Attention to complaints and enquiries by investors

2020 Annual Report

Attention to complaints and enquiries by investors
2020 Annual Report

Comisión Nacional del Mercado de Valores
Edison, 4
28006 Madrid

Bolivia, 56
08018 Barcelona

© Comisión Nacional del Mercado de Valores
Reproduction of the content of this report is permitted provided that the source is acknowledged.
All of the CNMV's regular reports and publications can be found on the Internet at www.cnmv.es

Layout: Cálamo y Cran
ISSN: 1989-2071

Table of contents

Abbreviations 9

1 Introduction 13

2 Activity in 2020 21
2.1 Documents filed with the CNMV Complaints Service 23
2.2 Processing of the documents 27
2.2.1 Pre-processing stage 27
2.2.2 Processing and resolution stage 27
2.2.3 Follow-up stage 29
2.3 Complaints resolved in 2020 31
2.3.1 Pre-processing stage 32
2.3.2 Final stage 36
2.3.3 Follow-up stage 47
2.3.4 Entity rankings 49
2.4 Information provided by the entities 58
2.5 International cooperation mechanisms 64
2.5.1. Financial Dispute Resolution Network (FIN-NET) 64
2.5.2. International Network of Financial Services Ombudsman Schemes (INFO Network) 66
2.5.3. Cross-border complaints 66

3 Main criteria applied in the resolution of complaints in 2020 69
3.1 Marketing/simple execution 73
3.2 Suitability. Investment advice and portfolio management 82
3.3 Prior information 89
3.4 Follow-up information 99
3.5 Portfolio management 115
3.6 Orders 119
3.6.1 Securities 120
3.6.2 Collective Investment Schemes (CIS) 130
3.7 Fees 134
3.7.1 Negotiable securities 135
3.7.2 CIS 141
3.7.3 Portfolio management 144
3.8 Wills 146
3.9 Ownership 157
3.10 Operation of entities' CSD 162

4 Enquiries area 165
4.1 Enquiry channels and volume 167
4.2 Subjects of enquiries 168
4.3 Main subjects of enquiries 169
4.3.1 Effects of COVID-19 on the activity of the enquiries service 169
4.3.2 Information on Brexit for investors 169
4.3.3 Replacement of the proposed application of profits for 2019 in certain listed companies by another proposed distribution due to the situation created by COVID-19 170
4.3.4 Commitments assumed in the prospectus for the public share offering for the sale of shares of Bosques Naturales del Mediterráneo, S. Com. p. A., registered with the CNMV on 18 November 1999 171
4.3.5 Suspension of trading of shares of Abengoa, S.A. and enquiries relating to the possibility of transferring these shares 172

4.3.6	Holding, content and consequences of the extraordinary general shareholders' meeting of Abengoa, S.A.	172
4.3.7	Concerns about takeover bids: the acceptance process, calendar and authorised price, as well as the possibility of squeeze-outs	173
4.3.8	Complaints about investment losses in shares of Banco Popular Español, S.A.	176
4.3.9	Methods used by minority shareholders to sell shares of Arquia Bank, S.A.	176
4.3.10	Waiver of the holding of warrants relating to the restructuring process issued by Deoleo, S.A.	177
4.3.11	Administration and custody fees for companies with suspended or delisted securities	178
4.3.12	Fees for cash accounts associated with securities accounts	180
4.3.13	Transfer fees	180
4.3.14	Fees for processing an inheritance	180
4.3.15	Requirement to implement of minimum lot trading for sales of certain listed securities	181
4.3.16	Advice in relation to the ruling on Pescanova, S.A.	181
4.3.17	Need for account holders to be in agreement for the transfer of securities	182
4.3.18	Requirement to open a securities account at the deceased person's financial institution to receive the inherited securities	182
4.3.19	Information on the purchase price and date of shares	182
4.3.20	Information on the investments of a deceased person	183
4.3.21	Agents of entities that provide investment services and their registration	183
4.3.22	Mortgage loan securitisation	184
4.3.23	Coverage of the Investment Guarantee Fund (FOGAIN)	185
4.3.24	Information on CNMV disciplinary proceedings	186
4.3.25	Intervention and insolvency proceedings of Esfera Capital, AV, S.A.	186
4.3.26	Domains and trademarks of Cypriot IFs operating in Spain under the freedom to provide services regime	186
4.3.27	Complaints against EU investment firms	187
4.3.28	Considerations about investing in cryptocurrencies	187
4.3.29	Enquiries about unregistered entities or those known as "boiler rooms"	187
4.3.30	Enquiries related to a type of fraud known as funded trading, linked to training courses	189
4.3.31	Enquiries related to a type of fraud carried out by companies known as "recovery rooms"	189
4.3.32	Attempts to defraud investors by simulating the CNMV's telephone numbers, domains or image	190
4.3.33	New IT strategies used by boiler rooms	191
4.3.34	Attempts to defraud investors by impersonating authorised entities	193

Annex 1 Guide to the electronic submission of complaints **195**

Index of figures

Figure 1	Types of investors applying to the Complaints Service	23
Figure 2	Origin of the investors applying to the Complaints Service	24
Figure 3	Types of entities	24
Figure 4	Complaints against credit institutions	25
Figure 5	Complaints against IFs and other entities authorised by the CNMV	25
Figure 6	Complaints against IFs and other entities authorised by the CNMV compared with credit institutions	26
Figure 7	Percentage distribution	26
Figure 8	Place of filing	27
Figure 9	Breakdown of PRPs concluded in 2020	32
Figure 10	Grounds for petitions for rectification	33
Figure 11	Response to petitions for rectification	34
Figure 12	Grounds for petitions for pleas	35
Figure 13	Response to petitions for pleas	36
Figure 14	Complaints concluded in 2020	36
Figure 15	Types of non-admissions	40
Figure 16	Grounds for non-admission after petition for pleas	41
Figure 17	Reasons for non-admission not rectified after response	42
Figure 18	Time to completion by type of non-admission	42
Figure 19	Distribution of types of complaint resolution	44
Figure 20	Percentage changes in types of resolution	45
Figure 21	Time to completion by complaint type	46
Figure 22	Follow-up actions	48
Figure 23	Replies from complainants	49
Figure 24	Trends in the percentage of decisions favourable to the complainant by entity	54
Figure 25	Trends in the percentage of acceptances/mutual agreements by entity	56
Figure 26	Subjects of enquiries	168

Index of tables

Table 1	Manner of presentation	26
Table 2	Complaints processed in full in 2020	31
Table 3	PRPs completed in 2020	32
Table 4	Non-admitted complaints concluded in 2020	37
Table 5	Types of non-admissions	37
Table 6	Complaints concluded in 2020	43
Table 7	Resolution of complaints concluded in 2020	43
Table 8	Reasons for complaints concluded in 2020	45
Table 9	Follow-up actions for reports favourable to the complainant	48
Table 10	Ranking of entities by number of complaints resolved	50
Table 11	Ranking of entities by time taken to read the notification of opening complaint procedures	51
Table 12	Ranking of entities by time taken to respond to the initial petition for pleas	52
Table 13	Ranking of entities by percentage of decisions favourable to the complainant	53
Table 14	Ranking of entities by number of acceptances and mutual agreements	55
Table 15	Ranking of entities by percentage of follow-up actions reported after a report favourable to the complainant	57
Table 16	Ranking of entities by percentage of acceptance of criteria or rectification after a report favourable to the complainant	58
Table 17	Complaints filed relating to the securities market	61
Table 18	Complaints relating to the securities market not admitted by entities in 2020	62
Table 19	Complaints relating to the securities market admitted and resolved by entities in 2020	64
Table 20	All costs and related expenses charged for investment and/or ancillary services provided to the client that must be included in the reported amount	103
Table 21	All costs and expenses related to the financial instrument that must be included in the reported amount	104
Table 22	Enquiries by channel of reception	168

Abbreviations

AA. PP.	Public administration service
ABS	Asset-Backed Security
AIAF	Spanish Market in Fixed-income Securities
AIF	Alternative Investment Fund
ANCV	Spanish National Numbering Agency
APA	Approved Publication Arrangement
APR	Annual Percentage Rate
ASCRI	Spanish Venture Capital & Private Equity Association
AV	Broker
BIS	Bank for International Settlements
BME	Spanish Stock Markets and Financial Systems
CADE	Public Debt Book-entry Trading System
CC. AA.	Autonomous regions
CCP	Central Counterparty
CDS	Credit Default Swap
CFA	Atypical financial contract
CFD	Contract For Differences
CISMC	CIS Management Company
CNMV	(Spanish) National Securities Market Commission
CP	Crowdfunding Platform
CS	Customer Service
CSD	Central Securities Depository
CSRD	Central Securities Depositories Regulation
DLT	Distributed Ledger Technology
EAF	Financial advisory firm
EBA	European Banking Authority
EBITDA	Earnings Before Interest Taxes, Depreciation and Amortisation
EC	European Commission
ECA	Credit and savings institution
ECB	European Central Bank
ECR	Venture capital firm
EFAMA	European Fund and Asset Management Association
EFSM	European Financial Stabilisation Mechanism
EICC	Closed-ended collective investment company
EIOPA	Occupational Pensions Authority
EIP	Public interest entity
EMIR	European Market Infrastructure Regulation
EMU	Economic and Monetary Union
ESFS	European System of Financial Supervision
ESMA	European Securities and Markets Authority
ESRB	European Systemic Risk Board
ETF	Exchange Traded Fund
EU	European Union
EUSEF	European Social Entrepreneurship Fund
FICC	Closed-ended collective investment fund
FII	Real estate investment fund
FIN-NET	Financial Dispute Resolution Network
FINTECH	Financial Technology

FOGAIN	Investment Guarantee Fund
FRA	Forward Rate Agreement
FROB	Fund for Orderly Bank Restructuring
FSB	Financial Stability Board
FTA	Asset securitisation fund
FTH	Mortgage securitisation fund
GDP	Gross Domestic Product
HF	Hedge Fund
HFT	High Frequency Trading
IAGC	Annual corporate governance report
IARC	Annual report on director remuneration
IAS	International Accounting Standards
ICIS	Collective investment company/scheme
ICO	Initial Coin Offering
IF	Investment Firm / Investment Fund
IFRS	International Financial Reporting Standards
IIMV	Ibero-American Securities Market Institute
IMF	International Monetary Fund
IOSCO	International Organization of Securities Commissions
IPO	Initial Public Offering (for sale/subscription of securities)
IPP	Periodic public information
IRR	Internal Rate of Return
ISIN	International Securities Identification Number
KIID/KID	Key Investor Information Document
Latibex	Market of Latin American Securities
LEI	Legal Entity Identifier
LIIC	Spanish Collective Investment Companies Act
LMV	Spanish Securities Market Act
MAB	Alternative Stock Market
MAD	Market Abuse Directive
MAR	Market Abuse Regulation
MARF	Alternative Fixed-Income Market
MBS	Mortgage Backed Securities
MEFF	Spanish Financial Futures Market
MFP	Maximum Fee Prospectus
MiFID	Markets in Financial Instruments Directive
MiFIR	Markets in Financial Instruments Regulation
MOU	Memorandum Of Understanding
MREL	Minimum Requirement for Own Funds and Eligible Liabilities
MTF	Multilateral Trading Facility
MTS	Market for Treasury Securities
NCA	National Competent Authority
NDP	National Domestic Product
OECD	Organisation for Economic Cooperation and Development
OIS	Overnight Indexed Swaps
OTC	Over The Counter
OTF	Organised Trading Facility
PER	Price-to-Earnings Ratio
PRIIP	Packaged Retail and Insurance Based Investment Product
PUI	Loan of last resort
RAROC	Risk-Adjusted Return On Capital
REIT	Real Estate Investment Trust
RENADE	Spanish National Registry for Greenhouse Gas Emission Allowances
RFQ	Request For Quote
ROA	Return On Assets
ROE	Return On Equity
SAMMS	Advanced Secondary Market Tracking System

SAREB	Asset Management Company for Assets Arising from Bank Restructuring
SENAF	Electronic Trading Platform for Spanish Government Bonds
SEND	Electronic Debt Trading System
SEPBLAC	The Executive Service of the Commission for the Prevention of Money Laundering and Monetary Offences
SGC	Portfolio management company
SGECR	Venture capital firm management company
SGEIC	Closed-ended investment scheme management company
SGFT	Asset securitisation fund management company
SIBE	Electronic Spanish Stock Market Interconnection System
SICAV	Open-ended collective investment company
SICC	Closed-ended collective investment company
SII	Real estate investment company
SIL	Hedge fund with legal personality
SME	Small and Medium Enterprise
SNCE	National Electronic Clearing System
SPV/SFV	Special purpose/financial vehicle
SRB	Single Resolution Board
SREP	Supervisory Review and Evaluation Process
STOR	Suspicious Transaction and Order Report
SV	Broker-dealer
T2S	Target2-Securities
TER	Total Expense Ratio
TOB	Takeover Bid
TRLMV	Recast text of the Spanish Securities Market Act
TVR	Theoretical Value of the Right
UCITS	Undertaking for Collective Investment in Transferable Securities
VCF	Venture Capital Firm / Venture Capital Fund
XBRL	Extensible Business Reporting Language

1 Introduction

1 Introduction

This Annual Report on Complaints shows the actions taken by the CNMV Investors Department to deal with claims, complaints and enquiries made by investors in 2020.

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".

The Annual Report therefore responds to this legal obligation.

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 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 extra-judicial 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 Complaints Service, 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 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 Official State Gazette (*BOE*) on 4 November 2017. In line with its first additional provision, the Complaints Service has had to accommodate its functioning and procedure as provided in Law 7/2017. The manner in which this accommodation took place was widely reported in the Annual Reports on Complaints of 2017 and 2018.

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

This Annual Report is divided into four chapters and one annex. The first chapter is the introduction, the second reports on the activity of the Complaints Service in 2020, the third provides a general view of the most significant criteria applied in the resolution of complaints in 2020, the fourth deals with the most outstanding issues dealt with during the year, and the annex includes a guide for the electronic submission of claims that was published in 2020.

A brief description of each of these chapters is provided below.

The first chapter, as indicated, contains the introduction, which includes a brief presentation of the Investor Department, some of its functions and the content of this Report.

The second chapter reports on the activity carried out by the Complaints Service in 2020. 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 is usual, statistical data are provided on the documents submitted to the Complaints Service with a detailed explanation of how the documents received are processed, indicating the different stages. Accordingly, individualised information is provided in the documents processed in each stages in 2020. Thus, the Report establishes the number of proceedings and the reasons that gave rise to the preprocessing 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 different 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 three 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. They would not be the same in cases in which the entity

responsible for the incident had merged or transferred its securities market business area to the entity against which the complaint has been filed.

As is customary in the last Annual Report and to provide information on the work carried out by the Customer Service Departments (CSD) 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 were filed with their CSD or with the Customer Ombudsman (CO) in 2020, as well as the complaints that were not admitted or those admitted and resolved by them in that year.

In general, according to the data provided by the entities from which information was requested, the percentage of complaints that are followed up by the Complaints Service after passing through the CSD in the same year is very low (it should be noted that complainants have a period of one year, from the date on which entity's CSD has resolved their complaint, or should have resolved it but did not do so, to submit their complaint to Complaints Service). On average it is less than 2%, indicating that the system is working properly, whereby customers first go to the entity and if the case cannot be resolved, they turn to the CNMV Complaints Service. In exercising this function, the Complaints Service received 1,242 complaints in 2020. Of these documents, in addition to those pending from the previous year, 477 were not admitted by the Complaints Service and 739 were admitted and processed as complaints.

In relation to the 739 documents processed, the Complaints Service issued a reasoned report establishing that the entity had acted incorrectly in 311 cases (42.1%) and correctly in 291 cases (39.4%). The Complaints Service therefore acts as an independent expert and issues a report that can be very useful for the complainant, as it can be used before judicial bodies if favourable to their interests. It is also worth mentioning the 15.8% of cases opened with the CNMV that were resolved in favour of the complainant, or where an agreement was reached with the entity, thereby resolving the case without issuing a ruling on the issues subject of the complaint.

It should also be noted that in recent years the percentage of acceptances or rectifications made by entities following the issue of a report in favour of the complainant by the CNMV's Complaints Service has increased significantly. The latest reports of the Complaints Service show a growing percentage of acceptances or rectifications: 7.3% in 2014, 31.3% in 2015, 45.8% in 2016, 58% in 2017 and 2018, and 80.2% in 2019. In 2020, this percentage was 70.3%, remaining at a much higher level than those registered in 2018 and previous years, even though it is slightly lower compared to 2019.

Regarding international cooperation mechanisms, the activity of FIN-NET (the Financial Dispute Resolution Network) is included. This is a network for the out-of-court settlement of cross-border financial disputes between consumers and service providers in the European Economic Area, which the CNMV joined in 2008. The Complaints Service took part in the plenary meeting held online in October 2020 (the meeting scheduled for 19 March 2020 had to be cancelled due to the health crisis).

Further, 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.

Since 2017, the Investors Department has also been a member of the International Network of Financial Services Ombudsman Schemes (INFO Network), whose general aim is to cooperate on the resolution of disputes, sharing experiences and information in different areas. Webinars are also held regularly to present topics of interest to the members of the organisation, and the Complaints Service participates in these.

The third chapter presents an overview of the main criteria applied in the resolution of complaints in 2020. 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 2020, and that future regulatory changes or variations in the particularities revealed in each proceedings could lead to changes 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 amended 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) portfolio management clauses and cancellation, iv) order execution; v) fees; vi) testamentary execution; vii) ownership of the securities; and viii) 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 CIS or other securities.

The fourth chapter deals with the activities carried out by the Enquiries Area and shows 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 2020 have been the subject of enquiries, with a specific section where the most relevant issues are developed.

In 2020, 11,150 enquiries were dealt with, most of which were made by telephone. The average response time, apart from enquiries received by telephone and dealt with immediately, stood at 22 calendar days in 2020.

Some of the main issues raised by investors in 2020 were as follows:

– Enquiries and complaints relating to the replacement of the proposed application of profits for 2019 in certain listed companies by another proposed distribution due to the situation created by COVID-19.

– Enquiries and complaints relating to the commitments assumed in the prospectus for the public share offering for the sale of shares Bosques Naturales del Mediterráneo 1, S. Com. p. A., registered with the CNMV on 18 November 1999.

– Enquiries relating to the suspension of trading in the Spanish Stock Market Interconnection System (SIBE) of the shares, or other securities with subscription, purchase or sale rights, of Abengoa, S.A., which took place on 14 July 2020, as well as enquiries relating to the possibility of transferring these shares.

– Enquiries relating to the holding, content and consequences of the extraordinary general shareholders' meeting of Abengoa, S.A., which took place on 17 November 2020.

– Enquiries relating to the difficulties encountered by minority shareholders of Arquia Bank, S.A. (formerly Caja de Arquitectos, S. Coop. De Crédito) to sell their shares.

– Enquiries relating to the intervention of Esfera Capital, AV, S.A. by the CNMV after being informed by the entity itself of an equity mismatch deriving from an incident related to the management of the derivatives positions of a small number of clients.

Lastly, Annex 1 contains an explanatory guide for the remote presentation of complaints published by the Complaints Service on 11 May 2020. Given the exceptional situation caused by the COVID-19 crisis and with the aim of enabling investors to continue to exercise their right to complain, the Complaints Service drew up this guide to encourage the submission of electronic claims and their subsequent follow-up. It explains the submission process, which includes four simple steps, indicating how to access the complaint after it has been presented to provide additional documentation and how to find out the processing status. This remote procedure is fast, secure and easily accessible through different types of electronic devices. Investors may consult the guide or view the explanatory video also published for this purpose.

2 Activity in 2020

2	**Activity in 2020**	**21**
2.1	Documents filed with the CNMV Complaints Service	23
2.2	Processing of the documents	27
	2.2.1 Pre-processing stage	27
	2.2.2 Processing and resolution stage	27
	➢ Non-admissions	27
	➢ Complaints	28
	2.2.3 Follow-up stage	29
2.3	Complaints resolved in 2020	31
	2.3.1 Pre-processing stage	32
	➢ Petition for rectification (PR)	32
	➢ Petition for pleas (PP)	34
	2.3.2 Final stage	36
	➢ Non-admissions	37
	➢ Complaints	43
	2.3.3 Follow-up stage	47
	➢ Follow-up actions for reports favourable to the complainant	47
	➢ Replies to non-admissions and complaints	48
	2.3.4 Entity rankings	49
	➢ Ranking of entities by number of complaints resolved	49
	➢ Ranking of entities by time taken to read the complaint	50
	➢ Ranking of entities by time taken to respond	51
	➢ Ranking of entities by percentage of complaints with decisions favourable to the complainant	52
	➢ Ranking of entities by number of acceptances and mutual agreements	54
	➢ Ranking of entities by percentage of response to follow-up actions	56
	➢ Ranking of entities by percentage of acceptance of criteria	57
2.4	Information provided by the entities	58
2.5	International cooperation mechanisms	64
	2.5.1 Financial Dispute Resolution Network (FIN-NET)	64
	➢ Plenary meetings	66
	2.5.2 International Network of Financial Services Ombudsman Schemes (INFO Network)	66
	2.5.3 Cross-border complaints	66

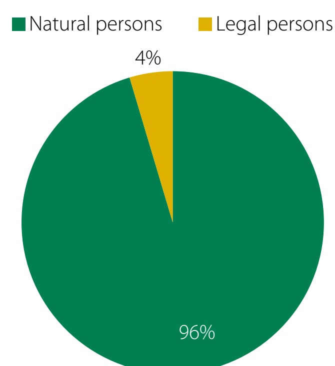
2 Activity in 2020

2.1 Documents filed with the CNMV Complaints Service

In 2020, 1,242 investor documents were filed with the Complaints Service that, due to their characteristics, could be processed as complaints.

These documents were submitted mainly by natural persons. In 161 cases, the investor acted through a representative (46 of represented legal persons and 115 natural persons). However, in only three of these cases representatives were consumer and user associations.

Types of investors applying to the Complaints Service FIGURE 1



Source: CNMV.

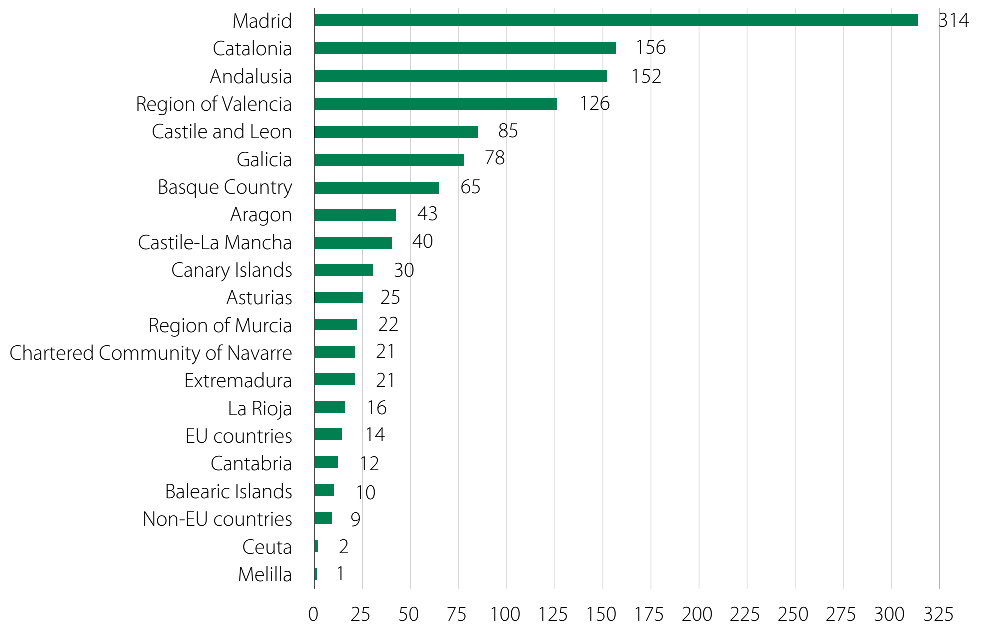
Regarding natural person investors, as well as not-for-profit entities, the complaints procedure set forth in Order ECC/2502/2012, adapted to the provisions of Law 7/2017, of 2 November, by which Directive 2013/11/EU of the European Parliament and of the Council, of 21 May 2013 applies, relating to the alternative resolution of consumer disputes, is incorporated into the Spanish legal system. On the other hand, investors that are legal persons must follow the procedure as it is set out in the order with no adaptation or accommodation whatsoever.

Of the 46 documents submitted by legal entities, one was a foundations, that is, a not-for-profit entity to which the adapted procedure was applied accordingly.

The differences between the different procedures were explained in detail in the Complaints Reports 2017 and 2018, which are referred to in this regard.

A large majority of the investors that approached the Complaints Service resided in Madrid (314), followed, albeit in a notably lower number, by residents of Catalonia, Andalusia and the Valencian Community.

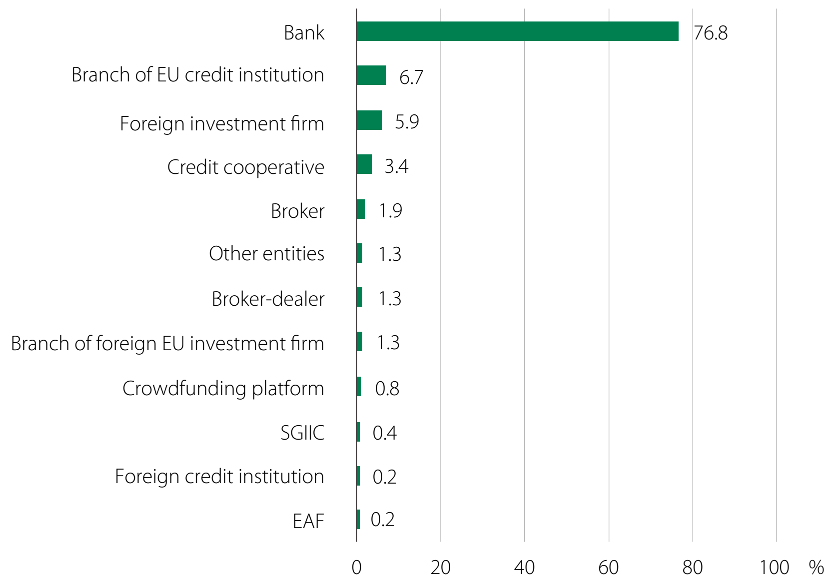
Origin of the investors applying to the Complaints Service FIGURE 2



Source: CNMV.

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

Types of entities FIGURE 3



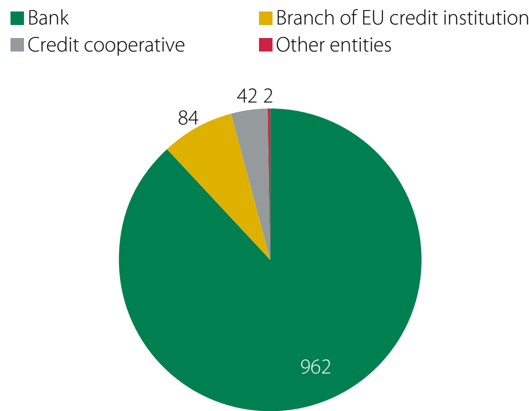
Source: CNMV.

As shown in Figure 3, the type of entity to which investors mostly addressed their complaints were Spanish credit institutions: 80.1% (76.8% of which were banks and 3.4%, credit cooperatives). To this percentage, another 6.9% corresponding to foreign credit institutions must be added: specifically, in 6.7% of cases the addressees were branches of EU credit institutions and in the remaining 0.2% they entities

1 The entities affected by investor documents amounted to 1,253, since some documents were addressed to several entities.

against which the complaint was filed were foreign credit institutions operating from their home country.

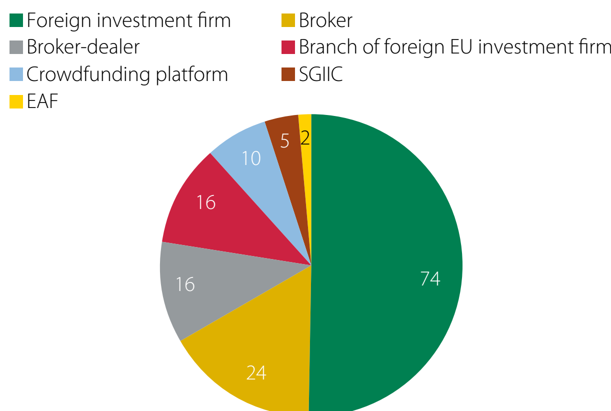
Complaints against credit institutions FIGURE 4



Source: CNMV.

Regarding investment firms (IFs) and other entities authorised by the CNMV, in only 3.4% of case was the company against which the complaint was filed a Spanish investment firm (1.9% referred to securities companies, 1.3% to broker-dealers and 0.2% to financial advisory companies), or a management company for collective investment schemes (CISMC) (0.4% of cases). In 7.2% of the complaints filed by investors with the Complaints Service, the entity against which the complaint was filed was a foreign IF. A distinction is made between those filed against foreign IFs acting from their country of origin (5.9%) and those filed against branches of EU IFs (1.3%). Lastly, in 0.8% of cases, the respondent entity was a crowdfunding platform.

Complaints against IFs and other entities authorised by CNMV FIGURE 5

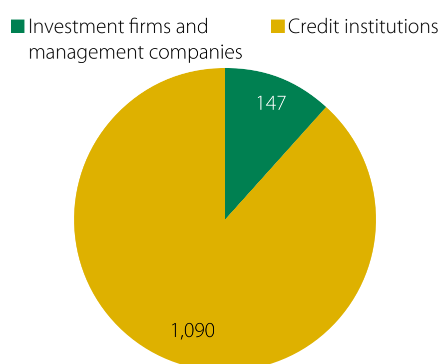


Source: CNMV.

Consequently, investors mainly addressed their complaints against credit institutions (banks, in particular), while complaints filed against IFs and other entities authorised by the CNMV accounted for a small portion, in relative terms, of the total number of complaints filed.

Complaints against IFs and other entities authorised by the CNMV compared with credit institutions

FIGURE 6



Source: CNMV.

Half of the investors filed their complaints with the Complaints Service on paper and the other half filed electronically, unlike in previous years, in which presentation on paper accounted for most submissions. In relation to the remote system, complaints registered with a username and password almost doubled (from 161 documents representing 15% of the total in 2019 to 319 documents representing 26% of the total in 2020) and those registered with an electronic certificate (108 documents representing 10% of the total in 2019, compared to 304 representing 24% of the total in 2020) tripled.

Manner of presentation

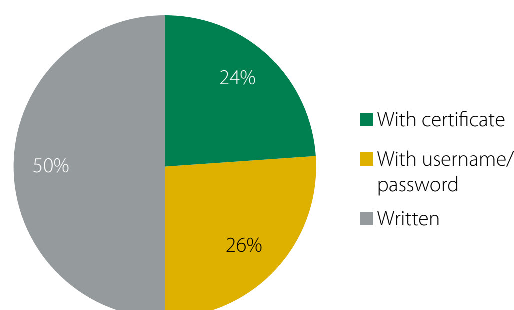
TABLE 1

Number of documents	
With certificate	304
With username/password	319
Written	619
Total	**1,242**

Source: CNMV.

Percentage distribution

FIGURE 7

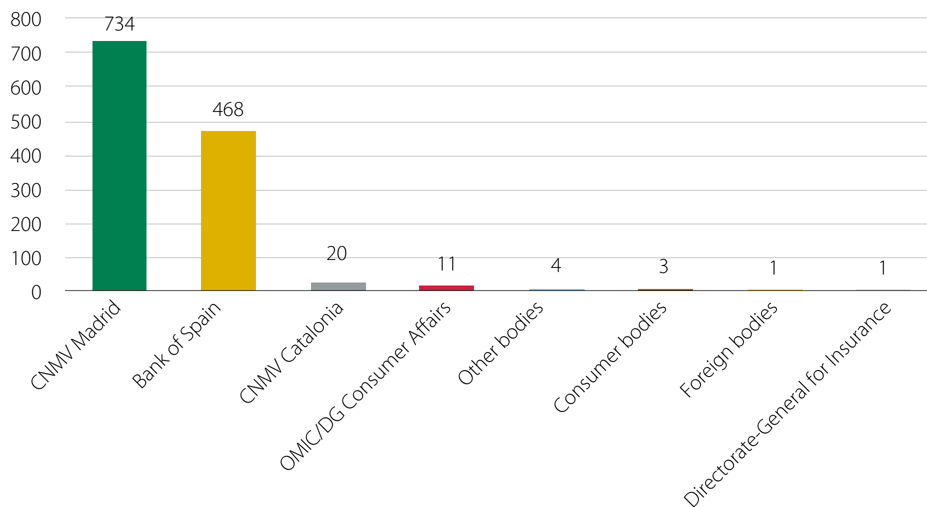


Source: CNMV.

On 11 May 2020, the CNMV published an explanatory guide to facilitate the electronic filing of complaints, which is shown in Annex 1 to this Report. Thus, to encourage the electronic submission of complaints by investors, given the exceptional situation caused by the COVID-19 crisis, the Complaints Service drew up this guide to encourage the submission of electronic complaints and their subsequent follow-up. It explains the submission process, which includes four simple steps, indicating how to access the complaint after it has been presented to provide additional documentation and how to find out the processing status. This remote procedure is fast, secure and easily accessible through different types of electronic devices. Investors may consult the guide or view the explanatory video also published for this purpose.

Lastly, most investors filed their documents at the CNMV headquarters in Madrid (734), 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 (468) 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 services, both private (3 documents) and public (11 documents).

Place of filing FIGURE 8



Source: CNMV.

2.2 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.

2.2.1 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 not-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 submit pleas about the cause of non-admission detected (petition for pleas 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.

2.2.2 Processing and resolution stage

➢ **Non-admissions**

In the cases in which, in spite of having requested the complainant to present a rectification or pleas, 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 pleas), 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 complaint proceedings.

The written complaint and documentation presented by the complainant are then submitted to the respondent entity, which is asked to submit pleas 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 pleas 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 pleas 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 pleas to both the Complaints Service and the complainant so that the latter, within 21 calendar days (if a natural person or a not-for-

profit entity) or 15 business days (if a legal person) from the day after the notification is received, may draw up and submit to the Complaints Service the comments deemed appropriate in respect of the entity's pleas. 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 pleas 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.

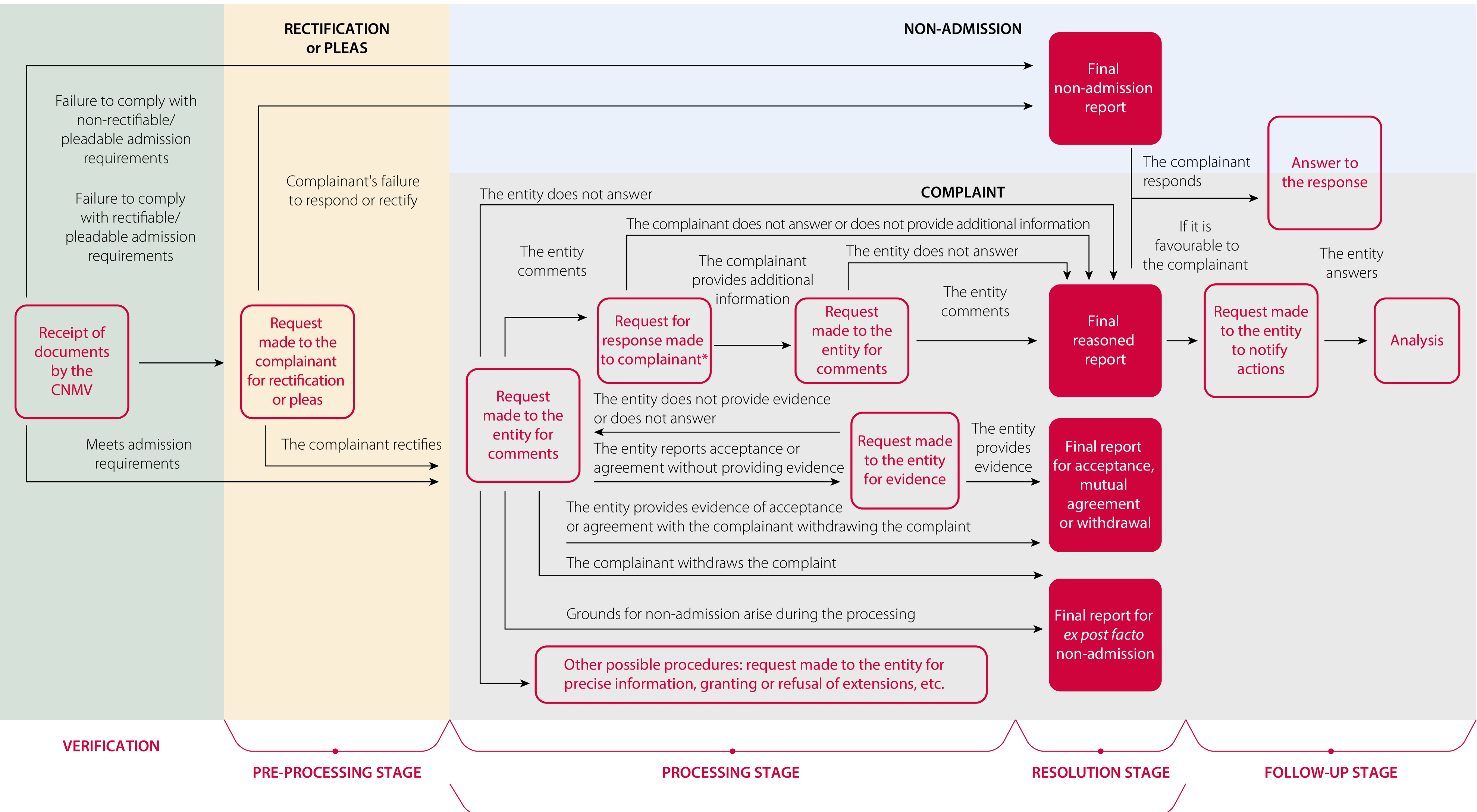
2.2.3 Follow-up stage

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, whom it informs of the deadline for presenting pleas to the CNMV Complaints Service.

2.3 Complaints resolved in 2020

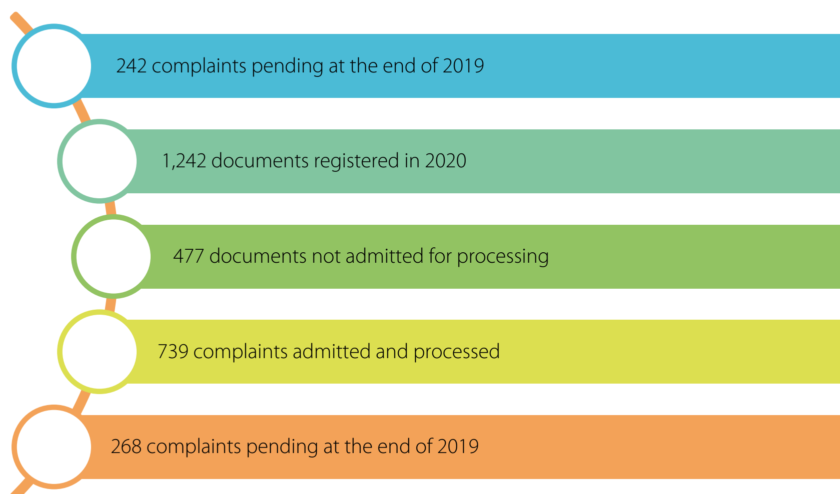
This chapter analyses how the documents received by the Complaints Service in 2020 were processed, differentiating between each of the above stages.

Complaints processed in full in 2020 TABLE 2

Number of documents

	No.
+ Complaints outstanding at year-end 2019	**242**
Outstanding non-admissions	2
Outstanding complaints	193
Outstanding requests for rectifications or pleas	47
Outstanding requests for rectifications or pleas that concluded in complaints	17
Outstanding requests for rectifications or pleas that concluded in non-admissions	30
+ Complaints submitted in 2020	**1,242**
Direct non-admissions	151
Direct complaints	520
Requests for rectifications or pleas	571
Requests for rectifications or pleas that concluded in complaints	241
Requests for rectifications or pleas that concluded in non-admissions	330
– Outstanding complaints at year-end 2020	**268**
Outstanding non-admissions	4
Outstanding complaints	218
Outstanding requests for rectifications or pleas	46
Outstanding requests for rectifications or pleas that concluded in complaints	14
Outstanding requests for rectifications or pleas that concluded in non-admissions	32
= Complaints completed in 2020	**1,216**

Source: CNMV.



2.3.1 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 pleas (PP).

Of the 242 complaints outstanding at 31 December 2019, 47 were in this pre-processing stage of requests for rectification or pleas, known as PRP (41 PR and 6 PP).

In addition, of the 1,242 complaints filed with the Complaints Service in 2020, the pre-processing stage was initiated in 571 cases (477 PR and 94 PP) began.

Lastly, as at 31 December 2020, 46 complaints (39 PR and 7 PP) were in this pre-processing stage.

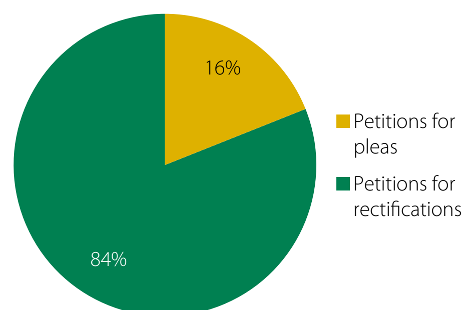
Consequently, in 2020 the pre-processing stage or PRP was concluded in 572 complaints submitted by investors (47 initiated in 2019 and 525 in 2020).

PRPs completed in 2020 TABLE 3

Number of complaints	
– Outstanding PRP in 2019	**47**
Petitions for rectifications	41
Petitions for pleas	6
+ PRP submitted in 2020	**571**
Petitions for rectifications	478
Petitions for pleas	93
– Outstanding PRP in 2020	**46**
Petitions for rectifications	39
Petitions for pleas	7
= PRP concluded in 2020	**572**

Source: CNMV.

Breakdown of PRPs concluded in 2020 FIGURE 9



Source: CNMV.

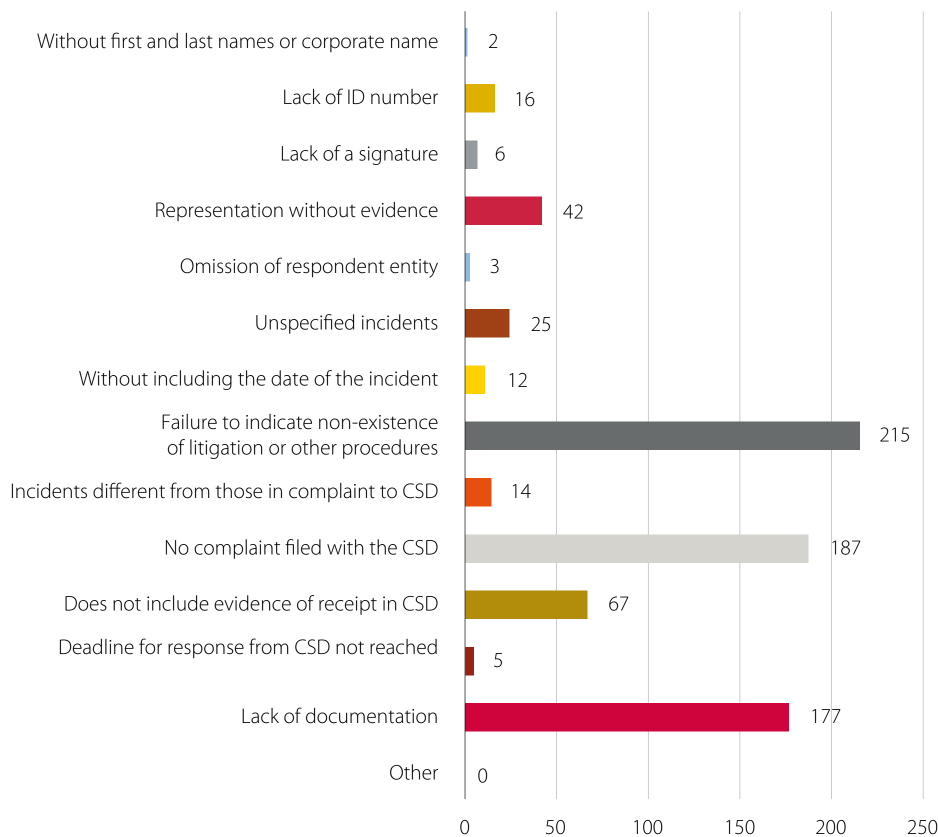
➢ Petition for rectification (PR)

A petition for rectification was made in 479 of the 572 complaints for which the pre-processing or PRP stage was concluded in 2020.

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

Grounds for petitions 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 (773) is greater than the number of processed petitions for rectification.

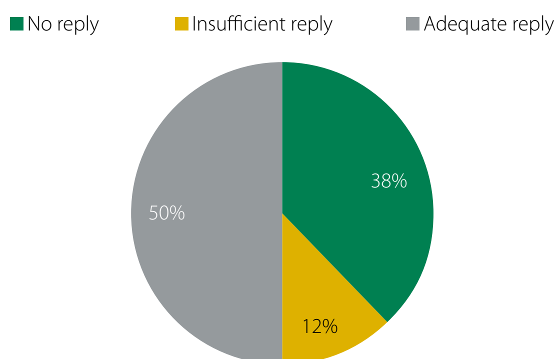
As shown in Figure 10, the most recurrent cause for rectification is that of not providing information about the processing of a complaint in parallel with judicial, administrative or arbitration proceedings for the same incidents that are the subject of the complaint (215 cases). To facilitate compliance with this requirement, the Complaints Service submits a pre-printed form along with the written petition for rectification. Submission of the duly completed form is sufficient to resolve this deficiency.

