

CIRCULAR 1/2006, of 3 May, of the Comisión Nacional del Mercado de Valores, on Alternative Collective Investment Schemes.

**The implementing regulation of Law 35/2003 (hereinafter referred to as the Regulation under the CIS Law), of 4 November, on Collective Investment Schemes (CIS), approved by Royal Decree 1309/2005, of 4 November, established, for the first time in Spain, what are called "IIC de Inversión Libre", known internationally as "hedge funds". This Circular details the rules applicable to those institutions.**

Hedge Funds are products with considerable investment flexibility aimed at investors who, because of their greater experience or financial training, require less protection. Nevertheless, in order to enable retail investors to use this form of investment, this Circular regulates Funds of Hedge Funds ("IIC de IIC de Inversión Libre"), which are subject to diversification and investor protection requirements that are similar to those of conventional CIS.

The main features of the rules established in this Circular can be summarised as follows:

It was not considered necessary to establish a new form of fund management company devoted exclusively to hedge funds. However, special requirements (including additional capital requirements) are imposed on management companies seeking to manage hedge funds.

The organisational and risk control resources required of management companies are regulated in detail, with particular emphasis on the reliability and independence of the calculation of the net asset value, whether or not it is outsourced.

The relations between management companies and their prime brokers (i.e. the financial intermediaries which provide finance and other services to hedge funds) are regulated. Since the funding provided by those intermediaries is normally collateralised by the acquired securities, and that collateral may be reused by the beneficiary, it was considered necessary to strengthen the depository's supervisory and control functions by requiring that it be informed of the financial collateral arrangements.

The selection of underlying funds by management companies of Funds of Hedge Funds is regulated, and the depository is given certain control functions within the scope of its powers as defined under current legislation.

The rules on prospectuses and periodic reporting are similar to those applicable to conventional CIS. However, investors are required to sign a consent form to the effect that they are aware of the peculiar features of hedge funds and of their differences with respect to conventional funds.

The concept of indebtedness established in the Regulation under the CIS Law is defined more precisely.

Finally, Funds of Hedge Funds are allowed to invest in managed accounts, i.e. structures that replicate the investment portfolio of a hedge fund.

Accordingly, by virtue of the powers contained in articles 43 and 44 of the Regulation under the CIS Law and in Ministerial Order EHA/1199/2006, of 25 April, and following a report by the CNMV Advisory Committee, the CNMV Board, at its meeting on 3 May 2006, resolved:

Rule 1. Scope.

This Circular will apply to Hedge Funds ("IIC de Inversión Libre") as envisaged in article 43 of the Regulation under the CIS Law, and to the Funds of Hedge Funds ("IIC de IIC de Inversión Libre") as envisaged in article 44 of that Regulation.

It will also apply:

- a) To management companies that manage Hedge Funds, Funds of Hedge Funds, or both (hereinafter referred to as "management companies");
- b) To their depositories.

Rule 2. Conditions for taking up this activity.

1. Authorisation and registration of the management companies subject to this Circular will follow the general rules established in article 41 of the CIS Law and its implementing regulations. Such companies are not required to be devoted exclusively to managing these CIS.
2. Management companies must have a program of operations explicitly stating that they manage Hedge Funds, Funds of Hedge Funds, or both, and containing a description of their internal control measures.
3. The description of the management company's internal control measures must cover its organisation structure, the specific technical and human resources which it will have, and a general description of the specific controls and procedures applicable to managing this type of CIS. It must also describe the controls over the activities of entities to which functions are outsourced, in accordance with the provisions of article 68 of the Regulation under the CIS Law, and over the activities of entities with which financial collateral arrangements are established.
4. The sufficiency of the internal control systems in place must be measured in terms of the activities performed and the risks actually assumed at any given time.
5. The foregoing requirements will also apply to Hedge Investment Companies (hereinafter "SICAV") and SICAV of Hedge Funds that have not entrusted the management of their assets to a management company.

Rule 3. Responsible body.

