CNMV
Comisión Nacional del Mercado de Valores

Attention to the Complaints and Enquiries of Investors
Annual Report 2016

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1 Introduction

1 Introduction

This Annual Report on Complaints shows the steps taken by the CNMV to deal with claims, complaints and enquiries made by investors in 2016 through the Complaints Service.

The legal requirement to prepare this annual report derives from Article 30.4 of Law 44/2002, of 22 November, on Financial System Reform Measures, whereby "the Bank of Spain, the National Securities Market Commission and the Directorate-General of Insurance and Pension Funds shall publish an annual report on their respective complaints services including at least a statistical summary of the enquiries and complaints handled and the criteria applied by said services in relation to the complaints and the respondent firms, indicating whether the findings were favourable or unfavourable to the complainant".

This Annual Report is prepared under said legal obligation and includes information on how the CNMV handled claims, complaints and enquiries in 2016.

Investors may file a complaint when they feel their interests or rights have been harmed by the actions of an entity providing investment services. With the aim of obtaining a favourable report, investors may file a formal complaint with the CNMV's Complaints Service with regard to material incidents arising from the acts or omissions of the respondent financial institutions, 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 exercising of judicial or extrajudicial claims in order that their interests or rights be reinstated. They may also make enquiries or request information on matters of general interest affecting their rights as financial service users with regard to transparency and customer protection, and on the legal channels available for the exercise of such rights.

Complaints are resolved through the issue of a reasoned report by the CNMV on the matters addressed in the complaint, which is non-binding for the respondent entities. This report will in no event constitute an administrative act subject to appeal.

With regard to the supporting legislation, the procedure for filing claims and complaints was set out in 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, which has been in force since 22 May 2013.

Pursuant to the aforementioned Order ECC/2502/2012, this procedure is specified in CNMV Circular 7/2013, of 25 September, on the resolution procedure for complaints against companies that provide investment services and for addressing enquiries in the field of the securities market.

The CNMV department responsible for discharging this function is the Investors Department, which is responsible for processing the claims, complaints and enquiries based on the aforementioned regulation, with the department's director signing the reasoned reports that rule on the proceedings. This department is also responsible for investor protection.

The Investors Department comprises two areas: the Complaints Area and the Enquiries Area.

The Complaints Area comprises a sub-director and eight technical staff who are responsible for analysing the documents that enter the department, performing all the processes corresponding to the complaints at each one of the stages, collecting the criteria applied in the resolution so as to publicise them and to prepare the Annual Complaints Report, dealing with the emails received in the mailbox of the Complaints Service, cooperating with other directorates, departments and units to which information is provided or requested, attending international forums relating to complaints, preparing the area's statistics and procedures manuals, participating in legislative implementation, preparing talks and presentations relating to their activity, etc.

The Enquiries Area comprises one sub-director and five technical staff who are responsible for: i) processing and responding to all the enquiries or doubts submitted by retail investors on issues falling under the authority of the CNMV; and ii) processing the proceedings of unauthorised entities (known as "boiler rooms"), which involves studying, analysing and monitoring natural and legal persons who may be performing restricted activities which may only be performed by companies that are authorised and registered in the CNMV's special registers. The final result of this work is the publication of warnings. Furthermore, the area also processes the warnings issued by other supervisory bodies, mainly the supervisory bodies of Member States of the European Union and "Other warnings", with alerts relating to certain irregular conduct or actions. These are all published on the CNMV's website. Similarly, the Enquiries Area issues advice and recommendations for investors to avoid these unauthorised entities.

The Annual Report is divided into four chapters. Following this introduction, Chapter Two reports on the activity of the CNMV's Complaints Service in 2016. In order to facilitate understanding of the procedure for complaints filed with this service, more detailed data on the processing of the complaints has been collected than in previous reports and new figures and diagrams are included in order to provide greater information on the work performed.

In this regard, and as usual, the Annual Report provides statistical data on the documents submitted to the CNMV's Complaints Service, but it also includes a detailed explanation of the processing of the documents received, differentiating between the different stages through which they pass. Individualised information is provided on the documents processed at each one of the stages in 2016.

Thus, the Report establishes the number of proceedings and the reasons that gave rise to the pre-processing stage (which includes those cases in which the documents submitted failed to comply with the requirements established by law or for which there were any legal grounds for non-admission), to the resolution stage (in which the documents submitted are decided on either as complaints or as non-admissions) and to the follow-up stage (which would include the actions of the entities after a

report favourable to the complainant or the responses of the complainants to the non-admissions or unfavourable reports).

As in previous years, the Annual Report contains a series of rankings of the respondent entities according to various criteria. In addition to the traditional classifications by percentages of final reports favourable to the complainants and by percentages of responses and acceptance of criteria after the issuance of a report favourable to the complainant, the report includes new rankings referring to the timescales for reading and responding to the petitions for comments sent by the Complaints Service to the entities and the number of acceptances and mutual agreements concluded. Similarly, the ranking of entities according to the number of complaints concluding in a reasoned report has been replaced by a ranking of entities according to resolved complaints. In addition to the complaints resolved with a reasoned report favourable or unfavourable to the complainant, this ranking includes those concluded by acceptance, mutual agreement or withdrawal of the complainant.

As a new aspect, the rankings differentiate between the entity against which the complaint is processed 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 had transferred the securities market business area to the entity against which the complaint is processed.

In order that this Annual Report might provide information on the work carried out by the Customer Service Departments (CSDs) of the entities supervised by the CNMV in processing the complaints received on issues that fall under the remit of this Complaints Service, entities have been requested to provide specific information on the complaints that they receive. This Report includes the data that the entities have provided on complaints relating to the securities market that have been filed with their Customer Service Departments or the Customer Ombudsman in 2016, as well as the non-admitted, admitted and resolved complaints in that same year.

In order to complete the analysis of the activity resulting from processing complaints, the Report includes a new section on cooperation with other CNMV directorates, departments and units to which the Complaints Service provides or requests information. The Report also includes the activity of the FIN-NET network aimed at processing cross-border complaints, paying particular attention to the promotional campaign that has been initiated and its new logo, and including the data on cross-border complaints filed.

With regard to enquiries, the Report specifies the most frequent issues and indicates the channels through which they have been received and their volume. At present, the telephone number for handling telephone enquiries is 900 535 015, which is totally free of charge for the public.

Finally, this chapter provides data on the email address of the Complaints Service used exclusively for dealing with issues relating to complaints and enquiries already filed using the electronic form or in writing.

Chapter Three presents the issues and criteria applied in resolving complaints in 2016. This chapter aims to be a full, systematic and practical guide that includes the criteria followed in all the complaints concluding with a reasoned report in 2016. As

it includes both complaints concluding in a favourable report and those in which an unfavourable report was issued, it is possible to identify not only the issues that have been considered bad practice by the entity, but also those which were considered to be correct.

Nevertheless, it should be noted that the criteria indicated in this chapter relate to a specific time and circumstances analysed in each one of the proceedings resolved in 2016 and therefore any future legislative changes or changes in the circumstances may give rise to modifications in said criteria.

In short, publication of these criteria aims to be a catalogue that is up-to-date on the publication date and does not mean that said criteria may be modified or refined following publication.

The issues are classified in accordance with an analysis of the product's suitability for the client's investor profile, in the cases of simple order execution or provision of advisory services or portfolio management; the provision of pre-sale and post-sale information; order execution; fees; testamentary execution; ownership of the securities; and functioning of the Customer Service Department. If necessary as a result of the particular features of the product or issue, a more detailed breakdown is sometimes offered in order to address generic or specific questions relating to collective investment schemes or other securities, complex or non-complex financial instruments, etc.

Within the complaints relating to the information that must be provided to investors prior to the sale of a financial instrument (information obligations linked to a securities custody and administration agreement), it should be noted that new criteria have been set with regard to the events and transactions which, affecting said financial instruments, must be reported to investors.

It has therefore been considered good practice for depositories of financial instruments to notify their clients not only about transactions, prior to the time they are effectively carried out, in which the investor has the power to take a decision, such as capital increases or shareholder remuneration programmes through bonus issues, but also other types of transactions, such as reverse splits.

Furthermore, it has also been considered good practice that, in the case of capital increases, the entity should provide information on the capital increase to its clients prior to the opening of the session of the first day of trading of the pre-emptive rights and, in any event, with sufficient time so that shareholders may place orders on their rights, should they wish to do so, as from the start of that day's session. In this regard, it is considered sufficient, in the case of electronic notifications, for the information to be sent at any time prior to the first day of trading and up to the opening time of the session. Postal notifications should be made with the time considered sufficient for the investor to receive the information in a similar timescale.

Chapter Four examines the issues attracting most enquiries in 2016, which include the following: doubts and incidents relating to Cypriot investment firms operating under the free provision of services, modification of the calculation of fees for transferring securities between accounts of the same holder, doubts and complaints resulting from investments in binary options and contracts for differences (CFDs), enquiries about public information relating to penalties imposed by the CNMV, requests for information on purchase prices of listed securities or the right to receive

dividends, and doubts relating to administration and custody fees in companies that are suspended or delisted and the possibility of renouncing ownership.

In addition, without prejudice to the rest of the data contained in this Report, two issues should be highlighted. Firstly, the increase in the percentage of entities that accepted the investor's complaint or reached an agreement with the complainant in the processing stage without the Complaints Service needing to issue a final reasoned report (14.8% of total complaints processed in 2016 compared with 9.2% in 2015) and, in the case of the follow-up stage, the increase in entities that accept criteria or rectify in cases in which complainants obtain a reasoned report from the Complaints Service favourable to their interests (45.8% in 2016 compared with 31.3% in 2016 of these resolved with a favourable report).

Secondly, it is important to highlight the improvement in compliance with procedural deadlines both by entities and by the Complaints Service, which has led to a reduction in the average time to respond to complainants. It is also worth highlighting the reduction in the average time taken for complaint resolution with a final reasoned report, favourable or unfavourable, to 95.12 days compared with 173 days in 2015. With regard to complaints resolved without a final reasoned report (withdrawals, acceptances, mutual agreements and *ex post facto* non-admissions), the timescale was 61.78 days compared with 114 days in 2015.

Finally, it is worth highlighting the importance both of the work performed by the Complaints Service and the information that it has obtained and included in this Annual Complaints Report for the exercise of the supervisory work entrusted to the CNMV with regard to compliance by entities that provide investment services of conduct of business and transparency rules applicable to them in general and, for example, those relating to the supervision of the Customer Service Departments of said entities.

2 2016 activity

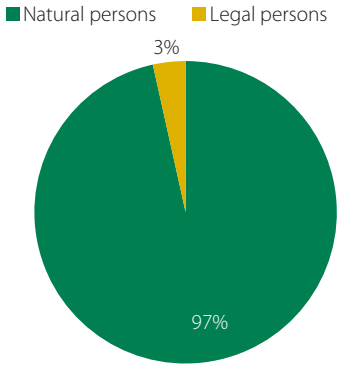
2 2016 activity

2.1 Documents filed with the CNMV's Complaints Service

In 2016, in accordance with 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, the CNMV's Complaints Service received 1,205 documents which, as a result of their nature, could be processed as complaints.

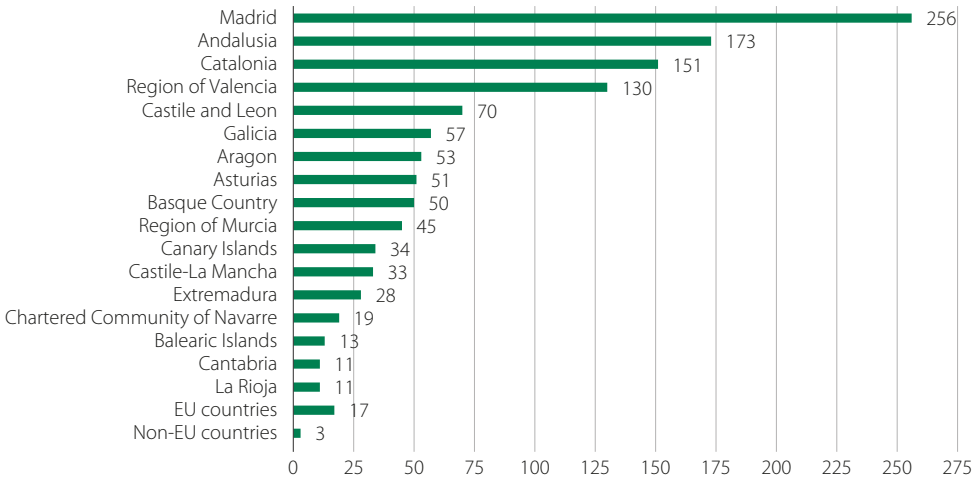
These complaints were mainly filed by natural persons. In 177 complaints, the complainant acted through a representative. In 16 of these, these representatives were consumer or user associations.

Type of complainant FIGURE 1



Source: CNMV.

Origin of the complaints FIGURE 2

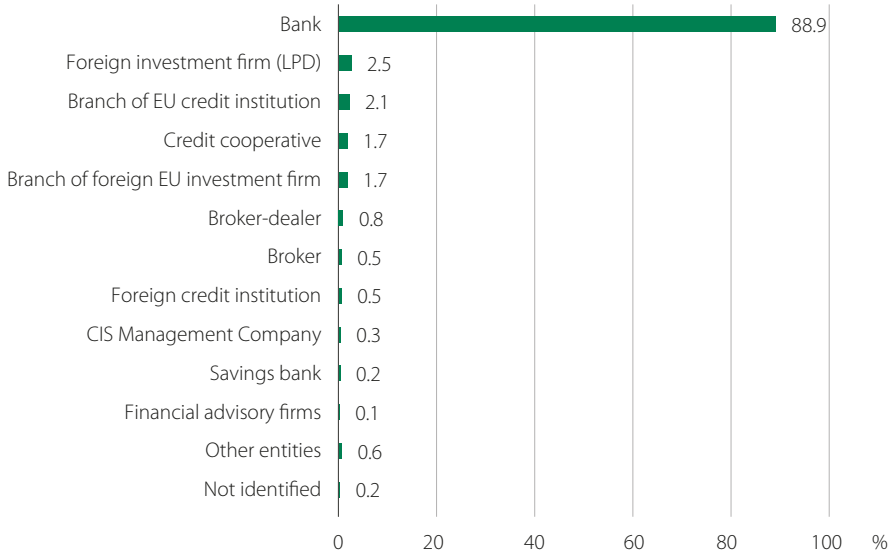


Source: CNMV.

As to the origin of the complainants, most of them were residents in Madrid, although closely followed by residents in Andalusia, Catalonia and the Region of Valencia.

With regard to the entities subject to complaints, the distribution of the complaints was as follows.

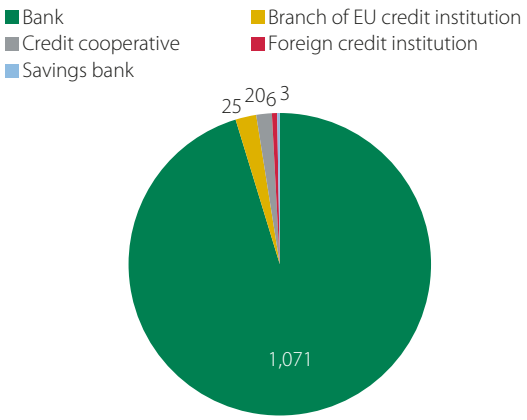
Type of entities FIGURE 3



Source: CNMV.

As shown, 90.8% of the filed complaints were against Spanish credit institutions (of which, 88.9% were banks, 1.7% were credit cooperatives and 0.2% were savings banks). A total of 2.1% of the documents related to branches of EU credit institutions and 0.5% to foreign credit institutions.

Complaints against credit institutions FIGURE 4

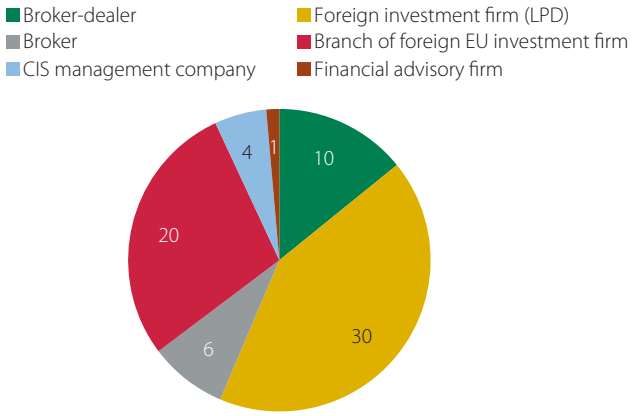


Source: CNMV.

Only 1.7% of the complaints related to Spanish investment firms and management companies of collective investment schemes (0.8% to broker-dealers, 0.5% to brokers, 0.1% to financial advisory firms and 0.3% to collective investment scheme management companies). However, the complaints referring to branches of EU investment firms accounted for 1.7% of the total and those relating to foreign investment firms operating under the free provision of services accounted for 2.5%.

Complaints against investment firms and management companies

FIGURE 5

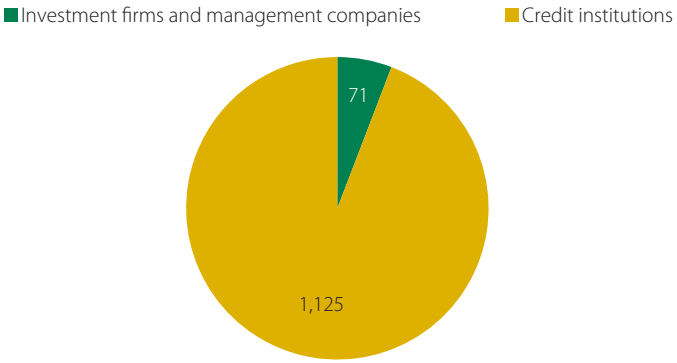


Source: CNMV.

As a result, the bulk of the entities against which complaints were filed were credit institutions (in particular, banks), with complaints registered against investment firms and collective investment scheme management companies accounting for a relatively low proportion of the total.

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

FIGURE 6



Source: CNMV.

Filing method

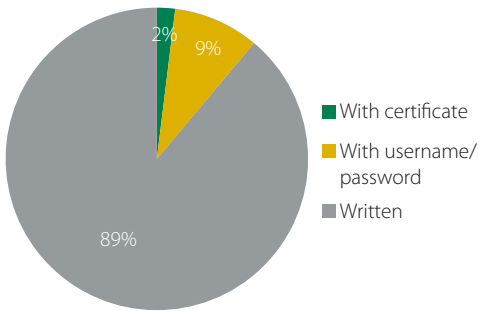
TABLE 1

Number of complaints	
With certificate	26
With username/password	110
Document	1,069
Total	**1,205**

Source: CNMV.

Percentage distribution by filing method

FIGURE 7

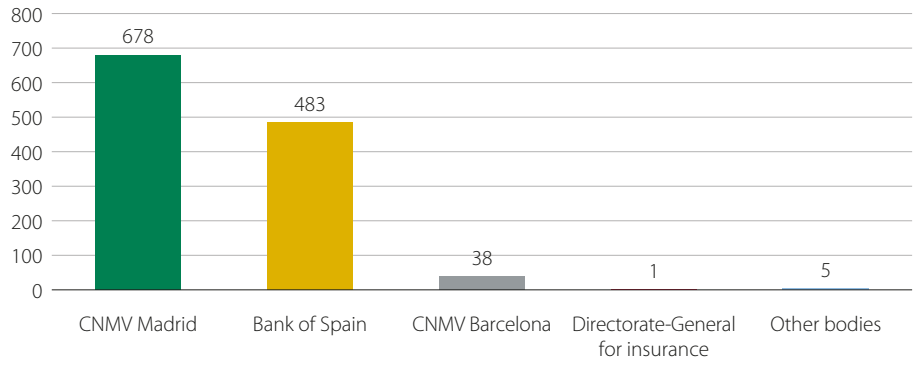


Source: CNMV.

Most of the complaints were filed on paper, although the number of complaints registered electronically, mainly through the use of a username and password, is slowly rising.

Finally, most of the complaints were registered at the CNMV's offices in Madrid, although it is also worth noticing the significant number of documents relating to issues with securities that were filed at the offices of the Bank of Spain.

Place of filing FIGURE 8



Source: CNMV.

2.2 Processing of the documents

Once an investor files a document requesting the opening of complaint proceedings, the CNMV's Complaints Service analyses two issues: firstly, whether said document complies with all the legally established requirements to be admitted as a complaint and secondly, whether any of the legally established grounds for non-admission are applicable.

Consequently, the documents filed by investors with the CNMV requesting the opening of complaint proceedings may, as the case may be, pass through various stages.

2.2.1 Pre-processing stage

This pre-processing stage will only start when, in view of the complainant's document and following its verification by the CNMV's Complaints Service, the conclusion is reached that either it does not meet all the legally established requirements to be admitted as a complaint or some of the legal grounds for non-admission apply.

In these cases, the complainant will be informed and given a period of ten working days to provide the necessary documentation for the complaint to be admitted if the non-compliance may be rectified (petition for rectification), or to submit pleadings with regard to the detected grounds for non-admission (petition for pleadings).

This stage would conclude with receipt of the response from the investor and its corresponding analysis or, as the case may be, with the passing of the deadline granted for this effect, with the processing and resolution stage, or final stage, then beginning.

2.2.2 Processing and resolution stage

➢ Non-admissions

In those cases in which, despite having been requested to submit a rectification or pleadings, the complainant does not respond (non-admission as a result of non-response), does so insufficiently (non-admission as a result of non-rectification) or the arguments put forward by the complainant do not discredit the detected grounds for non-admission (non-admission after pleadings), the Complaints Service would decide on the non-admission of the complaint, with its processing thus terminated.

Similarly, those proceedings in which the non-rectifiable requirements for admission were not met or for which pleadings could not be made by the complainant would also be terminated. This will be the case of so-called direct non-admissions, for example if the Complaints Service has no authority to decide on the issue raised.

In this regard, it should be indicated that, if subsequent to the non-admission of the document filed by the complainant, the complainant suitably rectifies the initially detected deficiencies, complaint proceedings would 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 data deficiencies have been rectified or the grounds for non-admission have been invalidated, the document will be admitted as a complaint thus giving rise to the start of the actual complaint proceedings.

These complaint proceedings are formally initiated by informing the complainant that their request has been admitted and about the fundamental procedures that will be followed during the proceedings.

The written complaint and all the documentation submitted by the complainant will be then passed on to the respondent entity, which will be asked to submit pleadings within 15 business days on the merits of the case brought by the complainant.

The entity may do several things in response to this petition:

– File pleadings on the merits of the case as requested.

– Notify that some kind of agreement has been reached with the complainant that satisfies their claims. In this case, the entity must prove, either *motu proprio* or at the request of the Complaints Service, that the agreement has materialised.

– Provide an acceptance or a 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 in progress on the same

facts forming the subject matter of the complaint. Once it has been properly analysed by the CNMV's Complaints Service, this response might lead to the *ex post facto* non-admission of the complaint.

In the event that the entity submits pleadings on the merits of the case brought by the complainant in the written complaint, which is usually the case, the proceedings will continue through corresponding processes.

In contrast, if an agreement is reached between the parties, and 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 is required to submit its pleadings both to the CNMV's Complaints Service and to the complainant so that the latter, in a period of 15 working days from the date following receipt of the notification, may formulate and submit to the Complaints Service the comments deemed appropriate in respect of the entity's pleadings. If the complainant's comments provide new information on the subject matter of the complaint, the aforementioned Service would once again pass this on to the respondent entity, granting it a new period of 15 working days to submit pleadings.

In addition, the CNMV's Complaints Service may perform any additional actions that it deems appropriate in order to obtain the largest amount of information on the disputed facts under analysis. In this regard, in more complex complaints, it will require supplementary information either from the respondent entity or from third entities participating in the events.

Once the processing of the complaint has been completed, the resolution stage begins. In this stage, the Complaints Service will issue a reasoned report analysing all the facts subject to the complaint (providing the statute of limitations has not passed or they are not subject to any other circumstance preventing said analysis) with a final decision on whether the respondent entity's actions were in line with rules on transparency and customer protection and good financial customs and practices. This final report will be sent to the complainant and the respondent entity, thus 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 will basically be determined by the type of resolution adopted by the CNMV's Complaints Service.

In those cases in which the Complaints Service has issued a reasoned report favourable to the complainant, in addition to passing on the final report to the respondent entity, as indicated above, the latter will be 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 said rectification.

The Complaints Service will assess these communications, as well as any failure to respond, which, in accordance with applicable legislation, would imply that the entity does not accept the criteria set out 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 unfavourable to the complainant, it is relatively common for the latter to submit subsequent petitions for clarification on certain aspects relating to the conclusion of the proceedings and demonstrating their disagreement with the resolution adopted. Both types of documents are answered by the Complaints Service in an attempt to answer all the doubts raised by the complainant.

2.3 Complaints resolved in 2016

As indicated above, the written complaints received in the CNMV's Complaints Service pass through up to three stages: a pre-processing stage, a processing and resolution stage, or final stage, and a follow-up stage.

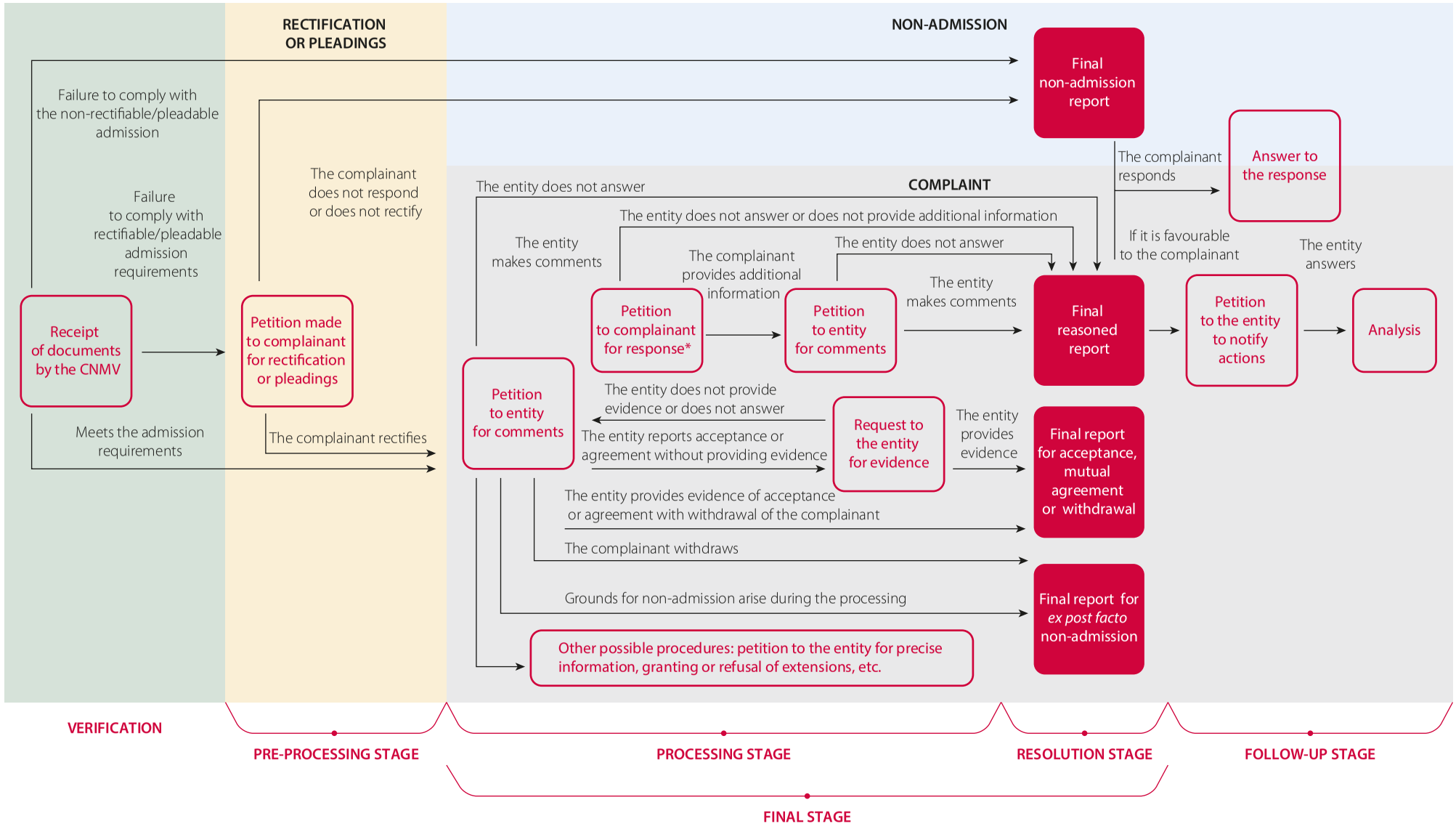
This chapter analyses the processing of the 1,143 complaints resolved in 2016.

Complaints finalised in 2016 TABLE 2

Number of complaints

	No.
+ Outstanding complaints at year-end 2015	**233**
Outstanding non-admissions	7
Outstanding complaints	185
Outstanding petitions for rectification or pleadings	41
Outstanding petitions for rectification or pleadings that concluded in complaints	18
Outstanding petitions for rectification or pleadings that concluded in non-admissions	23
+ Complaints filed during 2016	**1,205**
Direct non-admissions	94
Direct complaints	459
Petitions for rectification or pleadings	652
Petitions for rectification or pleadings that concluded in complaints	311
Petitions for rectification of pleadings that concluded in non-admissions	341
– Outstanding complaints at year-end 2016	**295**
Outstanding non-admissions	6
Outstanding complaints	211
Outstanding petitions for rectification or pleadings	78
Outstanding petitions for rectification or pleadings that resulted in complaints	19
Outstanding petitions for rectification or pleadings that resulted in non-admissions	59
= Complaints finalised in 2016	**1,143**

Source: CNMV.



(*) The entity itself sends the comments to the complainant and informs them of the deadline for submitting pleadings to the CNMV's Complaints Service.

2.3.1 Pre-processing stage

As mentioned above, all written complaints that the CNMV's Complaints Service examines and concludes that either 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 will be subject to a petition for rectification, while the latter will be subject to a petition for pleadings.

Of the 233 outstanding complaints at 31 December 2015, 41 were in the pre-processing stage of petitions for rectification or pleadings (PRPs). A petition for rectification had been made in 30 of these, and a petition for pleadings in the remaining 11.

In addition, of the 1,205 complaints filed in 2016 with the Complaints Service, the pre-processing or PRP stage was initiated in 652. Specifically, petitions for rectification were sent in 457 cases and petitions for pleadings were sent in the remaining 195.

Finally, at 31 December 2016, 78 complaints were in progress in this pre-processing stage. Petitions for rectification had been sent in 49 cases, and petitions for pleadings in 29 cases.

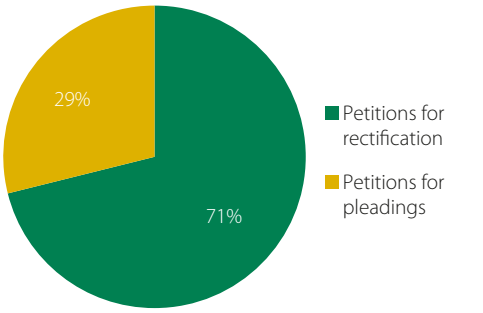
According to the data provided, this pre-processing or PRP stage was initiated or concluded in 615 complaints filed by complainants in 2016.

PRPs finalised in 2016 TABLE 3

Number of proceedings	
+ Outstanding PRPs in 2015	**41**
Petitions for rectification	30
Petitions for pleadings	11
+ PRPs filed in 2016	**652**
Petitions for rectification	457
Petitions for pleadings	195
– Outstanding PRPs at year-end 2016	**78**
Petitions for rectification	49
Petitions for pleadings	29
= PRPs closed in 2016	**615**

Source: CNMV.

Distribution of PRPs closed in 2016 FIGURE 9



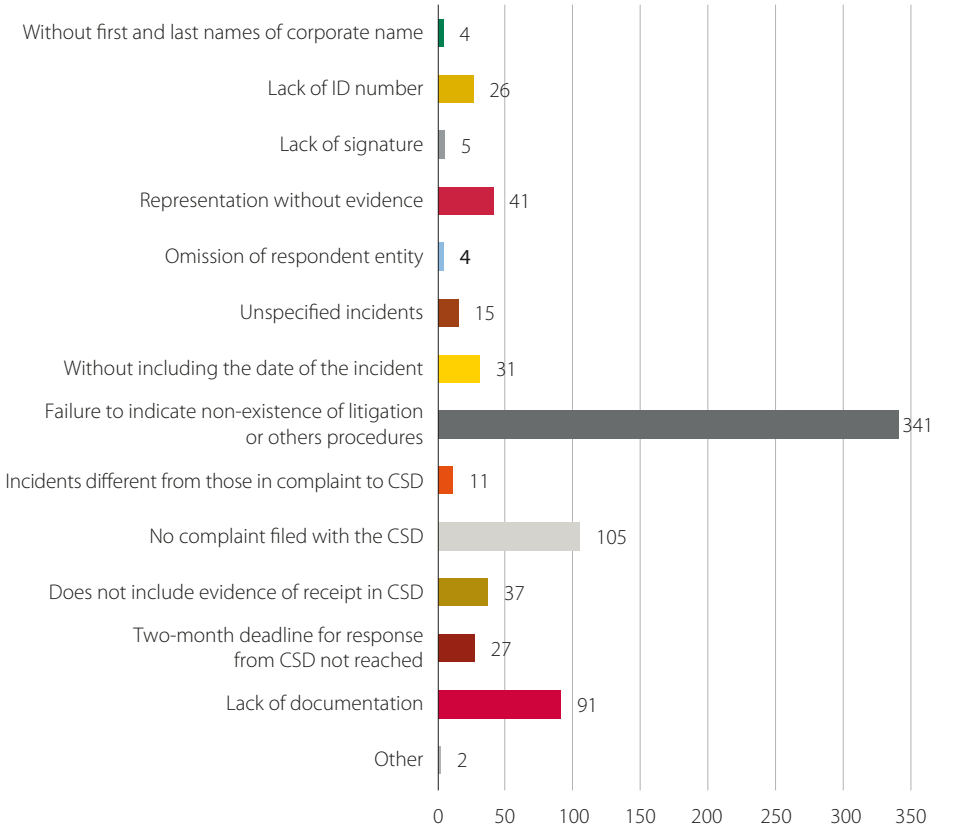
Source: CNMV.

➢ Petition for rectification

A petition for rectification was made in 438 of the 615 complaints for which this pre-processing or PRP stage was concluded in 2016.

The reasons for requesting rectification from the complainants are as follows:

Reasons for petition for rectification FIGURE 10



Source: CNMV.

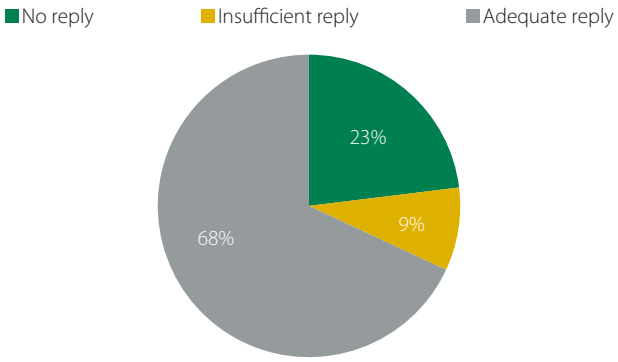
It is usual for a petition for rectification to request rectification of more than one reason; hence the number of reasons (740) is almost double the number of processed petitions for rectification.

As shown in the above table, the most common reason for rectification to be requested is the lack of information on the processing of a complaint in parallel with judicial, administrative or arbitration proceedings (341 cases). In order to facilitate compliance with this requirement, a model form has been prepared that is sent to the complainants together with the petition for rectification. Submission of this model form, duly completed, is sufficient to rectify the deficiency.

Further to the above, the second most common reason for rectification (105 cases) is the filing of complaints with the CNMV by investors without demonstrating that they had previously contacted the Customer Service Department (CSD) of the respondent entity. Compliance with this requirement, together with the other three reasons linked to the CSD (75 cases) is of major relevance given the fact 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 right were curtailed, entities would not have the prior opportunity to review their actions and, as the case may be, to correct them.

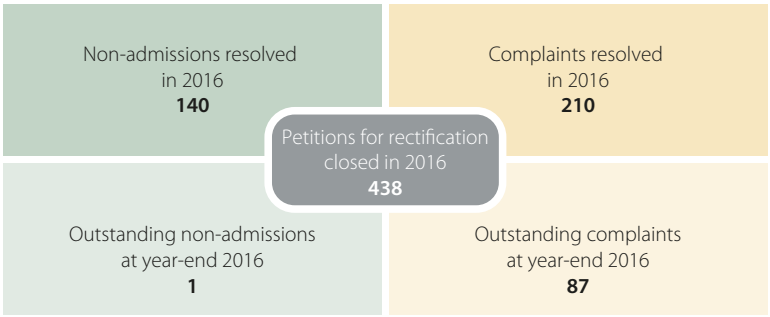
Even when in most cases the complainant suitably rectifies what was requested (68%), it is also true that in a significant number of cases, the complainant decides not to answer the petition for rectification (23%).

Answer to petitions for rectification FIGURE 11



Source: CNMV.

The final destination of the 438 complaints in which a petition for rectification was made is as follows:



Similarly, it should be indicated that at the end of 2016 there were 49 petitions for rectification outstanding. Throughout 2017, these were processed as complaints in 19 cases and as non-admissions in the other 30 cases.

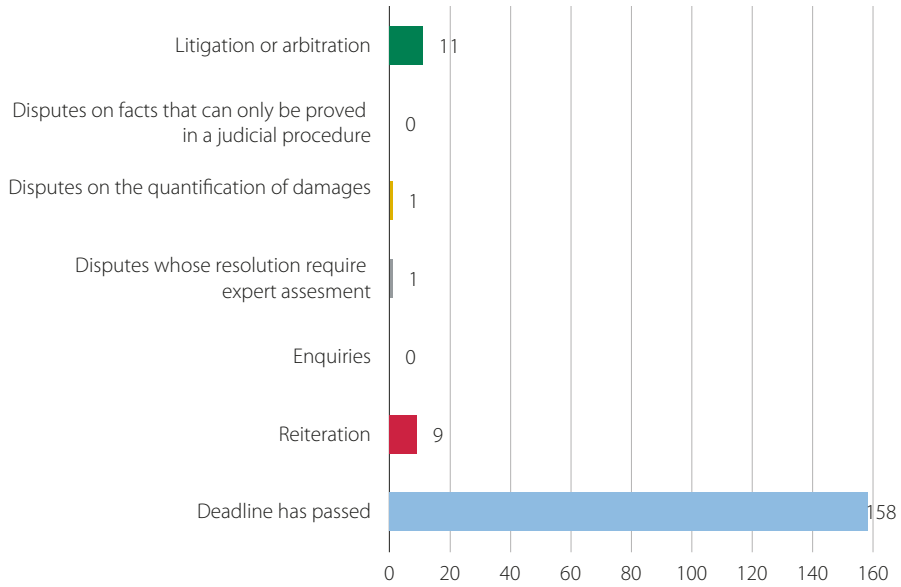
➢ Petitions for pleadings

In the cases in which the CNMV's Complaints Services analyses the complaint submitted by a complainant and it verifies the existence of one of the reasons for non-admission set out in the rules, it is required to inform the interested party of said reason for non-admission in a reasoned report, granting a period of ten days to submit the pleadings considered appropriate. If the interested party does not answer or on answering, the pleadings do not discredit the reason for non-admission, they will be notified of the final adopted decision.

A petition for pleadings was made in 177 of the 615 complaints for which this pre-processing or PRP stage was concluded in 2016.

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

Reasons for petition for pleadings FIGURE 12



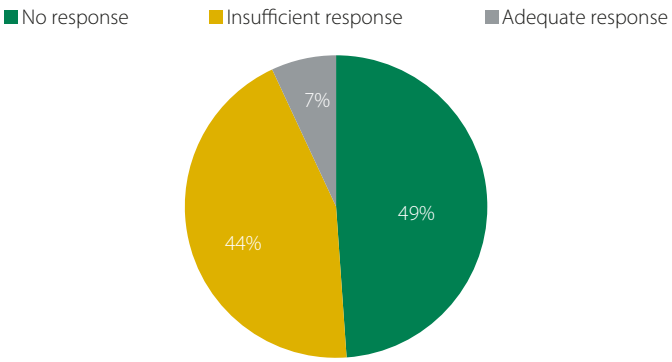
Source: CNMV.

As indicated in the previous chapter, the number of reasons for requesting pleadings is higher than the number of petitions for pleadings processed. However, in this case, the number of reasons is only slightly higher (180 compared with 177) as it is not so common for the complaint to suffer from more than one reason for non-admission as in the aforementioned case. In the case of petitions for pleadings, the most common reason for non-admission in the complaints filed by investors is that the six-year period available to the complainant to file their complaint from the date on which the events occurred has elapsed (158 cases). Only in 12 of these cases (in contrast with the other 148 cases) were the pleadings filed able to discredit the reason for non-admission. The complainant decided not to answer in 72 of these 158 petitions for pleadings.

The second most common reason for non-admission (although with much lower numbers) is the processing of judicial, administrative or arbitration procedures in parallel with the filing of the complaint, although this reason for non-admission is difficult to detect at this stage of the procedure, with it often being notified by the respondent entities once the processing of the complaint has begun, which leads to an *ex post facto* non-admission, a category which will be addressed in the corresponding chapter.

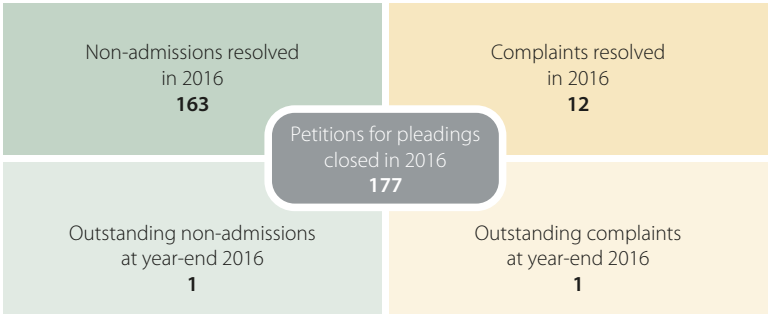
Although the complainants responded to around half of the petitions for pleadings, only in 7% of the petitions did the complainants manage to discredit the reason for non-admission and for the complaint to therefore be admitted._

Response to petitions for pleadings FIGURE 13



Source: CNMV.

The final destination of these 177 complaints is shown below:

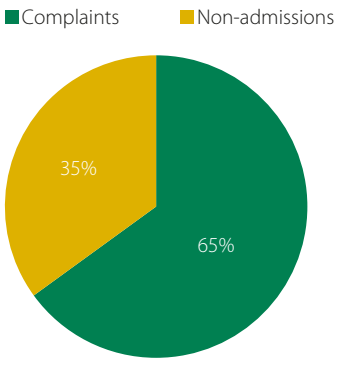


Lastly, it should be indicated that on 31 December 2016 there were 29 open petitions for pleadings, which were fully processed as non-admissions in 2017.

2.3.2 Final stage

In 2016, the Complaints Service concluded 1,143 proceedings, of which 400 were not admitted and 743 were processed as complaints, concluding with the issuance of a final report.

Complaints finalised in 2016 FIGURE 14



Source: CNMV.

➢ Non-admissions

In 2016, the CNMV's Complaints Service considered 400 applications for opening of complaint proceedings to be inadmissible.

Non-admissions finalised in 2016

TABLE 4

Number of proceedings

	No.
+ Outstanding non-admissions at year-end 2015	7
+ Non-admissions initiated during 2016	399
– Outstanding non-admissions at year-end 2016	6
= Non-admissions finalised in 2016	400

Source: CNMV.

The complaints submitted by investors may be directly inadmissible (94 proceedings) or inadmissible after the pre-processing stage of petitions for pleadings, as explained in the above point (306 proceedings).

Type of non-admissions

TABLE 5

Number of proceedings

	No.	%
Direct non-admission	**94**	**23.5**
Bank of Spain	39	9.8
Directorate-General for Insurance and Pension Funds	14	3.5
Against entities in free provision of services from member countries of FIN-NET	14	3.5
Against entities in free provision of services from non-member countries of FIN-NET	19	4.8
Other	8	2.0
Non-admission following petition to complainant for rectification/pleadings	**306**	**76.5**
No response	185	46.3
Insufficient response	121	30.3
Total non-admissions	**400**	**100.0**

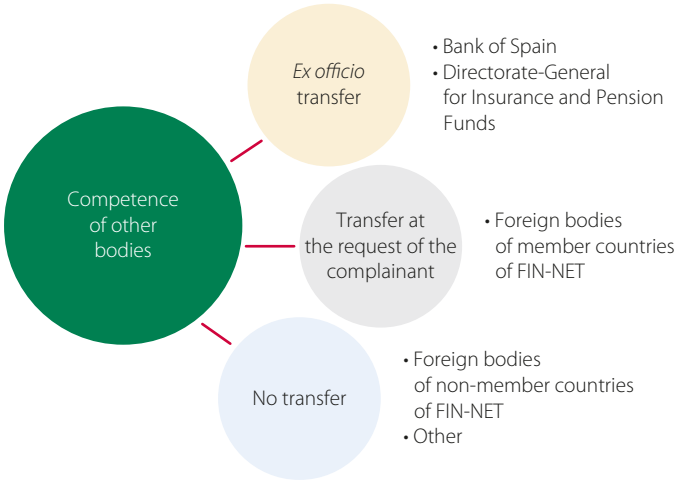
Source: CNMV.

Direct non-admissions take place in two situations:

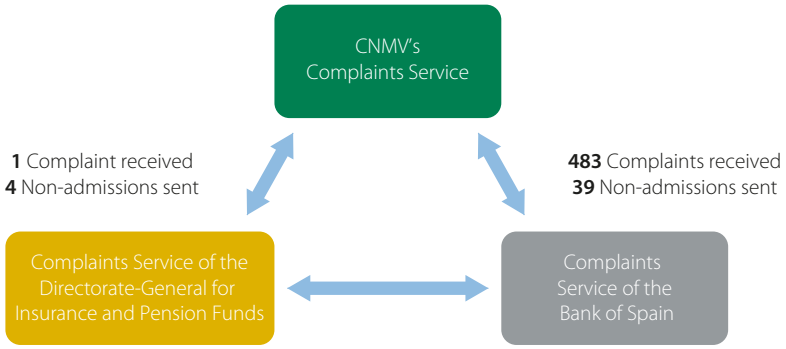
– When the issues raised in the complaint filed by the complainant, either because the product to which they refer or the type of service to which the incidents refer, do not fall within the scope of competence of the CNMV's Complaints Service, with another national supervisor responsible for analysing the incident (53 cases).

– When the issues raised by the complainant refer to products or services relating to securities markets, but the supervision of the entity against which the complaint is lodged corresponds to a foreign body (33 cases).

In the case of direct non-admission, the CNMV's Complaints Service may forward the file – *ex officio* or at the request of the complainant – or not pass on the file depending on the national or foreign body.



With regard to national bodies, the Bank of Spain is responsible for complaints relating to bank products and services and the Directorate-General for Insurance and Pension Funds is responsible for products or services relating to insurance and pension plans. However, complaints on incidents falling under the remit of the Complaints Services of the other two financial services supervisors may be filed with the CNMV's Complaints Service as, in accordance with current legislation, said complaints may be filed indistinctly with any of the bodies, irrespective of their content.



Even when the CNMV's Complaints Service does not admit these complaints as they do not fall under its responsibility, it sends them *ex officio* to the competent Complaints Service, informing the complainant of said transfer.

The non-admissions and transfers to the Complaints Services of the Bank of Spain and of the Directorate-General for Insurance and Pension Funds accounted for 9.8% and 3.5%, respectively, of total non-admissions and 3.2% and 1.2%, respectively, of total complaints filed.

In addition, the CNMV's Complaints Service also receives complaints relating to alleged breaches of conduct of business rules by foreign entities operating in Spain under the free provision of financial services. The competence to hear these incidents corresponds to the home country of the respondent entity.

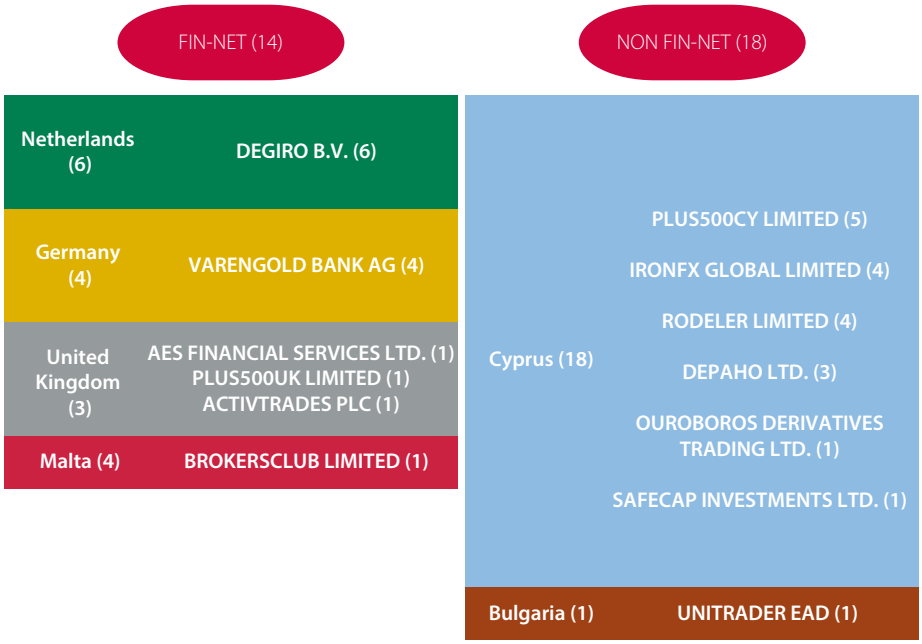
However, said home country may or may not be a member of the FIN-NET network, which is the network for settling out-of-court cross-border conflicts in the area of financial services in the European Economic Area.[1]

In the event that the home country 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 home country (in case the complainant wishes to file directly in said country) and the possibility, if requested, that the CNMV's Complaints Service might transfer their complaint to the competent scheme.

In 2016, 14 complaints were filed (3.5% of the total non-admissions) against entities operating under the free provision of services whose home country was a member of the FIN-NET network. The complainant only chose to make use of the possibility offered by the CNMV's Complaints Service to transfer their complaint to the competent body in four cases.

With regard to the complaints filed against foreign entities operating under the free provision of services whose home country is not a member of the FIN-NET network, the actions of the CNMV's Complaints Service is limited to informing the complainant that it is not competent to process the complaint, the applicable legislation and the contact data of the competent body to hear the complaint, without offering the investor, in this case, the possibility of handling the submission of their complaint.

In 2016, a total of 19 cross-border complaints were received outside the scope of FIN-NET, which accounted for 4.8% of total non-admissions closed in the year.

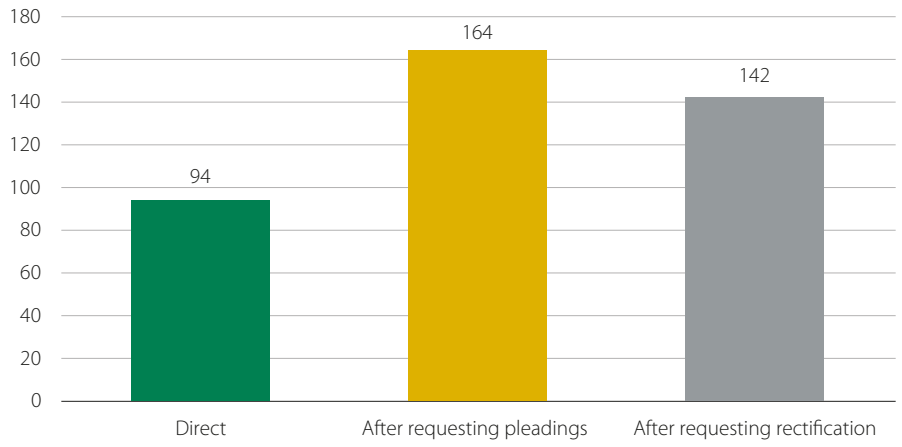


In addition to direct non-admissions, complaints filed by complainants that have passed through the pre-processing stage of pleadings may turn out to be inadmissible should a reason for non-admission be detected (164 cases), and complaints that

1 The FIN-NET network seeks to ensure that the different schemes for resolving out-of-court complaints cooperate with each other so that consumers may obtain a faster response to the complaint.

have passed through the pre-processing stage of rectifications will be inadmissible in the event that all the requirements necessary to initiate the complaint proceedings are not met (142 cases).

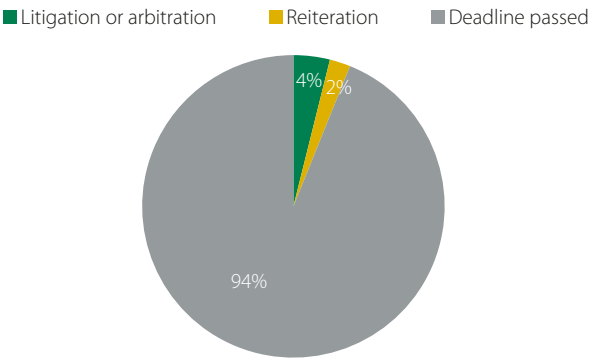
Types of non-admissions FIGURE 15



Source: CNMV.

Of the 164 proceedings in which pleadings had been requested at the pre-processing stage and which were ultimately rejected, 86 did not receive a response by the corresponding deadline, while in the remaining 78 proceedings, although the petition was answered, the arguments provided by the complainant did not discredit the reason for non-admission initially detected and therefore the complaints were eventually declared inadmissible. The complainant was informed of the final reason for non-admission in a reasoned report: a period greater than six years having elapsed between the incidents and the filing date of the first complaint (74 cases); existence of an administrative, judicial or arbitration procedure in parallel with the processing of the complaint (3 cases); and reiteration of proceedings already resolved (2 cases).

Reasons for non-admission following petition for pleadings FIGURE 16



Source: CNMV.

Of the 142 complaints rejected after complainants were requested to rectify the unmet admission requirements, in 99 cases the complainant did not respond to the petition for rectification made in the pre-processing stage by the corresponding deadline. Even though in the remaining 43 proceedings a response was obtained, said response was partial, and therefore one admission requirement had still not

been rectified in 31 proceedings, and two requirements had not been rectified in 12 proceedings.

The admission requirements that were not rectified by the complainants, despite having responded to the petition for rectification, were as follows (bear in mind that in 12 proceedings there were two requirements that were not rectified):

– In 40 proceedings, deficiencies in providing evidence that a prior complaint had been made with the entity's Customer Service Department.

– In nine proceedings, lack of documentation.

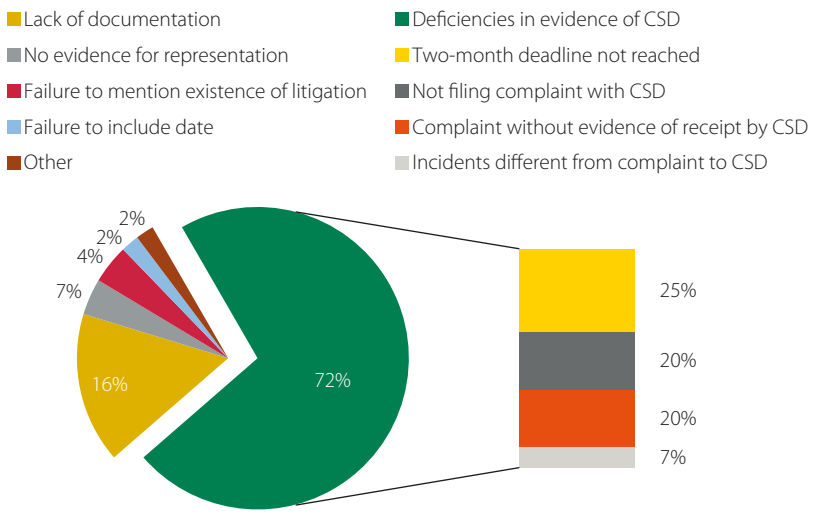
– In two proceedings, lack of a declaration that the incident was not subject to resolution or litigation before administrative, judicial or arbitration bodies.