The second reason (187 cases) is the failure to demonstrate that the complainants had previously contacted the Customer Service Department of the respondent entity. The third reason for rectification (177 cases) is the failure to provide documentation supporting the incidents highlighted in the complaint. Demonstration that the complainant has previously filed a complaint with the CSD, together with the other three requirements linked to the CSD (86 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.

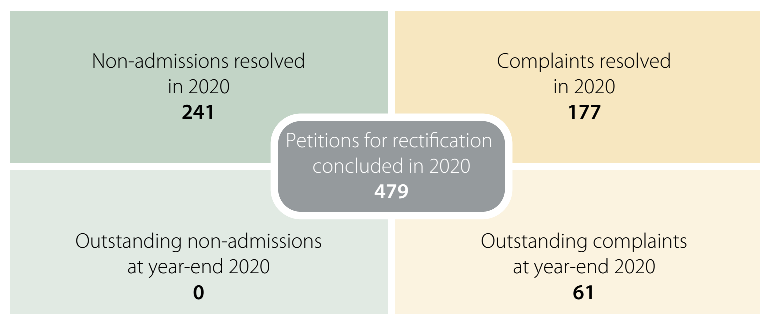
Half of the complainants properly rectified what was requested of them. However, there are also a significant number of cases in which the complainant does not answer the PR made (38%) or provides an insufficient response (12%), as shown in Figure 11.

Response to petitions for rectification FIGURE 11



Source: CNMV.

The final classification of the 479 complaints for which a PR was issued is shown below:



Likewise, it should be noted that at the end of 2020, there were 39 petitions for rectification outstanding, of which 13 were processed as complaints and 26 as non-admissions during the following year.

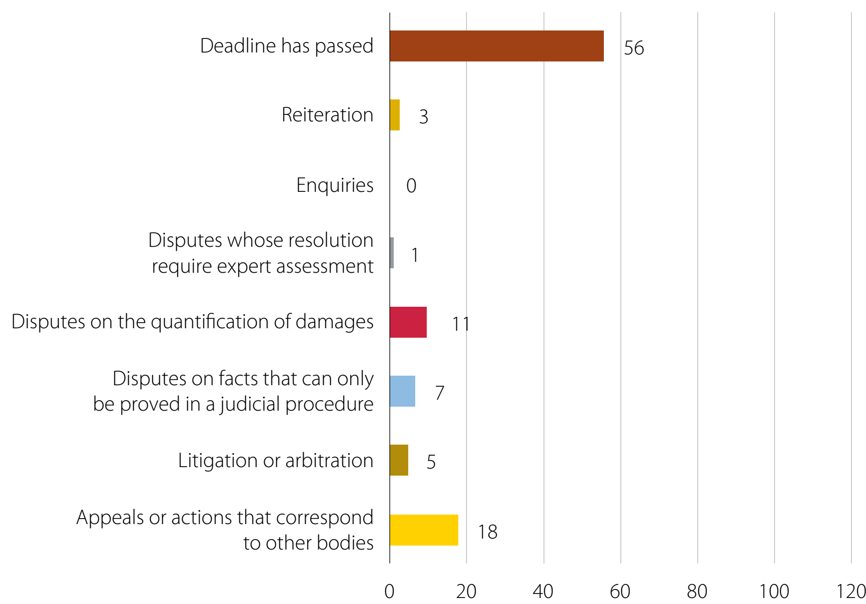
➢ Petition for pleas (PP)

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 not-for-profit entity) or 10 business days (if a legal person) to submit the pleas considered to be appropriate for the reason for non-admission. If the party involved does not answer or if the pleas submitted in response do not discredit the reason for non-admission, they will be notified of the closure and filing of the case. If, in contrast, the pleas received discredit the reason for the non-admission, the complaint will be admitted.

A petition for pleas was made in 93 of the 572 complaints for which the pre-processing or PRP stage was concluded in 2020.

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

Grounds for petitions for pleas FIGURE 12



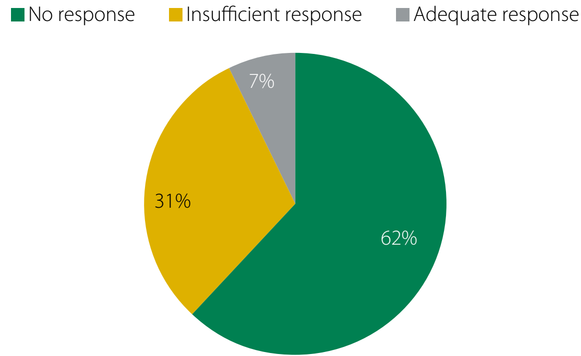
Source: CNMV.

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 pleas are requested (101) is fairly similar to the number of petitions for pleas processed (93).

In the case of petitions for pleas, 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 (56). Other notable reasons for non-admission, albeit with much lower figures, are the formulation of appeals or actions whose competence corresponds to other bodies (18), disputes over the economic quantification of the damages that could be due to the investor (11) and discrepancies over facts which can only be proved in a legal proceedings (7).

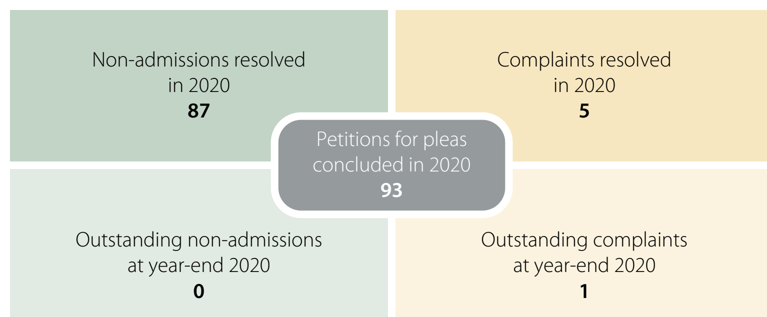
Complainants responded to less than half of the petitions for pleas formulated and in only 7% of them did the complainants to discredit the reason for non-admission and their complaints were therefore admitted.

Response to petitions for pleas FIGURE 13



Source: CNMV.

The final classification of the 93 complaints is as shown below:

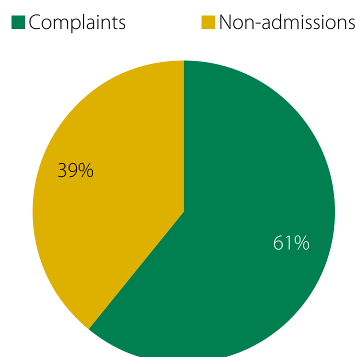


As of 31 December 2020, there were seven unclosed PP, of which one was processed as a complaint and six as non-admissions in the current year.

2.3.2 Final stage

In 2020, the Complaints Service concluded 1,216 proceedings, of which 477 were not admitted and 739 were processed as complaints with the issue of a final report.

Complaints concluded in 2020 FIGURE 14



Source: CNMV.

➢ Non-admissions

In 2020, the Complaints Service decided not to admit 477 requests to open complaint proceedings.

Non-admitted complaints concluded in 2020

TABLE 4

Number of complaints

	No.
+ Non-admitted complaints outstanding at year-end 2019	2
+ Non-admitted complaints in 2020	479
– Non-admitted complaints outstanding at year-end 2020	4
= Non-admitted complaints concluded in 2020	**477**

Source: CNMV.

The complaints submitted by investors may be directly non-admitted (151 proceedings) or non-admitted after the pre-processing stage, as explained in the previous point (326 proceedings).

Types of non-admissions

TABLE 5

Number of complaints

	No.	%
Direct non-admissions	**151**	**31.7**
Bank of Spain	49	10.3
Directorate-General for Insurance and Pension Funds	14	2.9
Against entities under the freedom to provide services regime from FIN-NET member countries	33	6.9
Against entities in free provision of services from non FIN-NET member countries	42	8.8
Other	13	2.7
Non-admission following petition to complainant for rectification/pleas	**326**	**68.3**
No response	239	50.1
Insufficient response	87	18.2
Total non-admissions	**477**	**100.0**

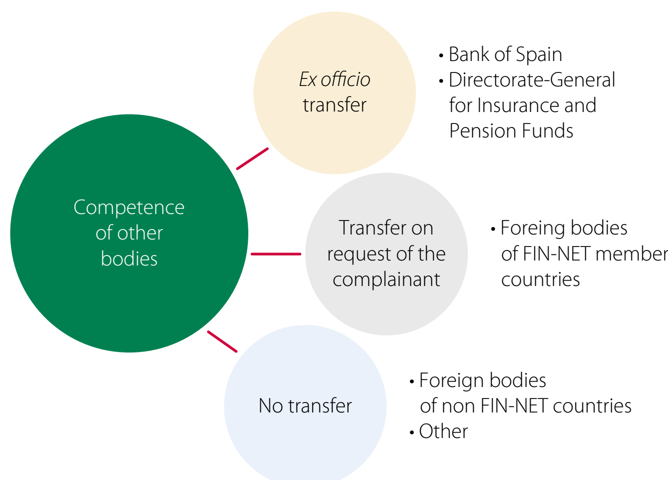
Source: CNMV.

Direct non-admissions occur mainly in two cases:

i) 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 its jurisdiction, and another national supervisor is responsible for assessing the incident (63 cases).

ii) 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 (75 cases).

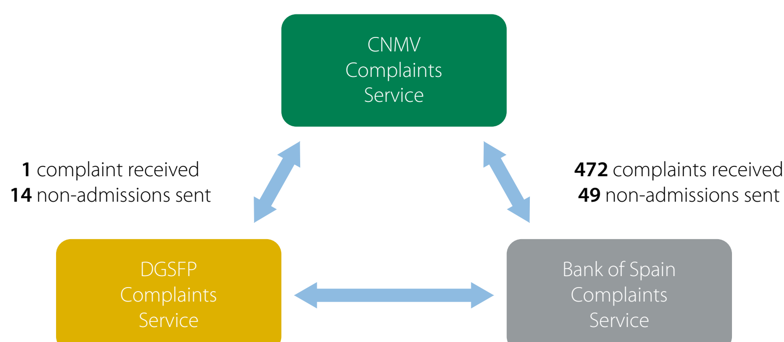
In the case of direct non-admissions, the Complaints Service may transfer the proceedings (*ex officio* or at the request of the complainant) or not, depending on the national or foreign body, as shown below:



With regard to national bodies, complaints relating to banking products or services correspond to the Bank of Spain's Market Conduct and Complaints Department, 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, 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 10.3% and 2.9% of total non-admissions completed, and 3.9% and 1.1% 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 freedom to provide financial services regime. The jurisdiction to rule on these facts corresponds to the country of origin of the respondent entity.

However, the 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 (EEA).[2]

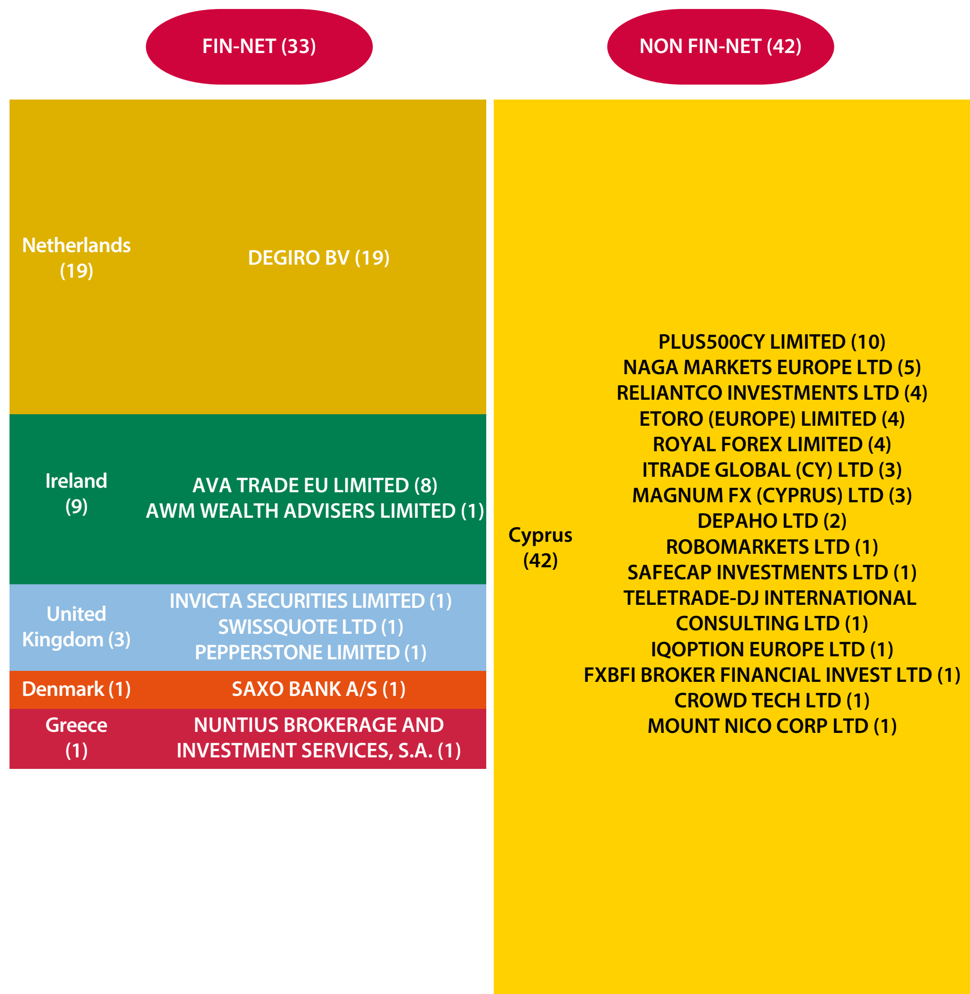
In the event that the country of origin of a respondent entity freely providing financial services belongs to the FIN-NET network, the Complaints Service informs the complainant that it is not competent to process the complaint. It also informs the complainant about the applicable legislation in this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

In 2020, 33 complaints (6.9% of total non-admissions) were filed against entities operating under the freedom to provide services regime, 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 17 cases.

For complaints filed against foreign entities that operate under the freedom to provide services regime but whose country of origin is not a member of FIN-NET, the Complaints Service provides the complainant with the same information indicated above, although in this case it does not offer them the possibility of managing the submission of their complaint to the corresponding supervisor.

In 2020, 42 cross-border complaints were received outside the scope of FIN-NET (8.8% of the total non-admissions concluded).

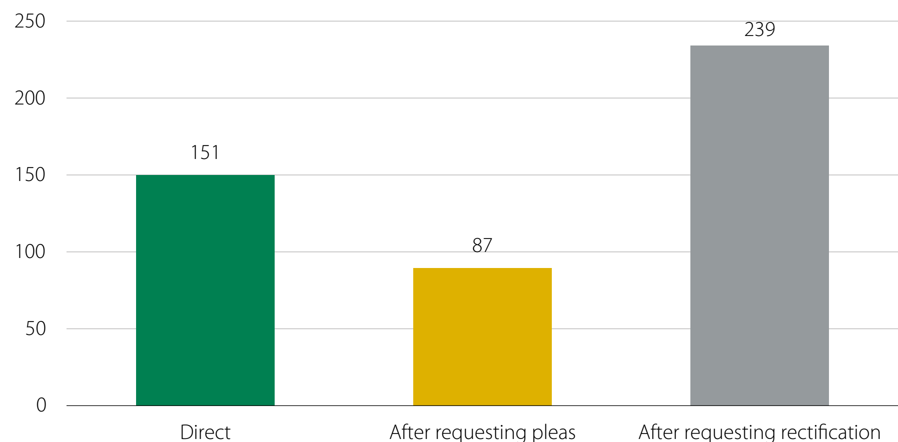
2 The purpose of the FIN-NET network is to ensure that the different systems responsible for resolving out-of-court complaints cooperate with each other, so that the consumer can obtain a faster response.



1 The United Kingdom has a financial mediation service associated with FIN-NET. Even though it belongs to a European country that is not part of the EEA. This authority has chosen to collaborate with the FIN-NET network and respect the essential principles of the European Union rules on alternative dispute resolution.

In addition to direct non-admissions, complaints filed by complainants who have gone through the pre-processing stage of pleas may finally be non-admitted if a reason for non-admission (87) or rectification (239) is noted.

Types of non-admissions FIGURE 15



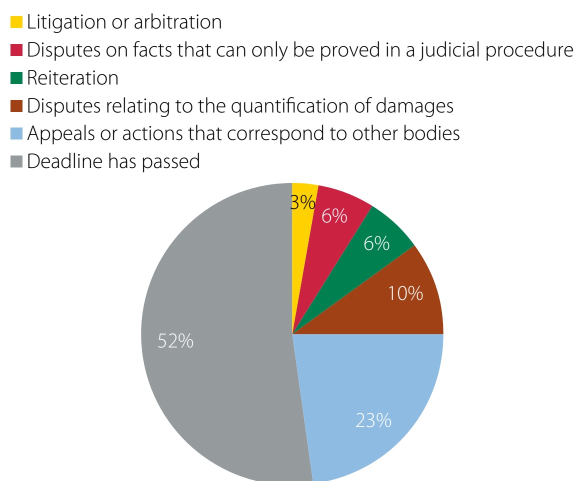
Source: CNMV.

Of the 87 proceedings in which pleas had been requested at the pre-processing stage and which were ultimately rejected, 58 received no response within the period

granted for that purpose, while in the remaining 29 proceedings the argument provided by the complainant did not discredit the reason for non-admission initially detected.

In these cases, the main cause of non-admission[3] was exceeding the deadline for submitting the complaint (16 cases). Other reasons for non-admission were the presentation of appeals or actions whose competence corresponds to other bodies (7 cases), disputes over the economic quantification of damages (3 cases), disputes over facts that can only be proved in a legal proceedings (2 cases), repetition (1 case) and litigation or arbitration (1 case). In all cases, the complainant was duly notified of the non-admission in a reasoned report.

Grounds for non-admission after petition for pleas FIGURE 16



Source: CNMV.

Of the 239 complaints not admitted after the petition for rectification, in 181 the complainant did not answer within the specific period granted for this purpose and in 58 cases a partial response was provided (with one requirement not rectified in 48 cases, two in nine cases and three in one case).

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

– Deficiencies in providing evidence that a prior complaint had been filed with the entity's CSD (38).

– Lack of documentation (14).

– Lack of a declaration that the incident was not subject to resolution or litigation before administrative, judicial or arbitration bodies (8).

– Failure to provide evidence of representation (3).

3 There was one reason for non-admission in all proceedings, except in two cases which both involved two reasons for non-admission.

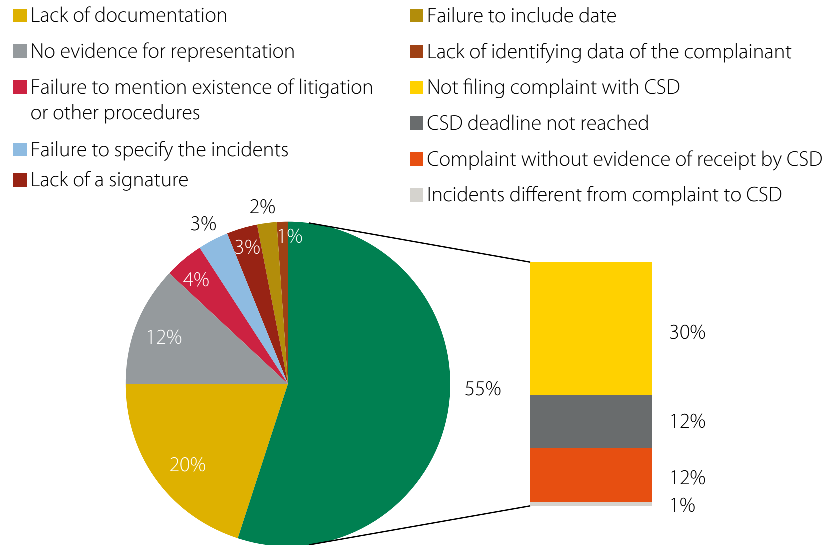
4 In some proceedings several requirements were not rectified.

– Facts not specified (2) or no mention of the date on which they occurred (1).

– Lack of identifying data of the complainant (1).

– Other (2).

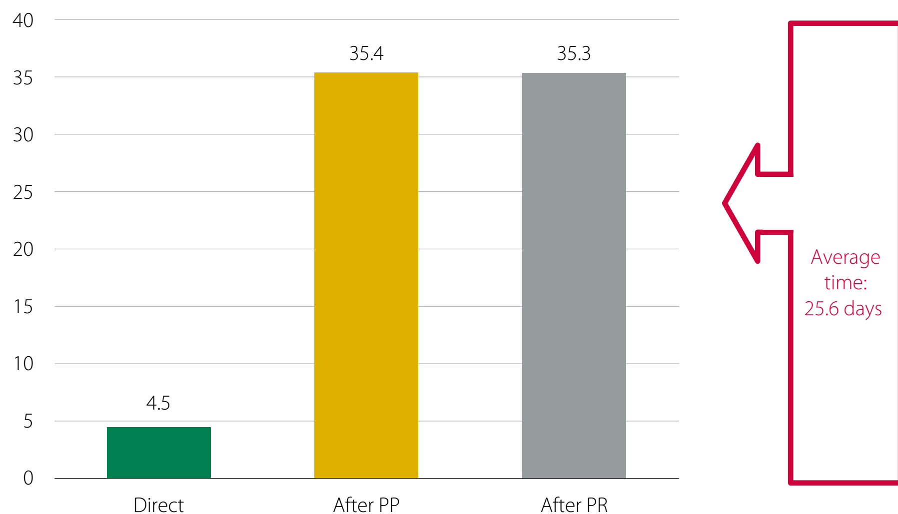
Reasons for non-admission not rectified after response FIGURE 17



Source: CNMV.

On average, direct non-admissions were resolved most quickly (5.2 days), followed by non-admissions deriving from a petition for pleas (36.7 days) and a petition for rectification (37.4 days). This is because for the latter two circumstances, a greater number of procedures must be carried out prior to non-admission.

Time to completion by type of non-admission FIGURE 18



Source: CNMV.

The average time to resolution for non-admissions was 25.6 days, compared to 29.7 days in 2019.

In this regard, it should be clarified that the period for processing complaint procedures was interrupted by the suspension agreed on in Royal Decree 463/2020, of 14 March, declaring the state of alarm for the management of the health crisis situation caused by COVID-19, which entered into force on the same day, 14 March; a situation that lasted until 27 April 2020, when the Executive Committee resolved to lift it. Consequently, the resolution periods have been calculated taking into account the above suspension period.

➢ Complaints

In 2020, 739 complaints that had been admitted for processing by the Complaints Service were resolved.

Complaints concluded in 2020

TABLE 6

Number of complaints

	No.
+ Outstanding complaints in 2019	193
+ Complaints initiated in 2020	764
– Outstanding complaints in 2020	218
= Complaints concluded in 2020	**739**

Source: CNMV.

Even when they are accepted, complaints may be terminated early without the Complaints Service 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 to the Complaints Service, such as judicial proceedings – in process or already concluded – for the incidents in the complaint).

In the rest of the cases, the complaints are resolved 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.

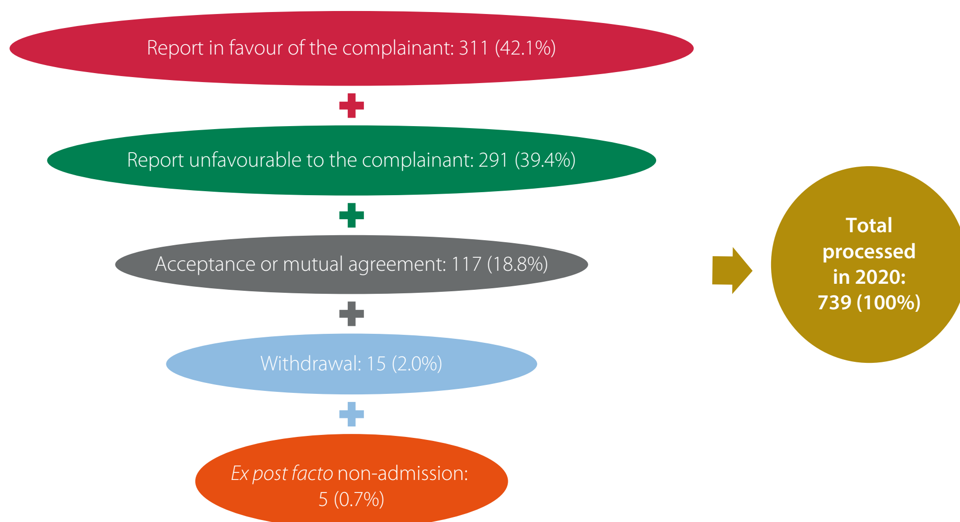
Resolution of complaints concluded in 2020

TABLE 7

Number of claims and complaints

	2018		2019		2020		% change
	No.	%	No.	%	No.	%	20/19
Processed without final reasoned report	**107**	**15.4**	**129**	**18.8**	**137**	**18.5**	**6.2**
Acceptance or mutual agreement	97	13.9	112	16.3	117	15.8	4.5
Withdrawal	7	1.0	12	1.7	15	2.0	25.0
Ex post facto non-admission	3	0.4	5	0.7	5	0.7	0.0
Processed with final reasoned report	**590**	**84.6**	**557**	**81.2**	**602**	**81.5**	**8.1**
Report favourable to the complainant	353	50.6	285	41.5	311	42.1	9.1
Report unfavourable to the complainant	237	34.0	272	39.7	291	39.4	7.0
Total processed	**697**	**100.0**	**686**	**100.0**	**739**	**100.0**	**7.7**

Source: CNMV.

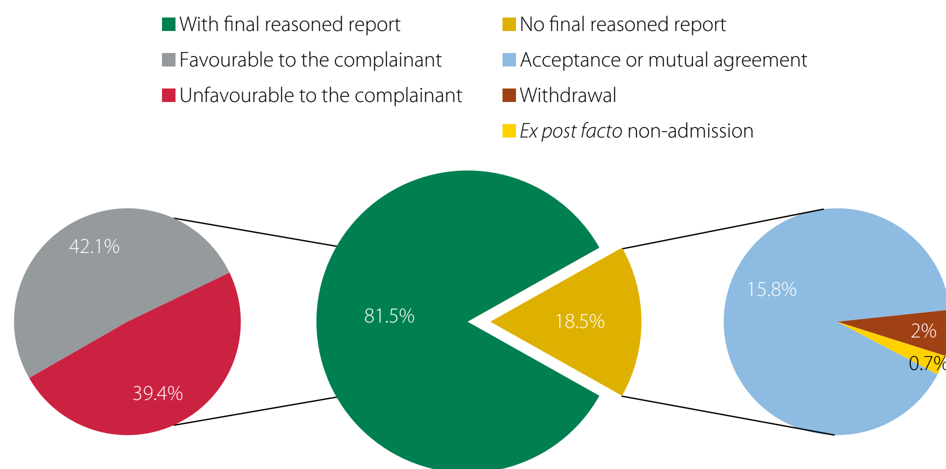


18.5% of the complaints concluded in 2020 did not require the issuance of a final reasoned report: 15.8% because the entity accepted the complainants' requests or a mutual agreement was reached between the two parties, 2% due to the complainant withdrawing the complaint and 0.7% due to *ex post facto* non-admission.

Of the 602 complaints that concluded with a final reasoned report (81.5% of those processed), the complainant obtained a report favourable to their complaint in 51.7% of cases and an unfavourable report in the remaining 48.3%.

Distribution of types of complaint resolution

FIGURE 19

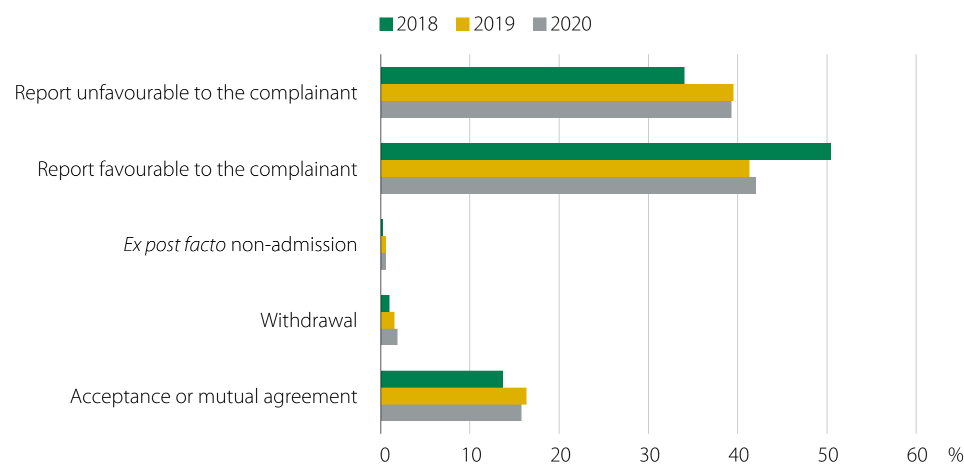


Source: CNMV.

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 figures in 2019 and 2020 are fairly similar and, compared to 2018, the percentage of reports unfavourable to the complainant has increased, which means that the number of reports favourable to the complainant has decreased.

Percentage changes in types of resolution[1]

FIGURE 20



Source: CNMV.

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

Complainants state in their complaints that they are dissatisfied 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 739 complaints concluded in 2020, a total of 1,017 causes of complaint were recorded, highlighting those related to the information provided about the product after its contracting (22.2%), the commissions charged by entities (20.1%) and purchase and sale orders for products (19.0%). With regard to the type of product, over half of the complaints resolved referred to collective investment schemes, while the other complaints related to different types of securities, such as capital instruments, bonds and financial derivatives.

Reasons for complaints concluded in 2020

TABLE 8

Investment service/reason	Reason	Securities	CIS	Total
Marketing/execution Advisory service Portfolio management	Appropriateness/suitability	31	65	**96**
	Prior information	43	84	**127**
	Purchase/sale orders	95	93	**188**
	Fees	111	88	**199**
	Transfers	18	69	**87**
	Follow-up information	117	84	**201**
	Ownership	12	8	**20**
Acquisition *mortis causa*	Appropriateness/suitability		1	**1**
	Prior information	1	1	**2**
	Purchase/sale orders	2	3	**5**
	Fees	5		**5**
	Transfers		2	**2**
	Follow-up information	8	17	**25**
	Ownership	11	25	**36**
CSD operation		**10**	**13**	**23**
Total		**464**	**553**	**1,017[1]**

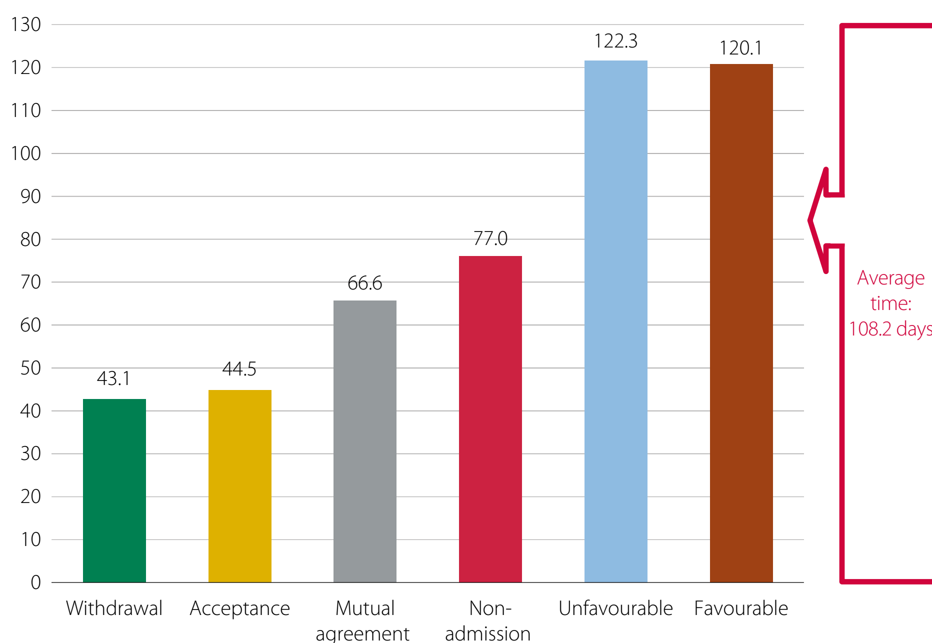
Source: CNMV.

1 There may be several reasons stated in the same claim or complaint file.

In regard to the processing time for complaints resolved with no final reasoned report, on average complainants withdrew in 43.7 days, entities fully accepted the complainant's petition in 45.5 days, an agreement was reached to the satisfaction of the complainant (mutual agreement) in 64.7 days and the proceedings were closed as a result of *ex post facto* non-admission in 78.2 days. Complaints that were resolved with a final reasoned report were processed on average in 122.7 days in cases that were unfavourable to the complainant and 120.2 days in cases that were favourable to the complainant.

In this regard, it should be noted that the issue of a final reasoned report requires an opinion on the underlying issues put forward in the complaint, and therefore a thorough study of all the documentation in the proceedings is required, 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 each complaint in order to be able to issue a reasoned decision in accordance with the circumstances of the case, which must conclude 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 completion of the complaints processed with a final reasoned report (favourable or unfavourable) was 121.2 days, compared to 120.12 days in 2019, 106.4 days in 2018 and 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 51 days, compared to 50.17 days in 2019, 52.5 days in 2018 and 67.5 days in 2017.

As indicated in the section on non-admissions, the period for processing the complaint procedures was interrupted by the suspension agreed in Royal Decree

463/2020, of 14 March, declaring the state of alarm for the management of the health crisis situation caused by COVID-19, which entered into force on the same day, 14 March; a situation that lasted until 27 April 2020, when the Executive Committee resolved to lift it.

Consequently, the deadlines for the resolution of the complaints have been calculated taking into account the above suspension period.

However, the 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 pleas, 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 provide documentation with evidence both of the result of the negotiations and that they have effectively taken place, reporting: i) that the term granted suspends the total term for processing the complaint and ii) that if within the term granted it does not provide the requested information, the procedure must continue with no further formalities.

2.3.3 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, according to prevailing regulations, 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 311 complaints resolved in 2020 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, 313 resolutions favourable to the complainant were issued.

Follow-up actions for reports favourable to the complainant

TABLE 9

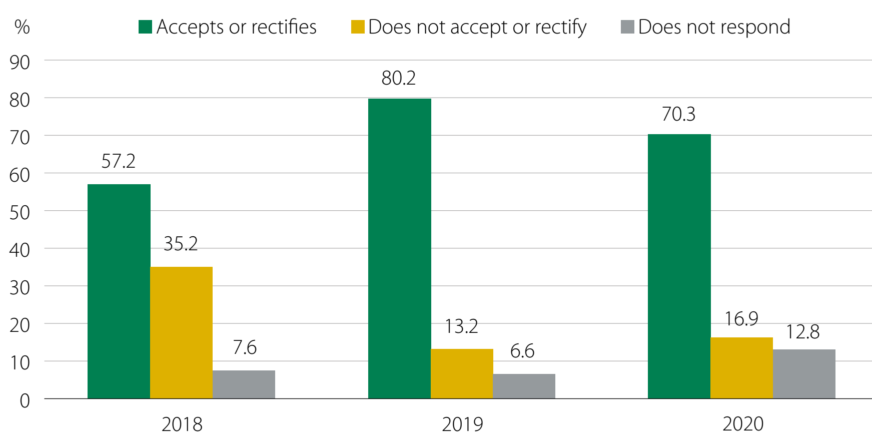
	Follow-up actions reported by the entity					Entities not reporting follow-up actions	
	Accepts criteria or rectifies		Does not accept or rectify				
Year	No.	%	No.	%	Total	No.	%
2018	203	57.2	125	35.2	328	27	7.6
2019	231	80.2	38	13.2	269	19	6.6
2020	220	70.3	53	16.9	273	40	12.8

Source: CNMV.

In 70.3% of the cases, respondent entities stated that they accepted the criteria and rectification of the situation referred to in the report.

Follow-up actions

FIGURE 22



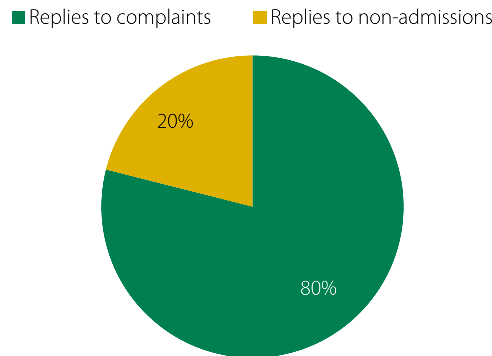
Source: CNMV.

➢ 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 2020, eight replies to non-admissions and 33 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.

2.3.4 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 the 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, mainly because the complainant 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 changes in the percentage of complaints relating to each entity with decisions favourable to the complainant and the percentage of acceptances and mutual agreements over the past three years are also shown.

➢ Ranking of entities by number of complaints resolved

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 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. The first nine positions are held by

Banco Santander, S.A. (151); Bankia, S.A. (88); CaixaBank, S.A. (86); Banco Bilbao Vizcaya Argentaria, S.A. (83); ING Bank NV, Sucursal en España (36); Ibercaja Banco, S.A. (28); Bankinter, S.A. (25); Banco de Sabadell, S.A. (23), and Andbank España, S.A. (23).

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.	151	BANCO SANTANDER, S.A.	144
		BANCO POPULAR ESPAÑOL, S.A.	6
		BANCO PASTOR, S.A.U.	1
2. BANKIA, S.A.	88		
3. CAIXABANK, S.A.	86		
4. BANCO BILBAO VIZCAYA ARGENTARIA, S.A.	83		
5. ING BANK NV, SUCURSAL EN ESPAÑA	36		
6. IBERCAJA BANCO, S.A.	28		
7. BANKINTER, S.A.	25		
8. BANCO DE SABADELL, S.A.	23		
9. ANDBANK ESPAÑA, S.A.	23		
10. UNICAJA BANCO, S.A.	19		
11. RENTA 4 BANCO, S.A.	15		
12. LIBERBANK, S.A.	13		
13. CA INDOSUEZ WEALTH (EUROPE), SUCURSAL EN ESPAÑA	13		
14. DEUTSCHE BANK, SOCIEDAD ANÓNIMA ESPAÑOLA	12		
15. KUTXABANK, S.A.	10		
16. SINGULAR BANK, S.A.	9		
17. CAJAMAR CAJA RURAL, SOCIEDAD COOPERATIVA DE CRÉDITO	9		
Other entities[1]	96		
Total	**739**		

Source: CNMV.
1 38 entities with fewer than eight complaints.

➢ Ranking of entities by time taken to read the complaint

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 is 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, ten calendar days after it has been made available, the entity has not accessed its content.[5]

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

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

Ranking of entities by time taken to read the notification of opening complaint procedures TABLE 11

Entity with which the complaint is processed	Calendar days
1. RENTA 4 BANCO, S.A.	12
2. BANKINTER, S.A.	9
3. CA INDOSUEZ WEALTH (EUROPE), SUCURSAL EN ESPAÑA	7
4. SINGULAR BANK, S.A.	5
5. LIBERBANK, S.A.	5
6. DEUTSCHE BANK, SOCIEDAD ANÓNIMA ESPAÑOLA	5
7. BANKIA, S.A.	4
8. KUTXABANK, S.A.	4
9. CAJAMAR CAJA RURAL, SOCIEDAD COOPERATIVA DE CRÉDITO	3
10. IBERCAJA BANCO, S.A.	2
11. BANCO BILBAO VIZCAYA ARGENTARIA, S.A.	2
12. BANCO SANTANDER, S.A.	1
13. BANCO DE SABADELL, S.A.	1
14. UNICAJA BANCO, S.A.	1
15. CAIXABANK, S.A.	1
16. ING BANK NV, SUCURSAL EN ESPAÑA	0
17. ANDBANK ESPAÑA, S.A.	0
Other entities[1]	3
Average	**3**

Source: CNMV.

1 38 entities with fewer than eight complaints.

Eight entities took longer to read the notifications than the average of three calendar days (Renta 4 Banco, S.A.; Bankinter, S.A.; CA Indosuez Wealth (Europe), Sucursal en España; Singular Bank, S.A.; Liberbank, S.A.; Deutsche Bank, Sociedad Anónima Española; Bankia, S.A. and Kutxabank, S.A.), one entity read the notifications within the general average term of three days (Cajamar Caja Rural, Sociedad Cooperativa de Crédito) and eight did so within a shorter than average period (Ibercaja Banco, S.A., Banco Bilbao Vizcaya Argentaria, S.A., Banco Santander, S.A., Banco de Sabadell, S.A., Unicaja Banco, S.A., CaixaBank, S.A., ING Bank NV, Sucursal en España and Andbank España, S.A.).

➢ Ranking of entities by time taken to respond

From the day following the date on which the entity accesses the notification, it has 21 calendar days (if the complaint is filed by a natural person or not-for-profit entity) or 15 business days (if the complainant is a legal person), to submit pleas on the issues raised by the complainant. These periods may be extended by half the initially granted time if requested before the end of that period.

In Table 12, to unify the calculation of periods, 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 pleas in 20 calendar days. Six of them answered within a longer period (CA Indosuez Wealth (Europe), Sucursal en España, Renta 4 Banco, S.A., Unicaja Banco, S.A., ING Bank NV, Sucursal en España, CaixaBank, S.A. and Bankinter, S.A.), two of them replied within the average (Bankia, S.A. and Banco Bilbao Vizcaya Argentaria, S.A.) and nine within a shorter period (Banco Santander, S.A.; Cajamar Caja Rural, Sociedad Cooperativa de Crédito, Andbank España, S.A., Liberbank, S.A., Deutsche Bank, Sociedad Anónima Española, Singular Bank, S.A., Kutxabank, S.A., Banco de Sabadell, S.A. and Ibercaja Banco, S.A.).

Ranking of entities by time taken to respond to the initial petition for pleas TABLE 12

Entity with which the complaint is processed	Calendar days
1. CA INDOSUEZ WEALTH (EUROPE), SUCURSAL EN ESPAÑA	55
2. RENTA 4 BANCO, S.A.	25
3. UNICAJA BANCO, S.A.	24
4. ING BANK NV, SUCURSAL EN ESPAÑA	21
5. CAIXABANK, S.A.	21
6. BANKINTER, S.A.	21
7. BANKIA, S.A.	20
8. BANCO BILBAO VIZCAYA ARGENTARIA, S.A.	20
9. BANCO SANTANDER, S.A.	19
10. CAJAMAR CAJA RURAL, SOCIEDAD COOPERATIVA DE CRÉDITO	19
11. ANDBANK ESPAÑA, S.A.	18
12. LIBERBANK, S.A.	17
13. DEUTSCHE BANK, SOCIEDAD ANÓNIMA ESPAÑOLA	16
14. SINGULAR BANK, S.A.	15
15. KUTXABANK, S.A.	15
16. BANCO DE SABADELL, S.A.	14
17. IBERCAJA BANCO, S.A.	12
Other entities[1]	19
Average	**20**

Source: CNMV.
1 38 entities with fewer than eight complaints.

Entities requested an extension to draw up their pleas on 111 occasions. All of them were granted. The entities requesting extensions were: Banco Santander, S.A. (40), CaixaBank, S.A. (27), Banco Bilbao Vizcaya Argentaria, S.A. (27), Unicaja Banco, S.A. (7), Bankia, S.A. (6), Ibercaja Banco, S.A. (2) and Bankinter, S.A. (2).

➢ 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). Eight entities had percentages of reports favourable to the complainant above the general average of 57.1% (CA Indosuez Wealth (Europe), Sucursal en España, Andbank España, S.A., Singular Bank, S.A., Deutsche Bank, Sociedad Anónima Española, Bankinter, S.A., ING Bank NV, Sucursal en España, Liberbank, S.A. and Banco Santander, S.A.) and nine had a percentage that is lower than this average (Kutxabank, S.A., CaixaBank, S.A., Ibercaja Banco, S.A., Bankia, S.A., Banco de Sabadell, S.A., Banco Bilbao Vizcaya Argentaria, S.A., Renta 4 Banco, S.A., Cajamar Caja Rural, Sociedad Cooperativa de Crédito and Unicaja Banco, S.A.).