The Board of Directors of a management company will be responsible, with regard to the CIS regulated by this Circular which it manages, for at least the following:

- a) Approving the organisational structure, procedures and policies of action, and implementing systems for control, monitoring and continuous assessment of risks that are appropriate to the specific activity of this type of CIS. It must also define the system for delimitation of responsibilities.
- b) Approving the contractual relations between the management company and the entities to which it outsources the functions detailed in article 68.2 of the Regulation under the CIS Law, and with entities with which it establishes financial collateral arrangements, in accordance with rule 9 of this Circular.
- c) Authorising the policy of investment in financial derivative instruments and other operating limits, and the potential risks that may be assumed ; and, for Hedge Funds, additionally authorising the indebtedness limits.
- d) In the event that it manages Funds of Hedge Funds, authorising the procedures for selecting investments.
- e) Establishing the procedures to follow in the event of breach of the limits referred to in c) above.
- f) Ensuring that the organisation has human and material resources such as to guarantee efficient management of these CIS and an appropriate separation of functions.
- g) Identifying the Control Unit, which will be responsible for supervising compliance with the rules applicable to CIS, including those contained in this Circular.

Rule 4. Human and material resources. Capital requirements.

1. Management companies subject to this Circular, and those entities to which management of Hedge Funds is outsourced in accordance with article 68 of the Regulation under the CIS Law, must have specific resources, knowledge and experience required to conduct this type of activity and appropriately assess the risks being incurred. In the event of outsourcing, the management company must retain sufficient resources to oversee the outsourced activities. Outsourcing may never lead to the management company becoming a letter box entity.
2. Control of risks requires that they be identified, measured, quantified and monitored. Consequently, management companies must have the specific organisational, material, technical and human resources to enable them to establish a system of control of the risks incurred by each CIS, in line with the specific activity in which they plan to engage.

3. Management companies must establish training and continuous assessment plans to ensure the staff is suitably trained.

4. To better cover operating risks, the capital requirements applicable to management companies subject to this Circular will be the sum of those required generally under article 70 of the Regulation under the CIS Law and 4 per cent of the gross fees revenues they obtain from management of the CIS regulated in this Circular. The capital requirements so calculated will be determined as the average of the last three years.

#### Rule 5. Asset management.

1. Management companies must have, on their Board of Directors or among their executive team or similar, people with experience that is appropriate to the type of management they plan to perform. Persons who have performed functions relating to Hedge Funds or other activities managing alternative investments similar to those performed by the CIS regulated in this Circular for at least two years will be deemed to have such experience.

2. Management companies may outsource asset management to third entities subject to the provisions of article 68 of the Regulation under the CIS Law and rule 4.1 of this Circular.

3. Management companies may obtain advice on their investment policy from third parties. Information on such entities must be provided in the CIS prospectus.

#### Rule 6. Risk control and measurement systems.

1. Management companies must have risk measurement and control systems that are appropriate to the specific investment strategies they plan to implement. Such systems must measure current and potential exposure to risk, particularly when, in the case of Hedge Funds, they perform leveraged transactions or transactions with unlisted securities, illiquid financial instruments or financial derivative instruments whose valuation is complex, or when they sell short.

2. Management companies of Hedge Funds must periodically perform stress tests and simulations of specific crisis situations in order to analyse their potential effects on the portfolios of the managed CIS and on liquidity management. Such tests and simulations, whose results must be kept in documentary form for five years, must suitably consider possible changes in market structures, products, and correlations between assets.

3. Management companies must establish internal communications systems which, in conformity with the provisions of this Circular, ensure that relevant information from the entities which provide services to them or to which they have outsourced functions are transmitted rapidly to the persons in charge of the management company.

4. Management companies of Hedge Funds must be equipped with procedures that ensure control of the asset positions which, in accordance with the provisions of rule 9, have been provided as collateral or over which the beneficiary of the collateral has exercised a right of disposition.

5. Management companies of Funds of Hedge Funds must have mechanisms for overseeing the liquidity of the underlying investments so that redemptions may be settled properly and on a timely basis.

6. Management companies must adopt measures to enable them to be aware of the shares or units in the CIS managed by them that have been used by third parties as the underlying of structured transactions.

#### Rule 7. Separation of functions.

1. Management companies must ensure an appropriate separation of functions, particularly management, administration and control functions, whether they are kept in-house or outsourced to service providers.

