

**TECHNICAL GUIDE 2/2017 TO RELATED-PARTY TRANSACTIONS  
RELATING TO FINANCIAL INSTRUMENTS MADE BY COLLECTIVE  
INVESTMENT SCHEME MANAGEMENT COMPANIES.**

18 January 2017

The regulations governing collective investment schemes (hereinafter CIS) gives particular importance to the prevention of conflicts of interest. To this end, it establishes a number of general requirements for the detection and control of conflicts of interest and a specific set of requirements for transactions with related parties.

Related-party transactions are considered to be, among others, transactions between managed CISs, managed CIS transactions with entities belonging to the management company's group, and the provision of services to CISs managed by such entities.

In particular, this special set of regulations governing related-party transactions (Article 67 of Law 35/2003, of 4 November, on CIS, and Article 145 on the regulation of CIS, approved by Royal Decree 1082/2012, of 13 July) obliges management companies to have a formal internal procedure in place to ensure that transactions with related parties are carried out in the sole interest of the CIS and at prices or under conditions that are the same or better than those of the market. The fulfilment of these requirements must be confirmed by an independent unit of the management company or, where appropriate, by the person responsible for compliance.

Management companies must also have procedures in place whereby the list of transactions that should be considered as related are properly identified, explicitly identifying those for which prior authorisation is necessary and those that may be subject to *a posteriori* supervision. These procedures must also include mechanisms aimed at certifying their effective application.

The CNMV considers it desirable to convey to CIS management companies a number of criteria arising from its experience in the supervision of procedures for the approval of related-party transactions relating to the acquisition and sale of financial instruments. To this end, on 18 January 2017, following a report from its Advisory Committee, the CNMV approved this Technical Guide, in accordance with the provisions of Article 21 of Securities Market Act. The CNMV will apply the criteria set out in this Technical Guide in its supervisory activities.

### **One. Scope of application**

This Technical Guide will be applicable to the trading of financial instruments considered to be related-party transactions of a non-repetitive nature, as provided for in Article 67 of Law 35/2003, of 4 November, on CISs, whether the instruments were issued by the related party or it is acting as the counterparty.

## **Two. Check that transactions relating to financial instruments are in the sole interest of the CIS**

The approval of related-party transactions must include sufficient reference to the reasons why the transaction is considered to have been carried out in the sole interest of the CIS, along with information or documentation on the *ex-ante* analyses performed in the selection of the investment. For these purposes, a reference to the mere analysis of the security's issue prospectus will not be considered to be sufficient, except in the case of securities which, due to their nature and characteristics, are of low complexity and have a low risk profile.

The sole interest of an CIS will not be considered to be sufficiently substantiated by mere statements to that effect or general declarations relating to the CIS's alignment with investment policy or to its compliance with ratios. Therefore, sufficient reasoning must be provided as to whether the transaction is in line with the institution's investment policy and risk profile and whether it has sufficient liquidity to take on the investment, and confirmation must be provided that in a normal investment process (this refers to unrelated third parties) the transaction would also have been carried out. Regarding the latter, there must be evidence of the analysis made to find non-related investment options under better conditions.

The sole interest of the CIS must also be substantiated, weighing up its interest against the interest of the related party.

The CNMV will not consider related-party transactions to be justified on the basis of their subsequent profitable returns.

## **Three. Checking of prices of transactions relating to financial instruments**

The checking that a related-party transaction relating to the trading of financial instruments is made at prices or under conditions that are the same as or better than those of the market must be evidenced in sufficient detail, especially in the case of low liquidity securities. For these purposes, general references to the range of prices in the market on the day the securities were traded will not be sufficient.

## **Four. Approval of related-party transactions relating to financial instruments**

The procedures for the approval of related-party transactions must ensure that there is evidence regarding who requested approval of the related-party transaction and who or which authority gave their approval.

Approval will be given by the person or persons designated for this purpose by the person in charge of the independent unit of the management company responsible for this function or, where appropriate, by the person responsible for compliance. The approval process may be carried out using verifiable and non-manipulable electronic means.

The provisions of the foregoing paragraphs will not be applicable to every individual transaction when simplified approval mechanisms are used, in accordance with Article 67.3 of Law 35/2003 on CISs in reference to repetitive or insignificant related-party transactions.

### **Five. Registration of related-party transactions**

The documentation supporting the analysis made in accordance with the above criteria must be included in the register of related-party transactions referred to in rule 3<sup>a</sup>.4.i) of Circular 6/2009, on the internal control of CIS management companies, and must be retained for at least five years.

### **Six. Delegation of management**

If a CIS management companies has delegated the management function, the set of regulations governing related-party transactions will be applicable to the delegated entities as provided for in Article 98.7 of the CIS Regulation.

Without prejudice to the foregoing, the delegated entity must send sufficient information and documentation relating to each related-party transaction to the delegating company, either before or after the event, and as often as the delegating company deems appropriate, depending on the volume and nature of the transactions. This is to enable the CIS management companies to properly carry out the duty of supervision that the management company has as the entity responsible for the actions of the delegated entity, and to check that the latter is acting in accordance with the regulations governing related-party transactions.

Any transactions that the delegated company may make with entities of the delegating CIS management companies' group or in relation to assets issued by those entities are also considered to be related-party transactions.