CNMV
Comisión Nacional del Mercado de Valores

Attention to Complaints and Enquiries by Investors
2018 Annual Report

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Comisión Nacional del Mercado de Valores
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Abbreviations

AA. PP.	Public Administration Services
ABS	Asset-backed security
ACGR	Annual corporate governance report
AIAF	Asociación de Intermediarios de Activos Financieros (Spanish market in fixed-income securities)
AIF	Alternative Investment Funds
ANCV	Agencia Nacional de Codificación de Valores (Spain's national numbering agency)
ARDR	Annual report on director remuneration
ASCRI	Asociación Española de Capital, Crecimiento e Inversión (Spanish association of capital, growth and investment entities)
AV	Agencia de valores (broker)
BIS	Bank for International Settlements
BME	Bolsas y Mercados Españoles
BTA	Bono de titulización de activos (asset-backed bond)
BTH	Bono de titulización hipotecaria (mortgage-backed bond)
CADE	Central de Anotaciones de Deuda del Estado (public debt book-entry trading system)
CC. AA.	Autonomous regions
CCP	Central counterparty
CDS	Credit default swap
CDTI	Centre for the Development of Industrial Technology
CFD	Contract for differences
CNA	Competent national authority
CNMV	Comisión Nacional del Mercado de Valores (Spain's National Securities Market Commission)
CO	Customer Ombudsman
CP	Crowdfunding platforms
CSD	Central securities depository
CSDR	Central Securities Depositories Regulation
DGSFP	Dirección General de Seguros y Fondos de Pensiones (Directorate-General for Insurance and Pension Funds)
EAFI	Empresa de asesoramiento financiero (financial advisory firm)
EBA	European Banking Authority
EC	European Commission
ECA	Credit and savings institutions
ECB	European Central Bank
ECR	Entidad de capital riesgo (venture capital firm)
EFAMA	European Fund and Asset Management Association
EICC	Entidad de inversión colectiva de tipo cerrado (closed-ended collective investment entity)
EIOPA	European Insurance and Occupational Pensions Authority
EIP	Public interest entity

EMIR	European Market Infrastructure Regulation
EMU	Economic and Monetary Union (euro area)
ESFS	European System of Financial Supervisors
ESI	Investment firms
ESM	European Stability Mechanism
ESMA	European Securities and Markets Authority
ESRB	European Systemic Risk Board
ETF	Exchange-traded fund
EU	European Union
EuSEF	European social entrepreneurship fund
EuVECA	European venture capital fund
FCR	Fondo de capital riesgo (venture capital fund)
FCR-pyme	Fondo de capital riesgo pyme (SME venture capital fund)
FI	Fondo de inversión de carácter financiero (mutual fund)
FICC	Fondo de inversión colectiva de tipo cerrado (closed-ended investment firm)
FII	Fondo de inversión inmobiliaria (real estate investment fund)
FIICIL	Fondo de instituciones de inversión colectiva de inversión libre (fund of hedge fund)
FIL	Fondo de inversión libre (hedge fund)
FIN-NET	Financial Dispute Resolution Network
FINTECH	Financial Technology
FOGAIN	Fondo General de Garantía de Inversiones (investment guarantee fund)
FRA	Forward rate agreement
FROB	Fund for Orderly Bank Restructuring
FSB	Financial Stability Board
FTA	Fondo de titulización de activos (asset securitisation trust)
FTH	Fondo de titulización hipotecaria (mortgage securitisation trust)
GLEIF	Global Legal Entity Identifier Foundation
HFT	High frequency trading
IAS	International Accounting Standards
ICO	Initial Coin Offerings
IFRS	International Financial Reporting Standards
IIC	Institución de inversión colectiva (UCITS)
IICIL	Institución de inversión colectiva de inversión libre (hedge fund)
IIMV	Instituto Iberoamericano del Mercado de Valores (Ibero-American Securities Market Institute)
IMF	International Monetary Fund
INFO Network	International Network of Financial Services Ombudsman Schemes
IOSCO	International Organization of Securities Commissions
IRR	Internal rate of return
ISIN	International Securities Identification Number
KIID	Key Investor Information Document
Latibex	Market in Latin American securities, based in Madrid
LEI	Legal Entity Identifier
LMV	Securities Market Act

LRL	Last resort loan
MAB	Mercado Alternativo Bursátil (alternative stock market)
MAD	Market Abuse Directive
MAR	Market Abuse Regulation
MARF	Alternative Fixed-Income Market
MEFF	Spanish Financial Futures and Options Market
MFP	Maximum fee prospectus
MiFID	Markets in Financial Instruments Directive
MiFIR	Markets in Financial Instruments Regulation
MMU	CNMV Market Monitoring Unit
MOU	Memorandum of Understanding
MTS	Market for Treasury Securities
NCA	National competent authority
NPGC	New general chart of accounts
OECD	Organisation for Economic Co-operation and Development
OIS	Overnight indexed swaps
OPS	Public offering (for subscription of securities)
OPV	Public offering (for sale of securities)
OTC	Over the counter
PER	Price to earnings ratio
PP	Petition for pleadings
PPI	Periodic public information
PPR	Petition for pleading or rectification
PR	Petition for rectification
PSR	Pre-emptive subscription right
REIT	Real estate investment trust
RENADE	Registro Nacional de los Derechos de Emisión de Gases de Efecto Invernadero (Spain's national register of greenhouse gas emission allowances)
RFQ	Request for quote
ROC	Regulatory Oversight Committee
ROE	Return on equity
SAC	Customer service
SAMMS	Advanced Secondary Market Tracking System
SAREB	Asset Management Company for Assets Arising from Bank Restructuring
SCLV	Servicio de Compensación y Liquidación de Valores (Spain's securities clearing and settlement system)
SCR	Sociedad de capital riesgo (venture capital company)
SCR-pyme	Sociedad de capital riesgo pyme (SME venture capital company)
SENAF	Sistema Electrónico de Negociación de Activos Financieros (electronic trading platform in Spanish government bonds)
SEND	Sistema Electrónico de Negociación de Deuda (electronic debt trading system)
SEPBLAC	Servicio Ejecutivo de la Comisión de Prevención del Blanqueo de Capitales e infracciones monetarias (Bank of Spain unit to combat money laundering)
SGC	Sociedad gestora de carteras (portfolio management company)
SGECR	Sociedad gestora de entidades de capital riesgo (venture capital firm management company)

SGEIC	Closed-ended investment scheme management company
SGFT	Sociedad gestora de fondos de titulización (asset securitisation trust management company)
SGIIC	Sociedad gestora de instituciones de inversión colectiva (UCITS management company)
SIBE	Sistema de Interconexión Bursátil Español (Spain's electronic market in securities)
SICAV	Sociedad de inversión de carácter financiero (open-ended investment company)
SICC	Closed-ended investment undertaking
SII	Sociedad de inversión inmobiliaria (real estate investment company)
SIL	Sociedad de inversión libre (hedge fund in the form of a company)
SMN	Sistema multilateral de negociación (multilateral trading facility)
SNCE	Sistema Nacional de Compensación Electrónica (national electronic clearing system)
SON	Sistema organizado de negociación (organised trading facility)
SRB	Single Resolution Board
SSS	Securities settlement system
STOR	Suspicious transaction and order report
SV	Sociedad de valores (broker-dealer)
TER	Total expense ratio
TRLMV	Texto refundido de la LMV (RDL 4/2015, de 23 de octubre) (recast text of the Securities Market Act)
TVR	Theoretical value of the right
T2S	TARGET2-Securities
UCITS	Undertaking for collective investment in transferable securities

1 Introduction

1 Introduction

This *Annual Report on Complaints* shows the actions taken by the CNMV in dealing with claims, complaints and enquiries made by investors in 2018 through the Complaints Service.

In this regard, the legal obligation to prepare an annual report was established in Article 30.4 of Law 44/2002, of 22 November, on Financial System Reform Measures, according to which: "The Bank of Spain, the National Securities Market Commission and the Directorate-General for Insurance and Pension Funds shall publish an annual report on their respective complaints services which must include, at least, the statistical summary of the inquiries and complaints handled and the criteria applied by said services, in relation to the matters on which the complaints filed are based, as well as the respondent entities, indicating, where appropriate, whether the findings were favourable or unfavourable to the complainant."

This Annual Report has been prepared under said legal obligation and includes information on how the CNMV handled claims, complaints and enquiries in 2018.

Investors can file complaints when they feel their interests or rights have been harmed by the performance of an entity that provides investment services. With the intention of obtaining a favourable report, investors may file a formal complaint to the Complaints Service on with regard to material incidents arising from actions or omissions by the financial institutions against which the claim is being filed, which may result in the entity's actions being declared contrary to the rules of transparency and customer protection or good financial customs and practices. This declaration may facilitate the subsequent exercise of their judicial or extrajudicial claims with the aim of reinstating their interests or rights. They may also make enquiries or request information on matters of general interest affecting the rights of financial services users in terms of customer transparency and protection or on the legal channels available for the exercise of such rights.

The resolution of the complaints entails the issuance, by the CNMV, of a reasoned report that pronounces on the issues raised in the claim, but is not binding on the entities against which complaints are lodged or on the complainants. This report is not considered an administrative act subject to appeal.

Regarding the supporting legislation of this function, the procedure for filing complaints and enquiries was set out in Order ECC/2502/2012, of 16 November, which regulates the procedure for filing complaints before the complaints services of the Bank of Spain, the National Securities Market Commission and the Directorate-General for Insurance and Pension Funds, which have been in force as from 22 May 2013.

This procedure is specified in CNMV Circular 7/2013, of 25 September, which was issued in development of the aforementioned Order ECC/2502/2012, on the

resolution procedure for complaints against companies that provide investment and addressing enquiries in the field of the securities market.

However, Law 7/2017, of 2 November, incorporating Directive 2013/11/EU of the European Parliament and of the Council into the Spanish legal system, dated 21 May 2013, on the alternative resolution for consumer disputes was published in the *BOE* (Official State Gazette) on 4 November 2017. In line with its first additional provision, the Complaints Service has had accommodate its operation and procedure as provided in Law 7/2017. The manner in which this accommodation took place was widely reported in the Annual Report last year.

The Investors Department of the CNMV is in charge of processing the claims, complaints and enquiries based on the aforementioned regulation. The Investors Department consists of two areas: Complaints and Enquiries.

This Annual Report is divided into five chapters. Chapter One is this introduction; Chapter Two presents the two complaint procedures that the Complaints Service is applying as a result of the entry into force of Law 7/2017 and its characteristics; Chapter Three reports on the activity of the Complaints Service during the 2018 financial year; Chapter Four sets out the issues and criteria applied to resolve complaints; and Chapter Five deals with the most significant issues that have been the subject of enquiries during the year.

Chapter Two, as was done in the 2017 Annual Report – although, in this case, merely as a reminder – differentiates the two complaint procedures that can be applied depending on the condition of the investor initiating the procedure. If the complainant is a natural person or a non-for-profit legal person, the applicable procedure will be as indicated in Order ECC/2502/2012, albeit adapted to the provisions under Law 7/2017. On the contrary, if the procedure is initiated by a legal person, the provisions under ministerial order must be followed without any form of adaptation.

However, as previously indicated, the 2017 *Annual Report on Complaints* extensively details the characteristics of these two procedures, whereas the present report is limited to including a reminder on the most relevant issues.

Chapter Three reports on the activities performed by the Complaints Service during the 2018 financial year. In line with the structure of the latest Annual Reports, data related to the processing of complaints are collected in more detail and figures and diagrams are included to facilitate understanding of the Service's complaint procedure. In this regard, and as usual, statistical data is provided on the documents submitted to the Complaints Service with a detailed explanation of the processing given to the documents received, indicating the different stages through which they pass. Accordingly, individualised information is provided in the documents processed in each of the stages in 2018. Thus, the Report establishes the number of proceedings and the reasons that gave rise to the pre-processing stage (including those cases in which the documents submitted by the investor fail to comply with any of the conditions required by law for them to be admitted, and others where there is a legal cause for non-admission), to the resolution stage (in which the documents filed are decided on either as complaints or as non-admissions) and to the follow-up stage (which includes the actions of the entities after the issuance of a report favourable to the complainant or the responses by complainants to the non-admissions or reports unfavourable to their complaints).

As in previous years, the Report includes a series of entity rankings according to various criteria: by number of complaints resolved; by reading and response deadlines to requests for comments sent by the Complaints Service to entities; by percentage of final reports favourable to complainants; by number of acceptances and mutual agreements concluded; and by percentages of answers and acceptance of criteria after the issuance of a report favourable to the complainant.

In line with the new way of presenting the data of the last two Annual Reports, the rankings differentiate between the entity against which the complaint is filed and the entity responsible for the incidents motivating the complaint, which may or may not be the same entity. They would not be the same in cases in which the entity responsible for the incident had merged or transferred the securities market business area to the entity against which the complaint has been filed.

In order to provide details in this Annual Report regarding the work carried out by the Customer Service Departments (CSDs) of the entities supervised by the CNMV in processing the complaints received on issues that fall under the remit of the Complaints Service, specific information about the complaints they receive has been requested from the entities. This Annual Report includes the data that the entities have provided on the complaints related to the securities market that have been filed with their CSDs or with the Customer Ombudsman (CO) in 2018, as well as the complaints not admitted or those admitted and resolved by them in that year.

As a novelty with regard to previous Annual Reports, a section on the meetings held by the Complaints Service with the heads of the CSDs of 11 entities has been included.

As for international cooperation mechanisms, the activity of the FIN-NET network, aimed at processing cross-border complaints, is included. Since September 2018, the Complaints Service has been a member of the Steering Committee of FIN-NET, made up of 12 members and in charge of the FIN-NET work programme that is discussed in the plenary meetings. The Complaints Service has attended the two plenary meetings that took place in 2018 (June and November) in Brussels and has actively participated in the first assembly concerning the alternative dispute resolution held in Brussels in June.

Also during 2017, the Investors Department joined the International Network of Financial Services Ombudsman Schemes (INFO Network), whose general aim is to cooperate on the resolution of disputes. The Complaints Service participated in its annual conference held in Dublin in September 2018.

Chapter Four details the issues and criteria applied in the resolution of complaints in the 2018 financial year. This chapter aims to be a complete, systematised and practical guide, which includes the criteria followed in all complaints finalised with a final reasoned report in 2018. By including both the complaints concluding in a favourable report and those on which an unfavourable report was issued, it is possible to identify not only of the actions that have been considered bad practice by the entity, but also those that were considered correct.

However, it should be noted that the criteria indicated in this chapter relate to a specific time and circumstances analysed in each of the proceedings resolved in 2018, and that future regulatory changes or variations in the circumstances revealed in each proceedings could lead to modifications to those criteria. In short, the

publication of these criteria is intended to be a catalogue that is current as of the date of publication and does not prevent said criteria from being modified or clarified later.

The issues are classified with the following criteria: i) the analysis of the product's suitability for the client's investor profile in the cases of simple order execution, provision of advisory services or portfolio management; ii) product information, which must be provided before and after entering into the contract; iii) order execution; iv) fees; v) testamentary execution; vi) ownership of the securities; and vii) the functioning of the CSD. If necessary, due to the particular characteristics of the product or issue, sometimes a more detailed breakdown is made to deal with issues related to collective investment undertakings (CIU) or other securities, complex or non-complex financial instruments, etc.

Chapter Five deals with the activities carried out by the Enquiries Area, collecting statistical data of the enquiries received broken down by communication channel (either through the electronic office, by telephone or by mail), as well as the main issues that throughout 2018 have been the subject of enquiries, with a specific section where the most relevant issues are developed.

2 Changes in the complaints handling procedure

2 Changes in the complaints handling procedure

2.1 Regulatory changes in 2017

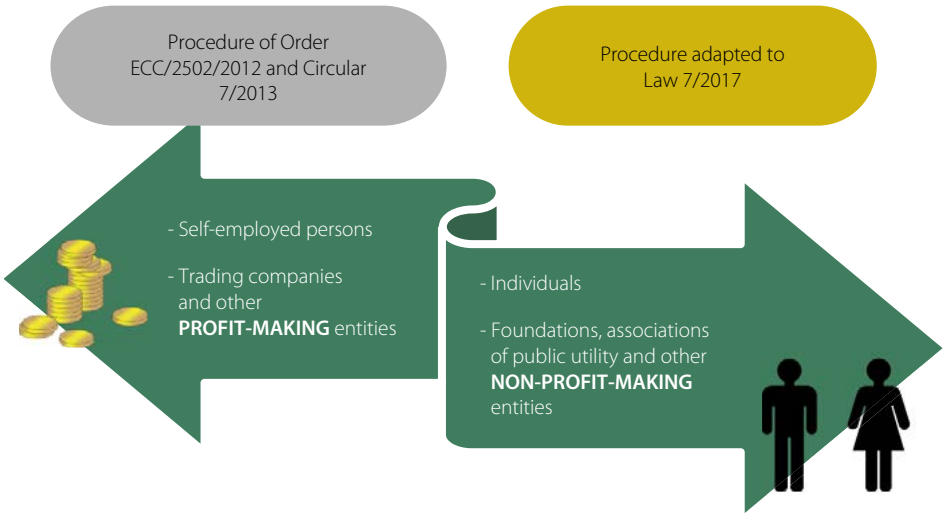
As indicated in the 2017 Annual Report, on 4 November 2017, Law 7/2017, of 2 November, was published in the *BOE*, which incorporates Directive 2013/11/EU into the Spanish legal system of the European Parliament and of the Council, of 21 May 2013, concerning the alternative resolution of consumer disputes, which designated as the competent authority in the financial field the National Securities Market Commission in its respective supervision sector.

Also, until the creation of the new single alternative dispute resolution authority, the current complaints services were urged to adapt their procedure and operation to the provisions established in said law.

The aforementioned adaptation involved a series of modifications to the complaints procedure that were set out in detail in the 2017 Annual Report, which included a complete comparison of the complaint resolution procedure included in Order ECC/2502/2012 and the resulting procedure after the adaptation established in the legislation. However, and only as a reminder, a summary of the main issues to consider is included below.

2.2 Issues that need to be adapted

The subjective scope of the law is more restrictive than that of the Order and the Circular, as legal entities in general and natural persons making claims as freelance workers are not considered to be consumers.



Therefore, until the approval of a new law regulating the institutional system for protecting financial clients referred to in the first additional provision, two parallel procedures are held in force:

– The current one, regulated in Order ECC/2502/2012, of 16 November, and in Circular 7/2013, of 25 September, on the National Securities Market Commission, which will be applicable to freelance workers and for-profit legal entities.

– The result of adapting the order to Law 7/2017, of 2 November, whose scope of application will be natural persons acting for purposes outside their commercial or business activity, trade or profession, as well as any legal person and entity without legal personality acting on a not-for-profit basis, in a field outside a commercial or business activity.

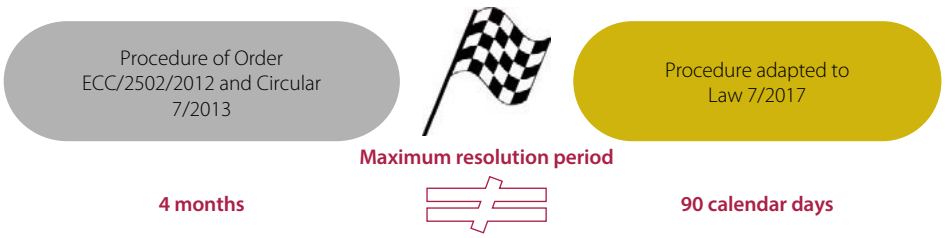
2.3 Reasons for non-admission

For the procedure adapted to Law 7/2017, the causes of non-admission listed in Article 10.1 of the order are maintained, due to lack of competence on the part of complaints services, and the non-admitted cases referred to in Article 18 of Law 7/2017 are included, which replace those included in Article 10.2 of the order. Of these new causes of non-admission, it is worth highlighting those referring to non-compliance with the deadlines to file the complaints with the CNMV.

Finally, the non-admission to process a complaint will have to be notified with reason to the complainant within a maximum period of 21 calendar days from the receipt of the complaint proceedings or, where appropriate, from the date on which the necessary documentation has been received to appreciate that any of the causes of non-admission foreseen in the previous section concur.

2.4 Duration of the procedures

Further, the new regulations introduce two important changes with regard to the current one. In the first place, the processing time of the procedure is reduced from 4 months to 90 calendar days and, secondly, said total processing period of the procedure is established in calendar days, which requires that, for consistency, all the intermediate deadlines are calculated the same way.



2.5 Transitional adaptations to the procedure laid down in Order ECC/2502/2012 resulting from the obligation to adapt to Law 7/2017

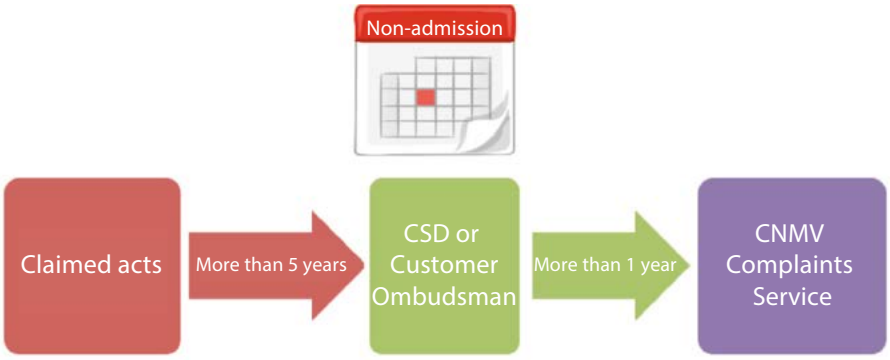
By virtue of the foregoing, the adaptations that have been made in order to adapt the procedure established in the order, to the requirements of Law 7/2017, some of which will begin to be applied shortly, are included again in this Report.

– The Complaints Service is admitting complaints after 1 month or more has elapsed since the consumer filed the complaint to the employer and the latter has not communicated its resolution (Article 18.1 a) of Law 7/2017).

– As from 13 September 2019, a complaint will not be admitted when more than 1 year has elapsed from the moment it was lodged with the CSD of the entity in question until it is submitted to the Complaints Service (Article 18.1 e) of Law 7/2017).

– Having published the *Annual Report on Complaints* on 13 September 2018, it is understood that this is the date from which investors became aware of or had the opportunity to know how the CNMV Complaints Service would adapt its procedure to this cause of non-admission, which is why all complaints filed after that date in the CSDs of the entities providing investment services are liable to fall under this cause of non-admission.

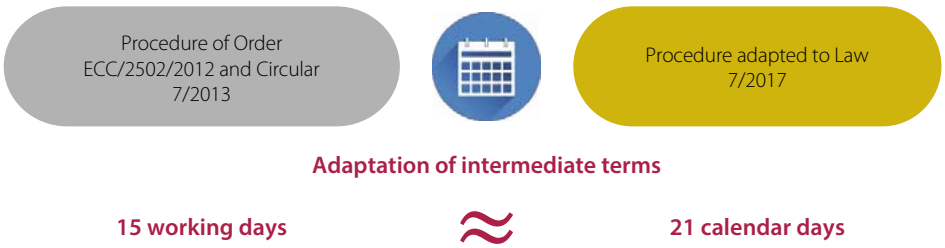
– Likewise, complaints in which the period elapsed from the commission of the claimed acts until the date the claim was submitted to the entity's CSD, exceeds 5 years, will not be admitted.



– The non-admission of a complaint will be duly notified with reason to the complainant within a maximum period of 21 calendar days from the receipt of the complaint proceedings (Article 18.3 of Law 7/2017) or, where appropriate, from the date on which the necessary documentation is received, allowing appreciation of whether any of the causes of non-admission foreseen in the previous section are in place.

– The resolution deadline for the proceedings will be 90 calendar days, counted from the date of submission of the complaint or, where appropriate, from the date on which the complete and necessary documentation to process the procedure is available.

– The other deadlines provided in the order shall be understood as referring to calendar and non-business days; thus: i) the terms of 15 business days will be 21 calendar days and ii) the terms of 10 business days will be understood as 14 calendar days.



– The documents that the Complaints Service addresses to the parties involved in the complaint procedures processed after the adaptation will be referred to the new regulations which will clarify the new procedural issues.

Finally, it should be noted that, as established in Article 12 of the order currently in force, the complaints procedure will end with the issuance by the Complaints Service of a final reasoned report that will not be binding nor considered to be an administrative act subject to appeal.

Also, the procedure will be free of charge for the parties.

3 Activity in 2018

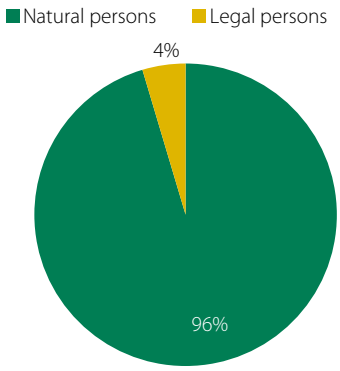
3 Activity in 2018

3.1 Documents filed with the CNMV Complaints Service

In 2018, 1,018 investor documents were registered with the Complaints Service that, due to their characteristics, could be processed as complaints.

These documents were submitted mainly by natural persons. In 141 cases, the investor acted through a representative. In 19 of these cases, the representatives were consumer and user associations and in 1 case it was a Municipal Office for Consumer Information.

Types of investors that apply to the Complaints Service FIGURE 1



Source: CNMV.

Regarding natural person investors, as well as non-for-profit entities, the complaints procedure set forth in Order ECC/2502/2012, adapted to the provisions of Law 7/2017, of 2 November, by which Directive 2013/11/EU of the European Parliament and of the Council, of 21 May 2013 applies, relating to the alternative resolution of consumer disputes, is incorporated into the Spanish legal system. On the other hand, investors that are legal persons must follow the order procedure without any adaptation or accommodation whatsoever.

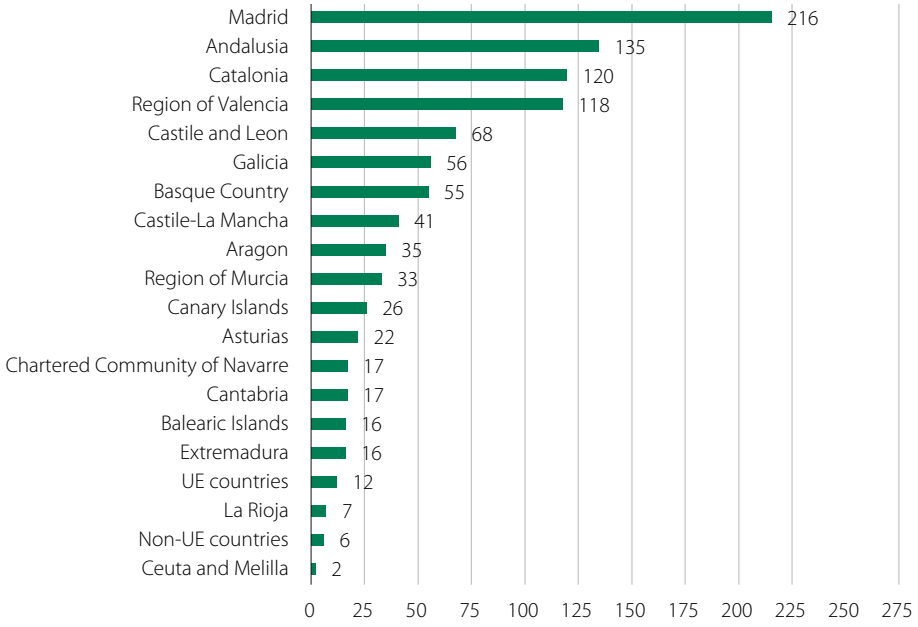
The differences between the two procedures were included in the 2017 *Annual Report on Complaints*. However, a reminder on this issue is included in Chapter Two of this Annual Report.

Of the 43 documents submitted by legal entities, 2 were foundations, that is, not-for-profit entities to which the adapted procedure was applied accordingly.

Investors who addressed the Complaints Service were mostly residents in Madrid (216), followed a long way back by residents in Andalusia, Catalonia and the Valencian Community.

Origin of the investors that address the Complaints Service

FIGURE 2

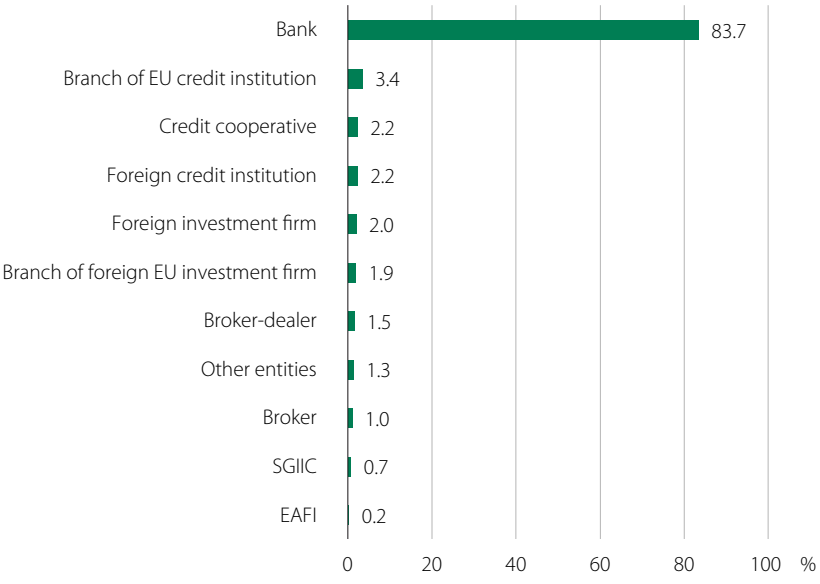


Source: CNMV.

The types of entities affected[1] by the investors' complaints were the following:

Type of entities

FIGURE 3



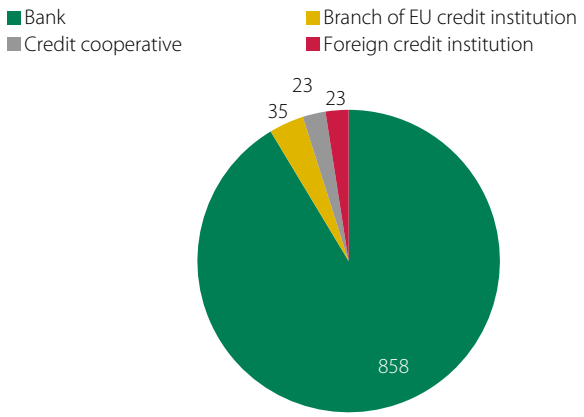
Source: CNMV.

As shown in Figure 3, the type of entity against which investors mostly addressed were national credit institutions: 85.9% (83.7% of which were banks and 2.2%, credit cooperatives). To this percentage, another 5.6% corresponding to foreign credit institutions must be added: specifically, 3.4% whose addressees were branches of EU credit institutions and 2.2% in which the entities against which the claim was

1 The entities affected by investor documents amounted to 1,025, since some documents were addressed to several entities.

lodged were foreign credit institutions carrying out their activity from their country of origin.

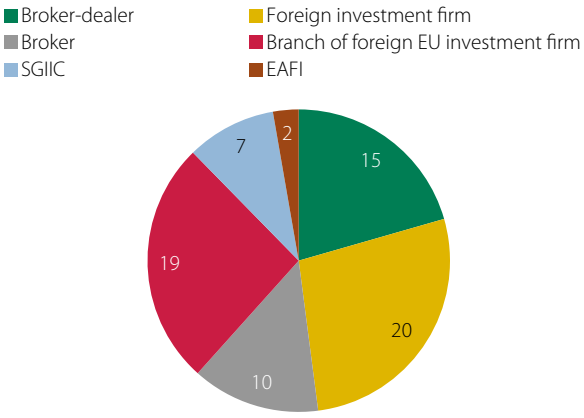
Complaints against credit institutions FIGURE 4



Source: CNMV.

Regarding investment firms (IFs), in only 2.7% of the documents was the company against which the complaint was filed a Spanish investment firm (1.5% referred to securities companies, 1% to securities agencies and 0.2% to financial advisory companies) or a management company for collective investment schemes (SGIIC in Spanish) (0.7% of cases). In 3.9% of the documents filed by investors with the Complaints Service, the entity against which said complaint was addressed was a foreign IF. A distinction is made between those directed against foreign IFs acting from their country of origin (2%) and those directed against branches of EU IFs (1.9%).

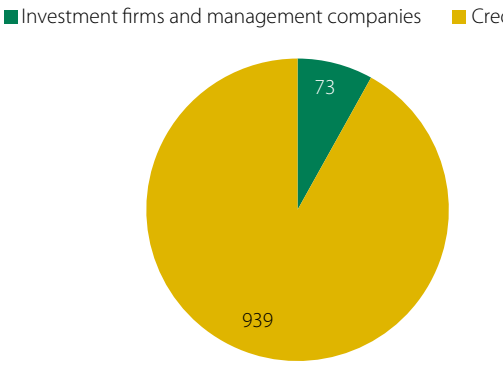
Complaints against investment firms and management firms FIGURE 5



Source: CNMV.

Consequently, credit institutions (banks in particular) are the entities against which investors mainly addressed their documents, thus those filed against IF and SGIIC amount to a low percentage, in relative terms, of the total number of documents filed.

Complaints against investment firms and CIS management companies compared with credit institutions FIGURE 6



Source: CNMV.

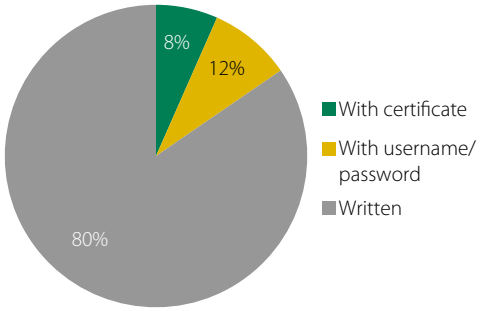
Regarding the way in which the investors addressed the Complaints Service, the majority did so on paper, although the number of electronically registered documents is slowly increasing. In relation to the latter system, both the documents registered with username and password (from 88 documents representing 9% of the total in 2017 to 118 documents representing 12% of the total in 2018) have increased, as well as those registered with an electronic certificate (66, which represented 7% of the total in 2017, compared to 86, which represented 12% of the total in 2018).

Presentation mode TABLE 1

Number of documents	
With certificate	86
With username/password	118
Written	814
Total	**1,018**

Source: CNMV.

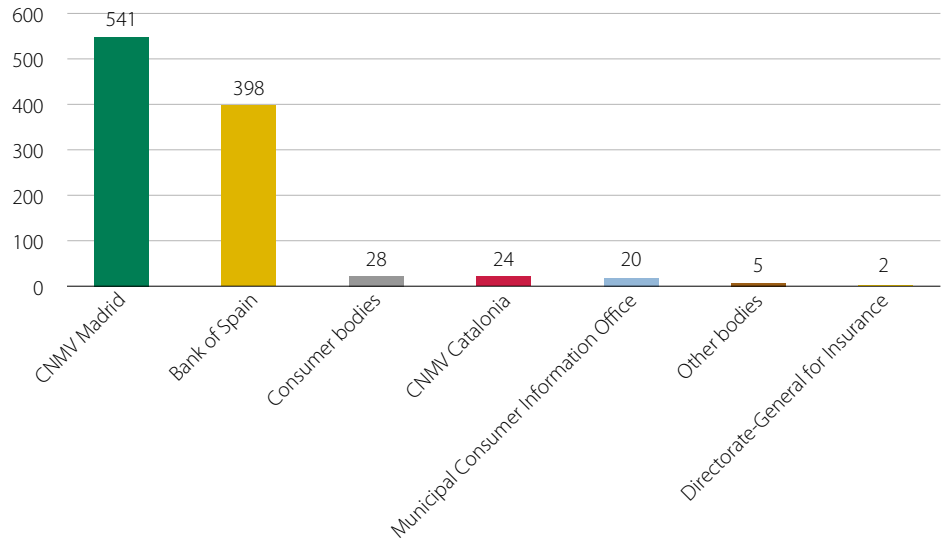
Percentage distribution by presentation mode FIGURE 7



Source: CNMV.

Finally, in relation to the place where investors filed their documents, the majority did so at the CNMV headquarters in Madrid (541), although it is worth mentioning that a significant number of documents referring to issues related to the securities markets were filed directly with the Bank of Spain (398) and were subsequently sent to the Complaints Service. It is also worth mentioning the cases in which the complainants filed their documents with entities related to consumer service, both private (20 documents) and public (28 documents).

Place of filing FIGURE 8



Source: CNMV.

3.2 Processing of the documents

Once an investor files a document to open complaint proceedings, the Complaints Service analyses two issues: on one hand, whether said document meets all the requirements established in the regulations to be admitted as a complaint and, on the other, whether any of the causes of legally-based non-admission apply. Consequently, the documents filed by investors with the CNMV requesting the opening of complaint proceedings might, as applicable, go through different stages.

3.2.1 Pre-processing stage

This pre-processing stage only begins when the Complaints Service concludes that the document does not meet all the requirements established in the regulations to be admitted as a complaint or any of the legally established grounds for non-admission. In these cases, the complainant is informed of this circumstance and a period of 14 calendar days is granted to natural persons or non-for-profit entities (or 10 business days to legal entities) to provide the necessary documentation in order to admit the complaint if the non-compliance can be rectified (petition for rectification or PR) or to allege about the cause of non-admission detected (petition for pleadings or PP).

This stage would conclude with the receipt of the answer from the investor and its corresponding analysis or, as applicable, when the term granted for that purpose has elapsed, after which the processing and resolution stage or final stage would begin.

3.2.2 Processing and resolution stage

➢ Non-admissions

In the cases in which, in spite of having requested the complainant to present a rectification or pleadings, the complainant does not answer (non-admission due to lack of response), does so insufficiently (non-admission due to lack of rectification) or its arguments do not discredit the cause of non-admission detected (non-admission after pleadings), the non-admission of the document will be agreed and its processing will be terminated.

Likewise, the proceedings which do not comply with the admission requirements, that were not susceptible to allegations or rectification by the complainant, will be finalised. This would be the case of the *direct non-admissions* – for example, owing to the Complaints Service's lack of jurisdiction to resolve the issue raised.

If, after the non-admission of the document, the complainant rectifies the deficiencies initially detected, complaint proceedings will be initiated.

➢ Complaints

In contrast, if it is verified that the document filed by the complainant meets all the admission requirements either from the start (direct complaints) or after the deficiencies have been rectified or the grounds for non-admission have been invalidated, the document will be admitted as a complaint thus giving rise to the start of the actual complaint proceedings.

The written complaint and documentation presented by the complainant are then submitted to the respondent entity, which is asked to submit pleadings on the merits of the case brought by the complainant within 21 calendar days or 15 business days according to the type of complainant. In response to this petition, the entity may do several things:

– Submit pleadings on the merits of the case, as requested.

– Report that some type of agreement has been reached with the complainant that satisfies its complaints. In this case, the entity must prove, either on its own initiative or at the request of the Complaints Service, that the agreement has materialised.

– Provide an acceptance or mutual agreement together with a document from the complainant withdrawing their complaint.

– State and demonstrate any grounds for non-admission not reported by the complainant, for example, the existence of litigation pending on the same facts that are the subject of the complaint. This response, once it has been properly analysed by the Complaints Service, could result in the *ex post facto* non-admission of the complaint.

In the usual case that the entity submits pleadings on the merits of the case raised by the complainant in their written complaint document, the processing of the case continues. In contrast, if any type of agreement is accepted by the parties, its

materialisation is demonstrated by the entity or the client's acceptance is obtained, the proceedings will be closed or dismissed without any further formalities.

Continuing with the ordinary processing of the complaint proceedings, the entity has the obligation to submit its pleadings to both the Complaints Service and the complainant so that that latter, within 21 calendar days (if a natural person or a non-profit entity) or 15 business days (if a legal person) from the day after the notification is received, may formulate and submit to the Complaints Service the comments deemed appropriate in respect of the entity's pleadings. If the complainant's comments provide new information on the subject matter of the complaint, they are sent back to the respondent entity, which is granted a period of time to submit pleadings equivalent to the first period granted.

The Complaints Service may carry out any additional actions it deems appropriate to obtain the greatest amount of information on the disputed facts under analysis. For more complex complaints, the Service will request additional information either from the respondent entity or from third parties involved in the events.

Once the complaint processing process has finished, the resolution stage begins. This involves the issuance of a reasoned report analysing all the facts subject to the complaints (provided that they are not subject to any other circumstance that prevents said analysis) and a final pronouncement on whether the respondent entity's actions were aligned with standards of transparency and customer protection, and good financial practices and uses. This final report is sent to the complainant and the respondent entity thereby concluding the complaint proceedings.

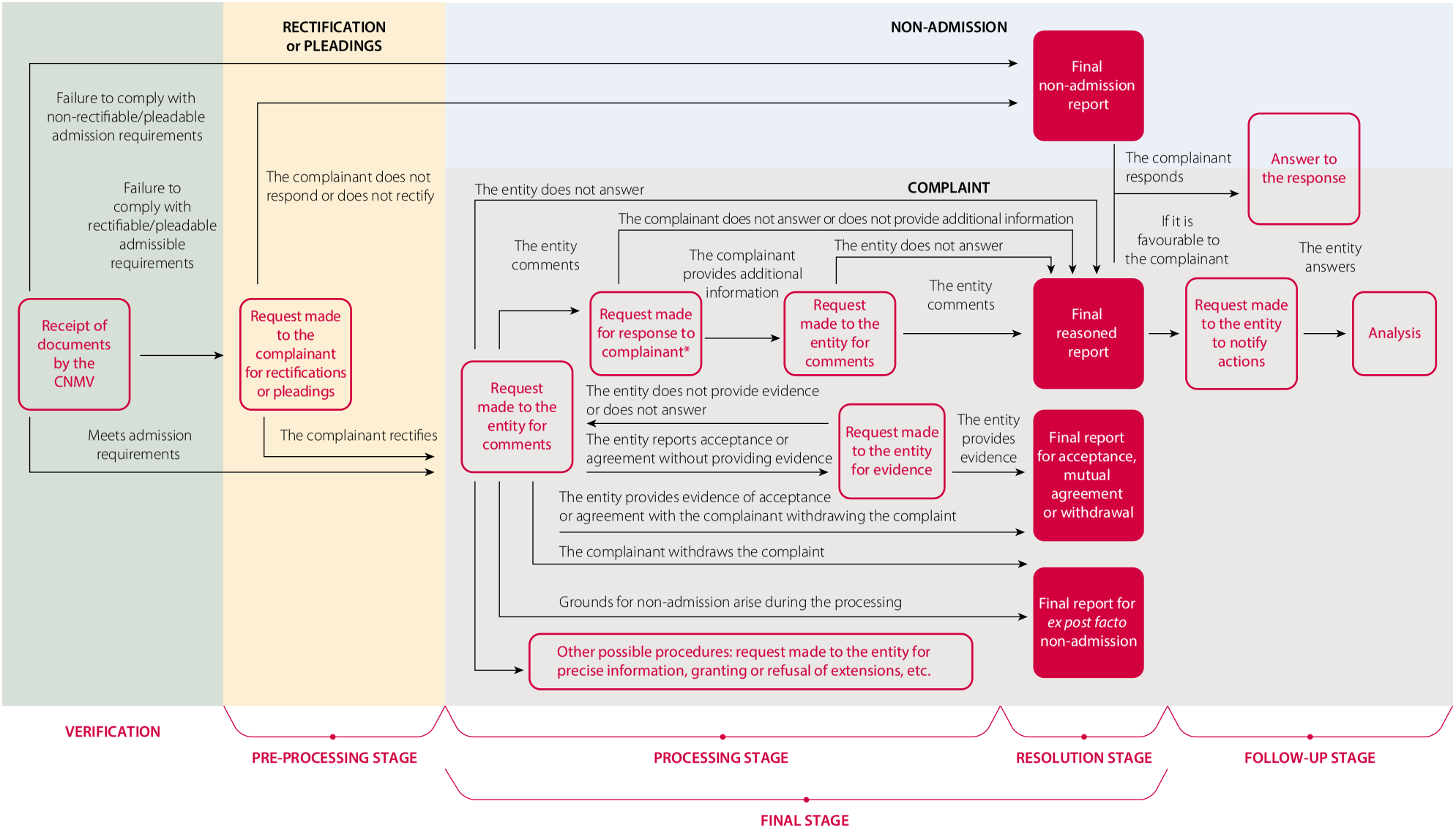
3.2.3 Follow-up stage

Once the non-admission or complaint proceedings have been completed, the follow-up stage begins, which is basically determined by the type of resolution adopted by the Complaints Service.

In those cases in which the Service has issued a reasoned report favourable to the complainant, in addition to sending the final report to the respondent entity, the latter is requested to inform the Service, within one month, of whether or not it accepts the criteria applied in the complaint resolution and, in the event that the entity has rectified the situation with the complainant, to provide documentary evidence of this rectification.

The Complaints Service assesses these communications, as well as any failure to respond. In accordance with prevailing regulations, failure to respond would imply the entity does not accept the criteria contained in the report.

In those cases in which the Complaints Service has not admitted the complaint for processing (non-admission) or, having admitted it, has issued a reasoned report that is unfavourable to the complainant, it is relatively common for the latter to submit subsequent documents for clarification on certain aspects relating to the conclusion of the proceedings or demonstrating their disagreement with the resolution adopted. The Complaints Service will respond to both types of complaints to try and resolve all doubts raised by the complainant.



(*) The entity itself sends the comments to the complainant and informs it of the deadline to file a complaint with the CNMV Complaints Service.

3.3 Complaints resolved in 2018

This chapter analyses how the documents received by the Complaints Service in 2018 were processed, differentiating between each of the aforementioned stages.

Complaints processed in full in 2018

TABLE 2

Number of documents

	No.
+ Complaints outstanding at year-end 2017	**223**
Outstanding non-admissions	6
Outstanding complaints	173
Outstanding requests for rectifications or pleadings	44
Outstanding requests for rectifications or pleadings that concluded in complaints	20
Outstanding requests for rectifications or pleadings that concluded in non-admissions	24
+ Complaints submitted in 2018	**1,018**
Direct non-admissions	115
Direct complaints	424
Requests for rectifications or pleadings	479
Requests for rectifications or pleadings that concluded in complaints	244
Requests for rectifications or pleadings that concluded in non-admissions	235
– Outstanding complaints at year-end 2018	**196**
Outstanding non-admissions	0
Outstanding complaints	153
Outstanding requests for rectifications or pleadings	43
Outstanding requests for rectifications or pleadings that concluded in complaints	11
Outstanding requests for rectifications or pleadings that concluded in non-admissions	32
= Complaints concluded in 2018	**1,045**

Source: CNMV.

3.3.1 Pre-processing stage

As indicated above, written complaints that do not meet all the legally-established requirements to be admitted as complaints or for which one of the legal reasons for non-admission apply pass through this stage. The former are subject to a petition for rectification (PR) and the latter to a petition for pleadings (PP).

Of the 223 complaints outstanding at 31 December 2017, 44 were in this pre-processing stage of requests for rectification or pleadings, known as PRP (31 PR and 13 PP).

In addition, of the 1,018 complaints filed with the Complaints Service in 2018, the pre-processing stage was initiated in 479 cases (388 PR and 91 PP) began.

Lastly, as at 31 December 2018, 43 complaints (30 PR and 13 PP) were in this pre-processing stage.

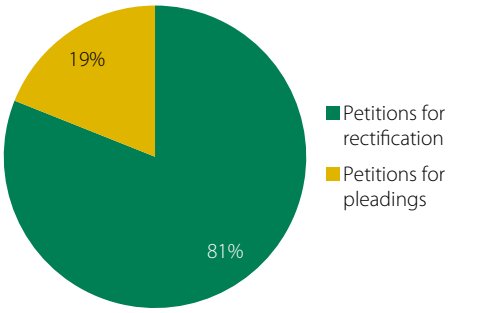
Consequently, in 2018 the pre-processing stage or PRP was concluded in 480 complaints submitted by investors (44 initiated in 2017 and 436 in 2018).

PRP concluded in 2018 TABLE 3

Number of cases	
+ Outstanding PRP at year-end 2017	**44**
Petitions for rectifications	31
Petitions for pleadings	13
+ PRP submitted in 2018	**479**
Petitions for rectifications	388
Petitions for pleadings	91
– Outstanding PRP in 2018	**43**
Petitions for rectifications	30
Petitions for pleadings	13
= PRP concluded in 2018	**480**

Source: CNMV.

Breakdown of PRP concluded in 2018 FIGURE 9



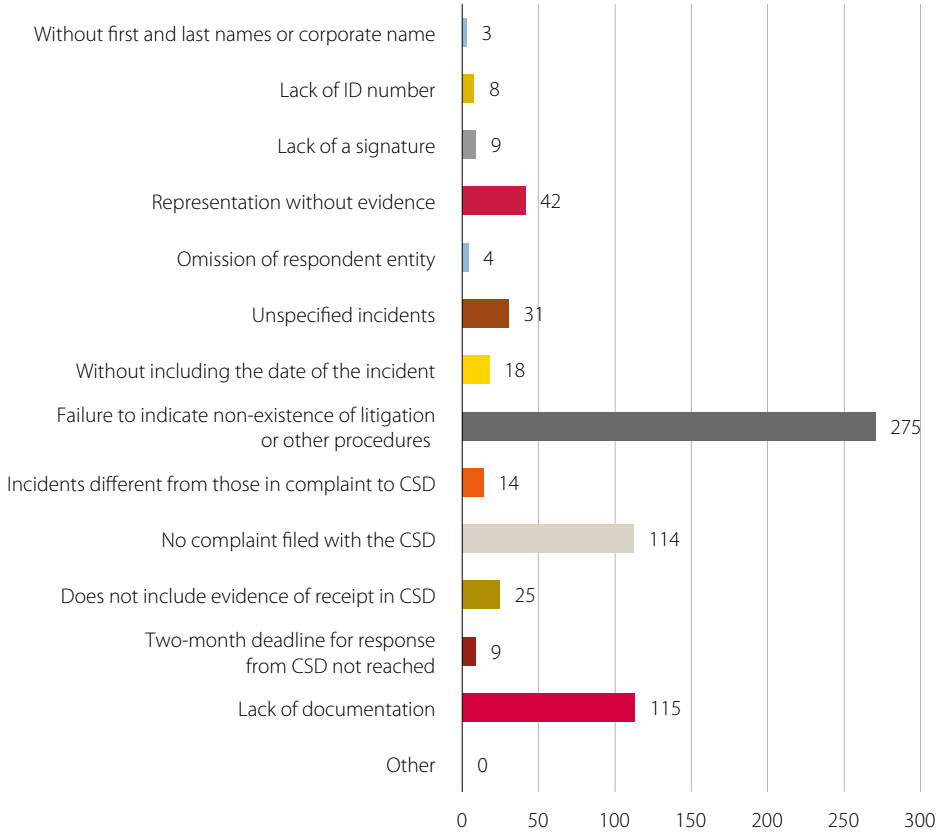
Source: CNMV.

➢ Petition for rectification (PR)

A petition for rectification was made in 389 of the 480 complaints for which the pre-processing or PRP stage was concluded in 2018.

The main reasons for requesting rectifications from complainants are as follows:

Reasons for requesting a petition for rectification[1] FIGURE 10



Source: CNMV.

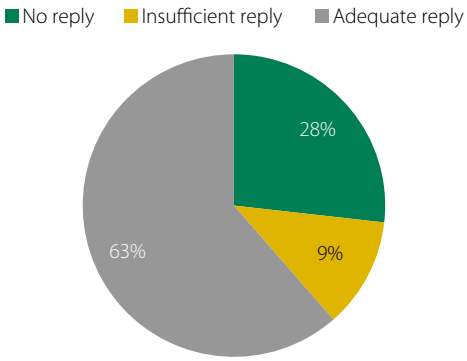
[1] It is usual for a petition for rectification to request rectification of more than one reason, which is why the number of reasons (667) is greater than the number of processed petitions for rectification.

As shown in Figure 10, the most recurrent cause for rectification is that of not providing information processing of a complaint in parallel with judicial, administrative or arbitration proceedings for the same incidents that are the subject of the complaint (275 cases). To facilitate compliance with this requirement, the Complaints Service submits a template along with the written petition for rectification. Submission of the duly completed form is sufficient to resolve this deficiency.

The second reason for rectification (115 cases) is the failure to provide documentation supporting the incidents highlighted in the complaint. The third reason (114 cases) is the failure to demonstrate that the complainants had previously contacted the Customer Service Department of the respondent entity. Compliance with this last requirement, together with the other three reasons linked to the CSD (48 cases) is extremely important, given that the complaint procedure is designed so that the respondent entity has the opportunity to attempt to resolve its clients' problems prior to the intervention of the public authorities. If this process is omitted, the entities do not have the opportunity to review their actions, and, where appropriate, correct them beforehand. Entities must also help their clients comply with this requirement by sending them the corresponding acknowledgements of receipt after receiving their complaints so that they can easily demonstrate to the Complaints Service that they have contacted the entity's Customer Service Department, particularly in those cases in which this department has not replied to the complainant by the established deadline.

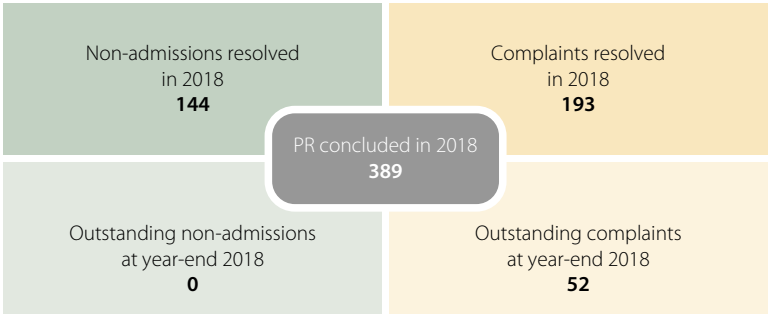
Even though in most cases the complainant suitably complies with the rectification requested (63%), there are also a significant number of cases in which the complainant does not answer the PR made (28%) or provides an insufficient response (9%), as shown in Figure 11.

Response to petitions for rectification FIGURE 11



Source: CNMV.

The final classification of the 389 complaints for which a PR was issued is shown below:



Likewise, it should be noted that at the end of 2018, there were 30 petitions for rectification outstanding, of which 11 have been processed as complaints and 19 as non-admissions during the following year.

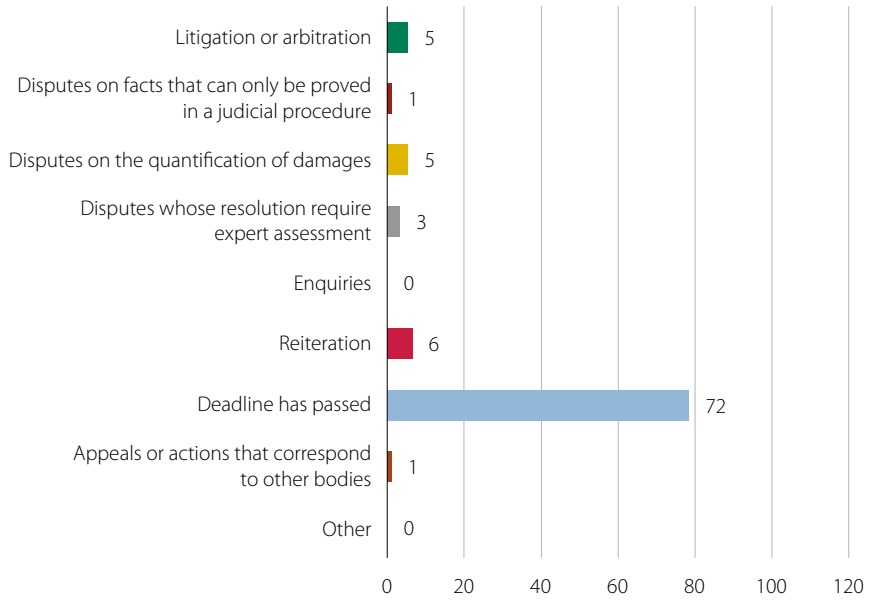
➢ Petition for pleadings (PP)

In the cases in which the Complaints Service observes that one of the reasons for non-admission set out in the rules exists, it is required to inform the party involved of the reason for non-admission in a reasoned report, granting a period of 14 calendar days (if a natural person or a non-profit entity) or 10 business days (if a legal person) to submit the pleadings considered to be appropriate. If the party involved does not answer or if the pleadings submitted in response do not discredit the reason for non-admission, they will be notified of the closure and filing of the complaint. If, in contrast, the pleadings received discredit the reason for the non-admission, the complaint will be admitted.

A petition for pleadings was made in 91 of the 480 complaints for which the pre-processing or PRP stage was concluded in 2018.

The main reasons for requesting pleadings from complainants are as follows:

Grounds for petitions for pleadings FIGURE 12



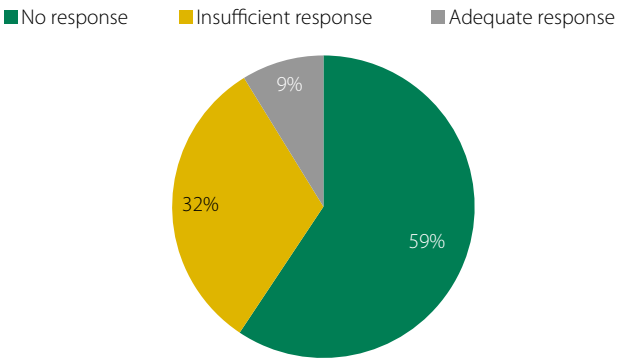
Source: CNMV.

The difference between the number of reasons and the number of complaints processed is smaller in the case of PP than in the case of the petitions for rectification as it is common for there to be one single reason for non-admission. Therefore, the number of reasons for which pleadings are requested (93) is very similar to the number of petitions for pleadings processed (91).

In the case of petitions for pleadings, the most common reason for non-admission is that the period available to the complainant to file their complaint from the date on which the events occurred has elapsed (72). Other noteworthy reasons for non-admission, although with much lower numbers, are the repetition of complaints that have already been resolved (6) or disputes about the financial quantification of the damages that may have been caused to the investor (5) and the processing of other procedures on the facts subject to dispute (5).

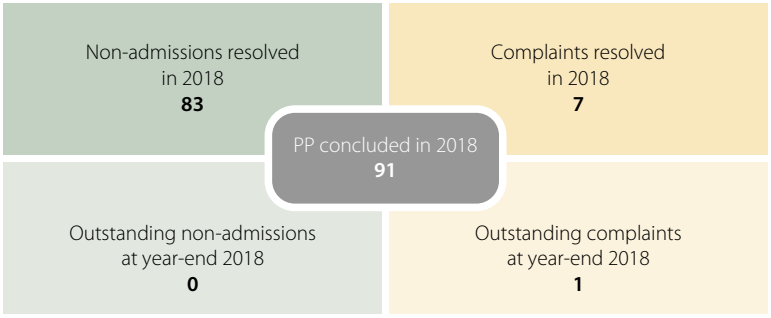
Complainants responded to less than half of the petitions for pleadings formulated and only in 9% of them did the complainants manage to discredit the reason for non-admission, and for their complaint therefore to be admitted.

Response to petitions for pleadings FIGURE 13



Source: CNMV.

The final classification of the 91 complaints is as shown below:

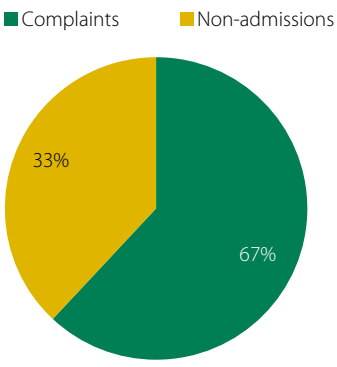


At 31 December 2018, there were 13 unclosed petitions for pleadings and all of these were processed as non-admissions in 2019.

3.3.2 Final stage

In 2018, the Complaints Service concluded 1,045 proceedings, of which 348 were not admitted and 697 were processed as complaints with the issuance of a final report.

Complaints concluded in 2018 FIGURE 14



Source: CNMV.

In 2018, the Complaints Service decided not to admit 348 requests to open complaint proceedings.

Non-admitted complaints concluded in 2018 TABLE 4

Number of complaints

	No.
+ Non-admitted complaints outstanding at year-end 2017	6
+ Non-admitted complaints in 2018	342
– Non-admitted complaints outstanding at year-end 2018	0
= Non-admitted complaints concluded in 2018	348

Source: CNMV.

The complaints submitted by investors may be directly non-admitted (121 proceedings) or non-admitted after the pre-processing stage of petitions for pleadings, as explained in the previous point (227 proceedings).

Types of non-admissions TABLE 5

Number of complaints

	No.	%
Direct non-admissions	**121**	**34.8**
Bank of Spain	53	15.2
Directorate-General for Insurance and Pension Funds	13	3.7
Against entities in free provision of services from FIN-NET member countries	37	10.6
Against entities in free provision of services from non FIN-NET member countries	10	2.9
Other	8	2.3
Non-admission following petition to complainant for rectification/pleadings	**227**	**65.2**
No response	164	47.1
Insufficient response	63	18.1
Total non-admissions	**348**	**100.0**

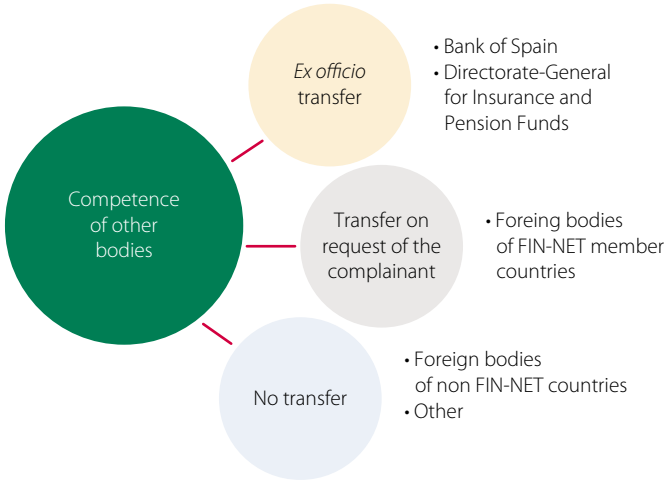
Source: CNMV.

Direct non-admissions occur in two cases:

– When having analysed the issues raised in the complaint filed by the complainant with the Complaints Service, either because of the product or the type of service to which the incidents refer, they do not fall within the jurisdiction of the CNMV, and another national supervisor is responsible for assessing the incident (66 cases).

– When the issues raised by the complainant refer to products or services related to the securities market, but the supervision of the entity against which the complaint is filed corresponds to a foreign body (47 cases).

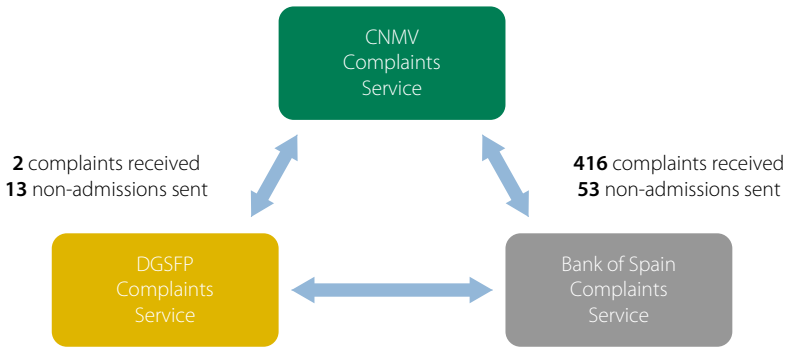
In the case of direct non-admissions, the Complaints Service may transfer the proceedings (*ex officio* or at the request of the complainant) or not, depending on the national or foreign body, as shown below:



With regard to national bodies, complaints relating to banking products or services correspond to the Bank of Spain and the Directorate-General for Insurance and Pension Funds (DGSFP) is responsible for insurance and pension plans. In accordance with current legislation, complaints may be filed with any of these three bodies, regardless of their subject. However, and if the complaints service receiving the complaint does not have the jurisdiction to process it, it will be responsible for sending it on to the appropriate service.

Consequently, when, after the mandatory analysis of the complaint submitted, the Complaints Service concludes that the issues in question do fall within its remit but fall to either of the other two services, it will not admit the complaint and send it *ex officio* to the competent complaints service, informing the complainant of both points.

Non-admissions and transfers to complaints services of the Bank of Spain and the DGSFP accounted for 15.3% and 3.8% of total non-admissions, and 5.2% and 1.3% of the total number of complaints submitted, respectively.

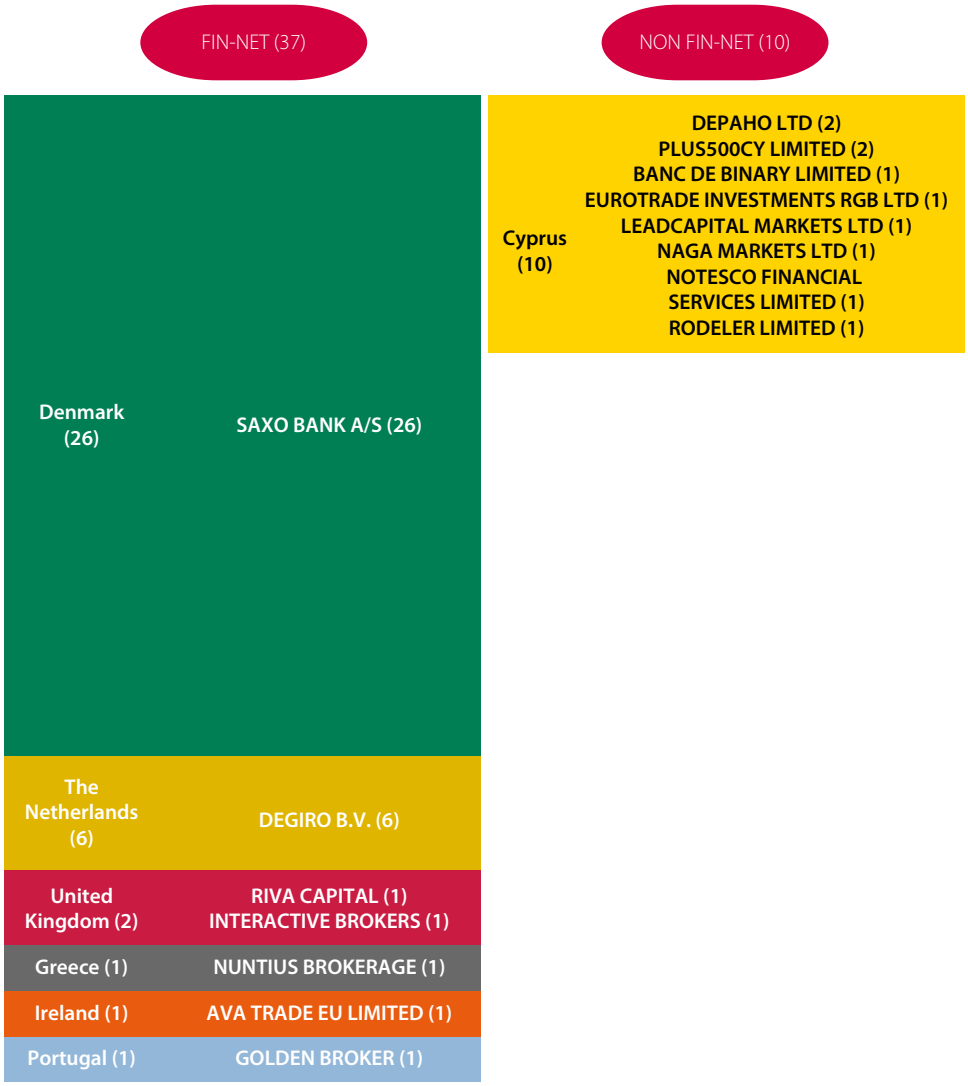


The Complaints Service also receives complaints regarding alleged breaches of rules of conduct by foreign entities that operate in Spain in respect of the free provision of financial services. The jurisdiction to hear these facts corresponds to the country of origin of the respondent entity.

However, that country of origin may or may not be a member of the FIN-NET network, which is responsible for settling out-of-court cross-border conflicts in the area of financial services in the with the European Economic Area.[2]

In the event that the country of origin of a respondent entity freely providing financial services belongs to the FIN-NET network, the Complaints Service informs the complainant that it is not competent to process the complaint. It also informs the complainant about the applicable legislation in this regard, the contact data of the competent scheme in the country of origin (in case the complainant wishes to file the complaint directly in said country) and the possibility, if requested, that the CNMV's Complaints Service could transfer the complaint to the complaints service of the competent country.

In 2018, 37 complaints (10.6% of total non-admissions) were filed against entities operating under the free provision of services, whose country of origin belonged to the FIN-NET network. The complainant chose only to use the possibility offered by the Complaints Service to transfer their complaint to the competent body in seven cases.



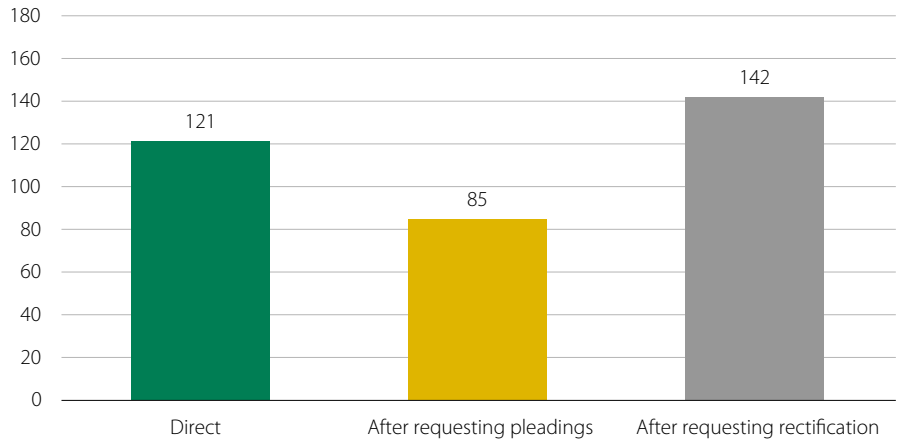
2 The purpose of the FIN-NET network is to ensure that the different systems responsible for resolving out-of-court complaints cooperate with each other, so that the consumer can obtain a faster response.

With regard to the complaints filed against foreign entities operating under the free provision of services whose country of origin is not a member of the FIN-NET network, the actions of the Complaints Service is limited to informing the complainant that it is not competent to process the complaint, the applicable regulations and of the contact details of the body that is competent to hear the complaint, without offering the investor in this case the possibility of send the complaint to the corresponding supervisor.

In 2018, 10 cross-border complaints were received outside the scope of FIN-NET (2.9% of the total non-admissions concluded).

In addition to direct non-admissions, complaints filed by complainants who have gone through the pre-processing stage of pleadings may finally be non-admitted if a reason for non-admission (85) or rectification (142) is noted.

Types of non-admissions FIGURE 15



Source: CNMV.

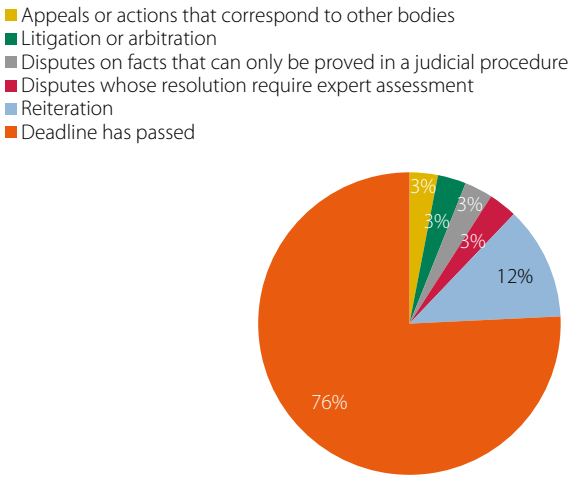
Of the 85 proceedings in which pleadings had been requested at the pre-processing stage and which were ultimately rejected, 54 received no response within the period granted for that purpose, while in the remaining 31 proceedings the argument provided by the complainant did not discredit the reason for non-admission initially detected.

The main definitive reason for non-admission[3] was failing to meet the deadline for submitting the complaint (the time elapsed between the incidents and the filing date of the first complaint) (25 cases), followed by the reiteration of proceeding that were already resolved (4 cases), proceedings or actions corresponding to other bodies (1 case), the processing of other procedures on the facts subject to dispute (1 case), disputes that require the intervention of experts (1 case) and facts that can only be proved through judicial proceedings (1 case). In all cases, the complainant was duly notified in a reasoned report.

3 There was a single reason for non-admission in all proceeding, except in two cases which both involved two reasons for non-admission.

Grounds for non-admission after petition for pleadings

FIGURE 16



Source: CNMV.

Of the 142 complaints not admitted after the petition for rectification, in 110 the complainant did not answer within the specific period granted for this purpose and in 32 cases a partial response was provided (with 1 requirement not rectified in 20 cases, 2 in 11 cases and 3 in 1 case).

The admission requirements that were not rectified by the complainants, despite having responded to the petition for rectification, were:[4]

i) Deficiencies in providing evidence that a prior complaint had been filed with the entity's CSD (26).

ii) Lack of documentation (12).

iii) Failure to provide evidence of representation (3).

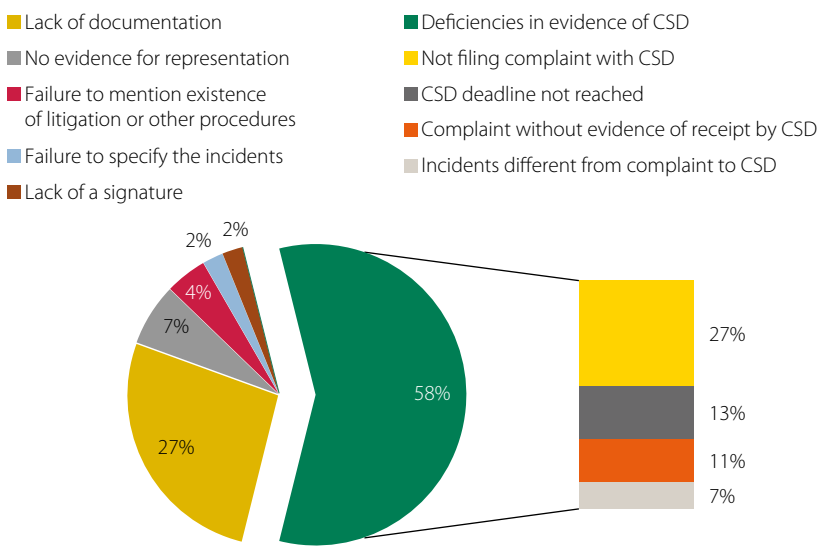
iv) Lack of a declaration that the incident was not subject to resolution or litigation before administrative, judicial or arbitration bodies (2).

v) Failure to specify the facts (1).

vi) Lack of a signature (1).

4 In some proceedings several requirements have not been rectified.

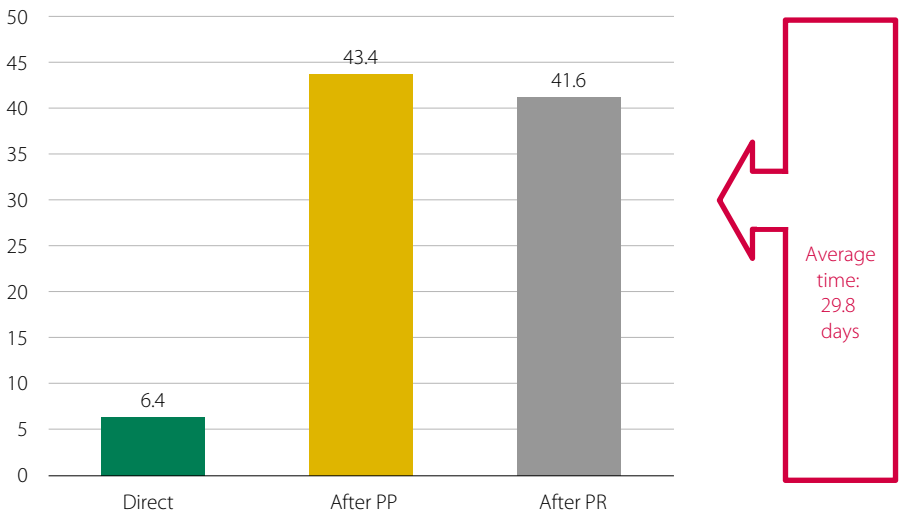
Reasons for non-admission not rectified after response FIGURE 17



Source: CNMV.

