



CNMV Circular 6/2009, of 9 December, on internal control of collective investment scheme management companies and investment companies. (Amended by Circular 6/2010, of 21 December).

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Article 43 of Act 35/2003, of 4 November, on Collective Investment Schemes (hereinafter, CIS Act) establishes the mandatory internal organisation requirements for management companies of collective investment schemes (hereinafter, CIS management companies). In particular, it requires that CIS management companies have good administrative and accounting organisation, with suitable human and technical resources, as well as internal control procedures and mechanisms, including procedures for risk management, and information technology control and security mechanisms. In addition, they must have bodies and procedures to prevent money-laundering, a regime for related-party transactions and an internal conduct regulation. In addition, it requires that CIS management companies are structured and organised so as to minimise the risks that the interests of collective investment schemes (hereinafter, CIS) or those of clients are damaged as a result of conflicts of interest between the CIS management company and its clients, between clients, between one of its clients and one CIS or between two CIS.

In addition, Article 73 of the Regulation of the CIS Act, approved by Royal Decree 1309/2005, of 4 November, which approves the Regulation of Act 35/2003, of 4 November, on Collective Investment Schemes, and which adapts the tax regime of collective investment schemes (hereinafter, CIS Regulation) requires that CIS management companies establish rules to regulate the personal transactions of their employees and the investments in financial instruments which they perform on their own account, as well as rules of operation and suitable procedures so as to facilitate that the members of their management bodies comply with their obligations at all times and assume the responsibilities corresponding to them in accordance with applicable legislation.

Furthermore, Articles 11.2 and 12.1 of the CIS Act and the CIS Regulation respectively establish similar organisational requirements to investment companies which have not designated their management, administration and representation to a CIS management company (hereinafter, investment companies).

The legislative implementation of the internal control requirements for CIS management companies and investment companies have so far been limited to transactions with derivative instruments or with unlisted financial instruments carried out by CIS management companies for the CIS which they manage or, as the case may be, by investment companies, included in CNMV Circular 3/1997, of 29 July, on financial information requirements of Collective Investment Schemes and certain implementations of the Order of 10 June 1997 on derivative trading by these schemes, and in CNMV Circular 4/1997, of 26 November, on valuation criteria and conditions for collective investment in unlisted securities. This Circular extends these requirements to all activities relating to the management, administration and representation of CIS.

Similarly, the Circular implements the organisational requirements and internal control requirements which legislation requires of CIS management companies or, as the case may be, investment companies in carrying out the management of CIS in line with the rules established

for providing certain investment services (such as discretionary and individualised management of investment portfolios, investment advisory services or custody and administration of CIS shares or units), in accordance with the provisions of Article 65.2 of the Securities Market Act 24/1988, of 28 July. In this regard, it is understood that the internal control of the CIS management company or investment company includes the functions of risk management and legislative compliance, and in addition that the entity will have an internal audit function which will evaluate the set of systems and procedures of the management company or investment company.

The Committee of European Securities Regulators (CESR) recently published, in February 2009, a document which includes the risk management principles applicable to CIS management companies, which have been reflected in this Circular. In addition, the Circular includes the principles contained in the advice which the CESR approved and passed on to the European Commission in October 2009 on the level II rules of Directive 2009/65/EC.

The Circular consists of 10 rules divided into seven sections, as well as a repeal rule and a final rule.

Section one defines its scope of application, which covers both CIS management companies and investment companies which have not designated their management, administration and representation to a CIS management company.

Section two covers the responsibility of the board of directors of CIS management companies or investment companies in implementing, maintaining and supervising a suitable internal control system, and implements the internal organisation requirements, as well as internal control policies, procedures and mechanisms which CIS management companies and investment companies must have. Furthermore, it requires that they create and maintain a risk management unit, a legislative compliance unit and an internal audit unit which operate independently. However, depending on the nature, volume and complexity of their activities and of the managed CIS, CIS management companies and investment companies may establish one single unit within the organisation responsible for legislative compliance and risk management. Furthermore, it provides that the CNMV may require CIS management companies and investment companies to rectify the deficiencies in their administrative and accounting organisation or in their internal control procedures, as well as to implement suitable resources, without prejudice to the provisions in letters p) and n) of Articles 80 and 81, respectively, of the CIS Act. Finally, the establishment of the aforementioned units and their corresponding functions must be understood without prejudice to the fact that certain processes may be carried out in other functional areas, providing the separation principle is guaranteed.

Sections three, four and five establish the internal organisation requirements and break down the functions which must be carried out by the risk management, legislative compliance and internal audit units.

Section six covers the requirements for the delegation of the functions of risk management, legislative compliance and internal auditing.

Section seven specifies the content of the internal control policies and procedures manuals of CIS management companies and investment companies.