Ranking of entities by percentage of decisions favourable to the complainant TABLE 13

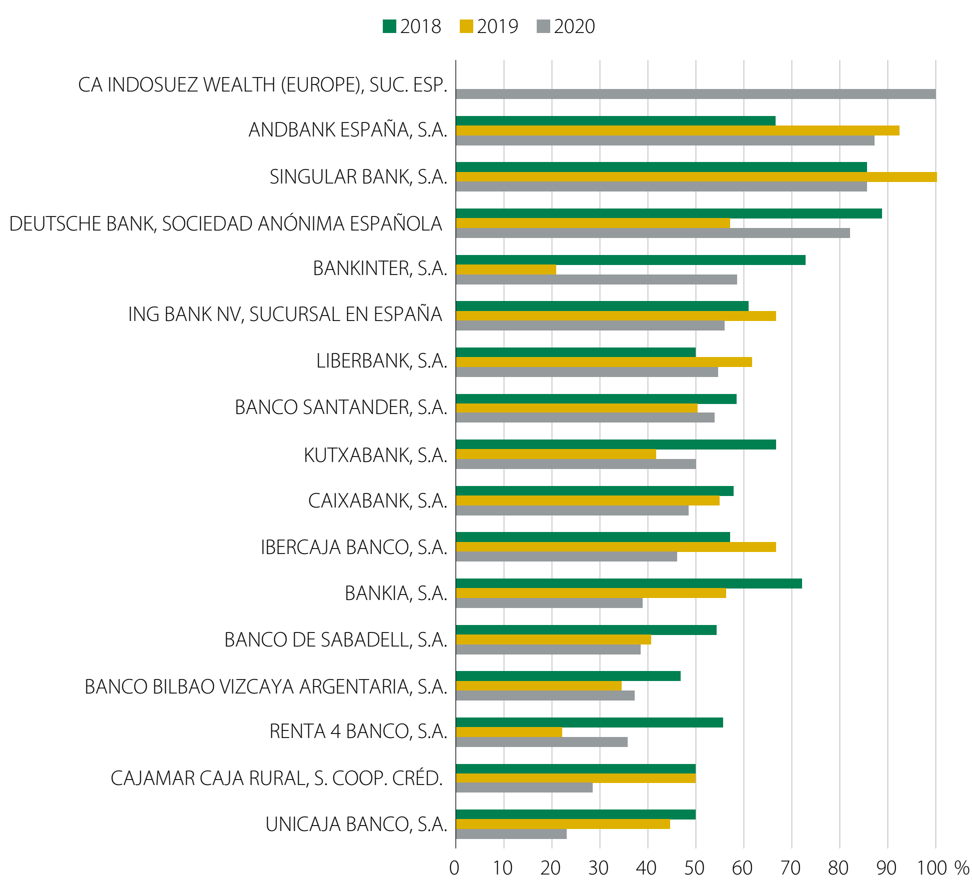
Entity against which the complaint is processed	% favourable	Entity responsible for the incidents	Unfavourable	Favourable	% favourable
1. CA INDOSUEZ WEALTH (EUROPE), SUCURSAL EN ESPAÑA	100.0			13	100.0
2. ANDBANK ESPAÑA, S.A.	87.0		3	20	87.0
3. SINGULAR BANK, S.A.	85.7		1	6	85.7
4. DEUTSCHE BANK, SOCIEDAD ANÓNIMA ESPAÑOLA	81.8		2	9	81.8
5. BANKINTER, S.A.	58.3		10	14	58.3
6. ING BANK NV, SUCURSAL EN ESPAÑA	56.0		11	14	56.0
7. LIBERBANK, S.A.	54.5		5	6	54.5
8. BANCO SANTANDER, S.A.	53.8	BANCO SANTANDER, S.A.	58	69	54.3
		BANCO POPULAR ESPAÑOL, S.A.	3	1	25.0
		BANCO PASTOR, S.A.U.		1	100.0
9. KUTXABANK, S.A.	50.0		4	4	50.0
10. CAIXABANK, S.A.	48.4		33	31	48.4
11. IBERCAJA BANCO, S.A.	46.2		14	12	46.2
12. BANKIA, S.A.	38.7		38	24	38.7
13. BANCO DE SABADELL, S.A.	38.5		8	5	38.5
14. BANCO BILBAO VIZCAYA ARGENTARIA, S.A.	37.3		42	25	37.3
15. RENTA 4 BANCO, S.A.	35.7		9	5	35.7
16. CAJAMAR CAJA RURAL, SOCIEDAD COOPERATIVA DE CRÉDITO	28.6		5	2	28.6
17. UNICAJA BANCO, S.A.	23.1		10	3	23.1
Other entities[1]	57.0		37	49	57.0
Total	**51.7**		**293**	**313**	**51.7**

Source: CNMV.

1 38 entities with fewer than eight 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. The trend marked by the entities is uneven, with the exception of CaixaBank, S.A., Bankia, S.A. and Banco de Sabadell, S.A., which showed a lower number of decisions in favour of the complainant.

Trends in the percentage[1] of decisions favourable to the complainant by entity FIGURE 24



Source: CNMV.

1 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. Bankia, S.A., Banco Santander, S.A. CaixaBank, S.A., Banco Bilbao Vizcaya Argentaria, S.A., ING Bank NV, Sucursal en España and Banco de Sabadell, S.A. stand out as the entities with the highest number of acceptances and mutual agreements, while Andbank España, S.A. and CA Indosuez Wealth (Europe), Sucursal en España, did not report any acceptances or mutual agreements with their clients in this period.

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. BANKIA, S.A.	26		20	6	26
2. BANCO SANTANDER, S.A.	18	BANCO SANTANDER, S.A.	12	5	17
		BANCO POPULAR ESPAÑOL, S.A.		1	1
3. CAIXABANK, S.A.	15		11	4	15
4. BANCO BILBAO VIZCAYA ARGENTARIA, S.A.	11		6	5	11
5. ING BANK NV, SUCURSAL EN ESPAÑA	11		8	3	11
6. BANCO DE SABADELL, S.A.	10		9	1	10
7. UNICAJA BANCO, S.A.	6		5	1	6
8. KUTXABANK, S.A.	2		1	1	2
9. IBERCAJA BANCO, S.A.	2		1	1	2
10. CAJAMAR CAJA RURAL, SOCIEDAD COOPERATIVA DE CRÉDITO	2		1	1	2
11. RENTA 4 BANCO, S.A.	1		1		1
12. DEUTSCHE BANK, SOCIEDAD ANÓNIMA ESPAÑOLA	1			1	1
13. LIBERBANK, S.A.	1		1		1
14. BANKINTER, S.A.	1		1		1
15. SINGULAR BANK, S.A.	1			1	1
16. ANDBANK ESPAÑA, S.A.	0				0
17. CA INDOSUEZ WEALTH (EUROPE), SUCURSAL EN ESPAÑA	0				0
Other entities[1]	10		6	4	10
Total	**118**		**83**	**35**	**118**

Source: CNMV.

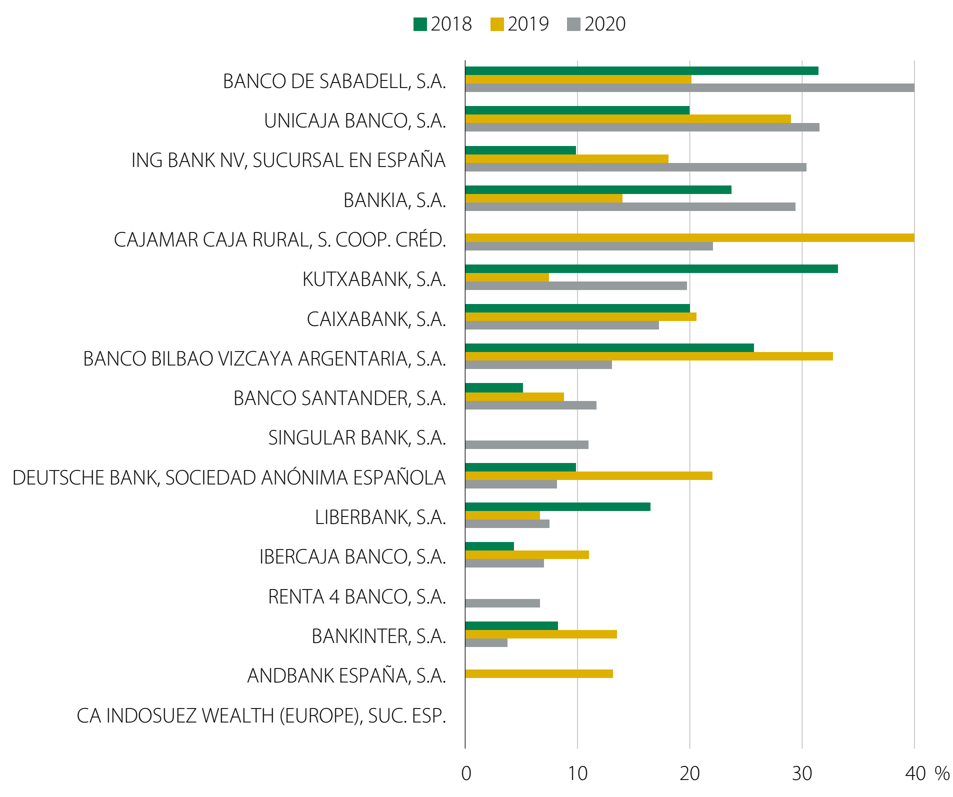
1 38 entities with fewer than eight complaints.

Figure 25 ranks the entities by percentage of acceptances/mutual agreements reached in 2020, presenting a comparison with the two previous years.

In 2020, Banco de Sabadell, S.A., Unicaja Banco, S.A. and ING Bank NV, Sucursal en España showed a percentage of acceptances and mutual agreements of over 30%, followed by Bankia, S.A., Cajamar Caja Rural, Sociedad Cooperativa de Crédito and Kutxabank, S.A., with a percentage of between 30% and 20%, and CaixaBank, S.A., Banco Bilbao Vizcaya Argentaria, S.A., Banco Santander, S.A. and Singular Bank, S.A., with a percentage between 20% and 10%. Deutsche Bank, Sociedad Anónima Española; Liberbank, S.A., Ibercaja Banco, S.A., Renta 4 Banco, S.A. and Bankinter, S.A. had a percentage of less than 10%. As previously mentioned, Andbank España, S.A. and CA Indosuez Wealth (Europe), Sucursal en España, saw no acceptances or mutual agreements with their clients in this period.

A comparison of 2019 and 2020, shows an upward trend in Unicaja Banco, S.A., ING Bank NV, Sucursal en España and Banco Santander, S.A. Meanwhile, Singular Bank, S.A. and Renta 4 Banco saw some acceptances or mutual agreements in 2020 and Andbank España, S.A. did in 2019, although they saw none in the remaining years. CA Indosuez Wealth (Europe), Sucursal en España has seen no acceptance or mutual agreements in the last three years.

Trends in the percentage of acceptances/mutual agreements[1] by entity FIGURE 25



Source: CNMV.

1 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 conclude with the Complaints Service issuing a final reasoned report, where the complainant is notified and the report is 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 the entities responded to this request for information in 87.2% of the cases on average. The response rate of nine of the entities listed in the table was above average, and in eight 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. ANDBANK ESPAÑA, S.A.	100.0			20	20	100.0
2. BANCO BILBAO VIZCAYA ARGENTARIA, S.A.	100.0			25	25	100.0
3. BANCO DE SABADELL, S.A.	100.0			5	5	100.0
4. CAIXABANK, S.A.	100.0			31	31	100.0
5. CAJAMAR CAJA RURAL, SOCIEDAD COOPERATIVA DE CRÉDITO	100.0			2	2	100.0
6. ING BANK NV, SUCURSAL EN ESPAÑA	100.0			14	14	100.0
7. LIBERBANK, S.A.	100.0			6	6	100.0
8. BANCO SANTANDER, S.A.	98.6	BANCO SANTANDER, S.A.	1	68	69	98.6
		BANCO PASTOR, S.A.U.		1	1	100.0
		BANCO POPULAR ESPAÑOL, S.A.		1	1	100.0
9. BANKIA, S.A.	87.5		3	21	24	87.5
10. CA INDOSUEZ WEALTH (EUROPE), SUCURSAL EN ESPAÑA	84.6		2	11	13	84.6
11. IBERCAJA BANCO, S.A.	83.3		2	10	12	83.3
12. SINGULAR BANK, S.A.	83.3		1	5	6	83.3
13. RENTA 4 BANCO, S.A.	80.0		1	4	5	80.0
14. DEUTSCHE BANK, SOCIEDAD ANÓNIMA ESPAÑOLA	77.8		2	7	9	77.8
15. BANKINTER, S.A.	71.4		4	10	14	71.4
16. UNICAJA BANCO, S.A.	66.7		1	2	3	66.7
17. KUTXABANK, S.A.	0.0		4		4	0.0
Other entities[1]	61.2		19	30	49	61.2
Total	**87.2**		**40**	**273**	**313**	**87.2**

Source: CNMV.

1 38 entities with fewer than eight 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 resulting from their failure to respond (non-acceptance of criteria).

The average percentage of acceptance of criteria or rectification of the complainant's situation in 2020 was 70.3% – eight entities are above this average and nine 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	% acceptance	Entity responsible for the incidents	Acceptance or mutual agreement/ rectification	No acceptance or mutual agreement/ rectification	No response	Total	% acceptance
1. BANCO DE SABADELL, S.A.	100.0		5			5	100.0
2. CAIXABANK, S.A.	100.0		31			31	100.0
3. LIBERBANK, S.A.	100.0		6			6	100.0
4. BANCO BILBAO VIZCAYA ARGENTARIA, S.A.	96.9		24	1		25	96.0
5. ING BANK NV, SUCURSAL EN ESPAÑA	92.9		13	1		14	92.9
6. BANCO SANTANDER, S.A.	84.5	BANCO SANTANDER, S.A.	60	8	1	69	87.0
		BANCO PASTOR, S.A.U.		1		1	0.0
		BANCO POPULAR ESPAÑOL, S.A.		1		1	0.0
7. BANKIA, S.A.	83.3		20	1	3	24	83.3
8. IBERCAJA BANCO, S.A.	75.0		9	1	2	12	75.0
9. SINGULAR BANK, S.A.	66.7		4	1	1	6	66.7
10. UNICAJA BANCO, S.A.	66.7		2		1	3	66.7
11. BANKINTER, S.A.	64.3		9	1	4	14	64.3
12. DEUTSCHE BANK, SOCIEDAD ANÓNIMA ESPAÑOLA	55.6		5	2	2	9	55.6
13. CAJAMAR CAJA RURAL, SOCIEDAD COOPERATIVA DE CRÉDITO	50.0		1	1		2	50.0
14. RENTA 4 BANCO, S.A.	40.0		2	2	1	5	40.0
15. ANDBANK ESPAÑA, S.A.	20.0		4	16		20	20.0
16. CA INDOSUEZ WEALTH (EUROPE), SUCURSAL EN ESPAÑA	0.0			11	2	13	0.0
17. KUTXABANK, S.A.	0.0				4	4	0.0
Other entities[1]	51.0		25	5	19	49	51.0
Total	**70.3**		**220**	**53**	**40**	**313**	**70.3**

Source: CNMV.

1 38 entities with fewer than eight complaints.

2.4 Information provided by the entities

As in recent years, prior to the preparation of this Annual Report, the CSDs of the entities providing investment services against which six or more complaints had been processed in 2020 were requested to supply information on certain issues. The aim of this request is for the report to continue reflecting, with data provided directly by the entities themselves, the effort being made by these Customer Service Departments each year 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 carried out regarding complaints filed with the CSD before they are filed with the Complaints Service. This information is intended to analyse how CSDs attend and respond to their clients in the first instance.

– Action carried out by the CSD once the complaints have already been submitted to the Complaints Service. The purpose of this information is to ascertain the number of investors per entity that are not satisfied with the response received in the first stage and go on to this second stage to try to obtain satisfaction.

The information provided by the CSDs of the entities[6] to the requests of the Complaints Service is assessed below. The aim of this analysis is to provide an approximate overview of the actions carried out by the CSDs. 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 information requested, even though this year clearer guidelines have been given about what should be included in the information provided, in order to ensure a certain level of harmonisation.

The conclusions shown in Table 17 were obtained from the information provided by the entities.

– The CSDs that received the most complaints in 2020 were: Banco Santander, S.A. (26,191), Banco Bilbao Vizcaya Argentaria, S.A. (1,781), CaixaBank, S.A. (1,137), Bankia, S.A. (1,031), Bankinter, S.A. (882) and ING Bank NV, Sucursal en España (860).

– There was a decrease in the number of complaints filed with the customer ombudsman by clients of entities with this figure. The customer ombudsman of Banco Bilbao Vizcaya Argentaria, S.A. processed the largest number of complaints in terms of number and proportion (263, 12.9% of the complaints received by the entity). In the rest of the entities with a customer ombudsman, the number of complaints file was lower. However, an analysis of the number of complaints processed by the customer ombudsman as a percentage of total complaints received by the entity, would show the following results. Banco de Sabadell, S.A. (31 complaints, representing 6.0% of total complaints received by the entity); Bankinter, S.A. (30 complaints, 3.3% of the total received); Deutsche Bank, SAE (4 complaints, 2.7% of the total), Open Bank, S.A. (2 complaints, 1.6% of the total) and lastly Banco Santander, S.A. (134 complaints, 0.5% of the total). As indicated above, the remainder of the entities analysed do not have a customer ombudsman.

– In general, according to data provided by the entities, the percentage of complaints raised to the Complaints Service in the same year, after passing through the entity's CSD or customer ombudsman, is very low. In 2020, the average number of complaints raised to the Complaints Service, after going through the CSD or customer ombudsman, was 1.7%. However, two entities amply exceed this average: Ibercaja Banco, S.A. (24 complaints, 35.3% of the total) and Renta 4 Banco, S.A. (18 complaints, 34.6% of the total).

6 All entities responded to the request for information except CA Indosuez Wealth (Europe), Sucursal en España.

It should be noted that the number of complaints received or processed by the Complaints Service in 2020 was much higher than the number reported by the entities. This is because complainants have a period of one year, if they are a natural person or a not-for-profit entity, after receiving a reply from the CSD, or the period available to reply to the complaint, to approach the Complaints Service. This means that the complaints processed by the CNMV in 2020 may have originated in incidents resolved by the CSD or customer ombudsman in that year or in incidents resolved in the previous year, which would explain the difference in the data processed.

Additionally, if the data provided by the entities in 2020 are compared with the data provided in 2019, the following conclusions can be drawn:

- The number of complaints filed in 2020 with the CSDs was much higher than in 2019. Banco Santander, S.A. stands out here, with more than double the number of complaints received (11,474 in 2019 compared to 26,191 in 2020). The number of complaints received by Renta 4 Banco also doubled in 2020 compared to the previous year (25 in 2019 compared to 52 in 2020).

- In contrast, there was a sizeable decrease in the number of complaints received by Novo Banco, Sucursal en España (26 in 2019 compared to 15 in 2020), Deutsche Bank, SAE (219 in 2019 vs. 143 in 2020) and Liberbank, S.A. (165 in 2019 vs. 115 in 2020).

- The number of complaints resolved by the customer ombudsman of Banco Bilbao Vizcaya Argentaria, S.A. (170 in 2019 compared to 263 in 2020) and Banco Santander, S.A. (97 in 2019 compared to 134 in 2020) increased.

- However, the customer ombudsman of Deutsche Bank, SAE saw a substantial drop in activity (34 complaints in 2019 compared to 4 in 2020). The activity of the customer ombudsman also decreased in the case of Banco de Sabadell, S.A. (48 complaints in 2019 compared to 31 in 2020) and Bankinter, S.A. (43 complaints in 2019 compared to 30 in 2020), albeit to a lesser extent.

- The customer ombudsman of Open Bank, S.A., resolved two complaints, compared to zero in 2019.

Complaints filed relating to the securities market

TABLE 17

	No. of complaints relating to securities market issues received in 2020			No. of complaints received by the Complaints Service in 2020	%[1]
	By the CSD	By the CO	By the CSD or CO		
ABANCA CORPORACIÓN BANCARIA, S.A.	179	0	179	7	3.9
ANDBANK ESPAÑA, S.A.	186	0	186	19	10.2
BANCO BILBAO VIZCAYA ARGENTARIA, S.A.	1,781	263	2,044	93	4.5
BANCO DE SABADELL, S.A.	489	31	520	20	3.8
BANCO SANTANDER, S.A.	26,191	134	26,325	137	0.5
BANKIA, S.A.	1,031	0	1,031	89	8.6
BANKINTER, S.A.	892	30	922	30	3.3
CA INDOSUEZ WEALTH (EUROPE), SUCURSAL EN ESPAÑA[2]					
CAIXABANK, S.A.	1,137	0	1,137	43	3.8
CAJAMAR CAJA RURAL, SOCIEDAD COOPERATIVA DE CRÉDITO	32	0	32	7	21.9
DEUTSCHE BANK, SOCIEDAD ANÓNIMA ESPAÑOLA	143	4	147	8	5.4
IBERCAJA BANCO, S.A.	68	0	68	24	35.3
ING BANK NV, SUCURSAL EN ESPAÑA	860	0	860	35	4.1
KUTXABANK, S.A.	57	0	57	8	14.0
LIBERBANK, S.A.	115	0	115	9	7.8
NOVO BANCO, S.A., SUCURSAL EN ESPAÑA	15	0	15	2	13.3
OPEN BANK, S.A.	127	2	129	7	5.4
RENTA 4 BANCO, S.A.	52	0	52	18	34.6
SINGULAR BANK, S.A.	103	0	103	12	11.7
UNICAJA BANCO, S.A.	285	0	285	22	7.7
X-TRADE BROKERS DOM MAKLERSKI, S.A., SUCURSAL EN ESPAÑA	486	0	486	2	0.4
Total	**34,229**	**464**	**34,693**	**592**	**1.7**

Source: Data provided by the entities.

1 Percentage of complaints received by CSDs or COs in 2020 that were subsequently submitted to the Complaints Service.

2 CA Indosuez Wealth (Europe), Sucursal en España has not submitted the requested information.

Once a client submits a complaint to the entity's CSD, this department has to check that it meets all the requirements to be admitted. Based on the information provided by the entities, the following conclusions can be drawn:[7]

– There were more than one hundred non-admissions by the CSDs of the two entities that presented the highest number of complaints: Banco Bilbao Vizcaya Argentaria, S.A. (265 of 1,781) and Banco Santander, S.A. (422 of 26,191).

  In percentage terms, i.e., the number of non-admissions with respect to the number of complaints filed with the CSD, this would be equal to or greater than 10% in: Banco Bilbao Vizcaya Argentaria, S.A. (14.9%), Liberbank, S.A. (12.2%), Banco de Sabadell, S.A. (10.8%), Deutsche Bank, SAE (10.5%) and Abanca Corporación Bancaria, S.A. (10.1%).

7 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.

The CSDs of Kutxabank, S.A., Openbank, S.A., Singular Bank, S.A., Unicaja Banco, S.A. and X-Trade Brokers Dom Malerski, S.A., Sucursal en España, did not reject any complaints submitted to them.

– In relation to non-admissions by the customer ombudsman, the number of complaints not admitted by the CO of Banco de Sabadell, S.A. (14 of a total of 31) and Deutsche Bank, SAE (3 of a total of 4) stand out.

Complaints relating to the securities market not admitted by entities in 2020 TABLE 18

	CSD			CO		
	Not admitted	Received	%[1]	Not admitted	Received	%[1]
ABANCA CORPORACIÓN BANCARIA, S.A.	18	179	10.1	0	0	–
ANDBANK ESPAÑA, S.A.	13	186	7.0	0	0	–
BANCO BILBAO VIZCAYA ARGENTARIA, S.A.	265	1,781	14.9	7	263	2.7
BANCO DE SABADELL, S.A.	53	489	10.8	14	31	45.2
BANCO SANTANDER, S.A.	422	26,191	1.6	0	134	0.0
BANKIA, S.A.	33	1,031	3.2	0	0	–
BANKINTER, S.A.	16	892	1.8	1	30	3.3
CA INDOSUEZ WEALTH (EUROPE), SUCURSAL EN ESPAÑA[2]						
CAIXABANK, S.A.	83	1,137	7.3	0	0	–
CAJAMAR CAJA RURAL, SOCIEDAD COOPERATIVA DE CRÉDITO	2	32	6.3	0	0	–
DEUTSCHE BANK, SOCIEDAD ANÓNIMA ESPAÑOLA	15	143	10.5	3	4	75.0
IBERCAJA BANCO, S.A.	2	68	2.9	0	0	–
ING BANK NV, SUCURSAL EN ESPAÑA	29	860	3.4	0	0	–
KUTXABANK, S.A.	–	57	0.0	0	0	–
LIBERBANK, S.A.	14	115	12.2	0	0	–
NOVO BANCO, S.A., SUCURSAL EN ESPAÑA	1	15	6.7	0	0	–
OPEN BANK, S.A.	–	127	0.0	0	2	–
RENTA 4 BANCO, S.A.	2	52	3.8	0	0	–
SINGULAR BANK, S.A.	–	103	0.0	0	0	–
UNICAJA BANCO, S.A.	–	285	0.0	0	0	–
X-TRADE BROKERS DOM MAKLERSKI, S.A., SUCURSAL EN ESPAÑA	–	486	0.0	0	0	–
Total	**968**	**34,229**	**2.8**	**25**	**464**	**5.4**

Source: Data provided by the entities.
1 Percentage of complaints not admitted as a percentage of the complaints received.
2 CA Indosuez Wealth (Europe), Sucursal en España has not submitted the requested information.

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

– In clear relation to the number of complaints received, the CSD that resolved the most cases was that of Banco Santander, S.A. (24,596) followed by Banco Bilbao Vizcaya Argentaria, S.A. (1,477).

– Regarding the result obtained by the complainant from the CSD, the following entities saw a percentage of more than 40% of cases resolved in favour of their clients: Open Bank, S.A. (76.6%), Renta 4 Banco, S.A. (60%), Unicaja Banco,

S.A. (54.0%), Andbank España, S.A. (45.8%), Banco Bilbao Vizcaya Argentaria, S.A. (42.7%) and Liberbank, S.A. (40.9%).

– The customer ombudsman that resolved the largest number of complaints in 2020 was that of Banco Bilbao Vizcaya Argentaria, S.A. (252), followed by those of Banco Santander, S.A. (117), Bankinter, S.A. (29), Banco de Sabadell, S.A. (18), Deutsche Bank, SAE (8) and Open Bank, S.A. (2).

– The customer ombudsman that issued the highest percentage of resolutions in favour of complainants in 2020 was Banco de Sabadell, S.A. (38.9%, 7 out of 11), followed by the Deutsche Bank, SAE (37.5%, 3 out of 5), Banco Bilbao Vizcaya Argentaria, S.A. (26.6%, 67 out of 185), Banco Santander, S.A. (26.5%, 31 out of 86) and Bankinter S.A. (17.2%, 5 out of 24). The two cases resolved by the customer ombudsman of Open Bank, S.A. in 2020 were unfavourable to the complainants.

A comparison of the data provided by the entities in 2020 and 2019 shows significant variations in terms of the percentage of reports favourable to the complainants issued.

In two entities the number of cases resolved in favour of the complaint fell notably, specifically in ING Bank NV, Sucursal en España (3.5% in 2020 compared to 52.4% in 2019) and in Banco de Sabadell, S.A. (17.7% in 2020 compared to 35.8% in 2019). In contrast, only two CSDs saw an increase the number of favourable resolutions issued to complainants: Renta 4 Banco, S.A. (60% in 2020 compared to 32% in 2019) and Kutxabank, S.A. (26.9% in 2020 compared to 19.4% in 2019).

There was a slight increase in reports favourable to the complainant made by the customer ombudsman of Deutsche Bank, SAE (37.5% in 2020 compared to 32.1% in 2019) and a decrease in those of Bankinter, S.A. (17.2% in 2020 compared to 28.1% in 2019).

Complaints relating to the securities market admitted and resolved by entities in 2020

TABLE 19

	CSD			CO		
	Favourable	Unfavourable	%[1]	Favourable	Unfavourable	%[1]
ABANCA CORPORACIÓN BANCARIA, S.A.	61	101	37.7	–	–	–
ANDBANK ESPAÑA, S.A.	71	84	45.8	–	–	–
BANCO BILBAO VIZCAYA ARGENTARIA, S.A.	631	846	42.7	67	185	26.6
BANCO DE SABADELL, S.A.	62	289	17.7	7	11	38.9
BANCO SANTANDER, S.A.	1030	23,566	4.2	31	86	26.5
BANKIA, S.A.	131	553	19.2	–	–	–
BANKINTER, S.A.	322	554	36.8	5	24	17.2
CA INDOSUEZ WEALTH (EUROPE), SUCURSAL EN ESPAÑA[2]						
CAIXABANK, S.A.	235	554	29.8	–	–	–
CAJAMAR CAJA RURAL, SOCIEDAD COOPERATIVA DE CRÉDITO	3	19	13.6	–	–	–
DEUTSCHE BANK, SOCIEDAD ANÓNIMA ESPAÑOLA	41	70	36.9	3	5	37.5
IBERCAJA BANCO, S.A.	12	48	20.0	–	–	–
ING BANK NV, SUCURSAL EN ESPAÑA	19	524	3.5	–	–	–
KUTXABANK, S.A.	14	38	26.9	–	–	–
LIBERBANK, S.A.	36	52	40.9	–	–	–
NOVO BANCO, S.A., SUCURSAL EN ESPAÑA	–	12	0.0	–	–	–
OPEN BANK, S.A.	95	29	76.6	–	2	0.0
RENTA 4 BANCO, S.A.	27	18	60.0	–	–	–
SINGULAR BANK, S.A.	15	88	14.6	–	–	–
UNICAJA BANCO, S.A.	127	108	54.0	–	–	–
X-TRADE BROKERS DOM MAKLERSKI, S.A., SUCURSAL EN ESPAÑA	93	374	19.9	–	–	–
Total	**3,025**	**27,927**	**9.8**	**113**	**313**	**26.5**

Source: Data provided by the entities.

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

2 CA Indosuez Wealth (Europe), Sucursal en España has not submitted the requested information.

2.5 International cooperation mechanisms

2.5.1 Financial Dispute Resolution Network (FIN-NET)

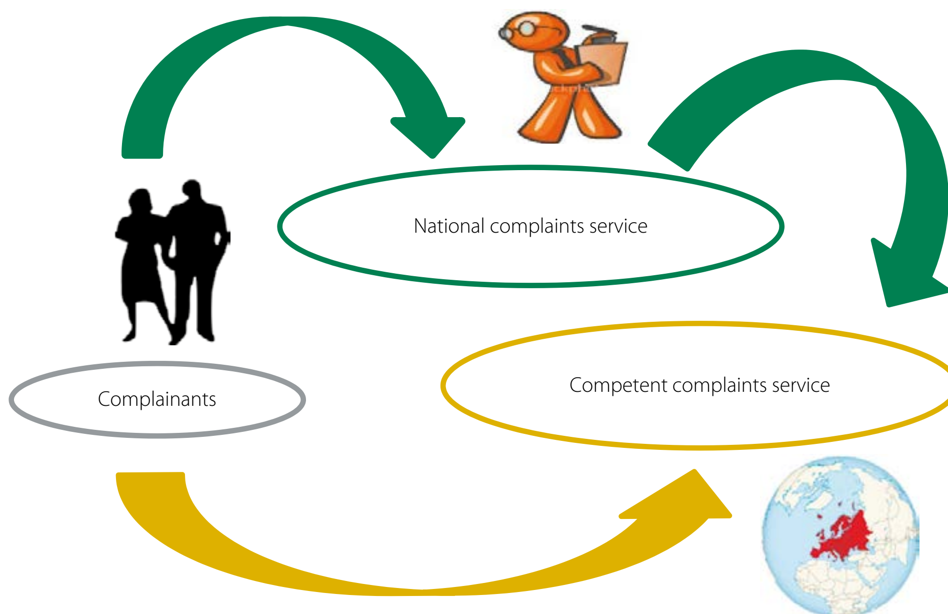
The Financial Dispute Resolution Network (FIN-NET) is the network for the out-of-court settlement of cross-border disputes between consumers and financial service providers in the European Economic Area.[8] FIN-NET was created through Commission Recommendation 98/257/EC of 30 March, on the principles 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 EEA. The CNMV joined FIN-NET in 2008.

8 FIN-NET has members in most of the countries of the European Economic Area (EEA), i.e., the European Union, Iceland, Liechtenstein and Norway.

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 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 entities belonging to FIN-NET are dispute resolution bodies of European countries or territories that are not part of the European Economic Area, and where the ADR (alternative dispute resolution) Directive is not applicable.

Up until now, the United Kingdom was one of the most active FIN-NET members. However, as a result of Brexit, it has become an associated entity, together with Switzerland and the Channel Islands, all of which collaborate with the FIN-NET network and adhere to the main principles of the European Union regulations on alternative dispute resolution.



The members of this network undertake to comply with a memorandum of understanding (MOU), which includes the mechanisms and conditions of cooperation to facilitate the resolution of cross-border disputes. Although the provisions of the MOU 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.[9]

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.

9 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.

Given the global pandemic in 2020, the mandate will be renewed in 2021, and the Complaints Service has requested to renew its participation as a member of the Steering Committee.

➢ Plenary meetings

The FIN-NET plenary association meets twice a year, mainly to inform on the regulatory developments in the European Union in the area of alternative dispute resolution[10] 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 well as to exchange and share specific examples of complaints both on a national and cross-border level.

The Complaints Service took part in the plenary meeting held online in October 2020 (the meeting scheduled for 19 March 2020 had to be cancelled due to the health crisis).

2.5.2 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.

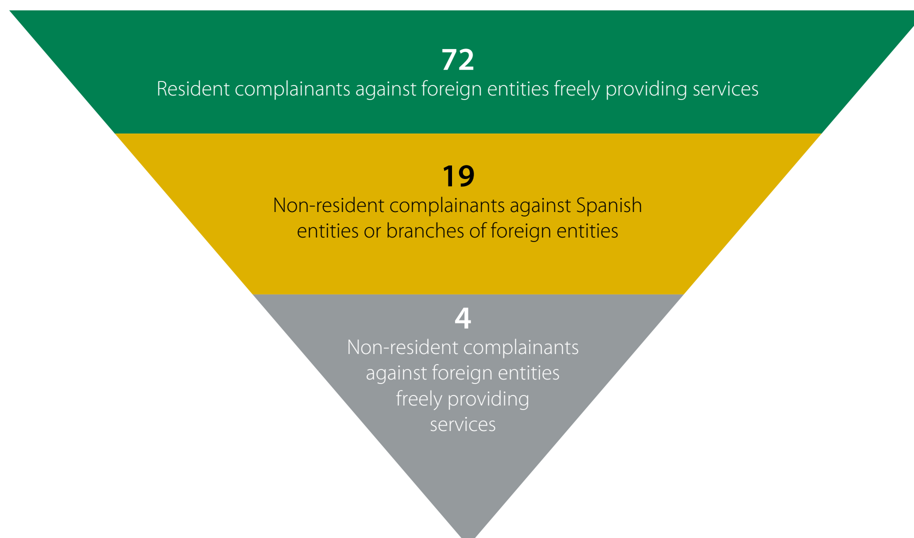
Webinars are held regularly to discuss topics of interest to members of the organisation. The Complaints Service took part in these webinars. In 2020, they focused on the implications of COVID-19 for the participating organisations, both in terms of motivation and training of work teams as well as managing their workload in a delocalised manner, with an increase in the number of complaints received due to the market downturn.

2.5.3 Cross-border complaints

In 2020, the Complaints Service received a total of 95 complaints in which the complainant or the respondent entity was established abroad, broken down as follows:

10 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.

Number of cross-border complaints



Residents in Spain submitted complaints against foreign entities acting under the freedom to provide services in 72 cases. One case was transferred to the Bank of Spain, since the complaint related to banking issues. The remaining 71 cases referred to securities market issues. As the Complaints Service lacks the powers to process these cases when foreign entities act under the freedom to provide services regime, the complainants were provided with information on the bodies in charge of out-of-court settlements in the countries where the companies were established. In the 32 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 16 cases. The 39 complaints filed against entities established in non FIN-NET member countries related to entities established in Cyprus.

Also, 13 residents in other countries of the European Union and six 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, nine were not admitted (in two cases because they fell to the competence of the Bank of Spain's Complaints Service, in one case because appeals or actions had been raised which corresponded to other bodies and in six cases because they did not respond to the request for rectification of admission requirements, or the request for pleas in a cause of non-admission). The remaining ten were admitted, of which seven were resolved with a reasoned final report favourable to the complainant, two were resolved with the entity's acceptance of the complaints of the complainant and one was terminated because the two parties reached an agreement.

Four complaints were received against foreign entities operating in Spain under the freedom to provide services regime, filed by complainants residing in Chile, Argentina, Portugal and the United Kingdom. Three of these complaints were against entities located in a country that is not a member of FIN-NET and were not admitted, after providing the complainants with information about the foreign organisations they could turn to in order to process the corresponding complaint. Lastly, the fourth document was an entity established in a FIN-NET member country and although it was not admitted, the complainant was provided the same information indicated above but was additionally offered the possibility of forwarding its complaint to the competent body, which it accepted.

3 Main criteria applied in the resolution of complaints in 2020

3.	**Main criteria applied in the resolution of complaints in 2020**	**69**
3.1.	Marketing/simple execution	73
	➢ Exemption from the obligation to assess the appropriateness of non-complex products	73
	➢ Irregularities in completion of the appropriateness test. Consistency of responses and control protocols	74
	➢ Cases of joint ownership or representation	75
	➢ Ordinary shares of companies admitted to trading and preemptive subscription rights	75
	➢ Particularities of binary options and CFDs	76
	➢ EU harmonised CIS. Complex and non-complex harmonised funds	80
	➢ Handwritten statements to be collected	81
3.2.	Suitability. Investment advice and portfolio management	82
	➢ Irregularities in completion of the suitability test. Consistencies and verification protocols	82
	➢ Investment advice. Independent and non-independent advice. ESMA advisory guide	83
	➢ Handwritten declaration reflecting the non-provision of an advice service when contracting complex products	87
	➢ Recommendations in the area of advice. Adjustment of recommendations after a rebalancing of the portfolio	87
	➢ Client portfolio management. Investment decisions in the area of portfolio management	88
3.3.	Prior information	89
	➢ Information documents prior to contracting the product	89
	➢ Method for demonstrating submission of the information. Signature on electronic devices	95
	➢ Risk indicator and liquidity and complexity warnings	96
	➢ KIID (Key Investor Information Document) of CFDs	97
	➢ Discretionary portfolio management. Prior information after MiFID II	98
3.4.	Follow-up information	99
	➢ Proof of sending documentation, not of delivery. Legal provisions	99
	➢ Information on events that affect domestic and foreign securities. Corporate events	100
	➢ *Ex post* information on expenses and incentives under MiFID II	102
	➢ Information on the value and initial price of the instruments acquired. Shares and funds	105
	➢ Requests for information. Where it has to be presented. Retention obligations. Response obligations	106
	➢ Procedure for waiving the maintenance of registration	107
	➢ Tax information	109
	➢ Automatic reclassification into funds	111
	➢ Mergers of foreign CIS sub-funds	112
	➢ Return/capital gains obtained by the CIS	113
	➢ Information on attachments	115
3.5.	Portfolio management	115
	➢ Contracts. Confusing clauses	115
	➢ Cancellation of the service. Total or partial use of assets under management. Periods for total or partial cancellation	116
	➢ Asset rebalancing	119
3.6.	Orders	119
	3.6.1. Securities	120
	➢ Errors in form in completion of orders	120
	➢ Market, limit and at-best orders	121
	➢ Contingent orders. Stop loss. Operation and types	122
	➢ International share transfer orders	122
	➢ Client instructions in corporate transactions	123
	✓ Capital increases (subscription rights)	123
	✓ Scrip dividend or flexible dividend orders. Repetition of orders	124
	➢ Purchase of assets with insufficient balance in the client's account	124
	➢ Incidents in order management	125
	➢ Failure to execute an order according to the client's instructions	126
	➢ Unilateral execution of positions by the entity	126
	➢ Lot orders (for prices below 0.01 euros)	128
	3.6.2. Collective Investment Schemes (CIS)	130
	➢ Disputes over the net asset value applied to the transaction. Unknown net asset value	130
	➢ Incidents in the subscription and redemption process. Holidays and closed market	131
	➢ Transfers between investment funds and other CIS. Transfer of foreign or domestic funds with the same distributor	131
	➢ Change of distributor	134
3.7.	Fees	134
	➢ Prior information on costs and expenses following the introduction of MiFID II	134

	3.7.1	Negotiable securities	135
		➢ Notification to the client of any changes in the fees initially agreed	137
		✓ Method of sending the notification of changes	137
		✓ Date of application of changes	138
		✓ Content of the notification of changes	138
		➢ Foreign currency transactions. Exchange rate applied	138
		➢ Custody and administration fees for securities that are delisted and inactive	139
		➢ Operational cash account linked to the securities account	139
		➢ Fees outstanding and accrued on cancellation of the financial instrument custody and administration contract	140
		➢ Fees for limit orders not executed	140
	3.7.2	CIS	141
		➢ Information on fees and expenses of investment funds	141
		➢ Notification of changes in CIS fees	142
		➢ Custody and administration for investment in CIS	143
		➢ Redemption fees: collection in funds with liquidity windows	143
	3.7.3	Portfolio management	144
		➢ Portfolio management fees. Success and management fees	145
		➢ Capital gains in funds under management when the service creates capital losses	145
		➢ Calculation of capital gains and losses in fund portfolios when fees are collected by selling shares	146
3.8.	Wills		146
	➢ Blocking of securities accounts. Limitations		146
	➢ Information on the deceased person's estate: steps to follow		148
	➢ Status of heir		148
	➢ Certificate of the deceased person's positions		148
	➢ Certificates of ownership		148
	➢ Dissolution of joint ownership of assets		149
	➢ Heirs' right to information		150
	➢ Acceptance of the inheritance: establishment of joint ownership		152
	➢ Partition of the estate and awarding of the assets		153
	➢ Study of documentation and change of ownership		154
	➢ Deadlines		154
	➢ Fees		155
	➢ Right of the heirs to complain about the distribution of the product		156
	➢ Issuance of certificates on wills pending on the date of death		157
3.9.	Ownership		157
	➢ Delay in processing the waiver of some shares after the redemption of foreign securities		157
	➢ Rule of operation: joint and several, and joint		158
	➢ Changing the rules of operation		158
	➢ Cancellation of the securities account and associated cash account		159
	➢ Refusal or delay in changes of ownership		159
	➢ Regional law. Account opening without a signature		160
	➢ Owner representation		161
	➢ Fees		162
3.10.	Operation of the entities' CSD		162
	➢ Delays and failure to attend		162
	➢ Tax effects deriving from settlement		163

3 Main criteria applied in the resolution of complaints in 2020

3.1 Marketing/simple execution

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

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:[1]

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

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

iii) The entity must have clearly informed the 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 legislation on the securities market. This warning may be issued in a standardised format.

iv) The entity must comply with the requirements established in the regulations to prevent, detect and manage possible conflicts of interest.

This provision is limited to cases in which the entity exclusively provides the service of execution or reception and transmission of client orders, with or without provision of ancillary services.

Following the adaptation of Spanish regulations to MiFID II, exemptions to these ancillary services expressly exclude the granting of credits or loans[2] that do not refer to existing credit limits on loans, current accounts and authorised client overdrafts.

For complaints resolved in 2020 relating to non-complex financial instruments, the entities that decided to make use of this exemption submitted proof of compliance with the requirements identified in points ii) and iii) through a document signed by the complainant stating that they had acted on their own initiative and specifying that information had been provided by the entity as to its not being obliged to assess the appropriateness of the product and the consequent lack of protection for the

1 Article 216 of Royal Legislative Decree 4/2015, of 23 October, which approves the recast text of the Securities Market Act.

2 Article 141.b) of the recast text of the Securities Market Act as approved by Royal Legislative Decree 4/2015, of 23 October.

client. In some cases, this information was included in the purchase order and in others in a document attached to it (R/515/2020).

➢ Irregularities in completion of the appropriateness test. Consistency of responses and control protocols

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

On 5 February 2019, the CNMV issued a statement on the obligation of entities to take measures to ensure the reliability of the information obtained from clients in order to assess the appropriateness or suitability of their investors. The statement establishes that while assessments must be carried out on a case-by-case basis, entities must also adopt measures and take reasonable steps to ensure that the information obtained from their clients is generally reliable.

This statement also mentions the regulatory obligations to which it applies, specifically those of Article 54.7 of Delegated Regulation (EU) 2017/565, of 25 April, which refers to the appropriateness and suitability assessment, and establishes that investment firms must take reasonable measures to ensure that the information collected about their clients or potential clients is reliable, mentioning, among other issues, that "appropriate measures must be adopted to ensure the consistency of customer information, for example, by examining the information for obvious inaccuracies" and of "ensuring that customers are aware of the importance of providing accurate and up-to-date information". Article 55 of the same regulation establishes that entities have the right to trust the information provided by their clients to assess their appropriateness and suitability, except when they "know, or should know, either that it is clearly out of date or that it is inaccurate or incomplete".

In this context, the entities would be responsible for identifying any potentially atypical situations, for instance:

– Whether the overall information on the level of education of the retail client is reasonable, taking into account the client's sociological characteristics.

– Whether the overall information on clients with a high degree of financial knowledge is reasonable, particularly for groups of clients who do not have prior professional or investment experience or a level of education consistent with this.

– Whether the overall information on retail clients with previous investment experience in complex instruments that are infrequently distributed to retail clients is reasonable, particular when clients' experience is not consistent with their transactions with the entity.

To properly identify and correct these situations, entities must have proper procedures in place to supervise the contracting process, periodically review the information obtained and correct incidents. "If inconsistencies, discrepancies or a large volume of atypical situations (situations that may arise for a variety of reasons, for instance, that the client information has not been collected correctly) are detected, the proper steps

must be taken to compare and validate the data using means other than simply checking that the information agrees with that shown in the completed questionnaires".