2. Persons involved in management functions must not participate in the determination of the net asset value of the managed CIS, regardless of whether or not this function is outsourced. Nevertheless, in exceptional cases where it is necessary to obtain input from the management area in order to calculate the net asset value, that participation must be documented and the documentation must be retained for five years.

#### Rule 8. Outsourcing of administration functions.

When management companies outsource the administration functions envisaged in article 64.b) of the Regulation under the CIS Law, then, in addition to the rules established in article 68 of that Regulation, the following will apply:

a) The entity to which the administration functions referred to in article 68.2 of the Regulation under the CIS Law are outsourced must have sufficiently-experienced personnel and suitable material resources. The management company outsourcing the services must have made checks to satisfy itself that the outsourced tasks are performed appropriately. The sufficiency of those resources must be accredited before the CNMV in the application for authorisation to outsource.

b) Outsourcing of administration functions may not lead to an impairment of the control required by the regulations. In particular, the entity to which the service is outsourced may not be the depository or an entity with which a financial collateral arrangement as provided in Rule 9 of this Circular has been entered into, nor may it perform the functions of Control Unit.

c) A system must be established for overseeing the activity of the service provider. Among other checks, procedures must be conducted, with sufficient frequency, to reconcile cash and securities positions between the service provider, the management company and the depository and any entities with which financial collateral arrangements are established.

d) When the calculation of the net asset value is outsourced, the outsourcing contract must ensure that the service provider's valuation practices conform to the asset valuation methods required by Spanish regulations and with those set out in the CIS prospectus. There must also be clauses enabling the depository to discharge its duties of oversight and supervision. Express procedures must be established to reconcile any discrepancies arising between the net asset value calculated by the service provider and that estimated by the management company.

#### Rule 9. Rules governing assets given as collateral by Hedge Funds.

1. When a Hedge Fund or its management company makes a financial collateral arrangement with a third party under which the latter receives title to the collateral or the collateral is pledged and the pledge-holder has rights of disposition, the depository must be notified of this circumstance in accordance with the provisions of article 92 of the CIS development rules. The contract signed by the CIS or its management company and the entity with which a financial collateral arrangement has been reached must provide for the depository receiving the information required for it to perform the supervision and oversight functions envisaged in article 93 of the Regulation under the CIS Law and other applicable regulations.

2. The arrangements referred to in the preceding paragraph may only be entered into with financial institutions subject to supervision in an OECD country.

3. Contracts entailing financial collateral arrangements must include clauses that enable and allow the CNMV's supervisory activities, particularly as regards financing transactions and securities loans.

4. In accordance with the provisions of article 15 of Royal Decree Law 5/2005, of 11 March, on urgent reforms to enhance productivity and improve public contracting, such arrangements must clearly set out the responsibilities of the CIS and the beneficiary of the collateral in the event of breach of their respective obligations and in situations of insolvency. In particular, once a beneficiary of collateral has commenced insolvency proceedings, the Hedge Fund may, subject to compliance with the conditions imposed in article 15 of Royal Decree Law 5/2005, immediately terminate the financial collateral arrangement, with the party whose debt to the other is greater making a single net payment, after taking account of all their respective obligations.

5. The management company, the entity to which it has outsourced the administration functions, if any, and the depository must receive periodic information about the positions in the assets given as collateral and the amount of the collateralised financial obligations from the entity with which the financial collateral arrangement was made. The contract must regulate the procedure for reconciling any differences that may arise in valuation or positions.

6. The CIS prospectus must set out the CIS's general policy as to the allocation of collateral. Additionally, both the CIS's prospectus and periodic reporting must identify the entities with which financial collateral arrangements have been made, with information about their financial solvency.

7. With regard to the obligations guaranteed in favour of the counterparties of financial collateral arrangements, the prospectus must disclose the maximum market value of the assets given as collateral which may be disposed of by the beneficiaries. The CIS's periodic reporting must reflect the actual level of that percentage on the last

business day of the reporting period.

#### Rule 10. Due diligence of investments by Funds of Hedge Funds.

1. Management companies of Funds of Hedge Funds must state, in their internal control procedures, the qualitative, quantitative and operational criteria on which they base the assessment and analysis of the investments for the institutions they manage. Those criteria must have been agreed upon with the depository and must be approved by the Board of Directors of the management company and by a person with sufficient authority at the depository.