Direct non-admissions were on average closed more quickly (6.4 days), followed by non-admission deriving from petitions for pleadings (43.4 days) and petitions for rectification (41.6 days), since in these last two proceedings the number of procedures performed prior to non-admission is higher.

Time to completion by type of non-admission FIGURE 18



Source: CNMV.

The average time to completion for non-admissions was 29.8 days, compared to 34.9 days in 2017.

➢ Complaints

In 2018, 697 complaints that had been admitted for processing by the Complaints Service were resolved.

Complaints concluded in 2018

TABLE 6

Number of complaints

	No.
+ Outstanding complaints in 2017	173
+ Complaints initiated in 2018	677
– Outstanding complaints in 2018	153
= Complaints concluded in 2018	697

Source: CNMV.

Even when they are accepted, complaints may be terminated early without the CNMV issuing a final reasoned report in the following cases: i) acceptance by the entity, ii) withdrawal by the complainant, iii) mutual agreement between the parties, or iv) *ex post facto* non-admission: normally the entity, in the processing stage of the complaint proceedings, reveals a prior reason for non-admission not reported by the complainant, such as judicial proceedings – in process or already concluded – for the incidents in the complaint).

In the rest of the cases, the processing ends with the issuance of a reasoned report in which the Complaints Service concludes whether the entity has complied with transparency and investor protection regulations and with good financial practices and uses.

Resolution of complaints concluded in 2018

TABLE 7

Number of claims and complaints

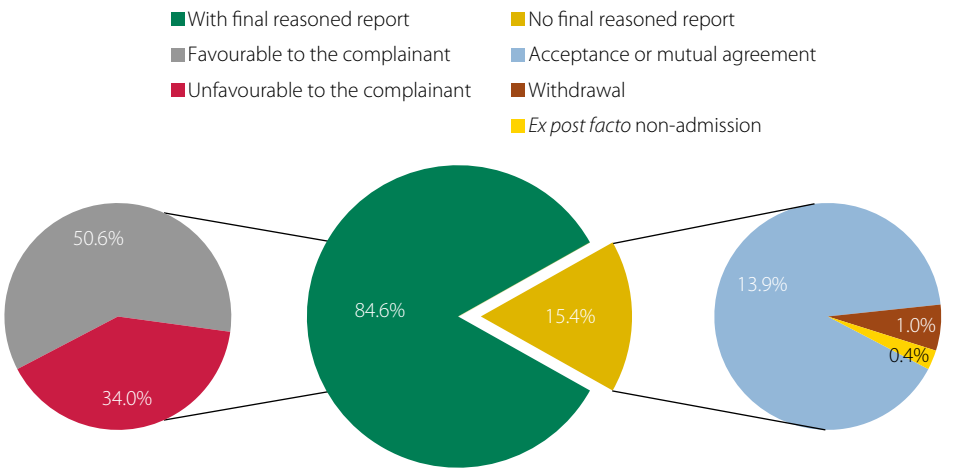
	2016		2017		2018		% change
	No.	%	No.	%	No.	%	17/18
Processed without final reasoned report	**141**	**19.0**	**108**	**16.3**	**107**	**15.4**	**-0.9**
Acceptance or mutual agreement	110	14.8	73	11.0	97	13.9	32.9
Withdrawal	19	2.6	21	3.2	7	1.0	-66.7
Ex post facto non-admission	12	1.6	14	2.1	3	0.4	-78.6
Processed with final reasoned report	**602**	**81.0**	**555**	**83.7**	**590**	**84.6**	**6.3**
Report favourable to the complainant	309	41.6	301	45.4	353	50.6	17.3
Report unfavourable to the complainant	293	39.4	254	38.3	237	34.0	-6.7
Total processed	**743**	**100.0**	**663**	**100.0**	**697**	**100.0**	**5.1**

Source: CNMV.

15.4% of the complaints concluded in 2018 did not require the issuance of a final reasoned report: 13.9% because the entity accepted the complainants requests or a mutual agreement was reached between the two parties, 1% due to the complainant withdrawing the complaint and 0.4% due to *ex post facto* non-admission.

Of the 590 complaints that concluded with a final reasoned report (84.6% of those processed), the complainant obtained a report favourable to their complaint in 59.8% of cases and an unfavourable report in the remaining 40.2%.

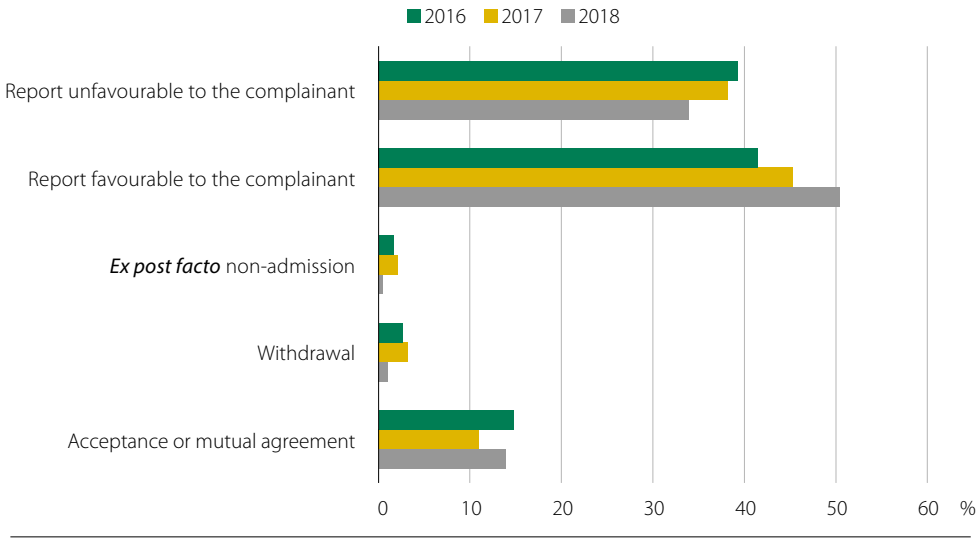
Distribution of types of complaint resolution FIGURE 19



Source: CNMV.

Figure 20 shows the percentages of the type of resolution as a portion of total complaints concluded in the last three years. In this comparison it can be seen that the percentage of reports unfavourable to the complainant is reduced, while the percentage of reports favourable to the complainant increases during the period.

Percentage of resolution type[1] FIGURE 20



Source: CNMV.

1 Percentage calculated as a portion of the total number of resolutions processed.

As is natural, complainants state in their complaints that they are not happy with the respondent entity for various different reasons, and therefore one single complaint proceeding may include various reasons for complaint. The Complaints Service must study, analyse and provide an *ad hoc* decision in the final reasoned report issued on each one.

In the 697 complaints concluded in 2018 there were 956 reasons for complaint. In terms of the type of product, almost one third of the complaints resolved were related to collective investment schemes (CIS), while the rest referred to other types of securities, such as equity instruments, bonds or debentures and financial derivatives. The issues making up most complaints related to the product information

provided after the contract (26.4%), product purchase and sale orders (20.4%) and the fees charged by entities (17.3 %).

Reasons for complaints concluded in 2018 TABLE 8

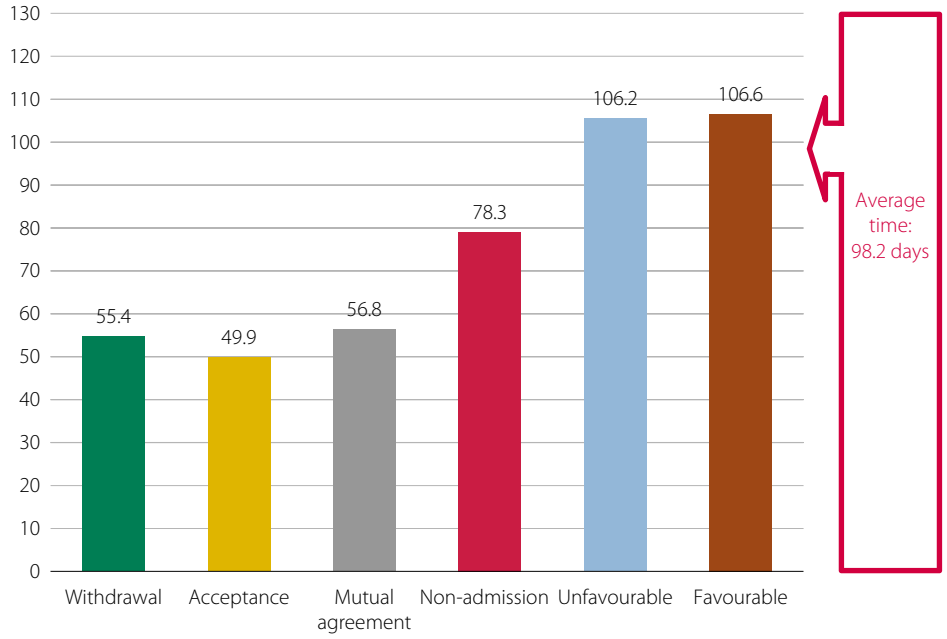
Investment service/reason	Reason	Securities	CIS	Total
Marketing/execution Advice Portfolio management	Appropriateness/suitability	50	24	**74**
	Prior information	85	47	**132**
	Purchase/sale orders	142	49	**191**
	Fees	111	50	**161**
	Transfers	9	31	**40**
	Subsequent information	178	52	**230**
	Ownership	13	5	**18**
Acquisition *mortis causa*	Appropriateness/suitability	0	0	**0**
	Prior information	1	0	**1**
	Purchase/sale orders	3	1	**4**
	Fees	4	0	**4**
	Transfers	3	3	**6**
	Subsequent information	12	10	**22**
	Ownership	18	22	**40**
CSD operation		**24**	**9**	**33**
Total		**653**	**303**	**956**

Source: CNMV.

The deadline for processing complaints without a final reasoned report was shorter than for complaints where a reasoned report was attached. On average, complainants withdrew in 55.4 days, entities fully accepted the complainant's petition in 49.9 days, an agreement was reached to the satisfaction of the complainant (mutual agreement) in 56.8 days and the proceedings were closed as a result of *ex post facto* non-admission in 78.3 days. Complaints in which a final reasoned report was issued were resolved, on average, in 106.2 days (in the case of a report unfavourable to the complainant) and 106.6 days (in the case of a favourable report).

In this regard, it should be noted that the issuance of a final reasoned report requires a thorough study of all the documentation in the proceedings, as well as the documents contained in the CNMV's registers, that the Complaints Service considers necessary to obtain a global view of the issue or issues raised by the complainant. This requires the use of sufficient and necessary time and effort in order to be able to issue a decision in accordance with the circumstances of the case, which concludes whether or not the practice carried out by the entity complies with the regulations on transparency and customer protection and financial good practices and uses.

Time to completion by complaint type FIGURE 21



Source: CNMV.

The average time to resolution of the complaints processed with a final reasoned report (favourable or unfavourable) was 106.4 days, which is lower than the figure of 121.5 days in 2017. In the case of complaints resolved with no final reasoned report (withdrawals, acceptance, mutual agreement and *ex post facto* non-admissions), the average time was 52.5 days, which also represents a reduction compared to 67.5 days in 2017.

It should be taken into account that the aforementioned time periods have not been reduced by any suspension periods that may have occurred as a result of the time between notification of any petition or request made to the entity or the complainant other than the mandatory process of pleadings, up to their completion or, failing that, up to the deadline granted for responding to said petition or request. For example, entities sometimes submit petitions to the Complaints Service in which they report that they are currently negotiating with the complainant in order to find a solution that is satisfactory to their interests although they do not state the content of these negotiations or whether they have taken place or not. The Complaints Service understands that improved investor protection involves facilitating, as far as possible, agreements between the complainant and the respondent entity. Therefore, in these cases, it submits a requirement to the entity granting it a period of 30 days to submit documentation providing evidence both of the result of the negotiations and that they have effectively taken place, informing: i) that the term granted suspends the total term for processing the complaint and ii) that if within said term it does not provide the requested information, the procedure shall continue with no further formalities.

3.3.3 Follow-up stage

➢ **Follow-up actions for reports favourable to the complainant**

The reasoned report that resolves complaint proceedings is not binding. However, if this report is favourable to the complainant, the Complaints Service requires the

respondent entity to state whether or not it accepts the criteria contained in the report and, where appropriate, that they provide documentation demonstrating that the situation referred to by the complainant has been rectified. The entity has one month to respond to this requirement; if it does not, it will be considered that it does not accept the criteria contained in the report and that, therefore, will not rectify the conduct shown therein.

It should be noted that in some of the 353 complaints resolved in 2018 with a report favourable to the complainant, there was more than one respondent entity. In these cases, an individual assessment of the performance of each of the entities participating in the events is carried out, so that it is possible that the decision is favourable to the complainant with regard to the actions of all the entities or only of some of them. This is communicated to each of the respondent entities so that they may individually inform about their acceptance of the criteria, if applicable, and, where appropriate, the rectification of the complainant's situation. Factoring in this situation, 355 resolutions favourable to the complainant were issued.

Follow-up actions for reports favourable to the complainant

TABLE 9

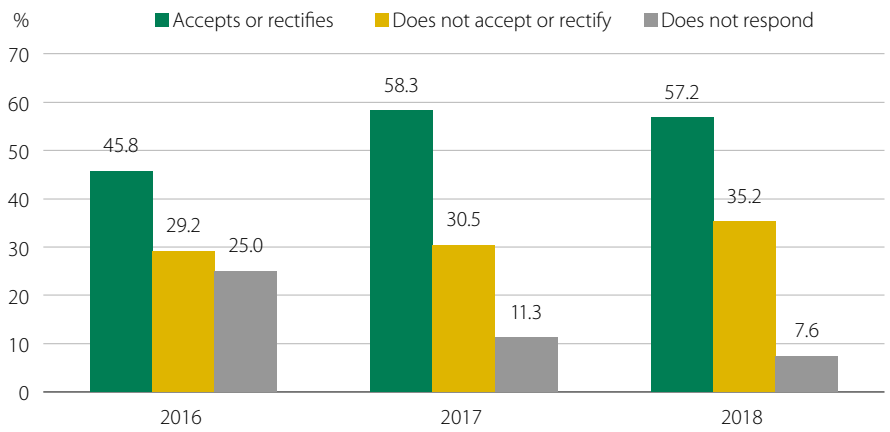
	Follow-up actions reported by the entity						
	Accepts criteria or rectifies		Does not accept or rectify			Entities not reporting follow-up actions	
Year	No.	%	No.	%	Total	No.	%
2016	143	45.8	91	29.2	234	78	25.0
2017	176	58.3	92	30.5	268	34	11.3
2018	203	57.2	125	35.2	328	27	7.6

Source: CNMV.

In 57.2% of the cases, respondent entities stated that they accepted the criteria and rectification of the situation referred to in the report. In this regard, the percentage of respondent entities that accept the criteria and rectify in the cases in which the complainant obtains a reasoned report from the Complaints Service favourable to their interests has increased considerably in the last four years compared to previous years, although, in 2018 there was a slight decrease in the percentage of acceptances compared to the previous year.

Follow-up actions

FIGURE 22



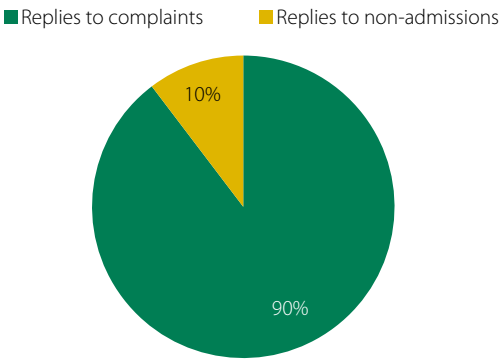
Source: CNMV.

➢ Replies to non-admissions and complaints

Some complainants expressed their disagreement or sought clarification in cases in which, after having carried out the relevant procedures, the Complaints Service informed them that their application for the opening of complaint proceedings had not been admitted or resolved the complaint with an unfavourable report as it did not detect any improper actions by the entity. The Complaints Service will respond to these complaints to try and resolve all doubts raised by the complainant.

In 2018, 6 replies to non-admissions and 52 replies to complaints were received, to which the Complaints Service responded to try to clarify in detail the issues for which the complainants had requested clarification or showed their disagreement. However, complainants are always informed that the decisions of the Complaints Service cannot be appealed.

Replies from complainants FIGURE 23



Source: CNMV.

3.3.4 Entity rankings

Presented below are some rankings of respondent entities based on the following criteria: i) number of complaints resolved (excluding *ex post facto* non-admissions); ii) timescale for reading the petition for comments sent by the Complaints Service to the entity; iii) deadline for replying to the petition for comments; iv) percentage of complaints with decisions favourable to the complainant; v) number of acceptances and mutual agreements; vi) percentage of responses to follow-up actions; and vii) percentage of acceptance of criteria.

In the cases in which the complaint refers to several entities, this section sets out the decision included about each one of them in each final reasoned report and the number of decisions is therefore higher than the number of complaint proceedings with a final report favourable or unfavourable to the complainant.

On the other hand, the entity responsible for the incidents does not always match the entity against which the complaint is processed, because the latter has needed to address complaints filed for alleged irregularities committed by other entities that they have fully or partially acquired, either through a takeover or by full or partial spin off of a business area. Therefore, the tables included in the rankings distinguish between the entity against which the complaint is being processed and the entity responsible for the incidents that are the object of the complaint.

Likewise, the evolution by entity over the last three years with regard to the percentage of complaints with decisions favourable to the complainant and the percentage of acceptances and mutual agreements is also shown.

➢ Ranking of entities by number of resolved complaints

The initiation of complaints proceedings by the Complaints Service indicates the client's disagreement with the performance of the entity, which has not been resolved in the earlier stage of the complaint with the Customer Service Department or the Customer Ombudsman and that justifies the processing of the complaints provided that that there is no cause for subsequent non-admission.

Table 10 shows the entities in order of the number of complaints admitted in which there was no *ex post facto* reason for non-admission. It should be noted that, although there are 14 entities against which at least 8 complaints were processed, the top 7 positions are held by the entities with the highest market capitalisation in the Spanish market: Banco Santander, S.A. (132); Banco Popular Español, S.A. (90);[5] Caixabank, S.A. (75); Bankia, S.A. (63); Banco Bilbao Vizcaya Argentaria, S.A. (62); Bankinter, S.A. (36) and Banco de Sabadell, S.A. (35). Excluding proceedings where the entity responsible for the incidents is a merged or acquired company, Bankia, S.A. would change position with Banco Bilbao Vizcaya Argentaria, S.A.

5 This entity was removed from trading with effect as from 9 June 2017.

Ranking of entities by number of complaints resolved

TABLE 10

Entity with which the complaint is processed	Total	Entity responsible for the incidents	Total
1. BANCO SANTANDER, S.A.	132	BANCO SANTANDER, S.A.	129
		BANCO POPULAR ESPAÑOL, S.A.	3
2. BANCO POPULAR ESPAÑOL, S.A.[1]	90		
3. CAIXABANK, S.A.	75		
4. BANKIA, S.A.	63	BANKIA, S.A.	57
		BANCO MARE NOSTRUM, S.A.	6
5. BANCO BILBAO VIZCAYA ARGENTARIA, S.A.	62	BANCO BILBAO VIZCAYA ARGENTARIA, S.A.	59
		CATALUNYA BANC, S.A.	3
6. BANKINTER, S.A.	36		
7. BANCO DE SABADELL, S.A.	35		
8. IBERCAJA BANCO, S.A.	22		
9. ING BANK N.V., SUCURSAL EN ESPAÑA	20		
10. LIBERBANK, S.A.	12		
11. DEUTSCHE BANK, SOCIEDAD ANÓNIMA ESPAÑOLA	10		
12. UNICAJA BANCO, S.A.	10	UNICAJA BANCO, S.A.	9
		BANCO DE CAJA ESPAÑA DE INVERSIONES, SALAMANCA Y SORIA, S.A.	1
13. RENTA 4 BANCO, S.A.	9		
14. KUTXABANK, S.A.	9		
Other entities[2]	117		
Total	**702**		

Source: CNMV.

1 Banco Popular Español, S.A. provided investment services until 28 September 2018, when its activity ceased due to its takeover by Banco Santander, S.A.

2 49 entities with fewer than 8 complaints.

➢ Ranking of entities by timescale for reading

Once a complaint is admitted for processing, the complainant is notified of the start of the proceedings and the respondent entity is asked to provide comments. This petition must always be sent electronically using the CNMV's CIFRADOC system (ALR procedure), so that the date of submission of the notification is the date on which the notification is read. This notification is considered to have been rejected if, 10 calendar days after it has been made available, the entity has not accessed its content.[6]

Table 11 ranks the entities by the average number of calendar days used to read the petition for comments.

6 Article 43 of Law 39/2015, of 1 October, on the Common Administrative Procedure for Public Administrations.

Ranking of entities by timescale for reading the notification of opening complaint procedures TABLE 11

Entity with which the complaint is processed	Calendar days
1. RENTA 4 BANCO, S.A.	10
2. BANKINTER, S.A.	9
3. BANKIA, S.A.	7
4. IBERCAJA BANCO, S.A.	5
5. LIBERBANK, S.A.	3
6. BANCO DE SABADELL, S.A.	2
7. BANCO POPULAR ESPAÑOL, S.A.[1]	2
8. BANCO SANTANDER, S.A.	2
9. BANCO BILBAO VIZCAYA ARGENTARIA, S.A.	2
10. CAIXABANK, S.A.	1
11. KUTXABANK, S.A.	1
12. ING BANK N.V., SUCURSAL EN ESPAÑA	1
13. DEUTSCHE BANK, SOCIEDAD ANÓNIMA ESPAÑOLA	1
14. UNICAJA BANCO, S.A.	0
Other entities[2]	3
Average	**3**

Source: CNMV.

1 Banco Popular Español, S.A. provided investment services until 28 September 2018, when its activity ceased due to its takeover by Banco Santander, S.A.

2 49 entities with fewer than 8 complaints.

Four entities had timescales for reading the notification exceeding the average of three calendar days (Renta 4 Banco, S.A.; Bankinter, S.A.; Bankia, S.A. and Ibercaja Banco, S.A.), one read the notifications in the general average time of three days (Liberbank, S.A.) and nine did so in less than the average timescale (Banco de Sabadell, S.A.; Banco Popular Español, S.A.; Banco Santander, S.A.; Banco Bilbao Vizcaya Argentaria, S.A.; Caixabank, S.A.; Kutxabank, S.A.; ING Bank N.V., Sucursal en España (Branch in Spain); Deutsche Bank, Sociedad Anónima Española and Unicaja Banco, S.A.).

➢ Ranking of entities by timescale for responding

From the day following the date on which the entity accesses the notification, it has 21 calendar days (if the procedure provided for natural persons or non-profit entities is applied) or 15 business days (if the procedure for legal persons applies), to submit pleadings on the issues raised by the complainant. These periods may be extended if requested before the end of the period initially granted.

In Table 12, the entities are ranked by the number of calendar days they take to send the information and documentation requested in the petition for comments, with the corresponding adjustments when an extension has been granted.

On average, the entities responded to the initial petition for pleadings in 19 calendar days. Eight of them took longer than this to respond (Ibercaja Banco, S.A.; Banco Popular Español, S.A.; Caixabank, S.A.; Unicaja Banco, S.A.; Bankinter, S.A.; Banco Bilbao Vizcaya Argentaria, S.A.; Renta 4 Banco, S.A. and Liberbank, S.A.), two

responded within the average timescale (Bankia, S.A. and Deutsche Bank, Sociedad Anónima Española) and four in a shorter period (ING Bank N.V., Sucursal en España; Banco de Sabadell, S.A.; Banco Santander, S.A. and Kutxabank, S.A.).

Ranking of entities by timescale for responding to the initial petition for pleadings TABLE 12

Entity with which the complaint is processed	Calendar days
1. IBERCAJA BANCO, S.A.	27
2. BANCO POPULAR ESPAÑOL, S.A.[1]	23
3. CAIXABANK, S.A.	23
4. UNICAJA BANCO, S.A.	22
5. BANKINTER, S.A.	21
6. BANCO BILBAO VIZCAYA ARGENTARIA, S.A.	21
7. RENTA 4 BANCO, S.A.	20
8. LIBERBANK, S.A.	20
9. BANKIA, S.A.	19
10. DEUTSCHE BANK, SOCIEDAD ANÓNIMA ESPAÑOLA	19
11. ING BANK N.V., SUCURSAL EN ESPAÑA	18
12. BANCO DE SABADELL, S.A.	16
13. BANCO SANTANDER, S.A.	15
14. KUTXABANK, S.A.	13
Other entities[2]	17
Average	**19**

Source: CNMV.

1 Banco Popular Español, S.A. provided investment services until 28 September 2018, when its activity ceased due to its takeover by Banco Santander, S.A.

2 49 entities with fewer than 8 complaints.

The entities requested 119 extensions to submit pleadings. Of these, 117 were granted and 2 were denied because they were requested after the deadline. The entities requesting extensions were Caixabank, S.A. (32); Banco Popular Español, S.A. (30); Banco Bilbao Vizcaya Argentaria, S.A. (27); Banco Santander, S.A. (13); Bankinter, S.A. (8); Bankia, S.A. (3); Banco de Caja España de Inversiones, Salamanca y Soria, S.A. (2); Banco Mare Nostrum, S.A. (1); Open Bank, S.A. (1); Popular Banca Privada, S.A. (1) and Unicaja Banco, S.A. (1).

Regarding the timescale for the submission of comments by the respondent entities, it should be noted that in 11 cases in the entity did not submit the requested pleadings, which was considered bad practice in the final reasoned report which concluded the complaint. The entities that failed to provide information were: Banco Popular Español, S.A. (in 8 proceedings); Banco Santander, S.A., Caixabank, S.A. and Open Bank, S.A. (in 1 proceeding each). The Complaints Service understands that the information that has to be provided by the entity is necessary and required to issue an adequate resolution on the issues raised by the complainants, therefore failure to submit such information would make this objective more difficult to achieve.

➢ Ranking of entities by percentage of complaints with decisions favourable to the complainant

The final reasoned reports may be favourable or unfavourable to the complainant. In the former, it is always concluded that there has been an incorrect action by the respondent entity and indicates the specific reasons why the Complaints Service considers that the entity would not have complied with the regulations on transparency and customer protection or good financial practices and uses.

Table 13 ranks the entities by the percentage of reports favourable to the complainant, calculated as a portion of the total number of findings (favourable and unfavourable). Five entities have a percentage of reports favourable to the complainant that is higher than the general average of 59.4% (Deutsche Bank, Sociedad Anónima Española; Bankinter, S.A.; Kutxabank, S.A.; Banco Popular Español, S.A. and ING Bank NV, Sucursal en España) and nine have a lower percentage than this average (Banco Santander, S.A.; Caixabank, S.A.; Ibercaja Banco, S.A.; Renta 4 Banco, S.A.; Banco de Sabadell, S.A.; Unicaja Banco, S.A.; Liberbank, S.A.; Banco Bilbao Vizcaya Argentaria, S.A. and Bankia, S.A.). If only the complaints in which the respondent entity is responsible for the incident were taken into account, the order of the ranking would be altered, since Unicaja Banco, S.A. would move to the last position.

Ranking of entities by percentage of decisions favourable to the complainant

TABLE 13

Entity against which the complaint is processed	% favourable	Entity responsible for the incidents	Unfavourable	Favourable	% favourable
1. DEUTSCHE BANK, SOCIEDAD ANÓNIMA ESPAÑOLA	88.9		1	8	88.9
2. BANKINTER, S.A.	72.7		9	24	72.7
3. KUTXABANK, S.A.	66.7		2	4	66.7
4. BANCO POPULAR ESPAÑOL, S.A.[1]	61.9		32	52	61.9
5. ING BANK N.V., SUCURSAL EN ESPAÑA	61.1		7	11	61.1
6. BANCO SANTANDER, S.A.	58.5	BANCO SANTANDER, S.A.	49	71	59.2
		BANCO POPULAR ESPAÑOL, S.A.	2	1	33.3
7. CAIXABANK, S.A.	57.9		24	33	57.9
8. IBERCAJA BANCO, S.A.	57.1		9	12	57.1
9. RENTA 4 BANCO, S.A.	55.6		4	5	55.6
10. BANCO DE SABADELL, S.A.	54.2		11	13	54.2
11. UNICAJA BANCO, S.A.	50.0	UNICAJA BANCO, S.A.	4	3	42.9
		BANCO DE CAJA ESPAÑA DE INVERSIONES, SALAMANCA Y SORIA, S.A.	0	1	100.0
12. LIBERBANK, S.A.	50.0		5	5	50.0
13. BANCO BILBAO VIZCAYA ARGENTARIA, S.A.	46.7	BANCO BILBAO VIZCAYA ARGENTARIA, S.A.	22	20	47.6
		CATALUNYA BANC, S.A.	2	1	33.3
14. BANKIA, S.A.	41.7	BANKIA, S.A.	25	19	43.2
		BANCO MARE NOSTRUM, S.A.	3	1	25.0
15. Other entities[2]	68.9		32	71	68.9
Total	**59.4**		**243**	**355**	**59.4**

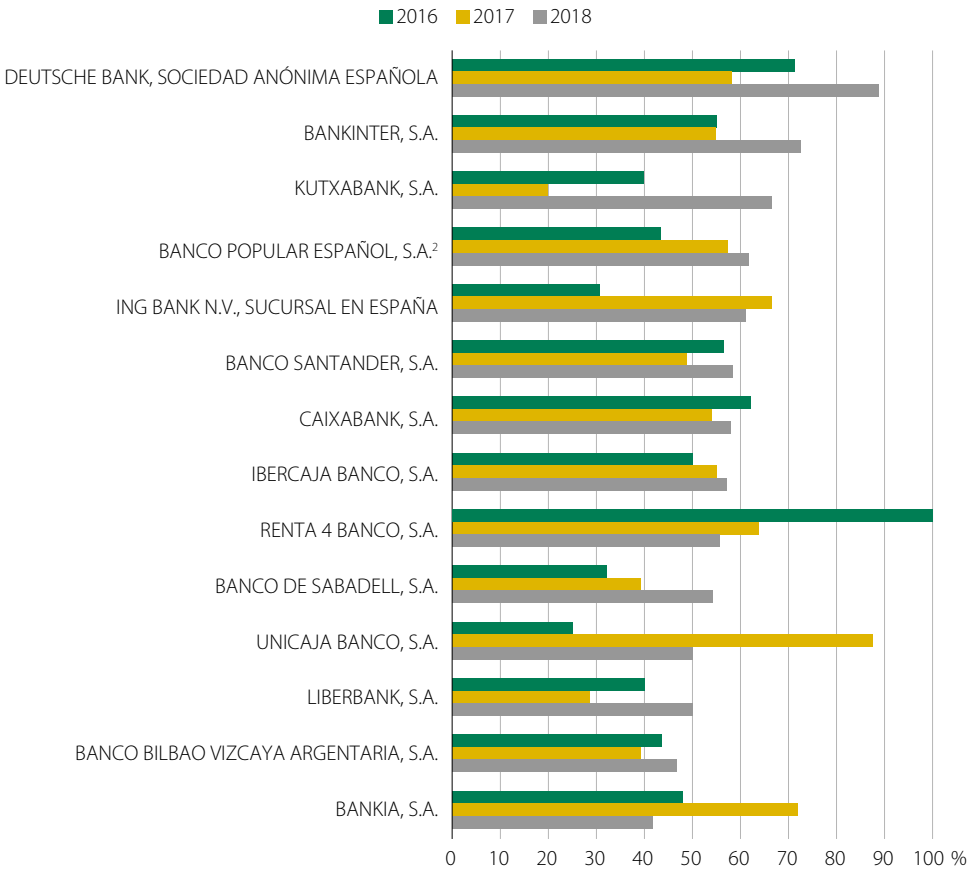
Source: CNMV.

1 Banco Popular Español, S.A. provided investment services until 28 September 2018, when its activity ceased due to its takeover by Banco Santander, S.A.

2 49 entities with fewer than 8 complaints.

Figure 24 shows variations by entity in the percentage of complaints resulting in a decision favourable to the complainant in the last three years. This figure shows a reduction in the percentage for Renta 4 Banco, S.A. and an increase in three entities (Banco Popular Español, S.A.; Ibercaja Banco, S.A. and Banco de Sabadell, S.A.). The remaining ten entities (Deutsche Bank, Sociedad Anónima Española; Bankinter, S.A.; Kutxabank, S.A.; ING Bank N.V., Sucursal en España; Banco Santander, S.A.; Caixabank, S.A.; Unicaja Banco, S.A.; Liberbank, S.A.; Banco Bilbao Vizcaya Argentaria, S.A.; and Bankia, S.A.) have shown an irregular performance.

Percentage[1] of decisions favourable to the complainant by entity FIGURE 24



Source: CNMV.

1 Banco Popular Español, S.A. provided investment services until 28 September 2018, when its activity ceased due to its takeover by Banco Santander, S.A.

2 The percentage is calculated on the annual total of favourable and unfavourable decisions to the complainant by entity.

➢ Ranking of entities by number of acceptances and mutual agreements

In some cases, complaints may be concluded because the entity decides to accept the complaint made by the complainant (acceptance) or because the entity and the complainant reach an agreement (mutual agreement). In these cases, the Complaints Service considers that the complainant's interests have been satisfied and, consequently, the complaint is closed without a decision on the merits of the case being raised.

Table 14 ranks the entities by number of acceptances and mutual agreements reached with the complainant. Banco Bilbao Vizcaya Argentaria, S.A.; Bankia, S.A.; Caixabank,

S.A.; and Banco de Sabadell, S.A., showed the highest number of acceptances, while Renta 4 Banco, S.A., saw no acceptances or mutual agreements with its clients.

Ranking of entities by number of acceptances and mutual agreements

TABLE 14

Entity against which the complaint is processed	Total	Entity responsible for the incidents	Acceptance	Mutual agreement	Total
1. BANCO BILBAO VIZCAYA ARGENTARIA, S.A.	16		11	5	16
2. BANKIA, S.A.	15	BANKIA, S.A.	10	3	13
		BANCO MARE NOSTRUM, S.A.	2	0	2
3. CAIXABANK, S.A.	15		13	2	15
4. BANCO DE SABADELL, S.A.	11		7	4	11
5. BANCO SANTANDER, S.A.	7		6	1	7
6. BANCO POPULAR ESPAÑOL, S.A.[1]	6		5	1	6
7. KUTXABANK, S.A.	3		2	1	3
8. BANKINTER, S.A.	3		3	0	3
9. UNICAJA BANCO, S.A.	2		1	1	2
10. LIBERBANK, S.A.	2		1	1	2
11. ING BANK N.V., SUCURSAL EN ESPAÑA	2		2	0	2
12. DEUTSCHE BANK, SOCIEDAD ANÓNIMA ESPAÑOLA	1		1	0	1
13. IBERCAJA BANCO, S.A.	1		1	0	1
14. RENTA 4 BANCO, S.A.	0		0	0	0
Other entities[2]	11		10	3	13
Total	**97**		**75**	**22**	**97**

Source: CNMV.

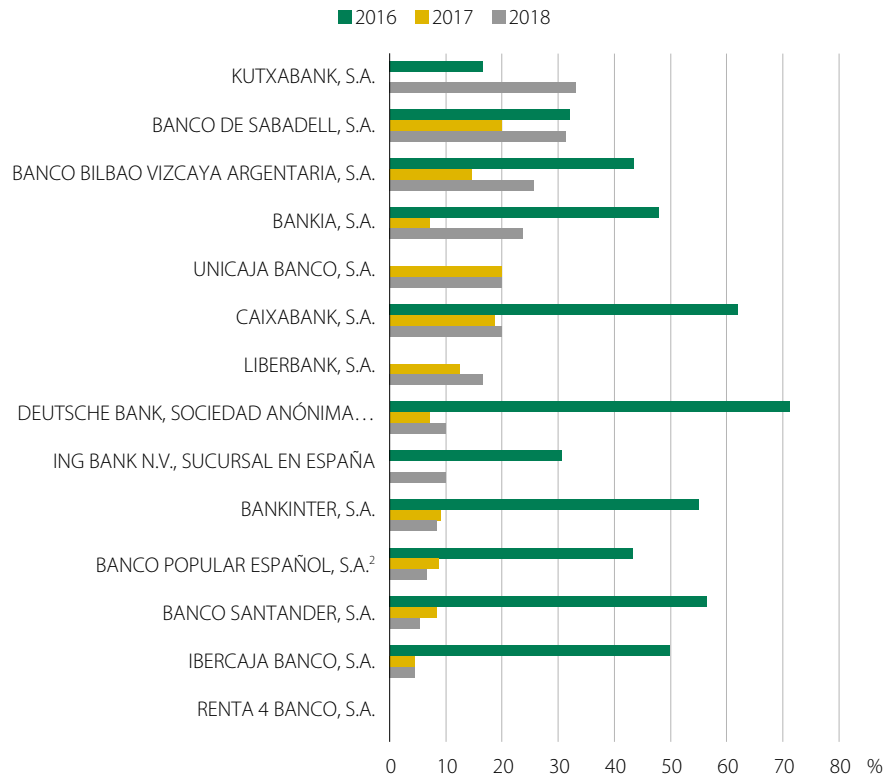
1 Banco Popular Español, S.A. provided investment services until 28 September 2018, when its activity ceased due to its takeover by Banco Santander, S.A.

2 49 entities with fewer than 8 complaints.

Figure 25 ranks the entities by percentage of acceptances/mutual agreements reached in 2018, presenting a comparison with the two previous years. Kutxabank, S.A. and Banco de Sabadell, S.A. reported a percentage of acceptances/mutual agreements higher than 30% of the total complaints resolved, followed by Banco Bilbao Vizcaya Argentaria, S.A.; Bankia, S.A.; Unicaja Banco, S.A.; and Caixabank, S.A., with a percentage of between 30% and 20%, and Liberbank, S.A.; Deutsche Bank, Sociedad Anónima Española; and ING Bank N.V., Sucursal en España, with a percentage of between 20% and 10%. Bankinter, S.A.; Banco Popular Español, S.A.; Banco Santander, S.A.; and Ibercaja Banco, S.A. reported a percentage of less than 10%. As noted above, Renta 4 Banco, S.A. did not make any acceptances or reach any mutual agreements with its complainants.

Looking at the movements between 2016 and 2018, a downward trend can be observed in Bankinter, S.A.; Banco Popular Español, S.A.; and Banco Santander, S.A., Renta 4 Banco, S.A. recorded zero movements. In contrast, Liberbank, S.A. and Unicaja Banco, S.A. increased their percentage in 2017; the former also saw an increase in 2018, while the latter maintained the same percentage. The remaining entities reported a lower percentage in 2017 and an increase in 2018.

Percentage of acceptances/mutual agreements[1] by entity FIGURE 25



Source: CNMV.

1 Banco Popular Español, S.A. provided investment services until 28 September 2018, when its activity ceased due to its takeover by Banco Santander, S.A.

2 Percentages are calculated based on the annual number of complaints resolved by entity (*ex post facto* non-admissions are not included).

➢ Ranking of entities by percentage of response to follow-up actions

Usually, complaint proceedings usually conclude with the Complaints Service issuing a final reasoned report, with the complainant notified and the report passed on to the entity. When this report is favourable to the complainant, it is transferred to the entity accompanied by a request for information so that the entity may state, within a period of one month, whether or not it accepts the assumptions and criteria expressed in the report, and also, if applicable, provide documentary evidence that it has rectified the situation with the complainant.

Table 15 shows that on average the entities responded to this request for information in 92.4% of the cases.

The response rate of eight of the entities listed in the table was above average, and in six cases it was below average.

Ranking of entities by percentage of follow-up actions reported after a report favourable to the complainant

TABLE 15

Entity against which the complaint is processed	% yes	Entity responsible for the incidents	No	Yes	Total	% yes
1. BANCO BILBAO VIZCAYA ARGENTARIA, S.A.	100.0	BANCO BILBAO VIZCAYA ARGENTARIA, S.A.	0	20	20	100.0
		CATALUNYA BANC, S.A.	0	1	1	100.0
2. BANCO DE SABADELL, S.A.	100.0	BANCO DE SABADELL, S.A.	0	13	13	100.0
3. DEUTSCHE BANK, SOCIEDAD ANÓNIMA ESPAÑOLA	100.0	DEUTSCHE BANK, SOCIEDAD ANÓNIMA ESPAÑOLA	0	8	8	100.0
4. IBERCAJA BANCO, S.A.	100.0	IBERCAJA BANCO, S.A.	0	12	12	100.0
5. RENTA 4 BANCO, S.A.	100.0	RENTA 4 BANCO, S.A.	0	5	5	100.0
6. UNICAJA BANCO, S.A.	100.0	BANCO DE CAJA ESPAÑA DE INVERSIONES, SALAMANCA Y SORIA, S.A.	0	1	1	100.0
		UNICAJA BANCO, S.A.	0	3	3	100.0
7. BANCO POPULAR ESPAÑOL, S.A.[1]	98.1	BANCO POPULAR ESPAÑOL, S.A.	1	51	52	98.1
8. BANCO SANTANDER, S.A.	95.8	BANCO POPULAR ESPAÑOL, S.A.	0	1	1	100.0
		BANCO SANTANDER, S.A.	3	68	71	95.8
9. ING BANK N.V., SUCURSAL EN ESPAÑA	90.9	ING BANK N.V., SUCURSAL EN ESPAÑA	1	10	11	90.9
10. BANKIA, S.A.	90.0	BANCO MARE NOSTRUM, S.A.	0	1	1	100.0
		BANKIA, S.A.	2	17	19	89.5
11. BANKINTER, S.A.	87.5	BANKINTER, S.A.	3	21	24	87.5
12. CAIXABANK, S.A.	81.8	CAIXABANK, S.A.	6	27	33	81.8
13. LIBERBANK, S.A.	80.0	LIBERBANK, S.A.	1	4	5	80.0
14. KUTXABANK, S.A.	75.0	KUTXABANK, S.A.	1	3	4	75.0
Other entities[2]	87.3		9	62	71	87.3
Total	**92.4**		**27**	**328**	**355**	**92.4**

Source: CNMV.

1 Banco Popular Español, S.A. provided investment services until 28 September 2018, when its activity ceased due to its takeover by Banco Santander, S.A.

2 49 entities with fewer than 8 complaints.

➢ Ranking of entities by percentage of acceptance of criteria

As noted above, while respondent entities must expressly report whether they accept the criteria or the rectification of the complainant's situation in the response to the form previously sent by the Complaints Service, they may or may not expressly notify their non-acceptance of the criteria. If they do so, this is referred to as explicit non-acceptance and if they do not do so, the corresponding legislation establishes that the entity is deemed to have not accepted the criteria (implicit non-acceptance).

Table 16 ranks the entities by the percentage of acceptance of criteria or rectification of the complainant's situation and includes both the information contained in the replies sent by the entities and the consequences that would result from their failure to respond (non-acceptance of criteria).

The average percentage of acceptance of criteria or rectification of the complainant's situation in 2018 was 57.2%. Nine entities are above this average and five fall short of it.

Ranking of entities by percentage of acceptance of criteria or rectification after a report favourable to the complainant

TABLE 16

Entity against which the complaint is processed	a% acceptance	Entity responsible for the incidents	Acceptance or mutual agreement/ rectification	No acceptance or mutual agreement/ rectification	No response	Total	% acceptance
1. UNICAJA BANCO, S.A.	100.0	BANCO DE CAJA ESPAÑA DE INVERSIONES, SALAMANCA Y SORIA, S.A.	1	0	0	1	100.0
		UNICAJA BANCO, S.A.	3	0	0	3	100.0
2. BANCO BILBAO VIZCAYA ARGENTARIA, S.A.	90.5	BANCO BILBAO VIZCAYA ARGENTARIA, S.A.	19	1	0	20	95.0
		CATALUNYA BANC, S.A.	0	1	0	1	0.0
3. BANKINTER, S.A.	87.5	BANKINTER, S.A.	21	0	3	24	87.5
4. BANCO DE SABADELL, S.A.	84.6	BANCO DE SABADELL, S.A.	11	2	0	13	84.6
5. ING BANK N.V., SUCURSAL EN ESPAÑA	81.8	ING BANK N.V., SUCURSAL EN ESPAÑA	9	1	1	11	81.8
6. LIBERBANK, S.A.	80.0	LIBERBANK, S.A.	4	0	1	5	80.0
7. CAIXABANK, S.A.	78.8	CAIXABANK, S.A.	26	1	6	33	78.8
8. IBERCAJA BANCO, S.A.	75.0	IBERCAJA BANCO, S.A.	9	3	0	12	75.0
9. DEUTSCHE BANK, SOCIEDAD ANÓNIMA ESPAÑOLA	75.0	DEUTSCHE BANK, SOCIEDAD ANÓNIMA ESPAÑOLA	6	2	0	8	75.0
10. BANKIA, S.A.	55.0	BANCO MARE NOSTRUM, S.A.	1	0	0	1	100.0
		BANKIA, S.A.	10	7	2	19	52.6
11. BANCO SANTANDER, S.A.	44.4	BANCO POPULAR ESPAÑOL, S.A.	0	1	0	1	0.0
		BANCO SANTANDER, S.A.	32	36	3	71	45.1
12. BANCO POPULAR ESPAÑOL, S.A.[1]	42.3	BANCO POPULAR ESPAÑOL, S.A.	22	29	1	52	42.3
13. KUTXABANK, S.A.	25.0	KUTXABANK, S.A.	1	2	1	4	25.0
14. RENTA 4 BANCO, S.A.	20.0	RENTA 4 BANCO, S.A.	1	4	0	5	20.0
Other entities[2]	38.0		27	35	9	71	38.0
Total	**57.2**		**203**	**125**	**27**	**355**	**57.2**

Source: CNMV.

1 Banco Popular Español, S.A. provided investment services until 28 September 2018, when its activity ceased due to its takeover by Banco Santander, S.A.

2 49 entities with fewer than 8 complaints.

3.4 Information provided by the entities

As in previous years, prior to the preparation of this Annual Report, the CSDs of the entities against which six or more complaints had been processed were requested to supply information on certain issues. The aim of this request is for the report to continue reflecting, with first-hand data, the effort being made by these Customer Service Departments to improve their procedures, adapt to new legislative requirements and to solve their clients' problems in an increasingly suitable manner.

The information requested from the CSDs was divided into two categories:

– Action regarding complaints filed with the CSD before they are filed with the Complaints Service. This information is intended to analyse how CSDs respond to their clients in the first instance.

– Action once the complaints have already been submitted to the Complaints Service. This purpose of this information is to ascertain the number of investors per entity that go on to this second stage to try to satisfy their complaints.

The information provided by the CSDs of the entities is assessed in detail below.[7] The aim of this analysis is to provide an approximate overview of the actions carried out by these Customer Service Departments. However, the data and results obtained must be viewed with some caution as it is not possible to know whether the entities use the same criteria to obtain and provide the requested information, even though this year clearer guidelines have been given about what should be included or not in the information provided.

The following details were obtained from the information provided by the entities, as shown in Table 17:

– The CSDs that received the most complaints in 2018 were: Banco Popular Español, S.A. (12,687); Banco Santander, S.A. (5,892); Banco Bilbao Vizcaya Argentaria, S.A. (1,520); Banco de Sabadell, S.A. (1,181); Bankinter, S.A. (805); Bankia, S.A. (760) and Caixabank, S.A. (728).

– With regard to data for the Customer Ombudsman, IG Markets Limited, Sucursal en España, was the only entity that processed more complaints through this channel than through its CS Department, so the 16 complaints processed through the Customer Ombudsman represented 59.3% of the total received by the entity. The figures for complainants using the Customer Ombudsman in other entities were as follows: Banco Bilbao Vizcaya Argentaria, S.A. (146 complainants, 8.8% of the complaints received by the entity); Banco de Sabadell, S.A. (52 complainants, 4.2% of complaints); Banco Santander, S.A. (75 complainants, 1.3% of complaints); Banco Popular Español, S.A. (6 complainants, 0% of complaints); Bankinter, S.A. (23 complainants, 2.8% of complaints) and Deutsche Bank, Sociedad Anónima Española (20 complainants, 15% of complaints). The rest of the entities that were asked for information do not have a Customer Ombudsman.

7 All entities responded to the request for information.

– In general, and according to the data provided by the entities, the percentage of complaints that are attended to first by the Customer Service Departments and subsequently processed by the Complaints Service is very low. This average is 1.7% of the complaints filed in the entities in the same year, although 4 entities present percentages equal to or greater than 20%: Novo Banco, S.A., Sucursal en España (8 complaints, 44.4% of the total); IG Markets Limited, Sucursal en España (6 complaints, 22.2% of the total); Ibercaja Banco, S.A. (22 complaints, 22.0% of the total) and Renta 4 Banco, S.A. (7 complaints, 20% of the total). In this regard, it should be noted that the number of complaints received or processed by the CNMV in 2018 is much higher than the number reported by entities, since it is fairly common for complainants, after having received a response from the Customer Service Department, to take some time before deciding to file a complaint with the CNMV's Complaints Service. This means that the complaints processed by the CNMV in 2018 may have originated in incidents resolved by the CS or the Customer Ombudsman in that year or in incidents resolved in previous years, which would justify the difference in the data processed.

Once the complaint is filed with the CSD or the entity's Customer Ombudsman, they have to decide if it meets all the requirements for admission. Based on the relevant information provided by the entities, the following conclusions can be drawn:[8]

– There were more than one hundred non-admissions by the CSDs the four entities that registered the highest number of complaints: Banco Popular Español, S.A. (536 non-admissions out of 12,687 complaints received); Banco de Sabadell, S.A. (306 out of 1,181); Banco Bilbao Vizcaya Argentaria, S.A. (214 out of 1,520) and Banco Santander, S.A. (160 out of 5,892).

  However, the percentage of non-admissions as a portion of the number of complaints submitted would be equal to or greater than 15% for: Liberbank, S.A. (28.9%); Banco de Castilla La Mancha, S.A. (28.6%); Banco de Sabadell, S.A. (25.9%) and Deutsche Bank, Sociedad Anónima Española (15.0%).

  In contrast, some entities did not register any non-admissions: Banco de Caja España, S.A.; IG Markets Limited, Sucursal en España; Kutxabank, S.A.; Novo Banco, S.A., Sucursal en España; Self Trade Bank, S.A.; and Unicaja Banco, S.A.

– In relation to complaints submitted to the customer ombudsmen of the entities, Banco Bilbao Vizcaya Argentaria, S.A. rejected 6 complaints out of 146 filed (4.1%); Banco de Sabadell, S.A. rejected one complaints out of 52 filed (1.9%); and Deutsche Bank, Sociedad Anónima Española, rejected three complaints out of 20 filed (15%).

8 It should be borne in mind that data obtained take as their starting point that the non-admissions reported referred to complaints filed in 2017, while it is possible that in 2017 complaints were rejected that were filed at the end of the previous year.

Complaints filed relating to the securities market

TABLE 17

		No. of complaints relating to securities market issues received in 2018			No. of complaints received by the CNMV Complaints Service in 2018	%[1]
		By the CSD	By the CO	By the CSD or CO		
ABANCA CORPORACIÓN BANCARIA, S. A.		299	0	299	8	2.7
BANCO BILBAO VIZCAYA ARGENTARIA, S.A.		1,520	146	1,666	69	4.1
BANCO DE CAJA ESPAÑA DE INVERSIONES, SALAMANCA Y SORIA, S.A.[2]	Before takeover	108	0	108	5	4.6
	After takeover	45	0	45	0	0.0
BANCO DE CASTILLA LA MANCHA, S.A.		35	0	35	6	17.1
BANCO DE SABADELL, S.A.		1,181	52	1,233	27	2.2
BANCO POPULAR ESPAÑOL, S.A.		12,687	6	12,693	40	0.3
BANCO SANTANDER, S.A.		5,892	75	5,967	58	1.0
BANKIA, S.A.		760	0	760	65	8.6
BANKINTER, S.A.		805	23	828	20	2.4
CAIXABANK, S.A.		728	0	728	47	6.5
DEUTSCHE BANK, SOCIEDAD ANÓNIMA ESPAÑOLA		113	20	133	6	4.5
EVO BANCO, S.A.		81	0	81	5	6.2
IBERCAJA BANCO, S.A.		100	0	100	22	22.0
IG MARKETS LIMITED, SUCURSAL EN ESPAÑA		11	16	27	6	22.2
ING BANK N.V., SUCURSAL EN ESPAÑA		367	0	367	18	4.9
KUTXABANK, S.A.		79	0	79	6	7.6
LIBERBANK, S.A.		135	0	135	8	5.9
NOVO BANCO, S.A., SUCURSAL EN ESPAÑA		18	0	18	8	44.4
RENTA 4 BANCO, S.A.		35	0	35	7	20.0
SELF TRADE BANK, S.A.		75	0	75	0	0.0
UNICAJA BANCO, S.A.		85	0	85	9	10.6
Total		**25,159**	**338**	**25,497**	**440**	**1.7**

Source: Data provided by the entities.

1 Percentage of complaints handled by the CSD or CO of which the entity has proof that the CNMV Complaints Service was consulted in 2018 on complaints relating to securities market issues received by the CSD or the CO in the same year.

2 Figures for Banco de Caja España de Inversiones, Salamanca and Soria, S.A. are separated between before and after its takeover by Unicaja Banco, S.A. was filed in the Companies Register on 21 September 2018.

Complaints related to the securities markets not admitted by entities in 2018

TABLE 18

		CSD			CO		
		Not admitted	Received	%[1]	Not admitted	Received	%[1]
ABANCA CORPORACIÓN BANCARIA, S. A.		31	299	10.4	0	0	–
BANCO BILBAO VIZCAYA ARGENTARIA, S.A.		214	1,520	14.1	6	146	4.1
BANCO DE CAJA ESPAÑA DE INVERSIONES, SALAMANCA Y SORIA, S.A.[2]	Before takeover	0	108	0.0	0	0	–
	After takeover	0	45	0.0	0	0	–
BANCO DE CASTILLA LA MANCHA, S.A.		10	35	28.6	0	0	–
BANCO DE SABADELL, S.A.		306	1,181	25.9	1	52	1.9
BANCO POPULAR ESPAÑOL, S.A.		536	12,687	4.2	0	6	0.0
BANCO SANTANDER, S.A.		160	5,892	2.7	0	75	0.0
BANKIA, S.A.		24	760	3.2	0	0	–
BANKINTER, S.A.		5	805	0.6	0	23	0.0
CAIXABANK, S.A.		76	728	10.4	0	0	–
DEUTSCHE BANK, SOCIEDAD ANÓNIMA ESPAÑOLA		17	113	15.0	3	20	15.0
EVO BANCO, S.A.		3	81	3.7	0	0	–
IBERCAJA BANCO, S.A.		4	100	4.0	0	0	–
IG MARKETS LIMITED, SUCURSAL EN ESPAÑA		0	11	0.0	0	16	0.0
ING BANK N.V., SUCURSAL EN ESPAÑA		17	367	4.6	0	0	–
KUTXABANK, S.A.		0	79	0.0	0	0	–
LIBERBANK, S.A.		39	135	28.9	0	0	–
NOVO BANCO, S.A., SUCURSAL EN ESPAÑA		0	18	0.0	0	0	–
RENTA 4 BANCO, S.A.		1	35	2.9	0	0	–
SELF TRADE BANK, S.A.		0	75	0.0	0	0	–
UNICAJA BANCO, S.A.		0	85	0.0	0	0	–
Total		**1,443**	**25,159**	**5.7**	**10**	**338**	**3.0**

Source: Data provided by the entities.

1 Percentage of complaints not admitted as a portion of complaints received.

2 Figures for Banco de Caja España de Inversiones, Salamanca and Soria, S.A. are separated between before and after its takeover by Unicaja Banco, S.A. was filed in the Companies Register on 21 September 2018.

Regarding the result obtained by the complainant (favourable or unfavourable) in the resolution extended by the CSD, the following observations can be made:

– In relation to the number of complaints received, the CSDs that resolved the most complaints corresponded to: Banco Popular Español, S.A. (13,244); Banco Santander, S.A. (5,557) and Banco Bilbao Vizcaya Argentaria, S.A. (1,291). Followed by: Bankinter, S.A. (818); Banco de Sabadell, S.A. (749); Caixabank, S.A. (560) and Bankia, S.A. (448).

– The CSDs extending favourable resolutions to the complaints to their clients in over 45% of cases were: IG Markets Limited, Sucursal en España (63.6%); Self Trade Bank, S.A. (60.0%); Banco de Caja España (46.8% before the take over and 52.2% after the take over); Banco Bilbao Vizcaya Argentaria, S.A. (50.6%); and ING Bank N.V., Sucursal en España (50.3%). In contrast, the entities extending reports with resolutions favourable to the complainant in less than 20% of cases were: Bankia, S.A. (18.8%); Liberbank, S.A. (16.3%); Banco de Sabadell, S.A. (15.9%); Banco Santander, S.A. (10.2%); Banco de Castilla La Mancha, S.A. (10.0%); and Banco Popular Español, S.A. (0.4%).

– The Customer Ombudsman of Banco Bilbao Vizcaya Argentaria, S.A. (128) resolved the most complaint proceedings, followed by: Banco Santander, S.A. (77); Bankinter, S.A. (25); Banco de Sabadell, S.A. (23); IG Markets Limited, Sucursal en España (16); and Deutsche Bank, Sociedad Anónima Española (13). The Customer Ombudsman of Bankinter, S.A. Issued the largest number of resolutions in favour of the complainant (36.0%), followed by those of: Banco Santander, S.A. (33.8%); Banco Bilbao Vizcaya Argentaria, S.A. (31.3%); Banco de Sabadell, S.A. (30.4%); Deutsche Bank, Sociedad Anónima Española (23.1%); and IG Markets Limited, Sucursal en España (12.5%).

Complaints relating to the securities market admitted and resolved by entities in 2018

TABLE 19

		CSD			CO		
		Favourable	Unfavourable	%[1]	Favourable	Unfavourable	%[1]
ABANCA CORPORACIÓN BANCARIA, S. A.		62	214	22.5	0	0	–
BANCO BILBAO VIZCAYA ARGENTARIA, S.A.		653	638	50.6	40	88	31.3
BANCO DE CAJA ESPAÑA DE INVERSIONES, SALAMANCA Y SORIA, S.A.[2]	Before takeover	36	41	46.8	0	0	–
	After takeover	12	11	52.2	0	0	–
BANCO DE CASTILLA LA MANCHA, S.A.		2	18	10.0	0	0	–
BANCO DE SABADELL, S.A.		119	630	15.9	7	16	30.4
BANCO POPULAR ESPAÑOL, S.A.		56	13,188	0.4	0	6	0.0
BANCO SANTANDER, S.A.		568	4,989	10.2	26	51	33.8
BANKIA, S.A.		84	364	18.8	0	0	–
BANKINTER, S.A.		324	494	39.6	9	16	36.0
CAIXABANK, S.A.		152	408	27.1	0	0	–
DEUTSCHE BANK, SOCIEDAD ANÓNIMA ESPAÑOLA		29	65	30.9	3	10	23.1
EVO BANCO, S.A.		27	56	32.5	0	0	–
IBERCAJA BANCO, S.A.		30	66	31.3	0	0	–
IG MARKETS LIMITED, SUCURSAL EN ESPAÑA		7	4	63.6	2	14	12.5
ING BANK N.V., SUCURSAL EN ESPAÑA		173	171	50.3	0	0	–
KUTXABANK, S.A.		20	62	24.4	0	0	–
LIBERBANK, S.A.		8	41	16.3	0	0	–
NOVO BANCO, S.A., SUCURSAL EN ESPAÑA		3	12	20.0	0	0	–
RENTA 4 BANCO, S.A.		12	27	30.8	0	0	–
SELF TRADE BANK, S.A.		45	30	60.0	0	0	–
UNICAJA BANCO, S.A.		30	50	37.5	0	0	–
Total		**2,452**	**21,579**	**10.2**	**87**	**201**	**30.2**

Source: Data provided by the entities.

1 Percentage of complaints favourable to the complainant as a portion total complaints resolved (i.e., both favourable and unfavourable to the complainant).

2 Figures for Banco de Caja España de Inversiones, Salamanca and Soria, S.A. are separated between before and after its takeover by Unicaja Banco, S.A. was filed in the Companies Register on 21 September 2018.

3.5 CNMV Complaints Service meetings with the heads of customer service departments

In accordance with the provisions of the CNMV Activity Plan for 2018, the Complaints Service held meetings with the heads of the customer service departments (CSDs) of 11 entities, selected according to their importance and number of complaints resolved.

The meetings had a fourfold purpose.

i) To understand how the entities' client service departments fit into their internal structure.

ii) To assess the actions of the CSD with the person in charge from a formal (basically compliance with deadlines) and material standpoint (quality of the action).

iii) To share with those responsible for the CSD any issues that the Complaints Service considers can be improved, in regard to both the actions implemented by the CSD and those implemented by the Complaints Service.

iv) To address informative issues ranging from the implications of the new consumer regulations for the complaint resolution procedure, to the content of the *Annual Report on Complaints* and the new *Criteria applied in the resolution of complaints* guidelines published on the CNMV website.

3.5.1 CSD location in the internal structure of the entities

The CSD officers explained how the services was deployed within their entity's internal structure. The general response was that the customer service department is independent from the business areas.

In the vast majority of cases, the CSD reports to the General Secretariat, the CEO or the Board of Directors of the entity.

3.5.2 Procedural issues

➢ Formal issues

Regarding formal issues, at the meetings a series of statistical data on the complaints resolved in 2017 were presented, which were analysed from three standpoints: the number of complaints, the timescale for reading the petition for comments made by the Complaints Service and the timescale in which the replies submitted by the entities are sent.

➢ Important issues and proposals for improvement

In all meetings held with the CSDs opinions on the replies received were discussed.

They were also informed of the new criterion implemented by the Complaints Service in regard to petitions for comments sent to the entities. They were informed that the first petition for comments will be made as usual, using a standard format, and if any lack of specificity or documentation were detected in the reply received, a request for clarification would be formulated specifying the issues which the entity must clarify or the additional documentation that it must provide, to resolve the issue raised in the complaint in the greatest depth and as accurately as possible.

It was also agreed to maintain closer and more fluid contact between the entities' CSDs and the Complaints Service with the objective of resolving any incidents that could arise during the complaints processing procedure.

3.5.3 Informative issues

Some questions of an informative nature were addressed, such as the action protocol drawn up with the participation of the Bank of Spain, the CNMV and the Directorate-General for Insurance, establishing the procedures and functions of the Complaints Service pursuant to additional provision one of Law 7/2017, of 2 November, which incorporates Directive 2013/11/EU of the European Parliament and of the Council, concerning alternative procedures for the settlement of consumer disputes, into Spanish law.

They were also informed of the *Criteria applied in the resolution of complaints* guidelines published on the CNMV website. This guide is intended to be a work in permanent development, which will be continually updated as new criteria arise or existing criteria are modified.

3.6 International cooperation mechanisms

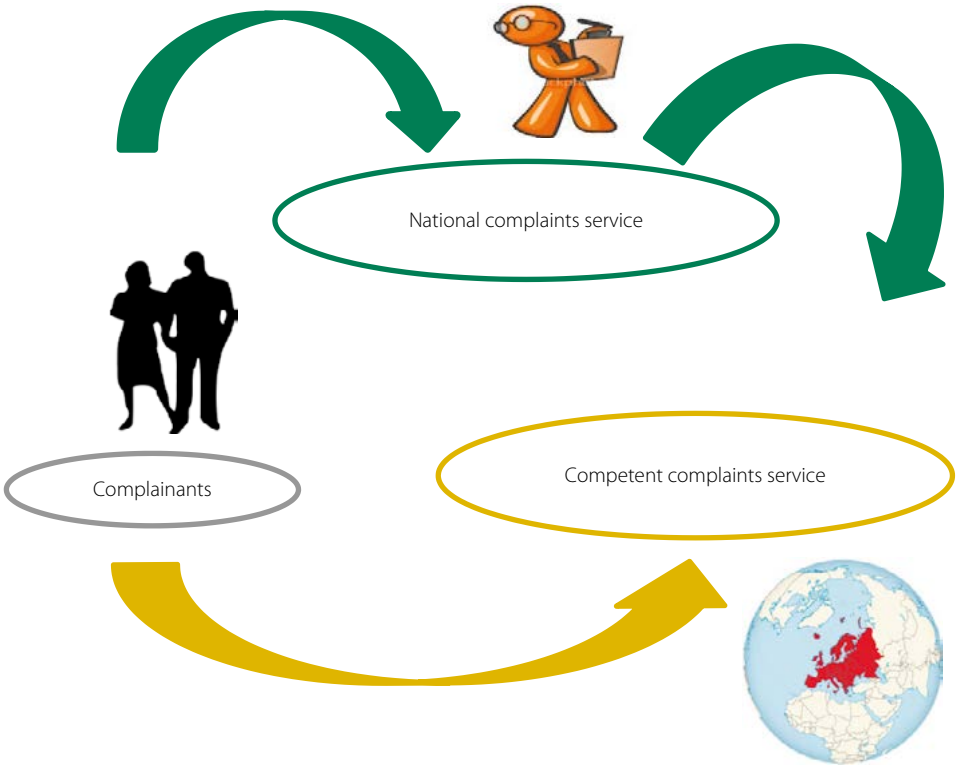
3.6.1 Financial Dispute Resolution Network (FIN-NET)

The Financial Dispute Resolution Network (FIN-NET) is the network for the out-of-court settlement of cross-border disputes between consumers and financial service providers in the European Economic Area.[9] FIN-NET was created through Commission Recommendation 98/257/EC of 30 March, on the principles applicable to the bodies responsible for the out-of-court settlement of consumer disputes. It was set up by the European Commission in 2001 and its purpose is to provide access to out-of-court settlement procedures in cross-border financial disputes within the European Economic Area. The CNMV joined FIN-NET in 2008. According to the data published on its website at the date of preparation of this Annual Report, FIN-NET has 60 members drawn from 27 countries of the European Economic Area.

In this way, any person wishing to complain about a foreign provider with its domicile elsewhere within the area can approach the out-of-court complaints settlement scheme in their home country. This local scheme will help them identify the relevant complaints scheme in the service provider's country and indicate the next steps that they should follow. Once the consumer has all the information, they can then

9 It comprises the 28 countries of the European Union plus Iceland, Liechtenstein and Norway.

choose to contact the foreign complaints scheme directly or else leave the complaint with their home-country scheme, which will pass it on accordingly.



The members of this network undertake to comply with a memorandum of understanding,[10] which includes the mechanisms and conditions of cooperation to facilitate the resolution of cross-border disputes. Although the provisions of the memorandum are not legally binding on the parties, the CNMV has made a commitment to fulfil them. The document was revised in May 2016 to adapt to the ADR Directive.[11]

Since September 2018, the Complaints Service has been a member of the FIN-NET Steering Committee, consisting of 12 members and in charge of the FIN-NET work programme that will be discussed in plenary meetings. The mandate of Steering Committee members lasts for two years. Steering Committee members meet twice a year.

➢ Plenary meetings

FIN-NET meets twice a year, mainly to inform on the regulatory developments in the European Union in the area of alternative dispute resolution[12] and financial services, on the regulatory developments specific to each Member State and on the developments that affect their respective areas of alternative dispute resolution, as

10 Memorandum of Understanding (MOU).

11 Directive 2013/11/EU of the European Parliament and of the Council of 21 May 2013, concerning the alternative dispute resolution of consumer disputes and amending Regulation (EC) No. 2006/2004 and Directive 2009/22/EC.

12 An alternative dispute resolution (ADR) entity is any type of agency or department that resolves out-of-court complaints between investors and the entities that provide investment services.

well as to exchange and share specific examples of complaints both on a national and cross-border level.

The Complaints Service participated in the two plenary meetings that were held in 2018 (June and November) in Brussels. This year one of the main topics discussed was the possible implications of Brexit for FIN-NET members. Other topics addressed related to future regulatory developments concerning crypto-assets and ICOs, and crowdfunding.

The Complaints Service also took part in the first ADR (Alternative Dispute Resolution) Assembly held in Brussels in June, the main purpose of which was to provide a forum for the exchange of knowledge and experiences in the ADR sector. 350 participants attended the conference. The next Assembly is planned for 2020.

3.6.2 International Network of Financial Services Ombudsman Schemes (INFO Network)

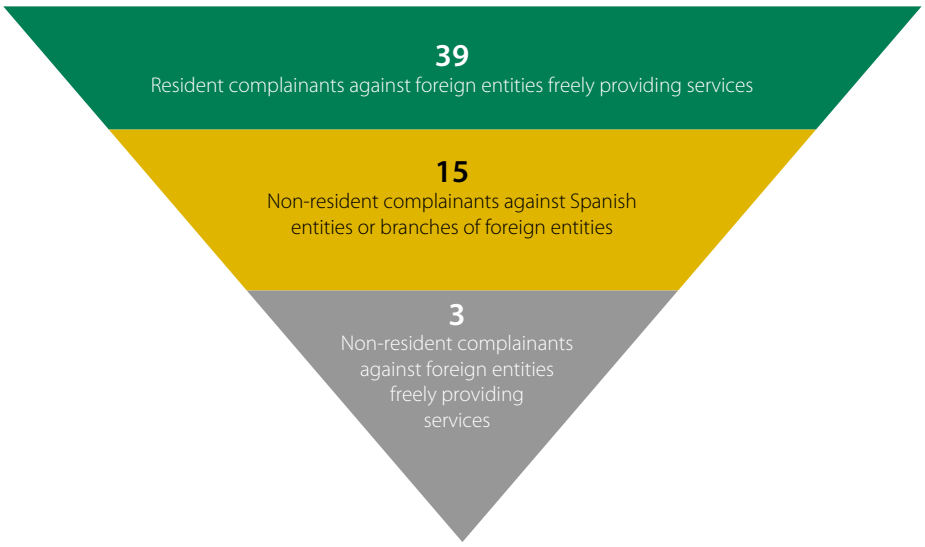
In 2017, the Investors Department joined the International Network of Financial Services Ombudsman Schemes (INFO Network). This body was created in 2007 with the broad aim of working together in the development of dispute resolution, exchanging experiences and information in different areas: management schemes, functions and models; codes of conduct; use of information technology; management of systemic aspects; processing of cross-border complaints; in addition to training for employees and continuing education.

INFO Network members are entities that operate as independent out-of-court bodies that resolve disputes in the financial sector. Depending on their powers, these entities provide litigation resolution services to consumers who have not been able to resolve the matter directly with the company providing financial services in the following areas: banking, investment, insurance, credit, financial advice and pensions/retirement.

The Complaints Service took part in the annual conference held in Dublin in September 2018. It is important to highlight the international networking opportunities that this type of event offers to participants, in addition to the exchange of experiences and knowledge sharing.

3.6.3 Cross-border complaints

In 2018, the Complaints Service received a total of 57 complaints in which the complainant or the respondent entity was established abroad, broken down as follows:



Residents in Spain submitted complaints against foreign entities acting under the freedom to provide services in 39 cases. Given that the Complaints Service did not have the jurisdiction to process the complaint, it provided information on the bodies responsible for resolving out-of-court complaints in the countries where the companies were established. In the 31 complaints filed against entities established in FIN-NET member countries, the complainant was also offered the possibility of the Complaints Service relaying the complaint to the competent body, which was requested in six cases. The eight complaints filed against entities established in non FIN-NET member countries related to entities established in Cyprus.

Also, 12 residents in other countries of the European Union and three residents outside the European Union submitted requests to open complaint proceedings against entities established in Spain or entities established in other countries that operated in Spain through a branch. Of these complaints, six were not admitted (four complaints because they were the responsibility of the Bank of Spain's Complaints Service, in one case over six years had elapsed between the time of the incidents and the filing of the first complaint, and in one case the complainant failed to respond to the petition for rectification relating to several admission requirement). Nine complaints were admitted and resolved with a final reasoned report (in six cases favourable to the complainant and in three cases unfavourable to the complainant).

Lastly, three complaints were received that had been filed against foreign entities that operated under the freedom to provide services regime, initiated by one complainant residing in Colombia, one in China and one in Chile. These complaints were not admitted as in two cases they had been filed against entities located in FIN-NET member countries and in one case against an entity based in a non FIN-NET member state. In all cases, information was provided to the complainants about the foreign agencies that could be used to process the corresponding complaint. In addition, entities based in FIN-NET member countries were offered the possibility of relaying their complaint to the competent body, although the complainants did not make use of this channel.

4 Criteria applied in the resolution of complaints

4 Criteria applied in the resolution of complaints

4.1 Marketing/simple execution

➢ Appropriateness assessment

The rules of conduct included in the securities market regulations mainly seek to protect the retail investor.

This goal is achieved, basically, with the inclusion in these regulations of a general duty to provide information from a dual standpoint. The information that entities have to provide their clients about the services offered and the products marketed, in order to ensure that investors have all the necessary information to make their investment decisions and understand the nature and the risks of financial instruments and services acquired or provided[13] (This issue is analysed in the chapter on prior information on these criteria). Additionally, the information that entities have to obtain from their clients, which is falls within the general principle of "know your customer".

Therefore, entities that provide investment services must ensure that they have all the necessary information about their customers, including potential clients, and should request, when the service to be provided is different from investment advice or portfolio management (services that will be discussed in a later chapter), information on their knowledge and experience in the field of investment corresponding to the specific type of product or service offered or requested, so that the entity can assess whether the investment service or product is suitable for them.[14] This is know as an *appropriateness assessment* and is usually recorded in the appropriateness test. In any case, the entity will provide with client with a copy of the assessment made.

The objective of analysing appropriateness is to determine whether, in the opinion of the entity that provides the investment service, the client has the knowledge and experience necessary to understand the nature and risks of the service or product offered or requested.

However, the standard[15] provides an exemption to the appropriateness analysis. Thus, if the client takes the decision to acquire a certain financial instrument or

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13 Obligations in this area were introduced in the Spanish legal system through Law 47/2007, of 19 December, which amends the Securities Market Act 24/1988, of 28 July.

14 Article 214.1 of Royal Legislative Decree 4/2015, of 23 October, which approves the Consolidated Text of the Securities Market Act.

15 Article 216 of Royal Legislative Decree 4/2015, of 23 October, which approves the Consolidated Text of the Securities Market Act.

request the provision of an investment service, with regard to a product that is considered non-complex, the entity will not have the obligation to assess whether or not the product or service requested is appropriate. However, the entity must inform the client that it is not obliged to carry out the appropriateness assessment and that, in addition, the client will not have the protection established by law.

Therefore, it is important to ascertain whether the decision in relation to a non-complex product has been taken at the initiative of the entity or of the client, which must be considered when analysing the complaints (it must be remembered that this exemption refers only to products classified as non-complex).

In cases where an appropriateness assessment is necessary, the scope[16] of the analysis that the entities have to carry out must include the following data:

i) The types of financial instruments, transactions and services with which the client is familiar (financial knowledge).

ii) The nature, volume and frequency of the client's transactions on financial instruments and the period during which they were made (previous investment experience).

iii) The level of studies, current profession and, where relevant, the previous professions of the client (training and professional experience).