– In another two cases, failure to provide evidence of representation.

– In one case, failure to indicate the date on which the incidents occurred.

– In one case, other issues.

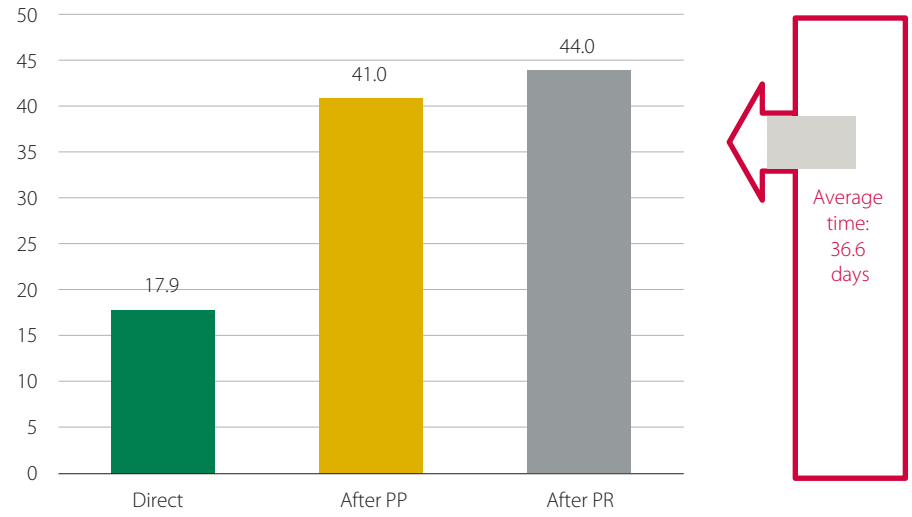
Reasons for non-admission not rectified following response FIGURE 17



Source: CNMV.

Direct non-admissions were on average closed more quickly (17.9 days). However, more time was spent in closing the non-admissions resulting from the petition for pleadings (41 days) and from the petition for rectification (44 days) as in these proceedings the number of processes to be performed prior to the non-admission is greater.

Time to completion by type of non-admission FIGURE 18



Source: CNMV.

As shown in the above figure, the average time to completion of the non-admissions was 36.6 days, compared with 50 days in 2015.

➢ Complaints

In 2016, a total of 743 complaint proceedings which had been admitted to processing by the CNMV's Complaints Service were resolved.

Complaints concluded in 2016 TABLE 6

Number of proceedings

	No.
+ Outstanding complaints in 2015	185
+ Complaints initiated in 2016	769
– Outstanding complaints in 2016	211
= Complaints concluded in 2016	743

Source: CNMV.

Even when they are accepted, complaints may be terminated early in certain circumstances without the CNMV issuing a final reasoned report in the following cases:

– Acceptance by the entity.

– Withdrawal of the complainant.

– Mutual agreement between the parties.

– *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, including a judicial procedure in progress for the same

incidents, the fact that over six years have elapsed since the alleged incidents took place, etc.

In the other cases, the processing concludes with the issuance of a reasoned report in which the Complaints Service concludes by stating whether or not the respondent entity has followed transparency and investor protection legislation or good financial customs and practices.

Resolution of complaints concluded in 2016

TABLE 7

Number of claims and complaints

	2014		2015		2016		% change
	No.	%	No.	%	No.	%	15/16
Processed with no final reasoned report	**766**	**16.9**	**213**	**14.1**	**141**	**19.0**	**-33.8**
Acceptance or mutual agreement	260	5.8	139	9.2	110	14.8	-20.9
Withdrawal	42	0.9	28	1.8	19	2.6	-32.1
Ex post facto non-admission	464	10.3	46	3.0	12	1.6	-73.9
Processed with final reasoned report	**3,754**	**83.1**	**1,303**	**85.9**	**602**	**81.0**	**-53.8**
Report favourable to complainant	2,700	59.7	761	50.2	309	41.6	-59.4
Report unfavourable to complainant	1,054	23.3	542	35.8	293	39.4	-45.9
Total complaints processed	**4,520**	**100.0**	**1,516**	**100.0**	**743**	**100.0**	**-51.0**

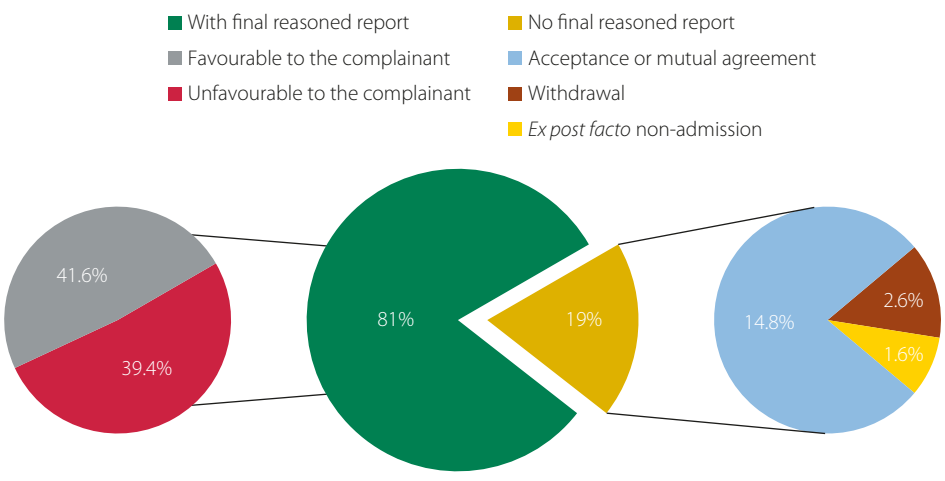
Source: CNMV.

Of the total complaints closed in 2016, 19% did not require the issuance of a final reasoned report: in 48% of the cases because the entity accepted the complainant's claims or there was a mutual agreement between both parties; in 2.6% of the proceedings, because the complainant withdrew the complaint; and in 1.6% of the cases, because there was an *ex post facto* non-admission.

With regard to the 602 complaint proceedings that concluded with a final reasoned report (81% of total complaints processed), the complainants obtained a favourable report in 51.3% of the cases and an unfavourable report in the remaining 48.7% of the cases.

Distribution of the type of complaint resolution

FIGURE 19

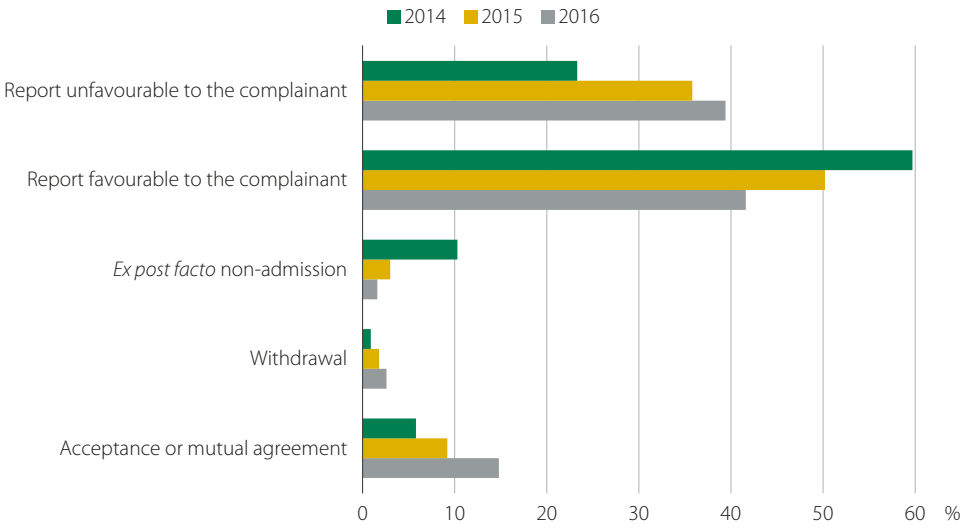


Source: CNMV.

The figure below shows the percentages of the types of resolution with regard to the total complaints concluded in the last three years. The comparison shows that the proceedings processed with no final reasoned report are rising as there has been an increase in acceptances, mutual agreements and withdrawals. With regard to the final reasoned reports, i.e., those in which the Complaints Service issues a decision of the merits of the case, the percentage of reports unfavourable to the complainant is increasing, compared with the downward trend in proceedings in which the resolution issued is favourable to their interests.

Percentage of resolution type*

FIGURE 20



(*) Percentage calculated over the total number of complaints processed.
Source: CNMV.

As is natural, complainants state in their complaints that they are not happy with the respondent entity for various issues, and all of them must be studied and analysed by the Complaints Service when processing the complaint with the requirement of an *ad hoc* decision in the final reasoned report issued on each of the cases. In short, one single complaint proceeding may include various reasons for complaint.

In this regard, in the 743 complaints concluded in 2016 there were 1,149 reasons for complaint, with regard to which two figures should be highlighted: firstly, the greater percentage of complaints arising from alleged irregularities in the entity's evaluation of the match between the product and the client's investor profile (appropriateness/suitability) – 23% of the complaints – and as a result of the alleged irregularities in the information provided about the product prior to its sale – 26% of the complaints – and, secondly, with regard to the product subject to the complaint, 66% of the complaints referred to securities other than collective investment schemes, while 34% related to these products.

Reasons for the complaints concluded in 2016

TABLE 8

Investment service/reason	Grounds	Products		Total
		Securities	CIS	
Marketing/execution Advice Portfolio management	Appropriateness/suitability	167	90	257
	Prior information	185	111	296
	Purchase/sale orders	106	52	158
	Fees	92	31	123
	Transfers	6	24	30
	Subsequent information	147	48	195
	Ownership	12	12	24
Acquisition *mortis causa*	Appropriateness/suitability	4	0	4
	Prior information	4	0	4
	Purchase/sale orders	3	6	9
	Fees	7	0	7
	Transfers	1	0	1
	Subsequent information	10	4	14
	Ownership	8	12	20
Operation of CSD		4	3	7
Total		**756**	**393**	**1,149**

Source: CNMV.

The time for processing complaints with no final reasoned report was shorter than for proceedings in which a final written report was issued.

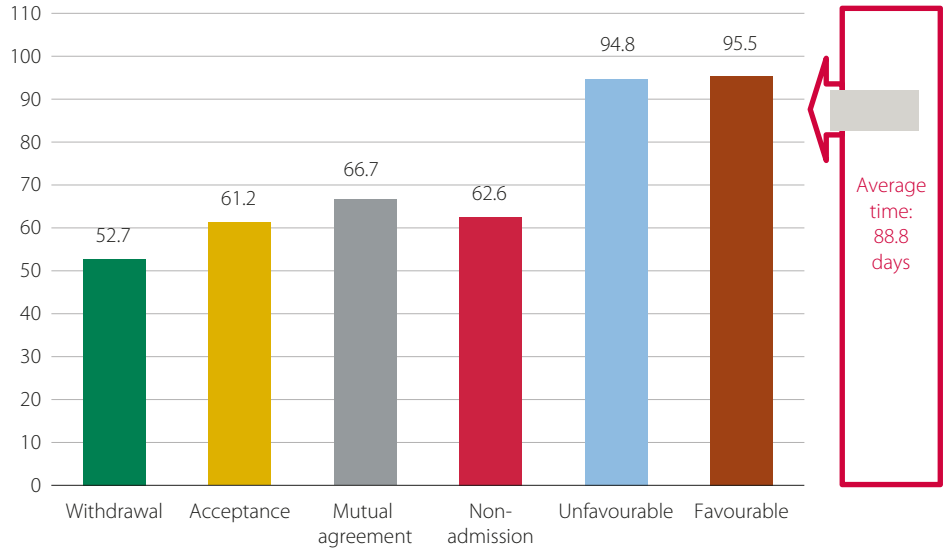
On average, complainants withdrew in 52.7 days, entities fully accepted the complainant's complaint in 61.2 days, an agreement was reached to the satisfaction of the complainant (mutual agreement) in 66.7 days and the proceedings were closed as a result of *ex post facto* non-admission in 62.6 days.

Complaints in which a final reasoned report was issued were resolved, on average, in 94.8 days in the case of a report unfavourable to the complainant and in 95.5 days when the report was favourable.

In this regard, it is important to highlight that the issuance of a final reasoned report requires an in-depth study of all the documentation in the proceedings, as well as the documentation contained in the CNMV's registers that the Complaints Service deems necessary in order to obtain a clear view of the issue or issues raised by the complainant. This requires the use of sufficient and necessary time and effort in order to be able to issue a decision in accordance with the circumstances of the case. This decision must, at any event, conclude whether or not the practice carried out by the entity follows the legislation on transparency and client protection or good financial customs and practices.

It is important to note the reduction in the average time to resolution of the complaints processed with a final reasoned report (favourable or unfavourable) to 95.12 days, compared with 173 days in 2015 and 273 days in 2014. With regard to the complaints resolved with no final reasoned report – withdrawals, acceptances, mutual agreements and *ex post facto* non-admissions – the time to resolution stood at 61.78 days, compared with 114 days in 2015 and 159 days in 2014.

Time to conclusion by type of complaint FIGURE 21



Source: CNMV.

It should also be highlighted that the aforementioned time periods have not been reduced by any suspension periods in the procedure that may have occurred as a result of the time between notification of any petition or request made to the entity or the complainant other than the mandatory process of pleadings, up to their completion or, failing that, up to the deadline granted for responding to said petition or request.

In this regard, and by way of example, it should be noted that entities sometimes submit documents to the CNMV's Complaints Service in which they notify that they are currently negotiating with the complainant in order to find a solution that is satisfactory to their interests although they do not notify the content of said negotiations or whether they have taken place or not. In these cases, the Complaints Service submits a requirement to the entity so that in a period of 30 days it should submit documentation providing evidence both of the result of the negotiations and that they effectively took place, informing about two issues: i) that the term granted suspends the total term for processing the complaint and ii) that if within said term it does not provide the requested information, the procedure shall continue with no further formalities.

2.3.3 Follow-up stage

➢ Follow-up of reports favourable to the complainant

The reasoned report resolving complaint proceedings is not binding. However, if the report is favourable to the complainant, the Complaints Service requires that respondent entities notify whether or not they accept the criteria set out in the aforementioned report and, as the case may be, that they provide documentation demonstrating that the situation referred to by the complainant has been rectified.

Entities have a period of one month to answer these requests. However, in the event that they do not do so, legislation establishes that it will be deemed that they have not accepted the criteria set out in the report.

It should be taken into account that in some of the 309 complaints resolved in 2016 with a report favourable to the complainant, there was more than one

respondent entity. In these cases, an individualised assessment is made of the actions of each one of the entities participating in the incident such that it is possible, as has effectively occurred, that the decision is favourable to the complainant with regard to the actions of all the entities. This is communicated to each of them so that they may individually inform about their acceptance of the criteria and, as the case may be, rectification of the complainant's situation. Bearing in mind this situation, 312 decisions favourable to the complainant were issued.

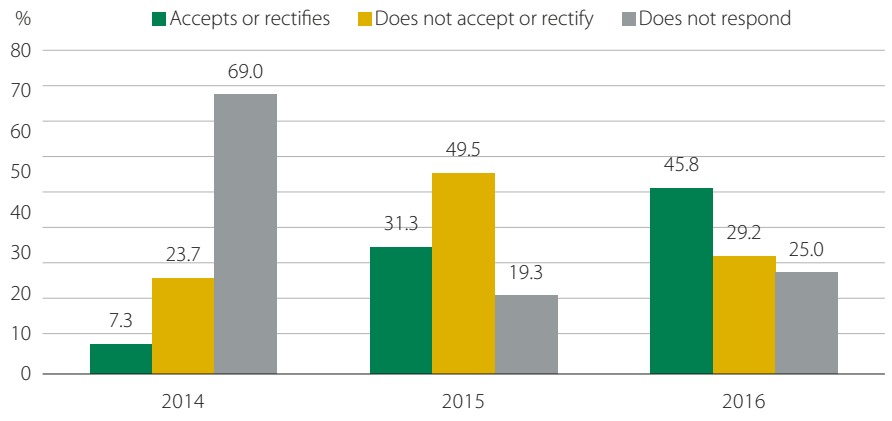
Follow-up actions favourable to the complainant TABLE 9

	Follow-up action reported by respondent entity						
	Accepts criteria or rectifies		Does not accept or rectify			Entities not reporting follow-up action	
Year	No.	%	No.	%	Total	No.	%
2014	197	7.3	639	23.7	836	1,864	69.0
2015	238	31.3	377	49.5	615	147	19.3
2016	143	45.8	91	29.2	234	78	25.0

Source: CNMV.

In 45.8% of the cases, respondent entities informed that they accepted the criteria and rectification of the situation referred to in the report. In this regard, the percentage of respondent entities that accept the criteria and rectify in the cases in which the complainant obtains a reasoned report from the Complaints Service favourable to their interests continues to increase.

Follow-up actions FIGURE 22



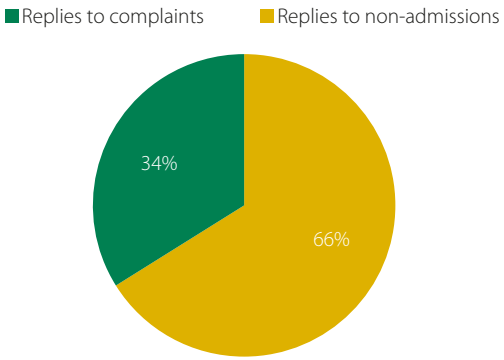
Source: CNMV.

➢ Replies to non-admissions and complaints

Some complainants expressed their disagreement or sought clarification in those 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.

In 2016, 20 responses to non-admissions were received and 39 responses to complaints, which the Complaints Service responded to by providing a thorough clarification of the issues on which the complainants requested clarifications or expressed their disagreement.

Replies of the complainants FIGURE 23



Source: CNMV.

2.3.4 Ranking of respondent entities

Presented below are some rankings of respondent entities based on the following criteria:

- By number of resolved complaints (excluding *ex post facto* non-admissions).
- By timescale for reading the petition for comments sent by the Complaints Service to the entity.
- By timescale for responding to the petition for comments.
- By percentage of complaints with decisions favourable to the complainant.
- By number of acceptances and mutual agreements.
- By percentage of response to follow-up actions.
- By percentage of acceptance of criteria.

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

In addition, even when the complaints were processed with the entities indicated in the first column of each one of the rankings, the entity responsible for the incidents does not always match the entity against which the complaint was processed. This is due to the fact that in some cases the entities have needed to address complaints filed for alleged irregularities committed by other entities that they have fully or partially acquired, either through a merger, a takeover or by full or partial segregation of a business area. For this reason, the different rankings tables distinguish

between the entity against which the complaint is processed and the entity that is responsible for the incidents.

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

➢ Ranking of entities by number of resolved complaints

The initiation of complaint proceedings indicates the client's disagreement with the actions of the entity, which it has not been possible to resolve in the earlier stage of the complaint with the Customer Service Department or the Customer Ombudsman and which justifies the processing of the proceedings providing that a subsequent reason for non-admission does not arise.

In this regard, Table 10 orders the entities, from highest to lowest, by the number of complaints admitted in which there was no *ex post facto* reason for non-admission.

Based on this criterion, even when there are 16 entities with which at least eight complaints were processed, it should be pointed out that the top seven places are occupied by the entities with the highest stock-market capitalisation in the Spanish market.

– Banco Santander, S.A.: 133

– Banco Bilbao Vizcaya Argentaria, S.A.: 98

– Banco Popular Español, S.A.: 75

– Bankia, S.A.: 75

– Caixabank, S.A.: 59

– Banco de Sabadell, S.A.: 54

– Bankinter, S.A.: 31

If this ranking is organised by the number of complaints in which the entity is responsible for the incidents, there would only be one change, which would affect Banco Popular Español, S.A. and Bankia, S.A., which would swap positions.

Ranking of entities by number of resolved complaints

TABLE 10

Entity with which it is processed	Total	Entity responsible for the incidents	Total
1. BANCO SANTANDER, S.A.	133	BANCO SANTANDER, S.A.	121
		BANCO ESPAÑOL DE CRÉDITO, S.A.	11
		BANCO BANIF, S.A.	1
2. BANCO BILBAO VIZCAYA ARGENTARIA, S.A.	98	BANCO BILBAO VIZCAYA ARGENTARIA, S.A.	91
		CATALUNYA BANC, S.A.	7
3. BANCO POPULAR ESPAÑOL, S.A.	75	BANCO POPULAR ESPAÑOL, S.A.	70
		BANCO DE ANDALUCÍA, S.A.	2
		BANCO PASTOR, S.A.U.	2
		BANCOPOPULAR-E, S.A.	1
4. BANKIA, S.A.	75	BANKIA, S.A.	71
		CAJA DE AHORROS DE VALENCIA, CASTELLÓN Y ALICANTE, BANCAJA	3
		CAJA DE AHORROS Y MONTE DE PIEDAD DE MADRID	1
5. CAIXABANK, S.A.	59	CAIXABANK, S.A.	56
		BARCLAYS BANK, S.A.	2
		BANCO DE VALENCIA, S.A.	1
6. BANCO DE SABADELL, S.A.	54	BANCO DE SABADELL, S.A.	42
		CAJA DE AHORROS DEL MEDITERRÁNEO	11
		BANCO GALLEGO, S.A.	1
7. BANKINTER, S.A.	31		
8. IBERCAJA BANCO, S.A.	17	IBERCAJA BANCO, S.A.	16
		BANCO GRUPO CAJATRÉS, S.A.	1
9. SELF TRADE BANK, S.A.	15		
10. BANCOPOPULAR-E, S.A.[2]	14		
11. ING BANK NV, SUCURSAL EN ESPAÑA	13		
12. BANCO DE CAJA ESPAÑA DE INVERSIONES, SALAMANCA Y SORIA, S.A.	13	BANCO DE CAJA ESPAÑA DE INVERSIONES, SALAMANCA Y SORIA, S.A.	12
		CAJA ESPAÑA DE INVERSIONES, CAJA DE AHORROS Y MONTE DE PIEDAD	1
13. ABANCA CORPORACIÓN BANCARIA, S.A.	12	ABANCA CORPORACIÓN BANCARIA, S.A.	10
		NCG BANCO, S.A.	2
14. ANDBANK ESPAÑA, S.A.	10	ANDBANK ESPAÑA, S.A.	9
		BANCO INVERSIS, S.A.	1
15. CATALUNYA BANC, S.A.[1]	8		
16. DEUTSCHE BANK, SOCIEDAD ANÓNIMA ESPAÑOLA	8		
Other entities (*)	106		
Total	**741**		

(1) CATALUNYA BANC, S.A. provided investment services until 9 September 2016, the date on which it ceased its activity due to the merger by acquisition by BANCO BILBAO VIZCAYA ARGENTARIA, S.A

(2) BANCOPOPULAR-E, S.A. provided investment services until 23 May 2016, the date on which it transferred its activity to BANCO POPULAR ESPAÑOL, S.A.

(*) 48 entities with fewer than eight complaints.

Source: CNMV.

➢ Ranking of entities by timescale for reading

Once a complaint is admitted to processing, the complainant is informed of the start of the complaint proceedings and the respondent entity is requested to send comments on the complaint made against it. This request must always be notified electronically through the CNMV's CIFRADOC system. When an electronic notification is carried out, the delivery date of the notification will be the date on which the notification is read. Consequently, said notification will be deemed rejected if the entity does not access the content for 10 days from when it becomes available.[2]

In this regard, Table 11 orders the entities, from highest to lowest, by the number of calendar days used to read the aforementioned petition for comments.

It should be indicated that seven entities have timescales for reading higher than the average of two calendar days, in particular: Bankinter, S.A. (9); ING Bank NV, Sucursal en España (6); Ibercaja Banco, S.A. (4); Catalunya Banc, S.A. (4); Bankia, S.A. (4); Caixabank, S.A. (3); and Andbank España, S.A. (3).

Ranking of entities by timescale for reading the notification of the opening of complaint proceedings

TABLE 11

Entity with which it is processed	Calendar days
1. BANKINTER, S.A.	9
2. ING BANK NV, SUCURSAL EN ESPAÑA	6
3. IBERCAJA BANCO, S.A.	4
4. CATALUNYA BANC, S.A.[1]	4
5. BANKIA, S.A.	4
6. CAIXABANK, S.A.	3
7. ANDBANK ESPAÑA, S.A.	3
8. DEUTSCHE BANK, SOCIEDAD ANÓNIMA ESPAÑOLA	2
9. BANCO DE CAJA ESPAÑA DE INVERSIONES, SALAMANCA Y SORIA, S.A.	2
10. ABANCA CORPORACIÓN BANCARIA, S.A.	2
11. BANCO SANTANDER, S.A.	1
12. BANCO BILBAO VIZCAYA ARGENTARIA, S.A.	1
13. BANCO POPULAR ESPAÑOL, S.A.	1
14. BANCO DE SABADELL, S.A.	1
15. SELF TRADE BANK, S.A.	0
16. BANCOPOPULAR-E, S.A.[2]	0
Other entities (*)	4
Total	**2**

(1) CATALUNYA BANC, S.A. provided investment services until 9 September 2016, the date on which it ceased its activity due to the merger by acquisition by BANCO BILBAO VIZCAYA ARGENTARIA, S.A.

(2) BANCOPOPULAR-E, S.A. provided investment services until 23 May 2016, the date on which it transferred its activity to BANCO POPULAR ESPAÑOL, S.A.

(*) 48 entities with fewer than eight complaints.

Source: CNMV.

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

Three entities read the notifications in the general average timescale of two days, specifically: Deutsche Bank, Sociedad Anónima Española; Banco de Caja España de Inversiones, Salamanca y Soria, S.A.; and Abanca Corporación Bancaria, S.A.

Six entities read the electronic notifications in a timescale lower than the average: Banco Santander, S.A.; Banco Bilbao Vizcaya Argentaria, S.A.; Banco Popular Español, S.A.; and Banco de Sabadell, S.A. had a one-day timescale for reading, while Self Trade Bank, S.A. and Bancopopular-e, S.A. read the notification on the same day that it was made available to them.

➢ Ranking of entities by timescale for responding

As from the day following the date on which it accesses the notification (and as indicated therein), the entity has 15 working days to submit pleadings on the issues raised by the complainant. Entities sometimes request an extension for responding. In accordance with the corresponding legislation, if the petition is submitted prior to the end of the initially granted deadline, said extension must be granted, while if the request is made after the deadline, the extension must be denied.

Table 12 orders the entities, from highest to lowest, by the number of calendar days that each one takes to submit the response requested in the petition for comments. The corresponding adjustments have been made in the cases in which the entity has requested an extension to the initially granted period to submit pleadings that has been granted by the Complaints Service.

It should be emphasised that the timescales in Table 12 are calculated in calendar days (not in working days as indicated by the corresponding legislation) and therefore the days which legislation establishes as non-working days have not been deducted from the total calculation. However, the data provided allow a fairly clear idea of the response times of the respondent entities.

The entities responded to the initial petition for pleadings in 17 calendar days on average.

Ten entities did so in a timescale higher than the average: Andbank España, S.A. (30); Bankinter, S.A. (24); Caixabank, S.A. (24); ING Bank NV, Sucursal en España (21); Self Trade Bank, S.A. (21); Banco Bilbao Vizcaya Argentaria, S.A. (21); Bancopopular-e, S.A. (19); Bankia, S.A. (19); Ibercaja Banco, S.A. (18); and Banco de Sabadell, S.A. (18).

The timescale for responding for Abanca Corporación Bancaria, S.A. stands exactly at the average of 17 days.

Five entities responded in a timescale lower than the average, specifically: Banco de Caja España de Inversiones, Salamanca y Soria, S.A. (14); Catalunya Banc, S.A. (14); Deutsche Bank, Sociedad Anónima Española (14); Banco Santander, S.A. (12); and Banco Popular Español, S.A. (9).

In 81 cases, the respondent entities requested an extension for submitting pleadings, of which 77 were granted. Said petitions for extensions were submitted in 60 cases by Banco Bilbao Vizcaya Argentaria, S.A.; in 6 by Banco Santander, S.A.; in 3 by

Bankinter, S.A. and Banco Popular Español, S.A.; and in 1 by Bankia, S.A., Banco de Sabadell, S.A. and another 7 entities with fewer than 8 complaints.

It should also be pointed out that in four proceedings, the respondent entities did not submit the requested pleadings. This was considered a bad practice as the CNMV's Complaints Service believes that the information that must be provided by the entity is necessary and required in order to issue a suitable resolution on the issues raised by the complainants and failure to submit such information makes this objective more difficult to achieve.

The entities that did not submit pleadings are: Banco Santander, S.A. in two proceedings, Bankinter, S.A. in one and ING Bank NV, Sucursal en España, in another.

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

Entity with which it is processed	Calendar days
1. ANDBANK ESPAÑA, S.A.	30
2. BANKINTER, S.A.	24
3. CAIXABANK, S.A.	24
4. ING BANK NV, SUCURSAL EN ESPAÑA	21
5. SELF TRADE BANK, S.A.	21
6. BANCO BILBAO VIZCAYA ARGENTARIA, S.A.	21
7. BANCOPOPULAR-E, S.A.[2]	19
8. BANKIA, S.A.	19
9. IBERCAJA BANCO, S.A.	18
10. BANCO DE SABADELL, S.A.	18
11. ABANCA CORPORACIÓN BANCARIA, S.A.	17
12. BANCO DE CAJA ESPAÑA DE INVERSIONES, SALAMANCA Y SORIA, S.A.	14
13. CATALUNYA BANC, S.A.[1]	14
14. DEUTSCHE BANK, SOCIEDAD ANÓNIMA ESPAÑOLA	14
15. BANCO SANTANDER, S.A.	12
16. BANCO POPULAR ESPAÑOL, S.A.	9
Other entities (*)	17
Total	**17**

(1) CATALUNYA BANC, S.A. provided investment services until 9 September 2016, the date on which it ceased its activity due to the merger by acquisition by BANCO BILBAO VIZCAYA ARGENTARIA, S.A
(2) BANCOPOPULAR-E, S.A. provided investment services until 23 May 2016, the date on which it transferred its activity to BANCO POPULAR ESPAÑOL, S.A.
(*) 48 entities with fewer than eight complaints.
Source: CNMV.

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

The final reasoned reports issued by the CNMV may be of two types: favourable or unfavourable to the complainant. Only in the case of reports favourable to the

complainant is it concluded that there has been an incorrect action by the respondent entity. In such reports, the Complaints Service will indicate the reasons why it considers that the respondent entity has not complied with transparency and investor protection legislation or good financial customs and practices.

With regard to the above, Table 13 sorts the entities, from highest to lowest, by the percentage of reports favourable to the complainant out of total decisions, both favourable and unfavourable, issued by the CNMV's Complaints Service for each one of the entities.

In this regard, seven entities have percentages of reports favourable to the complainant above the general average (51%). These percentages are:

– Between 90% and 100% in Catalunya Banc, S.A. (100%) and in Bancopopular-e, S.A. (92.9%) prior to the transfer of its retail banking business to Grupo Banco Popular.

– Between 70% and 80% in Deutsche Bank, Sociedad Anónima Española (71.4%).

– Between 60% and 70% in Self Trade Bank, S.A. (66.7%) and in Caixabank, S.A. (62.3%).

– Between 51% and 60% in Banco Santander, S.A. (56.7%) and in Bankinter, S.A. (55.2%).

The following nine entities had a percentage lower than the average: Ibercaja Banco, S.A. (50.0%); Bankia, S.A. (48.0%); Banco Bilbao Vizcaya Argentaria, S.A. (43.6%); Banco Popular Español, S.A. (43.5%); Andbank España, S.A. (40.0%); Banco de Caja España de Inversiones, Salamanca y Soria, S.A. (33.3%); Banco de Sabadell, S.A. (32.1%); ING Bank NV, Sucursal en España (30.8%); and Abanca Corporación Bancaria, S.A. (0%).

If the complaints in which the entity is responsible for the incident (without taking into account the responsibilities acquired as a result of mergers or segregations) were taken into account, the ranking would be changed in two cases: Banco Bilbao Vizcaya Argentaria, S.A. would swap position with Banco Popular Español S.A. and Banco de Sabadell, S.A. would swap position with ING Bank NV, Sucursal en España.

Figure 24 shows the percentage of complaints with decisions favourable to the complainant over the last three years.

As in previous years, Catalunya Banc, S.A., Bancopopular-e, S.A. and Deutsche Bank, Sociedad Anónima Española occupy the top three positions in the ranking, with the sole exception that Bancopopular-e, S.A. does not appear in the ranking in 2014. *A sensu contrario*, ING Bank NV, Sucursal en España is in the last position of the ranking, as in previous years.

Over the years, most of the entities have recorded lower percentages of reports issued with a decision favourable to the complainant, i.e., unfavourable to the respondent entity, and therefore the percentage of incorrect actions carried out.

Ranking of entities by percentage of decisions favourable to the complainant

TABLE 13

Entity against which it is processed	% favourable	Entity responsible for the incidents	Unfavourable	Favourable	Total	% favourable
1. CATALUNYA BANC, S.A.[1]	100.0	CATALUNYA BANC, S.A.	–	8	8	100.0
2. BANCOPOPULAR-E, S.A.[2]	92.9	BANCOPOPULAR-E, S.A.	1	13	14	92.9
3. DEUTSCHE BANK, SOCIEDAD ANÓNIMA ESPAÑOLA	71.4	DEUTSCHE BANK, SOCIEDAD ANÓNIMA ESPAÑOLA	2	5	7	71.4
4. SELF TRADE BANK, S.A.	66.7	SELF TRADE BANK, S.A.	5	10	15	66.7
5. CAIXABANK, S.A.	62.3	CAIXABANK, S.A.	20	31	51	60.8
		BANCO DE VALENCIA, S.A.	–	1	1	100.0
		BARCLAYS BANK, S.A.	–	1	1	100.0
6. BANCO SANTANDER, S.A.	56.7	BANCO SANTANDER, S.A.	48	60	108	55.6
		BANCO BANIF, S.A.	–	1	1	100.0
		BANCO ESPAÑOL DE CRÉDITO, S.A.	4	7	11	63.6
7. BANKINTER, S.A.	55.2	BANKINTER, S.A.	13	16	29	55.2
8. IBERCAJA BANCO, S.A.	50.0	IBERCAJA BANCO, S.A.	8	7	15	46.7
		BANCO GRUPO CAJATRÉS, S.A.	–	1	1	100.0
9. BANKIA, S.A.	48.0	BANKIA, S.A.	26	21	47	44.7
		CAJA DE AHORROS DE VALENCIA, CASTELLÓN Y ALICANTE, BANCAJA	–	2	2	100.0
		CAJA DE AHORROS Y MONTE DE PIEDAD DE MADRID	–	1	1	100.0
10. BANCO BILBAO VIZCAYA ARGENTARIA, S.A.	43.6	BANCO BILBAO VIZCAYA ARGENTARIA, S.A.	42	30	72	41.7
		CATALUNYA BANC, S.A.	2	4	6	66.7
11. BANCO POPULAR ESPAÑOL, S.A.	43.5	BANCO POPULAR ESPAÑOL, S.A.	37	28	65	43.1
		BANCO DE ANDALUCÍA, S.A.	1	1	2	50.0
		BANCO PASTOR, S.A.U.	1	–	1	0.0
		BANCOPOPULAR-E, S.A.[2]	–	1	1	100.0
12. ANDBANK ESPAÑA, S.A.	40.0	ANDBANK ESPAÑA, S.A.	3	2	5	40.0
13. BANCO DE CAJA ESPAÑA DE INVERSIONES, SALAMANCA Y SORIA, S.A.	33.3	BANCO DE CAJA ESPAÑA DE INVERSIONES, SALAMANCA Y SORIA, S.A.	6	3	9	33.3
14. BANCO DE SABADELL, S.A.	32.1	BANCO DE SABADELL, S.A.	19	8	27	29.6
		CAJA DE AHORROS DEL MEDITERRÁNEO	–	1	1	100.0
15. ING BANK NV, SUCURSAL EN ESPAÑA	30.8	ING BANK NV, SUCURSAL EN ESPAÑA	9	4	13	30.8
16. ABANCA CORPORACIÓN BANCARIA, S.A.	–	ABANCA CORPORACIÓN BANCARIA, S.A.	10	–	10	–
		NCG BANCO, S.A.	1	–	1	–
Other entities (*)	51.7		42	45	87	51.7
General total	**51.0**		**300**	**312**	**612**	**51.0**

(1) CATALUNYA BANC, S.A. provided investment services until 9 September 2016, the date on which it ceased its activity due to the merger by acquisition by BANCO BILBAO VIZCAYA ARGENTARIA, S.A.

(2) BANCOPOPULAR-E, S.A. provided investment services until 23 May 2016, the date on which it transferred its activity to BANCO POPULAR ESPAÑOL, S.A.

(*) 48 entities with fewer than eight complaints.

Source: CNMV.

In particular, the following changes were recorded in the percentage of decisions favourable to the complainant by entity:

– The percentage fell in the following nine entities: Deutsche Bank, Sociedad Anónima Española; Caixabank, S.A.; Banco Santander, S.A.; Bankinter, S.A.; Banco Bilbao Vizcaya Argentaria, S.A.; Banco Popular Español, S.A.; Banco de Caja España de Inversiones, Salamanca y Soria, S.A.; Banco de Sabadell, S.A.; and Abanca Corporación Bancaria, S.A.

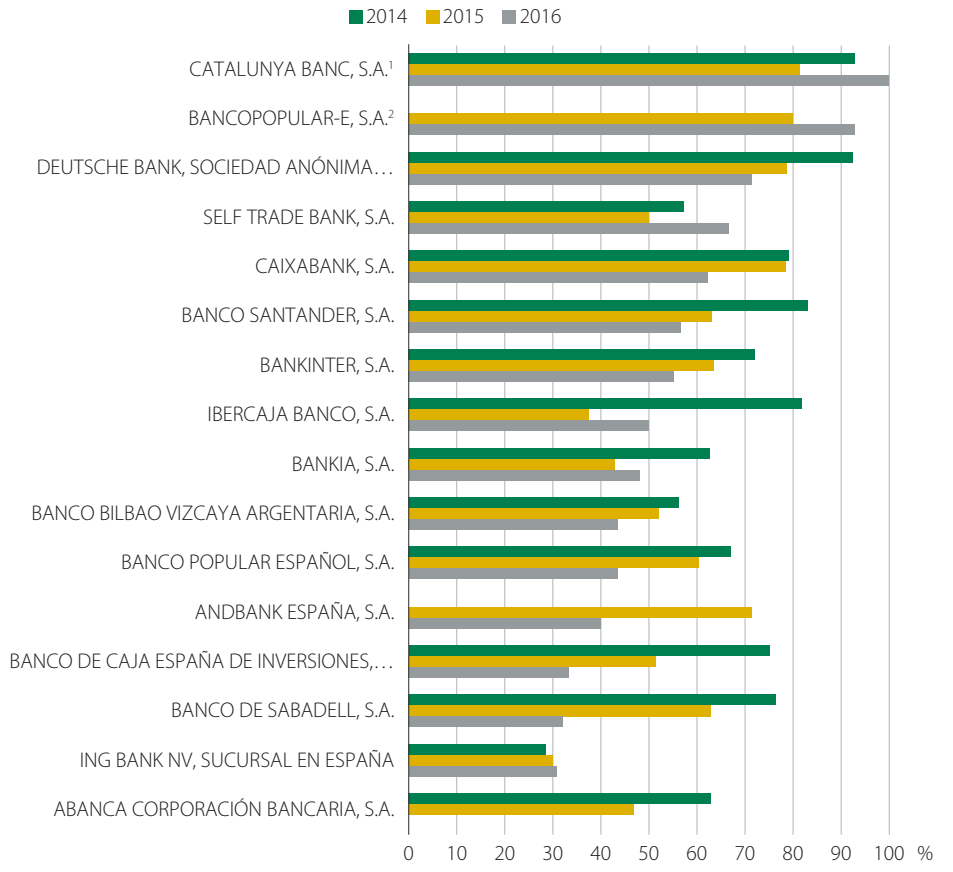
– It rose for Bancopopular-e, S.A.

– It remained constant for ING Bank NV, Sucursal en España.

– It moved irregularly in the following five entities: Catalunya Banc, S.A.; Self Trade Bank, S.A.; Ibercaja Banco, S.A.; Bankia, S.A.; and Andbank España, S.A.

Percentage* of decisions favourable to the complainant by entity

FIGURE 24



(1) CATALUNYA BANC, S.A. provided investment services until 9 September 2016, the date on which it ceased its activity due to the merger by acquisition by BANCO BILBAO VIZCAYA ARGENTARIA, S.A.

(2) BANCOPOPULAR-E, S.A. provided investment services until 23 May 2016, the date on which it transferred its activity to BANCO POPULAR ESPAÑOL, S.A.

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

Source: CNMV.

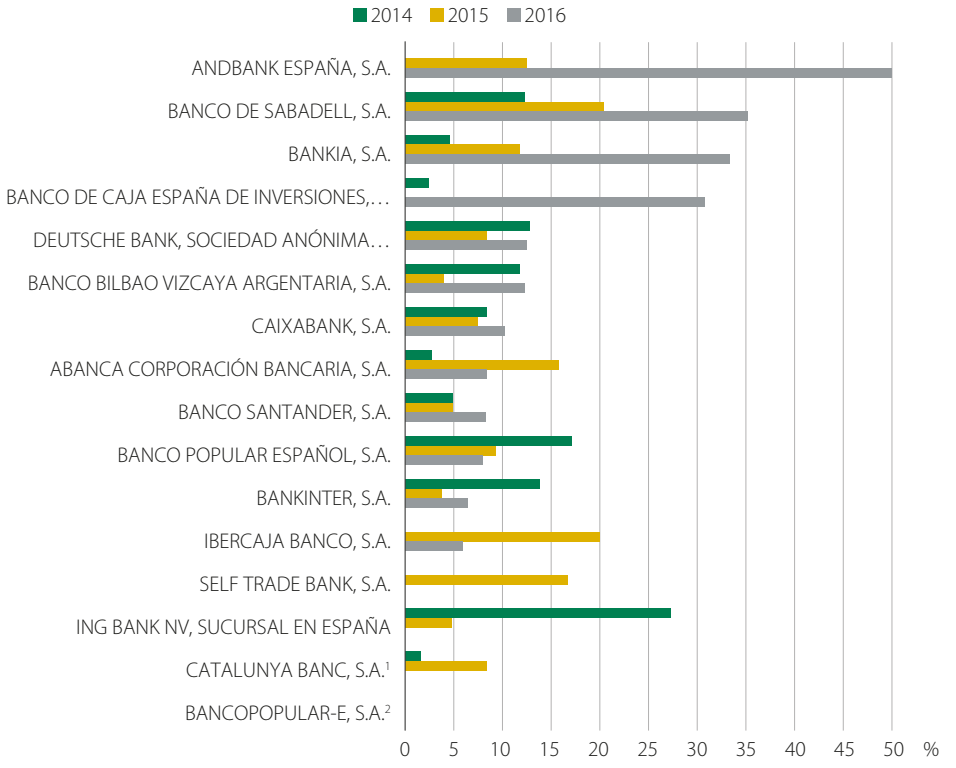
➢ Ranking of entities by number of acceptances and mutual agreements

In some cases, the complaints may conclude because the entity accepts the complainant's claims (acceptance) or because the entity and the complainant reach an agreement (mutual agreement). In these cases, the CNMV's Complaints Service considers that the complainant's interests have been satisfied and therefore closes the complaint without issuing a decision on the merits of the case.

Table 14 orders the entities, from highest to lowest, by number of acceptances and agreements reached with the complainant with the following standing out for the highest numbers of acceptances: Bankia, S.A. with 25; Banco de Sabadell, S.A. with 19; Banco Bilbao Vizcaya Argentaria, S.A. with 12; and Banco Santander, S.A. with 11, while ING Bank NV, Sucursal En España; Self Trade Bank, S.A.; Bancopopular-e, S.A.; and Catalunya Banc, S.A. did not reach any agreement with their clients.

Figure 25 orders the entities by percentage of acceptances/mutual agreements reached in 2016, including a comparison with those achieved in the two previous years.

Percentage of acceptances/mutual agreements* by entity FIGURE 25



(1) CATALUNYA BANC, S.A. provided investment services until 9 September 2016, the date on which it ceased its activity due to the merger by acquisition by BANCO BILBAO VIZCAYA ARGENTARIA, S.A.

(2) BANCOPOPULAR-E, S.A. provided investment services until 23 May 2016, the date on which it transferred its activity to BANCO POPULAR ESPAÑOL, S.A.

(*) The percentage is calculated over the total number of acceptances/mutual agreements, withdrawals and decisions favourable and unfavourable to the complainant by entity.

Source: CNMV.

Ranking of entities by number of acceptances and mutual agreements

TABLE 14

Entity against which it is processed	Total	Entity responsible for the incidents	Acceptance	Mutual agreement	Total
1. BANKIA, S.A.	25	BANKIA, S.A.	15	9	24
		CAJA DE AHORROS DE VALENCIA, CASTELLÓN Y ALICANTE, BANCAJA	1	–	1
2. BANCO DE SABADELL, S.A.	19	BANCO DE SABADELL, S.A.	7	5	12
		BANCO GALLEGO, S.A.	1	–	1
		CAJA DE AHORROS DEL MEDITERRÁNEO	4	2	6
3. BANCO BILBAO VIZCAYA ARGENTARIA, S.A.	12	BANCO BILBAO VIZCAYA ARGENTARIA, S.A.	5	6	11
		CATALUNYA BANC, S.A.	1	–	1
4. BANCO SANTANDER, S.A.	11	BANCO SANTANDER, S.A.	8	3	11
5. BANCO POPULAR ESPAÑOL, S.A.	6	BANCO POPULAR ESPAÑOL, S.A.	3	2	5
		BANCO PASTOR, S.A.U.	–	1	1
6. CAIXABANK, S.A.	6	CAIXABANK, S.A.	5	–	5
		BARCLAYS BANK, S.A.	1	–	1
7. ANDBANK ESPAÑA, S.A.	5	ANDBANK ESPAÑA, S.A.	3	1	4
		BANCO INVERSIS, S.A.	–	1	1
8. BANCO DE CAJA ESPAÑA DE INVERSIONES, SALAMANCA Y SORIA, S.A.	4	BANCO DE CAJA ESPAÑA DE INVERSIONES, SALAMANCA Y SORIA, S.A.	3	–	3
		CAJA ESPAÑA DE INVERSIONES, CAJA DE AHORROS Y MONTE DE PIEDAD	1	–	1
9. BANKINTER, S.A.	2	BANKINTER, S.A.	1	1	2
10. ABANCA CORPORACIÓN BANCARIA, S.A.	1	ABANCA CORPORACIÓN BANCARIA, S.A.	–	–	–
		NCG BANCO, S.A.	–	1	1
11. DEUTSCHE BANK, SOCIEDAD ANÓNIMA ESPAÑOLA	1	DEUTSCHE BANK, SOCIEDAD ANÓNIMA ESPAÑOLA	1	–	1
12. IBERCAJA BANCO, S.A.	1	IBERCAJA BANCO, S.A.	–	1	1
13. ING BANK NV, SUCURSAL EN ESPAÑA	–		–	–	–
14. SELF TRADE BANK, S.A.	–		–	–	–
15. BANCOPOPULAR-E, S.A.[2]	–		–	–	–
16. CATALUNYA BANC, S.A.[1]	–		–	–	–
Other entities (*)	17		9	8	17
General total	**110**		**69**	**41**	**110**

(1) CATALUNYA BANC, S.A. provided investment services until 9 September 2016, the date on which it ceased its activity due to the merger by acquisition by BANCO BILBAO VIZCAYA ARGENTARIA, S.A.

(2) BANCOPOPULAR-E, S.A. provided investment services until 23 May 2016, the date on which it transferred its activity to BANCO POPULAR ESPAÑOL, S.A.

(*) 48 entities with fewer than eight complaints.

Source: CNMV.

In this regard, in 2016, Andbank España, S.A. recorded a percentage of acceptances/mutual agreements of 50%. Banco de Sabadell, S.A., Bankia, S.A. and Banco de Caja España de Inversiones, Salamanca y Soria, S.A. recorded a percentage between 30% and 40%; Deutsche Bank, S.A.E., Banco Bilbao Vizcaya Argentaria, S.A. and Caixabank, S.A. between 10% and 20%; Abanca Corporación Bancaria, S.A., Banco Santander, S.A., Banco Popular Español, S.A., Bankinter, S.A. and Ibercaja Banco, S.A. below 10%, and, as noted above, ING Bank NV, Sucursal en España, Self Trade Bank, S.A., Bancopopular-e, S.A. and Catalunya Banc, S.A. recorded no acceptances or mutual agreements with complainants in 2016.

In general, the percentage of acceptances/mutual agreements by entity has developed unevenly over the last three years. However, there has been an upward trend in the case of Andbank España, S.A., Banco de Sabadell, S.A., Bankia, S.A. and Banco Santander, S.A., and a downward trend in the case of Banco Popular Español, S.A. and ING Bank NV, Sucursal en España. Finally, it should be pointed out that in the last three years, Bancopopular-e, S.A. has not recorded any acceptances or mutual agreements during the processing of complaints with the CNMV's Complaints Service.

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

The complaint proceedings usually conclude with the Complaints Service issuing a final reasoned report, with the Complainant notified and the report passed on to the entity. In those cases in which the report is favourable to the complainant, it is passed on to the entity together with a request for information so that the entity may declare, in a period of one month, whether or not it accepts the assumptions and criteria set out in the report and so that, as the case may be, it may provide documentary evidence that it has rectified the situation with the complainant.

Table 15 shows that entities responded to this request for information, on average, in 75% of the cases.

The response percentage of nine entities was higher than the average while that of six entities was lower.

If the cases in which the entity responsible for the incident is a merged or acquired entity were not taken into account, all the positions in the ranking would remain the same with the exception of Ibercaja Banco, S.A., which would move to eleventh place.

Ranking of entities by percentage of follow-up actions communicated following decisions favourable to the complainant

TABLE 15

Entity with which it is processed	% Yes	Entity responsible for the incidents	Yes	No	Total	% Yes
1. BANCO POPULAR ESPAÑOL, S.A.	100.0	BANCO POPULAR ESPAÑOL, S.A.	28	–	28	100.0
		BANCO DE ANDALUCÍA, S.A.	1	–	1	100.0
		BANCO POPULAR-E, S.A.	1	–	1	100.0
2. BANCO DE SABADELL, S.A.	100.0	BANCO DE SABADELL, S.A.	8	–	8	100.0
		CAJA DE AHORROS DEL MEDITERRÁNEO	1	–	1	100.0
3. DEUTSCHE BANK, SOCIEDAD ANÓNIMA ESPAÑOLA	100.0	DEUTSCHE BANK, SOCIEDAD ANÓNIMA ESPAÑOLA	5	–	5	100.0
4. BANCO DE CAJA ESPAÑA DE INVERSIONES, SALAMANCA Y SORIA, S.A.	100.0	BANCO DE CAJA ESPAÑA DE INVERSIONES, SALAMANCA Y SORIA, S.A.	3	–	3	100.0
5. ANDBANK ESPAÑA, S.A.	100.0	ANDBANK ESPAÑA, S.A.	2	–	2	100.0
6. BANKIA, S.A.	95.8	BANKIA, S.A.	20	1	21	95.2
		CAJA DE AHORROS DE VALENCIA, CASTELLÓN Y ALICANTE, BANCAJA	2	–	2	100.0
		CAJA DE AHORROS Y MONTE DE PIEDAD DE MADRID	1	–	1	100.0
7. BANCO SANTANDER, S.A.	94.1	BANCO SANTANDER, S.A.	56	4	60	93.3
		BANCO BANIF, S.A.	1	–	1	100.0
		BANCO ESPAÑOL DE CRÉDITO, S.A.	7	–	7	100.0
8. BANCO BILBAO VIZCAYA ARGENTARIA, S.A.	91.2	BANCO BILBAO VIZCAYA ARGENTARIA, S.A.	27	3	30	90.0
		CATALUNYA BANC, S.A.	4	–	4	100.0
9. SELF TRADE BANK, S.A.	90.0	SELF TRADE BANK, S.A.	9	1	10	90.0
10. ING BANK NV, SUCURSAL EN ESPAÑA	50.0	ING BANK NV, SUCURSAL EN ESPAÑA	2	2	4	50.0
11. CAIXABANK, S.A.	39.4	CAIXABANK, S.A.	12	19	31	38.7
		BANCO DE VALENCIA, S.A.	1	–	1	100.0
		BARCLAYS BANK, S.A.	–	1	1	0.0
12. CATALUNYA BANC, S.A.[1]	37.5	CATALUNYA BANC, S.A.	3	5	8	37.5
13. IBERCAJA BANCO, S.A.	37.5	IBERCAJA BANCO, S.A.	3	4	7	42.9
		BANCO GRUPO CAJATRÉS, S.A.	–	1	1	0.0
14. BANCOPOPULAR-E, S.A.[2]	15.4	BANCOPOPULAR-E, S.A.	2	11	13	15.4
15. BANKINTER, S.A.	0.0	BANKINTER, S.A.	–	16	16	0.0
16. ABANCA CORPORACIÓN BANCARIA, S.A.	–		–	–	–	–
Other entities (*)	77.8		35	10	45	77.8
General total	**75.0**		**234**	**78**	**312**	**75.0**

(1) CATALUNYA BANC, S.A. provided investment services until 9 September 2016, the date on which it ceased its activity due to the merger by acquisition by BANCO BILBAO VIZCAYA ARGENTARIA, S.A.

(2) BANCOPOPULAR-E, S.A. provided investment services until 23 May 2016, the date on which it transferred its activity to BANCO POPULAR ESPAÑOL. S.A.

(*) 48 entities with fewer than eight complaints.

Source: CNMV.

➢ Ranking of entities by percentage of acceptance of criteria

As noted above, while respondent entities must expressly report whether they accept the criteria set out by the CNMV's Complaints Service 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).

For this reason, Table 16 orders the entities, from highest to lowest, by the percentage of acceptance of criteria or rectification of the complainant's situation, including both the information contained in the responses sent by the entities and the consequences resulting from their failure to reply, which, as indicated above, is equivalent to the non-acceptance of the criteria.

The average percentage of acceptance of criteria or rectification of the complainant's situation stands at 45.8%, with eight entities above the average, one at the average, and six below the average.

If we exclude the situations in which the entity responsible for the incident is a merged or acquired entity, Banco de Sabadell, S.A. would be the entity with the second highest percentage of acceptances/rectifications reported and Bankia, S.A. would be the seventh.