Those criteria must take account of at least the following aspects of the management companies of the underlying CIS, or of the latter:

- a) Strategies and processes of investment and portfolio building.
- b) Human resources at the management companies and the managers' experience and integrity. The analysis of the management team's quality must take account of references from third parties.
- c) Risk control mechanisms, with particular emphasis on systems for the assessment of risk in extreme situations, and procedures for valuing assets and calculating the net asset value.
- d) Relations with entities to which administration functions have been outsourced, with intermediaries, custodians and sub-custodians, entities with which financial collateral arrangements have been made, and with service providers generally.
- e) Level of leverage, expenses and fees of the fund. Equalisation systems.
- f) Mechanisms and conditions for subscription and redemption.
- g) Form of representation, registration and custody of the units or shares.
- h) Quantitative analysis: study of yields and correlations, simulations and statistical analyses.
- i) Legal documentation: prospectus, incorporation documents, contracts for outsourcing and contracts with service providers, and auditors' reports.
- j) Content and frequency of the periodic reporting that must be submitted by the management companies of each underlying CIS.
- k) Existence of side letters with certain investors.

The procedures for assessment and analysis must indicate which parts of the evaluation of the foregoing aspects must be performed directly at the domicile of the CIS management company and, in the case of item d), which part must be performed directly with the aforementioned entities. Additionally, while the investment remains in portfolio, the aforementioned aspects must be reassessed at the intervals to be determined in each case, which may not exceed one year.

The depository's participation will be confined to the functions pertaining to it and will only affect the content of items c), in connection with the valuation of assets and the calculation of the net asset value, d), f), g) and j).

2. The procedures for evaluation and analysis must indicate which of the tasks set out in the preceding section must be performed by persons not directly involved in the management area.

3. The management company must retain documentary evidence of the assessments referred to in the preceding sections for five years.

4. The tasks described above may be outsourced to third parties subject to compliance with the provisions of article 68 of the Regulation under the CIS Law and Rule 8.a) and 8.b) of this Circular. In this connection, the management company must adopt measures to oversee the entity to which it has outsourced, particularly with regard to the provisions of section 3 above.

5. In compliance with the function of oversight and supervision attributed to it by article 93 of the Regulation under the CIS Law, the depository must establish a control system to guarantee that the aforementioned procedures are performed in accordance with the provisions of current legislation. This control system will be confined exclusively to the contents of items c), in connection with the valuation of assets and the calculation of the net asset value, d), f), g) and j).

#### Rule 11. Alternative SICAV and Hedge Fund SICAV which have not outsourced asset management.

The content of rules 3 to 10 will apply, to the extent they are appropriate, to Hedge SICAV (SICAV de Inversión Libre) and SICAV of Hedge Funds (SICAV de IIC de Inversión Libre) which have not outsourced asset management.

Rule 12. Investor consent form.

1. The written consent form whereby, in accordance with the provisions of articles 43.j) and 43.f) of the Regulation under the CIS Law, the investor acknowledges awareness of the risks inherent to investing in Hedge Funds and Funds of Hedge Funds, must read as follows.

"I (name and tax ID number of the investor or his representative) know that investments in (Hedge Fund/Fund of Hedge Funds) are subject to risks of a different nature and degree than ordinary investment funds. I know that the value of my investment may vary substantially over time and may even do so without any relationship to the performance of the equity or fixed-income markets. I know that I may lose part or, in an extreme case, all of my investment. I expressly accept that my investment may be much less liquid than ordinary investment funds and that it is not advisable for those who may have pressing needs for cash.

Additionally, I have been informed in detail about:

- The CIS's investment policy.
- The risks inherent to the investment.
- The frequency with which liquidity is guaranteed.
- The system of advance notices.
- The cap on redemptions in a single day.
- The minimum time which the investment must be retained.
- The management and deposit fees and other associated expenses, both direct and indirect.
- The possibility that I may be obliged to accept redemption in kind (in the case of Hedge Funds)."

2. The written declaration described in the preceding paragraph must be separate from the subscription order, both documents being signed at the same time. A signed copy must obligatorily be delivered to the investor.

3. When subscription is effected by telematic means, delivery of the consent form to the investor must be accredited appropriately.