Entities can carry out an appropriateness assessment either by means of a test or questionnaire prepared internally for this purpose, which must include a series of questions with the indicated scope, or based on the information on the client available to the entity.

In this regard, entities have the right to trust in the information provided by the client, unless they know or should know that it is outdated or incomplete or inaccurate.[17]

In any case, when the analysis of the information obtained or available to the entity leads the latter to consider that the product is not appropriate for its client, the client must be informed. For complex products there will also be a requirement for the contractual document that includes the appropriateness assessment made by the entity to include a handwritten note in which the investor acknowledges that they have been advised that the product is not appropriate for them.

Similarly, if the client does not provide the required information or the information is insufficient, the entity will advise the client that it cannot conclude whether the investment product or service is appropriate,[18] and a handwritten note must be included in the duly signed and submitted contractual document in which the investor declares that it has not been possible to carry out an assessment when the product to be assessed is complex.

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16 Article 74.1 of Royal Decree 217/2008, of 15 February, on the legal regime of investment firms and other entities that provide investment services.

17 Article 74.3 of Royal Decree 217/2008, of 15 February, on the legal regime of investment firms and other entities that provide investment services.

18 Article 214 of Royal Legislative Decree 4/2015, of 23 October, which approves the Consolidated Text of the Securities Market Act.

The following sections analyse each of the issues highlighted in this introduction and give examples of the actions performed by entities with regard to the complaints resolved in 2018.

✓ *Exemption from the obligation to assess the appropriateness of non-complex products*

As indicated in the previous section, there are exceptional cases in which the entity is exempt and does not have to assess the appropriateness of a product or service for the client, in strict compliance with the following requirements:[19]

i) The order must refers to a non-complex financial instrument.

ii) The service must be provided on the client's initiative.

iii) The entity has clearly informed client that it is not obliged to perform an appropriateness assessment on the instrument offered or the service provided and that, therefore, the client does not enjoy the protection established in the rules of conduct of Spanish securities market law. This warning may be issued in a standardised format.

iv) The entity must comply with the internal organisational requirements laid down in the regulations.

For complaints resolved in 2018 relating to non-complex financial instruments, the entities that decided to adhere to this exemption submitted proof of compliance with these requirements through a signed document stating the client's initiative and information provided by the entity demonstrating that it was not obliged to assess the appropriateness of the product and the subsequent lack of customer protection. In some cases this information was included in the purchase order (R/204/2018 and R/415/2018) and in others, in a document attached to that order (R/158/2018, R/214/2018 and R/231/2018).

However, the entities did not always act as described in the paragraph above:

– In some cases, the entity simply stated that as the order referred to a product classified as non-complex, it was not obliged to assess whether said product was appropriate for its client (appropriateness assessment). However, this statement was not supported by any documentary evidence demonstrating the client's initiative or the legally enforceable warning that the entity was exempt from this obligation and the lack of protection it implied. Consequently, having failed to provide evidence of compliance with the requirements established for implementing its exemption from performing an appropriateness assessment or providing an analysis thereof, the Complaints Service ruled that the entity had not acted correctly (R/192/2018).

– In other cases, although the entity stated in the purchase order for a non-complex product that the operation had been formalised at the client's initiative and

19 Article 216 of Royal Legislative Decree 4/2015, of 23 October, which approves the Consolidated Text of the Securities Market Act.

informed the client that it was not required to perform an appropriateness assessment (first part of the content of the warning), it did not specify that as a result the client would not enjoy the protection established by law (second part of the content of the warning) (R/10/2018).

✓ *The client does not provide information or the information is insufficient*

In order for an investment services company to determine whether the specific type of product or service offered or requested is appropriate for its client, it must obtain information about the client's individual circumstances, in line with the aforementioned content. Investors are responsible for providing the information requested by the entity and must do so with the utmost rigour. Under no circumstances shall the entity encourage its clients not to provide such information.[20]

If the client does not provide the entity with the information necessary for the appropriateness assessment or if the information provided is insufficient for that purpose, the entity is obliged to inform the client that this decision prevents it from determining whether the investment service or product is suitable for the client.

The content of this warning will be as follows:[21]

> *We hereby inform you that, given the characteristics of this transaction XXX (the transaction must be identified), ZZZ (name of the entity providing the investment services) is obliged to assess the appropriateness of the product for you, i.e., to assess whether, in our opinion, you possess the necessary knowledge and experience to understand the nature and risks of the instrument subject to the transaction. By not providing the necessary data to perform such an assessment, you lose this protection established for retail investors. By not performing such an assessment evaluation, the entity cannot form an opinion with regard to whether or not the transaction is appropriate for you.*

When the transaction is carried out on a complex instrument, in addition to the above warning duly signed by the client (which must always be collected), the entity must obtain a handwritten declaration stating:[22] "This is a complex product and as a result of a lack of information, it has not been possible to assess whether it is appropriate for me."

The warning and the handwritten declaration will form part of the contractual documentation of the transaction, even when they are formalised in a document separate from the purchase order.

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20 Article 74.2 of Royal Decree 217/2008, of 15 February, on the legal regime of investment firms and other entities that provide investment services.

21 Rule Four, section 2, of CNMV Circular 3/2013, of 12 June, on the implementation of certain information obligations relating to the financial instrument appropriateness and suitability test for clients of investment services.

22 Rule Four, section 3, of CNMV Circular 3/2013, of 12 June, on the implementation of certain information obligations relating to the financial instrument appropriateness and suitability test for clients of investment services.

The entity must keep all the information or documentation in which the warnings issued or made in this regard have been implemented, as this is one of the minimum mandatory records to be kept by investment service companies.[23]

In contracts signed prior to the entry into force of Circular 3/2013, some entities demonstrated the correct execution of the warning by providing a document signed by the client that contained the warning (R/468/2017 and R/558/2017).

However, the following incidents occurred:

– One entity incorrectly executed the warning by improperly identifying the product in the letter signed by the client in which the client was warned that it had not been possible to perform an appropriateness assessment as the test had not been completed (R/123/2018)

– Another entity included two warnings in the signed purchase order. One stated that it was impossible to assess the appropriateness of the transaction, as the client had not provided sufficient information, and the other informed the client that the transaction was not appropriate or suitable, based on their knowledge and experience. The Complaints Service ruled that the two warnings were contradictory because, if the entity could not obtain information on the knowledge and experience of the client, it would not have been able to conclude that the product was not appropriate. In the opinion of the Complaints Service, this contradiction questioned the way in which the product had been marketed, as the entity had not fulfilled the duty of diligence and transparency required of investment services companies[24] (R/470/2018).

In acquisitions made after the entry into force of Circular 3/2013, in one case the entity correctly informed the client that as they had not provided information on their knowledge and investment experience, it was not possible assess the appropriateness of the product or service. However, the Complaints Service identified a formal deficiency in the wording of the warning, since it did not identify the transaction nor did it state the name of the entity that provided the investment service, as required under the aforementioned circular (R/499/2018).

✓ *The financial instrument is not appropriate*

When, based on the information available to the entity about the client's knowledge and experience, it considers that the investment product or service is not suitable, the entity will issue a warning to the client.[25]

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23 Resolution of 7 October 2009, of the National Securities Market Commission, on the minimum records to be kept by companies that provide investment services.

24 Article 208 of Royal Legislative Decree 4/2015, of 23 October, which approves the Consolidated Text of the Securities Market Act.

25 Article 214 of Royal Legislative Decree 4/2015, of 23 October, which approves the Consolidated Text of the Securities Market Act.

In this case, the content of the warning will be as follows:[26]

> *We hereby inform you that, given the characteristics of this transaction XXX (the transaction must be identified), ZZZ (name of the entity providing the investment services) is obliged to assess the appropriateness of the product for you.*
>
> *In our opinion, this transaction is not appropriate for you. A transaction is not appropriate when the client lacks the necessary knowledge and experience to understand the nature and risks of the financial instrument subject to the transaction.*

When the transaction is performed on a complex instrument, the entity shall ensure the client signs the above text and includes a handwritten declaration stating:[27] "This product is complex and is considered inappropriate for me".

As indicated with respect to the warning described above, in this case the warning and the handwritten declaration will also form part of the contractual documentation of the transaction.

In addition to the obligations related to the appropriateness assessment (which include keeping the documentation or information in which the warnings issued or made have been implemented),[28] entities must keep an updated record of the clients assessed and of unsuitable products that reflects, for each client, those products for which the appropriateness assessment has produced a negative result.[29]

As we will see section "Evidence (and submission) of the appropriateness assessment", entities must prove not only that all regulatory formalities and warnings in the event of that a product is not appropriate have been met, but also that the client information has been obtained and assessed (beforehand), providing the appropriateness test performed or the information analysed that led to the conclusion that the product or service was not appropriate for the client.

Prior to the entry into force of Circular 3/2013, the following incidents occurred:

– The fulfilment of these obligations was suitably evidenced, with the entity providing the duly signed warning of non-appropriateness and the test (R/131/2018).

– The entity reported, through its website, that its client had completed the appropriateness test, responding that they had no knowledge of the financial

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26 Rule Four, section 4, of CNMV Circular 3/2013, of 12 June, on the implementation of certain information obligations relating to the financial instrument appropriateness and suitability test for clients of investment services.

27 Rule Four, section 4, of CNMV Circular 3/2013, of 12 June, on the implementation of certain information obligations relating to the financial instrument appropriateness and suitability test for clients of investment services.

28 Resolution of 7 October 2009, of the National Securities Market Commission, on the minimum records to be kept by companies that provide investment services.

29 Rule Five of CNMV Circular 3/2013, of 12 June, on the implementation of certain information obligations relating to the financial instrument appropriateness and suitability test for clients of investment services.

products indicated on the form. Even when the entity provided the computer record that was generated when the test was performed, the Complaints Service considered it to be incorrect that the entity did not provide a copy of the document filled in by the client with the assessment performed. In addition, since the entity had ruled that the product was not appropriate because the client lacked sufficient knowledge and did not show suitable prior experience, it was considered bad practice that did not provide evidence of having warned the complainant about the non-appropriateness of the product before it was contracted (R/379/2018).

– Other entities provided documents signed by the complainants in which they were advised of the non-appropriateness of the product to be acquired or of the service to be provided, without providing the information the entity had analysed to reach this conclusion. The Complaints Service considered this to be incorrect because the period for which the entity had to keep the documentation (R/396/2017 and R/583/2017) had not yet elapsed. In other cases, entities provided a questionnaire but no identifying data, so its relationship or link with the document signed by the complainant that contained the warning of non-appropriateness could not be established. This, too, was described as bad practice (R/65/2018).

Lastly, in transactions made after the entry into force of Circular 3/2013, bad practices were noted for the following reasons:

– The documentation signed with the client appeared to be contradictory and could have led to confusion. The appropriateness assessment and subscription order referred to non-complex products, while the warning of non-appropriateness referred to a product considered to be complex (R/122/2018).

– Evidence was not provided in the proceedings that the entity issued the client the required warning of non-appropriateness of the complex products to be contracted or that the client's signature had been obtained together with the corresponding handwritten declaration. In this case, the entity only provided an appropriateness test, the result of which indicated that due to the answers given by the client, the entity considered that products of a certain complexity were not appropriate (R/333/2018).

✓ *Features of binary options and financial contracts for differences*

The marketing of financial contracts for differences (CFDs) and binary options to retail clients has long been a concern in Spain and Europe. As a result, the CNMV has issued various communications and circulars and the European Securities and Markets Authority (ESMA) has implemented certain decisions. These documents, and the relationship between them, are summarised below:

i) CNMV communication issued on 21 March 2017 on measures on the marketing of CFDs and other speculative products to retail clients.

The CNMV issued the following requirements for intermediaries marketing CFDs or forex products with a leverage of greater than 10 times (10:1) or selling binary options to retail clients established in Spain (outside the scope of investment advice):

To expressly warn clients the CNMV considers that the acquisition of these products is not suitable for retail clients because of their risk and complexity.

Additionally, clients must be informed about the cost they would incur if they decided to close their position immediately after contracting the product and, in the case of CFD and forex products, they must be warned that due to leverage the losses may exceed the amount initially paid to acquire the product.

Entities must obtain from the client a handwritten declaration or verbal recording as proof that they are aware that the product they intend to purchase is particularly complex and that the CNMV considers that it is not suitable for retail clients.

Advertising tools used by the entities to promote CFDs, forex products or binary options must always contain a warning of the difficulty in understanding these products and of the fact that the CNMV considers that they are not suitable for retail clients due to their risk and complexity [...]

The entities subject to this requirement had to adapt their procedures and systems to be able to issue these warnings and obtain the written declaration or verbal recording as rapidly as possible and, in any case, within one month from the date of receipt.

ii) Circular 1/2018, of 12 March, of the National Securities Market Commission, on warnings relating to financial instruments.

CNMV Circular 1/2018 establishes the warnings that must be issued concerning: i) particularly complex financial instruments that are generally not suitable for retail clients, ii) financial instruments that are also eligible liabilities for internal recapitalisation and iii) the existence of a significant difference with respect to the estimated present value of certain financial instruments.

Particularly complex financial instruments that are generally not suitable for retail clients include binary options and CFDs.

Even if after assessing the knowledge and experience of a retail client, the entity considers that the particularly complex instruments are appropriate for this client, the following warning must still be issued:

Warning:

You are about to purchase a product that is not simple and can be difficult to understand: (the product must be identified). The National Securities Market Commission (CNMV) generally considers the acquisitions of this product by retail clients to be non-appropriate due to its complexity. However, ZZZ (name of the entity) has assessed your knowledge and experience and considers that it is appropriate for you.

The entity must ensure the retail client signs this warning, together with a handwritten declaration stating: "This is a product that is difficult to understand. The CNMV generally considers that it is not appropriate for retail clients.

When the entity considers that these particularly complex instruments are not suitable for the retail client or that a lack of information prevents it from determining whether they are suitable, Circular 1/2018 establishes a link between the warning and the handwritten declaration with those which the entity would have to obtain under Circular 3/2013.[30]

Circular 1/2018 entered into force on 27 June 2018.[31]

iii) Decisions of the European Securities and Markets Authority (ESMA), of 22 May, 21 September and 23 October 2018.

On 1 June 2018, ESMA published in the *Official Journal of the European Union* a series of product intervention measures concerning the marketing of CFDs and binary options to retail investors.[32]

The measures, which took into account the cross-border nature of the marketing of binary options and CFDs and the desirability of establishing a harmonised approach at the European level, were applicable to anyone who marketed, distributed or sold these products to retail investors in the European Union and included the following:

– The marketing, distribution or sale of binary options to retail investors was prohibited.

– Restrictions were placed on the marketing, distribution or sale of CFDs to retail investors. These restrictions consisted of: limited leverage on open positions, an obligation to close account positions if collateral was used up, a protection mechanism in the event of negative balances in the client's account, to prevent the use of incentives by CFD providers and establish a standardised warning on the risk corresponding to each entity.

The measures were applied from 2 July 2018 for binary options and from 1 August 2018 for CFDs. No additional provisions were required in Spain to ensure their effectiveness, and they were valid for three months, although this period was renewable by ESMA.

ESMA renewed and amended the temporary ban on binary options, through an implementation decision effective from 2 October 2018 for a period of three months,[33] as well as renewing and modifying the temporary restriction

30 Circular 3/2013, of 12 June, of the National Securities Market Commission, on the implementation of certain information obligations relating to the financial instrument appropriateness and suitability test for clients of investment services.

31 Single final provision of CNMV Circular 1/2018, of 12 March, on warnings relating to financial instruments.

32 Decision (EU) 2018/795 of the European Securities and Markets Authority of 22 May 2018, to temporarily prohibit the marketing, distribution or sale of binary options to retail clients in the EU under Article 40 of Regulation (EU) No. 600/2014 of the European Parliament and of the Council and decision (EU) 2018/796 by the European Securities and Markets Authority of 22 May 2018, to provisionally restrict contracts for differences in the European Union under Article 40 of Regulation (EU) No. 600/2014 of the European Parliament and of the Council.

33 Decision (EU) 2018/1466 of the European Securities and Markets Authority of 21 September 2018, which renews and amends the temporary prohibition established under Decision (EU) 2018/795 on the

on CFDs, through an implementation decision effective from 1 November 2018 for a period of three months.[34]

iv) Communication of 15 June 2018 of the National Securities Market Commission on the relationship between ESMA's decision on binary options and CFDs and Circular 1/2018 on warnings relating to financial instruments.

As noted above, CNMV Circular 1/2018 on warnings relating to financial instruments came into force on 27 June 2018 and hence before the date of application of ESMA's decisions. The CNMV clarified its position as follows:

> *As CFDs are particularly complex financial instruments, as established in Rule Two of the Circular, the entities that market them must issue the warnings set down in the aforementioned Rule between 27 June 2018 (the date of entry into force of the Circular) and 31 July 2018 (the day before the entry into force of ESMA's measures concerning CFDs).*
>
> *Likewise, as from 27 June 2018, they must obtain the signature and handwritten declaration of the retail client as established in this Rule.*
>
> *As from 1 August 2018, the date of entry into force of the intervention measures for CFDs adopted by ESMA, and for as long as they remain in force, the CNMV considers that instead of the warning set down in Rule Two of Circular 1/2018, ESMA's warning must be used. However, the requirement to obtain the signature and handwritten declaration of the retail client will remain unchanged, and these must be attached to the text of the warning set down by ESMA.*
>
> *In any case, the CNMV considers it acceptable for entities to use the warnings provided in ESMA's Decision on CFDs instead of those required under CNMV Circular 1/2018 from 27 June 2018, although ESMA's Decision enters into force at a later date (1 August).*
>
> *Lastly, from the entry into force of the aforementioned CNMV Circular 1/2018, the requirements issued by the CNMV to financial intermediaries marketing binary options and CFDs (referred to in the communiqué of 21 March 2017), according to which the formulation of certain warnings was required in addition to specific declarations from retail clients prior to contracting these products, will cease to apply.*

The additional formalities or requirements mentioned in the preceding paragraphs were applicable in only one of the complaints relating to CFDs resolved in 2018. In this complaint, the CFD was contracted after the CNMV's notification of 21 March 2017 and before the entry into force of CNMV Circular 1/2018 and ESMA's decisions. The entity provided a document signed by its client in which the client was informed that the CFD was an appropriate product; warned that, due to their risk and complexity, the CNMV considered that CFDs were not appropriate for retail

marketing, distribution or sale of binary options to retail clients.

34 Decision (EU) 2018/1636 of the European Securities and Markets Authority of 23 October 2018, which renews and amends the temporary restriction established under Decision (EU) 2018/796 on the marketing, distribution or sale of contracts for differences to retail clients.

investors; obtained the handwritten declarations relating this issue and included the rest of the information set down in notice. Therefore, the Complaints Service ruled that the entity had acted correctly in this case (R/545/2017).

Other issues relating to the appropriateness assessment for these products are analysed generically in the sections "Evidence (and submission) of the appropriateness assessment" and "Method of obtaining information from clients when the service is provided electronically" and, on issues specifically relating to CFDs, under the heading "Contracts for differences" in the section on "Complex financial instruments" in this chapter.

➢ Irregularities in completion of the appropriateness test

Investors often disagree with the answers recorded in the appropriateness tests performed by the entities and claim certain irregularities in completion of the test (submission of a test previously completed by the entities) or question the truthfulness of certain answers.

In these cases, the CNMV Complaints Service considers that with the information available in the complaint proceedings it is not possible to determine whether the tests given to the complainant had already been completed or to determine the truthfulness or authenticity of the answers set out therein by the entities or by the investors themselves, due to the lack of sufficient elements with which to make a judgement on said facts. Therefore, the courts must resolve these matters through the different evidence methods at their disposal (R/515/2017, R/206/2018, R/480/2018, R/490/2018 and R/514/2018).

➢ Assessment of client knowledge and experience

The scope[35] of the appropriateness assessment to be carried out by the entity (in terms of its appropriateness for the clients, the nature of the service to be provided and the type of product or transaction) must include information on the client's previous investment experience, financial knowledge and training and professional experience.

The criteria applied in the resolution of complaints for each of these parameters are highlighted below:

✓ *Prior investment experience*

Previous investment experience may be sufficient in itself to consider the product or service provided appropriate, as long as the following conditions are met:[36]

i) The new transactions are performed on financial products that have the same or similar features with regard to nature and risk as those already acquired.

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35 Article 74.1 of Royal Decree 217/2008, of 15 February, on the legal regime of investment firms and other entities that provide investment services.

36 Question 4 of the *Operational guide for the analysis of suitability and appropriateness*. ESI and ECA Supervision Department. 17 June 2010.

ii) Two or more previous transactions have been carried out.

iii) No more than 5 years have elapsed since the financial instruments in question were held in the client's portfolio (for non-complex products) and three years (for complex products).

For products that are similar in terms of their nature and risks (family of instruments), the greater the complexity and potential risks, the greater the difficulty of finding other similar instruments; i.e., the number of instruments in the family will be reduced the higher their risk and complexity.

Additionally, it is reasonable that the client's previous experience with a certain family of products can be deemed to be sufficient for a transaction on an instrument belonging to a different family of products to be considered appropriate, provided that its complexity reasonably suggests that the client can understand its risks and nature.

When the client's prior experience meets the aforementioned requirements, the new transaction would be considered appropriate without the need to analyse other factors (education, professional experience and financial knowledge). Otherwise, the other parameters must be assessed, in addition to previous investment experience.

✓ *Training and professional experience*

The information that the entity obtains from its clients with regard to the general level of education or other training, or with regard to their profession, may only provide a generic idea of their financial knowledge and it would therefore be necessary to assess such knowledge with the other answers taken as a whole.

Therefore, if the client does not have previous investment experience and is not familiar with any type of financial instrument, their general level of education and professional experience would only allow transactions performed on families of instruments with low complexity to be deemed appropriate.

✓ *Financial knowledge*

Financial knowledge refers to the types of financial instruments, transactions and services with which the client is familiar. For clients with no real investment or professional experience in the financial area and a low general level of education, complex products should not considered appropriate based solely on a positive assessment of their financial knowledge.[37]

The entity may obtain information about a client's knowledge and experience in the following manner:

– A client's prior investment experience can be ascertained from the information provided in the appropriateness assessment completed by the client or

37 Section 2.6 of the *Operational guide for the analysis of suitability and appropriateness*. ESI and ECA Supervision Department. 17 June 2010.

their previous transactions of which the entity had knowledge prior to marketing the product or the provision of the investment service. However, the content of the test or the documentation on previous transactions must allow it to be determined whether this experience is suitable in terms of appropriateness and similarity of the products, the number of transactions and the date their were last on the client's portfolio.

– Information on the client's education, professional experience and financial knowledge is usually obtained from the answers they give to the questions in the appropriateness test.

The assessment of the client's knowledge and experience carried out by the entity may lead it to decide that:

– The client has not provided sufficient information to determine whether the product or service is appropriate, which is discussed in the section "The client does not provide information or the information is insufficient".

– The product or service is not appropriate for the client, which is analysed in the section "The financial instrument is not appropriate".

– The product or service is appropriate for the client, where the entities' decision is based on sufficient information being provided in the appropriateness test or documentation on the client's previous transactions.[38]

  However, the Complaints Service considered it incorrect for entities to conclude that a contract was appropriate based on tests where the responses did not provide suitable evidence of the client's knowledge and experience[39] or based solely on a previous transaction performed by the client.[40] Likewise, it was considered incorrect for the entities to inform the client of the appropriateness of the contract but keep no record of the information on which that decision was based.[41]

The information obtained relating to the client's knowledge and experience and the communication to the client of the result of the assessment must be provided by the entity in the proceeding (see section "Evidence (and submission) of the appropriateness assessment"), unless, in the case of non-complex products contracted at the client's initiative, the entity has adhered to the exemption from the obligation to perform an appropriateness assessment and has no evidence that the requirements established for this purpose have been met (see section "Exemption from the obligation to assess the appropriateness of non-complex products").

Cases in which the entities acted correctly and incorrectly in their assessment of the client's knowledge and experience are described, by type of security, in the sections

38 R/467/2017, R/515/2017, R/587/2017, R/592/2017, R/612/2017, R/623/2017, R/36/2018, R/40/2018, R/123/2018, R/206/2018, R/216/2018, R/279/2018, R/292/2018, R/320/2018, R/340/2018, R/348/2018, R/377/2018, R/407/2018, R/490/2018 and R/514/2018.

39 R/498/2017, R/571/2017, R/603/2017 and R/33/2018.

40 R/523/2017.

41 R/545/2017, R/149/2018 and R/257/2018.

"Complex financial instruments" and "Non-complex financial instruments" of this chapter.

➢ Evidence (and submission) of the appropriateness assessment

In all cases, the entity must be able to provide evidence of the appropriateness assessment performed. For this purpose, the entities must keep a record of the appropriateness assessment containing the information or documentation that was considered to determine whether a specific product or service is appropriate for the client or potential client based on their knowledge and experience, as well as the warnings issued if it was not appropriate or the client failed to provide information or the information provided was insufficient.[42]

This documentation must be kept for five years from the date of the assessment. However, as described in the section "Subsequent information", the entities must not destroy the supporting documents for any transactions subject to disagreement by the client before the end of the minimum period (or, if the disagreement was raised after the end of the minimum period, the documentation has not yet been destroyed), until the disagreement has been resolved.

The entity will provide the client a copy of the document containing the assessment performed.[43] The entity must demonstrate compliance with this obligation, for which purpose it may obtain a copy of the submitted document signed by the client which must show the date the delivery was made.[44]

If the assessment refers to a specific transaction, the appropriate procedures must be established so that the assessment refers unequivocally to the transaction in question.

Further, the appropriateness test or questionnaire must be duly completed, with no defects of form; it must be signed by the holder, the co-holder with the greatest knowledge or by the payer or authorised party, depending on the arrangement of the account; the date on which it was completed must be recorded; and it must be valid at the time of the transaction. The lack of any of these elements could invalidate the assessment performed.

The entity will assess the client's prior experience of products of the same family as those to be acquired, and if said experience is not sufficient to deem the transaction appropriate, the entity will furthermore assess the financial knowledge, training and professional experience of the client.

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42 Resolution of 7 October 2009, of the National Securities Market Commission, on the minimum records to be kept by companies that provide investment services.

43 Article 214 of Royal Legislative Decree 4/2015, of 23 October, which approves the Consolidated Text of the Securities Market Act.

44 Rule Four, section 1, of CNMV Circular 3/2013, of 12 June, on the implementation of certain information obligations relating to the financial instrument appropriateness and suitability test for clients of investment services.

On the other hand, in accordance with current regulations,[45] entities have the right to trust the information provided by their clients except when they know, or should know, either that it is clearly out of date or it is inaccurate or incomplete.

In order to provide evidence that the appropriateness assessment was performed and delivered to the client, entities generally provide:

– Documentation signed by the client that includes the questionnaire (questions asked by the entity and answers given by the client) and the result of the assessment performed (appropriateness or non-appropriateness of the product, together with any warnings or handwritten declarations required).[46]

– In some cases, supporting documentation of the client's previous investment experience, together with a signed document in which they were informed of the appropriateness of the product.[47]

Irrespective of whether the Complaints Service has considered that the content of the questionnaire, the assessment made by the entity or the evidence of previous investment experience to appropriate or non-appropriate, an issue that is analysed in the sections "Complex financial instruments" and "Non-complex financial instruments" of this chapter.

The time the documentation relating to the appropriateness assessment must be kept must always be taken into account. The Complaints Service does not consider bad practice to exist in cases in which the entity does not provide the test performed by the client because the time period for which the document has to be kept has elapsed and the client did not file a complaint before the end of this period (R/291/2018).

However, incorrect actions were identified in complaint proceedings relating to the evidence provided by the entity of having obtained and assessed the client's information or of having informed the complainant of the result of the assessment. In this regard:

– The entities did not provide evidence that they had obtained and assessed any information about the complainant's knowledge and investment experience. Complex products (R/425/2017, R/570/2017, R/316/2018, R/359/2018 and R/456/2018) or non-complex products had been acquired where there was no evidence of compliance with the regulatory requirements indicated to adhere to exemption from the obligation to perform an appropriateness assessment (R/446/2017, R/616/2017, R/192/2018 and R/322/2018).

– Although the entity could provide evidence of having informed the complainant of the result of the assessment through a signed document which informed the client of the appropriateness or otherwise of the product, having issued the appropriate warnings and, where necessary, having obtained the corresponding

45 Article 74.3 of Royal Decree 217/2008, of 15 February, on the legal regime of investment firms.

46 R/498/2017, R/515/2017, R/571/2017, R/587/2017, R/592/2017, R/603/2017, R/612/2017, R/623/2017, R/33/2018, R/36/2018, R/40/2018, R/122/2018, R/131/2018, R/206/2018, R/216/2018, R/279/2018, R/292/2018, R/320/2018, R/340/2018, R/348/2018, R/377/2018, R/407/2018 and R/514/2018.

47 R/523/2017.

handwritten declarations, the entities did not provide the information (test or supporting documentation of the previous investment experience) on which this result was based (R/396/2017, R/545/2017, R/583/2017, R/149/2018, R/257/2018, R/310/2018 and R/354/2018).

– The entity provided a test that did not include the minimum data necessary to perform an assessment (name of the person assessed, date, signature or other valid reference). These deficiencies prevented a link being established between the test and the non-appropriateness warning that had been issued to the client in a duly signed and dated document (R/65/2018).

– The entity carried out an appropriateness questionnaire, which was attached to the complaint, but the result of the assessment was not recorded. In addition, in the contract the entity included several clauses that could be interpreted as transferring to the client the obligation to assess the appropriateness of the transaction (mandatory assessment that must always be performed by the entity and not the client) (R/256/2018).

– The entity deemed the product to be appropriate on the basis of a test signed by the client that was attached to the complaint. However, the test provided did not contain the result of the assessment nor was any other document provided that proved that the client had been informed of the decision of appropriateness (R/331/2018).

– The entity did not clearly inform the client of whether the product in the complaint was appropriate or not. The client was only informed that as a result of the answers given in the test, they were deemed to have sufficient culture and financial experience in some complex products to understand their nature and risks, although other products may not be appropriate for them. This general conclusion did not determine whether the specific complex product that the complainant intended to acquire was appropriate or not, and if not, neither the signed warning nor the handwritten declaration were included (R/480/2018).

➢ Method for obtaining information from clients when the service is provided electronically or by telephone

The same information about clients should be obtained regardless of the channel or means used to provide the investment service in question. Therefore, when the investment services are provided electronically or by telephone, effective procedures and measures must be put in place to prevent manipulation of the information.

As already mentioned, the client must be given certain warnings and write certain literal expressions in transactions involving complex or particularly complex products.

If the services are provided by telephone, the entity must keep a recording with the client's answers, as well as the corresponding statement (in this case oral rather than written) in the terms provided by law. The recording will be made available to the client if requested.

If the services are provided electronically, the entity must establish appropriate mechanisms to ensure that the client has appropriately completed the test. Where necessary, entities must ensure that the client can type the corresponding written

statement. All of the above must be done prior to placing the order. The entity must be able to prove that it has been done.

For complaints resolved in 2018 on products contracted electronically, the entities provided evidence of having fulfilled their obligations in the area of appropriateness by providing two digitally signed documents: the completed appropriateness test and the purchase order, in which the client was informed that the product was deemed to be appropriate (R/467/2017).

However, in other complaints related to products contracted electronically, incorrect actions were identified, for instance:

– The entity provided evidence of having informed its client that the product was appropriate by means of an email sent during the securities account opening process. However, even when the entity transcribed the answers given to a test that had supposedly been taken, it did not provide a copy of the duly signed document or the computer record created, so the Complaints Service considered that there was no evidence that the entity had obtained sufficient information from its client (R/149/2018).

– The entity only provided the computer record generated when the complainant carried out the test, but did not provide the test itself so it was not possible to determine whether, in view of the issues raised in the aforementioned test and the answers given by the client, the product in the complaint had been correctly assessed (R/379/2018).

➢ Request from a retail client to be treated as a professional client

Clients are classified according to the need to establish different protection mechanisms based on the client type, as not all of them are the same or need the same level of protection.

Entities that provide investment services must classify[48] their clients as one of two types:

– Professional clients: those who can claim to have the experience, knowledge and qualifications required in order to reach their own investment decisions and properly assess their risks.

– Retail clients: those who are not professionals.

Retail clients receive the highest level of protection and are served by the CNMV Complaints Service.

There are certain cases in which a retail client may be interested in being classified as a professional client by the entity. This gives them access to products that are not available to retail clients, but they need to be aware that their level of protection will be lower than that they enjoyed as a retail client.

48 Articles 203, 204 and 205 of Royal Legislative Decree 4/2015, of 23 October, which approves the Consolidated Text of the Securities Market Act.

If a retail client wants to request to be treated as a professional, they must do so prior to the investment service being provided, and they must expressly waive their right to be treated as a retail client.[49]

For this purpose, a series of formalities are established:[50]

– The client must send the entity a written request for classification as a professional client, either in general, or for a specific transaction or service, or for a specific transaction or product type.

– The entity must inform the client clearly in writing of the protections and potential rights of which they would be deprived if they are eventually classified as professional clients.

– The client will be required to declare in writing, in a document other than the contract, that they are aware of the consequences derived from their waiver of classification as a retail client.

Likewise, acceptance of the application and waiver is not automatic, but will instead be dependent on the company providing the investment service conducting an appropriateness assessment of the experience and knowledge of the client in connection with the transactions and services requested, furthermore ensuring that the client is able to reach their own investment decisions, and understands the risks.

In carrying out the aforementioned assessment, the company is required to check that at least two of the following requirements are met:

– That the client has performed transactions of a significant volume on the securities market, with an average frequency of more than ten per quarter, for the previous four quarters.

– That the value of the cash and the deposited securities is greater than 500,000.

– That the client occupies or has held for at least one year, a professional position in the financial sector that requires knowledge about the transactions or services provided.

Entities must maintain a client register which will included: i) the identification details of each client; ii) the client classification and, where applicable, review or reclassification, which may include any prior classification that may be of interest for the entity; iii) the documentation on which the classification, review or reclassification of the client is based; and iv) client requests to be classified differently than they were originally classified and other necessary information.[51]

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49 Article 206.1 of Royal Legislative Decree 4/2015, of 23 October, which approves the Consolidated Text of the Securities Market Act.

50 Article 61.3 of Royal Decree 217/2008, of 15 February, on the legal regime of investment firms and other entities that provide investment services.

51 Resolution of 7 October 2009, of the National Securities Market Commission, on the minimum records to be kept by companies that provide investment services.

In a complaint resolved in 2018, the Complaints Service considered it incorrect that a product aimed at professional investors was marketed to an investor who was not registered as having been classified as a professional client. In regard to the possibility that this investor did not wish to be treated as a retail client, no evidence was provided:

– That the required formalities had been met, as no written statements were provided showing such as request had been made by the investor, there were no warnings issued by the entity and no declaration from the client that they were aware of the consequences of waiving their status as a retail client.

– That the entity had carried out the appropriate checks, since supporting documentation was not provided to demonstrate that at least two of the three requirements regarding the volume and frequency of transactions, the deposited assets and the professional position of the client had been met (R/404/2017).

➢ Complex financial instruments

The features of some financial instruments means that they are classified as complex. Due to this complexity, entities must obtain information on the knowledge and experience of their clients wishing to contract these products, assess this information and inform their clients of the result of the assessment. Under no circumstances may the be exempted from compliance with these obligations, in clear contrast to the rules for non-complex financial instruments.

In addition, entities must issue specific warnings and obtain certain handwritten declarations from the client following the entry into force of various CNMV circulars and ESMA decisions for certain products, as discussed in previous sections.

✓ *Convertible/exchangeable bonds or debentures*

In relation to the appropriateness of convertible bonds, the respondent entity provided evidence, through the corresponding signed documentation, that it had both assessed the knowledge and experience of the client and that it had informed the client of the result of this assessment, issuing a warning of non-appropriateness, which was deemed to the correct action (R/131/2018).

Likewise, some entities provided a document signed by the client stating that the entity had carried out an appropriateness test, warning that, in their opinion, the product was not suitable for the client's declared level of knowledge and experience. However, they did not attach the test to this document. Even when it could not be demonstrated that the test had actually been performed, the Complaints Service considered that there was no evidence of bad practice, given that the mandatory holding period for the test had elapsed and no complaint had been filed by client before the end of this period (R/291/2018).

However, with regard to the appropriateness of convertible bonds or debentures, the Complaints Service considered the following actions to be incorrect:

– That the entity deemed the acquisition of convertible bonds to be suitable for a client with no real investment or professional financial experience but with

a high general level of education. The entity resolved that the complex product was appropriate as the client claimed to know about the effects on the profitability of different parameters (credit rating, early cancellation option of the issuance and the performance of the assets linked to the product). However, complex products cannot be considered appropriate based solely on a positive assessment of the answers given by the client to general financial knowledge questions (R/498/2017).

– That the entity simply provided a document signed by its client in which it warned about the non-appropriateness of convertible bonds. However, despite the obligation to keep the documentation relating to the assessment, the entity did not provide evidence to show that it had obtained and assessed, prior to the formulation of the warning, information on the client that would lead it to conclude that convertible bonds were not appropriate (R/396/2017).

– That the entity provided a letter delivered to and signed by the client warning that it had not been possible to perform an appropriateness assessment as the test had not been properly completed and the product had been improperly identified. This document referred to the securities deposit management product/service, instead of the mandatory convertible subordinated bonds that the client intended to acquire (R/123/2018).

– That the entity did not provide evidence of having obtained and assessed any information about the complainant's knowledge and investment experience prior to contracting the investment product, while the period for keeping this information had not elapsed (R/570/2017).

✓ *Debt that can be redeemed in advance by the issuer*

The entities provided evidence of having fulfilled their obligations with regard to the appropriateness of debt instruments redeemable by the issuer before their maturity date, as follows:

– The entity had requested and assessed information on the client's knowledge and experience, using electronic means, providing the digitally signed documents (R/467/2017).

– The entity provided a signed appropriateness test, according to which: i) the most complex products with which the client was familiar were structured products without a capital guarantee and had carried out transactions on these products several times a year over the previous three years; ii) the client was informed occasionally about the performance of markets and financial products; and iii) the client's education and profession or activity were related to financial issues. The result of test concluded that client had the necessary knowledge and experience to understand the features and risks inherent to certain product categories, including corporate fixed income and foreign currency issuances (R/40/2018).

– The entity had issued a warning, through a document signed by the client, that as the test had not been completed it was not possible to perform an appropriateness assessment for the product (R/468/2017 and R/558/2017).

However, the Complaints Service considered the following actions to be incorrect:

– The entity provided a signed document informing its client that it had been classified as having experience in complex financial products, although the information obtained was not sufficient to merit such a conclusion.

  In one case, to reach that conclusion, the entity provided various questionnaires in which the answers did not demonstrate that the clients had sufficient knowledge and experience to establish appropriateness. Only one of the answers provided relevant information about possible experience with a product classified as complex: "Do you currently hold or have you held any of the following products in your portfolio?" marking "Investment funds, shares or private fixed income" and "Unit linked products, structured products with guaranteed capital or preferred shares". In view of the information collected from the responses that were included in the appropriateness tests, the Complaints Service ruled that the overall assessment did not warrant the product being classified as appropriate for any of the potential clients (R/571/2017).

  In another case, the entity attached an appropriateness test in which the client responded that: i) he was aged between 40 and 60 and that his professional training had included financial topics; ii) he had investment experience of more than 5 years, held investment funds, shares or private fixed income products on his portfolio and made large but infrequent financial investments; and iii) regularly used the advisory services of financial institutions as sources of information. However, the complainant's experience in complex products was not accredited, since there was no documentary evidence that his previous transactions referred to exactly the same financial instruments or instruments that were different but similar in their nature and risks as those he intended to contract (R/603/2017).

– The entity carried out an appropriateness test, in which the responses received and the assessment indicated that the client had sufficient knowledge and investment experience to contract products where there was a risk of interest losses but not of losses on the initial investment. However, the client intended to acquire debt that could be redeemed early by the issuer on the AIAF market. These were securities that could be redeemed by the issuer at their nominal value but could also be sold on the market with no guarantee that the client would recover the initial investment (R/33/2018).

– The entity provided a signed copy of a document warning the client about the non-appropriateness of debt that could be redeemed early by the issuer. However, the following incidents occurred:

  i) In one case, the entity did not provide evidence of having previously obtained and assessed any information that led it consider the product not to be appropriate for the client (R/583/2017).

  ii) In another case, the entity provided an appropriateness test with formal deficiencies (specifically, the name of the client, their signature and the document date did not appear) and it was not proved that warning of non-appropriateness could be integrated with or linked to the signed and dated document (R/65/2018).

– The entity did not provide evidence that it had obtained and assessed any information about the complainant's knowledge and investment experience (R/425/2017).

✓ *Contracts for differences*

Contracts for differences (CFDs) are subject to special regulations. At the national level, this is reflected in the CNMV's communications with recommendations on the marketing of these products, which were included, due to their particular complexity, in Circular 1/2018. At the European level, various decisions were implemented by ESMA that involved restricting the marketing of the product to retail clients, subjecting it to compliance with a series of stringent requirements, as described in the section "Features of binary options and financial contracts for differences" above.

Complaints resolved in 2018 relating to the appropriateness of contracting CFDs focused on the following aspects:

– The entity had informed the client, through an email sent during the CFD account opening process, that the acquisition of this type of product was appropriate. However, the Complaints Service deemed it incorrect that the entity had not provided evidence that it has obtained information on the client's knowledge, education and experience in order to reach this conclusion.

  In addition, the client complained that the entity had failed to comply with the obligations set down in the CNMV communication of 21 March 2017. However, it was proved in the complaint proceedings that the last transaction undertaken by client had been nine months prior to the publication of this communication and this was explained to the complainant by the Complaints Service (R/149/2018).

– In a contract signed after the CNMV communication of 21 March 2017 and before the entry into force of Circular 1/2018 and the publication of ESMA's decisions, the entity provided a signed document complying with the requirements of this communication. By means of this document, the entity informed the client that it consider the acquisition of CFDs to be appropriate with a warning that, due to risk and complexity of the product, the CNMV considered that CFDs were not suitable for retail clients. The entity obtained the required handwritten declarations and included the rest of the information specifically requested in the communication. Nonetheless, the Complaints Service concluded that there had been an incorrect action because the entity did not provide the information on client that it had assessed to deem the transaction to be appropriate (R/545/2017).

– The entity provided the computer record generated on completion of two appropriateness tests carried out by the client on its website, but did not provide the complete assessment document, so the Complaints Service could not assess whether the result of the assessment was consistent with the answers given by the complainant. This is a fundamental issue because depending on the result obtained, the obligations for the entity will vary.

  For the case in hand, according to the entity, the first test indicated that the complainant had no knowledge of the financial products referred to on the

form (CFDs), but there was no evidence that the client had been warned that investment in this type of product was non-appropriate. In the second test carried out by the client one year after it started trading in CFDs, however, it was demonstrated that the complainant had knowledge of the product, according to the entity.

Obviously, the test must be done before the first transaction is made. Furthermore, as explained by Complaints Service to the respondent entity, determining the appropriateness of a product is not only based on an analysis of the client's knowledge, but for an investment to be classified as appropriate three aspects must be assessed: previous investment experience, the client's general level of education and professional experience and their general level of financial knowledge. Consequently, given the irregularities detected when the entity performed the appropriateness assessment of CFDs given the investor's characteristics, the Complaints Service concluded that it had acted incorrectly (R/379/2018).

✓ *Structured instruments where profitability and return on invested capital are linked to the performance of one or more shares or credit derivatives*

The Complaints Service concluded that the entity had assessed and determined the appropriateness of a financial contract correctly in view of the documentation it provided in the complaint proceedings. The entity provided a test that referred to the category of non-collateralised structured products. In this test, two questions were answered. Specifically, that the client had not held a professional position in the financial sector that would allow them to understand the risks inherent to this product and that they held or had held at least two products of a similar nature in the last three years. The product was considered to be appropriate based on this investment experience (R/377/2018 and R/407/2018).

However, in other complaints resolved in 2018, the Complaints Service concluded that the respondent entities had acted incorrectly when contracting bonds and structured notes and financial contracts for the following reasons:

– In a financial contract signed with the client, the entity included several clauses from which it could be inferred that the obligation to assess appropriateness was transferred to the client. In addition, even when the entity carried out an appropriateness questionnaire (which was attached to the complaint) the result of the assessment was not recorded (R/256/2018).

– The entities informed the clients, in signed documents, that the structured product was appropriate for them or that it did not fall outside their investment profile. However, neither the tests nor documentation on outstanding positions or previous transactions were attached to the complaint that would have justified the appropriateness of a financial contract (R/257/2018) or some credit linked notes (R/310/2018).

– The entity did a questionnaire to assess appropriateness in which it was stated that the client understood some basic financial concepts, that they had never worked in the financial sector or in the financial department of any company, and that they had never contracted a product similar to the financial contract referred to in the complaint.

Based on the answers provided in the appropriateness test, the Complaints Service concluded that the client could not be thought to have sufficient financial knowledge or to have previously invested in similar products, in terms of their nature and risks, on more than one occasion. Therefore, the most reasonable course of action would have been for the entity to consider the product to be non-appropriate and issue a warning to the client, although in the complaint proceedings it did not appear that either of these measures were taken (R/284/2018 and R/300/2018).

– The entity only provided an appropriateness test, the result of which indicated that due to the answers given by the client, the entity considered that products of a certain complexity were not appropriate. However, as the product had been contracted after the entry into force of Circular 3/2013, there was no evidence that the entity had issued a warning as established in this regulation on the non-appropriateness of the financial contract to be signed by the client, nor that it had obtained the client's signature along with the corresponding handwritten declaration (R/333/2018).

– The entity asked the client to complete an appropriateness test and then only informed them that, based on the responses given, it considered the client had sufficient culture and financial experience in some complex products to understand the nature of the product and risks involved, although other products might not be appropriate. The Complaints Service concluded that this communication did not clearly inform the client of whether the particular financial contract to be signed was appropriate or not, and if not, it did not state that it had issued the required warnings or obtained the client's signature and handwritten declarations pursuant to the regulations applicable on the date the contract was arranged (R/480/2018).

– The entity did not provide evidence that it had obtained and assessed any information about the complainant's knowledge and investment experience (R/359/2018).

✓ *Preemptive subscription rights acquired on the secondary market that are not intended to round up the number of rights assigned in a capital increase to reach to the number necessary to acquire a share*

Preemptive subscription rights acquired on the secondary market may be considered a complex product depending on the purpose for which they are acquired. When a shareholder acquires them on the secondary market with the sole objective of rounding up the number of rights they have been assigned in a capital increase to reach the number necessary to obtain a last new share, they would not be classified as a complex product. In these cases, it would not be mandatory to perform an appropriateness assessment when the respective exemption requirements have been met, as discussed in the section "Non-complex financial instruments".

However, if the rights are acquired on the secondary market for a different purpose, they would be classified as a complex products and the entity would have to perform an appropriateness assessment before processing of the client's order.

In relation to this issue, the following incidents arose in the complaints proceedings handled:

– It was not clear from the documentation provided in the complaint file that the rights had been acquired on the secondary market to round up the number of rights automatically assigned to a shareholder in a capital increase. Therefore, the rights should have been classified as a complex product and the entity should have asked the client for information about their knowledge and experience, and there was no evidence of it having done so. Consequently, the Complaints Service concluded that failing to provide proof of compliance with this obligation was incorrect (R/316/2018).

– In a case of preemptive subscription rights acquired where the client was not a shareholder of the issuer and, therefore, the product was considered complex, the entity provided a signed appropriateness test that only contained one question to which the client responded affirmatively, stating that they had invested in shares more than once in the past two years. The entity also provided a signed notification of test result stating that the client's level of knowledge and experience were appropriate to enable them to contract financial instruments belonging to equities family.

  In this case, the complainant's previous securities experience would not be sufficient to consider it appropriate for them to invest in preemptive subscription rights, since these products have a different nature and different risks. Therefore, the Complaints Service resolved that from the information provided by the entity it could not be concluded that the client had sufficient knowledge and experience for preemptive rights to be considered an appropriate investment option (R/320/2018).

– The purchase order itself stated the preemptive subscriptions rights as a complex product. The entity considered that they were appropriate for the client based on an appropriateness test signed by the client that contained information about their professional experience and education, knowledge of the risks involved and trading experience. In the latter case, the client professed to have contracted five types of products in the last three years, which featured three complex products, including preemptive rights. However, the test did not show the result of the assessment, nor were any documents attached proving that the entity had informed the client of the result of the appropriateness test obtained after their responses had been assessed. Consequently, the Complaints Service considered that the entity had acted incorrectly (R/331/2018).

✓ *Preferred shares*

The Complaints Service concluded that the respondent entity acted incorrectly where in the same purchase order signed by the complainant it warned of the impossibility of assessing the appropriateness of some preferred shares, as the client had not provided sufficient information to make such an assessment, and of the non-appropriateness of this product based on the complainant's knowledge and experience. The warnings were contradictory, as if the entity could not obtain information about the client's knowledge and experience, it was not clear how it could have concluded that the product was not appropriate for the client. This contradiction

was considered a formal irregularity that was not consistent with the duty of diligence and transparency required of companies that provide investment services[52] (R/470/2018).

✓ *EU non-harmonised CIS*

When the CIS to be marketed does not comply with Directive 2009/65/EC,[53] it is classified as a EU non-harmonised CIS. To establish whether EU non-harmonised CIS are complex or non-complex products, a series of parameters must be assessed:

– They are considered to be non-complex in the following circumstances:

  i) There are frequent opportunities for sale, redemption, or other means of settlement for the financial instruments at publicly available prices to market members and these are market prices or prices offered, or validated, by assessment systems that are independent of the issuer.

  ii) They do not involve real or potential losses for the client exceeding the amount invested.

  iii) There is sufficient public information on their features. This information must be easily understandable so that the average retail client can make a well-founded investment decision.

  In these cases, the entity may apply the exemption from the appropriateness assessment provided for by law for non-complex products, provided that the established conditions are met, among which are that the service is provided at the client's initiative and that the entity must issue a warning, in the terms provided in the regulation, stating that it has no obligation to assess its appropriateness.

– In contrast, if any of the above liquidity, loss and information requirements are not met, it is considered a complex product. In this case, the appropriateness assessment will be mandatory, with no exemption for the entity.

In several complaints in which the investment product was a EU non-harmonised CIS, the entities requested the unitholder to complete an appropriateness questionnaire, which resulted in the product being considered appropriate. The client was informed of this result as evidenced in the signed documentation attached (R/292/2018).

However, various errors were also detected in relation to this type of product:

– The entity provided a signed document in the complaint proceedings informing the client that non-harmonised investment funds were an appropriate

52 Article 208 of Royal Legislative Decree 4/2015, of 23 October, which approves the Consolidated Text of the Securities Market Act.

53 Directive 2009/65/EC of the European Parliament and of the Council, of 13 July 2009, which coordinates the legal, regulatory and administrative provisions on certain undertakings for collective investment in transferable securities (UCITS).

investment option. This conclusion was based on the fact that the client had previously contracted an investment fund of similar characteristics (i.e., with the same risk, with no guarantee on the capital invested or of the return and aimed at the same type of investors). The purchase order and a statement of the client's positions were also attached. However, the Complaints Service did not consider this experience to be sufficient to justify the appropriateness of the product, since it referred only to a previous transaction (R/523/2017).

– To assess the client's knowledge and investment experience for the purpose of contracting a non-harmonised fund, the entity asked them to complete a questionnaire on non-complex funds (the result of which was "appropriate") and stated in the subscription order that the fund in question was a non-complex fund.

  However, the entity also issued a warning letter on the non-appropriateness of the product, which inferred that it considered the fund to be a complex product.

  In view of the documentation provided by the entity, duly signed by the client, the Complaints Service identified a contradiction between the subscription order/appropriateness test and the warning issued, which could have caused the client some confusion about the result of the test that had been performed (R/122/2018).

➢ Non-complex financial instruments

As indicated above, entities do not have to follow the appropriateness assessment procedure when the order refers to non-complex products, as long as the service is provided at the initiative of the client and the entity has clearly informed them that it is not required to assess the appropriateness of the instrument offered or the service provided and that the client therefore does not enjoy the protection established in current legislation.

Consequently, for the entity to claim the exemption from the appropriateness analysis, each and every one of the requirements set out in the legislation must be met.[54]

✓ *Ordinary shares of companies admitted to trading and preemptive subscription rights for this type of shares automatically assigned in a capital increase*

Shares are deemed non-complex products providing they do not incorporate an embedded derivative and are admitted to trading on a regulated market. The shares may have been acquired in a public offering for subscription or in a purchase transaction performed on the stock market.

Preemptive rights may be automatically allocated to shareholders in a capital increase, for example. In this case, the rights are not considered to be financial instruments in themselves and should be considered as a component of the share when the instrument that can be subscribed when exercising the right is the same as the instrument that gave rise to the subscription right. This interpretation extends to

54 Article 216 of Royal Legislative Decree 4/2015, of 23 October, which approves the Consolidated Text of the Securities Market Act.

the acquisition of subscription rights on the secondary market for the sole purpose of rounding up the number of rights already held and, by exercising these rights, acquire additional shares to those that would correspond to the shareholder.

With regard to these non-complex financial instruments, the respondent entities acted correctly in the following cases:

– The entities obtain information on the client's knowledge and experience through a test, as a result of which the contracting of the shares was deemed appropriate. This information was relayed to the client (R/623/2017, R/216/2018 and R/320/2018).

– The entities applied the exemption from the appropriateness assessment and demonstrated compliance with the requirements established to adhere to this option.

  In some cases, the entities provided a document signed by the client, attached to the purchase order, in which the client stated: i) that they had requested the transaction; ii) that the service to be provided by the entity was limited to the execution of orders on behalf of the client or the receipt and transmission of client orders; and iii) that the entity, prior to signing of the order, had informed the client that it was not obliged to assess their knowledge and experience or whether or not the product was appropriate. In the same document the entity also issued a warning stating that the client would not enjoy the protection established under the stock market regulations for products/services subject to appropriateness assessment (R/158/2018, R/214/2018 and R/231/2018).

  In other cases, compliance with the regulatory requirements for the application of exemption from appropriateness testing was demonstrated in the purchase order itself (R/204/2018 and R/415/2018).

– The complainant owned shares and, on the occasion of several subsequent capital increases, subscribed for additional shares. However, they were in disagreement with two of these additional acquisitions.

  In the first complaint, it was demonstrated that the client had not completed the test to assess their knowledge and experience. Therefore, the entity submitted a document signed by client warning them that by failing to respond to the questions asked, it had not been possible to assess the appropriateness of the transaction.

  In the second complaint, the client had completed the appropriateness test, which the entity attached to the file. In this test, when asked about previous investment experience, the client's response was negative: "In the last two years, have you held more than one position in your portfolio or made more than one investment for more than €3,000 in shares?". In relation to their education level, the complainant claimed to have studied to Baccalaureate level or equivalent.

  In addition to the test, the entity provided a purchase order for shares and a statement showing several subscriptions for shares deriving from different capital increases. The accredited experience, together with the complainant's educational level, led the Complaints Service to conclude that the entity had

acted correctly by informing its client that shares were a suitable investment option (R/123/2018).

In contrast, bad practice was detected in the acquisition of shares and preemptive subscription rights for non-complex products when:

– The entities did not demonstrate that they had met all the regulatory requirements to qualify for exemption from performing the appropriateness assessment when contracting this type of product. Neither did they provided evidence of having obtained any information about the knowledge and experience of their client in order to assess the suitability of the product (R/446/2017, R/616/2017, R/192/2018 and R/322/2018).

– The entities did not correctly formulate the required warning to qualify for exemption from the obligation to assess the appropriateness of the non-complex product for the client. Therefore, although the signed purchase order reflected the client's initiative and the non-obligation to obtain information on their knowledge and financial experience (and hence to assess appropriateness), it was not clarified that as a consequence of this the client would not enjoy the protection established by law (R/10/2018).

✓ *EU harmonised CIS*

EU harmonised CIS are legally classified as non-complex products.

In the complaints processed by the CNMV Complaints, the entities were considered to have acted correctly in the following cases:

– The entity provided a signed appropriateness test in which the client responded that they had held positions: i) on two or more occasions in the last five years in investment funds, pension plans and ETFs; and ii) on two or more occasions in the last three years in structured products with no capital guarantee. In addition, in relation to the frequency and quantity of the transactions performed, the client indicated that they had been performing between three and six transactions per year for over four years, moving an average volume of less than half of their portfolio each year. A signed document was also provided in which the entity stated that it considered the investment fund to be an appropriate investment option for the client (R/515/2017).

– In a signed appendix attached to the investment fund subscription order the entity stated that this was an appropriate option for the client. To justify this conclusion, it provided: i) a signed copy of the assessment made, in which the client claimed to hold, or to have held at some time in recent years, at least two products similar to the product cited in the complaint in terms of their nature and inherent risks; and ii) statements of movements in the different investment funds contracted by the client (R/279/2018).

– The entity considered it appropriate for the client contract a harmonised fund in the euro fixed income category. For this purpose, it carried out a test referring to the moderate CIS category, in which the client responded that even though they had not held a professional position in the financial sector, they

currently held, or had held at least two products of a similar nature in the last five years (R/377/2018).

– The entity had requested information on the knowledge and experience of the clients, prior to contracting the harmonised fund, through an appropriateness questionnaire that was duly signed, warning them that more complex financial products were not a suitable investment option in their case. As the fund acquired was a non-complex product, the Complaints Service concluded that its contracting was consistent with the result of the entity's assessment (R/206/2018).

– The entity provided a signed appropriateness test in which the client declared that they had a certain level of studies and financial culture. Analysing the answers given in the test as a whole, the Complaints Service concluded that the client had a level of knowledge and investment experience that upheld the suitability of an investment in a harmonised CIS (R/490/2018).

– The entities provided duly signed appropriateness tests, the results of which were relayed to the client. The results confirmed the appropriateness of contracting the harmonised fund (R/587/2017, R/592/2017, R/612/2017, R/36/2018, R/340/2018, R/348/2018 and R/514/2018).

In contrast, the entities were considered to have acted incorrectly in the following cases:

– The Complaints Service concluded that there was a defect in form in a warning issued by the entity to its client regarding the latter's failure to provide sufficient information to assess whether the harmonised CIS was an appropriate investment option. In this case, the entity did not adhere to the exemption from the obligation to conduct an appropriateness assessment for the harmonised CIS and correctly informed the client that by not providing sufficient information about their knowledge and investment experience it was not possible to assess the suitability of the product or service. However, there was a formal error in the drafting of this warning since it did not identify the transaction or state the name of the entity that provided the investment service, as established in Circular 3/2013 (R/499/2018).

– The entity provided a document in which it informed the client that, in its opinion, the contracting of a harmonised fund was an appropriate option given the characteristics of the transaction, the outstanding positions or transactions and previous appropriateness or suitability assessments referring exactly the same or similar financial instruments in terms of their nature and inherent risks.

  The Complaints Service concluded that the entity had not acted correctly as it failed to demonstrate that it had sufficient information to conclude that the product was appropriate for the client. The entity did not provide evidence or demonstrate the existence of the complainant's alleged outstanding positions or previous transactions that led it to conclude that the product was appropriate for the client's profile. Neither did it provide previous assessments referring exactly to the same or similar financial instruments in terms of their nature and inherent risks (R/354/2018).

✓ *Bonds admitted to trading that do not incorporate an embedded derivative*

In a complaint related to simple bonds admitted to trading on the AIAF market, the entity considered that this product was appropriate for its client based on a test signed by the latter, conducted three months before the product was contracted, in which information about the client's professional experience and education, knowledge of risk and trading experience was obtained. In the latter case, the client professed to have contracted five types of products in the last three years, which featured three complex products. However, the test did not contain the result of the assessment and no other document showing that the appropriateness of the product had been properly relayed to the client was provided during the complaint proceedings. Therefore, Complaints Service concluded that the entity had acted incorrectly (R/331/2018).

Summary of complaints relating to simple execution/marketing EXHIBIT 1

- The **service of execution or receipt and transmission of client orders** does not require an appropriateness assessment if the following requirements are met: i) the order relates to a non-complex financial instrument, ii) the service is provided at the initiative of the client, iii) the entity clearly informs the client that it is not required to assess the appropriateness of the instrument and therefore they do not enjoy the protection provided for by law and iv) the entity complies with the internal organisational requirements provided for in the standard.

- **Warnings:**

  - The entity must warn the client in the event that, while being mandatory, **it is not possible to assess the appropriateness** because the client has not provided the necessary information or because the information provided is insufficient. Additionally, if the transaction is performed on a complex financial instrument, a handwritten declaration must be obtained from the client stated that it has not been possible to assess the appropriateness of the product due to a lack of information.

  - The entity must warn the client when the product is complex and the **result of the appropriateness assessment is negative.** The client must sign a handwritten statement declaring that they have been warned of these circumstances.

  - When marketing **financial contracts for differences** between retail clients, the entity must issue the appropriate warnings and obtain the signature and corresponding handwritten statement from the client, pursuant to CNMV communications and circulars and ESMA's decisions. These requirements must be met even when the entity considers that contracting of these products is an appropriate option for the client. It also establishes its relationship with the aforementioned warnings and handwritten declarations in cases in which the client has not provided sufficient information or the product or service is considered inappropriate.

– **Assessment of client knowledge and experience:**

  • In assessing the **appropriateness of a financial instrument or service**, the entity must take into account the client's **financial knowledge** (types of products with which they are familiar), their **investment experience** (nature, volume and frequency of transactions) and **their education and professional experience** (level of education or profession, both current and previous, if relevant for this purpose). The entity may obtain this information by any means it deems appropriate, although this is usually done through a specific document called the appropriateness test or on the basis of the information that it has on the client.

  • Previous **investment experience** may be sufficient to conclude that the product is appropriate. New transactions must be carried out with products that are similar to those previously acquired in terms of nature and risks. It is necessary for there to be a minimum of two or more previous transactions and for no more than five years (for non-complex products) or three years (for complex products) to have passed since the acquired securities were held in the portfolio.

– The entity must be able to provide proof of the appropriateness assessment performed and keep containing the information or documentation used for this purpose and the warnings issued. The entity must provide the client with a copy of the document containing the assessment made, and provide evidence of its receipt by the client. All of the above **must be confirmed regardless of the channel used to provide the service** (physical, electronic or by telephone).

– **Application for treatment as a professional client**. Retail clients may apply to be treated as professional clients provided they comply with certain requirements with regard to the amount of their investments, volume and frequency of the transactions and their knowledge resulting from a professional position. This new treatment is dependent on an assessment performed by the entity, a written request from the client to be treated as a professional client, a written warning from the entity explaining the loss of rights and protections that this treatment will involve and a waiver signed by the client stating that they know the effects of this waiver.

– **Complex financial instruments**. Entities must obtain information on the knowledge and experience of their clients wishing to contract complex products, assess this information and inform their clients of the result of the assessment. Under no circumstances may they be exempted from compliance with these obligations, in clear contrast to the rules for non-complex financial instruments.

– **Non-complex financial instruments**. Entities do not have to perform an appropriateness assessment when the order refers to non-complex products, as long as the service is provided at the initiative of the client and the entity has clearly informed them that it is not required to assess the appropriateness of the instrument offered or the service provided and that the client therefore does not enjoy the protection established in current

legislation. Entities that adhere to the exemption from the appropriateness assessment must prove that they have met each and every one of these requirements. If, in contrast, entities do not adhere to the exemption, they must demonstrate that they have assessed the appropriateness of the non-complex product.

– In relation to the complex and non-complex financial instruments mentioned above, the following points should be noted:

  - **Preemptive subscription rights** are classified as non-complex when: i) they are assigned to the shareholder of a company because of their status as shareholder or ii) the shareholder acquires them in the secondary market with the sole objective of rounding up the number of rights that they have in order to obtain a last new share issued by the listed company.

    However, if the rights are purchased with the aim of acquiring financial instruments other than the shares that gave rise to them, the rights are deemed to be complex or non-complex depending on the classification of the instrument to be acquired.

    Finally, if an investor acquires rights on the secondary market, these are considered to be complex products.

  - **Shares** are deemed non-complex products providing they do not incorporate an embedded derivative and are admitted to trading under the terms and conditions required by law.

  - **Harmonised CISs** are legally classified as non-complex products.

  - **Non-harmonised CISs** are considered non-complex when the following conditions are met: i) there are frequent possibilities of redemption, ii) they cannot involve losses exceeding the amount invested and iii) there is sufficient public information on their characteristics. In contrast, if they do not meet these requirements, they are classified as complex products, with the aforementioned obligations as regards the appropriateness assessment.

4.2 Investment advisory services and client portfolio management

➢ Concept of investment advisory services and client portfolio management

Investment advice is a service that consists of making personalised recommendations to a client – whether at the request of the client or at the initiative of the investment firm – with regard to one or more transactions relating to financial instruments.

The recommendation should be presented as suitable for the client, based on their personal circumstances, and may consist of:

– Buying, selling, subscribing, exchanging, maintaining, underwriting or redeeming a specific financial instrument.

– Exercising or not exercising any right conferred by a given financial instrument to buy, sell, subscribe, exchange or redeem a financial instrument.

The advice may be provided on a one-off basis, where the commercial relationship with the client is not conducted within the scope of an advisory service. However, on occasion, the entity may make an investment recommendation to the client (usually in the generic commercial segment), or recurrent recommendations when the client has an ongoing relationship with the advisor, who usually puts forward investment recommendations (usually in the private banking segment).

For this purpose, recommendations of a generic and non-personalised nature put forward as part of the marketing of financial instruments do not constitute advice.[55] Similarly, recommendations that are disclosed exclusively to the public will not be considered personalised recommendations.

The Complaints Service did not consider personalised advice to have been given when the entity contacted several potential clients to inform them of the possible transaction and acted as IB (Introducing Broker), establishing contact between these clients and the issuing company (R/446/2017).

Consequently, for each case and each complaint it is important to determine whether an advisory relationship exists, since depending on the conclusion reached, different obligations in the area of investor protection will be triggered.

In the case of discretionary and individualised portfolio management an investment service is deemed to exists when an entity receives a mandate from the client to implement the investment decisions it considers to be most suitable for said client.

➢ Handwritten declaration reflecting the non-provision of an advisory service when contracting complex products

When the entity provides a service relating to a complex instruments other than investment advice portfolio management for retail clients, or for professional clients who have obtained this category by waiving their right to be treated as retail clients (see section "Request from a retail client to be treated as a professional client") and the entity wishes to include in the documentation to be signed by the investor a statement saying that it has not provided any investment advice, it must obtain, in addition to the client's signature, a handwritten declaration stating:[56] "I have not been advised in this transaction".

The non-provision of advisory services on contracting complex products has been reflected in complaints resolved in 2018 with the following conclusions:

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55 Article 140 of Royal Legislative Decree 4/2015, of 23 October, which approves the Consolidated Text of the Securities Market Act.

56 Rule Four, section 5, of CNMV Circular 3/2013, of 12 June, on the implementation of certain information obligations relating to the financial instrument appropriateness and suitability test for clients of investment services.

– Some entities properly obtained the handwritten declaration required by law, complying with the provisions established in the standard and signed by the client (R/333/2018 and R/377/2018).

– Other entities acted incorrectly in the subscription of some financial contracts, in which they included clauses to clarify that there was no personalised advisory relationship, but they did not obtain, with the client's signature, a handwritten declaration that the client had not received advice on the transaction (R/257/2018 and R/480/2018).

➢ Difficulties in providing evidence of an advisory service

Securities market law establishes, in the article relating to the registration of contracts, that:

i) Entities that provide investment services must create a record that includes the contract or contracts that have as their object the agreement between the company and the client and specifies the rights and obligations of the parties and other conditions in which the company will provide customer service.

ii) Contracts with retail clients will be required in writing. In order to provide investment advice to these clients, written or reliable proof of the personalised recommendation will suffice.

The provision of an advisory service was demonstrated in some complaints resolved in 2018 through the formalisation of an investment advice contract, which was attached to proceedings (R/408/2017, R/559/2017 and R/184/2018), or which the entity acknowledged had been signed (R/405/2017).

To establish that an investment advice relationship exists between the client and the entity, the CNMV Complaints Service analyses whether certain conditions are met simultaneously, which, when consistent with the facts and explanations received, make it possible to reach such a conclusion. Therefore, when addressing the complaints the following situations arose that had to be assessed to conclude whether or not an advisory service had been provided:

– The client belonged to the personal or private banking segment of the respondent entity and had been assigned a personal manager/advisor.

  In these segments, an added value service compared with commercial or retail banking is usually provided involving support by qualified staff who will draw up an investment proposal adapted to the client's needs, specific objectives and asset and tax position.

  In this regard, the entity's acknowledgement that the client is categorised as belonging to the personal banking segment may determine, together with other factors, that an advisory service has been provided. By acknowledging that the client belongs to the personal banking segment, it is implied that the entity has assigned the client a personal manager, tailored advice and exclusive solutions, according to its website. Based on this premise, an additional documentation, the Complaints Service considered that there were sufficient factors in

place to conclude that a lawful investment advice relationship had been established (R/405/2017).

– The entity recognised the existence of one-off advisory services and provided a commercial proposal for contracting the product subject to the complaint (R/475/2017 and R/189/2018) or a request for the provision of this service signed by the client (R/173/2018).

– The complainant stated that they had been provided an advisory service to contract an investment fund and the respondent entity did not contest this claim and provided documentation evidencing that a suitability assessment had been performed (R/41/2018).

– The entity performed a suitability test and based on the investment profile obtained, recommended several investment funds to the client. In addition, in the transfer order issued by the client to one of these funds, the entity stated that it had recommended the product (R/340/2018).

– The entity indicated that the client had validated an investment proposed by its manager and also provided a suitability assessment which included the advice provided as a service (R/425/2018).

– The entity attached signed documentation with contradictory information, stating on the one hand that the transaction was not within the scope of an advisory service, while at the same time indicating that the entity had offered the client a series of products suitable for their knowledge, experience and investment objectives and that the client had chosen an investment fund from the range of products offered. The latter implied that the transaction would have been carried out within the framework of an investment advice relationship, which while not recurrent was at least a one-off occurrence (R/433/2018).

➢ Suitability assessment

Both the investment decisions adopted by the entity within the framework of a portfolio management contract and the recommendations offered within the scope of investment advice must be aligned with the investor's profile resulting from the suitability assessment carried out prior to the start of the provision of these services.

When investment firms provide advisory services or manage the portfolios of retail clients, they must obtain the necessary information on the client's knowledge and experience, their financial position and investment objectives so as to be able to recommend to the client the financial instruments that are most appropriate or to make investment decisions relating to such instruments. All this information is reflected in the suitability assessment that is normally obtained from the suitability test.

Entities have the right to trust the information provided by their clients except when they know, or should know, either that it is clearly out of date or it is inaccurate or incomplete.

In short, the recommendations that entities give to their clients within the area of advice or the investment decisions taken in the case of portfolio management must meet the following criteria:[57]

✓ *Investment objectives*

They must respond to the client's investment objectives. Information on the desired time horizon of the investment, the client's risk preferences, risk profile and the purpose of the investment will be taken into consideration, where applicable.

✓ *Financial position*

They must take into account the risks of the financial instruments to ensure that the client may assume such risks from a financial point of view. The information to be obtain will include information on the client's income, assets (including liquid assets), investments and properties, in addition to their financial commitments.

✓ *Knowledge and experience*

The client must have the experience and knowledge necessary to understand the risks involved in the transactions or portfolio management (see section "Assessment of customer knowledge and experience", within the section "Marketing/simple execution").

Knowledge and investment experience may differ depending on whether the service provided is investment advice or portfolio management. In advisory services, the final investment decision is always taken by the client and, therefore, the entity may only recommend transactions whose risks and nature the client may understand. However, in portfolio management, given that the manager monitors that the portfolio is in line with the client's investment objectives and financial position, it is only necessary for the client to be familiar with the instruments that make up their portfolio, i.e., that they have general financial knowledge. However, clients should understand the nature of the instruments that make up the bulk of their portfolio.[58]

To assess the above parameters, investment recommendations or decisions must generally be adapted to the level of risk that the investor has set in their investment objectives and entities may not exceed that level even where allowed by the investor's knowledge or experience, unless the investment in question forms part of a portfolio under advice or management and that, as a whole, meets the investment objectives set by the client. However, it is recommended that the client be informed of this.[59]

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57 Article 72 of Royal Decree 217/2008, of 15 February, on the legal regime of investment firms and other entities that provide investment services.

58 Question 24 of the *Operational guide for the analysis of suitability and appropriateness*. ESI and ECA Supervision Department. 17 June 2010.

59 Questions 19 and 22 of the *Operational guide for the analysis of suitability and appropriateness*. ESI and ECA Supervision Department. 17 June 2010.

However, if the client is willing to take on a level of risk that is so high that it may compromise their financial position or if the entity believes that the client does not have sufficient knowledge or experience to understand the nature and features of the investment, strictly respecting the investment objective set by the client would not make this investment suitable. In these cases it may be appropriate to recommend or adopt investment decisions that may be assumed by the client from a financial perspective or that have a more simple nature and features.[60]

The entity must obtain and assess information to determine the suitability of the product or service. Therefore:

i) When the entity does not obtain the necessary information, it cannot recommend investment services or financial instruments to the client or potential client or manage its portfolio.[61]

ii) If, after assessing the information obtained, the entity considers that the transaction is not suitable, it will not make recommendations or take investment decisions in the provision of investment advice services or portfolio management if none of the services or instruments are suitable for the client.

iii) If the assessment of information obtained leads the entity to consider the transaction to be suitable, it may recommend the product or service, or make the corresponding investment decision.

Where sufficient information was provided in the suitability questionnaires, some entities considered this to be sufficient to uphold the recommendations made or portfolio management decisions taken (R/475/2017, R/492/2017, R/340/2018, R/8/2018, R/41/2018 and R/184/2018), while others considered that the transaction requested by the client was not suitable for the area of advice contracted from the entity, and duly informed the client of this decision (R/559/2017).

However, some entities acted incorrectly when recommending products to clients based on questionnaires where the answers provided did not offer proof of suitability (R/173/2018, R/189/2018 and R/425/2018) or when the suitability assessment questionnaire had not been completed (R/433/2018).

In the sections "Recommendations in the area of advice" and "Investment decisions in the area of discretionary portfolio management" for each of these services, the cases in which the entities acted correctly and incorrectly in their suitability assessments and other related issues are discussed.

60 Question 19 of the *Operational guide for the analysis of suitability and appropriateness*. ESI and ECA Supervision Department. 17 June 2010.

61 Article 213 of Royal Legislative Decree 4/2015, of 23 October, which approves the Consolidated Text of the Securities Market Act and Article 72 of Royal Decree 217/2008, of 15 February, on the legal regime of investment firms and other entities that provide investment services.

➢ Cases of representation

In general, where a natural or legal person has appointed a proxy or legal representative to act on their behalf, it is considered reasonable that the suitability assessment is performed on the knowledge and experience of the proxy/legal representative for specific product or service and the financial position and investment objectives of the principal person (R/189/2018).

➢ Evidence of the suitability assessment

Entities must maintain a suitability assessment record, which will place on record the information or documentation considered for the purposes of determining whether the specific product or service is appropriate for the client or potential client on the basis of their investment knowledge and experience, financial position and objectives.[62]

In this regard, in the provision of advisory services and portfolio management, the entity must in all cases be in a position to accredit the appropriateness test performed, which can be evidenced by conducting the assessment in writing and keeping a copy duly signed by the client stating the result of the assessment and date it was submitted. It can also be performed through the record of notification to the client by electronic means or any other channel which can provide proof that the assessment was carried out.[63]

In the resolution of complaints related to accreditation of the suitability assessment of the product or service, the entities provided a copy of the duly signed suitability test, which contained the information obtained for the client's investment profile, the result of the assessment carried out and the submission date (R/475/2017, R/492/2017, R/173/2018, R/189/2018, R/340/2018, R/8/2018 and R/41/2018).