Ranking of entities by percentage of acceptance of criteria or rectification following decisions favourable to the complainant

TABLE 16

Entity against which it is processed	% acceptance	Entity responsible for the incidents	Acceptance or mutual agreement/ rectification	No acceptance or mutual agreement/ rectification	Does not answer	Total	% acceptance
1. SELF TRADE BANK, S.A.	90.0	SELF TRADE BANK, S.A.	9	–	1	10	90.0
2. BANCO POPULAR ESPAÑOL, S.A.	86.7	BANCO POPULAR ESPAÑOL, S.A.	24	4	–	28	85.7
		BANCO DE ANDALUCÍA, S.A.	1	–	–	1	100.0
		BANCOPOPULAR-E, S.A.	1	–	–	1	100.0
3. DEUTSCHE BANK, SOCIEDAD ANÓNIMA ESPAÑOLA	80.0	DEUTSCHE BANK, SOCIEDAD ANÓNIMA ESPAÑOLA	4	1	–	5	80.0
4. BANCO DE SABADELL, S.A.	77.8	BANCO DE SABADELL, S.A.	7	1	–	8	87.5
		CAJA DE AHORROS DEL MEDITERRÁNEO	–	1	–	1	0.0
5. BANCO BILBAO VIZCAYA ARGENTARIA, S.A.	67.6	BANCO BILBAO VIZCAYA ARGENTARIA, S.A.	20	7	3	30	66.7
		CATALUNYA BANC, S.A.	3	1	–	4	75.0
6. BANCO DE CAJA ESPAÑA DE INVERSIONES, SALAMANCA Y SORIA, S.A.	66.7	BANCO DE CAJA ESPAÑA DE INVERSIONES, SALAMANCA Y SORIA, S.A.	2	1	–	3	66.7
7. ANDBANK ESPAÑA, S.A.	50.0	ANDBANK ESPAÑA, S.A.	1	1	–	2	50.0
8. ING BANK NV, SUCURSAL EN ESPAÑA	50.0	ING BANK NV, SUCURSAL EN ESPAÑA	2	–	2	4	50.0
9. BANKIA, S.A.	45.8	BANKIA, S.A.	11	9	1	21	52.4
		CAJA DE AHORROS DE VALENCIA, CASTELLÓN Y ALICANTE, BANCAJA	–	2	–	2	0.0
		CAJA DE AHORROS Y MONTE DE PIEDAD DE MADRID	–	1	–	1	0.0
10. BANCO SANTANDER, S.A.	39.7	BANCO SANTANDER, S.A.	26	30	4	60	43.3
		BANCO BANIF, S.A.	–	1	–	1	0.0
		BANCO ESPAÑOL DE CRÉDITO, S.A.	1	6	–	7	14.3
11. CAIXABANK, S.A.	21.2	CAIXABANK, S.A.	7	5	19	31	22.6
		BANCO DE VALENCIA, S.A.	–	1	–	1	0.0
		BARCLAYS BANK, S.A.	–	–	1	1	0.0
12. IBERCAJA BANCO, S.A.	12.5	IBERCAJA BANCO, S.A.	1	2	4	7	14.3
		BANCO GRUPO CAJATRÉS, S.A.	–	–	1	1	0.0
13. CATALUNYA BANC, S.A.[1]	0.0	CATALUNYA BANC, S.A.	–	3	5	8.0	0.0
14. BANCOPOPULAR-E, S.A.[2]	0.0	BANCOPOPULAR-E, S.A.	–	2	11	13.0	0.0
15. BANKINTER, S.A.	0.0	BANKINTER, S.A.	–	–	16	16.0	0.0
16. ABANCA CORPORACIÓN BANCARIA, S.A.	–	ABANCA CORPORACIÓN BANCARIA, S.A.	–	–	–	–	–
Other entities (*)	51.1		23	12	10	45.0	51.1
General total	**45.8**		**143**	**91**	**78**	**312**	**45.8**

(1) CATALUNYA BANC, S.A. provided investment services until 9 September 2016, the date on which it ceased its activity due to the merger by acquisition by BANCO BILBAO VIZCAYA ARGENTARIA, S.A.

(2) BANCOPOPULAR-E, S.A. provided investment services until 23 May 2016, the date on which it transferred its activity to BANCO POPULAR ESPAÑOL, S.A.

(*) 48 entities with fewer than eight complaints.

Source: CNMV.

2.4 Information provided by the entities

Prior to preparing this Complaints Report, information was requested from the Customer Service Departments of the supervised entities on two groups of issues in order to reveal the efforts made by entities to resolve their clients' problems, thus obtaining information on the work actually performed by these departments. These two groups of issues were as follows:

i) Information relating to the actions of Customer Service Departments when a complaint is filed by a client prior to said complaint being filed with this Complaints Service. The aim of this information is to analyse how Customer Service Departments act in response to their clients at first instance.

ii) Information related to the actions of the Customer Service Departments once the complaint of their client has already been filed with the CNMV's Complaints Service. The aim of this information is to discover whether it is usual or not for investors to use this second instance in order to have their complaints resolved.

The information provided by the entities' Customer Service Departments is analysed in detail below.

In this regard, it should be noted that the information provided and the subsequent analysis performed aim to offer an approximate overview of the actions carried out by entities' Customer Service Departments. However, given that it is not possible to know whether the entities use the same criteria to obtain and provide the requested information, the data and results obtained must be viewed with some caution.

In that regard, it must firstly be indicated that all the entities have answered our request for information except for ING Bank NV, Sucursal en España and Self Trade Bank, S.A.

Based on the information provided by the entities, we have been able to note the following:

– The Customer Service Departments that received most complaints in 2016 were those of Bankia, S.A. (4,209 complaints), followed by Banco Santander, S.A. (2,644), Banco Bilbao Vizcaya Argentaria, S.A. (1,663) – to which we should add 366 complaints corresponding to Catalunya Banc, S.A. and 24 to Unoe Bank, S.A. – and Banco Sabadell, S.A. (850). The other entities are well below these figures.

– It can also be seen that the number of investors who make use of the entity's Customer Ombudsman is not very high. Noteworthy among these were the 248 complaints received by the Customer Ombudsman of Caixabank, S.A., which accounts for over 42% of all complaints received (the Customer Service Department of Caixabank, S.A. registered 340 complaints). The Customer Ombudsman that received the second highest number of complaints is that of BBVA with 144, although these complaints only accounted for 7.97% of the total complaints received by the entity.

– Finally, it should be indicated that the number of complaints processed by entities' Customer Service Departments in 2016 and with regard to which the

entities are aware that a complaint was filed with the CNMV's Complaints Service is very low, only 4%, except for some exemptions of little importance due to the volume of complaints they receive: Activotrade Valores, AV, S.A. (7 out of 7) and Banca March, S.A. (3 out of 6).

However, this fact – which is striking given that the number of complaints received or processed by the Complaints Service in 2016 is much higher than the number reported by entities – may make sense since it is fairly common for complainants, after having received a response from the Customer Service Department, to take some time before deciding to file a complaint with the CNMV's Complaints Service. This means that the complaints processed with the CNMV in 2016 might relate to incidents resolved by the entities' Customer Service Department or Customer Ombudsman in 2016 and those resolved in prior years, which would explain the difference in the figures.

Once the complaint has been filed with the Customer Service Department of the corresponding entity, the department must decide if it meets all the requirements to be admitted.

In this regard, based on the information provided by entities, the following conclusions may be reached – in any event, it must be taken into account that the data obtained take as their starting point that the non-admissions reported referred to complaints filed in 2016, while it is possible that in 2016 complaints were rejected that were filed at the end of 2015:

– Most of the complaints that were not admitted correspond to the Customer Service Departments of those entities that received the most complaints. This list is headed by Bankia, S.A. (1,170 non-admissions), followed by Banco Santander, S.A. (248) and BBVA, S.A. (231). However, although the entity with the fourth highest number of complaints received is Banco de Sabadell, S.A., it is not the fourth in terms of the number of non-admissions (124) as this place is occupied by Banco Popular, S.A. (221).

  In addition, there are nine entities whose volume of complaints is not very high and which have not rejected any complaint.

  In short, we can conclude that, in general terms, the number of non-admissions is linked to the number of complaints received by the corresponding Customer Service Department.

– However, if we analyse the percentage of the non-admissions with regard to the number of complaints filed, the data vary substantially.

  In percentage terms, the first place is occupied by Liberbank, S.A., with 30.7% of non-admissions, followed by Banco Castilla-La Mancha, S.A., with 30.4% and by Banco Popular Español, S.A., with 29.9%.

  For its part, Bankia, S.A. would fall to fifth place, BBVA, S.A. to fourteenth and Banco Santander, S.A. to seventeenth.

Complaints filed relating to the securities market

TABLE 17

ENTITY	No. of complaints on securities market issues received in 2016			Number of complaints received by the CNMV's Complaints Service in 2016	%*
	By the CSD	By CO	By the CSD and/or CO		
ABANCA CORPORACIÓN BANCARIA, S.A.	375	–	375	14	3.7
ACTIVOTRADE VALORES, AGENCIA DE VALORES, SOCIEDAD ANÓNIMA	7	–	7	7	100.0
ANDBANK ESPAÑA, S.A.	135	–	135	7	5.2
BANCA MARCH, S.A.	5	1	6	3	50.0
BANCO BILBAO VIZCAYA ARGENTARIA, S.A.	1,663	144	1,807	111	6.1
CATALUNYA BANC, S.A.	366	–	366	4	1.1
UNOE BANK, S.A.	24	–	24	4	16.7
BANCO DE CAJA ESPAÑA DE INVERSIONES, SALAMANCA Y SORIA, S.A.	331	–	331	13	3.9
BANCO DE CASTILLA-LA MANCHA, S.A.	23	–	23	2	8.7
BANCO DE SABADELL, S.A.	850	11	861	29	3.4
BANCO MARE NOSTRUM, S.A.	47	–	47	5	10.6
BANCO MEDIOLANUM, S.A.	50	–	50	3	6.0
BANCO PASTOR, S.A.U.	68	–	68	4	5.9
BANCO POPULAR ESPAÑOL, S.A.	738	–	738	52	7.0
BANCO SANTANDER, S.A.	2,644	55	2,699	88	3.3
BANKIA, S.A.	4,209	–	4,209	61	1.4
BANKINTER, S.A.	306	37	343	36	10.5
BNP PARIBAS, SUCURSAL EN ESPAÑA	9	–	9	2	22.2
CAIXABANK, S.A.	340	248	588	55	9.4
CAJA LABORAL POPULAR COOP. DE CRÉDITO	701	–	701	2	0.3
CAJA RURAL DEL SUR, S. COOP. DE CRÉDITO	1	–	1	–	0.0
CAJAMAR CAJA RURAL, SOCIEDAD COOPERATIVA DE CRÉDITO	21	–	21	4	19.0
CAJASUR BANCO, S.A.	22	–	22	4	18.2
DEUTSCHE BANK, SOCIEDAD ANÓNIMA ESPAÑOLA	135	27	162	14	8.6
EVO BANCO, S.A.	59	–	59	4	6.8
GVC GAESCO VALORES, SOCIEDAD DE VALORES, S.A.	15	1	16	2	12.5
IBERCAJA BANCO, S.A.	50	–	50	9	18.0
KUTXABANK, S.A.	205	–	205	4	2.0
LIBERBANK, S.A.	88	–	88	4	4.5
NOVO BANCO, S.A., SUCURSAL EN ESPAÑA	15	–	15	4	26.7
OREY FINANCIAL-INSTITUIÇAO FINANCEIRA DE CRÉTO, S.A., SUCURSAL EN ESPAÑA	3	–	3	2	66.7
POPULAR BANCA PRIVADA, S.A.	18	–	18	1	5.6
RENTA 4 BANCO, S.A.	27	–	27	4	14.8
TARGOBANK, S.A.	30	–	30	2	6.7
UNICAJA BANCO, S.A.	69	–	69	–	0.0
TOTAL	**13,649**	**524**	**14,173**	**560**	**4.0**

(*) Percentage of complaints handled by the Customer Service Department (CSD) or Customer Ombudsman (CO) with regard to which the entity is aware a complaint was filed with the CNMV's Complaints Service in 2016 over complaints relating to securities market issues received in 2016 by the Customer Service Department or Customer Ombudsman.

Source: Data provided by the entities.

Complaints not admitted by entities in 2016 relating to the securities market

TABLE 18

	Customer Service Department			Customer Ombudsman		
	Not admitted	Received	%*	Not admitted	Received	%*
ABANCA CORPORACIÓN BANCARIA, S.A.	18	375	4.8	–	–	–
ACTIVOTRADE VALORES, AGENCIA DE VALORES, SOCIEDAD ANÓNIMA	–	7	0.0	–	–	–
ANDBANK ESPAÑA, S.A.	–	135	0.0	–	–	–
BANCA MARCH, S.A.	1	5	20.0	–	1	0.0
BANCO BILBAO VIZCAYA ARGENTARIA, S.A.	231	1,663	13.9	16	144	11.1
CATALUNYA BANC, S.A.	–	366	0.0	–	–	–
UNOE BANK, S.A.	–	24	0.0	–	–	–
BANCO DE CAJA ESPAÑA DE INVERSIONES, SALAMANCA Y SORIA, S.A.	96	331	29.0	–	–	–
BANCO DE CASTILLA-LA MANCHA, S.A.	7	23	30.4	–	–	–
BANCO DE SABADELL, S.A.	124	850	14.6	–	11	0.0
BANCO MARE NOSTRUM, S.A.	3	47	6.4	–	–	–
BANCO MEDIOLANUM, S.A.	9	50	18.0	–	–	–
BANCO PASTOR, S.A.U.	14	68	20.6	–	–	–
BANCO POPULAR ESPAÑOL, S.A.	221	738	29.9	–	–	–
BANCO SANTANDER, S.A.	248	2,644	9.4	–	55	0.0
BANKIA, S.A.	1,170	4,209	27.8	–	–	–
BANKINTER, S.A.	3	306	1.0	–	37	0.0
BNP PARIBAS, SUCURSAL EN ESPAÑA	–	9	0.0	–	–	–
CAIXABANK, S.A.	7	340	2.1	6	248	2.4
CAJA LABORAL POPULAR COOP. DE CRÉDITO	106	701	15.1	–	–	–
CAJA RURAL DEL SUR, S. COOP. DE CRÉDITO	–	1	0.0	–	–	–
CAJAMAR CAJA RURAL, SOCIEDAD COOPERATIVA DE CRÉDITO	2	21	9.5	–	–	–
CAJASUR BANCO, S.A.	–	22	0.0	–	–	–
DEUTSCHE BANK, SOCIEDAD ANÓNIMA ESPAÑOLA	25	135	18.5	2	27	7.4
EVO BANCO S.A.	1	59	1.7	–	–	–
GVC GAESCO VALORES, SOCIEDAD DE VALORES, S.A.	–	15	0.0	–	1	0.0
IBERCAJA BANCO, S.A.	1	50	2.0	–	–	–
KUTXABANK, S.A.	3	205	1.5	–	–	–
LIBERBANK, S.A.	27	88	30.7	–	–	–
NOVO BANCO, S.A., SUCURSAL EN ESPAÑA	1	15	6.7	–	–	–
OREY FINANCIAL-INSTITUIÇAO FINANCEIRA DE CRÉDITO, S.A., SUCURSAL EN ESPAÑA	–	3	0.0	–	–	–
POPULAR BANCA PRIVADA, S.A.	3	18	16.7	–	–	–
RENTA 4 BANCO, S.A.	3	27	11.1	–	–	–
TARGOBANK, S.A.	6	30	20.0	–	–	–
UNICAJA BANCO, S.A.	–	69	0.0	–	–	–
TOTAL	**2,330**	**13,649**	**17.1**	**24**	**524**	**4.6**

(*) Percentage of complaints received over those that were not admitted.

Source: Data provided by the entities.

– Finally, with regard to the complaints filed with the entities' Customer Ombudsman, only in three entities were any complaints not admitted: specifically, BBVA, S.A., whose percentage of non-admissions stands at 11.11%; Deutsche Bank, S.A.E., with a percentage of 7.41%; and Caixabank, S.A. with only 2.42% of non-admissions.

With regard to the results obtained by the complainants, whether favourable or unfavourable, in the resolution of complaints admitted by the entities' Customer Service Department, the data reveal that:

– Following the aforementioned trend, the Customer Service Departments that resolved most complaints were those of Banco Santander, S.A. (2,328 complaints), followed by BBVA, S.A. (1,394) – to which it would be necessary to add 368 complaints corresponding to Catalunya Banc, S.A. and 26 relating to Unoe Bank, S.A. – Bankia, S.A. (883) and, interestingly, Caja Laboral Popular Cooperativa de Crédito (669). Banco Popular, S.A. and Banco Sabadell, S.A. would occupy the fifth and sixth positions with 536 and 500 complaints resolved, respectively.

– However, in this case it is striking to note the distribution of percentages with regard to the total number of complaints processed between those which were favourable and those unfavourable to the complainant:

  The Customer Service Departments of the entity with the highest percentage of complaints favourable to its clients is that of Evo Banco, S.A. with 78.3%, followed by BNP Paribas, Sucursal en España, with 66.7% and by Unoe Bank, S.A. (an entity currently integrated into BBVA, S.A.), with 61.5%.

  For its part, BBVA, S.A. would be in fourth place, with 56.2% of reports issued in favour of its clients; Banco Sabadell, S.A. would occupy the seventeenth place, with 26.6 %; Bankia, S.A. the twentieth position with 21.4 %; Banco Santander, S.A., the twenty-first, with 20%; and Banco Popular Español, S.A. the twenty-second, with 18.7%.

– The Customer Ombudsman that resolved most complaints is that of Caixabank, S.A. (197 complaints), followed by BBVA, S.A. (121). With a lower number of resolutions, we can find the Ombudsman of Banco Santander, S.A. (53 complaints), that of Bankinter, S.A. (35), that of Banco Sabadell, S.A. (27), that of Deutsche Bank, S.A.E. (19) and those of Banca March, S.A. and GVC Gaesco Valores, SV, S.A. (1 complaint).

  As to which of them has issued, in percentage terms, the highest number of resolutions favourable to the complainants, the top position would be occupied by the Ombudsman of Deutsche Bank, S.A.E., with 47.4%, followed by the Ombudsman of Banco de Sabadell, S.A., with 44.4%; that of Banco Santander, S.A., with 41.5%; that of BBVA, S.A., with 37.2%; that of Bankinter, with 22.9%; and that of Caixabank, S.A., with only 6.3% of favourable reports.

Complaints submitted and resolved by entities in 2016 relating to the securities market

TABLE 19

	Customer Service Department			Customer Ombudsman		
	Favourable	Unfavourable	%*	Favourable	Unfavourable	%*
ABANCA CORPORACIÓN BANCARIA, S.A.	92	214	30.1	–	–	–
ACTIVOTRADE VALORES, AGENCIA DE VALORES, SOCIEDAD ANÓNIMA	2	5	28.6	–	–	–
ANDBANK ESPAÑA, S.A.	56	49	53.3	–	–	–
BANCA MARCH, S.A.	2	4	33.3	1	–	100.0
BANCO BILBAO VIZCAYA ARGENTARIA, S.A.	783	611	56.2	45	76	37.2
CATALUNYA BANC, S.A.	194	174	52.7	–	–	–
UNOE BANK, S.A.	16	10	61.5	–	–	–
BANCO DE CAJA ESPAÑA DE INVERSIONES, SALAMANCA Y SORIA, S.A.	18	182	9.0	–	–	–
BANCO DE CASTILLA-LA MANCHA, S.A.	1	9	10.0	–	–	–
BANCO DE SABADELL, S.A.	133	367	26.6	12	15	44.4
BANCO MARE NOSTRUM, S.A.	4	35	10.3	–	–	–
BANCO MEDIOLANUM, S.A.	13	28	31.7	–	–	–
BANCO PASTOR, S.A.U.	7	47	13.0	–	–	–
BANCO POPULAR ESPAÑOL, S.A.	100	436	18.7	–	–	–
BANCO SANTANDER, S.A.	466	1,862	20.0	22	31	41.5
BANKIA, S.A.	189	694	21.4	–	–	–
BANKINTER, S.A.	73	221	24.8	8	27	22.9
BNP PARIBAS, SUCURSAL EN ESPAÑA	6	3	66.7	–	–	–
CAIXABANK, S.A.	34	227	13.0	13	194	6.3
CAJA LABORAL POPULAR COOP. DE CRÉDITO	17	652	2.5	–	–	–
CAJA RURAL DEL SUR, S. COOP. DE CRÉDITO	–	1	0.0	–	–	–
CAJAMAR CAJA RURAL, SOCIEDAD COOPERATIVA DE CRÉDITO	1	15	6.3	–	–	–
CAJASUR BANCO, S.A.	5	13	27.8	–	–	–
DEUTSCHE BANK, SOCIEDAD ANÓNIMA ESPAÑOLA	44	74	37.3	9	10	47.4
EVO BANCO S.A.	47	13	78.3	–	–	–
GVC GAESCO VALORES, SOCIEDAD DE VALORES, S.A.	–	15	0.0	–	1	0.0
IBERCAJA BANCO, S.A.	8	40	16.7	–	–	–
KUTXABANK, S.A.	29	132	18.0	–	–	–
LIBERBANK, S.A.	9	31	22.5	–	–	–
NOVO BANCO, S.A., SUCURSAL EN ESPAÑA	7	6	53.8	–	–	–
OREY FINANCIAL INSTITUIÇAO FINANCEIRA DE CRÉDITO, S.A., SUCURSAL EN ESPAÑA	1	2	33.3	–	–	–
POPULAR BANCA PRIVADA, S.A.	3	12	20.0	–	–	–
RENTA 4 BANCO, S.A.	24	21	53.3	–	–	–
TARGOBANK, S.A.	4	16	20.0	–	–	–
UNICAJA BANCO, S.A.	20	26	43.5	–	–	–
TOTAL	**2,408**	**6,247**	**27.8**	**110**	**354**	**23.7**

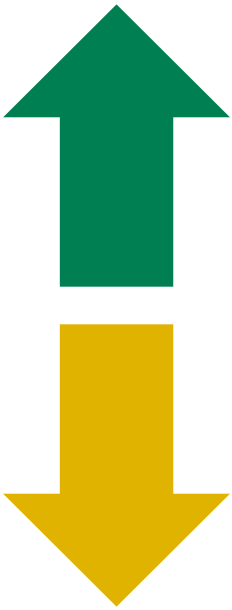
(*) Percentage of complaints favourable to the complainant in relation to the total number of resolved complaints (i.e., both favourable and unfavourable to the complainant).

Source: Data provided by the entities.

2.5 Procedures with other CNMV directorates, departments and units

The Complaints Service works closely with other CNMV directorates, departments and units.

Firstly, it receives requests for information on certain complaints and respondent entities from other CNMV departments or units. The Complaints Service responds to these requests with reports prepared for this purpose which include detailed information on the requested issues. In particular, in 2016 it responded to 27 requests for information, of which 9 were sent to the CIS and Venture Capital Firm Supervision Department, 9 to the Investment Firm and Credit and Savings Institution Supervision Department, 8 to the Litigation Unit and 1 to the Legal Affairs Unit.



Responses from the Complaints Service to requests from other departments or units:

- CIS and Venture Capital Firm Supervision Department (9)
- Investment Firm and Credit and Savings Institution Supervision Department (9)
- Litigation Unit (8)
- Legal Affairs Unit (1)

Information requested or forwarded to other directorates or departments at the initiative of the Complaints Service:

- Entities Directorate-General (2)
- Entity Authorisation and Registration Department (2)
- Investment Firm and Credit and Savings Institution Supervision Department (2)
- General Secretariat (1)
- Markets Directorate-General (1)

In addition, the Complaints Service sometimes needs information from other directorates-general or departments for proper resolution of the proceedings. Similarly, if required as a result of the actions performed, the Complaints Service must forward to the corresponding supervision services those proceedings in which there are signs of serious or reiterated non-compliance or breaches of rules on transparency and investor protection.

The Complaints Service requested or forwarded information on its own initiative on 8 occasions, with the recipients being the Entities Directorate-General (2), the Entity Authorisation and Registration Department (2), the Investment Firm and Credit and Savings Institution Supervision Department (2), the General Secretariat (1) and the Markets Directorate-General (1).

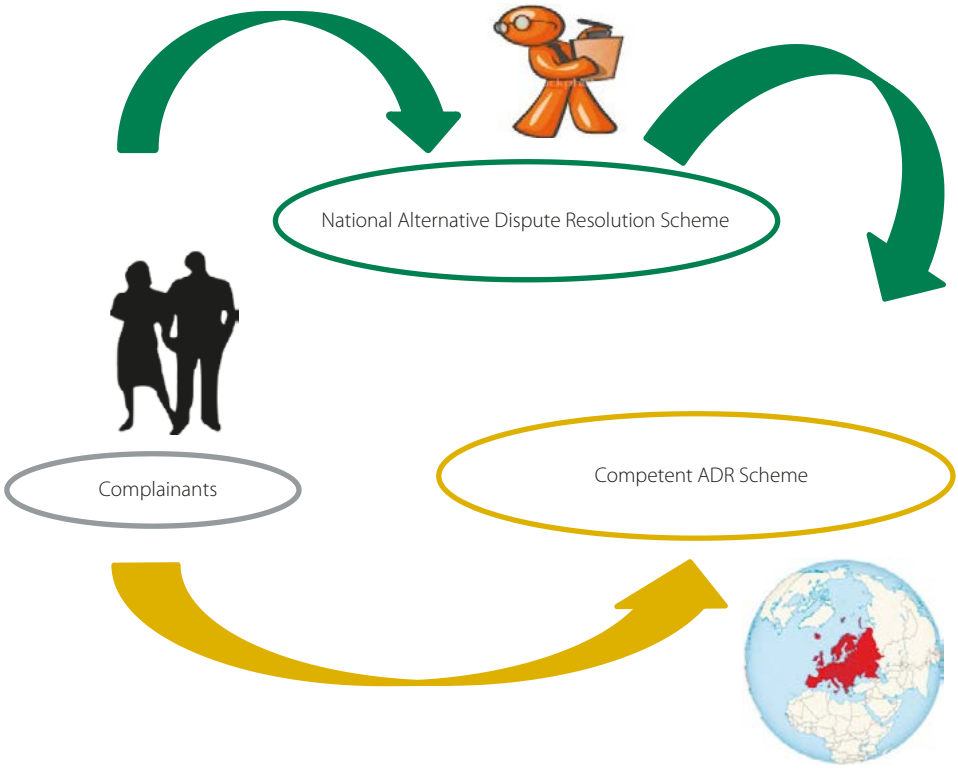
2.6 International cooperation mechanisms

2.6.1 Financial Dispute Resolution Network (FIN-NET)

The Financial Dispute Resolution Network (FIN-NET) is a network for the out-of-court resolution of cross-border disputes between consumers and financial service

providers in the European Economic Area (EEA).[3] FIN-NET owes its existence to European 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 so investment service users can channel any complaints they wish to direct against providers in another country within the EEA. The CNMV joined FIN-NET in 2008 and the organisation currently has 58 members drawn from 25 countries.

Any resident of an EEA country wishing to complain about a foreign provider with its domicile elsewhere within the area can approach the 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. The consumer 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.



A new version of the FIN-NET website has recently been published[4] in order to help consumers search for information in order to file a complaint and have a better understanding of the network and to make enquiries to the members of each country.

Similarly, a promotional campaign to promote the FIN-NET network has been started through a promotional video and a new logo.

FIN-NET members undertake to comply with a Memorandum of Understanding (MoU), which sets out the mechanisms and conditions for cooperation so as to facilitate the resolution of cross-border disputes. Although the provisions of the

3 Formed by the 28 countries of the European Union plus Iceland, Liechtenstein and Norway.

4 https://ec.europa.eu/info/business-economy-euro/banking-and-finance/consumer-finance-and-payments/consumer-financial-services/financial-dispute-resolution-network-fin-net_en.

memorandum are not legally binding for the parties, the CNMV, as a member of FIN-NET, has undertaken to comply with them. The document was revised in May in order to adapt it to the ADR Directive.[5]

➢ Plenary meetings

FIN-NET meets twice a year, mainly to inform on the regulatory developments of the European Union in the area of alternative dispute resolution[6] and financial services, on the regulatory developments specific to each Member State, and on developments that affect their respective areas of alternative dispute resolution and to exchange and share specific examples of complaints, both at national and cross-border levels.

The CNMV's Complaints Service participated in the two plenary meetings that took place in 2016, specifically in Brussels in April and in Berlin in September.

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

Even though it is information corresponding to the current year, it has been considered appropriate to mention, due to its importance, in this Complaint Report that the Investors Department has joined the International Network of Financial Services Ombudsman Schemes (INFO Network).

This network was set up in 2007 with the broad aim of working together in developing dispute resolution, exchanging experiences and information in areas including schemes, functions and governance models, codes of conduct, use of information technology, handling of systemic issues, cross-border referral of complaints and staff training and continuing education.

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

2.6.3 Cross-border complaints

In 2016, the CNMV's Complaints Service received a total of 54 complaints in which the complainant or the respondent entity were established abroad, broken down as follows:

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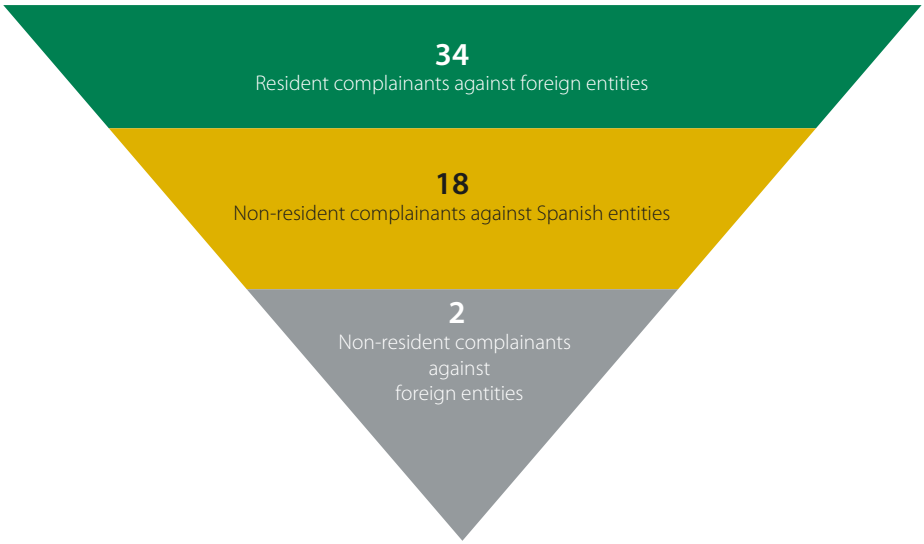
5 Directive 2013/11/EU, of 21 May 2013, on alternative dispute resolution for consumer disputes and amending Regulation (EC) No. 2006/2004 and Directive 2009/22/EC.

6 An alternative dispute resolution or ADR entity is understood to mean any body or department that resolves complaints between investors and investment service providers without recourse to the courts.



Residents in Spain submitted complaints against foreign entities based in the European Union in 34 cases. Given that the CNMV's Complaints Service is not competent to process the complaint, it provided information on the bodies responsible for resolving out-of-court complaints in the countries where the companies were established. In the 14 complaints against entities established in member countries of FIN-NET, the complainant was also offered the possibility of the CNMV's Complaints Service forwarding the complaint to the competent body, which complainants made use of in four cases. Of the 20 complaints against entities established in countries that are not members of FIN-NET, 19 referred to entities located in Cyprus.

Sixteen residents in other countries of the European Union and two residents outside the European Union submitted requests for the opening of complaint proceedings against entities established in Spain. Six of these complaints were not admitted for the following reasons: as over six years had elapsed from the time of the incidents to the filing of the first corresponding complaint (one case), as no evidence was presented relating to a prior complaint filed with the entity's Customer Service Department (three cases) and as a result of falling under the competence of the Complaints Services of the Bank of Spain (one case) or the Directorate-General for Insurance and Pension Funds (one case). The twelve remaining complaints were admitted and resolved with a final reasoned report: favourable to the complainant in six cases and unfavourable to the complainant in six cases.

Finally, two complaints from complainants with residence in Belgium and in Peru were processed against entities located in Switzerland and in Cyprus, respectively. In both cases, information was provided on the foreign bodies that could be contacted in order to process the corresponding complaint.

2.7 Enquiries

The CNMV's Investors Department handles investor enquiries on topics of general interest concerning the rights of financial service users and the legal channels available to defend them. These requests for information and advice are dealt with in Article 2.3 of Order ECC/2502/2012, of 16 November, regulating the procedure for filing complaints with the Complaints Services of the Bank of Spain, the National Securities Market Commission and the Directorate-General for Insurance and Pension Funds.

In addition to the enquiries provided for in the aforementioned Order ECC/2502/2012, the Investors Department supports investors in searching for the information contained in the CNMV's public official registers and in other public documents it makes available, and addresses any issues or doubts investors may raise relating to securities markets.

It will also respond to written communications which are not enquiries as such, but which set forth opinions, complaints or proposals on matters within the CNMV's supervisory remit.

Professional enquiries are also received requesting advice on specific issues affecting other areas of the CNMV. In these cases, either the enquiry is forwarded to the competent department depending on the matter in question, informing the interested party, or the interested parties are informed that the Investors Department only handles enquiries submitted by investors or users of financial services. In the latter case, they are in turn informed that, for professional issues, they should contact the relevant department of the CNMV, indicating the details of the transaction and identifying all the parties involved.

Finally, the Department passes on any written communications that are addressed to the CNMV but whose content places them outside its area of competence. These tend to be enquiries about banking products and/or services, or about insurance or pension funds. In such cases, the CNMV forwards the communications to the competent supervisory body, informing the sender accordingly. Another set of enquiries outside the CNMV's remit concerns tax-related matters, in which case the interested party is directed to the competent tax authority.

2.7.1 Volume and channels of enquiries

The CNMV dealt with 8,028 enquiries in 2016. Most of the enquiries were made by telephone (81.2%) and were dealt with by the operators of the call centre. These enquiries were limited to providing information contained in the CNMV's official public registers or posted on its website (www.cnmv.es). The second most used method was the virtual office (14.7%) followed by ordinary post or submission through a general register (4.1%).

As shown in Table 20, the total number of enquiries dealt with by the CNMV fell by 9.5% on 2015. This reduction was mainly the result of the lower number of telephone enquiries (460 fewer than in 2015) and in turn the reduction both in enquiries received by ordinary mail or submitted through the general register (182 fewer than in 2015) and in enquiries received through the virtual office (197 fewer than in 2015).

Following the significant increase in enquiries submitted in 2012 and 2013, mainly as a result of doubts and complaints from investors on the marketing of preference shares and subordinated debt, and as a result of the uncertainties arising from the swap or buyback processes of certain hybrid instruments, as well as the arbitration processes of entities owned by the Fund for Orderly Banking Restructuring (Spanish acronym: FROB) carried out in 2014, 2015 and 2016, the figures have returned to the values recorded prior to 2012. However, in 2015 there was a slight increase in enquiries resulting from the impact on affected parties of the bankruptcy situation of Banco de Madrid, S.A., which explains the high number of enquiries in that year.

With regard to response times, excluding enquiries received by telephone, which are dealt with on the same day, the average for 2016 stood at ten calendar days.

Number of enquiries by channel TABLE 20

	2014		2015		2016		% change
	No.	% / total	No.	% / total	No.	% / total	2016/2015
Telephone	5,307	73.5	6,974	78.7	6,514	81.1	-6.6
Written	397	5.5	512	5.8	331	4.1	-35.4
Form/Virtual Office	1,517	21.0	1,380	15.6	1,183	14.7	-14.3
Total	**7,221**	**100.0**	**8,866**	**100.0**	**8,028**	**100.0**	**-9.5**

Source: CNMV.

The channels available for submitting enquiries to the CNMV are:

– Electronically through the CNMV website (www.cnmv.es), or virtual office, using a certificate or electronic ID, or creating a user name and password.

– By writing to the CNMV's Investors Department, at C/ Edison, 4 - 28006 Madrid.

  A form is available for this purpose at www.cnmv.es, in the "Enquiries" section of the "Investors' website", in accordance with the template included in Annex III of CNMV Circular 7/2013, of 25 September, regulating procedures on the resolution procedure for claims and complaints against companies that provide investment services and for addressing enquiries in the field of the securities market.

– Through the investor helpline. This line is manned by call centre operators, and is confined to enquiries about information held in the CNMV's official registers or posted on its website (www.cnmv.es).

  It should be noted that a new telephone number has been enabled in 2017 to deal with enquiries totally free of charge: 900 535 015.

It is important to point out that the email mailbox serviciodeclamacionesCNMV@cnmv.es is in no case authorised to admit new enquiries for processing, but only deals with formal issues relating to previously filed complaints or enquiries, in accordance with the appropriate procedures. Complainants or enquirers must identify themselves and provide the reference number assigned to the complaint or enquiry.

2.7.2 The subjects of enquiries

Investors enquired about a variety of market-related matters and events, of which the following in particular stand out:

– Enquiries relating to the decision of Bankia, S.A. to return the investments made by minority shareholders in its stock exchange flotation.

– As in 2015, the CNMV dealt with doubts and incidents relating to Cypriot investment firms registered in the official CNMV registers under the free provision of services (i.e., without a permanent establishment in Spain).

– Enquiries relating to binary options, contracts for differences (CFDs) and other speculative products aimed at small investors, a large percentage of which are advertised through online platforms.

– Enquiries relating to the modification of the calculation of commissions for securities transfers.

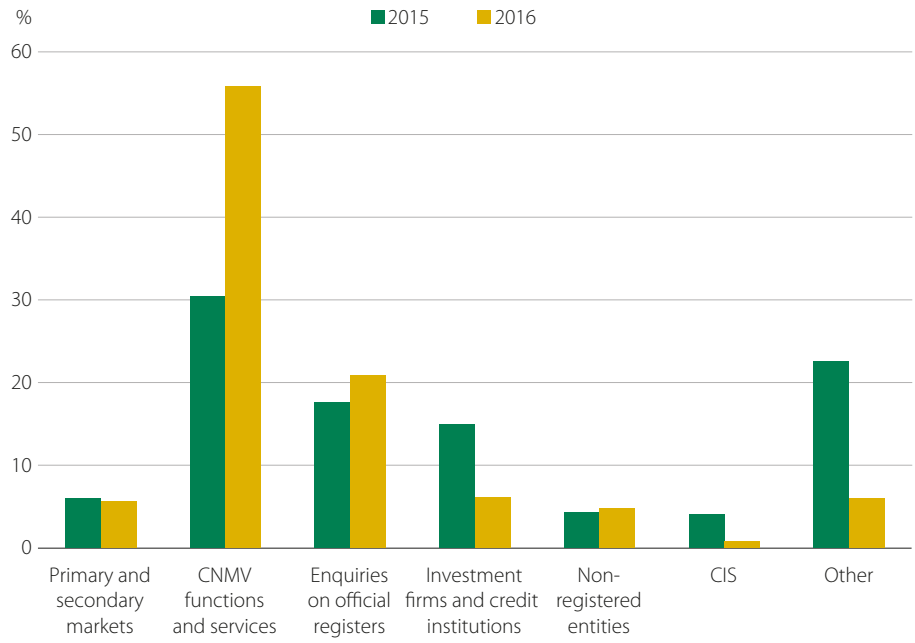
– Enquiries and complaints relating to takeover bids authorised by the CNMV during 2016. Specifically, relating to the takeover bids launched for Realia Business, S.A., Fomento de Construcciones y Contratas, S.A., Inverfiatc, S.A., Fersa Energías Renovables, S.A., and Cementos Portland Valderrivas, S.A.

– Enquiries regarding administration and custody fees relating to suspended and delisted securities.

– Enquiries about the requirements necessary to set up a crowdfunding platform following approval of Law 5/2015, of 27 April, on the promotion of business financing; and those relating to financial technology (FinTech).

Other enquiries recurring each year refer to the data available in our official registers: information on registered entities, fees for investment services, significant events, short positions, significant shareholdings, CNMV communications, statistics and publications and other content freely accessible to the public. In addition, and as in other years, there were enquiries about the functions and services of the CNMV. The call centre has also provided interested parties with telephone numbers and contact details of other bodies in the event that the issues raised do not fall under the responsibility of the CNMV (these enquiries are catalogued under the heading of "Other").

Enquiries by subject FIGURE 26



Source: CNMV.

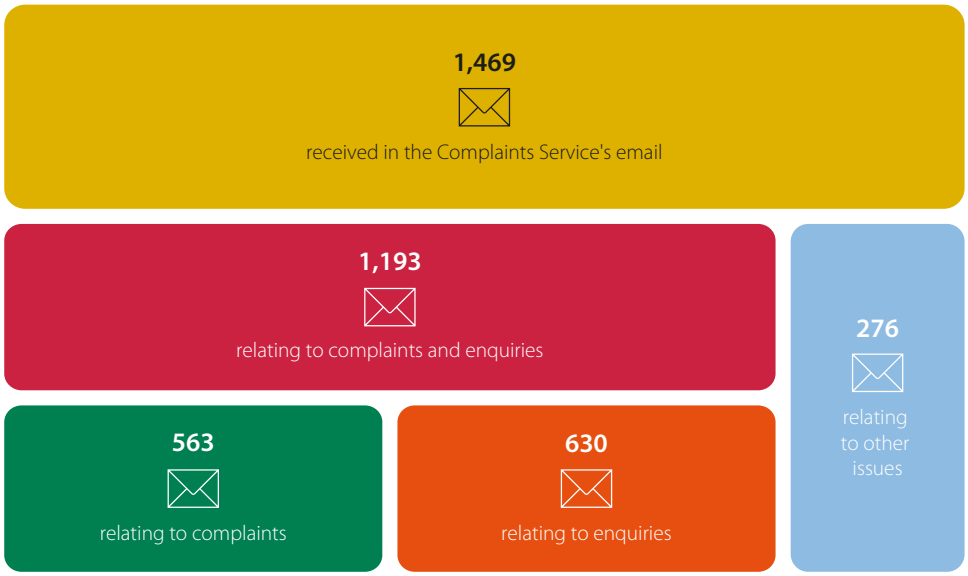
2.8 Electronic mailbox to address issues relating to complaints and enquiries filed

The Complaints Service provides investors with an email address (servicioderecla-macionesCNMV@cnmv.es) to deal exclusively with issues related to complaints or enquiries filed with the Complaints Service through officially established procedures. Consequently, only the emails sent by the investor identifying the complainant or enquirer, together with the number of the complaint or enquiry for which information is requested, will be answered. The functioning of this mailbox can be found in the "Contact" section on the CNMV's website.

Nevertheless, investors often submit new enquiries or complaints to the aforementioned email address, which therefore do not refer to cases that have already been filed. In these cases, the Complaints Service directs investors to the official channels for the filing of complaints and enquiries so that they may begin, should they so desire, the corresponding proceedings in accordance with the procedure established for this purpose.

On other occasions, emails are received referring to issues related to enquiries and complaints and, therefore, they would exceed the scope of competences attributed to the CNMV's Complaints Service.

The data on the emails received by the Complaints Service, as well as their breakdown according to content, are shown below:



2.9 Warnings about unauthorised firms

Warnings to investors are published on the CNMV's website (www.cnmv.es) about natural or legal persons that perform activities for which they are not authorised detected by the CNMV and by other supervisory bodies.

The following warnings were issued in 2016 (see Annex 1):

– 35 warnings (38 in the previous year) on natural and legal persons and websites were issued under Article 17 of the Securities Market Act, which entrusts

the CNMV with protecting investors by disseminating any information necessary to that end, and under Article 144 of the Securities Market Act, which establishes that the CNMV is the competent body to issue requirements to all persons or entities which, without having obtained the mandatory authorisation and without being registered in the corresponding administrative registries, perform, on a professional basis, the activities reserved for investment firms or which use the names that are also reserved for said firms, in order that they should immediately cease using said names or offering or performing those activities, with the CNMV able to issue public warnings with respect to said conduct.

– 424 warnings (212 in the previous year) were received, mainly from supervisors in Member States of the European Union in connection with unauthorised firms, and 17 others were included under the heading "Other warnings", with alerts relating to improper conduct or actions.

  The increase in these warnings compared with the previous year was the result of the CNMV issuing an individualised notification for each one of the unauthorised firms included in the notifications that some supervisory bodies make on a joint basis covering several firms.

This change in how the CNMV disseminates the notifications received from other supervisory bodies compared with the previous years has optimised background searches by entity, given that the joint notifications on unauthorised firms meant that it was not possible to individually locate firms directly through the CNMV's website.

Since 2010, the IOSCO website provides an alerts service about unauthorised firms which includes alerts issued by members of this organisation.

Given that not all the warnings issued by IOSCO members are in turn reported to the CNMV, the CNMV recommends visiting the corresponding section on unauthorised entities on the IOSCO website[7] in order to obtain further information.

7 http://www.iosco.org/investor_protection/?subsection=investor_alerts_portal.

3 Criteria applied in the resolution of complaints

3 Criteria applied in the resolution of complaints

The criteria used by the CNMV's Complaints Service for resolving complaints in 2016 are listed below.

The criteria set out in this chapter have been applied on the basis of the specific facts and circumstances brought to light and demonstrated by the parties during the processing of each one of the complaint proceedings in 2016. Their future application will therefore depend on whether the facts or circumstances revealed in new complaints are similar or analogous to those recorded this year.

3.1 Marketing / simple execution

➢ Appropriateness assessment

The law[8] establishes that when providing order execution, receipt and transmission services for clients, the investment firm must request that the clients (including, as the case may be, potential clients) provide information on their knowledge and experience in the area of investment relating to the specific type of product or service offered or requested so that the entity may assess whether said product or service is appropriate for the clients.[9] This is referred to as the "appropriateness test".

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

The scope[10] of the analyses to be carried out by the entities, to the extent that they are appropriate to the nature of the client, to the nature and scope of the service to be provided or to the intended type of product or transaction, including the complexity and the inherent risks, covers the following items:

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

8 Law 47/2007, of 19 December, amending the Securities Market Act 24/1988, of 28 July, published in the *BOE* (Official State Gazette) on 20 December 2007.

9 Article 214 of Royal Legislative Decree 4/2015, of 23 October, approving the recast text of the Securities Market Act.

10 Article 74 of Royal Decree 217/2008, of 15 February, on the legal regime of investment firms and other entities that provide investment services.

– The nature, volume and frequency of the client's transactions in financial instruments and the period over which they have been performed (prior investment experience).

– The level of studies, current profession and, as the case may be, previous professions of the client which may be relevant (education and professional experience).

Entities may carry out the analysis of appropriateness either through an appropriateness test or evaluation, which must include a series of questions with the aforementioned scope, or based on the information that the entity has relating to the client. In this regard, entities have the right to trust the information provided by the client unless they know or should know that the information is out-of-date or is incomplete or inaccurate.

In any event, when the entity believes that the product is not appropriate for its client based on the information obtained, it must inform the client. Similarly, if the client does not provide the requested information or the information provided is insufficient, the entity shall inform him/her that it is impossible to conclude whether or not the product is appropriate.

➢ The entity shall submit a copy of the assessment

Nevertheless, the entity's obligation is not only to assess the investment knowledge and experience of their client through the test performed for this purpose or the prior information that it holds on the client, but it must also submit to the client a copy of the document recording the evaluation undertaken.

In complaint R/379/2016, an incorrect action of the entity was detected as it did not include the results of the assessment in the appropriateness questionnaire signed by the client and performed for this purpose. For its part, in complaint R/529/2016, even though the complainant was assessed with an appropriateness test on several occasions and the entity had sufficient information to demonstrate the complainant's prior investment knowledge and experience, the entity was unable to provide evidence that it had submitted the document including the evaluation performed to the complainant.

➢ The entity shall provide evidence that it analysed appropriateness

In order to be able to provide evidence of the assessment of the appropriateness of the product or service for the client, entities must keep a copy of the submitted assessment document signed by the client, which must include both the results of the assessment and the date of submission to the client. Said submission must be made either through the register of electronic communication with the client or through any other means through which it can be reliably demonstrated that the communication took place.

Furthermore, the appropriateness test or questionnaire must: i) be duly completed, without containing any defects in form; ii) be properly signed by the owner or by the joint owner with most knowledge, or by the ordering party or authorised party; iii) record the date of the assessment; and iv) be in force at the time the transaction

is performed. The absence of any of these elements might, in principle, invalidate the assessment performed.

In order to provide evidence that the appropriateness test or questionnaire was performed, entities generally provide a duly signed copy of the assessment together with the result. This result is usually contained in the questionnaire itself, although in some cases it is included in a separate attached document or in the product purchase or subscription order, which usually includes, where appropriate, the warning on the inappropriateness of the product (R/88/2016, R/97/2016 and R/145/2016).

On those occasions in which financial institutions do not provide a copy of the appropriateness test or questionnaire or in which, even though they do so, the name of the assessed client, the assessment date or the signature are not included, the action of the entity is deemed to be incorrect (R/206/2016, R/235/2016, R/398/2016, R/400/2016, R/451/2016 and R/694/2015).

In complaint R/745/2015, the entity provided a document, duly signed by the complainant, which recorded the appropriateness assessment of the product with a positive result. However, the date of this document was subsequent to the date the product was contracted. In situations of this type, it must be considered that there is a formal irregularity as, even though the document provided may demonstrate the appropriateness of the product for the client, the fact is that the legislation requires that appropriateness be assessed prior to acquisition of the product and not subsequently, which was not duly demonstrated by the entity.

In other cases, the entities did not provide evidence that they had collected information on the complainant's investment knowledge and experience (R/880/2015 and R/44/2016) or, having collected the information and reached the conclusion that the product was not appropriate for the client, they did not inform the client (R/416/2016).

➢ Greater obligations relating to the appropriateness assessment

CNMV Circular 3/2013, of 12 June, on the implementation of certain obligations regarding information provided to clients of investment services was published in the *BOE* (Official State Gazette) on 19 June 2013.

This Circular implements the new aspects included in the Securities Market Act relating to the appropriateness and suitability assessment of products and services offered to, or acquired by, investors.

In this regard, the third final provision of Law 9/2012, of 14 November, on the restructuring and resolution of credit institutions, introduced certain amendments to the Securities Market Act, establishing as mandatory some of the recommendations that the CNMV had already communicated as good practice to entities providing investment services. Among changes, Article 79 *bis*(3) of this Law was amended, empowering the CNMV to require that the information submitted to investors prior to acquisition of a securities market instrument and any marketing material should include as many warnings relating to the financial instrument as they consider necessary and, in particular, warnings highlighting the fact that the product is not appropriate for non-professional investors due to its complexity.

The amendments also affected Article 79 *bis*(6) and (7) relating, respectively, to the suitability and the appropriateness evaluation.

In this regard, the following was included in Article 79 *bis*(7) of the Securities Market Act (current Article 214(5) of the recast text) in relation to the appropriateness assessment:

> *In the event that the investment service is provided in relation to a complex instrument, as established in the following section, the contractual document must include, together with the client's signature, a handwritten statement, in the terms set by the CNMV, whereby the investor declares that he/she has been warned that the product is not appropriate for him/her or that it has not been possible to assess the client in the terms of this article.*

This question was defined in Rule Four of the aforementioned Circular, which established the following (emphasis added):

> *If, after performing the assessment, the entity considers that the product or service is not appropriate for the client, it must warn him/her. The warning shall have the following content:*
>
> > *"We hereby inform you that, given the characteristics of this transaction XXX (the transaction must be identified), ZZZ (name of the entity providing the investment services) is obliged to assess the appropriateness of the product for you.*
> >
> > *In our opinion, this transaction is not appropriate for you. A transaction is not appropriate when the client lacks the necessary knowledge and experience to understand the nature and risks of the financial instrument subject to the transaction".*
>
> *When the transaction is performed on a* ***complex instrument****, the entity shall ensure the client signs the above text and includes a handwritten statement indicating:*
>
> > *"This product is complex and is considered inappropriate for me".*
>
> *The warning and handwritten statement will form part of the contractual documentation of the transaction even when formalised in a separate document from the purchase order.*

With regard to the above, in complaint R/519/2016, the complainant stated that Article 79 *bis*(7) of the Securities Market Act was not complied with as the entity did not obtain, together with his/her signature, a handwritten statement declaring that client had been warned that the product was inappropriate for him/her. In this case, the complainant was informed that the period of validity of this new obligation had started on a date much later than the date on which the transaction referred to in the complaint took place.

In this regard, it should be clarified that the "handwritten statement, in the terms set out by the CNMV", referred to in the aforementioned Article 79 *bis*(7) was not specified until Circular 3/2012, of 12 June, and that, in accordance with its transitional provision, entities are not required to collect from their clients the handwritten

statement set out in Rule Four until entry into force of the Circular on 19 August 2013, i.e., two months after its publication in the *BOE* (Official State Gazette).

However, the text of the warnings specified in the Circular is not mandatory for entities until three months following its entry into force, i.e., as from 19 November 2013.

➢ Obligations for entities when the client does not provide information or the information is insufficient

When the client does not provide the entity with the information necessary for the appropriateness assessment or the information is insufficient, the entity will be required to warn the client that his/her decision prevents it from determining whether the investment product or service to be provided is appropriate for the client.

In complaints R/820/2015, R/854/2015, R/876/2015, R/156/2016 and R/505/2016, the entities were deemed to have acted in accordance with the legislation in force by providing a copy of a specific document, duly signed by the complainant, warning that, as a consequence of the failure to complete the appropriateness test, it had not been possible to assess the appropriateness of the product or service. The entities warned of this situation and the nature and risks associated with the product or service.

However, Rule Four of CNMV Circular 3/2013, of 12 June, referred to in the above point, also introduced amendments in this regard, specifically as follows (emphasis added):

> *When the assessment cannot be performed because the client does not provide sufficient information, the entity must warn the client that the lack of information prevents it from determining whether the investment service or product is appropriate for him/her. The warning shall have the following content:*
>
> > *We hereby inform you that, given the characteristics of this transaction XXX (the transaction must be identified), ZZZ (name of the entity providing the investment services) is obliged to assess the appropriateness of the product for you, i.e., to assess whether, in our opinion, you possess the necessary knowledge and experience to understand the nature and risks of the instrument subject to the transaction. By not providing the necessary data to perform such an assessment, you lose this protection established for retail investors. By not performing said assessment, the entity cannot form an opinion with regard to whether or not the transaction is appropriate for you".*
>
> *When the transaction is performed on a* ***complex instrument****, the entity shall ensure the client signs the above text and includes a handwritten declaration stating:*
>
> > *"This is a complex product and as a result of a lack of information, it has not been possible to assess whether it is appropriate for me".*

In this case, the warning and the handwritten statement will also form part of the contractual documentation of the transaction, even when formalised in a separate document from the purchase order.

The entry into force of these new obligations is the same as that described in the preceding point.

➢ Prior investment experience

Prior experience may be sufficient by itself in order to consider the product or service provided as appropriate, providing the following conditions are met:

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

– Two or more prior transactions have been performed.

– No more than five years have elapsed since the financial instruments in question were in the portfolio for non-complex products and no more than three years for complex products.

When the client's prior experience meets the aforementioned requirements, the new transaction is considered appropriate without the need to analyse other factors (education, professional experience and financial knowledge). However, the entity must be able to demonstrate the investment experience that it assesses. Entities may determine their client's prior investment experience based on the information provided in the appropriateness test or assessment by the client him/herself or through the transactions that the client has performed and that the entity was aware of prior to marketing the new product or providing the investment service.

In both cases, the entity must provide evidence of said prior experience by providing, firstly, a copy of the questionnaire including the date it was carried out and the client's signature and, secondly, a statement of the transactions that the client performed which includes the transactions demonstrating his/her prior experience.

– In complaint R/209/2016, the entity provided an appropriateness test in which the client recognised that he/she maintained investments in investment funds, structured deposits, structured financial liability products, warrants and derivatives. It was therefore considered that, based on the information provided by the client, it was demonstrated that the client had prior experience for the purchase of an option offered to him/her. In complaint R/799/2015, the entity provided evidence that, prior to the purchase of a structured bond, the client had acquired, on three occasions, securities of the same nature: foreign structured bonds without capital guarantee.

– However, it was not considered that the prior experience of the complainant was demonstrated by the entity in complaint R/727/2015 due to the fact that, although it provided evidence that the complainant had previously acquired certain types of products (equity and fixed-income investment funds), these did not have the same nature and features as the product which the client had acquired, namely an autocallable certificate.

– Finally, it should be noted that bad practices by entities are often detected in situations in which, based on the responses provided by the complainants in the appropriateness tests, it was not reasonable to conclude the appropriateness

of the product either because the client had marked as prior experience products of a different nature and risk to the product subject to the complaint (R/196/2016 and R/558/2016), because the client only indicated one prior transaction as experience in products with similar features to that which was to be acquired (R/856/2015, R/350/2016 and R/430/2016), or because, with the complainant having responded in the test that he/she lacked experience, the answer to the other questions did not lead to the conclusion that he/she had sufficient knowledge to mitigate that lack of experience in order to consider the investment as appropriate (R/147/2016, R/409/206 and R/462/2016).

➢ Truthfulness of the answers or effective submission of the appropriateness test

A large number of complainants expressed disagreement with the responses included in the appropriateness tests, claiming irregularities in completion of the test (submission of the test already completed by the entities), in the truthfulness of some responses or in their effective submission.

In these cases, the CNMV's Complaints Service considers that determining the truthfulness or authenticity of the tests provided in the complaint proceedings by the entities or by the complainants is an issue which, bearing in mind the information in the complaint proceeding, it is not possible to decide on as a result of the lack of sufficient elements with which to make a judgement on said facts. Where appropriate, these cases should therefore be decided by the courts (R/58/2016, R/209/2016, R/295/2016, R/388/2016 and R/523/2016).