Rule 13. Prospectus.

To supplement the provisions of articles 22, 23, 43 and 44 of the Regulation under the CIS Law, the full prospectus and, in summarised form, the simplified prospectus must contain the following information:

A) Information about subscription and redemption:

1. Frequency of the net asset value. Estimated net asset values.
2. Mechanisms and dates for subscription and redemption.
3. Periods of advance notice and payment of redemptions. Possibility that the calculation of the net asset value may be delayed. In the case of Hedge Funds, the possibility and conditions of redemption in kind.

B) Information about the general policy of collateral provided by the institution, possibility that the beneficiaries may dispose of the assets delivered as collateral, maximum market value of collateral susceptible to being reused with respect to the fund's obligations, and minimum financial solvency of such beneficiaries.

C) General information about agreements to outsource functions.

D) General information about advisory contracts.

E) Information about the CIS's investment and management strategy, the special risks that they may entail, and the criteria for concentration and diversification that may be relevant for assessing the risk which may be incurred. Hedge Funds must also disclose the counterparty risk with a given entity. Funds of Hedge Funds must disclose the criteria for selecting the underlying CIS in which they invest and the criteria for diversification in terms of managers, strategies and securities.

F) Policy of investment in liquid assets and of managing liquidity to cater for redemptions.

G) Hedge Funds must disclose the limit of indebtedness and the additional leverage through repos, simultaneous financing, financing via securities loans, and transactions with derivative financial instruments.

H) Hedge Funds must disclose the criteria for valuing the assets in their portfolios.

I) Hedge Funds and Funds of Hedge Funds must disclose the maximum accumulated level of management and depository fees, both direct and indirect, that they will have to bear.

Rule 14. Periodic reporting.

1. Hedge Funds' annual, half-yearly and quarterly reports must conform to the general provisions for conventional CIS. In any case, they must disclose the following:

- a) Proportion of assets involved in structured transactions of third parties in which the CIS itself is an underlying.
- b) Portion of assets tied to positions owned by staff of the management company or the promoters of the CIS.
- c) Reconciliation of differences exceeding 10 per cent between the estimated net asset value and the final net asset value for the same date.
- d) Market value of the collateral provided by the CIS over which disposition rights have been exercised, with respect to the CIS's obligations to each beneficiary entity.
- e) Financial solvency of the entities which are beneficiaries of such collateral arrangements.
- f) Information about the amount of management and depository fees, both direct and indirect (if any), that are actually borne.

This information must be sent to the investor in accordance with the provisions of article 18 of the CIS Law.

2. Funds of Hedge Funds' annual, half-yearly and quarterly reports must conform to the general provisions for conventional CIS, with the modifications that are necessary. They must disclose information about the accumulated amount of direct and indirect fees actually paid and reconciliations of differences exceeding 10 per cent between the estimated net asset value and the final net asset value for the same date.

Rule 15. Right to redemption in a Hedge Fund.

1. A Hedge Fund need not grant redemption rights on all the dates on which the net asset value is calculated, provided that this is expressly envisaged in its prospectus. In any event, the right to redemption must be exercisable with at least the frequency established in article 43.e) of the Regulation under the CIS Law.

2. In accordance with article 43.d) of the Regulation under the CIS Law, redemptions may be paid in kind provided that this possibility is specified in the CIS prospectus. In this connection, the management company may establish mechanisms to avoid possible conflicts of interest between unit-holders or shareholders.

Rule 16. Redemption rights in Funds of Hedge Funds.

Rule 15.1 of this Circular will apply to Funds of Hedge Funds that guarantee redemption out of their own equity.

Rule 17. Rules for estimated net asset values.

Regardless of the interval of calculating the net asset value which, in accordance with the provisions of the prospectus, must be applied to subscriptions and redemptions, unit-holders or shareholders of Hedge Funds and Funds of Hedge Funds may receive from the management company, with the frequency which it considers appropriate and sets out in the prospectus, preliminary or indicative estimates of the net asset value, calculated by the management company using its estimates of the fees, expenses and results of the asset portfolio, which will not be used for settling subscriptions and redemptions. The periodic reporting must reconcile any differences exceeding 10 per cent between such preliminary estimates and the final net asset value as of the same date.