In case R/538/2020, there was different information about the complainant's education in different tests that by chance had been carried out on the same date, so it was considered that the entity had not acted with due diligence to guarantee the reliability of the information obtained from its client. It was even more striking that, according to the entity, on the same day the complainant signed two appropriateness tests which considered investment funds to be an appropriate option and preemptive subscription rights, futures and options to be inappropriate, and a suitability test with a "high-risk" result. The entity decided to provide a portfolio management service based on a model in which investments were to be made in derivatives products, i.e., those that the entity had considered not suitable for the complainant. These discrepancies between the test results clearly showed that the entity's procedures to detect the consistency of the information it had about its client did not work. The Complaints Service described the entity's performance as incorrect as it had not proceeded with all due diligence to guarantee the reliability of the information obtained from its client regarding the information about their education included in the different tests provided, highlighting the different results obtained in the tests carried out on the same day.

➢ Cases of joint ownership or representation

Some complainants express their dissatisfaction with the fact that the entity has not performed an appropriateness assessment for all the joint owners of the securities. Given the wide variety of cases that may arise, each entity must decide on the best way to resolve the situations that occur based on different variables.

However, in general, when the accounts or contracts are governed by the joint rule of operation, an appropriateness assessment must be performed by the owner with greatest knowledge and experience. In other cases, which are governed by the joint and several regime, the assessment must be performed by the ordering party.

In case R/708/2019, which was governed by the joint and several regime, once a new MiFID test had been carried out by one of the representatives (the previous test was no longer valid), he should have been able to order the purchase of the securities referred to in the complaint and the entity was considered to have acted incorrectly by not allowing this purchase to go ahead until all the representatives (both parents of the account holder, a minor) had carried out the MiFID test.

In some cases, the account holder (natural or legal person) may appoint a proxy or legal representative to act on his/her/its behalf, in which case the assessment must be performed by the proxy or representative when the proxy or representative is the operating party.

➢ Ordinary shares of companies admitted to trading and preemptive subscription rights

Shares admitted to trading on a regulated market, on an equivalent market in a third country or, following the adaptation of Spanish regulations to MiFID II, on a multilateral trading facility (MTF) are considered non-complex products when they

are shares in companies, excluding shares in non-harmonised CIS[3] and shares with embedded derivatives[4, 5].

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. The shareholder may also acquire rights in the secondary market for the sole purpose of rounding up the number of rights that they already hold to acquire additional shares to those that would correspond to the shareholder for that reason. In both cases, the rights do not constitute financial instruments in themselves and must be considered as a component of the share when the instrument that can be subscribed by exercising the right is the same as that giving rise to the subscription right.

However, in the case of preemptive subscription rights acquired by an investor in the secondary market for purposes other than those indicated above, they would be considered complex products and, only in these cases, the entity is required to assess the appropriateness of the product for the client's profile prior to processing the order.

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

– The entities obtained information on the client's knowledge and experience through a test, as a result of which the trading of the shares was deemed appropriate, and the client was duly notified (R/714/2019).

– The entities applied the exemption from the appropriateness assessment and demonstrated compliance with the requirements established to adhere to this option in the acquisition of the shares referred to in the complaint (R/336/2020).

➢ Particularities of binary options and CFDs

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):

3 Shares of open or closed-ended non-harmonised collective investment schemes.

4 Privileged shares with an early redemption right (embedded derivative).

5 Article 217.1 a), of Royal Decree-law 14/2018, of 28 September, amending the recast text of the Spanish Securities Market Act, approved by Legislative Royal Decree 4/2015, of 23 October.

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 on: 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.[6]

– In the event that the entity also has to issue a warning that it considers that the service or product is not suitable for the retail customer, the following warning will be issued and it will not be necessary to collect the handwritten declaration:

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.

The handwritten declaration to collect in this case will be: "This product is complex and is considered inappropriate for me".

– In the event that the entity also has to issue a warning that a lack of information prevents it from determining whether the investment service or the product is appropriate, the following warning must be used:

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.

The handwritten declaration to collect in this case will be: "This is a product that is difficult to understand. The CNMV generally considers that it is not appropriate for retail clients".

Circular 1/2018 entered into force on 27 June 2018.[7]

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

On 1 June 2018, the ESMA published in the *Official Journal of the European Union* a series of product intervention measures on the marketing of CFDs and binary options to retail investors.[8]

---

6 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.

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

8 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)

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:

Main criteria applied in the resolution of complaints in 2020

– 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 draw up 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 further period of three months,[9] as well as renewing and changing the temporary restriction on CFDs, through an implementation decision effective from 1 November 2018 for a period of three months.[10]

iv) CNMV Communication of 15 June 2018 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 the ESMA's decisions. The CNMV clarified the interaction between the two decisions 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 the ESMA's measures concerning CFDs).*

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.

9 European Securities and Markets Authority Decision (EU) 2018/1466, of 21 September 2018, renewing and amending the temporary prohibition in Decision (EU) 2018/795 on the marketing, distribution or sale of binary options to retail clients.

10 European Securities and Markets Authority Decision (EU) 2018/1636 of 23 October 2018 renewing and amending the temporary restriction in Decision (EU) 2018/796 on the marketing, distribution or sale of contracts for differences to retail clients.

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, the ESMA 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 the ESMA Decision on CFDs instead of those required under CNMV Circular 1/2018 from 27 June 2018, although the ESMA 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 2020. 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 the ESMA decisions (R/4/2020).

➢ EU harmonised CIS. Complex and non-complex harmonised funds

EU harmonised CIS are legally classified as non-complex products. The adaptation of Spanish legislation to MiFID II also establishes as an additional requirement that harmonised CIS may not be structured CIS in order to be considered non-complex.

In general, in the cases analysed, the entities acted correctly and did not contract the CIS at the client's initiative, providing the duly-signed appropriateness assessment and informing the client of the results of this assessment. These results indicated that the contracting of harmonised CIS was considered appropriate in most of the complaints.

However, in some complaints this product was not considered by the entity to be appropriate for its client, and in these cases, they provided, in addition to the test, the corresponding warning signed by the client.

The Complaints Service considered that the entity had acted correctly in the following cases:

– The entities had obtained information on the knowledge and experience of the clients, prior to contracting the harmonised fund, through an appropriateness assessment that was duly signed, warning them that, as a result of the test, 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/2/2020 and R/422/2020).

– Following a test taken by the client, the entity considered a harmonised fund to be an appropriate option (R/694/2019).

– The entity justified the client's previous investment experience, so it was considered that it correctly determined that the subscription of the harmonised investment fund matched their investor profile (R/238/2020).

In contrast, entities acted incorrectly in the following cases:

– The entities applied the exemption from the appropriateness assessment and demonstrated compliance with the established requirements. However, the Complaints Service considered that the warning associated with the exemption should have been issued at the time the fund referred to in the complaint was contracted and not on the date the shares were effectively subscribed (R/360/2020).

➢ Handwritten statements to be collected

In accordance with the provisions of the regulations[11] effective as of 19 August 2013 and in relation to the appropriateness and suitability assessments for financial instruments, when a service is provided for complex financial instruments[12] and for retail clients, before it is contracted (without providing the portfolio management or advisory service) the entity must analyse its suitability by obtaining the necessary data to assess whether, in its opinion, the client has the knowledge and the experience necessary to understand the nature and risks of the product offered. The entity can either rely on information it already has or request it from the client through the completion of a questionnaire or appropriateness assessment.

In those cases where, based on this information, the entity decides that the product is not suitable its client, it must inform the client of this decision. Likewise, when a client does not provide the requested information or the information provided is insufficient, the entity must warn the client that this prevents it from establishing whether the product is suitable or not.

In all cases, the entity must be able to provide evidence of the appropriateness assessment performed. It will also deliver a copy of the document including this assessment to the client.

In addition, regulations stipulate that in the event the investment service is provided for a complex instrument, the contractual document must include, in addition to the client's signature, a handwritten statement in which the investor states that he or she has been warned that the product is not suitable.

---

11 Circular 3/2013, of 12 June, of the National Securities Market Commission, on the implementation of certain information obligations for clients of investment services.

12 Article 214 of the recast text of the Spanish Securities Market Act as approved by Royal Legislative Decree 4/2015, of 23 October.

As indicated above, this issue was defined in Rule four of CNMV Circular 3/2013, of 12 June, on the implementation of certain information obligations relating to the financial instrument appropriateness and suitability assessment for clients of investment services, which entered into force on 19 August 2013, as follows:

> *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 forming the object of the transaction.*

When the transaction involves a complex instrument, the entity must obtain the client's signature for this text together with a handwritten declaration, stating: "This product is complex and is considered inappropriate for me".

As mentioned above, when assessing appropriateness, the entity must always be in a position to accredit the evaluation made. One way of doing this is through a written questionnaire, obtaining the client's signature or through another support considered by the entity to provide a reliable record that the assessment has been made.

3.2 Suitability. Investment advice and portfolio management

➢ Irregularities in completion of the suitability test. Consistencies and verification protocols

When investment firms provide their clients investment advice they must obtain the necessary information regarding the client or potential client's knowledge and experience in the investment field relevant to the specific type of product or service, that person's financial situation including his or her ability to bear losses, and investment objectives including risk tolerance so as to enable the investment firm to recommend to the client or potential client the investment services and financial instruments that are suitable and, in particular, are in accordance with his or her risk tolerance and ability to bear losses.

When the entity does not obtain this information, it will not recommend investment services and activities or financial instruments to the client or potential client.

In 2020, complaints were resolved in which entities provided a copy of the suitability assessment duly signed by the complainant, but did not acknowledge the responses given in the questionnaires, indicating that the entity's personnel either had not collected the answers provided in the test or had not even asked them the questions, and had completed them themselves. There have been many cases in which the complainant stated that they did not agree with any or with all of the answers given in the suitability assessment, either because they were not provided by them or because they were not accurate.

Thus, on 5 February 2019, the CNMV issued a statement on the obligation of entities to take measures to ensure the reliability of the information obtained from clients in order to assess the appropriateness and suitability of their investors. This

referred to certain situations that seem atypical and established the obligation to have procedures to detect these during the contracting process and through periodic reviews of the information, as well as correction procedures.

Consequently, in cases in which the complainants allege irregularities in the completion of the suitability assessment, the Complaints Service requires entities to report on the systems used by investment firm to verify that the information obtained in these tests is consistent with any other information that the entity may have about the client, accurate and up-to-date.

In case R/673/2019 inconsistencies were detected in the answers provided in the suitability assessment. The complainant stated that he had no previous investment experience in any financial instruments and, furthermore, had not completed any non-compulsory education. However, in the same questionnaire he also said that he had very high knowledge of the different markets, financial instruments and their terminology.

In other cases the alleged inconsistency in the responses was not so clear and it was not possible to conclude whether the procedures implemented by the entities had been followed or not, as there was insufficient evidence for the Complaints Service to rule on the matter.

It should also be clarified in the complaint report that the fact that the test given to the investor to sign has been completed mechanically by the entity's personnel, does not necessarily mean that the information contained in it does not reflect the answers given by the investor to the different questions.

The Complaints Service always indicates to the complainant that if the answers contained in the test could be legally proved to be inaccurate by any means other than a verbal statement, then the resolution of the complaint could be different (R/469/2020, R/470/2020 and R/542/2020).

➢ Investment advice. Independent and non-independent advice. ESMA advisory guide

The concept of investment advice refers to making personalised recommendations to a client, either at the request of the client or at the initiative of the investment firm, on one or more specific financial instruments.

Investment advice can be considered independent or non-independent.

When the service is provided independently, investment firms must meet the following requirements:[13]

- Assess a sufficient range of financial instruments available on the market which must be sufficiently diverse with regard to their type and issuers or product providers to ensure that the client's investment objectives can be suitably met and must not be limited to financial instruments issued or provided

13 Article 27.7 of Directive 2014/65/EU of the European Parliament and of the Council, of 15 May, on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU.

by the investment firm itself or by entities having close links with the investment firm or other entities with which the investment firm has such close legal or economic relationships.

– Not to accept and retain fees, commissions or any monetary or non-monetary benefits paid or provided by any third party or a person acting on behalf of a third party in relation to the provision of the service to clients.

To determine what is understood by a sufficient range of financial instruments available on the market, companies that provide independent investment advice must set out and apply a selection process that includes the following:

i) The number and variety of financial instruments considered will be provided within the investment advice services offered by the independent investment advisor.

ii) The number and variety of financial instruments considered will be sufficiently representative of the financial instruments available in the market.

iii) The amount of financial instruments issued by the investment firm itself or by entities closely related to it will be proportionate to the total amount of financial instruments considered.

iv) The selection criteria for the various financial instruments will include all relevant aspects, such as risks, costs and complexity, as well as the characteristics of the investment services firm's clients, and will guarantee that the selection of the instruments that may be recommended does not appear biased.

In the event that such a comparison is not possible due to the business model or the specific scope of the service provided, the investment firm providing investment advice will not present itself as independent.

A non-independent advice service does not meet the requirements set forth above.

Additionally, it is possible for an investment firm to offer independent and non-independent investment advice. To do this, it must meet the following requirements:

i) Sufficiently in advance of the provision of its services, the investment firm will inform its clients, using a durable medium, whether the advice provided will be independent or non-independent.

ii) The investment firm will present itself as independent in relation to the services for which it independently provides investment advice.

iii) The investment firm will establish appropriate organisational requirements and controls to ensure that both types of advice services and advisors are clearly separated from each other and that clients cannot be confused as to the type of advice they receive and that they obtain the type of advice that is right for them. The investment firm will not allow the same natural person to provide both independent and non-independent advice.

On 21 December 2018, the CNMV published a statement implementing the ESMA guidelines on MiFID II suitability requirements.

As indicated in the document published by ESMA, its objective is to clarify the application of certain aspects of the MiFID II suitability requirements to ensure a common, uniform and consistent implementation of Article 25.2 of MiFID II and Articles 54 and 55 of the delegated regulation of the directive.

i) On information to clients about the purpose of the suitability assessment:

Firms should inform their clients clearly and simply about the suitability assessment and its purpose which is to enable the firm to act in the client's best interest. This should include a clear explanation that it is the firm's responsibility to conduct the assessment, so that clients understand the reason why they are asked to provide certain information and the importance that such information is up-to-date, accurate and complete. Such information may be provided in a standardised format. (General guideline 1).

ii) Arrangements necessary to understand clients:

Firms must establish, implement and maintain adequate policies and procedures (including appropriate tools) to enable them to understand the essential facts and characteristics about their clients. Firms should ensure that the assessment of information collected about their clients is done in a consistent way irrespective of the means used to collect such information. (General guideline 2).

iii) Extent of information to be collected from clients (proportionality):

Before providing investment advice or portfolio management services, firms need to collect all "necessary information" about the client's knowledge and experience, financial situation and investment objectives. The extent of "necessary" information may vary and has to take into account the features of the investment advice or portfolio management services to be provided, the type and characteristics of the investment products to be considered and the characteristics of the clients. (General guideline 3).

iv) Reliability of client information:

Firms should take reasonable steps and have appropriate tools to ensure that the information collected about their clients is reliable and consistent, without unduly relying on clients' self-assessment. (General guideline 4).

v) Updating client information:

Where a firm has an ongoing relationship with the client (such as by providing ongoing advice or portfolio management services), in order to be able to perform the suitability assessment, it should adopt procedures defining:

(a) What part of the client information collected should be subject to updating and at which frequency.

(b) How the updating should be done and what action should be undertaken by the firm when additional or updated information is received or when the client fails to provide the information requested. (General guideline 5).

vi) Client information for legal entities or groups:

Firms must have a policy defining on an ex ante *basis, how to conduct the suitability assessment in situations where a client is a legal person or a group of two or more natural persons or where one or more natural persons are represented by another natural person. This policy should specify, for each of those situations, the procedure and criteria that should be followed in order to comply with the MiFID II suitability requirements. The firm should, clearly, inform* ex ante *those of its clients that are legal entities, groups of persons or natural persons represented by another natural person about who should be subject to the suitability assessment, how the suitability assessment will be done in practice and the possible impact this could have for the relevant clients, in accordance with the existing policy.* (General guideline 6).

In relation to the above, in case R/459/2020, the entity performed a suitability assessment on the complainant and of the five possible profiles (very conservative, conservative, moderate, dynamic and determined), the entity assigned her a moderate profile. The profile was described as one in which the portfolio returns would see average annual fluctuations of up to +/-10%.

The Complaints Service considered that the allocation of a moderate risk profile with a volatility limit of 10% was consistent with some of the information stated in the suitability assessment as investment objectives (including a risk profile suitable for seeking returns that moderately exceed inflation, accepting a medium level of risk and limited potential losses for a certain amount of time of up to 10%) and financial situation (e.g., an investment loss of 10% to 20% could be tolerated without any substantial impact on the investor's standard of living).

However, the Complaints Service considered that there were other factors that were likely to affect the complainant's financial situation (including her capacity to accept losses) and investment objectives (including risk tolerance) that indicated a lower risk profile would be more acceptable. These included her marital status (widow), advanced age (88), employment status (retired pensioner, tenant) or low annual income (less than €18,000). Furthermore, the complainant had limited knowledge and experience (no education, no professional experience in the financial area and investment experience in two of the 16 categories of financial instruments she was asked about).

Thus, the complainant was considered to be a potentially vulnerable client due to her age and lack of experience, as there was no evidence that she had prior investment experience.

The complaint was based on the provisions of ESMA's complementary guidelines. Specifically:

i) Paragraph 27 states:

Information necessary to conduct a suitability assessment includes different elements that may affect, for example, the analysis of the client's financial situation (including his ability to bear losses) or investment objectives (including his risk tolerance). Examples of such elements are:

- *marital status (especially the client's legal capacity to commit assets that may belong also to his partner);*

- *family situation (changes in the family situation of a client may impact his financial situation, e.g., a new child or a child of an age to start university);*

- *age (which is mostly important to ensure a correct assessment of the investment objectives, and in particular the level of financial risk that the investor is willing to take, as well as the holding period/investment horizon, which indicates the willingness to hold an investment for a certain period of time);*

- *employment situation (the degree of job security or that fact the client is close to retirement may impact his financial situation or his investment objectives);*

- *need for liquidity in certain relevant investments or need to fund a future financial commitment (e.g., property purchase, education fees).*

ii) Paragraph 40 of the guidelines establishes:

Firms should also take into account the nature of the client when determining the information to be collected. For example, more in-depth information would usually need to be collected for potentially vulnerable clients (such as older clients could be) or inexperienced ones asking for investment advice or portfolio management services for the first time.

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

CNMV Circular 3/2013, of 12 June, on the implementation of certain information obligations relating to the financial instrument appropriateness and suitability assessment for clients of investment services, which entered into force on 19 August 2013, establishes that when an entity provides a service related to complex instruments other than advice on investment or portfolio management and wishes to include in the documentation that the investor must sign a statement to the effect that it has not provided investment advice, it must obtain, together with the client's signature, a handwritten declaration that reads: "I have not been advised on this transaction".

Consequently, in cases where entities wish to demonstrate that they are not providing advice to their client on the complex product that he or she has decided to purchase, a handwritten declaration by the client must be included in the corresponding documentation expressing this decision.

Obviously, the handwritten declaration that advice has not been provided must be collected prior to the provision of the investment service. If, as happened in case R/3/2020, the handwritten declaration is obtained after the product has been marketed, bad practice will be considered to exist.

➢ Recommendations in the area of advice. Adjustment of recommendations after a rebalancing of the portfolio

In accordance with current regulations, when advice is provided to retail clients, each time an entity makes a recommendation, it must provide the client in writing,

or on another durable medium, a description of how the recommendation has been adjusted to his or her characteristics and investment objectives.[14]

The recommendation must be consistent with all the aspects assessed in relation to client (suitability assessment) and 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 entity must demonstrate compliance with information obligations, obtaining a copy signed by the client of the document submitted, 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.[15]

Unlike portfolio management, in the area of advice, the final investment decision must be made by the client after assessing the recommendation presented by the entity.

In relation to this issue, in case R/69/2020 after performing a suitability assessment, the complainant signed a “Contract for the provision of investment advice and intermediation of client orders” with the entity.

In accordance with this contract, the entity would present personalised recommendations, at the request of the client or at the initiative of the entity itself, with respect to one or more transactions related to financial instruments.

After the complainant made an initial contribution for the provision of advice through the transfer of investment funds, the entity decided to make changes in the composition of the funds in order to reduce volatility.

However, in view of the documentation provided, it was not proved that the entity had provided the complainant, in writing or through any other durable medium, with a description of how the recommendations made had been adjusted to his investment profile.

➢ Client portfolio management. Investment decisions in the area of portfolio management

To carry out portfolio management services, entities sign a contract with their clients empowering the entity to invest, within the established investment parameters, the specified assets under management in financial instruments.

Therefore, by signing the portfolio management contract the entity is authorised to make the investments it deems most suitable within the limits agreed with the client, without having to obtain instructions from the client or send any prior communication.

14 Article 213 of Royal Legislative Decree 4/2015, of 23 October, which approves the recast text of the Securities Market Act.

15 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.

The entity must act in accordance with the specifications, conditions and clauses of the contract and may only deviate from the general investment criteria agreed upon when the manager's professional judgement so advises or an incident occurs. In these cases, the entity, in addition to recording any such deviations, should immediately provide the client with detailed information.

Prior to signing the portfolio management contract, entities must ask clients for information about their knowledge, experience, objectives and financial situation (suitability assessment) to establish their investor profile. Portfolio management must be consistent with the investor and risk profile assigned and under no circumstances should the client's assets be invested in financial instruments that are not authorised in the contract.

In other words, the portfolio management contract is essentially an agreement between the client and the entity through which the former delegates to the latter the power to perform certain investments with the fundamental requirement that these adhere to the client's risk profile. Therefore, the entity would not be obliged to inform the client of the risks of every investment made as its obligations are limited to adhering to this profile.

In such cases, entities would not have the obligation to provide prior information to the investor about the financial instruments included in their portfolio. This information is intended to enable investors to make well-founded investment or divestment decisions, but when a portfolio management contract has been signed between the investor and the entity, these decisions are taken by the manager.

3.3 Prior information

➢ Information documents prior to contracting the product

Clients and potential clients will be provided with information on financial instruments and investment strategies, which should contain appropriate guidance and warnings about their associated risks.[16]

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[17] or, under MiFID II, an eligible counterparty.[18]

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

16 Articles 209 and 210 of the recast text of the Securities Market Act as approved by Royal Legislative Decree 4/2015, of 23 October.

17 Article 64.1 of Royal Decree 217/2008, of 15 February, on the legal regime of investment firms and other entities that provide investment services, in force until 17 April 2019.

18 Article 48.1 of Commission Delegated Regulation (EU) 2017/565, of 25 April 2016, supplementing Directive 2014/65/EU of the European Parliament and of the Council as regards organisational requirements and operating conditions for investment firms and defined terms for the purposes of that Directive.

as to allow the client to make informed investment decisions.[19] MiFID II adds other obligations for prior information on financial instruments, such as indicating the type of retail or professional client for which the financial instrument is intended, taking into account its target market,[20] and explaining how the financial instrument works and its results in different market conditions, both positive and negative.[21]

The explanation of the risks must include the following, where appropriate:[22]

- The risks related to this type of financial instrument, including an explanation of leverage and its effects, and the risk of total loss of the investment, and under MiFID II, the risks associated with the insolvency of the issuer or related events, such as bail-ins.

- Volatility in the price of the instrument and any limitations on the market on which it can be traded.

- The possibility that an investor may take on, in addition to the acquisition cost of the instrument, financial commitments and other obligations, including contingent liabilities, as a result of transactions carried out with the instrument.

- Any compulsory margin or similar obligation applicable to that type of instrument.

- MiFID II further requires information to be included on the obstacles or restrictions on divestment, as may be the case, for instance, for an illiquid financial instrument or one with a fixed investment term, indicating the possible exit methods and their consequences, the possible limitations and the estimated term to be able to sell this type of financial instrument to recoup the initial cost of the transaction.

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 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,[23] as it is often easier to understand due to its summarised and concise nature.

---

19 Article 64.1 of Royal Decree 217/2008, of 15 February, on the legal regime of investment firms and other entities that provide investment services, in force until 17 April 2019.

20 Article 77.1b) of Royal Decree 217/2008, of 15 February, on the legal regime of investment firms and other entities that provide investment services, in force from 17 April 2019.

21 Article 48.1 of Commission Delegated Regulation (EU) 2017/565, of 25 April 2016, supplementing Directive 2014/65/EU of the European Parliament and of the Council as regards organisational requirements and operating conditions for investment firms and defined terms for the purposes of that Directive.

22 Article 64.2 of Royal Decree 217/2008, of 15 February, on the legal regime of investment firms and other entities that provide investment services, in force until 17 April 2019. Article 48.2 of Commission Delegated Regulation (EU) 2017/565, of 25 April 2016, supplementing Directive 2014/65/EU of the European Parliament and of the Council as regards organisational requirements and operating conditions for investment firms and defined terms for the purposes of that Directive.

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

If the product is contracted on the secondary market, even when the entity has no obligation to provide the securities note or the prospectus, the entity 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 containing both aspects.

If any specific regulations were applicable at the time the product was contracted, the entity should demonstrate that it had previously provided the information required. For example, if the order relating to information obligations and classification of financial products, the European regulations on packaged retail investment products and insurance-based investment products (PRIIP), the CNMV circular on particularly complex products and eligible liabilities for bail in purposes, the CNMV resolution on financial contracts for differences, the transposition of MiFID II, etc.

In the specific case of collective investment schemes, a distinction must be made between domestic and foreign CIS.

In regard to **domestic CIS**, in 2011, with the aim of increasing investor protection with regard to their information rights, a new "Key Investor Information Document" (KIID) was applied 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 considered to be pre-contractual information.

At European level, this document was included in Directive 2009/65/EC[24] and its form and content were described in detail in Regulation (EU) No 583/2010.[25] Spanish rules were adapted to the European regulation by amending the CIS legislation in 2011 and with the approval of a new regulation for CIS in 2012 and CNMV Circular 2/2013.[26]

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.[27] Following the entry into force of the regulatory changes deriving from the adaptation to MiFID II, any

24 Directive 2009/65/EC of the European Parliament and of the Council, of 13 July 2009, on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS).

25 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.

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

27 Article 18.1 of Law 35/2003, of 4 November, on Collective Investment Schemes.

costs and expenses of the product and service that have not been included in the KIID must also be provided. In this regard, the CNMV has indicated that:

> *[...] it should be made clear that the UCITS KIID is not sufficient to comply with the cost information obligations established in Article 50 of the Delegated Regulation, since Article 51 expressly states that additional information must be provided on all the costs and expenses associated with the product and the service that has not been included in the UCITS KIID.*[28]

Intermediaries selling to or advising clients are subject to compliance with the obligations to provide the above-mentioned prior information on CIS.[29]

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 current legislation clearly stipulates that the KIID and the latest half-yearly report must be provided "well in advance" so that they can be read and understood before the investor makes an investment decision. The rules do not establish a minimum period of time that specifies what is to be understood by "sufficient notice". Therefore, entities will have to establish the times that they consider to be appropriate for each case, taking into account different variables, such as whether it is a complex product or not, or the client's characteristics, e.g., whether the client is familiar with the product or if they have previous experience in that type of investment.

Likewise, it should be noted that any possible urgency in contracting a product due to market volatility or instruments whose contracting period is close their end should not prevent the client from having enough time to analyse the information, understand the product and take a well-founded investment decision.

In cases R/299/2020 and R/341/2020, although the documentation provided in the proceedings indicated that the respondent entities had provided their clients with the mandatory information, there was no evidence in the documents analysed that this information had been delivered in the time and manner required by the rule, i.e., with "sufficient notice", since it was demonstrated only that the complainants had signed for the receipt of the mandatory prior documentation on the same day as they subscribed to the CIS and there was no evidence as to whether the information had been provided at the same time, before or after the subscription, given that there was no time stamp or declaration signed by the investor stating the time of delivery. Thus, the Complaints Service considered that the entities had not complied with their legal obligation to provide their clients with the information with sufficient notice to allow them read and understand it before taking an investment decision (subscription to the CIS).

The regulations contain specific provisions in the event that the KIID or the CIS prospectus are in the process of being updated when the client asks to subscribe to CIS. Thus, during the period between the adoption of the agreement and the

---

28 Question 9.6 of the CNMV document *Q&A on the application of the MiFID II Directive*.

29 Article 18.1 *bis* of Law 35/2003, of 4 November, on Collective Investment Schemes.

registration of the updated KIID or prospectus, the investors must be informed, prior to subscribing the units or shares, of the key changes in those documents that are pending registration.[30]

Further, 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.[31]

– With regard to the European Regulation on packaged retail investment products and insurance-based investment products (PRIIP), the following considerations should be made:[32]

  • 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 2021.[33, 34]

  • 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 2021, provided that the CIS publishes the KIID, as regulated by Circular 2/2013.[35]

It should be noted that there are cases in which the delivery of all or some of these documents is not mandatory or possible:

– Additional subscriptions in the same CIS In the case of additional subscriptions on the same CIS,[36] it would not be necessary to deliver the mandatory prior information again, since it was already provided on the occasion of the first subscription and, furthermore, such information is updated and the performance of the investment is communicated through follow-up information.

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

31 Article 2.2.d) of Order ECC/2316/2015, of 4 November, on the duty of information and classification of financial products.

32 Query 2.5 of the document *Questions and answers on the implementation of Regulation 1286/2014 on key information documents for packaged retail and insurance-based investment products (PRIIPs)*.

33 Amendment of Article 32.1 of Regulation (EU) No. 1286/2014 of the European Parliament and of the Council, of 26 November, by Article 17 of Regulation (EU) 2019/1156 of the European Parliament and of the Council, of 20 June, on facilitating cross-border distribution of collective investment undertakings and amending Regulations (EU) 345/2013, (EU) 346/2013 and (EU) 1286/2014.

34 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.

35 Article 32.2 of Regulation (EU) No. 1286/2014 of the European Parliament and of the Council,of 26 November, on key information documents for packaged retail and insurance-based investment products.

36 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 statements of position.

– CIS contracted before the preparation of the first half-yearly report. In these cases, the entity has no obligation to supply this document at the time of signing the CIS, since it has not yet been prepared.

– Funds with a specific target return at maturity (guaranteed or not) On 30 December 2018,[37] the amendment to the Law on CIS came into force, which included 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. Before this amendment, the Complaints Service had already established an identical criterion. In any case, the entity must certify, as indicated above, the delivery of the KIID to the client, keeping a copy of the document signed by the client.

In general, **foreign CIS** are not generally 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[38] 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,[39] 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 memorandum 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 must be understood as referring to the KIID, which, as indicated on the CNMV website,[40] 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 by the distributors upon request. In any event, at least one of the distributors must make all these documents available by electronic means, as well as the net asset values corresponding to the shares or units marketed in Spain.

The distributors of non-harmonised foreign CIS must comply with these obligations to provide information prior to subscription (delivery of the information document

37 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 Commercial Code, the recast 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.

38 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.

39 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.

40 Spanish provisions on UCITS' notification procedures.

and the latest published financial report) with the exception of the marketing memorandum, which is replaced by the specific conditions applied by the distributor.[41] In particular, if they are 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.[42]

➢ Method for demonstrating submission of the information. Signature on electronic devices

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. Thus, the delivery must be accredited by keeping a copy of the information document delivered duly 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. The Complaints Service considers that this does not reliably guarantee that the client has received the necessary documentation.

It should also be noted that the Complaints Service considers the signing of documents in electronic format, such as on a tablet or touch computer with a digital signature, to be perfectly valid and legally acceptable. However, prior to the signing of the documentation it must have been made available to the client for reading, in other words, the clients must know what they are signing.

In cases R/168/2020 and R/451/2020, the entities demonstrated that they had delivered the mandatory documentation required prior to the subscription of shares of an investment fund, since they provided a copy of said documentation duly signed (digital signature) by the unitholders.

Lastly, it is important to highlight that oral 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 this regard, it should be noted that the content of these conversations is not usually amicable and the statements of the parties are not normally taken into consideration unless a recording is provided or both parties have the same version.

In the specific case of Spanish CIS, the entity must demonstrate compliance with the obligation by keeping, on a durable medium, a copy of the information signed

---

41 Rule Three, section four, of CNMV Circular 2/2011, of 9 June, on information of foreign collective investment schemes registered in the CNMV's registries.

42 Article 15 *quinquies*, section 6 of Law 35/2003, of 4 November, on Collective Investment Schemes.

by the unitholder(s)/shareholder(s), while they hold this status.[43] 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.[44]

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 corresponding documentation will be delivered prior to the purchase or for the CIS subscription order or a client statement to mention that said documentation was delivered beforehand. The entity must provide evidence that it has been delivered.

➢ Risk indicator and liquidity and complexity warnings

On 5 February 2016, a new regulation came into force that established a standardised information and classification system to warn clients about the risk levels of financial products and allow them to choose those that best meet their requirements and savings and investment preferences.[45] Therefore, entities must provide their clients or potential clients with a risk indicator and, where appropriate, liquidity and complexity warnings referring to the financial instruments they wish to contract.

In relation to the stock markets, this rule is applicable to certain financial instruments,[46] 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),[47] CIS units and shares subject to Regulation (EU) No. 583/2010 on key investor information,[48] or Circular 2/2013 on the key investor information document and the prospectus of collective investment schemes.[49]

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 indi-

43 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 statements of position.

44 Article 2 of Royal Decree 217/2008, of 15 February, on the legal regime of investment firms and other entities that provide investment services, in force until 17 April 2019. Article 3.1 of Commission Delegated Regulation (EU) 2017/565, of 25 April 2016, supplementing Directive 2014/65/EU of the European Parliament and of the Council as regards organisational requirements and operating conditions for investment firms and defined terms for the purposes of that Directive.

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

46 Article 2.1 of the recast text of the Spanish Securities Market Act as approved by Royal Legislative Decree 4/2015 of 23 October.

47 Regulation (EU) No. 1286/2014 of the European Parliament and of the Council, of 26 November, on key information documents for packaged retail and insurance-based investment products (PRIIPs).

48 Commission Regulation (EU) No. 583/2010, of 1 July, 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.

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

Main criteria applied in the resolution of complaints in 2020

cator and, where appropriate, liquidity and complexity warnings that will be prepared and presented in graphic format, pursuant to these regulations.[50] The risk indicator is 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 closed in 2020 that related to prior information on securities referred to situations where the product was contracted after the entry into force of the above regulation. In particular, complaints were resolved in which the respondent entities acted correctly and proved that they had provided clients with information on specific shares listed on a regulated market or on a multilateral trading facility that included a risk indicator of 6/6 (R/714/2019).

However, in case R/73/2020 bad practice was considered to exist as, although the purchase was made in the secondary market and there was no obligation for the entity to provide the same information documents as for the rest of the investment instruments,[51] it was also true that even in the case of said transaction, the intermediary should have provided a general description of the nature and risks of the financial instrument in question. The documentation provided did not provide evidence that any informative documents about the characteristics and risks of the financial instrument referred to in the complaint, or on equities in general, had been provided. Nor the above risk indicator, which in this case would have corresponded to the highest level of risk: 6/6.

➢ KIID (Key Investor Information Document) of CFDs

Financial CFDs are non-standardised contracts through which an investor and a financial institution agree to exchange the difference between the purchase price and the sale price of a certain underlying (negotiable securities, indices, currencies, interest rates and other assets of a financial nature) that do not require the full payment of the nominal amount of the purchase and sale transactions. It is a high-risk, leveraged product that can cause losses in excess of the initial paid up capital.

These products generally involve bilateral trades carried out on electronic platforms established by the financial institution that issues them, since they are not traded on regulated markets.

As these are non-standardised products, their terms and conditions and, in particular, the adjustments made in certain situations, may differ from one issuing entity to another and are determined by the provisions of the contractual documentation arranged by the parties for this purpose.

The CNMV has been reinforcing its warnings on CFDs so that retail clients are clearly aware of their high level of complexity, since it is particularly difficult to assess and understand all the risks involved.

---

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

51 Article 210.2 of Royal Legislative Decree 4/2015, of 23 October, which approves the recast text of the Securities Market Act.

Regulation 1286/2014 of the European Parliament and of the Council, of 26 November, on fundamental data documents related to packaged retail investment products and insurance-based investment products, applicable from 31 December 2017, establishes the obligation of the creators of packaged investment products aimed at retail investors and investment products based on insurance to prepare a key information document for the investor that must be delivered to clients or potential clients sufficiently in advance of their purchase, so that they are able to understand and compare the main characteristics and risks of these products.

Article 13 of this Regulation establishes that:

> *Any person advising on a packaged or insurance-based product or selling it to a retail investor will provide the key information document in sufficient time before that investor is bound by any contract or offer relating to that product.*

In case R/582/2020, it was considered that the entity had correctly offered information on how the product worked, as well as warnings about its complexity and risks. However, the entity should have provided the complainant with a KIID for CFD buy and sell transactions carried out from 2018 onwards. The documentation submitted to the proceedings did not demonstrate that this had occurred.

Given the special characteristics of CFDs and the numerous transactions that can be carried out by investors on different CFDs on the same day or in the following days, it should be noted that Article 13.4 of the PRIIP regulation establishes how the KIID should be delivered, in the case of successive transactions on the same instrument:

> *When several successive operations are carried out on behalf of a retail investor in relation to the same packaged or insurance-based product following the instructions given by that retail investor before the first operation to the person who sells such product, the obligation to provide the document of fundamental data established in paragraph 1 will apply only to the first operation, as well as to the first operation carried out after the review of said document in accordance with Article 10).*

Although this rule is considered to apply to successive purchases of the same product in accordance with the investor's instructions, it should not be understood to allow a general KIID to be delivered for each product class. Nor should it be understood to meet the obligation to deliver the KIID for transactions with similar products or that have been contracted independently.

➢ Discretionary portfolio management. Prior information after MiFID II

Entities that provide investment services must provide their clients with prior information about the investment firm and its services.

Entities that offer discretionary portfolio management services must provide their clients with information on the types of financial instruments that may be included in their portfolios, as well as the types of transactions that can be carried out with them, including any limits, management targets, the level of risk that must be reflected in the discretionary management and any specific limitations on this

discretionary power.[52] They must also include information on the valuation methods and frequency of the financial instruments and the benchmark used to compare the results of the portfolio.[53]

The contract for the provision of the portfolio management service must include the matters referred to in the foregoing paragraph, as well as other detailed information on the conditions under which the service is provided (e.g., a detailed description of the general investment criteria, the types and geographical scope of the transactions and financial instruments, with the client's separate authorisation for each of the securities or transactions, the loss threshold or the limits on the commitments of the managed portfolio).[54]

In relation to the prior information on the financial instruments that can be included in the client's portfolio, as indicated above, this information is provided so that investors can make informed decisions about their intended investments or divestments, which is not the case when a discretionary portfolio management service is provided, as the investment decisions are made by the manager.

Therefore, signing the portfolio management contract authorises the entity to make the investments it deems most suitable within the limits agreed with the client for the management of the portfolio, without having to obtain instructions from the client or send any prior documentation.

In some cases, the complainants stated that they were unaware of the terms of the provision of portfolio management services. However, the contractual documents signed by the parties were submitted to the proceedings. The Complaints Service indicated that in these complaints, the documents provided, in addition to being binding for the parties who signed them, were sufficiently descriptive of the characteristics and operation of the portfolio management service (R/425 /2020 and R/529/2020).

3.4 Follow-up information

➢ Proof of sending documentation, not of delivery. Legal provisions

One of the main problems observed in the complaints presented is a failure to receive the communications sent by depositories to the instrument holders about

52 Articles 62 and 63.3 of Royal Decree 217/2008, of 15 February, on the legal regime of investment firms and other entities that provide investment services, in force until 17 April 2019. Articles 46 and 47.3 of Commission Delegated Regulation (EU) 2017/565, of 25 April 2016, implementing Directive 2014/65/EU of the European Parliament and of the Council as regards organisational requirements and operating conditions for investment firms and defined terms for the purposes of that Directive.

53 Articles 62, 63.2 and 63.3 of Royal Decree 217/2008, of 15 February, on the legal regime of investment firms, in force until 17 April 2019. Articles 46, 47.2 and 47.3 of Commission Delegated Regulation (EU) 2017/565, of 25 April 2016, implementing Directive 2014/65/EU of the European Parliament and of the Council as regards organisational requirements and operating conditions for investment firms and defined terms for the purposes of that Directive.

54 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 Rule Nine of CNMV Circular 7/2011, of 12 December, on the fee prospectus and the content of standard contracts.

their investments. These alleged incidents refer to both periodic information (position statements, movements, performance reports, etc.) and notifications of a specific nature (e.g., purchase/sale settlements, corporate transactions, changes in contractual conditions or fees).

In these cases, the contractual terms and conditions must first be assessed. In this regard, to provide custody and administration services for financial instruments, a standard contract should be used,[55] which must indicate the means and the form and procedures which the parties will use to communicate with each other, as well as the information that the entity must make available and send to clients, how often it will be sent and how it will be received.[56]

However, it should be noted that in the case of postal delivery, Spanish regulations do not require this information to be submitted by entities to their clients by certified post, with acknowledgement of receipt or in any other way that provides proof of delivery. Therefore, communication by ordinary mail would be sufficient to comply with the regulatory requirement.

Thus, to determine whether information has been provided correctly, the Complaints Service can only verify that the communications have effectively been sent by the entities but not that they have been received by the complainants (which is impossible to prove), checking whether the respective physical deliveries are addressed to the correspondence address (domicile) specified in the securities custody and administration contract.

The situation is different when the parties have contractually agreed to send communications electronically, via email or through the mailbox in the private section of the entity's website. In these cases, the computer trace generated in these telematic transactions can be used to verify whether the information was actually received by the investor.

➢ Information on events that affect domestic and foreign securities. Corporate events

Investment firms must act honestly, impartially and professionally, in the best interest of their clients, and observe, in particular, the principles established in the rules of conduct applicable to those who provide investment services.[57] One of the main obligations falling to entities is to keep their clients duly informed.

Therefore, in their capacity as depositories or managers of investment products, companies are obliged to inform their clients of relevant specific events that affect the financial instruments deposited in them: calls for shareholders' meetings, capital increases (bonus issues and otherwise), payment of flexible dividends, corporate

55 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.

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

57 Article 208 of Royal Decree Law 4/2015, of 23 October, which approves the recast text of the Securities Market Act.

restructurings, changes in issues, splits and contrasplits, limitations and decisions issued by institutional bodies on the securities, delistings, exchanges (voluntary or mandatory), takeover bids, early redemptions or position closings, etc., as well as carrying out whatever acts are necessary for these financial instruments to retain their value, exercising, among others, all the rights that correspond to them in accordance with the law.

That said, the entity must contractually establish the main actions that will be included in the administration of the financial products under its custody, as well as how to obtain instructions from its clients in transactions where they are necessary. In particular, the entity's procedure for dealing with a lack of instructions from 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.[58]

However, it is necessary not only for the depository to inform its client not only of corporate transactions in which the client's instructions are necessary, but of all corporate transactions agreed by the securities issuers, regardless of whether or not they give rise to a right to choose on the part of the investor.

In this regard, all information addressed to clients or potential clients, or disseminated in such a way that it is likely to be received by them, including advertising, must be accurate, sufficient and understandable to any average member of the target group and not conceal, cover up or minimise any important point, statement or warning.[59]

In order to comply with all these information obligations and do so effectively, depositories must adopt measures and procedures to ensure that their clients receive the information promptly, especially in cases in which instructions regarding operations must be requested, and in all cases with sufficient time so that, if necessary, they can choose the option offered that best suits their interests from among all those available or they can take the measures that are most appropriate for them. To this end, it is considered good practice for entities to establish a fast and efficient communication procedure with their clients, for instance, through online communications or SMS messages.

In relation to corporate operations in which client instructions have to be submitted, it should be noted that the deadlines granted by issuing companies to carry out these instructions are normally very short – especially in capital increases – and it is important for the investor to have as much time as possible to issue the instructions. Thus, it is essential that entities send communications to obtain instructions from their clients immediately after they become aware that the issuer has approved the operation in question.

For this purpose, it is good practice for these communications (both written and those sent using remote means) to be delivered sufficiently in advance so that shareholders receive the information before the first trading day of the subscription

58 Rule Eight of CNMV Circular 7/2011, of 12 December, on the fee prospectus and the content of standard contracts.

59 Article 44 of Commission Delegated Regulation (EU) 2017/565, of 25 April 2016, supplementing Directive 2014/65/EU of the European Parliament and of the Council as regards organisational requirements and operating conditions for investment firms and defined terms for the purposes of that Directive.

rights and, in the case of communications sent using remote means, before the start of business on the first trading day of the preemptive rights.

Likewise, it is important that entities advise their clients about all the options available to them and the consequences that may occur if they fail to provide instructions on time.

As an example of this, in case R/239/2020, the complainant indicated that he had not been informed of the corporate merger of Carrizo Oil & Gas Inc (of which he was a shareholder) and CIA Callon Petroleum CO. Before the mandatory exchange of his securities for shares of CIA Callon Petroleum CO, he had the opportunity to sell his shares of the absorbed company on the market – during the voluntary period – but was unable to exercise that option because he had not received any basic information about the corporate event from the depository. The bank argued that it was not required to provide its client with prior information about the merger, given that no instructions had to be issued in the operation. However, the Complaints Service concluded that, following the criteria of good practice indicated above and described in the guidelines published on the CNMV's website, the entity should have informed him about the corporate merger before it occurred, so that its client could have taken the decisions that he considered best suited to his interests with respect to his shares.