Finally, the Circular includes a final rule which establishes a period of one year for the CIS management companies and investment companies to adapt their control systems to the requirements of the Circular, as well as a rule repealing the current legislation which implements the internal organisation requirements and internal control obligations of CIS management companies and investment companies.

This Circular, pursuant to the authority contained in Articles 12 and 73 of the Regulation of Act 35/2003, approved by Royal Decree 1309/2005, of 4 November, implemented by Article 6 of Order EHA/35/2008, of 14 January, which implements the rules relating to the accounting of collective investment schemes, the method for determining the assets, calculating the risk diversification ratios and certain aspects of collective investment schemes with investment policies which reproduce, replicate or take as a reference a stock market or fixed income index, and which authorises the CNMV to implement said rules, implements the internal control requirements of CIS management companies and investment companies which have not designated their management, administration or representation to a CIS management company. The Circular requires the existence of a control unit responsible for supervising the correct functioning of the internal control procedures and systems (i.e. a unit which exercises the internal audit function), in line with the provisions of letter e) of Article 2 of Rule 6 of CNMV Circular 3/1997, of 29 July, on financial information requirements to members and unit-holders of Collective Investment Schemes and certain implementations of the Order of 10 June 1997 on derivatives trading by these schemes, which requires the creation of a control unit within the organisation which, guaranteeing suitable segregation of management and administration functions, is responsible for reviewing the internal control procedures and systems established. By virtue thereof, the CNMV Board, following a report from the Advisory Committee, in its meeting held on 9 December 2009, provided:

SECTION ONE

Scope of application

Rule 1. Scope of application.- This Circular will be applicable to collective investment scheme management companies (hereinafter, CIS management companies) and to investment companies which have not designated their management, administration or representation to a CIS management company (hereinafter, investment company).

In the event that the entity to which the investment company has designated the management of its assets is a firm authorised to carry out investment services in Spain provided in Article 63.1 .d) of the Securities Market Act 24/1988, of 28 July, the internal control requirements of the firms to which management has been delegated will be established in their specific legislation.

SECTION TWO

Organisational structure

Rule 2. Responsibility of the board of directors.-1. The board of directors of the CIS management company or, as the case may be, investment company, will be responsible for:

- a)** Establishing, maintaining and supervising the internal control policies and procedures, as well as evaluating their effectiveness and, as the case may be, adopting suitable measures to rectify possible deficiencies.
- b)** Ensuring that the main risks which affect the CIS which it manages, as well as those which affect the CIS management company or investment company, have been identified and that suitable internal control systems have been implemented so as to mitigate them.
- c)** Ensure the existence of suitable and sufficient human and technical resources to guarantee the correct functioning of risk management, legislative compliance and internal audit functions referred to herein, as well as suitable segregation of functions.

2. The board of directors of the CIS management company or, as the case may be, investment company may delegate to an audit committee, created within the board itself, the supervision and evaluation of the risk management and legislative compliance systems and procedures of

the CIS management company or investment company. In this case, the person responsible for the internal audit will report to said committee, which must have a majority of non-executive members appointed by the board of directors of the CIS management company or investment company.

Rule 3. Internal organisation requirements.-1. The board of directors of the CIS management company or, as the case may be, investment company must define and apply suitable policies and procedures to guarantee that its staff, its agents and legal representatives comply with the obligations imposed by legislation, as well as suitable policies and procedures for control of third-party entities to which the management and administration of the CIS or any other activity have been delegated.

For this purpose, they must have:

a) Suitable human and technical resources, in relation to the nature, volume and complexity of the activities performed and managed CIS, guaranteeing suitable segregation of functions within the organisation, especially of the management, administration and control functions.

In particular, the CIS management company or, as the case may be, investment company must employ staff with the qualifications, knowledge and experience necessary to carry out the functions assigned to them, and must establish ongoing training plans so as to ensure suitable staff training.

b) An organisational structure which is suitable and proportional to the nature, volume and complexity of their activities and the managed CIS, with well-defined, transparent and coherent lines of responsibility, which make it possible to prevent, detect and correct possible conflicts of interest which might be harmful to the unit-holders and shareholders of the managed CIS.

2. In addition, the CIS management company or, as the case may be, investment company must have:

a) A unit which functions independently and which guarantees suitable management of the commitments undertaken in exercising the activities of the managed CIS and other risks arising from the assets which make up its investments, as well as the risks inherent to the activities of the CIS management company itself or, as the case may be, the investment company.

b) A unit which guarantees the performance of the legislative compliance function under the principle of independence with respect to those areas or units which carry on the activities which said function is based on.

c) A unit which carries out the internal audit function, which follows the principle of independence and objectivity, supports the board of directors of the CIS management company or investment company in its responsibility to supervise the systems and procedures for risk management, legislative compliance and corporate governance.