Rule 18. Financial statements and statistics.

1. Management companies of Hedge Funds must file with the CNMV a statement of statistical and operating data as of the last day of the reporting period, except where expressly specified otherwise, in accordance with the form contained in Annex I:

Name Frequency Deadline for filing

IL1. Statistical and operating information. Monthly. The 25th of the following month.  
IL2. Investment portfolio. Monthly. The 25th of the following month.

At any time, the CNMV may ask the entities in general or specifically to provide such clarification and supplementary information as it may require about those statements.

2. Hedge Funds must provide the depository with the information referred to in the first paragraph of the preceding section, for verification, not later than the 20th of the month in which it must be filed with the CNMV.
3. The public forms of financial statements for Hedge Funds and Funds of Hedge Funds and the general financial statements of the Funds of Hedge Funds must conform to the general provisions for financial CIS.
4. The accounting rules applicable to Hedge Funds and Funds of Hedge Funds must conform to the general requirements for financial CIS.
5. The statements referred to in the preceding paragraphs must be filed with the CNMV via telematic means using the CIFRADO/CNMV system approved by Resolution of the CNMV Board on 11 March 1998, or a similar system. The information must be signed by a person empowered for this purpose at the management company or investment firm and at the depository.

#### Rule 19. Limits on Hedge Funds.

1. For the purposes of complying with the indebtedness limit established in article 43.h) of the Regulation under the CIS Law, Hedge Funds must make the calculation taking account of all the funds received by the institution in cash, without considering repos, financing received under simultaneous transactions, or finance raised by selling borrowed securities.

The prospectus must establish the CIS's policy as regards additional leverage via repos, simultaneous financing, financing through the sale of borrowed securities, and commitments arising from derivatives. In its description of the internal control measures, the management company must indicate the formula for calculating such commitments and the fundamental characteristics of the internal models used for measuring and overseeing them.

2. A Hedge Fund's prospectus must indicate the policy of risk diversification in assets, financial instruments and independent derivatives, so as to conform to the principle of risk diversification established in article 23 of the CIS Law. Also, it must disclose the limits on the CIS's asset exposure to counterparty risk with a given entity.
3. When a Hedge Fund's policy is to invest principally in other CIS, this must be disclosed explicitly in the prospectus. In this case, the provisions of article 44 of the Regulation under the CIS Law will not apply to such investments.

#### Rule 20. Limits on Funds of Hedge Funds.

1. The following assets will be considered to fall under article 44.1.a) of the Regulation under the CIS Law for the purposes of calculating the 60 per cent:

a) Hedge Funds constituted in Spain.

b) CIS domiciled in OECD countries or which are managed by a management company or entity performing similar functions to those of a management company and with comparable responsibilities which is subject to supervision and domiciled in an OECD country and whose incorporation documents establish investment rules similar to those established for Hedge Funds constituted in Spain.

c) Investment companies, portfolio companies and comparable vehicles and structures whose prospectuses or incorporation documents establish investment rules that are similar to those established for Hedge Funds constituted in Spain, whose purpose is to replicate a CIS of these characteristics and which are domiciled in an OECD country or whose management company is subject to supervision and domiciled in an OECD country. For the purposes of the provisions of this item c) and the preceding item b), supervision is deemed to mean authorisation of the entity and its rules of operation by a regulatory authority of that country which has powers in that area, or registration of the firm with such an authority.



2. The 60 per cent minimum percentage referred to in the preceding section may be attained by investment in derivative financial instruments whose underlying is an asset of those referred to in a), b) or c) of that section, or financial indexes made up of those assets, provided that the index meets the conditions established in article 36.1.f) of the Regulation under the CIS Law. In the case of derivative financial instruments referred to in article 36.1.g) of that Regulation, the risk diversification limits set out in article 38 must be complied with, in addition to the 10 per cent limit set out in article 44.1.b). Those limits will be calculated in accordance with the general provisions for derivatives transactions by CIS.

3. The 60 per cent limit must be measured in accordance with the following formula:

Investment coefficient =  $\geq 60\%$

where:

$V_{Ri}$  = Realization value of the investments in Hedge Funds and similar at time  $i$ , which is the time of calculating the net asset value.

$P_{ti}$  = Assets of the institution at time  $i$ .