It should also be noted that in relation to foreign securities, investment service providers often argue that they have acted correctly, blaming the delay or their failure to provide information on certain corporate events to their clients on the delay in the provision of this information by the sub-custodian located abroad. In these cases, even though for practical purposes the respondent entity could be right, the Complaints Service will consider that the Spanish entity has incurred in bad practice when it considers that a deficiency in the provision of the custody and administration service is attributable to the respondent entity, since the client has contracted the service with that entity, even though it may hold the sub-custodian selected by it to perform part of the contracted service, and with which the final client has no relationship whatsoever, responsible. By accepting the argument of the respondent entity, the owner of the foreign securities would be left clearly unprotected, as he would not be able to file a complaint against the sub-custodian or custodian located abroad as he would not be registered as the owner of the securities (the owner in the global account would be his investment service provider).

In relation to this, in cases R/676/2019 and R/127/2020, the entity did not communicate the early redemption of exchange traded funds (ETFs), stating as the sole reason for not doing so that it had not been informed by its sub-custodian. In case R/473/2020, the respondent entity was also declared to have acted incorrectly, as the complainant was unable to operate for several days with the new American shares corresponding to him after a spin-off as they had not been awarded to him in a timely manner, while the respondent entity attributed this delay to the sub-custodian in the United States.

➢ *Ex post* information on expenses and incentives under MiFID II

Entities that provide investment services must comply with the information obligations on costs and related expenses established in the MiFID II Directive.[60]

60 Article 65 of Royal Decree 217/2008, of 15 February, on the legal regime of investment firms, in force from 17 April 2019.

In accordance with this directive,[61] investment firms must provide annual *ex post* information on all costs and expenses related to financial instruments and investment and ancillary services when they have recommended or sold the financial instruments, or when they have provided the client with the KIID in relation to the financial instruments, and have or have had a continuous relationship with the client during the year. This information must be personalised and based on real costs.

Main criteria applied in the resolution of complaints in 2020

Investment firms may choose to provide aggregated information on the costs and expenses of investment services and financial instruments together with the periodic information that they provide to clients.

For the purposes of disclosing cost and expense information to clients, investment firms must aggregate:

i) All costs and related expenses charged by the investment firm or third parties, when the client has been referred to the third parties, for the investment or ancillary services provided (see Table 20). In this case, third-party payments received by investment firms in relation to the investment service provided to a client will be broken down separately, and the total aggregate costs and expenses will be expressed both as a cash amount and a percentage.

All costs and related expenses charged for investment and/or ancillary services provided to the client that must be included in the reported amount TABLE 20

Cost items that must be reported		Examples
Non-recurring expenses related to the provision of an investment service	All costs and expenses paid to the investment firm at the beginning or end of the provision of the investment service or services	Deposit fees, contract termination fees and account transfer costs[1]
Recurring expenses related to the provision of an investment service	All costs and recurring expenses paid to investment firms for services provided to clients	Management, advice or custody fees
All costs related to transactions started during the provision of an investment service	All costs and expenses related to transactions carried out by the investment firm or other interested parties	Brokerage fees,[2] entry and exit fees paid to the fund manager, platform fees, increases (included in the transaction price), tax on documented legal acts, transaction tax and currency exchange expenses
Any expenses related to ancillary services	All costs and expenses related to ancillary services that are not included in the above costs	Research costs Custody costs
Incidental expenses		Performance fee

Source: CNMV.

1 Account transfer are understood to be those borne by investors for moving from one investment firm to another.

2 Brokerage fees are understood as the costs charged by investment firms for the execution of orders.

61 Article 50 of Commission Delegated Regulation (EU) 2017/565, of 25 April 2016, supplementing Directive 2014/65/EU of the European Parliament and of the Council as regards organisational requirements and operating conditions for investment firms and defined terms for the purposes of that Directive.

ii) All costs and related expenses for the production and management of financial instruments (see Table 21).

All costs and expenses related to the financial instrument that must be included in the reported amount TABLE 21

Cost items that must be reported		Examples
Non-recurring expenses	All costs and expenses (included in the price of the financial instrument, or additional) paid to the product provider at the beginning or end of the investment in the financial instrument	Initial management fee, structuring fee[1] and distribution fee
Recurring expenses	All recurring costs and expenses related to the management of financial products that are deducted from the value of the financial instrument on investment	Management fees, service costs, financial swap fees, costs and taxes for loans of securities and financing costs
All costs related to transactions	All costs and expenses incurred as a result of the acquisition and disposal of investments	Brokerage fees, entry and exit fees, fee increases included in the transaction price, tax on documented legal acts, transaction tax and currency exchange expenses
Incidental expenses		Performance fee

Source: CNMV.

1 Structuring fees are understood as the fees charged by producers of structured investment products for structuring the products. They can cover a wider range of services provided by the producer.

iii) In relation to the two tables above, the regulation clarifies that although certain cost items appear in both tables it should be noted that they are not redundant, since they refer to product costs and service costs, respectively. Examples include management fees (in Table 20 these refer to management fees charged by an investment firm that provides a portfolio management service to clients, while in Table 21 they refer to fees charged by the manager of an investment fund to its investors) and brokerage fees (in Table 20 these refer to fees that the investment firm must pay when trading on behalf of its clients, while in Table 21 they refer to fees paid by investment funds when trading on behalf of the fund).

In case R/570/2019, the complainant alleged that the entity had charged him additional expenses that had been hidden when the investment fund was marketed and that did not appear in the KIID. The respondent entity claimed that all expenses had been correctly reported both at the time of subscription and afterwards and that no unforeseen additional expenses had been charged, but that the document entitled "Annual information on costs and expenses for investment funds" for 2018 had been prepared in compliance with the new regulations. The Complaints Service considered that the entity had acted correctly in this issue and clarified to the complainant that under these regulations, the entity had provided him with the above statement, and this information did not imply an increase in the fees included in the valid KIID or fund prospectus, but provided quantified information of these. However, it considered that it would have been good practice for the entity to have included a mention in the statement that the new fee breakdown did not imply an increase and, furthermore, that the calculation basis of the reported percentages was shown for the express purpose of providing the client with a better understanding of the data.

➢ Information on the value and initial price of the instruments acquired. Shares and funds

To calculate their gains or file their income tax returns, clients usually ask the entities responsible for the custody and administration of securities, or which provided the intermediation service, for information about the initial prices of the securities they acquire. However, on many occasions these requests are not satisfied by the investment service providers, due mainly to two reasons: they do not have this information as the securities were acquired through another entity, or the mandatory period for retaining the documents justifying the acquisition has expired.

For example, in case R/579/2019, the complainant requested information about the acquisition price of some shares of Abertis, S.A. sold in 2018. The complainant stated that the securities had been acquired from 1987 onwards and that the earliest information available was from 1993. However, the bank indicated that the earliest data on the securities in its possession was from 1998. Based on the documentation submitted in the proceedings, the entity was considered to have acted correctly, as it was not obliged to retain such old information.

It is worth mentioning that investors should also keep a copy of all documents, contracts or orders that they have signed with the entities of which they are or have been clients, and other documents that offer proof of the transactions they carry out to establish the acquisition dates and prices of their securities.

On another occasion, the complainant was dissatisfied with the information published on the bank's web platform, indicating that the programme used had erroneously calculated the return on his shares, by not taking its purchase price but a later price, and requested that the correct data be included. However, it was considered that the entity had not incurred in bad practice since the securities involved had not been acquired through the respondent entity but from another intermediary, and had been transferred to that entity in 2016, and in addition, the platform clearly stated that the return calculations were carried out based on share prices as of 31 December 2016 (R/560/2019).

In relation to the previous example, it should be clarified that the obligation to retain the data corresponding to the operation (and the respective documentation) fell to the entity that processed the order but not to other entities that were not involved in the purchase and that received the securities later through a transfer. In this sense, it should be noted that the regulations in force do not require that the transfer of the securities to a new custodian be accompanied by a history of the operations carried out by the client on those securities with other investment firms for tax purposes.

However, the case is different for CIS – an investment product for which management companies must retain the data on the initial value of the units/shares acquired in accordance with Spanish tax regulations and this information must be reported and retained, with no time limitations, by the different management companies in transfers between CIS.

➢ Requests for information. Where it has to be presented. Retention obligations. Response obligations

One obligation of the entities that provide investment services is to keep their clients properly informed at all times.[62] For this reason, they have the obligation to correctly respond to requests for information or documentation made by their clients on the operations and products that they have contracted.

In the first place, it should be noted that proper attention by financial institutions to investors' requests for information requires that they provide them with the requested documents at their disposal and if they do not have this information (either because they do not retain it or for any another reason) they must clearly indicate that this is the case. The Complaints Service takes this into consideration when assessing whether an entity has responded correctly to requests for information made by investors.

Second, it must be emphasised that investors should address their requests for information in the first instance to their corresponding bank offices or branches, as these are best placed to attend them, and they must address the CSD of the entity to file a complainant only in cases in which their request has not been satisfied by the office or has been dealt with inadequately. However, it is relatively frequent for entities not to submit the requested documentation to their clients in the first instance, i.e., when the complainant approaches them, but rather to postpone it until the time they make pleas before the CNMV's Complaints Service after the complaint proceedings have been initiated by the dissatisfied client. In these cases, the complaint reports state that it is not considered appropriate for clients, in order to obtain a copy of the documentation generated in commercial traffic with their entity, to be forced to file a complaint with the CNMV for two reasons: first, because of the delay this causes in the resolution of the investor's complaint, and second, because it leads to unnecessary administrative work. In short, it would be an improper action on behalf of the CSD of the respondent entity.

Third, 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. For this reason, it should be highlighted that the minimum time period for entities that provide investment services to retain information is five years, from the time of the corresponding event. In the case of signed contracts, the retention obligation starts from the beginning of the client relationship and will end five years after it has been terminated.

That said, financial institutions are not obliged to keep and therefore provide information/documentation going back more than five years with respect to the date of the request filed by the party in regard to: securities orders and their confirmations, appropriateness and suitability assessments (and any warnings), or personalised recommendations made, as well as the information on the content of the periodic statements sent to clients. However, entities must not destroy the supporting documents for any transactions in respect of which the client has expressed disagreement before the end of the minimum retention period (or, if the disagreement was raised after the end of the minimum period, the documentation of which has not yet been destroyed), until the disagreement has been resolved.

---

62 Article 209 of the recast text of the Securities Market Act as approved by Royal Legislative Decree 4/2015 of 23 October.

Main criteria applied in the resolution of complaints in 2020

As an example of the above, in case R/382/2020, the complainant requested a copy of a securities management contract (signed in November 2011), as well as documentation on the acquisition of Telefónica shares in January 2012. Although the entity did not have the obligation to keep the requested documentation related to the acquisition date of the shares, as the mandatory retention period of five years had expired at the date of the request (at the end of 2019), it did provide the client with the purchase order for the securities. However, it was concluded that the intermediary had incurred in bad practice by failing to provide its client with a copy of the requested contract, whose retention obligation was still in force on the date of the complainant's request.

In contrast, in case R/534/2019, the resolution was unfavourable to the complainant, who referred to the alleged disappearance of his shares in Meta 4, NV and the subsequent closure of his securities account, and requested, in May 2018, information and documentation about this issue. Given that the securities referred to were redeemed in 2005 and the account was closed in 2010, the entity was unable to supply the requested documentation or provide any more information than it had previously offered.

Another issue that must be highlighted in relation to requests for information is that if the requests are manifestly disproportionate and unjustified, or there are special circumstances that make it advisable, the Complaints Service will understand that the entity is not obliged to deliver the information. These cases would also include general and vague requests, although the entity would have to justify its decision.

Lastly, even when the requested contractual documentation is delivered to the client, they entity may be considered not to have acted diligently if it is not provided within a reasonable period of time.

This occurred in case R/103/2020, where the investment services provider did not respond to the request from its client of 26 November 2019 until 3 March 2020 – 2 days after the complainant filed a complaint with the CNMV. The company was considered to have acted incorrectly as it did not provide the requested information in a timely manner (with a delay of more than three months) and administrative measures could have been avoided if the entity had attended its client's request more diligently.

➢ Procedure for waiving the maintenance of registration

Complaints are often received relating to holders wishing to request the voluntary waiver of certain delisted securities as they cannot be disposed of in any other way.

It should be explained that delisting means that shareholders cannot go to the secondary market to trade their shares, but they maintain their status as shareholders and continue to hold all the rights inherent to this condition recognised in the Corporate Enterprises Act (economic, political, information, etc.) and in the company's bylaws.

In regard to the possibility of disposing of such securities, it should be clarified that they can indeed be sold outside the market, through alternative procedures such as finding a buyer for the securities, setting a price for the sale transaction and formalising the transaction outside the market. Another option would involve offering the

securities to the issuer by contacting the company's registered office, although the latter is not obliged to acquire the shares.

In any case, the holder can always choose to transfer the securities to another entity or to transfer them to a third party through other legal channels (such as donation).

Lastly, it should be noted that, in the case of securities delisted from the Spanish market that are also unproductive and inactive, Iberclear[63] has established a procedure that allows the registered holders to request the voluntary waiver of register-entry maintenance.

Circular 08/2017, of 4 September, approves a new procedures manual for the ARCO settlement system, which establishes that 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 the securities has not already been initiated) the requesting entity must submit a proposal asking that the relevant actions be carried out to start the voluntary procedure for waiving maintenance of registration. 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 an original certification issued by the Trade & Companies Register showing the registered office of the security issuer and showing that no entry has been made on the sheet opened in the name of the issuer in the four years prior to the calendar year in which the proposal is made.

Iberclear, through the publication of a notice, will then announce the start of the procedures, which it will perform once for each security (notarised request, and where appropriate, an announcement published in the listing bulletin). Once these actions have been completed, Iberclear will apply the procedure for recording the request for voluntary waiver of maintenance of registration, in accordance with the requests of the registered holders of the security, provided that no type of charge or encumbrance exists on the securities owned by the holders requesting the procedure.

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 the procedure for recording a request for the voluntary waiver of maintenance of registration can be applied to the security in question.

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.

The Complaints Service considers that entities would be acting in the interest of and to the benefit of the holders by informing their depositors of the existence of this voluntary waiver procedure, either 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.

---

63 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 the Securities Market Act, Law 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, on improving securities settlement in the European Union and on central securities depositories, and regulated in Articles 97 *et seq.* of Royal Legislative Decree 4/2015, of 23 October, which approves the recast text of the Spanish Securities Market Act.

Apart from the complaints received on this issue referring to Spanish securities, it should be noted that it is increasingly common for a similar problem to arise in complaints referring to foreign shares deposited with Spanish entities. In this regard, it should be noted that the possibility of voluntarily waiving ownership of foreign securities depends on the legislation and procedures of the issuer's home country or the country of the market on which the securities are listed. Even though the Complaints Service does not usually have information on this issue, it does assess the information provided by depositories about the possibilities of waiving ownership and their efforts to attend to the wishes of the holders.

Thus, in case R/157/2020, the complainant requested to waive some shares of Banco Espirito Santo, S.A. (ISIN: PTBES0AM0007) in accordance with the Iberclear procedure and proceed to close his securities account. In response to his request, the entity had informed him that he could not close his account while the shares, which could not be cancelled, were deposited in it and that his only options were to transfer them to another entity or wait for the issuer to file for dissolution. Since these were Portuguese shares that were listed on the Portuguese market, the Iberclear procedure was clearly not applicable and this was explained to the complainant in the final report issued by the Complaints Service, in which he was advised to pursue his query with the Portuguese regulator. However, the company was considered to have committed bad practice by not informing the client about the possibility of voluntarily waiving the shares or, where appropriate, of the reasons why this would not be possible.

Case R/25/2020 referred to German company Thielert AG, which had filed insolvency proceedings before the German Bankruptcy Court on 30 April 2008, and whose shares had been delisted from the Frankfurt Stock Exchange on 30 August 2012. The complainant stated that he wanted to cancel all his accounts, that he had been (unsuccessfully) trying to waive the securities since 2014, and that the depository had not offered him any alternatives. The respondent entity demonstrated that in the period from 2014 to 2019 it had not been possible to waive these securities, submitting the corresponding consultations of its international intermediaries addressed to the central depository of the shares in Germany – Clearstream – and its negative response due to legal difficulties.

➢ Tax information

In the analysis of complaints, at times complainants question the tax information received from entities. In these cases, it must be clarified that the Complaints Service lacks the powers to assess whether the correct tax treatment is provided by entities for the different operations or the results obtained on investment products as this task corresponds to the State Tax Administration Agency (AEAT).

However, the Complaints Service does assess compliance with the information obligations of the entities as providers of investment services.

In case R/420/2020, the holder of a managed investment fund portfolio complained that he had not been correctly informed about the tax regime applicable to the fees charged for the providing the portfolio management service, as he considered that these would be deductible from the portfolio amount, as an expense, in the same way as fees applied to CIS. In this case, it was proved that the contract regulating the

portfolio management service provided contained all the necessary information about its features and tax regime, and that specific questions relating to issues such as the possible deduction of fee charges or any transaction or expense generated as part of the portfolio management service were not included in the mandatory prior information on investment issues that entities must submit to their clients. The respondent entity had replied correctly to the complainant's request for information, confirming the deduction of the fees (case R/420/2020).

Cases relating to double taxation on the remuneration received from the investment instruments also warrant a mention. When, in accordance with the provisions of existing double taxation agreements, clients request their entities to provide them with the documentation required by the tax authorities of origin to obtain a refund of the withholdings made in that country, the entities must deliver this documentation promptly and diligently. If it is not possible to deliver this information, either because the entity does not provide this service or due to any other circumstances, they must inform the clients clearly and concisely as to how they can obtain it. For these purposes, entities must have suitable means and procedures to diligently attend to such requests, to allow their clients to benefit from these double taxation agreements in an agile, simple and fast manner.

In case R/567/2019, the holder requested from the bank the excess amount retained in the country of origin, France, for some dividends on Nokia shares paid in 2016, 2017 and 2019, in accordance with the agreement in force between Spain and that country. He also stated that as there was no means of processing the "5000 ES-DS" and "ERFA-Reduction" forms electronically, the entity did not comply with its legal requirement to prevent double taxation for its clients. After analysing the contractual obligations that were binding to the two parties, it was concluded that the entity had acted correctly since it was established in the contract that the bank had no obligation to carry out any procedures or make any adjustments on behalf of the holder in relation to the dividends they receive from other countries. In addition, the complainant had been duly informed by the entity about how to claim the excess amounts withheld and of the management cost for each dividend, which, if he wanted the entity to process the reimbursement, would cost €200, the price set by Citibank, the company that owned the global account, which would perform the procedure with the French Treasury. The lack of a means to process the respective forms electronically, was treated as a business deficiency, the rectification of which would be an improvement in the service provided, although there was no legal obligation in this regard.

In another case, the holder of some Repsol shares had changed his place of residence to Slovakia and requested the entity to register him as a non-resident in Spain to avoid double taxation on the forthcoming dividends that the issuer of the securities would distribute. In this case, in order to benefit from the application of the agreement and avoid double taxation, it was not sufficient for the entity to register the holder as a resident abroad, but it was necessary to issue a specific certificate, translated into Spanish, that recognised him as a tax resident in the other country ("Tax residence certificate") issued by the tax agency of the Slovak Republic. The entity duly informed the complainant about the documentation that he had to provide for the bank to process this change and corresponding deadlines. However, although the holder provided the requested documents in a timely manner, there was a delay in the management process carried out by the entity that made it impossible to complete the tasks (R/102/2020).

➢ Automatic reclassification into funds

There are investment funds that have various classes of shares. The difference between these different classes lies mainly in the minimum amount to be invested by the unitholder and the fees that are applied (lower fees for classes that require higher investments).

In cases where, due to different circumstances, such as new investments made by the unitholder, the transformation of a single category fund into another with two classes of units, fund mergers, etc., the unitholder reaches the mandatory minimum investment to gain access the most preferential class, it is considered good practice for the entity to automatically transfer the client's assets to this class, while informing him of this procedure.

In this regard, on 15 March 2012, the CNMV's General Directorate of Institutions published a statement on the possibility of carrying out procedures for the automated reclassification of investment fund units between classes of units or other equivalent cases. In this way, entities can voluntarily establish systems for the automatic reclassification of unit classes. In fact, it is considered good practice for managers to have control procedures to periodically identify investors who meet the requirements to gain access to more beneficial unit classes than those they have subscribed to (in terms of fees and commissions) and where appropriate, proceed with the reclassification.

However, the unitholder must have prior knowledge of how the manager will act in such a situation.

In accordance with current regulations (Article 14 of the CIS regulation and rule 9 of CNMV Circular 2/2013), this type of change, where different classes of investment fund units are created, does not require unitholders to be informed individually. It is sufficient for the entity to publish a significant event notice when the change occurs and unitholders are informed in the periodic information disseminated, which is why the unitholder sometimes does not detect the change in the fund until he or she receives the periodic information.

However, even when, in accordance with the CNMV communication of 15 March 2012, it would have been considered good practice for the respondent entity to have in some way identified the unitholders who, due to the amount of their investment, would have been in a position to gain access the new preferential class, automatically reclassifying their units from the old class to the new class after having informed them that this reclassification was going to take place, the implementation of this good practice is optional, since it is not included under current regulations.

For this reason, in cases in which the entity has not implemented the good practice recommended by the CNMV, the only way that unitholders would be able to gain access to the most beneficial class would be by requesting the transfer of their units from one class to another, a transaction which would be valid from the date on which the transfer is executed.

Therefore, while the entity did not adhere to the good practice recommended by the CNMV, the Complaints Service concluded that following the unitholder's request to change the class of their fund units, the entity would have acted appropriately by ordering the transfer of the units from the old class to the new preferential

class (transfer of funds) since that would be the only way to carry out this type of transaction if the entity did not have an automatic reclassification mechanism in place.

In this sense, in cases where the entity has no automatic mechanism for the reclassification of units and requires an order to transfer them to a more advantageous class for the unitholder meeting requirements to gain access to said class, the CNMV Complaints Service considers it a good practice for the entity to return the excess fees that would have been generated by remaining the less advantageous class until the transfer order has been executed.

In case R/641/2019, the entity was considered to have incurred in bad practice for not having previously informed the holder about the potential automatic reclassification to the most advantageous class for fees (the communication was made two days after the change) and for not demonstrating that it had the complainant's prior authorisation, as alleged.

However, in case R/574/2019, the Complaints Service considered that the respondent company had acted correctly by reclassifying the client's foreign fund to the most advantageous class and also because it did not have the obligation to inform the client in advance as the entity provided the complainant a portfolio management service.

➢ Mergers of foreign CIS sub-funds

In relation to this issue, it is worth noting some of the most disputed situations arising from corporate transactions are basically due to misinformation about their conditions and tax effect.

First, it should be remembered that foreign CIS are not supervised by the CNMV, but by the competent body in their respective home countries. However, the CNMV supervises the performance of distributors in Spain in accordance with national regulations on foreign CIS authorised for marketing in this country.

Thus, the regulations for foreign CIS in relation to the obligation to inform unitholders or shareholders establish that the distributors of harmonised foreign CIS in Spain that are filed in the corresponding CNMV registry must send (free of charge) to unitholders or shareholders who have acquired units or shares in Spain all the information required under the legislation of the State in which they have their headquarters, adhering to the same terms and deadlines set down in the legislation of their home country.[64]

Regarding the tax effect deriving from the merger of foreign CIS sub-funds, although unitholders and shareholders are responsible for informing themselves about the tax treatment of transactions related to their investments, the Complaints Service also considers that the information obligations of entities include a duty to provide information on all aspects of particular relevance for the investor. The tax effects of this type of operation (redemption of units of the merged fund, with their

64 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.

corresponding tax payment, and subscription of units in the acquiring fund) are a very relevant issue, The entity must inform the client, prior to the merger, of how the merger will be classified for tax purposes and, where appropriate, whether or not the corresponding tax withholding will be applied.

Lastly, it must be emphasised that financial institutions must provide complete and detailed information about the merger, as well as its tax implications, to their clients prior to the operation and in sufficient time, so that they can make informed investment decisions and avoid the tax effects of the merger if they so wish.

In case R/699/2019, the complainant alleged that there was lack of transparency on the part of the entity regarding the merger by absorption of two British sub-funds with two identical funds from Luxembourg leading to the unwanted aggregation of capital gains. The bank, in its defence, argued that transactions had been performed to transfer the fund compartments from the United Kingdom to fund compartments of the Luxembourg CIS due to Brexit and that the complainant had been diligently informed by his private bank manager by telephone about the particularities of the operations, including the tax effects. The Complaints Service clarified to the complainant that the mergers of compartments of different CIS did not benefit from the special regime provided for in the Corporation Tax Law (LIS), since the compartments of CIS did not have the independence attributed to funds and investment companies, as they did not have full autonomy in all areas. Consequently, they were not taxpayers for the purposes of the LIS and, therefore, the mergers that involved them did not meet the requirements to qualify as mergers for the purposes of the special regime provided for in Chapter VII of Title VII of that Law. Consequently, for the purposes of personal income tax, the tax deferral that would apply in other types of mergers could not be used. Consequently, as there was no fiscal neutrality, the transaction could lead to the corresponding capital gains being released and the consequent withholding or account deposit being made. The investment service provider was considered to have incurred in bad practice because it was not proved that it had provided detailed information to the complainant about the transactions within a reasonable period of time.

➢ Return/capital gains obtained by the CIS

The returns of the CIS are conditioned by their strategies and investment policies. The net asset value (NAV) and the performance of each fund will depend on the products in which it invests and their inherent risks – which will depend, to a large extent, on the volatility of the financial markets and the economic environment.

Thus, 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 capital losses suffered as a result of its investments. However, it considers that the information that must be passed on to the client in this regard must be as complete and clear as possible.

Thus, it is considered good practice for entities to include, in the statements they send to investors, information about the results of the calculations made and the method used to calculate the return. In this sense, the entity would be understood not to have provided satisfactory information when it should have reported the method used to calculate returns in greater detail.

Transfers between CIS stand out in this area, because these transactions often influence the calculation of capital gains and losses following the redemption of an investment fund. Transfers between investment funds consist of transferring the investment made in one investment fund to a different fund. They are carried out by subscribing to a fund after the total or partial redemption of the shares of another fund, and the total or partial redemption amount is not available to the investor at any time. This justifies the tax deferral applied to this type of transaction, and a preferential tax regime is applied to investments in investment funds (and other types of CIS, although some additional requirements must be met to apply this benefit), since no taxes are paid on the capital gains obtained during the life of the investment until the definitive redemption. Thus, transfers do not have any income tax effects for the investor and capital gains are not taxed (nor are losses deducted) until the final redemption takes place.

This means that the new shares retain the same value and acquisition date as those that have been sold, so that, when they are definitively redeemed, the value that must be taken into account to calculate the corresponding capital gain or loss will be the price at which the first shares were acquired. In addition, when there are partial redemptions, it must be taken into consideration that the FIFO (first in, first out) will be applied so that the shares that are sold first are always the oldest.

Unitholders often find differences between the return actually obtained on their investment and their expected return, and consequently consider that the information about the capital gains is wrong and should be corrected and request that the excess withholdings be returned to them. In case R/581/2019, the complainant considered that the capital gains stated by the entity on redemption were not correct based on the price at which the units had been subscribed. However, after analysing the case, it was found that there had been a partial redemption prior to the transaction referred to in the complaint, for which the oldest shares had been used. Consequently, for the redemption referred to in the case, the entity could not allocate the older shares that had already been redeemed, but the next oldest ones, which resulted in the capital gain that the investor considered to be incorrect.

On other occasions (cases R/585/2019 and R/651/2019) the complainants were not satisfied with the results obtained following the cancellation of their managed CIS portfolios as withholdings had been made for capital gains when the portfolio had actually shown a negative performance. In both cases, the Complaints Service considered that the bank had acted correctly and it was explained to the complainants that although the CIS being redeemed had been acquired as part of the provision of the portfolio management service, a tax charge had been made for each product purchased, in other words, it was necessary to look at the first investment in funds that led to the portfolio management investment, and not the result of the service. This circumstance – that the investment in portfolio management was of funds not cash – may mean that even though the portfolio is showing a loss, the individual funds that comprise it have made gains from the moment they were acquired, which would require the entities to carry out the corresponding tax withholding.

Lastly, it should be noted that 2020 was an unprecedented year in Spain and abroad. The onset of the COVID-19 pandemic, which caused tremendous instability in the markets and generalised price falls that were not attributable to market participants and were impossible to predict, caused a large part of net asset values of the CIS and other types of financial instruments to slump. However, it should be indicated that the apparent losses in the value of investments are no more than underlying losses while they are not realised, i.e., until the sale or redemption of the products affected by the price drop.

➢ Information on attachments

Investment service providers, as intermediaries, must comply with legal mandates such as attachment orders.

In these cases, the Complaints Service understands that the entity is acting in accordance with good practice provided that once the attachment 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 attachment order.

For these purposes, it is necessary to take into account the execution deadlines for this type of order, so it is advisable, if the deadlines are peremptory, that these types of notifications be sent using fast communication channels such as email.

3.5 Portfolio management

➢ Contracts. Confusing clauses

The purpose of portfolio management contracts is the provision by entities of a discretionary and individualised service to manage the assets that, at the time of signing the contract or at any time thereafter, the client has made available to the entity for this purpose, and the returns generated by this management.

The relationship between the parties is mainly governed by the clauses established in the contract, so the entity must act in accordance with the specifications, conditions and clauses thereof.

Although the Complaints Service is not competent to opine on the clauses contained in a contract in any way other than a literal or reasoned interpretation, and even less to decide whether or not they are abusive, as this is a matter that falls exclusively to the courts of justice, in the complaints resolved in 2020, it was evident that in certain cases some of the clauses of portfolio management contracts were confusing and difficult to interpret or understand.

In relation to the manner in which the portfolio management contract can be cancelled, in one clause of the contract referred to in case R/250/2020 it was established that:

> *12.1. This contract will be of indefinite duration, without prejudice to the right of either party to terminate it unilaterally at any time, by means of the corresponding written communication [...].*
>
> *12.2. On expiry or termination of the contract, the bank will have a maximum period of fifteen (15) business days to proceed to fulfil and execute all orders that have already been issued provided that all transactions are settled within the aforementioned period, obtain from the holder the payment of accrued fees and commissions and proceed to close and justify the management accounts.*

The complainant maintained that the entity had exceeded the cancellation period of 15 days established in the contract, while the entity understood that this was not the case because the term should begin from the day on which the pending transactions

relating to the investment decisions adopted by the managers prior to the cancellation order had been settled, in accordance with the contract.

In view of the documentation provided, the Complaints Service concluded that the entity had issued the order to cancel the contract following the complainant's instructions and acted as stipulated therein. However, it also considered that the contractual clause referred to was confusing and the day from which the calculation of the period of 15 days should begin was not clear – whether it was the day on which the client submitted the cancellation order, as maintained by the complainant or whether it was the day on which the pending portfolio transactions at the time the cancellation order was issued had been settled, as stated by the entity. This was a key issue for establishing whether the transaction had been carried out within the contractually established period or not.

In any case, regardless of the starting date of the period and even though no period has been established by law for cancelling a portfolio management service, the period of 15 business days indicated in the contract was considered to be too long by the Complaints Service, especially if the terms established by law for the redemptions of investment funds are taken into account – the assets that made up the managed portfolio in this case.

In cases R/305/2020 and R/465/2020, the procedure for cancelling the CIS portfolio management contract and making the assets under management available was carried out through a transfer of the fund units to a transactional fund. The entity argued that when a client issues an order to cancel a CIS portfolio management agreement, the conditions set out in the CIS prospectus do not apply in the implicit redemption in the transfer of the CIS but it is processed the day after the cancellation order is received. Thus, if the orders were placed before 10:00 p.m., the redemption of the CIS would be ordered the next business day – applying the provisions of the prospectus in each case – and if the cancellation orders were issued after 10.00 pm, the redemption orders implicit in the transfer would be processed two business days later. Although this procedure for the cancellation of a portfolio management contract may make some sense, the complainant stated that it was not included in the particular conditions of the contract.

This was indeed the case. Therefore, it was concluded that, in contrast to the entity's argument, that the transfers of the CIS after the order to cancel the portfolio being delayed by one business day if the cancellation was processed before 10.00 pm or two business days if it was processed after 10.00 pm, were not contractually justified.

➢ Cancellation of the service. Total or partial use of assets under management. Periods for total or partial cancellation

In general, portfolio management contracts are of indefinite duration. However, the client can either cancel them unilaterally at any time, or reduce the amount delivered for management.

Total or partial cancellation and making assets under management available to the client are matters that are specifically covered in the contractual provisions signed by the parties, therefore, they must adhere to the provisions established.

In an order for the total cancellation of a contract, the objective is to unwind the managed portfolio to make all of the assets under management available to the client.

However, although it is possible to cancel the portfolio management contract at any time during its life, it is also possible to redeem a part of the assets under management, a process known as partial cancellation. To do this, the client must issue an order to the entity requesting the amount they wish to redeem.

However, it should be taken into account that on occasion a partial cancellation order can lead to the total cancellation of the contract if the assets under management fall below a minimum required amount.

In the case of portfolios managed exclusively with investments in CIS, it is usual to use a transactional investment fund – or bridge fund – to manage requests for the partial or total redemption of the assets under management. Thus, when the client requests the total or partial redemption of cash, all the funds that make up the managed portfolio are transferred – in the event of total cancellation – or sufficient units of the funds to meet the requested amount – in the event of partial cancellation – to a bridge fund which has been identified in the contract or in the cancellation order issued. Once the transfer has been made, the units in the bridge fund are redeemed and the resulting amount is deposited in the cash account associated with portfolio management services, identified by the client in the contract.

It is important to note that, as long as the amount of the redeemed units of the managed funds used to subscribe units of the bridge fund is not made available to the holder, the transaction will have no tax effects[65] and the capital gain or loss implicit in the CIS transfer will be deferred in time until the units are definitively redeemed. In this way, the use of a bridge fund for the total or partial cancellation of the portfolio means that if the client does not wish to incur tax effects at that moment, an order can be issued to transfer the units from the bridge fund (source fund) to another managed portfolio or one or more other CIS (destination fund), thus postponing the tax effects of the cancellation.

However, if the client wishes to have cash, in the order that he or she signs for the total or partial cancellation of portfolio, the entity must be instructed to proceed with their redemption at the moment in which the transfer of the units to the transactional fund (universal class) comes into effect (R/305/2020, R/465/2020 and R/488/2020).

Notwithstanding, there are entities that allow the total or partial cancellation of managed portfolios through the redemption of the CIS units that make up the portfolio or the direct transfer of these to another management contract or CIS without using a bridge fund (R/254/2020 and R/468/2020).

A request for the total or partial cancellation of the contract does not affect the processing, settlement or cancellation of any transactions in progress that have been previously arranged by the managers. The ongoing transactions must first be completed and then the client's request will be addressed. This situation is usually covered in the contract terms and conditions signed by the parties.

---

65 Article 94.1 of Law 35/2006, of November 28, on Personal Income Tax and partial modification of the laws on Corporation Tax, on income tax for non-residents and assets under management.

Similarly, prior to the total cancellation of the contract, the proportional part of the accrued fees at the date of termination of the contract must be paid.

Consequently, the period in which entities carry out the total or partial cancellation of the managed portfolio may vary in accordance with the circumstances of each specific case (transactions pending processing, settlement of accrued fees, etc.).

In general, entities establish a maximum period of between 8 and 15 business days to carry out this task.

Thus, it is common for complainants to express disagreement with the time taken from the date they issue the order to cancel the portfolio until the order is executed and the assets can be redeemed, especially when there are rebalancing transactions pending.

Thus, although there is no regulatory deadline for cancelling a portfolio management service, as indicated above, entities usually include terms of between 8 and 15 business days in their management contracts.

However, several considerations must be made:

The Complaints Service considers that these periods should be considered maximum periods, so that entities should not exceed them other than in exceptional circumstances and cancellation orders must generally be issued as soon as possible. If any of these exceptional circumstances occur that require the period to be exceed, the reason for this must be demonstrated by entity.

Therefore, if the entity can prove that at the time the client placed the cancellation order, asset rebalancing operations were being carried out, the Complaints Service would consider that it acted correctly and in accordance with the provisions of the portfolio management contract (R/224/2020, R/225/2020, R/263/2020 and R/304/2020).

In case R/610/2019, the complainant requested the cancellation of his managed portfolio on 4 April 2019 at 10:29 a.m. The cancellation order expressly stated that: "Orders for redemption due to the early cancellation of the contract will be processed as of the next business day after receipt of this communication, provided that there are no transactions pending settlement in the funds that make up the portfolio, in which case these settlements must first be completed. In any case, the execution of these orders is subject to the definition of "business day" provided for in the prospectuses of the CIS in which the portfolio is invested". It was demonstrated that no rebalancing orders were pending at that time.

Likewise, the contract established that the client would have access to the assets within a maximum period of eight business days. In this case, the cancellation order was dated 4 April 2019 and the assets were redeemed on 11 April 2019. Thus, the entity complied with the provisions of the contract.

However, in case R/510/2020, the Complaints Service considered that the entity had delayed making the assets available to the client beyond the 15 business days agreed in the contract. In this case, even though the bridge fund was redeemed on 13 March 2019 – within the 15 business days provided for in the contract – the transfer of the cash into the client's account, the last cancellation procedure as established in the signed contract termination document, was not carried out until 5 April 2019, more than 20 calendar days after the redemption.

Lastly, it is important to note that the asset value of the managed portfolio will depend on the net asset value of the bridge fund at the time of redemption, once all the transfers have been carried out.

➢ Asset rebalancing

When an order to cancel a portfolio management contract is issued, it does not affect the processing, settlement and cancellation of ongoing transactions order by the managers prior to the order.

Thus, portfolio management contracts include clauses such as:

– *The cancellation of the contract will not affect the processing, settlement and cancellation of ongoing transactions that had been arranged prior to the communication, nor the settlement and payment of the fees and commissions generated, which will continue to be governed by the conditions applicable thereto, of in accordance with the stipulations of this contract.*

– *The resolution of the contract will not affect the processing, settlement and cancellation of the transactions started prior to the communication, which will continue to be governed by the conditions applicable thereto, in accordance with the stipulations of this contract.*

In delegated portfolio management contracts, entities can change the composition of the portfolio at different times during the life of the contract. However, any such adjustments must be made in accordance with the risk profile, investment objectives and specifications imposed, where appropriate, by the client.

Thus, the management of each delegated investment portfolio has an investor profile and its management is carried out by an Investment Committee or similar body, which, after analysing the market situation and investment policies for each of the portfolios, makes the corresponding adjustments or rebalances, weighting each financial instrument to adjust it to the market situation. These adjustments or rebalances lead to purchases and sales of financial instruments or transfers between different CIS.

3.6 Orders

In general, an order is a mandate or instruction that the investor passes on to the investment firm of which he or she is a client (which acts as an intermediary in the transaction) to buy or sell different financial instruments.

These 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 2020, 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 the client did not want), through the execution's not conforming in some way to the mandate or instruction issued by the client (this topic accounted for the

largest number of complaints), to the entity's selling the instrument without the client's having ordered the sale, or due to various incidents occurring in the execution process.

3.6.1 Securities

➢ Errors in form in completion of orders

Securities orders that contain the client's instructions must be completed so 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 have the following content:[66]

- Identification of the investor.
- Identification of the type of security.
- Purpose of the order: purchase or sale.
- Execution 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.

As an example, in case R/339/2020, the complainant alleged that his order had not been executed correctly, stating that it was a contingent order. According to the information provided, the order referred to in the complaint had been registered and confirmed as a limit order, and there was no evidence that the complainant had wanted it to be processed as a contingent order so it was processed as a limit order and the entity acted correctly.

In case R/95/2020, the complaint referred to the price at which a telephone sale order for a foreign security had been issued, stating that it had been processed at a limit price of US$376, and yet from the documentation provided it was proved that the complainant had confirmed the sell order for a price of US$3.76.

66 For further information on orders, see the CNMV Guide on securities orders available at the following link:https://www.cnmv.es/DocPortal/Publicaciones/Guias/guia_ordenesvalores_engen.pdf

➢ Market, limit and at-best orders

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. 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 an execution 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. All this 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 volatility, when the strike price of an order may differ substantially from the latest market price available immediately prior to that a which the order was made.

It should also be noted that 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.[67]

In this regard Bolsas y Mercados Españoles establishes the static and dynamic ranges, which 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. 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 Complaints Service understands that the entity must inform the client immediately. Otherwise, it would be considered to have acted incorrectly.

In case R/712/2019, it was found that the complainant had issued orders for transactions in which the indicated limit price was outside – by more than 52 times – the highest price in the market, and his orders were correctly rejected by the market. However, it was concluded that the entity had not acted correctly as it had not informed the client it in a timely manner about the reason for the rejection of his orders.

Similarly, in case R/489/2020, the sale order referred to in the complaint was correctly rejected by the market, as the client had set a price that was lower than the static range established for the security in question.

With **market orders**, no price limit is specified, 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 execution price. If the order cannot be fully executed against the counterparty order, the remaining

67 See Sociedad de Bolsas Circular 1/2017, on the Operating Rules of the Spanish Stock Market Interconnection System, in relation to the definition of the static range.

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, especially for highly liquid securities, 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.

In case R/210/2020, the investor alleged that he had issued a market order when, based on the documentation provided, it was proved that he had made a limit order.

At-best orders are orders with no price that are limited to the best price available on the opposite side of the order book.

➢ Contingent orders. Stop loss. Operation and types

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 cause an order to be 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 wishes to take risks and therefore wishes to unwind the position. They are orders that do not enter an order into the market immediately. The quoted price of the security must reach the condition established for the order to be activated and enter the market. Consequently, the activation condition of any mandate of these characteristics can only be met when transactions have been crossed in the secondary market at the price pre-established by the originator.

Once the order has been activated, it must adhere to the type of order that the client has selected, which, as mentioned above, could be a market order, limit order or at-best order.

It is also important to clarify that stop-loss orders cannot be entered directly in the market, since they are not covered by the Stock Exchange Interconnection System platform, so their acceptance will depend on the commercial policy of each entity, which must establish the necessary mechanisms to manage them correctly.

In case R/41/2020, it was proved that the complainant had entered a contingent order through the entity's online broker and once the condition had been met – quoted price equal to or less than a certain price – a market order was issued in accordance with the instructions provided by the complainant. Thus it was concluded that the respondent entity had acted correctly. A similar situation occurred in case R/113/2020 where, once the activation condition had been met, the order was entered (in this case a market sell order) as indicated by the complainant.

➢ International share transfer orders

In regard to the entity the investor must contact to request a transfer of securities between Spanish firms, it should be noted that Iberclear's procedures for the

execution of securities transfers[68] provide that the participating institutions (source and destination) may carry out transfers of securities between their respective accounts in Iberclear and the processing of the transfer will require the express communication of the transaction by the entity or entities involved. In other words, the procedures allow the transfer of securities between Spanish entities to be initiated by either of the two entities involved.

However, in the case of the international transfer of shares from a Spanish entity to a foreign institution or vice versa, regardless of whether the foreign entity is not a participant of Iberclear, the Complaints Service considers that the same procedure must be applied, i.e., the transfer order can be issued by the investor through either the source or destination entity.

If the international transfer entails some kind of extraordinary cost or tax impact for the investor requesting the transaction, the Complaints Service considers that the investor should be informed of these aspects at the time of placing the order.

➢ Client instructions in corporate transactions

As indicated in the section on follow-up information, the obligations of the entities that provide administration and custody services for securities include the obligation to provide, with due diligence and speed, information to their clients about all corporate transactions carried out by the companies issuing the securities. 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, particularly because these transactions have deadlines.

✓ *Capital increases (subscription rights)*

When, as part of a complaint proceedings, it is not demonstrated that the shareholder of the Spanish issuer has issued instructions to the investment service provider to take part in a capital increase in which the disbursement to acquire new shares is required within the established period, the Complaints Service considers that it is good practice for the entity to order the automatic sale of the allocated rights, as their value will otherwise be extinguished.

Such a situation occurred in case R/384/2020, in which the complainant stated that he intended to take part in the capital increase but the entity had sold the rights he had been allocated. As there was no evidence that the shareholder had issued instructions to take part in the capital increase before the deadline, it was concluded that the entity had acted correctly by automatically selling the rights.

In contrast, the usual practice in bonus issues – where no disbursement is required to acquire the new shares – is that the shares are subscribed at the end of the period.

68 PR240 procedure on securities transfers.

✓ *Scrip dividend or flexible dividend orders. Repetition of orders*

A scrip dividend consists of a company's deciding to remunerate its shareholders by giving them the option of receiving the dividend either in cash or in the form of new shares instead of the sole payment of a cash dividend. To this end, the issuer's governing body approves a capital increase to be charged to voluntary reserves for a maximum nominal amount equivalent to the payment of the ordinary dividend in cash.

A scrip dividend is an example of a transaction that requires precise instructions from the client by a specific deadline, as the depository must inform its clients of the terms and conditions and the options available to them in the context of this transaction.

Deciding whether the client can issue an instruction for this type of transaction that does not become invalid over time or whether the client must issue instructions each time an operation of this type occurs is a matter that falls to the entity, as it must establish the system that is the best fit with its internal operations.

