CNMV
Comisión Nacional del Mercado de Valores

Attention to the Complaints and Enquiries of Investors
Annual Report 2017

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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 2017 through the Complaints Service.

The legal requirement to prepare an 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 2017.

As a new feature, this year's Annual Report includes actions and data relating to unauthorised entities that have been the subject of a warning by the CNMV, the publication of other warnings on other types of entities, as well as other activities carried out by the CNMV's Investors Department.

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 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.

However, Law 7/2017, of 2 November, incorporating into Spanish law Directive 2013/11/EU of the European Parliament and of the Council, of 21 May 2013, on alternative dispute resolution for consumer disputes was published in the *BOE* (Official State Gazette) on 4 November 2017. In line with its first additional provision, the Complaints Service has had to adapt its operations and procedure to the provisions of Law 7/2007.

The CNMV's Investors Department 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: i) analysing the documents that enter the department, performing all the processes corresponding to the complaints at each one of the stages; ii) collecting the criteria applied in the resolution of complaints so as to publicise them through the CNMV's website and to prepare the Annual Complaints Report; iii) dealing with the emails received in the mailbox of the Complaints Service; iv) cooperating with other directorates, departments and units to which information is provided or requested; v) attending international forums relating to complaints; and vi) 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, as well as processing and publishing warnings on other entities by providing information on entities that do not have any type of authorisation and are not registered for any purpose with the CNMV and which might be performing an activity involving raising funds or providing a financial service. The final result of this work is the publication of warnings; iii) processing 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; and iv) the collaboration with other CNMV directorates, departments and units, as well as participation in courses and lectures relating to its activity, etc.

This Annual Report is divided into five chapters. Chapter One contains this introduction and Chapter Two presents the changes resulting from the obligation to adapt the operations and procedure of the Complaints Service to Law 7/2017. Chapter Three reports on the activity of the Complaints Service in 2017, while Chapter Four sets out the issues and criteria applied in the resolution of complaints. Finally, Chapter Five addresses the most significant issues that were the subject of enquiries over the year.

Chapter Two presents the changes resulting from the obligation to adapt the operations and procedure of the CNMV's Complaints Service to Law 7/2017. Given the scope of this law, the new procedure will apply to natural persons acting for purposes other than their commercial activity, business activity, trade or profession and to legal persons and entities without legal personality acting on a non-profit-making basis in an area other than a commercial or business activity.

With regard to the reasons for non-admission of complaints, those relating to a lack of competence already provided for in the current procedure are maintained. However, new aspects and modifications will be introduced, which include the non-admission of complaints if less than one month has elapsed (two months in the previous regulation) since the time the complaint was filed with the entity's Customer Service Department without resolution, or if more than one year has elapsed between the time the complainant contacted the entity's Customer Service Department and the time the complaint is filed with the Complaints Service. The complaint will also be rejected if over five years have elapsed between the date of the events in question and the filing of the complaint with the Customer Service Department.

The time limits for non-admission and resolution of the complaints will be calculated in calendar days and will amount to a maximum of 21 and 90 days, respectively. In line with this change, all the intermediate time periods for the procedure have been adapted by converting them to calendar days so that the time limits previously set at 15 business days will be calculated as 21 calendar days and those set at 10 business days will be calculated as 14 calendar days.

Chapter Three reports on the activity of the CNMV's Complaints Service in 2017. In line with the new structure of the Annual Report introduced last year, more detailed data on the processing of complaints are given and new figures and diagrams are included in order to facilitate understanding of the complaint procedure of this Service. In this regard, and as usual, the Annual Report provides statistical data on the documents submitted to the 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 2017. 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 by the investor fail to comply with the requirements established by law for their admission and those in which there are 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 includes 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: by the number of complaints resolved; by the timescales for reading and responding to the petitions for comments sent by the Complaints Services to the entities; by percentages of final reports favourable to complainants; by number of acceptances and mutual agreements concluded and by percentages of responses and acceptance of criteria after the issuance of a report favourable to the complainant.

In line with the new method for presenting data introduced in last year's Annual Report, 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 Annual Report includes the data that the entities have provided on complaints relating to the securities market that have been filed with their CSDs or the Customer Ombudsman in 2017, 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.

With regard to mechanisms for international cooperation, the Report includes the activity of the FIN-NET network, aimed at processing cross-border complaints, paying particular attention to the initiatives aimed at promoting the network (presentation of a promotional video and use of social networks) and the review of the functionality of its forms. In addition, in 2017 the Investors Department joined the International Network of Financial Services Ombudsman Schemes (INFO Network), whose general aim is to cooperate in dispute resolution.

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 Four presents the issues and criteria applied in resolving complaints in 2017. This chapter aims to be a full, systematic and practical guide that includes the criteria followed in all the complaints concluding in a reasoned report in 2017. By including 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 2017 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.

In this regard, it should be noted that a detailed guide of all the criteria being used in the resolution of complaints not restricted to a specific time period has recently been included in the "Investor's Corner" of the CNMV's website.

The issues are classified in accordance with the following criteria: 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 questions relating to collective investment schemes or other securities, complex or non-complex financial instruments, etc.

Chapter Five deals with the activities performed by the Enquiries Area, which include processing and responding to all the enquiries submitted by retail investors and investigations relating to unauthorised entities. The most significant issues that were subject to enquiries in 2017 include the following: i) the resolution of Banco Popular Español, S.A. agreed on 7 June 2017 by the Single Resolution Board (SRB); ii) the requests for information on purchase prices of securities listed on official Spanish secondary markets; iii) various issues relating to the company Abengoa, S.A. regarding alleged manipulation of the price of its shares between 23 and 31 March, and alleged promotion of mass purchases and manipulation of its shares through significant events, as well as alleged irregularities in the capital increase of March 2017 and failure to comply with the requirements of the capital increase prospectus published in English; iv) the suspension from trading of the shares of Urbas Grupo Financiero, S.A.; v) enquiries relating to the requirement to have a Legal Entity Identifier (LEI code); and vi) issues relating to administration and custody fees for suspended or delisted securities.

2 Changes in the complaints handling procedure

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2.1 Regulatory changes in 2017

Law 7/2017, of 2 November, incorporating into Spanish law Directive 2013/11/EU of the European Parliament and of the Council, of 21 May 2013, on alternative dispute resolution for consumer disputes was published in the *BOE* (Official State Gazette) on 4 November 2017.

Section IV of its preamble states: "Certain specialities are established for the financial sector, with the Bank of Spain, the National Securities Market Commission and the Directorate-General for Insurance and Pension Funds of the Ministry of Economy, Industry and Competitiveness designated as competent authorities for this area, each of them for the entities operating in their respective supervised sectors. In addition, the first additional provision mandates the Government to submit to Parliament a bill regulating a single entity for the resolution of consumer disputes in said sector".

The first two points of the above-mentioned additional provision state that:

> *1. For the resolution, whether binding or non-binding, of consumer disputes in the financial sector, a single entity with competence in this field shall be established by law and notified to the European Commission, following accreditation by the competent authority. This Law obliges financial institutions to participate in the procedures before the alternative dispute resolution entity corresponding to their activity. The other accredited entities that provide coverage for consumer complaints from all economic sectors may also deal with these types of disputes provided both parties have voluntarily submitted to the procedure.*
>
> *2. For these purposes, the Government shall submit to Parliament, in a period of eight months following entry into force of this law, a bill regulating the institutional system for the protection of financial customers, as well as its organisation and functions.*

Point Three, relating to alternative dispute resolution (hereinafter, ADR) entities, establishes that:

> *3. Until the law provided for in the previous section enters into force, the complaints services regulated in Article 30 of Law 44/2002, of 22 November, on Reform Measures for the Financial System, shall adapt their operations and procedures to those provided for in this Law and, in particular, their organisational and functional independence within the body to which they belong will be guaranteed so that they may be accredited as alternative financial dispute resolution entities.*

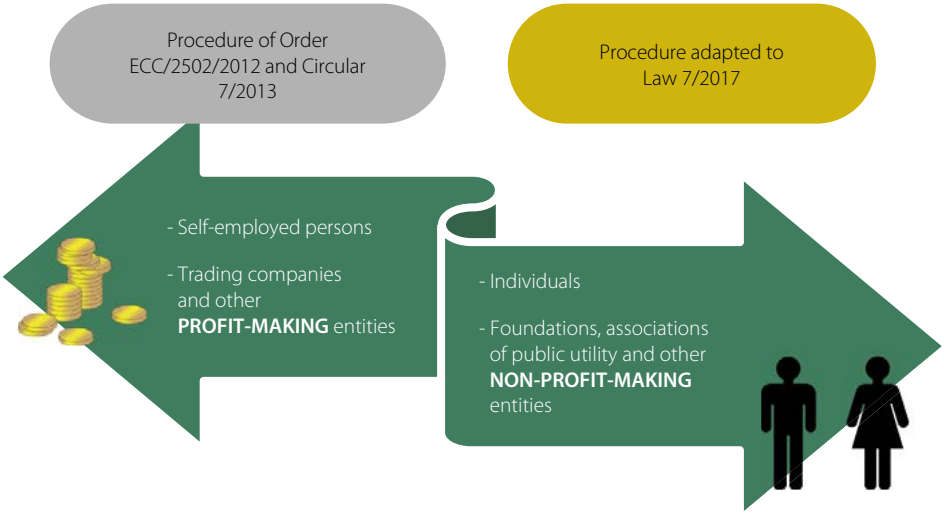
Consequently, until the law regulating the institutional system for the protection of financial customers comes into force, the current complaints services of the CNMV, the Bank of Spain and the Directorate-General for Insurance will perform the ADR function in the financial sector and will adapt their operations and procedures to the provisions of Law 7/2017.

To this end, the Complaints Service of the Investors Department has drawn up a comparison between the new regulation and the one currently in force – 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 and CNMV Circular 7/2013, 25 September – with the aim of determining the specific scope of both regulations and, as indicated, to adapt their operations and procedures, on a temporary basis and as far as possible, to the new regulation.

In this regard, the first thing to be made clear is the difference in the persons to whom said regulations refer.

While Order ECC/2502/2012 and Circular 7/2013 refer to users of investment services defined as "all natural and legal persons, whether Spanish or foreign", Law 7/2017 limits its scope of application to consumers, who are defined in Article 2 as "any natural person acting for purposes other than their commercial activity, business activity, trade or profession, as well as any legal person and entity without legal personality acting on a non-profit-making basis in an area other than a commercial or business activity, unless the legislation applicable to a certain economic sector restricts the filing of complaints to the accredited entities referred to in this law exclusively to natural persons".

In other words, the scope of affected persons is more restrictive than in the Order and the Circular as legal persons in general and natural persons complaining in their capacity as self-employed persons are excluded from the definition of consumers.



Therefore, two types of procedures will remain in parallel until the new law regulating the institutional system for the protection of financial customers referred to in the first additional provision is approved:

– The current procedure, regulated in Order ECC/2502/2012, of 16 November, and in CNMV Circular 7/2013, of 25 September, which will be applicable to self-employed persons and profit-making legal entities.

– The procedure resulting from adaptation of the Order to Law 7/2017, of 2 November, which will apply to natural persons acting for purposes other than their commercial activity, business activity, trade or profession, as well as any legal person and entity without legal personality acting on a non-profit-making basis in an area other than a commercial or business activity.

2.2 Issues that need to be adapted

2.2.1 Reasons for rejection

The reasons listed in Article 10(1) of the Order relating to lack of competence of the complaints services are retained, i.e.:

a) Where the matters submitted as a complaint or claim regulated in this procedure refer to appeals or other actions that should be heard by administrative, arbitral or legal bodies or which are already the subject of legal proceedings before such bodies.

b) Where the claim or complaint relates to disputes about certain facts that can only be proven in court.

c) Where disputes arise regarding the financial quantification of any damages that may have been caused to users of financial services by the actions, including those which are punishable, of the entities subject to supervision, or regarding any other economic valuation.

d) Where the claim or complaint is based on a dispute which must necessarily be resolved following an assessment of experts with specialist knowledge in a technical matter that does not fall within transparency and customer protection legislation or good financial customs and practices.

In addition, the rejections referred to in Article 18 of Law 7/2017 which will replace those currently laid down in Article 10.2 of the Order are included:

a) If the consumer has not previously contacted the business owner to try and resolve the matter or does not prove that he/she has attempted to communicate with the business owner. At any event, the complaint must be admitted if more than one month has elapsed from the time the consumer filed the complaint with the business owner and the business owner has not informed the complainant of the corresponding resolution.

b) If the complaint is manifestly unfounded or if the rights and legitimate interests of the consumer are not shown to be affected.

c) If the content of the complaint is abusive.

d) If the dispute has been settled or brought before another accredited body or court.

e) If the consumer files the complaint with the alternative resolution entity more than one year after it has been filed with the corresponding business owner or its Customer Service Department.

Finally, the complainant must receive a reasoned notification of the rejection of a complaint within a maximum period of 21 calendar days following receipt of the complaint file or, as the case may be, from the date on which the documentation necessary to assess the existence of any of the reasons for rejection provided for in the above section has been received.

2.2.2 Duration of the procedures

Article 20 of Law 7/2017 provides that:

1. The parties must be informed of the outcome of the procedure in a maximum period of 90 calendar days following the filing date of the complaint or, as the case may be, from the date on which it is recorded on a durable medium that the complete documentation necessary to conduct the procedure has been received.

For these purposes, a complaint is deemed to be complete when accompanied by the minimum data and documents necessary to process the file.

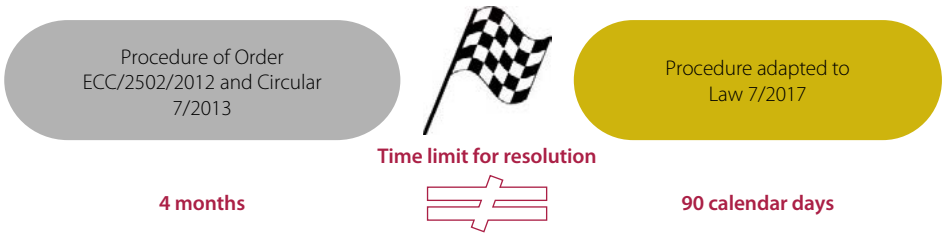
2. Where there is particular complexity in the dispute in question, the period referred to in the preceding paragraph may be extended. Said extension may not be greater than the period provided for resolution of the dispute and it must be notified to the parties on a reasoned basis.

While Article 12 of the Order provides that:

The procedure must conclude with a report in a maximum period of four months from the date that the complaint is filed with the competent complaints service. If this is not possible, the reasons for the delay must be expressly stated in the final report.

The new regulation introduces two important changes compared with the current one. Firstly, the time taken to process the procedure is reduced from four months to 90 calendar days and, secondly, the total time taken to process the procedure is set

in calendar days. This means that, for the sake of consistency, all the intermediate time limits must be calculated in the same way.



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

Pursuant to the above, the following adaptations will be made in order to adjust the requirements of Law 7/2017 to the procedure established in the Order:

– The Complaints Service shall accept complaints if more than one month has elapsed from the time the consumer filed the complaint with the business owner and the latter has not communicated the corresponding resolution – Article 18.1(a) of Law 7/2017.

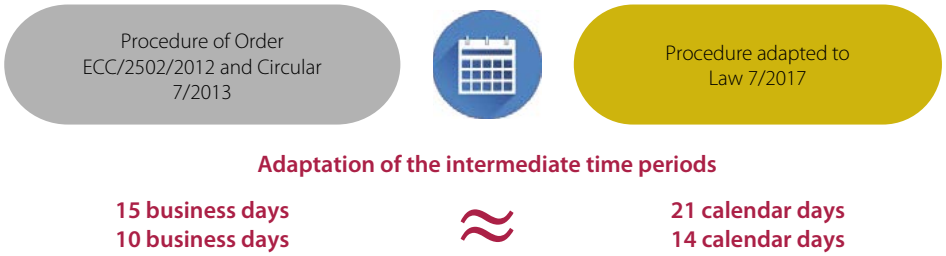
– A complaint will not be accepted for processing if more than one year has elapsed between the time it was filed with the Customer Service Department of the entity against which the complaint is made and the time it is submitted to the Complaints Service – Article 18.1(e) of Law 7/2017.

  Similarly, complaints will be rejected if the period between the events referred to in the complaint and the filing of the complaint with the entity's Customer Service Department exceeds five years.

– The complainant shall receive a reasoned report of the rejection of the complaint in a maximum period of 21 calendar days following receipt of the complaint file (Article 18.3 of Law 7/2017) or, as the case may be, from the date on which the documentation necessary to assess the existence of any of the reasons for rejection provided for in the above section has been received.

– The period for resolution of the complaint file will be 90 calendar days from the date on which the complaint is filed or, where applicable, from the date on which the complete documentation necessary to conduct the procedure has been received.

– The other periods provided for in the Order shall be deemed to refer to calendar days and not to business days. Therefore: i) the 15 business-day period will be 21 calendar days; ii) the 10 business-day period will be 14 calendar days.



– The documents addressed by the Complaints Service to the parties involved in the complaints procedures processed following adaptation will refer to the new regulation and will clarify the new procedural issues.

Finally, it should be noted that, as established in Article 12 of the Order in force, the complaints procedure will conclude with the Complaints Service issuing a final reasoned report that will not be binding and will not be considered a reviewable administrative act.

The procedure will also be free of charge for the parties.

3 2017 activity

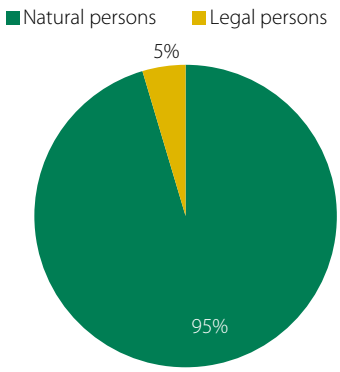
3 2017 activity

3.1 Documents filed with the CNMV's Complaints Service

In 2017, the CNMV's Complaints Service received 998 documents which, as a result of their nature, could be processed as complaints.

These complaints were mainly filed by natural persons. In 157 complaints, the complainant acted through a representative. In 21 of these, these representatives were consumer or user associations and in one case, it was a Municipal Consumer Information Office.

Type of investors who contact the Complaints Service FIGURE 1

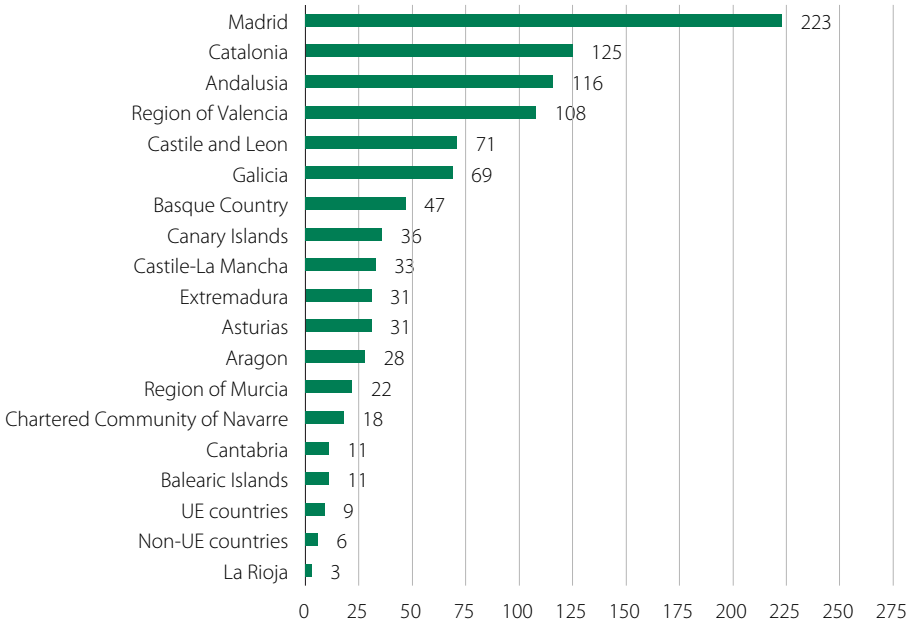


Source: CNMV.

As to the origin of the complainants, most of them were residents in Madrid (223), although closely followed by residents in Andalusia, Catalonia and the Region of Valencia.

Origin of the investors who contact the Complaints Service

FIGURE 2

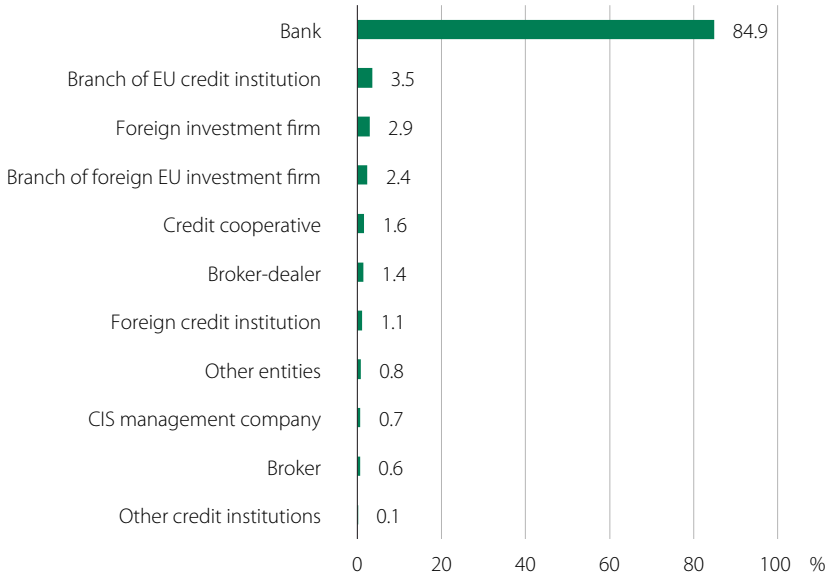


Source: CNMV.

The type of entities affected by investor complaints can be distinguished as follows:

Type of entities

FIGURE 3

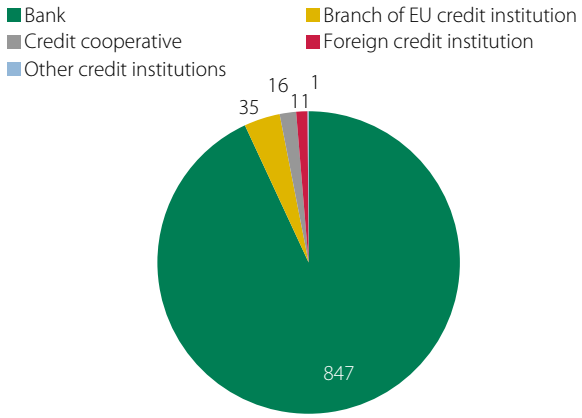


Source: CNMV.

As shown in Figure 3, the type of entity receiving most investor complaints was Spanish credit institutions: 86.6% (of which 84.9% were banks, 1.6% were credit cooperatives and 0.1% were other credit institutions). A further 4.6% corresponded to foreign credit institutions: specifically, 3.5% corresponded to branches of EU credit institutions and 1.1% of the respondent entities were foreign credit institutions that operated from their home country.

Complaints against credit institutions

FIGURE 4

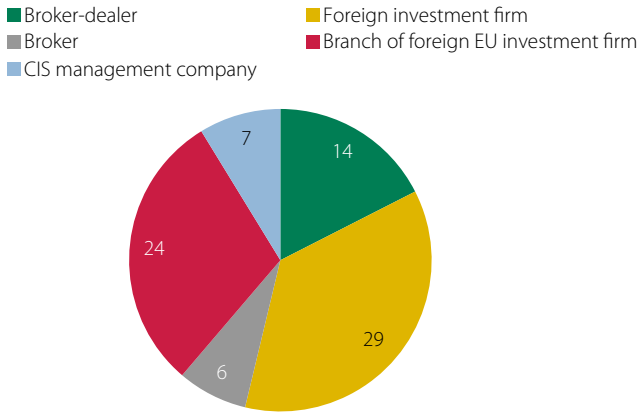


Source: CNMV.

Only 2% of the complaints related to Spanish investment firms (1.4% to broker-dealers and 0.6% to brokers) and 0.7% to a collective investment scheme (CIS) management company. However, foreign investment firms accounted for 5.3% of the complaints submitted by investors to the Complaints Service, which were divided between 2.9% for firms operating from their home country and 2.4% for branches of EU investment firms.

Complaints against investment firms and management companies

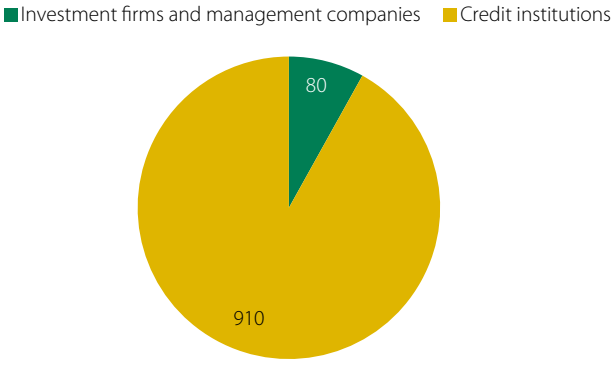
FIGURE 5



Source: CNMV.

As a result, the bulk of the entities against which complaints were filed were credit institutions (in particular, banks), while complaints filed against investment firms and CIS management companies accounted for a relatively low proportion of the total.

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



Source: CNMV.

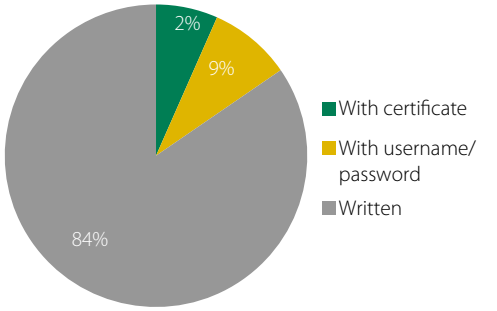
Most of the complaints were filed on paper, although the number of complaints registered electronically rose slightly. With regard to the electronic system, although the percentage of complaints registered with username and password remained unchanged compared with the previous year (9% of the total), there was a noteworthy increase in 2017 in the registration of complaints with an electronic certificate (66, accounting for 7% of the total) compared with 2016 (26, accounting for 2% of the total).

Filing method TABLE 1

Number of complaints	
With certificate	66
With username/password	88
Written	844
Total	**998**

Source: CNMV.

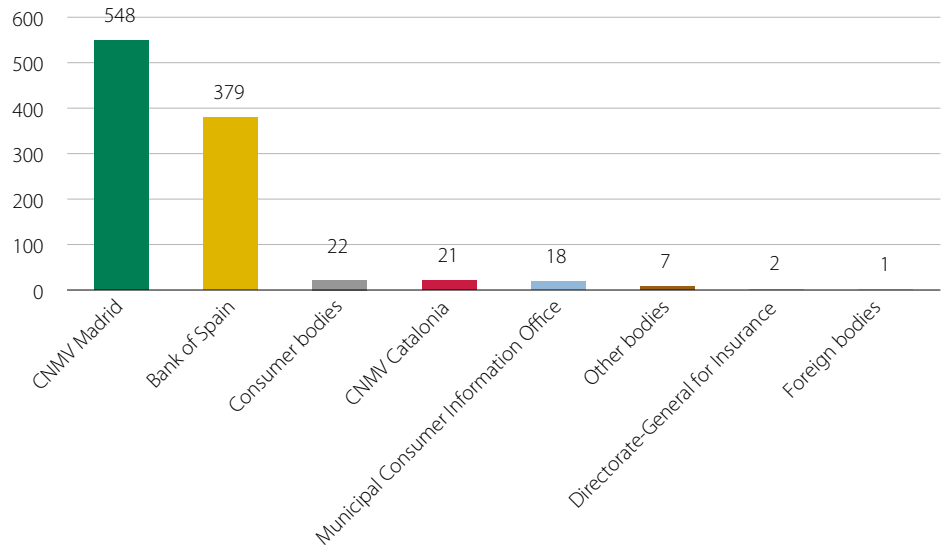
Percentage distribution by filing method by filing method FIGURE 7



Source: CNMV.

Finally, most of the complaints were registered at the CNMV's offices in Madrid (548), 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 (379) and subsequently forwarded to the Complaints Service. Lastly, it is important to note the cases in which the complainants filed their complaints with entities involved in consumer service, both private (22 complaints) and public (18 complaints).

Place of filing FIGURE 8



Source: CNMV.

3.2 Processing of the documents

Once an investor files a document requesting the opening of complaint proceedings, the 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.

3.2.1 Pre-processing stage

This pre-processing stage only starts when the Complaints Service reaches the conclusion that either the document 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 is 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 PR), or to submit pleadings with regard to the detected grounds for non-admission (petition for pleadings or PP).

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, following which, the processing and resolution stage, or final stage, would begin.

3.2.2 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.

If subsequent to the non-admission of the document, the complainant 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. The complainant is then informed that the complaint has been admitted and about the key steps that will be followed.

The written complaint and all the documentation submitted by the complainant is then passed on to the respondent entity, which is 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 Complaints Service, this response might lead to the *ex post facto* non-admission of the complaint.

In the usual case that the entity submits pleadings on the merits of the case brought by the complainant in the written complaint, the proceedings 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 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, they are passed on again to the respondent entity, granting it a period of 15 working days to submit pleadings.

In addition, the 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 requires 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 issues a reasoned report analysing all the facts subject to the complaint (providing 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 is sent to the complainant and the respondent entity, thus concluding the complaint proceedings.

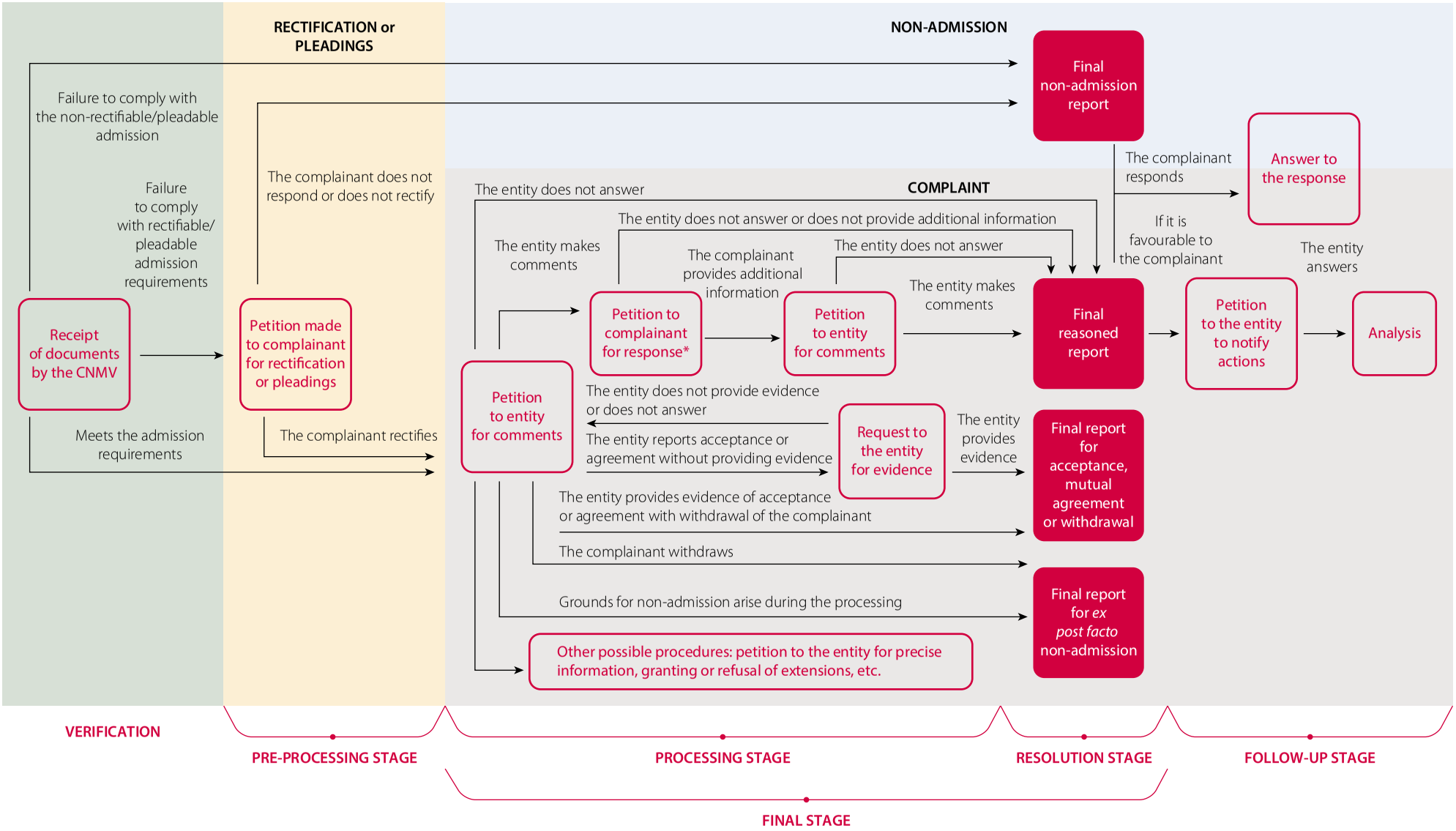
3.2.3 Follow-up stage

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

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

The Complaints Service assesses 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.



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

3.3 Complaints resolved in 2017

As indicated above, the written complaints received in the 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 complaints received by the Complaints Service in 2017, differentiating between each one of the aforementioned stages.

Complaints finalised in 2017 TABLE 2

Número de escritos

	No.
+ 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 concluded in complaints	19
Outstanding petitions for rectification or pleadings that concluded in non-admissions	59
+ Complaints filed during 2017	**998**
Direct non-admissions	120
Direct complaints	371
Petitions for rectification or pleadings	507
Petitions for rectification or pleadings that concluded in complaints	255
Petitions for rectification of pleadings that concluded in non-admissions	252
– Outstanding complaints at year-end 2017	**223**
Outstanding non-admissions	6
Outstanding complaints	173
Outstanding petitions for rectification or pleadings	44
Outstanding petitions for rectification or pleadings that resulted in complaints	20
Outstanding petitions for rectification or pleadings that resulted in non-admissions	24
= Complaints finalised in 2017	**1,070**

Source: CNMV.

3.3.1 Pre-processing stage

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

Of the 295 outstanding complaints at 31 December 2016, 78 were in the pre-processing stage of petitions for rectification or pleadings – PRP – (49 PR and 29 PP).

In addition, of the 998 complaints filed in 2017 with the Complaints Service, the pre-processing or PRP stage was initiated in 507 (389 PR and 118 PP).

Finally, at 31 December 2017, 44 complaints were in progress in this pre-processing stage (31 PR and 13 PP).

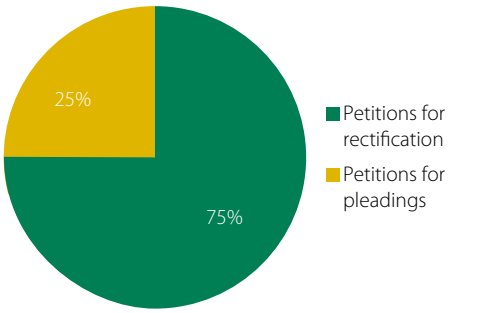
Consequently, this pre-processing or PRP stage was initiated or concluded in 541 complaints filed by complainants in 2017 (78 initiated in 2016 and 463 in 2017).

PRP concluded in 2017 TABLE 3

Number of proceedings	
+ Outstanding PRP at year-end 2016	**78**
Petitions for rectification	49
Petitions for pleadings	29
+ PRP filed in 2017	**507**
Petitions for rectification	389
Petitions for pleadings	118
– Outstanding PRP in 2017	**44**
Petitions for rectification	31
Petitions for pleadings	13
= PRP closed in 2017	**541**

Source: CNMV.

Distribution of PRP concluded in 2017 FIGURE 9



Source: CNMV.

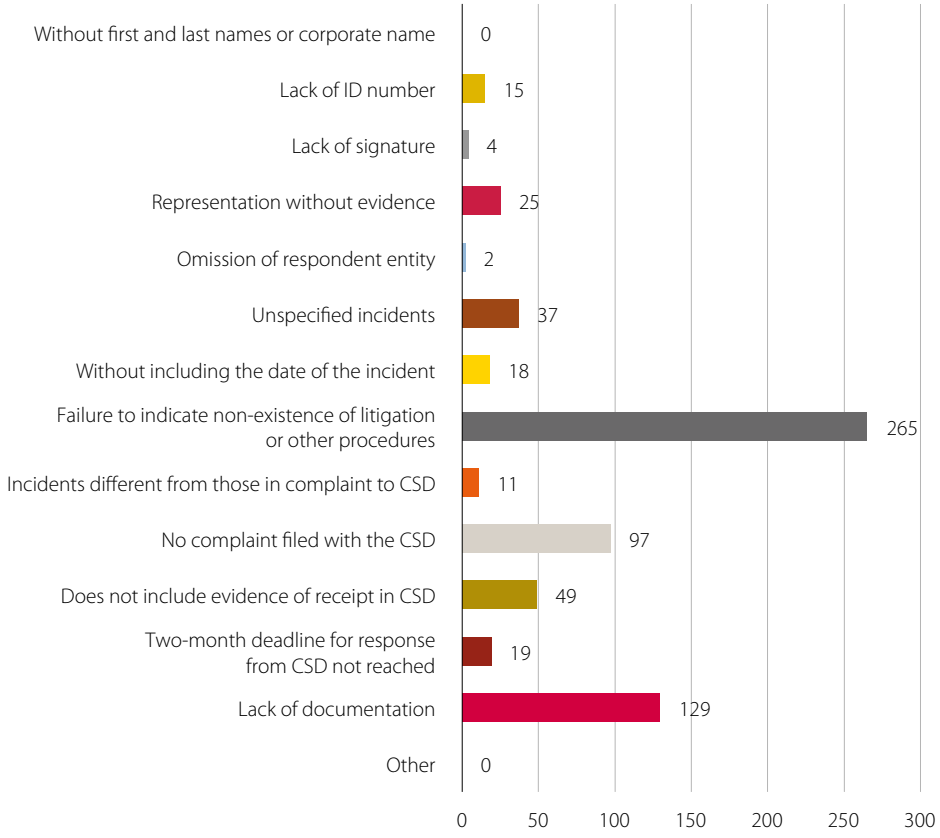
➢ Petition for rectification (PR)

A petition for rectification was made in 407 of the 541 complaints for which this pre-processing or PRP stage was concluded in 2017.