➢ Co-ownership or representation

There are frequent complaints indicating that the entity did not perform the appropriateness assessment on all the co-owners acquiring the product in question.

In these cases, when the jointly held accounts or contracts are established under a system of joint access, the appropriateness assessment must be made on the holder or authorised party with most knowledge and experience. However, in those cases in which access is joint and several or indistinct, the assessment must be made with regard to the holder that is the ordering or authorised party (R/284/2016 and R/473/2016).

In the cases in which the account holder (natural or legal person) designates a proxy or legal representative to act on their behalf, the assessment must be performed with regard to the proxy, authorised party or representative.

➢ Obtaining information from clients when the service is provided electronically or by telephone

When the investment service is provided electronically or by telephone, the information that entities must collect from their clients may be obtained electronically or by telephone providing effective measures are established to prevent manipulation of the information.

If the services are provided by telephone, the entity must keep a recording with the client's answers, as well as the corresponding statement in the terms provided by law. The recording will be made available to the client when requested.

If the services are provided electronically, the entity must establish appropriate mechanisms to ensure that the client has appropriately completed the test. Where necessary, entities must ensure that the client can type the corresponding written statement. All of the above must be performed prior to processing the order and the entity must be able to provide evidence that this has effectively been done.

3.1.1 Complex financial instruments

A good number of complaints were resolved in 2016 in which the Complaints Service analysed whether the financial institutions had assessed whether the product was appropriate to the client's investment knowledge and experience and, as the case may be, whether said assessment have been performed in accordance with good financial customs and practices.

The appropriateness assessment was analysed in 103 complaints relating to the marketing of complex products, specifically:

- 65 complaints about mandatory convertible/exchangeable subordinated bonds, both at the time of their subscription and at the time of the exchange.

- 17 complaints about option contracts, formerly referred to in Spain as atypical financial contracts.

- 9 relating to structured bonds and notes.

- Another 9 relating to subordinated debt with right to early redemption (embedded derivative) and preferred shares.

- 3 relating to swaps.

Financial institutions generally opt to perform a test in order to assess appropriateness.

However, bad practices have been detected for the following reasons:

- The documentation that entities provide to the complaint proceedings does not record that the entities analysed the appropriateness of a transaction before it was performed (R/113/2016 and R/144/2016).

- In addition, the result of the assessment must be consistent with all the information that the client has provided and that the entity possesses and has used in the assessment. In other words, the responses contained in the test must reveal that the client has sufficient knowledge and experience in order to understand the nature and risks of the product or service offered, in which case, it will be considered appropriate.

  In this regard, the CNMV's Complaints Service understands that the information that the entity obtains from its clients with regard to the general level of education or other training, or with regard to their profession, may only

provide a generic idea of their financial knowledge and it would therefore be necessary to assess such knowledge with the other answers taken as a whole.

For example, in complaint R/143/2016, even when the entity performed an appropriateness test on the complainant, the responses revealed that the complainant did not have sufficient knowledge to acquire preferred shares as the test reflected the fact the client had a basic level of education without adequate prior experience for it to be deemed appropriate for the client to acquire such a complex product.

– Similarly, the actions of the financial institution must be consistent with the warning made, i.e., there must be no contradictory actions.

With regard to the above, contradictory warnings by entities have been classified as incorrect actions. Consequently, in complaint R/708/2015, the entity informed the complainant, on the one hand, that it was not possible to assess the appropriateness and, in another document on the same date, that after performing the appropriateness test, it had been considered that the client had experience in non-complex financial products.

With regard to the prior assessments of the client recorded by the entity, it is reasonable, as indicated above, to consider them valid in order to determine the appropriateness of the product to be acquired or the service to be provided providing said analysis was not conducted a long time prior. The level of complexity and risk inherent to the financial instrument in question are key aspects when setting a period of time immediately prior to the new transaction during which the prior appropriateness tests may be taken into consideration (three years for complex products).

At any event, it should be indicated that the positive assumptions of appropriateness based on the client's general level of education and professional experience may be maintained indefinitely unless the entity has information that makes a review advisable.

With regard to prior investment experience, the entity must analyse the nature, volume and frequency of the client's transactions in financial instruments and the time when they were performed (R/305/207).

In these cases, as indicated above, it will be recommendable for no more than three years to have elapsed for complex products.

➢ Pre-emptive subscription rights

In principle, pre-emptive subscription rights, when assigned to the shareholder of a company as a result of being a shareholder, or when the shareholder acquires them in the secondary market with the sole objective of rounding up the number of rights that he/she has in order to obtain a last new share issued by the listed company, must be considered as a component of the share and it would not therefore be necessary to assess appropriateness.

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

Finally, when an investor acquires rights in the secondary market during the trading period, these are considered complex products and the financial institution must assess the appropriateness of this product prior to processing the client's order.

In the three complaints on this issue analysed in 2016, it was considered that the entity should have assessed appropriateness as the rights were acquired in the market in all the cases.

- In one of the cases, it was not demonstrated that prior to acquisition of the pre-emptive subscription rights, the respondent entity had collected information on the complainant's investment knowledge and experience in order to assess the appropriateness of the acquisition (R/819/2015).

- In another case, the entity provided an appropriateness questionnaire completed electronically five months prior to the purchase of the rights and which referred to the investment product of "Shares", which is a non-complex product. In addition, the entity claimed that the complainant had prior investment experience in purchasing shares, before and after the acquisition of the pre-emptive subscription rights. However, it was not demonstrated that the complainant had performed transactions with rights or with products of similar complexity prior to the transaction analysed in the complaint proceedings and it was therefore concluded that the obligation to assess appropriateness had not been met (R/497/2016).

- In complaint R/419/2016, it was concluded that, taking into account the answers that the complainant gave to the respondent entity through the "Assessment Test", the entity did not have sufficient information to conclude that the subscription rights were an appropriate product for the complainant.

➢ Non-EU harmonised collective investment schemes

Unlike for harmonised collective investment schemes (CIS), which are classified as non-complex financial products, for non-harmonised CIS entities have to perform a prior assessment of the schemes in order to determine whether they meet the requirements established in the current Article 217(2) of the Securities Market Act (in which case the product would be classified as non-complex) or, on the contrary, said requirements are not met (in which case the product should be considered as complex).

Depending on the result of that assessment, the entity may apply the exemption from the appropriateness assessment provided for non-complex products (see the heading on harmonised CIS) or it must follow the steps set out for the appropriateness assessment, i.e., it must ask clients (including, where appropriate, potential clients) to provide information on their knowledge and experience in order for the entity to assess whether that investment product is appropriate for the client.

In the complaints relating to non-harmonised CIS processed by the Complaints Service, entities have always performed the appropriateness test on the unit-holder. It was therefore assumed that, having performed the assessment, the entity had concluded that the product was complex.

In this regard, in complaint R/744/2015, the Complaints Service analysed whether the entity had complied with current legislation at the time the complainant

subscribed to the non-harmonised fund. In this case, a copy of an appropriateness test conducted previously was provided. Similarly, the entity provided a duly signed document entitled "Assessment Result" which detailed the aspects of the assessment so that the client could verify that the data included exactly matched his/her personal situation at the time of subscription of the fund. As a result of the assessment, it was considered that acquisition of this fund by the complainant was appropriate.

3.1.2 Non-complex financial instruments

Entities will not have to follow the appropriateness assessment procedure set out for complex products when the order refers to non-complex products, as long as the service is provided at the initiative of the client and the entity has clearly informed him/her that it is not required to assess the appropriateness of the instrument offered or the service provided and that the client therefore does not enjoy the protection established in current legislation for complex products.

Consequently, for the entity to claim the exemption from the appropriateness analysis, each and every one of the requirements set out in the legislation must be met.[11]

At any event, the entity must be able to provide evidence that it offered the warning to the client about the exemption from the appropriateness analysis or, failing that, evidence of the appropriateness assessment performed.

➢ Ordinary shares

In 2016, 89.5% of the complaints analysed on the suitability of shares related to the marketing of Bankia shares, either in the process of the public offering for subscription (most of the complaints), or in the purchases performed by complainants on the stock market.

Where the order is processed in the secondary market, the CNMV's Complaints Service assumes that the transaction is made at the client's initiative, particularly when ordered through electronic means. However, in these cases, as indicated above, the entity must comply with the requirement to clearly inform the client that, as shares are a non-complex product, the entity is not required to assess the product's appropriateness in relation to the client's knowledge and experience and, therefore, the client does not enjoy the protection that said assessment would provide. If the entity does not make this warning to the client, it would not comply with one of the requirements established in securities market regulation for applying the exemption from the appropriateness analysis and, consequently, the exemption would not be applicable and the assessment should be conducted.

In two complaints, it was demonstrated that the aforementioned exemption from the appropriateness assessment was correctly applied as the purchase orders showed that the order was processed at the initiative of the complainant and that the complainant had been informed that the entity was not required to assess the appropriateness of

11 Article 216 of Royal Legislative Decree 4/2015, of 23 October, approving the recast text of the Securities Market Act.

the financial instrument referred to in said order or to make any warning with regard to whether or not the product was in line with the client's investment knowledge and experience (R/365/2016 and R/410/2016).

In contrast, in another two cases, even though the entities were within the grounds for exemption, as the product was considered non-complex, they did not provide evidence that they had given any warning to the complainants about the appropriateness assessment not being performed or any evidence that the service was provided at the initiative of the client. Neither did the entities provide evidence, *a sensu contrario*, that they had performed the appropriateness analysis. Therefore, as they had not complied with all the conditions established by legislation for applying the exemption and, furthermore, with no record that said analysis had been performed, it was considered that the entities had acted improperly (R/263/2016 and R/264/2016).

However, in a good number of complaints, the entity provided evidence that it had assessed the product's appropriateness by providing a copy of the test performed (R/731/2015, R/741/2015, R/756/2015, R/791/2015 and R/557/2016). Furthermore, in several complaints, the subscription orders also included the warnings made in accordance with the test's result (R/730/2015, R/826/2015, R/873/2015, R/1/2016 and R/367/2016).

However, bad practices were detected in the following cases:

– In complaint R/746/2015, the entity provided no document allowing it to prove that it had complied with its obligation to assess whether the product matched the investment knowledge and experience of the ordering party and its legal representative. On the other hand, the order indicated that the entity had carried out a study of the appropriateness of the product to the profile of the ordering party, who at the time of acquisition was only 13 years old, and for whom the complainant, his/her father, was the representative.

– In complaint R/205/2016, it could not be reliably verified whether the investment in shares was requested by the complainant or whether it was the financial institution that had offered the purchase of the shares subject to the complaint. If the entity had offered to purchase the shares to the client, it should have evaluated the appropriateness and informed the client of the result and if, on the other hand, the complainant had requested to purchase the shares, the entity should have made the corresponding warning. Given that the entity was unable to provide evidence that it had performed either of the two actions, it was concluded that the entity had acted incorrectly.

➢ EU harmonised collective investment schemes

EU harmonised CIS are legally classified as non-complex products in accordance with legislation on the applicable conduct of business rules. Consequently, they would be products with regard to which, if the other requirements indicated in the first paragraph of this chapter are met, it would not be necessary to conduct an appropriateness test.

In this regard, in the complaints resolved in 2016, the entities applied the exemption from the appropriateness test in the following cases:

– The entities provided a copy of a document entitled "Annex to the Contract/ Order", which informed clients that they did not enjoy the protection established in the regulations relating to the entity's obligation to collect information on investment knowledge and experience as the conditions established therein for applying the exemption were met (R/40/2016 and R/57/2016).

– In another case, the entity argued before the Complaints Service that when its clients ordered the purchase of units in exchange-traded funds (ETFs) through online banking, they are generally informed that the entity is not required to assess the appropriateness of the transaction "as this is not a complex product and the transaction is performed at the initiative of the ordering party".

  In order to provide evidence of the above, the entity provided a screenshot showing said information. In this case, it was understood that the entity had acted correctly by sending a standard message that was activated when clients ordered, at their own initiative, the purchase of this type of unit.

In contrast, in other complaints, the respondent entities stated that, as the product was classified as non-complex, they were not required to assess the appropriateness. However, no evidence was provided that the order had been processed at the client's initiative or that the entity had warned the client that it was not required to assess the appropriateness and that the client therefore did not enjoy the corresponding protection. Therefore, as it did not comply with all the mandatory conditions for applying the exemption from the appropriateness analysis and it had not provided evidence of such an analysis, the entity was considered to have acted incorrectly (R/298/2016, R/335/2016, R/345/2016, R/376/2016, R/426/2016, R/477/2016 and R/502/2016).

There are also financial institutions that have decided not to make use of the exemptions set out in the regulations, but have established an internal protocol whereby it is considered that the appropriateness assessment should be conducted with regard to clients subscribing the harmonised funds that they market unless it is duly demonstrated that the subscription is made following an express request from the client (R/294/2016, R/333/2016, R/342/2016 and R/405/2016).

In other cases, without further comments in this regard, entities provide the appropriateness test performed by the participant, which shows that these entities considered that, at the time of subscription of the fund, not all of the necessary requirements for applying the exemption were met (R/4/2016, R/158/2016 and R/177/2016).

However, in those cases it was considered that the entities did not act in accordance with the pertinent conduct of business rules when:

– Despite evidence being provided that the entity had performed an appropriateness test with regard to the product, the communication did not clearly state the result of said test (R/718/2015 and R/742/2015).

– The test provided did not analyse the complainant's financial knowledge and proven prior experience in these types of products was limited to one single transaction. In this case, the prior experience expressed by the complainant on its own could not be considered sufficient to classify the product as appropriate without taking into account other information relating to the type of studies, training or profession, which was not provided (R/424/2016).

– No evidence was provided that the complainant had performed two or more similar investments (or investments of a higher level of complexity) to that forming the subject matter of the complaint (R/160/2016).

– The entity provided contradictory information to the complainant, indicating in the annex to the contract/order the appropriateness of the acquisition of the product and, in another document submitted, its inappropriateness (R/775/2015).

3.2 Advice / portfolio management

➢ Suitability assessment

The legislation applicable to firms that provide investment services establishes that, when advisory services are provided to retail clients relating to investment or portfolio management, the entity shall obtain the necessary information on the client's knowledge and experience, their financial position and their investment objectives so as to be able to recommend to the client the financial instruments that are most appropriate or to adopt investment decisions relating to such instruments. When the entity does not obtain this information, it will not recommend investment services or financial instruments to the client or potential client.[12]

➢ Scope of suitability

In short, the recommendations that entities give to their clients within the scope of advice or the investment decisions adopted in the case of portfolio management must meet the following requirements:

– Be in line with the investment objectives set by the client (investment objectives).

– The client must be able, from a financial point of view, to assume the risks of the products (financial situation).

– The client must possess sufficient knowledge and experience to understand the risks of the product (knowledge and experience).

➢ Recommendations: risk level and investment objectives

Investment recommendations or decisions must generally be adapted to the level of risk that the investor has set in his/her investment objectives and entities may not exceed that level even where allowed by knowledge or experience unless the investment in question forms part of a portfolio under advice or management and this portfolio as a whole meets the investment objectives set by the client. Nevertheless, the client should be informed of this situation.

12 Article 213 of Royal Legislative Decree 4/2015, of 23 October, approving the recast text of the Securities Market Act.

However, even if the client is willing to take on a very high risk level, if this may compromise their financial situation or if the entity believes that the client does not have sufficient knowledge or experience to understand the nature and features of the investment, strictly respecting the investment objectives set by the client, this would make this investment unsuitable. In these cases, it may be appropriate to recommend or adopt investment decisions that may be assumed by the client from a financial perspective or which are of a similar nature or with similar features.

In this regard, it is important to point out the differences with regard to this last aspect (knowledge and experience) between the service of advice and that of portfolio management. While in advisory services the final investment decision is always adopted by the client and, therefore, the entity should only recommend transactions whose risk and nature the client may understand, in portfolio management, given that the manager monitors that the portfolio is in line with the client's investment objectives and financial situation, it is only necessary for the client to be familiar with the instruments that make up his/her portfolio, i.e., that he/she has general financial knowledge. The client must however understand the nature of the instruments that make up the bulk of his/her portfolio.

In any event, the entity must be in a position to provide the recommendations made to their client.

➢ Evidence of assessment performed

With regard to the suitability analysis, the entity must be able to provide evidence that it performed said assessment. It may do this by performing the analysis in writing and keeping a copy duly signed by the client recording the result of the assessment. It may also be done through any other medium that allows a certifiable record that said analysis was performed.

If carried out by telephone, the description of how the recommendation made matches the investment characteristics must be made orally, with a recording kept. In addition, the document containing the recommendation must be sent to the investor by other means, such as postal mail or email.[13]

➢ Validity of the assessment performed

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

In the event of a one-off advisory service, it is only reasonable that the suitability analysis be limited to one specific transaction and it is not therefore generally reasonable to extrapolate the results to subsequent transactions.

13 Questions and answers document relating to CNMV Circular 3/2013, of 12 June. Investment Firm and Credit and Savings Institution Supervision Department, 3 April 2014.

With regard to longer-term services, recurrent advice or portfolio management, given the fact that investment objectives may change, the entity should periodically review whether said objectives have been modified.

The following may be concluded with regard to the suitability assessments in the complaints resolved relating to securities in 2016:

– With regard to the suitability assessment, in complaint R/675/2015, a copy of a duly signed "Suitability Test-Investor Profile" was provided. This contained information collected by the entity with regard to the complainant's investment profile, with the result of the evaluation being "Risky". The entity was deemed to have acted correctly.

– In complaint R/327/2016, the entity provided a suitability test. An analysis of the test, which was performed some months prior to the contracting of the structured product referred to in the complaint, revealed that in question No. 10 relating to the complainant's investment objectives, the investor responded as follows: "Investor objective profile: Moderate".

  This profile is defined in the test itself as follows: "The client prefers to obtain the highest return possible even if he/she has to risk a small part of the capital invested". Consequently, based on the investment objectives declared by the complainant, it was concluded that the product acquired did not fall within the concept of suitability that could be deduced from the information that the client had provided.

– In complaint R/309/2016, the complainant referred to "quite serious inconsistencies" in the suitability tests performed. In the first question of the test, it was indicated that the client possessed university studies relating to economics, but the truth is that the client had not studied any university course; in question three, it was stated that the client understood financial markets, but the complainant stated that she was a housewife; in question five, it was indicated that in the last three years the client had undertaken two or more transactions in venture capital products, derivatives and OTC derivatives, products that the complainant stated she had no knowledge of; in questions six, seven and eight, it was indicated that the client did not need the money in the short term, a fact that was absolutely contradictory to the movements in her account and her personal situation. Finally, in question ten, it was indicated that she would maintain her investment in the event of sharp falls in the markets, when the complainant had always indicated to the entity that she did not want to take on any risks.

  In accordance with the legislation in force,[14] entities will have the right to trust the information provided by the client except when they know, or should know, either that it is clearly out-of-date or it is inaccurate or incomplete.

  Nevertheless, it was concluded that the entity had not acted appropriately given that prior to the test linked to the transaction subject to the complaint, it had performed an appropriateness test and a suitability test (2 October 2007 and 26 February 2008). The entity should have detected that the information

14 Article 74(3) of Royal Decree 217/2008, of 15 February, on the legal regime of investment firms.

collected in the test dated 12 May 2014 was clearly contradictory *vis-à-vis* the data previously collected relating to, among other aspects, the complainant's knowledge (studies undertaken, profession, etc.).

– In complaint R/456/2016, it was considered that a one-off advisory service had been given. Even though the entity conducted a suitability test on the complainant, it was concluded that the entity acted incorrectly as there was no clear correspondence between the information provided by the client in the questionnaire and the classification of "Aggressive" to describe the profile based on the client's answers.

– In complaint R/798/2015, the entity did not provide any supporting documentation that it had gathered information from its client in order to properly carry out the investment advisory service. It was therefore concluded that there had been bad practice.

– In complaint R/136/2016, it was demonstrated that the entity obtained the necessary information on the client's knowledge and experience and on his/her financial situation and investment objectives through the appropriateness and suitability tests performed. Based on the answers offered by the complainant, it was considered that the entity had sufficient information to deduce that the investment fund subject to the complaint was appropriate to the complainant's investment profile.

  It was however concluded that the entity had acted incorrectly as there was no evidence that it had provided the client, in writing or in any other durable medium, with a description of how the recommendation matched the client's characteristics and objectives.

– In complaints R/436/2016 and R/464/2016, it was estimated that the Individual Savings Plan, as an investment proposal made by the client's Family Banker, contained products that corresponded to an investment profile that did not match the information contained in the suitability test performed on the complainant. It was therefore not considered that the entity had correctly analysed the complainant's knowledge and experience in the suitability assessment.

– In complaint R/522/2016, a contract for discretionary and individualised management of CIS share or unit portfolios, duly signed by the parties, was submitted to the proceedings.

  Condition Five of the contract expressly indicated that prior to formalisation of the contract, information had been collected on the claimant's investment experience, objectives, financial capacity and risk preference, the results of which were contained in Annex 2 to the contract. It was therefore considered that the entity had acted correctly.

➢ Features of advice compared with portfolio management

As indicated above, the suitability analysis must be performed when the entity provides two types of services, advice or portfolio management, although the features of each differ slightly:

– Discretionary and individualised investment portfolio management: When an entity provides this service, it receives a mandate from its client for it to take the investment decisions that it deems most appropriate for the client. These investment decisions must match the profile resulting from the suitability test that must be performed prior to the provision of this service.

– Investment advisory services: These consists of making personalised recommendations to the client, whether at the request of the client or at the initiative of the investment firm, with regard to one or more transactions relating to financial instruments. Generic, non-personalised recommendations which may be made in the context of marketing financial instruments shall not be considered as advice for these purposes.[15]

When the advisory or portfolio management service is provided, it will be assumed, in the absence of evidence to the contrary, that all transactions performed by the client are covered by said services.

However, it may be the case that, even when providing said services, one particular transaction or several specific transactions are performed outside the scope of the services. In these cases, entities must clearly warn of this situation.

Below we will only focus on the advisory service.

➢ Advisory service

The advisory service may be given on a one-off basis when the commercial relationship with the client is not carried out under the scope of an advisory service. However, the entity may sporadically offer the client investment recommendations (this is usually the case in the generic commercial segment) or recurring advisory services where the client has an ongoing relationship with his/her adviser, who regularly offers the client investment recommendations (this is usually the case in the private banking segment).

Every time that it makes a recommendation, the entity shall provide, in writing or another durable medium, a description of how this investment matches the investor's characteristics and objectives.

The recommendation must be consistent with all the aspects that the entity has assessed with regard to the client and the description must at least refer to the terms in which the investment product or service has been classified from a market, credit and liquidity risk point of view 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 (financial knowledge, prior investment experience and professional training and experience). The description may be abbreviated when repeatedly making recommendations on the same type or family of products.

For its part, the entity must provide evidence of compliance with the obligation to submit the recommendation to its client. To this end, it may keep a signed copy of

15 Article 140 of Royal Legislative Decree 4/2015, of 23 October, approving the recast text of the Securities Market Act.

the document provided, which will contain the date on which the document was submitted, or it may do so through a register of communications with the client by electronic or any other certifiable means.

The law establishes that, when the entity provides a service relating to complex instruments other than investment advisory services or portfolio management and it wants a statement that advisory services have not been provided to be included in the documentation to be signed by the investor, it must collect, together with the client's signature, a handwritten statement stating: "I have not been advised in this transaction".[16]

However, in order for there to be an advisory relationship, it is not essential for there to be an advisory service agreement, unlike the case of the portfolio management service, which must always be set out in a corresponding agreement.

The criteria of the CNMV's Complaints Service is therefore that, irrespective of whether or not the investment advisory service between the client and the entity is formalised contractually, it may be considered that this type of relationship is established when certain conditions are met, which, when consistent with the facts and explanations received, make it possible to reach such a conclusion.

➢ Circumstances taken into account to assess whether there is an advisory service relationship

i) The client belongs to the private banking segment of the respondent entity and has been assigned a personal manager/adviser.

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

   In this regard, in complaint R/798/2015, a copy of crossed emails between the complainant and his/her private banking asset adviser was provided to the complaint proceedings corroborating the existence of a one-off advisory service.

ii) The client had not expressly requested from the entity the acquisition of a specific product, but had asked for suggestions about the best options for investing based on his/her return targets, personal financial situation and expectations.

   For example, in complaint R/517/2016, a copy was provided of the suitability questionnaire performed on 13 May 2015, which supported the commercial proposal made by the bank with regard to the purchase of a structured bond. It was therefore concluded that in this case and for the specific transaction, an investment advisory service had been established between the parties.

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

iii) The product purchase documents include clauses in which the client recognises that he/she has received advice on the level of risk and on whether the investment matches his/her investment profile.

In complaint R/675/2015, a copy was received of a signed document entitled "Investment Proposal", and the purchase order contained the following warning, "This order is processed within the framework of the investment advisory service provided by the entity". It was therefore concluded that purchase of the security took place within the framework of such a service.

iv) There are emails, telephone recordings and other elements on durable media that make it possible to verify that the entities performed more or less explicit investment recommendations with regard to one or several products.

In complaint R/219/2016, it was understood that an email constituted a personalised recommendation and therefore fell within the scope of a one-off financial advisory service.

v) Whenever it is demonstrated that the respondent entity has offered its client an investment in a new product with the aim of recovering losses suffered in another previously acquired product with similar characteristics.

For example, in complaint R/327/2016, the clauses of the product subject to the complaint included the following warning, "This product is aimed at clients with structured financial products whose value at the time of contracting this product stands at between 55% and 60% of the initially invested amount and it aims to offer those clients that consider that they are able to assume the risk an alternative where, by changing certain features of the product, they may recover 100% of the amount initially invested in the original financial product".

In its pleadings, the entity stated that it had performed the corresponding suitability test, which is mandatory for providing advisory services. It was therefore concluded that the entity had provided a service which would involve the presentation or offering of products by means of personalised investment recommendations.

3.3 Prior information

3.3.1 Securities

With regard to the information to be provided to the client relating to the product's features and risks, entities that provide investment services must provide their clients (including potential clients), on a durable medium, with a general description of the nature and risks of the financial instruments, bearing in mind, in particular, the classification of the client as a retail or professional client.

The description must include an explanation of the features of the type of financial instrument in question and its inherent risks, which must be sufficiently detailed so as to allow the client to make informed investment decisions.

Where justified by the type of financial instrument in question and the client's knowledge and profile, information must be added on the risks linked to the type of

financial instrument, including an explanation on leverage and its effects, as well as the risk of full loss of the investment.[17]

For these purposes, a durable medium is understood as any instrument that allows the client to store the information personally addressed to him/her so that it may be easily recovered during a period of time that is appropriate for the purposes of such information and which allows its reproduction without changes.[18]

Entities can comply with this obligation by submitting to the client a summary of the securities note of the issue, the securities note of the offer, the prospectus or a document prepared by the entity for this purpose.

Similarly, the CNMV believes it is reasonable that, when the client is given the securities note, an additional summary of the issue should also be made. As it is shorter and more concise, this summary will normally be easier for investors to understand than the securities note, which is normally longer and often written in more complex language.

Entities must be able to provide evidence that they have submitted the aforementioned documentation.

One way of demonstrating the submission of said prior information is a copy of the document submitted signed and dated prior to acquisition of the product.

Entities sometimes provide purchase orders that include clauses where the client recognises that certain information has been made available or submitted. However, the criterion of the CNMV's Complaints Service is that this type of clause does not reliably guarantee the submission of the full documentation.

In addition, any oral information that the entity may have provided to the investor with regard to the product will not be taken into account in order to demonstrate compliance with the obligation to provide information prior to formalisation of the transaction.

➢ Prior information on securities classified as complex

With regard to resolved complaints relating to complex investment products, the bad practices detected according to the products subject to the complaint are listed below:

✓ *Preferred shares and subordinated debt*

In complaint R/143/2016, the entity did not provide evidence that it had submitted any document to the complainant regarding the features and inherent risks of the contracted product sufficiently in advance of its acquisition, and argued that

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

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

the complainant should have consulted the prospectus in the CNMV's registers. However, it was concluded that the entity had not been able to demonstrate that it had complied with its obligation to provide evidence of the submission of prior information to its client. Similarly, in complaints R/144/2016, R/211/2016 and R/479/2016, it was not possible to demonstrate that the respondent entities had provided the client with any type of written documentation containing the features and risks of the acquired securities prior to the contracting of the corresponding financial instrument.

✓ *Convertible or exchangeable bonds*

With regard to resolved complaints involving convertible or exchangeable bonds relating to alleged irregularities both at the time of their subscription and their subsequent exchange, in most of the cases analysed it was concluded that the entities had complied properly with their obligation to submit the prospectus summary to the clients prior to the transaction.

However, incorrect actions were noted in the following cases:

– In complaint R/856/2015, it was concluded that the entity had acted incorrectly because the claimants had signed the prospectus summary on a date later than that of the subscription order, which implied that the entity had not provided them with the information prior to contracting the mandatory exchangeable subordinated bonds.

– In complaints R/876/2015 and R/113/2016, there was no evidence that the entities had provided the complainants with any information about the terms and conditions of the issue (summary of the issue registered with the CNMV).

✓ *Pre-emptive subscription rights*

In complaints with reference R/819/2015 and R/459/2016, it was not demonstrated in the proceedings that the respondent entities had provided their clients with adequate prior information on the subscription rights that they acquired in the secondary market.

✓ *Atypical financial contracts or option purchase contracts*

For these financial contracts, it is usual for entities to submit to the complaint proceedings the contracts signed by the parties with clauses containing sufficiently explicit and specific information with regard to the nature, features and risks of the product. This is the case in complaints R/703/2015, R/828/2015, R/829/2015, R/838/2015, R/848/2015, R/884/2015, R/120/2016, R/147/2016, R/239/2016, R/245/2016, R/409/2016, R/423/2016, R/429/2016, R/430/2016, R/462/2016 and R/506/2016.

However, in complaint R/529/2016, it was concluded that the entity did not act correctly as it did not submit to the proceedings a copy of the document entitled "Product Sheet" which is attached to the signed financial contract and which describes, *inter alia*, the main risks relating to the contract. It could not therefore be

demonstrated that the entity had submitted sufficient information about the features and, particularly, the risks of the product in question.

✓ *Structured bonds*

Entities generally submit to the complaint proceedings documentation that includes information on the objective elements of the bond. This allows clients to understand the features, conditions and risks of the product they are acquiring and also informs them about the risk of a complete or substantial loss of the investment (R/694/2015, R/235/2016, R/350/2016, R/467/2016 and R/468/2016).

In contrast, in complaint R/109/2016, in which the client contracted a structured bond and was also granted financing by the entity, it was concluded that the information obligations should not only have been restricted to the structured product, but that the respondent entity should also have informed the client about the conditions and risks of jointly acquiring the credit and the structured product, including an explanation of the manner in which the credit increased the risks of the transaction (leverage) and the impact of the financial cost of the credit on the net return of the investment in the structured product.

In complaint R/799/2015, the respondent entity provided a copy of the two-page sheet with basic information on the security in question and also the risks inherent to the financial product, which should have been submitted as an annex to the order at the time of signing. However, said file did not include the complainant's signature and it was therefore considered that effective submission of the file to the complainant had not been demonstrated.

Similarly, in complaints R/727/2015 and R/880/2015, the entities did not provide evidence that they had provided information about the product's features or risks.

➢ **Prior information on securities classified as non-complex**

✓ *Ordinary shares*

With regard to the acquisition of shares in the context of the public offering for subscription of Bankia, in practically all the complaints filed the respondent entities were able to demonstrate, by submitting to the proceedings a copy of the prospectus summary signed by the complainants, that they had complied with the prior information obligation (R/731/2015, R/740/2015, R/741/2015, R/756/2015, R/791/2015, R/826/2015, R/868/2015, R/873/2015, R/1/2016, R/367/2016 and R/557/2016).

However, in complaint R/730/2015, the entity did not provide evidence that it had complied with the obligation to inform the complainant prior to the public offering for subscription. Nevertheless, it was able to provide evidence that, for the purchase that the complainant had made in the market, it had submitted said information.

In the case of complaint R/746/2015, there was also no evidence of the submission of prior information to the complainant, and in complaint R/791/2015, even when the entity did submit to the proceedings a copy of the issue prospectus summary, the full text of said document was not included and it was not signed by the client.

No evidence that the full document was handed over to the complainant was provided, leading to a conclusion of bad practice.

With regard to the shares listed on the ordinary secondary market acquired at the initiative of the client, in complaints R/365/2016 and R/410/2016, a signed copy was provided of the document entitled "Shares listed on regulated markets", which contained information on the specific features and risks of the financial instrument subject to the complaint.

In contrast, in complaints R/205/2016 and R/263/2016, it was concluded that there had been incorrect action as no evidence was provided that the entity had given any information on the features and risks of the shares.

In complaint R/692/2015, it was not demonstrated that the respondent entity had provided the complainant with full detailed information on the features and risks of the securities subject to the complaint (Bankia shares) prior to their acquisition through the exchange of subordinated bonds.

✓ *Uncovered bonds considered non-complex*

With regard to uncovered bonds acquired at the initiative of the client on the secondary market, it was considered that the entity had acted correctly in complaints R/693/2015 and R/480/2016. In both cases a signed copy was provided of the document containing information on the specific features and risks.

In contrast, in complaint R/849/2015, even though the purchase order specified certain features of the bond subject to the complaint, it was considered that the information was not sufficient as no mention was made of certain specific features of the bond or the risks inherent to this type of investment product.

Similarly, in complaint R/132/2016, it was not demonstrated that the respondent entity had provided the complainant with full information on the features and risks of the securities subject to the complaint prior to their acquisition.

➢ **Electronic and telephone transactions**

In cases in which the product is contracted electronically, entities must establish mechanisms that make it possible to provide evidence that the mandatory documentation was submitted to their client prior to contracting the product in question. In this regard, entities usually set up an electronic system that requires the opening of prior information before contracting the product so that if the client does not open the document containing said information, the IT system does not allow him/her to contract the product.

In these cases, opening said documentation leaves a digital fingerprint of individual confirmation of submission of the information prior to contracting the product, which the entity has to keep and which may be used as evidence that it has complied with its obligation.

In the case of telephone transactions, prior to processing the order, the entity must send its client an email with the pertinent documentation (or, as the case may be, by

other means, such as ordinary mail), and the investor must confirm that he/she has received said information. Once the entity has received confirmation from the client, it will process the order made by telephone. Every telephone conversation must be recorded.

In complaint R/497/2016, the entity sent an automatically generated document moments after purchase of the subscription rights by electronic means, to the Client's Personal Area on its web platform. According to the entity's pleadings and in accordance with the provisions in its "Specific Terms of Online Banking", the client had expressly accepted that the notifications and communications that the bank would provide would be made through electronic means.

Notwithstanding the above, the aforementioned communication of information by the entity was generated after purchase of the product subject to the complaint and was therefore submitted subsequent to acquisition of the rights.

As a result of the above, it was concluded that the entity had not demonstrated that prior to contracting the rights, it had provided the client with adequate and sufficient information on the features and risks associated with the product subject to the complaint (we should remember that generally subscription rights acquired in the secondary market are considered complex products).

➢ Complying with marketing commitments

All information addressed to clients, including marketing material, must be fair, clear and not misleading. Marketing communications must be clearly identified as such.[19]

Similarly, the information contained in marketing communications must be consistent with any information the firm provides to clients in the course of carrying on investment and ancillary services.[20]

In complaint R/358/2016, the marketing communication sent to the complainant did not inform about requirements which, as claimed subsequently by the entity, needed to be met in order to benefit from the advertised promotional campaign. Furthermore, the marketing communication did not include any reference to where said requirements might be consulted. After having made the securities transfer, it was considered that the entity had not acted correctly by refusing to give the advertised bonus.

3.3.2 Collective investment schemes

Current legislation regulating collective investment schemes (CIS) establishes that all specific features and conditions must be included in the prospectus. In this regard, prior to the subscription of units or shares, the entity must submit to the

19 Article 209(2) of the recast text of the Securities Market Act, approved by Royal Legislative Decree 4/2015, of 23 October, and, previously, Article 79 *bis*(2) of the Securities Market Act 24/1988, of 28 July.

20 Article 62(5) of Royal Decree 217/2008, of 15 February, on the legal regime of investment firms and other entities that provide investment services.

unit-holder free of charge the key investor information document (KIID) and the latest published half-yearly report and, following a request, the prospectus and latest published annual and quarterly reports,[21] and therefore these documents may not be replaced by the information that may appear in the marketing material of the CIS or by information provided to the client orally or on a summarised basis by the entity.

CIS management companies or investment companies or, as the case may be, CIS distributors, must provide evidence of compliance with information obligations. In the case of the first acquisition, said evidence will involve keeping a copy on a durable medium of the KIID and the latest published half-yearly report signed by the unit-holder while the latter continues in said capacity. In the case of additional subscriptions in the same CIS, it will not be necessary to submit the same information.[22]

However, the legislation provides an exemption for compliance with some of the prior information obligations relating to certain products acquired on the secondary market, such as units in exchange-traded funds. Thus, the acquisition of units in exchange-traded funds on the stock market is exempt from the obligation to provide a free KIID and the latest half-yearly report. In any event, if requested, both the prospectus and the latest published annual and quarterly reports must be provided to the unit-holder.[23]

In complaint R/40/2016, in accordance with the regulations and even though a copy of the latest published half-yearly report on the unit subscription date was provided, there was no record that the entity had submitted said document to the complainant.

In complaints R/768/2015 and R/169/2016, it was not demonstrated that the entity had submitted to the client the KIID prior to subscription of the units.

In addition, in complaints with reference R/786/2015, R/422/2016, R/424/2016 and R/543/2016, the entity did not comply with the obligation to submit the latest published half-yearly report to the client.

Finally, in complaints R/795/2015 and R/19/2016, there was no evidence that the entity had submitted the KIID or the latest half-yearly report published on the unit subscription date.

➢ Electronic and telephone transactions

The fund's prospectus and KIID may be provided on a durable medium or through the website of the investment company or management company. Following a request, a hard copy of said documents will be provided to investors at no charge.

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21 Article 18 of Law 35/2003, of 4 November, on Collective Investment Schemes.

22 Rule Five, "Evidence of submission to the unit-holders/shareholders of the information established in Article 18 of the Law on CIS", of CNMV Circular 4/2008, of 11 September, on the content of the quarterly, half-yearly and annual reports of collective investment schemes and their position statements.

23 Article 79(6) of Royal Decree 1082/2012, of 13 July, approving the Implementing Regulation of Law 35/2003, of 4 November, on Collective Investment Schemes.

An updated version of the documents will be published on the website of the investment company or management company.

When the product is acquired electronically, the client will receive the documentation when he/she opens the document that the entity provides with the prior information. This action must be performed prior to subscription of the CIS in question. Opening of the document leaves a digital fingerprint of individual confirmation of delivery, which the marketing entity of the CIS must keep and submit when required. As in the case of securities, opening of the document with the prior information is a mandatory procedure for subscription, and it will not therefore be possible to continue with the subscription process without having completed this procedure.

The procedure to be followed for acquisition by telephone is the same as that explained above for acquiring securities by telephone.

➢ Marketing commitments

Complaints were received in which the claimants disagreed with the loss of commercial promotions or the application of penalties after performing transfers of fund units. In these cases, a specific analysis is conducted in accordance with the commercial proposal agreed between the parties and the related facts that led to the promotion being revoked.

In complaint R/431/2016, the complainant contracted an investment fund linked to a deposit. The fund manager informed the complainant of significant changes that would take place in the fund, granting unit-holders the right of separation provided for by law.

As the complainant did not agree with the changes, he/she submitted a complaint to the entity's Customer Service Department, which responded by indicating that in the event of a transfer to another investment fund of the management company, there would be no penalty in the remuneration of the deposit (bonus).

However, it was concluded that, in response to the modification of a fund of such nature which requires the entity to give the right of separation to its unit-holders, the latter may freely exercise said right – redeeming, transferring to another fund from the same entity or a fund from another entity – without this generally involving the loss of the bonus.

In contrast, in complaint R/563/2016, the complainant disagreed with the amount charged under the item of "regularisation of funds". The entity indicated that said charge referred to the penalty resulting from failure to comply with the minimum term requirement that the unit-holder had undertaken to respect. Accordingly, after the transfer of the investment fund, the complainant lost the 1% bonus on the capital invested in the fund granted following subscription. In accordance with the "Combined Product Bonus Commitment Document", it was demonstrated that the entity acted correctly in accordance with the terms of the promotion as the bonus was linked to a minimum period in the investment firm of 24 months.

3.4 Subsequent information

3.4.1 Securities

3.4.1.1 Mandatory information: periodic

➢ **Information on the statements of the clients' financial instruments or funds**

Current legislation establishes that securities depositories must submit to their clients, on a durable medium and on an annual basis, a securities statement except when such information has already been provided to them in another periodic statement.[24]

Therefore, investment firm clients that maintain deposited investments should receive information on them at least once per year.

In this regard, we consider that it is good practice for the periodic statements of securities accounts to appropriately identify the product and report its effective or market value or, failing that, an estimate of the fair value of the instrument on the information date, so that the client may verify the performance of the product in each period.

➢ **Lack of communication**

Complainants sometimes state that they have not received the periodic statements and even that they suddenly appear as holders of securities for which they had not given a purchase order or received any periodic information (R/542/2016).

In these situations, they are informed that all the documentation that the securities depository must send them must be sent to the correspondence delivery address, to the email address or through the means of contact provided for in the securities account opening agreement and which is commonly used between the parties.

However, Spanish legislation does not require this information to be sent by means of certified post or with an acknowledgement of receipt and therefore communications by ordinary post or by alternative means agreed between the parties will be sufficient to comply with the legal requirements. Said communication may also be carried out through the electronic means that the entity generally uses in its relationship with the client.

In the above-mentioned complaint with reference R/542/2016, the entity provided evidence that it had submitted a comprehensive statement of fixed-income positions on a monthly basis since 2009 to the complainant, as well as tax information on the product subject to the complaint. It was therefore concluded that the entity had acted correctly.

This same conclusion was reached in complaint R/372/2016, in which the Complaints Service found no irregularity on the part of the respondent entity as the

24 Article 70 of Royal Decree 217/2008, of 15 February, on the legal regime of investment firms and other entities that provide investment services.

party responsible for administration and custody of the complainant's securities relating to compliance with the obligation to provide periodic information to the client on the performance of his/her share portfolio.

➢ Content of the statements: valuation

Financial instruments must be valued in the position statements. As indicated previously, it is considered good practice for entities to inform about the effective, market or estimated value of the financial instruments in the periodic information statements.

In complaint R/435/2016, the complainant claimed that the periodic statements did not provide the actual price and did not correctly identify the product or its issuer.

However, in view of the documentation provided by the entity, it could be concluded that, contrary to the claims of the complainant, the annual statements did correctly identify the product with the commercial name and the ISIN code. With regard to the market value and identification of the issuer, the complainant was informed that the corresponding legislation does not require entities to offer said information. However, it was the CNMV's criterion – and therefore good practice – for entities to inform about the effective, market or estimated value of the product in the periodic statements that they send to their clients.

With the documents provided to the complaint proceedings, it is generally possible to conclude that the complainant was able to obtain knowledge about the performance of the investment with sufficient regularity (R/147/2016). In some cases, entities even provide evidence that the submission of the information was suitably detailed as it included the valuation of the shares, the dividends received and the shares subscribed in share dividend processes (R/524/2016).

In other cases, it was demonstrated that the information included in the submitted periodic statements was not correct. Thus, in complaint R/125/2016, it was detected that the entity had acted incorrectly as a structured product was classified in the securities account statements as "money market" under the item "deposits", and in the tax statements as "term deposit". It was concluded that this classification might generate doubts for the complainant with regard to the true nature and risks of the product in question, particularly bearing in mind that this was actually a structured product whose essential element was a structure of derivatives and with which the whole invested principal might be lost (R/125/2016).

3.4.1.2 Information resulting from the status of depository

Entities that provide investment services must act with diligence and transparency in the interest of their clients, protecting said interests as if they were their own and, in particular, observing the rules laid down in Chapter I of Title VII of the Securities Market Act and its implementing regulations.[25]

25 Article 208 of Royal Legislative Decree 4/2015, of 23 October, approving the recast text of the Securities Market Act.

These obligations of investment firms include maintaining their clients appropriately informed at all times and ensuring that all the information that they submit to their retail clients, whether directly or indirectly (but highly likely to be received by them), is fair, clear and not misleading. To this end, the information must meet requirements, including being accurate, sufficient and understandable to any member of the target group and it must not hide, conceal or minimise any important aspect, statement or warning.[26]

In addition, the basic obligations of financial instrument administrators or depositories include performing as many actions as may be necessary to ensure that the instruments maintain their value, as well as exercising all the rights corresponding to them in accordance with legal provisions.

Therefore, entities that provide securities administration or depository services must provide their clients, with due diligence and speed, information on the procedure to be followed in order to make instructions in the context of corporate operations carried out by issuers of the shares that they hold, such as the distribution of remuneration among shareholders with a prior choice between securities or cash.

Similarly, depositories must adopt measures and procedures that allow them to guarantee that their clients will receive the requests for instructions about these operations promptly and, in any event, sufficiently in advance that they may choose the option that best matches their interests. To this end, it is considered good practice for entities to establish a fast communication procedure with their clients, for example through the Internet or SMS messages.

➢ Splits and reverse splits

Until recently it was the criterion of the CNMV's Complaints Service that the obligations of depositories of financial instruments include informing about all those operations which, having been decided by the product's issuer, confer upon the holder the right between several possible options. However, this Service has recently decided to extend this criterion to all corporate operations decided on by the issuer, whether or not these entail the right of the holder to make a choice.

This new criterion has a two-fold objective. On the one hand, investors will be better informed about all the events that affect the securities deposited with the financial institutions. On the other hand, entities guarantee better service to their clients and reduce possible conflicts with them.

This new context would include splits and reverse splits. It is considered good practice for entities to inform shareholders about this type of operation before they are performed so that the shareholder may have detailed knowledge about the operations and, consequently, may adopt the measures that best match their interests should they deem it appropriate (for example, buying or selling shares when the number that they hold is not divisible among the number of shares resulting from the operation). That is without prejudice to the fact that, if no instructions are

26 Article 209 of Royal Legislative Decree 4/2015 and Article 60 of Royal Decree 217/2008, of 15 February, on the legal regime of investment firms and other entities that provide investment services.

received by the shareholder to this effect, the depository must comply with the obligatory mandate incorporated in the operation (R/503/2016).

Furthermore, depositories, in their capacity as providers of the securities administration service, must report these operations to the clients once they have been executed, informing them of the number of shares they hold following the operation, as well as their nominal value.

Similarly, we should indicate that both splits – increasing the number of shares by dividing the nominal value of the former shares by an equivalent amount – and reverse splits – reducing, by a specific proportion, the number of shares in the market by multiplying by that same proportion the price of these shares and their nominal value – are operations that fall under the authority of the issuer's General Shareholders' Meeting, which must approve them before they can be implemented.

In relation to the above, in the aforementioned complaint with reference R/503/2016, the shares referred to in the complaint had been issued by a listed company in Belgium, and therefore the legislation regulating the publication of this type of resolution was not known.[27] Nevertheless, it was verified that the website of the Belgian listed company published that the company's Board of Directors had decided to implement a reverse stock split in accordance with the decision adopted by the General Shareholders' Meeting. The ratio was of one new share per 1,000 old shares and it would be made effective on 4 March 2016.

The reverse split as a result of a resolution adopted by the company's General Shareholders' Meeting was mandatory and therefore on the date the operation was carried out, it was not necessary to have the express consent of the shareholder for its execution. As a result, as the complainant owned 331 shares and needed 1,000 old shares to acquire one new one, he did not receive any shares, and he was compensated in cash for his 331 shares with 5.680705 euros, which was credited to his account on 30 May 2016 under the item of "sale by exchange". This operation meant a loss for the complainant of 5,904.32 euros.

The complainant stated that the depository had not informed him/her prior to execution of the operation, which would have allowed the complainant to adopt measures (for example, buying shares to complete the minimum number of 1,000 in order to obtain one new share) that would have prevented him/her suffering the eventual loss. In view of the documentation included in the proceedings and the arguments of the parties, the Complaints Service considered it appropriate to extend its prior criteria and established that it would be good practice for the depository to inform about this type of operations before they are carried out so that shareholders may know the operation in detail and, consequently, adopt the measures that they deem most appropriate for their interests, without prejudice, as indicated above, to the fact that if no instructions are received to this effect, the depository will comply with the compulsory mandate included in the operation.

Another different question relates to operations of this type which are imposed by other entities and not by the affected entity. In this regard, in complaint R/746/2015,

27 CNMV Circular 4/20019, of 4 November, on the communication of significant information, believes that the calling of the General Shareholders' Meeting and the resolutions to change the capital may be considered significant information.

it was informed that the grouping and modification of the nominal security, or reverse split, had been imposed by the authorities and was mandatory both for the affected entity and for the holders of the related securities. In other words, it was not the result of actions taken unilaterally by the aforementioned entity, but imposed in the context of the restructuring and resolution of domestic credit institutions. It was therefore considered that there was no incorrect action in this matter.

➢ Scrip dividend or flexible dividend

Over recent years scrip dividends, or flexible dividends, have become consolidated in Spain as a form of shareholder remuneration that offers the possibility of receiving the amount equivalent to the traditional dividend paid in cash either in new shares or in cash.

Scrip dividends are implemented such that the governing bodies of the entity agree a share increase charged to voluntary reserves (which is known as a "bonus issue") for a maximum nominal amount equivalent to the amount for paying the ordinary dividend in cash. Once the operation has been set out, the shareholder has three options, namely:

i) Participate in the capital increase and, therefore, subscribe the new shares.

ii) Sell the subscription rights[28] on the secondary market.

iii) Sell the subscription rights to the company at a fixed price.

Each one of these three options are taxed differently and therefore investors may be interested in one particular alternative[29] or another depending on their tax preferences.

As indicated in the previous section ("Lack of communication"), Spanish legislation does not require this information to be notified by certified post or with an acknowledgement of receipt, and therefore communication by ordinary post or by alternative means agreed between the parties will be sufficient to comply with the mandatory regulations.

Similarly, with regard to this type of shareholder remuneration programme, we believe that, bearing in mind that the deadlines granted by issuers to give instructions are generally very short (particularly for the sale of rights to the issuer) and given the importance that investors should have as long as possible to give their instructions, entities must send the communications for this purpose immediately after

28 The subscription rights which arise from a bonus issue are referred to as "free allocation rights". Article 306(2) of Royal Legislative Decree 1/2010, of 2 July, approving the recast text of the Capital Companies Act.

29 As from 1 January 2017, the sale of rights on the secondary market will be considered a capital gain, subject to withholding, in accordance with the provisions of Article 37(1) and of the 29th transitional provision of Law 26/2014, of 27 November, amending Law 35/2006, of 28 November, on Personal Income Tax, the recast text of the Law on Income Tax on Non-Residents, approved by Royal Legislative Decree 5/2004, of 5 March, and other tax regulations.

they become aware that the issuer has approved the programme and the instructions may be sent to their clients.

Specifically, it would be appropriate for these communications to be sent, in the case of written communications, with sufficient margin so that shareholders may receive the information prior to the first day of trading of the subscription rights and, in the case of communications sent electronically, prior to the first day of trading and, in any event, prior to the opening of the session on the first day of trading of the preferential subscription rights.

For this purpose, we understand that it would be reasonable for entities to have in place procedures which, as far as possible, automate the immediate dispatch of these communications to all the clients affected by the operation and which, furthermore, allow them to choose to receive them by fast communication channels, such as email.

The communications submitted by entities to their clients to collect their instructions on these operations must inform about the essential elements of the options in a clear, accurate and sufficient manner.

Among other aspects, they should inform them clearly about the type of operation in question (bonus issue), the options and deadlines available, the actions to be followed if no instructions are given and the fees and charges that would have to be paid in each one of those options.

Complaints in which investors disagree with the delay in receiving communications sent by the entity that are necessary for deciding on the option most in line with their interests are relatively frequent.

In complaint R/580/2016, it was concluded that there had been incorrect action, even though the financial institution demonstrated that it sent information to the complainant on the scrip dividend by ordinary post, given that said information was not sent prior to the start of the session on the first day of trading of the rights.

In complaint R/725/2015, relating to the delay in the complainant receiving the mandatory communications for the entity to collect the corresponding instructions, it was considered that the entity had not acted appropriately as it was unable to demonstrate that it had sent the communication to its client as it had made no effort to ensure that there had been no incident in submitting the communication to the client.

In contrast, on other occasions, given the dates in the programme's schedule, it was understood that the entities submitted the request for instructions with sufficient urgency and, based on the background information in the proceedings, it was not possible to demonstrate that the alleged delay in the receipt of the communication was attributable to the entities (R/834/2015, R/878/2015, R/140/2016 and R/311/2016).

➢ Bonus issue

In these cases, the capital increase is charged to the company's reserves and therefore shareholders obtain new shares without having to contribute any money (see information obligations in the point on scrip dividends).

In complaint R/516/2016, it was concluded that the entity had acted incorrectly given that, even though it stated that it had sent the information on the conditions of the bonus issue by ordinary post, it should have sent it prior to the first day of trading and, at any event, prior to the start of the session on the first day of trading, which was not demonstrated by the entity.

➢ Capital increase at par or above par: with share premium or called-up capital

In capital increases referred to as at par or above par, shareholders will have to pay the nominal amount of the shares (at par) or a premium over the nominal amount (above par) to subscribe the new shares issued.

With regard to the obligation to provide information to clients, in the case of capital increases for cash it is critically important for the entity to inform the client so as to collect instructions on what to do with those rights which may correspond to the client before the start of the session on the first day of trading. Following this criterion, in complaint R/382/2016, it was concluded that the entity had committed a bad practice as there was no evidence in the proceedings that the information on the increase had been sent sufficiently in advance, with the decision indicating the following: "Similarly, it would seem appropriate that information on the capital increase should have been sent by electronic means prior to the start of trading of the preferential subscription rights, i.e., before 9:00 a.m. on 15 March 2016, with no evidence presented in these proceedings with regard to the time at which it was sent".

In short and in general terms, we understand that it is a good practice, in the context of capital increases with preferential subscription rights and called-up capital, for investors that have rights allocated for previously holding shares in the company that has conducted the capital increase, and in the absence of instructions from the shareholder by the deadline established for this purpose by the entity, that the latter should unilaterally adopt the decision to make the sales order with regard to those rights before the end of the trading period.

The reason is that, once the right trading period has ended, their value falls completely from an economic, legal and corporate point of view. Therefore, this subsidiary action is the best possible option for the client once in that situation.

However, investors that acquire these rights not in their capacity as prior shareholders of the issuer, but as a result of a purchase order on the secondary market, must give specific instructions to the intermediary on what to do with them, irrespective of the time at which that purchase was ordered.

In the event that there are no instructions, the depository would not be required to carry out any type of action in this regard, and may even terminate the rights, with the subsequent loss for the investors. This is the case on a general basis and unless different guidelines for action by the entity have been set and these have been communicated to the client in due time and form.

In these cases, the entity must provide evidence that, at the time that the investor acquired the rights on the market, it informed the client about the consequences resulting from not receiving express instructions about what to do with them. In

this regard, complaint R/87/2016 was resolved in favour of the entity, concluding that the entity had acted correctly given that it was verified that the entity had warned the complainant of the following in the purchase order: "If prior to the last day of the period for preferential subscription of the increase, the ordering party does not expressly give the order of its intention to exercise its subscription rights, with regard to the rights acquired through this order, this option will be exercised by default (sale of rights on the last day of the period for preferential subscription) if allowed by market conditions, otherwise they will be extinguished without any value".

In complaint R/267/2016, the entity sent an email to the client on 16 March 2016 informing him/her that the deadline for participating in the capital increase was 18 March 2016, indicating to the client that if he/she wanted to do so, he/she needed to inform the entity prior to 9:00 a.m. on that day. The client was also warned that if he/she gave no instructions, the entity would send "a mandate to sell the rights". In this regard, the criteria of the CNMV's Complaints Service is to consider it to be a good practice in cases such as this – capital increases for cash – for the right to be sold at best order prior to the end of the trading period in the absence of instructions.