This issue arose in case R/458/2020, in which the complainant alleged that in a previous transaction he had communicated to the entity that for this type of dividend he did not wish to acquire new shares with his rights, but to receive them in cash and he understood that he did not have to indicate the same instruction each time, contrary to the view held by the entity.

➢ **Purchase of assets with insufficient balance in the client's account**

In general, the rule[69] establishes that members of the official secondary market are required to execute, on behalf of their clients, any orders they receive from them for trading 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.

However, as there is no general legal obligation to request funds prior to receiving a purchase order, it is necessary to adhere to the provisions established in the administration and securities deposit agreement and the operating procedures used by the entity to determine whether or not it requires the provision of funds and, if required, at what point in the transaction, in addition to the consequences of non-compliance.

By way of example, in case R/463/2020, as it was not proven that the contract in question required a prior provision of funds, the Complaints Service considered the entity's action to be correct on executing the order referred to in the complaint.

A similar situation occurred in case R/243/2020.

In any event, it would seem to be necessary for entities to have implemented appropriate procedures and control measures so as to avoid overdraft situations, given the negative consequences that this causes for both parties.

69 Article 71 of Royal Legislative Decree 4/2015, of 23 October, which approves the recast text of the Securities Market Act.

In regard to this issue, it is important to take account of 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.

➢ Incidents in order management

With regard to orders placed by clients, the rules of conduct establish, in general and as part of their order execution policy, that entities act with care and diligence in their transactions, performing them according to the strict instructions of their clients and adopting reasonable measures to obtain the best possible results, 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.[70]

Further, as in other matters raised in complaints, in this matter of securities orders, the 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.

In case R/491/2019, the complainant stated that he had observed an error in a movement in the private area of the website, as there was a sale for twice the number of instruments that he had ordered. The entity acknowledged that a technical incident had occurred that resulted in the settlement of the operation not being shown correctly.

In case R/476/2020, the complainant stated that his order had been "duplicated" due to an error in the entity's systems. However, in view of the documentation submitted to the case, it was proved that there were two transactions, both of which had been ordered by the complainant.

The Complaints Service 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.

It must be taken into account, however, that rectification by entities of errors committed does not imply the absence of bad practice, as occurred in case R/491/2019 detailed above. 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 Complaints Service 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's welcoming the entity's offering a solution to the client affected by the error.

---

70 Articles 221 to 224 of the LMV; Articles 67 to 70 of Commission Delegated Regulation (EU) 2017/565, of 25 April 2016; Article 79 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.

However, the Complaints Service lacks the competence to order the respondent entity to pay the damages allegedly caused to their clients, or to determine the possible compensation if necessary. This competence corresponds exclusively to the ordinary courts of justice, with which the complainant must file claims for damages

➢ 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.

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.

In these cases, the Complaints Service considers 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/88/2020, the respondent entity did not properly report the reasons that prevented the securities referred to in the complaint from being made available, specifically, a judicial order for their attachment, and for this reason the securities were blocked by the entity.

In some cases, the entity cannot execute orders on securities that it had previously admitted. This is because, on occasion, the secondary listing market has changed and the international broker used by the entity does not operate in the new market (this generally occurs when the securities are listed on an OTC market).

In these cases, the Complaints Service considers that entities must inform their clients in a timely manner of any circumstances that prevent them from intermediating the transactions ordered by them on certain securities so that the clients can take the measures they deem appropriate (including the transfer of the securities to another entity that can broker transactions).

This matter was addressed in case R/350/2020, in which it was concluded that the entity should have informed the client, in a timely, fast and diligent manner, of the new circumstances that have prevented the entity from being able to broker transactions on the target securities referred to in the complaint, and it was not proved that this information had been transferred to the complainant until the moment in which he intended to issue a sell order on the securities.

➢ Unilateral execution of positions by the entity

On certain occasions, complainants query the execution of orders by entities on their behalf, even though the transactions had been authorised under the corresponding investment service contract.

In this regard, investment firms 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 regulating the investment.

Although this may be justified in some cases (see below), the 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.

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 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, i.e., to close the position.

In this respect, for derivatives contracts or 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 margins that depend on the price of the underlying asset on the secondary market. Also, in the event that these margins are exceeded, the positions will be closed if the investor does not provide the requested funds.

Therefore, in order to close their clients' positions, entities must provide documentary evidence that the client had been informed about how they were going to proceed in this regard prior to the start of operations – that is, at the time of signing the contract. If nothing is indicated on this matter in the contract, the unilateral closing of positions by the entity will be considered incorrect.

Also, without prejudice to the entity's right to unilaterally close a client's positions when this circumstance has been fully reflected in the initial contract, the Complaints Services considers that the entity must be able to demonstrate that it clearly informed its client, prior to the closure, of the situation arising and the decision that was going to be taken, to enable the client to take any actions that he or she might deem appropriate with respect to the open positions.

For example, in case R/658/2019, the entity was considered to have acted incorrectly, as it was not stated in the file that the client had been expressly informed prior to the unilateral action, about the possible closure of his positions due to the lack of collateral in his account.

It should be noted that the European Securities and Markets Authority (ESMA) published in the *Official Journal of the European Union* product intervention measures related to the marketing of CFDs and binary options to retail investors.

These measures were approved by the ESMA Board of Supervisors on 22 May 2018, making Decision (EU) 2018/796 of the European Securities and Markets Authority public, although it did not enter into force until 1 August 2018.

The marketing, distribution and sale of CFDs to retail investors is restricted to cases in which the following protections are guaranteed:

– A leverage limit on opening a position that varies according to the underlying asset and its volatility. For stock market indices, this is set at 20% of the notional value.

– Margin close-out protection. Specifically, if the total margin in an account falls below 50% of the initial required margin with respect to the client's open CFD positions, the provider must close out one or more of the CFDs.

– Negative balance protection. A general limit is established to guarantee the losses of retail clients.

– The prohibition of incentives to promote transactions.

– A standardised risk warning.

In relation to CFDs, on 1 August 2019, CNMV Resolution, of 27 June 2019, on product intervention measures related to binary options and contracts for differences entered into force. Article 3 of this resolution contains the following definition:

> *[...] (e) "margin close-out protection" means the closure of one or more of a retail client's open CFDs on terms most favourable to the client in accordance with Articles 24 and 27 of Directive 2014/65/EU when the sum of funds in the CFD trading account and the unrealised net profits of all open CFDs connected to that account falls to less than half of the total initial margin protection for all those open CFDs;*
>
> *(f) "negative balance protection" means the limit of a retail client's aggregate liability for all CFDs connected to a CFD trading account with a CFD provider to the funds in that CFD trading account.*

By way of example, in case R/79/2020 it was concluded that the entity had acted correctly by closing positions shortly after a declining customer balance was detected.

➢ Lot orders (for prices below 0.01 euros)

On 17 September 2018, the Sociedad de Bolsas[71] published Circular 1/2018 amending the operating rules of the Stock Market Interconnection System in relation to the rules governing minimum price variation.

Its purpose was to dispense with the minimum trading price – which at that time was 0.01 euros – and establish, for securities with a price lower than 0.01 euros, a trade by lot requirement.

The circular was implemented through Operating Instruction 63/2018, of 19 September, which provides the following:

> *1. SCOPE OF APPLICATION*
>
> *This Operating Instruction will apply in relation with the trading of those instruments which, being traded in the Sistema de Interconexión Bursátil, have a trading price below or equal to €0.01.*

71 Sociedad de Bolsas, S.A., a BME Group company, manages and operates the Stock Market Interconnection System (SIBE), the technical trading platform for the Spanish stock market and the location of the order book.

2. APPLICATION OF THE MINIMUM LOT REQUIREMENT

1. 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.

Orders on these instruments pending execution at the end of the session of the previous day at the beginning of the trading session, to which the minimum lot requirement applies, will be automatically cancelled, and such orders, where appropriate, will need to be re-entered at the next trading session, in alignment with the minimum lot requirement. Orders that are sent to the system and do not meet the minimum lot requirement will be rejected.

2. For instruments to which minimum lot requirement applies that reach a trading price equal or greater than 0.02 euros at the end of the trading session, the minimum lot requirement will cease to apply for entering of orders in the system from the start of the next trading session.

3. At the end of the corresponding trading session, an Operating Instruction will be published with the list of securities of which the previous sections 1 and 2 apply.

Consequently, based on the rules of operation of the Spanish Stock Market Interconnection System (SIBE) a minimum trading lot of 100 shares has been established for certain instruments – applicable from 26 October 2018 onwards, and it is not permitted to trade lots of these shares that are not multiples of 100 on the SIBE, or to execute sales of less than 100 shares.

This means that, unless the client's financial intermediary accumulates the orders of its clients until a number of shares that is a multiple of the established minimum lot is obtained – in which case it should comply with the requirements established in Article 68[72] of Commission Delegated Regulation (EU) 2017/565, of 25 April 2016, it will not be possible for shareholders to trade a number of shares that is lower than minimum lot requirement or fractions of shares that are not multiples of the minimum lot established for shares on the SIBE.

Therefore, taking into account the obligation of entities to act in the best interests of their clients, as well as the provisions of the order execution policy of each one, where applicable, the Complaints Service considers that in these cases, and in the absence of other relevant applicable circumstances, acting in accordance with the good practices of the securities markets would mean that the entities should accumulate and allocate – e.g., fairly assign – the orders of their clients, for which purpose they must comply with all the requirements established in Article 68 of Delegated Regulation 2017/565.

To date, the list of securities to be traded in this manner has changed as some of them no longer meet the conditions established in the operating instructions

72 Article 68.1 a) *et seq.* of Commission Delegated Regulation 2017/565, of 25 April 2016: “that it is unlikely that overall the accumulation of orders and operations will harm any of the clients whose orders are going to accumulate […]”.

detailed above. However, when the complaint mentioned below as an example was resolved, the security in question met the conditions established for this purpose.

In case R/170/2020 it was explained that it was considered good practice for entities to accumulate and allocated the orders issued by their clients to reach minimum lots of 100 securities as established by operating instruction, and once executed assign to each one of their clients the percentage corresponding to them for the sale made.

3.6.2 Collective Investment Schemes (CIS)

➢ **Disputes over the net asset value applied to the transaction. Unknown net asset value**

Given the intrinsic liquidity features of CIS, many complaints refer to the net asset value (NAV) applied in the subscription or redemption of CIS units.

First of all, it should be pointed out that in general the NAV applied in subscriptions and redemptions of investment fund units that are not quoted in a secondary market may be that taken on the same day as the request or the day after the request, 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 NAV applicable to subscriptions and redemptions of units of financial investment funds is unknown when investors place their orders.

In this sense, it should be noted that the NAV of an investment fund is calculated by valuing all the assets in the portfolio on a daily basis (or with the frequency established in the prospectus), thereby obtaining the real equity of the fund. This equity will be divided by the number of shares existing at that time, thus determining the NAV of each one.

The prospectus must also indicate the procedure for subscription and redemption of units in order to ensure that the management company or distributor accepts 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 NAV.

In case R/321/2020, the client complained about the NAV applied in the redemption of his fund. However, it was concluded that the respondent entity had acted correctly, as it was proved that the order had been given before the established cut-off time and, consequently, the NAV applied was correct.

For both subscriptions and redemptions, certain practical aspects such as fees, minimum investment requirements or advance notice should be taken into account. Information on these matters is contained in the KIID and in the prospectus.

Lastly, it must be specified that the foregoing is regulated in the specific CIS regulations. However, when CIS are part of a portfolio within the framework that is part of

a discretionary portfolio management service, the provisions of these contracts for divestment must be taken into account (see section on client portfolio management).

➢ Incidents in the subscription and redemption process. Holidays and closed market

Article 78.2 of the CIS regulation[73] establishes that business days (for the purposes of orders received) will not be considered those in which there is no market for assets representing more than 5% of the fund assets. Therefore, if a CIS has more than 5% of its assets invested in a security for which there is no market, as mentioned above, the NAV of the next business day must be applied to the subscription and redemption transaction.

The information documentation of investment funds establishes that: "Business days will not be considered those in which there is no market for assets representing more than 5% of the fund assets [...]". This is usually the case when this day is a holiday in the market's country of origin.

Therefore, when it is proved that more than 5% of the fund assets referred to in the complaint are invested in securities that are listed on a stock exchange or market which is not open on the day on which the transaction should be executed, it can be concluded that, as indicated in the fund's prospectus, the orders given by the complainants on that non-business day would have to be executed with the NAV corresponding to the next business day.

This issue arose in case R/123/2020, in which it was specified that as 4 July (the day the order was placed) is a non-business day in the USA and that assets of the fund representing more than 5% of its total assets were traded in the markets of that country, the respondent entity had acted correctly, when it applied the net asset value of the following business day, 5 July, in the transaction.

➢ Transfers between investment funds and other CIS. Transfer of foreign or domestic funds with the same distributor

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 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 transaction is therefore subject to all general legislation on CIS subscriptions and redemptions.

The above regulation indicates that in order to initiate the transfer, the unitholder/shareholder must contact the target management company or distributor, with the

73 Royal Decree 1082/2012, of 13 July, approving the implementing regulations of Law 35/2003 of 4 November on Collective Investment Schemes.

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 which 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 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 provided for settlement of the transactions are governed by the provisions in the prospectus of each fund for subscriptions and redemptions.

In many cases, the complaint refers to the NAV used in the redemption of the original fund implicit in the transfer due to an alleged delay as the deadlines established by the regulations are not met.

In case R/414/2020, the entity was deemed to have acted incorrectly, as it was proved that there had been a delay on its part in executing the transfers referred to in the complaint, and consequently, an incorrect NAV was used in the redemption of the source CIS involved.

In contrast, in case R/80/2020, it was concluded that the NAV applied to the source fund in the transfer in question was correct.

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 above operating instructions.

In this regard, and in accordance with Inverco's protocol for CIS transfers[74] if as a result of the checks made it is found that the transfer cannot be carried out, the source entity must notify the target management or marketing company, within a maximum additional period of one business day, of the reasons why the transfer cannot be made.

At this point, it should be noted that most of the complaints received about CIS transfers occur in the context of transfers in which more than one entity is involved.

In these cases, the Complaints Service requests pleas from the two entities that have participated in the transfer, either as a respondent entity or as a participating entity (source or destination entity) to find out how they have acted and in the event that an error has occurred, to determine to which of the two is responsible.

If it is discovered that the culprit of the malpractice is not the entity against which the investors has filed a complaint but the other entity involved, the Complaints Service must inform the latter, in accordance with the provisions of the twelfth rule

74 http://www.inverco.es/archivosdb/cuaderno-334-def-2015-11.pdf

of Circular 7/2013, that objective information has come to light that suggest, at least initially, that this entity may have engaged in bad practice in relation to the transfer referred to in the complaint. The other entity is then notified in a reasoned manner that in the final report issued resolving the complaint in question it will be considered the respondent.

For example, in case R/348/2020, it was concluded that the shareholder had not been properly informed about the rejection of the order the complaint referred to.

In case R/395/2020, in which one of the complaints referred to the rejection by the source entity of a transfer order given at destination for an incorrect number of shares consigned to the order, it was concluded that the information about the number of shares provided by the source entity to the complainant was not correct.

Notwithstanding, if the case relates to transfers between CIS in which the respondent entity is a distributor of source and destination CIS involved in the transfer, the following points must be taken into account in relation to the registration of unitholders' positions:

i) Transfers between foreign CIS: since there are global accounts in practically 100% of cases, it would not be necessary to carry out the checks established in the regulations and consequently the period of two days conferred by Article 28 of the CIS Law to the source company of origin to carry out these checks would not be applicable. In other words, the redemption of the source fund would have to be managed as an ordinary redemption, applying the conditions established in the prospectus, since the distributor knows the position in the client's source fund and, consequently, the order received complies with all the requirements to be processed directly.

ii) Transfers in which the source fund is Spanish and registered in a global account of the distributor and the destination fund is also registered in a global account: in this case, as the distributor keeps the record of the funds and the managers only have a global account in the name of the distributor, they should proceed in same way as for foreign funds.

iii) Transfers in which the source or destination fund is Spanish and one of the two is not registered with the distributor in a global account: in this case, in practice the unitholder register would be duplicated and the identification and customer data are known to both the manager and the distributor, although the fields contained in both records and, consequently, the information, do not necessarily have to coincide.

In other words, there are cases where it is not necessary to carry out checks on the requests received directly from the investor by the distributors of the CIS in the order, other than those that must be carried out as part of the redemption and subscription to the CIS, under the terms extended to carry out these transactions by the regulations.

In this regard, the Complaints Service considers that in general when the source fund and the destination fund are both distributed by the same entity and managed by one or two management companies from the same group, the usual practice is for the register of the fund's unitholders to be overseen by the distributor while the managers would only have a global account in the name of the distributor on their

records. Thus, when the distributor receives the transfer order, no time would be needed for additional checks, since it would know players involved and have all the data for both funds.

However, the entity could also present proof to the contrary, i.e., that the distributor has not kept a second tier register of the CIS in question and consequently these are not registered in global accounts of the manager in its name. In such case, the corresponding checks would have to be made.

In case R/411/2020, it was concluded that the entity had acted incorrectly due to a delay in executing the transfer referred to in the complaint, as the funds were distributed by the same entity and managed by two fund managers from the same economic group. Since the entity did not provide any evidence to the contrary, it was considered that the funds units were registered in global accounts of the distributor and therefore the above checks were not needed.

In case R/397/2020, also referring to a transfer of CIS distributed by the same entity, there was no incorrect action on the part of this entity, as the period and the NAV applied to the funds involved in the transfer referred to in the complaint were both correct, and the transaction had been performed without applying the deadlines set out in the regulations.

➢ Change of distributor

A change of distributor is a separate transaction from a transfer, in which the investment remains unchanged; the investor keeps the CIS it has already acquired, but the entity that acts as distributor or custodian for the CIS is changed.

As two entities are involved in these operations and complaints are usually related to delays in making the change or transfer, the Complaints Service also usually requests pleas from the entities involved to analyse all the steps that both entities have taken to execute the transfer order issued by the complainant in due time and form.

If it is observed that respondent entity did not commit malpractice but the other entity involved, the Complaints Service sends the latter a reasoned notification in accordance with the regulations detailed above, informing it that it will also be considered a respondent.

For example, in case R/464/2019, it was concluded that the destination entity (that was originally not the subject of the complaint) had acted incorrectly, as it was considered that it had not used the proper channel to process the change of distributor.

3.7 Fees

➢ Prior information on costs and expenses following the introduction of MiFID II

Among the basic principles that underpin the relationship between the entities that provide investment services and their clients is the duty to act with honesty, impartiality and professionalism, in the best interest of the clients, observing the rules and principles established in the recast text of the Securities Market Act and its implementing

regulations. One of these obligations is to keep their clients properly informed at all times,[75] providing them with proper advance notice of all the costs and expenses associated with the services offered by the entity or related to the financial instruments.

Main criteria applied in the resolution of complaints in 2020

In this sense, a distinction is made between the criteria maintained by the Complaints Service on compliance by entities that provide investment services with the obligation to provide prior information on costs and expenses in the complaints processed in 2020 referring to negotiable securities, CIS and the provision of portfolio management services.

3.7.1 Negotiable securities

The MiFID II regulation[76] determines that investment service providers must report *ex ante* of all the costs and expenses of the service – including the cost of the platforms or applications made available to the client to operate in the markets (R/675/2019) and of the financial instrument – so that they are understandable to the clients to who the information is addressed. Furthermore, payments received from third parties in relation to the provision of the service to the client (inducements) must be broken down. In general, the *ex ante* information on costs must refer to the real fees applicable in each specific transaction ((R/688/2019).

It should be noted that until the entry into force of the adaptation of national regulations to MiFID II (17 April 2019), entities had the obligation to prepare a maximum fee and expenses prospectus, which they had to publish and report to the CNMV. Although the obligation to report these prospectuses to the CNMV has disappeared with the entry into force of the new EU regulations, there is still an obligation for entities to inform their clients of the fees that they are going to apply and to publish the main fees applicable on their website and make them available at their branches. However, it must be clarified that to prevent errors in this area, the fee prospectuses that may still appear on the CNMV's website are the last ones presented by each entity in compliance with the previous regulations.

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.

In the event that fees are increased, entities must inform their clients before the new fees are applied and give them a minimum of one month to change or cancel their contractual relationship with the entity, and the new fees may not be charged during this time. However, if the right of separation is exercised during this period, the rates previously in force will be applied unless the entity decides not to charge any fees at all. If the fees are decreased, the entity must also inform the client without prejudice to the immediate application of the new rates.

---

75 Articles 208 and 209 of the Securities Market Act and Chapter III, section 1 of Commission Delegated Regulation (EU) 2017/565, of 25 April 2016.

76 Article 50.2 of Commission Delegated Regulation (EU) 2017/565 of 25 April 2016 supplementing Directive 2014/65/EU of the European Parliament and of the Council as regards organisational requirements and operating conditions for investment firms and defined terms for the purposes of that Directive. CNMV document *Q&A on the application of the MiFID II Directive.*

In regard to the way that clients must be informed of these changes, although entities are not obliged to send their clients the information by certified post with acknowledgement of receipt – in other words, they are not legally obliged to provide proof of delivery –, the Complaints Services considers that they do have an obligation to prove that the information has been dispatched, through a copy of the personal and separate communication sent to the client at a valid notification address. 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, such as SMS, an alert on the private area of the website or similar.

One of the most common securities transactions refers to transfers between entities. A transfer is usually necessary to cancel a contract or commercial relationship with the depository. Therefore, a transfer fee that is too high could be an obstacle to the right of the investor to end their commercial relationship with the entity. For this reason, although entities are free to set their fees as they see fit, if the amount charged for the provision of this service is excessively high, it could imply a breach of consumer and user rights or even be considered a abusive clause, although the CNMV cannot rule whether it is abusive or otherwise as this can only be done by an ordinary court of justice (R/394/2020).

Standard contracts for the custody and administration of financial instruments must establish, among other aspects, the form and terms in which the entity will make the deposited or registered financial instruments available to its clients, as well as, where appropriate, the procedure for their transfer when the contract is terminated, expressly indicating the requirements for this, such as the fees charged for carrying out the transactions pending settlement at the time the contract is resolved and the proportional part of the fees accrued that corresponds to the period started at the time of the termination (R/349/2020).

Spanish legislation, adapted to MiFID II, establishes that when an investment service is offered together with another service or product as part of a package or as a condition for the same agreement or package – cross-selling – the investment firm must inform the client whether it is possible to buy the different components separately and provide separate evidence of the costs and charges of each component.[77] In addition, ESMA published Guidelines on cross-selling practices, which address, among other issues, the full disclosure, prominent presentation and timely communication of price and cost information for cross-selling. The CNMV notified ESMA of its intention to comply with these guidelines and disseminated that decision through a statement.[78]

When more than one investment firm provides investment services or ancillary services to a client, MiFID II establishes that each of them must provide information on the costs of the investment or ancillary services provided. An investment firm that recommends or sells the services provided by another firm to its clients must add the costs and expenses of its own services to those of the services provided by the other firm. The investment firm must take into account the costs and expenses

77 Article 219.2 of Royal Decree Law 4/2015, of 23 October, which approves the recast text of the Securities Market Act.

78 Statement of 13 September 2016: "CNMV to adopt ESMA Guidelines on cross-selling practices".

associated with the provision of other investment or ancillary services by other firms when it has referred the client to them.[79]

In relation to the aggregate cost figure provided for in the MiFID II Directive, the CNMV has clarified that it includes, among others, third-party fees and brokerages.[80]

➢ Notification to the client of any changes in the fees initially agreed

✓ *Method of sending the notification of changes*

Entities must inform clients of any change to the rates of fees and expenses applicable to the established contractual relationship. In particular, specific rules apply to changes in fees for services which require the use of a standard contract, within the general scope of said contracts.

In the event that fees are adjusted upwards, the entity must inform its clients and grant them a minimum period of one month in which to change or cancel their contractual relationship. The new fees will not be applied during this period. In relation to the latter, it should be clarified that the former rates will 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[81] (R/607/2019).

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.

However, regulations do not require that this change 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 (SMS, email). In any case, 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.

Based on the above and as already mentioned, although entities are not obliged to send their clients the corresponding information by certified post with acknowledgement of receipt – in other words, they are not obliged to provide proof of delivery –, they do have an obligation to prove that the information has been dispatched, through a copy of the personal and separate communication sent to the client at a valid notification address or the IT trace of the delivery of the communication if an electronic channel is used.

Therefore, if there has been any change in fees since the start of the contractual relationship, the entity must be able to prove that it has sent its clients the information about this change in the required terms (R/317/2020, R/464/2019, R/40/2020, R/86/2020 and R/394/2020).

---

79 Article 50.7 of Commission Delegated Regulation (EU) 2017/565, of 25 April 2016, supplementing Directive 2014/65/EU of the European Parliament and of the Council as regards organisational requirements and operating conditions for investment firms and defined terms for the purposes of that Directive.

80 Question 11.15 of the CNMV document *Q&A on the application of the MiFID II Directive.*

81 Rule seven, section 1. e), of CNMV Circular 7/2011, of 12 December, on the fee prospectus and the content of standard contracts.

In regard to sending communications of changes in a personal and separate manner, the Complaints Service considers that the entity acts correctly when the letter is addressed to the client and sent to the address indicated in the custody and administration contract for notification purposes. Consequently, a general communication in which the recipient is not identified or the address to which it has been sent is not stated would not be correct (R/370/2020).

✓ *Date of application of changes*

As mentioned above, clients must be informed of any increase in fees and given a minimum period of one month from the receipt of the information (or such other minimum notice period as the parties may have agreed or the entity has committed to) in which to change or cancel the contractual relationship, during which time the new fees will not be applied. Any reduction must also be communicated, without prejudice to its immediate application. These provisions are included in the specific regulations of the standard contracts.

Typically, in the communication of a fee adjustment, a date of entry into force for the new fees is established. In the case of an increase, entities would have to send the communication well in advance in order to enable the client to exercise the right to change or cancel the contractual relationship (R/85/2020 and R/374/2020).

✓ *Content of the notification of changes*

With reference to the content of the communication that entities are required to send their clients informing them of changes in fees, for the purpose of adequately informing the client, the communication should indicate, in addition to the legally required established information (when the new fees will enter into force and separation rights), the transactions that have undergone changes (at least the most usual ones) and, preferably, their amounts (those in force until a specific date and the new ones) (R/530/2019, R/606/2019, R/53/2020 and R/115/2020).

The separation rights must also be set out if the client is not in agreement with the proposed changes, as well as the term for exercising these rights and that during this time the new fees will not be charged.

➢ Foreign currency transactions. Exchange rate applied

When part of the total price to be paid for the investment service is paid by the retail client in a currency other than the euro, the entity receiving the order must inform the client, prior to executing the instructions or signing the contract, of the equivalent value of the currency in question or, failing that, the way in which this will be established or the spread on the official exchange rate that will be applied. Investment firms must also provide information about payment conditions or other forms of execution.[82] This information must also be available on the entity's website (R/718/2019 and R/173/2020).

82 Article 50.3 of Commission Delegated Regulation (EU) 2017/565, of 25 April 2016, supplementing Directive 2014/65/EU of the European Parliament and of the Council as regards organisational requirements and operating conditions for investment firms and defined terms for the purposes of that Directive.

Main criteria applied in the resolution of complaints in 2020

In relation to the aggregate cost figure provided for in the MiFID II Regulation, the CNMV has clarified that it includes, among others, the costs implicit in currency exchange.[83]

➢ Custody and administration fees for securities that are delisted and inactive

Some complaints refer to the collection of custody and administration fees by entities from their clients relating to securities that have been delisted (R/636/2019, R/662/2019, R/25/2020, R/178/2020, R/203/2020, R/272/2020 and R/282/2020).

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 until the company has been wound down (unless the securities are transformed into physical certificates, which requires a specific procedure). However, the 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 deregister the shares from their securities account.

Delisted foreign securities are subject to the regulations of their country of origin. Thus, given that the CNMV's supervisory powers are limited exclusively to the Spanish securities markets, in these cases the Complaints Service can only assess the entity's compliance with Spanish rules of conduct. However, if the client wishes to waive the shares, the custodian entities must inform them of any procedures that they are aware of that would allow them to cancel this type of share in the accounting records of the country of origin.

➢ Operational cash account linked to the securities account

In relation to the collection maintenance fees for the cash account associated with the securities account, while these types of accounts are usually the responsibility of the Bank of Spain, if they are accounts that are ancillary to the securities account, they will fall under the remit of the Complaints Service. The long-standing position of the Complaints Service is that when cash accounts (current and savings accounts, etc.) are required to be opened or maintained by the entity solely to support the movements in securities or investment fund accounts, as long as in practice these movements relate only to securities or funds, investors should not be charged any costs for opening, maintaining and closing them (R/633/2019).

This criterion, although it referred to securities, became a legal obligation,[84] and rules were established to ensure that the custody and administration of financial instruments includes both the maintenance of the securities account and the cash account, if this was an ancillary account, i.e., with movements linked exclusively to the securities account.

83 Question 11.15 of the CNMV document *Q&A on the application of the MiFID II Directive.*

84 Rule Four, section 2. b), of CNMV Circular 7/2011, of 12 December, on the fee prospectus and the content of standard contracts. "The maintenance of the securities account as well as the ancillary cash account will be included when it is linked exclusively to the securities account", which remains in force.

However, if not all the movements of the cash account are related to the securities account and the account is used by the investor for purposes other than supporting the investments in securities, this exception would not apply and therefore the entity will be able to charge maintenance fees for the cash account in question. In this case, as indicated above, the fee charged would be purely a banking fee, so the Bank of Spain's Institutions' Conduct Department would be the competent body in this area, which should decide whether the fee applied is correct or not.

To close this type of cash account, the securities account must be closed first as its sole purpose is to process the charges and fees corresponding to the securities deposited in the securities account, and thus the closure of this account is linked to the transfer or sale of the financial instruments deposited in it.

The inclusion of the MiFID II directive into Spanish legislation[85] establishes that when an investment service is offered together with another service or product as part of a package or as a condition for the same agreement or package, the investment firm must inform the client whether it is possible to buy the different components separately and provide separate evidence of the costs and charges of each component. In addition, ESMA published Guidelines on cross-selling practices, which address, among other issues, the full disclosure, prominent presentation and timely communication of price and cost information for cross-selling. The CNMV notified ESMA of its intention to comply with these guidelines and disseminated that decision through a statement.[86]

➢ Fees outstanding and accrued on cancellation of the financial instrument custody and administration contract

Standard contracts for the custody and administration of financial instruments must establish, among other aspects, the form and terms in which the entity will make the deposited or registered financial instruments available to its clients, as well as, where appropriate, their funds and the procedure for their transfer when the contract is terminated, expressly indicating the requirements for this, such as the fees charged for carrying out the transactions pending settlement at the time the contract is resolved and the proportional part of the fees accrued that corresponds to the period started at the time of the termination[87] (R/1/2020).

➢ Fees for limit orders not executed

In general, an order is the mandate or instruction that the investor passes on to the investment firm of which he or she is a client (which acts as an intermediary in the transaction) to buy or sell different financial instruments.

85 Article 219.2 of Royal Decree Law 4/2015, of 23 October, which approves the recast text of the Securities Market Act.

86 Statement of 13 September 2016, "CNMV to adopt ESMA Guidelines on cross-selling practices".

87 Rule Eight, section 2, of CNMV Circular 7/2011, of 12 December, on the fee prospectus and the content of standard contracts.

Main criteria applied in the resolution of complaints in 2020

In the trading of shares on the secondary market, there are three types of orders: limit orders, market orders and at-best orders.[88] 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 an execution price (price that acts as the maximum price for the buy order and minimum for the sell order).

As already stated, investment service providers must report *ex ante* all the costs and expenses applied in the most common transactions, which must include the case that fees may be charged if the order is executed and if it expires because no counterparty can be found and it is not executed (R/405/2020).

3.7.2 CIS

The fees charged by investment funds are one of the features that investors need to take into account when choosing a fund in which to invest as they may have a significant influence on the fund's returns.

Investment fund management companies and depositories may pass on management and deposit fees to investors. In addition, management companies and the fund distributor companies may charge unitholders subscription and redemption fees. Likewise, they may establish subscription and redemption discounts in favour of the funds themselves.

➢ Information on fees and expenses of investment funds

The information on the fees and expenses of investment funds is contained in the documentation that must be delivered to the investor before contracting the products (i.e., in the latest half-yearly report and KIID, which are obligatory, and on the investor's request, the prospectus and the latest published annual and quarterly reports) and it establishes the general maximum percentages for each specific investment fund, in addition to the calculation method and the maximum fees, the fees actually charged and the beneficiary entity[89] (R/45/2020, R/119/2020 and R/187/2020).

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.[90]

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

88 Circular 1/2001, of Sociedad de Bolsas, on the Operating Rules of the Spanish Stock Market Interconnection System (SIBE).

89 Article 8 of Law 35/2003, of 4 November, on Collective Investment Schemes.

90 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.

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 (they are charged directly and periodically to the investment fund itself) and are stipulated in the prospectus, subscription or redemption fees are explicit (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 units or due to being ordered on certain dates or in certain periods (liquidity windows).

Likewise, in accordance with the MiFID II Directive, investment firms must provide *ex post* annual information on all costs and expenses related to the CIS, which will be based on the real costs and will be provided on a personalised basis.

➢ Notification of changes in CIS fees

The fees set down in the KIID and the prospectus can be changed after the investment fund has been contracted, so the fee applicable to a particular transaction may be different from the fee initially stated.

There are certain changes, such as those establishing or increasing fees or establishing, increasing or eliminating discounts in favour of the fund upon subscription and redemption, of which unitholders must be informed 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.[91] In general, failure to exercise the right of separation within the specified period automatically implies that the unitholder wishes to maintain the investment, and hence the changes.

Even though these changes must be communicated to 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, although the entity must always be in a position to prove that the communication has been delivered to the name and address of the holder, or through the channel established in the contract.

The same obligation to inform unitholders applies to guaranteed investment funds or funds with a target return, in the event that fees are applied on the expiry of a redemption order when a guarantee or target return is being renewed. In this case, entities must demonstrate that they have informed the unitholders of these changes in the manner described, specifying the fees changes and any other issues such as the expiry of the guarantee, the revaluation of the fund, a name change or amendments to its investment policy.

91 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.

➢ Custody and administration for investment in CIS

Entities may charge fees for the custody and registration of shares or units in foreign CIS and for a change of distributor. They must always inform investors about these fees before they are applied, and the changes must be accepted by the client (R/191/2020).

Further, 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:[92]

- 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 to the investor of ownership of the units.

- 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 case of foreign CIS, it is not the CNMV that supervises the CIS prospectus, but the home authority. For this reason, in these cases, it is understood that custody services are provided and therefore the corresponding fee can be charged when the distributor keeps an individualised register of the CIS units, i.e., one that 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 global accounts (omnibus accounts), which is usually the case.

However, to be able to collect it, they must have informed their client of the fee before it is charged in accordance with the provisions on prior information on costs and expenses and changes in the fees initially agreed in the section on securities fees (R/90/2020, R/91/2020, R/109/2020, R/191/2020, R/202/2020 and R/428/2020).

➢ 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 specific established dates.

The fund prospectus also states 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.

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.

---

92 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.

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).

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 (R/721/2019 and R/182/2020).

3.7.3 Portfolio management

Clients sometimes contract CIS portfolio management services in which they make contributions and grant powers to an entity for it to carry out, in the name and on behalf of the client, transactions with different securities, or in case where a portfolio of CIS is managed, specifically with this type of product.

As in the other cases described above, clients and potential clients of portfolio management companies will be provided by the investment firm, with sufficient advance notice, information on all the costs and expenses associated with the provision of this service (normally a fixed fee and another variable fee relating to the success of the management carried out by the entity). These information obligations on costs and expenses are listed in the MiFID II Delegated Regulation and the particularities of this information in the case of discretionary portfolio management have been clarified in the FAQ documents on MiFID II published by ESMA and the CNMV.

The portfolio management service must be formalised through a specific contract,[93] which must include the type of fees, the calculation basis used and the settlement period, and, where appropriate, the corresponding discounts. 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 (or more if stated in the contract) from the receipt of this information in which to change or cancel the contractual relationship, during which time the new fees will not be applied. If the fees are reduced, the entity must also inform the client without prejudice to the immediate application of this change (R/98/2020 and R/433/2020).

Discretionary portfolio management contracts usually establish provisions for the collection of fees in the event that the service is not provided throughout the full settlement period (for example, if the service has been contracted or cancelled during that period).

93 Rules Seven and Nine of CNMV Circular 7/2011, of 12 December, on the fee prospectus and the content of standard contracts.

As for most of the services provided by entities, the fees accrued through discretionary portfolio management should be structured in such a way that invoice periods that were shorter than the agreed ordinary settlement period would be billed in proportion to the number of calendar days during which the service was provided[94] (R/488/2020).

➢ Portfolio management fees. Success and management fees

Among other information, entities that offer discretionary portfolio management services must provide their clients with information on the types of financial instruments that may be included in their portfolios, as well as the types of transactions that can be carried out with them, including any limits, management targets, the level of risk that must be reflected in the discretionary management and any specific limitations on this discretionary power. They must also provide information on the valuation methods and frequency of the financial instruments and the benchmark used to compare the results of the portfolio.

In portfolio management contracts, there are two types of fees – a fixed fee and a variable fee – or a mixed fee combining the two. The fixed fee is an annual fee that is paid at the end of every six-month period, applied to the effective value of the portfolio with a minimum amount. The variable fee is normally charged once a year based on the performance of the portfolio (it is also known as the success fee). To calculate this fee, the value of the portfolio on 1 January (or the start date, if later) is compared with the value on 31 December each year, subtracting the (fixed) cash fees charged to the client. The mixed fee would be a combination of both options.

The mixed or combined fee is currently the most commonly used by entities when providing this investment service.

On cancellation of the management contract, the entity will calculate the proportional part of the fixed fee as part of the effective value for the days on which the service was provided and the corresponding fee for the performance of the funds, if positive, between the cancellation date and 1 January of the same year, or the date on which the calculation of the accrual period for this fee begins (R/504/2019, R/697/2019, R/124/2020, R/127/2020, R/138/2020, R/154/2020, R/159/2020, R/435/2020, R/532/2020 and R/545/2020).

➢ Capital gains in funds under management when the service creates capital losses

When an investment fund portfolio management contract includes CIS showing capital gains and losses, the tax deduction is made at the level of each product purchased and not on the result obtained from the provision of the service, and the entity may not opt to apply the corresponding tax or levy. Thus, in some cases the performance of a portfolio as a whole may be negative but at the same time taxes will be paid (on redemption) for the capital gains obtained from one or more of the funds, considered on an individual basis, in the managed portfolio (R/651/2019).

---

94 Rule Four, section 3.b), of CNMV Circular 7/2011, of 12 December, on the fee prospectus and the content of standard contracts.

➢ Calculation of capital gains and losses in fund portfolios when fees are collected by selling shares

In certain fund portfolio management contracts, the entity includes clauses that authorise the payment of fees accrued through the redemption of shares of any of the CIS the portfolio has invested in and for a sufficient amount to cover these fees. This is not considered bad practice. In these cases, to calculate the real returns of the funds affected, these periodic redemptions must be taken into account (R/539/2019).

3.8 Wills

➢ Blocking of securities accounts. Limitations

Heirs or other lawful parties must report the death of a person to the financial institution in which the deceased had deposited their financial instruments. To do this, they must provide a copy of the death certificate and prove their status.

It is important to report the death to 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 (both individual and joint accounts). This means that other co-holders are not able to access the financial instruments deposited in the account or accounts, until it has been decided which part of these accounts will be included in the deceased's estate, regardless of the 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, as this authority is rendered invalid in the event of the holder's death.

However, as long as the entity is unaware of the death, the other joint owners or authorised parties may have free access to the securities – depending on the provisions established. For this reason, and in order to prevent unwanted access to the financial instruments owned by a deceased person, which can only be claimed through the courts, it is important that the entity providing investment services in which the deceased held accounts be promptly informed of the event.

In case R/380/2020, since the death of the co-holder of the account had not been reported, the other co-holder was able to make a subscription and transfer some units of investment funds, as the provisions established (indistinct regime) in the framework contract signed during the life of the co-holder remained in force. In this case, it was concluded that the entity was not responsible for the transactions performed as it had not been informed by the lawful parties of the death of the co-holder of the account beforehand.

In case R/496/2019, the complainant requested information from the entity that had disposed of the securities held in two accounts, in which one of the co-holders was his deceased father. It was proved that in one of the accounts there were no movements after the death of the co-holder, and the account was registered as having been closed. However, with respect to the other securities account, the entity recognised that exceptionally, on the request of the rest of the heirs, and given that it was unable to locate the complainant, it authorised the sale of the proportional part of the securities that corresponded to the heirs. Consequently, the entity was considered to have acted incorrectly by allowing the securities to be sold without the consent of all the heirs.

In case R/486/2020, the complainant stated that the entity had purposefully refused to change the ownership of the portion corresponding to her deceased father of a securities account held jointly by her father and grandmother (both deceased). In this case, it was explained to her that since the co-holder, the complainant's grandmother, had died, her will had to be executed prior to the execution of her father's will, or, failing that, the consent of all the heirs of the grandmother had to be obtained in order to obtain access to the portion corresponding to her father.

The complainant responded that she did not know who her grandmother's heirs were, and she was informed that if she was unable to contact her grandmother's heirs or resolve the issue in any other way, she would have to take the case to the courts to obtain a ruling from a judge on the distribution of the securities account.

The Complaints Service considered that the entity has issued the correct instructions, in that, prior to the awarding the portion corresponding to her father, the complainant would have to obtain the consent of her grandmother's heirs or, failing that, request a court ruling.

The securities would be blocked until the express agreement of all the heirs has been obtained, and, where appropriate, that of the co-holder(s) of the account, on the part which will be included in the deceased's estate. Thus, in the event that the heirs do not agree with each other or, where appropriate, with the co-holder of the securities account in the distribution of the financial instruments, they will not be released and the securities must remain blocked (R/679/2019 and R/59/2020).

It is also usual 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 of the holder.

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.

In CIS portfolio management contracts, once the death has been reported to the financial entities and, in order to preserve the value of the managed portfolio, in accordance with the contract, from the moment the entities have knowledge of the death of one of the contract holders, it is common practice for the units of the investment funds that make up the managed portfolio to be transferred to a bridge fund with a low or very low risk profile (R/515/2019).

In financial instrument portfolio management contracts, account blocking clauses are contemplated once the death of the holder has been reported, without prejudice to any acts that the entity may perform to protect the assets, such as the collection of coupons and dividends, participation in bonus issues or any mandatory exchanges.

In these cases, the investment fund units must be transferred without delay.

In case R/541/2019, the portfolio management contract contained a clause by which the parties, their successors and authorised parties or proxies were obliged to notify

the entity of the death of any of the parties. Given the *intuitu personae* nature of the contract, the death of one of the parties would lead to the termination of the contract.

In this case, the entity was considered to have committed bad practice as it took more than two months from when the death of one of the contract holders was reported to transfer the units to the bridge fund.

➢ Information on the deceased person's estate: steps to follow

✓ *Status of heir*

The heirs must prove their status to the investment firm by submitting the certificate of the General Registry of Last Wills and Testaments and an authorised copy of the last will and testament. In the event that the deceased has not left a will, a declaration of heir intestate proceedings from the notary must be provided.

✓ *Certificate of the deceased person's positions*

Once they have been informed of the death of one of their clients, financial institutions have the obligation to issue a certificate of position on the date of death that includes all the deceased's securities deposited with the entity, in both individual and joint accounts, so that the assets to be included in the estate can be established. This allows the heirs to pay the inheritance tax and start processing the will, resulting in the awarding and change of ownership of the assets.

For heirs or interested parties to obtain this information they must first prove their status as such. Otherwise, the financial institution could refuse to provide the information, which would not be considered an incorrect action by the Complaints Service (R/521/2019).

As stated above, this certificate should be issued without delay. In case R/11/2020 the respondent entity was considered to have acted incorrectly as it unjustifiably delayed the issuance of the certificate of the deceased's positions after the request submitted by the lawful heirs.

✓ *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, vis-à-vis the depository, to access the account in which the securities are deposited, in accordance with the securities deposit and administration contract. The ownership of the securities is established according to the source 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.

The issuance of ownership certificates with regard to book-entry securities 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.

Once any existing queries about the ownership of the securities have been resolved, the assets to be included in the deceased's estate must be established.

With regard to 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,[95] 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.[96]

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 these 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 must 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*

Before the inheritance can be processed, the joint ownership of assets must be dissolved to determine whether or not there are jointly-owned assets and, where appropriate, which correspond to the deceased's estate.

Under Articles 85 and 1392.1 of the Civil Code, the death of one spouses dissolves the joint ownership of assets. However, until the joint ownership has been dissolved, a post ownership regime will be set up for the assets and obligations that made up the joint ownership regime, in which the surviving spouse and the deceased's heirs

95 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.

96 Law 35/2003, of 4 November, on Collective Investment Schemes.

will have an abstract share of the total assets, which will be managed by the surviving spouse and the heirs in accordance with Article 392 *et seq.* of the Civil Code.

Thus, to determine which correspond to the deceased's estate, the company must be dissolved in accordance with the provisions of 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".

When the joint ownership of assets has been dissolved by means of an agreement between the surviving spouse and the deceased's heirs, the post ownership regime will be terminated and it will be determined whether or not there are joint assets, and, where appropriate, which of these will be included in the deceased's estate.

