paragraph 2.3 of the reasoning behind the principles states that "it is considered desirable to use an appropriate remuneration structure to encourage executives of investors and managers to effectively apply their strategies and objectives so as to obtain long-term performance for their firms". And Principle 7 indicates that "the remuneration policy shall establish and publicly indicate what part of the variable remuneration of the executive directors and senior managers of the investors and managers will be linked to the attainment of objectives related to their strategies and to how their effective application has been carried out during the year and, in particular, it will be oriented towards the achievement of long-term performance by such investors and managers". Additional guidance is requested on the extent to which a part of the variable remuneration should be linked to the fulfilment of objectives and strategies, in the context of an adequate application of Principle 7.

Reply by the CNMV

The principle indicates that it is important for affiliated entities to specify what portion – whether material, insignificant or nil – of variable remuneration is linked to the achievement of the entity's objectives and strategies, without specifying what portion is considered more appropriate or advisable.

This is because, as Section 2.3 of the Code makes clear, it is crucial to ensure that the remuneration structure is appropriate, in the sense that it aligns and incentivises executive directors and senior management to implement their strategies and objectives effectively, in favour of the achievement of long-term returns by those investors or managers.

This alignment or incentive can be achieved in different ways, taking into account not only the remuneration structure, but also the overall framework and structure of the affiliated entity, including its mission, vision and corporate culture, the ethical and control environment and other elements and circumstances specific to each entity.

The purpose of this principle is therefore to encourage the development of appropriate remuneration structures that provide the right incentives for those responsible for implementing the strategies and achieving the objectives of the organisations in order to align their interests with those of the entity and achieve long-term performance.

The Code recognises that there are different alternatives to achieve this alignment and that specifying that part of the variable component is linked to the achievement of certain objectives and strategies is not the only appropriate way to achieve this alignment. Thus, the Code simply indicates, between the explanatory paragraphs and as a guide, some of the ways in which the remuneration policy and structure can be linked to the achievement of the entity's strategies and objectives ("it is considered *desirable* that a part of the variable remuneration of the executive directors and senior managers of investors and managers be linked to the achievement of objectives that refer to the effective application of their strategy"), but that this would not be the only possible option, with sufficient transparency of information on this linkage being recommended in any case ("it is important for investors and managers to justify, both in the remuneration policy and in the annual report, that the remuneration structure and the amounts annually accrued are aligned with their business strategy and with the objective for such investors or managers of the achievement of long-term performance, it being advisable to explain[...]").

Therefore, if, after conducting a proper internal assessment and exercising professional judgement, the entity determines that it is not appropriate to link a portion of the variable remuneration to the fulfilment of the investor or manager's strategies and objectives in order to achieve the aforementioned alignment, this principle can still be complied with, provided that the option chosen does achieve the appropriate alignment of interests, and this decision must be reported in the remuneration policy and in the annual report.

In this context, it is important that investors and managers establish a remuneration structure that is aligned with the business strategy and long-term performance objective of the affiliated entity. It is the responsibility of each entity to assess and determine how best to achieve this alignment and to explain this appropriately in the remuneration policy and annual report. It is also recommended to explain the link between the metrics set out in the remuneration structure and the objectives pursued.

15. Concept of "senior management". Page 25 of the Code refers to the "variable remuneration of executive directors and senior managers". The question arises as to what is to be understood by "senior manager" for these purposes, considering the different definitions of this concept in Spanish legislation (Article 1 of Royal Decree 1382/1985, of 1 August; Article 11 of Law 35/2003, of 4 November, and Article 1 of Law 26/1988, of 29 July, among others). Additional clarifications are sought on the concept of "senior manager" in the context of a proper application of Principle 7.

Reply by the CNMV

As previously mentioned, the aim of Principle 7 is to establish an appropriate remuneration structure that provides incentives for individuals responsible for implementing organisational strategies and objectives. This ensures alignment between these strategies and objectives and a long-term focus on performance. Therefore, the perimeter of application of this principle will be that of people who:

1. Manage the activities of the entity with a view to achieving the general objectives and strategies at the corporate level of the affiliated investors and managers themselves, including the highest positions in the organisational chart of the affiliated entity.

2. Exercise their functions independently and with full responsibility, limited only by the criteria and direct instructions of the company's owners or management and administrative bodies.

Other managers who are subordinate to the above-mentioned managers and whose tasks also include the management of actions and (economic and/or human) resources, but who are limited to the achievement of certain specific or partial objectives and strategies and not to the definition and implementation of objectives and strategies at company level, do not *per se* fall within the scope of this principle.

In any case, the Code deliberately avoids prescribing a legal definition of the term "manager". It is the responsibility of each affiliated entity to define the scope of the Code according to reasonable criteria appropriate to its intended purpose. It is recommended that each entity disclose in the policy or annual reports the positions it considers to be senior management.

It is important to note that the assessment should be made in relation to the perimeter of the affiliated entity. This means that when an asset management firm adopts the Code, the senior managers are those persons within the asset management firm who are responsible for setting and executing the overall strategies and objectives of the affiliated asset management firm, without taking into account the managers belonging to other entities of the possibly larger group to which it belongs, as would be the case if its parent entity were a credit or insurance institution controlling a number of other investment and management entities.