$DP_{i}$  = Change in the "Unit-holders" account on the liabilities side of the balance sheet in the six months prior to time  $i$ . Only positive changes may be considered.

$n$ : Number of times the institution calculates the net asset value each year.

The coefficient must be complied with whenever the net asset value is calculated starting from the first anniversary of the institution's registration in the appropriate Register at the CNMV, except if breach is due to movements in the market prices of the assets in portfolio.

4. The institution's prospectus must disclose in detail the policies aimed at ensuring appropriate diversification of the CIS's portfolio, in terms of both investment strategies and the managers of the CIS or similar assets comprising the portfolio.

#### Rule 21. Valuation of Hedge Funds.

In calculating the net asset value of units and shares, the basic principles and general criteria for valuation established for financial CIS will apply to Hedge Funds, all in accordance with the valuation criteria established in the institution's prospectus. Those criteria must be aimed at reflecting the value at which the assets could reasonably be realised with a third party at arm's-length who is properly informed at the time of valuation.

The asset valuation criteria must comply with the following rules in any case:

a) Financial assets and instruments must be valued on a daily basis except in the case of positions that are not actively traded or in which price discovery requires considerable effort or whose valuation is complex, in which case a lower frequency may be established. In any case, the valuation frequency will take account of the size and nature of the position.

b) The acquisition of price information for valuing actively-traded positions, whether they are official closing prices or weighted average market prices, must be automatic and, where possible, subject to checks that will detect any errors in the price sources and cases where the prices are not representative due to illiquidity.

c) In the case of listed fixed-income securities, when average prices are used to determine the fair value of an asset, a sufficient number of data points must be used, excluding outliers.

d) To ensure representativeness, the parameters used to value derivatives in which there is not a sufficiently liquid market must be subject to the appropriate checks and verifications, which must be properly documented. Additionally, an express procedure must be established for reconciling any discrepancies between the value calculated using the theoretical models of the management company or the entity to which it outsourced this function, and the prices given by the counterparty.

e) To ensure that investors cannot know or accurately estimate the net asset value applicable to subscriptions and redemptions beforehand, the management company may establish minimum periods of advance notice for subscription and redemption, or may delay the calculation of the net asset value applicable to those transactions. All of this must be disclosed in the prospectus.

#### Rule 22. Valuation of Funds of Hedge Funds.

In calculating the net asset value of units and shares, the basic principles and general criteria for valuation

established for financial CIS will apply to Funds of Hedge Funds, all in accordance with the valuation criteria established in the institution's prospectus. Those criteria must be aimed at reflecting the value at which the assets could reasonably be realised with a third party at arm's-length who is properly informed at the time of valuation.

In any event, the following rules will apply:

a) The CIS and comparable securities in portfolio will be valued at the latest net asset value that is known at the time of valuation, provided that it is not susceptible to being recalculated or confirmed. If definitive valuations are not known, subscriptions and redemptions will be settled for the known part only. The difference will be settled when the definitive valuations are known. The unit-holder (in the case of subscription) or the management company (in the case of redemption) must expressly undertake to settle such differences.

b) When the net asset values of the CIS and comparable assets in portfolio do not correspond to the date of calculation of the net asset value of the Fund of Hedge Funds, the management company must establish mechanisms to avoid conflicts of interest between investors, such that the net asset value applicable to subscriptions and redemptions is not known to the investor and is impossible to estimate reliably. To this end, minimum periods of advance notice for subscription and redemption may be established, or the calculation of the net asset value applicable to those transactions may be delayed. All of this must be disclosed in the prospectus.

Transitional rule.

1. The simplified and full forms for prospectuses and the forms for periodical reporting by conventional CIS will also apply to Hedge Funds and Funds of Hedge Funds, with the specific features set out in this Circular.
2. The public forms referred to in Rule 18.3 will apply to Hedge Funds and Funds of Hedge Funds at the same time as they are obligatory for other financial CIS.

Final rule.

This Circular will come into force on the day following that of its publication in the Official State Gazette, except that the reporting obligations set out in rule 18.1 will be applicable from 1 October 2006.

Madrid, 3 May 2006  
The President

Manuel Conthe Gutiérrez

[Anexos](#)