The agreement resolving the will may be in the form of a private document and does not need to be converted into a public notarised instrument provided that it complies with the sole requirement that said document be executed by mutual agreement between the surviving spouse and the other heirs.

In case R/679/2019, the surviving spouse and the heirs had not reached an agreement for the dissolution of joint ownership of assets. Therefore, the surviving spouse asked the entity to release the 50% of the assets that corresponded to him as co-holder of the securities account. However, the respondent entity was against releasing the securities and changing the ownership of the securities, as a distribution document has to be presented specifying how the account was to be awarded, or failing that, instructions from the heirs and joint owners of the account agreeing which part corresponded to each of them. Consequently, the securities remained blocked until all parties agreed on the distribution of the assets.

➢ Heirs' right to information

Once the heirs or lawful parties have proved their status as such, they may obtain information on the accounts and financial instruments of the deceased held by the financial institution.

In cases where a securities account is jointly owned, the co-holder may object to the heirs receiving information or documentation on movements in the account shared with the deceased prior to the date of death.

In this regard, it must be noted 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 heirs, since there is always the possibility that the inheritance will not be accepted and, consequently, the person designated as heir will not replace the deceased as co-holder of the account.

However, from 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 with all corresponding rights.

Consequently, upon acceptance, the heir has the right to receive documentation on the transactions carried out prior to the death.

However, in principle, the right to obtain documentation is limited to the time period that the law requires entities to maintain said information.[97] By law, entities are obliged to keep records of all supporting documents for securities orders for a minimum period of five years. This retention period is equally applicable to appropriateness and suitability assessments. Lastly, in the case of contracts, the retention obligation covers the duration of the contractual relationship and up to five years after it ends.

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 the information requested.

In other words, the objective of informing the heirs must not be confused with the heirs' attempt to present, *ex post*, a kind of amendment to the entire relationship between the financial institution and the deceased over an extended period of time that would require the entity to offer explanations about all the transactions carried out by the deceased.

Lastly, it should be noted that this right corresponds to the heirs from the moment they accept the inheritance until the moment of distribution, since once the inheritance has been distributed, the right to request information can only be exercised by the heir who has been awarded the assets to which the request refers.

In case R/493/2019, the complainant, in her status as heir, requested that the Complaints Service rule on an alleged lack of attention to her request for information about a securities account owned by her deceased parents.

However, it was proved that the reason why the entity did not respond to the complainant's request for information was that at the date of the request, the agreements reached in the acceptance deed and partition of the inheritance between the complainant and her sister had already been executed, according to which they had agreed that the securities deposited with the entity be awarded to the sister.

Therefore, as it was established that on the date of the request the securities had been awarded to the other heir, the complainant did not have the right to request information about the financial instruments deposited in the securities account. Consequently, it was concluded that the entity had acted correctly.

In case R/671/2019, the complainant, in his role as heir, requested information about the balances of the products held by the deceased with the entity on the date

97 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). With effect from 15 February 2008, Royal Decree 217/2008, of 15 February, on the legal regime of investment firms. This Royal Decree reduces the retention period to five years.

of his death, as well as the movements in the year immediately preceding the death. In the pleas, the respondent entity indicated that it had no obligation to keep the requested documentation in its records because the five-year retention period had elapsed. However, although the period has expired, the entity provided documentation of the movements in the securities account from 2003 to the date on which the ownership change occurred, in 2012.

In case R/551/2019, the complainant, as his father's heir, asked the Complaints Service to rule on an alleged failure to provide information and documentation about the investment funds deposited with the entity at the date of death (28 February 1998). Despite the time elapsed, the respondent entity confirmed that on the date of death, the deceased did not hold any positions in investment products. Consequently, it was considered that the entity had responded adequately to the request for information made by the complainant.

➢ Acceptance of the inheritance: establishment of joint ownership

Once the estate has been established, the heirs may accept or reject it.

On acceptance, the heirs express their 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.

Under the joint ownership regime, all heirs hold an abstract share of the assets and no specific portion is allocated to any of them. Therefore, during this stage the heirs may not obtain access to the assets as the estate remains undivided. They do, however, have the right to sell their right to inherit before the partition, which would give their co-heirs a pre-emptive right to it (Article 1067 of the Civil Code).

In this regard, although an heir may not sell any of the specific assets making up their inheritance until they have been expressly and formally allocated such assets, it is possible that the joint ownership regime that is established following the 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 distribution instrument which may have been submitted to the financial institution, without prejudice to the tax consequences that this may entail.

In case R/285/2020, the complainant alleged that the losses he had suffered because the instructions issued by the heirs in the deed of acceptance and award of the inheritance for the sale of some shares and investment fund: units deposited with the respondent entity had not been attended in due time and form.

In this specific case, the instructions contained in the deed of acceptance and award of inheritance in regard to the distribution of some shares and investment fund units were clear: they had to be sold and the resulting amount had to be paid into the account of the deceased or of the joint ownership regime before the inheritance could be awarded to the heirs.

In other words, the Complaints Service considered that the will of the heirs was for the securities to be sold by the joint ownership regime that had been set up when

the inheritance was accepted and once these securities had been sold, they would be awarded to each of the heirs in different amounts.

Consequently, it was concluded that the deed of acceptance and award of the inheritance was clear and it was not necessary for the entity to request any clarification in this regard – a request that caused the processing of the will to be delayed.

➢ Partition of the estate and awarding of the assets

The partition is an agreement that puts an end to the joint ownership in order to distribute the deceased's assets and rights 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).

The agreement for partition of the inheritance and allocation of the assets can be drawn up in a public deed or in private partition document signed by all the heirs.

The criterion followed by the Complaints Service is that financial institutions must allocate the deceased's assets in accordance with the provisions made by the heirs in the public deed or private allocation document agreed on by them.

In cases in which, for some reason, the financial instruments cannot be awarded as established in the award document provided to the entity, the entity must request, prior to the change in ownership of the securities, new instructions for the distribution to be made to all the heirs.

In cases of indistinct partition, specific assets are not allocated but rather a share of these assets resulting from applying the corresponding percentage of the total value of the series of assets at a given date.

In other words, in this allocation the joint ownership is unwound and ordinary ownership by share is 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."

However, the unanimous agreement of the heirs (now joint owners) would be sufficient to end the situation of ordinary joint ownership and allocate the assets in specific shares.

In case R/330/2020, the complainant requested an explanation as to why 12.10% of the units of the investment fund in the inheritance had been allocated to her instead of 12.1085%, which, according to the deed of acceptance and partition of inheritance, would have corresponded to her.

The deed of acceptance and award of the inheritance proved that the complainant was entitled to receive 12.1085357% of the fund's units.

The entity alleged that, in the case of delegated portfolios, the award is made by percentages to only two decimal places. Therefore, in this case, the complainant was awarded 12.10%, disregarding the rest of the decimal places indicated in the deed.

In this case, it was concluded that the entity had committed bad practice because it did not award the investment fund units as specified in the deed of acceptance and award of inheritance.

Likewise, the Complaints Service expressed concern that the remaining decimals had not been included when investment fund units are, by definition, fully divisible, as they represent an aliquot of the assets managed by the fund.

Thus, the bad practice was exacerbated by the damage that the entity had caused to the complainant, since he had lost the amount of investment fund units corresponding to him in the distribution of the inheritance as a result of the respondent entity's decision not to factor in the additional decimals.

➢ Study of documentation and change of ownership

Once the heirs have submitted the necessary documentation to gain access to the securities deposited in the deceased's securities accounts, investment firms must spend some time verifying that the documentation provided is valid and sufficient.

If the documentation submitted is correct, the entities must 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.

Otherwise, the entity must ask 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.

In cases R/54/2020 and R/474/2020, it was not proved that the complainants had provided the entities with all the corresponding documentation to allow the change of ownership to be processed. Specifically, the payment of inheritance tax was not demonstrated even though the entities had informed them of the obligation to do so prior to the start of the execution process.

➢ Deadlines

Even when there is no legally established deadline for processing an inheritance, it should be as short as possible, which requires the diligent collaboration of both parties – the entity and the heirs – and that the entity provide the heirs with all means and solutions at its disposal to rapidly and satisfactorily carry out the process. However, the speed at which the process is carried out may be adversely affected by circumstances that affect the specific distribution of the inheritance.

Entities must change the ownership of the financial instruments awarded *mortis causa* as rapidly as possible, once all the required legal documentation is in its pos-

session. The speedy execution of the will relies on diligent collaboration between the parties – the entity and the heirs –, where the latter must provide the entity with the necessary documentation to carry out the procedures and the former must change the ownership of the securities subject to the succession process rapidly, so that the securities are blocked for the shortest possible time.

In case R/135/2020, the period of three months from when the full documentation for the processing of the inheritance was submitted until the fund units were allocated to the awardees was considered to be excessive.

Likewise, in case R/520/2020, the entity repeatedly asked the complainant to provide a document that had already been delivered, without offering any explanation for this request, which unnecessarily prolonged the processing of the will.

In case R/275/2020, the change of ownership of the fund units was delayed without just cause. Once the complainant has submitted to the entity the full documentation relating to the will (on 3 February 2020), it should have carried out the change of ownership immediately, in 10 or 15 days at most, as the complainant had been informed in an email dated 3 February 2020.

However, the change of ownership was delayed for two months without just cause and did not take place until 3 April 2020.

In case R/475/2020, the complainant was dissatisfied with the processing of the will as despite having delivered all the necessary documentation on 5 March 2020, the entity's probate service sent him an email on 13 March 2020 asking him to submit the inheritance tax payment in order to continue with the process.

The Complaints Service considered that the request of 13 March 2020 should be considered a human error, especially since it was verified that it did not interrupt the processing of the will.

In fact, on 24 and 26 March 2020, the entity executed the change of ownership of the investment funds included in the deceased's will and on 30 March 2020, the funds were redeemed by the complainant. For this reason, it was considered that the 20 day period for processing of the will was correct, and in any case, the exceptional circumstances affecting Spain at that time, i.e., the declaration of the State of Alarm, had to be taken into account.

➢ Fees

As indicated in the section on fees, investment firms 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 relation to fees for the processing of wills, it should be clarified that financial institutions usually charge two types of fees: a fee for processing the will and another fee for the change of ownership.

The fee for processing of the will, as a pure banking fee, fall within the remit of the Bank of Spain, while the fee for the change of ownership of financial instruments is the responsibility of the CNMV.

The Complaints Service understands that if the entity passes on to its client a will processing fee this must include the change of ownership, since this is one of the phases of that process (the last one). Therefore, it would not be possible to charge both fees at the same time.

In case R/584/2019, the entity acted incorrectly by charging a fee for a change of ownership *mortis causa,* even though it had previously agreed with the complainant to charge a fee for processing the will.

However, in case R/84/2020, a document that had been duly signed by the complainant was submitted in which the entity informed him about the fees for the change of ownership of some shares that also coincided with the fee established for this purpose in the entity's fee prospectus. Therefore, it was considered that the fee had been correctly applied and the complainant had been duly informed.

➢ Right of the heirs to complain about the distribution of the product

It is common for the heirs, when they learn about the financial instruments included in the estate, to consider that they were not distributed to the deceased correctly by the financial institution. The advanced age of the deceased, his or her lack of knowledge or investment experience, together with the fact that the financial instrument may be classified as a complex product are the main reasons why heirs are dissatisfied with how the product was distributed.

Once the heirs have proved their status as heirs and the inheritance has been accepted, they may file a complaint with the financial entities of which the deceased was a client.

However, in these cases it must be taken into account that no more than five years may have elapsed from the time the events occurred and when the complaint is filed. If longer than this period, the events would be considered to have expired.

If the five-year period has not expired, the Complaints Service will analyse the performance of the entity at the time the financial instrument (now inherited) was marketed to the deceased, examining the legal relationship between the deceased and the entity (advice or execution only), the type of product contracted (complex or non-complex) and, where appropriate, whether the suitability or appropriateness of the product was assessed, as well as whether the deceased received information about its features and risks prior to the acquisition.

In case R/603/2019, a study was made of how an investment fund had been marketed to the deceased because the complainant/heir considered that the investment fund was a complex product that was not suitable for the deceased – an octogenarian in a very poor state of health. However, in view of the documentation provided, it was considered that the entity had acted correctly.

In case R/3/2020, the heirs complained about the distribution to the deceased of an atypical financial contract that invested 90% in a term deposit and 10% in a basket of shares. In this case, it was proved that the entity had carried out an appropriateness assessment of the product for the deceased and that, based on the answers obtained, it considered that the financial contract was suitable for his profile. Furthermore, in relation to the characteristics and risks of the product, it was demonstrated that a general description of the nature and risks of the financial instrument had

been provided at the time of distribution. However, the Complaints Service considered that the entity committed bad practice because it did not obtain the client's signature along with the handwritten expression: "I have not been advised on this transaction" until six months after the contract was signed.

It should also be clarified that before the inherited financial instruments are awarded to the heirs, financial institutions are not obliged to obtain information about the suitability or appropriateness of the inherited product for the profile of the acquiring heir or to offer information about its features and risks, since this transaction only involves a change of ownership, not a remarketing of the awarded securities.

➢ Issuance of certificates on wills pending on the date of death

Sometimes there are discrepancies over the content of the certificate of positions because on the date of death of the deceased a will relating to an earlier death in which the deceased was also an heir is being processed at the same time.

Obviously, if at the time the certificate of the deceased's positions is requested, the inheritance relating to the earlier death has not been processed, the entity cannot certify the securities that correspond to the deceased but have not yet been allocated.

However, when it has been processed, the entities in which the securities are deposited would be in a position to certify that on the date of death, the deceased was the owner of the assets inherited in the previous death because, after processing the inheritance of the latter, the securities inherited by the deceased would be registered from the date of the earlier death, regardless of when the will of that person is fully processed. Therefore, once the will of the pre-deceased person has been processed, the entity will be in a position to certify the total positions of the deceased – owned and inherited – on the date of their death even though on that date the securities were not yet in his name (R/400/2020).

3.9 Ownership

➢ Delay in processing the waiver of some shares after the redemption of foreign securities

In the Spanish market, Iberclear has established a procedure to allow registered holders to request the voluntary waiver of register-entry maintenance in certain circumstances.

However, this procedure does not apply to shares traded in a foreign market as the applicable regulations would be those provided for in the legal system of that country. As the Complaints Service does not know the procedures for allowing registered holders to request the voluntary waiver of register-entry maintenance in foreign markets over which the CNMV has no supervisory powers, it cannot assess any potential course of action in this regard. However, the actions of respondent entities in terms of their compliance with Spanish rules of conduct that are applicable in their relationships with clients can be assessed.

In case R/683/2019, the complainant was dissatisfied that he was not able to waive some shares that had been delisted from the US market, specifically share of Worldcom and Enron. As the complainant insisted, on 16 April 2019, the entity informed

him that procedures had been started in the foreign market to cancel the securities. Subsequently, on 6 June 2019, the entity informed the client that it was taking the pertinent steps to resolve the case as rapidly as possible.

However, the Complaints Service considered that the procedure had taken too long as it was not until 17 December 2019 that the entity informed the complainant that the entities issuing the securities had authorised the cancellation of the shares, which would be reflected in the corresponding tax information.

➢ 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 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 by contract, is required to perform transactions.

➢ Changing the rules of operation

Any of the securities account holders may change the rules of operation from an securities account opened on a joint and several basis to a joint basis. Once the change has been requested, the procedure established in the contract for this purpose must be followed, or if no procedure has been included, the entity must inform the other holders before carrying out the request.

It must be remembered that decisions taken by one of the co-holders of a joint and several securities account will have consequences for all the other co-holders. If there is a breach of trust between the holders, clearly any one 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.

However, it should be noted that there are exceptional circumstances in which entities may require the consent of all joint owners in order to release the financial instruments deposited in a securities account under the joint and several regime. This situation occurs when the entity has reliable knowledge of conflicts between the joint owners of the accounts. In these cases, the entity must assume an impartial or neutral position and must not benefit any of the holders to the detriment of the others, and request the consent of all of them to proceed with the disposal of the financial instruments or, failing that, seek a court ruling to establish how the investment funds are to be distributed.

In cases of separation, annulment or divorce, the mere admission of the complaint, among other effects, causes the revocation of the consent and powers that either of the spouses had granted to the other. However, for this to occur, one of the spouses, or the competent court, must notify the bank of this circumstance.

In the event that either of the spouses, or the court, demonstrate to the entity that an application for annulment, separation or divorce has been admitted for processing, it must also change the rules of operation of the account from joint and several to joint, although in this case it is not necessary to inform the spouses.

Therefore, it would be considered bad practice by the Complaints Service if the respondent entity were to block a securities account based on the subjective perception of the entity's personnel deriving their personal relationship with one of the account holders and consequently not issue an order given by another of the joint owners when none of them has requested a change in the rules of operation of the account and the entity does not have any documentary evidence that would justify blocking the account (R/398/2020).

If the initial rule of operation for the account is joint, it can only be changed 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.

➢ Cancellation of the securities account and associated cash account

In order to buy securities, it is necessary to open a securities account and sign a securities custody and administration contract with a financial institution. Through this account, the financial institution manages the investor's portfolio (purchase and sale of securities, collection of dividends, etc.). This account must be associated with a cash account, in which the cash inflows and outflows corresponding to the securities transactions carried out by the client are recorded.

The custody and administration of securities can only be performed by authorised entities.

In order to cancel a securities account and its associated cash account a transfer or sale of all the securities deposited in the securities account must first be made. When the securities have all been transferred, it can then be closed.

➢ Refusal or delay in changes of ownership

In order to change of the ownership of the securities acquired in an inheritance, the beneficiaries must open a securities account in the same financial institution 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, 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.

In this regard, the Complaints Service considers that once all the heirs have notified the entity of their agreement with the distribution of the inheritance, the award procedure does not require all the heirs to open accounts for the deposit the securities awarded or associated accounts at the same time, but these may be opened at different times.

The Complaints Service also considers that while changes in ownership of the securities must be subject to the prior opening of the corresponding account, this too can be done on an individual basis, not necessarily collectively, such that the entity would complete the allocation of the inheritance assets when the last heir opened an account and requested the change of ownership of the securities allocated to him.

In case R/385/2020, once the will had been processed and the complainant opened a securities account on 28 February 2020, the entity should have proceeded with the change of ownership of the securities that had been awarded to him, regardless of whether or not the widowed spouse had opened a securities account for the part awarded to her.

However, it was delayed without just cause until 16 April 2020, the date on which the entity proved that it had registered the awarded shares in the name of the complainant.

In case R/419/2020, the entity followed the criteria of the Complaints Service and having received the certificate of ownership of the securities account of the third entity, it simultaneously awarded and transferred the 14 shares that had been given to the complainant as part of her inheritance.

Therefore, it was considered that the respondent entity had fulfilled its duty to award the securities once the ownership of the account in the other entity had been proved.

However, if investment fund units are being awarded, it would only be possible to allocate the units and carry out a change of distributor – transferring the shares to another entity – if the fund was distributed by both entities.

In this complaint, the respondent entity was the sole distributor of the fund, and therefore the complainants were forced to arrange contracts to participate in the fund in that entity to proceed with the allocation of the inherited shares.

➢ Regional law. Account opening without a signature

In accordance with Article 454 of Legislative Decree 1/2011, of 22 March, of the Government of Aragon, which approves the Code of Foral Law of Aragon, for cases in which there are trust issues:

> *If there are heirs, to effectively release the real estate assets, companies and economic holdings, transferable securities or precious objects, the authorisation of any of the heirs with full capacity to act will be necessary and, if all the heirs are minors or disabled, the Board of Relatives or competent Judge.*

In case R/264/2020, the entity alleged that to process the change of ownership of a securities account and associated account, taking into account the trust and usufruct issues, a new securities account and a new associated current account had to be opened in the name of the heirs or eventual heirs, with the widow as the beneficial owner.

The entity considered that the signature of a lawful heir and the trustee, in this case also beneficial owner, was sufficient to open the accounts.

However, the entity indicated that the inclusion of all heirs and eventual heirs as account holders was merely instrumental, since they would not own the account balances until the trust had been executed in favour of all or any of the lawful heirs.

However, the Complaints Service considered that even if, according to Article 454 of Legislative Decree 1/2011, of 22 March, of the Government of Aragon, it was possible for an account to be opened by only one of the heirs and the trustee in accordance with the law, it would be more in line with stock market good practice for the entity to obtain the signatures of all the heirs to open the accounts – mainly in order to comply with the regulations on knowing its clients – or, at least, informing them that the accounts were to be opened in their name in order to avoid future problems such as that referred to this complaint.

➢ Owner representation

Sometimes, the owner of the securities may perform transactions through a representative appointed through a power of attorney or in a court ruling. In order for the representative to carry out acts of disposition, he or she must provide a copy of the power of attorney or ruling, and the entity must check and confirm that the transaction is in accordance with the powers granted by the power of attorney or ruling. If the entity considers that the power of attorney is not sufficient, it may refuse to carry out the act of disposition ordered by the representative.

In case R/635/2019, the complainant – the representative of the heirs – expressed her disagreement with the fact that the entity had not awarded the units of an investment fund. However, the entity alleged that she had already been informed in writing that the powers of attorney provided had significant shortcomings, so it was not possible to comply with the distribution orders issued by her on the basis of those powers.

Consequently, in order to carry out the last phase of the inheritance process – the change of ownership of the investment fund – the complainant – the representative of the heirs – had to demonstrate that she had sufficient power to represent the heirs in these acts or otherwise the heirs would have to come to the branch to register as clients, open accounts, etc. as a prerequisite for the change of ownership of the investment fund units acquired through inheritance that corresponded to each of them.

However, it was considered that the entity had acted incorrectly because it did not inform the complainant of the causes that prevented the change of ownership of the investment fund units awarded to its clients from being made until the complaint had been filed with the Complaints Service.

In case R/645/2019, the complainant was dissatisfied that he was unable to complete the processing of an inheritance, as he was unable to travel from Switzerland to open the securities account and the cash account necessary to proceed to change the ownership of the inherited securities.

As shown in the chain of emails submitted in the proceedings, the entity proved that he had been informed that if he could not go to the office in person to sign the documentation, he could designate a person to legally represent him in all acts of disposition relating to the inherited securities.

Consequently, the Complaints Service considered that the entity had adequately informed the complainant of how he should proceed to conclude the processing of the inheritance.

➢ Fees

Even though the Complaints Service considers that in principle entities are entitled to charge fees for the change of ownership provided that the client has been duly informed, since they would be charging for a service that has been requested and effectively rendered, it also considers that in cases in which the minimum fee established for the provision of this type of service is applied due to the number of securities involved or their value – which in many cases is higher or slightly lower than the value of the inherited securities –, the application of this minimum fee would not adhere to the principle of proportionality that should exist between the amount charged to each heir and the service actually provided, with a multiplier effect that would not be explained by the service provided by the entity – the real and effective expense generated by the service would be the same regardless of the effective value of the securities subject to the change of ownership.

Therefore, the Complaints Service considers it good practice that in cases in which the real and effective expense generated by providing the service to each heir is the same regardless of the effective value of the securities involved in the change of ownership, they should try to avoid this multiplier effect.

3.10 Operation of entities' CSD

➢ Delays and failure to attend

Article 15 of Order ECO / 734/2004, of 11 March, establishes in relation to the resolution period that: "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 the ombudsman as the case may be".

Further, "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 Ombudsman. In any case, a written acknowledgement of receipt must be provided, in addition to the date of submission, to calculate the period" (Article 12 of Order ECO/734/2004).

The provisions of Article 12.1 of Order ECO/734/2004 must also be taken into account, which provides: "Once the complaint or claim has been received by the entity, if it is not resolved in favour of the client by the branch or service that is the object of the complaint or claim, it must be sent to the customer service department or service, which, when appropriate in accordance with operating regulations, must send it to the ombudsman. If the complaint or claim submitted to the ombudsman does not refer to a matter within its scope of competence, it must be forwarded to the customer service department. The complainant must be informed about the competent authority that will address the complaint or claim" (R/19/2020).

Main criteria applied in the resolution of complaints in 2020

As in previous years, bad practice was detected regarding the following areas:

– The operation of the CSD was inadequate because it did not respond to certain requests for documentation or information (R/571/2019, R/23/2020, R/104/2020 and R/373/2020).

– Delays in the resolution of complaints by the CSD.

- In case R/311/2020, for example, although the CSD acknowledged receipt of the letter of complaint on 3 April 2020, it did not resolve the complaint until 25 June 2020.

  However, the Complaints Service in this case valued very positively that the entity recognised the delay and offered the complainant a compensation of €150 for possible damages caused.

- In case R/38/2020, it was established that the complainant presented his complaint to the CSD on 26 November 2019 and received a reply on 31 January 2020, after it had been submitted to the Complaints Service.

  Consequently, bad practice was considered to exist due to the delay in responding.

- In case R/42/2020, the entity made an error, which it acknowledged, by not answering the complaint presented on 29 April 2019. However, it was considered that the error had been corrected with the information sent to the complainant in the answer issued by the entity's CSD following another complaint in October 2019.

- In case R/17/2020, the complainant stated that he had not received a reply to a complaint presented to the CSD.

  However, the entity provided a copy of the response it had given to the complaint, which had been sent to the same postal address as in the complaint.

  Therefore, it was concluded that the entity had replied correctly and the reasons why the complainant had not received the response were not known. However, they were not necessarily attributable to the respondent entity.

  The Complaints Service considered it to be good practice that the entity had offered the complainant economic compensation of €100 to redress the actions of the CSD, although this did not imply a withdrawal of the complaint.

➢ Tax effects deriving from settlement

In the provision of investment services, entities may make mistakes that cause economic damage to their clients and that they recognise and assume.

However, some of these errors, such as the sale of subscription rights or any other security, can have a tax impact for the complainant. The Complaints Service consid-

ers that the damages caused, including the tax effects, should be borne by the entities, since their clients should not bear any type of damages deriving from the errors that the entity may have committed in the exercise of its activity.

Thus, it is common for entities to compensate complainants for any possible tax effects that an error they have committed may entail, as long as there is documentary proof. To do this, the entities request a copy of their tax statement for the year in order to assess the tax damages caused by the error committed and, where appropriate, offer compensation (R/474/2019 and R/543/2019).

4 Enquiries area

4	**Enquiries area**		**165**
4.1	Enquiry channels and volume		167
4.2	Subjects of enquiries		168
4.3	Main subjects of enquiries		169
	4.3.1	Effects of COVID-19 on the activity of the enquiries service	169
	4.3.2	Information on Brexit for investors	169
	4.3.3	Replacement of the proposed application of profits for 2019 in certain listed companies by another proposed distribution due to the situation created by COVID-19	170
	4.3.4	Commitments assumed in the prospectus for the public share offering for the sale of shares of Bosques Naturales del Mediterráneo, S. Com. p. A., registered with the CNMV on 18 November 1999	171
	4.3.5	Suspension of trading of shares of Abengoa, S.A. and enquiries relating to the possibility of transferring these shares	172
	4.3.6	Holding, content and consequences of the extraordinary general shareholders' meeting of Abengoa, S.A.	172
	4.3.7	Concerns about takeover bids: the acceptance process, calendar and authorised price, as well as the possibility of squeeze-outs	173
	4.3.8	Complaints about investment losses in shares of Banco Popular Español, S.A.	176
	4.3.9	Methods used by minority shareholders to sell shares of Arquia Bank, S.A.	176
	4.3.10	Waiver of the holding of warrants relating to the restructuring process issued by Deoleo, S.A.	177
	4.3.11	Administration and custody fees for companies with suspended or delisted securities	178
	4.3.12	Fees for cash accounts associated with securities accounts	180
	4.3.13	Transfer fees	180
	4.3.14	Fees for processing an inheritance	180
	4.3.15	Requirement to implement of minimum lot trading for sales of certain listed securities	181
	4.3.16	Advice in relation to the ruling on Pescanova, S.A.	181
	4.3.17	Need for account holders to be in agreement for the transfer of securities	182
	4.3.18	Requirement to open a securities account at the deceased person's financial institution to receive the inherited securities	182
	4.3.19	Information on the purchase price and date of shares	182
	4.3.20	Information on the investments of a deceased person	183
	4.3.21	Agents of entities that provide investment services and their registration	183
	4.3.22	Mortgage loan securitisation	184
	4.3.23	Coverage of the Investment Guarantee Fund (FOGAIN)	185
	4.3.24	Information on CNMV disciplinary proceedings	186
	4.3.25	Intervention and insolvency proceedings of Esfera Capital, AV, S.A.	186
	4.3.26	Domains and trademarks of Cypriot IFs operating in Spain under the freedom to provide services regime	186
	4.3.27	Complaints against EU investment firms	187
	4.3.28	Considerations about investing in cryptocurrencies	187
	4.3.29	Enquiries about unregistered entities or those known as "boiler rooms"	187
	4.3.30	Enquiries related to a type of fraud known as funded trading, linked to training courses	189
	4.3.31	Enquiries related to a type of fraud carried out by companies known as "recovery rooms"	189
	4.3.32	Attempts to defraud investors by simulating the CNMV's telephone numbers, domains or image	190
	4.3.33	New IT strategies used by boiler rooms	191
	4.3.34	Attempts to defraud investors by impersonating authorised entities	193

4 Enquiries area

The CNMV Investors Department, among other functions, handles investor enquiries on topics of general interest on 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 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 from investors which are not enquiries as such, but which set forth opinions, complaints or suggestions on matters within the CNMV's supervisory remit.

4.1 Enquiry channels and volume

There are three channels available for submitting enquiries: by telephone, by post or through the electronic office (available at www.cnmv.es), where there is a section for submitting claims, complaints and enquiries and where identification is required by means of an electronic certificate or identity card or through a user name and password, which can be used for enquiries or claims with the CNMV (https://sede.cnmv.gob.es/sedecnmv/sedeelectronica.aspx?lang=en).

It should be noted that since 14 March 2020 (when the State of Alarm was declared due to COVID-19), for enquiries submitted by post in which an email address was provided, the response was sent to the email address as it was considered to be the most effective channel in the context of the pandemic.

In 2020, 11,150 enquiries were dealt with. Most of the enquiries were made by telephone (84.1%) and were dealt with by call centre operators, who mostly provide information available on the website (www.cnmv.es). By volume, the second most used method was the electronic office form (12.3%) followed by submission through the general registry (3.6%).

As shown in Table 22, the total number of enquiries dealt with increased by 47.5% in 2020 compared to 2019. This increase was due to the greater number of telephone enquiries (2,911 more than in 2019), together with an increase in enquiries submitted through the electronic office (569 more than in 2019) and a rise in those submitted through the general register (110 more than in 2019).

Numerous claims and complaints that were actually enquiries were also submitted to the CNMV through the channel for reporting possible infractions, thereby not using the channel correctly.

The average response time, apart from enquiries received by telephone and dealt with immediately, stood at 22 calendar days in 2020.

Enquiries by channel of reception TABLE 22

	2018		2019		2020		% change
	No.	% of total	No.	% of total	No.	% of total	20/19
Telephone	9,559	88.7	6,471	85.6	9,382	84.1	45.0
Letter	436	4.0	289	3.8	399	3.6	38.1
Form	777	7.2	800	10.6	1,369	12.3	71.1
Total	**10,772**	**100.0**	**7,560**	**100.0**	**11,150**	**100.0**	**47.5**

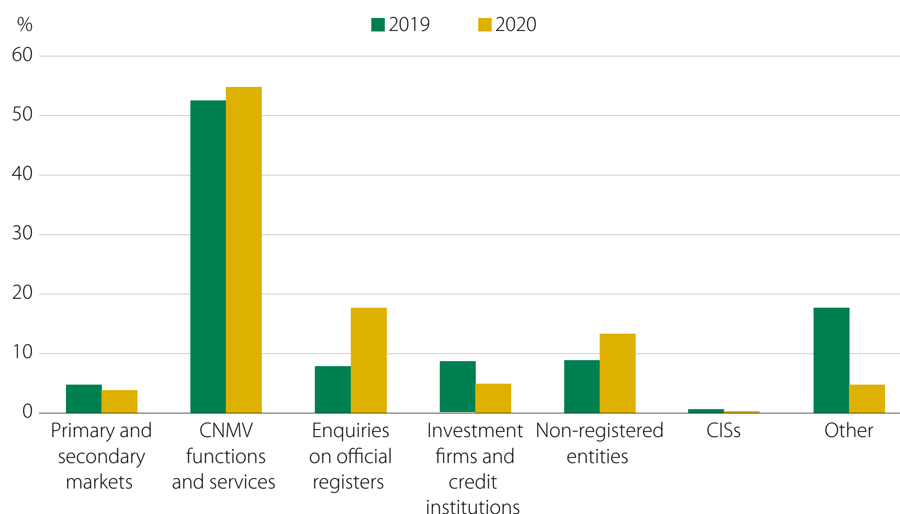
Source: CNMV.

4.2 Subjects of enquiries

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 public communications, statistics and publications and other content freely accessible to the public. Similarly, and as is now the norm, there were enquiries about the CNMV's functions and services and about the status of claim and complaint proceedings.

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.

4.3 Main subjects of enquiries

This heading includes the subjects of enquiries considered of particular importance in 2020 and thus worthy of special mention.

4.3.1 Effects of COVID-19 on the activity of the enquiries service

When dealing with investor enquiries, it has been detected that unauthorised investment companies (boiler rooms) are using the situation created by COVID-19 to attract customers and promote their services.

Attempts to place high-risk financial products (such as highly leveraged financial contracts for differences and crypto currencies) by unauthorised entities that have sometimes been warned by the CNMV have been increasing due to this situation.

4.3.2 Information on Brexit for investors

Due to the agreements reached in relation to Brexit, all investment firms and foreign investment vehicles domiciled in the United Kingdom were deregistered from the CNMV on 31 December 2020.

On 31 January 2020, the United Kingdom ceased to be a member state of the European Union and became a third country. A transitional period then began that ran until 31 December 2020.

As of 1 January 2021, certain measures were implemented that could affect investments. To clarify investors' concerns about the effects of this measure on investments, a document was published on 13 January 2021 entitled "How does it Brexit affect investors" in the "Information of interest to the investor" section of the Investors and Investor Education section of the CNMV website.

This document was addressed to investors who were unitholders or shareholders of investment vehicle marketed in Spain and domiciled in the United Kingdom or clients of investment firms domiciled in the United Kingdom.

Unitholders or shareholders of investment vehicles marketed in Spain and domiciled in the United Kingdom, either UCITS or alternative investment funds, were informed on 31 December 2020 about the closure all these investment vehicles due to the Brexit agreement, unless they had previously regularised their situation.

The list of UCITS[1] and AIFs that are still on the official registry of the CNMV can be consulted.

If investors were affected by this move, it was recommended to contact the entity to find out the scope of the measure and the effects on their investment.

Clients of investment firms domiciled in the United Kingdom that had been providing investment services in Spain, with either a physical presence in Spanish territory

1 Undertakings for the Collective Investment of Transferable Securities.

(branch) or under the freedom to provide services regime in their country of origin, were informed that, due to Brexit, all these investment firms had been removed from the CNMV registry on 31 December 2020.

However, all previously signed contracts would remain in force and consequently the obligations of each of the parties contained therein would retain their effect.

Investors were also informed that it up until 30 June 2021, these entities could provisionally carry out the activities required for the orderly termination or transfer of all contracts signed before 1 January 2021 to entities that are authorised to provide financial services in Spain under the contractual terms.

During this transition period, clients were required to be covered by an investment guarantee fund. If British institutions did not provide this cover, the entity providing the services had to join the Spanish guarantee fund, FOGAIN. Otherwise, the CNMV would require the immediate closure of positions and termination.

From 1 January 2021, these entities would have to ask for new authorisation to enter into new contracts, renew the contracts signed prior to 1 January 2021 or make changes to them that would entail the provision of new services in Spain or affect the main obligations of the parties, or in cases where the activities related to the management of these contracts require authorisation.

Given that the measures implemented could affect them as clients, it was advisable to ask about the consequences and the steps to follow in regard to the company with which they had contracted the investment service.

For more information on the effects of Brexit, a link was provided to the CNMV web page with further information. For any other questions or additional clarification, investors were encouraged to contact the CNMV's Consultation Service.

4.3.3 Replacement of the proposed application of profits for 2019 in certain listed companies by another proposed distribution due to the situation created by COVID-19

The agreement to distribute profits, which includes the dividend payable to shareholders, must be approved by the General Shareholders' Meeting and the board of director must propose this distribution to the general meeting.

The situation created by COVID-19 and the measures adopted by the authorities to stop its spread had an impact on the economy, which led the boards of some companies to rethink their proposed distribution of profits for 2019, in application of section 6 *bis* of Article 40 of Royal Decree-law 8/2020, of 17 March, on urgent extraordinary measures to deal with the social and economic impact of COVID-19, according to the wording of Royal Decree-law 11/2020, of 31 March, implementing complementary urgent measures the social and economic sphere to deal with COVID-19.

Investors were able to consult the changed proposals for the distribution of profit through the CNMV website (www.cnmv.es), in the "Consultations to the Official Registers"; "Issuers: regulated information" and "Inside information" sections.

4.3.4 Commitments assumed in the prospectus for the public share offering for the sale of shares of Bosques Naturales del Mediterráneo, S. Com. p. A., registered with the CNMV on 18 November 1999

On 27 April 2020, the CNMV published a clarification about the issues raised by investors.

In this statement, available on the CNMV's website (www.cnmv.es) under "Public communications", it was stated that Bosques Naturales del Mediterráneo 1, S. Com. p. A. (Bosques Naturales) does not have any shares or any other type of security admitted to trading on any regulated market in the European Union.

Bosques Naturales carried out a public share offering in 1999, for a consideration of €5,225,578, as a part of which the CNMV verified and registered the corresponding information prospectus in the same year.

Specifically, the attention of the shareholders and potential investors of Bosques Naturales was drawn to the following issues:

- Not being admitted to trading means that, as stated in section 0.5.3 of the 1999 issue prospectus "Information commitments", the company is not subject to the reporting obligations of listed companies. Its annual accounts or any other intermediate financial information, supplementary reports or documentation that the entity can or should publish do not fall under the supervision of the CNMV.

- The entity is also not legally obliged to submit the above information to the CNMV. When such information has been submitted voluntarily by the company in the past, the CNMV has clearly stated this on its website, and it does not mean that the information was subject to supervision or that its submission or publication was mandatory under any regulations.

- Title XIV of the LSC does not apply to Bosques Naturales either, the recast text of which was approved by Royal Legislative Decree 1/2010, of 2 July, and therefore none of the obligations deriving therefrom (on meeting calls, shareholder information, equal treatment, etc.) is supervised by the CNMV. In the seventh additional provision of the LSC, supervisory powers are attributed to the CNMV in these matters only with respect to listed companies.

As indicated in the prospectus, the offer did not require prior authorisation and was subject only to verification and registration by the CNMV as provided for in Royal Decree 291/1992, of 27 March, on issues and public offerings (Regulation (EU) 2017/1129 of the European Parliament and of the Council, of 14 June 2017, on prospectuses, similarly establishes that approval is limited to verifying compliance with the levels of completeness, consistency and intelligibility required). Furthermore, once a prospectus has been verified or approved, the CNMV may be obliged to exercise its supervisory powers, including its sanctioning powers (within the statute of limitations) in relation to the information included therein, for example, if it proves to be untruthful or inaccurate, but in general the CNMV is not responsible for requiring compliance with commitments that are voluntarily taken on by the issuer in relation to investors or the market.

4.3.5 Suspension of trading of shares of Abengoa, S.A. and enquiries relating to the possibility of transferring these shares

After numerous enquiries and concerns raised by investors, on 25 August 2020, the CNMV published a statement, which is available on its website (www.cnmv.es) in the "Public communications" section, stating the following:

> *On 14 July 2020, the CNMV suspended trading in the shares of Abengoa, S.A. after identifying circumstances that could disrupt the normal course of operations on the stock*
>
> *To date (25 August 2020 – the date of the CNMV statement), the company has still not prepared its annual accounts for 2019, which has therefore not yet been audited In addition, due to the information published, it is in a situation of negative equity, which constitutes grounds for dissolution, having made the notification provided for in Article 5* bis *of the Spanish Insolvency Act on 18 August (consequently, the three-month period laid down in this provision to reach an agreement with the creditors is currently ongoing).The survival of the company depends on this, and, with the level of debt resulting from the agreement, it would only hold a small minority stake in the business.*

In the statement, it was also emphasised that the CNMV considered that the circumstances affecting Abengoa S.A. continues to prevent its shares from being traded as normal and in such a way that investors could make an informed judgement on their real value and on the possibilities of the company overcoming the situation in which it finds itself.

The interests to be protected in cases such as this are not only those of current shareholders, who are temporarily restricted from selling their shares, but also those of investors who might acquire shares in an incomplete and extremely uncertain information situation.

Investors were informed that the suspension, which is still ongoing, would be maintained as long as circumstances continue to occur that, in the opinion of the CNMV, could disturb the normal course of trading on the stock.

In terms of its market position, it should be noted that the suspension of trading, which is a transitory measure, may lead to the future delisting of the shares or to the lifting of the measure and a return to trading, provided that the circumstances which caused it no longer exist. For this reason, it was recommended that interest parties periodically consult the news about and the company through the CNMV website (www.cnmv.es).

4.3.6 Holding, content and consequences of the extraordinary general shareholders' meeting of Abengoa, S.A.

Investors were informed by the Investors Department that the CNMV permanently supervises and inspects the securities markets and the activity of all natural and legal persons related to trading on these markets, in application of current regulations on transparency and market efficiency. In any case, any supervisory action or inspection by the CNMV will not be public in nature.

Likewise, the CNMV, in the exercise of the functions attributed to it by the recast text of the Securities Market Act, approved by Royal Legislative Decree 4/2015, of 23 October (LMV), and as established in Article 17.2 of this text, must ensure the transparency of the markets, the correct formation of prices and protection of investors, disseminating any information that may be necessary to ensure this purpose is achieved.

Notwithstanding the foregoing, the functioning of Spanish public limited companies is governed by the provisions of the recast text of the Corporate Enterprises Act, approved by Royal Legislative Decree 1/2010, of 2 July, and except for the provisions of that Law that are considered to be rules governing the management and discipline of the securities markets, the CNMV lacks the power to intervene in their functioning and in the decisions that taken by the governing bodies of public limited companies, as autonomous bodies.

Specifically, any potential discrepancies between shareholders and the administrators of a public limited company or with the agreements made by the governing bodies of this entity must be processed through the corporate channels in order to challenge corporate agreements or liability actions of administrators, in which the CNMV has no power to intervene.

4.3.7 Concerns about takeover bids: the acceptance process, calendar and authorised price, as well as the possibility of squeeze-outs

The enquiries arising from the takeover bids for Bolsas y Mercados Españoles, S.A., MásMóvil Ibercom, S.A. and Barón de Ley, S.A. stand out.

Enquiries or complaints were also filed regarding the formulation of a takeover bid for AB-Biotics, S.A., the shares of which were traded on BME Growth (formerly the Alternative Stock Market (MAB).

In relation to the voluntary takeover bid for the shares of Bolsas y Mercados Españoles, Sociedad Holding de Mercados y Sistemas Financieros, S.A. (BME) made by SIX, enquiries and concerns were raised about the unsolicited sale of BME shares after the takeover bid.

The Investors Department informed the interested parties that on 1 September 2020, SIX had published an inside information statement in which the following points were disclosed:

– That up until 31 August 2020, shareholders of BME jointly holding 1,798,530 shares, representing approximately 2.151% of BME's share capital, had exercised their squeeze-out rights.

– That as a consequence of this, as of 31 August 2020, the number of shares acquired by SIX in the bid, added to those on which squeeze-out rights had been exercised, amounted to 79,698,520 BME shares, representing of approximately 95.315% of its share capital.

– Therefore, all the requirements set out in Article 47 of Royal Decree 1066/2007, of 27 July, on the legal regime for takeover bids, as well as in sections 3.6.1 and 4.10 of the bid prospectus, had been met, and thus SIX could exercise its sell-out right.

In accordance with Article 136 of the Securities Market Act, Article 48.4 of Royal Decree 1066/2007 and bid prospectus, SIX stated its decision to require the sell-out of all the shares which it did not own at the bid price (€32.98 for each BME share).

The date of the sell-out was set for 24 September 2020. The settlement of the sell-out meant that BME shares were delisted from the Madrid, Barcelona, Bilbao and Valencia stock exchanges with effect from 30 September 2020.

In relation to the voluntary takeover bid made by Lorca Telecom BidCo, S.A.U. on 100% of the shares of MásMóvil Ibercom, S.A., there were several shareholders who asked about the consequences of holding the company's shares on their portfolios once they had been delisted.

The Investors Department stated that the bid prospectus expressed the offeror's wish to delist the company's shares from the Madrid, Barcelona, Bilbao and Valencia stock exchanges. Therefore, it the thresholds set out in Article 47.1 of Royal Decree 1066/2007 were reached, the offeror would exercise its sell-out rights within a maximum period of three months following the end of the acceptance period, which would result in the delisting of the shares by virtue of the provisions of Article 38.10 of the same Royal Decree. If the threshold established in Article 47.1 of Royal Decree 1066/2007 was not reached and it was not possible to exercise the sell-out rights, but the bid was positive because the minimum acceptance conditions had been met, the delisting would be carried out through the exemption provided for in Article 11 d), of this Royal Decree, as eventually occurred, based on the following terms and conditions:

– The originator and purchaser of the shares was the offeror.