It was therefore considered that the entity had informed the client of the consequences of not expressly giving the order of its intention to exercise subscription rights by indicating to him/her that these would be sold.

However, with regard to the content of the aforementioned email, it was considered insufficient as it made no reference to the existence of a period of allocation of surplus shares (oversubscription period) or to the conditions in which said period would be effective or the circumstances under which shareholders could benefit from it.

➢ Information due to closing of positions as a result of a lack of guarantees

Entities that provide investment services are sometimes forced to unilaterally close positions opened by their clients in certain financial instruments. Although, as we shall see below, this might be justified in some cases, the CNMV's Complaints Service understands that the reasons that justify the entity acting in this manner must be made available to its clients prior to making the investment. It should be noted that the legislation applicable to firms that provide investment services establishes, in the field of conduct-of-business rules, that they must keep their clients informed at all times.[30]

The most common case of unilateral closure of client positions by entities is related to trading with certain financial derivatives which, due to their leveraged nature, lead to the actual exposure to a certain asset (referred to as "the underlying asset") exceeding the investment or the money that the client has deposited with 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.

30 Article 209(1) of the aforementioned Royal Legislative Decree 4/2015.

Without prejudice to the legitimacy of entities unilaterally closing a client's position when this has been clearly reflected in the initial contract, the CNMV's Complaints Service understands that the entity must be able to demonstrate that it clearly informed, prior to cancellation, that it was going to do so in order to allow the client, as the case may be, to provide more funds and therefore avoid said unilateral closure. On some occasions, no evidence for this transfer of information was provided and, therefore, the Complaints Service had to conclude that the entity had acted incorrectly (R/778/2015).

For example, in an investment on credit, i.e., acquiring shares with money from a loan from the entity itself,[31] it was demonstrated in a complaint that the client had been informed prior to making the investment of the cases in which the entity would be authorised to close the client's position in shares. However, the Complaints Service understood that the entity had not acted correctly as it did not immediately inform the client before unilaterally closing the position in order to allow the client to open a cash position with the same financial instrument or take a position on credit through another entity (R/475/2016).

Finally, in contracts for differences (CFDs), the obligations assumed by the parties are generally laid down in the contract itself. This usually includes, *inter alia*, the client's obligation to set up and maintain a series of margin calls that will depend on the price of the underlying asset on the secondary market. In the event that these margin calls are exceeded, the positions will be closed if the investor does not provide the requested margins. Therefore, entities must provide documentary evidence that the client was informed about these issues.

There have, however, been cases (R/52/2016) in which neither of the parties provided the contract that supported such transactions and it was therefore impossible to issue a decision on the content or its effects.

Nevertheless, it was concluded that the entity had acted incorrectly with regard to closure of the client's CFD position as it was demonstrated that the complainant performed a transfer, prior to closing the position, reducing exposure without taking into account this fact when closing the position.

3.4.1.3 Request for documentation

Properly dealing with the requests for documentation that clients make to financial institutions requires them to provide the client with the requested documents that are available and, if they are not available (as they are not kept or for any other reason), to clearly inform the client.

However, it should be pointed out that the right to obtain this documentation is limited to the time period during which legislation requires entities to keep said documentation.

In this regard, applicable legislation provides, in the matter of contract registration, that entities that provide investment services must keep a register that includes the contract or contracts setting out the agreement between the company and the client,

31 Article 141 of the aforementioned Royal Legislative Decree 4/2015.

which must specify the rights and obligations of the parties and other conditions regulating provision of the service to the client. In addition, it lays down the obligation that contracts entered into with retail clients must be recorded in writing.[32] These contracts must be retained for the duration of the contractual relationship between the parties and up to five years after the end of the contract.[33]

With respect to the order register, which must also be kept by entities that provide order receipt and transfer services, it should be noted that the respondent entity has the obligation to maintain all the supporting documents of the securities orders in said registers for a minimum period of five years.[34]

However, entities must not destroy the supporting documents for the orders with regard to which the client has expressed his/her disagreement prior to conclusion of the minimum conservation period (or when, if raised after the end of said period, they have not yet been destroyed), until said disagreement has been resolved.

It is common for complainants to request from the entity and subsequently from the Customer Service Department, a copy of the supporting documents of the orders, contracts, appropriateness and suitability tests, etc.

It is also relatively frequent for entities not to submit to their clients the requested documentation in the first instance, but rather to postpone said submission until the time they make pleadings before the CNMV's Complaints Service after the complaint proceedings have been initiated by dissatisfied clients. In these cases, the reports resolving the complaints indicate that it is not considered appropriate that in order to obtain a copy of the documentation generated in their commercial operations with the entity, clients are forced to file a complaint with the CNMV. This is based on two reasons: firstly, as a result of the delay that this causes in achieving the investor's claims and secondly, because it makes it necessary to start up the administrative machinery for inappropriate purposes (R/769/2015 and R/869/2015). In short, it demonstrates improper functioning of the entity's Customer Service Department (CSD).

Entities sometimes do not provide evidence either to the client or to the CNMV's Complaints Service that they submitted the requested documentation even though on the request date the entity would be required to keep, and therefore submit, said documentation (R/59/2016, R/92/2016, R/153/2016, R/200/2016, R/407/2016, R/433/2016 and R/434/2016). In other cases, however, it was concluded that there has been no bad practice by the entity as at the date of the request by the complainant, the time period for keeping the requested documents had ended (R/758/2015, R/121/2016, R/231/2016 and R/484/2016).

Finally, in proceedings R/783/2015, R/785/5015, R/243/2016 and R/391/2016, even though the requested contractual documentation was submitted to the client, it was not done so diligently as it was not submitted in a reasonable time period.

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32 Article 218 of Royal Legislative Decree 4/2015, of 23 October, approving the recast text of the Securities Market Act (Article 79 *ter* of the previous text of the Act).

33 Article 32 of Royal Decree 217/2008, of 15 February, on the legal regime of investment firms.

34 Article 33 of Royal Decree 217/2008, of 15 February, on the legal regime of investment firms.

➢ Request for information on purchase value

As indicated above, entities are required to submit to their clients information on the transactions performed, indicating the purchase price. Furthermore, the mandatory periodic information will include the purchase price of the securities portfolio.

In complaint R/413/2016, the complainant disagreed with the acquisition value of some securities, although the client made the complaint with the entity where the securities were currently deposited after having acquired them with another entity. In this case, it was concluded that the respondent entity had acted correctly as it was not the obligation of the entity receiving the securities to inform about transactions performed prior to the transfer date, but rather said obligation falls on the entity that carried out the transaction. Similarly, the complainant was informed that, at the time of a securities purchase or sale, entities are required to immediately send to the client on a durable medium essential information on execution of the purchase/sale and its subsequent confirmation details.[35] As the complainant acquired the securities with another entity, it would be that entity and not the respondent entity that should have informed him/her, with the documentation provided by the other entity providing evidence of the purchase price.

➢ Request for information on fees

Entities are obliged to provide their clients with information on the fees applicable to the different services that they will provide. In this regard, clients may ask to be informed about which fees have been applied to one or several services provided or transactions performed.

There was bad practice in dealing with requests for information on fees in the following cases:

– In complaint R/552/2016, the complainant requested detailed and necessary information on the generic item "Custody Fee", including information on the specific item, the period of accrual and the basis for calculation.

  Although it was recorded in the proceedings that the entity had informed the complainant about the custody fee through the instant messaging service of the Client Area on its website, this information was not considered sufficient as the client was informed on a generic basis about the fees charged.

  Although the generic information provided might be sufficient for the domestic and European market – in which the custody fee was a fixed fee, irrespective of the value of the portfolio in the custody, to which value-added tax (VAT) should be added – it was not considered adequate for the US market given that the fee to be applied (0.10%) used the effective value of the securities portfolio as the basis for calculation.

  It was therefore concluded that the entries of the monthly charges to the account did not provide sufficient information for the complainant to be able to identify the reason for the custody fee charged. In addition, it was not

35 Article 68 of Royal Decree 217/2008, of 15 February, on the legal regime of investment firms.

demonstrated that the client had received information on the fees that would be charged to him/her for the service provided, as the documentation provided on this aspect did not include the client's signature or agreement.

– In complaint R/714/2015, the complainant requested information by email on the amount and breakdown of the fees charged as a result of a securities transfer. The entity acknowledged receipt of the email and indicated that it would provide a response, although no evidence was presented that it had indeed responded to the information request.

– In complaint R/82/2016, despite an express request from the complainant, the entity provided no evidence that it had provided detailed information clearly identifying the specific items of the fees which had been refunded to the client after having reached an agreement with the entity.

In contrast, the entity acted correctly in complaint R/154/2016. When the complainant requested information from the entity about the fees or costs for ordering a transfer, the entity responded by informing the client about the amount of the transfer fee and the custody fee accrued, although it warned the client that these were calculated for a specific date.

➢ Information on incidents that have occurred

In the case of an event such as the insolvency of the company issuing the securities, the entity, in its capacity as securities custodian and administrator, must promptly inform its clients of this situation, as well as the relevant circumstances that might affect their investment, including the options available to the clients to defend their rights with regard to the issuer.

In complaint R/770/2015, it was demonstrated that the respondent entity informed clients on each of the corresponding actions carried out by the issuer of the securities and, to this effect, it provided letters and notifications submitted to the complainant informing him/her of said actions.

➢ Information on incidents that occurred on placing an order

The information obligations of entities that provide investment services include keeping their clients appropriately informed at all times[36] and informing them about any significant difficulties that may arise for executing their orders.[37] Similarly, as mentioned previously, entities must immediately provide their clients with essential information on the execution[38] on a durable medium.

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36 Article 209(1) of Royal Legislative Decree 4/2015, of 23 October, approving the recast text of the Securities Market Act (Article 79 *bis* of the Securities Market Act).

37 Article 80(1)(c) of Royal Decree 217/2008, of 15 February, on the legal regime of investment firms and other entities that provide investment services.

38 See Article 68 of Royal Decree 217/2008, of 15 February, on the legal regime of investment firms and other entities that provide investment services.

In this regard, in complaints R/417/2016 and R/418/2016, following an incident in which securities orders were being rejected by its broker in the US market, the entity contacted the broker, which informed them of its unilateral decision to block trading in US OTC markets performed by non-US entities.

In that regard, it was concluded that, in such an incident, the respondent entity had acted appropriately by passing on the information received from its US broker to its clients. In addition, it took steps to extend the deadline for sale of the blocked securities and even enabled the processing of orders on the blocked securities by telephone.

Likewise, it was considered good practice for the entity to decide to assume the cost of the sale or the transfer of the securities blocked on the OTC market, as well as the custody fee for the affected securities as from January.

➢ Information on omnibus accounts

Omnibus accounts are frequently used in trading with foreign financial instruments. In this type of account, there is no record of the identity of the final holders of the securities as it is the entity that appears as holder of the total balance of its clients. Nevertheless, when this type of account is going to be used, the entity must inform its clients in advance and notify them of the risks that they assume, in particular in the case of insolvency of the entity that is the account holder as the insolvency proceedings will be governed by the law of the corresponding country.

In complaint R/321/2016, in the securities administration contract, the entity warned that in the event of the acquisition of foreign securities, these might be deposited in an omnibus account. In this regard, it is common practice in international markets for the purchase or sale of securities and financial instruments on behalf of clients to be registered in omnibus accounts for clients of one single entity, with the entity itself recorded as holder of the account rather than the final investor. However, in this case the entity must inform its client in accordance with the terms indicated in the above paragraph.

However, even when the securities contract provided in complaint R/321/2016 informed the complainant of the risks of the aforementioned omnibus accounts (basically in relation to the possibility of insolvency of the sub-custodian), the contract did not state that use of this type of account exempts the entity from providing its client with information relating to any corporate operations to which the securities held in custody might be subject. Consequently, it was concluded that the entity had not acted correctly as there was no evidence in the complaint proceedings that it had provided its client with information relating to corporate operations affecting the shares deposited in the respondent entity.

➢ Delisted shares: waiver

In the case of shares of listed companies excluded from trading, their holders continue to be shareholders and continue to have all the rights inherent to this status recognised in the Capital Companies Act (economic rights, voting rights, rights to information, etc.) and in the company's articles of association. However, exclusion from trading means that the shareholders may not use the secondary market to trade their shares although their sale is possible outside the market by means of

alternative procedures such as searching for a buyer on their own account or through an intermediary, setting a price for the transaction and organising the transaction.

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

Finally, in the case of securities excluded from trading in the domestic market and in a situation of inactivity, Iberclear[39] has established a procedure that allows the registered owners to request a voluntary waiver of maintenance of their registration as holder of the securities in the detailed registry controlled by the participating entity.

To this end, the registered holder shall communicate the request to the participating entity on whose detailed registry the securities are entered and said entity will make a request to the Spanish central securities depository (Iberclear) for the entry of a voluntary waiver to maintenance of the registration, providing it is verified that a minimum period of four years has elapsed without any registry entry in the issuer's page opened in the Companies Registry.

This procedure, however, could not be applied to the actions referred to in complaint R/397/2016, as the company issuing the securities maintained normal activity in the Companies Registry.

In contrast, complaint R/142/2016 concluded with a report that the entity had acted incorrectly as the Complaints Service confirmed that the last entry recorded in the Companies Registry with regard to the company excluded from trading dated back more than four years. As a result, and contrary to the claims of the respondent entity, it was indicated that the entity should submit the corresponding petition, as participating entity, in order to initiate the procedure for requesting a waiver of the shares.

➢ Information on the reform of the clearing system

In complaint R/356/2016, the complainant stated that he/she had not been previously informed of the changes that were going to take place in the deadlines of the securities clearing, settlement and registry system.

In this regard, the CNMV's Complaints Service considered that, although the reform of the securities clearing, settlement and registry system is relevant information for all participants in the affected secondary markets, said modification forms part of the general regulatory legislation and was published in the *BOE* (Official State Gazette) by Bolsas y Mercados Españoles (BME) and by the CNMV, with no obligation for entities to individually inform the holders of the securities under custody about said reform.

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39 Iberclear is the Spanish central securities depository. It is a public limited company that was created under the provisions of Article 44 *bis* of the Securities Market Act 24/1988, of 28 July, introduced by Law 44/2002, of 22 November, on measures to reform the financial system. It is subject to Regulation (EU) No. 909/2014, of 23 July 2014, on improving securities settlement in the European Union and on central securities depositories, and regulated in Article 97 *et seq.* of the recast text of the Securities Market Act, approved by Royal Legislative Decree 4/2015, of 23 October.

3.4.2 Collective investment schemes

In accordance with applicable sector legislation,[40] and with regard to knowledge about the performance of the investment, current regulations establish that the yearly and half-yearly reports of collective investment schemes (CIS) should be sent periodically, and at no charge, to unit-holders and shareholders unless they specifically instruct otherwise. In addition, CIS will send, on a regular basis and at no charge, a quarterly report to the unit-holders and shareholders that expressly request one. When expressly requested by the unit-holder or shareholder, said reports will be sent by electronic means.

Similarly, all these documents will be made available to the public in the places indicated in the prospectus of the CIS and the key investor information document.[41]

In addition, management companies of collective investment schemes, or the distributor of the units if the management company's register does not contain the name of the unit-holders, must send each unit-holder a statement of their position in the fund at the end of the year. When expressly requested by the unit-holder, said document may be sent by electronic means.

The position statement must at least contain information relating to the transaction date and the identity of the scheme, as well as its management company and its depository, and on the unit-holder or shareholder, and any additional information established by the CNMV.

In this regard, implementing legislation provides that management companies of collective investment schemes, investment companies and, as the case may be, distributors, must send unit-holders or shareholders, free of charge, until they no longer hold such status, and within one month of the end of the reference period and to the address that they have indicated, the successive simplified half-yearly reports and the first part of the annual report and, if requested, the simplified quarterly reports. The second part of the annual report will be sent to unit-holders or shareholders within the first five months of each year.[42]

In the case of foreign CIS, the management company or the distributors in Spain will send the unit-holders or shareholders, free of charge and to the address they provide, any successive financial reports and annual reports prepared subsequent to registration with CNMV, in a period of one month from their publication in the home country, unless said unit-holders or shareholders have waived their right to receive said information in a separate and duly signed document following receipt of the first periodic report. Nevertheless, the distributor must send said documents to unit-holders or shareholders if so requested even if they have previously waived their right to such information being sent.

Similarly, they must send, free of charge, to the unit holders or shareholders that have acquired their units or shares in Spain all the information provided in the

40 Law 35/2003, of 4 November, on Collective Investment Schemes.

41 Article 18 of Law 35/2003, of 4 November, on Collective Investment Schemes.

42 Rule Four of CNMV Circular 4/2008, of 11 September, on the content of the quarterly, half-yearly and annual reports of collective investment schemes and their position statements.

legislation of the State in which they have their head office in the same terms and with the same deadlines as provided for in the legislation of the home country.[43]

Therefore, from the subscription date of the CIS units, unit-holders or shareholders must receive the periodic reports and corresponding position statements through which they will be able to monitor the performance of the CIS and check their general features at all times.

With regard to this issue, complaints relating to not having received the periodic information in due time or form have been addressed by the Complaints Service. Specifically, complaint R/131/2016, in which it was not possible to conclude incorrect conduct by the entity, and complaint R/129/2016, in which incorrect conduct was noted as the respondent entity did not provide any documentary evidence that it had provided the corresponding annual and half-yearly periodic reports of the fund referred to in the complaint.

On other occasions, the asset composition of the CIS reported in the periodic documentation received was called into question, as well as the extent to which it was in line with the quantitative and qualitative limits of the investment policy, as was the case in complaint R/310/2016. In these cases, it was indicated that this was an issue directly regulated in the internal control and solvency rules of the CIS and which did not fall under the scope of transparency and client protection rules or of good financial customs and practices. Therefore, correct asset valuation and compliance with the investment policy, as well as monitoring of the liquidity of the CIS by the management company, are activities that are subject to ongoing prudential supervision by the CNMV and fall outside the scope of its Complaints Service.

In addition, CIS management companies and distributors are required to comply with certain obligations once an investor becomes a unit-holder of the CIS and while the investor maintains that status.

➢ Modifications to essential elements of investment funds

On a regular basis and under the scope of the authority granted by the corresponding legislation,[44] investment fund management companies may introduce significant changes in the essential features and nature of said funds, such as: amendments to the management regulation or, as the case may be, the prospectus or key investor information document which involve a substantial change in the investment or profit distribution policy; replacement of the management company or the depository; delegation of management of the scheme's portfolio to another entity; change in control of the management company or the depository; transformation, merger or split of the fund or of the compartment; establishment or raising of fees; establishment, raising or elimination of discounts in favour of the fund to be made on subscriptions and redemptions; amendments to the frequency for calculating the net asset value; or transformation into a CIS divided into compartments or in compartments of another CIS.

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43 CNMV Circular 2/2011, of 9 June, on information on foreign collective investment schemes registered in the CNMV Registries.

44 Article 14(2) of Royal Decree 1082/2012, of 13 July, approving the Implementing Regulation of Law 35/2003, of 4 November, on Collective Investment Schemes.

The unit-holders must be informed of these changes in writing and with sufficient advance, notice and clarity. However, the legislation does not require the communication to be made by certified post.

In contrast, the legislation establishes, as a prior requirement for registration of these amendments in the CNMV's registries, that evidence should be provided of compliance with the obligation on communication by means of a certificate from the CIS management company.[45]

Similarly, the legislation establishes that wherever there is a redemption fee or expenses or discounts associated with it, unit-holders may opt during a period of 30 calendar days (counting from the submission of the communications) for redemption or transfer of their units, whether fully or partially, without deduction of the redemption fee or any expense, at the net asset value on the date of the last day of the 30 calendar-day notice period.[46]

To this end, the unit-holder must make the corresponding redemption or transfer order as the purpose of this right of separation is not in itself to act as a provider of liquidity for unit-holders, but to allow those unit-holders who disagree with certain conditions of the investment fund which are objectively different to those that existed when they acquired the units to opt to leave the fund at no cost.

In general, a failure to exercise the right of separation by the established deadline implies that the unit-holder wishes to maintain its investment.

In relation to this point, in complaint R/368/2016 the complainant, in the framework of a merger of investment funds, complained that he/she had not been informed in a certifiable manner in due time and form. In this regard, it was indicated to the complainant that the requirement to register this amendment in the CNMV's registries had been duly fulfilled by the fund's management company, without knowing the reasons why the notification had not been received, which, in any event, was not necessarily attributable to the entity. A similar situation occurred in complaints R/576/2016, R/271/2016 and R/313/2016.

Similarly, in complaint R/535/2016, the complainant had requested a redemption within the context of another merger of investment funds, although the unit-holder set the condition that the order should be performed in the same terms as a previous redemption simulation. In this case, it was determined that the entity had acted incorrectly as it did not warn the unit-holder that it could not process a mandate that was impossible to fulfil and for not informing the client that the redemption had to be executed at the net asset value corresponding to the date of the last day of the 30 calendar-day notice period.

➢ Information request

As mentioned above, legislation applicable to companies that provide investment services generally establishes, in the field of conduct-of-business rules, that companies

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

46 The same Article 14(2) of Royal Decree 1082/2012.

should behave with diligence and transparency in the interests of their clients, protecting such interests as if they were their own. In this regard, entities must maintain their clients adequately informed at all times.

This section might therefore include requests for a copy of documentation relating to the investment, for example in complaints R/129/2016, R/438/2016 and R/835/2015, in which no incorrect conduct was noted, as well as the requests for information that unit-holders make to distributors. In these cases, it was assessed whether the entity had responded to the information requests and also whether it had provided appropriate information.

There is a wide range of information that might be requested. As an example we can cite: information about the procedure of a transfer between investment funds (R/384/2016, in which incorrect conduct was noted as there was no evidence that the unit-holder had been informed in due time and form of the manner in which the unit-holder might transfer his/her CIS portfolio to another entity); the history of subscriptions and redemptions of a particular CIS (R/89/2016, in which no incorrect conduct was noted); changes in net asset value over a particular period (R/173/2016, in which no incorrect conduct was noted); information on a certificate of the investment fund position containing pledged units (R/531/2016, in which no incorrect conduct was noted); information about ownership of the investment funds (R/486/2016, in which incorrect conduct was noted as there was no evidence of submission of the required information; and R/37/2016, in which incorrect conduct was noted as it was not demonstrated that the entity had informed the complainant of the identity of the management company of the investment funds, which belonged to the same financial group, so that said management company might provide the requested information); and the net asset value date to be applied to an implicit redemption in a CIS transfer (R/104/2016, in which the incorrect conduct was noted as it was demonstrated that the unit-holder had been provided with incorrect information with regard to the net asset value date applicable to the source CIS at the time the transfer order was processed).

It is also necessary to highlight two issues within this section which arise on a regular basis: questioning the tax information provided by the entities and the return calculations.

➢ Tax information

With regard to this issue, it should be highlighted that in the analysis of the complaints questioning the tax information that the different entities provided to CIS unit-holders, the role of the CNMV's Complaints Service is exclusively limited to assessing compliance by the entity with the information obligations laid down in securities market legislation, with the tax authority being responsible for assessing whether the tax treatment is correct or not.

Therefore, it is explicitly stated that the CNMV lacks jurisdiction in tax matters and is therefore unable to make an assessment with regard to whether the information offered by the entities is correct or not, which must be decided by the Tax Agency.

Due to the lack of competence to decide on issues relating to tax information, the reports linked to this question conclude without a decision, as occurred in complaint R/842/2015.

However, in complaint R/308/2016, there was a clear lack of response by the entity to the request for information made by a unit-holder with regard to a transmission of tax data within the framework of an investment fund transfer. As no evidence was provided for the entity's response, it was concluded that it had not kept the unit-holder adequately informed.

➢ Return calculation

In these cases, it is firstly specified that the scope of the CNMV's authority does not include determining the quality of the management or issuing judgements on the degree of return obtained by the managers as a result of their activity and it cannot therefore assess the cumulative return of the fund over a certain period or the losses obtained as a result of its investments.

Similarly, it is stressed that the actual result obtained by the unit-holder's investment is that which has been calculated by the management entity, which is, in short, responsible for performing the effective final assessment of the management of the fund in question and, therefore, for determining the final percentage return on the unit-holder's investment.

However, it is considered that the information that must be passed on to the client must be as complete and clear as possible.

In this regard, the statement sent by the entity to the complainants was assessed with the aim of concluding whether the entity, at the end of the year, had informed clients about the result of the calculations performed and method used to calculate the return, as well as the variables that had been taken into account on obtaining said result. In the case of complaint R/25/2016, it was understood that the entity had not provided satisfactory information, as it should have explained more precisely the method used to calculate the return, while in complaint R/864/2015, no incorrect conduct by the entity was noted.

➢ Change of an investment fund manager

Although no complaints were resolved in 2016 relating to the change of an investment fund manager, it should be noted that until recently the resignation or change of a fund manager was not established in CIS legislation[47] as a significant event and therefore the subject of a mandatory notification. Neither did it appear among the situations which grant the right of separation to unit-holders of investment funds without any redemption fee or expense being charged.

However, legislation regulating CIS was amended in 2015 to include certain aspects, including the treatment of this type of situation.[48] In this regard, it was established that, when a CIS is managed by a significant manager such that this fact is one of

47 Article 30 of Royal Decree 1082/2012, of 13 July, approving the Implementing Regulation of Law 35/2003, of 4 November, on Collective Investment Schemes and Rule Two of CNMV Circular 5/2007, of 27 December, on significant events of collective investment schemes.

48 Sole article of Royal Decree 83/2015, of 13 February, amending Royal Decree 1082/2012, of 13 July, approving the Implementing Regulation of Law 35/2003, of 4 November, on Collective Investment Schemes.

the distinctive elements of the CIS and is included in the prospectus and in the key investor information document, the change of the significant manager will be considered a substantial change in the investment policy and therefore must be published as a significant event and will grant, in the case of investment funds, the right of separation. If the replacement of the significant manager has immediate effects, it may also be communicated to the unit-holders of the investment fund subsequent to its entry into force, in a period of ten working days.[49] At any event, said provisions would only be applied to changes in the significant manager taking place subsequent to the entry into force of the amendment to the legislation, i.e., 15 February 2015.

3.5 Orders

3.5.1 On securities

3.5.1.1 Generic

When executing client orders, entities that provide investment services should generally adopt reasonable measures to obtain the best possible result for its clients' transactions, bearing in mind the price, cost, speed and probability of execution and settlement, volume, nature of the transaction and any other significant elements for its execution. To this end, entities must act with care and diligence in their transactions, execute them in accordance with their best execution policy and abide by the specific instructions that, as the case may be, their clients have given them.[50]

3.5.1.2 Specific

➢ Classification of buy/sell orders in the secondary market

In the case of direct purchases of shares in the secondary market, there are three types of orders: limited orders, market orders and at best orders.[51] This is a key distinction because it affects the price of the order: only in the first case (limited orders) is a client guaranteed a strike price (price that acts as the maximum price for the buy order and minimum for the sell order).

Therefore, the only order that truly eliminates risk or uncertainty about the strike price is the limited order as it is the client who sets the price, without prejudice to the risk of non-execution of the order as a consequence of the chosen price differing from the market price. This issue is particularly important at times of major market volatility, when the strike price of an order may differ substantially from the latest market price available prior to the time the order is made.

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49 Article 14(3) of Royal Decree 1082/2012, of 13 July, approving the Implementing Regulation of Law 35/2003, of 4 November, on Collective Investment Schemes.

50 Articles 221 and 223 of Royal Legislative Decree 4/2015, of 23 October, approving the recast text of the Securities Market Act.

51 Section 6.2.2 of Sociedad de Bolsas Circular 1/2001, on rules of operation of the Spanish Stock Market Interconnection System (Spanish acronym: SIBE).

The CNMV's Complaints Service processed complaints in 2016 in which the investor complained that he/she had not been given a fair market price in the execution of the order, with the complainant understanding a fair price as that provided by the entity at the time the order was made, which might be either the market price at that time or the closing price of the previous day if the order was made when the market was closed. Taking into account the fact that the client had not made a limited order, the Complaints Service explained to the complainant that orders without a price limit are executed at the best counterparty prices existing in the market at the time they are entered. These prices do not necessarily match the market price immediately prior to the time at which the order was made or the closing price (R/510/2016 and R/753/2015).

As previously discussed, although the limited order eliminates the uncertainty associated with the strike price, the investor runs the risk that the order will not be executed quickly and, in the event of sharp movements in the market, the limited price may be very far from the market price, thus making it impossible to execute the order, for which the entity bears no responsibility (R/244/2016).

Although the price of limited orders functions as a maximum price for the purchase and minimum price for the sale, the market does not allow entry of limited buy orders at a price above the upper limit of the static range or limited sell orders below the lower limit of that range.[52] The static range is the maximum variation permitted with regard to the static price established at any time (this limit is also applicable to shares traded on Latibex).[53] The static range is calculated based on the historic volatility of each security and is therefore usually specific to each security. However, in the event that an order issued by the customer is rejected by the system for this reason, the CNMV's Complaints Service understands that the entity must immediately notify the client of this situation (R/357/2016); otherwise, such conduct would be considered incorrect (R/69/2016).

Furthermore, the Complaints Service also receives complaints about non-executed securities orders relating to fixed-income assets, such as bonds and debentures. In Spain, these assets are usually traded on the AIAF fixed-income market and, more specifically through the Electronic Debt Trading System (Spanish acronym: SEND) As in the SIBE, limited orders are allowed in SEND, the advantage of which is that they eliminate the risk of execution at a price lower than that set by the client in the case of a sell order (or higher in the case of a buy order), but this system has the disadvantage that the order may take time to be executed or may even not be executed at all in the event that the market price differs from the price set by the client. Precisely this last situation arose in the context of the processing of a complaint proceeding and the Complaints Service had to conclude that there had been incorrect conduct, not as a result of poor execution of the order, but because the entity was unable to demonstrate that it had informed the client, in due time and form, of its non-execution following the prior request by the complainant with regard to the situation of the order (R/470/2016). Similarly, in relation to an order on bonds not executed in the secondary market, even when the Complaints Service did not note any incorrect conduct with regard to the execution, it was demonstrated that the

52 Rule Five, Section 2, of the aforementioned Sociedad de Bolsas Circular 1/2001 (amended by Circular 1/2004, amending the rules of operation of the Spanish Stock Market Interconnection System with regard to the definition of the static range).

53 Trading segment for Latin American securities listed in euros.

entity had not adequately informed the client about the market price of the financial asset immediately prior to making the order (R/794/2015).

➢ Execution of orders relating to capital increases or other corporate operations

As indicated in the section on subsequent information in relation to securities, the obligations of entities that provide securities administration services include providing, with due diligence and speed, information to their clients about the procedure to be followed to give instructions in the context of corporate operations carried out by companies whose shares they hold.

However, in those cases in which the client makes a limited sell order on subscription rights and said order is not executed as it does not at any time match the market price, the CNMV's Complaints Service understands that no blame may be attached to the entity for the loss in value of those rights (R/763/2015, R/867/2015, R/135/2016 and R/226/2016).

However, as discussed above,[54] investors that acquire these rights during the trading process of preferential subscription rights and not in their capacity as prior shareholders of the issuer, but as a result of a purchase order on the secondary market, must give specific instructions to the intermediary on what to do with them, irrespective of the time at which that purchase was ordered. In the event that the corresponding sell order is not made by the legally established deadline, the depository would not be required to carry out any type of action in this regard, and may even terminate the rights, with the subsequent loss for the investors. This is the case on a general basis and unless different guidelines for action by the entity have been set and these have been communicated to the client in due time and form. However, in the specific case that the aforementioned acquisition of the rights takes place on the last day of trading, it is impossible for the client to be able to receive any type of written communication sent by ordinary post within the time period for which it may be effectively useful. It would therefore be more effective for the entity, when completing the buy order for the rights online, to warn about the limit date for giving instructions in order to participate in the capital increase.

Another issue that generates some confusion in the context of capital increases with pre-emptive subscription rights is the time at which the order to participate in the increase is placed, given that the issuer of the shares usually sets different subscription periods and at the end establishes a "period for allocation of additional shares", in which shares can be acquired without the need to have rights but dependent on the increase remaining incomplete in the initial subscription period, referred to as the "pre-emptive subscription period". Notwithstanding the above, the process for purchasing any financial asset must generally be set out in an order that demonstrates the client's desire to make the acquisition. As we have already indicated, the CNMV's Complaints Service cannot base its conclusions on strictly oral statements that are not ratified or recognised by both parties. Therefore, the mere oral assertion that the client wanted to subscribe shares during the aforementioned period for

54 See the point on "Capital increases at par or above par: with share premium or called up capital" within the section titled "Information resulting from the status of depository" under the heading of "Subsequent information".

allocation of additional shares would not be sufficient to conclude incorrect conduct by the entity (R/749/2015). Similarly, a simple assertion that the client wanted to acquire shares directly in the secondary market and not through a capital increase in progress at the time the order was processed will not be sufficient grounds to conclude that the entity had acted incorrectly either (R/684/2015).

In takeover bids, as in capital increases, entities must provide their clients, with due diligence and speed, with information on the procedure to be followed to place instructions. Clearly, when the client places instructions in due time, the entity will be required to comply with them, in due time and form, even in the event that the client gives instructions on the last day of the period for acceptance. A failure by the entity to comply with instructions will be considered incorrect conduct (R/830/2015). A separate issue is when the client does not place instructions in the established period and submits the response to the branch after the deadline for placing instructions (R/21/2016).

Finally, with regard to the receipt of dividends, in the event that entities are interested in promoting amongst their clients a plan or programme for reinvesting the money they receive through cash shareholder remuneration, they must ensure that they have the required mandate. Any action by the entity which is not diligent when collecting said instructions is deemed to be worthy of reproach (R/766/2015).

➢ Errors committed by entities when executing orders on behalf of their clients

As indicated at the start of this chapter, entities that provide investment services must act with care and diligence in their transactions, performing them according to the strict instructions of their clients and adopting reasonable measures to ensure the best possible result for said clients.

The CNMV's 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. They must also allocate the necessary time to each client and pay attention to their complaints and claims and quickly and effectively correct any error that may have taken place.

Consequently, the Complaints Service welcomes those cases in which the respondent entity itself recognises the error made and offers the client a solution that financially compensates the damage resulting from unfortunate conduct by the entity for the following reasons: either because the order was a buy order and not a sell order (R/281/2016); or because the buy order was placed limited to a price and yet the order was executed at the market price, which was higher than the limited order price (R/494/2016); or because the order was executed even when it was dependent on the price reaching a certain limit, which was not reached (R/882/2015, R/260/2016, R/444/2016 and R/556/2016); because the order was to sell rights and not the shares from which the rights derived (R/7/2016); because the instruction was to sell rights and not subscribe shares (R/814/2015), or to sell rights to the issuer and not on the secondary market (R/12/2016), in the two last cases in the context of a scrip dividend programme.

The entity did not offer financial compensation in every case, such as when an order was not executed immediately, with the consequent "loss of earnings", i.e., the

difference between the market price at the time the order was processed and the price of the financial assets at the time it should have been executed (R/476/2016). In this case, once the incident was identified, as the client did not want to place the order, the entity understood that it was not appropriate to compensate him/her financially. However, the Complaints Service identified incorrect conduct with regard to the information offered when processing the order as the clients were not informed of the existence of a minimum number of securities to be acquired.

In addition, the recognition or existence of an error is not generally associated with an assumption of liability by the entity. Specifically, in the case of the processing of a buy order for shares traded on a foreign market, the respondent entity used the actions of the foreign broker as an excuse. However, the Complaints Service understood that this did not exempt the entity from the obligation to inform its client about the incident that prevented the processing of the order and the alternative channels which, as the case may be, it may have established in order to successfully complete the transaction (R/739/2015).

However, it should be indicated that the rectification of the error by the entity does not necessarily entail the absence of bad practice. In every case, the rectification of the consequences by the entities is the result of an error committed, but that does not ensure that the error will not be repeated. Consequently, when an error is detected, the CNMV's Complaints Service generally considers that there has been bad practice and requests that the entities provide evidence that measures have been adopted in order to prevent a repeat of such practice, without prejudice to the Service welcoming the solution adopted by the entity in the specific case subject to analysis in the complaint proceedings.

Finally, it should be indicated that on some occasions, although the client is convinced that the order has been poorly executed by the entity, this is not actually the case or, at least, this cannot be demonstrated. This might occur for several reasons, including the client's lack of knowledge about the true nature of the product acquired and the manner in which its price is discovered in the secondary market. We are referring, for example, to derivative products such as warrants, where price discovery depends on many factors,[55] not only the price of the "underlying asset". Therefore, the fact that there are sharp movements in the price of this product is not, in and of itself, an indication of abnormality, but quite the reverse, it is something that the client should have expected when investing in this type of product. More specifically, the fact that the market price of these products is very different from the closing price of the previous day to that on which the order is placed is something that, in and of itself, cannot justify a reproach by the Complaints Service (R/280/2016).

➢ Failure to provide evidence of an order supporting the transaction or failure to execute with instructions from the client

On some occasions, entities that provide investment services execute transactions on behalf of the client without having an order supporting said execution or, on the

55 For further information on the variables that influence the price discovery of the premium for options, you may consult the CNMV guide entitled *Futures and Options* here: https://www.cnmv.es/DocPortal/Publicaciones/Guias/GUIA_OPCYFUT_ENGen.PDF

contrary, transactions are not executed even though the client placed specific instructions in this regard.

Furthermore, applicable legislation on mandatory registers establishes that client order registers must contain the original copy of the order signed by the client or by the authorised person, when made in writing; the recording, when the order is made by telephone; and the corresponding magnetic register, in the case of electronic transmission. The respondent entity has the obligation to keep in its register the document through which the sale was ordered for a minimum period of five years.[56]

In the framework of one capital increase, a client placed a telephone order to subscribe the shares corresponding to him/her in accordance with the client's pre-emptive subscription rights and the respondent entity itself recognised that it had not been able to locate said call despite the aforementioned legislation on mandatory registers, and therefore the Complaints Service had to classify said conduct as incorrect (R/458/2016). On another occasion, the client had placed an order to acquire a fixed-income financial instrument and although the entity recognised the existence of said order, it justified its non-execution on the basis of a request asking the client to complete the purchase order, which the client did not respond to, which was made on the same day the order was placed and sent by email. As said email was not provided to the proceedings, the Complaints Service concluded that the entity had acted incorrectly (R/272/2016).

In relation to an investment carried out over a long period of time, the complainant questioned the execution of the transactions. The Complaints Service did not conclude in this case that there had been incorrect conduct by the entity as it had only requested that the client provide funds to cover the fee set out in the prospectus of maximum fees[57] in order to make available to the client the duplicates of the requested transactions (R/251/2016 and R/258/2016). Similarly, it is the Complaints Service's criterion not to conclude that there has been incorrect conduct when the entity refuses to process a securities transfer order while the client does not have sufficient funds in its associated cash account to pay the fee established in said prospectus of maximum fees for remunerating the service rendered (R/154/2016 and R/182/2016).

Finally, in those cases in which the client states that he/she had placed an order but the entity did not recognise the order, in the absence of certifiable evidence demonstrating that said order was placed or in the absence of specific instructions to perform a particular transaction, the CNMV's Complaints Service cannot conclude that the entity acted incorrectly (R/847/2015).

➢ Incidents on processing orders electronically

At present, with the advent of new technologies and the increasing access that clients have to the electronic channels offered by entities, clients often place securities

56 Article 33 of Royal Decree 217/2008, of 15 February, on the legal regime of investment firms and other entities that provide investment services, which partially amends the Regulation of Law 35/2003, of 4 November, on Collective Investment Schemes, approved by Royal Decree 1309/2005, of 4 November.

57 Article 71(1) of Royal Decree 217/2008, of 15 February, on the legal regime of investment firms and other entities that provide investment services and Order EHA/1665/2010, of 11 June, implementing Articles 71 and 76 of Royal Decree 217/2008.

orders through the entity's website, or through a mobile application or by using investment platforms. Although the legislation applicable to these transactions is essentially the same, when the entity intends to provide the service electronically it must have adequate resources to guarantee the security, confidentiality, reliability and capacity of the service rendered.[58] In addition, special situations may arise, for example, the existence of communication problems that might interrupt the processing of the order, with the consequent disruption for the investor. However, these situations will not always be the responsibility of the company that provides the investment service, but they may also be attributable to the telecommunications service provider used by the client.

When the respondent entity recognises a technical incident attributable to the entity itself, whether on its website or through a mobile application, as indicated above, the Complaints Service welcomes those cases in which the client is offered financial compensation, without prejudice to the fact that the entity's action must be classified as incorrect as it prevented the client operating with the securities that it had deposited in the entity (R/35/2016 and R/443/2016).

Nevertheless, it may be the case that although it has not been possible to operate electronically, the entity is diligent and informs the client about the situation with sufficient notice and as soon as the problem arises so that he/she may use other channels of communication, such as placing the order in person or by telephone. If it can be demonstrated that the respondent entity informed the client with sufficient notice that it was not possible to place orders electronically (R/759/2015) or as soon as the problem arose (R/162/2016), we believe that in this case it cannot be concluded that the entity has acted incorrectly, without prejudice to the obligation that entities would have to act with the due diligence when re-establishing the electronic service as soon as possible; otherwise, it must be concluded that the entity has acted incorrectly (R/175/2016 and R/195/2016).

A very similar issue arose with regard to electronic operations that consisted of placing hidden volume orders[59] in which the client detected that said condition was not being fulfilled and, therefore, the volume entered in the orders was visible for the market. However, the entity was able to demonstrate that it had acted swiftly to resolve the situation and inform the client of the alternative channels for operating with hidden volumes (R/394/2016).

Complaints have sometimes been made to the CNMV's Complaint Service stating that the entity has not executed an electronic securities order in accordance with the instructions, but they do not provide documentary support or certifiable evidence containing said instructions, beyond their simple testimony. If the fundamental piece of data for clarifying the facts is the time at which the order is made, the entity can always provide the electronic trail left by the client when he/she connected to the entity's website or mobile application. If the entity is able to provide evidence that at the time claimed by the client, he/she was not connected, the Complaints Service cannot attribute incorrect conduct to the entity (R/265/2016). Similarly, if the client claims that the entity executed an order electronically without his/her consent, and the entity provides the computer record containing the traceability of

58 Article 14(1)(f) of the aforementioned Royal Decree 217/2008.

59 Rule Six, paragraph 2(3) of Sociedad de Bolsas Circular 1/2001, on rules of operation of the Spanish Stock Market Interconnection System (Spanish acronym: SIBE).

the orders placed by the client, the Complaints Service cannot conclude that the entity has acted incorrectly (R/214/2016).

➢ **Execution of orders with stop loss condition**

Some entities that provide investment services offer their clients more sophisticated securities orders than those available on the market for all investors and which have been indicated in the section on order classifications. These are contingent orders that are entered in the market only if a specific condition is met, for example the financial asset reaching a certain price. These are referred to as stop loss orders, which are extensively used by investors in order to protect themselves against any possible falls in the price of the financial asset in which they have invested.

With regard to this type of contingent order, it may be the case that the client complains to the entity about poor execution. However, as these are orders that are executed through the SIBE, the CNMV's Complaints Service can verify whether the order, once entered into the market, was executed appropriately, which was explained to the complainants in the final reports (R/845/2015, R/853/2015, R/879/2015 and R/300/2016).

A similar case arises when the client places orders and the order is executed differently from how the client expected, not because the entity acted incorrectly but because the client might not understand the functioning of his/her order. In this case, if the client does not set the price for the order to be entered into the market, the transaction is executed at the best available price, which may be different from the price set in advance as the activation price. We insist, however, on the importance of providing the client with adequate information and, in this case, the client must be informed previously about the functioning of this type of stop loss order and its risks, either through the initial contractual documentation or through information available on the entity's website or when placing the order (R/67/2016).

On the other hand, the Complaints Service believes that it is not correct for the entity to allow the client to be able to place this type of order through its website when its financial intermediary does not allow them and, subsequently, once the order has been entered into the system, it is then rejected (R/43/2016). This is without prejudice to the positive assessment that must be made in those cases in which it is demonstrated that the entity informed the client of this situation at the time the order was placed.

3.5.2 On collective investment schemes

3.5.2.1 Generic

As discussed in the section on securities orders, entities that provide investment services must generally adopt, when executing client orders, reasonable measures in order to obtain the best possible result for the transactions of said clients.

Similarly, the legislation applicable to entities that provide investment services establishes, with regard to conduct-of-business rules, that when the client gives specific

instructions about the execution of his/her order, the firm must execute the order by following that specific instruction.[60]

3.5.2.2 Specific

In the case of CIS, the subscription/redemption process must be set out in a securities order that records the unit-holder's desire to subscribe/redeem or transfer units/shares of a particular CIS.

With regard to their execution, although their characteristics in relation to liquidity mean that there are fewer incidents compared with securities orders, this does not mean that there are no particular aspects that should be taken into account.

In this regard, and in relation to the complaints resolved in 2016, there were incidents relating to delays in processing the orders, failures to execute, defects in formalisation of the orders and errors when executing the orders. These aspects are addressed in the following points.

➢ Defects in formalisation of orders

As indicated above, entities that provide investment services must act with care and diligence in their transactions, execute them in accordance with their best execution policy and abide by the specific instructions that, as the case may be, their clients have given them.

Securities orders that contain those instructions must be fulfilled such that both the ordering party and the entity responsible for receiving and processing the order accurately and clearly know its scope and effects.

In complaint R/732/2015, the information contained in the subscription order of a foreign CIS was considered incorrect as it did not match the conditions established in the information documentation of the CIS and this could lead to confusion in investors with regard to the applicable conditions.

➢ Incidents relating to the net asset value applicable to investment fund subscriptions or redemptions

According to applicable sector legislation[61] the net asset value (NAV) applicable to the subscriptions and redemptions of units in financial investment funds will be that taken on the same day as the request or the following business day depending on the rule set for this purpose in the fund's prospectus.

The prospectus must also indicate the procedure for subscription and redemption of units in order to ensure that the subscription and redemption orders are accepted

60 Article 223 of Royal Legislative Decree 4/2015, of 23 October, approving the recast text of the Securities Market Act.

61 Article 78(2) of Royal Decree 1082/2012, of 13 July, approving the Implementing Regulation of Law 35/2003, of 4 November, on Collective Investment Schemes.

by the CIS management company only when they have been requested at a time when the applicable NAV is unknown to the investor and is impossible to accurately estimate.

In order to meet this objective, the prospectus may contain a cut-off time as from which the orders received will be deemed to be made on the following business day for the purposes of the applicable NAV, where appropriate. In this regard, days on which there is no market for the assets accounting for more than 5% of the fund's total assets will not be considered working days. The prospectus may set different cut-off times depending on the distributor, which, in any event, will be prior to that established by the CIS management company on a general basis.

The depository shall make the payment of the redemption in a maximum period of three working days from the date of the NAV applicable to the request. On an exceptional basis, that deadline may be extended to five working days when required by the specialities of investments exceeding 5% of the fund's assets.

Therefore, and bearing in mind applicable legislation, it will be necessary to consider the provisions of the prospectus of each fund in order to determine the NAV applicable to the subscriptions and redemptions.

In the case of foreign CIS, the distributors in Spain registered in the corresponding CNMV registry must submit a copy of the report on the categories of marketing established in Spanish territory, in accordance with the standard form published on the CNMV's website,[62] to each unit-holder or shareholder prior to subscription of the units or shares, in addition to the informative documentation of the CIS.

Said standard form establishes the following:

> *PROCEDURE FOR SUBSCRIPTIONS AND REDEMPTIONS*
>
> *Orders for subscription, redemption or exchange of shares/units must be received by the distributor on a business day and before [...]. Orders performed after the time limit or received on a non-business day will be processed together with the orders received on the following business day. The distributor will also confirm the transactions to each investor informing about the date on which they were performed, the number of shares/units subject to the transaction and the price and, where appropriate, the fees and expenses charged, and the exchange rates applied in any foreign exchange transactions performed.*

The provisions of both the informative documentation and the marketing report will therefore be followed.

In this regard, complaint R/297/2016 questioned the NAV applied to the redemption of units in a foreign CIS. It was also the case that the unit-holder had requested the redemption from the distributor in Spain on a day that was a public holiday for said distributor but not for the CIS. In this case, it was demonstrated that on the same public holiday, the distributor contacted the client to indicate that he/she could request the redemption directly from the CIS, but in the end the client

62 Rule Two, paragraph 2, of CNMV Circular 2/2011, of 9 June, on information on foreign collective investment schemes registered in the CNMV's registries.

requested the redemption from the Spanish distributor on the following day. Therefore, in accordance with the information in the prospectus, the NAV of the same day as the request should have been applied, whereas it was the NAV of the following day that was applied. However, it was not concluded that the entity had acted incorrectly because it was demonstrated that the foreign distributor had performed the appropriate procedures so that the NAV of the same day of the request would be applied, which meant that the complainant eventually received a credit in his/her account compensating the difference between the NAVs.

Similarly, in complaint R/167/2016, the complainant stated that, having given the order on 30 December, an incorrect NAV was applied, specifically that of the following 4th of January. In addition, this had led to a tax loss as the redemption was performed in a different tax period. In this case, it was demonstrated that the complainant had given the order on the 30th, but later than the cut-off time and that, furthermore, 31 December was not a business day for the purposes of subscriptions and redemptions in the fund subject to the complaint. It was therefore correct to have applied the NAV on the following business day, i.e., on the following 4th of January.

It should be stressed in these cases that it is important for the unit-holder to previously obtain information from the distributor about the working days for the purposes of subscriptions and redemptions, both for the distributor and for the corresponding CIS. This is especially important on dates on which public holidays may delay the applicable NAV and, therefore, effective redemption of the investment.

Complaint R/273/2016 questioned the NAV applied to the redemption of units in a foreign CIS, not because of the date applied but because the complainant stated that an incorrect NAV had been published for that date. In this case it was verified, by means of various information providers, that the published NAV was correct. However, it was concluded that the entity had acted incorrectly as it had not adequately informed the client about this point. A similar situation arose in complaint R/324/2016, in which a correct NAV was applied to the redemption subject to the claim, but incorrect information was provided in the settlement statement, on detailing an incorrect NAV that might have misled the unit-holder.

In other cases, the complainants stated that prior to the effective redemption request, a simulation was performed by applying a specific NAV, which was not fulfilled at the time of the redemption. In complaint R/378/216, even though no copy of the simulation document was provided, it was possible to verify that the NAV applied in the simulation corresponded to the latest NAV published at that time. However, as the redemption was requested on a subsequent date, that NAV did not necessarily match the NAV of the simulation, which particularly occurs with regard to investment funds that calculate the NAV on a daily basis.

Finally, it is interesting to highlight the situation that arose in complaint R/95/2016, in which the complainant questioned the applicable NAV as he/she believed that, even though a subscription order was given on a specific date and a money transfer sent to the associated account on the following day, said order had arrived after the cut-off time and therefore the subscription would take the NAV of the day following that of the money remittance. However, evidence was submitted that demonstrated that the money transfer had reached the destination on the aforementioned day but prior to the cut-off time. Therefore, the amount of the subscription took value in the fund's account on that same day, with the NAV corresponding to that date being applied to the subscription of the fund's units. It could not therefore be concluded

that the entity had acted incorrectly on subscribing the investment fund subject to the complaint on the questioned date.

➢ Specific case of CIS transfer orders

CIS transfers are governed by the provisions laid down in Article 28 of Law 35/2003, of 4 November, on Collective Investment Schemes and, for matters not provided for therein, by general legislation regulating the subscription and redemption of investment fund units.

Withdrawing from a fund, even when reinvesting the resulting amount in another fund (which is treated differently for tax purposes), involves redemption of the units of the source fund and a subscription of the units of the target fund. This operation is therefore subject to all the general legislation on subscriptions and redemptions of collective investment schemes.

The aforementioned legislation indicates that in order to initiate the transfer, the unit-holder/shareholder must contact the target management company or distributor, with the latter required to send 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 will have a maximum period of two working days following receipt of the request in order to perform the verifications that it deems necessary. Both the transfer of cash and transfer by the source company to the target company of all the financial and tax information necessary for the transfer must be performed as from the third business day following receipt of the request.

Similarly, both the deadlines established for setting the NAV applicable to transfer operations and the period set out for settlement of the operations will be governed by the provisions in the prospectus of each fund for subscriptions and redemptions.

CIS transfers are performed through the National Electronic Clearing System (Spanish acronym: SNCE). The manner in which the fields are completed is determined by the operating instructions of the SNCE. It should be clarified that the identifying data of the order issued by the target management company must match the data held by the source management company in accordance with the aforementioned operating instructions.

In this aspect, we must highlight that most of the complaints that are received questioning the applicable NAV arise in the context of a transfer between CIS, which mostly involve more than one entity. This may cause the transfer to be delayed and, in some cases, may lead to the subscription and redemption fees defined in the prospectus being charged as a result of the transfer, with the consequent negative effect for the unit-holder.

Similarly, it is interesting to highlight that, in cases involving more than one entity, the Complaints Service requests pleadings from those which have participated, either as respondent entity or as the entity involved in the transfer (whether source or target entity).

In complaint R/114/2016, it was demonstrated that the target entity had delayed in transmitting the order to the source entity and, furthermore, the amount initially

reimbursed in the source fund returned to that fund as it was rejected by the target management company. It was therefore concluded that the target entity had acted incorrectly as a result of the delay and that both entities had acted incorrectly by not keeping the unit-holder adequately informed about the incidents relating to the transfer.

It may also be the case that, during the processing of the proceedings and after requesting information from the two entities participating in the transfer, it is noted that the entity responsible for the bad practice may not be the respondent entity, but rather the other entity involved. If this is the case, a reasoned notification is sent to the latter in accordance with Rule Twelve of Circular 7/2013,[63] informing it that objective data has come to light that lead us to conclude, at least initially, that the entity may have incurred in bad practice with regard to the transfer subject to the complaint and that, consequently, we are providing them with a reasoned notification that said entity will be considered the respondent entity in the final report issued on the complaint in question.

Such was the case of complaint R/99/2016, in which it was demonstrated that one of the transfer orders was rejected by the source entity as it contained incorrect data, which the target entity was aware of and it was not until seven days later that it once again sent the order. It was therefore concluded that the target entity had acted incorrectly as the time period up to the final transfer application was excessive and because it did not inform the client with the due diligence about the incident that had arisen in the transfer and led to the failure to execute. This is particularly important as this information had only been communicated as a result of the enquiry made by the client.

Similarly, in complaint R/353/2016, it was concluded that the target entity had acted incorrectly as it had not correctly completed the transfer request, with the consequent rejection, and that the source entity had also acted incorrectly as it had not adequately informed its client.

In complaint R/371/2016, the order could not be executed as the target fund was not available. In this case, it was concluded that the entity had acted incorrectly as it did not inform the client in due time and form that the order could not be executed.

Similarly, in complaints R/108/2016 and R/454/2016, it was concluded that there had been incorrect conduct as it was demonstrated that there had been an unjustified delay in the communication about the incident arising in the transfer.

In complaint R/192/2016, the complainant stated that an incorrect NAV had been applied in the transfer of investment funds, in this case of the same distributor. The complainant claimed that he/she had placed a telephone order on the previous day, which was denied by the entity and in its pleadings, it simply informed of the impossibility of processing a fund transfer by telephone in cases in which, such as this case, the client had not previously contracted the target fund. The entity had asked the client to come to its offices in order to complete and sign the corresponding contract documentation, which the complainant did on the following business day. In this case, it was concluded that the entity had acted correctly as, independently

63 CNMV Circular 7/2013, of 25 September, regulating the resolution procedure for claims and complaints against companies which provide investment services and for addressing enquiries in the field of the securities market.

from assigning validity or not to the mandate given by telephone, it was demonstrated in the proceedings that, in any event, the telephone call took place after the cut-off time established in the target fund's prospectus. Therefore, the transfer order by telephone would have had the same NAV as that which was finally applied, i.e., the NAV of the following business day.

Similarly, it was not concluded that the entity had acted incorrectly as there was no delay in execution of the transfer in complaints R/119/2016 and R/55/2016, and also because a rejection of the order was not attributable to the respondent entity (R/871/2015).