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

Reasons for petition for rectification*

FIGURE 10



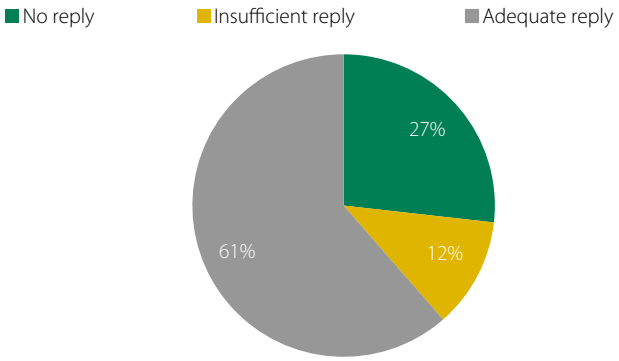
(*) It is usual for a petition for rectification to request rectification of more than one reason; hence the number of reasons (671) is higher than the number of processed petitions for rectification.
Source: CNMV.

As shown in Figure 10, the most common reason for rectification is the lack of information on the processing of a complaint in parallel with judicial, administrative or arbitration proceedings for the same incidents that are the subject of the complaint (265 cases). In order to facilitate compliance with this requirement, the Complaints Service sends a template together with the petition for rectification. Submission of this model form, duly completed, is sufficient to rectify the deficiency.

The second most common reason for rectification (129 cases) is the failure to provide documentation supporting the incidents highlighted in the complaint. The third most common reason (97 cases) is the failure to demonstrate that the complainants had previously contacted the Customer Service Department of the respondent entity. Compliance with this requirement, together with the other three reasons linked to the CSD (79 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 is curtailed, entities do not have the prior opportunity to review their actions and, as the case may be, to correct them. Entities must also help their clients comply with this requirement by sending them the corresponding acknowledgements of receipt after receiving their complaints so that they can easily demonstrate to the Complaints Service that they have contacted the entity's Customer Service Department, particularly in those cases in which said department has not replied to the complainant by the deadline established for this purpose.

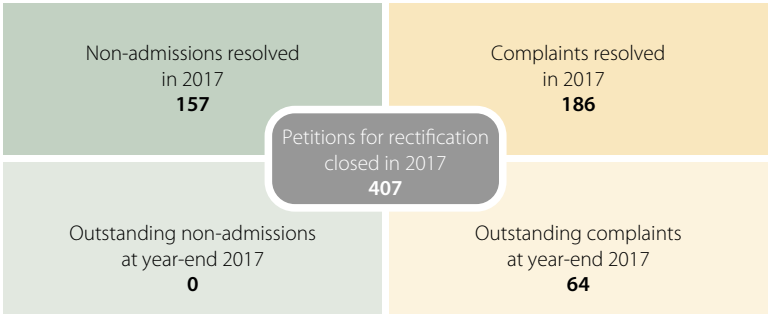
Even when in most cases the complainant suitably rectifies what was requested (61%), there was also a noteworthy number of cases in which complainants did not reply to the PR made to them (27%) or in which they provided an insufficient reply (12%) as shown in Figure 11.

Answer to petitions for rectification FIGURE 11



Source: CNMV.

The final destination of the 407 complaints in which a petition for rectification was made is as follows:



Similarly, it should be indicated that at the end of 2017 there were 31 petitions for rectification outstanding, of which 19 were processed as complaints and 12 as non-admissions over the following year.

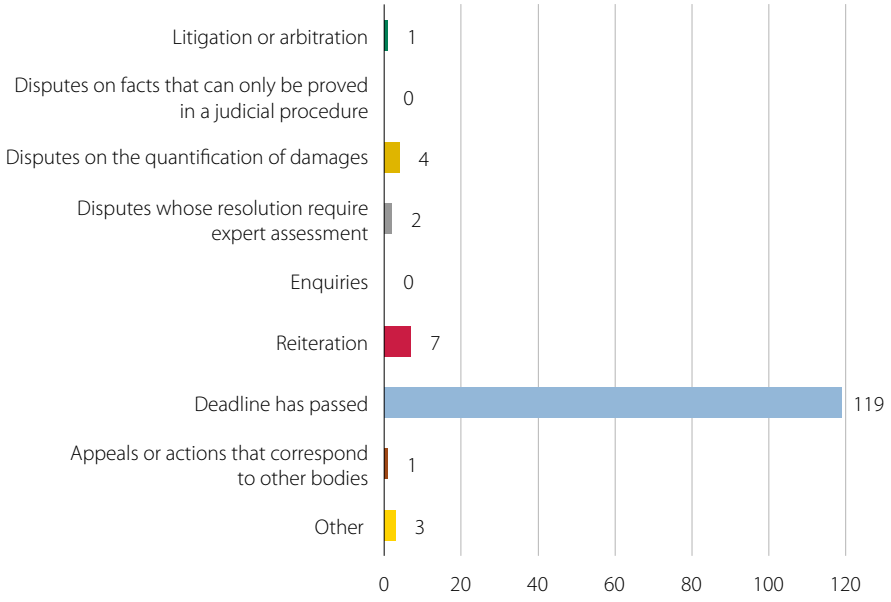
➢ Petitions for pleadings (PP)

In the cases in which the CNMV's Complaints Services 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 closure and dismissal of the complaint. If, however, the pleadings received discredit the reason for the non-admission, the complaint will be admitted.

A petition for pleadings was made in 134 of the 541 complaints for which this pre-processing or PRP stage was concluded in 2017.

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

Reasons for petition for pleadings FIGURE 12



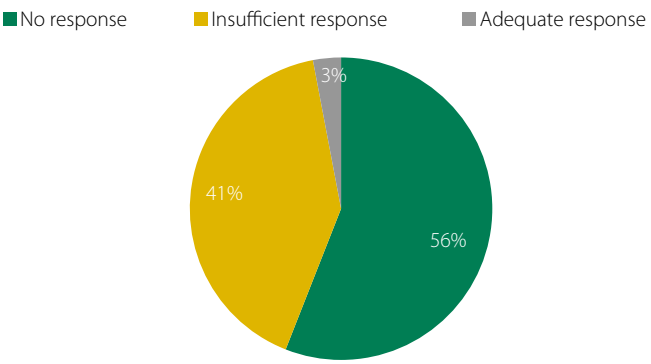
Source: CNMV.

The difference between the number of reasons and the number of complaints processed is smaller in the case of the petitions for pleadings than in the case of the petitions for rectification as it is common for there to be one single reason for non-admission in the case of the former. Therefore, the number of reasons for requesting pleadings (137) is very similar to the number of petitions for pleadings processed (134).

In the case of petitions for pleadings, the most common reason for non-admission is that the six-year period available to the complainant to file their complaint from the date on which the events occurred has elapsed (119). Other noteworthy reasons for non-admission, although with much lower numbers, are the repetition of complaints that have already been resolved (7) or disputes about the financial quantification of the damages that may have been caused to the investor (4).

Complainants responded to less than half of the petitions for pleadings, and only in 3% 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.

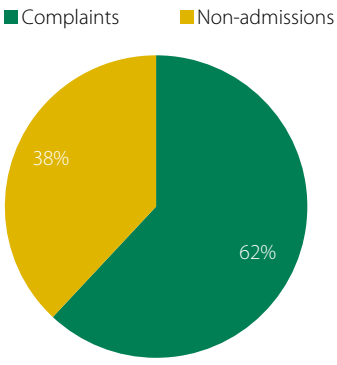
The final destination of these 134 complaints is shown below:

On 31 December 2017 there were 13 open petitions for pleadings, of which 1 was processed as a complaint and 12 as non-admissions in 2018.

3.3.2 Final stage

In 2017, the Complaints Service concluded 1,070 proceedings, of which 407 were not admitted and 663 were processed as complaints, concluding with the issuance of a final report.

Complaints finalised in 2017 FIGURE 14



Source: CNMV.

In 2017, the Complaints Service considered 407 applications for opening of complaint proceedings to be inadmissible.

Non-admissions finalised in 2017

TABLE 4

Number of proceedings

	No.
+ Outstanding non-admissions at year-end 2016	6
+ Non-admissions initiated during 2017	407
– Outstanding non-admissions at year-end 2017	6
= Non-admissions finalised in 2017	407

Source: CNMV.

The complaints submitted by investors may be directly inadmissible (120 proceedings) or inadmissible after the pre-processing stage of petitions for pleadings, as explained in the above point (287 proceedings).

Type of non-admissions

TABLE 5

Number of proceedings

	No.	%
Direct non-admission	**120**	**29.5**
Bank of Spain	65	16.0
Directorate-General for Insurance and Pension Funds	19	4.7
Against entities in free provision of services from member countries of FIN-NET	16	3.9
Against entities in free provision of services from non-member countries of FIN-NET	16	3.9
Other	4	1.0
Non-admission following petition to complainant for rectification/pleadings	**287**	**70.5**
No response	183	45.0
Insufficient response	104	25.5
Total non-admissions	**407**	**100.0**

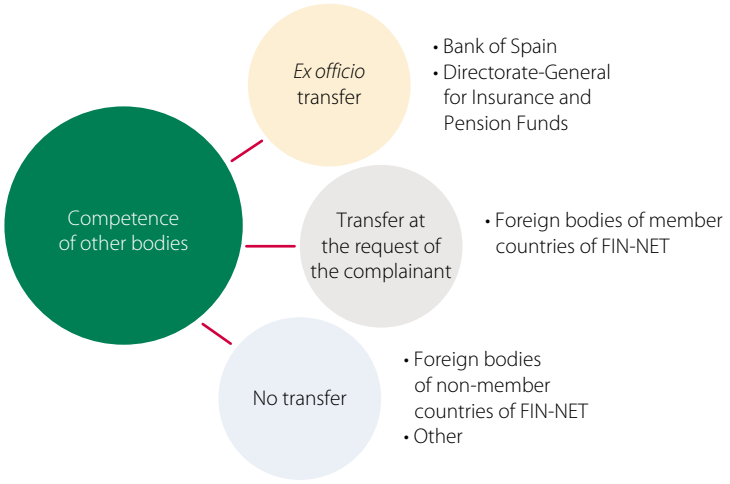
Source: CNMV.

Direct non-admissions take place in two situations:

– When the issues raised in the complaint filed by the complainant, either because the product or the type of service to which the incidents refer, do not fall within the scope of competence of the CNMV, with another national supervisor responsible for analysing the incident (84 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 (32 cases).

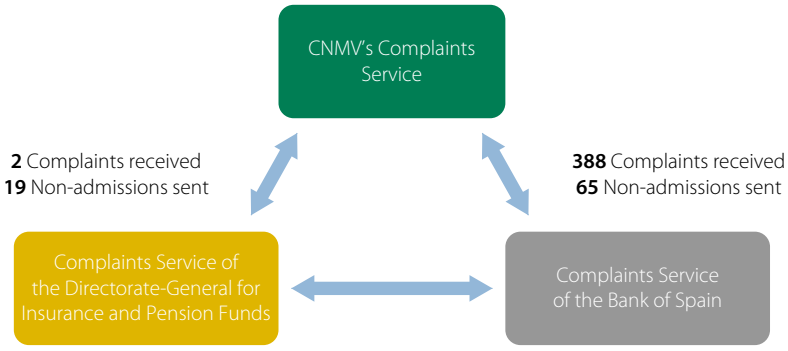
In the case of direct non-admission, the CNMV's Complaints Service may forward the file – *ex officio* or at the request of the complainant – or not pass on the file depending on the national or foreign body, as shown below:



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 Complaints Service as, in accordance with current legislation, investors may file complaints indistinctly with any of these three bodies.

Even when the 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 16% and 4.7%, respectively, of total non-admissions and 6.5% and 1.9%, respectively, of total complaints filed.



In addition, the 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.

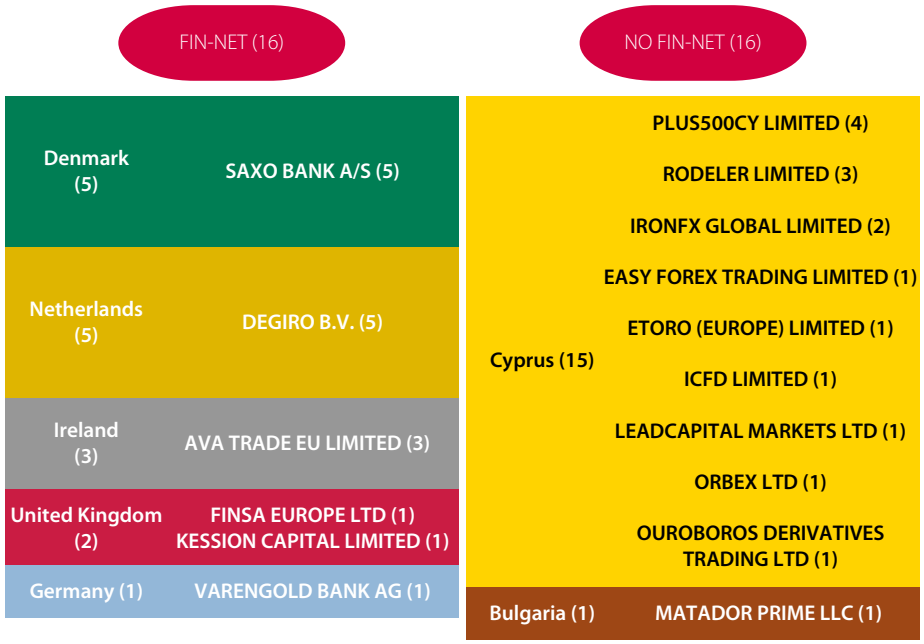
However, said home country may or may not be a member of the FIN-NET network, which is the network for settling out-of-court cross-border conflicts in the area of financial services in the European Economic Area.[1]

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 2017, 16 complaints were filed (3.9% 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 Complaints Service to transfer their complaint to the competent body in six 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 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 passing on their complaint to the corresponding supervisor.

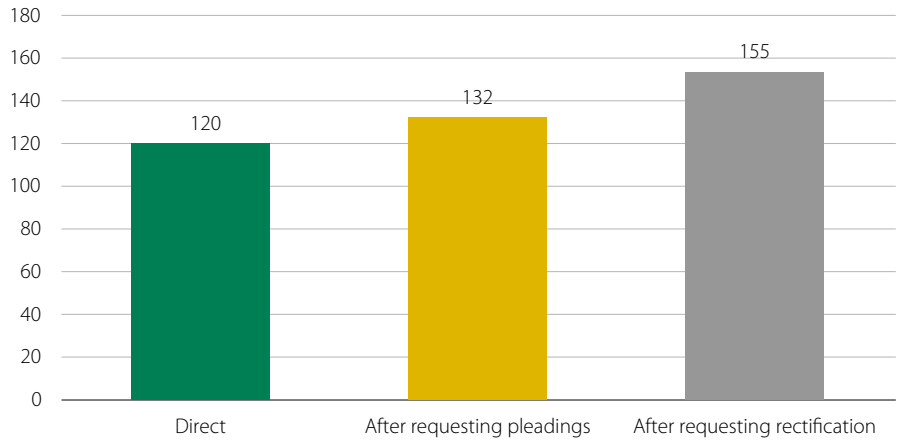
In 2017, a total of 16 cross-border complaints were received outside the scope of FIN-NET (3.9% of total non-admissions closed in the year).



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.

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 (132) or rectification (155) be detected.

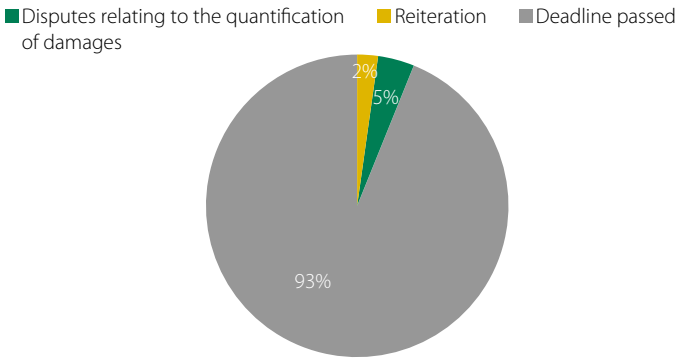
Types of non-admissions FIGURE 15



Source: CNMV.

Of the 132 proceedings in which pleadings had been requested at the pre-processing stage and which were ultimately rejected, 75 did not receive a response by the corresponding deadline, while in the remaining 57 proceedings, although the petition was answered, the arguments provided by the complainant did not discredit the reason for non-admission initially detected. The main reason for non-admission was that more than six years had elapsed between the incidents and the filing date of the first complaint (53 cases), followed by the reiteration of proceedings already resolved (3 cases) and disputes relating to the quantification of damages (1 case). In all cases the complainant was duly notified in a reasoned report.

Reasons for non-admission following petition for pleadings FIGURE 16



Source: CNMV.

Of the 155 complaints rejected following the petition for rectification, in 108 cases the complainant did not respond to the petition for rectification by the corresponding deadline, and in 47 proceedings said response was partial (1 admission requirement had still not been rectified in 35 proceedings, 2 requirements in 10 proceedings, 4 requirements in 1 proceeding and 3 requirements in 1 proceeding).

The admission requirements that were not rectified by the complainants, despite having responded to the petition for rectification, were as follows:[2]

i) Deficiencies in providing evidence that a prior complaint had been made with the entity's Customer Service Department (36).

ii) Lack of documentation (12).

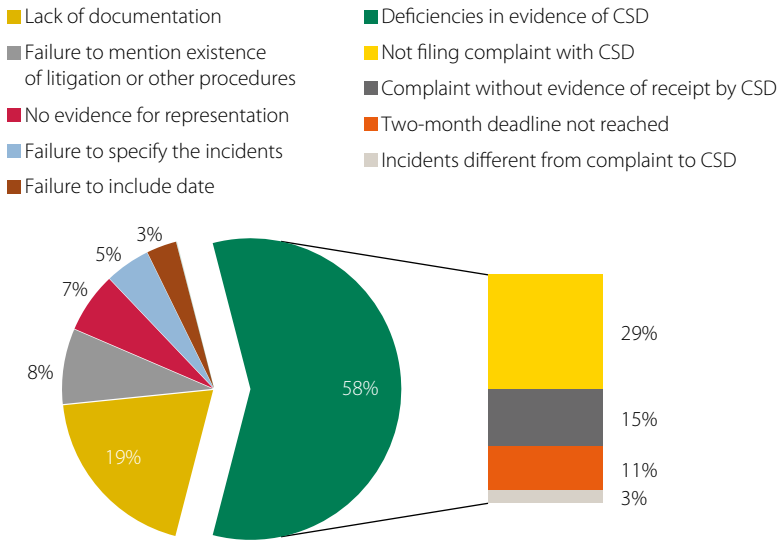
iii) Lack of a declaration that the incident was not subject to resolution or litigation before administrative, judicial or arbitration bodies (5).

iv) Failure to provide evidence of representation (4).

v) Failure to specify the incidents (3).

vi) Failure to indicate the date on which the incidents occurred (2).

Reasons for non-admission not rectified following response FIGURE 17

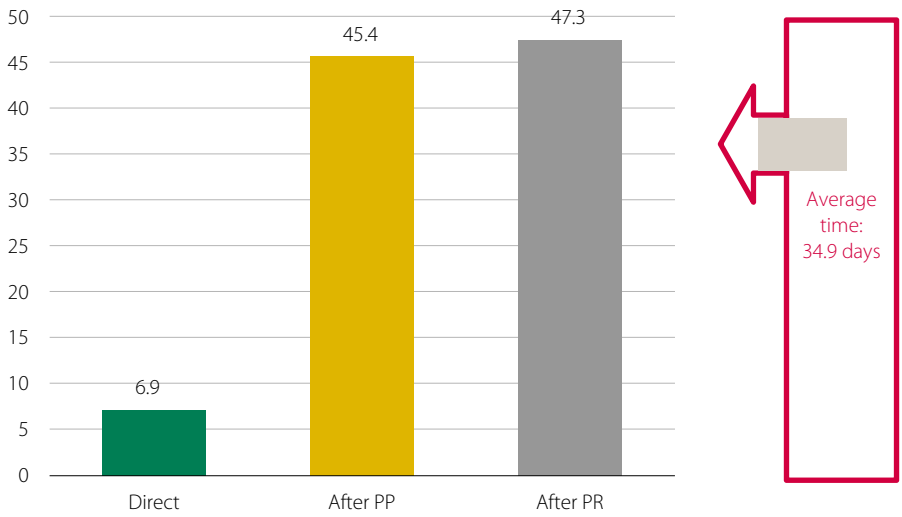


Source: CNMV.

Direct non-admissions were on average closed more quickly (6.9 days), followed by the non-admissions resulting from the petition for pleadings (45.4 days) and from the petition for rectification (47.3 days) as in these proceedings the number of processes to be performed prior to the non-admission is greater.

2 In some proceedings there are several requirements that have not been rectified.

Time to completion by type of non-admission FIGURE 18



Source: CNMV.

The average time to completion of the non-admissions was 34.9 days, compared with 36.6 days in 2016.

➢ Complaints

In 2017, a total of 663 complaint proceedings which had been admitted to processing by the Complaints Service were resolved.

Complaints concluded in 2017 TABLE 6

Number of proceedings

	No.
+ Outstanding complaints in 2016	211
+ Complaints initiated in 2017	625
– Outstanding complaints in 2017	173
= Complaints concluded in 2017	663

Source: CNMV.

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

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 2017

TABLE 7

Number of claims and complaints

	2015		2016		2017		% change
	No.	%	No.	%	No.	%	17/16
Processed with no final reasoned report	**213**	**14.1**	**141**	**19.0**	**108**	**16.3**	**-23.4**
Acceptance or mutual agreement	139	9.2	110	14.8	73	11.0	-33.6
Withdrawal	28	1.8	19	2.6	21	3.2	10.5
Ex post facto non-admission	46	3.0	12	1.6	14	2.1	16.7
Processed with final reasoned report	**1,303**	**85.9**	**602**	**81.0**	**555**	**83.7**	**-7.8**
Report favourable to complainant	761	50.2	309	41.6	301	45.4	-2.6
Report unfavourable to complainant	542	35.8	293	39.4	254	38.3	-13.3
Total complaints processed	**1,516**	**100.0**	**743**	**100.0**	**663**	**100.0**	**-10.8**

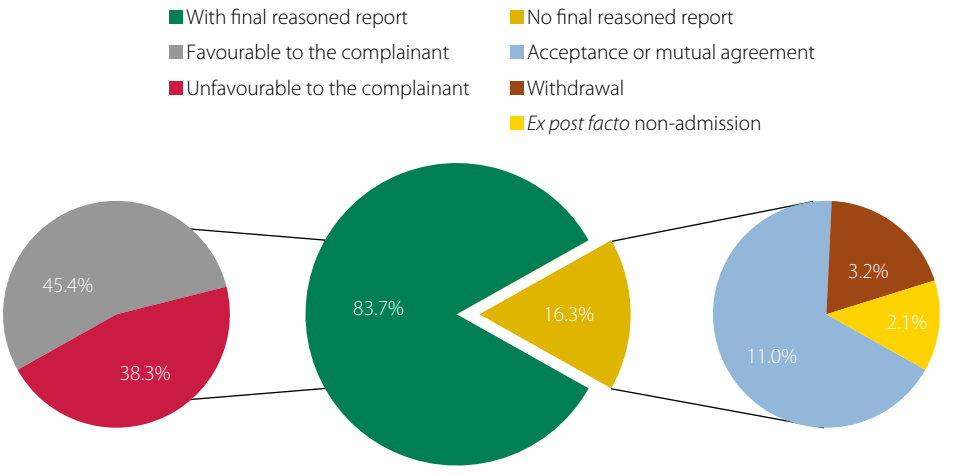
Source: CNMV.

Of the total complaints closed in 2017, 16.3% did not require the issuance of a final reasoned report: in 11% of the cases because the entity accepted the complainant's claims or there was a mutual agreement between both parties; in 3.2% of the proceedings, because the complainant withdrew the complaint; and in 2.1% of the cases, because there was an *ex post facto* non-admission.

With regard to the 555 complaint proceedings that concluded with a final reasoned report (83.7% of total complaints processed), the complainants obtained a favourable report in 54.2% of the cases and an unfavourable report in the remaining 45.8% of the cases.

Distribution of the type of complaint resolution

FIGURE 19

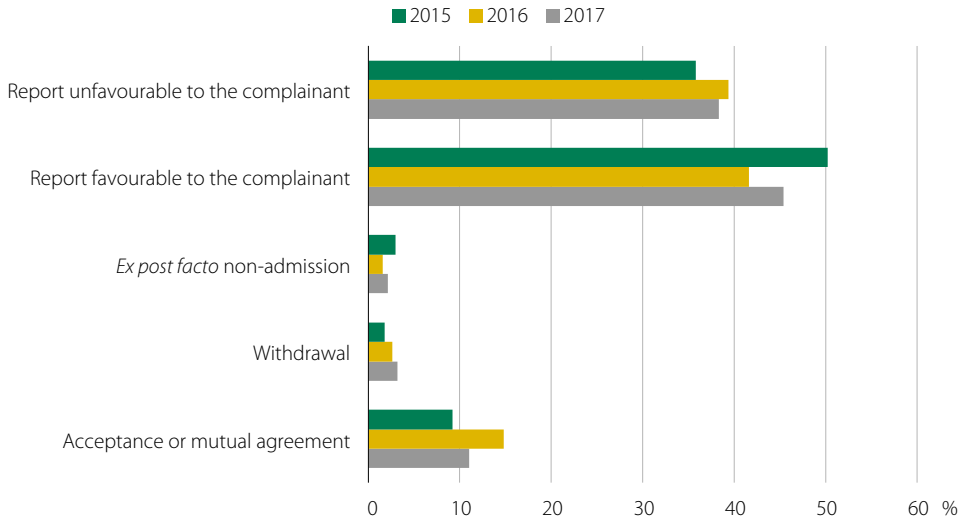


Source: CNMV.

Figure 20 shows the percentages of the types of resolution with regard to the total complaints concluded in the last three years. The comparison shows that, except in the case of withdrawals, the figures for 2017 developed more moderately and in the opposite direction from the previous year and therefore stood at levels between those recorded in 2015 and 2016.

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 therefore one single complaint proceeding may include various reasons for complaint. The Complaints Service must study, analyse and give an *ad hoc* decision in the final reasoned report issued on each of the cases.

In the 663 complaints concluded in 2017, there were 976 reasons for complaint, in which two figures should be highlighted: i) the greater percentage of complaints arising from alleged irregularities in the information provided on the product both before and after it was contracted (20.3% and 21.7% of the reasons for complaint, respectively), and ii) 33.5% of the reasons for complaint related to CIS, while 66.5% related to other securities.

Reasons for the complaints concluded in 2017

TABLE 8

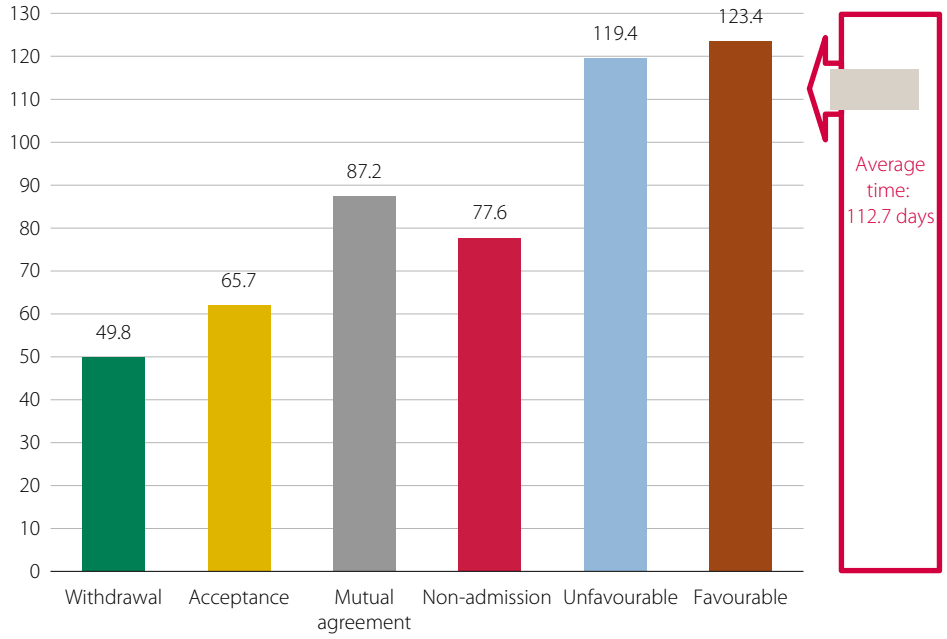
Investment service/reason	Grounds	Product		
		Securities	CIS	Total
Marketing/execution Advice Portfolio management	Appropriateness/suitability	94	64	**158**
	Prior information	116	78	**194**
	Purchase/sale orders	107	37	**144**
	Fees	112	46	**158**
	Transfers	13	21	**34**
	Subsequent information	143	49	**192**
	Ownership	23	8	**31**
Acquisition *mortis causa*	Appropriateness/suitability	4	0	**4**
	Prior information	4	0	**4**
	Purchase/sale orders	1	2	**3**
	Fees	4	0	**4**
	Transfers	1	1	**2**
	Subsequent information	14	6	**20**
	Ownership	7	12	**19**
Operation of CSD		6	3	**9**
Total		**649**	**327**	**976**

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 49.8 days, entities fully accepted the complainant's complaint in 65.7 days, an agreement was reached to the satisfaction of the complainant (mutual agreement) in 87.2 days and the proceedings were closed as a result of *ex post facto* non-admission in 77.6 days. Complaints in which a final reasoned report was issued were resolved, on average, in 119.4 days in the case of a report unfavourable to the complainant and in 123.4 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.

Time to conclusion by type of complaint FIGURE 21



Source: CNMV.

The average time to resolution of the complaints processed with a final reasoned report (favourable or unfavourable) stood at 121.5 days, a slight increase on the 95.12 days of 2016 and a reduction on the 173 days of 2015 and the 273 days of 2014. With regard to complaints resolved with no final reasoned report (withdrawals, acceptances, mutual agreements and *ex post facto* non-admissions) the average time to resolution stood at 67.5 days, a slight increase on the 61.78 days of 2016 and a fall on the 114 days of 2015 and the 159 days of 2014.

It should be highlighted that the aforementioned time periods have not been reduced by any suspension periods that may have occurred as a result of the time between notification of any petition or request made to the entity or the complainant other than the mandatory process of pleadings, up to their completion or, failing that, up to the deadline granted for responding to said petition or request. For example, entities sometimes submit 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. The Complaints Service believes that improved investor protection involves facilitating, as far as possible, agreements between the complainant and the respondent entity. Therefore, in these cases, it submits a requirement to the entity 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.

➢ Follow-up actions to favourable reports 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. In the event that they do not do so, it will be deemed that they have not accepted the criteria set out in the report and will not therefore rectify the conduct disclosed therein.

It should be taken into account that in some of the 301 complaints resolved in 2017 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 that the decision is favourable to the complainant with regard to the actions of all the entities or only of one. 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, 302 decisions favourable to the complainant were issued.

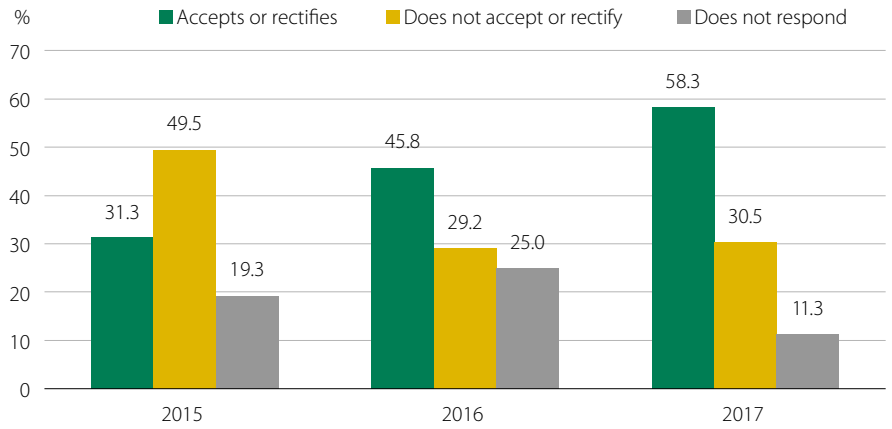
Follow-up actions favourable to the complainant TABLE 9

	Follow-up action reported by respondent entity					Entities not reporting follow-up action	
	Accepts criteria or rectifies		Does not accept or rectify				
Year	No.	%	No.	%	Total	No.	%
2015	238	31.3	377	49.5	615	147	19.3
2016	143	45.8	91	29.2	234	78	25.0
2017	176	58.3	92	30.5	268	34	11.3

Source: CNMV.

In 58.3% 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



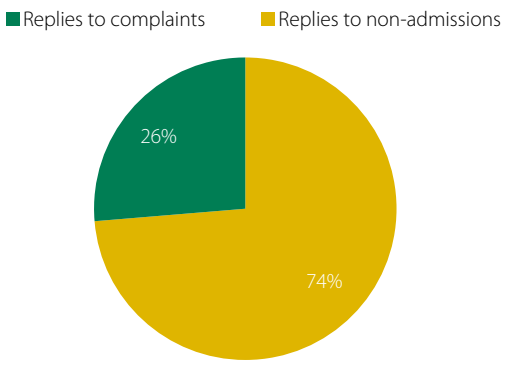
Source: CNMV.

➢ 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. The Complaints Service replies to these questions in order to attempt to resolve any doubts raised by the complainant.

In 2017, 10 responses to non-admissions were received and 28 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.

3.3.4 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; and 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, the entity responsible for the incidents does not always match the entity against which the complaint is processed, because the latter has needed to address complaints filed for alleged irregularities committed by other entities that they have fully or partially acquired, either through a 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 by the Complaints Service 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 by the number of complaints admitted in which there was no *ex post facto* reason for non-admission. It should be noted that, even when there are 16 entities against which at least eight complaints were processed, the top seven places are occupied by the entities with the highest stock-market capitalisation in the Spanish market. Banco Santander, S.A. (96); Banco Bilbao Vizcaya Argentaria, S.A. (95); Caixabank, S.A. (80); Banco Popular Español, S.A. (68);[3] Bankinter, S.A. (44); Bankia, S.A. (42) and Banco de Sabadell, S.A. (30).

3 This entity was delisted with effect from 9 June 2017.

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.	96	BANCO BANIF, S.A.	2
		BANCO ESPAÑOL DE CRÉDITO, S.A.	3
		BANCO SANTANDER, S.A.	91
2. BANCO BILBAO VIZCAYA ARGENTARIA, S.A.	95	BANCO BILBAO VIZCAYA ARGENTARIA, S.A.	82
		CATALUNYA BANC, S.A.	11
		UNOE BANK, S.A.	2
3. CAIXABANK, S.A.	80	CAIXABANK, S.A.	77
		BARCLAYS BANK, S.A.	3
4. BANCO POPULAR ESPAÑOL, S.A.	68	BANCO POPULAR ESPAÑOL, S.A.	65
		BANCOPOPULAR-E, S.A.	1
		BANCO PASTOR, S.A.	2
5. BANKINTER, S.A.	44		
6. BANKIA, S.A.	42	BANKIA, S.A.	40
		CAJA DE AHORROS DE VALENCIA, CASTELLÓN Y ALICANTE, BANCAJA	1
		CAJA DE AHORROS Y MONTE DE PIEDAD DE SEGOVIA	1
7. BANCO DE SABADELL, S.A.	30	BANCO DE SABADELL, S.A.	27
		CAJA DE AHORROS DEL MEDITERRÁNEO	3
8. IBERCAJA BANCO, S.A.	22		
9. BANCO DE CAJA ESPAÑA DE INVERSIONES, SALAMANCA Y SORIA, S.A.	17		
10. DEUTSCHE BANK, SOCIEDAD ANÓNIMA ESPAÑOLA	14		
11. RENTA 4 BANCO, S.A.	11		
12. ABANCA CORPORACIÓN BANCARIA, S.A.	10		
13. UNICAJA BANCO, S.A.	10		
14. GVC GAESCO BEKA, S.V., S.A.	9		
15. ING BANK NV, SUCURSAL EN ESPAÑA	8		
16. LIBERBANK, S.A.	8	CAJA DE EXTREMADURA	1
		LIBERBANK, S.A.	7
Other entities (*)	90		
Total	**654**		

(*) 39 entities with fewer than 8 complaints.
Source: CNMV.