All without prejudice to the Complaints Service consideration of the content of the questionnaire or the assessment made by the entity as suitable or unsuitable, as discussed in sections "Recommendations in the area of advice» and "Investment decisions in the area of discretionary portfolio management".

In contrast, it was considered incorrect in the provision of investment advice or a portfolio management service that:

– The entity did not provide any supporting documentation demonstrating that it had obtained the proper information from the client and conducted a suitability assessment (R/433/2018).

– The entity obtained some relevant data on the client's investment profile, although it did not provide evidence that it had informed the client of the assessment made (R/408/2017 and R/425/2018).

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62 Resolution of 7 October 2009, of the National Securities Market Commission, on the minimum records to be kept by companies that provide investment services.

63 Rule Three of CNMV Circular 3/2013, of 12 June, on the implementation of certain information obligations relating to the financial instrument appropriateness and suitability test for clients of investment services.

➢ Validity period of prior suitability assessments

With regard to the period of validity of prior suitability analyses, even where there are certain circumstances that are not likely to change over time, such as knowledge and experience, there are others, such as the financial position or investment objectives, that can vary. Therefore it is necessary to review suitability on a regular basis.

For one-off advisory services, the suitability assessment is most likely to be limited to one specific transaction and it is not therefore generally reasonable to extrapolate the results obtained from one transaction to subsequent transactions.

As indicated above, in the provision of longer-term services, recurrent advice or portfolio management, as the investment objectives may vary, the entity must periodically review these objectives to check whether they have been modified.[64]

The regulations also address this issue from the perspective of contract regulation and the policies and procedures established by entities.

The provision of portfolio management services requires a standard contract.[65] This contract must contain its essential features and establish in a clear and concrete manner, that can be understood easily by retail investors, among other aspects, the procedure for updating information on the client's knowledge, financial position and investment objectives, to enable the entity to provide the best possible service, as appropriate.[66]

In 2018, complaints were resolved relating to consequences arising from updating a client's investor profile. In the context of managing a portfolio of investment funds, a client with a dynamic profile was reassessed, almost two years later, and assigned a conservative profile. The entity informed the client that their risk profile was now lower than it had been originally, and that unless they expressly requested otherwise, within a period of two months the management contract would be modified. As the client did not respond within the two-month period, the entity proceeded to adapt the portfolio under management to bring it into line with the client's new profile (from a dynamic portfolio to a balanced portfolio).

In this case, the Complaints Service considered it reasonable that given the mismatch between the portfolio risk profile and profile resulting from the suitability test performed by the client, the entity would take measures to adjust them, as demonstrated in the aforementioned notification (R/608/2017).

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64 Question 27 of the *Operational guide for the analysis of appropriateness and suitability*. ESI and ECA Supervision Department. 17 June 2010.

65 Article 5.2 of Order EHA/1665/2010, of 11 June, implementing Articles 71 and 76 of Royal Decree 217/2008, of 15 February, on the legal regime of investment firms and other entities that provide investment services, with regard to fees and standard contracts.

66 Rule Seven, section 1, letter h), of CNMV Circular 7/2011, of 12 December, on the fee prospectus and the content of standard contracts.

➢ Recommendations in the area of advice

As discussed in the section "Suitability assessment", entities that provide advisory services to retail clients will obtain the necessary information on the knowledge and experience of these clients, their financial position and investment objectives. They will then assess this information to recommend the most suitable financial instruments. They must also be able to prove that they have carried out this assessment and keep a record of the suitability assessment containing this information as described in the section "Evidence of the suitability assessment".

In addition, in providing an investment advice service, the entity makes a personalised recommendation for the client and provides a description of how it fits with their profile and objectives.

The recommendation must be consistent with all aspects on which the client has been assessed.[67] The entity must keep a record of investment advice that shows in writing or in a certifiable manner the personalised recommendations made to retail clients, including information on the following points:

– The retail client to whom the advisory service is provided.

– The recommendation.

– The financial instrument or portfolio that has been recommended, including the date of the recommendation.[68]

The description must refer, at least, to the terms in which the investment product or service has been classified in terms of market, credit and liquidity risk, and from the point of view of its complexity, as well as the suitability assessment performed on the client with regard to its three components. The description may be abbreviated when recommendations are repeatedly made on the same type or family of products.[69]

The entity must provide a description of how the recommendation will be submitted in writing or on another durable medium. The entity must demonstrate the submission of the recommendation to its client (for which it may obtain a signed copy of the submitted document which must contain the date on which it was submitted) or do so through the record of communication by electronic means or by any other certifiable means.[70] If the service is provided through a telephone channel, the description must be made verbally, a recording must be kept and the document

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67 Rule Three, section 1, of CNMV Circular 3/2013, of 12 June, on the implementation of certain information obligations relating to the financial instrument appropriateness and suitability test for clients of investment services.

68 Resolution of 7 October 2009, of the National Securities Market Commission, on the minimum records to be kept by companies that provide investment services.

69 Rule Three, section 1, of CNMV Circular 3/2013, of 12 June, on the implementation of certain information obligations relating to the financial instrument appropriateness and suitability test for clients of investment services.

70 Rule Three, section 2, of CNMV Circular 3/2013, of 12 June, on the implementation of certain information obligations relating to the financial instrument appropriateness and suitability test for clients of investment services.

containing the description must be sent to the client using another channel such as post or email.[71]

The actions undertaken by the respondent entities in the suitability assessments and their consistency with the recommendation made were deemed to be correct in the following cases:

– The entity recommended acquiring structured bonds in a commercial proposal signed by the client. The proposal included a suitability questionnaire, which assigned the client a dynamic profile, defined as prioritising the return on investment and accepting a potential annual variation of around +/-55%. The entity also provided a document signed just over three years previously, in which the client declared that they had a great deal of knowledge about the structured bonds family (R/475/2017).

– The entity provided a signed copy of the suitability test, the result of which was a moderate risk profile, with a score of 7 on a scale of 1 (extremely conservative) to 15 (extremely high risk). The client had contracted a harmonised fund in Global Fund of Funds category, the target of which in terms of management, investment policy and risks took as a reference the return on several indices and was classified as a risk profile 3 on a scale of 1 to 7 (where 1 is the lowest risk and 7 the highest risk). In view of the characteristics and risk profile of the contracted fund, the Complaints Service considered that the profile was appropriate for the result of the assessment made (R/41/2018).

– The entity provided a signed copy of a suitability questionnaire. The responses indicated that the client had a good knowledge of financial products and markets, their investment objective was to obtain short-term returns, assuming the risk of possible losses that could account for a significant percentage of the investment, with a strong financial position that could absorb any loss of the invested capital and an investment experience that had included derivative products on more than one occasion. The client also declared that their risk tolerance level was very high and they were willing to suffer a loss of more than 50% of the assets invested if this entailed the expectation of large gains. Based on this information, the entity provided the advisory service and the client invested in derivative products and common shares (R/184/2018).

– The entity carried out a suitability test, the signed copy of which was attached to the file and the result of which indicated that the client had a conservative profile. Taking into account the test result, the entity recommended six investment funds of a non-complex nature and low risk profile. The client requested a transfer of one of these funds, stating in the order that the entity had recommended the product based on the test result (R/340/2018).

In contrast, incorrect actions were identified in the following cases:

– The entity, through a signed suitability questionnaire, had collected information on the financial position, investment objectives and knowledge and experience of the clients and decided that a financial contract was a suitable option.

71 Question 2 of the *Q&A document on CNMV Circular 3/2013, of 12 June.* ESI and ECA Supervision Department. 3 April 2014.

With respect to knowledge and experience, the clients had responded in the questionnaire that: i) they did not currently hold or had previously held a professional position in the financial sector or in an area that enabled them to understand the risks inherent to the product or service; ii) they had an average level of education (completed secondary school education or similar); and iii) they did not currently hold or had not previously held at least two products that were similar in nature and risk to the product or service at any time during the prior three years.

As regards the nature and risks inherent to the product, in addition to the possibility of incurring a loss of 5% of the principal, the method in which the clients were to be remunerated was particularly complex.

Based on the responses in the suitability tests and the type of product, the Complaints Service considered that it could not be established that the clients had sufficient knowledge and experience to understand the characteristics and risks of the financial contract and, therefore, the entity should not have recommended it (R/173/2018).

– The entity recommended to a client classified as a retail client the acquisition of bonds that, according to their issuance terms, were aimed exclusively at professional investors and, therefore, were not suitable for any retail client (R/408/2017).

– The entity provided a suitability test in which the client claimed to understand the investment products and their risks, in addition to concepts such as loss of value, fixed income, risk associated with variable interest rates, capital instruments and reduced liquidity. The client also stated that they had never worked in the financial sector or in the financial department of any company. Regarding knowledge and experience, the client claimed no previous experience or knowledge of SICAVs or their risks. The client declared assets of between €500,000 and €2,000,000 and was willing to assume losses that would affect 10% of the investment over the 5-year investment horizon.

  The complainant alleged that the assessment of their knowledge and experience was incorrect and presented documentation reflecting their previous investments, which were limited to guaranteed equity funds, shares, deposits and life insurance.

  The Complaints Service ruled that based on the content of the test and the evidence provided by the complainant regarding their investment experience, the SICAV the entity had recommended was not a suitable investment option (R/425/2018).

– The entity recommended a financial contract to a foundation and to assess suitability sent two questionnaires to its proxy; one resulted in a conservative risk profile and the other in a high risk profile.

  Based on the two questionnaires, the Complaints Service ruled that it was striking that in a period of less than six months there had been such a substantial change in the different questions assessed and ultimately in the assessment outcomes, which should have prompted the entity to query the information received, especially considering that the person was acting on behalf of a non-profit entity.

Furthermore, inconsistencies were noted between some responses in the second test. The person taking the test answered that they were familiar with investment funds, equities, structured products with a capital guarantee, private fixed income, structured products without a capital guarantee, hedge funds, subordinated debt, preferred shares and units, while their response to another question was that their knowledge of financial instruments and the stock markets was nil.

The Complaints Service considered that based on the client's knowledge and experience, the financial contract could not be considered a suitable product for the complainant due to the answers supplied in the second suitability test (R/189/2018).

– The entity stated that it had offered the client several products based on their knowledge, experience and investment objectives, but did not provide any suitability tests (R/433/2018).

➢ Investment decisions in the area of portfolio management

The management of client portfolios also requires entities to obtain information on the knowledge and experience, financial position and investment objectives of their clients. This information is assessed by the entities and enables them to make the most suitable investment decisions for the client's investor profile, as explained in the section "Suitability assessment". They must also provide evidence that they have carried out this test and keep a record of the suitability assessment with the related information as described in the section "Evidence of the suitability assessment".

The legal framework according to which portfolio management decisions must be adapted to the client's investment profile resulting from the suitability assessment is supplemented by other contractual limits that determine the framework in which the portfolio management service will be implemented. Therefore, the obligations and rights of the parties for the provision of portfolio management services must be reflected in a standard contract signed by the client and the entity.[72]

The standard contract has a minimum content and must include, among other aspects:[73]

– A detailed description of the general investment criteria agreed between the client and the entity.

– Specified management objectives, as well as any specific limitations to the discretionary management powers affecting the client.

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72 Article 5 of Order EHA/1665/2010, of 11 June, implementing Articles 71 and 76 of Royal Decree 217/2008, of 15 February, on the legal regime of investment firms and other entities that provide investment services, in regard to fees and standard contracts.

73 Article 7 of Order EHA/1665/2010, of 11 June, implementing Articles 71 and 76 of Royal Decree 217/2008, of 15 February, on the legal regime of investment firms and other entities that provide investment services, in regard to fees and standard contracts, and Rules Seven and Nine of CNMV Circular 7/2011, of 12 December, on the fee prospectus and the content of standard contracts.

– A specific and detailed list of the different types of transactions and categories of the securities or financial instruments to be managed and the types of transactions that may be performed, defining as a bare minimum those which involve equities, fixed income securities, other spot financial instruments, derivative instruments, structured and financed products.

  The geographical scope of financial instruments and transactions must be specified and any applicable limits included.

  If hybrid or low liquidity assets are included, a warning will be added. Further, if derivatives are included, it must be indicated whether they will be used for hedges or investments.

  The client's authorisation must be clearly recorded for each individual security, instrument or transaction type.

Entities are acting correctly when they make management decisions on their client's portfolio in accordance with the client's investment profile and in compliance with regulatory limitations and the portfolio management contract, as occurred in the following cases:

– The client claimed for the losses caused by an investment in subordinated debt that the entity had made as part of its portfolio management service. The entity had carried out a suitability test on the complainant, a signed copy of which was attached to the complaint, and which assigned the client a high risk profile. Pursuant to the test result, the signed portfolio management contract established a high risk profile for the client and authorised the entity to buy and sell all types of securities, including subordinated bonds, all across the world. Therefore, the transaction against which the complaint had been made fell within the contractual scope and client profile (R/492/2017).

– The client stated their disagreement with the investments made within the scope of a CIS portfolio management service. The entity provided evidence that it had assessed the client's profile through a signed suitability test showing that they had been assigned a conservative profile. The result was consistent with the level of risk assumed in the portfolio management service, a breakdown of which (including the CIS involved) was attached to the proceedings (R/8/2018).

Summary of complaints relating to advisory services/portfolio management EXHIBIT 2

– Personalised investment advice may be on a **one-off or recurring basis** (if the client has an ongoing relationship with an advisor who regularly provides investment recommendations). This usually occurs in the private banking segment.

– If the entity wishes to include in the documentation to be signed by the investor a statement saying that **it has not provided any investment advice,** it must obtain, in addition to the client's signature, a handwritten declaration stating: "I have not been advised in this transaction".

– To establish that an investment advice relationship exists between the client and the entity, the CNMV Complaints Service analyses whether certain conditions are met simultaneously, which, when consistent with the facts and explanations received, make it possible to reach such a conclusion.

– Entities that advise or manage portfolios of retail clients must bear in mind the client's investment objectives, financial position and investment knowledge and experience. All this information is normally reflected in the suitability test.

  Knowledge and investment experience may **differ depending on whether the service provided by the entity is considered investment advice or portfolio management.** While the final investment decision is always taken by the client (and the client must understand the risks and the nature of the product), in portfolio management, it is the entity that makes the decisions and monitors the investment. Therefore, it is only necessary for the client to be familiar with the financial instruments that make up the portfolios, i.e., have general knowledge.

– In general, where a natural or legal person has appointed **a proxy or legal representative** to act on their behalf, it is considered reasonable that the suitability test is performed on the knowledge and experience of the proxy/legal representative for a specific product or service. However, the financial position and investment objectives of the principal investor must be assessed by the entity.

– Entities must keep a **suitability assessment record** that allows them to prove that they have fulfilled this obligation. This assessment is usually performed through a suitability test duly signed by the client, which contains the information obtained by the entity in relation to the client's investment profile, the results of the assessment carried out and the submission date.

– With regard to the **period of validity** of prior suitability assessments, even where there are certain circumstances that are not likely to change over time (knowledge and experience), there are others (financial position or investment objectives) that can vary. Therefore it is necessary to review suitability on a regular basis.

  For one-off advisory services, the suitability assessment is most likely to be limited to one specific transaction and it is not therefore generally reasonable to extrapolate the results obtained from one transaction to subsequent transactions.

  For the provision of longer-term services (recurrent advice or portfolio management), as the investment objectives may vary, the entity must periodically review these objectives to check whether they have been modified.

– Whenever the entity makes a **recommendation** in the area of investment advice, it must provide the client with a **description** on a durable medium of how the recommendation matches the investor's characteristics and objectives and it must keep a record of these recommendations.

However, the Complaints Service considers that the entity is engaging in bad practice when, despite providing proof of having performed an assessment, the assigned profile or recommendation does not correspond to the information provided by the client, or when there is no evidence that a description of how it matches the investor's characteristics and objectives has been provided on a durable medium.

– **Portfolio management decisions** must be adapted to the client's investment profile resulting from the suitability assessment, in addition to the contractual limits that determine the framework in which the portfolio management service will be implemented.

4.3 Prior information

4.3.1 Securities

➢ **Information documents prior to contracting the product**

Clients, including potential clients, must be provided with information on financial instruments and investment strategies. This information should contain the appropriate guidance and warnings about the risks associated with these instruments or strategies.[74]

Entities that provide investment services must provide their clients (including potential clients), on a durable medium, with a general description of the nature and risks of the financial instruments bearing in mind, in particular, the classification of the client as a retail or professional client.

The description must include an explanation of the features of the type of financial instrument in question and its inherent risks, which must be sufficiently detailed so as to allow the client to make informed investment decisions. Where justified by the type of financial instrument in question and the client's profile, the explanation must include information on the risks linked to the financial instrument, including an explanation on leverage and its effects, as well as the risk of full loss of the investment.[75]

For these purposes, a durable medium is understood as any instrument that allows the client to store the information personally addressed to them so that it may be easily recovered during a period of time that is appropriate for the purposes of such information and which allows its reproduction without changes.[76]

Entities can comply with this obligation by submitting various documents to the client: a summary of the securities note of the issue, the full securities note of the offer

74 Articles 209 and 210 of Legislature Royal Decree 4/2015, of 23 October, which approves the Consolidated Text of the Securities Market Act.

75 Articles 62 and 64 of Royal Decree 217/2008, of 15 February, on the legal regime of investment firms and other entities that provide investment services.

76 Article 2 of Royal Decree 217/2008, of 15 February, on the legal regime of investment firms and other entities that provide investment services.

or a document prepared by the entity for this purpose. When the client is given the full securities note, it is considered reasonable for the client to also be given an issuance summary,[77] as it is often easier to understand due to its summarised and concise nature.

If the product is contracted on the secondary market, even when the entity has no obligation to provide the securities note or the prospectus, it must provide a general description of the nature and risks of the financial instrument to be contracted, which is usually delivered in the form of an informative document.

➢ Method for demonstrating submission of the information

The information document on the features and risks of financial instruments must be given to the client prior to contracting the product and the entity must be in a position to provide evidence of this submission.

The evidence must always be provided in the same way, irrespective of the financial instrument in question. Accordingly, as in the case of CIS, submission is demonstrated by means of a copy of the information document signed by the client.

The criterion of the Complaints Service is not to accept clauses incorporated into purchase orders through which the client acknowledges that the entity has provided sufficient information or certain documentation prior to contracting the product. As indicated for the case of CIS, the Complaints Service considers that this does not reliably guarantee that the client has received the necessary documentation.

Lastly, it is important to highlight that verbal information on the product given to the investor by an employee of the entity is not sufficient to fulfil the obligation to provide information prior to formalisation of the transaction. In addition, conversations are often acrimonious and there are often conflicting versions in the complaint proceedings when these conversations are not recorded.

Evidence of the submission of prior information was provided in several complaints resolved in 2018, through the client's signature on the summarised securities note of a bond or share issuance,[78] the documentation for the contracting of structured products containing information on their features and risks[79] or the information document provided by the entity on shares or bonds.[80]

However, entities were considered to have engaged in bad practice when: i) unsigned, incomplete or inaccurate documentation was provided;[81] ii) signed

77 Article 37 of Royal Legislative Decree 4/2015, of 23 October, which approves the Consolidated Text of the Securities Market Act.

78 R/396/2017, R/452/2017, R/468/2017, R/498/2017, R/558/2017, R/571/2017, R/583/2017, R/603/2017, R/65/2018, R/92/2018, R/101/2018, R/123/2018, R/131/2018, R/169/2018, R/182/2018, R/245/2018, R/291/2018, R/320/2018 and R/338/2018.

79 R/475/2017, R/173/2018, R/256/2018, R/257/2018, R/258/2018, R/284/2018, R/300/2018, R/312/2018, R/333/2018, R/359/2018, R/377/2018, R/407/2018, R/429/2018 and R/480/2018.

80 R/623/2017, R/214/2018, R/293/2018, R/320/2018, R/331/2018 and R/415/2018.

81 R/408/2017, R/425/2017, R/568/2017, R/570/2017, R/33/2018, R/204/2018, R/391/2018 and R/470/2018.

documentation was provided where the date of submission was omitted[82] or the signature was obtained after the product was contracted;[83] or iii) the respondent entity failed to provide any supporting documentation in the complaint proceedings of having informed the complainant of the features and risks of the securities.[84]

The sections "Complex products" and "Non-complex products" of this chapter describe (by type of security) cases in which entities acted correctly and incorrectly in providing the client with the mandatory information that must be submitted to the client before the product can be contracted.

➢ Acquisition of products with financing

When it is probable that the risks associated with a financial instrument composed of two or more financial instruments or services are greater than the risk associated with each of these instruments or services considered individually, an appropriate description of each of the instruments or services should be provided together with an explanation of how the relationship between the different components increases the risk.[85]

On occasion, financial instruments are acquired by investors with financing extended to them by the entity for this purpose. In cases where it has been demonstrated that the investment has been financed by the entity, the criterion applied by the Complaints Service is that a causal relationship exists between the contracting of both products or services (investment and financing). Therefore, the information requirements for characteristics and risks must apply to both the individual and joint transactions.

The Complaints Service considers that the information obligations should not be limited to the investment product contracted, but that the entity must inform its client of the conditions and risks relating to the financing of the transaction and of the impact that its financial cost could have on the net return of the corresponding investment.

There have been cases in which the respondent entity and the client formalised a loan policy where part of the financing granted was allocated to the acquisition of shares in a capital increase. The entity, in compliance with its contractual obligations, provided the client with the funds and processed the purchase order for the subscription rights in its favour. However, the Complaints Service considered that the entity had not acted correctly, as based on the documentation provided, it failed to prove that the client had been given any information about the characteristics and risks of the securities referred to in the complaint, either individually or jointly (R/316/2018).

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82 R/616/2017.

83 R/189/2018.

84 R/618/2017, R/10/2018, R/15/2018, R/40/2018, R/158/2018, R/192/2018, R/214/2018, R/216/2018, R/231/2018, R/322/2018 and R/338/2018.

85 Article 64.4 of Royal Decree 217/2008, of 15 February, on the legal regime of investment firms and other entities that provide investment services.

➢ Risk indicator and liquidity and complexity warnings

On 5 February 2016, a new regulation came into force that establishes a standardised information and classification system that warns clients about the risk levels of financial products and allows them to choose those that best meet their requirements and savings and investment preferences.[86] Therefore, entities must provide their clients or potential clients with a risk indicator and, where appropriate, liquidity and complexity warnings.

In relation to the stock markets, this rule is applicable to certain financial instruments,[87] although it does not include financial products subject to Regulation (EU) 1286/2014 on key information documents for packaged retail and insurance-based investment products (PRIIPs),[88] CIS units and shares subject to Regulation (EU) No. 583/2010 on key investor information,[89] or Circular 2/2013 on the key investor information document and the prospectus of collective investment schemes.[90]

For securities subject to this regulation, the general description of the nature and risks of the securities that entities must submit to investors also need to include a risk indicator and, where appropriate, liquidity and complexity warnings that will be prepared and presented in graphic format, pursuant to the aforementioned regulations.[91] The risk indicator will be established on an ascending scale from 1 to 6 (where 1 is the lowest risk and 6 is the highest). The liquidity warning will factor in all possible limitations on this aspect and the risks of an early sale of the financial product and a complexity warning will only be included in the information provided when the financial product is complex.

Some of the complaints resolved in 2018 that related to prior information on securities referred to situations where the product was contracted after the entry into force of the aforementioned regulation. Specifically, complaints relating to actions where the respondent entity attached a risk indicator of 6/6 to the information provided to its client (R/623/2017, R/123/2018, R/169/2018, R/293/2018, R/320/2018 and R/415/2018). However, in other complaints relating to prior information for the acquisition of shares, it was not proved that the entity had provided the client with any information on the product characteristics and risks and hence no documentation containing the aforementioned indicator (R/10/2018, R/87/2018, R/192/2018, R/214/2018 and R/322/2018).

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86 Order ECC/2316/2015, of 4 November, on the duty of information and classification of financial products.

87 Article 2.1 of the Consolidated Text of the Securities Market Act approved by Legislature Royal Decree 4/2015, of 23 October.

88 Regulation (EU) No. 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).

89 Commission Regulation (EU) No. 583/2010, of 1 July 2010, implementing Directive 2009/65/EC of the European Parliament and of the Council as regards key investor information and conditions to be met when providing key investor information or the prospectus in a durable medium other than paper or by means of a website.

90 CNMV Circular 2/2013, of 9 May, on the key investor information document and the prospectus on collective investment schemes.

91 Articles 10.b) and 11 of Order ECC/2316/2015, of 4 November, on the duty of information and classification of financial products.

In one specific case, the client filed a complaint stating that the entity had failed to comply with its duty to provide information and a classification of the financial products in relation to some shares. However, it was discovered that the purchase orders for the shares had been issued almost four years before the entry into force of the order that set down those obligations. The Complaints Service explained this situation to the client in the issued report (R/338/2018).

➢ Electronic transactions

For contracts formalised using electronic means, entities must obviously adhere to the same obligations as they would when the contract is arranged in a face-to-face meeting; i.e., they must provide the client with a description of the nature and risks of the financial instrument, providing evidence of compliance with this obligation in the following ways:

i) Information provided through the website.

The entity may provide the client with the mandatory general description of the nature and risks of the financial instruments not only on a durable medium, as described above, but also through its website.

However, when an entity that provides investment services submits information to a client through a website that is not considered to be a durable medium, the following requirements must be met:[92]

– The information must be provided using the medium in a manner than is appropriate for the context in which the activity between the entity and the client is being, or will be, carried out.

– The client must expressly consent to the information being provided through this medium.

– The client must be notified electronically of the website address and the part of the website where the information can be accessed.

– The information must be kept updated.

– The information must be continuously accessible through the website for the period of time that the client may reasonably need to consult it.

ii) Traceability of the sequence of orders.

When a product is contracted using electronic means, entities must set up mechanisms that allow them to reliably prove that the mandatory documents have been submitted to their clients prior to the contracting of the product in question.

Therefore, it is usual for entities to configure a system where the contracting of the product cannot be progressed until the prior information has been opened by

92 Articles 62.3 and 3.2 of Royal Decree 217/2008, of 15 February, on the legal regime of investment firms and other entities that provide investment services.

the client. If the client does not open the document containing the information, the computer system will not allow the contracting process to continue. When the investor opens the documents this leaves a digital fingerprint confirming that the individual information has been read, which the entity must keep. The log of the digital footprint generated by the transaction (which shows that the investor has opened the documents), together with the guidance on how to interpret the log, will serve as proof that the entity has complied with its obligation to submit the required prior information to the client.

Entities were considered to have acted correctly in providing complainants with prior information through electronic transactions in the following cases:

– Prior to opening an online trading account, it was demonstrated that the entity had complied with the regulatory requirement to provide its clients with prior information through its website. Therefore, the complainants had consented to receiving the information through the entity's website and had confirmed that they had read and understood the documents made available to them (R/97/2018, R/98/2018, R/244/2018 and R/444/2018). In other cases, clients had signed a framework agreement that included information on the characteristics and risks of the product before opening an online trading account (R/379/2018).

– With the traceability record of the purchase orders attached to the file, the entity provided evidence that prior to making electronic trades by entering the references on their card, the complainant had to consult the information on the risks of the securities involved in the complaint (R/467/2017).

However, in other electronic transactions, entities acted incorrectly, as the supporting documents provided relating to the submission of prior information were insufficient:

– In some cases, the information was limited to a warning recommending that the investor read the prospectus and the summary, as required by law (R/87/2018).

– In others, entities provided the complainant with certain information, in an email or by telephone, although they did not explain the meaning or implications of one of the most significant risks relating to the instrument, and provided other information in the proceedings (screenshots or other documents) that did not show that the complainant had been given this information (R/545/2017 and R/149/2018).

The sections "Complex products" and "Non-complex products" of this chapter describe (by type of security) cases in which entities acted correctly and incorrectly in providing the client the mandatory information that must be submitted to the client before the product can be contracted telematically.

➢ Complex products

The complaints resolved in 2018 relating to prior information provided to the client for complex products referred to:

✓ *Convertible/exchangeable bonds or debentures*

The submission of prior information on convertible/exchangeable bonds or debentures gave rise to disputes not only when the securities were acquired directly but also when they were acquired in an exchange of preferred shares.

Entities normally provide evidence of compliance with prior information obligations by attaching a copy of the securities note summary for the issuance of convertible/exchangeable bonds or debentures that has been duly signed by the client (R/396/2017, R/498/2017, R/92/2018, R/101/2018, R/123/2018, R/131/2018, R/245/2018 and R/291/2018).

However, incidents were detected in several transactions involving the exchange of preferred shares for convertible debt instruments. In one case, the only proof of compliance with this obligation was a statement from the entity, received by the complainant, describing the swap transaction along with the characteristics of the issuance. This was not considered sufficient as it did not describe the risks inherent to the convertible bonds that were to be exchanged for preferred shares (R/568/2017). In another case, it was only stated that the entity had sent an invitation to exchange document (provided by the complainant) and there was no proof of the time the document had been delivered (R/570/2017).

✓ *Debt that can be redeemed in advance by the issuer*

As in the previous section, entities usually prove that they have fulfilled their obligation to submit prior information by providing the summary (duly signed by the client) of the issuance of bonds or debentures that can be redeemed in advance by the issuer before the maturity date (R/452/2017, R/468/2017, R/558/2017, R/571/2017, R/583/2017, R/603/2017, R/65/2018 and R/182/2018).

In one complaint where the product was contracted electronically, the entity provided a breakdown of the general and particular terms and conditions, which were included in the purchase order for fixed income products. The terms indicated that the product had different types of risk and definitions of market risk, currency risk, credit risk, liquidity risk, risk of early redemption, global accounts risk, the risk of subordination and prioritisation of investors in the event of bankruptcy, deferral and loss of principal, etc. were provided. It was clearly stated that these risks could cause market prices to differ from the acquisition price and recommended reading the issuer's prospectus, which the entity would provide at the client's request and the client was warned that the product could incur gains or losses. Further, with the traceability record of the purchase order, the entity demonstrated that before issuing the order, the complainant had to access the information contained therein (R/467/2017).

In contrast, entities acted incorrectly in the complaints described below:

– The entity provided a product file, which, in addition to not being signed by the client, omitted relevant information, such as information on the risks inherent to the investment (R/408/2017).

– The only documentation on the securities included in the complaint proceedings was provided by the client, consisting of information contained in the

purchase order and in an *ad hoc* document prepared by the entity, although this documentation failed to include most of the risks relating to the issuance (R/425/2017 and R/33/2018).

– The entity did not provide any supporting documents showing that it had informed the complainant of the characteristics and risks of the securities, even though the contract order stated that the client had received information about the product or, where appropriate, that the product had been contracted on the secondary market (R/618/2017, R/15/2018 and R/40/2018).

– The entity did not provide the client with information about the product, prior to contracting, that would allow them to know that a planned maturity date can be modified under certain circumstances or due to the nature of the product itself. The entity provided the client with a product file setting down the terms of a private bond placement that was not listed on the stock market, although this document did not indicate in any way whatsoever the possibility that the established maturity date could change (R/391/2018).

✓ *Structured instruments where profitability and return on invested capital are linked to the performance of one or more shares or credit derivatives*

The contract order or the contract for a structured product itself (structured bonds or notes or financial contracts) usually set down the characteristics and general terms and conditions of the instrument, describe the risks inherent to them and contain a warning of the maximum loss that can be incurred in the investment. Therefore, attaching these documents to the complaint proceedings, duly signed by the client, demonstrates compliance with the entity's obligation to provide the client with prior information (R/173/2018, R/256/2018, R/257/2018, R/258/2018, R/284/2018, R/300/2018, R/312/2018, R/359/2018, R/377/2018 and R/429/2018). In some complaints, in addition to signing the order/contract with the aforementioned information, additional documents signed by the complainant were attached, consisting of:

– Pre-contractual information on the characteristics and nature of structured bonds; an explanatory appendix on the rating and a summary sheet providing all relevant information under the headings "Description", "Features", "Main dates", "Coupon payments and redemption calendar", "Redemption" and "Product risks" (R/475/2017).

– A pre-contractual document containing information on the duration of the contract, fees and expenses, a definition of the product and its possible remuneration, an explanation of the differences between the product and an ordinary bank deposit, an analysis of the potential scenarios and a warning that it could not be redeemed in advance by the contract holder, as well as the possibility of total or partial losses on the unsecured tranche (R/333/2018 and R/480/2018).

– An advertising communication for a financial contract containing the main details of the nature and features of the transaction (R/407/2018).

However, there were complaints in which entities engaged in bad practice. In one case, the entity submitted a file containing handwritten pre-contractual

information that had been signed and dated, two days after the structured product was contracted. Therefore, it was considered that the entity had not demonstrated that the information had been provided prior to the completion of the transaction. In addition, although entities have some scope to establish the descriptions they use in the products they design and market, this does not mean they should not reflect the nature and features of the products. The description of a structured product as a *Term deposit opening agreement* by a respondent entity was deemed to be incorrect as a deposit is a banking product in which the principal deposited is always recovered on maturity, plus the agreed interest. In contrast, the structured product to which this description was assigned did not comply with the terms because significant losses could be incurred on the principal invested (R/189/2018).

✓ *Contracts for differences*

In general, for CFDs, as for the products analysed above, the obligations assumed by the parties are established in the initial contract, so all the relevant information should be included not only in relation to how the financial instrument works (e.g. cases where positions can be closed unilaterally), but also in relation to the most important risks inherent to the product, with a focus on leverage. Therefore, to adequately comply with this obligation, entities must be able to prove that the client has been informed about these issues.

Information requirements for this type of product have been reinforced recently through CNMV communications and circulars and ESMA decisions (see section "Features of binary options and financial contracts for differences."

In the complaints resolved in 2018, CFDs were usually performed using electronic channels, so in the complaint report the Complaints Service assessed whether the entities had met their prior information obligations, either through their website (checking whether the regulatory requirements for using this method of providing information to clients had been respected) or on a durable medium provided in the contracting process, assessing the traceability of the order in the terms indicated in the section "Electronic transactions".

Entities were deemed to have acted correctly in the following complaints:

– Several complainants had requested, through the entity's website, to open an account to trade in CFDs after filling out an online form.

  Prior to opening the account, the complainants confirmed that: i) they had read and understood the nature and risks of trading with CFDs that had been provided to them online through the entity's website, the risk warning, the order execution policy and the summary of conflicts of interest; and ii) they had read, understood and accepted the terms set down in these documents.

  In addition, the complainants had indicated that they understood the contract they had signed with the entity and gave their consent to the information on the product they planned to contract being made available to them through the entity's website. They also confirmed that they had read, understood and accepted the terms of the documents provided.

The contractual information was provided to the complainants not only when the account was opened, but also in the welcome email attached to the complaint proceedings.

Specifically, based on the documents attached to the proceedings, it could be demonstrated that prior to opening the CFD trading account the entity had adequately informed the client about the terms of the contract, the order execution policy and other mandatory issues. Further, the entity had satisfactorily complied with the established regulatory requirement to provide the documents to the client using the same channel used to open the account, i.e., its website (R/97/2018, R/98/2018, R/244/2018 and R/444/2018).

– Before opening the online CFD trading account, the complainant had signed a framework agreement which they accepted in full and which contained information on the characteristics and risks of the financial instruments in question (R/379/2018).

However, complaints were also resolved where entities had committed bad practice, as set out below:

– The entity submitted a copy of several standard documents (including terms and conditions and the risk warning relating to some CFDs) that were not signed by the complainant and, therefore, did not constitute proof of delivery. In addition, the entity had attached:

  - A telephone conversation warning of the significant risk of losses and the leverage of CFDs, indicating that the investment might not be suitable for all investors.

  - A document signed by the client which: i) warned the client that the CNMV considered that due to their complexity and risk these products were not suitable for retail clients; ii) informed the client of the cost they would incur if they decided to close the position immediately after the contract had been formalised; and iii) advised the client that, due to leverage, losses could be greater than the amount initially paid out to acquire the product. Further, a handwritten declaration from client was included stating that the product was complex and the CNMV considered that it was not an appropriate investment option for the client. This information was required pursuant to CNMV communication of 21 March 2017, and the contract was formalised while this communication was in force.[93]

  However, the Complaints Service considered that in the telephone conversation and the document signed by the complainant full information was not provided about the CFDs and neither was one of the key risks of the investment, leverage, explained in detail (R/545/2017).

– The entity included in its pleadings some images allegedly showing information on the risks inherent to CFDs that the complainant should have viewed

93 CNMV communication issued on 21 March 2017: *Measures on the marketing of CFDs and other speculative products to retail investors*.

when requesting to open a trading account for these products. However, the entity could not prove which information had been made available to the client at the time the product was contracted.

The entity also provided an email that had been sent to the complainant with a warning that CFDs were complex, leveraged products with a high level of risk and the possibility of incurring losses in excess of the funds deposited. The Complaints Service considered that this information was incomplete and did not explain in sufficient detail the meaning and implications of leverage (one of the most significant risks in this type of investment).

In this case, the complainant also alleged that the entity had not complied with the requirements set forth in the CNMV communication of 21 March 2017.[94] However, the client should have been informed that this was not applicable to their investment as their last investment in CFDs had occurred nine months before this communication was published (R/149/2018).

✓ *Preferred shares*

In a complaint resolved in 2018, it was not reliably proved that the entity had provided the client, prior to contracting the preferred shares, a summary or any other information document describing all the characteristics and risks of these securities. The entity provided:

– A copy of the order to acquire the preferred shares signed by the client, with a statement that did not clarify whether the respondent entity had submitted the information documents to the complainant.

– A copy of the issuance summary, which did not include the date of delivery of the document or any evidence that it had been submitted to the complainant (R/470/2018).

➢ **Non-complex products**

The complaints resolved in 2018 relating to prior information provided to the client for non-complex products referred to:

✓ *Common shares of companies admitted to trading on regulated markets*

In general, in the complaints proceedings entities provided evidence that they had submitted the corresponding information prior to acquiring listed shares, keeping a copy, duly signed by the client, of the summary of the securities note for the share issuance (R/123/2018, R/169/2018 and R/338/2018), the document containing pre-contractual information or the information document describing the nature and risks inherent to the shares (R/623/2017, R/214/2018, R/293/2018 and R/415/2018) or both (R/320/2018).

94 CNMV communication issued on 21 March 2017: *Measures on the marketing of CFDs and other speculative products to retail investors*.

However, bad practices were identified in the following cases:

– The entity sent to the Complaints Service signed copies of documents that contained a general description of how shares work, their inherent risks, the different types of orders, valuation and profitability, as well as applicable fees and expenses, claiming that these were part of the pre-contractual documentation submitted. However, the documents were not dated nor did they contain any other reference proving that they had been submitted to the client prior to the share purchases made (R/616/2017).

– The entity failed to prove that it had provided the client with information on some shares acquired online, other than a warning that it was essential that the client read the issuance prospectus and summary. The Complaints Service considered that this warning was insufficient to comply with the obligation to inform clients of the characteristics and risks of the product (R/87/2018).

– In one complaint, the entity only provided the purchase order for the shares. In the order, the section on risk information indicated that the risks inherent to the shares were those described in the pre-contractual information sheet and that in an extremely adverse situation, the client could suffer a total loss on their investment. Since the entity did not prove that it had submitted this information to the complainant, the information included in the order was considered insufficient to comply with the obligation to provide the client with a description of the characteristics and risks of the shares (R/204/2018).

– Entities did not attach to the complaints proceedings any proof that they had informed the complainant of the characteristics and risks of the shares acquired, other than stating in the contract order that this information had been provided, or that the contract had been carried out on secondary market (considered by some entities as exempting them from complying with the obligation to provide their clients with prior information) (R/10/2018, R/158/2018, R/216/2018, R/192/2018, R/214/2018, R/231/2018 and R/338/2018).

✓ *Bonds admitted to trading that do not incorporate an embedded derivative*

In a complaint resolved in 2018 relating to simple bonds admitted to trading on the AIAF market through the SEND platform, the Complaints Service considered that the entity had provided the complainant with correct and sufficient prior information. The entity provided a copy of the marketing prospectus for the bonds, duly signed by the client. This document, which consisted of two pages, set down the basic characteristics of the issuance: type of product, date of issue, maturity date, quarterly coupon payment, referenced market (SEND), issuance rating, classification of the product as non-complex, IRR, taxation, inherent risks and information on the base prospectus of the securities registered with the CNMV (R/331/2018).

➢ Compliance with commitments

Entities sometimes propose to their clients offers that are subject to compliance with certain conditions. In these cases, the entities must duly inform the client of the conditions they must comply with and clearly reflect them in the contractual

documentation of the offer for it be accepted by the client. These conditions will be binding for both parties if the offer is accepted.

Complaints referring to compliance with marketing commitments mainly involved securities delivered as a result of the client's membership of a loyalty programme.

The parties agreed to open a securities account for the custody and management of the securities that the client would receive as a result of their membership of a loyalty programme.

The account would be open from the date the client received the first securities as part of the aforementioned programme. Therefore, the entity would inform the client that the account had been opened and provide the account number immediately after the first delivery of securities.

During the complaint proceedings, the entity reported the date on which the securities account had been opened; however, it did not demonstrate that it had informed the client that the account had been opened, or of the account number, as agreed by the two parties. This was considered an incorrect action by the respondent entity (R/582/2017).

Summary of complaints relating to information prior to the purchase of securities EXHIBIT 3

- Entities must provide their clients (including potential clients), on a durable medium, with a **general description of the nature and risks of the financial instruments** they intend to contract, paying particular attention to the client's classification as a retail or professional client. In addition, they must be able to prove that they have fulfilled this obligation.

  The description must include an explanation of the **features of the type of financial instrument and its inherent risks,** which must be sufficiently detailed so as to allow the client to make informed investment decisions.

  Where justified by the features of the financial instrument, special emphasis must be given to the concept of leverage, whereby a simple reference to its existence is not considered sufficient.

- Regardless of the type of document used to provide the information (*ad hoc* document, inclusion in the purchase order, contract, etc.), it must be guaranteed that with the documentation provided the client is able to understand the characteristics and risks assumed with the purchase of the product.

- For shares and bonds, compliance with this obligation is usually accredited by the entity by keeping a copy of the **prospectus summary** or relevant **information document** signed by the client. In the case of structured products, the **contractual documentation signed by the client** usually includes complete information on the characteristics and risks of the product.

- The criterion of the Complaints Service is **not to accept** (as a method of demonstrating compliance with this obligation) **clauses incorporated into**

purchase orders through which the client acknowledges receipt of information on the product to be acquired, if the entity does not also provide proof that this information has been submitted. Ultimately, as indicated for the case of CIS, the Complaints Services considers that this does not reliably guarantee that the client has received the necessary documentation.

– On occasion, **financial instruments are acquired with financing extended by the entity** to the client for this purpose. In cases where it has been demonstrated that the investment has been financed by the entity, the criterion applied by the Complaints Service is that a causal relationship exists between the contracting of both products or services (investment and financing). Therefore, the information requirements for characteristics and risks must be assessed in terms of the transaction as a whole.

– Some securities are subject to Order ECC/2316/2015, which establishes a standardised information and classification system for financial products. In these cases, the general description of the nature and risks of the securities delivered to clients or potential clients before they acquire the securities must include **a risk indicator and, where appropriate, liquidity and complexity warnings,** with specific requirements relating to how they are formed and represented.

– For **electronic** transactions, entities may provide the mandatory prior information through their website, provided that compliance with all regulatory requirements can be demonstrated. The information can also be provided during the electronic contracting process, although in this case a system must be configured that allows the entity to prove that the investor has had access to the information before acquiring the product in question. In the event that they offer **commercial promotions,** entities must duly inform clients of the conditions that they must meet in order to benefit from them and clearly reflect these conditions in the contractual documentation of the offer.

4.3.2 Collective investment schemes (CIS)

➢ Spanish CIS. Submission of information documents before contracting the products

In 2011, with the aim of increasing investor protection with regard to their information rights, a new "Key Investor Information Document" (KIID) was introduced to replace the previous simplified prospectus. This document incorporated two substantial changes which helped investors reach informed investment decisions.

– Full harmonisation of the document, which made harmonised funds and companies from any Member State perfectly comparable.

– Presentation of the information in a short format that is easily understandable for the investor and only contains the key information.

The KIID is deemed to be pre-contractual information.

At European level, this document was included in Directive 2009/65/EC[95] and its form and content were described in detail in Regulation (EU) No. 583/2010.[96] Spanish rules were adapted to the European regulation by amending CIS legislation in 2011 and with the approval of a new regulation for CIS in 2012 and CNMV Circular 2/2013.[97]

With regard to the information to be submitted to investors, subscribers must be provided with the latest half-yearly report and the KIID free of charge and, on request, the prospectus and the latest published annual and quarterly reports.[98]

Intermediaries selling or advising clients are subject to compliance with the obligations to provide the above-mentioned prior information on CIS.[99]

It is important to note that the entity may not replace these documents with information that may appear in the advertising of the CIS or provide it to the client orally or by means of a summary.

The entity must demonstrate compliance with the obligation by keeping, on a durable medium, a copy of the information signed by the unitholder(s)/shareholder(s), while they hold this status.[100] For these purposes, a durable medium is understood as any instrument that allows the investor to store the information personally addressed to them so that it may be easily accessed during a period of time that is appropriate for the purposes of such information and which allows its reproduction without changes.[101]

In order to provide evidence that the entity has delivered the prior information to the investor, it is not sufficient for the framework agreement for CIS transactions to provide that the KIID and the corresponding periodic information will be delivered prior to the purchase or for the CIS subscription order or client statement to mention that said documentation was delivered beforehand. The entity must provide evidence that it has been delivered.

In some complaints resolved in 2018, the delivery of prior information was deemed to have been correctly accredited by the respondent entity, as follows:

– Entities provided the KIID and the latest half-yearly report and the client's signature was recorded on each of these documents (R/206/2018, R/279/2018,

95 Directive 2009/65/EC of the European Parliament and of the Council, of 13 July 2009, which coordinates the legal, regulatory and administrative provisions on certain undertakings for collective investment in transferable securities (UCITS).

96 Commission Regulation (EU) No 583/2010, of 1 July 2010, implementing Directive 2009/65/EC of the European Parliament and of the Council as regards key investor information and conditions to be met when providing key investor information or the prospectus in a durable medium other than paper or by means of a website.

97 CNMV Circular 2/2013, of 9 May, on the key investor information document and the prospectus on collective investment schemes.

98 Article 18.1 of Law 35/2003, of 4 November, on Collective Investment Schemes.

99 Article 18.1-bis of Law 35/2003, of 4 November, on Collective Investment Schemes.

100 Rule Five of CNMV Circular 4/2008, of 11 September, on the content of the quarterly, half-yearly and annual reports of collective investment schemes and their position statements.

101 Article 18.1 of Law 35/2003, of 4 November, on Collective Investment Schemes.

R/292/2018, R/348/2018, R/377/2018, R/429/2018, R/490/2018, R/499/2018 and R/514/2018).

– Entities provided paginated documents that included the KIID and latest half-yearly report, which included the client's signature (R/20/2018, R/36/2018 and R/354/2018).

In contrast, it was considered that the correct documents had not been delivered to the complainant in the following complaints:

– Entities delivered a half-yearly report that was not the latest one published but an earlier one (R/587/2017, R/592/2017 and R/276/2018).

– Entities provided a signed copy of only some of the documents to be delivered (R/471/2017, R/592/2017 and R/340/2018) or did not provide a signed copy of any of them (R/612/2017, R/620/2017, R/116/2018, R/314/2018, R/363/2018 and R/457/2018).

Lastly, the relationship between CIS information requirements and other prior information obligations is established as follows:

– CIS units and shares subject to Regulation (EU) No 583/2010 or CNMV Circular 2/2013 are excluded from the scope of the standardised information and classification system for financial products.[102]

– With regard to the European Regulation on packaged retail investment products and insurance-based investment products (PRIIPS), the following considerations should be made:[103]

  • Spanish harmonised CIS or UCITS (authorised pursuant to Directive 2009/65/EC) will be exempt from the obligations established in the regulation on PRIIPs until 31 December 2019.[104]

  • Spanish non-harmonised or non-UCITS CIS (not authorised pursuant to Directive 2009/65/EC) will be exempt from the obligations of the regulation governing PRIIPs until 31 December 2019, provided that the CIS publishes the KIID, as regulated by Circular 2/2013.[105]

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102 Article 2.2.d) of Order ECC/2316/2015, of 4 November, on the duty of information and classification of financial products.

103 Document query 2.5 *Questions and answers on the application of Regulation 1286/2014 on key information documents relating to packaged retail investment products and insurance-based investment products (PRIIPs)*; version 13 July 2018.

104 Article 32.1 of Regulation (EU) No. 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.

105 Article 32.2 of Regulation (EU) No. 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.

➢ Spanish CIS. Exceptions to the submission of information documents before contracting the products

Even where the aforementioned documents must be submitted before contracting the CIS, it should be noted that there are cases in which it is not mandatory or even possible to submit all or some of these documents:

✓ *Additional subscriptions on the same CIS*

The aim of providing prior information is to ensure that the unitholder is aware of product's features and risks. Therefore, it would not be necessary in the case of additional subscriptions in the same CIS,[106] as the client will already have received such documents in the first purchase. Further, any updates or changes will be reported in subsequent documents.

✓ *Acquisition of listed investment funds or index listed SICAVs (open-ended investment undertakings)*

There are certain products contracted in the secondary market (such as units in listed investment funds or shares in index listed SICAVs) that are legally exempt from compliance with certain prior information obligations. The acquisition of these products on the stock markets exempts the entity from the obligation to deliver the KIID and latest half-yearly report free of charge. However, on request, the entity must provide the unitholder with both the prospectus and the latest published annual and quarterly reports.[107]

✓ *CIS contracted before the preparation of the first half-yearly report*

Failure to deliver the latest half-yearly report would be justified if the client had contracted a CIS that had recently been registered with the CNMV and prior to the obligation to prepare its first half-yearly report. However, even if the half-yearly report cannot be delivered for this reason, the entity's obligation to provide evidence that the KIID has been delivered remains intact (R/523/2017, R/41/2018 and R/506/2018).

✓ *Funds with a specific target return at maturity (guaranteed or not)*

The entity may not have to deliver the latest half-yearly report in the contraction of guaranteed equity funds where the previous guarantee has expired and new guarantee must be established, provided that the product was contracted prior to the publication of a new half-yearly report containing the updated information. As evidence of this exceptional circumstance, one entity submitted a document in the complaint proceedings, signed by the client, in which it warned that it would not be able to

106 Rule Five of CNMV Circular 4/2008, of 11 September, on the content of the quarterly, half-yearly and annual reports of collective investment schemes and their position statements.

107 Article 79.6 of Royal Decree 1082/2012, of 13 July, approving the implementing regulations for Law 35/2003, of 4 November, on Collective Investment Schemes.

deliver the latest half-yearly report because it contained information relating to the previous guarantee that differed from the information relating to the client's product. However, as mentioned above, the delivery of the KIID must be accredited by means of a copy signed by the complainant (R/122/2018).

Further, CIS legislation was recently modified to include exemption from prior delivery of the latest half-yearly report in the event of renewals of funds with a specific return on investment at maturity, guaranteed or otherwise. This is a recent amendment, which came into force on 30 December 2018.[108]

➢ Foreign CIS. Submission of information documents before contracting the products

In general, foreign CIS are not supervised by the CNMV, but by the competent body in their respective home countries. However, the CNMV is responsible for certain matters such as supervising the actions of providers of investment services in Spain in relation to the foreign CIS authorised by the CNMV to be marketed in Spain. Among foreign CIS, *harmonised* CIS are those that are subject to the directive[109] on these undertakings that EU Member States have had to transpose into their legal systems. In contrast, *non-harmonised* foreign CIS would fall outside the scope of the directive.

In this regard, and as established under current legislation,[110] the distributors in Spain of harmonised foreign CIS registered in the corresponding CNMV register are required to submit to each unitholder or shareholder, prior to subscription of the units or shares, a copy of the simplified prospectus or the document replacing it in the home state of the CIS and a copy of the latest published financial report. In addition, a copy of the Annual Report on the intended types of marketing to be conducted in Spain must be submitted using the form published on the CNMV website. The reference in this legislation made to the simplified prospectus should be understood as referring to the KIID, which, as indicated on the CNMV website,[111] must be translated into Spanish.

This delivery is mandatory and cannot be waived by the unitholder or shareholder. In addition, an updated copy of the other official documentation of the undertaking must be provided upon request. In any event, at least one of the distributors must make available by electronic means all these documents, as well as the net asset values corresponding to the shares or units marketed in Spain.

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108 Amendment of Article 18.1 of Law 35/2003, of 4 November, on Collective Investment Schemes, through Law 11/2018, of 28 December, amending the Code of Commerce, the Consolidated Text of the Corporate Enterprises Act approved by Legislature Royal Decree 1/2010, of 2 July, and Law 22/2015, of 20 July, on accounts auditing, regarding non-financial information and diversity.

109 Directive 2009/65/EC of the European Parliament and of the Council, of 13 July 2009, which coordinates the legal, regulatory and administrative provisions on certain undertakings for collective investment in transferable securities.

110 Rule Two, section 2, of CNMV Circular 2/2011, of 9 June, on information on foreign collective investment schemes registered in the CNMV's registries.

111 Spanish provisions on UCITS notification procedures.

Complaints were received in 2018 in which the Complaints Service analysed whether entities marketing harmonised foreign CIS in Spain had delivered the required prior information before the products were contracted. In this case, evidence of such a delivery was not provided (R/425/2018).

In complaint R/435/2018, the complainant stated that on attempting to transfer shares from one SICAV to another, they were informed by the entity that deferred taxation on transfers of CIS could not be applied as the source CIS did not have a minimum of 500 shareholders. The complainant claimed not to have been informed of this condition prior to acquiring the source CIS. In this case, it was concluded that although there was no requirement to include this information in the prior information delivered by the entity to the shareholder, it was good practice to mention the possibility that this circumstance could arise on the entity's website or in the CIS subscription process, given the major consequences for the investor of not implementing the tax deferral mechanism included in regulations governing the transfer of CIS.

The distributors of non-harmonised foreign CIS must comply with the aforementioned obligations to provide information prior to subscription (delivery of the information document and the latest published financial report) with the exception of the Annual Report on Marketing, which is replaced by the specific conditions applied by the distributor.[112] In particular, if marketed to non-professional investors, the authorised intermediary must deliver, free of charge, to the shareholders or unitholders of the foreign CIS that are resident in Spain the prospectus, KIID or a similar document together with the annual and half-yearly reports, as well as the fund management regulations or, as the case may be, the articles of association of the company. These documents must be provided translated into Spanish or another language admitted by the CNMV.[113]

➢ Transfers between CISs

As indicated in previous sections, the information documents on the features and risks of the CIS must always be delivered prior to their first subscription, even if this takes place as a result of a transfer. In the absence of specific provisions governing the transfers of investments between CIS or, as the case may be, between compartments of one single CIS, such transfers are governed by the general legislation regulating the subscription and redemption of units in investment funds, as well as that relating to the acquisition and disposal of shares in investment companies.[114]

In order to initiate the transfer, the unitholder or shareholder must contact, as appropriate, the target management company, distributor or investment company, which they must instruct to perform the necessary procedures.

In some complaints relating to transfers, the target entity did not provide evidence of delivery of the KIID or the latest published half-yearly report of the fund to which the investment in the source fund had been requested to be transferred (R/405/2017).

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112 Rule Three, section 4, of CNMV Circular 2/2011, of 9 June, on information on foreign collective investment schemes registered in the CNMV's registries.

113 Article 15-quinquies, section 6 of Law 35/2003, of 4 November, on Collective Investment Schemes.

114 Article 28.1 of Law 35/2003, of 4 November, on Collective Investment Schemes.

➢ Marketing commitments

Subscribing to CIS may entail certain advantages or promotions that make the acquisition more attractive. In these cases, in addition to the mandatory information on the product's features and risk, the entity must provide full and clear information on the terms and conditions of the commercial offer.

Some investors disagree with the loss of commercial promotions or the application of penalties after deciding to transfer the units of their investment funds to other products. It is therefore necessary to analyse in each case the commercial proposal agreed between the parties and the events that caused the benefits of the promotion to be revoked.

In relation to commercial promotions, the Complaints Service considered that entities had acted correctly in the following cases:

– The complainant claimed to be a beneficiary of a commercial promotion but the entity denied it, and no documentary evidence supporting the claims were provided (R/461/2017).

– The signed contract in relation to the marketing campaign established terms and conditions that the complainant did not meet.

  According to the signed contract, clients making contributions to investment funds subject to a CIS portfolio management service during a specified period of time would be entitled to receive an iPad. The client made a contribution 16 days before the start of the promotion period, so the terms and conditions established in the contract with regard to receiving the item were not met. Even though it had no obligation to do so, for marketing reasons, the entity gave the client an iPad of similar characteristics and even offered financial compensation for the difference in value between the item in the offer and the item delivered (R/578/2017).

However, in the context of promotions offered to clients, Complaints Service considered that some entities had not acted correctly. Formal deficiencies were detected in the completion of the documents relating to the promotion. In this case, to provide evidence of the terms and conditions of the promotion, the entity submitted a document that established the requirement to subscribe to and maintain certain investment funds to generate a specific return on a deposit. The document was signed only by one of the holders of the investment, so a formal deficiency was considered to exist (R/612/2017 and R/620/2017).

Summary of complaints relating to information prior to the purchase of CIS EXHIBIT 4

– Sufficiently in advance of subscribing the units or shares, subscribers must be provided with the **latest half-yearly report and the key investor information document (KIID)** free of charge and, on request, the prospectus and the latest published annual and quarterly reports.

  The entity may not replace these documents with information that may appear in the advertising of the CIS or provide it to the client orally or by means of a summary.

– However, there are cases that are exempt from this obligation, such as:

  • For **additional subscriptions to units or shares in the same CIS**, it is not necessary to resubmit these documents since the obligation to deliver the information is only required for the first subscription.

  • The acquisition on the stock exchange of **units of listed investment funds or shares of index listed SICAVs** will be exempt from the obligation to deliver the KIID and latest half-yearly report free of charge. However, on request, the entity must provide the prospectus and the latest annual and quarterly published reports.

  • There is no obligation to deliver the latest half-yearly report if the **CIS is acquired before the first half-yearly report has been issued**, or in **fund renewals with a specific target return on maturity, guaranteed or otherwise**.

  • In the case of subscriptions arising from transfers of shares or units from another CIS, the target entity must provide the same documentation as for the target CIS.

– The entity will demonstrate that the information has been delivered by keeping a copy, in a durable medium, of the **documentation signed by the unitholder or shareholder**, while they hold said status. The declaration signed by the client stating that they have received the mandatory documentation is not sufficient.

– In cases in which the acquisition of the CIS involves certain advantages or **promotions**, the entity must provide, in addition to the mandatory information on the product's features and risks, full and clear information on the terms and conditions of the commercial offer.

4.3.3 Discretionary portfolio management

In general, portfolio management consists of the client authorising the entity, through a signed contract and within the investment parameters established for the client and in line with their investment profile, to invest the assets under management in financial instruments, as described in the section "Investment decisions in the area of portfolio management".

Regarding the prior information on financial instruments mentioned above, it should be noted that the purpose of this information is to allow investors to make informed decisions about investments and divestments, although in the case of discretionary portfolio management these decisions are made by the manager.

Therefore, signing the portfolio management contract allows the entity to make the investments it deems to be most suitable, within the scope of the portfolio under management, without having to obtain instructions from the client or submit any prior communication. Accordingly, in several complaints resolved in 2018, the Complaints Service explained to the complainant that the entity was not required to

inform the client of the risks of each of the investments made by the manager (R/492/2017, R/608/2017 and R/8/2018).

4.4 Subsequent information

4.4.1 Securities

The information requirements of entities that provide investment services do not lapse once the product has been purchased or marketed.

Accordingly, following the processing and execution of a securities purchase order, investors receive confirmation of the execution with information on the conditions under which it was carried out (amount, date, time, settlement conditions, etc.).

In addition, entities must provide clients with periodic information so that they may monitor the performance of their investments.

Furthermore, while the contractual relationship between both parties exists, firms providing investment services are required to inform their clients of any events that may affect their investments in their role as depositories or managers of these investments.

All the information that entities must provide to their clients, resulting from legislative provisions or contractual obligations and that resulting from specific requests from clients, must be clear, comprehensive and appropriate.

➢ Information on the execution of orders

When an entity that provides investment services executes an order on behalf of a client that is not related to the portfolio management service, it must implement the following measures:

– It must provide the client immediately and on a durable medium the key information about the execution of the order.

– Retail clients must be sent a notice confirming the execution of the order as soon as possible and no later than the first business day following the execution of the order or, when the company receives confirmation from a third party, on receipt of the confirmation.[115]

  This notice must contain, as applicable:

  • Identification of the reporting company.

  • Name or other form of address of the client.

  • Date and time of execution.

115 Article 68 of Royal Decree 217/2008, of 15 February, on the legal regime of investment firms and other entities that provide investment services.

- Type of order.
- Identification of the execution centre and the financial instrument.
- Buy or sell indicator or the nature of the order (if it is not a purchase or sale).
- Volume, unit price and the total consideration. With regard to the volume, when the order is executed in tranches, information may be provided about the price of each tranche or about the average price. If information on the average price is provided, information must be given on the price of each tranche if expressly requested by the client.
- The total sum of the fees and expenses charged including, whenever requested by the client, a detailed breakdown of these.
- The client's responsibilities in relation to the settlement of the transaction, including the delivery or payment period and appropriate account information, when they have not been previously delivered.
- When the client counterparty is either the entity that provides the investment service or another person in its group or another client company, this must be reported, except when the order is executed through a trading system that allows anonymous trading.

In the complaints resolved in 2018, cases of bad practice relating to insufficient or inappropriate information provided by entities in the execution of orders on behalf of clients were detected:

– One complainant had acquired bonds bearing a fixed interest rate, for which limit orders were issued, setting the maximum price the client was willing to pay. However, the complainant claimed that the purchase price had been altered in the execution of the orders. The complainant had issued two limit purchase orders: one with an exchange limit of 49.92 and another of 49.93. Even though the entity executed the purchase orders at a price of 49.25 (a trading price below the limit established by the complainant), the settlement price of the trade was €50,183.33. The complainant disagreed with this on the understanding that the trade had been executed at a price that was higher than the price established in the orders.

  The Complaints Service explained to the complainant in its report that in general these types of issuances are trade on ex-coupon markets, i.e., excluding the accrued coupon. Therefore, the bond is settled upon acquisition by adding the interest that would have been accrued by the bond seller up until the date of sale. In the bond settlement statement the entity added to the ex-coupon purchase price (49.25% of €49,250) the accrued coupon for the amount of €933.33 (6% of €100,000 × 56 days ÷ 360), which increased the settlement to €50,183.33.

  The Complaints Service concluded that although the entity had carried out the settlement of the order correctly, the information provided in the securities statement did not show detailed information of the ex-coupon price of the accrued coupon. If clear information about these two concepts had been included,

the entity could have avoided the confusion caused to the complainant with regard to information contained in the statement (R/467/2017).

– In other cases, there were discrepancies between the information provided in the settlement of some trades and other information provided by the entity.

  The information the entity provided the complainant on the settlement of sales of pre-emptive subscription rights was inconsistent with the tax information submitted, as different amounts settled in the same transaction were noted and other transactions were omitted. Therefore, the Complaints Service considered that the entity had not been sufficiently diligent in informing the client about these transactions (R/134/2018).

  In another case, the settlement statement for the sale of shares listed in US dollars did not coincide with the information available on the entity's website about the same transaction. According to the settlement statement sent by the entity to the client, the client had suffered a loss in the transaction. However, the client attached two screenshots from the entity's website to the complaint proceedings. One from the day after the statement date and another more than 15 days after the settlement statement, in which the entity informed the client of gains on the transaction. Although these screenshots contained a warning that the exchange rate used to calculate the sale price was informative and did not necessarily correspond to the rate used in the settlement, the Complaints Service considered that the information provided on the entity's website was clearly misleading, especially considering that this provisional information had been provided when the transaction had already been carried out and the client had been informed of the losses incurred. Consequently, it was considered that the information provided by the entity through its website was not appropriate (R/228/2018).

➢ Mandatory periodic information on the status of clients' financial instruments or funds

✓ *Frequency and method of delivery of periodic information*

When entities that provide investment services hold their clients' financial instruments or funds, they must submit to their clients, on a durable medium and on an annual basis, a statement of the status of the instruments or funds, except when such information has already been provided to them in another periodic statement.[116]

Therefore, entities must send their clients information on their financial instruments at least once a year. However, it may be agreed by the parties that information will be sent more regularly (monthly, quarterly, etc.). In this case, the contract for the provision of the custody and administration service for financial instruments

116 Article 70 of Royal Decree 217/2008, of 15 February, on the legal regime of investment firms and other entities that provide investment services.

must establish the frequency with which the entity must make available and send information to its clients.[117]

A durable medium is understood as any format that allows the client to store the information personally addressed to them so that it may be easily recovered during a period of time that is appropriate for the purposes of such information and which allows its reproduction without changes.[118]

Entities may provide the information on a medium other than paper, but always using a medium that is appropriate to the context in which the activity is performed and ensuring that the person to whom the information should be provided expressly chooses to receive the information on a medium other than paper, when given the option to choose between several different formats.[119]

Regulations do not require that this information be sent by registered mail or with an acknowledgement of receipt. Therefore, it is sufficient that the communication be delivered by ordinary mail or by any alternative means agreed by the parties.

In relation to the above, one complainant claimed not to have received any information about the performance of their investment. However, the entity provided a copy of the different documents that it had sent to the client, which included the monthly information statement containing a valuation of each of the contracted products. The Complaints Service considered that the documentation provided by the entity was sufficient to prove that the information had been sent, and consequently, that it had complied with its information obligations (R/561/2017).

✓ *Content of periodic information*

The content of the periodic information sent to clients should include:[120]

i) Information on all financial instruments and funds held by the entity on behalf of the client at the end of the period to which the statement refers. When the client portfolio includes income from one or more unsettled transactions, the trade date or the settlement date can be used as a reference, provided that the same date is used in all the information of this type appearing on the statement.

ii) Where appropriate, for securities financing transactions where the client's financial instruments or funds have been used, the gains accrued in the client's

117 Article 5 of Order EHA/1665/2010, of 11 June, implementing Articles 71 and 76 of Royal Decree 217/2008, of 15 February, on the legal regime of investment firms and other entities that provide investment services, in regard to fees and standard contracts, and Rule Seven, section 1, of CNMV Circular 7/2011, of 12 December, on the fee prospectus and the content of standard contracts.

118 Article 2 of Royal Decree 217/2008, of 15 February, on the legal regime of investment firms and other entities that provide investment services.

119 Article 3.1 of Royal Decree 217/2008, of 15 February, on the legal regime of investment firms and other entities that provide investment services.

120 Article 70 of Royal Decree 217/2008, of 15 February, on the legal regime of investment firms and other entities that provide investment services.

favour for participating in the financing transaction and the corresponding accrual basis.

A valuation of the financial instruments must be provided in the statement of position. It is considered good practice for the periodic statements of securities accounts that the product is properly identified and its present value and market value stated, or failing that, a reasonable estimate of the value of the instrument at the reference date for the information, so that the client can observe the performance of the product during each period. When providing an estimated value, the entity must indicate that the estimate is for indicative purposes only.

One complainant complained about the information provided by the respondent entity with regard to the valuation of some preferred shares, which had been valued in a statement of position provided one month prior to issuing a sell order at a price that was higher than the price obtained in the sale. In this case, the Complaints Service explained that the statement of position should show the value of the preferred shares according to their trading price on the reference date of the extract; a valuation that did not necessarily have to match the quoted price of the preferred shares one month later (R/519/2018).

In another case, the complainant stated that the respondent entity had incorrectly reported the maturity date of some warrants traded on the New York Stock Exchange (NYSE) in the securities statements received. The complainant added that the maturity date of the warrants did not coincide with the date in the statements received from the entity during the entire life of the product (stating 7/10/16 when the maturity date was in fact 10/7/16). An assessment of the date format used by the entity in its statement showed that the date had been reported in US format (month/day/year) instead of in Spanish format (day/month/year), which should have been detected by the entity. The entity acknowledged the mistake made, although it proved that the error had not caused any damages for the complainant as the transaction had been settled correctly. Nonetheless, the entity offered the complainant the possibility of financial compensation, which Complaints Service rated positively (R/38/2018).

There were also complaints about differing valuations for Fagor subordinated financial contributions provided by the entity in the securities account statement, in the fee settlement statements and in the client's contract list. In this case, the Complaints Service deemed that the entity had not proved that it had provided clear information in the valuation of the product that had been sent periodically to the client or diligence in the explanations provided in this regard (R/113/2018).

➢ Specialised financial instruments that are eligible liabilities for internal recapitalisation

On 23 June 2016, the CNMV issued a communication that was also published in the form of an ESMA statement dated 2 June, in which credit institutions and investment companies were reminded of their responsibility to act in the best interests of their clients in the sale of financial instruments that are eligible liabilities for internal *recapitalisation* (bail-in-able financial instruments).

With regard to the content of the information, the communication established that companies that provide investment services had to inform investors, in a clear and simple manner, of the following aspects, among others: i) that the instruments were

not guaranteed and were subject to resolution; ii) that the impact on investors, in the event of resolution, would vary depending on the creditor's position in the resolution hierarchy; and iii) that the resolution could have an impact on the investment (total loss, conversion into ordinary shares or other instruments that absorb losses, suspension of interest payments, modification of the maturity date, etc.).

It was also established that such information should be provided to both new and existing investors and that in the latter case, distributors could include it in the periodic information sent to them.

Subsequently, 27 June 2018 saw the entry into force of Circular 1/2018,[121] which established warnings that the entities had to include in the statements of position in relation to particularly complex financial instruments that, in general, are not suitable for retail clients, and financial instruments that are eligible liabilities for bail-in tools.[122]

Entities that on the date of entry into force of the aforementioned circular held financial instruments on behalf of retail clients should, in the first periodic statement of position sent to these clients, clearly identify, where appropriate, any instruments which were not considered by the CNMV to be suitable for acquisition by retail clients due to their complexity, and those that were eligible liabilities for the bail-in tool.

Additionally, entities had to include in these statements, where applicable, the following warnings:

> *Warning:*
>
> *This statement identifies certain financial instruments that are liabilities eligible for the bail-in tool. In the event of the resolution of the issuer of said financial instruments (a process applicable when the issuer is failing or likely to fail in the near future and for reasons of public interest and financial stability, it is deemed necessary to avoid its winding up under ordinary insolvency proceedings), the products may be converted into shares or undergo a reduction in their principal, and their holders will incur the corresponding losses.*
>
> *Warning:*
>
> *As from XX/XX/XX (date of entry into force of Circular 1/2018), it is mandatory to warn, before purchasing, that the CNMV considers that certain financial instruments are not simple and may be difficult to understand and therefore, due to their complexity, they are not generally considered appropriate for purchase by retail clients. This statement identifies instruments included under said obligation this extract.*

It was mandatory to identify any such financial instruments in the periodic statements of position only once, and the warnings only affected the positions of these types of instruments held by retail clients.

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121 Sole final provision of CNMV Circular 1/2018, of 12 March, on warnings relating to financial instruments.

122 Single transitional provision of CNMV Circular 1/2018, of 12 March, on warnings relating to financial instruments.

It was not necessary to issue a warning relating to financial instruments that were also liabilities eligible for the bail-in tool when the retail clients had already been informed, in accordance with the aforementioned ESMA statement of 2 June 2016.

In relation to this issue, one complainant who had owned subordinated bonds eligible for the bail-in tool of the issuing entity since 2011, argued that the entity had failed to comply with the information transparency rules specified in ESMA's statement of 2 June 2016. In this regard, the Complaints Service issued a reminder that it was considered good practice for entities to send, as part of the periodic information, the information provided in this notice to the holders of bail-in instruments. As the documentation provided in the complaint proceedings by the respondent entity did not demonstrate that the complainant had been provided with this information, it was considered that the entity had acted incorrectly (R/138/2018).

➢ Information on events that affect securities

Entities that provide investment services must behave diligently and transparently in the interest of their clients, protecting these interests as if they were their own and, in particular, observing the rules of conduct applicable to providers of investment services.[123]

In this regard, entities must keep their clients adequately informed at all time, and all information relayed directly or indirectly (but which is highly likely to be received) is impartial, clear and not misleading. The information must meet several requirements including being accurate, sufficient and understandable to any average member of the group to whom it is directed and it must not disguise, diminish or obscure any important items, statements or warnings.[124]

In addition, the basic obligations of financial instrument administrators or depositories include performing as many actions as may be necessary to ensure that the instruments maintain their value, as well as exercising all the rights corresponding to them in accordance with legal provisions.

Therefore, entities that provide securities administration or depository services must establish in a contract the details of the main actions involved in the administration of the financial instruments in their custody and how instructions are to be received from their clients where necessary. In particular, the entity's procedure for dealing with a lack of instructions from the clients in connection with any subscription rights that might be generated by the securities in custody must be specified (and this procedure must in all cases be in the best interests of the client).[125]

Entities must provide their clients, with due diligence and promptness, information as to the procedure to be followed in corporate transactions undertaken by

123 Article 208 of Royal Decree Law 4/2015, of 23 October, which approves the Consolidated Text of the Securities Market Act.

124 Article 209 of Royal Decree Law 4/2015, of 23 October, which approves the Consolidated Text of the Securities Market Act and Article 60 of Royal Decree 217/2008, of 15 February, on the legal regime of investment firms and other entities that provide investment services.

125 Rule Eight of CNMV Circular 7/2011, of 12 December, on the fee prospectus and the content of standard contracts.

companies issuing the shares that they hold and which require specific instructions from shareholders, such as the distribution of shareholder remuneration by the issuer, with the prior option of receiving shares or cash. They must also report the consequences of the instructions not being received in due time and form by the entity providing the investment service. In any case, entities must act as agreed with the client and always in their best interest.

However, there are other transactions which, despite not requiring specific instructions from the investor, do require, in the opinion of the Complaints Service, the depository to inform the client prior to execution. This is the case of splits and reverse splits, for example. On this point, and although this matter is dealt with in detail below, the criterion of the Complaints Service has changed in 2016 as it now considers it necessary for the depository to inform its client not only when seeking instructions, but also for corporate transactions decided on by the issuer irrespective of whether or not these entail the right of the investor to make a choice.

In order to comply effectively with all these obligations, depositories must adopt measures and procedures that ensure that their clients receive information promptly, especially where they need to request instructions relating to these transactions. This information must be provided with sufficient time to allow investors to choose the option that best suits their interests. To this end, it is considered good practice for entities to establish a fast communication procedure with their clients, for instance, through online communications or SMS messages.

Corporate transactions in which the transfer of information by the entity has been the subject of a complaint include:

✓ *Splits or reverse splits*

Further developing the aforementioned point, until recently it was the criterion of the Complaints Service that the obligations of depositories of financial instruments only include informing about those transactions which, having been decided by the product's issuer, confer upon the holder the right to choose from among several possible options.

This criterion changed in 2016 when it was considered necessary to extend the obligation to include information about all corporate transactions decided on by the issuer, irrespective of whether or not these entail the right of the holder to make a choice.

The new criterion has a two-fold objective, as on the one hand, investors will be better informed about all the events that affect the securities deposited with the financial institutions, and on the other hand, entities will guarantee better service to their clients and reduce possible conflicts with them.

This new context would include, among others, splits and reverse splits. It is considered good practice for entities to inform shareholders about these types of transactions before they are performed so that the shareholder has detailed knowledge about the operation and, consequently, adopt the measures that best match their interests should they deem it appropriate (for instance buy or sell shares when the number held is not divisible into the number of shares held after the transaction). If

no instructions are received from the shareholder to this effect, the depository must comply with the obligatory mandate included in the operation by the issuer.