➢ Change of distributor

With regard to this issue, it is important to distinguish between the transfer of units or shares between CIS and a change in distributor. In the latter case, it should be noted that most foreign CIS marketed in Spain take the form of a company and therefore investing involves acquiring shares that must be deposited in a securities account. Selling the shares through another intermediary requires transferring shares to this other distributor, without altering the investment.

It is also important to highlight that, although Spanish legislation does not establish any specific deadline before which the operation relating to foreign CIS must be performed, there are conduct of business rules for entities that provide investment services, which must act with diligence and transparency in the interests of their clients, protecting their interests as if they were their own.

In complaint R/130/2016, the complainant requested a change of distributor of shares in a foreign CIS. In view of the communications between the two entities (source and target distributors) provided to the proceedings, it was noted that even when considering as sufficient the argument given by the source entity, according to which the request had been sent to a disabled mailbox, which explained its inaction, the fact is that the period that elapsed from the time it became effectively aware of the request until its execution (over a month and a half) was considered excessive. It was therefore concluded that the source entity had acted incorrectly by unjustifiably delaying the transfer.

➢ Errors committed by entities when executing orders on behalf of their clients

As indicated above, 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. They must also allocate the necessary time to each client and pay attention to their complaints and claims and quickly and effectively correct any error that may have taken place.

In complaint R/331/2016, the entity recognised that, although the redemption orders had been marked as if they had been placed after the cut-off time established in the prospectus, they had in fact been placed by the unit-holder before said time. Nevertheless, it is true that the entity placed the orders correctly and it was therefore considered that it had acted in accordance with its duty of due diligence and care for the interests of its clients.

➢ Incidents on processing orders electronically

When the entity intends to provide the service electronically, it must have adequate resources to guarantee the security, confidentiality, reliability and capacity of the service rendered.[64] In addition, there may be special situations, such as the existence of problems with the entity's systems that prevent the correct processing of an order.

In complaint R/481/2016, the complainant contacted the entity's office in order to make a redemption of shares in a foreign CIS, which could not be carried out as operations were suspended as a result of a technological upgrade. For its part, the entity recognised that for two weeks online access to CIS had been frozen, and that it was also not possible to perform transactions at the entity's branch. In this case, it was concluded that the entity had acted incorrectly as, although it was demonstrated that the client previously had sufficient information about the scope and content of the incident in provision of the contracted service, the fact is that the entity did not provide the client with alternative means to guarantee correct provision of the investment service.

In complaint with reference R/527/2016, the claimant reported having wanted to make a partial redemption of its investment fund through the entity's electronic means. However, that had not been possible because, as the system informed the client, the resulting balance of the fund, following the redemption, was lower than the required minimum to be held as set out in the prospectus. The entity, for its part, recognised the existence of an operational error as in this specific case the complainant was subject to an exemption set out in the prospectus. In this case, it was concluded that the entity had acted incorrectly as it became aware of the incident sufficiently in advance and there was no evidence that it had solved the situation, contrary to the statements by the entity, which, furthermore, incorrectly informed the client about the solution of the incident.

In complaint R/204/2016, the entity recognised that a redemption order for units in an investment firm resulting from the execution of a will could not be executed as a result of an error, as the computer system prevented it. An incident was therefore opened so that the management company might review the documentation and unfreeze the units – which have been frozen in the framework of prior execution of will proceedings that had already concluded. It was therefore concluded that the entity had committed an error by not allowing the redemption.

➢ Failure to provide evidence of an order supporting the transaction or failure to execute with instructions from the client

As indicated in the section on securities orders, on some occasions, entities that provide investment services execute transactions on behalf of the clients without having an order supporting said execution or, on the contrary, transactions are not executed even though the client placed specific instructions in this regard.

In complaint R/238/2016, a client complained that he/she believed that his/her purchase order of a foreign CIS had been executed because the entity had not informed

64 Article 14(1)(f) of Royal Decree 217/2008, of 15 February, on the legal regime of investment firms and other entities that provide investment services.

the client in due time and form that the CIS had not been contracted. In this case, although a specific order was not provided, it was interpreted from the documentation provided that the unit-holder made the order for subscription of the units on a particular date and it was also concluded that there was an unjustified delay by the entity in reporting the incident in execution of the order.

In contrast, in complaint R/185/2016, it was concluded that the entity had not acted incorrectly as it had not been duly proved that an investment fund transfer order had been formalised by the complainant.

It might also be the case that the entity does not take into account its client's instructions for performing certain transactions which, for various reasons, cannot be carried out. For example, in complaint R/414/2016, the complainant stated that he/she had not been able to redeem, when exercising the right of separation granted to unit-holders, his/her units in an investment fund pledged as security for a mortgage loan – an operation aimed as subscribing new shares that would be used to replace the previous guarantee – due to the delay in the entity approving the transaction. In this case, it was understood that any use made of the pledged securities, such as their redemption in the case of funds, would require prior lifting of the pledge in accordance with the provisions of the clauses of the loan and prior extinction of the cause of the pledge, i.e., cancellation of the guarantee that gave rise to it.

Similarly, and given that Clause Four of the mortgage-secured loan agreement that was provided established that the validity of the pledge would last until extinction of the guaranteed obligations, with the right to redemption of the units in the event of dissolution of the fund also remaining pledged in favour of the entity, it was considered that the complainant could not dispose of the fund units or request their redemption.

In complaint R/234/2016, it was concluded that the entity had acted incorrectly by executing the two fund transfers without having collected an express order from the sole legal representative of the holder.

3.6 Fees

3.6.1 Securities

➢ Prior information on fees

Entities that provide investment services are legally authorised to freely set maximum rates for fees or expenses charged to their clients for the services that, having been accepted or definitively requested by the client, are effectively provided. A prerequisite for application of the fees is that the prospectus of maximum fees applicable to services and transactions must be sent to the CNMV and published.[65]

Entities must provide retail clients with the information provided for by law sufficiently in advance of providing the service in question. Among other aspects, this

65 Article 71 of Royal Decree 217/2008, of 15 February, on the legal regime of investment firms and other entities that provide investment services, and Article 3 of Order EHA/1665/2010, of 11 June, implementing Articles 71 and 76 of Royal Decree 217/2008, of 15 February, on fees and standard contracts.

information contains the full price the client must pay, including all fees, commissions, costs and associated expenses.[66]

Similarly, the provision of services of custody and administration of financial instruments requires the use of a standard contract.[67]

The standard contract must establish in a manner that is clear, specific and easily understandable for retail investors the items, frequency and amounts of the remuneration when they are lower than those established in the fee prospectus. Otherwise, said prospectus will be delivered and the acknowledgement of receipt of the client will be kept.[68]

In addition, entities must inform clients of any modification to the rates of fees and expenses applicable to the established contractual relationship regulated within the general content of the standard contracts.

In the event that the rates are modified upwards, the client must be previously informed and given a minimum period of one month or, as the case may be, any longer notice period agreed by the parties or which the entity has undertaken to respect, to amend or cancel the contractual relationship. During this period, the old rates will be applicable rather than the new rates.

In the event of a downward change, the client will also be informed without prejudice to its immediate application.

The information on the rate 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.[69]

In this regard, the legislation does not require that this modification should be notified by certified post or with an acknowledgement of receipt and therefore communications by ordinary post or by alternative means agreed between the parties will be sufficient to comply with the legal requirements.

The entity must prove that it provided the client with information about the applicable rates, by providing evidence of submission of the fee prospectus (or the lower rates occasionally agreed between the parties) at the time the contract was entered

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66 Articles 62 and 66 of Royal Decree 217/2008, of 15 February, on the legal regime of investment firms and other entities that provide investment services.

67 Article 5(2) of Order EHA/1665/2010, of 11 June, implementing Articles 71 and 76 of Royal Decree 217/2008, of 15 February, on the legal regime of investment companies and other entities that provide investment services, on fees and standard contracts.

68 Rule Seven, paragraph 1(e) of CNMV Circular 7/2011, of 12 December, on the fee prospectus and the content of standard contracts.

69 Article 62 of Royal Decree 217/2008, of 15 February, on the legal regime of investment firms and other entities that provide investment services, and Rule Seven, paragraph 1(e) of CNMV Circular 7/2011, of 12 December, on the fee prospectus and the content of standard contracts. Prior to entry into force of this Circular, legislation indicated that clients should be informed of an amendment to the rates of applicable fees and expenses and that clients would have two months to request an amendment or termination of contract without the new rates being applied during said period and that the rate that was clearly beneficial for the client should be immediately applied.

into or, in the event of any modification subsequent to the start of the contractual relationship, by providing evidence that the information on said change was submitted to the client. In this regard, the public availability of the current fee prospectuses and notifications to the CNMV at all the entities' offices and representations and on its website[70] is not sufficient to consider the entity's obligation to inform the client as fulfilled. Nor may this be considered a valid method or alternative to the legal obligations that entities have to inform their clients of fees expressly and in advance, as required by current legislation.

In this regard, the conduct of the entities was considered incorrect in the cases in which:

– The entity did not submit evidence that it had provided the client with information about the fees applicable in the aforementioned terms (R/714/2015, R/850/2015, R/198/2016, R/253/2016, R/291/2016, R/292/2016, R/304/2016, R/338/2016, R/355/2016, R/385/2016, R/399/2016 and R/447/2016).

– The entity submitted documentation that was not sufficient to provide evidence that the client was informed of the increase in the rates; in particular, a prospectus of the new rates applicable with no evidence that it had been sent to the client (R/138/2016, R/359/2016 and R/552/2016).

– The entity provided a copy of computer images showing communications with the client's name, through various channels, over a period of time, although it was not possible to know the content of the communications or if they were sent to the client at the correct time. In this regard, the entity itself indicated that, due to a one-off incident in its systems, it was not possible to provide a copy of the communication sent (R/339/2016).

In contrast, the conduct of the entities was considered correct in the following cases:

– When the entity provided evidence that it had provided information to the client on modifications to rates applicable to certain transactions by means of a letter sent to the complainant (R/836/2015, R/452/2016 and R/480/2016) and through a highlighted and explicit mention in a position statement (R/225/2016).

– In the absence of a subsequent modification, the entity provided evidence that it had provided the client with information on the applicable rates through the signed securities custody or administration contract (R/70/2016 and R/216/2016) and through an investment advisory service contract (R/870/2015).

– The entity informed the client about the rates by means of a *burofax* (R/124/2016). In this regard, the client was subject to special conditions in his/her securities trading, one of which was a rate of zero euros as custody fee for some securities that had been transferred from another entity. However, under the clause on the term of the securities custody and administration contract, the entity sent a *burofax* to the customer informing of its decision to terminate the securities deposit and administration contract. The client was asked, in a

70 Article 9 of Order EHA/1665/2010, of 11 June, implementing Articles 71 and 76 of Royal Decree 217/2008, of 15 February, on the legal regime of investment firms and other entities that provide investment services, on fees and standard contracts.

period of two months following receipt, to transfer the securities deposited in the account. The client was informed that, in the event the securities had not been transferred by said deadline, the published current rates would start to be applied and that said rates were attached as an annex.

With reference to the content of the communication, for the purpose of adequately informing the client, the communication should indicate the transactions that have undergone modification – at least the most usual ones – and, preferably, their amounts (those current to date and the new rate). It is mandatory according to current legislation to inform the client about his/her right of separation in the event of disagreement with the proposed modifications and any costs that may result should said separation be exercised, which would correspond with the rates still in force.

In complaints R/276/2016, R/326/2016 and R/452/2016, bad practice was noted as the content of the communication did not contain information on the client's right of separation in the event of disagreement with the proposed modifications or about any costs that might arise on exercising said right. If the communication of an increase in rates sent to the client establishes a date for entry into force and the prospectus with said rate increase is registered with the CNMV after the date for entry into force communicated to the client, the entity would have to wait until the latter registration date in order to apply upward changes in the rates. In this regard, one of the prerequisites for the application of the new rates is their submission to the CNMV.[71]

In complaints R/315/2016 and R/326/2016, it was considered incorrect for the entity to apply an increase in the rates as from the date for entry into force communicated to the client, when on that date the prospectus setting out said upward change had not been registered with the CNMV. The entity should therefore have waited until the registration date with the CNMV and should not have applied the increased rates.

In those cases in which the investor has complained about the lack of information on fees and expenses applied to a specific transaction, it is admissible for the entity to provide evidence that it previously provided the information on fees and expenses applicable to the particular case of that transaction. In this regard, the conduct of the entity was considered appropriate in the following complaints:

– In complaints R/36/2016 and R/47/2016, on providing information about fees applicable to a change of ownership by execution of a will, as the entity provided a document signed by the heirs expressing their agreement to charging the fee in force, whose manner of calculation and minimum amount was specified.

– In complaint R/733/2015, in relation to a complaint requesting a change of ownership by execution of a will, the entity, in the response from the Customer Service Department, in addition to informing about the steps to be taken in order to distribute the securities, warned that the change of ownership of these securities would involve the fee that appeared under the section of "Other transactions relating to the transfer of securities and orders" of the prospectus of maximum fees for securities market transactions and services, a copy of which was attached as an annex.

71 Article 3 of Order EHA/1665/2010, of 11 July, 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 complaint R/292/2016, with regard to the fee for change of ownership as a result of a donation, the entity provided evidence that this had been informed orally, as this was recognised by the complainant, as well as in an email.

When a part of the full price must be paid in a currency other than the euro, entities are free to set the exchange rate to be applied to foreign exchange operations, i.e., exchange rates are freely decided and may change at any time. Credit institutions and foreign exchange bureaux may apply exchange rates that they agree with their clients in their transactions, without prejudice to the obligation of each entity to publish the minimum purchase rate and maximum sale rate or, as the case may be, the single rates that must be applied for transactions lower than 3,000 euros. However, the entity receiving the order must inform its client prior to executing its instructions about the currency in question and the exchange value and applicable costs.[72]

Entities must therefore inform in advance about the exchange rate and the applicable costs or, failing that, about the manner in which they would be determined and, in the event that the exchange rate used is not the market rate, about the spread applied.

Complainants sometimes complain to entities about the high fees applied in certain securities purchases/sales where the fees are based on the need to buy/sell a particular currency, something that the client does not always take into account. Therefore, where it is demonstrated that the respondent entity provided information to the client on the exchange rate applicable and, as the case may be, the spread to be applied to said exchange rate, prior to execution of the order, the CNMV's Complaints Service understands that the entity has acted correctly (R/493/2016).

➢ Maximum amount and fee items

Entities may not charge clients fees or expenses that are higher than those set in their rates, apply more stringent conditions or charge expenses that were not provided for, or for items not mentioned in their rates.[73]

The fees did not exceed the maximum amounts indicated in the fee prospectus, and therefore the aforementioned requirement was met, in the following complaints: R/836/2015, R/225/2016, R/248/2016, R/338/2016 and R/339/2016, for the fee for securities transfers; R/193/2016, for the fee for securities exchanges and conversions in primary Spanish markets; R/425/2016, for the sale in takeover bids; R/870/2015, for the fee for investment advisory services; R/166/2016, R/257/2016, R/325/2016 and R/552/2016, for the fee for securities custody; R/323/2016, for the cancellation of a securities buy order; and R/36/2016 and R/47/2016, for the fee for change of ownership by execution of a will.

In complaint R/351/2016, however, it was considered that the entity had acted incorrectly by applying fees to foreign instruments for items for which no evidence was provided that they match the nature and features of said instruments.

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72 Articles 62 and 66 of Royal Decree 217/2008, of 15 February, on the legal regime of investment firms and other entities that provide investment services.

73 Article 3(2) of Order EHA/1665/2010, of 11 June, implementing Articles 71 and 76 of Royal Decree 217/2008, of 15 February, on fees and standard contracts.

The rates or fees established in the prospectus are, at any event, maximum rates and the actual fees may therefore be lower. Consequently, if the entity informs of the application of a lower amount to the client, it must adjust the amount charged to the information that has been provided.

In complaint R/159/2016, the conduct of the entity was incorrect because, although the fees that it applied to some securities transfers did not exceed the maximum limit established in its rates on the transaction date, the entity recognised that employees at the branch had personally informed the client that said transactions would not be subject to any fee and it was therefore inappropriate to charge any amount for said transaction.

➢ Payment of outstanding expenses and fees before executing an order

As already indicated, entities may condition the execution of a client order on the client providing the funds necessary to meet any fees and expenses arising from said order.

In complaints R/154/2016 and R/182/2016, the failure to execute a securities transfer order was considered justified as the complainant did not have sufficient balance in the associated account to meet the outstanding sums for fees and expenses.

➢ Refund of fees charged for incorrect transactions

As indicated on several occasions, 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. They must also allocate the necessary time to each client and pay attention to their complaints and claims and quickly and effectively correct any error that may have been made.

In this regard, it is considered positive for respondent entities to recognise any errors that come to light in the provision of the financial services and for them to take responsibility for any consequences so as to improve the relationship between the entity and its clients.

In complaint R/188/2016, the entity provided documentary evidence that it had corrected an error in the settlement of the exchange of some shares such that in the end no fee was charged to the complainant.

➢ Incorrect or insufficient information in the statements on fee charges

Entities that provide investment services must maintain their clients appropriately informed at all times.[74] Deficiencies relating to information in client statements include the following:

74 Article 209(1) of the recast text of the Securities Market Act approved by Royal Legislative Decree 4/2015, of 23 October, and previously Article 79 *bis*(1) of Securities Market Act 24/1988, of 28 July.

– In complaint R/159/2016, the statements provided by the entity for securities transfers performed by the client indicated an amount of "0.00" euros for fees. However, the entity had charged the client fees for the transfers, as claimed by the complainant. This was admitted by the entity and appeared in the account linked to the securities account. Consequently, the information that appeared in the statement of the transactions did not correspond with the actual situation as the entity had charged fees for the transfers.

– In complaint R/552/2016, the entries of the monthly charges to the complainant's account lacked sufficient information so as to identify the reason behind charging the custody fee, which is particularly important bearing in mind that custody involves different types of fees depending on whether it is a domestic, European or US market.

➢ Types of fees

✓ *Securities custody and administration fees. Accrual of the fee*

Entities that provide the service of custody and administration of financial instruments must set out the applicable rates in their prospectuses with a series of requirements, such that for billing periods shorter than the agreed ordinary settlement period, a part proportional to the number of calendar days during which the service is provided will be applied. This is without prejudice to what the parties may agree with regard to their accrual and settlement in the corresponding contract.[75]

Consequently, it was considered incorrect conduct for the entity to charge the custody fee for transferred securities for the entire period without adjusting the fee to the period in which said custody service was provided (R/154/2016) and for the entity to charge a full quarter when the product held in custody was redeemed prior to the end of the quarter (R/447/2016).

In complaint R/166/2016, it was considered that the entity had acted correctly in applying the custody fee in proportion to the time that the securities were deposited.

✓ *Securities custody and administration fees. Charges in the case of securities that are delisted and in liquidation*

There are frequent complaints as a result of the delisting of securities deposited in the respondent entity.

In these cases, the CNMV's Complaints Service understands that, in general, 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. They are therefore in theory subject to payment of the fees provided for in the fee prospectus until the definitive extinction, unless there is a commercial decision by the depository to exempt their clients from paying said expenses. Similarly,

75 Rule Four, paragraph 2(a) of CNMV Circular 7/2011, of 12 December, on the fee prospectus and the content of standard contracts.

the entity may continue charging this fee even when the deposited securities are unproductive.

In this regard, provision of the custody service by the entity does not cease as a consequence of the deposited securities no longer paying a particular remuneration to the holders or the fact that they are no longer listed on any market.

However, the CNMV's Complaints Service considers that it is good practice for the depository to choose not to charge administration fees for the securities when the corresponding issuer is delisted – without liquidity – and its securities are unproductive, particularly in those cases in which no procedure is applicable through which the client may de-register the shares from his/her securities account.[76]

In this regard, in complaints R/813/2015, R/45/2016, R/106/2016, R/411/2016, R/463/2016 and R/533/2016, the complainants disagreed with the charging of fees for the custody of delisted securities which they were unable to dispose of. The Complaints Service informed them about the aforementioned criteria and other possible options made available to them to reduce or avoid fees being charged: transferring the securities to another entity; transferring the securities to a third party by any means accepted by law, such as donation or sale; voluntary waiver of maintenance of the registration in favour of said holder in the detailed accounting registry of the shares, providing the requirements provided for by law are met.

In complaints R/268/2016 and R/528/2016, it was considered good practice for the entity not to charge the client custody fees for some delisted shares. In the complaint with reference R/533/2016, the entity undertook not to charge custody fees while the client held the delisted securities deposited with the entity and provided evidence that it had refunded the fees owed for this item as from the first complaint by the client. In complaint R/106/2016, the entity provided evidence that it had reimbursed the client for the custody fees that had been charged as a consequence of the deposit of certain securities from the date on which they were delisted. In complaint R/463/2016, the entity offered the complainant the possibility of going to the office to renegotiate the amount of the fees.

✓ *Fees for the provision of advisory services*

Entities that provide investment advisory services will establish rates depending on the amount of the assets under advice, the increase in their value or both items.[77]

In complaint R/870/2015, the complainant expressed his/her disagreement with the fact that fees were charged for the provision of the advisory service when the portfolio under advice had changed very little, without producing any gains. However, the investment advisory service contract signed with the client was very explicit and clear with regard to the charging of fees for the advisory service, with these being independent from the other expenses and applied to the average effective value of the portfolio under advice and not on any possible positive gains.

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76 See the section on "Delisted shares: waiver" under the heading of "Subsequent information".

77 Rule Four, paragraph 3(a) of CNMV Circular 7/2011, of 12 December, on the fee prospectus and the content of standard contracts.

✓ *Fees for the provision of portfolio management services. Statements*

Entities that provide portfolio management services must provide each client, on a durable medium, with a periodic statement of the portfolio management activities carried out on behalf of the client, except when said statement is provided by another person. In the case of retail clients, the statement must include, where appropriate, the total amount of the fees and expenses accrued over the period to which the information refers, breaking down at least the total of the management fees and the total expenses associated with execution of the service, including, where necessary, a statement indicating that a more detailed breakdown may be provided at the client's request.[78]

Similarly, provision of portfolio management services requires the use of a standard contract,[79] which must specify the medium and the frequency of said statement.[80]

In complaint R/823/2015, it was considered that the client had been informed of the fees for portfolio management as this was recorded in the statement submitted to the proceedings.

✓ *Securities transfer fees. Abusive nature*

Transferring securities is necessary for cancelling the contract/commercial relationship with the depository. Therefore, without prejudice to the freedom that entities have to set their rates and the assessments that may be made with regard to the right to competition, 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 the Consumers and Users Act.[81]

A transfer fee that is too high might be an obstacle to the investor's right to terminate a service agreement in accordance with Article 62 of the aforementioned Act: "Clauses that establish [...] limitations that preclude or hinder the right of the consumer and user to terminate the contract are prohibited". It might even be identified as an abusive clause, in accordance with Article 82 of the Act, although its hypothetical abusive nature can only be decreed by an ordinary court of justice and not by the CNMV.

Therefore, the transfer fee may never serve as a penalty or deterrent and it may only be used to remunerate, in a proportionate manner, the service provided by the investment firm.

The Complaints Service communicated to the complainant, for information purposes, the issues relating to the abusive nature of the contractual conditions of the rates

78 Article 69 of Royal Decree 217/2008, of 15 February, on the legal regime of investment firms and other entities that provide investment service.

79 Article 5, paragraph 2(a) of Order EHA/1665/2010, of 11 June, implementing Articles 71 and 76 of Royal Decree 217/2008, of 15 February, on fees and standard contracts.

80 Rule Nine, paragraph 3 of CNMV Circular 7/2011, of 12 December, on the fee prospectus and the content of standard contracts.

81 Royal Legislative Decree 1/2007, of 16 November, approving the recast text of the General Law for the Defence of Consumers and Users.

for securities transfers in complaints with reference R/714/2015, R/836/2015, R/850/2015, R/70/2016, R/138/2016, R/155/2016, R/159/2016, R/182/2016, R/225/2016, R/248/2016, R/253/2016, R/291/2016, R/304/2016, R/307/2016, R/338/2016 and R/355/2016.

Similarly, the CNMV's annual report on investor complaints highlighted the need for proportionality of the fees for security transfers. Based on the information obtained from the complaints, as well as the conclusions drawn from an analysis relating to the fee rates contained in the fixed part of the prospectuses, the CNMV modified the regulations governing the rate applicable to securities transfers.[82]

The previous regulation established a maximum rate for each class of transferred security expressed in monetary terms, while the new regulation establishes that the rate would be based on a percentage of the amount of the transferred securities, together with a maximum amount in euros and without the possibility of establishing a minimum amount. If the transferred securities are equity, the basis for calculation will be the effective value on the date on which the transfer is performed and, if they are fixed-income securities, the nominal value.[83]

This modification is thus aimed at achieving a reasonable application of the principle of proportionality in the interest of investor protection and proper functioning of the market, but without undermining the freedom to set rates.

➢ Associated account

In accordance with applicable legislation in this regard, the item of custody and administration of financial instruments contained in the fee prospectuses will include the maintenance of the securities account, together with the maintenance of the operational cash account in the event that this is exclusively linked to the securities account.[84]

Consequently, when money accounts (current accounts, savings accounts, etc.) are opened or maintained with the sole aim of supporting the movements in the securities accounts – providing that in practice these are only movements relating to securities, i.e., that these are merely operational accounts that are ancillary to a main product which is an investment product – investors must not bear any additional cost for opening and maintaining these money accounts as said costs would be included in the fees charged for provision of the financial instruments custody and administration service.

However, if not all the movements are exclusively related to the securities account and the cash account is used for purposes other than supporting the investments in securities, the aforementioned exception would not apply. Consequently, deciding on whether the fees applied to the cash account are correct or not corresponds to the

82 CNMV Circular 3/2016, of 20 April, amending Circular 7/2011, of 12 December, on the fee prospectus and the content of standard contracts.

83 Rule Four, paragraph 2(e) of CNMV Circular 7/2011, of 12 December, on the fee prospectus and the content of standard contracts.

84 Rule Four, paragraph 2(b) of CNMV Circular 7/2011, of 12 December, on the fee prospectus and the content of standard contracts.

Bank of Spain as the competent authority for this issue. In complaints R/103/2016, R/275/2016 and R/461/2016, the entity would have incurred in bad practice by charging complainants fees for maintaining a current account associated with the securities account to the extent that the sole purpose of the current accounts was to support investments in securities and these, in practice, were only used for movements relating to these investments.

In contrast, in complaint R/765/2015, the respondent entity provided statements in which the current account associated with a securities account was used each year for numerous and varied transactions.

Finally, in complaint R/296/2016, the entity did not charge maintenance or administration fees for a dividend reinvestment account and an operational account and therefore followed the aforementioned regulations.

3.6.2 Investment funds

According to current legislation, management companies and depositories may receive management and deposit fees, respectively, from the funds, and management companies may receive subscription and redemption fees from unit-holders. Similarly, subscription and redemption discounts may be established in favour of the funds themselves. Said fees, which will be set as a percentage of the fund's assets or yield, or a combination of both variables or, where appropriate, a percentage of the net asset value of the unit, may not exceed the limits that have been set in the regulations as a guarantee of the interests of the unit-holders and according to the nature of the fund.

Different fees may be applied to the different classes of units issued by one single fund. At any event, the same management and depository fees will be applied to all the units of the same class.

The prospectus and the key investor information document must contain the method of calculation and the maximum limit of the fees, the fees effectively charged and the beneficiary of the fees.[85]

Consequently, any information that is included in another document must match the conditions and characteristics established in the fund's prospectus.

➢ Types of fees and maximum percentages

✓ *Subscription and redemption fees*

These are the fees charged by the fund's management company to each unit-holder for investing or disinvesting in the fund. They are calculated as a percentage of the invested capital, reducing the amount invested in the case of subscription or the disinvested capital at the time of redemption. The redemption fee sometimes varies

85 Article 8 as worded by Number Four of the Sole Article of Law 31/2011, of 4 October, amending Law 35/2003, of 4 November, on Collective Investment Schemes (*BOE* – Official Gazette of the State – of 5 October). Entry into force: 6 October 2011.

depending on the period in which the units have been held in the fund. Both fees are optional and, therefore, it will depend on the fund as to whether or not they are established in its prospectus.[86]

In financial funds, neither the subscription and redemption fees nor the discounts in favour of the fund that are applied in subscriptions and redemptions, nor the sum of both may be greater than 5% of the net asset value of the units.

In real estate funds, neither the subscription fee nor the redemption fee may be greater than 5% of the net asset value of the unit.

✓ *Management fees*

The management fee in investment funds will be established based on the assets, the yield or both variables.[87] In general, management fees that exceed the following limits in annual terms may not be charged:

– When the fee is calculated solely on the basis of the fund's assets, in annual terms it may not exceed 2.25% of the assets in financial funds; in real estate funds, this limit stands at 4%. This fee is generally deducted daily from the fund's net asset value.

– When the fee is only calculated on the basis of the results, it may not be greater, in annual terms, than 18% of the results in financial funds. In real estate funds, the fee may not be greater than 10% of the results.

– When both variables are used, the limits will be 1.35% of assets and 9% of results in financial funds, while in real estate funds, the limits will be 1.5% of assets and 5% of results.

✓ *Deposit fees*

This is a fee charged by the fund's depositories for custody and administration of the securities that form part of its portfolio. It is accrued on a daily basis and is implicit, i.e., it is deducted from the net asset value. This commission may not exceed 2/1000 of the assets per annum.

✓ *Other expenses*

Other expenses that must be borne by investment funds must be expressly set out in the prospectus. In any event, such expenses must match services effectively provided to the fund and which are essential for normal performance of its activity. No may they lead to additional costs for services inherent to the work of its CIS

86 Article 5 of Royal Decree 1082/2012, of 13 July, approving the Implementing Regulation of Law 35/2003, of 4 November, on Collective Investment Schemes.

87 Article 5(3) of Royal Decree 1082/2012, of 13 July, approving the Implementing Regulation of Law 35/2003, of 4 November, on Collective Investment Schemes.

management company or its depository, as these are already remunerated by their respective fees.

➢ Redemption fees: lack of information

As indicated in the section on prior information, the subscribers of investment funds must receive, when making their first subscription of the fund, a key investor information document (KIID), which must include the method of calculation and the maximum limit of the fund's fees.

In this regard, there are frequent complaints stating that clients had not been informed of the fund's fees and claiming a reimbursement of the redemption fee charged.

In this regard, in complaint R/207/2016, the entity provided a copy of the duly signed KIID of the investment fund subject to the complaint that was in force on the subscription date. This document was sufficient for the complainant to know that the 2% redemption fee that was eventually charged by the respondent entity at the time of redemption was already provided for.

Similarly, in complaint R/877/2015, the complainants indicated that they had been informed that the two investment funds that they subscribed were exempt from fees. In this regard, in view of the funds' prospectuses, it was verified that, in one case, the fund did not indeed mention any redemption fee for any of the classes of units of the fund, while the prospectus of the other fund subject to the complaint indicated a 3% fee on the redeemed amount for units held for up to 30 days and 1% for units held for between 31 and 90 days.

➢ Redemption fees on switching funds

Complaints arise on making a transfer between investment funds in which complainants express their disagreement with the redemption fee charged by the source entity after making an order with the target entity to transfer their investment to another fund of the latter.

In this regard, it must be remembered that a transfer of an investment fund, even when it has special tax treatment, involves a final redemption in the source fund and subscription in the target fund. Both redemption and subscription fees may therefore be applied.

In this regard, it should be recalled that the fund's prospectus must include all the applicable fees, including redemption fees. Consequently, in response to complaints of this nature, the first thing to be done is to verify whether the source entity, at the time of subscription of the fund by the complainant, complied with the information requirements established in the legislation, i.e., whether it submitted the KIID and the latest published half-yearly report, documentation which would have allowed the investor to know about the redemption fees that would be applied in the event of a transfer of his/her fund.

In complaint R/62/2016, the complainant disagreed with the fee charged for a transfer between investment funds and stated that the entity had informed him/her that no fee would be charged whatsoever. However, based on the contents of the original

fund prospectus in force at the time of subscription, a 4% redemption fee was established, unless said redemption took place on specific dates established in the prospectus (liquidity windows).[88]

In this case, even though the entity provided a copy of the KIID, said document was not signed by the complainant. Therefore, in accordance with the regulations, there was no evidence that the entity had submitted this documentation to its client. It was therefore concluded that the entity had not acted correctly.

In contrast, in complaint R/824/2015, the claimant believed that the entity should not have charged him/her any redemption fee following the transfer that was performed. For its part, the entity provided evidence to the complaint proceedings by means of a copy of the prospectus duly signed by the complainant. Said prospectus established a redemption fee of 5% of the redeemed amount for redemptions performed between certain dates, with there being certain liquidity windows in which the units could be sold without a fee with advance notice of at least five working days.

In accordance with the documentation provided, it was demonstrated that the complainant ordered, through the target entity, the transfer of his/her investment fund on a date other than those provided for as liquidity windows in the fund's prospectus. Given that said prospectus provided for a redemption fee of 5% of the redeemed amount outside said window – a fee that corresponded with that actually charged by the entity – it was concluded that the entity had acted correctly.

Similarly, the complaint with reference R/199/2016 focused on the fee charged with regard to a transfer of units of an investment fund. In this case, the complainant also claimed that he/she had not been informed when subscribing the fund.

The entity provided the proceedings with a document entitled "Request for information on investment funds", duly signed by the complainant, which made generic reference to five funds, which included the fund subject to the transfer. In the document, the complainant expressed his/her wish to periodically receive the half-yearly and annual report of the corresponding fund and stated the following: "In addition, I declare that I have received the Simplified Prospectus and the latest half-yearly report available for the funds in which I have performed a first subscription". In addition, the entity claimed to have submitted to the complainant the KIID.

However, it was concluded that there had been bad practice as effective submission of the KIID was not demonstrated given that the version of said document provided by the entity was subsequent to the effective subscription of the fund and was therefore unsigned.

➢ Fee following essential modification of the prospectus: right of separation

As already mentioned, as a result of essential modifications to an investment fund, current legislation establishes the requirement for the management company to set a period within which the units may be redeemed without any fee for this item and

88 The dates laid down in the fund's prospectus in which unit-holders may redeem their investments without paying a redemption fee are referred to as liquidity windows.

in exercise of the right of voluntary separation.[89] This is due to the fact that the purpose of this right of separation is not in itself to act as a provider of liquidity for unit-holders, but to allow those unit-holders who disagree with certain conditions that are objectively different to those that existed when they acquired the units to opt to leave the fund at no cost.

Similarly, any amendment to the regulation of an investment fund which requires prior authorisation must be published by the CNMV after its authorisation and communicated by the CIS management company to the unit-holders in a period of ten days following the authorisation notification. In these cases, the CNMV will demand, as a prior requirement for registration of the amendment in its administrative registers, that evidence be provided that the notification obligation has been met by means of certification from the CIS management company and submission of a copy of the letter sent to unit-holders.

In the case of complaint R/228/2016, the complainant stated that nobody had informed him/her about the existence of the redemption fee that was charged following transfer of the fund. However, in the course of the complaint proceedings, it was demonstrated that in response to an amendment of the fees, the fund's management company informed the complainant about said changes, notifying him/her of the available right of separation – which the complainant did not exercise – as well as the new redemption fee.

➢ Transfer in liquidity window: redemption fee

As indicated above, a liquidity window is defined as the dates set out in the fund's prospectus during which unit-holders may redeem their investment without paying any redemption fee.

With regard to the application of redemption fees on transfers of funds with liquidity windows, the CNMV's Entity Authorisation and Registration Department[90] published guidelines which stated that, "In transfer orders in which the 'liquidity window' coincides with the day the order is received, or within the verification period, by the source management company, the redemption fee cannot be charged, in accordance with the duty to execute orders under the best terms for the client".

In complaint R/269/2016, the entity charged its client a redemption fee even though the redemption order was placed on the day of the liquidity window. Consequently, it was considered that there had been bad practice due to the fact that, although the transfer was executed following the two-day verification period, the fact is that the order was received on the same day as the liquidity window and therefore the entity should not have charged the redemption fee in accordance with the duty to execute orders under the best terms for the client.

Similarly, in complaint R/279/2016, it was demonstrated with an email that the request made through the target entity for the transfer of the investment fund was

89 Article 14(2) of Royal Decree 1082/2012, of 13 July, approving the Implementing Regulation of Law 35/2003, of 4 November, on Collective Investment Schemes.

90 CNMV Communication about application of redemption fees in transfers of guaranteed funds with "liquidity windows" dated 16 October 2007.

made in the liquidity window. However, the target entity processed the order outside that window, which caused the complainant to be charged a redemption fee. In this case, it was concluded that the target entity had acted incorrectly as it should have processed the order on the liquidity window date.

➢ Funds with different unit classes

There are investment funds that have several classes. The difference between them mainly lies in the minimum amount to be invested by the unit-holder and the amount of the fees that are applied (lower fees in the class that requires greater investment).

In these cases in which, as a result of the amount of the subscription order, the unit-holder may access the more advantageous class of the investment fund – as indicated, the higher the minimum investment the lower the fees – the management company shall, in the case of natural persons, acquire units of the more advantageous class.

In those cases in which, as a result of various circumstances, such as: new investments of the unit-holder in the fund, transformation of a single-tranche fund into another fund with two unit classes, merger of funds, etc., it is considered good practice for the entity to make an automatic transfer of the units to said class, with the obligation to inform the investor.

In this regard, on 15 March 2012, the CNMV's Directorate-General of Entities published a communication on the possibility of establishing procedures for automated reclassification of investment fund unit-holders between classes of units or other equivalent situations. Entities may therefore voluntarily establish systems for the automated reclassification of unit classes. It is in fact considered good practice for management companies to establish control procedures in order to periodically identify investors that meet the requirements to access unit classes that are more beneficial in terms of fees than those that they have subscribed and, as the case may be, reclassify the units.

However, the unit-holder must know *a priori* how the management company will act in response to a reclassification of his/her investment.

In the case of complaints R/274/2016, R/390/2016 and R/412/2016, the unit-holders performed a transfer of units from their source fund to a target fund, which had two classes. However, although they met the minimum investment requirements to access the more favourable of the two classes existing in the target fund, the entity subscribed the less favourable class for them. However, the entity detected the situation and at its own initiative, reclassified the units to the more advantageous class, although it did not inform the client previously, and it was therefore considered that the provision of information had been defective.

A similar case occurred in complaint R/369/2016, in which the complainant disagreed with the fact that, being a unit-holder of an investment fund, the management company decided to create two classes of units in said fund, A and B, which were differentiated exclusively by the minimum required investment and the amount of the fees. Even though at the time of the creation of the classes, the complainant had an investment greater than the minimum required in order to access the more favourable class, the respondent entity kept the complainant in the less favourable class.

This type of modification of the investment fund, in accordance with current legislation – Article 14 of the CIS Regulation and Rule Nine of CNMV Circular 2/2013 – does not need to be reported to the unit-holders on an individual basis. It is sufficient for the entity to publish a significant event at the time the modification takes place and to notify the unit-holders in the periodic information. Consequently, the complainant did not detect a change in the fund until he/she received the aforementioned periodic information. At that time, the complainant requested that the entity transfer his/her units from the more expensive class to the cheaper class and immediately requested a refund of the amount of the improperly charged fees from the registration date of the new classes up to the date of the transfer request.

Even though, in accordance with the aforementioned CNMV Communication dated 15 March 2012, it would be considered good practice for the respondent entity to have implemented some kind of procedure to identify the unit-holders which, as a result of their invested amount, would have been eligible to access this new and more advantageous Class B and to have automatically reclassified his/her units from Class A to Class B (after having informed them of this change), implementation of this good practice is optional as current legislation does not establish any provisions in this regard.

Consequently, in those situations in which the entity has not implemented the good practices recommended by the CNMV, the only way in which unit-holders would be able to access the more beneficial class would be to request the transfer from one class to the other, as the complainant did, with the value date being the date on which the aforementioned transfer was executed.

Therefore, even though the entity did not follow the good practice as recommended by the CNMV, the Complaints Service concluded these proceedings by indicating that, in response to the request to change the class of the complainant's units in the fund, the office acted appropriately by ordering a transfer of his/her units from Class A to Class B (transfer of funds) as this was the only manner to perform this type of operation if the entity had not implemented an automatic mechanism for reclassifying the units.

However, after the final report had been issued, the entity informed that it accepted the decision and notified and demonstrated that it had refunded the fees to the complainant.

➢ Custody fees for investment in funds

Distributors of Spanish investment funds may charge the unit-holders that have subscribed units through them fees for their custody providing this is indicated in the CIS prospectus and the following requirements are met:[91]

i) The units are represented by means of certificates and appear in the register of unit-holders of the management company or the distributor through which they have been acquired on behalf of the unit-holders and, consequently, the

91 Article 5(14) of Royal Decree 1082/2012, of 13 July, approving the Implementing Regulation of Law 35/2003, of 4 November, on Collective Investment Schemes.

distributor provides evidence of ownership of the units with regard to the investor.

ii) The general requirements on fees and contracts for the provision of investment and ancillary services are met.

iii) The distributor does not belong to the same group as the management company.

However, the above is not valid for foreign investment funds. In these cases, the distributor of foreign CIS may only charge the custody fee if it effectively provides this service. In the field of foreign CIS, it is understood that custody exists when the distributor keeps an individualised register of the CIS units, i.e., one which details the holders of the units which, on an aggregate basis, appear in the corresponding management company in the name of the distributor. This will occur when the distribution of the investment fund is carried out through omnibus accounts.

Said fee must be indicated in the fee prospectus of the respondent entity.

Complaints were resolved in 2016 in which the complainants expressed their disagreement with the custody fees charged by the marketing entity of foreign CIS. In these proceedings, it was verified that the fees claimed were in line with the fee prospectus and that the complainants had been previously informed about their application through the contractual documentation, which set out the applicable fees (R/363/2016, R/370/2016 and R/464/2016).

3.7 Execution of wills

3.7.1 Generic

Generally, following the death of a person probate proceedings are initiated consisting of a series of stages whereby the deceased's assets pass to his/her heirs.

Securities deposited in deposit and administration accounts in the name of the deceased or the units in investment funds make up part of the deceased's estate, but only that part of the financial instruments for which the deceased has full ownership.

Accordingly, the entity, both in the case that the securities custody and administration account or units of investment funds are exclusively owned by the deceased or are in the name of several owners, must, at the request of the deceased's heirs or those parties that demonstrate a legitimate interest, issue the corresponding certificate of ownership, which, *inter alia*, shall record the identity of the owner or owners of the financial instruments.

Even when shared ownership of securities that appear in the accounts of more than one holder is assumed, the fact that financial instruments are in the name of several holders does not necessarily mean that their full ownership corresponds to each of them equally. It only means that the right to access the account in which these securities are deposited, with all the ancillary powers, corresponds to all of them up to the time of death, although on a joint or joint and several basis, as agreed in the contract opening the account.

In this regard, full ownership of said securities will be determined by the internal relationships between the different co-holders and, more specifically, the original ownership of the funds with which the financial instruments were acquired, although this issue must be proven in accordance with the law.

In short, even where there is an assumption, in the case of co-holders of the account, with regard to the shared ownership in equal parts between the different co-holders, said assumption admits evidence to the contrary.

Precisely for this reason, the aforementioned ownership certificates include all the securities owned by the deceased deposited in the corresponding entity whether on an individual basis or under shared ownership. The aim is that, once any doubts as to ownership of said instruments have been resolved, the assets to be included in the deceased's estate are determined, the heirs pay the corresponding inheritance tax and execution of the will begins. This process will culminate with the change of ownership of the securities in favour of the heirs, from which time they will obtain ownership and the securities will be made available to them, either by awarding the securities as established in a public or private document of partition of the inheritance or maintaining them *pro indiviso* under co-ownership.

Having reached this point, it is necessary to indicate the following: only the legislation regulating the representation of securities by means of book entries[92] (listed securities) provides for the consequences that would result from the issuance of the aforementioned certificates. In this regard, it is worth mentioning that ownership certificates for securities entered in the account necessarily involves freezing the securities and no sale orders affecting said securities may be placed except in the case of transfers resulting from enforcement of judicial or administrative rulings.

In short, as the deposited financial instruments are frozen, there is a *de facto* blocking of the custody and administration account in which they are deposited. This is the case regardless of whether the account has one or several holders and, in the latter case, regardless of the manner of access agreed between the different co-holders when the account was opened.

With regard to the units in investment funds, although it is true that there are listed and non-listed funds – the former would be subject to the legislation indicated in the above paragraph for other listed securities – it is also true that in accordance with the sector legislation[93] applicable to them, the units of non-listed funds must be registered in the register of unit-holders of the management company in the name of the unit-holder or unit-holders, or in the unit-holder identifying register[94] held by the marketing entity.

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92 Royal Decree 878/2015, 2 October, on clearing, settlement and registry of negotiable securities represented in book-entry form, on the legal regime of central securities depositories and central counterparties and on transparency requirements of issuers of securities admitted to trading on an official secondary market.

93 Law 35/2003, of 4 November, on Collective Investment Schemes.

94 Law 16/2013, of 29 October, establishing certain environmental tax measures and adopting other tax and financial measures as from 1 January 2014.

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, the aforementioned sector legislation does not provide for how the issues of the aforementioned certificates will affect the transferability of the investment fund units. However, it seems reasonable to conclude that, as with listed securities, these should also be frozen from the time the corresponding certificate is issued until the doubts that might exist about the new owners of the units are resolved.

Lastly, it should be indicated that said freezing will be maintained until the heirs provide the entity with all the necessary documentation for changing the ownership of the financial instruments, with said entity 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.

3.7.2 Specific

➢ Status of heir

Prior to initiating the procedure for awarding the inheritance, the heirs or legitimate interested parties must report the death of the deceased to the entity in which the securities or investment fund units are deposited, providing for this purpose the death certificate. The entity will then freeze the securities.

Immediately afterwards, evidence must be provided of the status of heir or legitimate interested party, submitting for this purpose the Certificate of the General Registry of Last Wills and Testaments and an authorised copy of the last will and testament or the declaration of heirs in intestate proceedings (R/472/2016).

➢ Effects of reporting the death

It is therefore important for the heirs or legitimate interested parties to report the death of the deceased to the entity as soon as possible. This notification will mean that the securities account or the investment fund units will be blocked, preventing holders of the account that have joint and several access from making use of the securities.

Consequently, there is no incorrect conduct from entities providing investment services when they allow access to investments by the other joint and several co-holders while they are unaware of the deceased's death (R/733/2016). In contrast, once the death has been reported, investment firms will be considered to have acted correctly when they prevent the other joint or several co-holders from redeeming or selling the securities – or making any other use of them – from that moment until the time the heirs submit the full documentation for processing the execution of the will and the change of ownership is carried out (R/801/2015, R/761/2015 and R/134/2016).

➢ Right to request information

Once the status of the heirs has been demonstrated, said heirs have the right to make specific requests for information, within certain deadlines, about the deceased's investments, and for these to be responded to. Therefore, a refusal to provide said information would constitute incorrect conduct (R/472/2016, R/817/2015 and R/241/2016).

However, if the requests for information are clearly disproportionate or unjustified, or if there are special circumstances that make it recommendable, the CNMV's Complaints Service accepts that the entity may object to providing said information (R/862/2015).

The first information to be requested includes the deceased's position statement in the securities deposit and administration accounts, as well as all the investment fund units held by the deceased at the time of death.

➢ Dissolution of joint ownership of property

Following the death of one of the spouses, the joint ownership of property governing the marriage is dissolved and will therefore have to be liquidated (Article 1,396 of the Civil Code). The *mortis causa* liquidation of the joint ownership of property can be recorded in a private document or public notarised instrument and will be executed by the surviving spouse and the other heirs. In this liquidation, a decision will be made on the financial instruments that become the private property of the surviving spouse and those that will pass on to the deceased's estate.

Thus, in complaint R/851/2015, as there was no public or private document recording the liquidation of the joint ownership of property and acceptance, partition and awarding of inheritance, the conduct of the respondent entity could not be considered incorrect on refusing delivery of the requested securities until their ownership was clarified.

➢ Evidence of payment of inheritance tax

Once the deceased's estate has been determined, the heirs must pay the corresponding inheritance tax. We must address at this point that financial intermediaries have subsidiary liability in *mortis causa* transfers.[95] It is therefore an essential requirement to provide evidence of having paid the corresponding tax to conclude the processing of the execution of the will.

Consequently, if no evidence is presented of settlement of the tax, the entity would be correct in refusing to continue with the processing of the inheritance (R/883/2015, R/181/2016 and R/445/2016).

95 Article 8 of Act 29/1987, of 18 December, on Inheritance and Donation Tax, and Article 19 of Royal Decree 1629/1991, of 8 November, approving the Inheritance and Donation Tax Regulation.

➢ Prior provisions: exceptions and requirements

In the event that any of the heirs do not accept or disclaim the inheritance to avoid an unsettled estate, Article 1,005 of the Civil Code establishes that: "Any interested parties that provide evidence of their interest in the heir accepting or disclaiming the inheritance may request a Notary Public to communicate to the heir that they have a period of 30 calendar days to unconditionally accept, on the condition of not paying creditors more than the value of the inheritance, or to disclaim the inheritance. The Notary Public shall indicate to said party that if they do not declare their choice by said deadline, the inheritance will be accepted unconditionally".

This act would therefore put an end to the unsettled inheritance and a community of heirs will be established.

Consequently, following acceptance of the inheritance, temporary joint ownership between all the heirs of the deceased is generated, which will be dissolved with the awarding, to each of them, of the specific assets. The heirs will therefore be joint owners of all of the deceased's assets without any specific partition corresponding to any of them. The community of heirs ceases with the partition and the abstract right that the heirs have over the community is transformed into a specific right over the corresponding assets that have been awarded to each of them.

In this regard, although an heir may not sell any of the assets making up the inheritance until they are expressly and formally awarded such assets, it is possible that the joint ownership system that is established following acceptance of the inheritance may sell all or part of the financial instruments making up the estate. In this case, the sale order must be signed by all the heirs of the deceased. In addition, the assets to which this order refers must be excluded from the inheritance partition instrument which, as the case may be, has been submitted to the financial institution. All of the above is without prejudice to the tax consequences that this may entail.

This criterion was brought to light in complaint R/501/2016. The complainant, who had been appointed executor and auditor/partitioner by the deceased and was also heir to one tenth of an investment fund, argued that the amount of the subscription of the fund should be reimbursed to the current account in order to have access to it. However, the respondent entity did not accept this argument given that it considered that it was only possible to reimburse the investment fund if the five heirs of the deceased gave their consent. Given that there was no record of this consent, it was considered that the entity had not acted incorrectly.

Another possibility of having access to part of the deceased's estate prior to the individualised award of the corresponding assets to the heirs would take place in the event that it was necessary to obtain cash in order to meet the burial or funeral expenses or to pay tax. In this case, we would be dealing with the exceptions established by law.

In this regard, in complaint R/134/2016, the following was indicated:

> *For the payment of inheritance and donation tax, the taxpayer[96] may use the mechanism of the request for access to the assets of the inheritance, which*

96 In the case of natural persons and *mortis causa* transfers, these are the successors, Article 5 of Law 29/1987, of 18 December, on Inheritance and Donations Tax.

consists of requesting from the financial intermediaries, insurance companies or brokers in the transfer of securities access to the deposits, guarantees, current accounts, insurance or securities recorded in the deceased's name in order to pay the inheritance tax. The tax is therefore paid with money from the inheritance and not paid using money of the successors themselves.

In particular, this procedure is established in tax legislation – Article 80.3 of Royal Decree 1629/1991, of 8 November, approving the Inheritance and Donation Tax Regulation – such that the tax office that has performed the tax levies may authorise, at the request of the interested parties, within eight days following the day of the notification, the financial institutions to dispose of securities deposited in such institutions in the deceased's name, charged to the amount of said securities, or to the balance in favour of the deceased in accounts of any type, releasing the corresponding receipts in the name of the Public Treasury for the exact amount of the aforementioned tax levies.

Finally, there may be significant occurrences or events that affect the financial instruments subject to the inheritance that make it necessary to adopt a decision within a deadline, with the consequence of maintaining an undesired investment in the event that no such decision is adopted. In these cases, the entity must comply with the order placed, in what might be considered a simple act of provisional conservation and administration of the inheritance. The only requisite to be able to order such transactions is that the documents evidencing the ordering party's status of legitimate heir or heirs of the deceased have been submitted to the entity. In the event that the deceased's account is under co-ownership, the joint consent of the heir or heirs and of the surviving co-owner would also be required (R/465/2016).

➢ Documentation necessary for the processing of the execution of the will

In short, for each one of the heirs to be able to make use of the securities deposited in the deceased's accounts, after providing evidence of said status, the financial institution must be provided with a notarised instrument of partition of inheritance or a private partition document signed by all the heirs and legatees (for the purpose of changing the corresponding ownerships), together with the documents demonstrating that all the successors are up-to-date with payment of inheritance tax. Therefore, the entity may refuse to process the execution of the will with regard to the financial instruments owned by the deceased and deposited in the financial institution and, consequently, place sale or redemption orders until said documentation is presented and the corresponding ownership changed. Up to that time, the securities accounts or investment fund units will remain blocked (R/485/2016), even if the request for access to the securities comes from a co-holder of a joint and several account or of an investment fund (R/499/2016).

In addition, financial entities may not award the assets that are deposited if they do not receive the public or private distribution document accepted by all the heirs. If, despite not having said document or with said document not accepted by all the deceased's heirs, they distribute the assets, the entity would be considered to have acted incorrectly (R/448/2016).

This same criterion would be applicable in those cases in which bequests existed. In this regard, in complaint R/883/2015, as the complainant did not provide the proceedings with supporting documentation of the participation and awarding of the

inheritance, there was no evidence that the entity had acted incorrectly by not fulfilling the request for change of ownership of the bequeathed securities.

None of the heirs may be compelled to remain in a situation of undivided inheritance, and therefore if any of them objects to its distribution or they do not agree on how to carry it out, they may make use of the provisions of paragraph 2 of Article 1,057 of the Civil Code:

> *There being no will, or no designated auditor/partitioner therein or with the position vacant, the Court Clerk or the Notary Public, at the request of the heirs and legatees that represent at least 50% of the estate, and summoning the other interested parties if their addresses are known, may appoint an auditor/partitioner, in accordance with the rules that the Law on Civil Procedure and on Notaries establishes for the designation of experts. The partition performed in this manner will require the approval of the Court Clerk or of the Notary Public unless there is express confirmation from all of the heirs and legatees.*

➢ Incidents that may occur during processing

It may sometimes be the case that, as a result of financial operations performed by the issuers of securities or by investment funds coinciding with the period for the execution of the will, certain errors arise in the procedure:

– In complaint R/702/2015, as a result of the issuer of the securities employing scrip dividends to remunerate shareholders, the deceased was assigned shares which were not included in the ownership certificates issued by the depository and therefore these were left out of the distribution among the successors. In this regard, after the end of the process for executing the will, the entity continued sending correspondence in the name of the deceased in accordance with its information obligations as securities custodian.

  In this case, although the respondent entity recognised the error committed, it was concluded that, in addition to not acting with due diligence in execution of the deceased's will, it took an excessive amount of time to try to resolve the defect generated in said process given that the procedures to attempt to solve the problem were initiated eight months after the complainant informed the entity of the incident and, at any event, after lodging a complaint with the entity's CSD.

  However, the CNMV's Complaints Service welcomed the willingness of the entity to solve the conflict, which was unavoidably solved by the successors giving precise instructions to distribute the unsettled inheritance.

– In complaint R/46/2016, it was demonstrated that the complainant had subscribed an investment fund together with the deceased. Following the death of the latter, and as a result of the partition of his/her inheritance, the co-owner (complainant) was awarded 100% of the investment fund, although the entity only allowed the complainant to make use of half of the fund. In this regard, the financial institution provided evidence that the 50% that belonged to the complainant was seized by court order, and therefore only the remaining 50% was made available to the complainant following partition of the inheritance of the other co-owner.

– In complaint R/386/2016, although the document of distribution of the inheritance of the deceased included three investment funds to be divided amongst her children in equal parts, it was demonstrated that one of these investment funds had merged with the other prior to the death of the deceased, and therefore at the time of distribution the units relating to this fund did not exist. Having been absorbed by another, it was verified that the absorbing fund was adequately divided amongst the heirs of the deceased in the execution of the will.