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. This request must always be notified electronically through the CNMV's CIFRADOC system (ALR procedure), so that the delivery date of the notification will be the date on which the notification is read. Consequently, said notification is deemed rejected if the entity does not access the content for ten calendar days from when it becomes available.[4]

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

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. RENTA 4 BANCO, S.A.	10
2. BANKINTER, S.A.	7
3. BANKIA, S.A.	6
4. IBERCAJA BANCO, S.A.	6
5. ING BANK NV, SUCURSAL EN ESPAÑA	4
6. BANCO SANTANDER, S.A.	3
7. BANCO POPULAR ESPAÑOL, S.A.	2
8. DEUTSCHE BANK, SOCIEDAD ANÓNIMA ESPAÑOLA	2
9. LIBERBANK, S.A.	2
10. BANCO BILBAO VIZCAYA ARGENTARIA, S.A.	1
11. UNICAJA BANCO, S.A.	1
12. BANCO DE SABADELL, S.A.	1
13. ABANCA CORPORACIÓN BANCARIA, S.A.	1
14. CAIXABANK, S.A.	1
15. BANCO DE CAJA ESPAÑA DE INVERSIONES, SALAMANCA Y SORIA, S.A.	0
16. GVC GAESCO BEKA, S.V., S.A.	0
Other entities (*)	3
Average	**3**

(*) 39 entities with fewer than 8 complaints.
Source: CNMV.

Five entities had timescales for reading greater than the average of three calendar days (Renta 4 Banco, S.A.; Bankinter, S.A.; Bankia, S.A.; Ibercaja Banco, S.A. and ING Bank NV, Sucursal en España), one read the notifications in the general average timescale of three days (Banco Santander, S.A.) and ten had timescales for reading that were below the average (Banco Popular Español, S.A.; Deutsche Bank, S.A.E.; Liberbank, S.A.; Banco Bilbao Vizcaya Argentaria, S.A.; Unicaja Banco, S.A.; Banco de Sabadell, S.A.; Abanca Corporación Bancaria, S.A.; Caixabank, S.A.; Banco de Caja España de Inversiones, Salamanca y Soria, S.A. and GVC Gaesco Beka, S.V., S.A.).

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

➢ Ranking of entities by timescale for responding

As from the day following the date on which it accesses the notification, the entity has 15 working days to submit pleadings on the issues raised by the complainant, with the possibility of an extension if requested before the end of the initially granted period.

Table 12 orders the entities by the number of calendar days that each one takes to submit the information and documentation requested in the petition for comments, with the corresponding adjustments when an extension has been granted. Although the timescales are calculated in calendar days, and therefore non-working days have not been deducted, 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 20 calendar days on average. Five entities did so in a timescale higher than the average (Bankinter, S.A.; Ibercaja Banco, S.A.; Banco Bilbao Vizcaya Argentaria, S.A.; Caixabank, S.A. and Bankia, S.A.), two did so in the average timescale (Banco de Caja España de Inversiones, Salamanca y Soria, S.A. and Unicaja Banco, S.A.) and nine entities responded in a timescale lower than the average (ING Bank NV, Sucursal en España; Renta 4 Banco, S.A.; GVC Gaesco Beka, S.V., S.A.; Banco de Sabadell, S.A.; Abanca Corporación Bancaria, S.A.; Liberbank, S.A.; Deutsche Bank, S.A.E.; Banco Santander, S.A. and Banco Popular Español, S.A.).

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

TABLE 12

Entity with which it is processed	Calendar days
1. BANKINTER, S.A.	35
2. IBERCAJA BANCO, S.A.	28
3. BANCO BILBAO VIZCAYA ARGENTARIA, S.A.	27
4. CAIXABANK, S.A.	26
5. BANKIA, S.A.	21
6. BANCO DE CAJA ESPAÑA DE INVERSIONES, SALAMANCA Y SORIA, S.A.	20
7. UNICAJA BANCO, S.A.	20
8. ING BANK NV, SUCURSAL EN ESPAÑA	19
9. RENTA 4 BANCO, S.A.	19
10. GVC GAESCO BEKA, S.V., S.A.	18
11. BANCO DE SABADELL, S.A.	16
12. ABANCA CORPORACIÓN BANCARIA, S.A.	16
13. LIBERBANK, S.A.	16
14. DEUTSCHE BANK, SOCIEDAD ANÓNIMA ESPAÑOLA	14
15. BANCO SANTANDER, S.A.	14
16. BANCO POPULAR ESPAÑOL, S.A.	12
Other entities (*)	17
Average	**20**

(*) 39 entities with fewer than 8 complaints.
Source: CNMV.

A total of 102 extensions were requested (all of which were granted) for submitting pleadings by the following entities: Banco Bilbao Vizcaya Argentaria, S.A. (58); Caixabank, S.A. (10); Bankinter, S.A. (10); Banco Santander, S.A. (6); Banco de Caja España de Inversiones, Salamanca y Soria, S.A. (5); Bankia, S.A. (4); Banco Mare Nostrum, S.A. (4); Banco Popular Español, S.A. (2); Novo Banco, S.A., Sucursal en España (1); Open Bank, S.A. (1) and Unicaja Banco, S.A. (1).

With regard to the timescale in which the respondent entity submitted comments, it is important to note one complaint procedure in which Banco Santander S.A. did not submit the requested pleadings, which was considered bad practice in the final reasoned report which concluded the complaint. The 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 would make this objective more difficult to achieve.

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

The final reasoned reports may be of two types: favourable or unfavourable to the complainant. In the former, it is concluded that there has always 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.

Table 13 sorts the entities by the percentage of reports favourable to the complainant out of total decisions (favourable and unfavourable). Eleven entities have percentages of reports favourable to the complainant above the general average (53.9%) (Gaesco Beka, S.V., S.A.; Unicaja Banco, S.A.; Bankia, S.A.; ING Bank NV, Sucursal en España; Renta 4 Banco, S.A.; Banco de Caja España de Inversiones, Salamanca y Soria, S.A.; Deutsche Bank, S.A.E.; Banco Popular Español, S.A.; Bankinter, S.A.; Ibercaja Banco, S.A. and Caixabank, S.A.) and five entities had a percentage lower than the average (Banco Santander, S.A.; Banco Bilbao Vizcaya Argentaria, S.A.; Banco de Sabadell, S.A.; Abanca Corporación Bancaria, S.A. and Liberbank, S.A.). If only the complaints in which the respondent entity is responsible for the incident were taken into account, the ranking would be changed, as Deutsche Bank, S.A.E. would swap position with Banco Popular Español, S.A., and Banco Bilbao Vizcaya Argentaria, S.A. would swap position with Banco de Sabadell, S.A.

Ranking of entities by percentage of decisions favourable to the complainant

TABLE 13

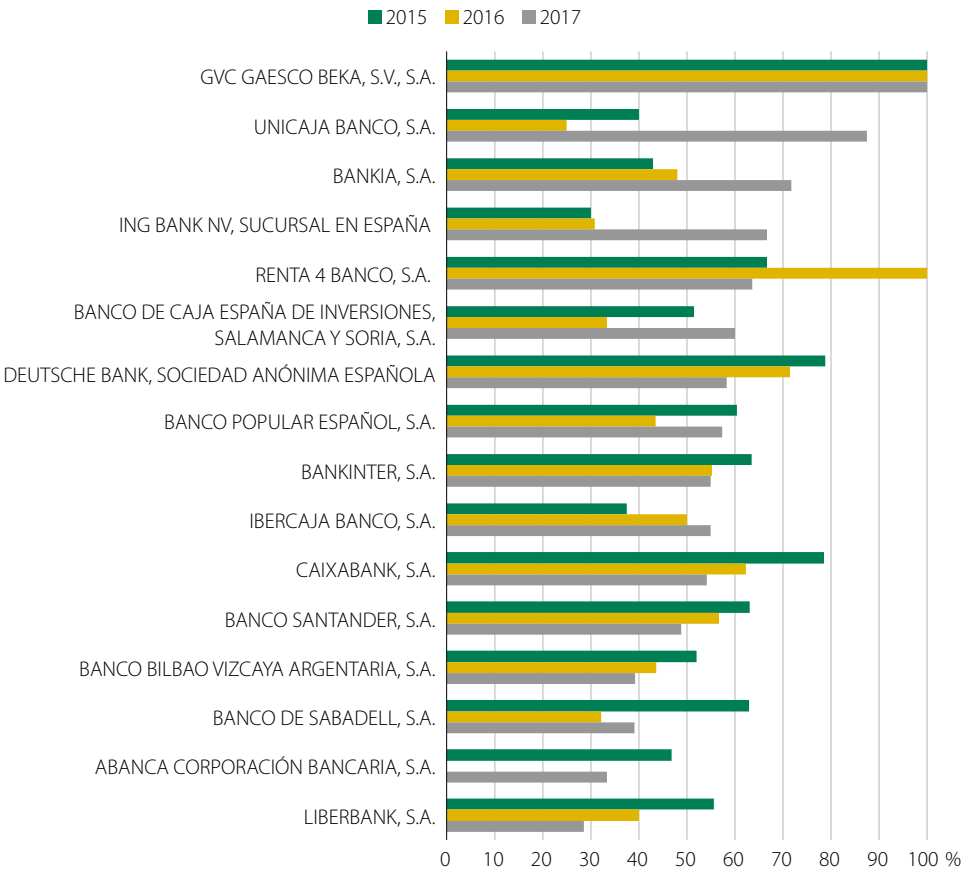
Entity against which it is processed	% favourable	Entity responsible for the incidents	Unfavourable	Favourable	% favourable
1. GVC GAESCO BEKA, S.V., S.A.	100.0	GVC GAESCO BEKA, S.V., S.A.	0	9	100.0
2. UNICAJA BANCO, S.A.	87.5	UNICAJA BANCO, S.A.	1	7	87.5
3. BANKIA, S.A.	71.8	BANKIA, S.A.	11	26	70.3
		CAJA DE AHORROS DE VALENCIA, CASTELLÓN Y ALICANTE, BANCAJA	0	1	100.0
		CAJA DE AHORROS Y MONTE DE PIEDAD DE SEGOVIA	0	1	100.0
4. ING BANK NV, SUCURSAL EN ESPAÑA	66.7	ING BANK NV, SUCURSAL EN ESPAÑA	2	4	66.7
5. RENTA 4 BANCO, S.A.	63.6	RENTA 4 BANCO, S.A.	4	7	63.6
6. BANCO DE CAJA ESPAÑA DE INVERSIONES, SALAMANCA Y SORIA, S.A.	60.0	BANCO DE CAJA ESPAÑA DE INVERSIONES, SALAMANCA Y SORIA, S.A.	4	6	60.0
7. DEUTSCHE BANK, SOCIEDAD ANÓNIMA ESPAÑOLA	58.3	DEUTSCHE BANK, SOCIEDAD ANÓNIMA ESPAÑOLA	5	7	58.3
8. BANCO POPULAR ESPAÑOL, S.A.	57.4	BANCO POPULAR ESPAÑOL, S.A.	24	34	58.6
		BANCOPOPULAR-E, S.A.	1	0	0.0
		BANCO PASTOR, S.A.	1	1	50.0
9. BANKINTER, S.A.	55.0	BANKINTER, S.A.	18	22	55.0
10. IBERCAJA BANCO, S.A.	55.0	IBERCAJA BANCO, S.A.	9	11	55.0
11. CAIXABANK, S.A.	54.1	CAIXABANK, S.A.	27	32	54.2
		BARCLAYS BANK, S.A.	1	1	50.0
12. BANCO SANTANDER, S.A.	48.8	BANCO BANIF, S.A.	1	1	50.0
		BANCO ESPAÑOL DE CRÉDITO, S.A.	2	1	33.3
		BANCO SANTANDER, S.A.	41	40	49.4
13. BANCO BILBAO VIZCAYA ARGENTARIA, S.A.	39.2	BANCO BILBAO VIZCAYA ARGENTARIA, S.A.	40	21	34.4
		CATALUNYA BANC, S.A.	4	7	63.6
		UNOE BANK, S.A.	1	1	50.0
14. BANCO DE SABADELL, S.A.	39.1	BANCO DE SABADELL, S.A.	14	8	36.4
		CAJA DE AHORROS DEL MEDITERRÁNEO	0	1	100.0
15. ABANCA CORPORACIÓN BANCARIA, S.A.	33.3	ABANCA CORPORACIÓN BANCARIA, S.A.	6	3	33.3
16. LIBERBANK, S.A.	28.6	CAJA DE EXTREMADURA	0	1	100.0
		LIBERBANK, S.A.	5	1	16.7
Other entities (*)	57.1		36	48	57.1
Total	**53.9**		**258**	**302**	**53.9**

(*) 39 entities with fewer than 8 complaints.

Source: CNMV.

Figure 24 shows the changes by entity in the percentage of complaints with decisions favourable to the complainant over the last three years. This Figure shows that in all the complaints against GVC Gaesco Beka, S.V., S.A. which concluded in a reasoned report in the last three years, the report was favourable to the complainant. In addition, the percentage fell in six entities (Deutsche Bank, S.A.E.; Bankinter, S.A.; Caixabank, S.A.; Banco Santander, S.A.; Banco Bilbao Vizcaya Argentaria, S.A. and Liberbank, S.A.) and rose in three (Bankia, S.A.; ING Bank NV, Sucursal en España and Ibercaja Banco, S.A.). The remaining six entities (Unicaja Banco, S.A.; Renta 4 Banco, S.A.; Banco de Caja España de Inversiones, Salamanca y Soria, S.A.; Banco Popular Español, S.A.; Banco de Sabadell, S.A. and Abanca Corporación Bancaria, S.A.) performed unevenly.

Percentage* of decisions favourable to the complainant by entity FIGURE 24



(*) 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 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 by number of acceptances and agreements reached with the complainant. On the one hand, Caixabank, S.A., Banco Bilbao Vizcaya Argentaria, S.A. and Banco Santander, S.A. stand out for being the entities with the highest number of acceptances and, on the other hand, Renta 4 Banco, S.A., GVC Gaesco Beka, S.V., S.A. and ING Bank NV, Sucursal en España recorded no acceptances or agreements with their clients.

Ranking of entities by number of acceptances and mutual agreements

TABLE 14

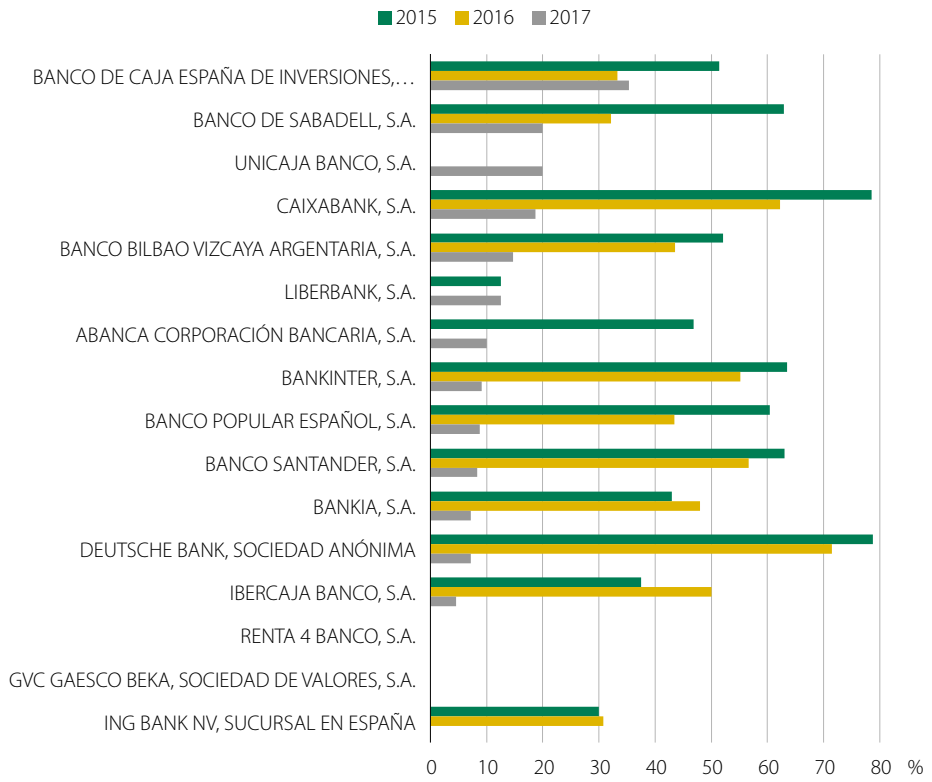
Entity against which it is processed	Total	Entity responsible for the incidents	Acceptance	Mutual agreement	Total
1. CAIXABANK, S.A.	15	CAIXABANK, S.A.	9	5	14
		BARCLAYS BANK, S.A.	0	1	1
2. BANCO BILBAO VIZCAYA ARGENTARIA, S.A.	14	BANCO BILBAO VIZCAYA ARGENTARIA, S.A.	11	3	14
3. BANCO SANTANDER, S.A.	8	BANCO SANTANDER, S.A.	8	0	8
4. BANCO POPULAR ESPAÑOL, S.A.	6	BANCO POPULAR ESPAÑOL, S.A.	6	0	6
5. BANCO DE SABADELL, S.A.	6	BANCO DE SABADELL, S.A.	2	2	4
		CAJA DE AHORROS DEL MEDITERRÁNEO	1	1	2
6. BANCO DE CAJA ESPAÑA DE INVERSIONES, SALAMANCA Y SORIA, S.A.	6	BANCO DE CAJA ESPAÑA DE INVERSIONES, SALAMANCA Y SORIA, S.A.	6	0	6
7. BANKINTER, S.A.	4	BANKINTER, S.A.	1	3	4
8. BANKIA, S.A.	3	BANKIA, S.A.	2	1	3
9. UNICAJA BANCO, S.A.	2	UNICAJA BANCO, S.A.	1	1	2
10. IBERCAJA BANCO, S.A.	1	IBERCAJA BANCO, S.A.	1	0	1
11. DEUTSCHE BANK, SOCIEDAD ANÓNIMA ESPAÑOLA	1	DEUTSCHE BANK, SOCIEDAD ANÓNIMA ESPAÑOLA	1	0	1
12. ABANCA CORPORACIÓN BANCARIA, S.A.	1	ABANCA CORPORACIÓN BANCARIA, S.A.	1	0	1
13. LIBERBANK, S.A.	1	LIBERBANK, S.A.	1	0	1
14. RENTA 4 BANCO, S.A.	–		–	–	–
15. GVC GAESCO BEKA, S.V., S.A.	–		–	–	–
16. ING BANK NV, SUCURSAL EN ESPAÑA	–		–	–	–
Other entities (*)	5		5	–	5
Total	73		56	17	73

(*) 39 entities with fewer than 8 complaints.
Source: CNMV.

Figure 25 orders the entities by percentage of acceptances/mutual agreements reached in 2017, including a comparison with those achieved in the two previous years. In this regard, Banco de Caja España de Inversiones, Salamanca y Soria, S.A. recorded a percentage of acceptances/mutual agreements of 35% of total complaints resolved, followed by Banco de Sabadell, S.A.; Unicaja Banco, S.A.; Caixabank, S.A.; Banco Bilbao Vizcaya Argentaria, S.A.; Liberbank, S.A. and Abanca Corporación Bancaria, S.A., with figures of between 20% and 10%. Below 10% were Bankinter, S.A.; Banco Popular Español, S.A.; Banco Santander, S.A.; Bankia, S.A.; Deutsche Bank, S.A.E. and Ibercaja Banco, S.A. and, as indicated above, Renta 4 Banco, S.A.; GVC Gaesco Beka, S.V., S.A. and ING Bank NV, Sucursal en España recorded no acceptances or mutual agreements with complainants.

In general, the percentage of acceptances/mutual agreements has fallen over the last three years. A downward trend can be seen in the case of Banco de Sabadell, S.A.; Caixabank, S.A.; Banco Bilbao Vizcaya Argentaria, S.A.; Bankinter, S.A.; Banco Popular Español, S.A.; Banco Santander, S.A. and Deutsche Bank, S.A.E., and an irregular trend in the case of Banco de Caja España de Inversiones, Salamanca y Soria, S.A.; Liberbank, S.A.; Abanca Corporación Bancaria, S.A.; Bankia, S.A.; Ibercaja Banco, S.A. and ING Bank NV, Sucursal en España. For their part, Unicaja Banco S.A.; Renta 4 Banco, S.A. and GVC Gaesco Beka, S.V., S.A. recorded no agreements or acceptances in 2015 and 2016, although the first entity did record an acceptance or agreement at some time in 2017.

Percentage of acceptances/mutual agreements* by entity FIGURE 25



(*) The percentage is calculated as a percentage of the total annual number of complaints resolved per entity (*ex post facto* non-admissions are not taken into account).

Source: CNMV.

➢ 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. When 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 88.7% of the cases.

The response percentage of most of the entities included in the table stood at above the average, and was only lower than the average in five cases.

Ranking of entities by percentage of follow-up actions communicated following decisions favourable to the complainant TABLE 15

Reference	% Yes	Entity responsible for the incidents	No	Yes	Total	% Yes
1. BANCO BILBAO VIZCAYA ARGENTARIA, S.A.	100.0	BANCO BILBAO VIZCAYA ARGENTARIA, S.A.	0	21	21	100.0
		CATALUNYA BANC, S.A.	0	7	7	100.0
		UNOE BANK, S.A.	0	1	1	100.0
2. BANCO DE CAJA ESPAÑA DE INVERSIONES, SALAMANCA Y SORIA, S.A.	100.0	BANCO DE CAJA ESPAÑA DE INVERSIONES, SALAMANCA Y SORIA, S.A.	0	6	6	100.0
3. DEUTSCHE BANK, SOCIEDAD ANÓNIMA ESPAÑOLA	100.0	DEUTSCHE BANK, SOCIEDAD ANÓNIMA ESPAÑOLA	0	7	7	100.0
4. GVC GAESCO BEKA, S.V., S.A.	100.0	GVC GAESCO BEKA, S.V., S.A.	0	9	9	100.0
5. LIBERBANK, S.A.	100.0	CAJA DE EXTREMADURA	0	1	1	100.0
		LIBERBANK, S.A.	0	1	1	100.0
6. RENTA 4 BANCO, S.A.	100.0	RENTA 4 BANCO, S.A.	0	7	7	100.0
7. UNICAJA BANCO, S.A.	100.0	UNICAJA BANCO, S.A.	0	7	7	100.0
8. BANCO SANTANDER, S.A.	97.6	BANCO BANIF, S.A.	0	1	1	100.0
		BANCO ESPAÑOL DE CRÉDITO S.A.	0	1	1	100.0
		BANCO SANTANDER, S.A.	1	39	40	97.5
9. BANCO POPULAR ESPAÑOL, S.A.	97.1	BANCO POPULAR ESPAÑOL, S.A.	1	33	34	97.1
		BANCO PASTOR, S.A.	0	1	1	100.0
10. BANKIA, S.A.	96.4	BANKIA, S.A.	1	25	26	96.2
		CAJA DE AHORROS DE VALENCIA, CASTELLÓN Y ALICANTE, BANCAJA	0	1	1	100.0
		CAJA DE AHORROS Y MONTE DE PIEDAD DE SEGOVIA	0	1	1	100.0
11. BANCO DE SABADELL, S.A.	88.9	BANCO DE SABADELL, S.A.	1	7	8	87.5
		CAJA DE AHORROS DEL MEDITERRÁNEO	0	1	1	100.0
12. BANKINTER, S.A.	81.8	BANKINTER, S.A.	4	18	22	81.8
13. ING BANK NV, SUCURSAL EN ESPAÑA	75.0	ING BANK NV, SUCURSAL EN ESPAÑA	1	3	4	75.0
14. CAIXABANK, S.A.	69.7	CAIXABANK, S.A.	10	22	32	68.8
		BARCLAYS BANK, S.A.	0	1	1	100.0
15. IBERCAJA BANCO, S.A.	63.6	IBERCAJA BANCO, S.A.	4	7	11	63.6
16. ABANCA CORPORACIÓN BANCARIA, S.A.	0.0	ABANCA CORPORACIÓN BANCARIA, S.A.	3	0	3	0.0
Other entities (*)	83.3		8	40	48	83.3
General total	**88.7**		**34**	**268**	**302**	**88.7**

(*) 39 entities with fewer than 8 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).

Table 16 orders the entities 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 (non-acceptance of the criteria).

The average percentage of acceptance of criteria or rectification of the complainant's situation in 2017 stood at 58.3%, with nine entities above the average and seven below the average. If we exclude the situations in which the entity responsible for the incident is a merged or acquired entity, Banco Bilbao Vizcaya Argentaria, S.A. would be in second place in the ranking and Liberbank S.A. would be amongst the last.

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

TABLE 16

Reference	% acceptance	Reference	Acceptance or mutual agreement/ rectification	No acceptance or mutual agreement/ rectification	Does not answer	Total	% acceptance
1. GVC GAESCO BEKA, S.V., S.A.	100.0	GVC GAESCO BEKA, S.V. S.A.	9	0	0	9	100.0
2. BANCO DE SABADELL, S.A.	88.9	BANCO DE SABADELL, S.A.	7	0	1	8	87.5
		CAJA DE AHORROS DEL MEDITERRÁNEO	1	0	0	1	100.0
3. UNICAJA BANCO, S.A.	85.7	UNICAJA BANCO, S.A.	6	1	0	7	85.7
4. DEUTSCHE BANK, SOCIEDAD ANÓNIMA ESPAÑOLA	85.7	DEUTSCHE BANK, SOCIEDAD ANÓNIMA ESPAÑOLA	6	1	0	7	85.7
5. BANCO DE CAJA ESPAÑA DE INVERSIONES, SALAMANCA Y SORIA, S.A.	83.3	BANCO DE CAJA ESPAÑA DE INVERSIONES, SALAMANCA Y SORIA, S.A.	5	1	0	6	83.3
6. BANCO BILBAO VIZCAYA ARGENTARIA, S.A.	79.3	BANCO BILBAO VIZCAYA ARGENTARIA, S.A.	19	2	0	21	90.5
		CATALUNYA BANC, S.A.	3	4	0	7	42.9
		UNOE BANK, S.A.	1	0	0	1	100.0
7. BANKIA, S.A.	71.4	BANKIA, S.A.	19	6	1	26	73.1
		CAJA DE AHORROS DE VALENCIA, CASTELLÓN Y ALICANTE, BANCAJA	1	0	0	1	100.0
		CAJA DE AHORROS Y MONTE DE PIEDAD DE SEGOVIA	0	1	0	1	0.0
8. BANCO SANTANDER, S.A.	66.7	BANCO BANIF, S.A.	0	1	0	1	0.0
		BANCO ESPAÑOL DE CRÉDITO S.A.	1	0	0	1	100.0
		BANCO SANTANDER, S.A.	27	12	1	40	67.5
9. BANKINTER, S.A.	63.6	BANKINTER, S.A.	14	4	4	22	63.6
10. LIBERBANK, S.A.	50.0	CAJA DE EXTREMADURA	1	0	0	1	100.0
		LIBERBANK, S.A.	0	1	0	1	0.0
11. ING BANK NV, SUCURSAL EN ESPAÑA	50.0	ING BANK NV, SUCURSAL EN ESPAÑA	2	1	1	4	50.0
12. CAIXABANK, S.A.	48.5	CAIXABANK, S.A.	16	6	10	32	50.0
		BARCLAYS BANK, S.A.	0	1	0	1	0.0
13. IBERCAJA BANCO, S.A.	45.5	IBERCAJA BANCO, S.A.	5	2	4	11	45.5
14. BANCO POPULAR ESPAÑOL, S.A.	40.0	BANCO POPULAR ESPAÑOL, S.A.	13	20	1	34	38.2
		BANCO PASTOR, S.A.	1	0	0	1	100.0
15. RENTA 4 BANCO, S.A.	0.0	RENTA 4 BANCO, S.A.	0	7	0	7	0.0
16. ABANCA CORPORACIÓN BANCARIA, S.A.	0.0	ABANCA CORPORACIÓN BANCARIA, S.A.	0	0	3	3	0.0
Other entities (*)	39.6		19	21	8	48	39.6
TOTAL	**58.3**		**176**	**92**	**34**	**302**	**58.3**

(*) 39 entities with fewer than 8 complaints.

Source: CNMV.

3.4 Information provided by the entities

As last year, prior to preparing this Complaints Report, information on certain issues was requested from the Customer Service Departments of entities for which six or more complaints were processed. The aim of this request is for the report to continue reflecting, using first-hand data, the effort being made by these Customer Service Departments to improve their procedures, adapt to new legislative requirements and to solve their clients' problems in an increasingly suitable manner.

The information requested from the Customer Service Departments was divided into two groups of issues:

– Actions relating to the complaints submitted to the Customer Service Departments before they are filed with the Complaints Service. The aim of this information is to analyse how Customer Service Departments act in response to their clients at first instance.

– Actions once the complaints have been filed with the Complaints Service. The aim of this information is to discover the number of investors per entity that 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.[5] The aim of this analysis is to provide an approximate overview of the actions carried out by these Customer Service Departments. However, the data and results obtained must be viewed with some caution as it is not possible to know whether the entities use the same criteria to obtain and provide the requested information, even though this year clearer guidelines have been given about what should be included or not in the information provided.

The information provided by the entities, which is reflected in Table 17, reveals the following figures:

– The Customer Service Departments that received most complaints in 2017, with all the rest standing far behind, were those of Banco Santander, S.A. (2,208); Banco Popular Español, S.A. (2,049); Banco Bilbao Vizcaya Argentaria, S.A. (1,994); Bankia, S.A. (980); Banco de Sabadell, S.A. (895); Bankinter, S.A. (702) and Caixabank, S.A. (688).

– The number of investors making use of the Customer Ombudsman fell notably in 2017. The numbers of complainants choosing this option were noteworthy in the following entities: Deutsche Bank, S.A. (12 complainants, 10.8% of the claims received by the entity); Banco Bilbao Vizcaya Argentaria, S.A. (135 complainants, 6.3%); Bankinter, S.A. (40 complainants, 5.4%); Banco de Sabadell, S.A. (46 complainants, 4.9%); Banco Santander, S.A. (58 complainants, 2.6%) and Caixabank, S.A. (14 complainants, 2%). In general, the other entities that were asked to provide information do not have a Customer Ombudsman, with the exception of GVC Gaesco Beka, S.V., S.A. which, despite having designated the Customer Ombudsman of Bolsas y Mercados Españoles, did not receive any complaint through said ombudsman in 2017.

5 All entities responded to the request for information.

– In general, and according to the data provided by the entities, the percentage of claims that pass through the Customer Service Departments and are subsequently processed by the Complaints Service is very low. This average is less than 4% of the complaints filed in the entities in that same year, although two entities recorded a significantly different percentage: Ibercaja Banco, S.A. (19 complaints, 38% of the total) and Renta 4 Banco, S.A. (9 complaints, 30% of the total). In this regard, it should be noted that the number of complaints received or processed by the CNMV in 2017 is much higher than the number reported by entities, since it is fairly common for complainants, after having received a response from the Customer Service Department, to take some time before deciding to file a complaint with the CNMV's Complaints Service. This means that the complaints processed by the CNMV in 2017 may have their origin in incidents resolved by the Customer Service Departments or Customer Ombudsman during the year or in those incidents resolved in previous years, which would justify the difference in the data processed.

The following conclusions can be drawn from a comparison of the figures provided by the entities in 2017 compared with those of the previous year:

– The number of complaints filed with the Customer Service Departments in 2016 and 2017 was very similar, although the following cases are noteworthy: Banco Popular Español, S.A., with over three times as many complaints received (738 in 2016 compared with 2,049 in 2017); Bankia, S.A., with a considerable fall (4,209 in 2016 compared with 980 in 2017); and Bankinter, S.A. (306 in 2016 compared with 702 in 2017) or Caixabank, S.A. (340 in 2016 compared with 688 in 2017), with over twice as many claims as in the previous year. In the case of Caixabank, S.A., it is important to bear in mind the actions of its Customer Ombudsman, which handled 248 complaints in 2016 and only 14 complaints in 2017, which necessarily means the transfer of complaints to the entity's Customer Service Department and, therefore, only a slight increase in the total number of complaints (588 in 2016 compared with 702 in 2017).

– Complaints handled by the Customer Ombudsman of Deutsche Bank, S.A.E. fell to less than half (27 in 2016 compared with 12 in 2017), as did those filed with its Customer Service Department (135 in 2016 compared with 99 in 2017).

– The Customer Ombudsman of Banco de Sabadell, S.A. increased its activity (11 in 2016 compared with 46 in 2017), while the complaints processed by the Customer Service Department remained practically the same (850 in 2016 and 895 in 2017).

– In the other entities that have a Customer Ombudsman, the figures for complaints handled by said ombudsman in 2016 and 2017 are very similar.

Complaints filed in 2017 relating to the securities market

TABLE 17

ENTITY	No. of complaints on securities market issues received in 2017			No. of complaints received by the CNMV's Complaints Service in 2017	%*
	By the CSD	By CO	By the CSD and/or CO		
ABANCA CORPORACIÓN BANCARIA, S.A.	575	–	575	7	1.2
ANDBANK ESPAÑA, S.A.	125	–	125	6	4.8
BANCO BILBAO VIZCAYA ARGENTARIA, S.A.	1,994	135	2,129	72	3.4
BANCO CASTILLA LA MANCHA	25	–	25	2	8.0
BANCO DE CAJA ESPAÑA DE INVERSIONES, SALAMANCA Y SORIA, S.A.	198	–	198	17	8.6
BANCO DE SABADELL, S.A.	895	46	941	17	1.8
BANCO MARE NOSTRUM, S.A.	48	–	48	6	12.5
BANCO POPULAR ESPAÑOL, S.A.	2,049	–	2,049	46	2.2
BANCO SANTANDER, S.A.	2,208	58	2,266	63	2.8
BANKIA, S.A.	980	–	980	46	4.7
BANKINTER, S.A.	702	40	742	55	7.4
CAIXABANK, S.A.	688	14	702	26	3.7
DEUTSCHE BANK, SOCIEDAD ANÓNIMA ESPAÑOLA	99	12	111	11	9.9
GVC GAESCO BEKA, S.V., S.A.	19	–	19	1	5.3
IBERCAJA BANCO, S.A.	50	–	50	19	38.0
ING BANK NV, SUCURSAL EN ESPAÑA	382	–	382	11	2.9
KUTXABANK, S.A.	91	–	91	6	6.6
LIBERBANK, S.A.	75	–	75	6	8.0
RENTA 4 BANCO, S.A.	30	–	30	9	30.0
UNICAJA BANCO, S.A.	117	–	117	10	8.5
Total	**11,350**	**305**	**11,655**	**436**	**3.7**

(*) 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.

Once the complaint has been filed with the Customer Service Department of the 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:[6]

– Unlike in 2016, the Customer Service Departments with most non-admissions do not necessarily match those that received the most complaints. Particularly noteworthy is the high number of complaints rejected by Abanca Corporación Bancaria, S.A. (532 non-admissions out of the 572 complaints received), which places it in absolute terms immediately after Banco Popular Español, S.A., with much lower relative figures (553 out of 2,049). These are followed by Banco Bilbao Vizcaya Argentaria, S.A. (255 out of 1,994); Bankia, S.A. (213 out of 980); Banco de Sabadell, S.A. (197 out of 895) and Banco Santander, S.A. (102 out of 2,208). The other entities have an insignificant number of non-admissions.

6 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 2017, while it is possible that in 2017 complaints were rejected that were filed at the end of the previous year.

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 Abanca Corporación Bancaria, S.A. (92.5% of non-admissions); followed by Liberbank, S.A. (29.3%); Banco Popular Español, S.A. (27%); Banco de Sabadell, S.A. (22%) and Bankia, S.A. (21.7%). For its part, Banco Bilbao Vizcaya Argentaria, S.A. would fall to seventh place (12.8%) and Banco Santander, S.A. to twelfth place (4.6%). The rest of the entities recorded non-admissions of under 15%. Particularly noteworthy were Banco de Caja España de Inversiones, Salamanca y Soria, S.A. and Kutxabank, S.A., which, although they do not have a very high number of complaints (198 and 91, respectively), did not have any non-admissions.

– In relation to the complaints filed with the entities' Customer Ombudsmen, only Banco Bilbao Vizcaya Argentaria, S.A.'s ombudsman rejected complaints (34 out of 135 complaints were rejected, non-admissions of 25.2%).

Comparing these data with those provided by entities in 2016, it can be seen that the percentages of non-admissions by Customer Service Departments and Customer Ombudsmen remain very similar, except in the case of Abanca Corporación Bancaria, S.A., whose percentage of non-admissions with respect to the total number of complaints received in 2016 (4.8%) is significantly lower than in 2017 (92.5%).