3. When proportional to the nature, volume and complexity of its activities and of the managed CIS, the CIS management company or, as the case may be, investment company, may create and maintain one single unit which guarantees that the legislative compliance and risk management functions are carried out.

4. In addition, the CIS management company or, as the case may be, investment company must adopt:

a) Suitable administrative and accounting policies and procedures. In particular, these policies and procedures shall:

(i) Guarantee correct accounting recording of the transactions carried out for the CIS managed by the CIS management company or investment company, in accordance with applicable legislation.

(ii) Guarantee correct registration of the requests for subscription and redemption of units or acquisition and disposal of shares of the CIS managed by the CIS management company or investment company, when required by applicable legislation and in accordance with the procedure established in the prospectus of the managed CIS and, therefore, maintain the unit-holder register and, as the case may be, the shareholder register.

The order register will identify the participant or shareholder of the CIS, the person that received the order, the date and time, conditions and payment method, type, execution date, number of units subscribed or redeemed, applicable net asset value, gross and net amount subscribed or redeemed and other relevant information.

(iii) Establish the performance of reconciliations of the assets of the CIS in custody of the Depository, either directly or through a participant in the clearing, settlement and registration systems of the markets in which they will operate, between their internal registers and the registers of the Depository, which make it possible to prevent and detect errors or anomalies in the processes for calculating the net asset value of the units or shares of the CIS.

(iv) Establish mechanisms to confirm the transactions performed for the CIS managed by the CIS management company or the investment company with financial intermediaries or corresponding counterparties, including verification of the economic conditions agreed with the above.

(v) Establish control mechanisms for the settlement of the transactions performed for the CIS managed by the CIS management company or investment company, and for the movements of the cash accounts belonging to the CIS managed by the CIS management company or investment company.

(vi) Establish mechanisms for identifying, evaluating and resolving immediately, or in the shortest time possible, those incidents, errors and failures to comply with applicable legislation which have an impact on the net asset value of the managed CIS or the investment company.

For this purpose, the CIS management company or the investment company may establish tolerance thresholds to identify incidents, errors and failures to comply with legislation which may have an impact on the net asset value of the units of the investment funds and of the shares of investment companies, as well as for compensation or, as the case may be, information to unit-holders or shareholders for the damage caused as a result of the above. These must be included in the internal manuals referred to in Rule 10, without prejudice to the right of the unit-holders or shareholders to demand liability from the management company referred to in Article 46.4 of the CIS Act.

At any event, the administrative and accounting procedures must be duly supported by computer systems which guarantee a high level of automation and which minimise operational risk. In particular, they must allow automatic entry of the prices used to determine the fair value of the assets, the calculation of the net asset value of the CIS managed by the CIS management company or the investment company with the frequency established in their prospectuses, as well as allowing immediate and suitable registration of each transaction.

b) Procedures, criteria and formulas for calculating net asset value of the CIS managed by the CIS management company or investment company. In particular, these procedures must make it possible to verify the accuracy of the calculation of the net asset value prior to its publication.

c) Policies and procedures for valuing the assets held by the CIS managed by the CIS management companies or the investment company.

d) Policies and procedures for internal control as well as for ongoing identification, evaluation and monitoring of the risks assumed both by the managed CIS, and by the CIS management company or investment company. In particular, these policies and procedures must include a regime which regulates the investments in financial instruments of the CIS managed by the CIS management company or the investment company, which:

(i) Guarantee that each transaction can be reconstructed based on its origin, the participating parties, its nature and the time and place in which it is carried out, as well as ensuring that the assets of the CIS are invested in accordance with its regulations, articles, prospectuses and current legal provisions.

(ii) Make it possible to verify that the investment decisions in favour of a specific CIS, or client, are adopted prior to transferring the order to the intermediary and, therefore, without prior knowledge of the results of the transaction. For this purpose, the CIS management company must have objective and pre-established criteria for distributing or breaking down the transactions which affect several CIS, or clients, which guarantee equal treatment and non-discrimination between them. At any event, compliance with these requirements must be recorded in documents in a manner which is objective, verifiable and which cannot be tampered with.

(iii) Guarantee that the investments meet the risk limits approved by the board of directors of the CIS management company or of the investment company and, as the case may be, by its investment committee, and that they meet the risk profile established in the prospectus of the CIS.

Similarly, the risk management system of the CIS management company or the investment company must make it possible to estimate and control at all times the risk of the open positions in derivative instruments and their contribution to the overall risk profile of the portfolio of the CIS management company or the investment company. They must also allow suitable liquidity management in order to control the depth of the securities market in which it invests, considering the usual trading and amount invested, so as to obtain orderly settlement of the positions of the CIS management company or investment company through normal trading mechanisms, and in order to guarantee its ability to meet requests for redemption of units or sale of shares.

e) Policies and procedures for selecting financial intermediaries involved in the transactions contracted by the CIS management company for the CIS managed by the CIS management company or by the investment company. These policies and procedures must bear in mind the price, costs, speed and probability in execution and settlement, the volume, nature of the transaction and any other item which the CIS management company or investment company considers relevant for executing the transactions.