In some complaints resolved in 2018 it was proved that the entity had provided information about a reverse split operation (R/466/2017). In others, however, there was no record that any information had been provided in this regard (R/481/2017 and R/211/2018).

Furthermore, depositories – in their capacity as providers of the securities administration service – must report these transactions to the clients once they have been executed, informing them of the number of shares they hold following the transaction, as well as their nominal value.

Similarly, it should be indicated that both splits (increasing the number of shares by dividing the nominal value of the former shares by an equivalent amount) and reverse splits (reducing, by a specific proportion, the number of shares on the stock market by multiplying by that same proportion the price of these shares and their nominal value) are optional transactions that fall under the authority of the issuer's General Shareholders' Meeting, which must approve them.

✓ *Change of trading market for some shares*

Several complaints related to impossibility of disposing of shares due to changes in the secondary trading market. Although changing the market on which shares are listed (in the case in question from the NASDAQ index to an OTC market) is a mandatory operation that can be carried out without the need to obtain instructions from the client, the Complaints Service considered that the entity should have informed its client prior to carrying it out.

In view of the documentation provided in the proceedings, it was not demonstrated that the entity had informed the complainant, before the change in the stock market on which the shares were traded, of the consequences of this change and of the difficulties that could arise with regard to trading the shares (as occurred in this case), which would have allowed the client to take appropriate measures to allay this risk. Given this lack of information, the Complaints Service considered that the entity had not acted with diligence and transparency in the interest of its client (R/211/2018).

✓ *Scrip dividend or flexible dividend, and similar transactions*

A scrip dividend takes place in cases in which companies decide to remunerate their shareholders by issuing and delivering new shares instead of the traditional payment of a cash dividend. In these dividends, the governing bodies of the issuer agree a share capital increase charged to voluntary reserves (*bonus issue*) for a maximum nominal amount equivalent to the amount for paying the ordinary dividend in cash.

A scrip dividend is an example of an operation that requires precise instructions from the client by a specific deadline, as the depository must inform its clients of the terms and conditions and options that available to them. However, Spanish legislation does not require information about this type of transaction to be sent by

means of certified post or with an acknowledgement of receipt and therefore communications by ordinary post or by alternative means agreed between the parties will be deemed sufficient to comply with the legal requirements.

For this reason, bearing in mind the short deadlines normally granted by issuers to place instructions (particularly for the sale of rights to the issuer) and given the importance that investors should have as long as possible to give their instructions, entities must send the communications seeking instructions from their clients immediately after they become aware that the issuer has approved the shareholder remuneration programme.

It would be appropriate for these communications to be sent with sufficient margin for shareholders to receive this information before the first day of trading of the subscription rights. In the case of communications sent electronically, this would be, in any event, prior to the opening of the session on the first day of trading of the pre-emptive rights.

For this purpose, the Complaints Service considers that it would be reasonable for entities to have procedures in place which, as far as possible, automate the immediate dispatch of these communications to all clients affected by the transaction in question and which, furthermore, allow them to choose to receive them by fast communication channels, such as email.

Regarding the content of the communication, once the issuer of the shares has implemented the transaction, the depositories must inform shareholders of the type of transaction (capital increase), the rights that correspond to it, the options and terms for exercising them, the measures that the entity will adopt if the shareholders do not issue instructions and the fees and expenses applicable depending on the option chosen.

Options available to shareholders may include:

i) Accept the capital increase and hence subscribe to the new shares.

ii) Sell their subscription rights[126] on the secondary market.

iii) Sell their subscription rights to the company at a fixed price.[127]

The client must issue instructions as to their chosen option, sending these instructions to their intermediary in due time and form, for the order to be executed accordingly.

However, if the instructions include a limit order for the sale of rights on a secondary market, shareholders must take into consideration that they bear the risk that their sell instruction might not be executed if the listed price of the rights does not reach the limit price for the sale, unless other operational guidelines are established

126 Subscription rights arising in a capital increase are called *free allocation rights* (Article 306.2 of Royal Legislative Decree 1/2010, of 2 July, approving the Consolidated Text of the Corporate Enterprises Act).

127 The commitment to purchase rights will only apply to rights received by persons who are shareholders on the reference date and are recorded as shareholders in Iberclear's registers, but not to those acquired on the market.

by the entity which have been communicated to the client in due time and form. On other occasions, for market reasons, the rights may not be sold.

Further, it is possible that the rights may expire and be left with no value following the trading period.

It is advisable for entities to include warnings or provisos in the communications sent to the shareholders referring to the sale of rights, emphasising the risks involved in these transactions. These warnings may be phrases such as "whenever market circumstances permit".

It is important to note that clients commonly have more rights than necessary to subscribe a whole number of shares. In these cases, clients may order the sale of the surplus rights or may acquire more on the market so as to subscribe one or more shares.

When the shareholder issues instructions to purchase more rights, they must issue specific instructions to the intermediary as to what is to be done with them (subscribe to more shares, sell them before the trading period ends, etc.), otherwise there would be a risk that the entity does nothing and the investment could be lost due to the rights expiring. However, rights acquired in this manner may under no circumstances be sold to the issuer.

The same applies investors who were not previously shareholders that acquire the capital increase rights on the market.

In any event, it is advisable for investors to pay attention to the clear and specific information that must be provided by their intermediary about the consequences that may result from each of the instructions that the client may issue.

The communications sent by the intermediary must inform clients of the consequences if it does not receive instructions from them by the deadline established for this purpose. In general, in these types of issues, the intermediary subscribes to the corresponding shares and sells any surplus rights on the market.

It is considered good practice for the entity to warn its clients that it will not sell surplus rights if the amount obtained from the sale on the market is lower than the corresponding expenses unless it receives instructions to the contrary.

Complaints were received regarding the distribution of dividends, which, while having similar characteristics to those discussed in this section, have their own special features. In some cases, the shareholder could choose between receiving the dividend in cash or in shares of the issuing entity deriving from its treasury stock and cash. In addition, in the price-sensitive information disclosure, the issuer stated that if the shareholder did not provide any instructions, remuneration could only be in cash. In these cases, entities that provide investment services were also obliged to inform their clients of these options clearly and well in advance in the terms set forth above.

Some of the complaints resolved in 2018 addressed:

– The late or non receipt of the communication relating to the distribution of dividends informing the shareholder of the remuneration options available.

Some entities acted correctly as they issued a communication addressed to the client and well in advance (R/423/2017 and R/441/2017).

However, others were deemed to have engaged in bad practice, as even though they issued communications relating to successive flexible dividend programmes and stated that the client had access to the online banking service from a certain date (so that the communications would be received through this channel), it was not demonstrated that the entity had informed the client that all correspondence would be received through the online banking service (R/1/2018).

Another entity acted incorrectly when it affirmed that it had sent the communication to the client the day before the start of the trading period for the rights using the e-mailbox (the channel commonly used for sending communications), which the client denied. The entity provided a screenshot showing that correspondence had been sent through the e-mailbox channel but did not in any way accredit the content of the communication. Therefore, as there was no evidence that the correspondence referred to the communication in question, the Complaints Service did not consider that the entity had submitted complete and sufficient information on the rights available to the complainant. Further, even if the correspondence sent had included the communication, there was no proof that it had been sent to the complainant on the date alleged by the entity, given that the sending date for the correspondence shown in the image was the day after the start of the trading period for the rights. Analysing the documentation provided in the proceedings, it was noted that the entity also failed to provide evidence that the client had consented to being included in an electronic correspondence service for the receipt of communications, with no option of receiving the information on paper by post (R/110/2018).

– Errors in the information provided to the client.

The complainant was the holder of shares that were issued and traded abroad for which the issuer carried out a flexible dividend payment programme. It was considered that the respondent entity acted incorrectly because not only did it fail to provide the complainant with the correct information about the transaction, but the information it did provide was misleading, since it was mostly wrong. Some of the inconsistencies disclosed in the complaint proceedings included the entity's claim to have sent a request for instructions to the complainant stating that the rights would be sold if no specific instructions were received. However, the usual default practice in a capital increase is the opposite, i.e., the shares are subscribed, which is what happened. In addition, the response of the entity's CSD to the client's complaint contained inconsistent information relating to the dates and the outcome of the complaint, leading the entity to acknowledge that an error had occurred (R/584/2017).

✓ *Capital increase at par or above par (with share premium or called-up capital required)*

These corporate transactions are another example of entities' obligation to obtain specific and prompt instructions from the client in order to proceed. They must be carried out in a very specific time period. In capital increases referred to as *at par* or *above par*, shareholders have to pay the nominal amount of the shares (at par)

or a premium over the nominal amount (above par) to subscribe to the new shares issued.

The client's instructions are aimed at informing the entity about how it should proceed with regard to any rights that may correspond to them. For this purpose, entities must previously request precise instructions from their clients about what to do with the rights. As indicated above, Spanish legislation does not require this communication to be sent by means of certified post or with an acknowledgement of receipt and therefore communications sent by ordinary post or by alternative means agreed between the parties will be sufficient to comply with the legal requirements.

However, the CNMV Complaints Service deems it good practice, both in the case of communications sent by post and those sent electronically, for these to be sent sufficiently in advance so as to allow the shareholder to receive them prior to the first day of trading of the rights. When the communication is sent electronically, it should be received prior to the starting time on the first day of trading of the preemptive subscription rights, and if on paper, a day before the start of trading. It may therefore be concluded that there is bad practice on the part of the entity when there is no record that it sent information on the capital increase sufficiently in advance.

It is considered good practice for entities to establish fast channels of communication with their clients, such as email, SMS or any other system that allows communications to be sent quickly and effectively.

The communication should inform the client of the following:

– The different options available to the shareholder for giving instructions in this regard.

– The deadline for participating in the capital increase and the time until which, as the case may be, they may give instructions to the entity – the deadline for giving instructions is usually one or two days earlier than the deadline for the capital increase.

– How the entity will act in the absence of instructions from the shareholder by the established deadline.

– Other relevant issues, such as the existence of an allocation period for surplus shares or an over-subscription period, the conditions in which said period would become effective and the circumstances under which the shareholders would be able to participate.

As previously mentioned, if the shareholder's instructions include a limit order for sale of their rights on a secondary market, they must take into consideration that they bear the risk that their sell instruction might not be executed if the listed price of the rights does not reach the limit price, unless other operational guidelines are established by the entity which have been communicated to the client in due time and form. On other occasions the rights may not be sold for market reasons.

Further, it is possible that the rights may expire and be left with no value following the trading period.

It is therefore advisable for entities to include warnings or provisos in the communications sent to the shareholders, essentially with regard to the sale of rights, emphasising to their clients the risks involved in this operation. Such warnings or provisos may be phrases such as "whenever market circumstances permit".

It is also important to note that clients commonly have more rights than necessary to subscribe a whole number of shares. In these cases, clients may either order the sale of the surplus rights or may acquire more rights on the market so as to subscribe one or more shares.

When the shareholder issues instructions to purchase more rights, they must issue specific instructions to the intermediary as to what is to be done with them (subscribe to more shares, sell them before the trading period ends, etc.), otherwise there would be a risk that the rights might expire and the investment could be lost.

The same applies investors who were not previously shareholders that acquire the capital increase rights on the market. In these cases, the entity must provide evidence that, at the time that the investor acquired the rights on the market, it informed the client about the consequences resulting from not receiving express instructions about what to do with them. This warning can be included in the purchase order for the rights.

In general, in the case of capital increases with called-up capital, if a shareholder that receives pre-emptive subscription rights for shares deposited with the entity, once informed of the conditions of their exercise, does not give instructions before the deadline, the entity shall act as agreed in the securities deposit and administration contract (always in the client's best interests).

In this regard, and unless otherwise agreed in the contract, it is considered good practice that, in the absence of instructions from the client, the entity should unilaterally order the sale of the pre-emptive subscription rights before the end of the trading period (once this period has ended, the value of the rights from a financial, legal and corporate point of view disappears completely and it is therefore considered that this action would be in the shareholder's best interests).

Similarly, it is considered good practice for the entity to warn its clients that their surplus rights will not be sold on the market – unless an order to the contrary is received – in the event that the amount that may be obtained from the sale is lower than the expenses of the transaction.

Several complaints related to capital increases with a share premium or called-up capital referred to the following issues:

– Shorter deadline for submitting instructions to the depository.

  The complainant alleged that the depository had brought forward the deadline for issuing instructions without having duly informed the client. In this regard, the client stated that he had received two communications from the entity about the same subject containing different deadlines for the final date of the capital increase, which led to confusion. The Complaints Service explained that this situation may occur when the share issuer and the investment service provider coexist. In this context, one period would be that established by the entity, in its capacity as issuer of the shares, as the deadline for the capital

increase, which would coincide with the deadline in the documents registered with the supervisory body of the issuer's country of origin, and the other period would be the deadline that the entity, as an investment service provider (in this case, as a depository for the shares), includes in the instructions sent to its depositors. Consequently, while a contradiction could appear to exist between the two communications received, it would not really exist, since each would respond to different purposes.

In this case, the Complaints Service informed the complainant that by bringing forward the deadline for issuing instructions by one or two days the depository of the shares could give an advantage to rights holders in terms of liquidity, as it would avoid problems of overselling on the last day of the capital increase that would make it impossible or difficult to trade the rights. Bringing the deadline any further forward would have been considered inappropriate, as this could restrict the investor's decision-making capacity.

In this complaint, the entity had set the deadline for receiving instructions two days before the last day of the rights trading period. Therefore, the Complaints Service ruled that the information provided by the entity conformed to good financial uses and practices (R/573/2017).

– Information on the deadline for giving instructions to the depository.

The client had deposited shares in the issuing entity, for which subscription rights had been awarded. For the purpose of rounding them up, the client acquired some more in the market, for which a purchase order was issued with a validity date of 20 July.

Nonetheless, the entity claimed to have sent the complainant the following communications: i) as depository for the shares, a letter sent by post establishing the deadline for receiving instructions on 18 July, and ii) as the issuer of the shares, two emails that indicated saying that the deadline for the capital increase was 20 July. The client claimed to have received only the last two emails, and unaware of the deadline for issuing instructions, tried to place an order to subscribe to the shares on 19 July. The entity, however, having received no instructions from the client within the specified period, had already sold the preferred subscription rights on the market.

As indicated above, the Complaints Service explained that it is common for entities that are at the same time both issuers and providers of investment services to prepare two types of communications, one addressed to all their shareholders (as a share issuer) and another aimed at the depositors of the shares included in the capital increase (in the role of investment service provider).

The first communication informs all shareholders of the characteristics and conditions of the capital increase, in the same terms used in the published price-sensitive information disclosure.

In the statement issued in the role of investment service provider, the entity informs its clients of the subscription rights that correspond to them and of the different types of instructions that they can issue, for which it establishes a deadline for receiving instructions that is slightly earlier than the deadline in

the above mentioned communication (the deadline is usually one or two days earlier) to ensure that it has a minimum period to sell on the market all the rights for which it has not received any instructions in an orderly manner.

With regard to the channels used to submit the communications, in this case it was noteworthy that the communication that the entity claimed to have sent in its capacity as issuer had been delivered by email (a means of immediate communication) while the request for instructions on what to do with the rights had been sent by post with no acknowledgement of receipt – with the difficulties that this system of communication may entail.

In addition, the communication sent by post was not personalised, as it did not contain data that showed it had been sent to the complainant's address for notification purposes. On the other hand, the two emails that established 20 July as the deadline for the capital increase mentioned the entity's offices and website, so they seemed to be addressed more to the entity's clients (depositors of shares) than to all shareholders (depositors and non-depositors), as stated by the entity.

The Complaints Service deemed not only that the entity should have asked for instructions (in its capacity as an investment service provider) through a fast and effective channel such email (as it did in the communication it sent as issuer), but the notifications sent by email, together with the deadline stated in the purchase order for additional rights mentioned above (20 July) could have caused confusion for the client with regard to the time available to issue the order to exercise of their rights and subscribe to shares. It should be added that the client stated that no postal notification of the instructions had been received and that the entity did not provide proof of having sent it (R/451/2018).

– Delay or failure to send the communication to request instructions.

In several complaints bad practice was deemed to exist on the side of the entity when it did not send the client sufficiently in advance the communication containing the terms of the capital increase (sent by ordinary mail), so that the client did not have this information prior to the first day of trading of the preemptive subscription rights. In this regard, the date in the communication was the first day of trading (R/610/2017).

In other cases, the entity acted incorrectly by not providing documentation that would allow the Complaints Service to verify whether or not prior information on the capital increase had been given to the client for the purpose of obtaining instructions (R/625/2017).

✓ *Changes in issuance characteristics*

The characteristics of an issuance can be modified according to the procedure established for this purpose. Complaints were received in relation to the information provided by the entity regarding such changes. In the context of bonds whose main characteristics were changed (among others, the maturity date and the coupon), it was considered that the entity had acted correctly by informing the client both of the calls for bondholder meetings (where these changes were to be discussed) and subsequently of the final decisions adopted (R/408/2017).

✓ *Lack of remuneration*

According to the characteristics of some issues, the holder may or may not receive certain remuneration depending on the performance of an underlying asset. In one case, a client had invested in a structured bond issued by the respondent entity without a capital guarantee, where remuneration depended on the performance of a specific share. The quarterly remuneration would be paid on each of the reference dates if the price of the underlying asset on that date was equal to or greater than 75% of its initial price. Otherwise, the periodic coupon corresponding to the specific observation date would not be paid.

On the non-payment of one of the coupons, the entity complied with its obligation to inform the client in a timely manner about the events that had affected the return on the bonds. In the complaint proceedings, the entity provided a statement informing the client of the closing price of the underlying on the observation date and the initial closing price, and stating that the coupon would not be paid because the former was lower than 75% of the coupon barrier (R/591/2017).

✓ *Warrants' expiry date*

Warrants are negotiable securities that grant their holders, against payment of a premium, the right, but not the obligation, to buy (call warrant) or sell (put warrant) an amount of the underlying asset at a given price (exercise price) during a period or on a date set in advance. The return obtained on these products is linked to the underlying asset, so that the investor can profit from the performance of the asset without having to acquire it directly. They are leveraged products that offer high percentage returns on the investment made, but investors can also lose part or all of their investment.

In one case, a complainant who had acquired some purchase warrants (call warrants) complained that the entity had not informed him of the expiry date and, therefore, he could not issue instructions with regard to the warrants, which resulted in the loss of his entire investment on expiry, when its economic value was extinguished.

However, in the complaint proceedings, the respondent entity provided the communication through which it had informed the client of the expiry date of the warrants and the exercise options available to him. The communication was dated and addressed to the client by name and had been sent by post and by web mail, of which the entity also provided documentary evidence. Consequently, it was deemed that the entity had informed the complainant correctly (R/46/2018).

✓ *Early redemption*

Some debt issues include in their prospectus the possibility that they will be redeemed early by the issuer as from a certain date and, where appropriate, with prior authorisation from the corresponding supervisory bodies. Therefore, according to the provisions of the issue prospectus, the issuer of the securities may sometimes exercise their right of early redemption. The market must be informed of this in the form of a price-sensitive information disclosure. The securities depository is obliged to notify its holders of all redemptions of issues of which it is aware, and entities are

obliged to suitably inform their clients.[128] This obligation is often included in the securities custody contract.

In some complaint proceedings, the entities provided evidence that they had issued such a communication through letters addressed to the complainants, which provided information on the conditions and dates of the early redemptions (R/452/2017, R/95/2018 and R/124/2018).

✓ *Settlement of a financial contract*

Financial contracts are contracts that are not traded official secondary markets for which a credit institution receives money or securities, or both, from its clients in exchange for a repayment obligation that involves either the delivery of certain listed securities, or the payment of a sum of money, or both, depending on price performance of one or more securities, or the performance of a stock market index, with no commitment to repay the principal received in full.[129]

Some investors have alleged that they were not informed of the settlement of their financial contract. Entities were deemed to have committed bad practice in cases where, despite providing several extracts of information on the starting date of the financial contract in the complaint proceedings, in addition to the scheduled intermediate early redemption dates and the liquidation date of the product, they did not provide any evidence to prove that these statements had been correctly submitted to the complainants (R/112/2018).

✓ *FROB resolutions that affect securities*

Securities can be affected by certain extraordinary circumstances, as was the case with the following resolutions implemented by the FROB (Spanish Executive Resolution Authority) in relation to the following issuers:

– Banco Popular Español, S.A.

  The shares of Banco Popular Español, S.A. were cancelled in full as a result of FROB Resolution of 7 June 2017[130] which executed a decision adopted by the Single Resolution Board (SRB).[131] The price-sensitive information disclosures

128 Article 209 of Royal Decree Law 4/2015, of 23 October, which approves the Consolidated Text of the Securities Market Act.

129 Article 2.1 of Order EHA/3537/2005, of 10 November, implementing Article 27.4 of the Securities Market Act 24/1988, of 28 July.

130 Resolution of 7 June 2017, of the Governing Committee of the FROB (Spanish Executive Resolution Authority) adopting the measures required to implement the Decision of the Single Resolution Board in its Extended Executive Session of 7 June 2017 concerning the adoption of the resolution scheme in respect of Banco Popular Español, S.A., in accordance with the provisions of Article 29 of Regulation (EU) No. 806/2014 of the European Parliament and of the Council of 15 July 2014 establishing uniform rules and a uniform procedure for the resolution of credit institutions and certain investment firms in the framework of a Single Resolution Mechanism and a Single Resolution Fund and amending Regulation (EU) No. 1093/2010.

131 The SRB is European Union resolution authority. It is a key element of Banking Union and the Single Resolution Mechanism. Its mission is to ensure the orderly resolution of banks in crisis with the least possible impact on the real economy and public finances of the EU member countries and third parties.

released on 7 June 2017 announced the precautionary suspension from trading of the shares of Banco Popular Español, S.A. and group companies[132] and the acquisition by Banco Santander, S.A. of 100% of the share capital of Banco Popular Español, S.A.[133]

In relation to this decision, a complainant stated that as a holder of Banco Popular shares deposited with Banco Santander, he had noticed that the information provided on the depository's trading website had not been updated and, therefore, could be considered misleading and not impartial. The complainant considered that the depository had known about the real status of Banco Popular Español, S.A. since 3 June 2017 and that, even if it could not transmit certain information to its clients because it contained data of a confidential and private nature, at very least the details that gave an unrealistic image of the issuer and its securities should have been deleted, leaving it blank.

The entity claimed that the information published on the website were objective data collected from external sources in their role as regular providers of financial market information, that the entity did not have access to the information provided by the FROB until 5 June 2017 and that, in any case, due to the confidentiality of the issue, information that became available to the entity was treated as classified information. As a result, the area providing investment services to clients had no knowledge of it.

The Complaints Service explained that the information provided by the FROB to potential buyers about the resolved entity was of extreme relevance to the securities markets and strictly confidential, so it should be treated as inside information.[134] In accordance with the regulations governing how this type of information is to be managed,[135] the departments of Banco Santander, S.A. that were not directly involved in preparing the binding offer presented for the acquisition of Banco Popular Español, S.A. could not have access to any information related to the subject, particularly the market analysis. Consequently, the Complaints Service considered that the above-mentioned lack of information on Banco Popular's shares on the website on 5 and 6 June 2017 was no more than a reflection that the *Chinese walls* were properly in place (R/126/2018).

In other complaints relating to information provided to the holders of these securities it was demonstrated that the entity had communicated said information to clients on 8 June 2017 (R/555/2017, R/611/2017 and R/505/2018). In addition, in some cases, after enquiries had been raised by complainants about the events, the entity provided them with information on the commercial actions they could undertake if they were interested. Therefore, the Complaints Service considered that the entities had sufficiently informed the complainants.

132 Price-sensitive information disclosure No. 252989.

133 Price-sensitive information disclosure No. 252992.

134 Article 226 of Royal Legislative Decree 4/2015, of 23 October, which approves the Consolidated Text of the Securities Market Act.

135 Article 229 of Royal Legislative Decree 4/2015, of 23 October, which approves the Consolidated Text of the Securities Market Act.

However, in other cases the entities delayed communicating the event to the holders of financial contracts where the investment was divided into two tranches and the return on the second of these was linked to a basket of shares, which included shares issued by Banco Popular Español, S.A. The Complaints Service considered that by publishing an extraordinary event notice (such as the one released on this issuer) more than eight months after the event took place the entities had acted incorrectly, given that clients should be informed immediately about events of this type by the depository (R/223/2018 and R/323/2018).

Where a respondent entity alleged to have informed the complainant in a letter sent by its CSD a year after the event occurred, the Complaints Service pointed out that this communication did not replace the notice that the entity should have delivered to the client at the time, since an extraordinary event such as this should have been communicated immediately (R/496/2018).

On 13 July 2017, Banco Santander, S.A. and Banco Popular Español, S.A. announced to the market their decision to launch a commercial action with the purpose of building the loyalty of Santander Group retail clients affected by the resolution of Banco Popular (loyalty action).[136] On 12 September 2017, they reported that the securities note and the summary relating to the public offer for the sale of contingently redeemable subordinated bonds of Banco Santander (loyalty bonds) had been approved by the CNMV and filed in its official register.[137] The commercial action began on 13 September 2017 and ended on 7 December 2017.

The offer prospectus established a series of conditions that had to be met by investors at whom the commercial action was aimed. These included: "To have, when the purchase order for the loyalty bonds is presented [...] before the corresponding placement entity, a commercial relationship equivalent to that which it had with that placement entity, at the time of the acquisition of the eligible securities. This requirement will be assessed by the Bank based on standardised criteria."

Some complainants disagreed with the refusal of one of the entities formalising the offer to accept their requests for loyalty bonds, which were denied because they failed to comply with the aforementioned requirement. In relation to these complaints, the Complaints Service considered the entity to have acted incorrectly by not properly informing its clients of the reasons why their requests to take part in the bond offer were rejected. According to the entity's statements, information on the reasons for the rejections had been provided in the response issued by their CSD. However, when these documents were analysed, it was found that they did not properly clarify the reason why the requests had been rejected, namely, due to a decrease in the business carried out by the complainant with the entity (R/322/2018 and R/335/2018).

136 Price-sensitive information notices Nos. 254573 and 254574, which were amended to correct a typo through Price-sensitive information notices Nos. 254575 and 254576, respectively.

137 Price-sensitive information notices Nos. 256280 and 256283.

In another case, it was not proven that the complainant had been properly informed, as the only evidence submitted in the complaint proceedings was an email sent by the branch manager asking the complainant if he intended to visit the office to talk about the bonds, but did not specify whether the client had a deadline for subscribing to them. Nor was it accredited that the entity had sent a communication indicating the details of the offer (R/402/2018).

In another case, it was considered that the entity had committed bad practice by informing the client that the deadline for evaluating new applications had ended on 5 December. This did not correspond to the securities note, which specified that the offer acceptance period ended on 7 December 2017. Therefore, it was considered that the entity had acted incorrectly by not having analysed the documentation that the client had submitted in branch within the deadline (on 7 December 2017) to verify whether or not it met the necessary conditions to qualify for the commercial action (R/495/2018).

– Banco Mare Nostrum, S.A.

In accordance with FROB Resolution of 27 May 2013,[138] Banco Mare Nostrum proceeded to issue common shares to meet the mandatory exchange of preferred shares and subordinated debt issued by companies in the group. The FROB agreed to this capital increase, through the exercise of its administrative powers and within the framework of the BMN Restructuring Plan approved by the Bank of Spain and the European Commission on 19 December and 20 December 2012, respectively.

In the complaints relating to the information on this subject provided by the respondent entity, the latter provided a communication issued on 29 May 2013 informing of the different options provided: i) conversion into shares of Banco Mare Nostrum at 90% of their nominal value, or ii) reinvestment of 63.34% in a Banco Mare Nostrum deposit. This communication expressly stated that if opting for the fixed-term deposit, the client must expressly state their wish to set up the deposit, in addition to the deadline for its formalisation. The Complaints Service considered that the complainant had been properly informed (R/34/2018).

– Banco de Valencia, S.A.

In another case, the client was the holder of subordinated bonds issued by Banco de Valencia, S.A. that were mandatorily convertible into or exchangeable for ordinary shares, as a result of the execution of FROB Resolution of 11 February 2013.[139]

In this case, the client had accepted an offer to purchase bonds that Caixabank (the entity acquiring Banco de Valencia) had announced through a

138 Resolution of 27 May 2013, of the Governing Committee of the FROB (Spanish Executive Resolution Authority), implementing management actions for hybrid capital instruments and subordinated debt in execution of the Banco Mare Nostrum, S.A. (BMN) restructuring plan.

139 Resolution of 11 February 2013, of the Governing Committee of the FROB (Spanish Executive Resolution Authority), implementing management actions for hybrid capital instruments and subordinated debt in execution of the Banco de Valencia, S.A. resolution plan.

price-sensitive information disclosure dated 4 April 2013.[140] The entity offered to repurchase the bonds at a gross price of 100% of the nominal amount and make a series of periodic contributions to a term deposit opened in the client's name. However, the entity's final contribution was conditional on the client maintaining a specific average balance invested in Caixabank products for a certain period time that was equal to or greater the balance held by clients accepting the offer in products of Banco de Valencia and CaixaBank before they accepted the offer.

The Complaints Service ruled that given the complexity for the client of calculating whether or not the requirement of maintaining a specific average balance in CaixaBank products had been met in order to be eligible for the final deposit payment, the respondent entity should have provided the complainant with information about this balance so that they were aware of the minimum level of funds that had to be maintained to receive the final contribution. This should have been done not only in application of the entity's duty to keep its clients appropriately informed, but also in accordance with the offer signed with the client, which established the following: "Information on the amount of these balances will be made available to the holder so that they can verify compliance with this condition." In view of the documentation submitted in the complaint proceedings, the entity had provided the client with information on the average balance required long before the period in which it should have been reached started (R/576/2017).

– Catalunya Banc, S.A.

The complainants were holders of subordinated bonds Caixa d'Estalvis de Catalunya, which as a result of the FROB Resolution of 7 June 2013,[141] were converted into ordinary shares of Catalunya Banc, S.A., and an initial haircut of 10% was applied. On that same date, the FROB also agreed to make a voluntary offer to acquire the shares that retail investors had subscribed as a result of the aforementioned mandatory exchange, and the acceptance of this offer implied an additional 13.8% haircut.

Even though complainants cited a lack of information on the exchange they had accepted, in view of the testimonies and the documentation provided in the proceedings, it was found that the signed acceptance order had been included and that the order contained comprehensive information on the conditions of the offer, clearly indicated its reason (the shares were not listed in any official market) and the consideration offered (1.5616 euros per share). Likewise, the information documentation dated 11 June 2013, addressed to the complainants was included in the proceedings, through which they were informed of the voluntary share offer as well as the arbitration process that included the securities to which the complaint related, and the application period for which finished on 12 July 2013 (R/195/2018).

140 Price-sensitive information disclosure No. 184803.

141 Resolution of 7 June 2013, of the Governing Committee of the FROB (Spanish Executive Resolution Authority), implementing management actions for hybrid capital instruments and subordinated debt in execution of the Catalunya Banc, S.A. resolution plan approved on 27 November 2012 by the FROB and the Bank of Spain, and on 28 November 2012 by the European Commission.

✓ *Restructuring processes*

In their role as custodian and administrator of the securities, entities must report any relevant circumstances that could affect their clients' investments, including the options available to them to protect their rights vis-a-vis the issuer in question.

In one complaint proceedings, the client had selected one of the options for the restructuring of some bonds issued by Abengoa, S.A. However, the depository had received an email from Euroclear informing them that the instructions issued by some clients – including the complainant – had not been properly processed. Nevertheless, there was no evidence that the entity had informed the complainant of this, so the Complaints Service deemed that the entity had acted with due diligence and transparency in the interest of its client in this case. However, the entity's intention to reach an agreement with the complainant to return to the option originally chosen was valued positively (R/44/2018).

In another complaint, the client was the holder of some bonds of Portugal Telecom International Finance, B.V. She went to the branch office to request information on the status of the issuer as she had discovered that the bond price had fallen and was likely to drop further. Although the entity had tried to ascertain the status of the issuer of these securities through internal enquiries, the Complaints Service considered that it had applied a bad practice by not proving that it had informed the client of the result of these enquiries, specifically that the issuer of the securities was in temporary receivership and that it had been reported that coupon payments would not be made in the future. Later, in relation to the restructuring of the aforementioned bonds, even though the entity was able to prove that it had sent the relevant communication quickly, said communication did not inform the client of all the possibilities offered to the entity's creditors, so it was not ensured that the complainant could adopt the measures most suited to her interests (R/493/2018).

✓ *Information on the closing of positions or accounts made unilaterally by the entity*

The contracting of certain financial instruments (such as contracts for differences or futures) and the provision of certain services (such as credit investment transactions to purchase securities with money from a loan granted by the entity)[142] require the provision of guarantees or the establishment of coverage ratios, respectively. If these guarantees are insufficient or the coverage ratios are below a certain threshold, the client would have to make additional contributions or close positions and failure to do so could allow the entity to directly close the positions on behalf of the client.

The CNMV Complaints Service considers that clients must be made aware of the reasons that would allow the entity to legally act in this way before they undertake the investment.

In addition, without prejudice to the entities' right to unilaterally close a client position when this is reflected in the terms and conditions agreed by the parties, the

142 Article 141.b) of Royal Legislative Decree 4/2015, of 23 October, which approves the Consolidated Text of the Securities Market Act.

Complaints Service understands that the entity must be able to demonstrate that it clearly informed the client beforehand to give them the opportunity to contribute more funds or to adopt measures that would prevent the unilateral closure of their positions.

Insofar as the terms and conditions set down in the contract signed with the client can be executed at the entity's discretion (this is usually the case), if a decision is taken to close a position, the client must be informed in advance. This is because the contractual document signed by the parties would make the client aware that the entity could close the positions if the client does not provide the required guarantees, but the client would not know if the entity intended to exercise this power or not, or where applicable, when this would happen.

Similar considerations would apply when the entity decides to exercise its power to definitively terminate the standard contract linking it with the client, although the following points would also taken into consideration:

The specific clauses relating to the amendment and termination of the contract by the parties must be established in a clear, concise manner that is easily understood by retail investors in the standard contract formalised between the investor and the entity before the service for the custody and administration of financial instruments or portfolio management is provided.[143] In particular, entities may not give their clients notice of less than one month of their decision to exercise this power unless the contract termination is due to the non-payment of fees, client credit risk, failure to comply with the regulations governing money laundering or market abuse, in which cases it may be performed with immediate effect.[144]

Based on the above, entities acted correctly in the following cases:

– One entity acted correctly by informing the complainant through an electronic platform of the investments they held in derivative products and by addressing the specific issues raised by the complainant by email. Therefore, in accordance with the clauses of the trading contract for derivatives listed on regulated markets signed by the entity and the client, the former agreed to inform the latter through its website, by telephone or by any other means available of the cash balance of the account and the amount of the additional guarantees that would need to be provided in order to continue trading or maintain open positions (R/522/2017).

– Another entity closed a client's long position in CFDs linked to shares of Banco Popular Español, S.A. following the FROB Resolution of 7 June 2017.[145] In

143 Article 5.2 of Order EHA/1665/2010, of 11 June, implementing Articles 71 and 76 of Royal Decree 217/2008, of 15 February, on the legal regime of investment firms and other entities that provide investment services, with regard to fees and standard contracts.

144 Rule Seven, section 1, letter f), of CNMV Circular 7/2011, of 12 December, on the fee prospectus and the content of standard contracts.

145 Resolution of 7 June 2017, of the Governing Committee of the FROB (Spanish Executive Resolution Authority) adopting the measures required to implement the Decision of the Single Resolution Board in its Extended Executive Session of 7 June 2017 concerning the adoption of the resolution scheme in respect of Banco Popular Español, S.A., in accordance with the provisions of Article 29 of Regulation (EU) No. 806/2014 of the European Parliament and of the Council of 15 July 2014 establishing uniform rules

accordance with the contractual clauses formalised for that purpose by the parties, given the extraordinary events that had a decisive effect on the shares (and, consequently, the CFDs linked to them), the entity had the right to wind down the long position in CFDs, adjusting the closing price to the real value of the underlying.

Therefore, on 7 June 2017, the entity had sent an email to the client stating that these extraordinary events had affected the underlying (specifically, that Banco Popular Español, S.A. had been acquired by the Santander Group, and the shares of the former had been suspended from trading) and that the closing price of €0 (zero euros) would be executed the following day. It also stated that, if after 5:05 pm on 8 June 2017, it could be demonstrated that this price was not correct, it would be corrected in the accounts of all its CFD-holder clients with investments indexed to Banco Popular shares (R/614/2017).

However, entities acted incorrectly in the following complaints:

– The entity had informed the complainant, among other issues, of how a to use an account to trade on the stock market on credit and that a coverage ratio had been established, defined as the ratio between client's assets and liabilities. If the coverage ratio fell below a certain threshold, the client was obliged to close positions, make a transfer through the Bank of Spain (OMF) or a transfer from another cash account opened for the client in the entity. However, if the client did not meet these obligations, the entity was empowered to unilaterally close its positions. This information was given to the client both in the contractual documentation for the account and in telephone calls held after the product had been contracted, the recordings of which were provided by the entity in the complaint proceedings.

  However, the Complaints Service detected that there had been a series of incorrect actions by the entity in relation to the information provided to the client after contracting the product. The proceedings included a telephone conversation and an email in which the entity provided incomplete information about the deadline for OMF transfers and extending the complainant's guarantees, which could have caused confusion. Further, after assessing several specific cases in which the entity unilaterally closed the client's positions due to an insufficient coverage ratio, it was found that the entity had not provided evidence of having notified the client in advance that it would exercise this power (R/387/2017).

– The entity exercised its power to unilaterally close the CFD trading account opened for the client. Even though the entity had informed the client of this decision by email, it had not done so within the minimum time period agreed, since less than one month had elapsed from the date the email was sent to the unilateral closing of the account (R/478/2017).

– The entity had closed positions in financial contracts for differences, and in its pleadings stated that the closure had not been performed in virtue of the

and a uniform procedure for the resolution of credit institutions and certain investment firms in the framework of a Single Resolution Mechanism and a Single Resolution Fund and amending Regulation (EU) No. 1093/2010.

guarantee clause established in the contract signed with the client, but because the balance of the securities account was lower than a specific amount, triggering its automatic liquidation (liquidation account). However, according to the documentation provided, it was not demonstrated that the entity had expressly informed the client of these circumstances (R/50/2018).

– The entity exercised its right to unilaterally sell securities purchased by the client on credit and to cancel the loan it had extended as the required additional guarantees had not been provided. Through the digital footprint log, the entity demonstrated that the client had accessed the contractual information specified this power and had signed the contract with their code card before issuing the purchase order on credit. However, the entity failed to prove that it had notified the complainant before exercising said power that it would close the client's position in shares purchased on credit if the corresponding guarantee was not provided once the recalculation had been made.

  Therefore, although the entity provided a screenshot of its communications records and stated that, as shown in its internal records, emails had been sent to the client informing them that the additional guarantee was still pending, no proof was provided of the content of these communications, i.e., it was not demonstrated that the client had been informed of the amount that needed to be contributed or of the consequences of failing to provide this contribution, nor was it demonstrated that said emails had been effectively been sent (R/190/2018).

– The entity was authorised under the signed contract for the purchase of securities on credit, to close the client's positions in the event that the issuer of the securities acquired were involved in any type of financial transaction, such as an IPO, merger, etc. Therefore, as a result of a reverse split approved by the issuer of the securities, the entity decided to close the client's position in shares of said issuer purchased on credit. In this case, the Complaints Service considered that the respondent entity had acted incorrectly by not notifying the client of this decision in advance (R/267/2018).

– The entity increased margin required in a CFD contract but could not provide evidence of having informed the client of this increase. Therefore, in accordance with the provisions of the contract, the entity had the obligation to inform clients of any change in margin levels, although it could do so by means other than those used to communicate with its client on a regular basis. (R/444/2018).

✓ Response to requests for documentation

It is common practice for complainants to ask the entity and, subsequently, its CSD, to provide a copy of orders, contracts, appropriateness and suitability tests, etc. The requests for supporting documents usually relate to the records that entities are required to keep for the specified retention periods mentioned below:[146]

146 Resolution of 7 October 2009, of the National Securities Market Commission, on the minimum records to be kept by companies that provide investment services.

– Contract register.

  The contract or contracts setting out the agreements between the company and the client, which must specify the rights and obligations of the parties and other conditions regulating the provision of the investment services must be kept. The record must be retained for the duration of the contractual relationship between the parties and up to five years after it ends.

– Order register.

  Supporting documents for orders must be kept for a minimum of five years. The order register must contain: a) the original copy of the order signed by the client or authorised person, when it is made in writing; b) the recording, when the order is processed by telephone; or c) the corresponding magnetic record, if the order is submitted electronically.[147]

– Confirmation log.

  This record must include information on confirmations of transactions made by the entity on behalf of the client that are unrelated to portfolio management. This information must be kept for a period of five years from the date the confirmation is sent to the client.

– Client register.

  The entity must keep the following information about its clients:

  - Identification data for each client, with the client's classification and, if applicable, any reviews or reclassifications. Any client classifications of interest to the entity may be included.

  - Support documents for the classification, review or reclassification of the client.

  - Client requests to be classified in a different category to their original classification and any other necessary information.

  The obligation to keep the information starts on the date the relationship with the client begins, or on the reclassification or renewal date, if applicable, and ends five years after the end of the relationship.

– Appropriateness and suitability assessment register.

  In relation to the investment profile of each client, entities must keep a record of the information or documents used for the purpose of assessing the appropriateness or suitability of a specific product or service for the client, as well as any warnings made within the scope of the appropriateness analysis. This documentation must be retained for five years after the assessment.

147 Article 33 of Royal Decree 217/2008, of 15 February, on the legal regime of investment firms and other entities that provide investment services.

– Register of periodic statements.

  Information on the content of the statements sent to clients, in the area of portfolio management or in relation to the client's financial instruments and funds or any others required under prevailing regulations, must be kept for five years after the statement date.

It is important to highlight that requests for information should be directed mainly to the office or branch of the entity that provided the investment service from which the obligation to keep the documentation derives, since the information should be kept by this body. However, if the office or branch does not properly respond to these requests, the client should file a complaint with the entity's CSD stating that their request for information has not been attended.

In some cases, however, the securities on which the complainant had requested information were neither acquired by nor deposited with the respondent entity, which explained why the entity did not provide this information (R/605/2017).

✓ *Requests where the entity had to keep the documentation*

Client requests for documentation submitted to financial institutions must be duly attended. Therefore, entities must provide the client with any requested documents for which the corresponding retention period has not elapsed.

Additionally, entities must not destroy the supporting documents for any transactions the client is in disagreement with before the end of the minimum retention period (or, if the disagreement was raised after the end of the minimum period, the documentation has not yet been destroyed), until the disagreement has been resolved.

Even when the entity was obliged to retain the documentation requested by the complainant, the following incidents occurred in the provision of this information:

– Entities responded to the requests after too much time had elapsed, e.g., 6 months after receiving the client's request (R/522/2017).

– Entities did not provide the information and documents requested by the complainant either when the request was addressed to the entity directly or during the complaint proceedings filed with the Complaints Service. In these cases, it was considered that the entity had acted incorrectly and had failed to comply with its obligation to inform the client or retain the documentation (R/396/2017, R/474/2017, R/570/2017, R/48/2018, R/57/2018, R/307/2018, R/430/2018 and R/477/2018).

– The information was not delivered in the first complaint filed by the complainant with the entity's CSD, although it was provided once the complaint proceedings had been initiated with the Complaints Service. These complaints are discussed in the section "Complaints Service criteria", "Role of the CSD".

– In cases where clients had requested all documentation related to the acquisition of some securities, the entities did not have the obligation to provide part of the requested information because more than five years had elapsed since

the product had been contracted, but other parts of the information did have to be provided, such as the securities custody and administration contract, since the contractual relationship between the parties was still in place or had ended in the five years prior to the request for documentation. Consequently, the entities acted incorrectly when they did not provide their clients with the latter documentation that they were required to keep (R/538/2017, R/557/2017, R/562/2017, R/17/2018, R/392/2018 and R/428/2018).

✓ *Requests where the entity did not have to keep the documentation*

The right to be informed and to obtain documentation has limits. One of these is the time limit, which means that the entity is not required to provide information beyond the retention period set out by law. Therefore, when the documentation is requested after this period has elapsed, the entity does not legally have to provide the documentation (R/432/2017, R/513/2017, R/551/2017, R/566/2017, R/500/2018 and R/505/2018).

However, if the documentation is not available because the corresponding mandatory period for keeping the record has elapsed, the entity must clearly indicate to the client that this is the reason why it cannot provide the documentation. If the complainant is not given due explanations in this regard, the Complaints Service will deem that the entity has not attended its client with diligence (R/489/2017 and R/381/2018).

Finally, even after the retention period has elapsed, some entities submitted evidence that they had provided the requested documents to the client, since it was still on their records (R/42/2018).

➢ **Response to requests for information**

As previously mentioned, entities have the obligation to keep their clients adequately informed at all times.

Clients sometimes complain that they have requested certain information, generally relating to investments or transactions with said investments, but that the investment firm has not submitted that information to them.

In this case, as with document requests, there are also limits. One of these limits regarding the right to information establishes that the entity does not have to respond to a request for information made by a client when it lacks specificity or is manifestly disproportionate and unjustified. In other cases, special circumstances may arise that make it inadvisable for the entity to provide the requested information, e.g. the entity refuses to provide information on the securities account of a company to an administrator whose position has expired (R/464/2018). In all these cases, however, the entity provided arguments to uphold its decision.

Complaints relating to attending requests for customer information have involved the following aspects:

✓ *Client order processing*

Entities must provide the client, on request, with information on the status of their orders.[148] Some complainants are interested in viewing the processing status of the orders they have issued. In this area, complaints were resolved on the following aspects:

– The complainant asked for information about the delay in putting some shares acquired in the framework of an IPO on a foreign market in the client's name. The respondent entity, which acted as the Introducing Broker (i.e., a contact between the investor and the issuer), took two months to contact the foreign bank responsible for transferring the securities acquired to the investor's personal securities accounts. Even though the Complaints Service rated positively the fact that the entity had tried to clarify what happened, it could not overlook the long period of time that elapsed from the client's complaint to the date on which the respondent entity asked the agent bank to provide clarifications, and the fact that no satisfactory explanations about what happened were provided (R/446/2017).

– The complainant issued an electronic purchase order and the execution could not be viewed online. After contacting the entity by telephone, the client was informed by an operator that this was due to a computer failure. However, in the pleadings submitted by the entity to the Complaints Service no computer failure was mentioned and the delay was attributed to checks that were being made, since on keying in the order a security filter had been activated.

  The Complaints Service demonstrated that from the documentation provided it was not possible to establish the real cause of the delay in viewing the transaction. In any case, the cause alleged by the entity was not proven, nor was it demonstrated that the client had previously been informed that this circumstance could occur. In this regard, this possibility was not covered in the securities contract.

  Similarly, and even if the cause of the delay was that alleged by the entity, the Complaints Service stated that: i) regardless of the filters and checks that have to be run, it did not consider it diligent that clients were unable see the execution of their orders until at least 14 minutes after the transaction, and ii) the operator had not properly informed the client (R/617/2017).

– The complaint asked the respondent entity to provide information on the reasons for the non-execution of a sell limit order for shares listed abroad that had been issued electronically. The entity replied that the order had not been executed because the price of the shares had not reached the sell price included in the order. In addition, the client was informed by the entity that the share price taken as a reference was not correct, since it had not been obtained from an official source.

  However, in the response provided to the complainant, the entity did not explain the real reason for the non-execution of the order, which was actually because at that time the securities subject to the complaint were listed on the

148 Article 68 of Royal Decree 217/2008, of 15 February, on the legal regime of investment firms.

OTC market and none of the entity's brokers could trade on that market. The entity reported this cause in its pleadings but not in its initial response to the client's complaint, so the Complaints Service concluded that the client had not been properly informed (R/105/2018).

– The complainant issued an order to participate in a capital increase using all their available subscription rights and requested a certain number of shares in the allocation period for additional shares. After contacting the entity to find out how many additional shares the client had been allocated in the period, the entity confirmed that the entire number of shares requested had been allocated, when in fact a much lower number had been assigned to the client due to the apportionment factor. The Complaints Service ruled that the client had not been adequately informed about the shares that were allocated to it in the allocation period for additional shares, as the entity itself acknowledged, indicating that the client had been given this information by mistake (R/239/2018).

✓ *Purchase/sale price of a financial instrument*

Entities provide clients with the specific figure for the purchase/sale price of a financial instrument at the time of the settlement of the transactions. In the confirmations of the orders placed, entities set out the volume, unit price and total consideration. With regard to the volume, when the order is executed in tranches, information may be provided about the price of each tranche or about the average price. If information on the average price is provided, information must be given on the price of each tranche if expressly requested by the client[149] (see section "Information on the execution of orders").

Even when entities have sent the purchase price information in the order confirmation, sometimes clients request this data at a later date.

If securities are transferred to another entity and the complainant asks for information on the purchase price from the entity receiving the securities, it would not be deemed incorrect if this entity is not able to respond to the request. Therefore, it is not the obligation of the entity receiving the securities to report on transactions carried out before the date of the transfer. This obligation would fall to the entity through which the investor carried out the buy transaction, which should have informed the complainant of the purchase price in the confirmation notice sent out on execution of the order (R/459/2017).

A similar case occurred in a complaint where the securities business of one entity had been spun off to another firm. In this case, the complainant did not become a client of the entity that had acquired the business and was requesting information on the purchase price of securities acquired through the previous entity. In this specific case, the client's contract had been terminated before the retail business was spun off. However, the respondent entity provided all the information it had access to under a collaboration agreement signed with the entity from which it had acquired the business. In this case, the Complaints Service considered that given the unusual circumstances the respondent entity had acted correctly and had addressed the request for information from the complainant to the best of its ability,

149 Article 68 of Royal Decree 217/2008, of 15 February, on the legal regime of investment firms.

since it was not legally bound to have access to all the information requested by the client about the securities account (R/136/2018).

Further, with regard to transferred securities, the Complaints Service deems that the respondent entity must be in a position to identify the originating entity in the transfer of the securities, both in the case of external transfers and where the transfer originates from within the entity itself or another entity in its group, since addressing the entity through which the securities were acquired is the only channel open to the client to obtain the requested information, i.e., the acquisition price of the securities.

In the case of a request for information about the date and the purchase price of some securities that the complainant claimed to have acquired through the respondent entity, the entity responded that the securities had been received through an external transfer and therefore only the custody start date could be provided. The Complaints Service concluded that the entity did not properly inform its client by offering only partial information, since at very least, it should have been able to identify the entity from which the securities transfer originated (R/516/2017).

✓ *Fees and commissions*

The information on fees and commissions that must be received by clients as a result of the execution of specific transactions or the contracting of services, both at the initial time of contracting and subsequently, is addressed in a specific section in this Annual Report.

This section therefore refers to the information requested by clients on fees and expenses for the duration of the contractual relationship, which usually consists of clarifications about how they are calculated or explanations on the expenses charged in a transaction.

Entities are expected to provide their clients or potential clients with all the information on current fees on request. In the case of clients that maintain a contractual relationship with the entity, the latter must also comply with requests relating to current fees throughout the contractual relationship.[150]

There was bad practice in dealing with requests for information on fees in the following cases resolved in 2018:

– The entity informed its client of a calculation base that was different to the base provided in the current fee prospectus.

  In the response issued by the CSD, the entity indicated that the applicable fee for the exchange or conversion of securities was calculated on the nominal amount. This did not coincide with the provisions of the prospectus regarding maximum fees, which referred to the cash transaction (R/466/2017).

150 Rule Two, section 4, of CNMV Circular 7/2011, of 12 December, on the fee prospectus and the content of standard contracts.

– The entity informed the complainant that their securities account could be closed at no cost, but, when the client ordered the transfer of securities to an account opened in another entity prior to closing the account, the entity charged an amount corresponding to the transfer fee.

  In this case, the complainant disagreed with this action and sent an email to the entity asking how to start the process of winding down a securities account. The entity replied that when the account showed a balance of zero euros, the client should sign and submit an attached document requesting the closure of the account. However, the Complaints Service stressed that the information provided was partial or incomplete, as the client was not advised that the securities account should be left empty of all deposited assets or financial instruments prior to its cancellation.

  Subsequently, as he had not been properly informed, the complainant filed a complaint with the entity's CSD, which replied that if the client was dissatisfied with any of the fee changes of which he had been notified, he could request the closure of his account with no complication or cost. Based on the information provided by the entity, the client left his account at zero and issued an order to transfer the securities deposited therein in order to close the account, assuming that there would be no charge for this transaction (according to the entity). However, the entity refused to make the transfer until the client paid the corresponding fee for such transactions.

  The Complaints Service considered that the response of the CSD and the rest of the information the entity provided to the client could have led the complainant to think that no fee would be charged. The complaint resolution report stated that it is not possible to close a securities account without the simultaneous transfer of the securities deposited therein, which is why the Complaints Service considers that both transactions (the transfer of the securities and cancellation of the account) are interlinked and are necessary processes in the closure of a securities account where the cancellation is the main transaction and the transfer the secondary one.

  Consequently, the complainant's interpretation of the information provided by the entity was reasonable and no fee should have been charged for extinguishing the client's relationship with the entity, since there was no way that the account could be closed without transferring the securities deposited in the account simultaneously, and the entity had stated that the account closure would be performed "free of charge" (R/351/2018).

✓ *Procedure for waiving the maintenance of registration of securities delisted from trading due to inactivity*

In the case of shares of listed companies excluded from trading, their holders continue to be shareholders and continue to have all the rights inherent to this status recognised in the Corporate Enterprises Act (economic rights, voting rights, rights to information, etc.) and in the company's articles of association.

However, exclusion from trading means that the shareholders may not use the secondary market to trade their shares although their sale is possible outside the market by means of alternative procedures such as searching for a buyer on their own account or through an intermediary, setting a price and formalising the transaction.

Another put option involves offering the securities to the issuer by contacting the company's registered office, although the latter is not obliged to acquire the shares.

There is always the option of transferring the shares to another entity or a third party through other legally-admissible channels (e.g. donations), and the depository would be entitled, in principle, to continue charging the relevant custody and administration fees. However, the Complaints Service has reiterated that if the securities, in addition to being excluded from trading, are inactive, entities should not charge their clients the above fee.

In these cases (excluded and inactive securities), the Spanish central securities depository (Iberclear)[151] has established a procedure that allows the registered holder (the investor) to request the voluntary waiver of register-entry maintenance in the second-tier register for participants.

Circular 08/2017, of 4 September, approves a new procedures manual for the ARCO settlement system. Specifically, in the event that Iberclear has received no previous request to waive the security in question from another entity (i.e., a procedure for the waiver of said securities as not already been initiated) the requesting entity must submit a proposal requesting that the relevant actions be carried out to start the voluntary procedure for waiving register-entry maintenance. For this purpose, the entity must provide a copy of the request for voluntary waiver made by the registered holder to the participant, in addition to the original certification issued by the Commercial Register including the registered office of the security issuer. Such certification must accredit that in the sheet opened at the issuer, no entry has been booked in the last four years prior to the calendar year in which the proposal is made.

Iberclear, through the publication of a notice, will announce the commencement of the following procedures that it will perform once for each security (notary request, and where appropriate, though an announcement published in the listing bulletin). Once these actions have been completed, Iberclear will proceed with the book-entry of the voluntary waiver of register-entry maintenance request, in accordance with the petitions made by the registered holders of the security, provided that no type of charges or encumbrances exist for these holders on such securities.

Likewise, once the request deadlines have been reached, Iberclear will duly notify the CNMV of the procedures performed, and it will report, through the publication of a warning, that a book-entry procedure for the voluntary waiver of register-entry maintenance can be applied to the security in question.

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151 Iberclear is the Spanish central securities depository. It is a public limited company that was created pursuant to the provisions of Article 44-bis of Securities Market Act 24/1988, of 28 July, introduced by Law 44/2002, of 22 November, on measures to reform the financial system. It is subject to Regulation (EU) No. 909/2014 of the European Parliament and of the Council, of 23 July 2014, on improving securities settlement in the European Union and on central securities depositories, and regulated in Article 97 *et seq.* of the Consolidated Text of the Securities Market Act, approved by Royal Legislative Decree 4/2015, of 23 October.

With respect to subsequent requests made by registered holders regarding the same security, Iberclear will apply this procedure provided that all applicable requirements are met.

In any case, it is recommended that the investor be informed in advance of the fees and expenses set down by the entity in its current fee prospectus for processing book-entry procedures for the voluntary waiver of register-entry maintenance in securities accounts.

The Complaints Service considers that it is advisable for entities to inform their depositors of the existence of this voluntary waiver procedure, facilitating the procedure or otherwise informing them that it is not possible to initiate the procedure as the requirements for applying the waiver have not been met (R/496/2017, R/343/2018, R/422/2018 and R/483/2018).

In some cases, the entity did not provide adequate information on shares that had been excluded from trading, for which the voluntary waiver procedure could not be initiated because entries had been registered with the Commercial Register in the four years prior to the request date.

In relation to this issue, an entity's CSD response brief informed the client that the shares subject to the complaint were not eligible for the voluntary waiver procedure but did not explain that the reason for this was because there had been no movement in the register in the previous four years.

However, in the pleadings submitted by the entity, a voluntary waiver procedure was mentioned without specifying that, in this case, the procedure could not be initiated, which was the central issue of the complaint. The entity also advised that it was an expensive procedure and that the costs involved would be passed on to the client. Nonetheless, the Complaints Service did not identify a fee for this concept in the entity's fee prospectus registered with the CNMV, even though all fees and expenses that the entity intends to charge its clients must be contained in this document (R/84/2018).

In another complaint, the entity also failed to provide appropriate information on some shares that were excluded from trading for which the voluntary waiver requested by the client should have been processed. The entity provided the complainant with contradictory information about the status of the shares, as in a first document he was told they were represented through physical certificates, and in a later document that they were represented through book-entries. The Complaints Service considers it to be good practice that the information provided by entities does not contain inconsistencies such as these, as it may be confusing for the investor.

Additionally, in the last document the entity informed the complainant that the issuer had not initiated the voluntary waiver procedure. In this respect, the Complaints Service explained that while it was true that the aforementioned securities did not appear in the list of the securities on which Iberclear participants had initiated a procedure to request a voluntary waiver of register-entry maintenance, this only meant that no entity had yet asked to initiate this procedure.

It was discovered that the issuer of the securities in question had complied with the time restriction of not having made any entries in the Companies Register sheet in the last four years, so that in principle any of its shareholders could request the initiation of said voluntary waiver procedure (R/418/2018).

✓ *Guarantees and incidents in a derivatives transaction*

As noted at the beginning of this section, the entity may not respond to requests for information that are non-specific, disproportionate or unjustified, although it must give reasons for this decision.

Examples would be requests that do not involve the delivery of data that are simple and easy to extract from the information held by the entity in its records and that would require a detailed analysis of different variables over a long period, analysis that goes beyond the usual information service that entities must provide to their clients and that would more aptly described as the provision of a new investment service than the general information obligation held by the entity.

In relation to the above, in the context of a derivatives transaction, a client requested data from the entity which included a breakdown of the guarantee components, the price performance in event of no sale or the positions exceeding certain percentage of their guarantee. The entity informed the client that it could not provide this information as it referred to negative events or to data that could not be quantified.

The Complaints Service considered the entity's pleadings to be reasonable, in which it stated that: i) all the procedures, calculations and detailed information required by the client exceeded its right to information and were not covered by stipulations in the contract and were not usual investment practices, and ii) it did not have systems in place to automatically obtain this information in terms of percentages, percentage breakdowns, etc., as the client had requested, and to do this manually would entail a cost for the entity that it had no obligation to accept.

However, in the request, the client also asked for information on his account position on dates when it had been blocked, as well as information on the reason for the blockage and the operating system failure. In the complaint proceedings, the entity did not submit evidence of having provided any clarification to its client on these aspects, which the Complaints Service considered bad practice, as the entity should have provided this information (R/522/2017).

✓ *Securities position contracted through the entity*

Sometimes complainants request a record of the investments made.

Complaints resolved in relation to these requests for information gave rise to the following considerations:

– A request made to an entity for a record of all the financial products contracted in the last 10 years, the accrued interest and the returns received was a considered too general and disproportionate. Therefore, the Complaints Service informed the complainant that if this information was necessary for the client, the period and type of documentation required would have to be specified (R/538/2017).

– A request made in 2017 asking the entity for a full statement of a securities account was considered excessively prolonged and drawn out over time, taking into account that the first acquisition of securities was in 2004, and subsequently in 2009 and 2010. However, in its pleadings the entity provided a list

of movements in the securities account from 2009 to 2017; an action that was commended (R/37/2018).

– A complainant requested from the entity the notes corresponding to movements in some shares owned by the client from the date when his father, as his legal representative when he was a minor, acquired the first shares, which would have involved providing information from 1980. Despite the time elapsed, the respondent entity provided the client with information on the transactions and movements in the securities account from 1994, but could not provide information on earlier transactions. The Complaints Service resolved that the entity had not only acted in accordance with the rules of conduct, but had made a special effort to obtain the requested documents that went beyond its legal obligations (R/449/2018).

– Several complainants asked their entity for explanations regarding the returns obtained on their investments during the entire period that they had been clients, which was considered a request for information that was clearly disproportionate, general and non-specific. Therefore, the Complaints Service considered that the respondent entity's CSD acted correctly by directing the complainants to their own branches for further clarification of the request, as well as detailed information, where this was possible, on their specific products and transactions. In addition, in the pleadings included in the complaint proceedings, the entity provided movements and orders that should have helped the complainants understand and compare the performance of their investments and the returns obtained (R/331/2018).

– In one complaint, the client requested a certificate of ownership for the securities issued by Banco Popular that he held on the date prior to the issuer's declaration of insolvency.[152] The entity had provided two extracts from the securities account and a certificate of all movements from the opening of the account until the intervention date. In each of these documents, the client's securities position in Banco Popular on the requested date was stated, broken down between subordinated bonds and shares and, in the case of the latter, those that came from the capital increase carried out by the banking entity in June 2016.

  In view of the documents provided by the entity to the complainant, the Complaints Service considered that the entity had properly addressed the request for documentation. Therefore, although the entity had not provided the client with separate documents showing the position in shares (the client had also requested that the shares relating to the capital increase of June 2016 be shown separately) and the position in bonds, it was resolved that this in itself did not signify a failure by the entity in its duty to properly inform the client (R/574/2017).

152 Resolution of 7 June 2017, of the Governing Committee of the FROB (Spanish Executive Resolution Authority) adopting the measures required to implement the Decision of the Single Resolution Board in its Extended Executive Session of 7 June 2017 concerning the adoption of the resolution scheme in respect of Banco Popular Español, S.A., in accordance with the provisions of Article 29 of Regulation (EU) No. 806/2014 of the European Parliament and of the Council of 15 July 2014 establishing uniform rules and a uniform procedure for the resolution of credit institutions and certain investment firms in the framework of a Single Resolution Mechanism and a Single Resolution Fund and amending Regulation (EU) No. 1093/2010.

– In another case, a certificate was requested to show the number of Banco Popular shares held by the complainant deposited with the entity and the amount as of 31 December 2016, in addition to the acquisition date and the prospectuses for the capital increases carried out by the banking entity. As there was no proof that the entity had provided the requested documents, the Complaints Service did not consider it proven that the entity had fulfilled its obligation to keep the client properly informed (R/22/2018).

– In other cases, complainants asked for information about their positions in Santander Securities, which should have included a statement from the securities account reflecting the de-recognition of the securities due to the exchange, the number of shares awarded in the exchange and their valuation. In response to these requests, the respondent entity provided the clients with the price-sensitive information disclosure containing information about the conversion, the de-recognition of the securities for the exchange and information on the shares awarded. In several cases complainants stated their disagreement with the information provided, since they considered that the documentation did not reflect the valuation of the exchange.

  The Complaints Service concluded that the entity could be considered to have provided its clients with the requested valuation implicitly, since they were informed of the number of Santander Securities that had been cancelled and they were also sent the price-sensitive information disclosure that contained the conversion formula, (385.8024691358O2 shares of Banco Santander for each Santander security, obtained by dividing the nominal value of each Santander security (€5,000) by the reference price of the shares (€12.96).

  However, the Complaints Service considered that the entity had not acted as diligently it should have, since given the questions posed by the clients after the delivery of the documentation and their repeated requests for information or documentation, it should have tried to clear up their queries as far as this was possible (R/217/2018, R/218/2018, R/219/2018, R/220/2018 and R/221/2018).

– In other cases, entities showed evidence that they had provided the requested information to their clients through the submission of documents that contained the movements of their securities accounts or investment funds (R/144/2018 and R/247/2018).

✓ *Information on restrictions on the transfer of securities*

On some occasions, complainants request clarifications on extraordinary events that affect the transferability of their securities, and entities must respond to these requests for information, as occurred in the following complaints:

– The complainant had acquired securities in an issuance made outside Spain that corresponded to a private placement aimed at qualified investors; an acquisition made on the basis of a recommendation made by the respondent entity as part of the provision of an advisory service. The complainant had contacted the entity as he wished to sell the securities and was informed that it was not possible to sell them because the competent regulatory body had issued a ban on their sale. The complainant then sent a letter to the entity requesting additional information.

In response to the letter, the entity clarified that the foreign supervisor had prohibited the respondent entity from placing with its portfolio management or advisory clients any financial instrument issued by entities of its group, which included the securities held by the client. The respondent entity also informed the complainant that he could not acquire the securities in question for his own portfolio, since he was not authorised to trade them on his own account. However, the entity informed him that he could, if applicable, sell the securities to institutional or professional investors if they expressed an interest in acquiring them.

In view of the entity's response to the complainant, the Complaints Service ruled that it had correctly addressed the request (R/408/2017).

– A client asked the entity whether the non-voting units he owned had been redeemed and if they could be sold at cost. The entity replied that the non-voting units had been redeemed at zero value for legal reasons, and therefore they had a book value of zero. However, the redemption agreement had not been filed with the Commercial Registry, so the redemption was not yet formally effective. Consequently, it was considered that the entity had fulfilled its obligation to inform (R/501/2017).

✓ *Tax information*

In the analysis of complaints, at times complainants can question the tax information received from entities. In these cases, the role of the Complaints Service is exclusively limited to assessing the entity's compliance with the information obligations laid down in securities market legislation, with the tax authority being responsible for assessing whether or not the tax treatment applied to the transaction is correct.

Entities properly addressed the requests for tax information in some complaints, in which the complainants requested clarification of the tax gains or losses obtained on their investments (R/331/2018), of the calculation withholding tax (R/486/2018) or the movements in their securities portfolios (R/364/2018).

In another case, the complainant questioned the financial year in which the sale of preemptive subscription rights should be taxed. In this case, the order to sell the rights was executed on 28 December 2017 and the entity reported the withholding made on the transaction to the Tax Office on the settlement date, i.e., in 2018. The Complaints Service explained to the complainant the consequences deriving from the reform of the securities clearing, settlement and registration system,[153] which provides that the transaction is not considered final until it has been settled, i.e., at D + 2. However, the complainant was also informed that Tax Office should decide on how the tax regulations should be interpreted, as well as on all the details of the reporting obligations for transactions carried out by entities that provide investment services (R/336/2018).

153 Royal Decree 878/2015, of 2 October, on the clearing, settlement and registration of negotiable securities represented by book-entries, on the legal regime of central securities depositories and central counterparties and on transparency requirements of issuers of securities admitted to trading in an official secondary market.

The CNMV Complaints Service also identified bad practice in other cases:

– The tax information that the entity provided to the complainant incorrectly identified the client's investment, when the ISIN (International Securities Identification Number) code of a subsequent issuance referred to in the subscription order (R/508/2017) was recorded.

– The complaint wanted to process a request in relation to dividends paid by foreign companies to recover the withholdings made by the Treasury department of the country of origin.

  The entity initially informed the client that an agreement to avoid double taxation existed in which a procedure was established to recover the tax withheld. However, in the response issued by the CSD and in the pleadings presented to the Complaints Service, the entity rectified this information and went on to indicate that this agreement did not include any specific procedure for that purpose, and that the complainant would have to comply with the regulations of the country of origin. Interestingly, the entity, in its initial response, explained to the complainant in detail how to process a request through the international custodian, as well as the fee that would be charged. However, fewer details were provided when the entity informed the client of how to process the request directly with the Treasury department of the country of origin, as it did in the pleadings submitted to the complaints proceeding.

  Additionally, although the entity was not contractually obliged to carry out the procedure to obtain the return of the surplus withholding, it was obliged to provide the client with information on the withholdings made on the securities at source and at destination, but in the complaint proceedings it was not demonstrated that this information had been provided. All these circumstances led to the conclusion that the entity had not acted correctly (R/521/2017).

– The entity did not provide its client with the tax information immediately when requested by the complainant, but it was submitted with the pleadings delivered to the Complaints Service (R/436/2018).

✓ *Clarification of contractual clauses*

Sometimes complainants request clarification on certain provisions contained in the clauses of the contracts signed with the entity. Entities must respond to requests of this nature by virtue of their duty to keep clients properly informed at all times.[154] Additionally, the contract signed between the parties may include the right to request additional information on any of its clauses.

In this regard, a clause of a standard custody and administration contract indicated that, unless the client indicated otherwise, the entity would use general segregated accounts (omnibus accounts) in the central counterparty and third-party accounts in the central securities depository, and that if the client wanted more information on

154 Article 209 of Royal Decree Law 4/2015, of 23 October, which approves the Consolidated Text of the Securities Market Act and Article 60 of Royal Decree 217/2008, of 15 February, on the legal regime of investment firms and other entities that provide investment services.

this topic, they should consult the entity's offices, their financial agent or their usual contact person at the entity.

In one case, a complainant requested clarification as to whether third-party accounts in the central securities depository referred to individual segregated accounts (ISA) in the Central Registry. The entity sent the client a letter explaining that different account options could be selected for the registration of the shares, including an individual account opened in the Central Registry in the client's name in which the balances corresponding to the client would be registered individually. If this option was selected, it should be included in the standard contract by means of an addendum. Even though the information provided was correct, the client's complaint referred to the entity's delayed response to the enquiry. In this regard, the Complaints Service considered that the entity had engaged in bad practice, since it was demonstrated that the request for information had not been addressed until one year had elapsed (R/209/2018).

✓ *Cancellation and settlement of financial contracts*

Sometimes, clients have doubts about financial contracts and it is common for them to request information on the conditions governing their cancellation and settlement.

In one case, investors requested information about the maturity and settlement of a financial contract, a request that the entity addressed by providing them with the contractual document signed by both parties. In addition, in the complaint proceedings undertaken by the Complaints Service, the entity provided the financial contract settlements that detailed the economic terms of the transactions and the periodic settlement and maturity terms. It also provided a statement of movements in the current account which showed the amounts credited in the form of settlements. Therefore, it was considered that the entity acted in accordance with applicable rules of conduct in relation to the events cited in the complaint (R/96/2018).

In other cases, clients asked entities if they could cancel their financial contracts early, on which they were properly informed. In this regard, one entity informed their client about the clause in the signed contract that expressly stated that "the holder does not have the right to cancel the contract early once it has been formalised" (R/189/2018).

Other investors complained that the entity had not carried out the adjustments to the initial value (IV) of the underlying or underlyings in different financial contracts that, in their opinion, should have been made.

In the resolution of the complaints received on this matter it was clarified that the CNMV Complaints Service has the power to rule on compliance with obligations in the form of securities markets rules of conduct that entities that provide investment services can be required to adhere to, but does not have the authority to interpret the contractual clauses included in the aforementioned contracts.

However, for information purposes only, complainants were given some general indications about certain aspects that could be of interest to them.

Hence, clients were informed that it is customary for the necessary adjustments to the IV of the underlying share or shares to be made in the event that, during the term of the investment, events occur that have a dilutive or accretive effect on the theoretical value of these shares, or events that alter the corporate position of the issuing company.

A classic example for the IV adjustment of the underlying share arises when it is affected by a capital increase with preemptive rights, since this type of transaction produces a *dilution effect*. From an economic standpoint, the dilution effect can be defined as the loss of value of a company's shares as a result of the issuance of new shares. After the issuance, the loss of value is caused by the fact that the issue price of the new shares is lower than their fair value or, in the case of listed companies, the quoted price.

Consequently, after the capital increase the share price is lower than it was before it. Shareholders are financially compensated for this loss of value by the *theoretical value of preemptive subscription rights*, but investors that purchase structured products assume a fall in the price of the underlying share that is unrelated to its stock market performance, and therefore it is common practice in these contracts that, in circumstances of this type, IV adjustments are made to the underlying shares to compensate the investor for the dilution effect.

In some complaints, the entity reported that as a result of a capital increase with subscription rights that resulted in a decrease in the value of the share, the IV of the share was adjusted downwards in structured products where it was one of the underlyings (R/549/2017).

However, adjustments to the IV of underlying shares are not always appropriate. In this regard, complaints were received from clients who complained that no adjustment had been made before the payment of ordinary dividends in kind through a scrip dividend.

In Spain, payments of dividends in kind are usually made through capital increases. Bearing in mind that this type of capital increase is negative for investors in the structured product and the option contract, since they entail, from a financial point of view, a dilution effect (and therefore the shareholder has the corresponding preemptive subscription right, referred to in this case as the *free allocation right*), it would be logical to think that the corresponding adjustment should be made in the IV of the underlying asset.

However, it should be borne in mind that the ultimate purpose of the issue is to remunerate the shareholder, replacing the traditional cash settlement for payment in shares. As already indicated, the ordinary dividend – whether in cash or shares – has been taken into account when valuing the premium of the options making up the product's structure.

Finally, it should be noted that calculation agents usually take into consideration as a reference any adjustments made by the MEFF (Official Exchange for Financial Futures and Options in Spain) in order to perform, or not, adjustments to the prices of the underlyings of their derivative products or those products that incorporate financial derivatives into their structure.

In these cases, the Complaints Service mainly looks at whether the entity has treated the complainant correctly, in compliance with its duty to keep its clients properly informed. In some cases, the CSD did not provide the complainant with sufficient information on the reasons why a corporate transaction carried out by the issuer (scrip dividend) was not taken into account when making the relevant adjustments in the IV of the share that formed part of the underlying of the purchased product, although it did go into these reasons in the pleadings submitted to the Complaints Service during the complaint proceedings (R/549/2017).

✓ *Other information requested by the investor*

The obligation to keep clients properly informed at all times[155] requires entities to inform their clients of all relevant circumstances that could affect their relationship, including those mentioned in the following complaint.

The complainant disagreed with the transfer of their securities account from one entity branch to another without prior notice. The entity argued that it had transferred the securities account from a business branch to a retail branch because the complainant was no longer employed by the entity and the characteristics of the branch were not suitable for her transactions and needs. However, the same conditions as the original securities account were maintained. In this regard, it was considered incorrect that the entity could not demonstrate that it had informed the complainant of the need to transfer the securities contract following her termination as an employee (R/428/2017).

Summary of complaints relating to subsequent information on the securities EXHIBIT 5

- The information addressed to retail clients must be **fair, clear and not misleading** and must comply for this purpose with the requirement, *inter alia,* to be accurate, sufficient and likely to be understood by the average member of the group to whom it is directed and to not disguise, diminish or obscure important items, statements or warnings.

- The information investors should receive about their investments includes information relating to the execution of their orders, the position of their of financial instruments and certain events that affect their securities.