Complaints not admitted by entities in 2017 relating to the securities market

TABLE 18

	Customer Service Department			Customer Ombudsman		
	Not admitted	Received	%*	Not admitted	Received	%*
ABANCA CORPORACIÓN BANCARIA, S.A.	532	575	92.5	–	–	–
ANDBANK ESPAÑA, S.A.	3	125	2.4	–	–	–
BANCO BILBAO VIZCAYA ARGENTARIA, S.A.	255	1,994	12.8	34	135	25.2
BANCO CASTILLA LA MANCHA	3	25	12.0	–	–	–
BANCO DE CAJA ESPAÑA DE INVERSIONES, SALAMANCA Y SORIA, S.A.	–	198	–	–	–	–
BANCO DE SABADELL, S.A.	197	895	22.0	–	46	–
BANCO MARE NOSTRUM, S.A.	7	48	14.6	–	-	–
BANCO POPULAR ESPAÑOL, S.A.	553	2,049	27.0	–	-	–
BANCO SANTANDER, S.A.	102	2,208	4.6	–	58	–
BANKIA, S.A.	213	980	21.7	–	-	–
BANKINTER, S.A.	2	702	0.3	–	40	–
CAIXABANK, S.A.	44	688	6.4	–	14	–
DEUTSCHE BANK, SOCIEDAD ANÓNIMA ESPAÑOLA	11	99	11.1	–	12	–
GVC GAESCO BEKA, S.V., S.A.	1	19	5.3	–	–	–
IBERCAJA BANCO, S.A.	2	50	4.0	–	–	–
ING BANK NV, SUCURSAL EN ESPAÑA	17	382	4.5	–	–	–
KUTXABANK, S.A.	-	91	-	–	–	–
LIBERBANK, S.A.	22	75	29.3	–	–	–
RENTA 4 BANCO, S.A.	1	30	3.3	–	–	–
UNICAJA BANCO, S.A.	5	117	4.3	–	–	–
TOTAL	**1,970**	**11,350**	**17.4**	**34**	**305**	**11.1**

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

Source: Data provided by the entities.

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:

– In clear relation with the number of complaints received, the Customer Service Department that resolved most complaints was that of Banco Santander, S.A. (2,038); followed by Banco Bilbao Vizcaya Argentaria, S.A. (1,695) and Banco Popular Español, S.A. (1,292). The remaining entities resolved fewer than 1,000 complaints: Bankinter, S.A. (696); Bankia, S.A. (568); Banco de Sabadell, S.A. (517); Abanca Corporación Bancaria, S.A. (514); Caixabank, S.A. (484) and ING Bank NV, Sucursal en España (365).

– It is striking to note the distribution of percentages with regard to the total number of complaints processed between those that were favourable and those unfavourable to the complainant. The Customer Service Department of the entity with the highest percentage of complaints favourable to its clients is that of Andbank España, S.A. (75%), followed by that of ING Bank NV, Sucursal en España (63.8%). Banco Bilbao Vizcaya Argentaria, S.A. would be in third place (59.8%); Bankinter, S.A., sixth (35.6%); Banco Santander, S.A., eighth (28.4%); Banco de Sabadell, S.A., eleventh (20.9%); Bankia, S.A., fifteenth (16.4%); Caixabank, S.A., eighteenth (13%) and Banco Popular Español, S.A. would be last (2.6%).

– The Customer Ombudsman that resolved most complaints is that of Banco Bilbao Vizcaya Argentaria, S.A. (106); followed, a long way behind, by the Ombudsman of Banco Santander, S.A. (57); Bankinter, S.A. (43); Banco de Sabadell, S.A. (25); Deutsche Bank, S.A.E. (9) and Caixabank, S.A. (5). The Ombudsman that issued the highest percentage of resolutions favourable to the complainants was that of Banco Santander, S.A. (54.4%, 31 out of 57); followed by Banco de Sabadell, S.A. (48%, 12 out of 25); Caixabank, S.A. (40%, 2 out of 5); Banco Bilbao Vizcaya Argentaria, S.A. (37.7%, 40 out of 106); Bankinter S.A. (30.2%, 13 out of 43) and Deutsche Bank, S.A.E. (11.1%, 1 out of 9).

A comparison of the data provided by the entities in 2017 and 2016 shows some significant changes in the percentage of favourable reports issued. This figure fell significantly in two entities: Banco Popular Español, S.A. (2.6% in 2017 compared with 18.7% in 2016) and Abanca Corporación Bancaría, S.A. (15.6% in 2017 compared with 30.1% in 2016). However, the Customer Service Departments of other entities recorded significant increases in the percentage of favourable reports: Andbank, S.A. (75% in 2017 compared with 53.3% in 2016) and Banco Mare Nostrum, S.A. (35.6% in 2017 compared with 10.3% in 2016).

With regard to the complaints resolved by the Customer Ombudsmen, there was a notable increase in favourable reports in Caixabank, S.A. (40% in 2017 compared with 6.3% in 2016), which is clearly related to the lower number of complaints handled, and a significant fall in the case of Deutsche Bank, S.A.E. (11.1% in 2017 compared with 47.4% in 2016).

Complaints submitted and resolved by entities in 2017 relating to the securities market

TABLE 19

	Customer Service Department			Customer Ombudsman		
	Favourable	Unfavourable	%*	Favourable	Unfavourable	%*
ABANCA CORPORACIÓN BANCARIA, S.A.	80	434	15.6	–	–	–
ANDBANK ESPAÑA, S.A.	78	26	75.0	–	–	–
BANCO BILBAO VIZCAYA ARGENTARIA, S.A.	1,013	682	59.8	40	66	37.7
BANCO CASTILLA LA MANCHA	2	10	16.7	–	–	–
BANCO DE CAJA ESPAÑA DE INVERSIONES, SALAMANCA Y SORIA, S.A.	20	128	13.5	–	–	–
BANCO DE SABADELL, S.A.	108	409	20.9	12	13	48.0
BANCO MARE NOSTRUM, S.A.	16	29	35.6	–	–	–
BANCO POPULAR ESPAÑOL, S.A.	33	1,259	2.6	–	–	–
BANCO SANTANDER, S.A.	578	1,460	28.4	31	26	54.4
BANKIA, S.A.	93	475	16.4	–	–	–
BANKINTER, S.A.	248	448	35.6	13	30	30.2
CAIXABANK, S.A.	63	421	13.0	2	3	40.0
DEUTSCHE BANK, SOCIEDAD ANÓNIMA ESPAÑOLA	26	43	37.7	1	8	11.1
GVC GAESCO BEKA, S.V., S.A.	3	15	16.7	–	–	–
IBERCAJA BANCO, S.A.	10	38	20.8	–	–	–
ING BANK NV, SUCURSAL EN ESPAÑA	233	132	63.8	–	–	–
KBL EUROPEAN PRIVATE BANKERS, S.A., SUCURSAL EN ESPAÑA	–	–	–	–	–	–
KUTXABANK, S.A.	25	72	25.8	–	–	–
LIBERBANK, S.A.	2	32	5.9	–	–	–
RENTA 4 BANCO, S.A.	6	20	23.1	–	–	–
UNICAJA BANCO, S.A.	38	43	46.9	–	–	–
TOTAL	**2,675**	**6,176**	**30.2**	**99**	**146**	**40.4**

(*) 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.

3.5 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 that the Service responds with reports prepared for this purpose. In particular, in 2017 it responded to 31 requests for information, of which 12 were sent to the CIS and Venture Capital Firm Supervision Department, 12 to the Investment Firm and Credit and Savings Institution Supervision Department, and 7 to the Litigation Unit.

2017 activity

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

- DCIS and Venture Capital Firm Supervision Department (12)
- Investment Firm and Credit and Savings Institution Supervision Department (12)
- Litigation Unit (7)

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

- Investment Firm and Credit and Savings Institution Supervision Department (2)
- CIS and Venture Capital Firm Supervision Department (1)

In addition, the Complaints Service may need 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 three occasions, with the recipients being the Investment Firm and Credit and Savings Institution Supervision Department (2) and the CIS and Venture Capital Firm Supervision Department (1).

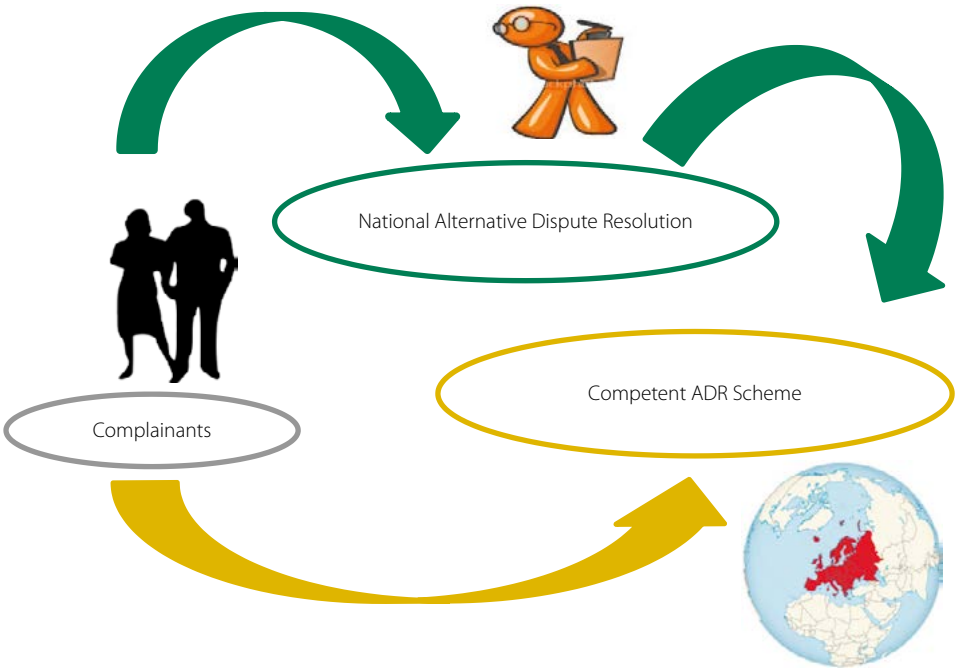
3.6 International cooperation mechanisms

3.6.1 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).[7] 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. According to data published on its website as of the Report date, the organisation has 60 members drawn from 27 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.

7 This is made up of the 28 Member States of the European Union, plus Iceland, Lichtenstein and Norway.



The new version of the FIN-NET website[8] aims to make it easier for consumers to search for information in order to file a complaint against a financial service provider from another country, learn more about the FIN-NET network and consult the list of its members in each country.

As part of this network's promotional campaign, a promotional video was presented, which may be accessed from the CNMV website,[9] and it plans to use social networks such as Twitter.

The functionality of the FIN-NET form for cross-border filing of complaints is expected to be reviewed shortly.

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 memorandum are not legally binding for the parties, the CNMV has undertaken to comply with them. The document was revised in May 2016 in order to adapt it to the ADR Directive.[10]

➢ 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[11] and financial

8 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

9 http://www.cnmv.es/portal/Inversor/FIN-NET.aspx?lang=en

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

11 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 courts.

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 Complaints Service participated in the two plenary meetings that took place in 2017 (May and October in Brussels). In addition, this Service also attended the conference on Alternative Dispute Resolution (ADR) held in Rome in September, where the different ADR models in Europe were analysed.

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

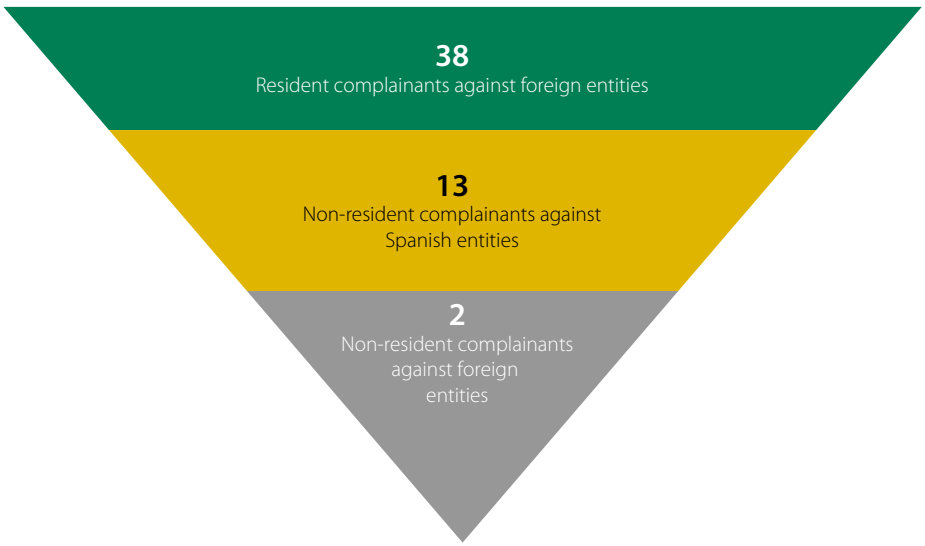
In 2017, the Investors Department joined the International Network of Financial Services Ombudsman Schemes (INFO Network).This network was set up in 2007 with the broad aim of working together in developing dispute resolution, exchanging experiences and information in areas including schemes, functions 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.

3.6.3 Cross-border complaints

In 2017, the Complaints Service received a total of 53 complaints in which the complainant or the respondent entity were established abroad, broken down as follows:

Number of cross-border complaints



Residents in Spain submitted complaints against foreign entities in 38 cases. Given that the 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 23 complaints against entities established in member countries of FIN-NET, the complainant was also offered the possibility of the Complaints Service forwarding the complaint to the competent body, which complainants made use of in 9 cases. Of the 15 complaints against entities established in countries that are not members of FIN-NET, 13 referred to entities located in Cyprus, 1 in Bulgaria and 1 in Andorra.

Nine residents in other countries of the European Union and four 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 (one case as a result of a complainant's failure to respond to a petition for pleadings as over six years had elapsed between the time of the incidents and the filing of the first complaint, one case resulting from a failure to demonstrate a prior complaint to the entity's Customer Service Department, two cases which were the competence of the Bank of Spain and two cases which were the competence of the Complaints Service of the Directorate-General for Insurance and Pension Funds). Seven were resolved with a final reasoned report that was favourable to the complainant (except one case in which the entity accepted the complainant's petition).

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

4 Criteria applied in the resolution of complaints

4 Criteria applied in the resolution of complaints

Set out below, and organised by topic, are the criteria and recommendations applied in the resolution of complaints in 2017 that are deemed of interest as they are recurrent or new. It is, however, important to note that the Investors Website within the CNMV's website contains a duly up-to-date and full guide with the most usual criteria used by the Complaints Service in its resolutions.

4.1 Marketing/simple execution

➢ Appropriateness assessment

One of the main objectives of conduct of business rules is to enhance retail investor protection. In order to achieve this end, said rules aim to ensure, among other aspects, that investors have all the information necessary to make their investment decisions and to understand the nature and risks of the financial instruments and services acquired or provided. To this end, investment firms[12] that receive, transmit and execute orders from clients (including potential clients) must ask them to provide information on their knowledge and experience in the area of investment relating to the specific type of product or service offered or requested in order to assess whether it is appropriate for them. This is referred to as the "appropriateness analysis", which is usually recorded in 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.

However, the law[13] provides for an exemption to the appropriateness analysis when the following conditions are met:

a) The order relates to a non-complex financial instrument.

b) The service is provided at the client's initiative.

c) The entity has clearly informed the client that it is not required to assess the appropriateness of the instrument offered or the service provided and therefore

12 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.

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

they do not enjoy the protection provided for by law, with the entity allowed to make this warning in a standardised format.

d) The entity complies with the internal organisational requirements provided for by law.

In short, only when it is the client that makes the decision to purchase or request provision of a service with regard to a product classified as non-complex will there be no obligation for the entity to assess whether or not the product or service requested is appropriate for him/her. However, at any event, the entity must inform the client that it is not required to perform said appropriateness assessment and that, furthermore, the client will not enjoy the protection provided for by law. This situation is referred to as *simple execution*.

The above leads to the importance of clarifying when a service is provided at the initiative of the entity or of the client, which must be considered when analysing the complaints (it should not be forgotten that, in any event, this exception relates to products classified as non-complex).

In cases where the appropriateness assessment must be performed, the scope[14] of the analyses that entities need to perform must incorporate a series of data, insofar as these are appropriate to the client's characteristics, to the nature of the service to be provided and to the intended type of product or transaction, including the complexity and inherent risks. These data are as follows:

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

– 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, which they have the right to trust unless they know or should know that the information is out-of-date or is incomplete or inaccurate.[15]

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.[16] Similarly, if the client does not provide the requested information or the information provided

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

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

16 Article 214.3 of Royal Decree 217/2008, of 15 February, on the legal regime of investment firms and other entities that provide investment services.

is insufficient, the entity shall inform him/her that it is impossible to conclude whether or not the product is appropriate.[17]

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

In order for an investment firm to help its clients make decisions and to offer them the services that are most appropriate to their needs, it must know their personal circumstances in line with the aforementioned content. It is the investor's responsibility to provide the information requested by the entity and to do so with the utmost rigour. 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 their decision prevents it from determining whether the investment product or service is appropriate for the client.

The entity must keep all the information and documentation in which the warnings sent or made in this regard have been implemented. This is one of the mandatory minimum records to be kept by firms that provide investment services.[18]

An analysis of the complaints received in 2017 regarding this issue shows that entities usually submit a specific document duly signed by the client in order to demonstrate that they complied with this obligation to issue such a warning. In this regard, the following complaints were resolved:

R/154/2017: it was concluded that the entity complied with the legislation by means of a duly signed document informing the client that, as a consequence of the failure to complete the test, it was not possible to assess the appropriateness of the product/service and warning the client of this situation, as well as the nature and associated risks of the product or service.

However, Rule Four of CNMV Circular 3/2013, of 12 June, also introduced amendments in this regard:[19]

> *2. 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*

17 Article 214.4 of Royal Legislative Decree 4/2015, of 23 October, approving the recast text of the Securities Market Act.

18 CNMV Resolution of 7 October 2009, on the minimum records to be kept by firms that provide investment services.

19 Parts have been highlighted in bold so as to improve understanding of the text in the context of this Report.

said assessment, the entity cannot form an opinion with regard to whether or not the transaction is appropriate for you".

3. 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.

✓ *Irregularities in completion of the appropriateness test*

Investors often disagree with the answers recorded in the appropriateness tests performed by the entities and claim certain irregularities in completion of the test (submission of a test previously completed by the entities) or question the truthfulness of certain answers. In some cases, investors even claim that they were not given the test.

In these cases, the Complaints Service considers that it is not possible to determine whether the tests given had already been completed or whether the answers set out therein were truthful or authentic with the information available in the complaint proceedings due to the lack of sufficient elements with which to make a judgement on said facts. These cases should therefore be decided by the courts.[20]

✓ *The financial instrument is not appropriate*

As already indicated in the above point, 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. With regard to the non-appropriateness of the product, Rule Four establishes the following:

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.

20 R/496/2016, R/595/2016, R/596/2016, R/623/2016, R/690/2016, R/26/2017, R/78/2017, R/141/2017 and R/165/2017.

In our opinion, this transaction is not appropriate for you. A transaction is not appropriate when the client lacks the necessary knowledge and experience to understand the nature and risks of the financial instrument subject to the transaction".

When the transaction is performed on a complex instrument, the entity shall ensure the client signs the above text and includes a handwritten declaration stating:

"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.

In addition to the obligations relating to the record of appropriateness assessments,[21] entities must keep an up-to-date record of assessed clients and non-appropriate products that shows, for each client, the products for which the appropriateness assessment has yielded a negative result.[22]

R/752/2016, R/149/2017 and R/151/2017: these complaints contained an appropriateness test and a handwritten statement with the following wording: "Warning of non-appropriateness". Given that the recorded handwritten statement did not match the literal wording required by law, it was concluded that the entities had committed a bad practice.

R/633/2016, R/738/2016 and R/4/2017: in these complaints, the entity acted in accordance with the legislation and included the handwritten statement provided for by law whereby the complainants acknowledged the non-appropriateness of the complex product that they were going to acquire.

It should be clarified that "the handwritten statement, in the terms set out by the CNMV" referred to in Article 79 *bis*.7 of the former Securities Market Act was not specified until Circular 3/2012, of 12 June, and that, in accordance with its transitional provision, entities were not required to collect any handwritten statement from their clients until entry into force of the Circular on 19 August 2013, two months after its publication in the *BOE* (Official State Gazette). However, the specific wording of the warnings contained in the Circular was not mandatory for the entities until three months following its entry into force, i.e., as from 19 November 2013.

This is relevant as complaints were still resolved in 2017 in accordance with the legislation applicable prior to 19 November 2013. In these cases, the entities simply warned their client, after performing the appropriateness test, that they believed that the product was not appropriate to their level of investment knowledge and experience, without collecting any additional statements.

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21 CNMV Resolution of 7 October 2009, on the minimum records to be kept by firms that provide investment services.

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

In order to provide evidence this warning was made, the entities provided documents signed by the complainants in which they were warned of the non-appropriateness of the product that they were going to acquire or of the service to be provided, as well as its nature and associated risks (R/670/2016, R/719/2016, R/769/2016 and R/236/2017). In other cases, this warning was contained in the subscription or purchase order itself (R/190/2017) or in the contract concluded between the parties (R/289/2017).

✓ *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:[23]

– 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 would be considered appropriate without the need to analyse other factors (education, professional experience and financial knowledge). Otherwise, the other parameters must be evaluated in addition to prior investment experience. The entity must be able to demonstrate the investment experience that it assesses.

Below are some of the lines of action followed by entities and brought to light in the complaints:

– In general, entities perform an appropriateness test and the answers obtained with regard to prior investment experience may show that the complainant has previously performed more than one transaction with products with the same nature and features as the acquired product.[24]

  Sometimes, in addition to performing an appropriateness test, entities provide internal data to demonstrate that their client has prior investment experience in contracting products that are similar with regard to the nature, features and risks to that which forms the subject of the complaint (R/551/2016, R/675/2016, R/712/2016 and R/743/2016).

– In other cases, entities clarify that they did not perform the appropriateness questionnaire as their records contain sufficient information about the complainant's prior investment experience, which was considered sufficient for acquiring the product or receiving the service in question. In order to demonstrate

23 Question 4 of the *CNMV guideline for analysing appropriateness and suitability*. Investment Firm and Credit and Savings Institution Supervision Department. 17 June 2010.

24 R/639/2016, R/663/2016, R/692/2016, R/700/2016, R/721/2016, R/725/2016, R/70/2017, R/78/2017, R/170/2017, R/193/2017, R/200/2017, R/247/2017 and R/298/2017.

the above, entities submit to the complaint proceedings a computer record or history of the transactions performed by the complainants which shows that they had previously acquired products that were similar, as regards the nature and risks, to the product or service forming the subject of the complaint (R/628/2016, R/639/2016, R/650/2016 and R/656/2016).

– The Complaints Service also resolved proceedings in which, even though the entities provided documentation on the complainant's investment experience, said documentation did not demonstrate the appropriateness as said products did not have the same nature and features as the new acquired product (R/761/2016 and R/351/2017) or related to one single transaction (R/23/2017 and R/141/2017).

– R/283/2017: it was claimed that "the entity performed the necessary actions in order to analyse whether the products matched the client's experience". However, no documentation was submitted to the proceedings demonstrating that the complainant company had prior experience in contracting complex products.

✓ *Method of obtaining information from clients when the service is provided electronically or by telephone*

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

As already mentioned, in the case of complex products, clients must write certain literal expressions in two cases: when the entity is unable to assess the appropriateness because the client does not provide it with the necessary information and when the entity, after the corresponding appropriateness analysis, believes that the product is not appropriate for the client.

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

R/92/2017: the entity explained that, when its customers apply for an online account, they complete an appropriateness test contained in the application itself. In order to demonstrate this fact, the entity submitted to the proceedings a copy of the screenshots with the complainant's responses in its systems and a copy of an email that the entity sent to the complainant. In this email, the entity informed the complainant that it was required to assess the appropriateness of the CFD[25] and that, in

25 Contract for Differences.

its opinion and according to the information provided in the account application, trading in said instrument was appropriate for the client. It was therefore considered demonstrated that the entity informed the complainant about the result of the appropriateness test.

➢ Cases of co-ownership or representation

As in previous years, complaints were filed in which the complainants disagreed with the fact that the entity did not perform the appropriateness assessment on all the account co-holders. In this regard, given the wide diversity of cases that may arise, each entity must decide on the ideal method for solving the different possible situations depending on different variables.

One of the cases that arises is when the accounts or contracts are jointly held under a system of joint access, in which case the appropriateness assessment must be made on the holder 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 ordering party (R/639/2016 and R/141/2017).

In 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 said proxy or representative when said person performs the transaction.[26]

➢ Evidence (and submission) of the appropriateness assessment

The entity must in all cases be in a position to accredit the appropriateness test performed. To this end, entities must maintain a suitability assessment record, which will place on record the information or documentation considered for the purposes of determining whether the specific product or service is appropriate for the client or potential client on the basis of their knowledge and experience and the warnings given in the event that it is not appropriate, or the client does not provide information, or this is insufficient.[27]

It is deemed appropriate to conduct appropriateness tests in writing in a document separate from the purchase order containing the replies given by the client and the results of the assessment. In addition, if the assessment refers to a specific operation, the relevant procedures must be established for the assessment to be unequivocally referenced to the operation in question.

Furthermore, the appropriateness test or questionnaire must be duly completed, without containing any defects in form; be signed by the owner or by the joint owner with most knowledge, or by the ordering party or authorised party, depending on the system for access to the account; record the date of the assessment;[28] and be in

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26 Question 15 of the *CNMV guideline for analysing appropriateness and suitability*. Investment Firm and Credit and Savings Institution Supervision Department. 17 June 2010.

27 CNMV Resolution of 7 October 2009, on the minimum records to be kept by firms that provide investment services.

28 Question 6 of the *CNMV guideline for analysing appropriateness and suitability*. Investment Firm and Credit and Savings Institution Supervision Department. 17 June 2010.

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.

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

Furthermore, in accordance with the legislation in force,[29] entities have the right to trust the information provided by their clients except when they know, or should know, either that it is clearly out of date or it is inaccurate or incomplete.

In this regard, in complaint R/402/2017, the complainant stated that prior to the test there was only evidence of three transactions having being performed and therefore the complainant believed that there was an error. However, the entity demonstrated that the complainant had prior investment experience with the transactions performed and indicated that it had evidence that the complainant had performed transactions with third parties. The Complaints Service therefore concluded that the entity acted correctly as, according to the legislation in force, entities have the right to trust the information provided by their clients except when they know, or should know, either that it is clearly out of date or it is inaccurate or incomplete.

However, entities act incorrectly when they do not demonstrate that they have collected information on the complainant's investment knowledge and experience as they do not provide any supporting documentation of the prior experience or a copy of the appropriateness test or questionnaire.[30]

R/541/2016: in some cases, as in this complaint, entities provide an appropriateness test that lacks the minimum data necessary to validate the document provided, such as the name of the assessed person, the date or the signature.

In other cases, despite demonstrating that they warned the client about the appropriateness, or not, of the product, they do not provide the test that led the entity to said conclusion. It can therefore not be considered as demonstrated that the entity collected the prior information on the client's investment knowledge and experience (R/10/2017, R/57/2017, R/157/2017 and R/447/2017).

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

30 R/584/2016, R/43/2017, R/134/2017, R/167/2017, R/243/2017 and R/470/2017.

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

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

Entities providing investment services must classify[31] their clients into two types:

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

– Retail clients: those who are not professionals.

Retail clients receive the highest level of protection and may be dealt with by the Complaints Service.

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

If a retail client wants to request to be treated as a professional, they must do so prior to the investment service being provided, and they must expressly waive their right to be treated as a retail client.[32] To this end, a series of formalities are established:[33]

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

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

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

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

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31 Articles 203, 204 and 205 of Royal Legislative Decree 4/2015, of 23 October, approving the recast text of the Securities Market Act.

32 Article 206.1 of Royal Legislative Decree 4/2015, of 23 October, approving the recast text of the Securities Market Act.

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

When said assessment is performed,[34] the company is required to check that at least two of the following requirements are met:

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

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

– That the client holds, or held for at least a year, a professional position in the financial sector that would require knowledge of the operations or services provided.

With regard to the assessment of the appropriateness of professional clients, the entity may assume that they have the necessary knowledge and experience to understand the risks inherent to these investment services and specific products, or the types of services and operations for which they are classified as a professional client.[35]

In this regard, some investment product issues are intended solely for professional investors. However, in order to place this type of investment with retail clients that have requested treatment as professionals, the entity must accredit:

– That the required formalities have been fulfilled, and the texts recording the investor's request, the entity's warnings, and the declaration of the client's awareness of the consequences of the waiver of their status as retail client have been provided.

– That the relevant checks have been performed, and documentation provided demonstrating fulfilment of at least two of the requirements regarding the volume and frequency of operations, assets deposited, and professional position.

As a consequence, in cases of investment intended for professionals contracted by retail clients who have requested treatment as professionals, malpractice would be deemed to exist in those cases where, on the one hand, there is no record of all the texts required by the regulations, and on the other, where the relevant checks have not been performed, or the checks were performed regarding aspects that would not serve to reach a conclusion as to the fulfilment of the requirements set out in the regulations.

Finally, it should be indicated that entities must maintain a client register, which will record: i) the identification details of each client; ii) the client classification and, where applicable, review or reclassification, which may include any prior classification that may be of interest for the entity; iii) the documentation on which the classification, review or reclassification of the client is based; and iv) client requests to

34 Article 206 of Royal Legislative Decree 4/2015, of 23 October, approving the recast text of the Securities Market Act.

35 Article 73 of Royal Decree 217/2008, of 15 February, on the legal regime of investment firms and other entities that provide investment services.

be classified other than as they were originally classified, and any other necessary information.[36]

R/658/2016: in this complaint, the Complaints Service was unable to accept that the entity had demonstrated that the complainant complied with the requirement of having had a "significant volume in the securities market, with an average frequency of over ten transactions per quarter over the previous four quarters". In addition, the entity did not provide evidence that the complainant had expressly requested in writing their classification as a professional investor or that it had warned the complainant about this new classification and the consequences that this change would entail (the loss of rights and of greater protection). There was also no record that the client knew the consequences of waiving treatment as a retail client. As a result of the above, it was concluded that the entity had performed incorrect marketing of mandatory convertible subordinated bonds as this issue was aimed exclusively at professional investors.

R/187/2017: the heirs stated in the complaint that, at the time the entity marketed the product to their father, he was considered a professional client. The entity claimed that it was the client who requested the modification of his classification so as to be classified as a professional client instead of a retail client, certifying compliance with two of the three requirements[37] and assuming the consequences of his waiver of the classification as a retail client. However, in view of the documentation provided by the entity, it was considered that the document submitted was a self-assessment by the client himself, and there was no record that the entity had undertaken any action to verify that this client did indeed comply with the aforementioned requirements. It was therefore concluded that the entity had acted incorrectly.

➢ Complex financial instruments

The distinction between complex and non-complex financial products determines the financial institution's obligations with regard to providing information and assessing the personal circumstances of its clients.

As in previous years, a significant percentage of the complaints corresponded to complex products, such as mandatory convertible/exchangeable subordinated bonds – both at the time of their subscription and at the time of the exchange – (28 complaints); option sale and purchase agreements, also referred to as atypical financial contracts (13); structured bonds and notes (2); subordinated debt with the right to early redemption (6); preference shares (8); futures and options (2); and contracts for differences (CFDs) (4).

In these cases, it is necessary to see whether the financial institutions have analysed if the product was adequate (appropriate) to the client's investment knowledge and

36 CNMV Resolution of 7 October 2009, on the minimum records to be kept by companies providing investment services.

37 a) The client has performed transactions of significant volume in the securities market, with an average frequency of more than ten per quarter over the previous four quarters. b) The value of the cash and securities deposited exceeds 500,000 euros. c) The client holds or has held for at least one year a professional position in the financial sector that requires knowledge of the intended transactions or services.

experience and, as the case may be, if said assessment has been performed in accordance with good financial customs and practices. As indicated above, financial institutions generally opt to perform a test in order to assess appropriateness. However, the bad practices indicated below were detected in the following complaints:

– The documentation submitted to the proceedings does not show that the respondent entity collected information on the client's investment knowledge and experience with the aim of assessing whether or not the investment product was appropriate for them.[38]

– R/744/2016: in this complaint, it was not demonstrated that the entity had collected information on the client's investment knowledge and experience and it was also noted that the section of the contract relating to the client's knowledge and experience was left blank and there was therefore no record that the client had received any type of warning.

– 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.

  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.

  R/668/2016, R/751/2016 and R/297/2017: in these complaints, the entity performed an appropriateness test on the complainant. It was not clear from the answers given to the questions relating to knowledge that the complainant had sufficient financial knowledge to understand the features and risks of the product (subordinated bonds and derivatives). In addition, it could not be deduced from the answers on prior investment experience that the client had invested in similar products with regard to their nature and risks on more than one occasion.

  R/449/2017: it was demonstrated that the entity collected information on its client's knowledge and experience and warned them that they only had experience in non-complex products. However, as the complaint related to the marketing of subordinated bonds (complex products), it was concluded that the entity committed bad practice by failing to warn its client that, based on the appropriateness analysis performed, such securities were not appropriate for them.

  R/585/2016: although the annex indicated that the result of the test on the atypical financial contract was that it was appropriate, the Complaints Service did not consider it correct that said result should be obtained from an appropriateness test performed by the entity on its client in which it only collected

38 R/584/2016, R/614/2016, R/43/2017, R/134/2017, R/243/2017 and R/470/2017.

information on the client's level of education. It was therefore concluded that the respondent entity did not have sufficient information to determine that the complex instrument was appropriate to the complainant's investment knowledge and experience.

With regard to the prior assessments of the client recorded by the entity, it is reasonable – as indicated above in other sections – 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 and relates to financial instruments or services with similar features. The level of complexity and risk inherent to the financial instrument in question are key aspects when setting the period of validity of said prior appropriateness analyses (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.

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

R/643/2016: in this case, a test conducted almost three years earlier was not considered appropriate, not because the period of validity of the test had expired, but because the bond convertible into ordinary shares that was the subject of the complaint had a higher level of complexity and risk than the subordinated bond referred to in the previous assessment as it incorporated the risk of convertibility into ordinary shares. It was therefore considered that the entity acted incorrectly as it was not apparent from the answers that the client had sufficient knowledge and experience to classify the product as appropriate.

✓ *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 they have in order to obtain a last new share, must be considered as a component of the share and it would not therefore be necessary to assess appropriateness prior to their acquisition.

However, 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 with them.

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 this last case, the entity must demonstrate that it has assessed the appropriateness

of said rights and that it has sufficient information on the client to assess said appropriateness. In this regard, it is necessary to clarify that prior experience of having invested in shares would not be sufficient for investing in pre-emptive subscription rights, since these are products of a different nature and risks.

In the five complaints on this issue analysed in 2017, it was considered that the entity should have assessed appropriateness as the rights were acquired in the market in all the cases:

R/623/2016 and R/363/2017: in these two cases, the entity provided an appropriateness assessment document in which it collected information on the client's knowledge and experience. It also submitted a document with the results of the assessment performed in which the entity recognised that it was appropriate for this client to acquire this type of product.

R/718/2016, R/393/2017 and R/395/2017: it was concluded that this was bad practice on the part of the respondent entities as it could not be concluded from the answers given by the complainants in the appropriateness tests that they had sufficient knowledge and experience to acquire subscription rights.

✓ *Non-EU harmonised CIS*

When the CIS to be marketed do not comply with Directive 2009/65/EC, they are classified as non-harmonised CIS. In these cases, the CIS is considered to be non-complex when the requirements established in the legislation in force are met (Article 217.2 of the recast text of the Securities Market Act):

– There are frequent opportunities for redemption.

– They may not involve losses exceeding the amount invested.

– There is sufficient public information on their features.

In contrast, in the event that any of the above requirements are not met, the CIS is considered a complex investment product.

Depending on the result of that assessment, the entity may apply the exemption from the appropriateness assessment provided for by law for non-complex products – provided that the conditions analysed in the heading on harmonised CIS are met – or analyse appropriateness in the same way that it would for any other complex product.

Entities performed the appropriateness test on the unit-holder in four of the six complaints relating to non-harmonised CIS analysed by the Complaints Service in 2017. In these cases, it was assumed that the entity considered the product to be complex – R/200/2017, R/237/2017, R/347/2017 and R/418/2017. In contrast, in complaint R/616/2016, even though the client was informed that, in the entity's opinion, the contracted CIS was appropriate, it was concluded that there was bad practice as it was not demonstrated that the client had been asked to provide information on their investment knowledge and experience or that the entity possessed such information and, consequently, that the appropriateness analysis had been performed prior to acquisition of the investment product.

In contrast, in complaint R/311/2017, the complainant acquired units in a non-harmonised fund and yet the entity did not provide evidence to the proceedings that it had performed the appropriateness test that is required in the case that the fund is considered a complex product. Neither did it provide evidence that, in the event that it had classified the fund as a non-complex product, the requirements established by legislation that would exempt the entity from the appropriateness analysis had been met, given that the entity did not submit any document to the proceedings informing the client that the entity was not required to assess the appropriateness of the instrument and that, consequently, the complainant did not enjoy the protection provided by said assessment.

In short, given that the entity did not provide the appropriateness test or, *a sensu contrario*, the warning of exemption of said analysis, it was concluded that it had acted incorrectly.

➢ Non-complex financial instruments

Entities do not have to follow the appropriateness assessment procedure when the order refers to non-complex products, as long as the service is provided at the initiative of the client and the entity has clearly informed 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. In other words, 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.[39]

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*

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

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

exemption from the appropriateness analysis and, consequently, the exemption would not be applicable and the assessment should be conducted.

Entities may indicate in the purchase order if the order was processed on the initiative of the client. This circumstance, together with accreditation that the warning established in the regulations was given, would allow a conclusion that the entity acted correctly (R/41/2017).

In contrast, this conclusion could not be reached in the cases where, despite relating to a non-complex product, it was not demonstrated that the service was provided at the initiative of the client and that the investor had been warned about the consequences of not performing an appropriateness assessment (R/44/2017 and R/279/2017).

R/399/2017 and R/479/2017: in these complaints, even though the entity warned the complainant that it was not required to assess appropriateness, it did not inform the client of the consequences of not performing said assessment (the client would not enjoy the protection established by law), which led to the conclusion that the entity had acted incorrectly.

