

STATEMENT ON ENHANCING TRANSPARENCY IN RELATION TO THE TYPE OF MANAGEMENT CARRIED OUT BY COLLECTIVE INVESTMENT SCHEMES

8 October 2018

In February 2016, ESMA issued a Public Statement on the results of research conducted on possible practices in closet indexing across the European Union, relating to the cases in which an investment fund is presented in its information documents as "active management", despite managing the portfolio very closely to a benchmark and, therefore, with an investment policy whose implementation requires fewer resources by the management company (which should be taken into account by investors when assessing the amount of management fees associated with the fund, given that this should normally result in a lower management fee as opposed to that of an active fund).

The statement stressed the fact that the European Regulation on KIIDs (Key Investor Information Documents)¹ establishes the obligation for the CIS's "investment objectives and policy" section to specify whether or not there is discretion used to take investment decisions and whether or not such discretion involves reference to a benchmark and, if so, to which one. It was also stated that, in accordance with the KIID Regulation, when reference is made to a financial benchmark, the degree of management freedom must be specified with respect to that benchmark and, when the objective is to replicate it, that fact must be mentioned.

Finally, in the statement ESMA announced its intention to carry out other actions in this area, coordinating the analyses conducted at national level by the different supervisors and that it would analyse the need for additional measures.

In line with the above and in light of the adoption of specific measures on possible closet indexing practices, several European countries (including Germany, France, Italy and the United Kingdom) have taken steps to improve the transparency of the information documents provided to investors.

CNMV has also performed an analysis in which it has detected a small number of cases in which information documents have been updated. It should be noted that, in the case of Spain, it is common practice for the Key Investor Information Document (KIID) to include the financial benchmark, which has been highlighted positively². However, in line with ESMA recommendations and best practices in other countries, it is considered necessary for entities to apply the following criteria in order to improve the information provided to investors in this area:

- key Investor Information Documents

In the section called "Investment Objectives and Policy", in cases in which information on a financial benchmark is included, it must be specified whether such

¹ Article 7 of EC Regulation 583/2010.

² See the statement by Better Finance (European association of investors and users of financial services) of 4 June 2018, which included the practice of the KID for CISs in Spain in the "Best-in-Class" section, highlighting the widespread inclusion of the updated benchmark, in neutral and standardised language, and which is also accessible on the CNMV website.

benchmark is used in merely informative or comparative terms (that is, without conditioning the manager's freedom) or whether, on the contrary, to a greater or lesser extent management is linked to the financial benchmark. In the latter case, additional information must be provided on the degree of management freedom with respect to the financial benchmark, such as limits on tracking errors, correlation, levels of exposure to benchmark's constituents³, or even the range of overweightings and underweightings with respect to benchmark's constituents (for example, between 0% and 5%).

The aforementioned information contained in the CIS KIID must be included in the next update of that document.

- Periodic Public Reporting

Information must be provided on the degree of discretion used in the management carried out during the period, and in the event that, to a greater or lesser extent, it is linked to a benchmark, details must be provided as to the performance of the fund in comparison with that of the benchmark, as must any other additional information that the manager considers it appropriate to provide, such as that relating to tracking errors, total exposure of the assets held in components of the benchmark, "active share", degree of coincidence in the order of the positions with respect to that benchmark, etc.

CNMV considers important that investors (retailers and professionals), as well as entities that market or recommend investment in CIS, take into account the information outlined above on management style in taking their decisions. It will also take into account the content of this statement in its supervisory and registration activities.

³ For example: *The fund will invest at least 70% of its assets in IBEX-35 shares.*