➢ Documentation analysis and change in ownership

Following submission of the documentation, entities generally spend a period of time studying the documents with the aim of executing the will in order to verify whether it is complete or request further documentation if it is incomplete or not in line with the law.

Once the financial institution has verified the documentation, it must change the ownership of the shares or units.

Prior to performing the change of ownership of financial instruments acquired *mortis causa*, financial institutions require the beneficiaries to open securities accounts, whether with the same entity or with a different entity, in the name of the same owners awarded the inherited assets – with shared ownership in the event that the inheritance remains *pro indiviso* or individual ownership if the inheritance is distributed – in order for the shares awarded to be deposited therein. In other words, there is nothing preventing the awarded shares being deposited in a different entity to the entity conducting the awarding of the shares. To this end, the heir may place an order to transfer the shares to an entity in which the heir holds a securities account in his/her name, with the awarding and transferring of the securities carried out in one single act. However, in the event that the holder of the target account does not match the name of the person awarded the securities, it is understood as correct practice for the entity to refuse the transfer (R/20/2016).

However, in the event that the securities acquired *mortis causa* are investment fund units, we must indicate that, as a general rule, acquisition of units of this type of fund does not involve the obligation of having a securities account (holding a securities account would be necessary, however, in the event that the acquired securities are shares of an investment company, which is another collective investment structure) or a current account associated with the fund in the depository or distributor.

Nevertheless, even where it is not necessary to open a securities account in order to make use of the investment fund units, it is the case that most entities, as a result of banking operations, use standard form contracts or investment fund contracts, a practice which we consider to be correct. However, in these cases, the entity must provide the client with clear and precise information on the procedures to be followed in order to achieve the intended purpose, in this case, the change of ownership of the shares by acquisition *mortis causa* (R/230/2016).

In addition, if for operational reasons the entities request the opening of a current or securities account associated with the investment fund, to the extent that this account is exclusively related to the operations of said fund, the CNMV's criterion is that the entity must not charge any maintenance fee for the account.

Finally, entities that provide investment services must ensure that the change of ownership takes place not only in the contracts or in the securities accounts, but also in the payment account linked to said contract or securities account. Only in cases where the entity has warned the heir of the need to open a linked cash account and the latter has refused to do so, would the entity be exempt from liability for not having modified the linked payment account (R/857/2015).

➢ Time limit for processing

Current legislation does not stipulate any specific deadline for performing the aforementioned process for executing a will, which will conclude with the change of ownership of the securities by the entities that provide investment services.

The criterion of the CNMV's Complaints Service is that all these processes must be performed swiftly. In this regard, speed in the execution of the processes for executing the wills is the result of diligent cooperation between the parties involved – namely, the heir or heirs and other legitimate interested parties (usufructuaries, legatees, etc.) – and the entity. The former must provide all the pertinent documentation to carry out the procedures and the entity must properly perform all the procedures necessary to conclude the process, once it possesses the aforementioned documentation.

In this regard, in complaint R/49/2016, it was concluded that the respondent entity had acted incorrectly as it was demonstrated that while the entity submitted its last request for documentation on 8 June 2015 (documentation submitted by the complainant on 1 July), it was not until 28 August that it transferred the balances existing in the deceased's account. In this case, it was considered that the procedures to execute the will were not performed in a reasonable period of time in accordance with the usual time periods used by most entities.

Similarly, in complaint R/165/2016, it was concluded that the time spent in the processing of the execution of the will had been excessive – 18 January 2016 was the date on which the entity accepted that it had all the necessary documentation but it was not until 22 April 2016 that it complied with the distribution – particularly when a complaint procedure on this issue had already been initiated with the Market Conduct and Complaints Department of the Bank of Spain.

However, it was concluded that the entity had acted correctly in complaint R/170/2016. In this case, the entity received the partition document signed by all the heirs on 10 July 2015, the entity's legal affairs department for executions of wills issued the corresponding asset award report on 20 July 2015, the securities and cash accounts were opened on 6 August 2015 and on 11 August 2015 the funds, and settlement of the execution of the will was completed on 26 August 2015.

Completion of the procedures for execution of the will may also be delayed as a result of operating incidents which, as was the case in complaint R/483/2016, were accepted by the respondent entity due to a change in its technological platform.

➢ Change of ownership with regard to marketing

In accordance with Article 661 of the Civil Code: "The heirs succeed the deceased by the mere fact of his/her death in all his/her rights and obligations". Therefore, once

their status as heirs has been proven, they may file complaints with the financial entities of which the deceased was a client, objecting to the actions of the entity, for example, with regard to the marketing of the product at the time it was subscribed or acquired by the deceased.

However, in these matters, it will be necessary to bear in mind that no more than six years may elapse between the time of the events and the filing of the complaint. In the event that over six years have elapsed, we would be in the situation established in Article 10(2)(f) 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, which indicates as grounds for non-admission of complaints the fact that a period greater than six years has elapsed between the facts and the filing of the corresponding complaint.

In these cases, the conduct of the entity is analysed with regard to the original acquisition leading to the execution of the will by means of: the legal relationship that the deceased held with the entity (advisory service or simple execution), the type of product contracted (complex or non-complex) and, as the case may be, whether the product's suitability or appropriateness was analysed, in addition to whether, prior to the acquisition, the deceased received information on the product's features and risks.

In this regard, in complaint R/81/2016, it was concluded that there had been incorrect conduct by the entity as it was not demonstrated that it had information on the buyer (the deceased) that would allow it to assess whether the product matched his/her investor experience or profile.

On other occasions, complaints are lodged by the surviving co-holder of the accounts. Thus, in complaint R/157/2016, there was no evidence that the entity had collected information on the investment knowledge and experience of the deceased prior to subscription of the preferred shares.

In contrast, prior to the awarding of financial instruments to the heirs or legatees, financial entities are not required to obtain information on the appropriateness or suitability of the product with regard to the acquiring heir or to offer information on its features and risks, given that this is a case of a change of ownership and, under no circumstances, a marketing of securities.

➢ Fees

Finally, we must indicate that as noted in the section on fees, entities that provide investment services are free to set the fees or expenses charged for any service effectively provided.

As a prerequisite for application of the fees, entities must notify the CNMV and publish a prospectus of maximum fees applicable to all the usual transactions, which must be available to clients at all times so that if they make a request to consult it in the branch or online, they may do so immediately.

In addition, entities are required to previously inform the client of any upward change in the fees and expenses applicable to the service provided that have been

previously agreed with the client. In this case, clients are given a maximum period of one month from receipt of said notification to modify or cancel their contractual relationship with the entity without the new conditions being applicable. If the fees are reduced, the client will also be informed without prejudice to their immediate application.

Nevertheless, the legislation does not establish that said notification must be made by certified post or by any procedure other than that typically used by the entity to communicate with its clients and provide them with information, and therefore the change may be included in any periodic information that the entity is required to submit to its clients.

Accordingly, in complaint R/36/2016, the entity charged a fee, as well as for the issuance of the corresponding ownership certificates, for the "transfer of securities resulting from [...] changes of ownership through execution of a will". In this regard, the complainant stated that she had not been properly informed about the fees that would be charged with regard to the awarding of the securities owned by her deceased husband. However, it was demonstrated that the respondent entity had informed her in the document entitled "Division of common property and awarding of inheritance", signed by the parties at the start of the processing of the inheritance. The fee was charged for each class of securities making up the awarded inheritance.

At other times, the information on the fees is contained in the securities custody and administration contract and corresponds with the fees established in the registered prospectus of maximum fees (R/70/2016).

In contrast, in other cases, it was demonstrated that the entity did not inform the client in due time and form about the changes in the fee rates (R/359/2016).

Finally, it should be made clear that financial institutions may have two types of fee in relation to this process of executing wills: a fee for "processing the execution of the will" and a fee for "changing ownership".

The authority to analyse the correct or incorrect application of the first of these fees would be the Market Conduct and Complaints Department of the Bank of Spain (this would be a purely banking fee), while the second, provided the change in ownership relates to financial instruments, would be analysed by the CNMV's Complaints Service. In this regard, it should be indicated that we would be in a situation of a generic fee applicable to any change of ownership whether *mortis causa* or *inter vivos*.

However, the Complaints Service understands that if the entity charges its client a fee for processing the execution of the will, said fee will include the last procedure of said process, i.e., the change in ownership, and it would therefore not be appropriate for the entity to charge both fees.

3.8 Ownership

3.8.1 Securities

The shares must necessarily be deposited in a securities account opened with an entity that provides investment services. This securities account will have an associated

current account in order to perform the debits and credits of the movements produced therein (purchases, sales, payment of dividends, fees, etc.).

In general, ownership of a negotiable security is assumed to be held by the holder of the securities account, with the ownership of the security established in the account contract. The shares will be registered in the accounting registers in the name of the same holders that appear in the securities account held with the entity.

In this context, the register of ownership of the shares in the name of several people in the corresponding accounting registers forms the basis for an assumption of co-ownership for tax purposes which, however, may be removed through evidence to the contrary.[97]

In general, complaints about ownership refer to shared co-holder accounts (with two or more holders), with the main cause being one of the co-holders making use of the shares without the knowledge of the other co-owner(s).

The rules of operation of the security account will be used to determine whether an entity has acted correctly in response to an order made by a co-holder to make use of the securities.

➢ Rules of operation of the securities account

The rules of operation are generally established when opening the securities administration account. In indistinct or joint and several accounts, with the signature of all the intervening parties in the contract opening the account, said parties give their mutual authorisation so that any of them, individually, may perform operations with the securities. In the case of joint accounts, the signature of all the holders will be necessary to perform operations with the securities.

➢ Modification of the rules for operation

It may be the case that one of the holders of an account opened on a joint and several basis requests a modification of the rules of operation of the account so as to change from a joint and several basis to operating on a joint basis.

In practice, even though this is a problem that arises frequently, deposit and administration contracts do not normally contain provisions on this aspect (if this situation is provided for in the contract, the clauses therein will be followed). Therefore, doubt is generated about who must agree to these changes to the rules of operation, i.e., whether it is sufficient that one of the holders notifies, in due form, the entity of his/her objection to the account continuing with indistinct access for the holders for it to be automatically modified to a system of joint access or whether the change must be requested by both holders.

There may be circumstances that involve a loss of the mutual trust granted to each other by the joint-holders of a securities account when they decided on joint and

97 Article 108(3) of Law 58/2003, of 17 December, on General Taxation (*BOE* – Official State Gazette – of 18 December).

several access to the account, which would justify a change in the rules of operation of the account. In these situations, it will be sufficient for one of the holders of the securities account to request modification for the entity to carry out the modification, although it will be necessary for the entity to previously inform the other holder or holders of said change. It should not be forgotten that the decisions adopted by one of the joint-holders in a securities account has tax and other consequences for all the joint-holders. For this reason, after the trust between them has been lost, it is clear that any of them may request the change in the rules of operation, with the only condition being that the other co-holders be notified in advance.

In this regard, in complaint R/255/2016, the entity did not provide the securities deposit and administration contract, and therefore it was not possible to verify whether or not said contract provided for modification of the rules of operation of the securities account.

However, the proceedings did not receive and the parties did not make any mention of the communication that the entity should have sent to the complainant informing her of the change in the rules of operation of the securities account held with the complainant's ex-spouse. Following the line of argument presented above, the entity should have sent said communication prior to changing the rules of operation.

Finally, it should be indicated that if the initial rules of operation of the account establish joint access, this may only be modified with the joint consent of all of the joint-holders of the account.

➢ Separation agreement

In complaint R/815/2015, the complainant disagreed with the fact that, despite having submitted the separation agreement relating to her divorce to the entity, the latter did not distribute the securities as set out in said separation agreement. The documentation provided revealed that the entity had not informed the complainant that it was not possible to carry out the distribution of the shares until the agreement was ratified by the corresponding court. Thus, it was considered that the entity, by not previously informing her about the need to submit the separation agreement ratified by the judge, had failed to comply with its obligation to keep the complainant adequately informed.[98]

➢ Evidence of the rules of operation

In order to provide evidence of the rules of operation of the account, the respondent entity must provide the securities custody and administration contract, duly signed by all the parties, in order to verify whether the sales order of the shares is in line with the rules of operation set out in the contract.

In complaint R/440/2016, the complainant argued that his/her rights had been violated as co-holder as his/her ex-spouse had been allowed to carry out the unilateral

98 See Article 79 of the Securities Market Act 24/1988, of 28 July (now, Article 209 of Royal Decree 4/2015, of 23 October, approving the recast text of the Securities Market Act).

sale of securities without having obtained his/her consent. The entity argued that access to the securities had been carried out due to the fact that, both in the securities account and in the current account, the manner of access was indistinct.

However, it was concluded that there had been bad practice given that it was impossible to verify whether or not the sale of the shares, without the consent of all the co-holders, was in line with the manner of access established in the contract as the entity did not provide the securities deposit and administration contract referenced in the cash account.

➢ Current account associated with a securities account with different holder

Complaints also arise as a result of incidents occurring after the use of securities deposited in the securities account, as occurred in complaint R/374/2016, in which the complainant disagreed with the proceeds from the sale of securities being deposited into a current account exclusively held by the other co-holder that ordered the sale.

Although it is an unavoidable requirement that, when opening a securities account, the account should be associated with a current account, that does not imply that the holders of both accounts have to be exactly the same. It may be the case that a married couple are recorded as the co-holders of the securities account while only one of the spouses is the holder of the associated account, as happened in the case under analysis.

In the event that the co-holder of the securities account disagrees with this fact, he/she must request that the entity modify the payment account, although this request must be ratified by all the co-holders of the account.

When the co-holder or co-holders of the securities account considers/consider that the holder of the cash account has made improper use of the proceeds of the sale of the securities, they must use the courts to resolve that issue as the CNMV has no authority in this regard. However, being the holder of the current account associated with a securities account does not involve ownership of the securities deposited therein and said ownership is only assumed with regard to the holders of the securities account.

➢ Current account associated with inactive securities account

Another incident that has occurred relating to the cash accounts linked to a securities account is analysed in complaint R/224/2016. In this case, the current account linked to the securities account had been inactive, and as a result the credits resulting from dividends and the sale of pre-emptive subscription rights were not being credited to the account held by the complainant (holder of the securities account), but to an internal account of the entity. On this occasion, it was demonstrated that the entity had informed the complainant that said credits would be made in the cash account in their name in the entity – even when said account was already inactive – it was therefore concluded that the entity had not informed the complainant correctly.

➢ Incident in dividend payment

Entities should make as few errors as possible. To do this, they must allocate all the necessary time to each client, so as to identify the client appropriately, correctly interpret their instructions, pay attention to their complaints and quickly and effectively correct any error that might arise. But they must also assume the damages caused by any errors that might arise.

➢ Usufruct: scrip dividends

Complaint R/54/2016 referred to the fact that the entity had credited to the complainant the dividend corresponding to shares that he/she did not own.

Scrip dividends are a shareholder remuneration system in which the shareholder must choose between receiving the dividend in cash or receiving ordinary shares allocated at no cost (see the point entitled "Scrip dividend" in the section entitled "Information resulting from the status of depository" under the heading of "Subsequent information").

Given that these situations constitute a capital increase charged to reserves as provided for in Article 303(1) of the Capital Companies Act and the status of shareholder lies with the bare owner, even when the usufructuary has the right to the dividends decided on by the issuer of the securities during the usufruct (Article 127 of the Capital Companies Act), if during the validity of the usufruct, the issuer distributes dividends in accordance with this system, the bare owner will be authorised to adopt the decision on how the remuneration should be paid and, in the event that he/she opts for the delivery of shares, ownership of those shares will correspond to him/her, even though the usufruct shall continue over the shares[99] (R/841/2015).

3.8.2 Collective investment schemes

The rules of operation of either joint and several or joint access with regard to investment funds is established when they are subscribed, whether through the standard form contract, the subscription order or any other document for this purpose, as established by the fund manager.

➢ Modification of the rules of operation

However, in the same manner as explained above for securities, the mutual trust granted between co-holders may decline under certain circumstances that might break that friendly bond, for example a marital separation. The request to change to a system of joint access may be made at any time and by any of the holders.

In complaint R/782/2015, it was considered bad practice that the respondent entity did not process the redemption requested by one of the co-holders (in an account with indistinct access), when none of them had requested a change in the rules of

99 Articles 127(1) and 129(4) of the Capital Companies Act, Royal Legislative Decree 1/2010, of 2 July, approving the recast text of the Capital Companies Act.

operation and the entity had not received any document justifying freezing the account, but rather as a result of the perception of an employee of the bank about the marital situation of the co-holders. In this respect, it should be noted that there are exceptional circumstances that justify the automatic blocking of securities accounts. This situation arises when the entity knows, in a certifiable manner, that there are conflicts between the co-holders of the account (separation, divorce, etc.). In these situations, the entity must opt for an impartial or neutral position, not benefiting any of the holders to the detriment of the others, and requesting the consent of all of them in order to give orders until the dispute between them is resolved or a judge rules on how the investment funds should be distributed.

In complaint R/455/2015, the entity did not act correctly by not processing the request for change of ownership of investment fund units supported by a public instrument of dissolution and award of joint property (executed 13 years previously) by both spouses and requesting from the complainant additional documentation demonstrating once again the express consent of the co-holder with regard to said award of the units.

➢ Signed documentation

The Complaints Service may only take as evidence those circumstances which are demonstrated by means of documents and therefore arguments may not be based on strictly oral statements that are not ratified or recognised by both parties.

Thus, in complaint R/163/2016, the complainants stated that their children had not given consent to acquire the investment fund, despite having been appointed, on a joint and several basis, as agents of their parents. However, the document entitled "Agent to operate in unit-holder account" provided to the proceedings, in which the children of the complainants had been appointed agents on a joint and several basis in order to operate on behalf of the parents, was not signed either by the complainants or by the designated agents. In contrast, the contractual documentation provided to the proceedings was signed exclusively by the unit-holders and therefore in this case it was understood that the investment fund had not been contracted by the children, for or on behalf of the complainants, but by the complainants themselves.

In complaint R/172/2016, the complainant stated that provisions of a "Loyalty plan" had not been applied to him/her and the bank had not reimbursed 100% of the value of his/her shares. However, the document provided by the complainant contained signature boxes corresponding to Holder 1 and Holder 2 that were not completed and one of the pages of the document contained a stamp stating "Cancelled", and therefore it was considered that the entity had not acted incorrectly.

➢ Rights *in rem*

The pledging of securities as collateral in a loan or commercial guarantee is extremely common. According to current legislation, the owner of any transferable securities, such as investment fund units, may provide these as guarantee for payment, which automatically implies restrictions on their free transferability.

The pledge necessarily involves blocking the securities to the benefit of the creditor whether they are deposited with a third party or with the creditor itself. They would

therefore be frozen and the depositories may not process any transfers while the pledge remains unless the transfers result from compulsory enforcement of judicial or administrative rulings.

Consequently, any use made of the pledged securities, such as their redemption in the case of funds, would require prior lifting of the pledge in accordance with the provisions of the clauses of the loan or prior extinction of the cause of the pledge, i.e., cancellation of guarantee that gave rise to it. However, Spanish law[100] assumes, in the absence of evidence to the contrary, cancellation of the guarantee when the pledged item, after having been delivered to the creditor, is in the power of the debtor.

In complaint R/806/2015, one of the clauses of the mortgage-secured loan agreement established that the pledge would remain in force until extinction of the guarantee obligations and, in principle, no redemption of the fund could be carried out. However, the respondent entity indicated that the lifting of the freezing of the units was a question framed within the bank's commercial and risk-taking policy. Therefore, it was treated as a cancellation of the guarantee, given that the amount of the redemption of the fund was deposited into an account held by the complainant.

➢ Missing signature of the holder or principal

Finally, there have been cases in which the entity did not act correctly by executing fund transfers without having collected an express order from the sole legal representative of the account holder (R/234/2016).

In the case of complaint R/98/2016, the entity processed orders issued by a person other than the holder designated in the contract.

However, it was indicated that disputes relating to the forgery of the signature fall outside the administrative powers legally attributed to the CNMV's Complaints Service as this is an issue that can only be proved through the courts.

It was also indicated that, in accordance with applicable legislation, after exercising a unit subscription or redemption order of the holder, said order must be notified on a durable medium, no later than the first business day following execution, and, furthermore, at the end of the year the position statement in the fund must be sent.

Therefore, as from the fund subscription date, the complainant should have received confirmation of the redemptions and the position statements through which he/she could have verified the redemptions performed in the fund. Although in this case it was not known whether the complainant had effectively received the aforementioned documentation, he/she was informed that submission of the documentation could not be verified as legislation does not establish that this type of information must be sent by certified post or by any other procedure other than that typically used by the entity to communicate with its clients.

However, the fact that it was not until November 2014 that the complainant revealed the situation, i.e., more than one and a half years after the last redemption of the fund, it was considered, together with the other facts incorporated into the com-

100 Article 1(191) of the Civil Code, Royal Decree of 24 July 1889.

plaint proceedings, to demonstrate his/her agreement with the investment performed, without prejudice to the obligations with regard to orders that must be fulfilled by the respondent entity.

3.9 Operation of the Customer Service Department

In 2016, some complaints were filed revealing deficiencies in the operation of the entities' Customer Service Departments (CSDs).

– In complaint R/717/2015, the complainant expressed his/her disagreement with the fact that the entity did not comply with the payment of securities deposit and administration fees offered to the complainant in the context of a previous complaint and, consequently, it was not demonstrated that the entity had made effective the decision adopted by its own CSD.

– In complaint R/735/2015, it was considered bad practice that the respondent entity had not responded to the request from the Complaints Service for comments about the complaint. In this regard, the requested comments constitute precise and necessary information in order to issue an appropriate resolution on the questions raised by the complainant and failure to submit said information hinders the achievement of said objective.

– Article 12 of Order ECO/734/2004, of 11 March, on the customer service departments and customer ombudsman of financial institutions, establishes the following, "Once the complaint or claim has been received by the entity, in the event that it has not been resolved in favour of the client by the office or service subject to the complaint or claim, it will be forwarded to the customer service department, which, where appropriate in accordance with the operating regulations, will in turn forward it to the customer ombudsman. If the complaint or claim submitted to the customer ombudsman addresses an issue outside its area of competence, the customer ombudsman will forward it to the customer service department. The complainant must be informed about the competent authority to hear his/her complaint or claim".

  In this regard, in complaint R/369/2016, it was concluded that the complaints that the complainant made in the entity's office, through emails, should have been passed on to the entity's CSD so that it might decide on the issues raised in accordance with the aforementioned regulations and with the Customer Service and Customer Ombudsman Regulation of said entity.

4 Key subjects of enquiries

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This chapter singles out enquiry subjects considered of particular importance.

4.1 Enquiries relating to the decision of Bankia, S.A. to return the investments made by minority shareholders in its stock exchange flotation

In accordance with the significant event reported to the CNMV by the entity on 17 February 2016, among other issues, the Investors Department informed about the group of investors that will be benefited in the process initiated by Bankia, S.A., which excluded those investors who purchased their shares subsequent to the stock exchange flotation and, therefore, on the secondary market.

The enquirers were also informed that the CNMV has no authority to issue any type of ruling or assessment on the content of the agreement offered by Bankia to its customers or on the financial compensation that may have been received, given that this issue falls within the strict scope of private and voluntary agreements entered into between parties.

4.2 Doubts and incidents in relation to Cypriot investment firms registered in the official CNMV registers under the free provision of services

As in 2015, the CNMV dealt with doubts and incidents relating to Cypriot investment firms registered in the official CNMV registers under the free provision of services regime (i.e., without a permanent establishment in Spain).

In accordance with the notification published by the Investors Department on the CNMV's website on 28 July 2016, the enquirers were informed that, as from the middle of 2015, the European Securities and Markets Authority (ESMA) has been coordinating a group of national regulators whose work has focused on issues relating to several investment firms based in Cyprus that market CFDs and binary options throughout Europe, through the European passport, under the free provision of services regime, i.e., without a physical establishment in the host Member State.

Depending on the cases, enquirers are informed that the Cyprus Securities and Exchange Commission (CySEC) imposed fines on eight investment firms[101] for a total of 2.07 billion euros, having suspended the licence of Pegase Capital, Ltd.

101 Depaho Ltd., Reliantco Investments Ltd., IronFx Global Ltd., WGM Services Ltd., Pegase Capital Ltd., Rodeler Ltd., Banc de Binary Ltd. and Ouroboros Derivatives Trading Ltd.

All enquirers are also informed that in order to resolve their complaints they should directly contact the competent body in Cyprus as the CNMV is not able to forward complaints to the competent authority as this is only possible for countries forming part of the FIN-NET network, to which Cyprus does not belong.

4.3 Modification of the calculation of fees for securities transfers

Following entry into force of CNMV Circular 3/2016, of 20 April, amending Circular 7/2011, of 12 December, on the fee prospectus and the content of standard contracts, the applicable legislation provides, with regard to transfer fees, that entities must set out a transfer fee for national or foreign securities in the fee prospectus expressed as a percentage of the amount of the securities transferred, with the obligation to establish a maximum amount and without the possibility of establishing a minimum amount.

At any event, enquirers are informed that the figures set out in the fee prospectus of each entity are the maximum fees that they may charge their clients and that in no way limits their power to negotiate and agree with their clients fees that are more favourable for the latter.

In turn, it was stated that the transfer fee may never serve as a penalty or deterrent and it may only be used to remunerate, in a proportionate manner, the service provided by the investment firm.

4.4 Investment in binary options, contracts for differences and other speculative products aimed at retail investors

Enquirers are informed that these are risky, complex, speculative and non-standardised products and therefore their conditions may vary from one investment firm to another.

The marketing of this type of product to retail clients has been of concern to the CNMV for some time. In October 2014, a warning was issued about the risks and high probability that clients will suffer losses when they invest in contracts for differences (CFDs).

In July 2016, as a result of the ESMA warning on the sale of CFDs, binary options and other speculative products, the CNMV issued a new warning about the risks involved in trading with these products.

CFDs, forex products and binary options and their risks are difficult to understand for most retail investors. In addition, according to studies performed by the CNMV and other securities supervisors, the vast majority of retail investors that trade in these products lose money. According to data from the latest CNMV study between 1 January 2015 and 30 September 2016, 82% of clients that performed transactions with CFDs suffered losses. The total losses of 30,656 clients, including costs and fees associated with the transactions, amounted to 142 million euros (losses of 52 million euros plus 90 million euros for fees and other costs).

In this context, some European Union countries have proposed – and in some cases developed – various initiatives, such as those aimed at limiting the level of leverage

of investments in this type of product and at restricting their marketing by placing limits on advertising or remote sales using call centres.

In the first few months of 2017, the CNMV implemented some measures to strengthen the protection of retail investors in Spain when they invest in CFDs, forex products or binary options.

4.5 Registration of entities as crowdfunding platforms

Various issues relating to crowdfunding platforms (CFPs) were raised over 2016.

In those of a professional nature relating to the requirements for setting up a CFP, enquirers were informed that for professional issues relating to duly identified projects, they should write to the competent area of the CNMV for this type of issue, the Entity Authorisation and Registration Department within the Directorate-General of Entities.

It was also indicated that the activity provided by an entity consists of placing into contact, in a professional manner and by means of a website or other electronic media, a wide range of natural and legal persons that offer funding in exchange for a monetary return – the investors – with natural or legal persons that request funding on their own behalf for use in a crowdfunding project – the promoters. This is an activity that is restricted to crowdfunding platforms, which they may only perform after obtaining the mandatory authorisation and registering in the corresponding CNMV register. To do this, entities must comply with the provisions laid down in Law 5/2015, of 27 April, on the promotion of business financing.

In enquiries submitted by private investors asking about the registration of a specific entity as a CFP in the CNMV's registers, enquirers were given the information available in our public registers, in turn reminding them of the provisions of Paragraphs 1 and 2 of the 11th transitional provision of Law 5/2015, of 27 April, on the promotion of business financing: "The persons or entities that, upon entry into force of this Law, are exercising the activity of crowdfunding platforms must adapt to this Law and request their authorisation in accordance with Article 53 in a period of six months following its entry into force. [...] Once fifteen months have elapsed following entry into force of this Law, and in the event that they have not been registered, said crowdfunding platforms may not perform new operations, although they may conclude those that are outstanding at the time of entry into force of this Law".

On 23 December 2016, a FinTech Portal was created within the CNMV's website whose main aim is to:

– Provide assistance to promoters and financial institutions with regard to legislative aspects of the securities market that might affect their projects.

– Create an informal space for communication with promoters and financial institutions on their initiatives in this area.

Following the creation of the aforementioned portal, any enquiries received by the Investors Department on aspects or doubts with regard to the legislation applicable to specific projects have been forwarded to the Fintech inbox (FinTech@cnmv.es), and the enquirer informed.

4.6 Public information relating to penalties imposed by the CNMV within the scope of its powers

There are numerous enquiries that reach the Investors Department requesting the information available on disciplinary proceedings processed by the CNMV.

The Investors Department informs enquirers that the requested information refers to the actions that the CNMV has performed in exercise of the functions recognised in Articles 233 *et seq.* of the Securities Market Act (recast text approved by Royal Legislative Decree 4/2015, of 23 October), which would determine the application of Article 248 of the Securities Market Act, whereby "the confidential information or data that the CNMV or other competent authorities have received in the exercise of their functions relating to the supervision and inspection provided for in this or other laws may not be disclosed to any person or authority".

In consequence, the information contained in the disciplinary proceedings undertaken by the CNMV, with the penalties published in the *BOE* (Official State Gazette), is confidential and may not be disclosed. It is therefore not possible to respond to said requests as this information is not included among the exceptions provided for in the aforementioned Article 248(4).

The existing public information on this matter is contained in the Public Register of Penalties for serious and very serious breaches, provided for in Article 238(h) of the Securities Market Act, which may be consulted through the CNMV's website (www.cnmv.es).

4.7 Request for information on purchase prices of securities listed on an official Spanish secondary market

In order to declare the sale of a listed security for tax purposes, many investors request information from the CNMV on the prices at which they bought certain securities.

The Investors Department informs them that the CNMV's functions do not include disclosing information on stock market prices and its official public registers do not contain information on the value of the shares traded on secondary markets.

It should be noted, however, that entities are required to maintain certain information over a period of five years, such as that relating to the transactions performed, clients' periodic statements and financial instruments. In addition, investors should also keep a copy of any documents, contracts or orders that have been signed with the entities of which they are or have been clients, or other supporting documentation for the transaction for the purposes of determining the dates and prices of the shares.

To this end, and in order to know the purchase value, the supporting documents of share transactions should be kept by the entity that carries out the securities custody and administration services or which provided the brokerage service so that if a client makes a formal request for documentation, said entity should provide him/her with the documents that it possesses and clearly inform the client with regard to those documents which it does not have, whether because it has not kept them or for any other reason.

In contrast, if the time that has elapsed since the acquisition exceeds the aforementioned minimum period during which the documents must be kept, the entity would no longer be required to keep the transaction data.

In the event of a change in the depository of the securities and once the share transfer has been made, both the source and target depository would be required to keep the records of the transactions performed for the aforementioned period, without the legislation in force requiring that the history of transactions performed by the client with other investment firms must be submitted with the transfer.

4.8 Deadline for acquisition of shares in order to have the right to receive dividends

In response to the doubts raised by numerous investors on the deadline for acquisition of shares in order to have the right to receive dividends, the Investors Department informed the enquirers that, although historically investors that have acquired the securities up to the day prior to payment of the dividend had the right to receive the dividend, taking that date as the reference point for determining the positions corresponding to each holder (record date), this situation had undergone a significant modification.

On 22 March 2016, the CNMV published a document with information relating to the changes to the key dates of corporate events (capital increases and reductions, dividend payments, etc.) following implementation of the reform of securities clearing, settlement and registry in the Spanish market.

According to this communication, with implementation on 27 April 2016 of said reform, two situations arose in the receipt of dividends that resulted from the shortening of the settlement cycle – from T+3 to T+2 – finally established for 3 October 2016:

– Accordingly, from 27 April to 3 October 2016, the settlement cycle would be T+3, and therefore in order to have the right to receive the dividend it was necessary to have acquired the securities at least four days prior to the payment date.

– As from 3 October 2016, the date scheduled for the shortening of the settlement cycle to T+2, it was necessary to have acquired the securities at least three days prior to the payment date in order to have the right to receive the dividend.

4.9 Administration and custody fee in suspended or delisted companies

There are many cases in which investors with suspended or delisted shares express to the CNMV their disagreement with regard to the fees charged for the deposit of said securities.

On many occasions it has been necessary to clarify, firstly, the difference between suspension and delisting. Unlike delisting, suspension is a temporary measure which may in the future result in definitive delisting or lifting of the suspension, which takes place when the circumstances leading to the suspension are deemed to have ended.

For securities suspended from trading, enquirers were informed that there is no procedure for avoiding the custody of the securities by the authorised entity. This is impossible due to the system for registering listed shares. According to current legislation, marketable securities may be represented by book entries or by physical certificates, although the first option is a necessary condition for their admission to trading on the stock market and on the alternative stock market (Spanish acronym: MAB). Consequently, the shares of a listed company are necessarily represented through book entries, with Iberclear responsible for keeping the accounting register, together with the member entities.

As the securities custody, deposit and administration service is included within the usual services that investment firms provide to their clients and is included in their lists of chargeable fees and expenses, unless there is a commercial decision otherwise, depositories may continue requesting payment of these amounts resulting from the provision of the securities deposit and administration service.

In the case of delisted shares, irrespective of the financial value that they may have, up until they cease to exist by means of the corresponding entry in the Companies Registry, these shares continue to be considered outstanding securities represented by book entries, unless they are converted to physical certificates. Therefore, depositories are authorised to apply the fees established for this purpose until the company ceases to exist, unless it decides, based on purely commercial criteria, to exempt the client from said expenses.

In the event that the shares have effectively been converted into physical certificates, the holders of the shares may, if they deem it appropriate, request that the depository hand their certificates over to them. They would therefore stop paying custody fees and it would be the shareholders themselves that would, as from that time, be responsible for custody of their shares.

Having said that, Circular 7/2001, of 18 July, on the Securities Clearing and Settlement Service, regulates a procedure of voluntary waiver to the keeping of the accounting register in the case of delisted companies that are inactive. In order to qualify for this procedure, it must be verified, *inter alia*, that a minimum period of four years has elapsed without any registry entry being made in the issuer's page in the Companies Registry.

Among the group of companies for which said procedure is now applicable, enquiries were made to the CNMV in 2016 mainly with regard to Sierra Menera, S.A., Papelera Española, S.A. and Gran Tibidabo, S.A. In these cases, enquirers were recommended to obtain information about the fees and expenses that they would have to pay and which are set out in the fee prospectus of the depository prior to submitting the waiver application.

Enquiries were also made with regard to Fergo-Aisa, Martinsa-Fadesa, Indo Internacional and La Seda de Barcelona, for which application of the procedure is not applicable as the requirement set out in the regulations of a minimum period of four years without any registry entry being made in the issuer's page in the Companies Registry has not been met.

When enquiries were made about Sociedad Española del Zinc, the enquirers were informed that they may request initiation of the aforementioned waiver procedure

given that the last movement registered in the company's name in the Companies Registry dates from 27 May 2011.

For this purpose, the enquirer must submit an application to the securities depository. Said entity will forward the application to Iberclear, according to the procedure established by the CNMV's Complaints Service. The requirements for said procedure include verifying the entity of the holder, the effective existence of the securities in their favour, the absence of charges and encumbrances over the securities and the suitability of the application.

However, and as a step prior to initiating the procedure, it is recommendable to obtain information on the fees and expenses that the securities depository has set out in the fee prospectus in force for carrying out said procedure.

Finally, it should be indicated that, irrespective of the aforementioned requirements set out in the Iberclear circular, the CNMV's Investors Department considers that it is good practice for depositories not to charge custody and administration fees for the shares of companies that are delisted and are inactive, particularly when a waiver procedure has not been established.

5 Annexes

Annex 1. Public warnings in respect of unauthorised entities

Public warnings in respect of unauthorised entities

Date	Company to which the warning relates	Type	Regulator	Comments
Warnings from the CNMV regarding non-authorised entities				
18/01/2016	HTTP://WWW.TRADERFXCAPITAL.COM/ MANUEL CABANILLAS JURADO	Unauthorised entities	CNMV	
18/01/2016	HTTPS://WWW.CITRADES.COM/	Unauthorised entities	CNMV	
01/02/2016	O.S.B. CONSULTORES ASOCIADOS EN LA MISMA DIRECCIÓN, S.L. ALEJANDRO REGUERAS PIÑEIRO	Unauthorised entities	CNMV	
08/02/2016	GREEN INVESTMENT HOUSE CORP. (FXMARKER) WWW.FXMARKER.COM	Unauthorised entities	CNMV	
08/02/2016	LANDMARK TRADE LTD. (IMPERIAL OPTIONS) WWW.IMPERIALOPTIONS.COM	Unauthorised entities	CNMV	
15/02/2016	HTTP://WWW.FINANCIKA.COM/HOME	Unauthorised entities	CNMV	
15/02/2016	FIRST BUSINESS ORIENTATION, S.L. NUBER EDGARDO DI MATTEO	Unauthorised entities	CNMV	
15/02/2016	HTTPS://WWW.BKTRADING.COM/ES/	Unauthorised entities	CNMV	
15/02/2016	HTTP://WWW.SAFEKLIK.COM/ES/	Unauthorised entities	CNMV	
29/02/2016	WWW.EMPIREOPTION.COM	Unauthorised entities	CNMV	
04/04/2016	HTTPS://WWW.BELFORFX.COM/ES HTTP://WWW.ISOCIALFX.COM/ES	Unauthorised entities	CNMV	
04/04/2016	WWW.ESCUELADETRADERS.ORG WWW.ESCUELADETRADERS.ES	Unauthorised entities	CNMV	
11/04/2016	UNITED INVESTMENT FEDERATION, S.L. ANTONIUS JOSEF SUNDERMANN ULRICH	Unauthorised entities	CNMV	
11/04/2016	HTTPS://WWW.IBAMARKETS.COM/	Unauthorised entities	CNMV	
18/04/2016	VELASCO & ASOCIADOS WWW.VELASCOYASOCIADOS.ES	Unauthorised entities	CNMV	
17/05/2016	TIGER ASSET MANAGEMENT WWW.TIGERASSETMANAGEMENT.NET	Unauthorised entities	CNMV	
30/05/2016	HTTP://TRADINGFOREX.ES/	Unauthorised entities	CNMV	

Public warnings in respect of unauthorised entities *(continuation)*

Date	Company to which the warning relates	Type	Regulator	Comments
27/062016	TDB-OPTIONS LIMITED HTTP://WWW.BANCO-BINARIO.COM/ES/ HTTP://BANCO-BINARIO.NET/ HTTP://OPCIONESBINARIAS-BANCOBINARIO.NET/ HTTP://BANCOBINARIO-FINANZAS.NET/ HTTP://INVESTINGBINARIO.COM/ HTTP://BOLSALP-BANCO-BINARIO.COM/ HTTP://WWW.TRADESOPCIONESBINARIAS.COM/	Unauthorised entities	CNMV	
27/06/2016	SFKK TRADING SOLUTIONS HTTPS://WWW.STCAPITALS.COM	Unauthorised entities	CNMV	
04/07/2016	IT- GROUP SUCURSAL EN ESPAÑA WWW.IT-GROUP.ES	Unauthorised entities	CNMV	
18/07/2016	YOUR TRADE CHOICE HTTP://YOURTRADECHOICE.NET HTTP://YOURTRADECHOICE.COM	Unauthorised entities	CNMV	
05/09/2016	JORGE BLANCO DOVAL JOSÉ LUIS MARTÍN CÓRDOBA	Unauthorised entities	CNMV	
05/09/2016	GRUPO GARINTIA 2015, S.L. RUBÉN SÁNCHEZ MONROY	Unauthorised entities	CNMV	
24/10/2016	FINANCIAL MARKETS LIMITED HTTPS://FINMARKFX.COM	Unauthorised entities	CNMV	
24/10/2016	MAXI SERVICES LTD. WWW.UMARKETS.COM	Unauthorised entities	CNMV	
28/11/2016	BANCO CFD HTTP://BANCOCFD.COM	Unauthorised entities	CNMV	
05/12/2016	WWW.FB-ONE.COM	Unauthorised entities	CNMV	
05/12/2016	WWW.CLICKBANCA.ES/	Unauthorised entities	CNMV	
05/12/2016	WWW.STOCKSCALL.COM	Unauthorised entities	CNMV	
05/12/2016	SOLIDARY MARKETS FX ("SMFX") HTTP://SOLIDARYMARKETS.COM/	Unauthorised entities	CNMV	
19/12/2016	PEDRO VICENTE GARRIDO GARRIDO	Unauthorised entities	CNMV	
19/12/2016	RIDGE CAPITAL MARKETS HTTPS://WWW.RDGCM.COM	Unauthorised entities	CNMV	
27/12/2016	MARIO FRÍAS MARINA	Unauthorised entities	CNMV	
27/12/2016	JOSÉ MIGUEL VARET TORRES	Unauthorised entities	CNMV	
27/12/2016	FX-GOLD FXGOLDSYSTEM HTTP://FXGOLDSYSTEM.COM/	Unauthorised entities	CNMV	
Public warnings forwarded to the CNMV by foreign regulators				
13/01/2016	PETERSON GROUP WWW.THEPETERSONGROUP.COM	Unauthorised entities	FCA (United Kingdom)	

Public warnings in respect of unauthorised entities *(continuation)*

Date	Company to which the warning relates	Type	Regulator	Comments
13/01/2016	BRIDGEWATER ASSET MANAGEMENT WWW.BWATERMGM.COM	Unauthorised entities	FCA (United Kingdom)	
13/01/2016	GCM MARKETING LTD.	Unauthorised entities	SSMA (Slovenia)	
13/01/2016	GLOBAL MARKETING SOLUTIONS D.O.O.	Unauthorised entities	SSMA (Slovenia)	
13/01/2016	LYXOR LTD.	Unauthorised entities	SSMA (Slovenia)	
13/01/2016	KANSAI & PARTNERS WWW.KANSAIPARTNERS.COM	Unauthorised entities	FCA (United Kingdom)	
13/01/2016	DGX SYSTEM LTD. / CRLINK LIMITED WWW.OPTIONCM.COM	Unauthorised entities	CONSOB (Italy)	
13/01/2016	IFX4U LTD. / OKLYCAPITAL LIMITED WWW.IFX4U.COM	Unauthorised entities	CONSOB (Italy)	
13/01/2016	KRAMER AND ASSOCIATES MANAGEMENT GROUP LLC WWW.KRAMERAMG.COM	Unauthorised entities	FCA (United Kingdom)	
13/01/2016	PRUSIK (CLONE) PRUSIKPLC.CO.UK	Unauthorised entities	FCA (United Kingdom)	Unrelated to the duly registered entity with a similar name
13/01/2016	ZAR FOREX CAPITAL MARKETS LTD. / RGV MEDIA LTD. / RGV HOLDINGS LTD. WWW.ZARFOREX.COM	Unauthorised entities	CONSOB (Italy)	
13/01/2016	MARKETIER HOLDINGS LTD. / PROFITIER LIMITED WWW.STOXMARKET.COM	Unauthorised entities	CONSOB (Italy)	
20/01/2016	JJ BAUER ASSET MANAGEMENT HTTPS://WWW.JJ-BAUER.COM	Unauthorised entities	CSSF (Luxembourg)	
20/01/2016	KMJ LIMITED WWW.KMJLTD.COM	Unauthorised entities	AFM (Netherlands - Holland)	
20/01/2016	WINTON (CLONE) WINTON-INVESTMENTS.CO.UK	Unauthorised entities	FCA (United Kingdom)	Unrelated to the duly registered entity with a similar name
20/01/2016	SHERMAN CONSULTANCY GROUP WWW.SHERMANCONSULTANCYGROUP.COM	Unauthorised entities	FCA (United Kingdom)	
20/01/2016	RIGHT CAPITAL SERVICES WWW.RIGHTCAPITALSERVICES.COM	Unauthorised entities	FCA (United Kingdom)	
20/01/2016	KIRKWOOD GLOBAL WWW.KIRKWOODGLOBAL.COM	Unauthorised entities	AFM (Netherlands - Holland)	
27/01/2016	SAMSON CAPITAL GROUP WWW.SAMSONCAPITALGROUP.COM	Unauthorised entities	FCA (United Kingdom)	

Public warnings in respect of unauthorised entities *(continuation)*

Date	Company to which the warning relates	Type	Regulator	Comments
27/01/2016	MANNEX GLOBAL CORP LLC WWW.MANNEXGLOBAL.NET	Unauthorised entities	FCA (United Kingdom)	
27/01/2016	PROFITSAMLER WWW.PROFIT-SAMLER.COM	Unauthorised entities	DFSA (Denmark)	
10/02/2016	TIGER ASSET MANAGEMENT LLC, BULGARIA (CLONE) TIGER ASSET MANAGEMENT GMBH, AUSTRIA (CLONE) WWW.TIGERASSETMANAGEMENT.NET	Unauthorised entities	BFSC (Bulgaria)	Unrelated to the duly registered entities with a similar name
10/02/2016	ACTIVMARKETS WWW.ACTIVMARKETS.COM	Unauthorised entities	AMF (France)	
10/02/2016	MARKET CITY INTER. SRL WWW.BROKERS500.COM	Unauthorised entities	AMF (France)	
10/02/2016	CVC LTD. WWW.CVCGROUPS.COM	Unauthorised entities	AMF (France)	
10/02/2016	INTERNATIONAL CAPITAL MARKETS PTY LTD. WWW.ICMARKETS.COM	Unauthorised entities	AMF (France)	
10/02/2016	RGV MEDIA LTD. WWW.ZARFOREX.COM	Unauthorised entities	AMF (France)	
10/02/2016	MITSUI CREDIT GLOBAL WWW.MITSUICREDIT.COM	Unauthorised entities	AFM (Netherlands - Holland)	
10/02/2016	MILLENNIUM CAPITAL PARTNERS (CLONE)	Unauthorised entities	FCA (United Kingdom)	Unrelated to the duly registered entity with a similar name
10/02/2016	MALCOLM CONSULTANCY LTD. WWW.MALCOLMLTD.COM	Unauthorised entities	FCA (United Kingdom)	
24/02/2016	OSAKA FINANCIAL WWW.OSAKAFINANCIAL.COM	Unauthorised entities	AFM (Netherlands - Holland)	
24/02/2016	FX-CI LTD. WWW.FX-CI.COM	Unauthorised entities	AFM (Netherlands - Holland)	
24/02/2016	REEF CAPITAL ADVISORS WWW.REEFCAPITALADVISORS.COM	Unauthorised entities	SFSA (Sweden)	
24/02/2016	WHITEHALL CAPITAL GROUP	Unauthorised entities	SFSA (Sweden)	
24/02/2016	GEMINI ACQUISITIONS WWW.GEMINI-ACQUISITIONS.COM	Unauthorised entities	SFSA (Sweden)	
24/02/2016	ESCROW SERVICE GROUP WWW.ESCROWSERVICEGROUP.COM	Unauthorised entities	SFSA (Sweden)	
24/02/2016	QMI FINANCIAL WWW.QMIFINANCIAL.COM	Unauthorised entities	SFSA (Sweden)	
02/03/2016	ROLAND PUCHTA (CLONE) WWW.ROLANDPUCHTA.COM	Unauthorised entities	FCA (United Kingdom)	Unrelated to the duly registered entity with the same name
02/03/2016	RESOLUTION INVESTMENTS PLC (CLONE) WWW.RESOLUTION-PLC.CO.UK	Unauthorised entities	FCA (United Kingdom)	Unrelated to the duly registered entity with a similar name

Public warnings in respect of unauthorised entities *(continuation)*

Date	Company to which the warning relates	Type	Regulator	Comments
09/03/2016	FERRIER GROUP	Unauthorised entities	CBI (Ireland)	
16/03/2016	EVERCORE (CLONE) WWW.EVERCORE.CO.UK	Unauthorised entities	FCA (United Kingdom)	Unrelated to the duly registered entity with a similar name
16/03/2016	FRANS TERNIER (CLONE) WWW.FRANSTERNIER.COM	Unauthorised entities	FCA (United Kingdom)	Unrelated to the duly registered entity with the same name
23/03/2016	THOMPSON ADVISORS WWW.THOMPSONADVISORS.COM	Unauthorised entities	FCA (United Kingdom)	
23/03/2016	ASPECT FUND MANAGERS PLC (CLONE) WWW.ASPECTFUNDMANAGERS.COM	Unauthorised entities	FCA (United Kingdom)	Unrelated to the duly registered entity with a similar name
23/03/2016	EDWARD COLLINS ASSOCIATES WWW.EDWARDCOLLINSASSOCIATES.COM	Unauthorised entities	FCA (United Kingdom)	
23/03/2016	RESOLUTION FUND INTERNATIONAL (CLONE) WWW.RESOLUTIONFUNDINTERNATIONAL.COM	Unauthorised entities	FCA (United Kingdom)	Unrelated to the duly registered entity with a similar name
23/03/2016	FERRIER GROUP WWW.FERRIERGRP.COM	Unauthorised entities	FCA (United Kingdom)	
23/03/2016	WINTON FUND MANAGERS (CLONE) WWW.WINTONFUNDMANAGERS.COM	Unauthorised entities	FCA (United Kingdom)	Unrelated to the duly registered entity with a similar name
23/03/2016	CROWN CORPORATE CONSULTANTS WWW.CROWNCORPORATECONSULTANTS.COM	Unauthorised entities	FCA (United Kingdom)	
30/03/2016	ASIA PACIFIC LIMITED WWW.ASIAPACIFICLTD.COM	Unauthorised entities	FCA (United Kingdom)	
30/03/2016	DIFFERENT CHOICE FBC INC. HTTPS://DCFXBROKER.COM/	Unauthorised entities	MNB (Hungary)	
30/03/2016	FOREX CLUB INC.	Unauthorised entities	MNB (Hungary)	
30/03/2016	LAUNTON WEALTH WWW.LAUNTONWEALTH.COM	Unauthorised entities	FCA (United Kingdom)	Uses the reference number of a duly registered entity
30/03/2016	WWW.ABBEYSTOCKBROKER.COM	Unauthorised entities	AMF (France)	
30/03/2016	WWW.ANGELS-INVESTORS.COM	Unauthorised entities	AMF (France)	
30/03/2016	WWW.ATTRACTIVETRADE.COM	Unauthorised entities	AMF (France)	
30/03/2016	WWW.BESTEPARGNE.COM	Unauthorised entities	AMF (France)	
30/03/2016	WWW.BFM-CAPITALS.COM	Unauthorised entities	AMF (France)	

Public warnings in respect of unauthorised entities *(continuation)*

Date	Company to which the warning relates	Type	Regulator	Comments
30/03/2016	WWW.BROKERSOPTIONS-MARKETS.COM	Unauthorised entities	AMF (France)	
30/03/2016	WWW.BROOKS-PARTNERS.COM	Unauthorised entities	AMF (France)	
30/03/2016	WWW.CAPITAL-EPARGNE.COM	Unauthorised entities	AMF (France)	
30/03/2016	WWW.CFEBOURSE.COM	Unauthorised entities	AMF (France)	
30/03/2016	WWW.ETRADE-SECURITIES.COM	Unauthorised entities	AMF (France)	
30/03/2016	WWW.FINANCES-CAPITAL.COM	Unauthorised entities	AMF (France)	
30/03/2016	WWW.INSTA-TRADING.COM	Unauthorised entities	AMF (France)	
30/03/2016	WWW.INVESTMENTSWISS.COM	Unauthorised entities	AMF (France)	
30/03/2016	WWW.INVEST-OPTION.COM	Unauthorised entities	AMF (France)	
30/03/2016	WWW.MARKETS-CENTRAL-INVESTMENT.COM	Unauthorised entities	AMF (France)	
30/03/2016	WWW.OPTION-CAPITALMARKET.COM	Unauthorised entities	AMF (France)	
30/03/2016	WWW.RBSBOURSE.COM	Unauthorised entities	AMF (France)	
30/03/2016	WWW.SOLUTION-INVEST.COM	Unauthorised entities	AMF (France)	
30/03/2016	WWW.SWISS-BANQUE.COM	Unauthorised entities	AMF (France)	
30/03/2016	WWW.TOTAL-OPTIONS.COM	Unauthorised entities	AMF (France)	
30/03/2016	WWW.TRADECAPITAL.NET	Unauthorised entities	AMF (France)	
06/04/2016	MR JON PAUL HACKWOOD	Unauthorised entities	JFSC (Jersey)	
13/04/2016	W PARKER CONSULTANTS LLC WWW.WPARKERCONSULTANTS.COM	Unauthorised entities	FCA (United Kingdom)	
13/04/2016	GFS MANAGEMENT LIMITED (CLONE) WWW.GFSMANAGEMENTLIMITED.COM	Unauthorised entities	FCA (United Kingdom)	Unrelated to the duly registered entity with a similar name
13/04/2016	GS LOANS (CLONE)	Unauthorised entities	FCA (United Kingdom)	Unrelated to the duly registered entity with a similar name
13/04/2016	BEST LOANS LIMITED	Unauthorised entities	FCA (United Kingdom)	

Public warnings in respect of unauthorised entities *(continuation)*

Date	Company to which the warning relates	Type	Regulator	Comments
13/04/2016	RUSSELL AND PARTNERS TRUST FINANCIAL MANAGEMENT	Unauthorised entities	AFM (Netherlands - Holland)	
13/04/2016	LOANS TODAY (CLONE) WWW.LOANS-TODAY.ME.UK	Unauthorised entities	FCA (United Kingdom)	
13/04/2016	EXO CAPITAL MARKETS LTD. / GLOBAL FIN SERVICE LTD. WWW.TRADE12.COM	Unauthorised entities	CONSOB (Italy)	
13/04/2016	TITAN TRADE CAPITAL LIMITED / DOM TECHNOLOGY SERVICES LTD. / TITAN TRADE SOLUTIONS LTD. WWW.TITANTRADE.COM	Unauthorised entities	CONSOB (Italy)	
13/04/2016	LIBERUM CAPITAL LIMITED (CLONE) WWW.LIBERUMCAPITALLIMITED.COM	Unauthorised entities	FCA (United Kingdom)	Unrelated to the duly registered entity with the same name
20/04/2016	CJR INVESTMENTS WWW.CJRINVESTMENTS.COM	Unauthorised entities	FCA (United Kingdom)	
20/04/2016	BRADLEY & ROGERS / BRADLEY ROGERS LLC WWW.BRADLEYROGERS.COM	Unauthorised entities	FCA (United Kingdom)	
20/04/2016	RUSHMOOR ASSOCIATES WWW.RUSHMOOR-ASSOCIATES.COM	Unauthorised entities	FCA (United Kingdom)	
20/04/2016	I CASH ADVANCE (CLONE)	Unauthorised entities	FCA (United Kingdom)	Unrelated to the duly registered entity with a similar name
20/04/2016	MTL INDEX HTTP://MTLINDEX.COM/FR/	Unauthorised entities	AMF (France)	
20/04/2016	BANQUE INVESTISSEMENT	Unauthorised entities	FSMA (Belgium)	
20/04/2016	CAPITALCOURTAGE / EICH INVEST LTD. / 10 SPHERES MEDIA LTD. / FIRST CONSULTING SCS	Unauthorised entities	FSMA (Belgium)	
20/04/2016	CEDIE	Unauthorised entities	FSMA (Belgium)	
20/04/2016	E TRADE SECURITIES (CLONE)	Unauthorised entities	FSMA (Belgium)	
20/04/2016	FXSEP / SEP GLOBAL / HEDGE FUNDS LIEGE 2015 / FONDS D´INVESTISSEMENT LIEGE 2015	Unauthorised entities	FSMA (Belgium)	
20/04/2016	G.M. MARKETING GROUP LIMITED / TRADESOLID / G.M. SOFTWARE SOLUTIONS LIMITED	Unauthorised entities	FSMA (Belgium)	
20/04/2016	GCI FINANCIAL LLC / GCI	Unauthorised entities	FSMA (Belgium)	
20/04/2016	LAU GLOBAL SERVICES CORPORATION / MXTRADE / TARIS FINANCIAL CORP.	Unauthorised entities	FSMA (Belgium)	
20/04/2016	NG-BANK / ARIAN FINANCIAL / ALBORG TRADING INC. / KALAHOUSE LIMITED	Unauthorised entities	FSMA (Belgium)	
20/04/2016	OPTION500 / OPTION SOLUTION GROUP LIMITED / OPTION SOLUTION ONLINE LIMITED	Unauthorised entities	FSMA (Belgium)	