Finally, in complaint R/650/2016, the respondent entity provided evidence that, prior to the purchase of the shares subject to the complaint and in accordance with its records, the complainant had performed a total of 150 equity transactions. It was therefore demonstrated that the client had sufficient prior experience of this type of product so as to consider the new investment performed as appropriate.

✓ *EU harmonised CIS*

EU harmonised CIS are legally classified as non-complex. Therefore, if the other aforementioned requirements are met, it is not necessary to assess the appropriateness of these products.

In three complaints resolved in 2017 against the same entity, said entity applied the appropriateness exemption and provided a copy signed by the complainants of the document entitled "Annex to the contract/order". This document informed the clients that they were not protected under securities market legislation applicable to products or services subject to the appropriateness assessment as the conditions were met for applying the exemption (R/698/2016, R/712/2016 and R/355/2017).

In contrast, in other complaints, the respondent entities only stated that, as the product was classified as non-complex, they were not required to assess the appropriateness. However, no evidence was provided in any of these cases that the orders 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. It was therefore considered that these entities did not act correctly (R/536/2016 and R/707/2016).

In 73.5% of the cases analysed relating to harmonised CIS, the appropriateness test performed on the unit-holder was provided. It can therefore be deduced that at the time of subscription of the fund, the entities considered that at least one of the requirements necessary for applying the exemption – normally that the order is at the client's initiative – was not met (R/496/2016, R/721/2016, R/725/2016, R/762/2016,

R/78/2017, R/168/2017, R/170/2017, R/247/2017 and R/298/2017). In five cases, after complying with the obligation to request information from the client on their investment knowledge and experience, the entities made a warning about the non-appropriateness of the fund (R/558/2016, R/596/2016, R/739/2016, R/118/2017 and R/142/2017). In three other cases, in addition to the appropriateness test, the entity provided documentation demonstrating the prior investment experience of the complainant in investment funds with the same features as that to be acquired (R/551/2016, R/675/2016 and R/743/2016).

R/688/2016: an annex to the purchase order submitted to the proceedings indicated that, given the features of the transaction, the entity was required to analyse the appropriateness of the transaction. The entity attempted to perform an appropriateness test, but the complainant did not provide the data necessary for conducting said assessment. The entity warned the client that it was therefore not able to form an opinion with regard to whether or not the product was appropriate.

R/573/2016: in this case, the entity provided an appropriateness test with a result deeming the transaction appropriate based on the answers given by the complainant about their knowledge. However, the complaint stated that the then branch manager of the bank was aware of the complainant's mental and sensory disabilities. Even though the complainant submitted a notification in their name of the resolution classifying their level of disability (issued by the Department of Social Action and Citizenship of the Regional Government of Catalonia), it was not demonstrated that the entity knew of this certificate at the time the product was acquired.

In two cases (R/325/2017 and R/357/2017), it was considered that the complainant's general level of education (average studies: high school certificate or similar) was adequate for understanding the features of harmonised investment funds (non-complex product).

R/639/2016: in this complaint, the entity provided a copy of the computer record showing that since 2010 the complainant had invested in similar investment funds to that which they were going to subscribe. In addition, in a document entitled "Marketing of investment products" that was submitted to the proceedings, the client was informed that "given the features of this transaction, the outstanding positions or transactions and prior assessments of appropriateness or suitability relating to exactly the same or similar financial instruments in terms of their nature and risks, this transaction, in the opinion of the entity, is APPROPRIATE for you". It was therefore concluded that the entity acted correctly on informing the client about the appropriateness of the funds based on the client's prior investment experience.

R/310/2017: in this case, the complainant disagreed with the test's signature, which, as clarified by the entity, was done digitally.[40] The criterion of the Complaints Service is that digital signatures are perfectly valid and legally accepted. It was therefore considered that a document signed by this procedure was sufficient to demonstrate that the entity had performed the appropriateness test on the complainant and had notified them of the result prior to subscription of the fund.

40 The client's signature is transferred directly from the digitizer tablet to the signed document, which is filed at the same time in the electronic forms system. A copy of the document is submitted to the client. This system is sufficiently proven and is used both in financial institutions and in other types of business.

However, in these cases, it was considered that the entities did not act in accordance with applicable legislation relating to conduct of business rules:

– R/36/2017: the entity submitted a copy of a document entitled "Information on the appropriateness assessment of the order", which informed the complainant of the following: "Given the characteristics of this transaction, the entity is required to assess its appropriateness for you. In the opinion of this entity, the transaction is appropriate for you. A transaction is appropriate when the client has the necessary knowledge and experience to understand the nature and risks of the financial instrument subject to the transaction".

  However, it was concluded that the entity had acted incorrectly as there was no record that the entity had performed an appropriateness test or that it had sufficient information as to assess whether or not the product subject to the complaint was appropriate.

– R/313/2017: in the annex to the subscription order, the client stated that, prior to execution of the transaction, the entity had asked him for information on his investment knowledge and experience – on being required to assess the appropriateness – and had informed him that the product was appropriate for him. However, the entity did not submit either the appropriateness test performed on the complainant or information relating to the data that it may have had on the client's prior knowledge and experience in order to determine that the subscribed fund was appropriate.

– R/374/2017: the entity did not comment on whether it had performed the appropriateness assessment on the claimants and merely indicated that prior to acquisition of the fund the claimants had experience in this type of product. However, the Complaints Service did not consider that the entity had demonstrated prior investment experience as it was based on one single investment in a financial instrument with similar features.

Summary of complaints relating to simple execution/marketing

EXHIBIT 1

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

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

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

– In the case of **jointly-held accounts**, when access to the account is on a joint basis, the appropriateness assessment will be carried out on the holder with the most knowledge and experience. In cases in which access to the account is joint and several, the assessment will be conducted on the ordering account holder.

– **Warnings:**

  - The entity must warn the customer when the product is complex and the result of the appropriateness assessment is negative. The customer must sign a handwritten statement declaring that he/she has been warned of these circumstances.

  - The entity must also warn the customer in the event that, while being mandatory, it is not possible to assess the appropriateness because the customer has not provided the necessary information or because the information provided is insufficient.

  - The entity must be able to provide evidence of all of the above irrespective of the channel used to provide the service. A record must be kept of the information or documentation used to assess the appropriateness and, as the case may be, the warnings made for five years following completion of the assessment.

– **Application for treatment as a professional customer:** retail customers may apply to be treated as professional customers provided they comply with certain requirements with regard to the amount of their investments, volume and frequency of the transactions and their knowledge resulting from a professional position. This new treatment is dependent on an assessment performed by the entity and a waiver signed by the customer stating that he/she knows the effects of said waiver.

– **Complex/non-complex financial instruments**:

It is not necessary to assess appropriateness prior to the purchase of **pre-emptive subscription rights** when i) they are assigned to the shareholder of a company as a result of their status as shareholder or ii) the shareholder acquires them in the secondary market with the sole objective of rounding up the number of rights that he/she has in order to obtain a last new share issued by the listed company.

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

Finally, if an investor acquires rights in the secondary market, these are deemed complex products and generate the corresponding appropriateness assessment obligations.

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

Shares are deemed non-complex products providing they do not incorporate an embedded derivative and are admitted to trading on a regulated market. In the event that the order is placed in the secondary market, the Complaints Service assumes that the transaction is made at the customer's initiative – particularly where the order is placed electronically – such that the entity is exempted from the appropriateness assessment obligation (non-complex product acquired at the customer's initiative).

4.2 Investment advisory services and client portfolio management

➢ Concept of investment advisory service and client portfolio management

The investment advisory service 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 are not considered as advice for these

purposes.[41] It is therefore important to determine in each complaint whether or not an advisory service was provided as this is a prerequisite for triggering one or another set of investor protection obligations.

The parties involved in the complaints usually hold contradictory versions with regard to whether or not an advisory service was provided and complainants often feel that they have been advised at the time of purchase.

In order to conclude that the investor did indeed receive an advisory service, the Complaints Service takes into account certain indications, such as the client belonging to the private banking segment and having been assigned a personal manager, express recognition in the purchase order of having received advice or the entity offering a new product to the client in order to recover losses of another previous investment in a product with similar features.

The discretionary and individualised investment portfolio management service is deemed to exist when an entity receives a mandate from its client for it to make the investment decisions that it deems most appropriate for the client.

Both the investment decisions taken by the entity in the context of a portfolio management contract and the recommendations given in the field of an advisory service must match the investor's profile resulting from the suitability analysis that must be performed prior to beginning the provision of the services. 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, the entity must clearly warn the client about this situation and its consequences and perform, where appropriate, the corresponding appropriateness test for that specific transaction.

As indicated above, the suitability analysis must be performed when the entity provides the advisory service or the portfolio management service for retail clients, and must therefore bear in mind the client's investment objectives, financial position and investment knowledge and experience. This information is reflected in the suitability analysis and is normally set out in the suitability test. However, with regard to the client's investment knowledge and experience, there are differences depending on whether an advisory service or portfolio management service is provided. While in the advisory service, the final decision is taken by the client – and it is the client who must understand the risks and nature of the product – in portfolio management it is the entity that takes the decision and conducts the corresponding monitoring and it is therefore sufficient for the client to have some general knowledge in order to be familiar with the financial instruments in which the entity invests.

➢ Difficulties in providing evidence of the advisory service

The Complaints Service often receives conflicting versions as to whether or not an advisory service was provided. Complainants often feel that they have been

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

advised at the time of purchase, while entities, however, do not have the same perception.

As mentioned above, different situations must be analysed when resolving complaints to conclude whether or not it has been established that an investment advisory service was provided. The various situations that arise in the complaints and the criteria adopted in each of them by the Complaints Service are presented below:

– The client belongs to the private banking segment of the respondent entity and has been assigned a personal manager/adviser. In said 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. An example of this is given in the following complaint:

  R/585/2016: three emails sent by the entity's manager were included in this complaint. It was concluded that two of these emails contained generic recommendations as a result of their content (they provided information and clarifications on several types of product). However, the information contained in the third email complied with the requirement of a personalised recommendation. It was therefore considered that – for the product referred to in this specific email – there was a one-off advisory service.

– 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 their target return, personal financial situation and expectations. This situation was highlighted in the following complaint:

  R/153/2017: in this case, and despite the fact that an information document was provided containing the following warnings issued by the institution: "in no case are you receiving an advisory service" or "whoever subscribes the bond will do so at their own initiative and under their sole responsibility", it was understood that there was a legal relationship of a personalised investment advisory service on the basis of the various suitability tests submitted and performed at successive times.

– The product purchase documents include clauses in which the client recognises that they have received advice on the level of risk and on whether the investment matches their investment profile. This was the case in this complaint:

  R/690/2016: the bulletin of the opening and first subscription of the securities warned the following: "This product has been recommended to you in the document 'Investment Savings Proposal' presented by your Personal Banking Consultant [...]". The Complaints Service therefore considered that the transactions subject to the complaint were performed under the relationship of an investment advisory service.

– There are emails, telephone recordings and other elements on durable media that make it possible to verify that they have performed more or less explicit investment recommendations with regard to one or several products. Here are some examples:

R/152/2017: in this case, the transaction was considered to have been performed in the context of an advisory service through conversations between the complainant and an operator of the entity through the WhatsApp application, in which they received precise instructions for performing transactions with CFDs.

R/55/2017: the Complaints Service considered that the subscription to an investment fund was the result of the entity's staff issuing a personalised recommendation by email.

– It was demonstrated that the respondent entity had offered its client an investment in a new product with the aim of recovering losses suffered in another previously acquired product with similar features. Some examples of this practice can be seen in the following complaints:

R/216/2017: a warning stating the following was included in the clauses and annex of the structured product that is the subject of this complaint: "This product is aimed at clients with structured financial products whose value at the time of contracting this product stands at between 30% and 40% 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".

R/727/2016: in this case, the clauses of the structured product that is the subject of the complaint contained the following warning: "This product is aimed at clients with structured financial products whose value at the time of contracting this product stands at below 30% 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".

R/175/2017*:* the entity offered the complainant the possibility of investing in an atypical financial contract so as to recover the loss suffered in another previous atypical financial contract. It was therefore considered that the contracting of this product was performed in the framework of a legal relationship of a one-off investment advisory service.

Once the existence of an advisory relationship has been proven, a distinction needs to be made between one-off and ongoing advice.

The advisory service may be: i) one-off: where the commercial relationship with the client is not conducted within the scope of an advisory service, but on one particular occasion the entity makes an investment recommendation (this usually occurs in the generic commercial segment), or ii) recurrent: where the client has an ongoing relationship with their advisor, who usually makes investment recommendations to him/her (usually in the private banking segment).[42]

42 Section 2 of the *CNMV guide on providing investment advisory services*. Investment Firm and Credit and Savings Institution Supervision Department. 23 December 2010.

In any event, whenever it makes a recommendation, the entity shall provide the client, in writing or on another durable medium, with a description of how the recommendation made matches the investor's characteristics and objectives.[43]

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. The description may be abbreviated when repeatedly making recommendations relating to the same type or family of products.[44]

For its part, the entity must demonstrate compliance with the obligation to submit the recommendation to its client – for which it may collect a signed copy of the submitted document which must contain the date on which it was submitted – and must do so through the record of client communication through electronic means or any other certifiable method.[45]

The law establishes that when the entity wishes to record that a transaction with a complex instrument is performed outside an advisory service, the following handwritten statement must appear in the corresponding documentation together with the client's signature: "I have not been advised in this transaction".[46] This matter was dealt with in the following complaints:

R/4/2017: it was concluded that this was a case of bad practice on the part of the entity as it did not collect a handwritten statement that the claimant had not been advised in the transaction despite the atypical financial contract itself including a clause clarifying that there was no personalised advisory relationship between the client and the entity.

R/656/2016: In contrast, in this case, the atypical financial contract included a clause stating that the entity was not providing an investment advisory service to the complainant and therefore it had not made a personalised recommendation. In this regard, the handwritten statement "I have not been advised in this transaction" was included together with the complainant's signature, as provided for by the legislation in force at the time the product was acquired.

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 portfolio management services, which must always be set out in the corresponding contract. The criterion of the

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43 Article 213.4 of Royal Legislative Decree 4/2015, of 23 October, approving the recast text of the Securities Market Act.

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

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

46 Section 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 test for clients of investment services.

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

➢ Suitability assessment

When investment firms provide advisory services or manage the portfolios of retail clients, they 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 make 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.[47]

In short, the recommendations that entities give to their clients within the scope of advisory services or the investment decisions taken in the case of portfolio management must meet the following criteria:[48]

– They must be in line with the investment objectives set by the client (investment objectives).

– They must take into account the risks of the financial instruments to ensure that the client may assume such risks from a financial point of view (financial position).

– They must determine whether the client possesses sufficient knowledge and experience to understand the risks of the product (knowledge and experience).

➢ Evidence of suitability assessment

The entity must be able to prove that it conducted the suitability assessment through one of the following two methods: i) performing said analysis in writing and keeping a copy signed by the client which states the results of the assessment and the date the document was submitted to the client, or ii) through the record of electronic communication with the client or through any other means by which it can be reliably demonstrated that said analysis was performed.[49]

Entities must keep a record of the suitability assessment that shows the information or documentation used for the purposes of assessing the knowledge and experience – in the area of investment corresponding to the specific type of product or

47 Article 213 of Royal Legislative Decree 4/2015, of 23 October, approving the recast text of the Securities Market Act, and Article 72 of Royal Decree 217/2008, of 15 February, on the legal regime of investment firms and other entities providing investment services.

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

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

service –, financial position and investment objectives of the client or potential client.[50]

In the case of advisory services, the entity must provide the client in writing, or by any other durable medium, with a description of how the recommendation matches the investor's characteristics and objectives.[51] The recommendation must be consistent with all the aspects assessed 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.[52] In the event that the service is provided by telephone, the description of how the recommendation made matches the investor's 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 by postal mail or email.[53]

In the resolution of complaints relating to the suitability assessment, it is considered that entities act correctly when they submit a duly signed copy of the suitability test, with the information collected by the entity relating to the client's investment profile, the results of the assessment performed and the date it was submitted to the client.

In the case of discretionary and individualised portfolio management, the service contract usually indicates that prior to its conclusion, information was collected on the client's investment experience, investment objectives, financial capacity and risk preference, and the test and its result are usually included in an annex to the contract.

It is therefore considered bad practice by entities not to provide the documentation demonstrating that it collected the appropriate information from the client and assessed their suitability. Moreover, even when the entity demonstrates that it performed the suitability test on its client, the Complaints Service shall declare that the entity acted incorrectly in those cases in which the product acquired, the profile assigned to the investor or the investment proposal do not correspond to the information provided by the investor or where there is no record that the client was provided, where appropriate, in writing or by another durable medium, with a description of how the recommendation made matched their investment characteristics and objectives.

➢ Period of validity of prior suitability analyses

With regard to the period of validity of prior suitability analyses, even where there are certain circumstances that are not likely to change over time, such as knowledge and experience, there are others, such as their financial position and investment

50 CNMV Resolution of 7 October 2009, on the minimum records to be kept by firms that provide investment services.

51 Article 213.4 of Royal Legislative Decree 4/2015, of 23 October, approving the recast text of the Securities Market Act.

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

53 Question 2 of the *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.

objectives that may change and it is therefore necessary to review suitability on a regular basis.

In the event of a one-off advisory service, the suitability analysis is most likely to be limited to one specific transaction and it is not therefore generally reasonable to extrapolate the results obtained from one transaction to subsequent transactions. However, as indicated above, in the provision of longer-term services (recurrent advice or portfolio management), the entity should periodically review whether the investment objectives have been modified as they may have changed.[54]

➢ Investment recommendations or decisions in the field of advisory services or discretionary portfolio management

Investment recommendations or decisions must generally be adapted to the level of risk that the investor has set in their investment objectives and entities may not exceed that level even where allowed by the investor's knowledge or experience, unless the investment in question forms part of a portfolio under advice or management and that, as a whole, meets the investment objectives set by the client. Nevertheless, the client should be informed of this situation.[55]

However, if the client is willing to take on a level of risk that is so high that it may compromise their financial position or if the entity believes that the client does not have sufficient knowledge or experience to understand the nature and features of the investment, strictly respecting the investment objective set by the client would not make this investment suitable. In these cases, it may be appropriate to recommend or take investment decisions that may be assumed by the client from a financial perspective or which are of a similar nature or with similar features.[56]

In this regard, it is important to highlight the differences that exist between the advisory service and the portfolio management service with regard to knowledge and experience. In advisory services, the final investment decision is always taken by the client and, therefore, the entity may only recommend transactions whose risks and nature the client may understand. However, in portfolio management, given that the manager monitors that the portfolio is in line with the client's investment objectives and financial position, it is only necessary for the client to be familiar with the instruments that make up their portfolio, i.e., that they have general financial knowledge. The client must however understand the nature of the instruments that make up the bulk of their portfolio.[57]

In any event, the entity must be in a position to provide the recommendations made to their client. For this purpose, it must keep a record of the investment advice that

54 Question 27 of the *Operational guide for the analysis of suitability and appropriateness.* Investment Firm and Credit and Savings Institution Supervision Department. 17 June 2010.

55 Questions 19 and 22 of the *Operational guide for the analysis of suitability and appropriateness.* Investment Firm and Credit and Savings Institution Supervision Department. 17 June 2010.

56 Question 19 of the *Operational guide for the analysis of suitability and appropriateness.* Investment Firm and Credit and Savings Institution Supervision Department. 17 June 2010.

57 Question 24 of the *Operational guide for the analysis of suitability and appropriateness.* Investment Firm and Credit and Savings Institution Supervision Department. 17 June 2010.

shows in writing or a certifiable manner the personalised recommendations made to retail clients, including information on the following points:

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

– The recommendation.

– The recommended financial instrument or portfolio, recording, *inter alia*, the date of the recommendation.[58]

The complaints resolved in 2017 relating to the suitability assessment include the following, which deal with different aspects highlighted in this section of the Report.

R/203/2017: the entity was deemed to have acted correctly as it was demonstrated that it had collected information on the complainant's financial position, experience and investment objectives by means of a document entitled "Investor profile of the holder and portfolio". The result of the assessment was a moderate profile.

R/135/2017: in this complaint, even though the entity submitted to the proceedings a copy of three suitability tests performed in different periods of time, it was concluded that the entity had acted incorrectly as two of these were completed after the date on which the product was contracted and the date was not recorded in the other test. Accordingly, the entity did not demonstrate that it had information on the claimant that would enable it to assess the suitability of the product prior to its acquisition.

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

Thus, in resolution R/198/2017, there was an inconsistency between the result of the suitability profile of the test performed (moderate profile) and that of the investment proposal (dynamic profile).

R/585/2016, R/175/2017 and R/216/2017: in these complaints, the entities acted incorrectly by failing to perform the suitability test on the investment profile of the complainants prior to making a personalised recommendation.

R/690/2016: in this case, it was considered that the entity did not correctly assess the complainant's knowledge and experience in the scope of the suitability assessment due to the fact that in one of the questions on knowledge of investment products, the complainant was given various options to choose from: limited, basic, sufficient or detailed. This type of question in which the complainant must assess their own knowledge is considered inappropriate as it requires the client to self-assess, instead of the entity using the information collected from its client to determine the level of knowledge they have with regard to the product in question or the family of products. In addition, with regard to the analysis of investment experience, the complainant stated that in one of the responses on the current composition of their assets that they held 120,000 euros in sight accounts and savings accounts in other entities, which was deemed to contradict the dynamic profile assigned by the entity.

58 CNMV Resolution of 7 October 2009, on the minimum records to be kept by firms that provide investment services.

R/727/2016: although it was demonstrated that the entity obtained the necessary information on the client's knowledge and experience and on their financial position and investment objectives through the suitability test, it was considered that the structured product acquired was not in line with the investment experience and objectives declared by the complainant.

R/376/2017: the entity was considered to have acted incorrectly as it did not obtain the necessary information on its clients prior to signing a portfolio management contract. In these proceedings, it was demonstrated that the assessments performed on the holders of the portfolio management contract were performed after the contract was signed. Specifically, the suitability assessments provided were dated 11 May 2017 and the portfolio management contract was signed on 8 May 2017.

R/85/2017, R/214/2017 and R/234/2017: in contrast, in these cases, the entities assessed the client's investment profile by means of a portfolio management suitability test questionnaire, through which they collected information on their clients' financial position, experience and investment objectives prior to signing the contract. The result of this assessment (risky or conservative profile, as the case may be) corresponded to the level of risk assumed through the portfolio management.

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

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

- The Complaints Service often receives conflicting versions from complainants and entities as to whether or not the advisory service has been provided. Complainants often feel that they have been advised at the time of purchase. In order to verify the existence of the **advice referred to in the complaints**, the Service takes into account certain indications, such as the customer belonging to the private banking segment and having been assigned a personal manager, express recognition in the purchase order of having received advice or the entity offering the investment in order to recover losses of another previous investment in a product with similar features.

- Entities that advise or manage portfolios of retail customers must bear in mind the customer's investment objectives, financial position and investment knowledge and experience. All this information is normally reflected in the **suitability test**. Entities must keep a register of the suitability assessment that allows them to demonstrate that they have complied with this obligation.

- With regard to the **period of validity of the prior suitability analyses**, it should be pointed out that even where there are certain circumstances that are not likely to change over time (knowledge and experience), there are others (financial position or investment objectives) that may change and it is therefore necessary to review suitability on a regular basis.

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

With regard to longer-term services (recurrent advice or portfolio management), the entity should periodically review whether the investment objectives have been modified as they may have changed.

– With regard to the customers' investment knowledge and experience, there are **differences depending on whether the service provided by the entity is deemed an advisory service or portfolio management**. While in the advisory service the final decision is taken by the customer – and it is the customer who must understand the risks and nature of the product – in portfolio management it is the entity that takes the decision and conducts the corresponding monitoring and it is therefore sufficient for the customer to have some general knowledge in order to be familiar with the financial instruments in which the entity invests.

– In complaints, evidence can be provided of the **suitability assessment** by means of a signed copy of the suitability test. In portfolio management, it is usually the contract itself that indicates that information has been collected from the customer on his/her investment experience, investment objectives, financial capacity and risk preference, and the test and its result are usually included in an annex.

  However, the Complaints Service believes that it is bad practice by the entity where, despite providing evidence of the assessment, the assigned profile or investment proposal does not match the information provided by the customer or when there is no record that the customer has been provided, through a durable medium, with a description of how the recommendation made by the entity matches his/her characteristics and investment objectives.

– Whenever the entity makes a recommendation, it must provide the customer on a durable medium with a description of how the recommendation matches the investor's characteristics and objectives and it must keep a record of said **recommendations**.

4.3 Prior information

4.3.1 Securities

➢ Information documents before contracting the product

Entities that provide investment services must provide their clients (including potential clients), on a durable medium, with a general description of the nature and risks of the financial instruments bearing in mind, in particular, the classification of the client as a retail or professional client. The description must include an explanation of the features of the type of financial instrument in question and its inherent risks, which must be sufficiently detailed so as to allow the client to make informed investment decisions. Where justified by the type of financial instrument in question

and the client's profile, information must be added on the risks linked to the financial instrument, including an explanation on leverage and its effects, as well as the risk of full loss of the investment.[59]

For these purposes, a durable medium is understood as any instrument that allows the client to store the information personally addressed to them so that it may be easily recovered during a period of time that is appropriate for the purposes of such information and which allows its reproduction without changes.[60] Entities can comply with this obligation by submitting various documents to the client: a summary of the securities note of the issue, the full securities note of the offer or a document prepared by the entity for this purpose. When the client is given the full securities note, it is considered reasonable for the client to also be given an issue summary[61] as it is often easier to understand as a result of its summarised and concise nature.

➢ Method for demonstrating submission of the information

The information document on the features and risks of financial instruments must be given to the client prior to contracting the product and the entity must be in a position to provide evidence of said submission. This evidence must always be provided in the same way, irrespective of the financial instrument in question. Accordingly, as in the case of CIS, submission is demonstrated by means of a copy of the information document signed by the client and dated prior to acquisition of the financial instrument.

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

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

➢ Complex products

The information that must be provided to the client with regard to the product's features and risks must be provided in sufficient detail so as to allow the client to make informed investment decisions.

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59 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.

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

61 Article 37 of Royal Legislative Decree 4/2015, of 23 October, approving the recast text of the Securities Market Act.

With regard to resolved complaints relating to complex investment products, the actions undertaken by the entities are set out below according to the products subject to the complaint:

✓ *Preferred shares and subordinated debt*

In complaint R/470/2017, 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. The entity justified its action by means of a clause included in the purchase order in which the complainant acknowledged that they had been provided with the information documentation on the product. 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 other complaints (R/115/2017, R/167/2017, R/283/2017, R/351/2017, R/190/2017, R/584/2016, R/269/2017, R/686/2016 and R/283/2017), the entities were unable to demonstrate that they had provided the client, prior to acquisition of the corresponding financial instrument, with any type of written documentation containing full information on the features and risks of the securities acquired.

In other cases, however, the complaint proceedings included a copy signed by the client of an information document (normally the prospectus summary) that contained the features and risks of the financial instrument acquired. The respondent entity could not therefore be criticised for not having provided the investor with prior information on the contracted product (R/769/2016, R/23/2017, R/225/2017, R/57/2017, R/134/2017, R/372/2017 and R/449/2017).

✓ *Convertible or exchangeable securities*

With regard to resolved complaints involving convertible or exchangeable securities relating to alleged irregularities both at the time of their subscription and at 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. Accordingly, in numerous complaints (R/68/2017, R/670/2016, R/768/2016, R/47/2017, R/447/2017, R/236/2017, R/154/2017, R/668/2016, R/239/2017, R/719/2016, R/541/2016, R/305/2017, R/252/2017, R/177/2017, R/157/2017, R/761/2016, R/595/2016 and R/662/2016), it was demonstrated that the entities provided the complainants with full information on the issue's terms and conditions.

However, incorrect actions were noted in the following cases:

R/658/2016*:* in this complaint, although the entity was able to demonstrate that it had submitted a document containing information on the convertible securities to the client prior to their acquisition, the Complaints Service concluded that this was not sufficient to comply with the information obligations as it did not make any reference to the risks inherent to the issue.

R/614/2016*:* in this case there was no record that the entity had provided its client with any type of documentation containing information on the features and risks of the convertible securities, even though the client acknowledged having been informed

by signing the purchase order. As indicated above, the existence of clauses in the orders whereby clients acknowledge receipt of information on the product is not sufficient to demonstrate that information has effectively been submitted.

✓ *Derivatives*

In this area, there was a noteworthy increase in complaints relating to contracts for differences (CFDs). In this type of product, the obligations assumed by the parties are generally laid down in the initial contract itself. It is therefore this document that should include all the information relating to the functioning of the product (for example, cases in which positions may be unilaterally closed) as well as the most important risks of this product, paying particular attention to the concept of leverage. Therefore, entities must provide documentary evidence that the investor was informed about these issues.

In complaints R/70/2017, R/92/2017 and R/166/2017, it was demonstrated that all this information had been made available to the investors and therefore the Complaints Service did not detect any information deficiencies prior to the start of the transactions with this financial instrument.

However, in other cases it was not demonstrated that the investor had received information on this financial instrument prior to the start of the transaction (R/243/2017).

R/152/2017: in this complaint, although the entity warned the investor about the possibility of suffering losses in their investment and the existence of leverage, it was not demonstrated that it had submitted information to the client on the features and risks of this financial instrument. In addition, the entity did not explain to the client the most important risk of this asset – the aforementioned leverage – and therefore the Complaints Service considered a simple reference to this risk to be insufficient.

R/39/2017: in this case, the entity had also provided the client with a contract that contained generic information on the main risks associated with this type of product (market, credit, liquidity and other risk). However, it did not offer information on the specific risks of this financial instrument, such as leverage. The Complaints Service therefore considered that it had not been demonstrated that the entity had complied with the applicable information requirements.

The Complaints Service also received several complaints about financial options, products which are very highly leveraged and which therefore, from a risk point of view, are similar to CFDs. As mentioned above, a simple warning that a product is risky does not exempt the entity from providing the investor with full information on its features and risks prior to the start of the transaction. Consequently, in complaints R/150/2017, R/751/2016, R/752/2016, R/151/2017, R/149/2017, R/174/2017, R/176/2017 and R/297/2017, it was concluded that the entity had acted incorrectly.

R/318/2017: in this complaint about warrants, it was also concluded that the entity had acted incorrectly. The main difference between options and warrants is that warrants are issued by a bank or financial institution. In this complaint, although it was demonstrated that the entity had warned the client about the risks of trading with this instrument, it was not demonstrated that the entity had provided the client with information on the features, functioning and risks of this type of investment.

✓ *Pre-emptive subscription rights*

When pre-emptive subscription rights are acquired directly on the secondary market, they are considered to be complex instruments which may incorporate a high level of leverage. However, when the investor acquires the pre-emptive subscription rights in an automatic allotment to shareholders as a result of a capital increase or purchases them in the secondary market in order to round up the number of rights necessary to acquire one further share, they are considered to be non-complex.

R/393/2017 and R/395/2017: in both cases the investor purchased pre-emptive subscription rights directly on the secondary market and therefore this instrument had to be treated as complex. Although it was demonstrated that the respondent entity had provided the client with the prospectus summary of the capital increase, the Complaints Service concluded that it had acted incorrectly as it was not demonstrated that the entity had collected full information in order to assess the appropriateness of the product.

R/363/2017: this transaction is similar to the one indicated in the previous complaint. However, in this case, the entity made the prospectus summary of the capital increase available to the client after acquisition of the financial instrument, which was considered to be an incorrect action.

R/729/2016*:* In this complaint, it was not demonstrated that the respondent entity had made available to the client prior information on this financial instrument, which led to a conclusion that was favourable to the complainant.

✓ *Atypical financial contracts or option sale and purchase agreements*

The applicable legislation defines these instruments as "contracts not traded on official organised secondary markets through which a credit institution receives money or securities, or both, from its customers, assuming a consistent redemption obligation consisting of the delivery of certain listed securities, the payment of a sum of money, or both, depending on the evolution of the listed price of one or several securities, or the evolution of a stock market index, without a commitment for full redemption of the principal received".

In these cases, it is customary for entities to submit to the complaint proceedings the contracts signed by the parties, whose clauses contain information that is sufficiently explicit and specific in order to be aware of the nature, features, risks and, above all, the functioning of the product so as to be able to understand how the investment will be liquidated (R/656/2016, R/4/2017, R/289/2017, R/343/2017, R/585/2016, R/652/2016, R/175/2017, R/216/2017, R/356/2017, R/727/2016, R/633/2016, R/700/2016 and R/10/2017).

✓ *Structured bonds*

The functioning of structured bonds is similar to that of financial contracts, with the difference that the bonds are issued in such a way that they are eligible for trading on secondary markets.

In general, in order to demonstrate the submission of information on this financial instrument, entities submit certain documentation to the complaint proceedings, essentially explaining the objective elements of the bond. This document usually allows clients to understand the features, conditions and risks of the product they are acquiring, while also informing them of the risk of a full or substantial loss of the investment (R/559/2016, R/43/2016, R/58/2016 and R/153/2016).

➢ Non-complex products

Certain actions performed by entities relating to information on non-complex products are explained below:

✓ *Ordinary shares*

R/399/2017: in this complaint, relating to the acquisition of shares in the context of the capital increase of Bankia carried out in 2012, it was not demonstrated that the entity had complied with its obligation to inform the complainant prior to performing the transaction.

R/410/2017: in this complaint, although the entity claimed that it had made the prospectus summary of the capital increase available to the client, in view of the documentation submitted to the proceedings, said delivery was not demonstrated.

R/479/2016: in this case of the acquisition of shares directly on the secondary market, it was not demonstrated that the entity had effectively submitted the prior information to the complainant even though the purchase order included a clause through which the client acknowledged having received the information. In these cases, as mentioned above, the Complaints Service concludes in favour of the complainant.

R/41/2017: in this case, the entity was able to demonstrate effective submission of the information prior to acquisition of the shares on the secondary market through a document ("Marketing of investment products") which contained a detailed explanation of the product's features.

R/279/2017: the complainant complained about the acquisition of shares in a company admitted to trading on the Dutch Stock Exchange (Euronext) and claimed – although this could not be demonstrated – that the entity's staff had recommended them to him/her. Neither was it possible to demonstrate that the entity had provided the client with prior information on the features and risks of the ordinary shares before their acquisition and it was therefore considered that the respondent entity had acted incorrectly.

✓ *Senior debt or money market instruments (considered non-complex)*

R/738/2016: as part of an exchange process involving certain preferred shares, the client was offered the possibility of exchanging this investment for simple bonds, the basic characteristics of which were set out in a document entitled "Buy-back offer", a signed copy of which was submitted to the complaint proceedings. In addition, the entity also sent a letter to the client's address expressly indicating that both the prospectus and its summary, both registered with the CNMV's registers, were

available to the client. For all these reasons, the Complaints Service did not find any wrongdoing.

R/30/2017: the entity was also found not to have acted incorrectly in this complaint as together with the purchase order for the simple bonds, the client was provided with full information on the features and risks of the issue and, furthermore, a warning was made on the lower level of liquidity of the fixed-income market compared with the equity market.

R/315/2017: in this case, effective submission of information documentation prior to acquisition of a money market financial instrument (commercial paper) was not reliably demonstrated, and the entity's actions were therefore classified as bad practice. It should be remembered that the mere reference to the submission of information is not sufficient to prove the submission and receipt of said information by the client.

➢ Compliance with commitments

Entities sometimes propose to their clients offers that are subject to compliance with certain conditions, such as the client maintaining a minimum balance or the investment being maintained over a particular period of time. In these cases, the entities must duly inform the client of the conditions they must comply with and clearly reflect them in the contractual documentation of the offer for it be accepted by the client.

In recent years, in the context of the financial restructuring carried out in the Spanish financial sector, some entities offered their clients the possibility of recovering the full amount of the investment in certain complex financial instruments. Said recovery was subject to compliance with certain conditions, which included maintaining a minimum balance. Therefore, in the event that it could be demonstrated that the client had failed to comply with the aforementioned conditions, the Complaints Service could not conclude that the entity had acted incorrectly (R/689/2016).

Similarly, and irrespective of said financial restructuring process, when the entity promises the client a financial reward or compensation that is conditional on maintaining the investment for a certain period of time, the Complaints Service cannot criticise the entity if it is demonstrated that the client failed to comply with said commitment (R/635/2016).

Summary of complaints relating to information prior to the purchase of securities EXHIBIT 3

– Entities must provide their customers (including potential customers), on a durable medium, with a **general description of the nature and risks** of the financial instruments, paying particular attention to the customer's classification as a retail or professional customer.

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

Where justified by the features of the financial instrument, special emphasis must be given to the concept of leverage, whereby a simple reference to its existence is not considered sufficient.

– The information document may vary and the **issue summary or securities note** is usually given to the customer.

  When the customer is given the full securities note, it is considered reasonable for the customer to also be given an issue summary as it is often easier to understand as a result of its summarised and concise nature.

  However, depending on the circumstances and the financial instrument in question, the information included in the purchase order or in the contract itself, where the obligations of the parties and the terms and conditions of the transaction are set out, may be deemed sufficient.

  In any event, irrespective of the medium used, entities must ensure that the information provided allows the customer to be aware of the features and the risks being taken on when purchasing the product.

– The criterion of the Complaints Service is **not to accept clauses incorporated into purchase orders** through which the customer acknowledges receipt of information on the product to be acquired. As indicated for the case of CIS, this does not reliably guarantee that the customer has received the necessary documentation.