In addition, they must bear in mind the analysis services for investments referred to in Article 63.2 .e) of the Securities Market Act 24/1998, of 28 July, which, as appropriate, may be provided by intermediaries through commissioning brokerage, verifying that said services are related to the investment profile of the CIS and that they contribute to improving investment decision-making. The procedures must include mechanisms to prevent, detect and correct possible conflicts of interest in selecting intermediaries with regard to the provision of said services, thus guaranteeing the best possible result for the CIS. Similarly, the procedures must include a review, at least annually, of the fees paid to intermediaries, providing these are significant amounts, with

the aim of determining the amount of these fees which correspond to analysis services and to determine whether they are reasonable with regard to the brokered amount.

f) Policies and procedures which regulate the actions of the members of its board of directors, employees, representatives and legal representatives, included in the internal conduct regulation.

g) Policies and procedures related to the remuneration system and the setting of incentives for members of the board of directors, employees, representatives and legal representatives. At any event, the remuneration and incentives system which is established must prevent conflicts of interest and taking on risks which are inconsistent with the risk profile of the managed CIS.

h) Internal communications policies and procedures, including information systems which ensure that staff are aware of the obligations, risks and responsibilities deriving from their actions and the legislation applicable to the functions assigned to them.

i) Policies and procedures for related-party transactions which guarantee that they are performed in the exclusive interest of the CIS managed by the CIS management company or the investment company, and with prices and conditions equal to or better than those of the market. At any event, these policies and procedures must guarantee the existence of a regularly updated register of those transactions and activities in which a conflict of interest has arisen or may arise.

j) External communications policies and procedures. They should especially introduce effective mechanisms for communicating:

(i) To unit-holders and shareholders in order to guarantee their right to the information referred to in Articles 17 and 18 of Act 35/2003, of 4 November, on Collective Investment Schemes (hereinafter, CIS Act), including the dissemination of information by electronic means.

(ii) To the Depository of the CIS managed by the CIS management company or investment company in order to guarantee effective compliance with its oversight and supervision functions.

(iii) To the CNMV in order to guarantee the accuracy, quality and sufficiency of the information that the CIS management company or investment company must send to the CNMV relating to the CIS managed by the CIS management company or investment company.

(iv) To any other entity or third party with which the management company is related, especially to those entities to which it has delegated functions.

k) Policies and procedures which make it possible to control the activities and relations with agents and legal representatives in compliance with applicable rules.

l) Policies and procedures relating to managing the risks inherent to delegated functions.

m) Policies and procedures which make it possible to guarantee that the assets of the CIS managed by the CIS management company or investment company are at all times used with the consent and authorisation of the Depository.

n) Policies and procedures that make it possible to detect any anomaly in the custody and administration functions of the Depository with respect to the assets of the CIS managed by the CIS management company or the investment company.

- o) Policies and procedures relating to monitoring securities lending for the CIS managed by the CIS management company or the investment company.
- p) Policies and procedures relating to the functioning of the customer service department or, as the case may be, ombudsman designated by the CIS management company or investment company, which, among other aspects, guarantees that the claims by investors are processed quickly and that appropriate measures are taken to rectify them.
- q) Policies and procedures for marketing units and shares of the CIS managed by the CIS management company, unless said company does not carry on marketing activities. In particular, it is necessary to define the policies and procedures required for managing the legal and reputational risks which may arise from advertising, including appropriate communication criteria so as to minimise the aforementioned risks.
- r) Policies and procedures for preventing money laundering.
- s) Policies and procedures to reduce the risk arising from unexpected interruptions in essential functions, guaranteeing continuity and regularity of the activities. Specifically, they must have established business continuity and disaster recovery plans.
- t) Policies and procedures relating to information security, which guarantee the confidentiality, integrity and availability, and the authorised use of the information, as well as compliance with legislation relating to personal data protection.
- u) Policies and procedures which guarantee the conservation, for at least five years, of the documents providing evidence of the controls performed with regard to the policies and procedures mentioned in the above letters.
- v) Policies and procedures on exercising the rights inherent to the securities making up the portfolios of the investment funds, specifically with regard to exercising the voting rights of those securities in which there may be conflicts of interest.
- w) Any other policies and procedures which, in accordance with the nature, volume and complexity of their activities and the managed CIS, are necessary in order to achieve best compliance with internal control requirements.

Nevertheless, the policies and procedures referred to in letters p), r), s), t) and u) above may be structured at the level of the group which the CIS management company or investment company belongs to, providing it is allowed by applicable legislation.