- The **execution of orders on behalf of clients** not related to the portfolio management service requires the entity to adhere to a series of information obligations vis-a-vis the client. These obligations basically involve providing the investor with essential information on the order execution immediately and sending a notice and confirmation of the execution of the order as soon as possible, no later than the first business day after the execution of the order or, if the order has been carried out through a third party, on receipt of confirmation from the third party.

155 Article 209 of Royal Legislative Decree 4/2015, of 23 October, which approves the Consolidated Text of the Securities Market Act.

– The **holding of financial instruments or client funds** requires that entities periodically submit to the client a statement of position of these instruments or funds, except when it has already been provided with this information in another periodic statement.

  The frequency with which clients must receive information on their investments is at least annual, although it may be more frequent if so agreed by the parties.

  The content of the statement of position must include information on all financial instruments and funds held by the entity on behalf of the client at the end of the statement period.

– Depositories must inform their clients of any **corporate transactions or events that affect the financial instruments deposited with them**, regardless of whether the transaction or event requires precise instructions from the depositor. However, entities must act with special diligence when these transactions require precise instructions from the client that must be executed within a specified period. In these cases, it is considered a good practice for entities to adopt agile and fast communication procedures with their clients that guarantee the timely receipt of communications. Fast communication is required in transactions such as scrip dividends or capital increases with called-up capital.

– Entities have the obligation to respond to **specific and one-off requests for information/documents** from their clients. However, this right is restricted to the time limit for the retention of information/documents required by law. In the case of contracts concluded with retail clients, this retention requirement lasts up to five years after the contractual relationship has ended. In the case of supporting documents for orders, the minimum period is five years after the transaction is executed. In these cases, the entity must inform its client of any reason why it cannot respond to the request (duration of the document retention period).

  Another restriction to the right to information arises in the case of requests that are manifestly unjustified, disproportionate or lacking in detail.

4.4.2 Collective investment schemes (CIS)

➢ **Quarterly, half-yearly and annual reports**

✓ *Submission*

The annual and half-yearly reports of the CIS must be sent to unitholders and shareholders, unless they expressly waive receipt of these documents. If requested, they should be sent the quarterly CIS report.[156]

156 Article 18 of Law 35/2003, of 4 November, on Collective Investment Schemes.

Following a recent regulatory amendment that entered into force on 30 December 2018,[157] reports must be sent through electronic channels, unless the client does not provide the necessary information for this to be done or expresses in writing a preference to receive them in physical format, in which case a hard copy will be sent. Prior to this amendment, regulations allowed the reports to be sent via electronic means if so requested by the unitholder or shareholder.

Similarly, all these documents will be made available to the public in the places indicated in the prospectus of the CIS and the KIID, which, after the aforementioned modification, must include the address of the website.

In some complaints, the periodic reports provided demonstrated that the client had access to complete and detailed information about the performance of the CIS in which it had invested (R/363/2018).

✓ *Content*

The collective investment scheme management company or, where appropriate, the investment company must prepare the quarterly, half-yearly and annual reports on each CIS or subfunds they manage. The form and content of the reports must conform to the model established in the regulations for the type of CIS in question.[158]

One complainant pointed out that the half-yearly reports of a real estate investment company in which he had invested had increased the information on the risk profile of the CIS in the investment policy section from 2011. The Complaints Service considered this to be good practice as this type of institution was not required to include information of this type (R/363/2018).

➢ Response to requests for documentation

On occasion, clients may request documentation related to their CIS investments. The registration obligations applicable to entities that provide investment services have already been mentioned in the section on the response to requests for documentation related to securities.[159] In this section, referring to CISs, the obligation of the CIS management company to keep records of the transactions and subscription orders and redemptions for a period of at least five years should also be included.[160]

The entity acted correctly in the following cases:

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157 Amendment of Article 18 of Law 35/2003, of 4 November, on Collective Investment Schemes, through Law 11/2018, of 28 December, amending the Code of Commerce, the consolidated text of the Corporate Enterprises Act approved by Royal Legislative Decree 1/2010, of 2 July, and Law 22/2015, of 20 July, on accounts auditing, regarding non-financial information and diversity.

158 Rule Three of CNMV Circular 4/2008, of 11 September, on the content of the quarterly, half-yearly and annual reports of collective investment schemes and their position statements.

159 Resolution of 7 October 2009, of the National Securities Market Commission, on the minimum records to be kept by companies that provide investment services.

160 Article 115.1.m) of Royal Decree 1082/2012, of 13 July, approving the implementing regulations for Law 35/2003, of 4 November, on Collective Investment Schemes.

– The complainants requested documentation on their investments in investment fund units that had been subscribed between 1996 and 2001 and redeemed on several dates up to 2008. The Complaints Service explained that, taking into account the time elapsed, the entity was not obliged to keep supporting documentation and commended the entity for providing full details of the movements in the investment fund in the complaint proceedings, including the amounts and account numbers where redemptions were paid (R/529/2017 and R/547/2017).

– The complainant requested proof of the purchase price of some units of an investment fund acquired in 1993. As more than 25 years had elapsed since the fund had been subscribed, the management company was not obliged to have the related contractual documents (R/186/2018).

➢ Response to requests for information

As previously mentioned, in regard to rules of conduct, the regulations applicable to companies that provide investment services generally establish that they must behave diligently and transparently in the interest of their clients, protecting these interests as if they were their own. Therefore, entities must keep their clients properly informed at all times.[161]

The Complaints Service has clarified that if the requests for information are manifestly disproportionate and unjustified or there are special circumstances that so advise, the entity may refuse to deliver this information.

CIS management companies can perform the CIS management function, which includes the task of responding to client enquiries relating to the CIS under management.[162]

Client requests in complaints relating to CISs in 2018 addressed the following topics.

✓ *Investment fund fees*

The fees and expenses of the investment funds are established in the information documents the entity has to deliver to the unitholder before the fund is subscribed, as described in the section on investment fund fees. Unitholders may subsequently request information on fees and expenses from the entity through which they subscribed to the units (usually, the distributor of the CIS).

For example, a complainant requested information from the entity, through Twitter and by email, about the deadline for issuing a redemption order so that it would be executed on the liquidity window date. The entity informed the investor by email of the dates on which the units could be redeemed at market value and with no redemption fees, as well as the latest date on which the redemption order should be

161 Articles 208 and 209 of Royal Legislative Decree 4/2015, of 23 October, which approves the Consolidated Text of the Securities Market Act.

162 Article 94.2.a.2 of Royal Decree 1082/2012, of 13 July, approving the implementing regulations for Law 35/2003, of 4 November, on Collective Investment Schemes.

issued. All this information was consistent with the information in the fund prospectus and was confirmed to the client by Twitter on two further occasions. Consequently, the Complaints Service considered that the entity had provided correct information to the complainant (R/213/2018).

In another case, a complainant requested information on custody fees for foreign ETFs, as well as their calculation base. The entity acted incorrectly by failing to prove that it had provided the client with the information on time, that is, when it was requested and before the complaint was submitted to the Complaints Service. However, the information was provided in the complaint proceedings and this was considered to partially offset the entity's incorrect practice (R/440/2018).

✓ *Positions in investment funds contracted through the entity*

Complainants may also request information on their positions in investment funds that they have held over a period of time or at a certain time.

An example of a request of this type that was correctly addressed occurred when a complainant asked the entity for information about his positions in an investment fund. In response to the request, the entity provided details of the events and movements that occurred in the investment funds owned by the investor and a copy of the fiscal information for the years spanning 2012 to 2016, both inclusive (R/144/2018).

In another case, a complainant queried the calculation of the gain obtained in the redemption of units in an investment fund, since the money had been invested for many years in fixed income funds with periodic redemptions. The investor therefore requested information from the entity about the historical performance of the investment, as well as proof of the initial date of acquisition of the shares.

In its response to the Complaints Service, the entity pointed out the difficulty of locating/preparing the document showing the historical performance of the complainant's investment in CISs since the end of 1998, and said that it was still working on it. However, the entity submitted the required information to the proceedings.

In view of the information provided, the Complaints Service considered the entity's difficulty and delay in preparing the historical performance document and in proving the exact return on the fund redeemed in the terms requested by the client to be reasonable, given that a long period had elapsed (over 18 years). It also deemed that the entity had fulfilled its duty to provide the required one-off information and prove the correct execution of the fund redemption order (R/511/2017).

✓ *Tax information*

In some cases, issues related to the taxation of investment funds are queried. In these cases, the CNMV Complaints Service cannot issue any type of statement as to whether the tax treatment of investments carried out by the entities is correct or not, as this falls to the Spanish tax office.

However, the Complaints Service does assess compliance with the information obligations of the entities as providers of investment services. Therefore, except in cases of disproportionate or unjustified requests or other exceptional circumstances,

entities must properly respond to the requests for information filed by clients concerning their investment funds.

Requests for information on tax issues were correctly addressed in the following cases:

– A complainant queried the simulation of the gain that would be obtained if the units of an investment fund were redeemed on a given date. The entity clarified how such a simulation was performed within the framework of the complaint proceedings. Factoring in the units to be redeemed and the latest net asset value, a simulation was made of the capital gains (the difference between the initial acquisition price of the units and their value on the simulation date) and the withholding (applying the corresponding percentage on the gain obtained) (R/266/2018).

– Another complainant requested clarification on the loss incurred on redemption of an investment fund. The entity submitted the requested tax information and told the investor that its office staff would be available to provide any detailed information required (R/331/2018).

– A complainant residing abroad requested clarification of the reasons why withholdings had been applied on redemptions made in investment funds with capital gains. The entity replied that it was because the investor had failed to submit the documentation required to adhere to the double taxation agreement (R/396/2018).

However, in another case the entity did not properly inform the client about how investment funds for non-residents work. Following the establishment of an investment advice relationship between the client and the entity, the person who regularly attended the client and knew about her investment fund transactions, in addition to her non-resident status, was not familiar with the workings of investment funds for non-residents, as evidenced by the emails and conversations between the parties, which were submitted in the proceedings (R/453/2018).

✓ *Incidents in the entity's website information*

Regulations stipulate that when an entity intends to provide investment services through electronic channels, it must have the appropriate resources in place to guarantee the security, confidentiality, reliability and capacity of the service provided.[163] Therefore, the Complaints Service considers that entities should commit as few errors as possible, for which they must control and organise their resources in a responsible manner, adopting the appropriate measures and using the appropriate means to carry out their activity efficiently; dedicating all the time required to each client, responding to their complaints and enquiries and rapidly and efficiently correcting any errors that may occur.

In some cases, clients requested clarification of data that appeared on an entity's website. In this regard, the following incidents were detected:

163 Article 14.1.f) of Royal Decree 217/2008, of 15 February, on the legal regime of investment firms and other entities that provide investment services.

– The information provided by an entity on its website contained an error whereby the ISIN of some ETFs and their description did not match. The error did not negatively affect the complainant and was resolved. Even so, it was deemed to be an incorrect action by the entity.

  The entity responded properly to the emails from the client indicating the error, as it recognised the existence of the incident and stated that it was working to resolve it, in addition to offering the client an alternative means to continue trading. Further, in the pleadings submitted in the complaint proceedings the entity explained the reasons for the error. The Complaints Service stated that it would have been better if the entity had provided the client with the same information to more adequately address his concern and the complaint submitted (R/83/2018).

– The entity acknowledged that there had been a computer error that affected the client's private area on the website, which incorrectly showed the number of units held in an investment fund. However, when the client requested clarification, the entity provided an alternative means to access the correct information on the units held through the same website (R/308/2018).

✓ *Other information requested by the investor*

Complainants sometimes request clarification on other issues such as those set out below, in which it was determined that the entity acted incorrectly.

The complainant had changed from being a client of a private banking branch to an individual banking branch and asked the entity's CSD to clarify which branch any enquiries should be addressed to. In its first letter, the CSD informed the client that, in general, information on the positions held could be requested from the individual banking branch, while information on investment funds should be requested from the private banking branch. In a subsequent communication, the CSD indicated that the client could carry out all transactions through the private banking branch, including those relating to funds. Based on the inconsistent responses of the entity's CSD and the information provided by the entity in the pleadings submitted in the proceedings, the Complaints Service did not consider that the client had been adequately informed in the first response provided by the CSD (R/505/2017).

➢ Changes in key features of investment funds

On a regular basis, within the scope of the power conferred under current regulations,[164] the CIS management companies can make significant changes to the key features and nature of investment funds, such as the management regulation or, where applicable, the prospectus or KIID, that may involve a substantial change in the investment or profit distribution policy, the replacement of the management company or depository, the transfer of the management of the institution's portfolio to another entity, a change of control of the management company or depository, the transformation, merger or spin off of the fund or subfund, the application of or

164 Article 14.2 of Royal Decree 1082/2012, of 13 July, approving the implementing regulations for Law 35/2003, of 4 November, on Collective Investment Schemes.

increase in fees, the application, increase or elimination of discounts in favour of the fund in subscriptions and redemptions, changes in the frequency of the NAV calculation or transformation of a CIS into subfunds or subfunds of other CISs.

Unitholders must be informed of any such changes clearly, in writing and with sufficient notice. Specifically, by law, they must be informed within a minimum of 30 calendar days before the change enters into force. However, regulations do not require that the information be sent by registered post or by any other means that allows proof of delivery.

As a prerequisite for filing these changes in the CNMV registers, the CIS management company must provide proof that it has fulfilled its obligation to inform the unitholders of the change in question.[165]

Similarly, regulations stipulate that, provided that a redemption fee or associated expenses or discounts are established for the fund, when they are notified of this type of change unitholders have a period of 30 calendar days from the notification date to choose the total or partial redemption or transfer of their units at the corresponding net asset value on the date of the last day of the 30 calendar days granted for this purpose, with no redemption fees or expenses.[166]

To do this, the unitholder must issue the corresponding redemption or transfer order, since the purpose of this right of separation is not, in itself, to provide liquidity for unitholders, but to enable those who are not satisfied with investment fund terms and conditions that differ significantly from those existing at the time the units were acquired to opt to pull out of the fund at no cost.

In the case of CIS mergers, regulations establish the specific information to be provided to unitholders and shareholders, as well as the specific right of separation[167] that must be granted.

Some unitholders complained that they had not been informed or had not consented to the merger of an investment fund with another investment fund or, when the guarantee expired, changes made to its key features. The entity provided evidence of having informed them by submitting the communication sent to the complainants in the proceedings. In addition, the Complaints Service explained that, in general, failure to exercise the right of separation within the specified period automatically implies that the unitholder wishes to maintain their investment (R/543/2017, R/82/2018, R/478/2018 and R/502/2018).

In another case, the complainant was the owner of units in an investment fund that were pledged at the time the fund absorbed another one, and stated that he did not know about and had not consented to the merger. The entity provided a letter addressed to the complainant informing him of the merger and indicating that if he wished to maintain his investment in the fund, he did not need to do anything.

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165 Rule Nine of CNMV Circular 2/2013, of 9 May, on the key investor information document and the prospectus of collective investment schemes.

166 Article 14.2 of Royal Decree 1082/2012, of 13 July, approving the implementing regulations for Law 35/2003, of 4 November, on Collective Investment Schemes.

167 Articles 42, 43 and 44 of Royal Decree 1082/2012, of 13 July, approving the implementing regulations for Law 35/2003, of 4 November, on Collective Investment Schemes.

However, if he decided to redeem or transfer his position, he could do so with no fees or expenses.

However, the units involved in the merger were pledged, which meant that any drawdown on the pledged securities (i.e., their redemption) required the pledge to be removed first, in accordance with the provisions of the loan contract clause, or the prior termination of the reason for the pledge, i.e., the cancellation of the guarantee that originated it. The Complaints Service deemed that the entity should have informed the client about this special circumstance, as it meant that despite the right of separation conferred by the management company on all the unitholders, in this particular case, it was not possible to exercise the right if the pledge had not been removed, information which it failed to submit evidence of having provided (R/569/2017).

➢ Return/capital gains obtained by the CIS

The scope of the Complaints Service's authority does not include determining the quality of the management or issuing judgements on the level of return obtained by the managers as a result of their activity and it cannot therefore assess the cumulative return of a CIS over a certain period or the losses obtained as a result of its investments. However, it is considered that the information that must be passed on to the client must be as complete and clear as possible.

In one case, a complainant queried the fact that the return obtained on a class of units in an investment fund in which he had invested did not match that of the fund's benchmark index. Here, in addition to clarifying its lack of authority to issue a judgement on the return obtained, the Complaints Service pointed out that the investment fund's own prospectus stated that the purpose of the index was to demonstrate to the unitholder the potential risk of their investment, given that it represents the performance of the securities or markets in which the fund invests without being limited to them or their components, and that the return obtained by the fund would not be determined by the revaluation of this index (R/539/2018).

Summary of complaints relating to subsequent information on CIS EXHIBIT 6

- The **annual and half-yearly reports** of the CIS must be sent to all unitholders and shareholders, unless they expressly waive the right to receive them. If requested, they must also be sent the **quarterly** CIS report. Following a recent regulatory amendment, reports must be sent by electronic channels, unless the client does not provide the necessary information for this to be done or expresses in writing a preference to receive them in physical format, in which case a hard copy will be sent.

- Unitholders and shareholders may **request documentation and information** from entities related to their investments in CISs. These requests must be properly addressed, unless the entity does not have the documentation in question due to the expiry of the requisite storage period, the request for information is manifestly disproportionate and unjustified or special circumstances arise.

- **Changes in key features** of the CIS give unitholders the right of separation without fees or expenses and must be clearly communicated to them at least 30 days in advance of their entry into force.

- Pursuant to the **right of separation**, for the period of 30 calendar days immediately after the notification date, unitholders may opt for the total or partial redemption or transfer of their units at the net asset value on the last day of the 30 calendar days granted for this purpose, with no redemption fees or expenses applied. In general, failure to exercise the right of separation within the specified period automatically implies that the unitholder wishes to maintain the investment.

4.4.3 Discretionary portfolio management

When entities provide a portfolio management service, they must provide each client with a periodic statement of the portfolio management activities carried out on their behalf, on durable medium.[168]

For retail clients, the statement must include the following information, if applicable:

- The entity's name.

- The name or other form of address of the client account.

- Information on the content and valuation of the portfolio, including information on each financial instrument, its market value or, where not available, its fair value and the cash balance at the beginning and end of the period to which the information refers, as well as the portfolio return during the period.

- The total fees and expenses accrued during the period to which the information refers, containing at least a breakdown of the total management fees and total expenses associated with execution and including, where appropriate, a declaration indicating that a more detailed breakdown can be provided at the request of the client.

- Where appropriate, a comparison of the portfolio return during the period to which the information refers and the benchmark return on investment agreed between the company and the client.

- The total amount of dividends, interest and other payments received in relation to the client's portfolio during the period to which the information refers, as well as information on any other corporate transaction that confers rights in relation to the financial instruments held in the portfolio.

- Specific information on each transaction executed during the period, except when the client prefers to receive separate information about each transaction carried out.

168 Article 69 of Royal Decree 217/2008, of 15 February, on the legal regime of investment firms and other entities that provide investment services.

If the client chooses to receive separate information, the key data about each transaction must be provided immediately on a durable medium, and a notice confirming the transaction must be sent to the retail client no later than the first business day following the execution or, when the company receives confirmation from a third party, immediately on receipt of the confirmation and not later than the first business day subsequent to that.

The entity must send a periodic statement to retail clients on a half-yearly basis, except when the following circumstances arise:

– When the client requests a quarterly statement. The entity must inform the client of this possibility.

– When the client asks to receive separate information for each transaction executed. In this case, a periodic statement must be sent to the client at least annually, with certain exceptions.

– When, under the portfolio management contract, a leveraged portfolio is permitted, in which case a statement must be received on a monthly basis.

In one case, a complainant disagreed with the content of the periodic report relating to the provision of a discretionary portfolio management service. Specifically, he considered the information on the calculation of the average annual fee for the funds in his portfolio to be erroneous. The entity acknowledged that there had been a one-off mistake in this information that had already been corrected and stated that this error had not affected the portfolio return, so the incident did not have a negative impact for the client. However, it was considered that the entity had acted incorrectly by providing erroneous information to the complainant with regard to the fee (R/366/2018).

4.5 Orders

In general, an order is the mandate or instruction that the investor passes on to the investment services company of which he or she is a client (which acts as an intermediary in the transaction) to buy or sell different financial instruments.

Buy orders include subscription orders (when newly issued securities are acquired) or purchase orders (when securities that are already traded on secondary markets are acquired). As described below, there are various types of orders, which can be processed through different channels.

In 2018, complaints of various kinds were raised, ranging from querying the investment made (i.e., the entity acquired a financial instrument on the client's behalf that it did not want), to the entity selling the instrument without the client having ordered the sale, or where the execution did not conform in any way to the mandate or instruction issued by the client (this topic raises the largest number of complaints), or due to different incidents occurring in the execution process.

4.5.1 Securities

➢ Orders without client authorisation

The legislation applicable to entities as regards order execution establishes that entities must execute them according to the criteria of best execution. However, when the client gives specific execution instructions, the company must execute the order according to these instructions.[169]

In the cases set forth below, the entities providing investment services executed transactions on behalf of their clients with no order on which to base the execution or did not execute the transaction despite the fact that the client had issued specific instructions about it.

R/315/2018: the client complained that the entity had sold a security without his consent. The entity alleged that the client had been informed of the unilateral decision to terminate the contractual relationship sufficiently in advance, giving him time to transfer the security. However, the Complaints Service concluded that the unilateral sale was contrary to the procedure established in the standard contract for the custody and administration of securities signed by the parties.

In contrast, in case R/491/2018, although the client also complained about a unilateral sale made by the entity also linked to the termination of the contractual relationship between the parties, it was the client who made the decision to terminate the relationship. For this reason, it was explained to the complainant in the final report that in order to close a securities account, the first thing that had to be done was to sell or transfer of all of the securities that deposited in the account. A copy of the contested sales order was submitted in the complaint proceedings, which had been signed by the client at the time the request to terminate the contractual relationship made.

In cases R/222/2018 and R/309/2018, the complainants claimed to have issued an order, which had not been recognised by the entity. In the absence of reliable evidence that an order has been issued, the Complaints Service cannot deem that the entity has acted incorrectly based only the complainant's verbal declaration that is not recognised by the entity.

A similar situation occurred in case R/402/2018, in which the existence of a purchase order was not accredited. However, since the case related to bonds that the respondent entity had offered to clients that met certain requirements, in accordance with the issuer's securities note in which a deadline for accepting the offer was established, it was concluded that the entity had acted incorrectly as it was shown that the information provided to the complainant when he expressed interest in the bonds did not include any mention of this deadline.

There were also cases where the client complained of being the owner of shares for which he had not issued an order to buy, although a buy order had actually been issued. This occurred in case R/579/2017, where the entity submitted a copy of the order record, created on the same day as the execution, which showed that the

169 Articles 223 and 225 of Royal Legislative Decree 4/2015, of 23 October, which approves the Consolidated Text of the Securities Market Act.

investor had used the online banking channel to issue the order. To provide evidence that the order had been properly registered, the entity submitted the computer sequence (a document consisting of three pages) of the steps followed by the holder to complete the purchase order for the securities and validate the transaction. Consequently, it was deemed that the entity had processed the order correctly.

A similar situation occurred in case R/415/2018, where the complainant did not acknowledge an order to purchase shares of a specific company, and said that he had intended to acquire shares of another company. However, the entity provided a copy of the duly signed order in the complaint proceedings.

The same occurred in case R/484/2018, where the complainant claimed to have ordered the sale of subscription rights and not ordinary shares. However, the entity submitted a copy of the order in the complaint proceedings, which showed instructions had been issued to sell 3,000 shares at market price.

➢ Errors in form in completion of orders

Securities orders that contain the client's instructions must be completed such that both the ordering party and the entity responsible for receiving and processing the order accurately and clearly know the scope and effects.

The order must include the following content:[170]

- Identification of the investor.
- Identification of the type of security.
- Purpose of the order: purchase or sale.
- Strike price and volume, if limits or conditions are to be applied (if the client does not specify a price, the order is deemed to be a market order and to remain in force until the close of the session).
- Period of validity.
- Securities debit or credit accounts.
- Associated cash account.
- Any other necessary information depending on the channel used or market regulations.

In 2018, several investors complained about the absence of some of this information in orders:

R/450/2018: The reason for the complaint was that the entity had validated and executed orders incorrectly, as they were not signed by all the investment holders.

170 For further information on orders, see the CNMV Guide on securities orders available at the following link: http://www.cnmv.es/DocPortal/Publicaciones/Guias/ordenes.pdf

A review of the contractual documentation provided in the complaint proceedings showed that orders had to be issued "jointly". However, not all the holders of the investment had signed the sell orders, which was considered an incorrect action.

R/146/2018: In this case, the complainant alleged that an order had been executed outside the period of validity, as the limit was the same day as the order and it was executed after this date.

In the information provided by both parties, the order date was reflected as the deadline and no fields had been left blank by the client suggesting that no deadline for the purchase order had been entered (contrary to the entity's allegation). Further, the entity acknowledged that the date indicated in the order entered by the complainant was the date being queried, so it was concluded that either the entity had made an error by processing the order one day after the deadline or the information that the entity provided to the client was confusing and caused an error relating to the period of validity of the purchase order entered.

R/337/2018: In this case, the complainant alleged that the entity had made an error in the execution of an order by placing it at market price (28.3% of the nominal value) when the client wanted it to be processed at the price at which it had been placed on other occasions (70% of the nominal value).

Although the entity did not recognise the alleged error, the Complaints Service considered that there were indications in the complaint that suggested the entity had not properly processed the order, namely: the existence of previous orders issued by the complainant that were all at 70% of the nominal value; the fact that when the order was placed at a price of 28.3% the complainant asked for it to be cancelled (which was acknowledged by the entity in its written response to the complaint filed with the CSD); and lastly, the fact that the complainant did not perform the orders electronically, but through the branch, so the client did not enter the order price but rather an employee of the branch.

➢ Market, limit and at-best orders

As previously mentioned, there are different types of orders and they can be transmitted through different channels. The final return of the investment may be contingent on the correct execution of a securities order.

In the trading of shares on the secondary market, there are three types of orders: limit orders, market orders and at-best orders.[171] This is a fundamental distinction as it affects the price at which the order is executed. Only in the first case (limit orders) is a client guaranteed a strike price (price that acts as the maximum price for the buy order and minimum for the sell order).

Therefore, the only order that truly eliminates risk or uncertainty about the strike price is the limit order as it is the client who sets the price, without prejudice to the risk of non-execution of the order as a consequence of the chosen price differing from the market price. This issue is particularly important at times of high market

171 Rule 6.2.2 of Sociedad de Bolsa Circular 1/2001, on the Rules of Operation of the Spanish Stock Market Interconnection System (SIBE).

volatility, when the strike price of an order may differ substantially from the latest market price available prior to the time the order was made.

The nature and features of each type of order gave rise to various complaints in 2018:

In case R/358/2018, the complainant alleged that an order had not been executed even though the security in question had traded at the limit price that had been set. Based on available data, it was observed that trades had been crossed at the price indicated by the complainant in the order. However, the entity explained that the executed orders been had entered in the order book before the complainant's or had priority due to the type of order issued.

As described above, the price shown in limit orders acts as a maximum price for the purchase and a minimum price for the sale. Further, the market does not allow limit purchase orders to be placed at a price that is higher than the maximum price in the static range or limit sales orders where the price is lower than the minimum in the range.[172]

Therefore, Bolsas y Mercados Españoles establishes the static and dynamic ranges that are calculated using the most recent historical volatility of each security, so that each one usually has its own range. The static range is the maximum variation permitted with regard to the static price established at any time (this limit is also applicable for shares traded in the Latibex).[173] The ranges are in the public domain and are updated periodically.

However, in the event that an order issued by the client is rejected by the system for being outside the range, the CNMV Complaints Service understands that the entity must inform the client immediately. Otherwise, it would be considered to have acted incorrectly.

For instance in case R/414/2018, where the order was rejected for this reason and the entity did not provide evidence that it had duly informed the client.

Further, a price limit is not specified in market orders, so they are traded at the best price offered by the counterparty at the time the order is entered. These orders can be entered in both auctions and open market periods.

The risk in this type of order is that the investor cannot control the strike price. If the order cannot be fully executed against the counterparty order, the remaining tranche will still be executed at the next purchase or sale prices offered, as many times as necessary until the order has been fully completed. Typically, market orders are executed immediately, even if in several tranches. These types of order are useful when the investor is more interested in performing the transaction than in trying to obtain a better price.

172 Rule Five, section 2, of Sociedad de Bolsas Circular 1/2001, amended by Circular 1/2004, on the modification of Rules of Operation of the Spanish Stock Market Interconnection System, in relation to the definition of the static range.

173 Trading segment for Latin American securities listed in euros.

In case R/365/2018, the complaint referred to the strike price of some orders. From the documentation provided, it was demonstrated that the orders in question were processed as market orders.

Therefore, the report explained to the complainant that the (partial or total) execution of an order was dependant on market conditions, and the intermediary was not able to influence the cross price. The client was also informed that the only way to set a strike price was by issuing limit orders.

In case of R/453/2017, the complainant alleged that a sell order had been executed at a lower price than agreed. In the copy of the order submitted in the complaint proceedings, it was observed that the type of order issued was a market order and, while a specific price had been included, the order did not have the same features as a limit order and it was clear that the price was the last trading price prior to the issue of the order, i.e., an indicative price.

Given that the client had not issued a limit order, the Complaints Service did not consider it bad practice on behalf of the entity that the sell order was executed at a price lower than the indicative price (and which, according to available data, was within the security's price margin between the order date and the execution date). It was explained to the complainant that orders with no limit price are executed at the best counterparty prices on the market at the time of they are placed and that these prices do not have to coincide with the market price immediately prior to the moment the order is issued or the closing price of the previous day.

A similar situation occurred in case R/177/2018, in which it was accredited that at the time of issuing the order the entity informed the client that the amounts indicated were approximate and that the final amount of the transaction could differ from the approximate effective amount due to market volatility .

R/533/2017 was an unusual case: The central issue of this complaint was the non-execution of a market sell order. In this case, we would also point out that, without prejudice to the aforementioned description of how market orders work, the Spanish electronic trading system (SIBE) has established limits on cash amounts, which, if exceeded, require confirmation from an authorised operator. Although all companies listed on the SIBE have an established limit in accordance with applicable regulations,[174] usually these limits have more of an effect on trades made on companies with low liquidity (as in this case). In this case, the established cash limit was €30,000, which was amply exceeded in the orders issued by the complainant.

Therefore, in view of the above, there was a reason why one of the orders issued by the complainant on the shares was not executed immediately, namely that approval was required from an authorised SIBE operator. This circumstance was described in a document entitled *Operating conditions in the securities markets*, which the entity made available to the client when the securities account was first opened.

At-best orders are orders with no price that are limited to the best price available on the opposite side of the order book.

174 Sociedad de Bolsas Operating Instruction 59/2004, of 26 November.

In case R/426/2018, the complainant alleged that the entity had erroneously executed a purchase order, which had caused economic damage to the client. This was an at-best order in which the validity date was also not indicated and which had been executed in two tranches (the second the day after the order was issued and for a higher price).

The Complaints Service concluded that, according to the features of at-best orders, following the partial execution of the order, the rest (i.e., the shares that had not been executed) should have been kept on the order book with a price limit which was the same as the price at which the shares included in the first tranche had been executed. Since the shares did not trade at that price again (or any lower), it was considered correct that the rest of the order had not been executed during the first day. However, the entity did not act correctly when the rest of the order was executed at a higher price the following day.

➢ Electronic orders

At present, with the rise of new technologies and the increasing access that clients have to the electronic channels offered by entities, clients often place securities orders through the entity's website, or through a mobile application or by using investment platforms.

Although the regulations applicable to these transactions are essentially the same as for those performed in person, when the entity intends to provide the service electronically it must have adequate resources to guarantee the security, confidentiality, reliability and capacity of the service rendered.[175]

Different incidents may arise, such as the existence of communication problems that might interrupt the processing of the order, with the consequent disruption for the investor.

In 2018, several complaints relating to this issue were processed:

R/227/2018: Due to a computer problem affecting the entity's systems, a client was unable to sell certain financial instruments, for which he requested financial compensation. In this case, although the entity acknowledged the existence of the technical problem, which meant it was deemed to have engaged in bad practice, it decided not to compensate the complainant financially on the grounds that the client did not suffer any financial damages.

R/491/2017: The central issue of this complaint was the impossibility of disposing of shares of a foreign company on a specific trading day. It was demonstrated that the client had acted diligently by informing the entity of the incident the very same day.

However, the entity acknowledged that it did not contact the client until several days later and it did not resolve the problem. Days later the entity informed the client of the source of the problem that had prevented the sale of the securities (i.e., the

175 Article 14.1.f) of Royal Decree 217/2008, of 15 February, on the legal regime of investment firms and other entities that provide investment services, partially amending the regulations of Law 35/2003, of 4 November, on Collective Investment Schemes, approved by Royal Decree 1309/2005, of 4 November.

order volume) and an alternative method for executing the sale was not provided until a few days afterwards, which consisted of the splitting the order. Consequently, it was concluded that the entity did not act with due diligence in the interest of its client.

➢ Email as unsuitable channel

As previously mentioned, securities orders must be completed in such a way that both the investor and the entity in charge of their reception and processing know exactly and clearly their scope and effects.

Therefore, the Complaints Service understands that email is not an ideal channel for issuing orders.

In case R/477/2017, the complainant alleged that the entity had not responded to an order made through the email channel. The investor was informed of this criterion and also told that if email is used, it is not possible to determine the exact time at which the entity obtains knowledge of the client's mandate.

➢ Contingent orders

Some entities that provide investment services offer their clients more sophisticated securities orders than those available on the market for all investors, as referred to above.

These are contingent orders that are entered in the market only if a specific condition is met, for example the financial asset reaching a certain price.

The best-known are stop loss orders, which are widely used by investors in order to protect themselves against any possible falls in the price of the financial asset in which they have invested. They are activated when the quoted price falls to a level at which the investor no longer wants to take risks and therefore wants to unwind the position.

In case R/390/2018, the entity did not execute the client's contingent order according to its specific instructions and erroneously sold some shares, as it acknowledged in the complaint proceedings.

➢ Client instructions in corporate transactions

The obligations of entities that provide securities administration services include providing their clients, with due diligence and speed, information on all corporate transactions carried out by the issuing entities. This obligation is especially relevant for transactions that require precise instructions from clients. In these cases, entities must inform their clients of the procedure that they must follow to issue instructions in corporate transactions carried out by companies in which they hold shares, especially because these transactions have deadlines.

When the client issues instructions in due time, the entity is required to comply with them, in due time and form, even in the event that the client issues instructions

on the last day of the period for acceptance. Failure to do so is considered to be an incorrect action.

✓ *Capital increases*

When a client places a sell limit order relating to subscription rights and the order is not executed as it does not at any time match the market price, the CNMV Complaints Service believes that the entity cannot be criticised for the loss of value of the rights. This occurred in case R/318/2018.

R/373/2018: On this occasion, although the client issued instructions for the additional subscription of shares within the deadline, they were not taken into account by the entity. Although the entity acknowledged that its client had issued the order, it stated that no compensation was required, as even if the order had been processed, it would not have been possible to proceed since the system would not have allowed a client to trade if said client had not previously completed an appropriateness test.

However, the Complaints Service concluded that the entity could not justify the non-execution of the purchase order for ordinary shares due to the hypothetical rejection of the order because no appropriateness test had been carried out, when its obligation was precisely to carry out such a test (if the entity considered that, although the product was not complex, the test should have been performed) and, where appropriate, issue the warnings provided for in the regulations. Therefore, it was deemed an incorrect action.

R/607/2017: In this case, the complainant alleged to have sent to the entity using an electronic channel its decision not to subscribe to new shares and to sell the rights. The entity claimed that, after the complainant decided not to subscribe to the capital increase, he had been informed that the entity would take no action and that, therefore, it should be the client's decision to sell the rights before their expiry date and extinguishment at the end of the capital increase period.

Although in the complaint proceedings it was only proved that the complainant had communicated his decision not to subscribe to the new shares (not to sell his rights), it was not demonstrated that the respondent entity had provided the client with information on the implications of not taking part in the capital increase in sufficient detail for him to make an informed decision, especially considering that, in general, the course of action that entities must follow in cases where the client does not give any instruction is to sell the rights to avoid the loss that would result from not doing so.

✓ *Voluntary exchanges of financial assets*

In the context of a voluntary exchange of one financial asset for another, the entity needs to have the client's instructions.

In case R/201/2018, it was found that the complainant had delivered the necessary document for the exchange on the final day of the deadline period. Although it was not demonstrated whether the document had been delivered prior to the cut-off time, the Complaints Service considered that, since the document bore no time stamp, the entity should have proceeded to process the order in accordance with the client's instructions.

A different issue occurred in case R/109/2018, where the complainant alleged that the entity had sold some securities (convertible bonds) without having ordered the transaction. From the documentation provided by the entity, it could be proved that the complainant's securities account held shares resulting from the mandatory exchange of these bonds, so it was demonstrated that the entity had not sold the bonds in question but had carried out their mandatory conversion into shares, as provided for in the prospectus.

✓ *Public offerings*

R/451/2017: In this case, although the complainant alleged to have given instructions to his branch to take part in a public tender offer, it was not possible to obtain any evidence to prove that such instructions had actually been delivered.

The forms that the complainant submitted in the proceedings did not bear the entity's stamp, signature or receipt of delivery that would have proved they had been presented at the branch. Further, the entity denied having received the corresponding order.

Therefore, in the absence of any evidence that the transaction had been ordered, it was concluded that the entity had not acted incorrectly.

✓ *Other share offerings*

In case R/121/2018, the complainant claimed that he was unable to subscribe to some bonds that the entity in question had offered to clients that met certain requirements, in accordance with the securities note (prospectus) of the bond issuer published with the CNMV.

In this regard, it was concluded that the entity acted incorrectly as it could not prove that it had informed the complainant about the bond offer, even though the client allegedly met the required conditions, nor consequently that it had obtained instructions from the client in this regard.

A similar situation arose in case R/277/2018, which involved the same product. In this case, the complainant did not receive sufficient information about the bond acquisition procedure.

Lastly, in case R/282/2018 it was proved that the complainant could have subscribed to these securities as, even though the entity said that some client information was missing, the latter provided proof that it had been presented at the branch before the deadline.

➢ **Purchase of assets with insufficient balance in the client's account**

In general, regulations[176] establish that members of the official secondary market are required to execute, on behalf of their clients, any orders they receive for the

176 Article 71 of Royal Legislative Decree 4/2015, of 23 October, which approves the Consolidated Text of the Securities Market Act.

trading of securities in the corresponding market. However, with regard to spot transactions, the entity may subordinate compliance with this obligation to the ordering party delivering the funds used to pay for the amount of the transaction.

This subordination referred to in the legislation may be incorporated into the securities deposit and administration contracts.

In any event, it seems necessary for entities to have implemented appropriate procedures and control measures so as to avoid overdraft situations, given the negative consequences this causes for both parties.

In regard to this issue, it is important to bear in mind whether this type of incident happens on a one-off basis, in which case the responsibility may fall on the complainant, or whether it occurs systematically, which is a situation that the entity should avoid.

In fact, entities may make the processing and execution of their clients' securities orders contingent on the client providing the necessary funds; not only of the amount of the investment, but the total amount, including the transaction fees. For example, in case R/398/2018, the Complaints Service considered the non-execution of an order to transfer securities to be justified because the complainant did not have a sufficient balance in his associated account to cover the transaction fees.

➢ Errors in the execution of orders on behalf of clients

When executing client orders, entities that provide investment services should adopt reasonable measures to obtain the best possible result for their clients' transactions, bearing in mind the price, cost, speed and probability of execution and settlement, volume, nature of the transaction and any other significant element for their execution.

Entities must also act with care and diligence in their transactions and execute them in accordance with their best execution policy. However, in cases where the client provides the entity with instructions, it must comply with the specific instructions given.[177]

In this issue relating to securities orders, as with other issues raised in the complaints, the CNMV Complaints Service considers that entities should make as few errors as possible and they must therefore control and organise their resources responsibly, adopting the pertinent measures and making use of the appropriate resources to perform their activity efficiently; dedicating all the time required to each client, responding to their complaints and enquiries and rapidly and efficiently correcting any errors that may occur.

The Complaints Service therefore welcomes those cases in which the respondent entity itself acknowledges the error made and offers the client a solution that financially compensates the damage resulting from unfortunate conduct by the entity.

177 Articles 221 and 223 of Royal Legislative Decree 4/2015, of 23 October, which approves the Consolidated Text of the Securities Market Act.

R/170/2018: In this case, the respondent entity recognised that an acquisition had been made incorrectly as the result of an isolated human error, and offered the complainant the option to sell the shares and compensation for the losses that the transaction could have caused, including tax damages.

However, it should be indicated that the rectification of the errors committed by entities does not necessarily entail the absence of bad practice. The rectification of the consequences by the entities is the result of a prior error, but that does not ensure that the error will not be repeated. For this reason, in general, when an error is detected, the CNMV Complaints Service generally considers that there has been bad practice and requests that the entities provide evidence that measures have been adopted in order to prevent a repeat of such practice, without prejudice to the Service welcoming the entity offering a solution to the client that was negatively affected by the error.

➢ Failure to execute an order according to the client's instructions

As previously mentioned, the regulations on order execution establish that entities must execute orders according to the specific instructions issued by each client.[178]

Despite the provisions set out in the legislation, it might be the case that the entity does not take into account its clients' instructions for performing certain transactions which, for various reasons, cannot be carried out.

The Complaints Service believes that diligent action by the entity involves providing clients with all the information necessary so that they may understand the problem that prevented their order from being executed.

In case R/234/2018, the complainant alleged that she had not been able to buy a derivative financial instrument in her account, receiving a message that the transaction was not available.

The entity claimed that, in accordance with the contract signed between the parties, it was not obliged to mediate or execute a transaction on the market or comply with instructions relating to any transaction if there were amounts for any concept or securities, instruments or financial assets pending payment or delivery by the client to the entity in relation to any transaction, as had occurred in this case, where the entity had blocked the complainant's account due to late payment.

However, the entity did not provide evidence of the outstanding debt in the terms indicated in the proceedings, nor did it deliver to the client a copy of the contract containing proof of the aforementioned clause which justified blocking the client's transaction due to late payment.

There are also situations in which clients are not able to operate because they have not provided some type of information required by the regulators. For example, in case R/299/2018, the complaint related to a sale of some shares that could not be executed because the client had not submitted any identification documents, in accordance with the MiFID II regulations. Specifically, Annex II of Delegated

178 Article 223 of Royal Legislative Decree 4/2015, of 23 October, which approves the Consolidated Text of the Securities Market Act.

Regulation (EU) 217/590 requires for Italy (the complainant was an Italian national) a tax identification code (*codice fiscale*) in order to operate. Therefore, it was considered that the entity did not step over the line by requesting that this identification document be provided by the client in order to accept and execute his orders.

In the complaint proceedings, the entity submitted a communication informing the complainant of this identification requirement, in accordance with the provisions of Annex II of the regulation indicated above.

A similar situation occurred in case R/387/2018. However, in this case the entity was found not to have acted diligently in the process of unblocking the complainant's securities account as an excessive length of time elapsed between the date on which the complainant provided the required documentation and the date on which the account was effectively unblocked. The Complaints Service therefore ruled that the entity had acted incorrectly.

In case R/120/2018, the complainant claimed that he was unable to subscribe to some bonds that the entity in question had offered to clients that met certain requirements, in accordance with the securities note (prospectus) of the bond issuer published with the CNMV.

However, based on the documentation provided, it was demonstrated that the complainant did not meet one key requirement, and therefore did not form part of the target audience to which the offer was addressed.

The same situation occurred in cases R/272/2018, R/238/2018 and R/421/2018.

A similar situation occurred in cases R/210/2018 and R/335/2018, but in these cases it was concluded that the entities acted incorrectly as they could not prove that they had informed their clients about the requirements that said clients did not meet in order to be eligible to subscribe to the bonds at the time of the request.

➢ Unilateral execution of positions by the entity

On certain occasions, complainants query the execution of orders by the entity on the complainant's own account, although it is authorised to do so within the framework of the corresponding investment service contract.

In this sense, entities that provide investment services can unilaterally close positions opened by their clients in certain financial instruments, a possibility that is usually included in the operating rules established in the contractual documentation signed between the parties as part of the investment.

Although this may be justified in some cases (see below), the CNMV Complaints Service considers that prior to the investment, the entity must inform its clients of the cases in which it could act in this manner. It should be noted that the legislation applicable to firms that provide investment services establishes, in the field of conduct of business rules, that they must keep their clients informed at all times.[179]

179 Article 209.1 of Royal Legislative Decree 4/2015, of 23 October, which approves the Consolidated Text of the Securities Market Act.

The most common case of unilateral closure of client positions by entities is related to trading with certain financial derivatives products, which, due to their leveraged nature, lead to the actual exposure to a certain asset (referred to as the *underlying asset*) exceeding the investment or the money that the client has deposited in the entity. It is therefore necessary to continuously monitor the position and, in some cases, if the underlying asset performs unfavourably and the client does not provide any new funds, the entity would be justified in cancelling the investment.

For example, in contracts for differences (CFDs), the obligations assumed by the parties are generally laid down in the contract itself. This usually includes the client's obligation to set up and maintain a series of margin calls that depend on the price of the underlying asset on the secondary market. In the event that these margin calls are exceeded, the positions will be closed if the investor does not provide the requested funds. Therefore, entities must provide documentary evidence that the client was informed about these issues prior to the start of the transactions.

It is considered good practice if, before closing the position for any reason, the entity reports this circumstance to its client so that the latter may prevent the closure or minimise the consequences derived from it to the extent possible. Otherwise, the entity would have been deemed to have acted incorrectly (as occurred in cases R/596/2017, R/97/2018, R/98/2018 and R/473/2018).

In case R/478/2017, the client also complained that the entity had unilaterally closed his accounts.

The report showed that, without prejudice to the entity's right to unilaterally close a client's account when this circumstance has been reflected in the initial contract, the entity should be able to demonstrate that it clearly informed its client, prior to the cancellation, that it was going to proceed in this manner in order to enable the client to perform the actions deemed appropriate with respect to their open positions.

In this case, it was concluded that the entity had acted incorrectly, as it was demonstrated that it failed to comply with the minimum notice period of one month for termination of the contract, as specified therein.

In case R/16/2018, the complainant alleged that the entity had sold some shares without her consent to cover a seized account.

In these cases, the Complaints Service understands that the entity is acting correctly provided that once the seizure order has been received and the corresponding shares have been retained, the entity informs the client the seizure so that the latter, if so wished, may take the appropriate measures to stop the execution of the seizure order. In this case, no such communication was accredited, so it was concluded that the entity had engaged in bad practice.

Summary of complaints relating to securities orders

EXHIBIT 7

- Complaints were received that queried the investments made. In such cases, the entity must provide evidence of an order that addresses the transaction.

- Securities orders that contain the client's instructions must be completed such that both the ordering party and the entity responsible for receiving and processing the order accurately and clearly know the scope and effects.

- There are complaints resulting from **different types of orders and their consequences** (market orders, limit orders, at-best orders and contingent orders).

- When it is **not possible to operate by electronic means for reasons attributable to the entity**, said entity must act diligently to restore the service, inform the client sufficiently in advance or, if not possible, as soon as the interruption to the service occurs, and make other alternative channels available.

- Complaints may also arise relating to the non-execution or incorrect execution of orders related to different corporate transactions.

- Entities may make the processing and execution of their clients' securities orders dependent on the customer **providing the necessary funds** to cover the total amount of the transaction (including applicable fees).

- Entities should make as few **errors** as possible and they must therefore control and organise their resources responsibly. The Complaints Service welcomes those cases in which the respondent entity itself detects the error, corrects it, speedily informs the client and offers them a solution that financially compensates them for the damage resulting from unfortunate conduct by the entity.

- It might also be the case that the entity does not take into account its clients' instructions for performing certain transactions which, for various reasons, cannot be carried out, or it may be forced to **unilaterally close the positions opened by its clients** in certain financial instruments due to their operating rules. Before such an operation is carried out, the entity must inform the client of the reasons why it is entitled to act in this manner as stated in the contractual documentation that supports the investment signed between the parties. However, the Complaints Services considers it to be good practice if, before closing the position for any reason, the entity reports this circumstance to its client so that the latter may prevent the closure or minimise the consequences derived from it to the extent possible.

4.5.2 Collective investment schemes (CIS)

➢ Orders without client authorisation

As mentioned in the "Securities" section, the rules of conduct applicable to companies that provide investment services establish, in matters of order execution, that when the client gives specific instructions for the execution of an order, the company must execute the order following those instructions.

With regard to investment funds, the subscription/redemption of units must be reflected in an order that certifies the unitholders wish to subscribe/redeem units of a certain fund.

In case R/485/2017, the complainant made a query about an investment in a specific CIS, claiming that at no time had he consented to contracting the product. The entity alleged that the client had been reimbursed for the transaction a few days later and that there had been no economic damage, as the entity credited the complainant's account for the amount of €27.51 with the stated purpose of "Investment fund regularisation" to compensate for the loss of assets that occurred in the redemption of the fund.

However, as no copy of the order or the duly signed orders supporting the transactions were provided, the Complaints Service concluded that there was no proof that the client had given his express consent to the subscription of the units in the complaint.

In contrast, in case R/313/2018, the complainant alleged that he had issued an order to redeem some units of an investment fund, but that his branch manager had convinced him not to do so at that time, so they were redeemed at a later date.

Since no evidence was submitted in the proceedings that any documents or evidence had been provided showing that the complainant intended to redeem the units on the date indicated or that the conversation with the branch manager had taken place, the Complaints Service could not make a judgement on the verbal statements provided by the client so it had to consider only the documentary evidence that indicated that the redemption request had been made at a later date. A similar situation occurred in case R/349/2018.

➢ Disputes over the net asset value applied to the transaction

Given the intrinsic characteristics of CISs with regard to liquidity, many complaints relate to the net asset value (NAV) applied in the subscription or redemption of CIS units.

First of all, in should be pointed out that in general the NAV applied in subscriptions and redemptions of unquoted investment fund units be that taken on the same day as the request (which will be made public the following) or the day after the request (which will be published two days later), as stated in the fund prospectus. Business days do not include, among others, days in which there is no market for the assets accounting for more than 5% of the total fund assets.

Consequently, the net asset value (NAV) applicable to subscriptions and redemptions of units of financial investment funds is unknown to investors when they

place the order. The prospectus must also indicate the procedure for subscription and redemption of units in order to ensure that the management company or distributor accepts the subscription and redemption orders only when they have been requested at a time when it is impossible to accurately estimate the NAV.

Likewise, it is common practice for the prospectuses of investment funds to set out what are referred to as *cut-off times*, so that requests received after this time are deemed to have been made on the following business day for the purposes of the applicable net asset value.

For both subscriptions and redemptions, certain practical aspects such as fees, minimum investment requirements or advance notice should be taken into account. All this information is contained in the KIID and in the prospectus.

In the case of harmonised foreign CIS registered in the corresponding CNMV registry, the distributors in Spain must deliver to each unitholder or shareholder, prior to subscription of the units or shares, a copy of the Annual Report on the marketing categories provided for in Spanish territory in accordance with the standard form published on the CNMV's website.[180] This delivery is mandatory and cannot be waived by the unitholder or shareholder. The standard form establishes the following:

> *SUBSCRIPTION AND REDEMPTION PROCEDURE*
>
> *Orders for subscription, redemption or exchange of shares/units must be received by the distributor on a business day and before [...]. Orders performed after the time limit or received on a non-business day will be processed together with the orders received on the following business day. The distributor will also confirm the transactions to each investor informing about the date on which they were performed, the number of shares/units subject to the transaction and the price and, where appropriate, the fees and expenses charged, and the exchange rates applied in any foreign exchange transactions performed.*

The following complaints questioned the NAV applied to the transactions.

In case R/25/2018, a different NAV was applied to that of the request date. The NAV applied was correct due to an exception in the processing of redemptions for the CIS in question, whereby on days on which there was no market for assets that represented more than 5% of the CIS's total assets would not be considered business days. This condition was described in the fund prospectus.

However, in this complaint it was concluded that the entity acted incorrectly, because when the redemption was requested, the client was erroneously informed that it would be carried out on the same day as the request.

The same situation occurred in case R/153/2018, where the entity applied the correct NAV, but the client was given incorrect information through its website that gave rise to erroneous expectations about the date of the NAV applicable in the subscription of the units in question.

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180 Rule Two, section 2, of CNMV Circular 2/2011, of 9 June, on information of foreign collective investment schemes registered in the CNMV's registries.

➢ Incidents in the subscription and redemption process

The request or order must state the identification of the CIS in which the investor wishes to subscribe or redeem shares or units, the amount or number of units or shares that the investor wishes to subscribe or redeem, as well as other information of interest. In the case of transfers, the source and target fund must also be identified.

In 2018, complaints were resolved in which entities executed transactions on behalf of their clients with no order to support the execution (or if there was an order it had some type of deficiency) or, in contrast, transactions were not executed even though they had received specific instructions from the client.

In case R/498/2018, it was concluded that the entity acted incorrectly because it could not prove that the ordering party in the transaction was the legal representative of the minor who owned the fund, so it should not have allowed that party to subscribe and redeem units of the investment fund.

In case R/262/2018, the complainant alleged that he had not been able to redeem the units of his three investment funds. However, it was demonstrated that these units were pledged in favour of an official organisation, so it was concluded that the respondent entity acted correctly by considering that the situation of the three investment funds in the complaint meant that they could not be redeemed.

A similar situation occurred in case R/376/2018, where the Complaints Service concluded that the guarantee on a personal loan in the name of the complainant covered units in the investment funds subject to the complaint that had been pledged and consequently, it was not possible to redeem or transfer the units as they had been immobilised in favour of the bank.

As mentioned previously, the Complaints Service considers that entities should commit as few errors as possible, for which they must control and organise their resources in a responsible manner, adopting the appropriate measures and using the appropriate means to carry out their activity efficiently; dedicating all the time required to each client, responding to their complaints and enquiries and rapidly and efficiently correcting any errors that may occur.

The Complaints Service therefore welcomes those cases in which the respondent entity itself acknowledges the error made and offers the client a solution that financially or otherwise compensates the damage caused by the entity's unfortunate conduct.

In some cases, such as R/81/2018 and R/265/2018, entities offered their clients financial compensation for the errors committed, namely, failure to execute an order immediately, with the consequent economic loss that this delay could have incurred, i.e., the difference between the NAV at the moment the order should have been executed and the NAV at the time it was finally executed.

A similar situation occurred in case R/345/2018, only in this case the error affected the amount redeemed (€15,000 were redeemed instead of €1,500). The entity offered compensation both for the tax withholding applied on the units that were redeemed in error and for the potentially higher subscription cost applied in the repurchase of the units.

In other cases, complainants allege that the entity has acknowledged that there is an error in the processing of their orders. However, in the pleadings submitted by the entity in the complaint proceedings, this is not usually recognised. As already indicated, the CNMV Complaints Service cannot base its conclusions on verbal statements that are not recognised by both parties but on reliable evidence submitted in the proceedings.

In case R/395/2018, the complainants alleged that the investment fund units had been redeemed in full by mistake, as they had intended only to carry out a partial redemption of the units.

However, the pleadings and the documentation provided by the entity in the complaint proceedings showed that the prospectus of the fund in question required a minimum investment of €600 to be maintained, and the amount of the partial redemption requested by the complainants would have put the amount remaining in the fund below that minimum investment requirement. Therefore, it was not considered an error or an incorrect action by the respondent entity to have automatically redeemed the entire investment, in accordance with the provisions of the fund prospectus, as the minimum investment requirement would not have been maintained after the partial redemption.

➢ Transfers between investment funds and other CISs

CIS transfers are governed by the provisions laid down in Article 28 of Law 35/2003, of 4 November, on Collective Investment Schemes and, for matters not provided for therein, by general legislation regulating the subscription and redemption of investment fund units and the acquisition and disposal of shares in investment companies.

Withdrawing from a fund, even when reinvesting the resulting amount in another fund (which is treated differently for tax purposes), involves a redemption of the units of the source fund and a subscription of the units of the target fund. This operation is therefore subject to all general legislation on CIS subscriptions and redemptions.

The aforementioned regulation indicates that in order to initiate the transfer, the unitholder/shareholder must contact the target management company or distributor, with the latter required to send to the management company or distributor of the source fund, in a maximum period of one business day from the time it receives the notification, the duly completed transfer request.

The source company has a maximum of two business days following receipt of the request in order to perform the verifications that it deems necessary. Both the transfer of cash and transmission by the source company to the target company of all the financial and tax information necessary for the transfer must be performed as from the third business day following receipt of the request.

Similarly, both the deadlines established for setting the NAV (D or D+1) applicable to transfer operations and the period set out for settlement of the transactions are governed by the provisions in the prospectus of each fund for subscriptions and redemptions.

In general, CIS transfers are performed through the National Electronic Clearing System (SNCE). The manner in which the fields are completed is determined by the

operating instructions of the SNCE. It should be clarified that the identifying data of the order issued by the target management company must match the data held by the source management company in accordance with the aforementioned operating instructions.

In this respect, it should be noted that most of the complaints that are received questioning the applicable NAV in the redemption of units of a CIS arise in the context of a transfer between CISs, which also mostly involve more than one entity.

In these cases, the Complaints Service requests pleadings from the entities involved in the transfer, either as the respondent entity or the participant (i.e., source or target entity).

R/130/2018: In this case the complaint involved a delay in the subscription of units in the target fund and, consequently, the NAV was applied. The source entity indicated that the delay was due to an error in the transfer of the money resulting from the redemption of the source fund between the depositories, which was classified as an incorrect action by the respondent entity given that it did not clearly explain the reason for the error that cause the delay in the execution of the transfer.

R/130/2018: In this case, the source entity rejected the transfer because the target fund had been wrongly identified. Therefore, it was considered that the target entity had shown a lack of diligence in resolving the incident which arose during a transfer as the recipient of the client order. In fact, it was demonstrated that the entity did not contact its client to inform him of the situation and request new instructions until nine days after the source entity had rejected the transfer, which was considered as an incorrect action by the target entity.

R/452/2018: The complainant complained about the NAV applied in a subscription to units of the target fund, although in this case the same entity managed the source and target funds.

Although it was found that the NAV applied was correct, it is important to mention that in this case, as the distributor of the source and target fund was the same, the deadlines established in the regulations for the transfer of information from the target fund to the source fund, as well as for performing the necessary checks at source, do not apply.

In these cases, it is not necessary for the distributor of the CIS in the transfer order to verify any requests received from the investor other than those that must be verified within the framework of the normal CIS redemption and subscription procedure.

Lastly, in transfers between investment funds *liquidity windows* should be taken into account. These are dates on which no subscription/redemption fees are applied, which are defined in the corresponding CIS prospectus.

R/525/2017: The complainant alleged that the entity had not heeded his instructions to redeem a certain CIS during a liquidity window. The request for this redemption was submitted to one of the employees of his bank branch, who drafted a document along these lines that was signed by the fund's owners. The entity claimed that the document did not conform to the format or templates available for that purpose, which formed part of its operating procedures and internal organisation models.

The Complaints Service considered that although the document failed to include some basic requirements of an order, the entity should have implemented reasonable measures to obtain the best possible result for its client by informing him, when the transaction was not executed, of the deficiencies in the document or the additional information that was needed to carry out the mandate. It was therefore concluded that the entity acted incorrectly.

➢ Change of distributor

A change of distributor is a separate operation from a transfer, in which the investment remains unchanged; i.e., the investor keeps the CIS it has already acquired, but the entity that acts as distributor or custodian for the institution is modified.

In case R/448/2018 this was the operation the complainant wished to perform. However, to change distributor, the target distributor must sell the same CIS as that held by the investor, which in this particular case did not occur, so it was considered that the respondent entity could not comply with the complainant's request to change distributor.

Summary of complaints relating to CIS subscriptions and redemptions EXHIBIT 8

- The process of subscribing and redeeming units and shares in investment funds is set out in the prospectus and in the KIID.

- The **net asset value** will be that taken on the day of the request or the following business day depending of the rule set out in the fund prospectus. It is common practice to establish what are referred to as *cut-off times*, so that requests received after this time are deemed to have been made on the following business day for the purposes of the applicable net asset value.

  In any case, the net asset value must always be unknown to the investor at the time of placing a subscription or redemption order.

- The **subscription and redemption process** must be recorded in an order that demonstrates the investor's decision to subscribe or redeem. This order must identify the CIS to be subscribed or redeemed, the amount or number of shares or units to be subscribed or redeemed and other relevant information on the transaction.

- **Transfers** must identify the source fund and the target fund. To avoid errors, it is advisable to provide the target entity with a position statement of the source fund as this contains all the information necessary to identify the fund from which the transfer is to be made.

- Likewise, it is important to take into account the characteristics and procedures attributable to the subscription and redemption of the source and target funds, and, where appropriate, the corresponding subscription and redemption fees and the legal deadlines for the transfer, to prevent any unpleasant surprises relating to the net asset value applied in the subscriptions and redemptions performed in the transfer, or to the total cost of the operation.

– However, if the same is the distributor of the source and target funds, the deadlines stated in the regulations for the required checks do not apply.

– A **change of distributor** is a separate operation from a transfer, since in this case the investment remains unchanged; i.e., the investor keeps the CIS it has already acquired, but the entity that acts as distributor or custodian for the institution is modified.

4.6 Fees

4.6.1 Securities

Each entity freely decides the maximum rates for fees and expenses charged to their clients for the transactions and services that, having been accepted or definitively requested by the client, are effectively provided. One requirement for the application of fees is that they are disclosed to the public. For this purpose, entities submit to the CNMV a fee prospectus that includes the maximum fees that the entity may charge its clients and which must be disseminated through the entity's branches and its website.[181]

In addition, entities must provide retail clients with the information on associated fees and expenses provided for by law sufficiently in advance of providing the service in question.[182] Therefore, even though, as indicated, the current fee prospectus that has been filed with the CNMV must be made available to the public in all entity branches and offices and on their websites,[183] entities must also inform their clients of these rates individually, expressly and in advances, as required under current regulations.

➢ **Evidence that information on fees has been provided prior to the start of the contractual relationship**

The custody and administration of financial instruments requires the use of a standard contract.[184] The contract must establish in a manner that is clear, specific and easily understandable for retail investors the items, frequency and amounts of the fees charged when these are lower than those established in the fee prospectus. Otherwise, the prospectus will be delivered and the acknowledgement of receipt of the client will be kept.[185]

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181 Article 71 of Royal Decree 217/2008, of 15 February, on the legal regime of investment firms and other entities that provide investment services, and Article 3 of Order EHA/1665/2010, of 11 June, implementing Articles 71 and 76 of Royal Decree 217/2008, of 15 February, in regard to fees and standard contracts.

182 Articles 62 and 66 of Royal Decree 217/2008, of 15 February, on the legal regime of investment firms and other entities that provide investment services.

183 Article 9 of Order EHA/1665/2010, of 11 June, implementing Articles 71 and 76 of Royal Decree 217/2008, of 15 February, on the legal regime of investment firms and the other entities that provide investment services, in regard to fees and standard contracts.

184 Article 5.2 of Order EHA/1665/2010, of 11 June, implementing Articles 71 and 76 of Royal Decree 217/2008, of 15 February, on the legal regime of investment firms and other entities that provide investment services, in regard to fees and standard contracts.

185 Rule Seven, section 1, letter e), of CNMV Circular 7/2011, of 12 December, on the fee prospectus and the content of standard contracts.

The entity must be able to prove that it provided the client with prior information about the applicable fees for the different services offered, by providing evidence of submission of the fee prospectus (or the lower fees occasionally agreed between the parties) at the time the contract was entered into.

Entities acted correctly when the documentation was submitted in the complaint proceedings proving that they had provided the client with information on the fees initially agreed through:

– The contract for the custody and administration of financial instruments signed between the entity and the client, the annex of which contained the fees (R/225/2018 and R/286/2018).

– The contract for online securities trading operations, which contained the applicable fees and which had been electronically signed by the complainant, where the signature was accredited by the log of the computerised trace performed by the entity (R/243/2018).

– The maximum fee prospectus for transactions and services in the stock market, together with a declaration from the client acknowledging receipt of the aforementioned prospectus or the corresponding section or sections thereof. This declaration is usually included in the contract signed by the entity and the client for the deposit and administration of securities (R/260/2018, R/369/2017, R/310/2018, R/380/2018 and R/456/2018).

In contrast, the following actions were considered to be incorrect:

– The entity agreed to charge intermediation costs that would be applied through a spread or margin, and the complainant was not informed of the amount.

  In relation to a CFD on shares, the entity provided a contract for the receipt and transmission of orders in which a broker was appointed. The broker was responsible for setting the prices (bid price or ask price), which were obtained from an organised market. In addition, it was agreed that the intermediation costs would be applied through a spread or margin on the bid price or ask price. However, since the contract did not state the amount of the spread or make any referral to where the amount could be consulted, it was considered that the complainant had not been properly informed of the amount of the cost (R/89/2018).

– The entity did not provide evidence of having informed the complainant of the fees that would be charged for services that could be provided at the time the contract for the custody and administration of securities was signed.

  In some cases, although a signed copy of the custody and administration contract for securities had been submitted in the proceedings, it did not contain the applicable fees and merely mentioned the existence of a maximum fee prospectus, without providing any record that the complainant had received it (R/355/2018). In other cases, the entity alleged that it had not been delivered to the complainant personally because the fees were included in the entity's maximum fee prospectus, available to all clients in its branches and on its website (R/447/2018).

➢ Notification to the client of any changes in the fees initially agreed

✓ *Method of sending the notification of fee changes*

Entities must inform clients of any modification to the rates of fees and expenses applicable to the established contractual relationship. In particular, specific rules apply to the modification of fees for services which require the use of a standard contract, within the general scope of said contracts, as set out below.

In the event that fees are modified upwards, the entity must inform its clients and grant them a minimum period of one month to modify or cancel the contractual relationship. The new fees will not be applied during this period and the former rates will be continue to be charged, unless the entity indicates otherwise. In the event of a downward change, the client will also be informed without prejudice to its immediate application.[186]

The information on the fee changes, both upwards and downwards, may be included in any periodic communication that the entity must submit to its clients or sent by any means of communication agreed by the parties in the contract.[187]

However, regulations do not require that this modification should be sent by registered mail or with an acknowledgement of receipt. Therefore, it is sufficient that the communication be delivered by ordinary mail or by any alternative means agreed by the parties. Consequently, entities must be able to prove that they have sent the information to the client, while its receipt is subject to circumstances, in principle, beyond their control.

Therefore, if there were any modification of fees after the start of the contractual relationship, the entity must be able to prove that it has sent its clients the information about this modification. This occurred in the following cases, in which the following information was submitted in the complaint proceedings:

– A letter about changes in the agreed fees addressed to the complainant. This letter is usually sent by ordinary postal mail,[188] although in some cases it was sent by burofax,[189] through an online message sent to the client,[190] through the client's mailbox at the branch[191] or by email, to which the client responded.[192]

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186 Rule Seven, section 1, letter e), of CNMV Circular 7/2011, of 12 December, on the fee prospectus and the content of standard contracts.

187 Article 62 of Royal Decree 217/2008, of 15 February, on the legal regime of investment firms and other entities that provide investment services, and Rule Seven, section 1, letter e), of CNMV Circular 7/2011, of 12 December, on the fee prospectus and the content of standard contracts.

188 R/424/2017, R/534/2017, R/613/2017, R/11/2018, R/118/2018, R/179/2018, R/347/2018, R/357/2018 and R/398/2018.

189 R/59/2018 and R/225/2018.

190 R/114/2018.

191 R/11/2018.

192 R/351/2018 and R/466/2018.

– An update of the custody or administration contract for securities that contained the new fees applicable. This updated contract, accompanied by an information letter, was sent to the client by ordinary postal mail.[193]

However, in the following cases of modifications to the agreed fees, entities did not properly inform their clients:

– The entity did not prove that it had provided its client with information on the new fees applicable, when the account movements showed that they had been modified.

  Although the securities contracts or the conditions agreed in them relating to fees were not submitted in the complaint proceedings, an analysis of the documentation on the movements in the cash account linked to the contracts revealed that there had been an upward modification to administration fees. The documents showed that the respondent entity had reimbursed the administration fees up until a specific date, when it stopped returning the amount. This indicated an increase in fees which, up to that date, had been reimbursed. However, the entity was not able to prove that it had informed the client, in the terms provided by law, of the end of the reimbursement period, and consequently, of the upward modification to administration fees (R/168/2018).

– The entity provided a standard fee modification letter that contained neither the identity of the recipient nor their postal address. Therefore, the Complaints Service resolved that the non-personalised standard letter was insufficient, at least as proof of having sent the information to the complainant (R/260/2018).

– The entity did not prove that an electronic communication sent to the complainant on a certain date included a notification of the fee modification.

  In relation to a communication on the modification of fees sent by the entity to the complainant through electronic channels, the entity submitted to the complaint proceedings an image of a computer register containing only the client's identification number and the send date. However, the entity was not able to demonstrate the content of the electronic delivery and, consequently, it could not be proved that the message contained a notification of changes to fees (R/601/2017).

– In relation to the fees in the complaint, the entity could only prove in the complaint proceedings that the complainant had been informed of the fees which had been in place since the start of the contract, but not of any subsequent modifications to some of them.

  The complainant complained that he did not know either the fee applicable on a transfer of securities or the modification of the fee prospectus that affected other transactions. In relation to the fee charged for a securities transfer service, the entity accredited that this fee had not undergone any modification since the custody and administration contract for securities was signed with the complainant and proved that the client had been informed of the

193 R/157/2018 and R/280/2018.

applicable fees for the services provided prior to formalising the contract. However, with respect to other fees that had been modified, the entity failed to prove that it had informed the complainant in the terms required under current regulations, so the Complaints Service concluded that it had acted incorrectly (R/369/2017).

✓ *Date of application of the fee changes*

As mentioned above, clients must be informed of any upward modifications of fees and given a minimum period of one month from the receipt of the information (or, where appropriate, the minimum notice that the parties have agreed or the entity has committed to) to change or cancel the contractual relationship, during which time the new fees will not be applied. Any downward modification must also be communicated without prejudice to its immediate application. These forecasts are included in the specific regulations governing standard contracts.[194]

Typically, in the communication of a fee modification, a date of entry into force for the new fees is established. In the event of an increase, entities would have to send out the communication well in advance to enable the client to exercise their aforementioned rights of modification or cancellation of the contractual relationship.

Some entities sent communications for fee increases well in advance of their entry into force (R/114/2018, R/225/2018 and R/466/2018).

However, in other cases the notice given for the fee changes was gave clients insufficient time to cancel or modify their contractual relationship, as provided by law. Entities were considered to have acted incorrectly in the following cases:

– The entity informed the complainant of the fee increase only two weeks before the effective date of the modification (R/35/2018).

– The entity mistakenly applied the fee increase before the date of its entry into force communicated to the client.

  The complainant had agreed certain special economic conditions with the respondent entity, by virtue of which he was not charged a fee for the custody and administration securities. With more than one year's notice, the entity had informed the client that, as of September of the following year, it would be subject to the fees set forth in the new securities deposit and administration contracts that he had been sent, which, among other aspects, defined the maximum percentage and the basis for calculating the fees for the custody and administration of securities.

  However, the entity made a mistake and charged the complaint custody and administration fees for the whole six month period, instead of for the period from September to December, as stated. The entity acknowledged the error and it was resolved immediately, returning to the complainant not just the

194 Rule Seven, section 1, letter e), of CNMV Circular 7/2011, of 12 December, on the fee prospectus and the content of standard contracts.

proportional part of the fee that had been incorrectly charged, but the whole fee. This was commended by the Complaints Service (R/157/2018).

– Communications about the fee changes were not made with the minimum contractual notice.

  In an deposit and administration contract for securities signed by the parties, the entity undertook to notify the client of any fee changes and give him the possibility of modifying or cancelling the contractual relationship within a minimum period of two months from receipt of the communication (during this period, the new fees would not be charged). However, the entity sent several communications to the complaint about fee changes in which it the two month period agreed in the contract would not have been respected, since the period from the date of the communications to the date of application reported in them was less than two months (R/398/2018).

✓ *Content of the notification of fee changes*

With reference to the content of the communication that entities are required to send their clients informing about the change in fees, for the purpose of adequately informing the client, the communication should indicate the transactions that have undergone modifications (at least the most usual ones) and, preferably, their amounts (those in force until a specific date and the new ones).

In the event that the fees are to be increased, in accordance with current regulations it is mandatory to inform the client about their right of separation in the event of disagreement with the proposed modifications, the deadline for exercising this right (which must be at least one month after the communication is received), and that the new fees are not applicable during this period. However, the entity may apply the fees previously in force unless otherwise stated.

Entities acted correctly in some cases by informing clients of future fee changes and granting them a period of one month to resolve or cancel their contract, in this case, without any cost (R/114/2018 and R/157/2018).

However, bad practice was observed in cases where communications addressed to clients about the fee increases did not provide any information on their right to modify or cancel the contractual relationship in the event of disagreement with the proposed changes (R/482/2017, R/532/2017, R/35/2018, R/59/2018, R/240/2018, R/252/2018, R/347/2018, R/351/2018, R/460/2018 and R/466/2018).

➢ Maximum amounts and fee items

Entities may not charge clients fees or expenses that are higher than those set in their prospectus, apply more stringent conditions or charge expenses that were not provided for, or for items not mentioned in their prospectuses.[195]

195 Article 3.2 of Order EHA/1665/2010, of 11 June, implementing Articles 71 and 76 of Royal Decree 217/2008, of 15 February, in regard to fees and standard contracts.

The fees did not exceed the maximum amounts indicated in the fee prospectus in the following complaints relating to fees for intermediation in the markets (reception, transfer, execution and settlement),[196] fees for the transfer of securities,[197] fees for the administration and custody of securities,[198] securities exchange and conversion fees,[199] fees on interest[200] and the total or partial redemption of securities.[201]

However, in some cases, entities charged their clients a higher amount than the corresponding amount as a result of an incorrect calculation of the securities custody and administration fee, although the entity recognised and resolved the situation and reimbursed the client for the amounts unduly charged (R/400/2018).

The fees or commissions established in the prospectus are, at any event, maximum fees and commissions and those that are effectively applied may therefore be lower (which is usually the case). Therefore, if the entity informs the client of the application of a lower fee than that in the prospectus, it must adjust the amount that it is going to charge for said information.

In one case, the client expressed his contention with the fees charged by the entity, since he claimed to have negotiated a reversal of the securities custody and administration fee and an exemption from the transfer fee, although no supporting documentation was provided. The entity denied having reached any type of agreement with the client. The Complaints Service eventually concluded that the entity had acted correctly because the client could not provide any evidence to justify his claims, and complaint proceedings can only consider as evidence circumstances that are accredited. Verbal arguments put forward by parties cannot be accepted unless they are ratified or recognised by both parties (R/362/2018).

In another complaint, the client wanted the entity to apply the best fees shown on its website for trading through a platform. However, according to the information on the entity's website, to be eligible for these fees, a new securities account was required and the complainant had not opened one, but had traded from an account he already held. Consequently, the Complaints Service considered the entity had acted correctly (R/488/2018).

➢ Foreign currency transactions

Even when there is no fee for the currency exchange, entities are free to set the exchange rate to be applied to foreign exchange transactions, without prejudice to the obligation of each entity to publish the minimum purchase rate and maximum sale

196 R/428/2017, R/540/2017, R/582/2017, R/595/2017, R/30/2018 and R/91/2018.

197 R/369/2017, R/424/2017, R/482/2017, R/534/2017, R/580/2017, R/613/2017, R/11/2018, R/35/2018, R/118/2018, R/157/2018, R/166/2018, R/168/2018, R/179/2018, R/240/2018, R/243/2018, R/286/2018, R/327/2018, R/355/2018, R/357/2018, R/380/2018 and R/460/2018.