– In the event that they offer **commercial promotions**, entities must duly inform customers of the conditions that they must meet in order to benefit from them and clearly reflect these conditions in the contractual documentation of the offer for it to be accepted.

4.3.2 CIS

➢ Spanish CIS. Submission of information documents before contracting the product

In 2011, with the aim of increasing investor protection with regard to their information rights, a new "Key Investor Information Document" (KIID) was introduced to replace the previous simplified prospectus. This document incorporated two substantial changes which helped investors reach informed investment decisions:

– Full harmonisation of the document, which made harmonised funds and companies from any Member State perfectly comparable.

– Presentation of the information in a short format that is easily understandable for the investor and which only contains the key information.

The KIID constitutes pre-contractual information.

Sufficiently in advance of subscribing the units or shares, subscribers must be provided with the latest half-yearly report and the KIID free of charge and, on request,

the prospectus and the latest published annual and quarterly reports.[62] The prospectus and the KIID may be provided in a durable medium or through the website of the investment company or the management company. Following a request, a hard copy of said documents will be provided to investors at no charge. For these purposes, a durable medium is understood as any instrument that allows the investor 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. An updated version of the documents provided for in this section must be published on the website of the investment company or management company.

Intermediaries selling or advising clients are subject to compliance with the obligations to provide the above-mentioned prior information on CIS.[63]

It is important to note that the entity may not replace these documents with information that may appear in the advertising of the CIS or provide it to the client orally or by means of a summary.

The entity would demonstrate compliance with the obligation by keeping, on a durable medium, a copy of the information signed by the unit-holder(s)/shareholder(s) while they hold said status.[64] Delivery of the KIID and the latest half-yearly report was demonstrated in this manner in most of the complaints resolved in 2017.[65]

In order to provide evidence of delivery of the prior information, it is not sufficient for the framework contract to provide that the KIID and the corresponding periodic information will be delivered prior to the purchase or for the subscription order or client statement to mention that said documentation was delivered beforehand. Consequently, irrespective of whether or not the framework contract, subscription order or client statement contains such provisions, the entity acted incorrectly as it submitted a signed copy of only part of the documents that it was required to deliver in complaints R/596/2016, R/639/2016, R/26/2017, R/156/2017, R/193/2017, R/200/2017, R/310/2017, R/325/2017 and R/381/2017, and because it did not submit a signed copy of any of the documents in complaints R/507/2016, R/706/2016, R/722/2016, R/100/2017, R/373/2017 and R/374/2017.

The aim of said delivery is to ensure that the unit-holder is aware of the product's features and risks. It would therefore not be necessary in the case of additional subscriptions in the same CIS,[66] as the client will already have received such documents in the first purchase, with any updates or changes included in the periodic reports.

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

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

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

65 R/496/2016, R/536/2016, R/551/2016, R/558/2016, R/585/2016, R/663/2016, R/675/2016, R/688/2016, R/698/2016, R/707/2016, R/712/2016, R/721/2016, R/725/2016, R/739/2016, R/743/2016, R/762/2016, R/51/2017, R/55/2017, R/78/2017, R/118/2017, R/142/2017, R/165/2017, R/168/2017, R/170/2017, R/248/2017, R/257/2017, R/298/2017, R/353/2017, R/355/2017, R/357/2017 and R/437/2017.

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

There are, however, certain products traded on the secondary market, such as units in exchange traded funds, for which the legislation requires compliance with certain prior information obligations. Accordingly, the acquisition of units of exchange traded funds in the stock market is exempt from the obligation of free of charge delivery of the KIID and the latest half-yearly report. At any event, upon request, both the prospectus and the latest published annual and quarterly reports must be provided to the unit-holder.[67]

In addition, there are other exceptional situations in which it is not possible to deliver any document due to the time at which the subscription takes place. For example, failure to deliver the last half-yearly report would be justified if the CIS lacked such a report as it was registered with the CNMV on an intermediate date of a calendar half-year and the client's acquisition took place before the end of that half-year period. Even if the half-yearly report cannot be delivered in these cases, at any event evidence must be provided of delivery of the KIID (R/247/2017, R/339/2017, R/347/2017 and R/418/2017). In complaint R/311/2017, the entity did not even demonstrate that it had delivered this document.

➢ Foreign CIS. Submission of information documents before contracting the product

In general, foreign CIS are not supervised by the CNMV, but by the competent body in their respective home countries. The CNMV is only responsible for certain matters such as supervising the actions of distributors in Spain according to Spanish regulations in relation to the CIS authorised by the CNMV to be marketed in Spain.

Among foreign CIS, harmonised CIS are those that are subject to the EU directive[68] on these undertakings that EU Member States have had to transpose into their legal systems. In contrast, non-harmonised foreign CIS would fall outside the scope of the directive.

In this regard, and as established by current legislation,[69] the distributors in Spain of harmonised foreign CIS registered in the corresponding CNMV register are required to submit to each unit-holder or shareholder, prior to subscription of the units or shares, a copy of the simplified prospectus or the document replacing it in the home state of the CIS and a copy of the latest published financial report. In addition, a copy of the report on the intended types of marketing to be conducted in Spain must be submitted using the form published on the CNMV website. The reference in this legislation made to the simplified prospectus should be understood as referring to the KIID, which, as indicated on the CNMV website, must be translated into Spanish.[70]

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67 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.

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

69 Section 2 of Rule Two of CNMV Circular 2/2011, of 9 June, on information on foreign collective investment schemes registered in the CNMV's registries.

70 Spanish provisions on UCITS' notification procedures.

This delivery is mandatory and cannot be waived by the unit-holder or shareholder. In addition, an updated copy of the other official documentation of the undertaking must be provided upon request. At any event, at least one of the distributors must make available by electronic means all these documents, as well as the net asset values corresponding to the shares or units marketed in Spain.

Complaints were received in 2017 in which the Complaints Service analysed this issue relating to the delivery of information prior to the contracting of harmonised foreign CIS marketed in Spain, although evidence of such delivery was not provided (R/690/2016 and R/648/2016).

The distributors of non-harmonised foreign CIS must comply with the aforementioned obligations to provide information prior to subscription – delivery of the information document and the latest published financial report – with the exception of the marketing report, which is replaced by the specific conditions applied by the distributor.[71] In particular, if marketed to non-professional investors, the authorised intermediary must deliver, free of charge, to the shareholders or unit-holders of the foreign CIS that are resident in Spain the prospectus, the KIID or a similar document together with the annual and half-yearly reports, as well as the fund management regulations or, as the case may be, the articles of association of the company. These documents must be provided in their translation to Spanish or another language accepted by the CNMV.[72]

➢ Transfers between CIS

The information documents on the features and risks of the CIS must always be delivered prior to their first subscription, even if this takes place as a result of a transfer. In the absence of specific provisions governing the transfers of investments between CIS or, as the case may be, between compartments of one single CIS, such transfers are governed by the general legislation regulating the subscription and redemption of units in investment funds, as well as that relating to the acquisition and disposal of shares in investment companies.[73]

In order to initiate the transfer, the unit-holder or shareholder must contact, as appropriate, the target management company, distributor or investment company, which they must instruct to perform the necessary procedures.

This situation arose in the following complaint, in which the subscription of units of the investment fund came from a transfer of units:

R/51/2017: the entity acted correctly as it was demonstrated that it made available to the unit-holder all the information documentation on the CIS subject to the complaint, by providing to the proceedings a copy signed by the unit-holder of the KIID and the latest published half-yearly report of the target fund.

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71 Section 4 of Rule Three of CNMV Circular 2/2011, of 9 June, on information on foreign collective investment schemes registered in the CNMV's registries.

72 Article 15 *quinquies* (6) of Law 35/2003, of 4 November, on Collective Investment Schemes.

73 Article 28.1 of Law 35/2003, of 4 November, on Collective Investment Schemes.

➢ Electronic transactions

The information that must be provided to the client before the purchase does not change depending on the channel used. However, the manner in which evidence is provided of delivery of the prior information on the CIS has certain specific features when the contracting is performed electronically. For this purpose, an up-to-date version of the CIS documentation (the current KIIDs and prospectuses and the latest published quarterly, half-yearly and annual reports)[74] must be published on the website and accessible prior to completion of the subscription. In addition, the entity must be able to provide evidence that the client has received said information.[75]

In order to provide evidence of the delivery of the information in a specific transaction, the opening of the document must leave a digital fingerprint confirming individual reading of the information. Therefore, the ideal way for an entity to substantiate evidence of compliance with its obligations to provide information to its clients is to submit to the Complaints Service the log of the digital footprint generated by the transaction together with the pattern of how to interpret it.

As in the case of other financial instruments, for CIS subscriptions, the client must be provided with the document containing the prior information, without which it should not be possible to continue with the subscription.

R/690/2016: the entity attached the screens shown and the documentation generated on its website during the contracting process, as well as the magnetic recording of the orders. However, following a request for clarification, the entity acknowledged that, prior to contracting, the computer system did not require the client to have opened the associated documentation before ticking the confirmation of its reading. It was therefore considered that delivery of the documentation prior to electronic subscription had not been proven.

➢ Marketing commitments

Subscribing to CIS may entail certain advantages or promotions that make acquisition more attractive. In these cases, in addition to the mandatory information on the product's features and risk, the entity must provide full and clear information on the terms and conditions of the commercial offer.

Some investors disagree with the loss of commercial promotions or the application of penalties after deciding to transfer the units of their investment funds to others. It is therefore necessary to analyse in each case the commercial proposal agreed between the parties and the fact that triggered the revocation of the promotion's benefits. Some complaints dealing with this aspect are shown below:

R/720/2016: in this complaint, the entity did not apply the commercial promotion because its term had already expired when the client applied for it.

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

75 Enquiry 86 of Section 1 of the document *Consultas sobre normativa de las IIC, ECR y otros vehículos de inversión colectiva cerrados [Enquiries on the legislation of CIS, venture capital undertakings and other closed-end collective investment vehicles],* 13 October 2016.

R/235/2017 and R/437/2017: the loss of the promotion was due to the fact that the unit-holders redeemed the investment funds before the end of the minimum investment period. In all these cases, the entities acted correctly because the commercial promotion was clear and sufficient as it specified the period during which it would be applied in an understandable manner.

R/750/2016: the complainant had contracted foreign CIS which were part of the products which, according to the promotional offer contracted, would benefit from a rebate of the management fee provided the customer was a member of a consumer organisation. The complainant had three securities accounts with the entity, two of which were attached to the fee rebate agreement. Although the complainant subsequently requested that the third account be attached to said agreement – with a record existing of the entity's commitment to do so – this did not take place. Consequently, the Complaints Service concluded that the entity had acted incorrectly on not applying the fee rebate agreement to this third account as from the date on which it was demonstrated that the client contacted the entity to make the corresponding request.

R/18/2017: the claimant disagreed with the overdraft fee charged to their account. The entity applied a penalty to the client for failing to comply with the commitment of a minimum period required in the promotional campaign from which the client had benefited with the subscription of an investment fund. According to said commitment, for a period of 24 months subsequent to the bonus being credited to their account, the client would be unable to perform any redemptions of the units (other than automatic redemptions of income funds, in accordance with the provisions of their prospectuses), or outward transfers to other entities that entailed a reduction in the balance invested in investment funds with the entity existing at the time the bonus was received. However, this case had a unique feature in that the redemption which triggered the penalty was the result of exercising a free redemption right granted to the complainant as a result of a modification of essential elements of one of the funds attributable to the entity itself. Charging the fee penalising the complainant was therefore classified as bad practice.

Summary of complaints relating to information prior to the purchase of CIS EXHIBIT 4

- Sufficiently in advance of subscribing the units or shares, subscribers must be provided with the **latest half-yearly report and the key investor information document (KIID)** free of charge and, on request, the prospectus and the latest published annual and quarterly reports.

  The entity may not replace these documents with information that may appear in the advertising of the CIS or provide it to the customer orally or by means of a summary.

- In the case of subscriptions arising from transfers of shares or units from another CIS, the target entity must provide the same documentation.

- The entity may demonstrate that the information has been given by keeping a copy, in a durable medium, of the **documentation signed by the unit-holder or shareholder** while they hold said status. The declaration signed by the customer that he/she has received the mandatory documentation is not sufficient.

– When the purchase is made by **telematic means**, an up-to-date version of the CIS documentation (the current KIIDs and prospectuses and the latest published quarterly, half-yearly and annual reports) must be published on the website and made accessible prior to completion of the subscription. In addition, the entity must be able to provide evidence that the customer has received said information.

  In order to substantiate the delivery of the information in a specific transaction, the opening of the document must leave a digital fingerprint confirming individual reading of the information. Therefore, the ideal way for an entity to provide evidence of compliance with its obligations to provide information to its customers is to submit to the CNMV's Complaints Service the log of the digital footprint generated by the transaction together with the pattern of how to interpret it.

  As in the case of other financial instruments, in relation to CIS subscriptions, the customer must be provided with the document containing the prior information, without which it should not be possible to continue with the subscription.

– In those cases in which the acquisition of the CIS involves certain advantages or **promotions**, the entity must provide, in addition to the mandatory information on the product's features and risks, full and clear information on the terms and conditions of the commercial offer.

4.4 Subsequent information

4.4.1 Securities

The information requirements of entities that provide investment services do not lapse once the product has been purchased or marketed. Accordingly, following the processing and execution of a securities purchase order, investors receive a confirmation of said execution with information on the conditions under which it was carried out (amount, date, time, settlement conditions, etc.). In addition, entities must provide clients with periodic information so that they may monitor the performance of their investments. Furthermore, while the contractual relationship between both parties continues, firms providing investment services are required to inform their clients of any events that may affect their investments in their role as depositories or managers of these investments.

All the information that entities must provide to their clients, both that resulting from legislative provisions or contractual obligations and that resulting from specific requests from clients, must be clear, comprehensive and appropriate.

➢ **Mandatory periodic information of the statements of clients' financial instruments or funds**

✓ *Frequency of periodic information*

Current legislation establishes that securities depositories of financial instruments must submit to their clients, on a durable medium and on an annual basis, a statement

of the securities deposited therein except when such information has already been provided to them in another periodic statement.[76]

It should be remembered that 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. Entities may therefore provide the information on a medium other than paper, but always using a medium that is appropriate to the context in which the activity is performed.

Therefore, investment firm clients that maintain financial instruments deposited at said entities should receive information on them at least once per year.

However, it may be agreed that information be sent more regularly (monthly, quarterly, etc.). In this case, the contract for the provision of the custody and administration service for financial instruments must establish the frequency with which the entity must make available and send information to its clients.[77]

✓ *Content of periodic information*

Financial instruments must be valued in the position statements. It is considered 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.

The Complaints Service received the following complaints relating to this matter, which were concluded with a decision favourable to the complainant with regard to the content of the information provided:

R/46/2017: the complainant claimed that the periodic statements did not provide the actual price of a security that had defaulted. Contrary to the contents included in the entity's pleadings, the statement submitted to the complainant reported that the price of 6.01 euros corresponded to the "last quoted price", which, given the security's situation, could lead to confusion for the client. Similarly, no part of the statement clarified that the securities had been de-listed since 1996. It is preferable and considered good practice for entities to provide additional information in the statements when it is important (in this case, the de-listing of the security for over 20 years).

R/109/2017: a similar situation occurred in this complaint, in which the share was no longer listed and it was therefore considered that the entity should have informed the complainant of this fact. In addition, the issuer had made public its

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

77 Article 5 of Order EHA/1665/2010, of 11 June, implementing Articles 71 and 76 of Royal Decree 217/2008, of 15 February, on the legal regime of investment firms and other entities that provide investment services, in the matter of fees and standard contracts; and Section 1 of Rule Seven of CNMV Circular 7/2011, of 12 December, on the fee prospectus and the content of standard contracts.

intention to make effective a squeeze-out at 3.50 euros per share, which the entity also failed to disclose to the complainant. It was therefore concluded that it would have been reasonable to value each one of the complainant's shares deposited in the entity at 3.50 euros and that it would have been good practice for the entity to have previously informed him/her that the squeeze-out would take place.

In these other cases, the entity acted correctly in relation to the information it provided to its clients:

R/421/2017: it was found that the information contained in the statements was correct as the complainant was informed of the market price reached by the underlying asset on different dates.

R/4/2017: Similarly, in this case, the entity's actions were classified as correct as it submitted to the complaint proceedings a series of position statements that established a value of the atypical financial contract subject to the complaint. These statements reflected the initial amount, the amount cancelled and the amount outstanding, as well as the valued balance and the interest received. It was therefore considered that the complainant could have been aware of the performance of their investment during the life of the product.

R/41/2017: a similar situation arose in this complaint, where the entity submitted to the proceedings a series of position statements that valued the complainant's investment in shares on different dates (one of them also informed about a reverse split). These statements reflected the number of securities the complainant held and the valued balance on the reference date.

Finally, there are cases in which the entities themselves acknowledge that they have made an error in the content of the information provided to their clients, as shown in the following complaint.

R/294/2017: the client complained that the entity misinformed him/her in the position statements relating to the securities deposited therein and that this affected their investment in a bond that had been redeemed. Although the position statements submitted by the entity reported the client's positions in their investments in accordance with current legislation, it also acknowledged the mistake made in another report entitled "Investment report" submitted to the client. It was therefore concluded in the complaint that the entity had made a mistake in this regard.

➢ 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.[78]

The obligations of these entities include maintaining their clients appropriately informed at all times and ensuring that all the information that they submit to their

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

retail clients, whether directly or indirectly (but highly likely to be received by them), is fair, clear and not misleading. The information must meet several requirements including being accurate, sufficient and understandable to any average member of the group to whom it is directed and it must not disguise, diminish or obscure any important items, statements or warnings.[79]

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

Therefore, entities that provide securities administration or depository services must establish in a contract the details of the main actions involved in the administration of the financial instruments in their custody and how instructions are to be received from their clients where necessary. In particular, the entity's procedure for dealing with a lack of instructions from the clients in connection with any subscription rights that might be generated by the securities in custody must be specified (and this procedure must in all cases be in the best interests of the client).[80]

Entities must provide their clients, with due diligence and promptness, information as to the procedure to be followed in corporate operations undertaken by companies issuing the shares that they hold and which require specific instructions from shareholders.[81] They must also inform about the consequences of said instructions not being received in due time and form by the entity providing the investment service. In all cases, entities must act as agreed with the client and always in their best interest.

There are other transactions which, despite not requiring specific instructions from the investor, do require, in the opinion of the Complaints Service, the depository to inform the client prior to execution. This is the case of splits and reverse splits. On this point, and although this matter is dealt with in detail below, the criterion of the Complaints Service has changed as it now considers it necessary for the depository to inform its client not only when seeking instructions, but also for corporate operations decided on by the issuer irrespective of whether or not these entail the right of the investor to make a choice.

In order to comply effectively with all these obligations, depositories must adopt measures and procedures that ensure that their clients receive information promptly, especially where they need to request instructions relating to these operations. This information must be given sufficiently in advance so that investors, where appropriate, may choose the option that best suits their interests. To this end, it is considered good practice for entities to establish a fast communication procedure with their clients, for example through the Internet or SMS messages.

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79 Article 209 of Royal Decree Law 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.

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

81 An example of a specific instruction may be the distribution of remuneration by the issuer among shareholders with the prior choice of receiving securities or cash.

✓ *Splits and reverse splits*

Further developing the aforementioned idea, until recently it was the criterion of the Complaints Service that the obligations of depositories of financial instruments only include informing about those operations which, having been decided by the product's issuer, confer upon the holder the right to choose from among several possible options. This criterion changed in 2016 when it was considered necessary to extend the obligation to include information about all corporate operations decided on by the issuer, irrespective of whether or not these entail the right of the holder to make a choice.

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

This new context would include, *inter alia*, 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 operation and, consequently, may adopt the measures that best match their interests should they deem it appropriate.[82] If no instructions are received from the shareholder to this effect, the depository must comply with the obligatory mandate incorporated in the corporate operation in question.

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, it should be indicated that both splits (increasing the number of shares by dividing the nominal value of the former shares by an equivalent amount) and reverse splits (reducing, by a specific proportion, the number of shares 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.

The following complaints were received in 2017 relating to the above matters:

R/607/2016: the securities to which the complaint related had undergone a reverse split as a result of a decision by the issuer whereby their number had been reduced from 1,000 to 500. Coincidentally, on the same day that the reverse split was carried out, the investor ordered the sale of their supposed 1,000 securities (when they actually only had 500), which was executed in error. Based on the aforementioned criterion (that the depository must inform the shareholder about this type of operation prior to its execution), it was concluded that the entity should have informed the complainant about its features and consequences before the reverse split.

R/714/2016: in this complaint, the complainant also thought that they had 1,800 shares when they actually only had 60 as a result of a reverse split decided by the issuer.

82 These measures include, for example, buying or selling shares when the number held is not divisible among the number of shares resulting from the operation.

R/735/2016: in contrast, in this complaint it was demonstrated that the entity provided the complainant with appropriate information about the reverse split forming the subject of the complaint.

✓ *Scrip dividend or flexible dividend*

A scrip dividend takes place in those cases in which companies decide to remunerate their shareholders by issuing and delivering new shares instead of the traditional payment of a cash dividend. In these dividends, the governing bodies of the issuer agree a share increase charged to voluntary reserves ("bonus issue") for a maximum nominal amount equivalent to the amount for paying the ordinary dividend in cash.

A scrip dividend is an example of an operation that requires precise instructions from the client by a specific deadline. Accordingly, once the issuer of the shares structures the operation, depositories are required to send an announcement to the shareholders, informing them of the type of operation in question (bonus issue), the rights they enjoy, the options and time periods available, the action that will be taken if they do not issue instructions, and any fees and/or expenses that they will be charged under each of these options. However, Spanish legislation does not require information about this type of operation to be sent by means of certified post or with an acknowledgement of receipt and therefore communications by ordinary post or by alternative means agreed between the parties will be deemed sufficient to comply with the legal requirements.

The Complaints Service considers that, bearing in mind the short deadlines normally granted by issuers to place instructions (particularly for the sale of rights to the issuer) and given the importance that investors should have as long as possible to give their instructions, entities must send the communications seeking instructions from their clients immediately after they become aware that the issuer has approved the programme. It would be appropriate for these communications to be sent, both in the case of written and electronic communications, with sufficient margin so that shareholders may receive this information before the first day of trading of the subscription rights (in the case of communications sent electronically, this would be, in any event, prior to the opening of the session on the first day of trading of the pre-emptive subscription rights).

For this purpose, the Complaints Service considers 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 in question and which, furthermore, allow them to choose to receive them by fast communication channels, such as email.

As regards the content of the announcement, in addition to inclusion of the terms set out in this heading, it must also inform shareholders of the different options available to them: i) participate in the capital increase and, therefore, subscribe the new shares; ii) sell the subscription rights[83] on the secondary market or iii) sell the subscription rights to the company at a fixed price.[84]

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83 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.

84 The commitment to purchase rights will only apply with regard to rights received by persons who are shareholders on the reference date and are registered as shareholders in Iberclear's registers, but not with regard to those acquired on the market.

Meanwhile, the client will be required to issue instructions as to their chosen option, by sending this instruction to their intermediary in due time and form, for the order to be executed accordingly. Nevertheless, if said instructions include a limit order for the sale of rights on a secondary market, shareholders must take into consideration that they bear the risk that their sell instruction might not be executed if the listed price of the rights does not reach the limit price for the sale. On other occasions, for market reasons, the rights may not be sold and would expire and be left with no value following the trading period. This would occur in general, unless other operational guidelines are established by the entity which have been communicated to the client in due time and form.

It is advisable for entities to include warnings or provisos in the communications sent to the shareholders, essentially with regard to the sale of rights, emphasising to their clients the risks involved in this operation. Such warnings or provisos may be phrases such as "if allowed by market circumstances".

It is important to highlight that it is common for clients to have more rights than necessary to subscribe a whole number of shares. In these cases, clients may order the sale of the surplus rights or may acquire more on the market so as to subscribe one or more shares. When the shareholder issues instructions to purchase more rights, they must issue specific instructions to the intermediary as to what is to be done with them (subscribe more shares, sell them before the trading period ends, etc.), since the risk otherwise would be that the rights might expire and the investment in them be lost. However, rights acquired in this manner may under no circumstances be sold to the issuer (this also occurs with investors who were not previously shareholders that acquire the bonus issue rights on the market).

In any event, it is advisable for investors to pay attention to the clear and specific information that must be provided by their intermediary about the consequences that may result from each of the instructions that the client may issue.

The communications sent by the intermediary must inform the clients of the consequences if it does not receive instructions from them by the deadline established for this purpose. In these cases, the intermediary generally subscribes the corresponding shares and sells any surplus rights on the market.

It is considered good practice for the entity to warn its clients that it will not sell surplus rights if the amount obtained from the sale on the market is lower than the corresponding expenses unless it receives instructions to the contrary.

Complaints in which investors disagree with the delay in receiving communications that are necessary for deciding on the option most in line with their interests, which may prevent them from placing the instructions that they wish, are relatively frequent.

R/125/2017: Although in these proceedings, it was demonstrated that the entity sent the complainant information on the conditions of the scrip dividend by ordinary post, said communication was dated subsequent to the first day of trading of the rights. It was therefore concluded that the respondent entity had acted incorrectly.

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 it was not possible to demonstrate that the alleged delay in the receipt of the communication was attributable to them.

R/711/2016: in this case, it was established that, as stated in the digitally signed contract, the complainant was included in the entity's virtual correspondence service, without the option of receiving communications by post. The documentation relating to the scrip dividend was therefore sent to the messages section that the client was able to access from the private part of the website.

✓ *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. These corporate operations are another example of entities' obligation to obtain specific and prompt instructions from the client in order to carry them out.

The client's instructions are aimed at informing the entity about how to proceed with regard to any rights that may correspond to them. For this purpose, entities must previously request precise instructions from their clients about what to do with the rights. As indicated above, Spanish legislation does not require this communication to be sent by means of certified post or with an acknowledgement of receipt and therefore communications sent by ordinary post or by alternative means agreed between the parties will be sufficient to comply with the legal requirements. However, the Complaints Service deems it good practice, both in the case of communications sent by post and those sent electronically, for them to be sent sufficiently in advance so as to allow the shareholder to receive them prior to the first day of trading of the rights. At any event, when the communication is sent electronically, it should be received prior to the start time of the first day of trading of the pre-emptive subscription rights. If it is sent on paper, it should be received the day before the start of said trading. It may therefore be concluded that there was bad practice on the part of the entity when there is no record that it sent information on the capital increase sufficiently in advance.

It is considered good practice for entities to establish fast channels of communication with their clients, such as email, SMS or any other system that allows communications to be sent quickly and effectively. This communication should inform about the following issues: i) the different options available to the shareholder for giving instructions in this regard; ii) the deadline for participating in the capital increase and, on said date, the time to which, as the case may be, they may give instructions to the entity – the deadline for giving instructions is usually one or two days earlier than the deadline for the capital increase; iii) how the entity will act in the absence of instructions from the shareholder by the established deadline; and iv) any other relevant issues, such as the existence of an assignment period for surplus shares or an over-subscription period, the conditions in which said period would become effective and the circumstances under which the shareholders could participate.

As indicated above, if the shareholder's instructions include a limit order for sale of their rights on a secondary market, they must take into consideration that they bear the risk that their sale instruction might not be executed if the listed price of the rights does not reach the limit price. On other occasions, for market reasons, the rights may not be sold and would expire and be left with no value following the trading period. This would occur in general, unless other operational guidelines are established by the entity which have been communicated to the client in

due time and form. It is therefore advisable for entities to include warnings or provisos in the communications sent to the shareholders, essentially with regard to the sale of rights, emphasising to their clients the risks involved in this operation. Such warnings or provisos may be phrases such as "if allowed by market circumstances". It is also important to highlight that it is common for clients to have more rights than necessary to subscribe a whole number of shares, in which case clients may order the sale of the surplus rights or may acquire more on the market so as to subscribe one or more shares. When the shareholder issues instructions to purchase more rights, they must issue specific instructions to the intermediary as to what is to be done with them (subscribe more shares, sell them before the trading period ends, etc.), since the risk otherwise would be that the rights might expire and the investment in them be lost. However, the rights acquired in this manner may under no circumstances be sold to the issuer (this also occurs with investors who were not previously shareholders that acquire the bonus issue rights on the market). In these cases, the entity must provide evidence that, at the time that the investor acquired the rights on the market, it informed the client about the consequences resulting from not receiving express instructions about what to do with them. This warning may be included in the purchase order for the rights.

In general, in the case of capital increases with called-up capital, if a shareholder that receives pre-emptive subscription rights does not give instructions before the deadline, the entity shall act as agreed in the securities deposit and administration contract (always in the client's best interests).

In this regard, and unless otherwise agreed in the contract, it is considered good practice that, in the absence of instructions from the client, the entity should unilaterally order the sale of the pre-emptive subscription rights before the end of the trading period (once this period has ended, the value of the rights from a financial, legal and corporate point of view disappears completely and it is therefore considered that this action would be in the shareholder's best interests).

Similarly, it is considered good practice for the entity to warn its clients that their surplus rights will not be sold on the market – unless an order to the contrary is received – in the event that the amount that may be obtained from the sale is lower than the expenses of the transaction.

With regard to the above, no incorrect action was found in complaint R/562/2016 as, according to the documentation submitted to the complaint proceedings and the sending date of the communications, it was considered to be demonstrated that the respondent entity sent its client full and sufficient information on the conditions of the capital increase before trading of the rights began.

R/169/2017: in this case, an exceptional situation arose that had a very negative impact on the trading of subscription rights in the market. The theoretical value of the right turned out to be lower than the minimum trading price (0.01 euros), which seriously affected the liquidity of this financial instrument during its trading period. The Complaints Service therefore considered that the entity, in the exercise of its obligation to act in its client's best interests, should have informed them of this exceptional situation in view of the clear risk – which eventually materialised – of not being able to sell the rights in the market. This information should have been offered, if not before trading of the rights began, at least once said trading had begun and the low real probability of selling the right became clear.

✓ *Squeeze-outs*

Not all corporate events generate different alternatives for the investor and an example of this are the cases of squeeze-outs[85] following a takeover bid. In these cases, it is not necessary for entities to receive instructions from their clients as this is a mandatory transaction for the shareholder (without prejudice to the entity's general obligation to appropriately inform its clients about all corporate operations that take place).

R/109/2017: on this occasion, it could not be demonstrated that the entity had informed its client about the nature of the operation prior to the squeeze-out.

✓ *Communication of other corporate events*

▌ Takeover bids. Information on voluntary exchanges. Early redemptions. Mergers

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.

The following complaints relate to this matter:

R/655/2016: the client complained that the entity had not informed them of the takeover bid that affected their ordinary shares in the foreign company Lafarge, traded on the Paris stock exchange (Euronext). In the context of this takeover bid, the shareholder had three options: i) exchange for cash, ii) exchange for shares of the company that launched the offer and iii) do nothing, in which case, they would be given cash by default. The complainant stated their interest in the exchange for shares of the bidding company, but as the appropriate communication was not received, it was not possible to place specific instructions and the complainant was given cash. The respondent entity itself acknowledged the situation and attempted to solve it by immediately purchasing the shares the client would have obtained if the appropriate instructions had been placed. Therefore, although it was demonstrated that the entity did not act diligently with regard to the takeover bid affecting the shares of Lafarge – which the Complaints Service considered incorrect action – the fact that the entity sought a solution and, furthermore, acted swiftly, was viewed positively.

R/631/2016: the client complained that they had not received sufficient information about an exchange/conversion operation of an issuer (Abengoa, S.A.). In view of the documentation reviewed in the proceedings, it was considered that the communication sent by the entity did indeed fail to include essential aspects of the transaction and that, as depository of the affected securities, it should have sent appropriate and relevant information on the conversion operation that was to be performed.

R/13/2017: the client complained that the issuer had redeemed their investment in advance. Although this issuer, in accordance with the provisions in the issue

85 Article 47 of Royal Decree 1066/2007, of 27 July, on the regime for takeover bids.

prospectus, was authorised to conduct early redemption of the securities referred to in the complaint, it was understood that it would be good practice for the depository to inform its clients in advance that said right was going to be exercised. In this regard, the entity submitted to the proceedings the written communication that it sent to the complainant in which they were informed that on the next coupon payment date, the securities referred to in the complaint would be subject to early redemption and therefore no incorrect action was found.

R/324/2017: the client complained that the entity had not appropriately informed them of the de-recognition of certain securities issued by Banco Popular Español, S.A. that were affected by the decision of the Fund for Orderly Bank Restructuring (Spanish acronym: FROB) of 7 June 2017 – reduction of share capital through cancellation of the outstanding shares. This case involves an exceptional decision of immediate compliance adopted by the banking authorities of the European Union. Nevertheless, the entity demonstrated that it had issued a statement of the complainant's account which showed the de-registration of the shares of Banco Popular Español, S.A. This document was considered sufficient given the exceptional nature of the situation.

R/189/2017: this complaint questioned the information provided on a merger with compulsory exchange of the securities of the absorbed entity for those of the absorbing entity. The entity submitted timely information on the results of the securities conversion operation and also sent the complainant by ordinary mail prior to the merger a letter informing them about the merger and the compulsory exchange that it entailed. Therefore, no incorrect action by the entity was found.

R/438/2017: in the merger of Caixabank, S.A. (absorbing company) and Banco de Valencia, S.A. (absorbed company), although the respondent entity informed the client by letter of the basic nature of the transaction, it was not possible to demonstrate that it had provided the client with documentation about how the exchange was executed.

➢ 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. Without prejudice to the legitimacy of entities to unilaterally close a position where this is established in the initial contract, the Complaints Service believes that the entity must be able to demonstrate that it clearly informed the client beforehand so as to give them the opportunity to contribute more funds or adopt the necessary measures to prevent said unilateral closure.

In contracts for differences (CFDs), the obligations assumed by the parties are generally laid down in the contract itself, which normally includes the client setting up and maintaining a series of margin calls which 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 measures.

R/207/2017: in this complaint, the client complained about the unilateral closure of many of their positions in the entity. It was verified that the contract contained a clause (Margin Call or Stop Out) which allowed the entity under certain conditions to close the positions if the investor ceased to maintain or did not provide the corresponding margins. However, the entity was considered to have acted incorrectly as it did not inform the complainant about the percentage at which the closure would be carried out, as required in Article 7.4 of the entity's regulations on the provision of investment services.

R/258/2017: the client complained that the entity increased the margins required without prior notice, which led to the closure of their positions because the ones they had were insufficient. In this case, it was demonstrated that an email was sent to the complainant warning them that temporary changes would be made to the margins required in their account and therefore the entity was not found to have acted incorrectly.

R/634/2016: no incorrect action by the entity was found in this case as it was demonstrated that it was the complainant, not the entity, that closed the positions of their account and that, furthermore, the complainant was able to choose the specific date to do so.

➢ Response to clients' requests for documentation/information

✓ *Requests 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 have not been kept or for any other reason), to clearly inform the client why they cannot be provided.

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.

This right to be informed and obtain documentation has limits. One of these is the time limit, which means that the entity is not required to provide information beyond the storage period set out by law.

In the matter of contract registration, 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, 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.[86] 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.[87]

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86 Article 218 of Royal Legislative Decree 4/2015, of 23 October, approving the recast text of the Securities Market Act.

87 Article 32 of Royal Decree 217/2008, of 15 February, on the legal regime of investment firms and other entities that provide investment services.

Supporting documents for orders must be kept for a limited period of time. The order register, which must also be kept by entities that provide order receipt and transmission services, must contain all the supporting documents for securities orders for a minimum period of five years.[88]

However, entities must not destroy the supporting documents for the orders with regard to which the client has expressed their 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. This situation was highlighted in the following complaint:

R/115/2017: on this occasion, the client complained that they had requested a copy of a purchase order and the entity had not provided it. The entity claimed that the five-year period from subscription of the financial instrument referred to in the complaint had elapsed, making it impossible for the entity to provide it. In this regard, it was indicated that entities should not destroy supporting documents for orders for those transactions with regard to which the client has expressed their disagreement before the end of the minimum storage period until said disagreement is resolved. It was therefore concluded that the entity had acted incorrectly as it was demonstrated that the complainant had requested a copy of the order before the end of the aforementioned period.

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/25/2017, R/57/2017, R/102/2017, R/185/2017 and R/380/2017).

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/564/2016, R/676/2016, R/763/2016, R/119/2017, R/290/2017, R/340/2017 y R/495/2017).

In contrast, in other complaints, the entity did prove that it had given or made available the requested documentation to the client (R/647/2016, R/661/2016, R/6/2017, R/67/2017, R/157/2017, R/235/2017 and R/455/2017).

✓ *Client requests for information*

As indicated above, entities are required to keep their customers appropriately informed at all times.

Clients sometimes complain that they have requested certain information, generally relating to investments or transactions with said investments, but that the investment service provider has not submitted that information to them.

As will be seen in the subsections below, there is a wide range of different cases of requested information and therefore the most repeated and relevant requests are highlighted.

88 Article 33 of Royal Decree 217/2008, of 15 February, on the legal regime of investment firms and other entities that provide investment services.

In this case, as for requests for documentation, there are also limits. One of these limits relating to the right to information, which justifies the fact that the entity does not comply with the request, refers to those cases in which the requests for information are lacking in detail or are clearly disproportionate and unjustified. In other cases, there are special circumstances that make it advisable not to provide the requested information. In every case, however, the entity must explain the grounds for its decision.