5. Without prejudice to the above, the CIS management companies authorised to carry out discretionary or individualised investment portfolio management, including those belonging to pension funds and venture capital funds, investment advice and/or custody and administration of investment fund units and, as the case may be, the shares of investment companies in accordance with the provisions of Article 40 of the CIS Act, must comply with the provisions on internal organisation requirements, conflicts of interest, and on rules of conduct provided in Articles 70 (3), 70 (4), 78, 78 (2), 79, 79 (2), 79 (3) and 79 (4) of the Securities Market Act 24/1988, of 28 July, and its implementing provisions in accordance with Article 65 of the aforementioned Act.

6. Similarly, the CIS management companies that manage hedge funds, funds of hedge funds, or both, as well as hedge investment companies (SICAV) and SICAV of hedge funds must comply with the additional requirements on internal control established in applicable legislation and, in particular, in CNMV Circular 1/2006, of 3 May, on Hedge Funds. Similarly, the CIS management companies which manage real estate CIS must extend the internal control policies and procedures to cover the additional functions referred to in Article 26 of the Order of 24

September 1993 on real estate investment funds and companies, as well as to the real estate valuations made by property valuation companies. With regard to the valuations assigned by property valuation companies, the CIS management companies must have procedures for comparing said values with their information on the market situation.

7. When the CNMV, in exercising its functions, considers that there are insufficient human and technical resources, as well as deficiencies in the administrative and accounting organisation or weaknesses in the internal control systems, it may require that the CIS management company or, as the case may be, investment company, obtain sufficient resources in order to perform its activities.

SECTION THREE

Risk management function

Rule 4. Risk management.-1. The unit within the organisation which guarantees the performance of the risk management function shall:

- a)** Report to a person in the organisation with sufficient authority so as to promote independence and guarantee wide coverage of the risk management function.
- b)** Establish, apply and maintain suitable risk management procedures which make it possible to determine the risks arising from the activities of the CIS, as well as of the CIS management company or investment company in accordance with the level of overall risk approved by the board of directors of the CIS management company or the investment company, and with the specific risk levels established, as the case may be, by its investment committee.

In particular, the risk management unit shall:

- (i) Identify, evaluate and quantify the significant risks relating to the CIS managed by the CIS management company or the investment company, which will include market risk, credit risk (including issuer risk and counterparty risk) and liquidity risk, as well as their overall impact on the risk profile of each CIS.
- (ii) Perform the appropriate verifications prior to investing in financial instruments, and while these instruments remain in the portfolio of the managed CIS, so as to assess their suitability to the investment policy of the CIS, their risks and contribution to the overall risk profile of the CIS, their specific valuation method, as well as the availability of information allowing ongoing valuation of the financial instruments and continuous evaluation of their risks. However, it may be possible to use simplified prior verification procedures for those categories of financial instruments which, depending on their nature and characteristics, have a low level of complexity or a low risk profile.

For this purpose, it shall not only bear in mind the credit rating given by a specialised agency, but must also carry out an exhaustive process of analysing the characteristics of the financial instruments, the composition of the investment portfolio or its structure, the suitability to the investment policy and risk profile of the investing CIS, and of the evolution of the inherent risks.

(iii) Use suitable risk management techniques, adapted to the specific characteristics of the investment strategy and risk profile of each CIS managed by the CIS management company or the investment company, as well as the level of complexity of the assets managed and their valuation, supported by integrated computer systems, as the case may be, with accounting and investment management applications.

(iv) Verify compliance with the risk limits approved by the board of directors of the CIS management company or of the investment company and, as the case may be, by its investment committee and, that these meet the risk profile established in the prospectus of the CIS.

Similarly, it must verify compliance with the procedures approved by the board of directors of the CIS management company or investment company so as to guarantee that, in the case of failure to comply with said risk limit system, appropriate decisions are taken to ensure an efficient and ordered adjustment, in the shortest time possible, of the investment portfolio of the CIS, which must be carried out in the interests of the unit-holders and shareholders.

(v) Periodically review the validity of the risk management techniques used. In particular, it shall carry out back testing so as to calibrate the quality and accuracy of the risk evaluation systems, as well as carry out stress testing.

This stress testing will include periodic simulation exercises so as to discover the effects on the ability to comply with the obligations of the CIS to meet redemption commitments in the event of an adverse market situation.

(vi) Verify the specific valuation procedures for the assets in which the CIS managed by the CIS management company or investment company invests, especially the methodology and parameters used in valuing assets which are not traded on official secondary markets, on other regulated markets or on multi-lateral trading facilities, or non-liquid assets or assets with an unrepresentative market price, guaranteeing that they are suitable and reflect the movements and situation of the markets.

