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A new version of the Draft Royal Decree amending the CIS Regulation has been published

On Wednesday 20 September, the Ministry of Economic Affairs and Digital Transformation published a new version of the Draft Royal Decree amending Royal Decree 1082/2012, of 13 July, approving the Regulation implementing Law 35/2003, of 4 November, on collective investment schemes ("**Draft amendment of the CIS Regulation**"), together with three other draft royal decrees implementing Law 6/2023, of 17 March, on Securities Markets and Investment Services ("the **SML**"). It introduces new features to the first version of the Draft amendment of the CIS Regulation, published in 2021, arising from the approval of the SML and the new European regulations on sustainability.

In this legal briefing, we highlight some of the main new features included in the Draft amendment of the CIS Regulation.

1. Adaptations to European Union law

- 1.1. National regulations have been adapted to Regulation (EU) 1286/2014 of the European Parliament and of the Council of 26 November 2014 on key information documents for packaged retail and insurance-based investment products ("**PRIIPS**").
- 1.2. The obligation for quarterly reporting to the CNMV of the identity of shareholders or unitholders reaching, exceeding or falling below the thresholds considered significant holdings has been removed and the register of significant holdings has been eliminated.
- 1.3. The 15% limit imposed on CISs when investing in financial instruments that incorporate voting rights over an issuer has also been eliminated, and the reference to the possibility of exercising significant influence over the issuer has been maintained.
- 1.4. The success fee regime has been aligned with the guidelines of the European Securities and Markets Authority ("**ESMA**").
- 1.5. Finally, the obligation to require the publication of a running cost indicator in the prospectus has been removed.

2. Improving the competitiveness and functioning of collective investment schemes

- 2.1. As a consequence of the amendments introduced by Law 18/2022, of 28 September, on the creation and growth of companies ("**Create and Grow Law**") to Law 35/2003 on Collective Investment Schemes ("**Law 35/2003**"): (i) the obligation for management companies of collective investment schemes ("**ManCos**") to prepare and publish the quarterly report for each of the CISs they manage has been eliminated, and (ii) electronic means are established as the default form of communication with unitholders and shareholders.
- 2.2. The obligation for ManCos to provide the internal rules of conduct during the authorisation process has been eliminated, although they may request any data, reports or background information deemed appropriate to verify compliance with the conditions and requirements established therein under the applicable regulations in force.

- 2.3. The procedure for expressions of interest in appointing a new manager and/or depositary to replace another manager and/or depositary in a situation of insolvency, revocation or suspension has been established.
- 2.4. In cases of the dissolution and liquidation of an investment fund, it will be possible, while maintaining the suspension of the unitholder's right to request redemption, to make payments on account through the redemption of units.
- 2.5. The minimum liquidity ratio requirement of 1% for financial CISs has been abolished.

3. Amendments relating to hedge funds

- 3.1. The minimum holding period for shareholders or unitholders has been adjusted, the maximum limit of which was set at one year, and the holding period may now extend to the period provided for the liquidation of the investments made in hedge funds.
- 3.2. It provides that the prorating of redemptions of hedge funds will be carried out without making it conditional on their settlement on the next redemption date, but rather on the availability of the necessary liquidity.
- 3.3. The regime for marketing hedge funds to non-professional investors has been made more flexible. Thus, as an alternative to the 100,000 euro investment requirement, marketing to non-professional investors is permitted when the investment is made on the recommendation of an entity authorised to provide advisory services. If the client's financial assets do not exceed 500,000 euros, a minimum initial investment of 10,000 euros must be made which may not represent more than 10% of said assets.

4. Technical adjustments relating to special purpose sub-funds

- 4.1. The option for such sub-funds to be carried out through a company has been eliminated, only the option of using a fund as a vehicle has been retained.
- 4.2. The minimum amount of CIS assets whose valuation or sale at fair value must be affected by exceptional circumstances for the creation of this type of sub-fund is reduced from 5% to 1%.
- 4.3. Details are provided on the process of redemptions as the special purpose sub-fund obtains liquidity.
- 4.4. From the second year onwards, the management fee is capped at (i) one-third of the management fee established in the original CIS; or (ii) 0.20% of the assets under management, whichever is lower.

5. Calculation of the net asset value, subscription and redemption regime and risk diversification

- 5.1. There is now the option for subscriptions and redemptions to be dealt with at least fortnightly on the dates set out in the prospectus, in which case the net asset value is calculated by the fund manager at this frequency or at a higher frequency for information purposes.
- 5.2. To facilitate the management of funds with strategies focused on less liquid assets, the possibility of establishing in the prospectus and in the fund management regulations of funds of a financial nature, notice periods adjusted to the frequency of the calculation of the net asset value is permitted.
- 5.3. The limits to risk diversification of ManCos are reinforced by including, within the limit of 25% concentration in the same entity or entities belonging to the same group, all types of financial instruments and cash.

6. New developments in the area of sustainability

The amendments introduced in the Draft amendment of the CIS Regulation in this area derive from Commission Delegated Directive (EU) 2021/1270, of 21 April 2021, amending Directive 2010/43/EU as regards the sustainability risks and sustainability factors to be taken into account for Undertakings for Collective Investment in Transferable Securities (UCITS):

- 6.1. It introduces an obligation for ManCos to have in place a sound and documented risk management policy that takes into account, inter alia, sustainability risks, with the necessary resources and expertise.
- 6.2. The board of directors of a ManCo will be responsible for ensuring that sustainability risks are integrated into the functions of the board.
- 6.3. A reference is added to the obligation for ManCos to effectively integrate sustainability risks into the management of the CIS, taking into account the nature, scale and complexity of their activities.
- 6.4. When identifying the types of conflicts of interest, an obligation is introduced for ManCos to include those that may arise as a result of the integration of sustainability risks into their processes, systems and internal controls.
- 6.5. Finally, it is established that the ManCo or the CIS must assess the exposure of each of the CISs to sustainability risks and take into account the main adverse effects of investment decisions on sustainability factors.

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