This was the case for the following complaints:

R/144/2017: the client complained that the entity had not complied with their request for information in which the complainant demanded all the documentation signed with the entity relating to their investment in participation shares, as well as the documentation reflecting the settlement of the purchase order, the history of the investments made in the last ten years in relation to all the client's fixed-income and equity financial products deposited in the entity, a certificate of accrued interest on the financial product, tax information for the last ten years, the appropriateness/suitability test performed on the client by the entity, a statement of their securities account from the year in which the product was subscribed up to the date of the request, and a certifiable communication of the successive structural changes in the entity and the redemption of participation shares.

In this case, the Complaints Service considered that the request for documentation relating to the last ten years was disproportionate as it required the entity to provide supporting documents for all the transactions performed, when the information obligation was met with the periodic information sent to the agreed address. The request for the other documentation was made after the end of the storage deadline and therefore no incorrect action by the entity was found.

R/104/2017: in this case, the complainant requested that the entity deliver all the contracts of any account or position that they had maintained with the entity. It was therefore considered that the request for information lacked detail and, in any event, was disproportionate.

R/147/2017: this complaint was resolved in the same way as the above complaint as the complainant requested documentation without any relevant aspect that would make it possible to identify the financial services or products referred to in the request and without an indication of the specific period of time to which the request related.

➢ Information on the purchase/sale price of a financial instrument

Entities provide clients with the specific figure for the purchase/sale price of a financial instrument at the time of the settlement of the transactions and, in addition, with the mandatory periodic information.

In other words, in the confirmations of the orders placed, entities set out the volume, unit price and total consideration. With regard to the volume, when the order is executed in tranches, information may be provided about the price of each tranche or about the average price. If information is provided about the average

price, information must be given on the price of each tranche if expressly requested by the client.[89]

In relation to this issue, it is common for claimants to disagree with the response received from the entity. Some cases are shown below.

R/749/2016: the complainant expressed their disagreement with the deficient information received on the purchase prices of some ordinary shares. The complainant needed this information to assess whether they were interested in selling certain assets in the market in 2016 and also for appropriately completing their income tax return.

On the basis of the documentation submitted to the proceedings, it was demonstrated that in October 2016, the client contacted the staff of the respondent entity and requested information of the purchase prices of the shares in certain companies listed in Spain. Later, in November 2016, as a result of the inaccuracy in the information provided in the first enquiry, the complainant once again made the request and finally, in December 2016, contacted the Valencia Consumer Centre to file a complaint about the inadequate response to their request for information.

For its part, the respondent entity acknowledged that the information provided to the complainant in the first instance contained errors, although it justified them on the grounds that the client had acquired the security subject to the complaint from another entity that had been absorbed by the respondent entity.

In this case, it was therefore demonstrated that the entity had not informed its client in due time and form about the purchase price of certain financial assets, which was even acknowledged by the entity itself. As a result, the Complaints Service classified the entity's actions as incorrect.

In the confirmations of the orders placed, entities must also report the total sum of the fees and expenses charged and must include, whenever requested by the client, a detailed breakdown of such fees and expenses.[90]

R/206/2017: the complainant stated that the entity had not informed them of the spread applied to the euro/dollar exchange rate in a sale of shares quoted in US dollars. The respondent entity submitted to the proceedings an information document provided prior to the execution of the order through which the client was informed, among other issues, about the spread applicable on a general basis to exchange rate transactions, which was specifically a spread of 2.5%.

However, in relation to the transactions subject to the complaint, the entity complained that the spread was 2.30% and, therefore, lower than the maximum figure communicated on a general basis. Even so, the confirmation of the execution only showed the final exchange rate applied in the transaction without any information of the aforementioned spread applied to the rate, which the Complaints Service considered an incorrect action.

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

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

R/250/2017: in this complaint, in contrast, no incorrect action was found as it was demonstrated that the entity sent a certificate to the client showing all the transactions in their securities account from the time it was opened up to the issue date of the certificate, including various items whose meaning was clarified at the end of the document.

➢ Fees and commissions

The information on fees and commissions that must be received by clients as a result of the execution of specific transactions or the contracting of services, both at the initial time of contracting and subsequently, is addressed in a specific section in this Report.

This section therefore refers to the information requested by clients on fees and expenses for the duration of the contractual relationship, which usually consists of clarifications about how they are calculated or explanations on the expenses charged in a transaction.

Entities are expected to provide their clients or potential clients with all the information on current fees on request. In the case of clients that maintain a contractual relationship with the entity, the latter must also comply with requests relating to current fees throughout the contractual relationship.[91]

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

R/747/2016: the complaints referred to the lack of detailed information on a fee charged by the entity as a consequence of a transfer of some shares as, although it was clear to the complainant that the fee was for 1%, the entity did not explain in detail whether the percentage was applied to the nominal amount or, otherwise, on what value of the shares and at what time said value was taken. The entity reported that it had applied the current fee prospectus, which established a charge of 1% of the amount of the transfer with a maximum of 200 euros per security class and with no minimum fee.

However, as the entity did not provide information, in this specific case, on the amount of the transfer, i.e., on the basis for calculating the fee, it was not considered demonstrated that it had informed the client appropriately.

R/146/2017: the complainant requested information on the fee charged on settlement of the product subject to the complaint. The entity submitted a copy of the Personal Banking communication, together with the breakdown of the redemption credit, which informed about both the sum redeemed and the amount of the fee. However, as the entity did not provide supporting information on the basis for calculation used for calculating said amount, it was not demonstrated that the entity had complied with the complainant's request for information with regard to the fee applied.

91 Section 4 of Rule Two of CNMV Circular 7/2011, of 12 December, on the fee prospectus and the content of standard contracts.

➢ Procedure for waiving maintenance of registration in the registry of de-listed shares in a situation of inactivity

In the case of shares of listed companies excluded from trading, their holders continue to be shareholders and continue to have all the rights inherent to this status recognised in the 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.

In these cases of exclusion, there are also situations in which the securities, in addition to being excluded from trading in the domestic market, are in a situation of inactivity. For these cases, the Spanish central securities depository (Iberclear)[92] has established a procedure that allows registered owners (investors) to request a voluntary waiver of maintenance of their registration in their favour in the detailed registry controlled by the participating entities.

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 Iberclear for the entry of a voluntary waiver to maintenance of the registration providing it is verified that the minimum period of four years has elapsed without any registry entry in the issuer's page opened in the Companies Registry.

In any event, it is recommended that investors should previously obtain information on the fees and expenses established by the entity in its current fee prospectus for handling these requests for the entry of a voluntary waiver to maintenance of the registration in the securities registries.

It is considered of interest and recommendable for entities to inform their depositors about the existence of this voluntary waiver and to facilitate its implementation. This situation was demonstrated in complaint R/46/2017.

R/264/2017: the entity informed the client that in order to waive maintenance of the registration, they needed to provide it with an original report from the Companies Registry certifying that the company in question had no registry movements in the last four years. The Complaints Service considered that the entity could not delegate to its client the responsibility for requesting a registry certificate that it was not known would be necessary. It should instead be the entity, without prejudice to the fees that it may charge for providing the service (which, in any event, must be set out in the current fee prospectus) that should apply for and submit, where necessary, the aforementioned registry certificate.

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

Therefore, on the basis of the reply letter that the entity's Customer Service Department gave to its client, it was considered that the information provided to the client was not adequate.

➢ Tax information

In the analysis of the complaints questioning the tax information that the different entities provided to their clients, the role of the Complaints Service is exclusively limited to assessing the entity's compliance with the information obligations laid down in securities market legislation, with the tax authority being responsible for assessing whether or not the tax treatment applied to the transaction is correct.

In short, the Complaints Service does not have any authority on tax matters and, therefore, cannot assess whether the content of the information provided by the entities is correct. This is a matter for the Tax Agency, as indicated in complaint R/715/2016.

However, and with regard to the provision of information, complaint R/544/2016 related to the tax information that the entity provided to its client about a securities trade. In 2015, after receiving the statement of the 2014 tax information on securities trades, the complainant noted that the statement contained incorrect data as it stated the gross amount of the transaction as the effective amount, without accounting for the expenses, which are deductible.

Without assessing whether or not the tax data provided to the complainant were correct, the Complaints Service considered that the entity had acted incorrectly as it did not comply appropriately with the request for information made by the complainant. The aim of said request was simply to clarify the situation, which the complainant believed was contrary to their interests. The entity merely suggested that the client should make a claim to the Tax Agency, when the source of the complaint was an action taken by the entity itself.

➢ Adjustments of the calculation agent in atypical financial contracts

Investors sometimes complain that the entity has not made the adjustments to the initial value (hereinafter IV) of the underlying or underlyings of atypical financial contracts that they believe to be correct.

This type of contract usually establishes that it is a third party other than the issuer – the calculation agent – that must determine whether the detailed adjustment situations have a dilutive or concentrating effect on the theoretical value of the share and, if appropriate, make the adjustments it deems necessary to the price of the share affected by such situations.

In resolving the complaints received in relation to this issue, it is clarified that the Complaints Service has the authority to rule on compliance with the formal requirements of conduct of business rules in securities markets that may be applicable to entities that provide investment services, but it is unable to interpret clauses included in the contracts signed in the provision of such financial services.

However, and purely for information purposes, some general ideas can be given about certain aspects that are of particular interest.

It is common for the necessary adjustments to be made in the IV of the underlying share or shares in the event that during the term of the investment, events occur which have a dilutive or concentrating effect on their theoretical value or events which alter the issuer's corporate situation.

A classic example of the adjustment of the IV of the underlying share arises when the share is affected by a capital increase with pre-emptive subscription rights, which produces what is referred to as a "dilution effect". From a financial point of view, this can be defined as the loss of value suffered by a company's shares as a result of the issuance of new shares: in this case, the loss of value following the issue is the result of the issue price of the new shares being lower than their fair value or, in the case of listed companies, the quoted share price.

This is what happens when new shares are issued at a price lower than the quoted price: the price of the shares following the increase is lower than their price prior to the increase. Shareholders are financially compensated for this fall with the theoretical value of the pre-emptive subscription right. However, investors who acquire structured products assume a fall in the price of the underlying share that is not linked to their stock market performance and it is therefore a common practice in this type of contract to make adjustments to the IV of the underlying shares which compensate the investor for the dilution effect.

However, it is not always appropriate to make adjustments to the IV of the underlying shares. Actions that do not normally give rise to an adjustment include the following:

✓ *Capital increases without pre-emptive subscription rights*

In certain cases, applicable legislation provides for the possibility that ordinary shares may be issued without pre-emptive subscription rights.

In these cases, one of the requirements that must be met by this type of issue in Spain is that the issue price of the new shares should match the fair value of the outstanding shares as determined by an auditor other than the auditor of the company's accounts.

Consequently, as in these cases the shares would not be issued at below their fair value, the usual practice is not to make adjustments to the IV of the underlying shares.

✓ *Payment of ordinary dividends in cash*

This case is also an event that harms the investor in this type of product as following payment of the dividend, there is a fall in the quoted price of the underlying share that is not related to its natural performance in the market. However, it is a common practice for ordinary dividends and other remuneration to shareholders similar to the payment of ordinary dividends not to lead to any adjustment.

The reason is that when valuing the call and put options that make up the structure of the product, a series of variables are taken into account, which include the expected dividend to be paid for the underlying share. In other words, payment of the dividend is already implicit in the price of the premium of these options.

✓ *Payment of ordinary dividends in kind (scrip dividend)*

In Spain, payments of dividends in kind are usually made through bonus issues. Bearing in mind that this type of capital increase harms the investors in the structured product and the option contract, since they entail, from a financial point of view, a dilution effect (and therefore the shareholder has the corresponding pre-emption subscription right, referred to in this case as the free allotment right), it would be logical to think that the corresponding adjustment should be made in the IV of the underlying asset.

However, it is important to bear in mind that the final objective of this increase is to remunerate the shareholder by replacing the traditional payment in cash by a payment in the form of shares. As already indicated, the ordinary dividend – whether in cash or shares – has been taken into account when valuing the premium of the options making up the product's structure.

Finally, it should be noted that calculation agents usually take into consideration as reference any adjustments made by the MEFF (Official Exchange for Financial Futures and Options in Spain) in order to perform, or not, adjustments to the prices of the underlyings of their derivative products or those products that incorporate financial derivatives into their structure.

R/1/2017: the client complained that there should have been an adjustment to the IV of the underlying share of their contract following an increase in the issuer's share capital. In this case, the complainant was informed, *inter alia*, that MEFF had not made any adjustment to the price of the underlying for the products traded on said market, whose underlying shares were shares from the same issuer, as a result of the event referred to in the complaint. A similar situation arose in complaint R/137/2017.

R/746/2016 and R/274/2017: although they both dealt with the same issue as the previous complaint, in these complaints the entity was found to have acted incorrectly as, in response to the request for information from the investor, it had not appropriately informed them about the possibility of adjustments being made, or not, to the reference price of the underlying shares.

In other cases, investors complain about the amount of the settlement of other structured financial products, as was the case in the following complaints.

R/58/2017: in this case, the client complained about the apparent incorrect action by the entity since it had not complied with a particular clause of the contract signed between the parties. However, in view of the contract and an analysis of the clause, it was found that the complainant had misinterpreted the clause and the entity was not deemed to have acted incorrectly.

R/559/2016: the complainant considered that the initial amount of their investment should be reimbursed in the settlement as the underlying had not depreciated by more than 50% with regard to the IV, as the complainant had interpreted the provisions of the contract. However, bearing in mind that the contract provided that the holder would receive the nominal amount invested less the percentage of the fall in the index from the initial level (which was the situation that occurred at maturity), the entity was not found to have acted incorrectly.

Summary of complaints relating to subsequent information on the securities EXHIBIT 5

- The information addressed to retail customers must be **fair, clear and not misleading** and must comply for this purpose with the requirement, *inter alia*, to be accurate, sufficient and likely to be understood by the average member of the group to whom it is directed and to not disguise, diminish or obscure important items, statements or warnings.

- The **frequency** with which customers must receive information on their investments is at least annual, although it may be more frequent if so agreed by the parties.

- The information that entities provide to their customers must have sufficient **content** so as to allow the customer to know the effective market value or, failing that, an estimate of the fair value of the financial instruments making up their portfolio on the reference date of the information so that customers may monitor the performance of these instruments in each period.

- Depositories must inform their customers of any **corporate operations or events that might affect the financial instruments deposited therein**, irrespective of whether precise instructions from the depositor are required. However, special care is required where such operations require instructions from the customer that must be carried out by a specific deadline. In these cases, entities must adopt quick communication procedures with their customers to ensure timely receipt of communications. This is the case, for example, for operations such as scrip dividends or capital increases with payment required from shareholders.

  When communications are sent by post, it should be noted that the law does not establish that they must be sent by certified post.

- Entities must **respond to specific and one-off requests for information/documentation** from their customers. This right is restricted to the time limit for retention required by law, which, in the case of contracts concluded with retail customers, is five years after the contractual relationship has ended, and in the case of supporting documents for orders, the minimum period is five years after the transaction is executed. Another restriction to the right to information arises in the case of requests that are manifestly unjustified or disproportionate, lacking in detail or those cases in which the entity has sufficient grounds for deciding not to respond to the requests.

4.4.2 CIS

➢ Periodic information

CIS shareholders and unit-holders are periodically informed of their position and the performance of the CIS in which they have invested.

In accordance with applicable sector legislation[93] and with regard to knowledge about the performance of the investment, current regulations establish that the yearly and half-yearly reports of 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. In addition, said reports will be sent by electronic means if requested.

Similarly, all these documents will be made available to the public in the places indicated in the prospectus of the CIS and the KIID.[94]

In addition, management companies of CIS, 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, together with any additional information established by the CNMV.

As indicated in the section regarding subsequent information on securities in general, the depositories of the shares of investment companies must submit a securities statement to their clients on a durable medium and at least on an annual basis, except where such information has already been provided to them in another periodic statement.

In this regard, implementing legislation provides that UCITS management companies, investment companies and, as the case may be, distributors, must send unit-holders or shareholders – until they no longer hold such status – free of charge 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. The shareholder or unit-holder may waive the sending of the yearly and half-yearly report in a separate and duly signed written document following receipt of the first periodic information. This waiver will be revocable.[95]

In the case of foreign CIS, the management company or the distributors in Spain must 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 the 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 by means of a separate and duly signed document following receipt of the first periodic report. Nevertheless, the distributor must send said

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

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

95 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.

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 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.[96]

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.

Related to this issue is the following complaint in which the clients complained that they had not received the periodic information on their CIS in due time and form.

R/228/2017: it was not concluded that the entity had acted incorrectly as it was demonstrated in the complaint proceedings that the entity provided the clients, by email, with a monthly report on the asset positions in the CIS subject to the complaint.

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

Therefore, whilst they remain investors in the CIS, their specific requests for information must be dealt with in the same terms as for securities and, furthermore, they must be informed about certain situations or circumstances that are characteristic of the functioning of the CIS.

➢ Attention of entities to requests for information from clients

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

This section may therefore include requests for copies of documentation or information related to the investment made. Some examples are found in these complaints:

R/48/2017: the client complained that the entity had not provided them with a copy of an earlier subscription order. In this case, given the date of acquisition of the securities subject to the complaint, the entity was not required to keep the copy of said order signed by the client. The respondent entity was therefore not found to have acted incorrectly.

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

This section also includes all requests for information that unit-holders submit to CIS distributors. In these cases, it was assessed whether the entity responded to the request for information and whether it submitted appropriate information or, as the case may be, demonstrated the reasons for not providing the information.

There is a wide range of information that might be requested. One example is the request for information on the history of subscriptions and redemptions of certain CIS referred to in the following complaint:

R/582/2016: in this complaint, no incorrect action was found as it was demonstrated that the entity provided the complainant with various statements that contained the information requested.

The information requested may also relate to the return of an investment firm over a certain period, as is the case of complaint R/360/2017, in which the entity was also found not to have acted incorrectly.

➢ Modifications to essential elements of investment funds

On a regular basis and under the scope of the authority granted by the corresponding legislation,[97] UCITS 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 KIID 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.

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

In contrast, 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 of the modification by means of a certificate issued by the CIS management company.[98]

Similarly, legislation establishes that wherever a redemption fee or associated expenses or discounts are established in the fund, unit-holders (when they are informed of this type of modification) may opt, during a period of 30 calendar days as from the submission of the communications, for full or partial redemption or transfer of their units, without them being subject to any redemption fee or expense, at

97 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.

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

the net asset value on the date of the last day of the 30 calendar-day period granted to this effect.[99]

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, failure to exercise the right of separation by the established deadline implies that the unit-holder wishes to maintain their investment. In relation to this point, the following complaints are of interest.

R/2017/2016: the complainant, in the framework of a merger of investment funds, complained that the entity had not informed them about the operation in due time and form. However, the entity demonstrated that the management company had complied with the requirements established for registration of this modification in the CNMV's registries, which included, as indicated above, certifying having informed unit-holders of the modification undergone by the fund. A similar situation occurred in complaints R/606/2016 and R/419/2017.

R/100/2017*:* the clients complained that they had not been notified about modifications to essential elements of the investment fund in the context of a guarantee renewal. The same circumstances were noted in this case as in the previous complaints and therefore the criterion referred to in the above paragraph was repeated.

R/382/2017*:* the client complained that the entity had not informed them about modifications to essential elements that affected the investment fund in which the client held units. However, the entity submitted to the complaint proceedings an email sent within the period for exercising the right of separation in which it informed the complainant of the expiry of the fund guarantee and the need to decide what to do in this regard and it informed them of the possibility of going to the branch in order to resolve this matter. The entity was therefore found to have acted correctly.

➢ CIS with different unit classes

As mentioned above, there are CIS that have several classes of units. The difference between them mainly lies in the minimum amount that the unit-holder must invest in order to access each of them and the amount of the fees applied (lower fees in cases that require a larger investment).

In those cases in which, as a result of various circumstances, such as new investments by the unit-holder in the fund, transformation of a single-tranche fund into another fund with two unit classes, merger of funds etc., the unit-holder reaches the minimum mandatory investment in order to access the more beneficial class (that with a lower fee), it is considered good practice for the entity to make an automatic transfer of the units to said class and to inform the investor.

99 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.

In this regard, on 15 March 2012, the CNMV 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 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 their investment.

R/754/2016: the client complained that the entity had transferred their units of one investment fund from one class to another without the client's consent. In this regard, the respondent entity demonstrated in the complaint proceedings that it had informed the complainant of the automatic transfer of their units to a class that was more beneficial for the client as the fees were lower. In the communication sent, the entity informed its client that the transfer would be made effective unless the entity received written instructions from the unit-holder to the contrary within one month from the date of the communication. This communication was sent not only by ordinary post, but was also made available to the client through the entity's application, which the complainant used on a regular basis. Therefore, having received no instructions from the unit-holder contrary to the transfer, the entity carried out the transfer. The entity was therefore found to have acted correctly.

➢ Liquidation of an investment fund

The dissolution and liquidation of an investment fund is not a common practice – as might be the case with fund mergers – although this option is provided for in current legislation[100] (as is the dissolution of one or several compartments of the fund) and generates a right to information for unit-holders.

A dissolution decision is adopted by common agreement by the CIS management company and the depository, except in the case of a dissolution resulting from the termination of the CIS management company, in which case it is adopted solely by the depository. The dissolution decision must be communicated immediately as a significant event to the CNMV and to the unit-holders.

R/129/2017: this complaint focused on the lack of information that the respondent entity provided to the complainant with regard to the liquidation of the investment fund in which they held units. According to the provisions established for this purpose, the entity was required to notify unit-holders of the dissolution decision. In this regard, the entity provided the proceedings with a copy of the communication sent to the complainant's postal address notifying them about the dissolution. It was also demonstrated that the entity had registered the corresponding significant events and publicised this process and it was therefore considered that the entity had acted correctly.

100 Article 35 of Royal Decree 1082/2012, of 13 July, approving the Implementing Regulation of Law 35/2003, of 4 November, on collective investment schemes.

R/54/2017: this complaint also focused on the information received as a result of the liquidation of the same investment firm, where it was also found that the entity submitted the correct information as it was demonstrated that it sent the communication on the significant changes in the fund.

➢ Calculations of return/gains

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.

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

R/677/2017: the complainant asked the respondent entity for information on how the return was calculated due to the fact that, as demonstrated, on a particular day the entity's website showed that the AER for the units in the fund's portfolio was 34.84%.

Following the request for information, the respondent entity sent a letter explaining the annualised return formula: ((Final net asset value/Initial net asset value)^(365-days))-1. However, the complainant maintained that the formula provided generated an annualised loss of 28.34% instead of 34.84% so they still did not know how the calculation had been carried out.

Regarding this issue, the entity claimed there was a misunderstanding between the two parties, but it was unable to clarify why its website showed the annualised loss of 34.84%. As a result, the Complaints Service concluded that there was bad practice by the entity.

Summary of complaints relating to subsequent information on CIS EXHIBIT 6

– In the case of both Spanish and foreign **CIS** marketed in Spain, unit-holders and shareholders must receive financial reports and position statements with the frequency established by law and they may, in certain circumstances, waive the right to receive such documents. In addition, their requests for information and documentation must be dealt with under similar terms to those for securities in general.

  Special situations may arise that are characteristic to the functioning of the CIS and which must be reported to unit-holders:

– **Modification to essential elements** that give unit-holders the right of separation must be clearly communicated sufficiently in advance so as to allow unit-holders to exercise their right for a period of 30 days.

– In the case of CIS with **different unit classes** differentiated by their minimum investment and the amount of their fees, and providing the minimum

required investment is reached, it is considered good practice for the entity to automatically transfer units to the most advantageous class. The unit-holder must know *a priori* how the management company will act in response to a reclassification.

– The **dissolution and liquidation** of an investment fund is another event that must be disclosed to unit-holders and disseminated through a significant event.

4.5 Orders

4.5.1 Securities

➢ Defects in form in completion of orders

Securities orders that contain the client's instructions must be completed such that both the ordering party and the entity responsible for receiving and processing the order accurately and clearly know the scope and effects.

The order must include the following content:[101] identification of the investor; identification of the type of security; purpose of the order (purchase or sale); execution price and volume, if limits or conditions are to be applied (if the client does not specify price, the order is deemed to be a market order and to remain in force until the close of the session); period of validity; securities debit or credit accounts; associated cash account; and any other necessary information depending on the channel used or market regulations.

The absence of any of this information sometimes forms the grounds of the complaint, as was the case in the following proceedings:

R/234/2017: the reason for the complaint filed by the complainant was a lack of information received prior to the contracting of a certain financial instrument. However, a review of the contractual documentation submitted to the proceedings revealed that not all the holders of the investment signed the purchase order, which, unless it can be demonstrated that the rules for operation are joint and several or indistinct, must be considered as incorrect action.

R/390/2017: the joint directors of a trading company generally exercise the power of representation of that company jointly, i.e., the intervention of at least two of them is necessary, in the manner set out in the articles of association.

In this complaint, it was concluded that there were formal defects in the completion of the order submitted, particularly the presence of the signature of only one of the joint directors.

No documents proving said joint representation were submitted to the proceedings. In any event, this restriction in representation is recorded in the Companies Registry. Therefore, the entity should have known said restriction, which was not documented

101 For further information on orders, you may consult the CNMV Guide on securities orders, which is available at the following link: http://www.cnmv.es/DocPortal/Publicaciones/Guias/ordenes.pdf

in the proceedings, and could have obtained the information from the Companies Registry or, as is usual practice, have documentation demonstrating the situation. In addition, there was other evidence of this joint control, such as the signing of a purchase order of another financial instrument by both joint representatives.

✓ *Orders without the client's authorisation*

The legislation applicable to entities as regards order execution establishes that entities must execute them according to the instructions given by their clients. When the client gives specific instructions about the said execution, the firm must execute the order following that specific instruction.[102]

Furthermore, applicable legislation on mandatory records establishes that client order records must contains the original copy of the order signed by the client or by the authorised person, when made in writing; the recording tape, when the order is made by telephone; and the corresponding magnetic record, in the case of electronic transmission. The entity has the obligation to keep in its records the document through which the sale was ordered for a minimum period of five years.[103]

In the cases shown below, entities that provide investment services executed transactions on behalf of their clients without having an order supporting said execution or, on the contrary, transactions were not executed even though the client placed specific instructions in this regard.

In accordance with the legislation referred to in the above paragraph, the Complaints Service concluded that in these cases,[104] the entity had acted incorrectly as it did not keep, for the legal period established for this purpose, a copy of the order allegedly given by its client (which the client does not acknowledge) and executed in the market

R/196/2017 and R/649/2016: the client acknowledged that they had ordered the respondent entity to sell some shares, but the sale was performed partially or under conditions that were different from what the client expected. If the respondent entity had submitted the order to the proceedings, it would have been possible to know the exact data of the order, specifically the number of securities to be sold and the type of order.

R/44/2017: although entities are required keep their clients' orders for five years, situations arise in which, due to the trust existing between the parties, oral orders are issued without proper documentary support.

In these cases, once a certain period of time has elapsed since the order was executed and the client has received the information document on the settlement of the

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102 Article 223 of Royal Legislative Decree 4/2015, of 23 October, approving the recast text of the Securities Market Act.

103 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.

104 R/714/2016, R/751/2016, R/752/2016, R/149/2017, R/150/2017, R/151/2017, R174/2017, R/176/2017 and R/297/2017.

transaction provided for in the legislation applicable to conduct of business rules,[105] the Complaints Service considers that the client has at least tacitly accepted the transaction.

R/583/2016, R/695/2016, R/482/2016 and R/130/2016: in cases where the client claims to have placed an order but the entity does not acknowledge it, in the absence of reliable proof that the order was placed or of specific instructions given by the client to the entity to perform a specific transaction, the Complaints Service is unable to conclude that the entity acted incorrectly.

R/12/2017: in contrast, it may be the case, as in this complaint, that the entity does not acknowledge that the client placed an order, but its evidence in the pleadings submitted to the complaint proceedings reveal at least a tacit acknowledgement of its existence. Said contradiction led to the Complaints Service concluding that the entity had acted incorrectly.

➢ Market, limit and at-best orders

An order is the mandate or instruction that the investor transfers to their intermediary in order to buy or sell financial instruments. There are different types of orders and they can be transmitted through different channels. The final return of the investment may be contingent on correct execution of a securities order.

In the trading of shares on the secondary market, there are three types of orders: limit orders, market orders and at best orders.[106] This is a key distinction because it affects the price of the order, as only in the first case (limit orders) is a client guaranteed a strike price (price that acts as the maximum price for the buy order and minimum for the sell order).

The only order that truly eliminates risk or uncertainty about the strike price is the limit order as it is the client who sets the price, without prejudice to the risk of non-execution of the order as a consequence of the chosen price differing from the market price. This issue is particularly important at times of 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 was made.

The nature and features of each type of order gave rise to various complaints in 2017:

R/641/2016: it is sometimes the case that the investor complains that they have 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 limit 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

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

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

prices do not necessarily match the market price immediately prior to the time at which the order was made or the closing price of the previous day.

R/593/2017: the subject matter of the complaint is repeated in that it relates to the quoted price of shares reported on the entity's website. According to the entity, the data would have been provided by its supplier (Bloomberg). The reported prices are for guidance only (they are not binding) and it does not therefore mean that the sale will take place at the price published on the website. According to the complainant's version, based on the price data of certain shares that appeared on the depositor's website, they placed a "market" sell order of those shares at the indicated value. The client then noted that a lower capital figure had been credited to them than that which would correspond if the indicated share price had been applied. The entity pointed out that it was clear that the last price that it could publish on its website was the closing price of the previous session until the market on which the security was listed opened. In any event, together with each one of the securities, the broker included the time and date of the last reported price so that the client was easily able to verify the time interval of the information that they were reviewing. The client could therefore have checked that the price reported on the website corresponded to the close of the previous session. In summary, it should always be borne in mind that the data displayed on the website are merely informative and for guidance only. In this case, the price that the client saw at the time they made the decision to sell was the closing price of the previous day. It was not therefore demonstrated that the entity had acted incorrectly with regard to the results obtained by the client on selling their securities at a price other than that which appeared on the broker's website.

Another particular feature of market orders is that no price limit is specified. Therefore, they are executed at the best price offered by the other party at the time the order is entered. They can be entered in both auction and open market periods.

The risk for investors in this type of order is that they do not control the strike price. If the order cannot be fully executed against the best order of the other party, the remaining part will continue to be executed at the next offered prices, in as many tranches as necessary until the order is completed. Market orders are usually executed immediately, albeit in parts. They are useful when investors are more interested in performing the operation than in trying to obtain a favourable price.

There were other incidents that arose in the processing of market orders. Clients are sometimes not aware of the manner in which their orders have been executed (particularly in cases in which the client places several orders at the same time) despite having given specific instructions in said regard and having received information *a posteriori* from the entity, in accordance with the legislation applicable to conduct of business rules.

R/346/2017: on one occasion, the client had received the corresponding transaction settlement document with a different order number than the original. However, the entity explained that this was due to the fact that a different order number was generated upon settlement of the transaction (T+2), although that did not mean that the original order had not been executed.

R/242/2017: on the other hand, as mentioned above, although market orders are executed at the prices available at the time of execution, it may be the case that the entity is not diligent when placing the order. In cases in which there is a delay in sending the market order, the strike price may vary substantially with regard to the

market price at the time the client placed the order. In this case, the client complained that their market order to sell shares had been executed at a lower price than the market price. The Complaints Service concluded that the entity had acted incorrectly as it was unable to demonstrate the exact time at which the client placed the order, and merely submitted the transaction execution time to the proceedings. This information was not relevant for clarifying the facts as the CNMV already held this information as the supervisory body of the secondary market.

R/291/2017, R/567/2016 and R/128/2017: although limit orders eliminate the risk or uncertainty associated with the strike price of the order, investors run the risk that their orders will not be executed quickly. When this happens and there are sudden movements in the market, the limit price may differ substantially from the market price, making it impossible for the order to be matched. In these cases, the entities cannot be deemed to have acted incorrectly for not executing the orders placed.

R/345/2017: limit orders work with a maximum price to buy and a minimum price to sell, which means that they will not necessarily be executed at the limit price of the order. When the investor sets a price limit for buying very slightly above the market price, this order will be matched at a price that is lower than said limit price, which should, in theory, be beneficial for the investor. However, in this complaint, this type of order was matched in several tranches and, although the investor benefited from a lower price than the limit price set in the order, the transaction generated more than one fee. This led to the filing of a complaint with the Complaints Service, which found that the entity had acted incorrectly given that the information on this matter set out in the maximum fee prospectus was deficient.

R/364/2017, R/571/2016 and R/330/2017*:* as stated above, limit orders operate with a maximum price for the purchase and a minimum price for the sale. In addition, the market does not allow entry of buy limit orders at a price above the upper limit of the static range or sell limit orders below the lower limit of that range.[107] 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).[108] This 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 Complaints Service understands that the entity must inform the client immediately, as occurred in these proceedings.

R/578/2016: the Complaints Service also receives complaints about non-executed securities orders but 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 Spanish Stock Market Interconnection System (SIBE), limit 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. However, they have the disadvantage that the order may take time to be executed or may not even be executed at all in the

107 Section 2 of Rule Five of the 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.

108 Trading segment for Latin American securities listed in euros.

event that the market price differs from the price set by the client. It was precisely this that became apparent in the context of the processing of a complaint about subordinated bonds admitted to trading on the SEND. According to available secondary market data, it was possible to confirm that over the period in which the sales orders were valid, no transactions had been brokered in the market with the securities subject to the complaint at a price equal to or higher than the exchange limit set by the investor.

➢ Electronic orders

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 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 as for those performed in person, when the entity intends to provide the service electronically it must have adequate resources to guarantee the security, confidentiality, reliability and capacity of the service rendered.[109]

Special situations may arise, such as the existence of communication problems that might interrupt the processing of the order, with the consequent disruption for the investor. However, these situations may not always be the responsibility of the company that provides the investment service.

When the respondent entity acknowledges a technical incident attributable to the entity itself, whether on its website or through a mobile application, 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 they had deposited with the entity (R/328/2017).

R/256/2017: there are other times when the entity corrects the alleged error. This is the case with this complaint, in which the investor complained that the entity withdrew money from their account claiming that it had previously been credited as a result of an error in the Forex/CFD platform. The entity, for its part, claimed that on the date indicated by the client there was an error in the quoted price of the CFD of the DAX and sums were credited to the accounts of certain clients that did not correspond to the actual situation of their transactions. A correction was therefore made to their balance, although some clients wanted to withdraw the improperly obtained profits.

The entity highlighted that there was a contractual clause whereby it reserved the right to cancel or amend any operation that may have arisen from an incorrect price as a result of a clear error or *force majeure*. Even though, as indicated at the outset, the entity corrected the alleged error, it was concluded that the entity had acted incorrectly as it failed to demonstrate that it had taken measures to prevent the error

109 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.

from recurring. It also failed to demonstrate that it had offered its client compensation for any possible tax damages that the error may, as the case may be, cause.

R/164/2017: once again, due to a computer problem in the entity's systems, the client was unable to sell certain financial instruments, with the consequent financial loss. In this case, although the entity acknowledged the existence of said technical problem, it decided not to financially compensate the complainant.

R/534/2016: on this occasion, the entity did not consider it appropriate to compensate the client, arguing that it would have been impossible to execute the order placed by the client, even if said problem had not existed, as it differed from the market price. Irrespective of the alleged financial loss, the Complaints Service concluded that the entity had acted incorrectly as it did not react proactively as soon as the technical incident occurred.

R/539/2017: 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 they may use other channels of communication, such as placing the order in person or by telephone. Therefore, if it can be demonstrated that the respondent entity informed the client with sufficient notice that it was not possible to place orders electronically or as soon as the problem arose and it offered reasonable alternatives so as to continue operating, the Complaints Service believes 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.

On the other hand, it may be the case that 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 provide the electronic trail left by the client when they 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, they were not connected, the Complaints Service cannot attribute incorrect conduct to the entity.

Similarly, if the client claims that the entity executed an order electronically without their consent, and the entity provides the computer record containing the traceability of the orders placed by the client, the Complaints Service cannot conclude that the entity has acted incorrectly.

➢ Contingent orders

Some entities that provide investment services offer their clients more sophisticated securities orders than those available on the market for all investors.

These are contingent orders that are entered in the market only if a specific condition is met, for example the financial asset reaching a certain price.

The best- known are the so-called 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. They are activated when the quoted price falls to a level at which the investor no longer wants to take risks and therefore wants to unwind the position.

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 is then explained to the complainants.

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 their 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 (R/265/2017). However, it is important to emphasise 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.

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 the market member with which it acts does not allow them since, once the order has been entered into the system, it will then be rejected. Specifically, on one occasion, the investor complained that its bank branch had not placed a stop loss order to sell ordinary shares, although it was possible to demonstrate that the entity's staff informed the client at that time of the channels available to perform said transaction, which did not include the bank branch (R/138/2017).

➢ Client instructions in corporate operations

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 issue instructions in the context of corporate operations carried out by companies whose shares they hold.

When the client issues instructions in due time, the entity is required to comply with them, in due time and form, even in the event that the client issues instructions on the last day of the period for acceptance. A failure by the entity to comply with instructions will be considered incorrect conduct.

✓ *Capital increases*

R/575/2016 and R/140/2017: when the client places a sell limit order relating to subscription rights and said order is not executed as it does not at any time match the market price, the Complaints Service believes that the entity cannot be criticised for the loss of value of said rights.

R/604/2016: on this occasion, although the client issued instructions before the deadline, the entity did not take them into account and, by default, applied a different decision to that expressly adopted by the investor, which had to be classified as incorrect action.