198 R/465/2017, R/580/2017, R/47/2018, R/91/2018, R/166/2018, R/225/2018, R/240/2018, R/260/2018, R/347/2018, R/355/2018, R/357/2018, R/384/2018 and R/398/2018.

199 R/466/2017.

200 R/412/2018.

201 R/310/2018 and R/412/2018.

rate or, as the case may be, the single rates that must be applied for transactions lower than €3,000.

However, when the client has to pay part of the total price for the investment service provided in a currency other than the euro, the entity receiving the order must inform its client of the currency in question and of the exchange price and costs applicable[202] prior to the execution of their instructions or making the trade.

Entities must therefore inform their clients in advance about the exchange rate and the applicable costs or, failing that, about the manner in which they would be determined and, in the event that the exchange rate used is not the market rate, about the spread applied.

Each section of the fee prospectus must contain the explanatory notes that are necessary to inform clients of the need to apply the exchange rate in force at any time and the costs applicable to foreign currency transactions.[203] The standard fee prospectus includes provisions for intermediation transactions in markets and the custody and administration of securities issued in currencies other than the euro.

Complaints about foreign currency transactions referred to the following aspects:

– In relation to the settlement of a securities transaction carried out in a currency other than the base currency of the account, the entity provided evidence that it had previously informed the complainant about the exchange rate, the way it was calculated and the associated costs through the order receipt and transmission contract signed by the client, as well as through information on its website. The complainant also confirmed that the information had been effectively communicated on the entity's website (R/21/2018).

– With regard to the sale of shares denominated in a currency other than the euro in the context of a public tender offer, based on the documentation provided in the complaint proceedings, it was not established that the entity had provided the client with information on the exchange rate and any applicable costs, or at least, information on the calculation methods used, sufficiently in advance of the signing of the contract for the provision of investment services, Nor was it proved that it had provided this information to the client prior to ordering the transaction. Consequently, the Complaints Service concluded that the respondent entity had acted incorrectly (R/334/2018).

➢ Accrual of custody and securities administration fees

Fees accrued for the custody and administration of securities are established in such a way that invoice periods that are shorter than the ordinary agreed settlement

202 Articles 62 and 66 of Royal Decree 217/2008, of 15 February, on the legal regime of investment firms and other entities that provide investment services.

203 Rule Three, section 3, letter f), of CNMV Circular 7/2011, of 12 December, on the fee prospectus and content of standard contracts.

period will be billed in proportion to the number of calendar days during which the service is provided.[204]

In particular, according to the standard fee prospectus, the maintenance, custody and administration of securities represented by book entries can be a fixed rate as a percentage on an annualised basis and a minimum amount. For securities that are deposited for a period less than the established settlement period, the applicable fee is the amount resulting from applying the general rate to the number of days the securities have been deposited. The minimum amount is also applied in proportion to the number of days the securities have been deposited.[205]

In some of the complaints filed during this period, entities charged the correct fee for the custody and administration of securities calculated according to the number of days that the securities had been deposited in the account until their sale (R/91/2018).

In contrast, other entities acted incorrectly, since the settlement period for the custody and administration fees charged to the complainant corresponded to the first natural six months of the year, when, according to the statement submitted to the proceedings, the securities had only been deposited for a part of that period (in this specific case, they had been received after the execution of a will in March and were sold in early May) (R/152/2018).

➢ Transfer of securities

Transferring securities is necessary for cancelling the contract/commercial relationship with the depository. Therefore, without prejudice to the freedom that entities have to set their rates, if the fee established for providing that service is excessively high, this might prevent or make it difficult for clients to terminate the contractual relationship with the entity providing investment services and, ultimately, exercise their freedom of contract. In this sense, an excessively high transfer fee could be considered an abusive clause, although the CNMV is unable to decide on this hypothetical abusive nature, as this can only be done by an ordinary court of justice.

Therefore, the transfer fee may never serve as a penalty or deterrent and it may only be used to remunerate, in a proportionate manner, the service provided by the investment firm.

It is also important to highlight the need for securities transfer fees to be proportionate. In this regard, at the end of 2016, the CNMV modified the regulations governing the rate applicable to securities transfers.[206] The aim of the modification was to achieve a balance between the proportionality of the fees, investor protection and an efficiently-working market without undermining the entities' freedom to set fees.

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204 Rule Four, section 2, letter a) and section 3, letter b), of CNMV Circular 7/2011, of 12 December, on the fee prospectus and content of standard contracts.

205 Annex I, section 2, note 2.1, of CNMV Circular 7/2011, of 12 December, on the fee prospectus and content of standard contracts.

206 CNMV Circular 3/2016, of 20 April, amending Circular 7/2011, of 12 December, on the fee prospectus and content of standard contracts.

In this regard, the previous regulation established a maximum rate for each class of transferred security expressed in monetary terms, while the new regulation changed the calculation basis for these fees so it would be based on a percentage of the value (cash or nominal) of the transferred securities, including, where appropriate, a maximum fee and with no possibility of establishing a minimum amount. If the transferred securities are equities, the basis for calculation will be the effective value of the securities on the date on which the transfer is performed and, if they are fixed-income securities, the nominal value.[207]

The fees for the transfer of securities to another entity are applicable to each class of securities (group of securities of the same issuer, with the same features and identical rights). In addition, if so established and notified in advance, the entity may pass on to the client, the fees and transfer fees charged by the settlement and registration systems, if applicable.

In one complaint assessed during the reference period (2018), the core issue was the different fees passed on to the complainants in a transfer of securities. The source entity for the transfer proved that it had correctly informed the complainants of the most recent changes in securities transfer fees by providing letters addressed to them that had been sent both by ordinary postal mail to their address for notification purposes and through the entity's website.

However, in addition to the fee for transferring securities between entities, the source entity also applied a fee for the transfer of securities between markets. In this particular case, the target entity's internal policies did not allow it to act as custodian for securities deriving from Spanish fixed-income issues listed on a foreign market, therefore, the source entity transferred the securities from the foreign market to a domestic market and subsequently to the target entity. In this transaction, the source entity acknowledged that it could not prove that it had informed the complainants of the need to carry out this prior transfer of the securities between markets and of the fees that this involved. Therefore, the respondent entity decided to reimburse its clients for the fees charged for this concept (R/553/2017).

➢ Custody and administration fees for securities that are delisted and unproductive

Sometimes complaints arise as a result of entities charging custody and administration fees for securities after they have been delisted.

In these cases, even if the securities are delisted, they must remain deposited in an account opened with an authorised financial institution under a securities deposit and administration contract (unless the securities are transformed into physical certificates). However, the CNMV Complaints Service considers that it is good practice in these cases for the depository of the delisted securities to choose not to charge administration fees for the securities when such securities are not only delisted (with no liquidity), but also unproductive, particularly those cases in which no procedure is applicable through which the client may de-register the shares from their securities account (see "Delisted shares: procedure for waiving register-entry

207 Rule Four, section 2, letter e), of CNMV Circular 7/2011, of 12 December, on the fee prospectus and the content of standard contracts.

maintenance of delisted shares that are unproductive" under the heading "Subsequent information").

In the case of illiquid and unproductive securities, most of the respondent entities that are still charging this fee decide to reimburse the client once the complaint proceedings start and do not charge it again (R/496/2017, R/84/2018, R/111/2018 and R/418/2018). However, not all entities act like this. Some do not inform clients of the possibility of future reimbursements or changes in the fees charged for these types of securities (R/518/2017).

It is a different case where the securities, while delisted, are not unproductive, i.e., cases where the issuer continues to perform its usual commercial activity and has only become delisted. As indicated in previous Annual Reports published by the Complaints Service, although the entity could in these cases apply the custody and administration fee contained in its fee prospectus for unlisted securities, in some cases the respondent entity has also opted to reimburse the client the amount of custody fees charged (R/422/2018).

➢ Operational cash account linked to the securities account

In accordance with applicable legislation, the fee established in the prospectus for the custody and administration of financial instruments contained in the fee prospectuses will include the maintenance of the securities account, together with the maintenance of the operational cash account in the event that this is exclusively linked to the securities account,[208] with no charges or payments for other items.

Consequently, when cash accounts (current accounts, savings accounts, etc.) are opened or maintained with the sole aim of supporting the movements in the securities accounts, provided that in practice these are only movements related to securities, i.e., these are merely operational accounts that are ancillary to a main product (the investment product), investors must not bear any additional cost for opening and maintaining these cash accounts as the costs would be included in the fees charged for provision of the custody and administration service for financial instruments.

However, if not all the movements of the cash account are related to the securities account and the account is used for purposes other than supporting the investments in securities, the aforementioned exception would not apply and therefore the entity could charge maintenance fees for the cash account in question. In this case, the amount charged would be purely a banking fee, so the Bank of Spain's Market Conduct and Complaints Department would be the competent body in this area, which should decide whether the fee applied is correct or not (R/141/2018 and R/168/2018).

➢ Market fees and fees for clearing and settlement services

Entities that provide the service of execution or receipt and transmission of orders on equity securities in national markets must establish a fee in their prospectus that

208 Rule Four, section 2, letter b), of CNMV Circular 7/2011, of 12 December, on the fee prospectus and the content of standard contracts.

includes the full amount that must be paid to the intermediary, while those deriving from the intervention of other entities cannot be included as chargeable expenses, with the exception of market fees and fees for clearing and settlement services.[209]

In addition, in the standard fee prospectus[210] under section "Intermediation transactions in markets (fixed portion)" it states that, in the event that other expenses will be passed on to the client, the items that are eligible to be passed on must be indicated, which are the following:

– Fees and charges charged by markets and settlement systems.

– Mail, telex, fax and Swift costs, if any.

– Expenses generated by messaging systems, provided they are used at the client's request.

– Expenses relating to the intervention of public notaries, deeds and any other justified external concept.

In 2018, complaints were resolved on market fees and fees for clearing and settlement services in which the dispute was not about the absence of information about the possible impact of the fees, but about the amounts charged.

R/460/2017: The market fees that could be charged to client were set down in the entity's fee prospectus. However, the object of the dispute was the basis of calculation used, which was determined based on the information that the entity reported to the stock market on each client. In this regard, the fees of the management company of the Madrid Stock Exchange for the year in which the events subject to the complaint occurred included transaction fees and expressly stated:

> *For cash traded in the day by the same end customer, security, price and direction, the amount resulting from applying the following scale:*
>
> *See scale in Annex 2 attached*
>
> *When the end customer has not been notified, the transaction fee will be applied to each execution individually.*

Therefore, although these were market fees applicable to settled transactions, the fees charged by the management company of the Madrid Stock Exchange allowed transactions to be grouped. However, although the complainant had made two transactions that could be grouped and that met the requirement of "same end customer, security, price and direction", the entity did not report them to the stock exchange with the same holder reference, and for this reason a more beneficial market fee was not applied. The incorrect action carried out by the entity was therefore described as bad practice.

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209 Rule Four, section 1, of CNMV Circular 7/2011, of 12 December, on the fee prospectus and the content of standard contracts.

210 Annex I of CNMV Circular 7/2011, of 12 December, on the fee prospectus and the content of standard contracts.

Summary of complaints relating to securities fees

EXHIBIT 9

- Entities are **free** to set their fees and expenses with the sole requirement of publishing them and reporting them to the CNMV (maximum fee prospectuses are available on the website www.cnmv.es).

- **Fee prospectuses must be written in a manner that is clear, specific and easily understandable for clients**, avoiding the use of irrelevant or unnecessary concepts. They must set out unambiguous descriptions of the different items and include explanatory notes with clarifications or examples of the transactions that may fall within this scope of the items that give rise to the fee.

- Clients should be aware of the fees that they will have to pay before the start of the commercial relationship, given that they affect the return on their investment. This information is usually included in the administration and custody contract for financial instruments. However, this contract establishes the items, frequency and amounts of the remuneration when these are lower than those established in the fee prospectus. Otherwise, the prospectus will be delivered and the **acknowledgement of receipt** of the client will be kept.

- In the event that the rates are **modified upwards,** the client must be previously informed and given a minimum period of one month to amend or cancel the contractual relationship, with the old rates, rather than the new rates, being applicable during this period. Unless the entity decides to charge no fees during this time. If they are modified downwards, the entity must also inform the client without prejudice to the immediate application of the new rates.

- When a retail client must pay a portion of the total price for the investment service provided in a **currency other than the euro** the entity receiving the order must inform the client, prior to the execution of the instructions or the conclusion of the contract, of the currency in question and of the applicable exchange rate and costs.

- In the case of fees for the custody and administration of securities, periods that are shorter than the ordinary agreed settlement will be billed **in proportion to the number of calendar days during which the service is provided**.

- The CNMV Complaints Service considers that it is good practice for the depository to choose not to charge administration fees for the securities when the corresponding issuer is **delisted** – without liquidity – and its securities are unproductive, particularly in those cases in which no procedure is applicable through which the client may de-register the shares from their securities account.

- The **transfer of securities** is necessary for cancelling the contract/commercial relationship with the depository. Therefore, without prejudice to the freedom that entities have to set their rates, if the fee established for providing that service is excessively high, this might constitute a breach of the rights recognised in favour of consumers by consumer and user legislation.

  A transfer fee that is too high might be an obstacle to the investor's right to terminate a service agreement and may even be identified as an abusive

clause. However, this hypothetical abusive nature can only be decreed by an ordinary court of justice and not by the CNMV.

– The concept of custody and administration of financial instruments contained in the fee prospectus will include both the maintenance of the securities account, together with the maintenance of the **operational cash account** in the event that this is merely **instrumental** in nature, i.e., that its movements are exclusively linked to the securities account.

– Entities that provide the service of execution or receipt and transmission of orders on equity securities in national markets must establish a fee in their prospectus that includes the full amount that the intermediary must pay, while those deriving from the intervention of other entities cannot be included as chargeable expenses, with the exception of **market fees and fees for clearing and settlement services.**

4.6.2 Investment funds

The fees charged by investment funds are one of the features that investors need to take into account when choosing an investment fund in which to invest as they may have a significant influence on the fund's returns.

Investment fund management companies and depositories may receive management and deposit fees, respectively, from the fund. In addition, the management companies may charge unitholders subscription and redemption fees. Likewise, they may establish subscription and redemption discounts in favour of the funds themselves.

The regulations governing investment funds establish the maximum percentages for these fees. According to these general maximum percentages, the prospectus and the KIID must contain, for each specific investment fund, the method of calculation and the maximum limit of the fees, the fees effectively charged and the beneficiary of the fees.[211]

All other expenses borne by the investment funds must be expressly stated in the fee prospectus. These expenses must relate to services effectively provided to the fund that are essential for its normal activities. They must not involve an additional cost for services inherent to the work of the CIS management company or depository, which are already remunerated through their respective fees.[212]

With regard to other types of fees and expenses, provided that a series of additional regulatory requirements are met, the fund prospectus may stipulate that:

– Investment funds bear the expenses corresponding to the financial analysis service provided for investments.[213]

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211 Article 8 of Law 35/2003, of 4 November, on Collective Investment Schemes.

212 Article 5.11 of Royal Decree 1082/2012, of 13 July, approving the implementing regulations for Law 35/2003, of 4 November, on Collective Investment Schemes.

213 Article 5.13 of Royal Decree 1082/2012, of 13 July, approving the implementing regulations for Law 35/2003, of 4 November, on Collective Investment Schemes.

– Investment fund distributors charge unitholders who have subscribed units through them fees for the custody and administration of the units.[214]

Fund fee prospectuses may also stipulate that the CIS management company may establish agreements to reimburse unitholders for fees charged, in addition to the criteria that must be followed for such reimbursements.[215]

Any information on fees and expenses that is reflected in other documents must be consistent with the terms and features set out in the fund's prospectus.

➢ Information on fees and expenses of investment funds

Most complaints relating to information on investment fund fees refer to the unitholder not being aware of the subscription and redemption fees that the fund manager charges for investing or disinvesting in the fund. These fees are usually calculated as a percentage of the capital invested or disinvested, reducing the amount that is invested in the fund in the case of subscription or the disinvested capital on redemption.

Unlike management and deposit fees, which are implicit (i.e., they are charged directly and periodically to the investment fund itself) and are stipulated in the prospectus, subscription or redemption fees are explicit (i.e., they are charged to the unitholders when they invest or disinvest in the fund) and are also included in the prospectus, which sometimes specifies exemptions due to the seniority of the unitholders or due to being ordered on certain dates or periods (liquidity windows).

In addition to the aforementioned fees, the funds have operating expenses that some complainants have stated that they were not aware of.

Entities may prove that they have informed their clients of the fees and expenses relating to investment funds in the manners shown below.

✓ *Documentation submitted before subscribing to the fund*

As indicated in the section "Collective Investment Schemes (CISs)" under "Subsequent information", in advance of the subscription to the units and shares of CIS, the most recent half-yearly report and KIID must be delivered free of charge to the subscribers, and, upon request, the prospectus and the latest annual and quarterly published reports.

The aforementioned documentation contains information on the fees and expenses of the CIS.

Some complaints in this period referred to a lack of information provided by entities on the applicable subscription and redemption fees and the corresponding

214 Article 5.14 of Royal Decree 1082/2012, of 13 July, approving the implementing regulations for Law 35/2003, of 4 November, on Collective Investment Schemes.

215 Article 5.1 of Royal Decree 1082/2012, of 13 July, approving the implementing regulations for Law 35/2003, of 4 November, on Collective Investment Schemes.

exemptions. The KIID contains information on subscription and redemption fees. However, the maximum fee that can be applied may also be mentioned in this document and the full prospectus may be delivered to provide detailed information on cases where the fee may be lower or may not apply (e.g. the minimum time the investment has to be kept or the specific days of the liquidity window). Therefore, the information contained in the KIID and, in some cases, the information included in the full prospectus would, in principle, fully define the fees applicable and the corresponding exemptions.

In some complaints, entities provided evidence that they had informed their clients of the redemption fees applicable in investment funds through the information documentation that they demonstrated they had delivered to the unitholder before the investment fund was subscribed (R/77/2018, R/212/2018, R/213/2018, R/388/2018 and R/463/2018).

In other cases, complainants indicated that they were not aware of the operating expenses corresponding to an investment fund. One complainant indicated that before subscribing to the investment fund units, he had not been informed of these expenses. However, in the complaint proceedings, the entity provided an annex to the subscription order for the fund, signed by the complainant, which showed that the entity had delivered to him the KIID, the latest half-yearly report and the full prospectus of the fund. After analysing this documentation, it was found that the percentage of current expenses deducted from the fund throughout the year was indicated in the KIID and it was clarified that these expenses were intended to cover the operating expenses of the fund, including marketing and distribution costs and that as a result reduced the growth potential of the investment (R/471/2018).

✓ *Content of subscription and redemption orders*

On certain occasions, the entity had informed the complainants of the fee subject to dispute in the orders issued by the client. In some cases, the subscription fee to be applied was specified in the investment fund subscription order signed by the complainant, which the respondent entity submitted to the proceedings (R/515/2017). In other cases, the redemption fee was stated in the electronic redemption order issued by the client and signed electronically (R/438/2018) or the entity proved that the client had been informed through the computer trace generated by the electronic operation (R/468/2018).

✓ *Information provided in the event of a merger*

The merger of investment funds requires that the CISs involved provide their unitholders or shareholders with a document containing sufficient and accurate information on the planned merger. This information has a specific content that includes a comparison of all fees and expenses applicable to all participating CISs. In addition, an updated copy of the KIID of the beneficiary CIS must be provided.[216]

216 Articles 42 and 43 of Royal Decree 1082/2012, of 13 July, approving the implementing regulations for Law 35/2003, of 4 November, on Collective Investment Schemes.

In one specific case, the complainant was a unitholder in an investment fund that was absorbed by another fund. Subsequent to the merger, the complainant made a contribution to the absorbing fund, after which he made a complaint stating his disagreement with the subscription fee that the entity had applied for the acquisition.

In the complaint proceedings, the entity submitted a communication sent to the complainant on the occasion of the merger of the funds, four months before the unitholder issued the subscription order. The communication provided contained information on the amount of the subscription fee charged by the absorbing fund both in an annex comparing the terms and conditions of the funds involved, and in a second annex which included the KIID of the absorbing fund. Further, in the subscription order, the complainant stated that he had been informed of the fees and expenses applicable to the transaction, and that the order was subject to the conditions set out in the CIS prospectus (R/250/2018).

✓ *Notification of changes in fees*

The fees set down in the KIID and the prospectus can be modified after the investment fund has been contracted, so that the fee that is applicable in a transaction may be different from the fee initially stated.

Unitholders must be informed of some changes, such as those that involve establishing or raising fees or establishing, raising or eliminating discounts in favour of the fund that must be carried out in subscriptions and redemptions, individually and at least 30 calendar days in advance of their entry into force. The notification must mention the unitholder's right to opt, for a period of 30 calendar days, for the total or partial redemption or transfer of their units, with no deduction of redemption fees or any expenses, at the net asset value of the last day of the 30-day period.[217]

Although these changes must be clearly communicated to the unitholders in writing, with the minimum advance notice required, regulations do not require that the information be sent by registered post or by any other means that allows proof of delivery.

In 2018, some complaints related to guaranteed equity funds were resolved where, after the expiry of previous guarantee, changes were made to the key features of the prospectus and a new system of subscription and redemption fees established. In these cases, the complainants said they were unaware of the change in the redemption fees. However, the entities proved that they had informed the unitholders of this issue, for which they provided the communication delivered regarding the expiry of the guarantee, the revaluation of the fund, the change of name and the change in the investment policy, the purpose of the fund and the applicable fees, as well as the unitholders' right of separation that could be exercised if they were not satisfied with the changes made to the fund (R/203/2018).

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217 Article 14.2 of Royal Decree 1082/2012, of 13 July, approving the implementing regulations for Law 35/2003, of 4 November, on Collective Investment Schemes, and Rule Nine, sections 1 and 2, of CNMV Circular 2/2013, of 9 May, on the key investor information document and the prospectus of collective investment schemes.

✓ *Transfers between CISs*

The transfer of an investment fund is not a transfer of a security, but involves the redemption of units in the source fund and the subscription of shares in the target fund.

The redemption and subscription, if carried out simultaneously and without the unitholder having access to the cash, are subject to a special tax regime. However, it is possible for the entity to apply both a redemption fee and a subscription fee, since there is no transfer fee.

Transfers between investment funds are the reason for complaints where the complainants are often dissatisfied with the redemption fee charged by the source entity after an order has been issued to the target entity to transfer the investment to another of its funds. In complaints of this nature, the Complaints Service checks whether the source entity has complied with the prior information obligations established by law, in the terms mentioned in the previous sections.

The target entity must provide prior information on the target fund, in addition to informing the unitholder of issues *ex novo*, i.e., arising as a result of the transfer itself (for example, the change that applies when the source or the target fund is denominated in a currency other than the euro).

In one case, the unitholder alleged that neither the source nor the target entity had informed him of the redemption fees applied by the source entity when the units were transferred.

The Complaints Service explained to the complainant that the target entity in the transfer was not obliged to inform him of the fees and expenses applicable to the source fund, but that this information should have been sent to him by the source entity.

The Complaints Service also analysed the actions of the source entity to verify whether it had properly informed the complainant of the fees applicable to redemptions of units. It was revealed that, in relation to a merger, the source entity had duly informed the complainant of the fees applicable to the source fund, in addition to the dates of the liquidity windows. In the complaint proceedings, the source entity submitted the communication sent, a certification of the representative of the logistics centre used to process the communications stating that it had sent and deposited the communication in the post office bulk mail centre and several receipts of delivery recognising the deposit for a certain number of letters to be posted in Spain and abroad (R/135/2018).

➢ Redemption fees: collection in funds with liquidity windows

The dates laid down in the fund's prospectus in which unitholders may redeem their units without paying a redemption fee are referred to as *liquidity windows*. In other words, on the basis of the content of the fund prospectus, exemptions to the redemption fee may be established when the redemption takes place on the specific established dates (liquidity windows).

The redemption of an investment fund in a liquidity window may arise from a direct redemption order or be the result of a transfer order.

✓ *Redemption orders in funds with liquidity windows*

The application of a redemption fee requires consideration of the exemption terms provided for in the fund prospectus, as well as the time at which the client has issued the order. Based on these factors, the entity correctly charged a redemption fee in the following cases:

– The redemption fee did not apply on the second day of each month (or the next business day if the second day was not a business day), according to the fund prospectus. The redemption was executed on day 1. The entity charged a redemption fee as the order was issued and executed outside the liquidity window (R/203/2018).

– The fund prospectus stated that the liquidity window was day 2 of each month (or the next business day if day 2 was not a business day) and that orders issued by the unitholder after 5:00 p.m. or on a non-business day would be processed along with those made on the next business day. The client issued an electronic order to sell the CIS on the day of the liquidity window, although the order was issued at 7:42 p.m. Consequently, as the redemption order had been issued after the cut-off time, the entity applied a redemption fee (R/388/2018).

– The redemption of units during the 30 days after subscription entailed a redemption fee being charged, in accordance with the provisions of the fund prospectus. The client ordered the redemption before the time required for the exemption of the fee has elapsed, so the entity proceeded to charge the fee (R/438/2018).

✓ *Order to transfer source funds with liquidity windows*

It should be noted that for the application of redemption fees on transfers of funds with liquidity windows, the CNMV's Entity Authorisation and Registration Department[218] has published guidelines stating that:

> *In transfer orders in which the "liquidity window" coincides with the day the order is received, or within the verification period, by the source management company, the redemption fee cannot be charged, in accordance with the duty to execute orders under the best terms for the client*
>
> *In cases in which the above does not occur, and yet the unitholder has informed the target fund manager of his/her intention to make use of the liquidity window prior to that date, the latter must take the necessary steps to inform the source fund manager of this intention, using a communication channel that ensures it can be subsequently accredited, so that the order is executed with no redemption fee applied. [...]*
>
> *For orders received by the source fund manager after the day of the liquidity window, a redemption fee will be charged, as established in the corresponding prospectus.*

218 CNMV communication on the application of redemption fees in transfers of guaranteed equity funds with liquidity windows, dated 16 October 2007.

In the case of funds with an established a cut-off time in the prospectus, if the source fund manager receives the order on the day of the liquidity window, but after this cut-off time, the redemption fee will apply, since the order will be considered to have been made on the following business day.

In relation to the verification period of the source entity, it should be clarified that it has a maximum of two business days following receipt of the request in order to perform the verifications that it deems necessary.[219]

For the transfer of units of funds for which the prospectus contemplates days that are exempt from fees, to assess whether the source fund manager has acted correctly, it should be taken into account, among other aspects, whether at the time it received the transfer request the redemption fee was applicable and whether the redemption fee charged corresponds to the fee stated in the fund documentation. Additionally, if the complainant disagrees not only with the fee charged, but alleges that they were unaware of the existence of the fee, the Complaints Service must assess whether the source entity complied with its obligations to inform the unitholder prior to contracting the CIS. This issue will be analysed in greater detail in the section "Information on fees and expenses of investment funds".

The source entity correctly charged redemption fees in the following complaints related to transfers of funds:

– The source fund prospectus established that a redemption fee was not applicable on day 20 of each month, or the next business day. In the month in which the transfer order was issued, day 20 was a Saturday and a non-business day, so the liquidity window was moved to the next business day, i.e., Monday, day 22. The source entity received the transfer request on day 23 (R/471/2017).

– A redemption fee was not charged on day 14 of each month, or the next business day, according to the fund prospectus. In one of the complaints raised, day 14 was a business day and the entity received the transfer request the day after the liquidity window (i.e., day 15) (R/199/2018). In another complaint, the source entity received the request on day 25, i.e., a clear day after the liquidity window (R/212/2018).

– The liquidity window was on 15 January, according to the source fund prospectus. The source entity received the request on 9 January, and had 10 and 11 January to make the corresponding checks. Accordingly, a redemption fee was charged (R/297/2018).

– A redemption fee was applicable, according to the source fund prospectus, only for the redemption of units less than 7 days old. However, the client ordered the transfer of the fund the day after subscribing to it, therefore the entity applied the corresponding redemption fee (R/116/2018).

– The fund prospectus established a redemption fee for a period of time, although it included a series of annual liquidity windows. In the year in which the order for the transfer referred to in the complaint was issued, the liquidity window was on 25 April, however, the transfer order was issued on 17 July (R/135/2018).

219 Article 28 of Law 35/2003, of 4 November, on Collective Investment Schemes.

– A redemption fee would have been charged from March 2017, as indicated in the source fund prospectus, although it stipulated that there would be monthly liquidity windows for redemptions without fees from March 2018. However, the redemption was requested in September 2017, six months ahead of the first liquidity window (R/77/2018).

In other complaints, irregularities were detected in the entity's actions for the following reasons:

– The source entity incorrectly charged a redemption fee in cases where the liquidity window coincided with the day it received the transfer order or with the days available for verifications.

  In one complaint, the source fund prospectus established that a redemption fee was not applicable on day 20 of each month, or the next business day. The source entity received the transfer order on day 19. Therefore, the window coincided with one of the two days available to the entity to carry out the checks related to the transfer (R/29/2018).

  In other cases, the liquidity window was day 15 of each month, or the next business day, according to the source fund prospectus. In case R/232/2018, the source entity received a transfer order from one of the complainants on day 13 and from the other on day 15. Therefore, the liquidity window coincided with one of the days available to the entity to carry out checks in the first case and with the same day the order was received in the second. In cases R/440/2018 and R/463/2018, the source entity received the transfer order on Friday, day 12, and consequently had days 15 and 16 to make the appropriate checks. Therefore, the liquidity window coincided with one of the verification days.

– The source entity did not respond properly to the client's instructions to execute the transfer within the liquidity window.

  The unitholder issued a fund transfer order from the target entity. On discovering that his fund had a redemption fee, the complainant decided to give direct instructions to the source entity to reject the first transfer order and process the redemption order on the day of the liquidity window.

  The source entity, following the client's instructions, rejected the first transfer order. However, as the complainant had not informed the target entity of his intentions, it requested the transfer for the second time, and on this second occasion the source entity, contrary to the client's explicit instruction to redeem the fund within the liquidity window, made the transfer to the target fund, redeeming the units and applying a redemption fee.

  The Complaints Service considered that the source entity should have rejected the second transfer order or, failing that, should have asked the client, upon receipt of the second order, to confirm whether his instructions were still valid (i.e., to make the redemption within the liquidity window) (R/527/2017).

➢ Custody and administration for investment in CIS

Distributors of Spanish investment funds may charge the unitholders that have subscribed units through them fees for their custody and administration providing this is indicated in the CIS prospectus and the following requirements are met:[220]

– The units are represented by means of certificates and appear in the register of unitholders of the management company or the distributor through which they have been acquired on behalf of the unitholders and, consequently, the distributor provides evidence of ownership of the units with regard to the investor.

– The general requirements for fees and contracts for the provision of investment and ancillary services are met.

– The distributor does not belong to the same group as the management company.

However, in the field of foreign CISs, the CNMV does not supervise the CIS prospectus, but the home authority. In the field of foreign CISs, it is understood that custody exists and the corresponding fee can therefore be charged when the distributor keeps an individualised register of the CIS units, i.e., one which details the holders of the units which, on an aggregate basis, appear in the corresponding management company in the name of the distributor. This occurs when the distribution of the investment fund is made through omnibus accounts, which is usually the case.

However, to be able to charge it, the fee must be indicated in the prospectus of the respondent entity.

If the complainants disagree with the custody fees charged by the distributor of a foreign CIS, the Complaints Service must verify that the fees in question are in accordance with those established in the fee prospectus and that the client has been duly informed of said fees prior to their application (R/440/2018).

➢ Exchange rate in CIS transactions denominated in foreign currencies

As indicated in the fees for securities, in transactions with CISs denominated in a currency[221] other than the euro, entities are free to establish the exchange rate to be applied to foreign currency sale and purchase transactions; i.e., exchange rates are freely determined and may be modified any time, with credit entities and currency exchange establishments being entitled to apply in their transactions any exchange rate they might agree with their clients, without prejudice to the obligation of the entity to publish the minimum buy and maximum sell rates or, where applicable, the only rates to be applied to transactions involving less than €3,000.

Therefore, for this type of transaction, entities may apply exchange rates other than the official published ones.

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220 Article 5.14 of Royal Decree 1082/2012, of 13 July, approving the implementing regulations for Law 35/2003, of 4 November, on Collective Investment Schemes.

221 It is usual to find classes of units or shares denominated in currencies other than the euro in foreign CISs.

However, in accordance with the rules of conduct,[222] the entity receiving the order must inform its client of the foreign currency in question, the corresponding exchange rate and the applicable costs, or failing that, of the manner in which these would be determined.

In addition, if the exchange rate used is not the market rate, entities must inform their clients of the spread that will be applied.

The exchange rate applied by the entities is not a fee, in the strictest sense of the word, although it may be considered a surcharge applied to the market exchange rate for the operation to be performed.

Therefore, in the complaints relating to this issue assessed during the reference period, an investment service provider acted incorrectly by not accrediting in the complaint proceedings that it had provided the complainant with information on the applicable exchange rate or, failing that, on the formula for calculating that exchange rate prior to the subscription of units in CISs denominated in US dollars. As the contract had been arranged electronically, the entity submitted various documents in the proceedings, but it could not be proved that the information provided on the exchange rate was complete or issued prior to the formalisation of the contract in any of them.

The entity submitted an investment fund contract that mentioned the amount of the initial subscription in US dollars. This information provided the client with the amount in US dollars that corresponded to the units he wanted to subscribe to in the fund, but there was no information on the final amount in euros or the exchange rate to be applied. In addition, no computer footprint was provided that demonstrated that the client knew the information provided prior to the subscription through the entity's website.

Further, the entity submitted some screenshots of the "Amount of first subscription to the new fund" section and other sections related to exchange rates. In these screenshots, on entering a figure in euros the amount was obtained in the corresponding currency and a certain exchange rate spread was reported. However, the screenshot also included the following text: "The subscription amount may vary depending on the net asset value of the transaction and exchange rate." Therefore, it was concluded that the information provided was incomplete, since it was indicative and did not explain the base on which the spread was applied. Additionally, it was not accredited in any way that the complainant had consulted the information on the screenshot before issuing the order to subscribe to the fund (R/565/2017).

➢ Change of distributor

Some maximum fee prospectuses include the possibility of applying a fee for processing the registration or cancellation of foreign CIS balances due to a change in the distributor with which the balances or positions are to be registered. In these cases, the general regulations for fees referred to in the section on securities fees applies. Entities may not, therefore, charge clients fees or expenses that are higher

222 Articles 62 and 66 of Royal Decree 217/2008, of 15 February, on the legal regime of investment firms and other entities that provide investment services.

than those set in their rates, apply more stringent conditions or charge expenses that were not provided for, or for items that were not mentioned, in their rates.[223]

In one complaint, the complainant disagreed with a fee that the entity had informed him would be applied if he requested to change the distributor of the shares he held in a foreign investment company.

In a report on his account position and movements for the first quarter, the entity had provided the complainant with an update of the economic terms for the custody and registration of shares or units in CISs, that would enter into force on 1 May of that year. In addition, it specified the fee percentage, the calculation basis and the minimum that would be applied for processing the cancellation of foreign CIS balances held by the client in the entity due to a change in the distributor in which these balances or positions would be registered.

The fees cited by the entity for carrying out the transaction did not exceed the limit established in the maximum fee prospectus that was registered with the CNMV on the date of the request. Consequently, the entity was allowed to pass on fees to the client for changing the distributor of the foreign investment company (R/176/2018).

Summary of complaints relating to CIS fees EXHIBIT 10

- **Information on fees and expenses** of investment funds is included in the documentation that must be delivered to the investor before contracting the fund (i.e., the last half-yearly report and the KIID, and on request, the prospectus and the last published annual and quarterly reports). Some subscription and redemption orders include information on the fee applicable to the operation to be executed. Unitholders must be informed individually of any changes in fund fees, in accordance with regulations.

- Some fund prospectuses include dates on which the unitholder may redeem their units without being charged a redemption fee (**liquidity windows**). It is also stated whether the orders issued by unitholders will be processed the day of the order or whether there is a **cut-off time**, after which any orders received will be processed the next business day.

- For **redemption orders,** the entity should not charge a redemption fee if the order is issued during the liquidity window, according to the procedure provided in the prospectus for this purpose (notice period, etc.).

- For **orders for transfers** between investment funds in which the liquidity window coincides with the day the order is received or one of the verification days available to the source management company, the redemption fee should not be charged pursuant to the entity's duty to execute the orders on the best terms for the client (in this case, within the liquidity window).

223 Article 3.2 of Order EHA/1665/2010, of 11 June, implementing Articles 71 and 76 of Royal Decree 217/2008, of 15 February, in regard to fees and standard contracts.

However, if the fund prospectus establishes a cut-off time, the redemption fee will be applicable when the source management company receives the transfer order on the day of the liquidity window, but after the cut-off time, as it is considered that the request has been made the next business day.

– Information prospectuses may establish custody fees and fees for changing the distributor in relation to **foreign CIS**s. Entities must inform investors about these fees before they are charged, and they must comply with the fee prospectus. Therefore, entities cannot charge clients fees or expenses that are higher than those set out in their fee prospectus, apply more stringent conditions or charge expenses that were not provided for, or for items that were not mentioned.

4.6.3 Portfolio management

Clients sometimes contract CIS portfolio management services in which they make contributions and grant powers to an entity so that, for and on behalf of the client, it may perform transactions with different securities, and in cases of CIS portfolio management, particularly with this type of product.

➢ Definition and calculation basis

Entities that provide discretionary portfolio management services must establish rates depending on the amount of the assets under management, the increase in their value or both items. In any case, an express indication must be given as to whether the two fees are complementary or exclusive. If this is not indicated, it will be understood that they are exclusive, with whichever is more beneficial for the client being taken as the maximum fee.

The rate must be expressed as an annual percentage on the assets under management or on their annual increase in value and an annual minimum rate on the assets under management may be established, without prejudice to the agreements made between the parties in relation to their accrual and settlement in the corresponding contract.[224]

The standard fee prospectus establishes the form of presentation and application of portfolio management fees,[225] so that:

– The calculation base for the fee on the effective value of the portfolio is the effective value of the managed portfolio at the end of the accrual period.

– The fee on the increase in value of the portfolio is calculated by comparing the effective value of the portfolio on 1 January (or the start date of the accrual period if later) and 31 December (or the end date of the accrual period) each

224 Rule Four, section 3, of CNMV Circular 7/2011, of 12 December, on the fee prospectus and the content of standard contracts.

225 Annex I, section 3, of CNMV Circular 7/2011, of 12 December, on the fee prospectus and the content of standard contracts.

year, subtracting the contributions and adding the withdrawals made during the period. In one specific complaint proceedings, the complainant disagreed with the fee charged on the increase in value of the portfolio charged by the entity, arguing that the average effective balance of the portfolio was lower than the initial contribution and, therefore, no gains would have been obtained. However, factoring in the calculation basis mentioned above, the portfolio had increased in value between the beginning of the accrual period and its end, so a portfolio revaluation fee was charged by the entity (R/397/2017).

➢ Evidence that information on fees has been provided prior to the start of the contractual relationship

As indicated in the section on securities fees, if at the start of the contractual relationship between the client and the entity, returns that are lower than those of the fee prospectus are agreed, these must be set out in the standard contract. In the event that no such agreement exists, the entity must provide the client with the aforementioned prospectus and keep the client's acknowledgement of receipt.[226]

Entities accredited having informed the complainant of the fees to be charged for the provision of a discretionary portfolio management service by providing a copy of the contracts signed by the client for that purpose, in which both the type of fees and their calculation basis were established, in addition to the settlement period in case R/588/2017, R/79/2018, R/99/2018 and R/287/2018.

➢ Notification to the client of any changes in the fees initially agreed

The standard contract for portfolio management must establish the obligation to inform the client, prior to their application, of any increase in the fees and expenses applicable to the service provided, and that had been previously agreed with the client. In this case, the client must be given a minimum period of one month from the receipt of this information to modify or cancel the contractual relationship, during which time the new rates will not be applied. If the fees are decreased, the entity must also notify the client, without prejudice to the immediate application of the new rates. This information can be included in any periodic communication that the entity must submit to its clients or sent by any means of communication agreed by the parties in the contract.[227]

In one complaint file during this period, the respondent entity increased its portfolio management fee from 0% to 0.35%, a modification that the complainant alleged he was not aware of. To provide evidence that it had informed the client of the change, the entity submitted a letter addressed to the client which, in addition to informing him of the entry into force of the MiFID II Directive and the MiFIR Regulation, included the contractual clauses that would be changing as a result of the entry into force of the new regulations. The entity attached to the letter the

226 Rule Seven, section 1, letter e), of CNMV Circular 7/2011, of 12 December, on the fee prospectus and the content of standard contracts.

227 Rule Seven, section 1, letter e), of CNMV Circular 7/2011, of 12 December, on the fee prospectus and the content of standard contracts.

discretionary and individual portfolio management contract with the clauses that had been modified, one of which related to the applicable fees.

The Complaints Service concluded that the communication contained a formal irregularity, in that it did not grant the client a minimum period of one month from the receipt of the information in which to modify or cancel the contractual relationship during which time the new terms would not be applicable.

In addition, the Complaints Service considered it incorrect, in terms of transparency and the provision of the correct information to clients, that the respondent entity had used the entry into force of the MiFID II Directive to justify the modification of its fees, when in fact these changes had nothing to do with the new regulations (R/517/2018).

➢ Maximum amounts and items

With regard to the application of the fee prospectus, and as indicated in the section on securities fees, entities may not charge clients fees or expenses that are higher than those set in their fee prospectus, apply more stringent conditions or charge expenses that were not provided for, or for items not mentioned in their rates.[228]

In relation to the above, the rates or fees established in the prospectus are maximum rates and, therefore, those actually applied may be lower.

In some disputes over the fees charged for portfolio management, based on the settlement of the fees which the respondent entity submitted in the complaint proceedings, it was possible to verify that the fees had been calculated as agreed by the parties in the portfolio management contract and, in addition, they had been totally and partially reimbursed or waived (R/397/2017, R/99/2018, R/287/2018 and R/438/2018).

In another case, the standard contract for discretionary and individual portfolio management submitted in the complaint proceedings established a fee on the average effective value of the managed portfolio that would be settled annually on the last day of the year. However, in accordance with an agreement reached between the parties, the entity would waive this fee so long as the client could not sell the portfolio (i.e., while it showed a loss) but when the portfolio began to show gains, the client would have to pay the fee to continue the management service.

Both the complainant and respondent entity agreed that the portfolio had started to show gains at a certain date during the year and that, consequently, given the agreement reached between the parties, the entity would no longer reimburse the management fee. However, the dispute between the parties involved the amount of the fee. In the complainant's opinion, he should be charged a fee for the part of the year in which the portfolio had made gains, and be reimbursed for the period during which it had returned a loss. However, the entity considered that the fee should be charged for the entire period.

228 Article 3.2 of Order EHA/1665/2010, of 11 June, implementing Articles 71 and 76 of Royal Decree 217/2008, of 15 February, in regard to fees and standard contracts.

The Complaints Service concluded that (as established by the parties) the fee should no longer be reimbursed from the moment the portfolio started to show gains and the tariff clause established in the contract should be applied from then on. This clause provided that the fee would be applied on the average effective value of the managed portfolio and would be settled annually on the last day of the year, as evidenced in the settlement made by the entity. Therefore, it was considered that the entity had acted correctly.

In its report, the Complaints Service expressed its opinion that the entity should not have to partially reimburse the fee. However, given that this conclusion was reached as the result of an interpretation not only of a clause included in a contract, but also of a compensation agreement made between the parties, it added that the case should be brought before a court of justice for a further ruling (R/361/2018).

➢ Accrual of the fee

Fees accrued for discretionary portfolio management are established in such a way that for invoice periods that are shorter than the ordinary agreed settlement period, they will be billed in proportion to the number of calendar days during which the service is provided.[229]

The respondent entity was deemed to have acted correctly by charging the fee on a managed portfolio that was contracted in the middle of one year and was closed at the beginning of the following year in the amount proportional to the period in which the service was provided in each of the years in which it was held (R/79/2018). In another case, the portfolio management service was contracted and cancelled in the same year, so the entity was entitled to collect the fee based on the number of days between the date the contract was signed and its cancellation (R/521/2018).

In another, it was considered that the respondent entity had charged the proper fee on the increase in value of the managed portfolio. In this case, the holder had died and during the probate process the heirs had requested the distribution of the positions in the managed portfolio. The management fee charged by the respondent entity factored in the increase in value of the portfolio from the beginning of the year until the date on which it was cancelled, charging a third of the fee to the respondent heir (in this case, there were three heirs with rights to an equal share of the securities under management) (R/152/2018).

4.6.4 Advisory services

Entities that provide investment advice services must establish their fees according to the amount of assets for which they provide services, the increase in value of these assets, or both. The same conditions should be applied as those mentioned in the portfolio management fees section in that an indication must be given as to whether the two fees are complementary or exclusive and in relation to the form in which this indication must be expressed. However, in the provision of advisory services, as an alternative to the established fees, a fee can be established for the time

229 Rule Four, section 3, letter b), of CNMV Circular 7/2011, of 12 December, on the fee prospectus and the content of standard contracts.

required to analyse the portfolio for which the advisory service is being provided. This rate would be expressed in euros per hour and, if there are fractions of hours, the corresponding proportional part would apply.[230]

In one complaint, in the recurring advisory contract signed by the parties, an annual percentage fee was established, payable at the end of each six-month period, which would accrue daily. The complainant alleged that the entity was acting illegally by collecting the fee for the advisory service provided in December, as he had expressed his intention to redeem all his investments in June of the same year.

In this case, it should be taken into account that under no circumstances may entities charge fees or expenses for services that have not been effectively provided.[231]

The Complaints Service thus deemed that the respondent entity acted incorrectly by not accrediting the advisory service it had provided that could justify the fee charged in the second half of the year. Therefore, bearing in mind that the client had informed the entity in June that he intended to sell all his investments, the Complaints Service ruled that the entity should have submitted to the complaint proceedings the recommendations made during the second half of the year in order to justify charging the fee, unless the amount charged as a fee referred to a different period, an issue that the Complaints Service could not confirm since the entity did not provide the corresponding settlement (R/350/2018).

4.7 Wills

➢ Starting the inheritance process: reporting the death and blocking securities accounts

Heirs or legitimate interested parties must report the death of a person to the financial institution in which the deceased had deposited their securities or units of investment funds. To do so, they must provide a full copy of the death certificate, which will be issued by the Civil Registry in the place where the death occurred.

It is important to present the death certificate at the financial institution because from the moment that the death has been notified the institution must block all the securities accounts in which the deceased is named as a holder. This means that other co-holders are not able to access the financial instruments deposited in the account or accounts, regardless of provisions established (indistinct or joint and several regime) when the account was opened. If there are authorised parties for the accounts, they may not access the deposited securities either, because this authority is rendered invalid in the event of the holder's death. The account must remain blocked until the will of the deceased holder has been executed.

There are many complaints in which the complainant disagrees with the fact that the financial institution will not allow them to access shares or units in investment funds held jointly with a deceased person after notification of their death.

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230 Rule Four, section 3, letter c), of CNMV Circular 7/2011, of 12 December, on the fee prospectus and the content of standard contracts.

231 Article 3.3 of Order EHA/1665/2010, of 11 June, implementing Articles 71 and 76 of Royal Decree 217/2008, of 15 February, in regard to fees and standard contracts.

The Complaints Service considers that firms providing investment services are acting correctly when they prevent the redemption of investment fund units or the sale of securities – or any other manner of disposing of such instruments – by other co-holders (indistinctly or jointly and severally) or authorised parties.

However, as indicated above, access to other co-holders is blocked once the death has been reliably reported to the financial institution by a legitimate party. Therefore, while the entity is not aware of the circumstance, the other co-holders or authorised parties may freely avail themselves of the securities, depending on the arrangement in place. For this reason, and in order to prevent unwanted access to the financial instruments owned by a deceased person, it is important that the entity providing investment services be promptly informed of the event. The following complaints relate to the above and, in particular, to the way of notifying the financial institution of the death of the account holder:

R/586/2017: The respondent entity was deemed to have acted correctly when issuing and executing orders for the sale of rights and subscription to new shares. In this case, the person issuing the orders was a co-holder of one of the deceased's securities accounts and an authorised party to the other account. Further, it was proven in the complaint proceedings that the entity was not made aware of the death until five days after the account co-holder issued the orders.

R/27/2018: The respondent entity executed a redemption order for some investment fund units ordered by the person listed as an authorised party for the deceased's account after his death.

However, in the proceedings it was demonstrated that the respondent entity was not aware of the holder's death, so it was considered to have acted correctly.

R/106/2018: The complainant alleged that the respondent entity had committed bad practice by allowing the deceased's proxy to carry out transactions with securities in his account (sale of shares) after his death. The complainant referred to Article 1732 of the Civil Code, which states that the mandate ends once the person conferring the mandate dies, and for that reason sought compensation in favour of the heirs.

However, the entity claimed that it did not learn of the death of the client until January 2017, while the transactions queried in the complaint had been performed on 25 November 2015. To prove the date on which it learned of the death, the entity provided copies of the deceased client's position statements issued on 20 January and 23 January 2017 at the request of a person with sufficient legitimate interest.

In this case, it was concluded that, at the time when the sales orders made by the deceased's proxy were issued and executed, the respondent entity was not aware of the death of the holder of the securities in question, so the entity proceeded to carry out the order in virtue of the power of attorney provided by the proxy.

Article 1738 of the Spanish Civil Code stipulates: "The actions performed by the attorney, being unaware of the death of the principal or any other causes which involve termination of the mandate, shall be valid and fully effective against third parties who have transacted with him in good faith."

Further, Supreme Court Ruling 984/2008, of 24 October 2008, establishes that actions performed by the attorney after the mandate has been terminated shall be null

and void and as such non-binding on the principal, whereby the attorney shall be responsible vis-a-vis third parties. The exception to this general rule requires two conditions to exist: that the third party the client has transacted with has acted in good faith and did not know that the mandate had been terminated, and that the attorney, in making use of their power, was unaware of the death of the principal or any other reason that could cause the mandate to be terminated.

R/546/2017: It was deemed that the entity had acted incorrectly by failing to block the securities account after the death of one of its co-holders. In this case, the entity acknowledged that the securities account had remained active after it had been informed of the death of one of the co-holders, thus breaching the requirement to block the account until the processing of the deceased holder's estate had been completed.

R/93/2018: In this case, the complainant's father and holder, together with his wife, of a participant CIS account under a joint ownership system requested at a branch of the respondent entity the redemption of units of an investment fund. With the excuse that his wife had reduced mobility and could not come to the office, he asked for permission to take the redemption order home for the co-holder to sign. The entity, based on an existing relationship of trust, agreed. Once the order had been signed by both parties (in appearance at least) it was delivered to the branch for the execution of the redemption.

However, a few days after the redemption order was issued, the ordering party's children informed the bank that their mother, co-holder of the fund units, had passed away prior to the order date. Once this information was known, the entity blocked the current account into which the redemption had been paid, given that the father had not yet moved the redeemed amount.

In this case, it was considered that the entity acted correctly by immediately blocking the current account into which the redemption amount had been paid as soon as it became aware of the death of the co-holder, until the heirs provided the entity with all the necessary documentation to proceed with the distribution of the balances.

It is also usual, in some cases, for securities deposit and administration contracts or portfolio management contracts signed by with the investment services provider, to include a detailed description of the consequences of the death of one of the co-holders.

However, for this type of clause to take effect it the entity must be aware of the death.

In relation to portfolio management, the Complaints Service considers that the management decisions adopted by an entity that provides investment services which is unaware of the death of a client are valid and fully effective vis-a-vis third parties with which it has transacted in good faith.

Consequently, the heirs or persons with legitimate interest of the holder of the contract must inform the financial institution of the death of the holder in order to activate the contract clauses.

R/353/2018: The complainant disagreed with the entity's failure to block some investment fund units before they were distributed, as occurred in other entities. In

contrast, she alleged that movements had been carried out with the fund units without having previously consulted the heirs. As a result, the number of units that were finally awarded did not coincide with the position balances certified by the respondent entity on the client's date of death.

In this case, it was proven that the deceased had arranged a portfolio management contract with the respondent entity. It was also accredited that, even though the death occurred on 14 January 2017 (the date on which the entity issued the position statement), the entity was not informed of the event until 20 February.

Consequently, under the current portfolio management contract, the entity continued to manage the deceased's portfolio not only until the date on which the death was reported, but also subsequent to that date. In this regard, condition eight of the contract, relating to the duration and termination thereof, established the following:

> *In the event of death or disability of any of the clients that are signatories to this Contract, the contract will be automatically resolved with effect from the day the Bank receives express written notification of this event. The Bank will not be liable under any circumstances for the possible repercussions, either fiscal or of any other nature, for having continued to provide the management service while it has not received such notification.*

Once the respondent entity had knowledge of the death, as established in the conditions of the contract, it proceeded to cancel it. This meant that the units in the portfolio class (class of units aimed exclusively at clients that hold a fund management contract with the entity) were automatically transferred to the most favourable class for the unitholder, which in this case corresponded to the basic class.

Therefore, in this case it was proved that the subscription and redemption movements after the death of the fund holder were due to two reasons: first, that the entity was unaware of the death of the holder of the managed portfolio and, consequently, continued to perform the contracted management tasks, and second, that once the death of the holder was known, the entity had to cancel the portfolio management contract, for which reason it had to transfer the units in the portfolio class of each fund to another class of units. As the units of different classes had different net asset values, the number of units remaining after the transfer did not coincide with the number of units reported in the certificate issued by the entity on the holder's date of death.

➢ Providing evidence of the status of heir

To prove the status of heir before a financial institution, a certificate of last will and testament or an authorised copy of the last will and testament, or the declaration of heirs in intestate proceedings must be presented.

The certificate of last will and testament is an official document issued by the Ministry of Justice that proves whether a person has left a will, the date it was drawn up and before which notary. Therefore, it is important that the entity knows which is the last will made by the deceased, if there should be more than one.

With this certificate, the heirs can go to the notary to request an authorised copy of the last will of the deceased. In the event that the deceased does not leave a will, they

must obtain a declaration of heirs in intestate proceedings from the notary, or where applicable, a judge.

➢ Information of the deceased person's estate: steps to follow

✓ *Certificate of the deceased person's positions*

The first document that the heir or person of legitimate interest must request from the financial institution is the certificate of the deceased person's positions on the date of their death. The entity must issue a certificate including all securities and cash accounts, as well as a list of the financial instruments that the deceased held in the financial institution on the date of their death, both owned and co-owned.

Therefore, for heirs or persons of legitimate interest to obtain this information they must first prove their status as such. Otherwise, the financial institution may refuse to provide the information, which would not be considered an incorrect action by the Complaints Service.

✓ *Certificates of ownership*

The securities deposited in deposit and administration accounts in the name of the deceased or the units in investment funds will be included in the deceased's estate, but only that part of the financial instruments of which the deceased has full ownership.

In the case of securities accounts with shared ownership, although it is presumed that co-ownership of the deposited securities exists, this may not be the case. In fact, the shared ownership of a securities account only means that any of the holders has the right to access the account in which the securities are deposited before the depository, in accordance with the securities deposit and administration contract, but does not determine co-ownership of the securities deposited therein. The ownership of the securities is established according to the original owner of the funds used to acquire the securities, and the internal relationships between the account holders.

Certificates of ownership list all the securities owned by the deceased that are deposited with the corresponding entity, either individually or under co-ownership.

Once any existing queries about ownership have been resolved, the assets to be included in the deceased's estate must be established.

The issuance of ownership certificates with regard to securities entered in the account necessarily involves freezing the securities and no sales orders affecting said securities may be placed except in the case of transfers resulting from enforcement of judicial or administrative rulings.

In other words, the custody and administration account in which the securities are deposited will be blocked.

With regard to the units in investment funds, although it is true that there are listed and non-listed funds – the former would be subject to the legislation provided for

other listed securities – it is also true that in accordance with applicable sector regulations,[232] units of non-listed funds must be registered either in the register of unitholders of the management company in the name of the unitholder or unitholders, or in the identifying register of unitholders held by the distributor.[233]

In addition, the obligations of CIS management companies, or distributors when these are responsible for identifying holders, include the issuance of certificates of investment fund units.

However, sector legislation does not provide for how the issue of the aforementioned certificates will affect the transferability of the investment fund units. Nevertheless, it seems reasonable to conclude that, as with listed securities, these should also be blocked from the time the corresponding certificate is issued until any queries that may exist about the new owners of the units are resolved.

This block shall be maintained until the heirs provide the entity with all the necessary documentation for changing the ownership of the financial instruments, for which the entity is required to check, *inter alia,* that the corresponding tax has been paid. During this period, the heirs may only perform acts of conservation, monitoring and administration of financial instruments that form part of the inheritance.

✓ *Dissolution of joint ownership of assets*

To determine the estate of the deceased, if the deceased was married under a joint ownership regime, the matrimonial property regime must be dissolved since only the assets and rights awarded to the deceased will form part of the inheritance.

Therefore, once the marriage has been dissolved as a result of death, the joint ownership of property will be liquidated in accordance with Article 1396 of the Civil Code: "Once the joint ownership has been dissolved it will be liquidated and an inventory of the corresponding assets and liabilities will be started".

However, between the time which the joint ownership is dissolved and the moment in which it is liquidated, the assets and liabilities attached to the joint ownership regime form part of the assets (post joint ownership) that are administered by the surviving spouse and heirs in accordance with Articles 392 *et seq.* of the Civil Code.

The liquidation of joint ownership requires a series of transactions aimed at determining whether or not there are jointly owned assets and, where appropriate, which correspond to the deceased's estate.

The *mortis causa* liquidation of the joint ownership of assets may be formalised in a private document and does not need to be converted into a public notarised instrument providing that it complies with the sole requirement that said document be executed by mutual agreement between the surviving spouse and the other heirs.

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232 Royal Decree 878/2015, of 2 October, on the clearing, settlement and registration of negotiable securities represented by book-entries, on the legal regime of central securities depositories and central counterparties and on transparency requirements of issuers of securities admitted to trading in an official secondary market.

233 Law 35/2003, of 4 November, on Collective Investment Schemes.

In complaint R/497/2018, the complainant disagreed with the fact that, in her capacity as co-unitholder in an account that she held with her deceased husband, under the indistinct regime, she had requested access to the investment fund units and financial institution had denied that request, on the understanding that it required the consent of all the heirs.

In this case, no documentation was submitted to liquidate the matrimonial property regime. Therefore, from the moment when liquidation did not take place, a post joint ownership regime was set up from the date of death during which no access was granted without the unanimous consent of all members of the community of heirs. The surviving spouse and the heirs held an abstract share of the total assets that would remain in place until the joint ownership regime had been liquidated.

It was considered that the entity acted correctly in preventing any access until the documentation for the liquidation of the matrimonial property regime or a unanimous agreement signed by all partners has been provided.

In contrast, in case R/594/2017, the complainant alleged that the entity had allowed the co-holder of the deceased's investment fund to issue a redemption order for a part of the units after their corresponding change of ownership. However, a copy of a duly signed private document was submitted, in which it was agreed that the redeemed units had been awarded to the surviving spouse and co-holder following the liquidation of the joint ownership regime. In the liquidation process, it had been agreed that those units would become the property of the surviving spouse on an exclusive basis. The rest of the units were added to the deceased's estate which, in the same act, was awarded to the complainant as sole heir. In short, it was concluded that by providing the private document to the entity, the latter had received precise instructions on how to award the investment fund units referred to in the complaint.

In case R/474/2018, the complainant stated that the entity had not allowed her access to some shares over which she had sole and exclusive ownership. In the pleadings document, the respondent entity proved otherwise, i.e., that the shares had been deposited in a securities account held jointly with the deceased.

In these circumstances it was not possible to separate the shares the presumably belonged to the complainant without the consent of the heirs of the other co-owner. In the absence of such consent, the will had to be executed to honour the rights of the heirs before proceeding to deliver the shares corresponding to the complainant.

In this case, there was no evidence that the probate process had been completed since the document of acceptance, partition and awarding of the inheritance and accreditation of the payment of the inheritance and donations tax had not been provided to the respondent entity. Therefore, it was concluded that the entity had acted correctly.

➢ Inheritor's right to information

Once the status of heir has been demonstrated, the heirs may exercise their right to request information on the balances held by the deceased with the financial institution.

However, problems arise in determining whether the person seeking to access the inheritance as heir has the right to obtain information or documentation from a securities account if the co-holder is in opposition.

As indicated above, the heirs have the right to obtain information on the balances held by the deceased in the financial institutions on the date of death, therefore, this is an essential document to establish the estate, pay the corresponding taxes and proceed with the distribution of the assets.

As regards the documentation and information on movements in the deceased's account prior to the date of death, it must be shown that it is a unanimous legal criterion that the acquisition by the heirs of the rights and obligations that correspond to the deceased does not occur at the date of death, but is postponed to the date the inheritance is accepted, at which point the deceased is replaced by the heirs from the date of death.

Consequently, the Complaints Service considers that until the inheritance has been accepted, the surviving co-holder of the securities account may object to documents showing the movements in the account prior to the death of the other co-holder being passed over to the heir, since there is always the possibility that the inheritance will not be accepted and, consequently, the person designated as inheritor will not replace the deceased as co-holder of the account.

This is set down in the Supreme Court ruling of 19 October 1963, Articles 657 and 661 "when the succession is transferred to the heir, a transfer that cannot be immediately effective, as it requires a decision in favour, acceptance of the inheritance, even through this is backdated to the date of death [...]", and the ruling of 5 July 1958: "[...] It must be remembered that according to Articles 657 and 661 of the Civil Code, the rights to a person's succession are transferred at the time of his death and heirs succeed the deceased pursuant to the sole fact of his death in all his rights and obligations, and although, despite this last statement, acceptance of the inheritance is also required, and this, according to Article 989 of the Code, shall always have retroactive effect to the time of death of the decedent, which is the same as for the possession of hereditary property established in Article 440 of the Code [...]".

In summary, for the succession to have the effects established in Article 661 of the Civil Code: "The heirs succeed the deceased pursuant to the sole fact of his death in all rights and obligations", it is necessary that the prospective heir accepts the inheritance.

However, at the moment when the prospective heir accepts the inheritance, he or she is placed in the same legal position previously held by the deceased in respect of all assets and debts, with effect from the date of death. Therefore, from that moment, the surviving co-holder of the securities account cannot oppose the delivery of the documentation, since the heir assumes the same position as the deceased by replacing him as co-holder of the securities account.

Consequently, upon acceptance, the heir has the right to receive documentation on the transactions carried out prior to the death.

It should be noted that the right to obtain this documentation is limited, in principle, to the time period that entities are legally required to keep it.[234] However, if the requests for information are manifestly disproportionate, unjustified or generic, or there are special circumstances that so advise, the entity could refuse to provide such information.

In this sense, the objective of informing the heirs should not be confused with an intention to present, *a posteriori*, a kind of amendment to cover the entire the relationship between the financial institution and the deceased over an extended period of time that would require to the entity to offer explanations about the transactions carried out by the deceased.

It should be noted that entities have the obligation to keep a record of all supporting documents on securities orders for a minimum of five or six years, depending on the trade date. This storage period is equally applicable to the appropriateness and suitability tests. Lastly, in the case of contracts, the duty of storage extends for the duration of the contractual relationship and up to five years after it ends.

In case R/117/2018, it was concluded that it could not be proved that the prospective heir had accepted the inheritance, which, in addition to the express opposition of the surviving co-holder of the securities account to the provision of any documentation or information, led to the Complaints Service to rule that the entity acted correctly by refusing to deliver the requested documentation to the complainant.

In other complaints, it was concluded that, depending on the date of acquisition of the securities to which the heirs' requests for information referred, the respondent entity had no obligation to keep the purchase orders for the securities in its records or appropriateness/suitability assessments (R/463/2017, R/556/2017, R/19/2018 and R/198/2018).

In case R/71/2018, a request for information filed by the heir before the respondent entity referring to all the transactions carried out by the deceased from 1999 to 2015 was considered disproportionate and lacking the minimum required specificity.

In this case, the Complaints Service welcomed the fact that the respondent entity submitted the information requested for the period 2008 to 2015 in the proceedings, since it significantly exceeded the minimum storage period for documentation required by law.

A request for information referring to the deceased submitted by an heir to the respondent entity "throughout their entire client relationship" was also considered disproportionate in case R/342/2018. However, in this case it was concluded that the respondent entity had engaged in bad practice because it had not kept the securities deposit and administration contract (which it should have stored); a document that was expressly requested by the Complaints Service.

234 Rule Two, section 8, of CNMV Circular 3/1993, of 29 December, on records of transactions and files containing supporting documentation (in force at the time of the first acquisition of securities). As of 15 February 2008, Royal Decree 217/2008, of 15 February, on the legal regime of investment firms. This Royal Decree reduces the storage period to five years.

In contrast, in case R/353/2018 the entity amply complied with a request for documentation made by the heir, particularly as the request, given its format, should have been considered disproportionate. However, in the complaint proceedings, the entity provided a copy of the portfolio management contract signed by the deceased, all the movements in the investment funds he held on portfolio and the subscription orders to investment funds held in a participant account that was not managed.

In case R/102/2018, the entity offered detailed information on a specific request for information submitted by the heir related to an exchange of subordinated bonds mandatorily convertible into shares that had occurred during the two years that had elapsed from the death of the account holder until the will was executed.

In case R/537/2017, the respondent entity had sent a communication to the deceased's address informing him of the existence of some securities in his favour and indicating that they would shortly be considered abandoned, so if he did not exercise his right to dispose of them within one month, the entity would proceed to inform the tax authorities of the abandoned assets and they would be delivered into the hands of General State Administration.

On receipt of this notice, the deceased's spouse and legal heir contacted the entity to request information about the securities. In the complaint proceedings, it states that she asked the entity for a certificate of positions in the deceased's accounts in order to proceed with the execution of the will on 15 May 2017.

In its pleadings, the entity argued that the request for information was eligible to be classified as disproportionate and for this reason was not addressed.

However, the Complaints Service concluded that the heir's request could not be described as disproportionate because it was a specific request relating to the deceased's positions on the date of his death. However, it was considered that the petition was out of time, as almost 30 years had passed since the death.

Further, in the letter that the entity sent to the account holder (at that time the entity was unaware of his death), it informed him, as indicated above, that if he did not exercise his right to dispose of the securities within one month, the entity would proceed to deliver them to the State General Administration.

Consequently, and in compliance with the terms of this notice, the securities in the account (393 shares of Iberdrola S.A.) were transferred to the tax authorities on 28 April 2017. Therefore, it was the entity's understanding that the heir should claim the shares at the corresponding tax office.

In case R/155/2018, in July 2017, the complainant provided the respondent entity with documentation proving her status as an heir and requested a copy of the securities contract signed by the deceased. In its pleadings, the entity acknowledged that the request for documentation was not processed. It therefore apologised to the heir and informed her that it would be happy to assess the damage that failing to provide the requested documentation may have caused. In the complaint proceedings, the entity also provided the contract to open the securities account. However, since it was not proved that the required documentation had been delivered at the time of the request, i.e., in July 2017, the Complaints Service concluded that the entity had engaged in bad practice, which had been partially rectified, during the proceedings.

Notwithstanding, there are cases in which the persons requesting information or documentation do not have the legal right to obtain it because they lack the status of heirs:

– Usufruct: In these cases, the usufructuaries have the right to obtain from the entity the certificate of positions of the deceased as they have a legitimate interest in the positions; however, they would not have the right to request information on movements or transactions carried out by the deceased before death.

  A situation like this occurred in case R/450/2017. The complainant, with usufruct corresponding to the third level of kinship, disagreed with the entity's refusal to provide information on the movements of some investment funds during the life of the deceased. The reason given for requesting these movements was that she wanted to know to the exact inventory of her deceased husband's assets in order to calculate the value of the usufruct that corresponded to her.

  In its pleadings, the respondent entity referred to the jurisprudential doctrine established by Supreme Court ruling 712/2014 (Civil Chamber) of 16 December 2014, which stipulates that "the beneficiary appointed by the testator with usufruct on the entire inheritance, or a part or share thereof, cannot be assimilated to the institution or legal position of inheritor", indicating in the legal argument that "the content of the beneficiary's right to the inheritance is such that he/she cannot be given the title of heir, i.e., the global ownership of the rights and obligations of the deceased, and is configured in the form of a specific awarding of assets; usufruct of the inheritance. This is an award that also lacks prior legal existence in the inheritance estate, since it is constituted *ex novo* [...] so that the manner of sub-entering the usufructuary in the succession clearly differentiates it from the central position assumed by the heir".

  In this case, it was concluded that since the complaint was not a heir, it was not possible, on the basis of the cited jurisprudential doctrine, for the entity to provide her the requested information and documentation.

– Fiduciary substitutions: This subject is regulated in Articles 781 *et seq.* of the Civil Code. It is configured as a testamentary provision whereby the testator instructs the heir to preserve and transfer all or part of the inheritance to a third party. This shall be valid and effective provided it does not go beyond the second degree of kinship and must be made in favour of people who are alive at the time of the testator's death (R/127/2018).

  Paragraph two of Article 783 of the Civil Code emphasises that "the fiduciary trustee shall be obliged to deliver the inheritance to the beneficiary, without other deductions than those which correspond to legitimate expenses, credits and improvements, unless otherwise provided by the testator".

  In accordance with prevailing legal doctrine and jurisprudence, the expression "unless otherwise provided by the testator" means that the testator is able to authorise the fiduciary to dispose of all or part of the trust assets. In other words, in the event of a change of trustee, if there is a restorative lien, this would be limited to the residual estate and the fiduciary would be able to dispose of the assets within the scope provided by the will.

In the residual trust a call to succession exists, while the obligation to preserve and restore is a natural element the scope of which depends on the will of the owner.

Regarding the effects of fiduciary substitution, it must be clarified that the fiduciary is the heir of the trustee and once he or she accepts the inheritance becomes the owner or holder of the assets subject thereto.

The trustee or beneficiary is the heir of the trustor, who is the sole party in the fiduciary substitution as heir after the death of the fiduciary. Until the fiduciary dies, the trustees have an expectation of rights over the trust assets. Once the fiduciary dies, the trustees become heirs of the trustor with respect to the assets in the residual estate.

Based on the foregoing, it was considered that the entity acted correctly in one case by not recognising the trustee or beneficiary as the heir of the fiduciary, since the real heir was the trustor due to residual fiduciary substitution. In accordance with paragraph two of Article 783 of the Civil Code, the trustee is not the heir of the fiduciary and is not responsible for the obligations contracted by the trustee, except for those arising from the normal administration of the trust assets, apart from improvements.

➢ Acceptance of the inheritance: establishment of a joint ownership system

Once the estate of the inheritance has been established, the prospective heirs may accept or reject it.

On acceptance, the prospective heir expresses his or her willingness to succeed the deceased. The community of heirs arises when all those entitled to an inheritance accept it, whether expressly or tacitly, and is terminated with the partition and the awarding of the specific inherited assets to each one of the heirs.

In the event that one of the heirs does not express acceptance of the inheritance, preventing the legatees from receiving their legacy or the rest of the heirs from proceeding with the partition and awarding of the assets, the latter may contract a notary to require the heir to accept the inheritance, as established in Article 1005 of the Civil Code: "Any interested third party that proves their interest in the heir accepting or rejecting the inheritance may contract a Notary to notify the beneficiary that he or she has a period of thirty calendar days to accept the inheritance absolutely or under the benefit of inventory, or to reject the inheritance. The Notary will also indicate that if the party does not express his or her will within that period, he or she will be deemed to have accepted the inheritance absolutely." Therefore, this would resolve the unsettled estate and a community of heirs would be constituted. However, if the situation persists, the parties can go to court to resolve the situation (R/154/2018).

In the community of heirs, its members hold an abstract share of the assets without any specific portion corresponding to each of them. Therefore, during this stage the heirs may not dispose of the assets as the inheritance remains undivided. They do, however, have the right to sell their share of the entire inheritance, so that their co-heirs would have the right of withdrawal over the share sold (Article 1067 of the Civil Code).

With the partition of the inheritance, the community of heirs is terminated and the abstract right held by the heirs is transformed into a specific right over the corresponding assets that have been awarded to each of them.

In this regard, although an heir may not sell any of the assets making up their inheritance until they are expressly and formally awarded such assets, it is possible that the community of heir that is established following acceptance of the inheritance may sell all or part of the financial instruments making up the estate. In that case, all the heirs of the deceased and, where appropriate, the forced heirs, must consent and sign the sales orders. The assets to which these orders refer must be excluded from the inheritance partition instrument which, as the case may be, has been submitted to the financial institution, without prejudice to the tax consequences that this may entail.

In the event that one of the heirs dies while the inheritance is being processed, this heir must be replaced by his or her own heirs in any act in which the consent of all of the heirs is required. In this sense, it is considered that the entity acts correctly by requesting the signatures of all heirs on the inheritance acceptance document (R/483/2017).

In any case, the change of ownership must be carried out prior to the execution of any order relating to the assets inherited by an heir.

➢ Partition of the inheritance and awarding of the assets

The partition is an agreement that puts an end to the community of heirs and allows the deceased's assets and rights to be distributed among the heirs in proportion to the share corresponding to each of them according to the type of inheritance (will or notarial declaration of heirs in intestate proceedings).

Partition can be voluntary, judicial or made by the executor/distributor. Voluntary partition is a partition made by common agreement between the heirs which can be formalised in a private document signed by all the heirs or in a public deed signed before a notary. In cases where the heirs do not agree on how to perform the partition, it must be done by a judge. The executor (contador partidor testamentario) is appointed by the deceased in the will to execute the partition, while the court-appointed distributor (contador dativo) is appointed by a Notary Public at the request of at least 50% of the heirs.

The following actions must be carried out in the partition:

i) Preparation of the inventory, listing the assets and liabilities comprising the inheritance.

ii) Valuation of the inheritance, i.e., valuation of the assets and rights included.

iii) Settlement, once all medical and funeral expenses, etc. have been discounted.

iv) Partition and awarding of the assets and securities that make up the inheritance.

The Complaints Service understands that in the deed of partition the heirs must agree on the manner in which the financial instruments of the deceased are to be distributed and the financial institution must proceed according to the content of said deed. However, if for operational reasons the entity requires the heirs to fill in additional documents (as happened in case R/73/2018, where the entity required a document known as the *Private distribution instructions* to be filled out), this is considered to be correct provided that said document does not contradict the public or private distribution document and is accepted by the beneficiaries of the products deposited with the entity.

In case R/431/2018, after the heirs of the deceased presented the deed of partition which included some shares, the issuer of the shares decided to execute a scrip dividend. Given this situation, and having received no instructions from the depository, it proceeded to subscribe to new shares, as a result of which the number of shares included in the deed of partition and awarding of the inheritance and the number of shares deposited at the entity did not match.

Nevertheless, the entity distributed the remaining shares calculating the percentage of shares that would correspond to each heir from the number of shares effectively awarded to each.

However, the Complaints Service considers that if this situation occurs (increase in the shares to be distributed due to a scrip dividend), the entity must request instructions from the heirs on how to distribute the new shares and not act on its own initiative, especially when in the deed of partition and awarding of the assets, the shares were awarded to the heirs by number and not by percentage.

Consequently, in this case it was considered that the entity had engaged in bad practice, given that it did not request new instructions from the awardees of the shares on how to proceed with the new shares acquired after the corporate transaction.

In case R/413/2018, the financial institution engaged in bad practice by modifying the distribution established in the deed of partition of the inheritance without the knowledge or express consent of the heirs.