(vii) Verify that there is suitable liquidity management which makes it possible to control the market depth of the financial instruments in which the CIS invests, taking into account the usual trading and amount invested so as to obtain ordered settlement of the positions of the CIS managed by the CIS management company or the investment company through normal trading mechanisms in order to guarantee that their ability to meet requests for redemption of units or sale of assets is not reduced, and respects at all times equal treatment for all investors.

In particular, liquidity risk must be analysed both at the level of the managed CIS and at the level of the financial instruments in the investment portfolios.

1. The evaluation of the liquidity of the managed CIS will take into account factors such as the structure of unit-holders or shareholders and their level of concentration, the quality of the information on patterns of unit redemption or disposal of shares of the managed CIS and the existence of restrictions on the redemption of units or disposal of shares of the managed CIS included in its prospectus.

At any event, the liquidity of the managed CIS will be evaluated individually for each CIS, as well as overall for all the managed CIS, including any other portfolios managed by the CIS management company in accordance with the provisions of Article 40.1 of the CIS Act.

2. The evaluation of the liquidity of a financial instrument will take into account factors such as trading frequency, trading volume and the number of transactions, the availability of market prices, the analysis, as the case may be, over a certain period of time, of the bid and ask prices and the spread, including a comparison with available market prices, the quality and number of financial intermediaries involved in trading the financial instrument, the investment volume of the managed CIS in the financial instrument compared with the total outstanding volume, and the time necessary to dispose of a significant amount of the investment in the financial instrument without causing serious damage to the unit-holders or shareholders.

For this purpose, the CIS management company or investment company may assign a liquidity ratio to each financial instrument in the portfolio of the managed CIS or the investment company. At any event, the evaluation of the liquidity risk, both at the level of the CIS and at the level of the financial instrument in their investment portfolios, will be submitted to the stress testing referred to in point (v) above.

(viii) Periodically review the policies and procedures for selecting entities which broker the transactions performed by the CIS management company on the account of the CIS managed by the CIS management company or the investment company, paying special attention to the quality of execution of the designated entities.

c) Inform in writing all directors of the CIS management company or investment company, at least every quarter, about the result of the work performed, highlighting whether the overall risk level and the specific risk levels of the managed CIS or the CIS management company or investment company have been exceeded, as well as about the effectiveness of the measures adopted by the board of directors of the CIS management company or investment company with regard to said risks.

However, the risk management unit must immediately inform the board of directors of the CIS management company or investment company, or the person which they have designated, about any incident or anomaly of special importance.

2. Similarly, the risk management function shall prepare an annual report about the results of its activities, which will be sent to the board of directors of the CIS management company or investment company within the first four months of each year so it may be studied and, as the case may be, appropriate measures adopted to resolve the incidents reported. At any event, this report shall be made available to the CNMV. However, in the event that there is a single unit which guarantees performance of the legislative compliance and risk management functions in accordance with the provisions of Section 3 of Rule 3, one single report may be prepared which fully separates and identifies the results of the risk management function and the legislative compliance function.

SECTION FOUR

Legislative compliance function

Rule 5. Legislative compliance.-1. The unit within the organisation which guarantees the performance of the legislative compliance function shall:

- a)** Report to a person in the organisation with sufficient authority so as to promote independence and guarantee wide coverage of the legislative compliance function.
- b)** Establish, apply and maintain suitable procedures to detect and correct failure to comply with the obligations imposed by the rules applicable to the CIS management company or investment company, and to the managed CIS, including the rules of internal functioning of the CIS management company or investment company included in their internal conduct regulation.

In particular, the legislative compliance unit shall verify compliance with:

- (i) The requirements, ratios, criteria and limits established by applicable legislation to the transactions and investments of the CIS managed by the CIS management company or investment company, including the investment profile defined in their prospectuses. Similarly, it shall verify that the transactions carried out on goods, rights, securities or instruments by the CIS management company or the investment company, on the account of the CIS, have been carried out under market conditions.
- (ii) The criteria established by applicable legislation for calculating the net asset value of the units or shares of the CIS managed by the CIS management company or investment company.
- (iii) The mechanisms established to guarantee equal treatment and non-discrimination among unit-holders and shareholders.
- (iv) The rules of separation of the Depository, when the CIS management company or investment company belongs to the same group as the depository, in the terms provided in

Article 68 of the CIS Act, except when this function has been designated to an independent committee created within the board of directors of the CIS management company or investment company.

(v) The procedure for related-party transactions in the terms provided in Articles 67 of the CIS Act and 58 of Royal Decree 1309/2005, of 4 November, which approves the Regulation of Act 35/2003, of 4 November, on Collective Investment Schemes, and which adapts the tax regime of collective investment schemes (hereinafter, CIS Regulation), respectively, except when this function has been designated to an independent committee created within the board of directors of the CIS management company or investment company.

