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The CNMV publishes a Code of good practice for institutional investors, asset managers and proxy advisors in relation to their duties regarding the assets conferred or the services provided

On 22 February 2023, the Spanish Securities Market Commission (using the Spanish acronym, "**CNMV**") published the **Code of good practice for institutional investors, asset managers and proxy advisors in relation to their duties regarding the assets conferred or the services provided** (the "**Code**"), the main objective of which is to promote responsible, long-term oriented investment by institutional investors, asset managers and proxy advisors, so as to promote the sustainability of the entities in which they invest. The Code represents the CNMV's alignment with the regulatory trend whereby, in recent years, more than 20 countries, seven of them European, have published this type of code, which are known as stewardship codes.

1. Scope of application

The Code is aimed at the following, irrespective of their size and the amount or the relative influence in each entity in which they have invested or which they have under management, or the number of clients they serve:

(a) **Institutional investors**: life insurance and reinsurance companies and occupational pension funds. In addition, other entities, such as non-life insurance and reinsurance companies, holding companies, or other similar entities, can adhere to the Code. In the case of occupational pension funds, both adherence to and implementation of the principles must be carried out through their supervisory boards or their managing bodies.

(b) **Asset managers**: including (i) management companies of collective investment undertakings; (ii) management companies of closed-end collective investment undertakings; (iii) investment companies that have not entrusted management to a manager; and (iv) investment firms and credit institutions in relation to the discretionary and individualised portfolio management services they provide.

(c) **Proxy advisors**: they should tailor the principles to their mandated activities and roles in relation to the investment, engagement and voting processes, using their professional judgement to determine which principles apply to them and to what extent.

It should be noted that, although the principles of the Code are oriented towards entities based in Spain, investors and managers based outside Spain can voluntarily adhere to the Code.

2. Voluntary nature, proportionality

Adherence to the Code is voluntary, and there is no provision for partial adherence. In this respect, each entity must adhere from a global perspective, assessing how it applies each principle in substance, taking into account not only its wording but also its spirit and purpose.

In order to alleviate the costs or difficulties that adherence to the Code may entail, some measures are introduced to facilitate the adherence of entities of a lesser size, scale or complexity. Based on the criterion of proportionality, the scope of the recommendations can be adjusted for any entity, regardless of its size, depending on the absolute and relative magnitude of its investments, or on the type of investments it makes. This proportionality criterion is not of a temporary nature. Entities applying it may continue to take such circumstances and conditions into account throughout the period of their adherence to the Code and for as long as the reasons justifying the application of a principle of proportionality remain.

In any case, entities that have decided to adhere should indicate in their annual report how they have applied the different principles of the Code in the previous year, under the criterion of proportionality and thus taking into account their particular conditions and circumstances.

3. "Apply and explain" model and transitional regime

The Code adopts an "apply and explain" model (in contrast to other codes, such as the Good Governance Code for Listed Companies, which follow the "comply or explain" approach, allowing for the non-application of some of their principles provided that reasons are given). The main reasons given for adopting this approach are the following: (i) the subjective scope of the Code is open and variable; (ii) the principles are expressed in a generic, non-prescriptive way; and (iii) entities that choose not to adhere to the Code are under no obligation to explain or state their position in relation to the Code.

In any case, for a transitional period of three years, entities that choose to adhere to the Code may apply the "comply or explain" principle in their annual report, explaining why they have not followed certain principles and indicating which principles they have applied and, if so, in what way, during the reporting period. Entities availing themselves of this possibility must publish, at the time of adhering to the Code, a concrete plan and timetable for adaptation, explaining the degree of annual progress in each of the years. In any case, principle 6, relating to the conflict of interests management policy, should be applied from the outset, as it is inherent to the operations of any investor or manager.

4. The principles

The Code contains seven principles, which should be considered without prejudice to the different legal and regulatory obligations that may be applicable, which will always prevail in the event of conflict with any of the provisions of the Code:

- **Principle 1**: Investors and managers should aim for the long-term profitability of their investments for the benefit of their clients and beneficiaries, and should include, to the extent they deem appropriate, as part of their fiduciary duties, environmental, social and governance factors and associated risks in their investment strategies, policies and decisions. Investors and managers should also maintain, periodically review and update, as appropriate, their internal governance practices and structures to ensure that they are consistent with the principles of the Code.
- **Principle 2**: Investors and managers should adequately monitor and gain an understanding of the companies in which they invest and the extent to which these companies contribute to the objective set out in principle 1 above, and should have sufficient means to do so.

- **Principle 3**: Based on their knowledge of the companies in which they invest, investors and managers should develop, publish and keep up to date an engagement policy, focused on generating performance consistent with principle 1 and contributing to the appropriateness of the business strategies of the companies in which they invest.
- **Principle 4**: Investors and managers should actively exercise their rights as shareholders in the companies in which they invest by participating and exercising their voting rights responsibly at general meetings of shareholders, in the interest of their clients and beneficiaries, in accordance with their engagement and voting policies.
- **Principle 5**: Investors and managers should publish an annual report on how they have implemented the engagement and voting policies in the immediately preceding year, including an assessment of the actions taken and an explanation of how the above policies have contributed to both the objectives set out in principles 1, 2 and 3 and to achieving the business strategy of the companies in which they invest.
- **Principle 6**: Investors and managers should have a conflict of interests management policy that should be focused on prioritising the interests of their clients and beneficiaries.
- **Principle 7**: The remuneration policy should set out and publicly disclose how much of the variable remuneration of executive directors and senior management of investors and managers is linked to the achievement of objectives relating to their strategies and how their actual implementation has been carried out during the financial year and, in particular, should be aimed at achieving long-term performance by such investors and managers.

Following each principle, the Code includes explanatory text with clarifications and expectations about that principle, as well as when it applies and how the principle of proportionality would apply. These clarifications and expectations are not prescriptive in nature, but are intended to facilitate the application of each principle.

5. Instructions for adhering to the Code

Institutional investors, asset managers and proxy advisors who wish to do so can adhere to the Code by sending the CNMV a letter via its website indicating the full corporate name of the adhering entity, the date and internal body that approved the adherence, the relevant contact details and, if they have one, their legal entity identifier (LEI), as well as whether they have decided to avail themselves of the transitional period. The letter must also state whether the adherence is only in their capacity as investor, manager or both, or, in the case of insurance undertakings, whether adherence relates only to life insurance business, or also to non-life or general insurance business. In addition, they should provide in a separate document, which will not be made public, the identity of the entity's contact person(s) for matters related to their adherence to and monitoring of the Code.

Once both letters have been received and it has been verified that both contain all the above information, the applicant entity will be added to the list of adhered organisations. The CNMV will publish a list of these entities and a link to each of their websites, which must publish, in a visible and clear manner, the engagement and voting policies, as well as the other information necessary to comply with the Code.

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