

16 January 2012

Circular 7/2011, of 12 December, from the Spanish Securities Market Commission, on Fees Prospectus and Content of Standard Agreements.

On 24 December 2011, Circular 7/2011, of 12 December, from the Spanish Securities Market Commission ("**CNMV**"), on fees prospectus and content of standard agreements (the "**Circular**") was published in the State Official Gazette ("**BOE**"). The Circular is aimed at regulating the content and control by the CNMV of the fees prospectuses established by entities and the minimum content of the standard agreements prepared by those entities to regulate the relationships with their retail clients.

The Circular is issued under the authorisations contained in Order EHA/1665/2010, of 11 June, which develops articles 71 and 76 of Royal Decree 217/2008, of 15 February, on the legal regime for investment firms and other firms that provide investment services as regards fees and standard form agreements (the "**Order EHA 1665/2010**") for further develop the transparency regime with customers in certain aspects.

The Circular will be applicable to the transactions and activities with retail customers that fall under Law 24/1988, of 28 July, on the Securities Market ("**LMV**"), which have been carried out in Spain by: (i) investment firms (including those individuals who have the condition of investment advice firm), (ii) credit entities and management companies of collective investment schemes authorised for the provision of certain investment and ancillary services, (iii) branches of foreign investment firms and credit entities, (iv) investment firms and credit entities from European Union member States which operate on a free provision of services basis in Spain through agents established in Spain and (v) investment firms and credit entities from non European Union member States which provide investment services in Spain without a branch.

The Circular will come into force six months after its publication in the BOE, i.e. 24 June 2012.

The main changes brought in by the Circular are summarised below:

1 Fees prospectuses

The Circular is a drive for transparency, with the aim of providing investors with sufficient information to assess whether fees are in proportion with the quality of the service provided. For the firms, it is intended as an incentive so that maximum fees are effectively capped in line with those generally applied to retail customers.

1.1 General guidelines for preparing the fees prospectus applicable to services and transactions with retail customers (the “Prospectus”)

The Prospectus shall include the maximum fees for commissions and expenses set freely by the entities and the charges for all the transactions and services carried out by the entity with its retail customers in accordance with its activities programme. However, singular transactions (e.g. credit for buying or selling securities, securities lending or transactions performed outside a securities secondary official market or a multilateral trading system) may be excluded from the Prospectuses irrespective that they are habitually provided.

Entities are also required to provide their customers or potential customers with all information on applicable fees upon request and, for those clients with whom the entity maintains a contractual relationship, also with the fees in force throughout the contractual relationship. This is without prejudice to their duty to inform customers on the total price that they shall pay for the financial instrument or service provided or, when this is not possible, with the basis for calculating the total price.

1.2 Form of the Prospectus

The Prospectuses shall be preceded with the entity's full details including its registry number, the identity of the competent supervisor and the date of entry into force and shall be drafted in a way which is clear, specific and easy for customers to understand, omitting the inclusion of irrelevant or unnecessary concepts.

The Circular also includes a list indicating the minimum content of the Prospectuses.

1.3 Presentation format for fees corresponding to certain transactions and services in the Prospectus

The Circular sets out certain specific requirements as regards the calculation basis and the presentation format (included in Annex I to the Circular) for fees, for those entities that provide the services of reception and transmission of orders and execution of orders on behalf of clients, custody and administration of financial instruments and portfolio management and investment advice.

1.4 Control of Prospectuses

The Circular establishes an *ex ante* control system by the CNMV, the specific format that the Prospectuses shall have and the obligation of electronically filing the same with the CNMV.

The date of entry into force set out in the Prospectus shall be at least 30 calendar days after its filing with the CNMV. Should the CNMV have any objections or amendment suggestions on the Prospectus filed, the procedure of electronically filing the Prospectus shall be repeated without that meaning that the term for its control is extended. The amendments to the Prospectus registered will require the filing of a new complete Prospectus according to the abovementioned procedure.

1.5 Publicity of fees

The CNMV will make available to the public the fees prospectuses in its webpage, the date set out by the entity for its entry into force and may disclose the data included in the fixed section of the standard form Prospectus with the aim of making easier its comparability by the investors.

Entities must make available to the public the Prospectus in force at any moment and registered with the CNMV in any durable format, at their corporate domicile, at all their branches and at the domicile of their agents as well as in their webpage, in a place of easy access. The fees which have been made available to the public by the entities shall coincide with those provided to the CNMV.

2 Standard agreements

2.1 General content of standard agreements

The Circular states that standard agreements shall contain their essential terms, and includes a list with the minimum content they shall include, as well as the obligation for the entities to draft such content in a way which is clear, specific and easy for retail investors to understand.

Likewise, the standard agreements shall comply with the provisions of consumer protection legislation as well as with the conduct of business rules and information requirements set out in the securities markets legislation and with other applicable regulations such as those relating to the prevention of money laundering, on distance marketing of financial services addressed to consumers and similar regulations.

2.2 Specific content of certain standard agreements

The Circular sets out certain specific information that the standard agreements of custody and administration of financial instruments and portfolio management must contain, in addition to the general content

foreseen in the Circular, and the information required by Order EHA 1665/2010 in the case of portfolio management standard agreements.

2.3 Publicity of standard agreements

Finally, as with Prospectuses, entities must make available to the public the standard agreements, in any durable format, at their corporate domicile, at all their branches and at the corporate domicile of their agents as well as in their webpage in a place of easy access.

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