

Recent key developments in the area of Spanish financial regulation

Prepared by the Regulation and Research Department of the Spanish Confederation of Savings Banks (CECA)

Royal Decree-Law amending the Consolidated Text of the Securities Market Act (Royal Decree-Law 14/2018, published in Spain's official state journal on July 29th, 2018)

This piece of legislation rounds out the transposition into Spanish law of Directive 2014/65/EU on markets in financial instruments (MiFID II) and Commission Delegated Directive (EU) 2017/593. It took effect the day after its publication in the journal, with the exception of certain provisions, that will take effect in tandem with the implementing regulations.

The most significant aspects of the Royal Decree-Law are the following:

- It empowers Spain's competent authority, the CNMV, to impose limits on net positions in commodity derivatives. It also regulates the management controls over such positions and the disclosure obligations (to the CNMV) incumbent upon the providers of investment services and activities (investment firms) and market operators operating trading venues on which commodity derivatives, emission allowances or emission allowance derivatives are traded.
- It modifies the legal regime applicable to investment firms, specifying the applicable legislation that directly affects credit institutions and management companies by virtue of carrying out investment activities. It introduces the following modifications, among others:
 - Changes in the investment firm authorisation, registration, suspension and revocation procedure.
 - In the cross-border arena, it regulates the establishment of subsidiaries and the freedom to provide services, both within the European Union and in third countries.
 - It introduces the requirement to set up corporate governance arrangements that ensure the firms' effective and prudent management.
 - It introduces the obligation to keep a record that must include recordings of phone conversations and electronic communications related with the execution of client orders.
 - It establishes the organisational and management requirements for firms that engage in algorithmic trading.
 - It regulates the organisational requirements for firms that provide direct electronic access or act as general clearing members and for data reporting services providers.
- As for the conduct of business rules applicable to investment firms, the following changes stand out:
 - Clients must be classified as either retail or professional clients or eligible counterparties.
 - The due diligence and transparency obligations have been stepped up and new obligations introduced regarding measures for the prevention, detection and management of potential conflicts of interest between clients and the firm itself or its group.

- As for the design and marketing of financial products, there are new rules for the oversight and control of these activities.
 - The new rules outline the information that must be provided before and during client service provision and that related with any cross-selling.
 - In terms of the suitability assessment for existing and prospective clients, investment service, activity and financial instrument recommendations must be aligned with their levels of risk tolerance and ability to bear losses.
 - Firms must ensure that staff remuneration does not conflict with their obligation to act in their clients' best interests.
 - The legislation sets the minimum requirements for investment advice to be considered independent: (i) firms must assess a sufficiently wide and diverse range of financial instruments; (ii) they may not receive and keep benefits from third parties in relation to the provision of the service to the client; and, (iii) they must clearly disclose to clients if they are receiving permitted minor non-monetary benefits that could improve the standard of service provided.
 - As for the management and execution of client orders, investment firms must take measures to facilitate the earliest possible execution of client limit orders that are not executed immediately under prevailing market terms. Investment firms are not allowed to receive any remuneration, discounts or non-monetary benefits for routing client orders to a particular trading or execution venue. Lastly, every year, firms are required to publish the five main order execution venues used to execute client orders during the prior year.
- Among the changes made to the supervision, inspection and sanctions regime, the following stand out: the CNMV has been

given new supervisory powers; cooperation with other competent authorities has been reinforced (the CNMV must notify the ESMA of any position limitation demands and of any limits imposed on individuals' ability to purchase a financial instrument; and the sanctions regime has been modified, most notably with respect to very serious violations and the attendant penalties.

Lastly, the CNMV will be the authority with the competence to act as the alternative dispute resolution authority in the securities market arena until a single competent authority is set up to rule on lawsuits in the consumer financial sector, as contemplated in additional provision one of Spanish Law 7/2017 (of November 2nd, 2017).

CNMV Circular amending CNMV Circulars 1/2010 (July 28th, 2010) and 7/2008 (November 26th, 2008) (Circular 4/2018, published in the official state journal on October 9th, 2018)

The purpose of the Circular, which took effect the day after its publication, is to update the information collected via the confidential statements submitted without changing the frequency with which they are filed or the related deadlines.

- The changes made to Circular 1/2010 update the confidential statements collected by the CNMV in order to address new disclosure requirements, such as those deriving from the introduction of MiFID II. The following new disclosure requirements stand out: (i) more detailed information about the provision of investment advice (independent and non-independent); (ii) the volume of financial instrument transactions executed that were part of cross-selling campaigns, *i.e.*, bundled with other financial products; (iii) more detailed information about the reasons underpinning claims presented by retail clients; and, (iv) more specific information about the distribution channels through which client orders are received.

The first set of financial disclosures to be submitted in accordance with these new

requirements is that corresponding to the period between January 1st and March 31st, 2019, which must be presented by April 20th, 2019.

- The changes made to Circular 7/2008 are designed to collect additional information about the activities of the investment service firms. To this end, three new sections have been added to the complementary information statement prescribed in Annex IV (Separate Confidential Statement Templates).

The first set of disclosures to be filed in keeping with these changes is that corresponding to April 30th, 2019, which must be presented by May 20th, 2019.