

SOCIMIs: Relevant new MAB developments

On 10 February 2016, the MAB's Daily Bulletin published a modification of the General Regulations of the Alternative Equity Market (Mercado Alternativo Bursátil or MAB), and approved eleven new Circulars implementing the same.

In practice, these changes oblige SOCIMIs (either already included in the MAB and to be included shortly) to implement a series of measures on a short- to medium-term basis.

The aim of the new rules is to adapt the MAB regulations to recent legislative amendments introduced by, among others, the Business Financing Promotion Act (Ley 5/2015, de 27 de abril, de Fomento de la Financiación Empresarial) and the Audit Act (Ley 22/2015, de 20 de julio, de Auditoría de Cuentas).

Main new developments

Below we have highlighted the main implications of said rules for companies aiming to join, or who have already joined, the MAB-SOCIMI segment (although the new regulations affect all segments of the MAB to a greater or lesser extent):

Hot topics

- The maximum term for SOCIMIs to ensure their shares are diversely owned is set at 12 months, although the minimum number of shares they must have in order to comply with said requirement is not specified.
- Before joining the MAB, the board of directors of the SOCIMI must prepare certain documents, among others, (i) a report confirming the existence of sufficient working capital in order to carry out its activity in the 12 months following the date of the application for inclusion; and (ii) an internal code of conduct
- For inclusion on the MAB, a third party will have to carry out a legal and financial due diligence process and an auditor must issue a comfort letter on the financial information contained in the DIIM.
- An auditor must carry out at least a limited review of the six-monthly financial information each year.
- The role of the Registered Advisor is enhanced, both before and after the company joins the MAB.
- Obligation to apply for listing on the regulated market for companies with a capitalisation in excess of 500 million euros, with the CNMV being given the power to establish exceptions for SOCIMIs.

1. *Maximum term for complying with the diverse ownership requirement:* SOCIMIs have a maximum term 12 months as of inclusion to ensure their shares are diversely owned.

The concept of shares being "diversely owned" has not been modified, meaning that it will be achieved when shareholders with a holding of less than 5% of the share capital of the company hold a number of shares representing at least:

- a. An estimated market value of two million euros; or
- b. 25% of the shares issued by the company.

Unfortunately, the MAB has not taken advantage of the new regulations to offer a definitive reply to one of the questions that crops up most often in practice, namely the minimum number of shareholders a SOCIMI must have in order to comply with this diverse ownership requirement (it tends to be set in the region of 20-30 shareholders, even though there is no specific legal guidance on that).

2. *Reports from the board of directors:* as a prerequisite for joining the MAB, the board of directors of the SOCIMI will have to draft the following reports confirming that the company has:
 - a. Sufficient working capital to perform its activity in the 12 months following its application for inclusion.
 - b. An organisational structure that enables it to comply with its information obligations, including an appropriate internal monitoring system for financial information.
 - c. An Internal Code of Conduct in line with the provisions of Article 225.2 of the Restated Text of the Securities Market Act (*Texto Refundido de la Ley del Mercado de Valores*).
3. *Legal and financial due diligence and comfort letter:* as of the entry into force of the new regulations, a third party must carry out a due diligence process, covering at least legal and financial aspects, for the purpose of the inclusion of the company in the MAB.

Moreover, an auditor will have to issue a comfort letter on the financial information submitted by the company in the Information Document on Inclusion on the MAB (DIIM).

Both the due diligence process and the comfort letter will be the subject of a report by the Registered Advisor.

Clarification from the MAB on the specific criteria for carrying out the above requirements in practice is still pending.

4. *Periodic financial information:* the main new development in this regard is the obligation for the financial information corresponding to the first six months of each financial year to be subjected to at least a limited review by an auditor. Moreover, the term for publishing said information is extended from 3 to 4 months.
5. *Increased functions of the Registered Advisor:* the role of the Registered Advisor is enhanced, with a series of additional functions being attributed:
 - a. Prior to the inclusion of the company on the MAB, the Registered Advisor will have to draft certain reports, including those already mentioned in relation to the due diligence process and auditor's comfort letter.
 - b. Once the SOCIMI has joined the MAB, the Registered Advisor will have to review all the information prepared by the company to be disclosed to the Market, verifying that it meets the requirements envisaged in the applicable regulations.

Moreover, the Registered Advisor will have to be in permanent contact with the company, justifying the meetings held, attending general meetings, monitoring price developments and the trading volume of its shares, etc.

Meanwhile, all agreements between the company and the Registered Advisor will have to make express reference to the functions of the Registered Advisor.

6. *Obligation to apply for listing on a regulated market:* in line with the provisions of Article 77.3 of the Restated Text of the Securities Market Act, those companies whose capitalisation exceeds 500 million euros for an uninterrupted period of 6 months will have to apply for listing on a regulated market within a maximum term of 9 months.

However, said article expressly empowers the CNMV to establish exceptions to that rule that SOCIMIs, among others, can avail of. At the time of writing, the CNMV has not yet regulated said exceptions, although the criterion regarding the obligation for SOCIMIs to apply for listing on the regulated market is likely to be linked to the trading volume of their shares, with a significant volume being required in order to make the switch to the regulated market.

Entry into force

The main content of the new regulations will enter into force on 9 March 2016. As exceptions:

1. For those SOCIMIs whose shares have already been listed on the MAB, the diverse ownership requirement must be met within one year as of the entry into force of Circular 6/2016 (that is, prior to 9 March 2017).
2. The obligation for an auditor to carry out at least a limited review of the six-monthly information will apply for the first time in relation to the first half of the 2016 financial year.
3. The obligation to have an Internal Code of Conduct will apply to SOCIMIs already included on the MAB within 6 months as of publication of Circular 6/2016 (that is, 10 August 2016).
4. Agreements between the companies and the Registered Advisors will have to contain the minimum content stipulated by Circular 8/2016 no later than 31 July 2016.
5. Certain provisions on the clearing, settlement and registration of securities will enter into force on 27 April 2016.

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