(vi) The regime for personal transactions of directors, executives, employees and legal representatives or agents of the CIS management company or investment company established in its internal conduct regulation.

(vii) Policies and procedures relating to the remuneration system and internal and external communication, those relating to the activities of the depository, those relating to the customer service department, the policies and procedures for preventing money-laundering, those relating to information security and those which guarantee the conservation of the documents providing evidence of the controls performed, as well as any other policies and procedures implemented to improve compliance with internal control requirements.

c) Inform all the directors of the CIS management company or investment company in writing, at least every quarter, about the results of the work performed, highlighting non-compliance and the associated risks, as well as on the effectiveness of the measures adopted by the board of directors of the CIS management company or the investment company relating to said non-compliance and risks.

However, the legislative compliance unit shall immediately inform the board of directors of the CIS management company or the investment company, or the person which they have designated, about any legislative non-compliance, incident or anomaly of special importance.

2. Similarly, the legislative compliance function shall prepare an annual report about the results of its activities, which will be sent to the board of directors of the CIS management company or investment company, within the first four months of each year, so it may be studied and, as the case may be, appropriate measures adopted to resolve the incidents reported. At any event, this report shall be made available to the CNMV. However, in the event that there is a single unit which guarantees performance of the legislative compliance and risk management functions in accordance with the provisions of Section 3 of Rule 3, one single report may be prepared which fully separates and identifies the results of the risk management function and the legislative compliance function. Notwithstanding the provisions of the above paragraphs, the CIS management company or investment company must send the report on the level of compliance with the requirements provided in Article 68.2 of the CIS Act within the deadlines provided in Section 4 of Article 100 of the CIS Regulation.

SECTION FIVE

Internal audit function

Rule 6. Internal audit.-1. The Unit within the organisation which performs the internal audit function shall:

a) Report to a person in the organisation with sufficient authority to promote independence and guarantee wide coverage of the internal audit function, as well as suitable consideration of the communications of the work performed and the appropriate actions on the recommendations made, reporting directly to the board of directors of the CIS management company or

investment company or, as the case may be, to the audit committee of the CIS management company or the investment company.

b) Prepare and maintain an audit plan, approved by the board of directors of the CIS management company or of the investment company, or by the board of directors of the entity of the group which the CIS management company belongs to which has taken on the internal audit function in accordance with the provisions in Rule 8, aimed at examining and evaluating the suitability and effectiveness of the internal control systems and procedures (including the business continuity and disaster recovery plans), formulating recommendations based on the work performed and verifying compliance with said recommendations, thus contributing to improving the internal control systems and procedures.

Supervision of the correct functioning of the internal control procedures and systems implemented by the CIS management company or the investment company shall be extended to:

(i) Control procedures of the actions of the entities to which the CIS management company or investment company has delegated asset management, risk control and legislative compliance, or any other function which may be delegated in accordance with applicable legislation.

(ii) Control procedures of the actions of the CIS management company when it directly or, as the case may be, through agents or legal representatives, markets the shares and units of the CIS.

In particular, it shall verify the marketing procedures established by the CIS management company, compliance with the subscription and redemption procedure provided in the prospectus of the CIS, as well as compliance with applicable information requirements and rules of conduct. Similarly, the audit plan shall include examination and evaluation of the suitability and effectiveness of the policies and procedures relating to the management of the CIS and of the administrative and accounting policies and procedures, in particular verifying compliance with the requirements of Rule 3. 4.a).

c) Periodically inform the board of directors of the CIS management company or investment company on the results of the work performed, highlighting the significant observations and recommendations, as well as on the effectiveness of the measures adopted by the board of directors of the CIS management company or investment company relating to said observations and recommendations.

2. Similarly, the internal audit function shall prepare an annual report on the results of its activities, which will be sent to the board of directors of the CIS management company or investment company, and sent to the CNMV generally by electronic means using the CIFRADOCC/CNMV system, approved by agreement with the CNMV Board on 15 September 2006 or a similar system, in accordance with the technical requirements established at any time, within the first four months of each year.

SECTION SIX

Delegation of functions

Rule 7. Delegation of the legislative compliance and risk management functions.-1. The CIS management company or investment company may only delegate the risk management function referred to in Rule 4 when appropriate based on the nature, volume and complexity of its activities and those of the managed CIS in the terms established in Section 3 of Rule 3. However, when an investment company has designated management of its assets to an entity

authorised in Spain to perform the investment services provided in Article 63.1.d) of Act 24/1988, of 28 July, it may delegate the risk management function to this entity under the terms and conditions established in this Rule, providing the segregation of the management and risk management functions is guaranteed.

The CIS management company or investment company may not delegate the risk management function to the depository, or to the entity to which the CIS management company or investment company has delegated the internal audit function, or to any other entity whose interests may be in conflict with those of the CIS management company or investment company or those of the unit-holders or shareholders. In addition, this function may not be delegated to the same entity to which the depository has delegated the functions designated to it by the legislation regulating CIS.