– The price at which the sustained order was arranged was €22.50 per share, the same price at which the offer was formulated, which was duly justified as provided for in sections 5 and 6 of Article 10 of Royal Decree 1066/2007 by means of a valuation report published alongside the bid prospectus.

– The sustained order encompassed a maximum of 17,894,977 MásMóvil shares, representing 13.59% of the share capital of the company, which were not owned by Lorca, and Lorca committed not to sell the MásMóvil shares it owned, at least until MásMóvil's shares had been removed from trading, once all the buy transactions making up the sustained order had been settled.

– The sustained order began on 23 September 2020 and remained in force until 3 November 2020, the date on which the CNMV suspended the trading of MásMóvil shares, as a prior step to their delisting. In any case, the sustained order was in force for at least one month in the six-month period after the bid settlement.

– Banco Santander, S.A. was the entity in charge of brokering the purchases of MásMóvil shares that were transferred as part of the sustained order and the settlement of these transactions.

– Shareholders of MásMóvil who decided to accept the sustained order were charged, where appropriate, for the expenses deriving from the brokerage of the mandatory participation of a market member in the sale transaction, as well as the stock market trading fees, fees for the intervention of the central counterparty, BME Clearing, S.A., and the settlement performed by Iberclear.

The parties were informed that the shareholders of MásMóvil Ibercom, S.A. (MásMóvil) had the possibility of selling their shares during the takeover bid launched by Lorca Telecom Bidco, S.A.U. (Lorca) for 100% of the share capital of MásMóvil, which was settled on 22 September 2020 and, subsequently, within the period of the sustained order initiated by Lorca, which ran from 23 September 2020 to 3 November 2020, the date on which the CNMV suspended MásMóvil shares from trading as a prior step to their delisting from the stock market. Investors were also informed that they should have received information on all of these items from their depositories.

On 16 November 2020, MásMóvil shares were removed from trading on the Spanish organised markets, and no further information relating to the company has been included in the official records of the CNMV as a consequence of the measure, as this body no longer has supervisory powers over it.

It was also explained 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 and to sell the shares the investor must find a counterparty, agree to its terms or price and carry out the corresponding asset transfer.

Lastly, investors were informed that the shares could also be offered to the issuer, although the latter was not obliged to acquire the shares. In any case, it was indicated that the CNMV did not have the competency to rule on any discrepancies in this matter, since, as already indicated, the company was outside the scope of the authority's powers from the moment it was removed from trading.

In relation to complaints about the formulation of a takeover bid with the delisting of shares of AB-Biotics, S.A., whose shares were traded on the Alternative Stock Market (MAB), it should be noted that the CNMV informed investors that, in accordance with Article 129 of the Securities Market Act (recast text approved by Royal Legislative Decree 4/2015, of 23 October) and Article 1 of Royal Decree 1066/2007, of 27 July, on the regime of takeover bids for the acquisition of securities, the powers of the CNMV in the area of takeover bids are limited to companies whose shares are, in whole or in part, admitted to trading on an official Spanish secondary market and have their registered office in Spain, and do not extend to shares of entities that are traded exclusively on a multilateral trading facility such as BME MTF Equity (previously, MAB).

In regard to the complaints about the price set for the removal from trading and in accordance with the regulations of BME MTF Equity, it was stated that prices should be set in accordance with the provisions of the issuer's articles of association, and therefore be subject to prevailing mercantile legislation in force in the event that the provisions of the articles of association or their interpretation are considered to be unlawful.

4.3.8 Complaints about investment losses in shares of Banco Popular Español, S.A.

In 2020, further complaints were received about investments losses in shares of Banco Popular Español, S.A.

The reason for the complaints usually refer to the information received at the time of purchase on the bank's financial situation or the accounting data published by Banco Popular Español, S.A.

However, this issue is not part of the entity's role as an investment service provider but as an issuer, and therefore it falls outside the scope of the CNMV's complaints procedures and corresponds to the ordinary courts of law.

However, it should be clarified that the measures adopted by the Fund for Orderly Bank Restructuring (FROB) on 7 June 2017, which, among other aspects, entailed the cancellation of all pre-existing shares of Banco Popular Español, S.A., i.e., those outstanding at that time, with no payment of any amount or compensation given to the holders of those shares and the consequent loss of their entire investment, arose from the decisions adopted by the competent European Union authorities in this matter relating to its lack of viability.

In particular, Banco Popular Español, S.A. was subject to the supervision of the European Central Bank, specifically Regulation (EU) No. 806/2014, of 15 July, establishing uniform rules and a uniform procedure for the resolution of credit institutions.

The European Central Bank ruled (on 6 June 2017) that Banco Popular Español, S.A. was unviable, considering that the entity could not honour the payment of its debts or other liabilities upon maturity, or there were objective factors indicating that it would not be able to do so in the near future.

At European level, the Single Resolution Board (SRB) was responsible for declaring the resolution of Banco Popular Español, S.A.

The FROB, as the executive resolution authority, took the required measures to apply the resolution procedures, established by the SRB in accordance with the resolution process governed by Regulation (EU) No. 806/2014 of the European Parliament and of the Council, of 15 July, establishing uniform rules and a uniform procedure for the resolution of credit institutions.

4.3.9 Methods used by minority shareholders to sell shares of Arquia Bank, S.A.

Minority shareholders of Arquia Bank, S.A. (formerly Caja de Arquitectos, S. Coop. De Crédito) raised questions about how to sell their shares.

According to the information available in the Central Mercantile Registry, on 18 March 2019, the transformation of Caja de Arquitectos, Sociedad Cooperativa de Crédito into a public limited company and adoption of the corporate name of Arquia Bank, S.A., was registered in the Madrid Mercantile Registry.

The shares of Arquia Bank, S.A. are not admitted to trading on any Spanish secondary market or multilateral trading facility, so it was not possible use the markets or trading venues to sell the company's shares.

However, the fact that the shares of a company are not admitted to trading on a secondary market does not prevent them from being transferred outside the market, in accordance with the general provisions of the Corporate Enterprises Act, approved by Royal Legislative Decree 1/2010, of 2 July, and the company's articles of association.

This option, which according to the enquiries received, was used, means that it is often very difficult to find a counterparty for the share transfer.

Regarding the procedure and the requirements established in the articles of association of Arquia Bank, S.A. for the transfer of its shares, investors were provided a link to the private section of the entity's website in order to consult these articles of association, where in Article 12, "Transfer of shares" it is established (and should be emphasised) that for the transfer to take place it is necessary to find a counterparty (to acquire the shares).

https://www.arquia.com/media/5877/estatutos-sociales-arquia-ampliacio-n-de-capital-2019.pdf

Any discrepancies with the company issuing the shares (Arquia Bank, S.A.) regarding the procedure or the requirements established for their transfer is outside the scope of the CNMV.

Any concerns that the shareholders of a public limited company may have with its administrators or with the agreements reached by its governing bodies must be processed through the corporate channels in order to challenge corporate resolutions, the liability actions of administrators or, where appropriate, through the courts of justice.

4.3.10 Waiver of the holding of warrants relating to the restructuring process issued by Deoleo, S.A.

A repeated topic of consultation was how to waive the holding of warrants relating to the restructuring process of Deoleo, S.A., with ISIN ES0610047005, in June 2020.

These warrants are not traded on any secondary markets and in order to waive ownership is necessary to transfer them to a third party, outside the market, or to waive them.

To transfer them, it is necessary to find an acquirer (counterparty) who agrees to carry out the transaction, formalise it and approach the depository to register that transfer of warrants and ensure the corresponding entries are made in the accounting register of the securities (deregistration of the warrants in the securities account of the transferor and registration of the warrants in favour of the acquirer).

If the holder wishes to waive ownership of the warrants, he or she would not need to find an acquirer and would only have to submit the corresponding request to waive ownership before the depository, giving consent to cancel the warrants in the book-entry records.

4.3.11 Administration and custody fees for companies with suspended or delisted securities

Every year there are enquiries from shareholders of companies that have been suspended or removed from trading who wish to stop paying fees for the custody of their shares.

For **removed companies** whose shares are still represented by book entries (if they are physical securities, the holder could be the direct custodian) investors may stop paying custody fees to the depository, provided that certain conditions are met that allow a procedure for waiving register-entry maintenance of delisted shares to be initiated.

One of these conditions is that the company is inactive and thus no entry should have been made in the Mercantile Registry during the four years prior to the calendar year in which the procedure is started. Investors may contact the CNMV to find out if these conditions exist for a specific company.

Some of the companies for which the procedure for waiving register-entry maintenance can already be initiated are:

– Fergo Aisa, S.A.

– Compañía de Inversiones Cinsa, S.A.

– Sierra Menera, S.A.

– Cartera Montañesa, S.A.

– Intra Corporación Financiera, S.A.

– Grupo Nostra RNL, S.A.

The procedure for waiving register-entry maintenance of delisted shares does not imply the loss of ownership but it does imply the loss of some aspects associated with registration, such as the possibility of registering with effect against to third acts or rights that fall on the values or affect them.

Furthermore, delisted companies may find themselves in other situations, such as:

– Companies removed due to inactivity but for which any of the above requirements are not met (this is the case of Sniace, S.A. or La Seda de Barcelona, S.A.) which have entries in Mercantile Registry in the last four years.

  When this procedure cannot be initiated because the necessary requirements are not met, the CNMV considers it good practice for the depository not to charge fees for the administration of shares with an inactive issuers and, above all, in those cases where there are no procedures available to the clients to cancel the shares of their securities account.

– Delisted companies for which the waiver procedure can be initiated as of 2021 but which has not been requested by any shareholders at the current time. This is the case of Let's Gowex, S.A., since the last movement registered in the

Mercantile Registry dates from 3 April 2017, so the waiver procedure could be initiated.

The procedure begins with the request submitted by the interested party to their securities depository, using a form provided by the CNMV's Consultation Service for to investors. The entity will transfer the request to Iberclear, according to the arbitral procedure, which, among other requirements, must verify the identity of the holder, check that securities exist in the holder's name, check there are no charges or encumbrances and confirm the suitability of the request.

– For companies that have made register entries, such as Nissan Motor Ibérica, S.A. or Carrefour, S.A., it should be noted that the procedure to voluntarily waive register-entry maintenance is expected in the case of companies that have been delisted due to inactivity that also meet a series of requirements established in the regulation itself, including verification that a minimum period of four years has elapsed without no register entries being made on the issuer's sheet in the Mercantile Registry.

  However, from the standpoint of the registry, these companies continue to operate as normal, which prevents the voluntary waiver procedure from being initiated.

Extinguished companies. The Central Mercantile Registry shows that Española del Zinc, S.A. is listed as extinguished in a register entry dated 22 December 2020, which means that its shares no longer exist.

Thus, the collection of fees for the administration of these shares or holding a securities account is no longer applicable, if these shares were the only ones deposited in the account. In regard to fees charged on these shares before the extinguishment, it should be reiterated that the CNMV considers it good practice for the depository not to charge fees for the administration of shares with an inactive issuers and, above all, in those cases where there are no procedures available to the clients to cancel the shares of their securities account.

Foreign companies. When the enquiry refers to shares of a foreign company, it is recommended to contact the depository, which can confirm whether the shares still exist or if there is a procedure that allows them to be removed from their corresponding accounting registers.

The option for the shareholder to remove the shares from the accounting register depends on the regulations governing this register in the corresponding country or market.

For shares that have been suspended from trading, it should be noted that the suspension of trading is a transitory measure, which may lead to the future delisting of the shares or to the lifting of the measure and a return to trading, provided that the circumstances which caused it no longer exist.

For the duration of the suspension period, the securities will continue to be represented through the book-entry system and not as physical securities, so they must remain in a securities account and the depository is permitted to apply the fees established for this service or that it has agreed with the client.

4.3.12 Fees for cash accounts associated with securities accounts

Investors raise questions as to whether they should also pay fees for the required cash account linked to the securities account they have opened at the financial institution.

The CNMV considers that when cash accounts (current accounts, savings accounts, etc.) are opened or maintained due to the entity's requirements and for the sole purpose of supporting the movements in securities accounts or investments made in investment funds, that is, accounts that are merely instrumental and ancillary to a main product that is an investment product, investors should not bear any costs for their opening, maintenance and closure.

4.3.13 Transfer fees

One subject of repeated complaints from investors is the transfer fee for moving securities to another financial institution.

The entities that provide investment services can freely set fees or expenses that are passed on to their clients on any service requested by the client that the entity effectively provides. No legal maximums have been established for the fees that entities charge for the provision of these services to their clients and in particular, for the transfer of securities.

It is important to note that 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 fees, and interpretations that could be made with regard to antitrust law, 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.

Thus, a transfer fee that is too high could be an obstacle to the investor's right to terminate the contract for the provision of services and, in accordance with the provisions of Article 62 of this Regulation, "Clauses that establish [...] limitations that exclude or hinder the right of the consumer and user to terminate the contract are prohibited", and it could even be identified as an abusive clause, according to Article 82, although its hypothetical abusive nature cannot be decreed by the CNMV, but only by an ordinary court of justice.

4.3.14 Fees for processing an inheritance

When processing a will, financial institutions may have two types of fee: a fee for processing the execution of the will and a fee for changing ownership.

The fee for processing the will includes the fee for the change of ownership of financial instruments. Therefore, if the first fee is charged, it cannot also be charged for changing the ownership of the instruments.

The Bank of Spain 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.

4.3.15 Requirement to implement of minimum lot trading for sales of certain listed securities

At present, based on the rules of operation of the Spanish Stock Market Interconnection System (SIBE) a minimum trading lot of 100 shares has been established for certain instruments – applicable from 26 October 2018 onwards, and it is not permitted to trade lots of these shares that are not multiples of 100 on the SIB, or to execute sales of less than 100 shares.

The companies obliged to operate with minimum trading lots of 100 shares can be consulted in the following link. As they may vary, it is recommended that the link be consulted when orders are issued.

https://www.bmerv.es/esp/aspx/Regulacion/Regulacion.aspx?cod=SBolsas

This means that, unless the client's financial intermediary accumulates the orders of its clients until a number of shares that is a multiple of the established minimum lot is obtained, it will not be possible for shareholders to trade a number of shares that is lower than minimum lot requirement or fractions of shares that are not multiples of the minimum lot established for shares on the SIBE.

In this type of situation, the CNMV understands that the requirement established by the standard that "it is unlikely that as a whole the accumulation of orders and transactions will harm any of the clients whose orders are going to be accumulated", since the transaction could not be executed otherwise.

Therefore, taking into account the obligation of entities to act in the best interests of their clients, as well as the provisions of the order execution policy of each one, where applicable, the Complaints Service considers that in these cases, and in the absence of other relevant applicable circumstances, acting in accordance with the good practices of the securities markets would mean that the entities should accumulate and allocate the orders of their clients, for which purpose they must comply with all the requirements established by law.

4.3.16 Advice in relation to the ruling on Pescanova, S.A.

Some shareholders have asked for advice on an indemnification process given the ruling handed down by the National High Court.

On 6 October 2020, Pescanova, S.A. informed the CNMV through a relevant information notice about the ruling of the Fourth Section of the Criminal Chamber of the National High Court, issued on 6 October 2020 in Abbreviated Procedure 1/2019, and in which charges were brought against the actions of some of the company's administrators and executives who worked there until 2013.

This statement is available on the CNMV website, www.cnmv.es, in the "Issuers: regulated information and other" section, under "Other relevant information".

Clients were reminded that the CNMV does not issue any type of advice or recommendations on the potential legal alternatives available, so they should seek professional advice if they wish.

4.3.17 Need for account holders to be in agreement for the transfer of securities

Investors frequently complain or do not understand why the depository prevents them from transferring their securities to another account opened in the entity itself or in another firm.

It should be clarified that to transfer securities deposited in one entity to a different financial entity, the owner of the destination account must be the same as that of the source account.

4.3.18 Requirement to open a securities account at the deceased person's financial institution to receive the inherited securities

The beneficiaries of the securities acquired in an inheritance must open a securities account (and the associated cash account) in the same financial institution where the deceased's securities 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. If the inheritance is *pro indiviso*, the ownership of the account must be shared. However, if the financial instruments are distributed, there must be an individual account in the name of each heir.

There is nothing to prevent the allocated shares from being deposited in a securities account opened in a different financial institution from that making the allocation. 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, carrying out 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.

The acquisition *mortis causa* of investment fund units requires special treatment.

As a general rule, the acquisition of investment fund units does not usually imply the obligation to hold a securities account (a securities account is always necessary if shares of an investment company are acquired) or an associated current account with the depository or distributor.

However, most entities use subscription contracts or investment fund contracts to manage these financial instruments, which an acceptable practice as long as it does not imply any cost for the unitholder. In these cases, the entity must 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*.

4.3.19 Information on the purchase price and date of shares

It is very common for investors to contact the CNMV to ask about the price of their shares or the date of their purchases for tax purposes.

The CNMV is not responsible for providing share price information, nor does it keep an official record of the dates and prices of the shares that are listed on the Spanish market that may have been traded by investors.

Investors can request this information from their securities depository, but they should bear in mind that the latter is only obliged to keep information on the transactions carried out for five years.

4.3.20 Information on the investments of a deceased person

As in the previous case, investors usually assume that the CNMV keeps a register of data on ownership and investments from which a statement can be requested in the event of a death in order to initiate the inheritance process.

However, there is no public register managed by the CNMV with information referring to the securities portfolios owned by investors such as the number, type and valuation of their assets.

To obtain this information, investors must approach the depository of the financial instruments with which the deceased had arranged custody.

4.3.21 Agents of entities that provide investment services and their registration

When investors receive an offer from a different or unknown entity, they request details of its registration from the CNNV and sometimes it occurs that these are agents of entities that provide investment services.

It should be specified that an agent of an entity authorised to provide investment services is not an entity authorised to provide investment services but a natural or legal person empowered by an entity authorised to provide investment services to promote and distribute certain investment and ancillary services in its programme of activities.

Likewise, authorised entities may appoint them to offer clients, on behalf of the authorised entity, the investment services provided for in Article 140 a) and e), in addition to advice on financial instruments and investment services offered by the company.

These agents must be registered in the corresponding CNMV registry (for agents of investment firms) or the Bank of Spain (for agents of credit institutions) and they must act at all times on their behalf and under the full and unconditional responsibility of the authorised entities that contract them.

In particular, the agents of investment firms can be consulted through the CNMV website under "Registration files", either by accessing the information available on the investment firm, or if it is a Spanish investment firm, accessing the "Search by entities" tool.

Agents of credit institutions are not registered in the CNMV registers but with the Bank of Spain. Therefore, for enquiries about this register of agents and to resolve any queries arising (information, material scope of action, etc.), investors should contact that authority (www.bde.es).

In the response to investors, the link to the part of the Bank of Spain website for enquiries relating to its Register of Agents is attached:

https://www.bde.es/bde/es/secciones/servicios/Particulares_y_e/Registro_de_Agen/Registro_de_Age_ead972d6c1fd821.html

To obtain more detailed information, investors can also contact the entity that has contracted the agent or the agent itself.

4.3.22 Mortgage loan securitisation

Enquiries are received from individuals asking about the securitisation of their mortgage loans.

The CNMV does not have this information since it does not appear in the public registers overseen by it.

In any case, based on the premise that investors are interested in knowing whether a loan has been allocated to an asset securitisation fund, the following points should be indicated:

The allocation, by a credit institution, of a mortgage loan (or other credit right) does not require the debtor to be notified for it to be valid. Therefore, it is a market practice for loans to be allocated to a fund without informing the debtor.

If a mortgage holder wishes to know whether his or her loan has been securitised, they should contact their entity (i.e., the entity with which they arranged the mortgage loan) to request this information.

If their request is not answered by the entity, they may file a complaint which, if appropriate, would be processed by the Complaints Service of the Bank of Spain – which is competent in this area, as it concerns information about mortgage loans.

Once the entity has informed the client that his or her loan has been effectively allocated to a securitisation fund and provided the name of the fund in question, the client may contact the CNMV, through its Electronic Office to file a "Request for official records" or by writing to the General Secretariat of the CNMV, requesting a copy of the deed of incorporation of the corresponding securitisation fund.

However, the deed of incorporation may not be provided because it may contain personal data that are protected in accordance with the provisions of Regulation (EU) 2016/679 of the European Parliament and of the Council, of 27 April, on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, repealing Directive 95/46/EC, as well as Royal Decree-law 5/2018, of 27 July, on urgent measures for the adaptation of Spanish law to European Union regulations on data protection and more recently in Organic Law 3/2018, of 5 December, on the protection of personal data and guarantee of digital rights.

For funds whose securities are admitted to trading the corresponding prospectus is available on the website www.cnmv.es, under "Registration files", "Issues, trading and takeover bids", "Issues and public offering prospectuses".

The list of securitisation fund management companies can also be consulted in the "Registration files", "Issuer filings: information under regulation and other". Clicking

on the company in question provides access to all securitisation funds under their managements.

The link to this section is provided:

http://www.cnmv.es/Portal/Consultas/FTA/ListadoGestorasFTA.aspx

It is also clarified that the allocation of a mortgage loan to a third party, such as a securitisation fund, does not affect the terms and conditions of the loan, which will still be those agreed with the entity.

4.3.23 Coverage of the Investment Guarantee Fund (FOGAIN)

Enquiries about the coverage of the Investment Guarantee Fund (FOGAIN) are also common.

In general, if the entity that acts as depository of the financial instruments contracted is part of the FOGAIN, investors are informed that the fund will cover up to a certain amount and, where appropriate, that member entities will not be able to recover a certain part of the cash, securities or financial instruments deposited by the client (global creditor position vis-à-vis the company), in the event that the member entity:

– Has entered into insolvency proceedings.

– Has another problem that prevents it – after an administrative declaration from the CNMV – from meeting its payments and obligations.

The investor's position will be established by accounting for all the accounts or positions opened in his or her name in an investment firm, taking into account all balances (positive or negative), in any currency, until the global creditor position is established with regard to that firm.

The fund does not cover any loss of value of the investment or any credit risk (i.e., insolvency of the issuer, guarantor or counterparty of the financial instruments).

The quantitative limit of the coverage offered by FOGAIN is €100,000.

The following links to regulations on investment guarantee funds and the FOGAIN website are provided:

http://www.cnmv.es/Portal/legislacion/legislacion/tematico.aspx?id=7

https://www.fogain.es

To resolve any queries about the scope and limits of the coverage offered by that investment guarantee fund in specific situations, investors should contact the manager of the guarantee fund in question.

4.3.24 Information on CNMV disciplinary proceedings

The information requested refers to actions carried out by the CNMV in the exercise of the functions recognised in Articles 233 *et seq.* of the Securities Market Act (LMV), which determines the application of Article 248 of the LMV, pursuant to which "Confidential information or data that the National Securities Market Commission or other competent authority have received in the exercise of their functions related to supervision and inspection provided for in this or other law may not be disclosed to any person or authority".

Consequently, information on the disciplinary proceedings carried out by the CNMV is private and cannot be disclosed, so it is not possible to respond to such requests as the information is not among the exemptions included in Article 248.4.

The public information that exists on these proceedings is shown on the CNMV website (www.cnmv.es), in the "Press room"; "Press releases/Statements" sections.

The public record of penalties imposed by the CNMV can be consulted on the website, www.cnmv.es, in the "Registration files", "Disciplinary penalties" section.

4.3.25 Intervention and insolvency proceedings of Esfera Capital, AV, S.A.

For enquiries relating to the intervention of Esfera Capital, AV, S.A., approved by the CNMV on 20 March 2020 at the request of the entity itself, as a result of an equity mismatch deriving from an incident related to the management of the derivatives positions, it is only possible to access the public notices issued by the CNMV on this topic, which can be found in the following link:

https://www.cnmv.es/portal/AlDia/Comunicaciones-Publicas.aspx

According to this information, investors are reminded that once the insolvency practitioner of Esfera Capital, AV, S.A. has been appointed, they can contact him to ask any questions relating to their credit with the entity.

4.3.26 Domains and trademarks of Cypriot IFs operating in Spain under the freedom to provide services regime

Due to the changes that have taken place in recent years in methods and channels used to attract customers, investors often ask about the authorisation and registration of companies that offer financial instruments over the Internet.

Here, there is a particularity that they do not use the corporate name of the companies, but rather their web domain.

This occurs mostly in the case of Cypriot investment firms that operate in Spain under the freedom to provide services regime, i.e., with no physical presence in Spain. Some examples are shown that clearly highlight the difficulty in identifying them in the name of the registered company:

– www.trade360.com belongs to Crowd Tech, Ltd.

– www.Tradefw.com belongs to ITrade Global (CY), Ltd.

- www.fxgm.com belongs to Depaho Ltd, Sucursal en España
- www.ROinvesting.com belongs to Royal Forex, Ltd.
- www.101investing.com/es is the domain of FXBFI Broker Financial Invest, Ltd.
- https://www.t1markets.com/es belongs to General Capital Broker (GCB), Ltd.

The CNMV has stated that it is necessary to check the website of the Cyprus securities authority to verify the official websites of registered investment firms.

4.3.27 Complaints about EU investment firms

When investors contact the CNMV to complain about European Union investment firms, it is clear that they do not know which authority they should contact to submit their complaints.

Therefore, it is important to understand how these entities operate in Spain.

When the complaint involves an IF of the European Economic Area authorised to provide investment services in Spain under the freedom to provide services regime, in accordance with EU regulations on cross-border activity, the CNMV is not usually tasked with the supervision of that entity. This task, as well as the task of responding to the complaints and claims of the entity's clients in Spain, correspond to the competent authorities of its country of origin.

However, when the IF of the European Economic Area is authorised to provide investment services in Spain through a branch or an associated agent, it would fall to the CNMV to ensure that the branch or agent complies with Spanish rules of conduct and consequently to address complaints filed by clients of the IF relating to the services carried out by said bodies.

4.3.28 Considerations about investing in cryptocurrencies

In response to enquiries received by the CNMV relating to the nature of the entities through which investments in cryptocurrencies can be made, investors are referred to the statement "CNMV considerations on cryptocurrencies and ICOs for financial sector professionals", published on 8 February 2018, and the joint statement issued by the CNMV and the Bank of Spain, published on 9 February 2021 warning about the risk of investing in cryptocurrencies.

4.3.29 Enquiries about unregistered entities or those known as "boiler rooms"

Some of the most frequent enquiries received each year refer to unregistered entities that offer investment services for the sole purpose of committing alleged fraud.

Sometimes investors consult the CNMV before handing over their money but most often they contact the authority when they are unable to contact the entity to recover their investment.

In 2020, an increase was observed in investment offers by unauthorised entities, possibly due to the situation caused by COVID-19.

The procedures and techniques used by these natural or legal persons (boiler rooms) have varied over the years and have adapted to new circumstances and regulatory changes.

For instance, in recent months the CNMV has received enquiries and complaints from investors who invested on the basis of the offer of investment services, such as the purchase of financial instruments that were popular at the time: crypto-assets, shares of e-commerce companies, commodities contracts (oil, precious metals…), through advertisements in which the entity that is offering the services is not identified at first.

A variety of advertising media and formats are also used to offer these services: advertisements (banners) in browsers and communications media (even widely distributed media), social media profiles, web pages of electronic marketing companies, emails sent to investors' accounts, etc.

One factor that is common to all of them is the biased and impartial nature of the information offered on expected future returns, where the possibility of obtaining returns are exaggerated and the risk of losses is concealed. Sometimes television, sports or business personalities are used as a hook.

Examples like: "[…] shares: For an investment of only €200 you could receive a monthly salary […]"; "Investment in shares […]. For as little as €200, learn how to obtain income from home in just one second […]".

Sometimes these can be strategies to obtain personal data from investors, such as emails or phone numbers – which are usually obtained through forms – which are then given to entities interested in this information, which could include boiler rooms, unauthorised investment firms which are not registered with this authority.

In these cases, investigations are started and investors are informed that in order to carry out reserved activities in Spain such as receiving, transferring and executing client orders, portfolio management or providing advice on investment issues and others set out in the Spanish Securities Market Act, when they refer to the financial instruments provided for in Article 2 of said Act, the firm must be registered in the CNMV's official registers.

A list of authorised firms is available on the CNMV website (www.cnmv.es), under "Registration files", "Investment firms". Alternatively, information can be found on unauthorised firms and other entities using the search engine in the "Warnings" section through the following link: https://www.cnmv.es/Portal/BusquedaAdvertencias.aspx.

Registered companies can only obtain authorisation by demonstrating their compliance with certain requirements (sufficient capital, sufficient organisation and means, etc.) and are subject to supervisory control.

In any case, the powers of the CNMV are merely administrative and therefore if an investor feels that he or she has been harmed by the actions of unregistered entities or persons, he or she should take the case to the ordinary courts of justice.

It is also recommended that investors consult the guide on boiler rooms published by the CNMV – in which this term is described as "entities that offer and provide investment services without being authorised to do so" –, where it is highlighted that "the most advisable course of action is not to trust any unknown entity until it has been possible to verify that it is duly authorised to provide investment services", since in these cases, "it is not possible to use any of the investor protection mechanisms provided for in the legal provisions". Likewise, the guide states that "entities that have not been the subject of a warning are not necessarily authorised entities; it is simply possible that their irregular activities have not yet been detected by the competent supervisory bodies".

The link is provided to the *Decalogue to avoid boiler rooms* published by the CNMV and the alerts for investors on the CNMV website:

http://www.cnmv.es/DocPortal/Publicaciones/Guias/DecalogoCNMV.pdf

https://www.cnmv.es/portal/Gpage.aspx?id=Alertas-Inversor

4.3.30 Enquiries related to a type of fraud known as funded trading, linked to training courses

Another type of enquiry refers to a type of fraud known as funded trading, which is linked to training courses.

These services offer clients the possibility of accessing a securities account to carry out different types of transactions (stock market trades, CFDs, forex, etc.) with the particularity that users would not risk their own capital, but would apparently trade with the capital provided by the service, supposedly in exchange for a percentage of the profits.

In order to make use of these funded trading accounts, the user must take a course in which, among other subjects, includes the trading rules to be followed, and has to pass operating tests in a simulated environment within certain operational parameters (maximum daily loss, risk level, etc.).

This course requires an advance payment, sometimes of several thousands of euros, to be able to attend.

The CNMV warned potential users of these accounts about the risks incurred by contracting the courses, including the risk of fraud or deception regarding the possibility of accessing the funded trading account.

Investors have also been warned that these courses or opening of these accounts do not fall within the CNMV's scope of action under the Securities Market Act, although its supervisory powers would extend to the different activities that could be carried out from these accounts in the financial markets.

4.3.31 Enquiries related to a type of fraud carried out by companies known as "recovery rooms"

The scope of the CNMV's supervision does not include job offers which require a training course to be carried out beforehand, for which the investor is expected to pay a

registration fee. However, after analysing some of the contracts submitted to the CNMV by investors, it was discovered that they use the CNMV registration information of EU investment firms that operate in Spain under the freedom to provide services regime (with no physical presence in Spain), in addition to presented an alleged guarantee from the CNMV as compliance with the terms and conditions of the contract.

In 2020, investors once again raised complaints about a new type of fraud carried out by companies known as recovery rooms, which contact people who have been victims of boiler rooms (unauthorised entities) to manage the recovery of their losses or buy back shares or securities acquired through unregistered companies.

This type of fraud may derive from the boiler room that carried out the initial fraud or from other people or companies that have acquired lists of the parties involved.

In these cases, the CNMV recommends that any consumer who receives such an offer without having requested it to consider the following points:

– To be aware that the same boiler room may make another attempt to make the investor lose more money, or even sell his or her data to other companies.

– To look for new signs of fraud: it should be considered that if the company contacts the investor without the investor having requested it and asks for money in advance for the payment of taxes, fees or insurance policies as a prerequisite to providing the service offered, this is an indication that it is a recovery room.

– To be suspicious if they are contacted on behalf of the CNMV to recover the losses they have suffered, since neither the CNMV nor its employees will directly contact any party who has potentially been affected, nor can they authorise the use of its identity, corporate image or domain (cnmv.es) in order to recoup losses.

– Not to respond to offers to repurchase shares or to recover losses without first making sure that they come from companies with positive or reliable references, even though the actions of these recovery rooms is not supervised by the CNMV. (The CNMV's remit in regard to the activity of companies operating in the financial sector is linked to limited actions governed by the securities market regulations or with the authorisation of or registration by the authority. Therefore, if investment services or other reserved activities included in the securities market regulations are not offered, they would not be companies subject to the supervision of the CNMV).

– It is also recommended that if the investor has already been the victim of such an action, he or she should report it to the police.

4.3.32 Attempts to defraud investors by simulating the CNMV's telephone numbers, domains or image

In 2020, investors' concerns about the authenticity of certain contracts bearing the CNMV logo or documents with false signatures of representatives of the authority revealed attempts to defraud investors by simulating telephone numbers, domains or the image of the CNMV.

The CNMV has detected attempts to defraud investors by falsifying the telephone number from which the communication is made so that it appears to be that of the authority. In these calls, personal or banking information is requested under the pretext of an alleged official management task. For example, in relation to the losses suffered by the investor in previous investments. However, the real purpose of these calls or communications is to access the investor's bank accounts or personal passwords and illegally appropriate their funds.

The CNMV has stated in its responses to the enquiries that it will never ask investors for this type of information by telephone or through any other means of communication.

These cases have been passed on to the Economic and Fiscal Crime Unit (UDEF) of the National Police, by virtue of the collaboration agreement signed between both parties to combat financial fraud. The Spanish security forces will continue with the investigation and seek to apprehend the perpetrators.

Investors who have been victims of attempts to inflict financial fraud can inform the Spanish state or regional security forces.

The CNMV has stated that it will never ask for account numbers or passwords to operate with a bank or securities firm.

This type of telephone fraud comes in addition to other forms of phishing and others that have already been detected:

– Sending communications to investors by email from domains that are similar to ...@cnmv.es (such as ...@cnmv.help).

– Proving responses to investor enquiries with scanned documents, with the falsified format, content and signatures of the CNMV.

– Contracts of fraudulent companies to be signed by investors, which include the CNMV logo to make them appear legal.

In all cases, the CNMV advises investors to verify the source of any communication received in its name. Specifically, it is considered advisable:

– To check that emails from the CNMV come from the domain ...@cnmv.es and make sure of the source, in order to rule out links that are unrelated to www.cnmv.es.

– To be wary of unofficial contracts or documents that feature the CNMV logo.

– To be wary of any comm unication that includes a request for confidential, financial or personal information or that contains a suspicious link.

– To remember that the CNMV will never encourage investors to make an investment or charge them for it.

4.3.33 New IT strategies used by boiler rooms

Investor testimonies have revealed that there are new IT strategies being used by boiler rooms.

In recent months, the CNMV has received evidence from Spanish investors about the use of new IT tools by boiler rooms – entities that provide investment services without authorisation, that are not registered with the CNMV – which have caused significant losses in investors' assets as a result of the transactions carried out or due to unsuccessful attempts to recover the balance of their securities accounts. Therefore, the CNMV has issued the following warnings to investors:

– Not to share passwords to their bank and securities accounts with third parties.

– Not to allow remote access to their IT devices.

– Not to log in to their bank or securities accounts with a connected third party.

– Not to use VPN services to conceal their IP address or access web pages blocked to IP addresses from Spain.

The testimonies received refer to two specific tool that have become popular due to the measures adopted on the occasion of COVID-19: remote access software (such as AnyDesk, LogMeIn, TeamViewer, etc.) and virtual private networks (VPN services).

➢ Remote access software

This type of tool allows individuals to connect remotely to the different users' devices (computers, mobile phones, etc.) in order, among other services, to allow users to access their devices remotely from another terminal, or for third parties to manage any IT problems that are detected.

It has been observed that boiler rooms are using these tools to connect to investors' devices and appropriate data (such as access codes or passwords) to allow them to trade through their securities accounts, without express authorisation to do so.

Sometimes, the boiler room itself invites the investor to install a specific remote access application but sometimes they can use one that is available on the investor's own computer.

Once the boiler room has connected remotely to the investor's device, it asks the investor to start a session on the website through which it is illegally providing its investment services, obtaining the access codes to operate through his or her securities account at a later date. It may also ask directly ask the investor to provide his or her securities account access codes.

In addition to the consequences that may arise for investors – which also derive from other tools used by boiler rooms –, the misuse of remote access software makes it difficult to carry out police or legal investigations to identify the person ordering the transactions performed.

These are new forms of a simple practice which continues to cause people to fall victim to boiler rooms: that of providing third parties with access codes to bank or securities accounts, and the risks of these must be highlighted.

➢ Virtual private network (VPN services)

VPN services can be used to conceal an Internet address (IP), which publicly identifies every computing device on web. This identifier is unique for each device and shows, among other factors, its geographical location.

The recommendation to operate only with entities authorised to provide investment services that appear in the "Registration files" section of the CNMV website (www.cnmv.es), is reiterated. This website also lists the entities that have been given a warning by the CNMV or another foreign regulator for having provided reserved investment services without the mandatory authorisation.

4.3.34 Attempts to defraud investors by impersonating authorised entities

Through the Investors Department's Consultation Area, the CNMV has become aware of the fraud carried out by unauthorised companies (boiler rooms) that use identifier data of companies that are authorised and registered with the CNMV to confuse the investor by giving an appearance of legality.

There are companies or websites, identified in the CNMV registry as "clones", which have no connection whatsoever with the authorised entities whose identities they are impersonating.

Investors are always recommended to verify that any offers come from an entity registered with the CNMV by directly consulting the CNMV register.

Boiler rooms make illegal use, even on their web pages, of identifiers that are identical or very similar to those of duly authorised and registered companies.

To protect themselves from potential scams, it is recommended that consultants, when offering financial products, check the data themselves, including the company name, trademark, headquarters and postal addresses, domain and web address or registration number in the supervisory authority. In the event that any of these features do not match or they still have concerns about the identity of the company selling the product, it is recommended to ask the CNMV and reject any unsolicited offers until they can verify that they come from entities that are registered with the CNMV.

The entity's data should always be verified through the CNMV's website, never through links in emails or through the website of the company offering the investment.

If the contact details cannot be found in the CNMV register or if investors have concerns when comparing them with the details provided by the company, it is recommended to contact the CNMV Investors Department before investing.

This type of boiler room can be found using the warned entities search engine on the CNMV website, where both the CNMV and other foreign regulatory authorities use the word "clone" to identify them.

➢ Warnings for investors

The Investors' Department seeks to prevent fraud by individuals or companies that offer investment products and high returns with the ultimate aim of appropriating investors' money.

One of the ways used by the CNMV to prevent these fraudulent activities is by disseminating relevant information to investors that prevents them from coming into contact with such people or companies.

For this purpose, a specific space dedicated to "Warnings" was created on the CNMV website in the section on investors and financial education with information for investors on how these companies act. The last of these statements was published in December 2020 and warned against attempts to defraud using the identity and image of the CNMV. It was also published on social media with the aim of reaching the largest number of people.

This warning, like the others published in this same section, includes information made known to the CNMV by investors through their enquiries or complaints. This highlights the importance for affected parties to provide the CNMV with all the information or documentation they have on the identity of these entities, so that they can be investigated and where appropriate warnings will be issued about them and the way in which they operate, given that the methods used and the products offered vary from time to time.

Alongside this new section of warnings for investors created in 2020, there is a section dedicated to warnings from the CNMV and from other regulatory authorities, about entities that may be providing investment services without being duly authorised to do so.

It is also useful to provide information on other entities that do not have any type of authorisation and are not registered for any purpose in the CNMV that could be carrying out fund-raising activities or providing services of a financial nature.

It is essential that investors are aware that investments made through unauthorised entities carries high risks of capital losses, since they act outside the controls established by supervisory bodies. In addition, to create confusion some refer to the CNMV to give security to their investments.

To achieve its objective, the CNMV disseminates as much information as necessary to protect investors and, in particular, to warn the public, and publishes warnings on the way in which these entities operate, prepares guides, infographics and podcasts, etc. to reach investors. This is because the authority is aware of the reach of this conduct due to the numerous complaints and enquiries received, as these represent a very high percentage of the total addressed by the Investors Department.

These alerts are published on social media to reach more people and as far as possible prevent them from falling victim to boiler rooms.

Annex 1 Guide to the electronic submission of complaints

CNMV
COMISIÓN
NACIONAL
DEL MERCADO
DE VALORES

Online filing of complaints

The Complaints Service

The Complaints Service would like to remind investors that they have an online procedure at their disposal for filing complaints.

CNMV
COMISIÓN
NACIONAL
DEL MERCADO
DE VALORES

The procedure is very simple

You only have to follow four steps that are indicated for initiating a quick, safe and easily accessible procedure through your electronic devices.

1 **Access the investors website and the section "How to file a complaint"**

http://www.cnmv.es

Relevant information on CIS and other authorised entities

Registration files

Prospectuses

Investors and financial education

Legislation, Publications and other content

BREXIT

INVESTORS AND FINANCIAL EDUCATION

Home

LATEST NEWS

21/07/2021
The CNMV has published its quarterly bulletin for the second quarter of 2021

07/07/2021
The CNMV temporarily suspends the on-site filing of documentation at the registry of its head office in Barcelona

COMPLAINTS

Home > Investors and financial education

- Who can file a complaint and why?
- How to file a complaint
- Criteria applied when settling a complaint
- The FIN-NET Network

2 **Click on the link "Submit your complaint by electronic means"**

Home > Investors and financial education > Complaints

Firstly, you must consult the Customer Care Service or Customer Ombudsman for the entity. The address of these services must be available in their offices or on their website. You can also consult it on the CNMV website. If you do not agree with the response received, or if you have not received a reply after a month have passed, you can submit a complaint to the Complaints Service through the following channels:

- Submit your complaint by electronic means by telematic means, through the CNMV Virtual Office, using either their digital certificate or digital DNI (national identity document), or their username and password, investors may consult the guide or see the explanatory video.
- Submit a form addressed to the Complaints Service: C/ Edison, 4, 28006 Madrid – C/ Bolivia 56, (4 ª Planta) 08018 Barcelona.

There is also an investor assistance service telephone number you can call: 900 535 015.

CNMV COMISIÓN NACIONAL DEL MERCADO DE VALORES

3 Create a user Id. with your email address or using a valid online identification method

CNMV COMISIÓN NACIONAL DEL MERCADO DE VALORES

The complainant can choose to:

- Create a user Id. with their email address
- Use a digital certificate or DNI (national identity document)
- Verify their identity through the use of a p@ssword

ACCESO A RECLAMACIONES INDIVIDUALES, QUEJAS O CONSULTAS

Presentación y seguimiento de reclamaciones individuales, quejas y consultas de inversores

Sin certificado ni DNI electrónico

Correo ¹

Repita el Correo

Clave ²

¿Olvidó su clave?

Con certificado o DNI electrónico

Identidad Electrónica mediante Cl@ve

cl@ve

CNMV COMISIÓN NACIONAL DEL MERCADO DE VALORES

4 Complete the form, attach the documentation and send it.

CNMV COMISIÓN NACIONAL DEL MERCADO DE VALORES

The complainant must:

- Complete the form
- Attach the files with the documentation (proof of the prior complaint filed with the entity and other supporting documents)
- Send the complaint

Inicio | Cerrar sesión

RECLAMACIONES Y QUEJAS DE INVERSORES

Reclamante | Representante | Domicilio a efectos de notificación | Entidad reclamada | Datos reclamación | Documentación

Datos del Reclamante

Tipo de Persona * | Tipo de Documento * | Núm Documento *

Nombre *

Primer Apellido *

Segundo Apellido

En caso de ASOCIACIONES DE CONSUMIDORES Y USUARIOS

Nº de inscripción registral en el Registro Estatal de Asociaciones de Consumidores y Usuarios

Tipo de Vía * -- Seleccione --

Número * | Piso | C.P *

Localidad * | Provincia * | País * -- Seleccione --

Teléfono * | Correo electrónico

Datos de otros cotitulares (si procede)

Tipo de Persona | Tipo de Documento | Núm Documento

Nombre

Primer Apellido

Segundo Apellido

Añadir Cotitular

Siguiente

Upon submission of the complaint, complainants can access the case file via the CNMV's virtual office through the same method used to file the complaint (using the same user Id. and password or the other online identification methods)

Hechos relevantes de IIC y otras entidades autorizadas

Consultas a registros oficiales

Folletos

Sección del inversor

Legislación, Publicaciones y otros contenidos

BREXIT

CNMV FINTECH

FINANZAS SOSTENIBLES

sede electrónica CNMV

INFORMACIÓN PRIVILEGIADA DEL DÍA

IP

28/04/2020
18:09
AENA, S.M.E., S.A.
Sobre negocio y situación financiera

28/04/2020
18:06
AENA, S.M.E., S.A.
Sobre resultados

Advantages of electronic processing

01

IMMEDIACY OF THE NOTIFICATIONS

The notifications of the Complaints Service are sent by email. The complainant has easy access to the notifications through the link provided in the email or on the CNMV's virtual office.

02

VISUALISATION OF THE PROCESSING STATUS

The complainant immediately knows the processing status of the case file by simply accessing it on the CNMV's virtual office.

03

STREAMLINE THE FILING OF DOCUMENTS

The complainant can attach the necessary documentation by accessing the case file on the CNMV's virtual office, when the status of the case file is other than "in the process of verification".

SIMPLIFY BY USING ONLINE COMPLAINTS