In case R/353/2018, the entity recognised an error that occurred in the awarding of the investment fund units caused by rounding up to two decimals places the percentages established in the public deed of partition and awarding of the inheritance, which meant that one of the heirs received an amount that was slightly greater than their share, to the detriment of another heir.

Once the error was detected, the entity amended the amounts corresponding to each heir in accordance with the provisions of the deed, transferring the amount equivalent to the difference caused by the rounding up the percentage of units to two decimal places to the affected heir.

It should be noted that if the distribution of assets between the heirs is performed using amounts resulting from dividing the value of a series of financial assets on a given date by the number of heirs, no specific assets are being awarded only a share or a percentage. This is because the amount assigned to each heir is static and refers to a specific day on which the assets were valued, while the value of the financial assets is dynamic and changes daily depending on different variables. In short, distribution for amounts of financial assets requires that the heirs, when effectively awarded their share by the financial institution, to confirm the amounts or preferably

the number of securities to awarded to each one, given that it is almost certain that on the day the assets are actually awarded their value will be different to the value seen on the date the distribution was made, so the amounts distributed among the heirs will have changed. In other words, in this type of award, ordinary joint ownership is established by shares, as indicated in Article 392 of the Civil Code: "There is joint ownership where ownership of a thing or a right belongs *pro indiviso* to several persons. In the absence of a contract or special regulations, joint ownership will be governed by the requirements of this title."

However, the unanimous agreement of the heirs (now members of the community of heirs) is sufficient to end the situation of ordinary joint ownership and award the financial instruments in specific parts for each one. It must be taken into account that there are divisible financial instruments, such as investment fund units, and indivisible instruments, such as shares.

In case R/598/2017, the complainant disagreed with the entity's refusal to process the change in ownership and the subsequent redemption of some investment fund units that had been awarded after the execution of his father's will.

With the documentation provided, it was proved that the heirs and the widowed spouse signed the deed of liquidation of joint ownership, acceptance and awarding of the inheritance on 31 May 2014. With this act, the heirs and the surviving spouse ended the period of indivisible inheritance and conferred an individual right of ownership on each of them.

However, as part of the distribution of the assets was performed according to amounts resulting from dividing between them the value of a series of financial assets on a given date (consisting of divisible and indivisible assets), in reality, no specific assets were awarded but a share of said assets resulting from dividing the amount awarded to each of heirs by the total value of the assets on a given date.

In other words, in this award the ordinary joint ownership was unwound and ordinary ownership by share was established, as indicated in Article 392 of the Civil Code: "There is joint ownership where ownership of a thing or a right belongs *pro indiviso* to several persons. In the absence of a contract or special regulations, joint ownership will be governed by the requirements of this title."

Therefore, the investment fund units would correspond to each heir and the surviving spouse in specific percentages resulting from the amounts allocated in the awarding of the inheritance.

In order to liquidate the investment fund units included in the ordinary joint ownership, taking into account that these were divisible, the co-holders or owners, in accordance with Article 397 of the Civil Code, should unanimously agree to make changes in the common property, separate from it the investment funds units and proceed to distribute it in accordance with the provisions of the deed of awarding the inheritance. It was not possible, as the complainant wished, to separate from the common property (the financial assets) a part of one of the assets contained therein and keep the remaining part under joint ownership.

In this specific case, a document signed by four of the community members of the fund was presented, indicating how to proceed to the change of ownership of the units that would correspond to them, but there was no proof of the consent

of the rest of members of the community of heirs to the separation of this asset from the common property, its distribution and as co-holders, to the way to proceed with the units that would correspond to them.

Consequently, it was concluded that the entity acted correctly, since the ownership of the fund units should not have been changed because the consent of all members of the community of heirs/co-holders had not been obtained.

In case R/150/2018, the probate report issued by the entity's legal service accredited that full control of the shares had been awarded by third parties according to the private distribution document signed by the heirs.

As there were no specific awards, the entity contacted the heirs by email indicating the following:

> *According to the legal report, the shares will be received in a single contract. If you wish to receive them in individual contracts, you must send us the signed contracts or a letter confirming the elimination of* pro indiviso *status, signed and stamped by the branch.*
>
> *In order to process the distribution of the shares all three must open a joint custody deposit account or sign a document confirming that you are eliminating the* pro indiviso *clause, so that you can receive them separately.*

The complaint replied by email to which he attached a letter explaining how the shares should be distributed individually. However, this document was not signed by all heirs and consequently did not meet the requirements required to break the *pro indiviso* clause.

Therefore, it was explained to the complainants that if they wanted the shares to be awarded individually, they should follow the instructions indicated by the entity in its email or otherwise, the entity would make the award *pro indiviso* and would keep the shares under the joint ownership of the three heirs.

In case R/115/2018 it was concluded that the entity engaged in bad practice when it distributed the securities in the inheritance without having received precise instructions from all the heirs. In this case, the entity awarded the assets based on a document that only bore the signature of one of the heirs.

In case R/424/20018, according to the partition record approved by a judge, each of the four heirs was awarded a share of the inheritance which gave them 25% of the 9,093 BBVA shares deposited in the deceased's securities account.

Despite the judicial distribution, the complainant alleged that the entity had informed him that it could not divide one share between four heirs and that due to that one share all the shares had been "retained" and this had forced him to file "dozens of complaints".

The respondent entity had requested a document signed by the four heirs to proceed to break the indiviso clause but the complainant maintained that this request was not valid because the entity had to execute the judicial order, stating that: "It is not possible to act unanimously in my case because it is a judicial division of inheritance where the deed has already been signed".

In the complaint report, the complainant was told that with regard to the stock market, there are securities (such as shares) that are not divisible and consequently are held in a joint account opened in the name of all the heirs (indiviso) or if one of the heirs wished to break the indiviso clause, a private or public document must be submitted in which all the heirs jointly determine how the shares are to be distributed so that the entity knows how proceed.

In this case, even through there was a judicial distribution of the inheritance, the shares were awarded to the heirs according to a percentage (25% each) of an indivisible number of shares, which is why the respondent entity was forced to request instruction from the heirs on how they should be awarded.

As the heirs did not collaborate, after repeated requests for instruction, the entity proposed a possible solution consisting of the sale of the surplus share and subsequent distribution among the heirs, in equal parts, of the amount obtained from the sale.

The Complaints Service concluded that the entity acted correctly, as faced with effecting the proportional distribution (in four equal parts) of an indivisible asset (9,093 BBVA shares), it requested instruction from the four parties involved to try, by all means available, to resolve the problem caused by this form of distribution. When no response was obtained from the heirs, it diligently offered different alternatives to change the ownership of the shares.

➢ Inheritance tax

In accordance with Article 8 of Law 29/1987, of 18 December, on Inheritance Tax, and Article 19 of its implementing regulations, financial institutions are legally liable on a subsidiary basis to pay the tax in *mortis causa* transfers. Hence, in order to complete the execution of the will, the heirs must provide evidence to the financial institution that they are up to date with tax payments, or prove their exemption from such taxes or their expiry.

In order to pay the inheritance tax, a public or private document (deed of partition or manifestation of inheritance) must be presented before the entity in which the heirs are identified and the assets and rights that make up the deceased's estate are established.

If they are not up to date with the payment of the inheritance tax, the entity in which the deceased's securities are deposited may refuse to continue processing the will, as in the event that the tax is not paid by the heirs, the entity will be liable on a subsidiary basis for its payment.

Therefore, for the entity to complete the processing of the will, and where applicable lift the block on the securities deposited in the name of the deceased, the heirs must be up to date with the payment of the tax or otherwise the block will remain in place and the deposited securities may not be accessed.

R/172/2018: In this case, the heirs and the surviving spouse paid the inheritance tax with the surviving spouse as usufructuary of the deceased's assets and the heirs as the bare owners. Subsequently, on 20 June 2016, they unanimously decided to change the usufruct into a private partition document and grant the usufructuary 13% of the part not included in the joint ownership.

Following this change, the fund management company considered that it was not appropriate to distribute the units in the fund as indicated in the partition document dated 20 June 2016, since the partition had not been the basis for the settlement of the inheritance tax (April 2015) and, consequently, merely presenting the inheritance partition document before the Directorate-General for Taxation in the Autonomous Community of Madrid was not sufficient to allow the distribution to be made in the manner established in the new document. Therefore, the entity considered that it was necessary to wait for the Treasury to decide on whether the new distribution bore any encumbrances, and where appropriate, for the heirs to pay any further inheritance tax.

However, in this case it was considered that the entity did not act with due diligence in the client's interest due to the time elapsed (almost three months) from the date the complainants submitted the new distribution document informing it of the change in usufruct and the date on which the complainants obtained a response from the fund management company.

Nonetheless, in the absence of documentation accrediting payment or exemption from the tax in accordance with the new partition document provided, the Complaints Service concluded that the fund management company had acted correctly with regard to the distribution.

➢ Legacies

The legatee, unlike the heir, acquires a real asset or right in a private capacity, i.e., he or she acquires the specific asset without the liabilities of the inheritance, and always according to the will of the deceased set down in the testament.

Article 882 of the Civil Code establishes the following:

> *When the legacy consists of a specific and determined thing, owned by the testator, the legatee shall acquire ownership thereof as of the testator's death, and shall be entitled to pending fruits or income, but not income accrued and unpaid prior to such death. The thing bequeathed shall from such time be at the legatee's risk and venture, and the legatee shall therefore bear its loss or impairment, and shall benefit from any accretion or improvement thereof.*

However, Article 885 of the Civil Code establishes that "the legatee may not take possession of the thing bequeathed by his or her own authority, but must request delivery and possession thereof to the heir or the executor, where the latter is authorised to do so".

Further, Article 1025 of the Civil Code states that "during the drawing up of the inventory and the period for deliberation, the legatees may not claim payment of their legacies".

When the legacy is a specific and determined thing owned by the testator, the legatee will acquire ownership from the moment of death, although the legatee must request the delivery and possession of the legacy from the heirs, once the inventory has been drawn up.

In case R/524/2018, the complainant disagreed with the reversal of some amounts that the respondent entity had previously delivered to him as a legacy.

In its pleadings, the respondent entity stated that, by virtue of the documentation submitted to process the will, it had redeemed the units of some investment funds owned by the deceased and delivered the redeemed amount to the complainant as a legacy granted in the will.

However, the entity then noticed that the will did not provide that the legatee could take possession of his legacy directly, without the knowledge of the heirs. As a result, the delivery made to the legatee was incorrect, since it should have been made by the heirs.

The entity engaged in bad practice by delivering the legacy to the legatee, when, in this case, this action corresponded to the heirs. However, the entity was deemed to have acted correctly by returning the legacy to its original state, although the Complaints Service considered that it should have informed the legatee of the reason for the reversal before it was carried out, which it did not.

➢ Change of ownership

Once the heirs have submitted the necessary documentation to gain access to the securities deposited in the deceased's securities accounts, the companies providing investment services must spend some time verifying that the documentation provided is valid and sufficient.

If the documentation submitted is correct, the entities shall carry out the last remaining procedure to allow the heirs exercise all the rights related to ownership of the securities acquired in accordance with the provisions of the partition record, i.e., the change of ownership.

This procedure to change ownership of the shares or units in the funds must be carried out without delay.

Or in contrast, the entity must request the heirs to correct the documentation presented as rapidly as possible, indicating the reasons why it considers that the documentation is not sufficient or does not comply with the law.

The entity must be able to prove that it has informed the heirs clearly and without delay about the documents or issues that have to be completed or rectified (if possible, listing them in detail) to be able to conclude the execution of the will and carry out the change of ownership of the securities or units in the investment funds.

However, it must be taken into account that in order to carry out the change of ownership of securities acquired through inheritance, the beneficiaries must open a securities account, as well as an associated cash account, in the same financial institution in which the securities held by the deceased are deposited, or in a different one. The only requirement for this account is that the holder must be the same as the awardee of the securities. In other words, the ownership of the account must be shared, where the inheritance remains *pro indiviso*, and individual (one in the name of each heir) when the financial instruments are distributed.

Further, as mentioned previously, there is nothing to prevent the awarded shares from being deposited in a securities account opened in a different financial institution to that making the award. To do this, the heir can issue an order to transfer the securities awarded to the entity in which a securities account has been opened in his or her name, effecting the change of ownership and transfer of the securities simultaneously. However, if the holder of the target account is not the same as the awardee of the securities, the entity would be acting correctly by refusing to transfer the securities.

It is possible, during the time elapsing from the termination of the partition to the date on which the shares are awarded, that the issuer of said securities executes a shareholder remuneration programme or scrip dividend. Taking into account that the periods conferred by issuing companies to execute instructions in these transactions are usually very short (especially when opting to sell rights to the issuer) and how important it is that the investor has as much time as possible to issue instructions in this regard, it is understandable that entities, guided by a principle of prudence, are opposed to changing of ownership of the securities affected by such a transaction until it has been completed. Otherwise, it is possible that ownership will be changed or the shares will be transferred to the heirs without the change of ownership or without transferring the associated subscription rights, which would injure the heirs as they could lose the right to decide what to do with their rights.

In order to adequately combine the heir's right to ensure the change of ownership is made and, where appropriate, the inherited shares are transferred as rapidly as possible, in alignment with the aforementioned principle of prudence, the Complaints Service considers that in these cases entities must take a proactive stance and inform the heirs about the reasons that are preventing the change of ownership, and where appropriate, the requested transfer from being carried out.

However, if the assets acquired *mortis causa* are units of investment funds, the heirs are not obliged to open a securities account with the entity, since these types of financial instruments are not usually deposited at the banking institution. Neither is it mandatory to open a current account associated with the fund.

However, a securities account (and an associated cash account) would be necessary if the acquired assets are shares of an investment company (another type of CIS) and not investment fund units.

Although it is not obligatory (as indicated above) to open a securities account in order to access units of an investment fund, in their banking operations most entities use adhesion contracts or investment fund contracts to manage this type of asset, as well as cash accounts associated with these contracts through which to credit or debit any cash movements linked to the investment fund; a practice that is considered correct. In these cases, it is the entity's responsibility to provide the heir with clear and precise information about the procedures to be followed to achieve the intended purpose, in this case, changing the ownership of shares in an acquisition *mortis causa*.

If, as mentioned above, entities ask the heirs to open a current account, securities account or any other account associated with the investment fund, provided that they are linked exclusively to the operations of said fund, the CNMV's criterion is that the entity should not charge any maintenance fees.

Lastly, it should be noted that in these cases it is usual for the investment fund unit acquired *mortis causa* to be held in the same entity as the deceased, since unlike what happens with other types of securities, these units can only be transferred to another entity that also distributes them, which is not always the case. This is known as changing distributor.

R/431/2018: The entity sent two faxes to the complainant's children explaining that it was not possible to deposit the shares that had been awarded to them in the public deed of distribution and awarding of the inheritance because in that deed they had been awarded individually to each heir while the securities account they had opened was jointly owned. The complainant was told that in order for the entity to be able to make individual awards of the shares that belonged to the children in accordance with the deed of partition and awarding of the inheritance, they should follow the instructions issued by the entity in the fax relating to the opening of individual accounts in the names of the children.

However, it was concluded that the entity did not act diligently, since the will execution process started on 24 May 2018 and the entity did not send the faxes explaining the reasons that prevented the Iberdrola shares in the claim from being distributed until August. The Complaints Service ruled that too much time had elapsed.

In this complaint an unjustified delay was also identified in the change of ownership of the Iberdrola shares awarded to the rest of the heirs, which prevented them from exercising their individual rights in the remuneration programme or scrip dividend, as the execution process had not been completed when the transaction took place.

In this specific case, the probate report was dated 24 May 2018. Therefore, in principle, it should have been resolved before the scrip dividend on Iberdrola shares in July 2018.

R/215/2018: In this complaint, the respondent entity could not open a fund or securities account for a non-resident person, since the funds marketed and the brokerage service offered by the entity were intended only for natural persons resident in Spain.

Therefore, the respondent entity could not distribute the investment fund units and shares of the deceased, since one of the awardees of the financial instruments did not reside in Spain.

However, in view of the documentation provided in the complaint proceedings, it was ruled that the entity carried out all the measures within its reach to try to process the will. The entity showed a willingness to resolve the situation by diligently informing the heirs of the different alternatives for distributing the securities. On one hand, it proposed that the complainants could open an account directly with the fund manager, transferring to it the will execution process so that it could analyse the documentation and make the awarded units available to the heirs. It also contacted another financial institution to which it transferred the shares to be distributed so they could be awarded to the heirs.

R/598/2017 and R/73/2018: The entities highlighted the need for heirs to register as their clients in order for each of them to open a contract of adhesion to the investment funds and to change the ownership of the shares of the investment funds corresponding to each heir in accordance with the partition document.

However, it was clarified that if, for operating reasons, an entity requests an account associated with the investment fund to be opened, the CNMV's criterion is that the entity should not charge any maintenance fees for such accounts.

R/208/2018: It was concluded that the entity committed bad practice by not informing the heirs in a timely manner of the need to present new documentation in order to properly process the inheritance.

R/13/2018: In this case, the complainant requested the banking entity to proceed with the redemption of units of an investment fund which he had been awarded from the deceased's account, and that the amount obtained from the redemption be transferred to a current account opened in a bank in his country of residence (the Netherlands).

The complainant was informed that it was not possible to have access to the investment fund units of the deceased which he had been awarded until the corresponding change of ownership had been made, and that only then could they be redeemed.

However, the complainant disagreed with opening an account with the respondent entity, so the entity offered him the possibility to going directly to the fund management company so that once the corresponding change in ownership of units had been made, they could be redeemed.

In this complaint, it was necessary to clarify to the complainant that after the redemption of the investment fund units, capital gains could be generated due to the variation in the value of the units in the period elapsing from the deceased's death (the date on which the complainant legally acquired ownership of the units) to the effective redemption date. For this reason, the credit institution or fund manager is obliged to withhold a percentage of the capital gains in accordance with Article 53 of Royal Legislative Decree 5/2004, of 5 March, which approves the consolidated text of the Law on Non-Resident Income Tax, which states the following:

> *In transfers or redemptions of shares or units representing the capital or assets of collective investment schemes a withholding or income on account must be retained, in the cases and in the manner established by law, by management companies, administrators, depositories, distributors or any other entity responsible for the above mentioned transactions.*

It was therefore necessary to open a cash account associated with the fund in a Spanish entity and, once the tax had been withheld (if applicable), a transfer of the resulting cash could be ordered to the account opened in the foreign entity indicated by the complainant.

In any case, the complainant was informed that if he did not wish to maintain a contractual relationship with the entity, once the inheritance process was complete, he could agree with the entity to immediately cancel the accounts opened as part of the legal proceedings after the money had been transferred to his account in the Netherlands.

Consequently, it was concluded that the entity had acted correctly by providing the complainant with various alternatives to resolve his problem.

R/127/2018: In 2012, after the death of the trustor, some assets were awarded to the fiduciary (her husband and sole and universal heir). On accepting the inheritance he became the owner or holder of the assets subject to fiduciary substitution.

The complainants were trustees or beneficiaries of the estate left by the trustor (wife) – the only party in the fiduciary substitution – who were heirs after the death of the fiduciary (husband). In other words, until the fiduciary (husband) died, the trustees or beneficiaries (complainants) had an expectation of a right over the trust assets and, once the fiduciary (husband) died, the trustees (complainants) became heirs to the assets of the trustor's (wife) estate.

The trustees or beneficiaries (complainants) disagreed with the allocation of units in an investment fund owned by the fiduciary (husband) after the execution of the provisions of the deed of partition and awarding of assets corresponding to the fiduciary substitution of the estate, since they considered that the investment fund units belonged to them from the trustor's date of death.

In this case, the units of the fund cited in the complaint were subscribed after the death of the trustor and recorded in the fund manager's register as the sole property of the fiduciary, without any limit or restriction. In other words, on the fiduciary's date of death, the respondent entity was not aware that the investment fund units were subject to the burden of the residual trust.

On the other hand, according to the deed of partition and awarding of assets subject to substitution of fiduciary trust, it was literally specified that the amount corresponding to the trustees (complainants) was €125,000.

To execute the deed of partition and awarding of assets subject to the substitution of fiduciary trust and deliver the €125,000 to the trustee heirs (complainants), the entity redeemed units of the fund in a quantity sufficient to reach this amount and delivered the redeemed amount to the heirs of the fiduciary so that they would meet the trustee's obligations. The heirs made the corresponding bank transfers to each of the trustees (heirs of the trustee and complainants) for the amount established in the deed of partition and awarding of the assets subject to substitution.

However, the complainants considered that the investment fund units belonged to them from the date of the death of the trustee and, consequently, they should have been awarded the units from that date, so they would be entitled to any possible revaluations that may have occurred in the units, as well as having the right to decide when to redeem them.

The Complaints Service concluded that even though the literal wording of the specific provision referring to the trust of the deed of partition and awarding of the assets seemed to refer to the delivery of a certain monetary amount (not to the delivery of the units), it was not the role of the CNMV to interpret the content of the will or what was agreed in the deeds of partition and awarding of the inheritance, and that any issues of this type (as appeared to exist in this case) or discrepancies in interpretation should be brought before a court of justice. Consequently, if they considered it appropriate, the complainants should go to the courts to obtain a ruling on the correct interpretation of the disputed clause.

➢ Additions to the partition of the inheritance

When a financial instrument is erroneously excluded from the estate of the deceased, the heirs must add the asset to the inheritance partition that was not included at the time. In other words, when the exclusion of the asset was not carried out in bad faith, a new partition agreement can be made so that the new asset can be awarded to its rightful heirs, and a private deed or document must be drawn up to add the asset to the estate.

Article 1079 of the Civil Code establishes that "the omission of one or several objects or securities in the estate shall not give rise to the rescission of the partition on the grounds of injury, but to completion or addition to the estate of the omitted objects or securities".

R/433/2017: In this case, the complainant, who was the sole heir of the deceased, erroneously excluded 24 shares of Bodegas Riojanas, S.A. and 15 shares of Adolfo Domínguez, S. A. from the estate. To resolve this error, in November 2017, he submitted a document to the respondent entity entitled *Model for the addition of assets for inheritance tax*, together with proof of payment of the tax. As a result, the entity immediately changed the ownership of the excluded shares, which were still in the name of the deceased.

However, it was discovered that the respondent entity did not act with due diligence in the interest of the heir, since although the complainant informed the respondent entity of the shares in the two listed companies that had not been awarded and that remained in the name of the deceased in May 2015, the entity did not inform the complainant of how to resolve this situation to carry out the corresponding change of ownership until 2 November 2017. Therefore, it was concluded that the respondent entity had engaged in bad practice.

➢ Deadlines

The regulations governing the rules of conduct of the securities markets do not stipulate any deadlines for the execution of change of ownership in acquisitions *mortis causa* by entities providing investment services.

On this issue, the criterion reiterated by the CNMV Complaints Service is that entities must promptly change the ownership of securities subject to an inheritance process. It has been stated on multiple occasions that a speedy execution of inheritance procedures is the result of diligent collaboration between the parties involved, namely the heir or heirs and other lawful parties (usufructuaries, legatees, etc.) and the entity. In this way, the former must provide all relevant documentation to carry out these procedures and the entity must promptly carry out all the necessary steps to complete the process, once the required documentation is in its possession.

Further, the Complaints Service considers that entities should commit as few errors as possible, for which they must control and organise their resources in a responsible manner, adopting the appropriate measures and using the appropriate means to carry out their activity efficiently; dedicating all the time required to each client, responding to their complaints and enquiries and rapidly correcting any errors that may occur.

In 2018, complaints were resolved in which it was considered that the entity acted incorrectly, describing the time it spent on changing the ownership of investment fund units in an inheritance to be excessive.

R/73/2018: The respondent entity acknowledged that in processing the inheritance an error occurred in the digitalisation of the documentation provided that delayed the resolution of the will.

R/413/2018: The respondent entity acknowledged that it had engaged in bad practice by excessively delaying the processing of the will. In this case, it should be noted that the entity acknowledged the delay and paid the complainant €349.99 for any damages caused, which was welcomed in the complaint report.

R/187/2018: It was proven that there was an unjustified delay by the respondent entity of at least two and a half months in the change of ownership of some 2016 Fergo Aisa bonds.

R/434/2017: In this case the respondent entity did not act with due diligence in the interest of its client as more than three months elapsed from the date it started to process the inheritance, which was not considered to be especially complex.

R/142/2018: The respondent entity explained that some non-voting units of Caja de Ahorros del Mediterráneo (CAM) had not been awarded due to an error of interpretation by the branch staff, who considered that the non-voting units, as they had no economic value, could not be awarded. Consequently, they did not contact the heirs to inform them that they should open securities accounts in which to deposit the units in their name.

In this specific case the complaint had been filed with the entity in 2015 and the CSD resolved the issue in favour of the complainant, but the entity did not comply with its own resolution issued in favour of the heirs, which logically led to an excessive delay in completing the inheritance process.

It was concluded that the entity had engaged in bad practice by not complying with the resolution implemented by its own CSD on 6 June 2015, with the result that the CAM units that corresponded to the heirs were not rapidly and diligently awarded.

R/510/2017: The entity was considered to have taken too long to award some investment fund units to the heirs. It should be noted that on 25 April 2016, the heirs issued distribution instructions to the entity stating: "Investment fund: Divided between the four into equal parts using the corresponding funds", however, the award was not made until 26 January 2018.

R/193/2018: More than seven months elapsed between the time the complainant delivered the deed of acceptance, partition and awarding of the inheritance and supporting documentation showing proof of payment of the inheritance tax and the completion of the inheritance process, which the Complaints Service described as excessive.

However, the Complaints Service considered that the entity acted diligently in the following cases:

R/294/2018: The complainant complained about the entity's delay in changing the ownership of some securities awarded to him in the probate process.

However, it was accredited that the respondent entity had issued its legal report on the will promptly (in one week) and, immediately afterwards contacted the fund management company (which did not belong to the same group as the respondent entity) by email in order to award the investment fund units.

It was also accredited that the necessary documentation for the change of ownership of the securities included in the estate was made available to the respondent entity on 6 March 2018 and that on 4 May 2018 the change of ownership took place.

Consequently, it was concluded that the entity had acted correctly.

R/439/2018: The complainant expressed disagreement with the respondent entity's "slowness" in the processing of her mother's and sister's wills, which prevented the heirs from signing the consumer arbitration agreement relating to some preferred shares that were part of her mother's estate. Therefore, they had to accept the mandatory exchange of shares, which caused them to lose part of their value.

However, the respondent entity alleged that the heirs did not start processing the mother's estate (she died on 1 March 2011) until 7 April 2016 and that the certificate of positions was generated by the entity the following day.

In order to accredit these allegations, the entity provided a copy of a document entitled *Probate processing request* dated 7 April 2016, which the complainant had submitted to the entity as an heir, in addition to a copy of the certificate of positions issued on 8 April 2016 showing the deceased's positions on the date of her death.

The private instructions for the distribution of the inheritance of 30 December 2016 submitted by the heirs were also provided but were not considered valid since they did not indicate the method for awarding the inheritance or the target accounts for the assets awarded. Although the entity asked the heirs for new instructions and the target accounts, these were not provided.

With regard to the inheritance of the sister, who died on 4 January 2013, the entity stated: "There is no record of any active or cancelled inheritance process in the name of the deceased."

Therefore, it was concluded that the failure of the heirs to sign the consumption arbitration agreement could not under any circumstances be attributed to the financial institution, given that on the date on which this agreement should have been signed the probate process for the deceased mother's and sister's estate had not even been started.

R/45/2018: The complainant cited an unjustified delay by the respondent entity in making some assets held by the deceased available to the heirs.

The respondent entity countered that it had attended the complainant with the utmost diligence and professionalism at all times. Proof of this were the numerous calls and emails exchanged between the complainant and branch manager, which addressed the queries and instructions required to process the inheritance correctly.

In addition, the entity stated that the fact that both the deceased and one of the heirs were resident for tax purposes outside of Spain only added new requirements to those usually required in this type of case, hence the process was more complicated and lengthy than usual.

Based on the emails exchanged and the dates they were sent (they were answered almost immediately) and considering that it was a particularly complex inheritance case, it was concluded that the delay incurred was justified.

However, in the exchange of emails it was revealed that the complainant had not been properly informed about certain requirements that he had to meet, which were clarified by staff of the respondent entity when questioned by the complainant himself.

R/594/2018: The entity acted correctly in processing the change of ownership since the inheritance partition agreement was signed on 18 August 2017, the estate was processed and the change of ownership of the fund units took place on 29 September 2017.

➢ Conservation, monitoring and management of financial instruments

During the period for processing the execution of the will, financial transactions or corporate events often take place with the issuers of the financial instruments making up the estate, or agreements of different types, such as the merger between CISs in which the investment funds subject to the inheritance are involved.

Some of the following situations that may occur:

R/594/2017, R/27/2018 and R/353/2018: In these cases, it was revealed that in the period of processing the execution of the will, the funds were merged or transformed following the expiry of the associated guarantee. In these cases, the complainants were dissatisfied with the fact that changes were made to the funds without having previously informed them of their right of separation, and even complained that they had not consented to these transactions.

Within the scope of the power granted by current regulations, management companies can make significant changes to the characteristics and nature of the funds. When the changes in the prospectus affect aspects such as the investment policy and the establishment of fees, regulations[235] require that unitholders be notified at least one month before their entry into force and that they shall have this period to exercise their right of separation and be able to opt for the total or partial redemption or transfer of their units without any redemption fees or expenses applied.

Entities shall demonstrate to the CNMV that they have fulfilled their obligation to notify clients by means of a certification issued by the fund management company and a copy of the letter sent to the unitholders. These documents are prerequisites for filing the changes in the official registers. This form of accreditation is required under current regulations,[236] but no specific method of delivery is established for sending the notification to unitholder, such as certified post.

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235 Article 12.2 of Law 35/2003, of 4 November, on Collective Investment Schemes, and Article 14.2 of the Regulations of Law 35/2003, of 4 November, on Collective Investment Schemes.

236 Article 14.2 of the Regulations of Law 35/2003, of 4 November, on Collective Investment Schemes.

R/187/2018: In this case, the complainant and respondent entity disagreed on the value that should be assigned to some Aisa bonds for the purpose of payment of inheritance tax. The bond issuance was in default as the issuer had failed to comply with the provisions of its securities note on the repayment of the principal on the maturity date, as well as its periodic remuneration. In addition, Aisa had been suspended from trading.

The respondent entity maintained that the bonds should be valued at their nominal value for the payment of inheritance tax in accordance with Article 14 of Law 19/1991, of 6 June, on Property Tax, considering that it related to securities representing the transfer of equity capital to a third party, rather than securities that could be traded in organised markets.

However, the CNMV Complaints Service disagreed, understanding that the Aisa bonds should be valued in accordance with Article 13 of this Law, since, due to their initial characteristics they were securities that could be traded in organised markets. Consequently, as it was a past due and unpaid issue, the most reasonable course of action was considered to be that the entity should estimate the fair value factoring in the issuer's precarious situation.

However, it was also established that the tax authority should make the final decision on how to value a financial instrument for the purposes of inheritance tax.

R/102/2018: In this case, at the time of the distribution of dividends on some shares owned by the complainant *mortis causa*, the shares were still in the name of the deceased and consequently the dividend payment was credited to the current account associated with the securities account and designated for that purpose.

However, in the complaint report it was clarified that this did not mean that the amounts paid did not correspond to the complainant. However, since they had been credited to the cash account associated with the securities account, of which he was not the owner, he should submit a claim to the inheritor of the balance of the deceased's account for the amount that would have corresponded to the dividends.

Therefore, it was concluded that the entity acted correctly by paying the dividends into the cash account designated for that purpose.

R/175/2018: The complainant alleged that the deceased had a securities account that she became aware of as it appeared as presumed abandoned in the *BOE* (Official State Gazette) number 296, published on 11 December 2005. She therefore requested the entity for information about of the securities that the deceased had deposited in the securities account in order to proceed in the appropriate manner.

The entity carried out an intensive search and discovered that the securities in the deceased's deposit account comprised 30 shares of Unión Fenosa, that the entry date of the securities in the entity was 20 December 1972 and that the position had increased by three shares following a capital increase on 18 June 1979.

It was concluded that although the securities account was presumed abandoned in 2006 and that almost 40 years had elapsed since the events occurred, the entity provided the heir with sufficient information on the securities of the deceased. Consequently, the Complaints Service concluded that the entity had offered information,

even though it was not obliged to keep a record of the movements in the securities account referred to by the complainant.

➢ Fees

As indicated above, entities that provide investment services are free to set the fees or expenses charged for any service effectively provided. Clients must be informed of these fees prior to the provision of the service in question.

In addition, as a prerequisite for application of the fees, entities must notify the CNMV and publish a prospectus of maximum fees applicable to all the usual transactions, which must be available to clients at all times so that if they make a request to consult it at the branch of an entity or online, they may do so immediately.

However, financial institutions may have two types of fee in relation to this process of executing wills: a fee for processing the execution of the will and a fee for changing ownership.

The Bank of Spain's Market Conduct and Complaints Department is responsible for assessing whether the fees for processing the execution of the will have been applied correctly, as these are purely banking fees, while the latter would fall to the CNMV Complaints Service. In this regard, it should be noted that this is a standard fee applicable in any case of change of ownership, whether by acquisition *mortis causa* or *inter vivos*.

However, the Complaints Service understands that if the entity charges its client a fee for processing the execution of the will, this fee must include the change of ownership fee, so it would not be correct for the entity to charge both fees.

This situation was identified in case R/546/2017. The entity charged a fee for a change of ownership *mortis causa* when another fee had already been charged for processing the execution of the will.

Summary of complaints on the execution of wills EXHIBIT 11

- Heirs must inform the entity as soon as possible and in a reliable manner of the death of the deceased by providing the **death certificate,** which is considered sufficient for this purpose. The entity must then block the securities accounts and financial instruments of the deceased so as to prevent other co-holders of the accounts or the instruments having access to them.

- It is then necessary to prove to the entity the **status of heir** or legitimate interested party by submitting: i) certificate of the General Registry of Last Wills and Testaments and ii) an authorised copy of the last will and testament or the declaration of heirs in intestate proceedings.

- Once this status has been demonstrated and the inheritance accepted, the **right of the heir to request information on the deceased's positions** in the financial institution is recognised, although with the same limits that

would be applicable to the deceased (the period for keeping the documents required by law has not expired, the requests are not disproportionate and unjustified, and there are no exceptional circumstances in which the entity may object to handing over such information).

– When the inheritance has been **accepted,** the heirs can request information on prior movements even when the account holder does not agree, because on acceptance the deceased is replaced by the heirs.

– The entities may not allow persons who do not have the status of heir, such as usufructuaries or trustees, to receive information on the movements in the accounts during the life of the deceased.

– Similarly, it is necessary for the entity to issue **position certificates** that include all the securities of the deceased deposited therein, both individually and under shared ownership, so as to then determine all the assets to be included in the deceased's estate and enable the heirs to pay the inheritance tax and start the process of executing the will.

– Following the death of one of the spouses and as a prior step to determining the estate of the deceased spouse, the joint ownership of property, where applicable, must be dissolved. This dissolution must be carried out by means of a public or private agreement between the surviving spouse and the heirs, in which they must agree on the assets and rights that will be included in the estate of deceased spouse and which will be become the exclusive property of the surviving spouse.

– Once accepted by all the heirs, the **community of heirs** is established. While this community is maintained, the owners have an abstract right over all of the assets and no heir may sell the assets held by the community. However, it is possible that the joint ownership regime may sell one or more of the financial instruments making up the estate, although this requires the consent of all of the heirs. The partition and specific awarding of the assets terminates the community of heirs.

– In order to proceed with the awarding of the inheritance, the heirs must submit to the entity: i) the notarised instrument of partition of inheritance or a private partition document signed by all the heirs, and ii) the documents demonstrating that all the successors are up-to-date with payments of inheritance tax. Once the adequacy of this documentation has been verified, the entity shall proceed with the change of ownership without delay.

– If the will does not provide otherwise, all **legacies** must be delivered to the legatees by the heirs.

– For the securities to be awarded, a securities account must be opened or already exist whose holder or holders should coincide with the awardee or awardees (for *pro indiviso* cases) of the securities.

– The conduct of business rules of securities markets do not expressly provide for a **maximum time limit** for execution of a change of ownership through

the execution of a will. The speed of implementing these processes is the result of diligent cooperation between the parties involved.

– The fee for processing the execution of the will includes the **fee for change of ownership** and therefore both fees may not be charged at the same time.

  The heirs must be informed about the fee for change of ownership prior to the start of the execution process.

4.8 Ownership

➢ Proof of ownership of financial instruments

In order to trade with securities, it is necessary to open a securities account and sign a securities custody and administration contract with a financial institution authorised to provide this type of service.

Through the securities account, the financial institution custodies and manages the investor's portfolio and is obliged to keep the client's positions up to date, facilitate the exercise of the rights derived from holding the portfolio and provide notice of any corporate transactions, especially those that require instructions from the client. The securities account has an associated cash account in which any money will be credited or debited (deriving from purchases/sales, payment of dividends, fees, etc.).

The ownership of a financial instrument is assumed to be held by the holder of the securities account in which it is deposited, with the ownership of the security established in the account contract. Therefore, the shares will be registered in the accounting registers in the name of the same holders that appear in the securities account held with the entity.

When ownership of the shares appears in the name of several people in the corresponding accounting registers, there is an assumption of co-ownership for tax purposes, although this assumption may be rebutted by evidence to the contrary.

Co-holder accounts (with two or more holders) are the main source of the complaints received, with the main cause being one of the holders making use of the financial instruments without the knowledge or consent of the other owner(s).

To determine whether or not the entity has acted correctly before an order to access the securities issued by one of the co-holders, the access regime of the securities account established in the administration and deposit contract will be decisive.

R/430/2018: In this case, the complainant alleged that his parents had opened a securities account for him when he was a minor and, by mistake, the entity had included his parents as co-holders when he became an adult. To prove that the error was attributable to the entity, the complainant provided extracts from the cash account associated to the securities account in which the dividends paid on the shares for which he was listed as the sole holder had been credited. He also provided a background list of the accounts that his parents had opened for the rest of his siblings, in which they appeared as sole holders.

However, the respondent entity stated that the holders listed in the securities contract were the complainant and his parents, and that since the account had been opened they had been receiving tax information without having so far expressed any concern.

The complainant requested a copy of the securities contract from the entity, to verify whether an error had occurred when his parents' status as his legal representatives was changed. In response to this request, the entity claimed that it had not yet been able to locate the contract, although it was obliged to keep it. This was considered bad practice not only because the entity breached the obligation to preserve the document, but because, by not having access to the contract, it was not possible to verify who signatory holders were when the account was opened.

R/458/2018: The complainant alleged that the entity had prevented her from issuing an order to sell a share deposited in her securities account.

In this case, the entity provided evidence that prior to issuing the sell order, the complainant had cancelled the current account associated with her securities account. As there was no current account in the depositary, it was not possible to execute the order, since the complainant lacked one of the key elements required to trade with securities: a cash account for receiving the proceeds from the sale. Consequently, it was concluded that the entity had acted correctly.

➢ Rule of operation: joint and several, and joint

In general, on opening a securities deposit and administration account the rule of operation is established. In indistinct (joint and several) accounts, on signing the account opening contract, the co-holders give mutual authorisation to access the funds. Any of the holders is therefore authorised by the others to perform transactions. In the case of joint accounts, the signature of two or more holders, as established, is required to perform transactions.

Any of the securities account holders may change the rules of operation from an account opened on an indistinct basis to a joint basis. Once the change has been requested, the procedure established in the contract for this purpose should be followed, or if no procedure has been included, the entity must inform the other holders before carrying out the request.

It should be remembered that decisions taken by one of the co-holders of a securities account will have consequences for all the co-holders. If there is a breach of trust between the holders, clearly anyone could request to change of the rule of operation from indistinct to joint, and for this reason the entity must, if solely as a precaution, inform the rest of co-holders.

If the initial rule of operation for the account is joint, it can only be modified with the joint consent of all the co-holders.

The Complaints Service considers that entities must be able to justify any changes in the rule of operation that may arise during the contractual relationship.

However, for face-to-face orders where the holder or authorised person goes to the entity branch to submit it in writing, the investment service company, before

issuing the order, must verify that the principal/authorised party is in agreement with the holder or authorised party of the securities account.

The following complaints involved disputes in the access to accounts:

R/145/2018: The complainant disagreed with a change in the system of accessing the account, as it had been made unilaterally by the respondent entity without informing the contract holders.

In the complaint proceedings, the respondent entity only provided a copy of the contract signed with the complainant, which reflected that the form of access was indistinct or joint and several and could not prove when or why it was changed, or any document that justified that any of the holders had requested such a change or that the co-holders had been notified previously.

Consequently, it was concluded that the entity acted incorrectly because no reason could be accredited for changing the rules of access to the account established in the original securities contract.

R/132/2018: In this complaint it was concluded that the entity engaged in bad practice because it did not verify that the signature on the sell orders corresponded to that of the person identified as the ordering party.

R/390/2017: It was concluded that bad practice had occurred due to errors in form in the completion of purchase orders. These included the failure to obtain the signature of one of the joint partners of the limited company. In accordance with the company by-laws, to sign any commercial, stock market, banking, financial transaction, etc. the joint signature of the two proxies of the commercial company was required.

R/567/2017: In this case, the complainant had opened two securities accounts in 2012, of which she was the owner and her children were authorised parties.

In 2017, the complainant, as the owner, and her children, as authorised parties, signed an amendment to the annex to the securities account contract, changing the access system from indistinct to joint, for which two signatures of any of the three parties were necessary.

However, when the complainant realised that she could not freely dispose of her securities, she tried to revoke the operational limit that the joint system implied. The entity did not allow her to do this and stated that it required the signature of one of the authorised children.

The complainant filed a complaint with the entity's CSD, sent a letter to the branch manager and a submitted a notarised statement of her wish to declare the consent granted null and void and her express desire to change it.

The entity alleged that the children had filed a motion to incapacitate the complainant and that they had requested, as a precautionary measure, that no access be granted to their assets until the case was resolved.

The Complaints Service indicated that the complainant, as the sole holder in the contract, was the only party legally entitled to request to change the rule of operation for the account.

However, Article 322 of the Civil Code states that "a person who is of legal age has capacity for all acts of civil life, save for the exceptions set forth in this Code as special cases", Article 199 determines that "no one may be declared incapable expect by a court decision pursuant to the causes set forth in law", and lastly Article 200 includes the causes of incapacitation: "Persistent physical or mental illnesses or deficiencies that prevent a person from governing himself shall be causes for incapacitation."

Further, the Civil Procedure Act (LEC) determines the procedure and responsibilities involved in order to declare someone incapacitated. Article 756 of the LEC stipulates that "the court of the first instance of the place in which the person referred to in the requested declaration resides shall be responsible for hearing the claims relating to the capacity and declaration of prodigality of said person," and Article 760 states that "the sentence declaring incapacitation will determine the extent and limits of this [...]".

Consequently, although it was proven that the complainant's children had filed a suit before a judge to declare her incapacitated, it did not state on the date of the request made to the entity's CSD (or even on the date of the resolution of the complaint proceedings) that the complainant would be deprived, by court order, of the ability to act.

In relation to the precautionary measures, it was indicated that Article 762 of LEC establishes the following:

> *When the competent court becomes aware of the existence of possible cause for the incapacitation of a person, it will adopt* (ex officio) *the measures it deems necessary to adequately protect the person alleged to be incapacitated or their estate and inform the Prosecutor's Office so that it may proceed, if deemed appropriate, with the incapacitation process.*
>
> *2. The Prosecutor's Office may also, on becoming aware of possible cause for the incapacitation of a person, request the court to immediately implement the measures referred to in the previous section.*
>
> *The same measures may be taken,* ex officio *or at the request of a party, at any time during the incapacitation procedure.*

However, contrary to the statement of the respondent entity, there was no proof that the court had requested or implemented precautionary measures. Therefore, as indicated by the respondent, "the complainant's assets could not be touched by third parties until the case was resolved".

As a result, it was concluded that even though a procedure has been implemented to incapacitate the complainant, it was not demonstrated that the case had been resolved such that, consequently, there was a court ruling that fully or partially limited the complainant's ability to act. Further, it was not proved that any precautionary measures in this regard had been taken and for this reason the respondent entity should have gone ahead with the complainant's request to change the rule of operation for the securities accounts, as holder thereof.

➢ Cash account associated with a securities account with a different holder

It is an essential requirement that on opening a securities account, it is associated with a current account to support the cash movements related to trades made on the securities deposited in the first account.

The holders of the securities and the cash accounts do not necessarily have to be the same. However, being the holder of the cash account associated with a securities account does not presume ownership of the securities deposited therein and said ownership is only assumed with regard to the holders of the securities account.

If any of the co-holders of the securities account disagree with the fact that the holder of the cash account is only one of them or is even a third party, he or she may request the depository to change the cash account associated with the securities account, although in this case all co-holders must approve the change. This is the case for the following complaint:

R/4/2018: The complainant noticed that the dividends of some shares owned by his mother (deceased) had been paid into a current account belonging to a third person from 2009 to July 2016. The complainant understood that there had been an error in identifying the current account associated with the securities owned by his mother and that the error was attributable to the respondent entity.

The respondent entity alleged that such an error was unlikely to have occurred when all correspondence had been sent to the deceased's address for over seven years, and neither the holder nor her children had made any complaints about the matter, even though they had not received any return on the shares deposited in the securities account. Even more surprisingly, the third party who had received the dividends from the shares was the holder's sister (and aunt of the complainant), a person who, during the lifetime of both, had received dividends on shares that she did not own for seven years, that had been regularly credited to her current account.

The Complaints Service pointed out that the issue had not been reported until June 2017, i.e., more than seven years after the first dividend payment on the shares awarded to the complainant's mother following the execution of her husband's will in 2009.

The fact that so much time had been allowed to elapse before the incident was reported was considered by the Complaints Service as an indication that there was an agreement on the part of the deceased for the dividends to be paid into her sister's account (being the complainant's aunt).

➢ Establishing *in rem* rights

The holder of any transferable securities, such as shares or units of investment funds, can offer them as a guarantee of payment, which automatically stops them from being freely transferable.

A pledge necessarily implies freezing the securities for the benefit of the creditor, whether they are deposited with a third party or the creditor himself; therefore, they are immobilised and depositories may not process transfers affecting these securities while this situation continues, except in the case of transfers resulting from compulsory enforcement of judicial or administrative rulings.

Therefore, any use made of the pledged securities, such as their sale, redemption or transfer, requires the pledge to be lifted beforehand in accordance with the provisions of the loan clauses or the prior extinction of the cause of the pledge, i.e., the cancellation of the debt that gave rise to it.

Article 1866 of the Civil Code establishes that "a pledge agreement entitles the creditor to retain the item in his or her possession or in that of the third party to whom it was delivered, until he or she is paid the credit".

In the event that the credit is not paid, the pledge cannot be lifted. If the pledge consists of listed securities, they must be sold on a preventive basis in accordance with Article 1872 of the Civil Code.

R/376/2018: The complainant disagreed with the entity's refusal to allow him to redeem or transfer a part of the units of six funds deposited in the entity.

However, the documentation submitted in the complaint proceedings demonstrated that the guarantee for the personal loan signed by the complainant extended to units of investment funds, which prevented their redemption or transfer while they were pledged in favour of the bank.

It was concluded that it was not possible to redeem, as requested by the complainant, any gains in the value of the units due to increases in their net asset value, because the units themselves were immobilised, regardless of their value at any given time.

However, it would have been possible to redeem any units that were free from encumbrances.

Although it was not stated in the proceedings whether the complainant had issued any type of order, it was accredited, through a document issued by the branch of the respondent entity, that the complainant had expressed a wish to transfer his non-pledged units to another investment fund firm. However, when the entity's staff tried to carry out the requested transfer, the bank's computer system did not allow it to go through.

Since it was not demonstrated that the respondent entity had informed the complainant about whether or not his non-pledged units could be transferred and, in the latter case, the reasons that prevented the transfer, it was concluded that the respondent entity had engaged in bad practice by not properly informing the complainant about the events.

R/241/2018: The complainant stated that the entity did not process an order to redeem an investment fund during a liquidity window because the fund had allegedly been pledged. The complainant acknowledged that he had a pledged fund at the time but claimed that it was a different one.

The respondent entity submitted supporting documentation in the proceedings, showing that in 2007 it had pledged units of an investment fund owned by the complainant which subsequently changed its name. It was also accredited that in 2010 the entity gave the complainant authorised access to the returns obtained from the fund and proceeded to redeem units for the amount of €3,500, while the remaining units were pledged again under a new pledge agreement.

In accordance with the provisions of clause two of the aforementioned agreement, the pledge extends to mergers, changes of name and any other change or modification undergone by the fund. Therefore, it was concluded that the request to redeem the fund was not lawful since the fund units remained pledged as collateral for a mortgage loan.

Consequently, it was concluded that the entity acted correctly by refusing to process the redemption order on units of a fund that had been pledged.

➢ Representation: appointment of a legal guardian

Article 267 of the Civil Code defines a guardian as "the representative of the minor or incapacitated person, except for those acts which the latter may perform on his or her own, pursuant to the express provision of the law or the incapacitation judgement".

Article 271 of the Civil Code establishes a series of cases for which the guardian requires judicial authorisation, such as "to dispose of or encumber real estate property, commercial or industrial undertakings, precious objects and transferable securities belonging to minors or incapacitated persons, or enter into contracts or perform acts that are acts of disposal and subject to registration. The sale of the pre-emptive subscription rights shall be an exception." However, judicial authorisation is not required, according to Article 272 of the Civil Code, for "the partition of the estate or the division of common property performed by the guardian, but once practised shall require judicial approval".

In this regard, there are frequent complaints that relate to the scope of the guardian's powers to carry out some type of use of the securities owned by an incapacitated party.

In these cases, the CNMV Complaints Service considers that entities should ask the guardian to provide the judgement or judicial resolution confirming their appointment, to verify the powers granted to them and the scope of such powers, in order to determine whether the use requested by the guardian is permitted.

R/469/2018: The complainant disagreed with the respondent entity's failure to process a redemption order for an investment fund owned by the person to whom he acted as guardian.

The respondent entity stated that after receiving the judicial resolution appointing the complainant as guardian, this document was reviewed and legal services sent an internal note to the branch informing them of the scope and limitations of the guardianship. This internal note contained the following warning: "[...] Regarding the disposal of transferable securities (investment funds, securities, etc., as well as mortgage liens, etc.) in order to take out a loan, the guardian will need to have judicial authorisation."

Therefore, on a preventive basis and for the benefit of the incapacitated party, the branch blocked the investment fund units to prevent any redemptions being carried out through remote channels without the proper judicial authorisation.

The complainant requested the redemption of the units owned by the person under his guardianship, but as he failed to submit judicial authorisation, the entity denied his request.

The Complaints Service concluded that the entity had acted correctly by blocking of the investment fund units until the complainant could provide the corresponding judicial authorisation in order to proceed.

➢ Limits on the acquisition of shares to be eligible for the collection of dividends

The right to the collection of dividends change significantly following the reform of the Spanish market securities clearing, settlement and registration system on 27 April 2016:

– From 27 April to 3 October 2016, the settlement cycle was D+3, and therefore to be entitled to receive a dividend it was necessary to have acquired the securities at least 4 days before the payment date.

– As from 3 October 2016, when the settlement cycle was shortened to D+2, to be entitled to receive a dividend it is necessary to have acquired the securities at least 3 days before the payment date.

In case R/194/2018, the complainant alleged that his representative was entitled to receive some cash dividends from shares of CaixaBank, S.A., of which he was the owner.

It was proved that the shares were sold on 10 April 2017 and that according to the significant event notice published, the dividend payment date was 13 April 2017.

Therefore, it was concluded that the entity acted correctly, since the person who held the right to receive the dividend was the person who acquired the CaixaBank shares on 10 April 2017, while the seller lost that right.

➢ Fees

In case R/64/2018, the complainant alleged that the respondent entity had charged an excessive fee, without having previously informed her. However, the entity provided a copy of the duly signed securities deposit and administration contract, which proved that the complainant had received a copy of the maximum fee prospectus for stock market transactions and services. The fee prospectus, which was valid on the fee accrual date, included the charge for change of ownership. Consequently, it was concluded that the entity acted correctly.

In case R/150/2018, in response to the complainant's complaint about the fee charged for the change of ownership of some shares, the entity stated that it would acquiesce to the complainant's wishes and reimbursed the amounts charged to his current account.

Summary of complaints relating to ownership

EXHIBIT 12

- The purchase of securities requires the opening of a securities account by signing a custody and administration contract with a financial institution. The securities account must have an associated cash account.

- **The ownership of a financial instrument is assumed to be held by the holder of the securities account**, with the ownership of the securities established in the account contract.

- In those cases in which there is more than one holder of the securities account, the contract should include **rules for operation with regard to the financial instruments,** which may allow for indistinct/joint and several access (the holders give their mutual authorisation to make use of the financial instruments) or joint (which require the prior consent of all of the holders for ordering transactions).

  Any of the co-holders may request a change in the rules from a joint and several basis to operating on a joint basis, although the entity must inform the other holder or holders prior to said change.

  If the initial rule of operation for the account is joint, it can only be modified with the joint consent of all the co-holders.

- As indicated above, the opening of a securities account requires the designation of an **associated cash account** against which all movements of money resulting from transactions with the financial instruments generated in the securities account are debited or credited. However, the holders of both accounts (securities and cash) do not have to match. The ownership of financial instruments is assumed only with respect to the holders of the securities account.

- The holder of financial instruments may offer them as guarantee for payment for the successful completion of a financing transaction. The **pledging of securities** entails, from the outset, the blocking of the financial instruments designated for such purpose.

  Any use made of the pledged securities requires prior lifting of the pledge in accordance with the provisions of the clauses of the loan or prior extinction of the cause of the pledge, i.e., cancellation of the debt that gave rise to it.

- In cases where a **legal guardian** has been appointed, entities must request the judgement or judicial resolution in which this appointment is disclosed to verify the powers granted thereto and the extent of these powers, to therefore be able to determine whether the transactions requested by the guardian are lawful.

- As of 3 October 2016, **to be entitled to the receive a dividend** it is necessary to have acquired securities at least 3 days before the payment date.

4.9 Operation of the entities' CSD

Complaints were received in 2018 that revealed deficiencies in the operation of the Customer Service Department of financial institutions in the matters indicated below.

The following complaints revealed a breach of procedural requirements:

➢ Calculation of the termination period

In accordance with Article 12 of Order ECO/734/2004, of 11 March, "the calculation of the maximum termination period will start from the date the complaint or claim is submitted to the customer service department, or where applicable, the Customer Ombudsman. In any case, a written acknowledgement of receipt must be provided, in addition to the date of submission, for the purpose of calculating the period".

R/366/2018: In this case, the entity was considered to have engaged in bad practice by issuing an acknowledgement of receipt for a letter received by its CSD by email 42 days after it had been submitted.

The criterion followed by the CNMV Complaints Service is that where the entity's CSD issues an acknowledgement of receipt, the start date for the two month calculation period for resolving the complaint shall be the date of said acknowledgement. Otherwise, i.e., if the CSD has not issued an acknowledgement of receipt, the calculation period shall start on the date in the document presented by the complainant in any place authorised for that purpose.

➢ Resolution period

Article 15 of Order ECO/734/2004, of 11 March, establishes the following regarding the resolution period: "The proceedings shall conclude in a maximum period of two months from the date on which the complaint or claim was filed with the Customer Service Department or, where appropriate, the Customer Ombudsman."

Article 15 also provides that: "The decision shall at all times be reasoned, and contain conclusions as to the request raised in each grievance or complaint, based on the contractual clauses, the applicable standards of transparency and client protection, and good practice and financial norms."

These obligations are included in the operating regulations of the CSDs of entities that provide investment services.

R/570/2017, R/118/2018, R/209/2018, R/505/2018 and R/539/2018: It was concluded that the entity had breached Order ECO/734/2014, of 11 March, and its own customer protection regulations by responding to the complaint after the deadline.

R/73/2018 and R/265/2018: It was considered that the response of the respondent entity's CSD did not address a central aspect of the complaint, which was qualified as bad practice.

R/53/2018: The CSD was deemed to have acted incorrectly as the reasoning of the complaint was not sufficient and it did not put forward suitable conclusions for the events stated.

R/465/2017: The CSD issued an acknowledgement of receipt of the written complaint on 12 May 2017, but did not reply until 19 September 2017, i.e., four months later. Therefore, it was concluded that the entity had engaged in bad practice.

R/225/2018: In contrast, in this case it was considered that the entity acted properly as it resolved the complaint filed with its CSD in a timely manner.

➢ Complaints Service criteria

In addition to the provisions of Order ECO/734/2004, of 11 March, and the operating regulations of the different Customer Service Departments, it is important to refer to Order ECC/2502/2012, of 16 November, regulating the procedure for filing complaints with the complaints services of the Bank of Spain, the CNMV and the Directorate-General for Insurance and Pension Funds. The criteria followed by the Complaints Service in the resolution of complaints is described below:

– The Complaints Service considers it bad practice for entities to fail to respond to requests for comments, clarifications or cooperation that this Service may make during the processing of a complaint. This failure to cooperate makes it impossible to issue a suitable resolution on the issues raised by the complainant (R/527/2017, R/119/2018, R/138/2018, R/185/2018, R/277/2018, R/282/2018, R/296/2018 and R/402/2018).

– It also considers it bad practice for entities to respond to requests for comments, clarifications or cooperation after the cut-off date, as this means that the Complaints Service will not be able to meet its deadlines for resolving complaints. (R/169/2018).

– It also classifies the operation of the entity's Customer Service Department as inappropriate when it does not respond to clients' requests for information or documentation. It is relatively frequent for entities not to submit the requested documentation to their clients in the first instance, but rather to postpone it until the time they make pleadings before the CNMV's Complaints Service after the complaint proceedings have been initiated by the dissatisfied client.

– However, it should also be noted that investors should request information from their bank office or branch and only if they are not properly attended in that instance should they approach the entity's CSD to complain that their request has not been properly addressed. At that time, the entity's CSD must, if possible, provide the documentation requested by the client, without waiting for the client to file a complaint with the Complaints Service.

  In these cases, the reports resolving the complaints indicate that it is not considered appropriate that in order to obtain a copy of the documentation generated in their commercial transactions with the entity, clients are forced to file a complaint with the CNMV. This is based on two reasons: firstly, as a result of the delay that this causes in addressing the investor's requests and secondly,

because it makes it necessary to start up the administrative process for inappropriate purposes (R/17/2018 and R/155/2018).

R/538/2017: The entity was considered to have engaged in bad practice by failing to inform the complainant that it had the lawful standing to address the complaint filed with the CSD, although it did acknowledge this responsibility once the complaint had been filed with the Complaints Service. Consequently, it prevented the complainant's request for documentation from being addressed the first instance, if it was available, or otherwise receive an explanation of the reasons why it had not been kept.

– The decisions taken by the entity's Customer Ombudsman (as appropriate) are binding on the entity and therefore it must also be understood that the commitments made by the entity to its Ombudsman to resolve its client's complaint must also be deemed binding, and it is bad practice for the entity to breach these commitments.

– For this same reason, the resolutions adopted by the Customer Service Department in favour of the complainant must also be deemed binding on the entity, with it considered bad practice for the entity not to consider them as such (R/405/2017 and R/463/2017).

Summary of complaints relating to the operation of the CSD or Customer Ombudsman EXHIBIT 13

– The **operation of entities'** Customer Service Departments and Customer Ombudsman are regulated in Order ECO/734/2004, of 11 March, on the Customer Service Departments and Customer Ombudsman of financial institutions.

– Each entity or group approves a **Customer Protection Regulation**, which regulates the activity of the Customer Service Department and, where appropriate, the Customer Ombudsman, as well as the relations between both.

– Order ECC/2502/2012, of 16 November, regulates the procedure for filing complaints with the CNMV Complaints Service.

– This Service maintains, *inter alia*, the following criteria:

  • The start date for **calculating the period** for resolution is indicated on the acknowledgement of receipt of the complaint filed with the entity's Customer Service Department or Customer Ombudsman. If the receipt has not been acknowledged, the period will start to run from the date stated in the document filed by the complainant in any of the places authorised for this purpose.

  • It is considered a **bad practice** for entities to fail to respond to requests for comments, clarifications or cooperation that this Service may make during the processing of a complaint. This failure to cooperate makes it impossible to issue a suitable resolution on the issues raised by the complainant.

- When the complaint relates to **requests for documentation** that have not been responded to, it is relatively frequent for entities not to submit to their clients the requested documentation in the first instance, but rather to postpone it until the time they make pleadings before the CNMV's Complaints Service after the complaint proceedings have been initiated by the dissatisfied client.

- In these cases, the reports resolving the complaints indicate that it is not considered appropriate that in order to obtain a copy of the documentation generated in their commercial transactions with the entity, clients are forced to file a complaint with the CNMV.

- However, it should also be noted that investors should request information from their bank office or branch and only if they are not properly attended in that instance should they approach the entity's CSD to complain that their request has not been properly addressed. At that time, the entity's CSD must, if possible, provide the documentation requested by the client, without waiting for the client to file a complaint with the Complaints Service.

– The **decisions taken by the entity's Customer Ombudsman** (as appropriate) are binding on the entity and therefore it must also be understood that the commitments made by the entity to its Ombudsman to resolve its client's complaint must also be deemed binding, and it is considered bad practice for the entity to breach these commitments. For this same reason, the resolutions adopted by the Customer Service Department in favour of the complainant must also be deemed binding on the entity, with it considered bad practice for the entity not to consider them as such.

5 Enquiries area

5 Enquiries area

5.1 Enquires

The CNMV Investors Department, among other functions, handles investor enquiries on topics of general interest concerning the rights of financial service users and the legal channels available to defend these rights. These requests for information and advice are addressed in Article 2.3 of Order ECC/2502/2012, of 16 November, regulating the procedure for filing complaints with the Complaints Services of the Bank of Spain, the National Securities Market Commission and the Directorate-General for Insurance and Pension Funds.

In addition to the enquiries provided for in the aforementioned Order ECC/2502/2012, the Investors Department supports investors in searching for information contained in the CNMV's public official registers and in other public documents it discloses, and addresses any issues or queries that investors may raise relating to the securities markets.

It will also respond to written communications which are not enquiries as such, but which set forth opinions, complaints or suggestions on matters within the CNMV's supervisory remit.

Professional enquiries are also received requesting advice on specific issues affecting other areas of the CNMV. In these cases, either the enquiry is forwarded to the competent department depending on the matter in question, informing the interested party, or, in some circumstances, the interested parties are informed that the Investors Department only handles enquiries submitted by investors or users of financial services. In the latter case, they are in turn informed that, for professional issues, they should contact the relevant department of the CNMV, indicating the details of the transaction and identifying all the parties involved.

Written communications are also received that, due to their content, are outside the CNMV's area of competence. Prominent among those are enquiries about banking products and services, or about insurance or pension funds. In these cases, the CNMV forwards the communications to the competent supervisory body, informing the sender accordingly. Another set of enquiries outside the CNMV's remit concerns tax-related matters. In these cases, the parties are directed to the competent tax authority.

5.1.1 Enquiry volumes and channels

In 2018, 10,772 enquiries were dealt with. Most of them were made by telephone (88.7%) and attended by call centre operators. These enquiries were limited to providing information contained in the CNMV's official public registers or posted on its website (www.cnmv.es). The second most widely used method was the electronic office (7.2%), located on the CNMV's website, followed by ordinary post or submission through the general register (4%).

As shown in Table 20, the total number of enquiries dealt with decreased by 3.8% compared to 2017.

This decrease was mainly the result of the drop in telephone enquiries (348 less than in 2017), as well as enquiries received through the electronic office (116 less than in 2017), while enquiries received by ordinary post or submitted through the general register increased (37 more than in 2017).

One of the reasons for the decrease in the number of enquiries attended in 2018 compared to 2017 relates to the larger number of enquiries received through the agreement implemented by the Single Resolution Board (SRB) to go ahead with the resolution of Banco Popular Español, S.A, which was particularly relevant in 2017.

With regard to response times, it should be noted that excluding enquiries received by telephone, which are answered on the same day, the average for 2018 was 21 calendar days.

Number of enquiries by channel TABLE 20

	2016		2017		2018		% change
	No.	% total	No.	% total	No.	% total	2018/2017
Telephone	6,514	81.1	9,907	88.5	9,559	88.7	-3.5
Postal mail	331	4.1	399	3.6	436	4.0	9.3
Form/Electronic office	1,183	14.7	893	8.0	777	7.2	-13.0
Total	**8,028**	**100.0**	**11,199**	**100.0**	**10,772**	**100.0**	**-3.8**

Source: CNMV.

The channels available for submitting enquiries to the CNMV are:

– Electronically through the CNMV Electronic Office (https://sede.cnmv.gob.es/sedecnmv/sedeelectronica.aspx), either using a digital certificate or electronic ID, or creating a username and password.

– By writing to the CNMV Investors Department at c/ Edison, 4 - 28006 Madrid.

  A form is available for this purpose at www.cnmv.es, in the "Enquiries" section of the "Investors Website", in accordance with the model set out in Annex III of CNMV Circular 7/2013, of 25 September, regulating procedures on the resolution procedure for claims and complaints against companies that provide investment services and for addressing enquiries regarding the securities market.

– Through the investor assistance office (900 535 015). This line is manned by call centre operators, and is confined to enquiries about information held in the CNMV's official registers or posted on its websites (www.cnmv.es).

Finally, it is important to point out that the email mailbox serviciodereclamacionesCNMV@cnmv.es is not authorised to admit new enquiries for processing, but only deals with issues relating to previously filed complaints or enquiries, in accordance with the appropriate procedures. Complainants or enquirers

must identify themselves and provide the reference number assigned to the complaint or enquiry, which parties are informed of so that they may submit their enquiries through the appropriate channels.

5.1.2 Subjects of enquiries

Investors submitted enquiries relating to the markets as a whole or specific events, including:

- Enquiries and complaints relating to the stock market performance of the shares of Distribuidora Internacional de Alimentación, S.A. (DIA).

- Enquiries and queries relating to changes in the minimum trading price of certain securities in the electronic trading system (SIB).

- Enquiries relating to the status of shareholders of Abertis Infraestructuras, S.A. (Abertis) after the voluntary takeover bid carried out by Hochtief Aktiengesellschaft.

- Enquiries relating to an heir's wish to know where a deceased's securities are deposited.

- Enquiries relating to the delay in the admission to listing of the capital increase carried out by Urbas Grupo Financiero, S.A. in 2015.

- Enquiries relating to entities not authorised to act on the securities markets, known as *boiler rooms*.

- Other enquiries or queries submitted in 2018 and that have already been discussed in greater detail in previous Annual Reports and reports issued by the Investors Department:

    - The resolution of Banco Popular Español, S.A., as well as issues related to the loyalty action carried out by Banco Santander, S.A.

    - Enquiries about the purchase price of certain securities.

    - Enquiries relating to administration and custody fees for securities that are suspended from trading or delisted, referring mainly to the following companies: Fergo Aisa, S.A. (in liquidation), La Seda de Barcelona, S.A. (in liquidation), Indo Internacional, S. A. (in liquidation) and Reyal Urbis, S. A. (in liquidation).

    - Enquiries relating to takeover bids authorised by the CNMV. Specifically, in 2018, investors asked about the bids launched for Funespaña, S.A., Abertis Infraestructuras, S.A. and Bodegas Bilbainas, S.A.

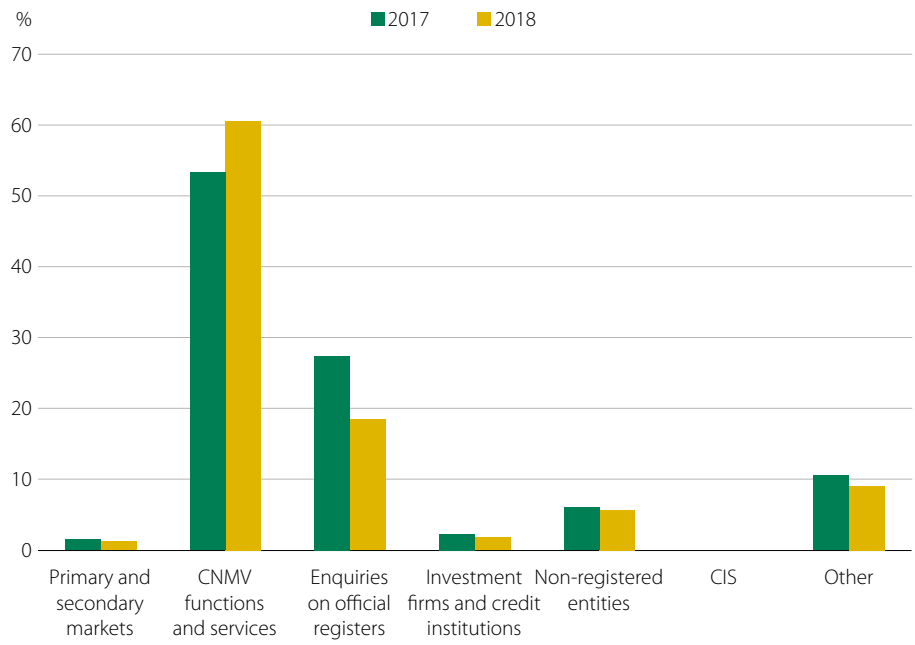
    - Enquiries and incidents relating to Cypriot investment services companies registered in the CNMV's official registers under the freedom to provide services regime (i.e., without a permanent establishment in Spain).

    - Enquiries relating to the possible securitisation of mortgage loans.

Other enquiries recurring each year refer to the data available in our official registers: information on registered entities, fees for investment services, price-sensitive information disclosures, short positions, significant shareholdings, CNMV communications, statistics and publications and other content freely accessible to the public. In addition, and as in other years, there were enquiries about the functions and services of the CNMV.

The call centre has also provided interested parties with telephone numbers and contact details of other bodies in the event that the issues raised do not fall under the responsibility of the CNMV (these enquiries are recorded "Other" in Figure 26 on subjects of enquiries).

Subjects of enquiries FIGURE 26



Source: CNMV.

5.1.3 Key subjects of enquiries

This chapter singles out enquiry subjects considered of particular importance.

5.1.3.1 Enquiries and complaints relating to the stock market performance of the shares of Distribuidora Internacional de Alimentación, S.A. (DIA)

In addition to these enquiries/complaints, there were queries relating to volume of short positions, as well as the shareholder structure and the possibility of a takeover bid.

The parties were informed that their queries would be passed on to the competent CNMV department and were reminded that any actions carried out by the CNMV would be subject to the duty of secrecy pursuant to Article 248.1 of the Securities Market Act.

5.1.3.2 *Enquiries and queries relating to changes in the minimum trading price of certain securities in the electronic trading system (SIB), and queries relating to the implementation of minimum lot trading requirements*

In a notice published on 30 July 2018, Sociedad de Bolsas, S.A. (a BME group company) stated that in order to ensure the correct price formation for securities trading at less than €0.01, it would i) modify the minimum trading price set down in point 5.7 of Sociedad de Bolsas Circular 1/2017, governing the electronic trading system, from €0.01 to €0.001, and ii) for those securities with a trading price that is lower or very close to €0.01 a trade by lots requirement would be established. Subsequently, on 19 September 2018, and as a continuation of the notice of 30 July 2018, Sociedad de Bolsas, S.A. issued a notice stating that the minimum price admitted by the system would be €0.0001.

The Investors Department informed the parties that the CNMV considers the decision announced by Sociedad de Bolsas, S.A. to be positive and necessary to ensure the liquidity of the securities and that they can be traded in an orderly manner, in addition to guaranteeing correct price formation and investor protection. This decision is also fully in line with the new regulatory framework established by the MiFID II directive. It is consistent with Delegated Regulation (EU) 2017/588, which establishes a minimum price variation for all securities, including those traded at prices between €0 and €0.10, which have an assigned minimum variation of between €0.0001 and €0.0005 depending on their liquidity. It is also a direct consequence of the obligations set down in Articles 6 and 17 of Royal Decree Law 21/2017, of 29 December, on urgent measures for the adaptation of Spanish law to European Union regulations on the securities market, deriving from the MiFID II Directive, which states that regulated markets must establish transparent and non-discretionary rules and procedures that ensure fair and orderly trading and set objective criteria for the effective execution of orders. It also requires them to establish clear and transparent rules, in relation to the admission of financial instruments to trading, to ensure that they can be traded in a fair, orderly and efficient manner. In short, the measure announced by BME is consistent with regulatory requirements and helps prevent price formation at artificial levels and disorderly trading.

Further, Sociedad de Bolsas, S.A., Operating Instruction 63/2018, of 19 September 2018, states:

> *For those instruments which, at the close of the trading session, reach the trading price of €0.01 the requirement of trading by lots of shares will apply from the following trading session. The share lot requirement will be adjusted in such a way that the minimum amount in a trade involving any of these will be €0.01.*

The list of traded securities to which the minimum lot requirement applies, due to their quoted price, as well as the minimum lot applicable for each security to enter orders on the SIB, is published by Sociedad de Bolsas, S.A. in an Operating Instruction.

5.1.3.3 *Enquiries relating to the status of shareholders of Abertis Infraestructuras, S.A. (Abertis) after the voluntary takeover bid carried out by Hochtief Aktiengesellschaft for 100% of the company's share capital, expressing an intention to delist its shares, which were delisted on 6 August 2018*

The Investors Department informed the parties that Abertis shareholders had the possibility of selling their shares during the takeover bid or afterwards, during the acceptance period for the sustained purchase order initiated by Hochtief that extended from 21 June 2018 to 27 July 2018. They were also informed that they should have received information on this subject from their depository entities.

They were also informed that although the shares may be excluded from trading, their holders continue to be shareholders and continue to have all the rights inherent to this status recognised in the Corporate Enterprises Act (economic rights, voting rights, rights to information, etc.) and in the company's articles of association.

However, exclusion from trading also means that holders can no longer trade their shares on the secondary market, although they may be transferred outside the market and in accordance with the general provisions of the Corporate Enterprises Act and the company's articles of association. It also means that to sell the shares the investor must find a counterparty, agree to its terms or price and carry out the corresponding asset transfer.

Investors were also informed that the shares may be sold to the issuer itself, although any agreements reached between the issuer and the shareholder correspond to the private legal area of both parties and fall outside the remit of the CNMV.

5.1.3.4 *Enquiries relating to an heir's wish to know where a deceased's securities are deposited, in addition to information on acquisition dates and prices*

Parties were informed that the official registers of the CNMV contained no information referring to securities portfolios owned by investors, such as the number, type or valuation of assets in the name of the deceased or the depositary that provides the custody and administration service.

Therefore, the interested parties were told that if had any information from the current depositary (bank statements, tax documentation of the deceased, etc.), they could make a formal request for documentation to that entity, which should provide them with the documents of that it has in its possession and, with indicate which documents it does not have (either because it does not keep them or for other reasons).

5.1.3.5 *Enquiries relating to the delay in the admission to listing of the capital increase carried out by Urbas Grupo Financiero, S.A. in 2015*

Parties were informed that in the pretrial proceedings 56/2017 heard before the Juzgado Central de Instrucción No. 4 of the Audiencia Nacional (National PreTrial Examining Court No.4) of 9 April 2018, the court issued a ruling pursuant to a report from the Prosecutor's Office, which agreed to prohibit the disposal of the shares of the company deriving from the capital increase executed through a public deed

signed on 6 August 2015 before the Notary Public, Francisco Consegal García, under number 2246 of his notarial protocol.

As a result, the CNMV agreed, on 16 April 2018, to suspend the administrative procedure requesting the admission to trading of 30,759,040,000 shares of Urbas Grupo Financiero, S.A. so long as there is no judicial resolution that modifies or cancels the precautionary measure issued by the Madrid court ruling of 9 April 2018.