2. The CIS management company or investment company may delegate the legislative compliance function referred to in Rule 5, except in relation to verification of compliance with the separation rules of the depository, when the CIS management company or investment company belongs to the same group as the depository, and with the requirements for carrying out related-party transactions referred to in points (iv) and (v) respectively of letter b) of Section 1 of Rule 5.

The CIS management company or investment company may not delegate the legislative compliance function to the depository, or to any other entity whose interests may enter into conflict with those of the CIS management company or investment company or those of the unit-holders and shareholders. In addition, this function may not be delegated to the same entity to which the depository has delegated the functions designated to it by the legislation regulating CIS.

Rule 8. Delegation of the internal audit function.-1. The CIS management company or investment company may delegate the internal audit function referred to in Rule 6.

The CIS management company or investment company may not delegate the internal audit function to the entity which audits its annual accounts or those of the managed CIS, or to the entity to which the CIS management company or investment company has delegated the risk control function, or to any other entity whose interests may be in conflict with those of the CIS management company or investment company or those of the unit-holders or shareholders.

2. When the CIS management company belongs to a group of companies, as defined in Article 4 of the Securities Market Act 24/1988, of 28 July, the internal audit functions may be assumed by the internal audit function of the group to which the CIS management company belongs.

Rule 9. Additional requirements for delegating functions.-1. The delegation of functions by the management company or investment company will be subject to the requirements and limits established in Article 68 of the CIS Regulation. At any event, the CIS management company or investment company must have the human and technical resources and necessary experience to effectively oversee the delegated functions and effectively manage the risks associated with delegation, as well as to guarantee continuity and quality of the delegated functions in the event of a termination of the delegation agreement.

2. The CIS management company or investment company, prior to signing the delegation agreement, must carry out appropriate verifications so as to ensure that the entity which takes on the delegated functions has the competence and capacity to carry them out reliably and professionally under the terms contained in this Circular. For this purpose, the entity which takes on the delegated functions must have policies and procedures equivalent to those contained herein and, in accordance with applicable provisions, it must have personnel with sufficient experience and suitable material resources. Similarly, it must have established ongoing training plans so as to ensure appropriate staff training to identify any possible conflict of interest.

3. The delegated activity will be overseen by a committee created within the board of directors of the CIS management company or investment company or by a managing director or similar. The members of the independent committee, as well as the managing director or similar must have suitable knowledge and experience in this area and may not have executive functions in the CIS management company or investment company, and they may not carry out functions which may undermine their independence or objectivity. A breakdown of the control policies and procedures of the delegated functions, both prior to signing the delegation agreement and while it is in force, must be included in the internal manuals referred to in Rule 10.

5. The CIS management company or investment company shall inform the CNMV prior to the delegation of these functions becoming effective for them to be included in the register.

SECTION SEVEN

Internal control policies and procedures manuals

Rule 10. Internal manuals on internal control policies and procedures.-1. The CIS management company or investment company must have internal manuals detailing the internal control policies and procedures referred to in the CIS Act and its implementing provisions, and especially in this Circular.

2. The internal manuals on internal control policies and procedures must be approved by the management body of the CIS management company or investment company and it must be continuously updated.

Repeal rule.-The following rules are repealed:

1. Rule 6 and Annex 3 of CNMV Circular 3/1997, of 29 July, on information requirements to members and unit-holders of financial Collective Investment Schemes and certain implementations of the Order of 10 June 1997 on derivative trading by these schemes.

2. Rule 11 of CNMV Circular 4/1997, of 26 November, on valuation criteria and conditions for collective investment in unlisted securities.

Final rule.-1. This Circular will enter into force on the day following its publication. The entities subject to this circular must adapt their organisational structure and internal control systems and procedures to the provisions of this Circular by 31 December 2010.

2. The first report on the results of the activities of the risk management, legislative compliance and internal audit functions, referred to in Section 2 of Rules 4, 5 and 6 will be those corresponding to 2011, which will be sent to the board of directors of the CIS management company or investment company and, as the case may be, to the CNMV, within the first four months of 2012, without prejudice to the periodic reports which must be sent as from 31 December 2010 to all directors of the CIS management company or investment company in the terms provided in letter c) of Section 1 of Rules 4, 5 and 6.

However, the internal audit function of the CIS management company or investment company shall prepare a report on the level of adaptation of the internal control systems and procedures to the provisions of this Circular, which will be sent to the CNMV within the first four months of 2011, referring to the situation as at 31 December 2010.

Madrid, 9 December 2009.– CNMV President, Julio Segura Sánchez. cve (electronic verification code for official state gazette): BOE-A-2009-20499