Public warnings in respect of unauthorised entities *(continuation)*

Date	Company to which the warning relates	Type	Regulator	Comments
20/04/2016	SERVICE QUALITE DES PLATEFORMES BOURSIERES (SQPB)	Unauthorised entities	FSMA (Belgium)	
20/04/2016	STOCK BINARY (CLONE) / STB	Unauthorised entities	FSMA (Belgium)	
20/04/2016	SWISS INVESTMENT (CLONE) / GLOBAL CAPITAL LTD. / T.T.F. / SWISSPARTNERS AG	Unauthorised entities	FSMA (Belgium)	
20/04/2016	TRADING TECHNOLOGIES LTD. / CONSORFX	Unauthorised entities	FSMA (Belgium)	
20/04/2016	ZULUTOYS LTD. / RBOPTIONS / RB SECURED PROCESSING LTD.	Unauthorised entities	FSMA (Belgium)	
27/04/2016	NORBERT MACH (CLONE) WWW.NORBERTMACH.COM	Unauthorised entities	FCA (United Kingdom)	Unrelated to the duly registered entity with the same name
27/04/2016	RAYMUND SERVAIS (CLONE) WWW.RAYMUNDSERVAIS.COM	Unauthorised entities	FCA (United Kingdom)	Unrelated to the duly registered entity with a similar name
27/04/2016	CARLSON & CLARKE MANAGEMENT GROUP WWW.CARLSONANDCLARKE.COM	Unauthorised entities	FCA (United Kingdom)	
27/04/2016	GERARD & ALTERMAN / GERARD AND ALTERMAN (CLONE) WWW.GERARDALTERMAN.COM	Unauthorised entities	FCA (United Kingdom)	Unrelated to the duly registered entity with a similar name
27/04/2016	FORT GLOBAL FUND MANAGERS (CLONE) WWW.FORTGLOBALFUNDMANAGERS.CO.UK	Unauthorised entities	FCA (United Kingdom)	Unrelated to the duly registered entity with a similar name
27/04/2016	YAMAZAKI ACQUISITION GROUP	Unauthorised entities	CBI (Ireland)	
27/04/2016	CARLSSON AND CAPEHART GROUP LTD.	Unauthorised entities	CBI (Ireland)	
27/04/2016	CAPITAL TRUST VENTURES WWW.CTVENT.COM	Unauthorised entities	FCA (United Kingdom)	
27/04/2016	INTERNATIONAL MERGERS LLP / INTERNATIONAL MERGERS & ACQUISITIONS LLP WWW.INTERNATIONAL-MERGERS.COM	Unauthorised entities	FCA (United Kingdom)	
04/05/2016	BALMORAL INTERNATIONAL GROUP, S.A.	Unauthorised entities	CONSOB (Italy)	
04/05/2016	VENICE FOREX INVESTMENT DOO WWW.VENICEFOREXINVESTMENT.COM	Unauthorised entities	CONSOB (Italy)	
04/05/2016	CHINA BEIJING MERGERS & ACQUISITIONS CORPORATION WWW.CHINABEIJINGMA.CN.COM	Unauthorised entities	FCA (United Kingdom)	
04/05/2016	GSH SOLUTIONS WWW.FINDWHATINEED.CO.UK WWW.FUTURE-FINANCE.CO.UK WWW.PREMIERLEADS.CO.UK	Unauthorised entities	FCA (United Kingdom)	
04/05/2016	CVC LTD. WWW.CVCGROUPS.COM	Unauthorised entities	CONSOB (Italy)	Unrelated to the duly registered entity with a similar name

Public warnings in respect of unauthorised entities *(continuation)*

Date	Company to which the warning relates	Type	Regulator	Comments
11/05/2016	HANS BERNAUER (CLONE) WWW.HANSBERNAUER.COM	Unauthorised entities	CBI (Ireland)	Unrelated to the duly registered entity with the same name
11/05/2016	SCORPION LOANS WWW.SCORPIONLOANS.CO.UK	Unauthorised entities	FCA (United Kingdom)	
11/05/2016	IPC CAPITAL WWW.IPCCAPITAL.COM	Unauthorised entities	SFSA (Sweden)	
11/05/2016	NANKAI GROUP WWW.NANKAIGROUP.COM	Unauthorised entities	SFSA (Sweden)	
11/05/2016	YAMAMOTO INTERNATIONAL WWW.YAMAMOTOINTERNATIONAL.COM	Unauthorised entities	SFSA (Sweden)	
11/05/2016	SHAW, EDWARDS, EMMERSON & KNIGHT LTD. LLP (SEEK LTD. LLC/LLP) WWW.SEEK-LLC.NET	Unauthorised entities	SFSA (Sweden)	
11/05/2016	FALCON ASSET MANAGEMENT WWW.FALCONASSETMGT.COM	Unauthorised entities	FCA (United Kingdom)	
11/05/2016	FINANCIAL SERVICES NET LTD. (CLONE)	Unauthorised entities	FCA (United Kingdom)	Unrelated to the duly registered entity with the same name
18/05/2016	HTTP://ALPHACMARKETS.COM/	Unauthorised entities	MFSA (Malta)	
18/05/2016	SURE MONEY UK (CLONE)	Unauthorised entities	FCA (United Kingdom)	
18/05/2016	MARTIN PRANZ (CLONE) WWW.MARTINPRANZ.COM	Unauthorised entities	FCA (United Kingdom)	Unrelated to the duly registered entity with the same name
25/05/2016	NIPPON HOLDINGS (OR NIPPON CAPITAL ASSET MANAGEMENT) OSAKA FINANCIAL FRANKLIN TRANSFER SERVICES ABLE CENTURY LIMITED GLORY JET LIMITED	Unauthorised entities	FSMA (Belgium)	
25/05/2016	MITSUI CREDIT GLOBAL (OR MITSUI CREDITS) RESONA CORPORATE PARTNERS FRANKLIN TRANSFER SERVICES MING FU (HK) INDUSTRIAL LIMITED EKL INTERNATIONAL CO. LIMITED HADID RAVAN CO. LIMITED BAUWAY TECHNOLOGY LIMITED	Unauthorised entities	FSMA (Belgium)	
25/05/2016	HOOVER BRIGHT INDEPENDENT FINANCE ADVISOR Y CC MANUEL TRADING	Unauthorised entities	FSMA (Belgium)	
25/05/2016	GERARD & ALTERMAN (CLONE)	Unauthorised entities	FSMA (Belgium)	Unrelated to the duly registered entity with the same name
25/05/2016	ASIA PACIFIC BROKERAGE SERVICES LIMITED	Unauthorised entities	FSMA (Belgium)	
25/05/2016	SOLAR COURTAGE	Unauthorised entities	FSMA (Belgium)	

Public warnings in respect of unauthorised entities *(continuation)*

Date	Company to which the warning relates	Type	Regulator	Comments
25/05/2016	ISLAND FINANCE	Unauthorised entities	FSMA (Belgium)	
25/05/2016	ATLANTIC FINANCE	Unauthorised entities	FSMA (Belgium)	
25/05/2016	GEMINI ACQUISITIONS Y ESCROW SERVICE GROUP	Unauthorised entities	FSMA (Belgium)	
25/05/2016	FUJI CREDIT ASSET MANAGEMENT (OR FUJI CREDIT J-LLC)	Unauthorised entities	FSMA (Belgium)	
25/05/2016	EARNEST & MEDWELL INTERNATIONAL	Unauthorised entities	FSMA (Belgium)	
25/05/2016	BOW FINANCIAL	Unauthorised entities	FSMA (Belgium)	
25/05/2016	APEX EQUITIES, SOUTH-EAST ASIA TRADERS Y SOUTH-EAST ASIA REGISTRAR	Unauthorised entities	FSMA (Belgium)	
25/05/2016	ALFA ONE CORPORATION, THE SOUTHWOOD GROUP AND MICRON ASSOCIATES	Unauthorised entities	FSMA (Belgium)	
25/05/2016	GROSVENOR CAPITAL / GCR CAPITAL WWW.GCRCAPMANAGEMENT.COM	Unauthorised entities	FCA (United Kingdom)	
25/05/2016	SAMEDAY LOANS WWW.SAMEDAY-LOANS.ORG.UK	Unauthorised entities	FCA (United Kingdom)	
25/05/2016	QUICK FINANCERS WWW.QUICKFINANCER.COM WWW.QUICK-FINANCERS.COM	Unauthorised entities	FCA (United Kingdom)	
25/05/2016	UNSECURED LOAN FOR ALL / UNSECURED LOAN 4 ALL (CLONE) WWW.UNSECUREDLOANFORALL.COM WWW.UNSECUREDLOAN4ALL.ORG WWW.UNSECUREDLOANFORALL.NET HTTP://UNSECUREDLOAN4ALL.CO.UK	Unauthorised entities	FCA (United Kingdom)	Unrelated to the duly registered entity with the same name
25/05/2016	UNSECURED LOAN CALL ME (CLONE) WWW.UNSECUREDLOANCALLME.COM	Unauthorised entities	FCA (United Kingdom)	Unrelated to the duly registered entity with the same name
25/05/2016	CAPSTONE FINANCIAL DEVELOPMENT	Unauthorised entities	CBI (Ireland)	
25/05/2016	WATTERS & PARTNERS LTD. WWW.WATTERSANDPARTNERS.COM	Unauthorised entities	FCA (United Kingdom)	
01/06/2016	ARCHIPEL FUND (CLONE) WWW.ARCHIPELFUND.COM	Unauthorised entities	CBI (Ireland)	Unrelated to the duly registered entity with a similar name
01/06/2016	SCHULZ AND PARTNER (CLONE) WWW.SCHULZANDPARTNER.COM	Unauthorised entities	FCA (United Kingdom)	Unrelated to the duly registered entity with the same name
01/06/2016	NIPPON CAPITAL ASSET MANAGEMENT WWW.NIPPONHOLDINGS.COM OSAKA FINANCIAL WWW.OSAKAFINANCIAL.COM	Unauthorised entities	DFSA (Denmark)	

Public warnings in respect of unauthorised entities *(continuation)*

Date	Company to which the warning relates	Type	Regulator	Comments
01/06/2016	SEP GLOBAL LIMITED WWW.FXSEP.COM	Unauthorised entities	AMF (France)	
01/06/2016	WWW.MARKETCT.COM	Unauthorised entities	AMF (France)	
01/06/2016	VALTECHFX GLOBAL SOLUTIONS LTD. WWW.VALTECHFX.COM	Unauthorised entities	AMF (France)	
01/06/2016	CITY BANK CFD WWW.CITYBANKCFD.COM	Unauthorised entities	AMF (France)	
08/06/2016	MFG INVESTMENTS (CLONE) WWW.MFGINVESTMENTS.CO.UK	Unauthorised entities	FCA (United Kingdom)	Unrelated to the duly registered entity with a similar name
08/06/2016	BAUER SCHMIDT & GUENTER (CLONE) WWW.BAUERSCHMIDT-GUENTER.COM	Unauthorised entities	FCA (United Kingdom)	
08/06/2016	CAPITA CONSULT (CLONE) WWW.CAPITACONSULT.COM	Unauthorised entities	FCA (United Kingdom)	Unrelated to the duly registered entity with a similar name
08/06/2016	TRADITIONAL FUNDS PLC (CLONE) WWW.TRADITIONAL-FUNDSPLC.COM	Unauthorised entities	FCA (United Kingdom)	Unrelated to the duly registered entity with the same name
15/06/2016	STANFORD LAW WWW.STANFORDLAWFIRM.COM	Unauthorised entities	FCA (United Kingdom)	
15/06/2016	COHEN & PARTNERS WWW.COHENANDPARTNERS.COM	Unauthorised entities	FCA (United Kingdom)	
15/06/2016	FUJI CREDIT ASSET MANAGEMENT WWW.FUJICREDIT.COM	Unauthorised entities	AFM (Netherlands - Holland)	
15/06/2016	FAST LOANS NOW (CLONE)	Unauthorised entities	FCA (United Kingdom)	
15/06/2016	LOCKER CAPITAL MANAGEMENT LOCKER GLOBAL MANAGEMENT HTTP://WWW.LOCKER-CM.COM HTTP://LOCKER-CM.COM	Unauthorised entities	CSSF (Luxembourg)	
15/06/2016	SOREN MOLLER HTTP://SOREN-MOLLER.COM	Unauthorised entities	CSSF (Luxembourg)	
22/06/2016	EPIC LOANS (CLONE)	Unauthorised entities	FCA (United Kingdom)	
22/06/2016	WWW.ABROPTION.COM	Unauthorised entities	AMF (France)	
22/06/2016	WWW.ALLIANZ-BROKERS.COM	Unauthorised entities	AMF (France)	
22/06/2016	WWW.BANQUE-INVESTISSEMENT.COM	Unauthorised entities	AMF (France)	
22/06/2016	WWW.BARCLAYSTRADERS.COM	Unauthorised entities	AMF (France)	

Public warnings in respect of unauthorised entities *(continuation)*

Date	Company to which the warning relates	Type	Regulator	Comments
22/06/2016	WWW.CONNECTING-TRADE.COM	Unauthorised entities	AMF (France)	
22/06/2016	WWW.COLLINSGESTION.COM	Unauthorised entities	AMF (France)	
22/06/2016	WWW.F-GENERALSECURITIES.COM	Unauthorised entities	AMF (France)	
22/06/2016	WWW.FINPARI.COM	Unauthorised entities	AMF (France)	
22/06/2016	WWW.GOINTRADING.COM	Unauthorised entities	AMF (France)	
22/06/2016	WWW.IBL-MARKETS.COM	Unauthorised entities	AMF (France)	
22/06/2016	WWW.MICROPTION.COM	Unauthorised entities	AMF France)	
22/06/2016	WWW.MYTRADEOPTION.COM	Unauthorised entities	AMF (France)	
22/06/2016	WWW.SOLUTION-CAPITAL.COM	Unauthorised entities	AMF (France)	
22/06/2016	WWW.STOCK-BINARY.COM	Unauthorised entities	AMF (France)	
22/06/2016	WWW.SWITZERLAND-CAPITAL.COM	Unauthorised entities	AMF (France)	
22/06/2016	WWW.SWISSPARTNERS-AG.COM	Unauthorised entities	AMF (France)	
22/06/2016	NOMURA LEVY MERGERS & ACQUISITIONS (CLONE) WWW.NOMURALEVY.COM	Unauthorised entities	FCA (United Kingdom)	
22/06/2016	TFX TRADERS WWW.TFXTRADERS.COM	Unauthorised entities	FCA (United Kingdom)	
22/06/2016	ATHOS INTERNATIONAL MANAGEMENT SPRL EAGLE CREST INSURANCE EAGLE CREST UNDERWRITER	Unauthorised entities	FSMA (Belgium)	
22/06/2016	FINANSOV CONSULT LLC (ANTES TELETRADE SOFIA LLC)	Unauthorised entities	BFSC (Bulgaria)	
22/06/2016	BROKERAGE – HRISTO IVANOV SOJSC	Unauthorised entities	BFSC (Bulgaria)	
22/06/2016	24 TRADE SOJSC (ANTES EXUS MARKETS SOJSC)	Unauthorised entities	BFSC (Bulgaria)	
22/06/2016	DEALERWEB LLC	Unauthorised entities	BFSC (Bulgaria)	
22/06/2016	INVESTORS SOJSC (ANTES ASTON MARKETS SOJSC)	Unauthorised entities	BFSC (Bulgaria)	
22/06/2016	TRADERXP (TRADERXP LLC)	Unauthorised entities	BFSC (Bulgaria)	
22/06/2016	TELETRADE BULGARIA SOJSC, SOFIA	Unauthorised entities	BFSC (Bulgaria)	

Public warnings in respect of unauthorised entities *(continuation)*

Date	Company to which the warning relates	Type	Regulator	Comments
22/06/2016	INSTAFOREX, RUSSIA	Unauthorised entities	BFSC (Bulgaria)	
22/06/2016	HOTFOREX, MAURITIUS	Unauthorised entities	BFSC (Bulgaria)	
22/06/2016	CITYCAPITAL LLC, SOFIA	Unauthorised entities	BFSC (Bulgaria)	
22/06/2016	BULGARIAN TRADING GROUP, SOFIA	Unauthorised entities	BFSC (Bulgaria)	
22/06/2016	KFM CAPITAL INVESTMENTS SOJSC, SOFIA	Unauthorised entities	BFSC (Bulgaria)	
22/06/2016	INSTA SOFIA LLC	Unauthorised entities	BFSC (Bulgaria)	
22/06/2016	ISLANDBAY SERVICES LLC (OPERATING WITH THE BROKER CAPITAL BRAND)	Unauthorised entities	BFSC (Bulgaria)	
22/06/2016	BROKERS STAR LLC	Unauthorised entities	BFSC (Bulgaria)	
22/06/2016	BELFOR CAPITAL LLC, SOFIA	Unauthorised entities	BFSC (Bulgaria)	
22/06/2016	FX GLORY LLC, PLOVDIV	Unauthorised entities	BFSC (Bulgaria)	
22/06/2016	B.M. INVESTMENTS SOJSC	Unauthorised entities	BFSC (Bulgaria)	
22/06/2016	TRADEPLUS SOLUTIONS LLC, MARSHALL ISLANDS	Unauthorised entities	BFSC (Bulgaria)	
22/06/2016	TVOY MILLION	Unauthorised entities	BFSC (Bulgaria)	
22/06/2016	PLUSOPTION	Unauthorised entities	BFSC (Bulgaria)	
22/06/2016	INTERACTIVE COMPANY SOJSC	Unauthorised entities	BFSC (Bulgaria)	
22/06/2016	ALPHA BROKING SOJSC	Unauthorised entities	BFSC (Bulgaria)	
22/06/2016	TIGER ASSET MANAGEMENT SOJSC	Unauthorised entities	BFSC (Bulgaria)	
22/06/2016	NEW CAPITAL TRUST SOJSC	Unauthorised entities	BFSC (Bulgaria)	
22/06/2016	ATLANTIC CAPITAL SOJSC	Unauthorised entities	BFSC (Bulgaria)	
22/06/2016	ERIDA ASSET MANAGEMENT SOJSC	Unauthorised entities	BFSC (Bulgaria)	
22/06/2016	ROYAL CAPITAL MANAGEMENT SOJSC	Unauthorised entities	BFSC (Bulgaria)	
22/06/2016	PROMETEOS ASSET MANAGEMENT SOJSC	Unauthorised entities	BFSC (Bulgaria)	
22/06/2016	RIGYFIELD CAPITAL MANAGEMENT SOJSC	Unauthorised entities	BFSC (Bulgaria)	
22/06/2016	TIGER ASSET MANAGEMENT LLC, AUSTRIA	Unauthorised entities	BFSC (Bulgaria)	

Public warnings in respect of unauthorised entities *(continuation)*

Date	Company to which the warning relates	Type	Regulator	Comments
22/06/2016	NEMESIS CAPITAL BG SOJSC	Unauthorised entities	BFSC (Bulgaria)	
22/06/2016	PROSPER GESIT SOJSC	Unauthorised entities	BFSC (Bulgaria)	
22/06/2016	GDMFX EUROPE SOJSC	Unauthorised entities	BFSC (Bulgaria)	
22/06/2016	MIZUHO CORPORATE GLOBAL WWW.MIZUHOGLOBAL.COM	Unauthorised entities	SFSA (Sweden)	
22/06/2016	SHELDEN ASSOCIATES WWW.SHELDENASSOCIATES.COM	Unauthorised entities	SFSA (Sweden)	
22/06/2016	EPHRAIM GLOBAL WWW.EPHRAIMGLOBAL.COM	Unauthorised entities	SFSA (Sweden)	
29/06/2016	CANNON CORPORATE CONSULTANTS WWW.CANNONCORPORATECONSULTANTS.COM	Unauthorised entities	FCA (United Kingdom)	
29/06/2016	SIMPLE FINANCE (CLONE)	Unauthorised entities	FCA (United Kingdom)	Unrelated to the duly registered entity with a similar name
29/06/2016	STERLING CONSULTANCY OPTIONS (CLONE)	Unauthorised entities	FCA (United Kingdom)	
29/06/2016	BANCO FX WWW.BANCOFX.COM	Unauthorised entities	FCA (United Kingdom)	
29/06/2016	GRUBER & TAYLOR CO	Unauthorised entities	CBI (Ireland)	
29/06/2016	NOVUS CAPITAL MANAGEMENT (CLONE) WWW.NOVUSCAPITALMARKETS.COM	Unauthorised entities	FCA (United Kingdom)	
06/07/2016	CHESHIRE CAPITAL LTD. WWW.BOSSCAPITAL.COM	Unauthorised entities	CONSOB (Italy)	
06/07/2016	ICLICK LOANS (CLONE) HTTP://WWW.ICLICK-LOANS.COM/INDEX.HTML	Unauthorised entities	FCA (United Kingdom)	
13/07/2016	WESTGATE CONSULTING GROUP WWW.WESTGATECONSULTINGGRP.COM	Unauthorised entities	FCA (United Kingdom)	
13/07/2016	LARSE CAPITAL LTD. WWW.LARSE.COM	Unauthorised entities	SFSA (Sweden)	
13/07/2016	ROYALTON CAPITAL GROUP WWW.ROYALTONCAPITALGROUP.COM	Unauthorised entities	FCA (United Kingdom)	
13/07/2016	RITZCOIN TECHNOLOGIES INC.	Unauthorised entities	CSSF (Luxembourg)	
13/07/2016	THORNTON & TRESK / TT FINANCIAL WWW.TT-FINANCIAL.COM	Unauthorised entities	FCA (United Kingdom)	
13/07/2016	TRADITIONAL FUNDS PLC (CLONE) WWW.TRADITIONAL-FUNDSPLC.COM	Unauthorised entities	CBI (Ireland)	Unrelated to the duly registered entity with the same name

Public warnings in respect of unauthorised entities *(continuation)*

Date	Company to which the warning relates	Type	Regulator	Comments
20/07/2016	GO MARKETS (CLONE)	Unauthorised entities	FCA (United Kingdom)	
20/07/2016	5GULDEN CORPORATION LIMITED HTTP://5GULDEN.COM/	Unauthorised entities	MNB (Hungary)	
20/07/2016	5GULDEN CORPORATION LTD. HTTP://5GULDEN.COM/	Unauthorised entities	MNB (Hungary)	
20/07/2016	PORTSEA ASSET MANAGEMENT LLP (CLONE) WWW.PASSETMGT.COM WWW.PORTMNGT.COM WWW.PORTSEAASSET.COM	Unauthorised entities	FCA (United Kingdom)	
27/07/2016	ELLIS & REID INVESTMENTS	Unauthorised entities	CBI (Ireland)	
27/07/2016	CAPITA GROUP (USA)	Unauthorised entities	CBI (Ireland)	
27/07/2016	FARNHAMS CONSULTING GROUP (USA)	Unauthorised entities	CBI (Ireland)	
03/08/2016	HOMEOWNER LOANS / ADVANTAGE LEADS (CLONE)	Unauthorised entities	FCA (United Kingdom)	Unrelated to the duly registered entity with a similar name
03/08/2016	BIT MANAGEMENT LTD. WWW.BIT-INVEST.COM	Unauthorised entities	FCA (United Kingdom)	
03/08/2016	UNEMPLOYED LOANS WWW.UNEMPLOYEDLOANS.CO.UK	Unauthorised entities	FCA (United Kingdom)	
03/08/2016	COSTELLO & RUBIN LLP WWW.CANDR-LAWYERS.COM	Unauthorised entities	FCA (United Kingdom)	
03/08/2016	UBS GLOBAL INVESTMENT MANAGEMENT LTD. (CLONE)	Unauthorised entities	FCA (United Kingdom)	Unrelated to the duly registered entity with a similar name
03/08/2016	KAUFMAN FRANZ WEALTH MANAGEMENT (CLONE) WWW.KAUFMANFRANZ.COM U-NEX SOLUTIONS SRL WWW.FOREXBLVD.COM	Unauthorised entities	FCA (United Kingdom)	Unrelated to the duly registered entity with a similar name
03/08/2016	BAUMER MANSOOR FINANCIAL ADVISORY (CLONE) WWW.BAUMERMANSOOR.COM	Unauthorised entities	FCA (United Kingdom)	Unrelated to the duly registered entity with the same name
24/08/2016	NATIX BANK WWW.NATIX-LU.COM/1WW/PRIVATE/	Unauthorised entities	CSSF (Luxembourg)	
24/08/2016	PHILIPPE TORRES HTTP://PHILIPPETORRES.COM	Unauthorised entities	CSSF (Luxembourg)	
24/08/2016	BPJ SERVICES WWW.ATTRACTIVETRADE.COM	Unauthorised entities	CONSOB (Italy)	
24/08/2016	 WWW.INVESTIREINAZIONI.COM WWW.SEGNALIDITRADING.COM	Unauthorised entities	CONSOB (Italy)	
24/08/2016	DEN DANSKE METODE WWW.DANISHMETHOD.COM	Unauthorised entities	DFSA (Denmark)	

Public warnings in respect of unauthorised entities *(continuation)*

Date	Company to which the warning relates	Type	Regulator	Comments
24/08/2016	PAN ASIA PACIFIC MERGERS & ACQUISITIONS (JAPAN)	Unauthorised entities	CBI (Ireland)	
24/08/2016	DFM SERVICES LIMITED WWW.ENTERPRISEINSURANCECLAIM.COM	Unauthorised entities	GFSC (Gibraltar)	This publication does not imply a modification of the positions of Spain on the dispute relating to the British territory of Gibraltar and the local nature of its authorities
24/08/2016	CF INVESTMENT FUNDS (CLONE) WWW.CFINVESTMENTFUNDS.CO.UK	Unauthorised entities	FCA (United Kingdom)	
24/08/2016	INTER GLOBAL LIMITED WWW.FX-INTER.COM	Unauthorised entities	FCA (United Kingdom)	
24/08/2016	PIPER JAFFRAY (CLONE)	Unauthorised entities	FCA (United Kingdom)	Unrelated to the duly registered entity with the same name
24/08/2016	WHEATON CAPITAL LIMITED (CLONE) WWW.WHEATONCAPITAL.COM	Unauthorised entities	FCA (United Kingdom)	Unrelated to the duly registered entity with the same name
24/08/2016	JB TRADE FINANCE (CLONE) WWW.JBTRADEFINANCE.COM	Unauthorised entities	FCA (United Kingdom)	Unrelated to the duly registered entity with the same name
24/08/2016	UNITED TRADING MARKETS (UT MARKETS)	Unauthorised entities	BFSC (Bulgaria)	
24/08/2016	CFD GLOBAL LTD.	Unauthorised entities	BFSC (Bulgaria)	
24/08/2016	STP MARKETS	Unauthorised entities	BFSC (Bulgaria)	
24/08/2016	GROVE CAPITAL ADVISORS LTD. WWW.GROVELTD.COM	Unauthorised entities	FCA (United Kingdom)	
24/08/2016	NATIX BANK (CLONE) WWW.NATIX-LU.COM/1WW/PRIVATE/ WWW.NATIX-LU.COM	Unauthorised entities	FCA (United Kingdom)	
24/08/2016	BROKER FINANCIAL LTD. / INVEST-OPTION	Unauthorised entities	FSMA (Belgium)	
24/08/2016	CENTRAL PROVIDER LTD. / CENTRAL OPTION	Unauthorised entities	FSMA (Belgium)	
24/08/2016	GN CAPITAL LTD. / PWRTRADE	Unauthorised entities	FSMA (Belgium)	
24/08/2016	GRAHAMINTERNATIONAL LTD. / BINAT LTD. / PROINVEST	Unauthorised entities	FSMA (Belgium)	
24/08/2016	STERLING CONSULTANCY OPTIONS LTD. (CLONE) / SC-OPTIONS	Unauthorised entities	FSMA (Belgium)	
31/08/2016	CLAYTON & OAKLEY INVESTMENTS (IRELAND)	Unauthorised entities	CBI (Ireland)	
31/08/2016	IBL MARKETS (CLONE) WWW.IBL-MARKETS.COM	Unauthorised entities	FCA (United Kingdom)	

Public warnings in respect of unauthorised entities *(continuation)*

Date	Company to which the warning relates	Type	Regulator	Comments
07/09/2016	COSTELLO & RUBIN ATTORNEYS AT LAW (USA)	Unauthorised entities	CBI (Ireland)	
07/09/2016	I.S. SIGNAL TRADER LIMITED WWW.SIGNALTRADER.COM	Unauthorised entities	CONSOB (Italy)	
07/09/2016	ROYAL PRIVATE BANK OF LUXEMBOURG HTTPS://RPBL.LU/	Unauthorised entities	CSSF (Luxembourg)	
07/09/2016	FXMARKETLIVE PTY LTD. HTTP://WWW.FX-MARKETLIVE.COM	Unauthorised entities	CSSF (Luxembourg)	
14/09/2016	LOAN IN A FLASH (CLONE)	Unauthorised entities	FCA (United Kingdom)	
14/09/2016	CREDIT POOR (CLONE)	Unauthorised entities	FCA (United Kingdom)	
14/09/2016	CHIBA & ASSOCIATES WWW.CHIBAASSOC.COM	Unauthorised entities	FCA (United Kingdom)	
14/09/2016	PURPLE LOANS (CLONE)	Unauthorised entities	FCA (United Kingdom)	
14/09/2016	HARGREAVES LANSDOWN (CLONE)	Unauthorised entities	FCA (United Kingdom)	
14/09/2016	THOMAS & JOHNSON CONSULTANCY WWW.THOMASANDJOHNSON.COM	Unauthorised entities	FCA (United Kingdom)	
14/09/2016	DEBT VANISH DEBT RID WWW.DEBTVANISH.CO.UK WWW.NODEBTSNOW.CO.UK WWW.THEDEBTCRUNCHER.CO.UK WWW.DEBTLEAVE.CO.UK WWW.DEBTRID.CO.UK	Unauthorised entities	FCA (United Kingdom)	
14/09/2016	ARBORETIX TRADING LIMITED	Unauthorised entities	CONSOB (Italy)	
14/09/2016	TOUCH TRADES LIMITED	Unauthorised entities	CONSOB (Italy)	
21/09/2016	WWW.B4TRADE.COM	Unauthorised entities	AMF (France)	
21/09/2016	WWW.BOSSCAPITAL.COM	Unauthorised entities	AMF (France)	
21/09/2016	WWW.BREVAN-INVEST.COM	Unauthorised entities	AMF (France)	
21/09/2016	WWW.LIMITED-BINARY.COM	Unauthorised entities	AMF (France)	
21/09/2016	WWW.LOYALBINARY.COM	Unauthorised entities	AMF (France)	
21/09/2016	WWW.SC-OPTIONS.COM	Unauthorised entities	AMF (France)	

Public warnings in respect of unauthorised entities *(continuation)*

Date	Company to which the warning relates	Type	Regulator	Comments
21/09/2016	WWW.SWISS-CAPITALINVEST.COM	Unauthorised entities	AMF (France)	
21/09/2016	3G EQUITY PARTNERS	Unauthorised entities	CBI (Ireland)	
21/09/2016	INDUSTRIAL AND COMMERCIAL BANK OF CHINA (EUROPE), S.A. (CLONE)	Unauthorised entities	FCA (United Kingdom)	Unrelated to the duly registered entity with the same name
21/09/2016	ASHWOOD FINANCE WWW.ASHWOODFINANCE.COM	Unauthorised entities	SFSA (Sweden)	
21/09/2016	ARAI, ENDO AND ASSOCIATES WWW.ARAIENDO.COM	Unauthorised entities	SFSA (Sweden)	
21/09/2016	OSHIRO ASSOCIATES WWW.OSHIROASSOCIATES.COM	Unauthorised entities	SFSA (Sweden)	
21/09/2016	ASASHI MERGERS & ACQUISITION GROUP WWW.ASASHIMA.COM	Unauthorised entities	SFSA (Sweden)	
21/09/2016	INTEGRITY RESEARCH GROUP WWW.INTEGRITYRESEARCHGROUP.COM	Unauthorised entities	SFSA (Sweden)	
21/09/2016	TIX GROUP LTD. / JEDI MARKETING LTD. WWW.TIXFX.COM	Unauthorised entities	CONSOB (Italy)	
21/09/2016	GETTOPTION WWW.GETTOPTION.COM	Unauthorised entities	CONSOB (Italy)	
21/09/2016	GLOBAL REACH LTD. WWW.PROFIT4TRADE.COM	Unauthorised entities	CONSOB (Italy)	
28/09/2016	53OPTION WWW.53OPTION.COM	Unauthorised entities	FSAN (Norway)	
28/09/2016	ALL UK LENDERS (CLONE) ALLUKLENDERS.CO.UK	Unauthorised entities	FCA (United Kingdom)	
28/09/2016	LOAN.CO.UK (CLONE)	Unauthorised entities	FCA (United Kingdom)	Unrelated to the duly registered entity with the same name
28/09/2016	SPRING EMPIRE SOLUTIONS LTD. SPRING STRATEGIES LTD. WWW.SUNBIRDFX.COM	Unauthorised entities	CONSOB (Italy)	
28/09/2016	WWW.DODSON-NORWOOD.COM	Unauthorised entities	CONSOB (Italy)	
28/09/2016	EDGEDALE FINANCE WWW.EDGEDALEFINANCE.COM	Unauthorised entities	CONSOB (Italy)	
28/09/2016	EMEXPAY HTTP://WWW.EMEXPAY.COM	Unauthorised entities	MFSA (Malta)	
28/09/2016	QUESTRA HOLDINGS	Unauthorised entities	FSMA (Belgium)	Possible pyramid or Ponzi scheme. Recommendations of the supervisor in this regard
05/10/2016	CORPORATE LOAN CAPITAL WWW.CORPORATELOANCAPITAL.COM	Unauthorised entities	CSSF (Luxembourg)	
05/10/2016	ASHWOOD FINANCE WWW.ASHWOODFINANCE.COM	Unauthorised entities	AFM (Netherlands - Holland)	

Public warnings in respect of unauthorised entities *(continuation)*

Date	Company to which the warning relates	Type	Regulator	Comments
05/10/2016	KENJE GROUP WWW.KENJEGROUP.COM	Unauthorised entities	AFM (Netherlands - Holland)	
05/10/2016	JACOB L. CALLAN WWW.JLCALLAN.COM	Unauthorised entities	AFM (Netherlands - Holland)	
13/10/2016	AMBERFIELD GROUP	Unauthorised entities	FSAN (Norway)	
13/10/2016	DODSON NORWOOD WWW.DODSON-NORWOOD.COM	Unauthorised entities	FSAN (Norway)	
13/10/2016	INTEGRA OPTION WWW.INTEGRAOPTION.COM	Unauthorised entities	FSAN (Norway)	
13/10/2016	WHEATON CAPITAL WWW.WHEATONCAPITAL.COM	Unauthorised entities	FSAN (Norway)	
13/10/2016	ALFRED LETTNER (CLONE) WWW.ALFREDLETTNER.COM	Unauthorised entities	FCA (United Kingdom)	Unrelated to the duly registered entity with the same name
13/10/2016	DMS INVESTMENT MANAGEMENT SERVICES WWW.DMSMANAGEMENT.EU	Unauthorised entities	FCA (United Kingdom)	Unrelated to the duly registered entity with the same name
13/10/2016	UTILITY BILL SOLUTIONS	Unauthorised entities	FCA (United Kingdom)	
13/10/2016	MORGAN STANLEY / MORGAN STANLEY & CO LTD. (CLONE)	Unauthorised entities	FCA (United Kingdom)	Unrelated to the duly registered entity with the same name
13/10/2016	FXGLORY LTD. WWW.FXGLORY.COM	Unauthorised entities	CONSOB (Italy)	
13/10/2016	CFI HOLDING GROUP WWW.SYSTYS.NET	Unauthorised entities	CONSOB (Italy)	
13/10/2016	FLEXY FINANCE (CLONE)	Unauthorised entities	FCA (United Kingdom)	
13/10/2016	KNIGHT COVER WWW.KNIGHTCOVER.COM	Unauthorised entities	FCA (United Kingdom)	
13/10/2016	APEX UK LOAN WWW.APEXUKLOAN.COM	Unauthorised entities	FCA (United Kingdom)	
13/10/2016	SOUTH FINANCE (CLONE)	Unauthorised entities	FCA (United Kingdom)	
19/10/2016	LOANFACTORY (CLONE)	Unauthorised entities	FCA (United Kingdom)	
19/10/2016	CARLEASE LTD. (CLONE)	Unauthorised entities	FCA (United Kingdom)	Unrelated to the duly registered entity with the same name

Public warnings in respect of unauthorised entities *(continuation)*

Date	Company to which the warning relates	Type	Regulator	Comments
19/10/2016	FEDERATED MUTUAL INSURANCE UK WWW.FEDMIC.COM	Unauthorised entities	FCA (United Kingdom)	
19/10/2016	BRITS FINANCE (CLONE) WWW.BRITSFINANCE.COM	Unauthorised entities	FCA (United Kingdom)	
19/10/2016	KNIGHT CAPITAL MARKETS WWW.KNIGHTCAPITALMARKETS.COM	Unauthorised entities	FCA (United Kingdom)	
19/10/2016	PRUDENTIAL CONSULTANTS / PRUDENTIAL GROUP WWW.PRUDENTIALCONSULTANTS.COM	Unauthorised entities	FCA (United Kingdom)	
19/10/2016	SHAKS SPECIALIST CARS (CLONE)	Unauthorised entities	FCA (United Kingdom)	Unrelated to the duly registered entity with the same name
19/10/2016	DEBT FRIENDLY (CLONE)	Unauthorised entities	FCA (United Kingdom)	
19/10/2016	ORIGINAL MARKETS LTD. WWW.BLOOMCAPITALMARKETS.COM	Unauthorised entities	AMF (France)	
19/10/2016	MARSHALL ADVANCED INNOVATION LTD. / JOSHUA CONSULTING LTD. WWW.KSFTRADE.COM	Unauthorised entities	AMF (France)	
19/10/2016	UTC INVEST WWW.UTCINVEST.COM	Unauthorised entities	AMF (France)	
19/10/2016	ARBORETIX TRADING LIMITED / VORTEX ASSETS CORPORATION WWW.VORTEXASSETS.COM	Unauthorised entities	CONSOB (Italy)	
19/10/2016	ZIDEX FINANCIALS HTTP://WWW.ZIDEXFINANCIALS.COM	Unauthorised entities	CSSF (Luxembourg)	
26/10/2016	CORPSERV (CLONE) WWW.CORPSERVGMBH.COM	Unauthorised entities	FCA (United Kingdom)	Unrelated to the duly registered entity with the same name
26/10/2016	TITANIUM WEALTH MANAGEMENT WWW.TITANIUM-WEALTH.COM	Unauthorised entities	FCA (United Kingdom)	
26/10/2016	MILLIONET INVESTMENT MANAGEMENT LIMITED HTTP://WWW.MILLIONETASIA.COM	Unauthorised entities	CSSF (Luxembourg)	
26/10/2016	TELFORD AND BERNSTEIN WWW.TELFORDANDBERNSTEIN.COM	Unauthorised entities	FCA (United Kingdom)	
26/10/2016	ADEXEC LOANS & FINANCIAL SOLUTIONS (CLONE) HTTP://WWW.ADEXECONLINELOANFINANCE.ORG.UK/	Unauthorised entities	FCA (United Kingdom)	
26/10/2016	TREASURY ADVISORY GROUP	Unauthorised entities	FCA (United Kingdom)	
26/10/2016	PAN ASIA PACIFIC MERGERS AND ACQUISITIONS HTTP://WWW.PANASIABROKERS.COM	Unauthorised entities	FCA (United Kingdom)	

Public warnings in respect of unauthorised entities *(continuation)*

Date	Company to which the warning relates	Type	Regulator	Comments
26/10/2016	FARNHAMS CONSULTING GROUP WWW.FARNHAMSGROUP.COM	Unauthorised entities	FCA (United Kingdom)	
26/10/2016	SLS TRADE WWW.SLSTRADE.COM	Unauthorised entities	FCA (United Kingdom)	
26/10/2016	BRADLEY & NOWELL LLC WWW.BRADLEYNOWELL.COM	Unauthorised entities	FCA (United Kingdom)	
26/10/2016	PROVIDENT CAPITAL MANAGEMENT HTTP://WWW.PROVIDENT-TRADING.COM/	Unauthorised entities	MFSA (Malta)	
02/11/2016	CLAYTON & FISHER ADVISORS WWW.CLAYTONFISHERADVISORS.COM	Unauthorised entities	FCA (United Kingdom)	
02/11/2016	ALGEBRA INVESTMENTS, S.A. WWW.ALGEBRAINVEST.COM	Unauthorised entities	CSSF (Luxembourg)	
02/11/2016	TRADINGBANKS - GRIZZLY LIMITED WWW.TRADINGBANKS.COM	Unauthorised entities	MFSA (Malta)	
02/11/2016	MXTRADE - GRIZZLY LIMITED HTTP://WWW.MXTRADE.COM/	Unauthorised entities	MFSA (Malta)	
02/11/2016	MY MONEY SOLUTIONS WWW.MYMONEYSOLUTIONS.CO.UK	Unauthorised entities	FCA (United Kingdom)	
10/11/2016	ONO VENTURES (JAPAN)	Unauthorised entities	CBI (Ireland)	
10/11/2016	MONEX BMO SECURITIES WWW.MONEXFINANCIAL.COM	Unauthorised entities	AFM (Netherlands - Holland)	
10/11/2016	WWW.THEPROFITSALGORITHM.COM	Unauthorised entities	CONSOB (Italy)	
10/11/2016	WWW.ITALIANMETHOD.COM WWW.DIAMONEO.COM WWW.DIAMONDTHRUST.COM WWW.BOURSODIAMANTS.COM WWW.GEMONEO.COM WWW.INVESTISSEMENTDIAMANT.COM WWW.DIAMONING.COM WWW.RUEDUDIAMANT.COM WWW.DIAMONDSEXCHANGES.COM	Unauthorised entities	CONSOB (Italy)	
10/11/2016	CARMANN, REED, EDWARDS ASSOCIATES LAWYERS / TUNNER GRANT & ASSOCIATES / CARMANN CONSULTANCY SERVICES	Unauthorised entities	FSMA (Belgium)	Warning against unauthorised entities that offer investment services (boiler rooms) and entities that offer their help to victims of fraud to recover their investment (recovery rooms)
10/11/2016	DODSON NORWOOD / KIMBALL GROUP INTERNATIONAL LIMITED / PVSS HOLDINGS LIMITED	Unauthorised entities	FSMA (Belgium)	Warning against unauthorised entities that offer investment services (boiler rooms) and entities that offer their help to victims of fraud to recover their investment (recovery rooms)

Public warnings in respect of unauthorised entities *(continuation)*

Date	Company to which the warning relates	Type	Regulator	Comments
10/11/2016	EPHRAIM GLOBAL / BOLTIN LIMITED / HAMBERG LIMITED	Unauthorised entities	FSMA (Belgium)	Warning against unauthorised entities that offer investment services (boiler rooms) and entities that offer their help to victims of fraud to recover their investment (recovery rooms)
10/11/2016	FRANK BOSSUYT & PARTNERS (CLONE)	Unauthorised entities	FSMA (Belgium)	Warning against unauthorised entities that offer investment services (boiler rooms) and entities that offer their help to victims of fraud to recover their investment (recovery rooms)
10/11/2016	HASEGAWA FINANCIAL HOLDINGS / ELANTRA LIMITED / JEC INVESTMENT LIMITED / UNITED EQUITY CLEARING LTD.	Unauthorised entities	FSMA (Belgium)	Warning against unauthorised entities that offer investment services (boiler rooms) and entities that offer their help to victims of fraud to recover their investment (recovery rooms)
10/11/2016	ICSID (INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT DISPUTES)	Unauthorised entities	FSMA (Belgium)	Warning against unauthorised entities that offer investment services (boiler rooms) and entities that offer their help to victims of fraud to recover their investment (recovery rooms)
10/11/2016	NEWTON INVEST / JH TRADING / RT TRADING / GS INFO	Unauthorised entities	FSMA (Belgium)	Warning against unauthorised entities that offer investment services (boiler rooms) and entities that offer their help to victims of fraud to recover their investment (recovery rooms)
10/11/2016	OSHIRO ASSOCIATES	Unauthorised entities	FSMA (Belgium)	Warning against unauthorised entities that offer investment services (boiler rooms) and entities that offer their help to victims of fraud to recover their investment (recovery rooms)
10/11/2016	PARKWELL & COMPANY INC.	Unauthorised entities	FSMA (Belgium)	Warning against unauthorised entities that offer investment services (boiler rooms) and entities that offer their help to victims of fraud to recover their investment (recovery rooms)
10/11/2016	SHAW, EDWARDS, EMMERSON & KNIGHT	Unauthorised entities	FSMA (Belgium)	Warning against unauthorised entities that offer investment services (boiler rooms) and entities that offer their help to victims of fraud to recover their investment (recovery rooms)

Public warnings in respect of unauthorised entities *(continuation)*

Date	Company to which the warning relates	Type	Regulator	Comments
10/11/2016	WALDMANN ASSET MANAGEMENT / CARDAN LIMITED / CEDAN LIMITED / GRANDWIC LIMITED / LESTON LIMITED / MANRICH LIMITED / MUTUAL HOPE LIMITED / OXRED LIMITED / TRICORP LIMITED	Unauthorised entities	FSMA (Belgium)	Warning against unauthorised entities that offer investment services (boiler rooms) and entities that offer their help to victims of fraud to recover their investment (recovery rooms)
10/11/2016	WALLACE ASSOCIATED INC.	Unauthorised entities	FSMA (Belgium)	Warning against unauthorised entities that offer investment services (boiler rooms) and entities that offer their help to victims of fraud to recover their investment (recovery rooms)
16/11/2016	PIORTELLO LTD.	Unauthorised entities	CONSOB (Italy)	
16/11/2016	GO24INVEST	Unauthorised entities	CONSOB (Italy)	
23/11/2016	M J ANSEN (CLONE) WWW.MJ-ANSEN.COM	Unauthorised entities	FCA (United Kingdom)	
23/11/2016	WATKINS CONSULTANCY LTD. WWW.WATKINSCONSULTANCYLTD.COM	Unauthorised entities	FCA (United Kingdom)	
23/11/2016	NEMESIS CAPITAL LIMITED NEMESIS CAPITAL BG LIMITED WWW.ALFATRADE.COM	Unauthorised entities	CONSOB (Italy)	
23/11/2016	LAWSON MANAGEMENT GROUP LLC (USA)	Unauthorised entities	CBI (Ireland)	
30/11/2016	SSW MARKET MAKING GMBH WWW.SSWMARKETMAKINGGMBH.COM	Unauthorised entities	FCA (United Kingdom)	
30/11/2016	PEARSON GLOBAL MARKETS / PEARSON PRIVATE CLIENTS WWW.PEARSONPRIVATECLIENTS.COM	Unauthorised entities	FCA (United Kingdom)	
30/11/2016	SEARCH LOANS LTD. HTTP://SEARCHLOANSLTD.CO.UK/	Unauthorised entities	FCA (United Kingdom)	
30/11/2016	THE LOAN LENDERS WWW.THELOANLENDERS.CO.UK	Unauthorised entities	FCA (United Kingdom)	
07/12/2016	AVALON CONSULTANCY WWW.AVALONCONSULTANCY.COM	Unauthorised entities	FCA (United Kingdom)	
07/12/2016	ALGO CAPITALS (CLONE) WWW.ALGOCAPITALS.COM	Unauthorised entities	FCA (United Kingdom)	
07/12/2016	RHODIUM FOREX / WR TRADE WWW.RHODIUM-FOREX.COM	Unauthorised entities	FCA (United Kingdom)	

Public warnings in respect of unauthorised entities *(continuation)*

Date	Company to which the warning relates	Type	Regulator	Comments
07/12/2016	KOJIMA VENTURES WWW.KOJIMAVT.COM WWW.KOJIMAVENTURES.COM	Unauthorised entities	FCA (United Kingdom)	
07/12/2016	MIYAKE GOULD MERGERS AND ACQUISITIONS WWW.MIYAKEGOULD.COM	Unauthorised entities	FCA (United Kingdom)	
07/12/2016	DVP CONSULTING GMBH (CLONE) WWW.DVPCONSULTING.CO.UK	Unauthorised entities	FCA (United Kingdom)	
07/12/2016	ZIMMERMANN GLOBAL (CLONE) WWW.ZIMMERMANNGLOBAL.COM	Unauthorised entities	FCA (United Kingdom)	Unrelated to the duly registered entity with the same name
07/12/2016	TOTALLY MONEY (CLONE)	Unauthorised entities	FCA (United Kingdom)	
07/12/2016	WESTBURN FINANCE (CLONE)	Unauthorised entities	FCA (United Kingdom)	
07/12/2016	ORIX CAPITAL TRADING WWW.ORIXTRADING.COM	Unauthorised entities	AFM (Netherlands - Holland)	
14/12/2016	ERNST HOFSETTER ASSET MANAGEMENT (CLONE) WWW.ERNSTHOFSETTER.COM	Unauthorised entities	FCA (United Kingdom)	
14/12/2016	REINHARD HOFER INTERNATIONAL / REINHARD HOFER VENTURE PARTNERS (CLONE) WWW.REINHARDHOFER.COM	Unauthorised entities	FCA (United Kingdom)	
14/12/2016	NOVOSTAR FINANCE CO LTD. HTTP://WWW.NOVOSTARFIN.N.NU/	Unauthorised entities	FCA (United Kingdom)	
14/12/2016	LAWSON MANAGEMENT GROUP LLC WWW.LAWSONMANAGEMENTGRP.COM	Unauthorised entities	FCA (United Kingdom)	
14/12/2016	ALPHA INNOVATIVE STRATEGIES LTD. HTTP://WWW.IA-PATRIMOINE.COM	Unauthorised entities	CSSF (Luxembourg)	Unrelated to the duly registered entity with a similar name
14/12/2016	PEL LTD. / KAKAO LTD. WWW.EASYINVESTMENT500.COM	Unauthorised entities	CONSOB (Italy)	
14/12/2016	LM SWISS GROUP LTD. (OPERATING UNDER THE TRADEMARK SWISSFXTRADING) WWW.SWISSFXTRADING.COM	Unauthorised entities	CONSOB (Italy)	
14/12/2016	LM SWISS DIRECT LTD. (OPERATING UNDER THE TRADEMARKS SWISSFXTRADING, SWISSFXPRO AND LM SWISS) WWW.SWISSFXTRADING.COM WWW.SWISSFXPRO.COM WWW.LMSWISS.COM	Unauthorised entities	CONSOB (Italy)	
21/12/2016	GVQ INVESTMENT FUNDS (DUBLIN) PLC (CLONE) WWW.GVQINVESTMENTFUNDS.COM	Unauthorised entities	CBI (Ireland)	Unrelated to the duly registered entity with the same name
28/12/2016	COINSPACE LTD. HTTP://WWW.COINSPACE.EU/	Unauthorised entities	MFSA (Malta)	

Public warnings in respect of unauthorised entities *(continuation)*

Date	Company to which the warning relates	Type	Regulator	Comments
28/12/2016	SFILBANK WWW.SFILBANK.COM	Unauthorised entities	CSSF (Luxembourg)	
28/12/2016	TOKACHI GROUP WWW.TOKACHIGROUP.COM	Unauthorised entities	SFSA (Sweden)	
28/12/2016	LEXUS GROUP WWW.LEXUSGROUP.COM	Unauthorised entities	SFSA (Sweden)	
28/12/2016	NIKKO-DESJARDINS ASSET MANAGEMENT WWW.NIKKOHOLDINGS.COM	Unauthorised entities	SFSA (Sweden)	
28/12/2016	WWW.PROFITMAXIMIZER.COM	Unauthorised entities	CONSOB (Italy)	
28/12/2016	DSMG LTD. / EUROPE RIDGE EOOD WWW.BINARYBROKERZ.COM	Unauthorised entities	CONSOB (Italy)	
28/12/2016	EVOLUTION TRADE LP / REVOLUTION MARKETS LP WWW.EXXONFX.COM	Unauthorised entities	CONSOB (Italy)	
28/12/2016	INTERNATIONAL PARTNERS	Unauthorised entities	CONSOB (Italy)	
28/12/2016	GMI BQ LTD. WWW.GMIBANQUE.COM	Unauthorised entities	CONSOB (Italy)	
28/12/2016	MONEY MATCHER LTD. WWW.MONEYMATCHERCLAIMS.CO.UK	Unauthorised entities	FCA (United Kingdom)	
28/12/2016	IBA MARKETS / INTERNATIONAL BROKERS ASSOCIATION MARKET WWW.IBAMARKETS.COM	Unauthorised entities	FCA (United Kingdom)	
28/12/2016	CAMPTON CAPITAL PARTNERS WWW.CAMPTONCAPITALPARTNERS.COM	Unauthorised entities	FCA (United Kingdom)	
28/12/2016	GRACEFUL MOTORS LTD. WWW.GRACEFULMOTORS.CO.UK	Unauthorised entities	FCA (United Kingdom)	
28/12/2016	EINSTEIN TRANSFER LTD. WWW.EINSTEINTRANSFER.COM	Unauthorised entities	FCA (United Kingdom)	
28/12/2016	PENFLOW LTD. (CLONE) WWW.PENFLOW.NET	Unauthorised entities	FCA (United Kingdom)	Unrelated to the duly registered entity with the same name
28/12/2016	FINANCE 2ALL (CLONE) WWW.FINANCE2ALL.COM	Unauthorised entities	FCA (United Kingdom)	
28/12/2016	CAPITAL BRIDGING FINANCE NO.1 LIMITED (CLONE) WWW.CAPITALFINANCENO1.COM	Unauthorised entities	FCA (United Kingdom)	
02/03/2016	SUNDRY LUXEMBOURG	Other warnings	CSSF (Luxembourg)	Warning in relation to issue performed by Oil & Gas Invest Ag
09/03/2016	SUNDRY FRANCE	Other warnings	AMF (France)	Warning on unauthorised binary options platforms. They copy information from duly registered entities

Public warnings in respect of unauthorised entities *(continuation)*

Date	Company to which the warning relates	Type	Regulator	Comments
13/04/2016	SUNDRY BELGIUM	Other warnings	FSMA (Belgium)	Warning against entities that offer their help to victims of fraud to recover their investment (recovery rooms)
20/04/2016	SUNDRY ITALY	Other warnings	CONSOB (Italy)	Unauthorised issues
01/06/2016	SUNDRY FRANCE	Other warnings	AMF (France)	Warning in relation to the "Preditrend" advertising campaign and binary options
13/07/2016	SUNDRY ITALY	Other warnings	CONSOB (Italy)	Unauthorised issues
03/08/2016	SUNDRY ITALY	Other warnings	CONSOB (Italy)	Unauthorised issues
03/08/2016	U-NEX GLOBAL LTD.	Other warnings	CONSOB (Italy)	
24/08/2016	SUNDRY ITALY	Other warnings	CONSOB (Italy)	Unauthorised issues
21/09/2016	SUNDRY ITALY	Other warnings	CONSOB (Italy)	
28/09/2016	SUNDRY ITALY	Other warnings	CONSOB (Italy)	
19/10/2016	SUNDRY ITALY	Other warnings	CONSOB (Italy)	
10/11/2016	SUNDRY ITALY	Other warnings	CONSOB (Italy)	
10/11/2016	BLUE STONE LTD.	Other warnings	AMF (France)	Warning about offer of investment in diamonds
23/11/2016	SUNDRY DENMARK	Other warnings	DFSA (Denmark)	Warning about confusion/copy of the website of the authorised entity BLS Capital Fondsmæglerselskab A/S
14/12/2016	SUNDRY ITALY	Other warnings	CONSOB (Italy)	
28/12/2016	SUNDRY ITALY	Other warnings	CONSOB (Italy)	