✓ *Voluntary exchanges of financial assets*

R/640/2016: in the context of a voluntary exchange of one financial asset for another, the entity needed to have the client's instructions, but, in this case, it was not demonstrated that the entity had obtained them. Bearing in mind that said exchange was eventually executed, it was considered that the entity had acted incorrectly as there was no evidence in the complaint proceedings that the investor had accepted the investment in the new financial assets.

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

In general, legislation[110] establishes that members of the official secondary market are required to execute, on behalf of their clients, any orders they receive for the trading of securities in the corresponding market. However, with regard to spot transactions, the entity may subordinate compliance with this obligation to the ordering party delivering the funds used to pay for the amount of the transaction.

This subordination referred to in the legislation may be incorporated into the securities deposit and administration contract.

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

With regard to this issue, it is important to bear in mind whether this type of incident happens on a one-off basis, in which case the responsibility may fall on the complainant, or whether it occurs systematically, which is a situation that the entity should avoid.

Entities may indeed make the processing and execution of their clients' securities orders contingent on the client providing the necessary funds. It may also be the case that, unless contractually obliged to do so, the entity allows transactions to be performed for an amount higher than the client's actual balance, without this in itself constituting an irregularity. The Complaints Service followed this line in its decisions relating to complaints R/731/2016 and R/586/2016.

Similarly, in complaints R/34/2017 and R/617/2016, 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. However, if the entity decides not to execute the transaction due to insufficient balance, the Complaints Service believes that it must promptly inform the client of the situation; otherwise, this would be considered a defect of information (R/135/2017).

110 Article 71 of Royal Legislative Decree 4/2015, of 23 October, approving the recast text of the Securities Market Act.

➢ Errors in the execution of orders on behalf of clients

When executing client orders, entities that provide investment services should adopt reasonable measures to obtain the best possible result for their clients' transactions, bearing in mind the price, cost, speed and probability of execution and settlement, volume, nature of the transaction and any other significant element for their execution.

Entities must also act with care and diligence in their transactions and execute them in accordance with their best execution policy. However, in those cases in which the client provides the entity with instructions, the entity must abide by the specific instructions given.[111]

In this issue relating to securities orders, as with other issues raised in the complaints, the Complaints Service considers that entities should make as few errors as possible and they must therefore control and organise their resources responsibly, adopting the pertinent measures and making use of the appropriate resources to perform their activity efficiently. 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.

The Complaints Service therefore welcomes those cases in which the respondent entity itself acknowledges the error made and offers the client a solution that financially compensates the damage resulting from unfortunate conduct by the entity.

Below are cases in which the entity committed an error which led to the filing of the complaint:

R/659/2016, R/632/2016 and R/667/2016*:* in these cases, the entity offered financial compensation for the error made, namely, not executing an order 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 at which the financial asset is quoted at a later time.

R/588/2016: on this occasion, the respondent entity, in the context of a capital increase, disposed of ordinary shares instead of selling subscription rights. The entity acknowledged the error and financially compensated the client by paying the cash difference between the erroneous sale and the subsequent repurchase of the shares.

R/50/2017: similarly, the investor complained about the failure to sell subscription rights in the context of the capital increase in which their instructions had been not to take part in the increase. The entity acknowledged this fact and financially compensated the complainant.

However, it should be indicated that the rectification of the errors committed by entities does not necessarily entail the absence of bad practice. In this regard, the rectification of the consequences by the entities is the result of a prior error, but that does not ensure that the error will not be repeated. Consequently, when an error is detected, the Complaints Service generally considers that there has been bad

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

practice and requests that the entities provide evidence that measures have been adopted in order to prevent a repeat of such practice, without prejudice to the Service welcoming the entity offering a solution to the client that was negatively affected by the error.

In addition, the legislation applicable to order executions establishes that entities must have in place order management procedures and systems that allow their prompt and correct execution and subsequent assignment so as not to cause losses to any client when transactions are performed by several of them or when acting on their own account.[112]

In the context of a sale of senior bonds, it was demonstrated that the entity, operating on its own account, offered its client a lower sale price than that available on the secondary market (SEND), which was considered incorrect action (R/569/2017).

In addition, in the context of a flexible remuneration programme of a foreign company, the investor had two options: receiving cash or receiving new shares. In this case, although the client had issued orders to receive shares, these shares were acquired with the cash that the entity had previously credited to the client in the form of remuneration, with the consequent taxing of said payment in cash. This action differs from the traditional scrip dividend in which the shares are automatically assigned, without taxation.

However, after reviewing the information that the share issuer made available to investors, it was shown that on this occasion there was the option of receiving shares without taxation. The Complaints Service therefore understood that the entity had not appropriately executed its client's instructions (R/229/2017).

➢ Delays in the execution of orders

Investors often complain of delays in order execution as a result of multiple reasons, some of which may be attributable to the intermediary.

R/21/2017: it was demonstrated in this complaint that the target entity had taken 14 days to execute a securities transfer order, which greatly exceeded the period provided for in the legislation in force at the time the order referred to in the complaint was placed.[113]

According to the applicable legislation at the time the events occurred, the owner of the registered securities may request the transfer both from the source and the target entity. It is the entity that receives the transfer order that must initiate it, in the sense that it sends the securities transfer order through the entity keeping the register to the counterpart entity.

In the event that the transfer is requested at the petition of the holder through the entity receiving the securities, the Service must communicate the request to the source

112 Article 221 of Royal Legislative Decree 4/2015, of 23 October, approving the recast text of the Securities Market Act.

113 Article 26 of the Regulation of the Sociedad de los Sistemas de Registro, Compensación y Liquidación de Valores.

entity in order for it to initiate the internal processes necessary to perform the transfer. This entity must confirm the transfer at the latest before the close of the business day following that on which it received the owner's instructions, either directly or through the requesting entity, in accordance with the contractual relationship existing between the source entity and its client.

Therefore, in accordance with the securities transfer procedures established by Iberclear, as a general rule, provided that the transfer request has been properly issued, the data sent by the source and target entities match and there are sufficient funds in the associated current account of the owners of the securities in order to meet the expenses for fees applicable to the transaction, the transfer process must be completed within three or four business days.

Improper processing of the order by the entity's agent was another of the reasons that led to a delay in execution:

R/619/2017: in this case, the delay was due to the actions of the agent, to whose office the complainant went in order to process their order for the sale of shares. The agent of the respondent entity, as claimed by the latter, used email (which was not the appropriate method) to send the order, which delayed its execution and caused a loss for the client.

Securities market legislation provides that when entities act as agents, they act at all times on behalf of and under the full and unconditional responsibility of the investment firms that have hired them.[114]

In addition, as a prerequisite to the appointment of agents, investment firms must have the necessary resources to effectively monitor their performance and enforce the internal rules and procedures of the entities that are applicable to them.[115]

➢ Incidents in transfer orders between accounts

A common source of problems relates to different holders of source and target accounts, which may lead to automatic rejection of the order. Some examples of these incidents were recorded in the following complaints:

R/621/2016: on this occasion, it was demonstrated that the information and data provided by the client were incorrect. Therefore, the Complaints Service found no incorrect action on the part of the entity, without prejudice to the general obligation of the entity to appropriately inform its clients and, therefore, warn about this issue as soon as the incident took place.

R/679/2016: the respondent entity did not make an order to transfer securities on assets owned by the complainant's children because the spouse objected. On the basis of the documentation submitted to the complaint proceedings, it was demonstrated that the spouses were divorced and that there was a separation agreement

114 Article 146 of Royal Legislative Decree 4/2015, of 23 October, approving the recast text of the Securities Market Act.

115 Article 146.3(a) of Royal Legislative Decree 4/2015, of 23 October, approving the recast text of the Securities Market Act.

which stipulated that parental authority over the children of both spouses would be shared in all functions. The Complaints Service did not therefore find that the entity had acted incorrectly.

R/98/2017: the respondent entity was unable to successfully execute a securities transfer order as the securities were blocked, since the initial depository of the securities had subcontracted this activity and, subsequently, the latter was absorbed by the respondent entity, which led to the shares being blocked. Although the entity acknowledged that it had not acted diligently as it was unable to prevent the blocking of the shares, the client eventually decided to postpone the transfer until collecting a dividend that affected the securities so as not to further complicate the transfer.

➢ Impossibility of executing an order according to the client's instructions

The legislation on order execution establishes that entities must execute orders according to the specific instructions[116] given by the client.

Despite the provisions set out in the legislation, it might be the case that the entity does not take into account its clients' instructions for performing certain transactions which, for various reasons, cannot be carried out.

The Complaints Service believes that diligent action by the entity involves providing clients with all the information necessary so that they may understand the problem that prevented their order from being executed.

This is the case of shares that are suspended from trading or delisted, in which it is clear that the entity cannot execute instructions, without prejudice to the obligation to appropriately inform its clients of the reasons why their orders cannot be carried out.

These information obligations become complicated when the situation affects foreign companies with regard to which their exact situation and the legal system of the home country are not known.

R/59/2017: this complaint addressed the inability to sell shares of a foreign company de-listed from the Portuguese stock exchange with the aim of cancelling the securities account in which they were deposited. The possibility provided for in Spanish legislation of a voluntary waiver to maintenance of the registration of those shares under certain circumstances is not applicable to these shares given that they relate to a financial instrument traded on a foreign market, as the applicable legislation is that provided for in the Portuguese legal system. The investor also complained about the information provided by the entity on the value of the shares subject to the complaint. In this regard, it was considered that the information provided by the entity was unclear and possibly misleading with regard to interpretation of the actual value of the shares as it did not clarify whether the reported price was the nominal value of the securities or whether it corresponded to another value. Furthermore, it did not include the valuation date or the method used to value the shares

116 Article 223 of Royal Legislative Decree 4/2015, of 23 October, approving the recast text of the Securities Market Act.

after they were de-listed. The Complaints Service understood that the entity had acted incorrectly with regard to the information that it provided to its client relating to the valuation of some shares.

R/261/2017: in another case that was similar to the previous one, the client had ordered the sale of some shares listed in Sweden, but the entity did not comply with said order claiming that it was not a member of the secondary market where they were currently listed. In this case, a corporate event had taken place whereby the Swedish company left the general market of Stockholm to become listed on the *Aktier Torget*, a market on which the respondent entity was not authorised to operate. However, it was found that this situation had not been reported to the investor at the time, so that the entity's action was classified as incorrect.

R/736/2016 and R/737/2016: the respondent entity had been unable to execute a market sell order relating to shares listed on the Alternative Stock Market (Spanish acronym: MAB). Although the information collected showed that the order was affected by the low liquidity of the issuer, the Complaints Service was forced to conclude that the entity had acted incorrectly as it was not demonstrated that it had maintained the client informed at all times of the reasons for the failure to execute the order even though the complainant had requested information in this regard.

R/293/2017: the respondent entity had not taken into account the precise instructions from a client with regard to cancelling a purchase order for ordinary shares. The reason for this omission was that the cancellation order had been sent when the secondary market was closed and it was therefore rejected and the shares were acquired on the following day, against the client's wishes. In this case, the Complaints Service also found that the entity had acted incorrectly as it contravened its client's instructions and did not warn them of the consequences of giving an order outside the market at the time when the client placed the cancellation order.

R/300/2017: similarly, when the shares to be sold are pledged by the entity, it is not possible to carry out the sale automatically, rather it is necessary to obtain the consent of the pledgee (the bank) and, once that has been obtained, to lift the pledge and process the order. However, in those cases in which the entity agrees to the sale of the securities, it must perform the procedures aimed at achieving the lifting of the pledge as quickly as possible. Otherwise, the Complaints Service will consider that the entity has acted incorrectly.

R/376/2017: in the context of the provision of a portfolio management service, clients delegate to the entity so that the latter should take investment decisions on the basis of a profile that has been previously studied and recorded in the contract. On this occasion, the Complaints Service received a complaint from a client because the entity had not sold one of the shares that formed part of the portfolio managed following a significant fall in its price, with the client required to order the sale and subsequently file a complaint about the entity's inaction. In this regard, as indicated above, the entity manages the investments following a mandate from the client and, therefore, it is the entity's decision whether or not to sell certain financial assets and it may not be criticised for a failure to dispose of a certain asset because of a fall in its price, without prejudice to the information obligations with which the entity must comply.

Another reason why an entity might not be able to execute a client's order is when the client gives instructions outside market hours. As is the case with the official

stock market, the segment of warrants, certificates and other products forms part of the Integrated Spanish Stock Exchange and trading in this segment does not include opening and closing auctions, with the market open (electronic trading) from 9:00 h to 17:30 h.[117] On one occasion, the client complained that the entity had not complied with an order to sell warrants placed at 17:29:56, although it was demonstrated that the order reached the market at 17:30:02, i.e., when it had already closed. Therefore, the Complaints Service found no incorrect action on the part of the respondent entity (R/748/2016).

➢ Unilateral execution of positions by the entity

On certain occasions, entities that provide investment services are forced to unilaterally close the positions opened by their clients in certain financial instruments. This possibility is provided for in the rules of operation established in the contractual documentation signed between the parties that supported the investment. Although, as will be seen below, this may be justified in some cases, the Complaints Service considers that, in any event, the entity must inform the client prior to investment about the situations in which it will act in this manner. It should be noted that the legislation applicable to firms that provide investment services establishes, in the field of conduct of business rules, that they must keep their clients informed at all times.[118]

The most common case of unilateral closure of client positions by entities is related to trading with certain 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 in the entity. It is therefore necessary to continuously monitor the position and, in some cases, if the underlying asset performs unfavourably and the client does not provide any new funds, the entity would be justified in cancelling the investment.

For example, in contracts for differences (CFDs), the obligations assumed by the parties are generally laid down in the contract itself. This usually includes, *inter alia*, the client's obligation to set up and maintain a series of margin calls that depend on the price of the underlying asset on the secondary market. In the event that these margin calls are exceeded, the positions will be closed if the investor does not provide the requested margins. Entities must therefore provide documentary evidence that the client was informed about these issues prior to the start of the transactions; otherwise, it will be concluded that the entity has acted incorrectly (R/84/2017, R/692/2016 and R/634/2016).

On another occasion, the Complaints Service also considered that the entity had acted incorrectly, not as a result of the rejection of a CFD order, as this was appropriately provided for in the contract, but as a result of not notifying the client about the reason for said rejection, which prevented the complainant from adopting the measures that they might consider appropriate in order, as the case may be, to correct the order (R/307/2017).

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117 Section 3 of *S.I.B. Warrants, Certificates and Other Products Market Model.*

118 Article 209.1 of Royal Legislative Decree 4/2015, of 23 October, approving the recast text of the Securities Market Act.

Another similar situation is that in which the respondent entity undertakes the unilateral sale of ordinary shares on credit, i.e., with money from a loan from the entity itself.[119] In this case, it was demonstrated that the client had been informed, prior to making the investment, of the cases in which the entity is authorised to close their position in shares (R/657/2016).

Summary of complaints relating to securities orders EXHIBIT 7

- Securities orders that contain the customer's instructions must be completed such that both the ordering party and the entity responsible for receiving and processing the order accurately and clearly know the scope and effects.

- Entities must keep **a record of customer orders** (original signed copy, recording tape or magnetic record, depending on the means used to process the order) for **at least five years**.

- There are complaints resulting from the investor's lack of knowledge of the **different types of orders and their consequences** (market orders, limited orders, at best orders and contingent orders).

- When it is **not possible to operate by telematic means for reasons attributable to the entity,** said entity must act diligently to restore the service, inform the customer sufficiently in advance or, if not possible, as soon as the interruption to the service occurs, and make other alternative channels available that do not involve a higher cost.

- Entities may make the processing and execution of their customers' securities orders dependent on the customer **providing the necessary funds**. It may also be the case that, unless contractually obliged to do so, the entity allows transactions to be performed for an amount higher than the customer's actual balance, without this in itself constituting an irregularity.

- Entities should make as few **errors** as possible and they must therefore control and organise their resources responsibly. The Complaints Service welcomes those cases in which the respondent entity itself detects the error, corrects it, speedily informs the customer and offers him/her a solution that financially compensates the damage resulting from unfortunate conduct by the entity.

- Different holders of the source and target accounts leads to automatic rejection of the securities transfer order.

- It might also be the case that the entity does not take into account its customers' instructions for performing certain transactions which, for various reasons, cannot be carried out. In these cases, the Complaints Service believes that diligent action by the entity involves providing customers with all the information necessary so that they may understand the problem that prevented their order from being executed.

119 Article 141 of Royal Legislative Decree 4/2015, of 23 October, approving the recast text of the Securities Market Act.

– Entities that provide investment services are sometimes forced to **unilaterally close positions opened by their customers** in certain financial instruments as a result of their operating rules. The reasons that justify the entity acting in this manner must be conveyed to the customer before performing the transaction in the contractual documentation that supports the investment signed between the parties.

4.5.2 CIS

➢ **Disputes with regard to the net asset value applied to the transaction**

The net asset value (NAV) applicable to subscriptions and redemptions of units of financial investment funds is unknown to the investor. The NAV will be that taken on the day of the request or the following business day depending of the provision set out in the fund's prospectus. Working days do not include, among others, days in which there is no market for the assets accounting for more than 5% of the total assets.

The prospectus must also indicate the procedure for subscription and redemption of units in order to ensure that the management company accepts the subscription and redemption orders only when they have been requested at a time when it is impossible to accurately estimate the NAV.

It is common practice for the prospectuses of investment funds to set out what are referred to as "cut-off times", so that requests received after this time are deemed to have been made on the following business day for the purposes of the applicable net asset value. Different cut-off times may be set depending on the distributor, which, in any event, will be prior to that established by the CIS management company on a general basis.

It is interesting to consider, both for subscriptions and redemptions, certain practical aspects such as fees, the existence of minimum investments or advance notice periods. All this information is contained in the KIID and the prospectus.

In the case of harmonised foreign CIS registered in the corresponding CNMV registry, the distributors in Spain must deliver to each unit-holder or shareholder, prior to subscription of the units or shares, a copy of the report on the marketing categories provided for in Spanish territory in accordance with the standard form published on the CNMV's website.[120] This delivery is mandatory and cannot be waived by the unit-holder or shareholder. 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*

120 Section 2 of Rule Two of CNMV Circular 2/2011, of 9 June, on information on foreign collective investment schemes registered in the CNMV's registries.

which they were performed, the number of shares/units subject to the transaction and the price and, where appropriate, the fees and expenses charged, and the exchange rates applied in any foreign exchange transactions performed.

The following complaints questioned the NAV applied to the transactions.

R/3/2017: this complaint questioned the NAV applied to the redemption of units in a CIS. The client had ordered the redemption of a fund in the context of a transfer and, therefore, had contacted the target company, which informed the client at that time of a redemption value which, in the end, was different from that obtained in the redemption of the units of the source fund.

However, on the basis of the documentation submitted to the proceedings, it was demonstrated that both the source company and the target company complied with the periods laid down by law for the transfer of the units. It was therefore considered that the information provided by the target entity was not incorrect, but rather an estimate, given that, as indicated above, the applicable NAV was unknown at the time the complainant placed the redemption order. In view of the above, the Complaints Service did not detect any incorrect action in this case.

R/723/2016: a similar conclusion was reached in this complaint, this time in the context of a redemption order not associated with a transfer. In addition, the investor was reminded that, with the aim of preventing the use of inappropriate practices, legislation[121] establishes that the NAV applicable to subscriptions and redemptions must be unknown by the unit-holder at the time of their redemption request and impossible to accurately estimate.

R/326/2017: similarly, in this case, the complainant stated that there had been an unjustified delay in the sale of several CIS which had caused them financial loss. However, a review of the documentation submitted to the proceedings demonstrated that the orders were executed in due time and form, namely, in accordance with the provisions of the respective prospectuses with regard to the applicable NAV and the settlement period of the transactions.

➢ Incidents in the subscription and redemption process

The subscription and redemption process for shares and CIS units must be recorded in an order that demonstrates the investor's decision to subscribe or redeem.

The request or order must state the identification of the CIS in which the investor wishes to subscribe or redeem shares or units, the amount or number of units that the investor wishes to subscribe or redeem, as well as other information of interest. In the case of transfers, the source fund and the target fund must also be identified.

Complaints were resolved in 2017 in which the entities executed transactions on behalf of their clients without having an order supporting said execution or, in contrast, transactions were not executed despite having specific instructions from the client.

121 Article 48.2 of the Regulation of Law 35/2003, of 4 November, on CIS, approved by Royal Decree 1309/2005, of 4 November.

In several complaints, the Complaints Service concluded that there had been bad practice on the part of the entity as it had not kept the orders given by the client even when the legal storage period had not elapsed.

In this regard, in complaints R/228/2017, R/230/2017, R/231/2017 and R/232/2017, the Complaints Service had to conclude that there had been incorrect action by the entity as a result of not keeping the orders given by the client. As mentioned in previous sections, entities are required to keep orders for a specific period. The respondent entities in these cases were unable to demonstrate that they had done so.

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/674/2016, the investor complained that they had been unable to redeem their investment fund units that were placed as collateral for a credit transaction. In this case, it was considered 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 or prior extinction of the cause of the pledge, i.e., cancellation of obligation that gave rise to it.

R/61/2017: in this case, the entity did not comply with an order to cancel a previous transfer order since when it received that order, the transfer had already been carried out, and the units of the original fund had even been redeemed. However, the Complaints Service had to conclude that the entity had acted incorrectly as it had provided incorrect information to its client since when the client requested renewal of the order, the entity informed them that this was possible. This therefore generated false expectations about the result that the client might obtain with the new cancellation order.

In addition, 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.

That is why the Complaints Service welcomes those cases in which the respondent entity itself acknowledges the error made and offers the client a solution that financially compensates the damage resulting from unfortunate conduct by the entity.

In several cases, the entity offered its client financial compensation for the error committed, namely, not executing an order immediately, with the consequent financial loss, that is, the difference between the NAV at the time the order should have been executed and the NAV of the affected CIS at the time the order was eventually executed (R/420/2017 and R/205/2017). However, in such a situation, entities do not always offer financial compensation to their clients (R/222/2017).

In other cases, the complainant states that the entity has recognised an error in the processing of orders. However, when the entity submits its pleadings in the complaint proceedings, it does not acknowledge said error. As already indicated, the Complaints Service cannot base its conclusions on simple oral assertions that are not acknowledged by both parties, but must rely on the documentary evidence submitted to the proceedings.

Accordingly, in complaint R/391/2017, the Complaints Service was unable to conclude that the respondent entity had committed an error when it performed the redemption from an investment fund of 2,000 units instead of 2,000 euros (as the complainant claimed that they had ordered) given that the redemption order signed by the complainant submitted to the proceedings contained instructions to sell that number of units, even though the complainant insisted that that was not their intention.

➢ Transfers between investment funds and other CIS

CIS transfers are governed by the provisions laid down in Article 28 of Law 35/2003, of 4 November, on Collective Investment Schemes and, for matters not provided for therein, by general legislation regulating the subscription and redemption of investment fund units and the acquisition and disposal of shares in investment companies.

Withdrawing from a fund, even when reinvesting the resulting amount in another fund (which is treated differently for tax purposes), involves a redemption of the units of the source fund and a subscription of the units of the target fund. This operation is therefore subject to all general legislation on CIS subscriptions and redemptions.

The aforementioned 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 to the management company or distributor of the source fund, in a maximum period of one business day from the time it receives the notification, the duly completed transfer request.

The source company has a maximum of two business days following receipt of the request in order to perform the verifications that it deems necessary. Both the transfer of cash and transmission by the source company to the target company of all the financial and tax information necessary for the transfer must be performed as from the third business day following receipt of the request.

Similarly, both the deadlines established for setting the NAV applicable to transfer operations and the period set out for settlement of the operations are governed by the provisions in the prospectus of each fund for subscriptions and redemptions.

CIS transfers are generally 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, it should be noted 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.

In cases where more than one entity is involved, the Complaints Service requests clarifications from all the entities involved.

R/163/2017: in this complaint, it was demonstrated that the entity was unable to execute the transfer order for several reasons: firstly, because there were not enough securities available in the source fund as redemption of part of the units of this fund

was pending execution and, secondly, because there was the obligation to maintain a minimum of 1,000 euros in the source fund and execution of the requested order would entail breaching this requirement. 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.

On the other hand, in transfers between CIS, the transmission of a transfer request, the transfer of cash and the transmission of information between the entities involved in said transfer are performed through the SNCE, which is regulated and monitored by the Bank of Spain and only allows transfers in euros. Therefore, in transfers between CIS denominated in other currencies and with a different distributor or management company, the transfer to the target fund is performed through the SNCE and, therefore, cannot be performed in a currency other than the euro. Only when the source and target distributor or management company are the same is it not necessary to use the SNCE and, therefore, not necessary to perform this double currency exchange.

R/350/2017: in this complaint, the client complained that the entity had made a currency exchange in the context of a transfer between CIS where the source and target funds were both denominated in Canadian dollars. In this case, given that the distributor of both funds was the same, the Complaints Service understood that, given that in order to obtain the corresponding tax benefits it was not necessary to conduct the transfer through the SNCE, the currency exchange performed by the entity to execute the transaction had been unnecessary. It was therefore concluded that the entity had acted incorrectly.

R/457/2017: on this occasion, the client complained that the entity had not complied with their instructions to perform a transfer between CIS and, contrary to the client's wishes, the entity performed a redemption of a fund and the subscription of another, with the consequent tax impact of these transactions. It was demonstrated that the transfer requested by the client had been performed correctly, although the unit-holder had also requested a partial redemption of the target fund. It was this last transaction that generated the tax withholding performed by the entity. It could not therefore be concluded on this occasion that the entity had acted incorrectly.

R/222/2017: on this occasion, there was a delay in the processing of the transfer order due to technical problems acknowledged by the entity itself which meant that the transfer was not performed correctly by the required deadlines. Regardless of the delay, the fact of which was demonstrated, it was shown that under no circumstances could the net asset values claimed by the complainant have been applied. However, the entity was considered to have acted incorrectly in the delayed execution of the transfer order due to a technical problem that the entity itself acknowledged.

Summary of complaints relating to CIS subscriptions and redemptions EXHIBIT 8

– The process of subscribing and redeeming units and shares in investment funds is set out in the prospectus and in the KIID.

  The **net asset value** will be that taken on the day of the request or the following business day depending of the rule set out in the fund's prospectus. It is common practice to establish what are referred to as "cut-off times", so

that requests received after this time are deemed to have been made on the following business day for the purposes of the applicable net asset value.

In any event, the net asset value must always be unknown to the investor at the time of placing the order.

– The subscription and redemption process must be recorded in an order that demonstrates the investor's decision to subscribe or redeem. This order must identify the CIS to be subscribed or redeemed, the amount or number of shares or units to be subscribed or redeemed and other relevant information on the transaction.

In transfers, the source fund and the target fund must be identified. In order to avoid errors, it is advisable to provide the target entity with a position statement of the source fund as this contains all the information necessary to identify the fund from which the transfer is to be made.

4.6 Fees

4.6.1 Securities

➢ Prior information - Maximum Fee Prospectuses (MFPs)

There are no legal restrictions on the setting of fees by entities that provide investment services. Each entity freely decides the maximum rates for fees and expenses charged to their clients for the transactions and services that, having been accepted or definitively requested by the client, are effectively provided. The only requirement for the application of fees is that they are disclosed to the public. For this purpose, entities submit to the CNMV a fee prospectus that includes the maximum fees that the entity may charge its clients and which must be disseminated through the entity's branches and its website.[122]

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 information contains the full price the client must pay, including all fees, commissions, costs and associated expenses.[123]

In those cases in which the service provided by the entities, such as that relating to custody and administration of financial instruments, requires the use of a standard contract,[124] it must establish in a manner that is clear, specific and easily understandable for retail investors the items, frequency and amounts of the fees charged when

122 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 the legal regime of investment firms and other entities that provide investment services, on fees and standard contracts.

123 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.

124 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.

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.[125]

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 entity must inform the clients and give them 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.[126]

However, 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 aforementioned legal requirements.

The entity must be able to 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 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[127] is not sufficient to consider the entity's obligation to inform the client as fulfilled. Nor may this be considered a valid method or an alternative to the legal obligations that entities have to inform their clients of fees individually, expressly and in advance, as required by current legislation.

In accordance with these premises, the actions of the entities were considered to be incorrect in those cases in which no evidence was substantiated that the client was

125 Section 1(e) of Rule Seven of CNMV Circular 7/2011, of 12 December, on the fee prospectus and the content of standard contracts.

126 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 Section 1(e) of Rule Seven 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.

127 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.

provided with information on the fees applicable in the aforementioned terms (R/753/2016, R/105/2017, R/178/2017, R/189/2017 and R/271/2017).

On other occasions, the entity submitted to the complaint proceedings a communication made to its client on a modification of the fees, although said communication was not made with the minimum advance notice provided for in legislation (R/699/2016, R/106/2017, R/249/2017, R/288/2017 and R/341/2017).

On other occasions, in contrast, the actions of the entities were considered to be correct as they were able to demonstrate that they had provided information on the modification of fees applicable to certain transactions. These communications were made through a letter addressed to the complainant (R/691/2016, R/34/2017, R/71/2017, R/117/2017, R/180/2017, R/329/2017 and R/362/2017), through a communication to the client's personal mailbox on the entity's website, which the complainant acknowledged having received and which was submitted to the proceedings (R/101/2017); or the communication and computer record of the sending of communications with the identification number corresponding to the complainant were submitted to the proceedings (R/162/2017).

At any event, it would suffice for the entity to demonstrate that it had informed about the last change that affected the item applied, as was the case in the following complaint:

R/691/2016: the entity demonstrated that it had informed the client about the last modification made to the securities transfer fee, which had remained unchanged up to the date it was applied to the transfer subject to the complaint. There had been changes affecting other fees in the period between the last modification of the transfer fee until its application to the transfer subject to the complaint, but these in no way altered the transfer fee.

In the absence of a subsequent modification, the entity can provide evidence that it had provided the client with information on the applicable rates through the signed securities custody or administration contract or with any other document (R/601/2016, R/617/2016, R/29/2017, R/117/2017, R/159/2017 y R/303/2017).

R/329/2017: however, on this other occasion, the entity did not act correctly as, in response to a request for information submitted by the client on the fees applicable to their transactions, it took too long (one month) to respond to the request.

R/473/2017: the entity did not act correctly on this occasion either given that, in response to a complaint filed by the client expressing their disagreement with the charging of administration and custody fees, the Customer Service Department responded that it would credit the client with the disputed amounts and that it would start to apply a specific administration and custody fee in a period of one month from receipt of the response. In this regard, it was considered incorrect that the Customer Service Department's reply did not inform about the right to amend or cancel the contractual relationship with the previous fees applicable rather than the new fees.

With reference to the content of the communication that entities are required to send their clients informing about the change in fees, for the purpose of adequately informing the client, the communication should indicate the transactions that have undergone 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 their 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 this regard, entities are usually found to have engaged in bad practice when the content of the communication addressed to their clients about fee increases does not provide information on the right of separation that the client has if they disagree with the proposed changes, as well as any costs that may arise.[128]

Entities are also found to have acted incorrectly when the wording of the notification of the fee change may be misleading. There are times when an entity informs its clients of the general possibility to cancel contracts at no cost in a specific period if they do not agree with the new fees and, despite this, the entity applies the securities transfer fee when the client requests that the securities be transferred to another entity in order to end their contractual relationship with the current entity. In these cases, the Complaints Service deems it bad practice by the entity if the imprecise wording of the communication might lead the complainant to believe that no fee whatsoever will be charged either for cancellation of the securities deposit and administration contract or for the transfer or sale of the deposited securities implicit in said cancellation (R/278/2017)

In addition, 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, 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 or concluding the contract about the currency in question and the exchange value and applicable costs.[129]

Entities must therefore inform their clients in advance about the exchange rate and the applicable costs or, failing that, about the manner in which they would be determined and, in the event that the exchange rate used is not the market rate, about the spread applied.

R/245/2017: in this case, it was not demonstrated that information had been delivered on the applicable exchange rate either prior to entering into the investment service contract or at the time the order was given. In this regard, the entity submitted screenshots of the orders, both buying and selling securities, which included the exchange rates. These images contained an asterisk with clarifications about the exchange rate applicable to conversions from euros to another currency. However, as the screenshots were classified in the client's "Order history", this is information obtained subsequent to the order and therefore the entity was considered not to have acted correctly as this was insufficient to demonstrate that the information had been provided to the client in advance.

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128 R/598/2016, R/699/2016, R/11/2017, R/106/2017, R/249/2017, R/288/2017, R/341/2017, R/366/2017, R/442/2017 and R/444/2017.

129 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.

✓ *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.[130]

In the following complaints, the fees did not exceed the maximum amounts indicated in the fee prospectus, and therefore the aforementioned requirement was met: R/599/2016, R/117/2017 and R/327/2017, for intermediation in Spanish equity markets (receipt, transmission, execution and settlement); R/691/2016, R/747/2016, R/29/2017, R/66/2017, R/71/2017, R/117/2017, R/255/2017, R/266/2017 and R/366/2017, for the transfer fee; R/38/2017 and R/342/2017, for the dividend collection fee; R/303/2017 and R/362/2017, for the administration and custody fee; R/755/2016, for the securities exchange and conversion fee; and R/342/2017, for the fee for the redemption of fixed-income securities.

R/101/2017: in this complaint, the securities custody and administration contract provided that the custody fee would not be applied if a transaction was carried out in the calendar half-year in any market (clarifying that trades of pre-emptive subscription rights were not considered transactions for this purpose), while said fee would accrue to the amount determined by the security if said condition was not met. The client complained that the entity had charged the custody fee when it was not applicable. However, the entity submitted a copy of the statement of the complainant's securities account to the complaint proceedings demonstrating that in the half-year subject to the complaint there was only one sale of rights and various dividend payments.

With regard to the above, the Complaints Service did not find any incorrect action on the part of the entity as there was no transaction in the sense established in the communicated fees. As already indicated, the sale of rights was expressly excluded from the category of transaction and the receipt of dividends was not a market transaction, but a credit of the remuneration given by the listed company to its shareholders.

In other cases, the entities charged their clients a higher amount than the corresponding amount as a result of an incorrect calculation of the securities transfer fee (R/601/2016) or the securities custody and administration fee (R/767/2016, R/50/2017 and R/342/2017), although the entities acknowledged and regularised the situation by crediting the corresponding amounts to their clients' accounts.

R/293/2017 and R/314/2017: in these cases, it was concluded that there was incorrect action on the part of the entities, which inappropriately processed an order that generated fees which would have been avoided if the order had been processed properly.

R/299/2017: on this occasion, the entity acknowledged that it had committed an error in some of the fees charged to the complainant and therefore proceeded to regularise the situation. However, the entity did not demonstrate to the complainant the fees that had been incorrectly applied and those that had not, which, together with the error committed, led to the conclusion that the entity had acted incorrectly.

130 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 the legal regime of investment firms and other entities that provide investment services, on fees and standard contracts.

R/186/2017: the entity had acted incorrectly because, even though the complainant expressed their disagreement with the securities custody and administration fees whose rate was modified during the calculation period, the entity made no comment on the fees subject to the complaint and it did not provide details about their calculation that might demonstrate that they did not exceed the established maximum fees.

The rates or fees established in the prospectus are, at any event, maximum rates and the fees that are effectively applied may therefore be lower. Therefore, if the entity informs the client of the application of a lower fee, it must adjust the amount that it is going to charge for said information.

R/724/2016: the entity had sent the client an email offering a reduced deposit and administration fee for securities with no other charge. However, after some time, the entity no longer respected the offer and applied fees for securities trades and for collection of a coupon. Even though the entity argued that the exemptions were no longer in force, it was considered that it had acted incorrectly as it only submitted the aforementioned email to the proceedings. There was therefore no evidence that it had in any way informed the complainant of the alleged revocation of their rates. To the extent that this will involve an increase in the rates, this communication had to be made in the terms required by law.

R/76/2017: the client had a standard securities account and, subsequently, in the context of an entity's commercial programme, opened another securities account with special conditions in which the securities assigned to them by the entity under the programme would be deposited. The client complained that they had performed a series of transactions to which said conditions had not been applied. However, it was found that these transactions were linked to the client's standard account previously opened in the entity, to which the special conditions were not applicable. The entity was therefore found not to have acted incorrectly.

✓ *Clarity of wording*

The fee prospectuses must be written in a manner that is clear, specific and easily understandable for clients, avoiding the use of irrelevant or unnecessary concepts. In this regard, each section of the prospectus must include any explanatory notes that are necessary to duly inform clients.[131]

✓ *Accrual of the fee*

Fees accrued for the provision of ongoing services, such as securities custody and administration, advisory services or discretionary portfolio management, for periods that are shorter than the ordinary agreed settlement period will be billed in proportion to the number of calendar days during which the service is provided.[132]

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131 Section 2 of Rule Three and Section 3(f) of Rule Three of CNMV Circular 7/2011, of 12 December, on the fee prospectus and the content of standard contracts.

132 Section 2(a) and Section 3(b) of Rule Four of CNMV Circular 7/2011, of 12 December, on the fee prospectus and the content of standard contracts.

R/665/2016: it was considered correct for the entity to apply the portfolio management fee accrued up to the date of the complainant's request to cancel the contract.

➢ Securities custody and administration fees. Delisted and unproductive securities

There are frequent complaints as a result of entities charging custody and administration fees for securities after they have been delisted. 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. However, the Complaints Service considers that it is good practice in these cases for the depository of the delisted securities to choose not to charge administration fees for the securities when such securities are not only delisted (with no liquidity), but also unproductive, particularly those cases in which no procedure is applicable through which the client may de-register the shares from their securities account (see "Delisted shares: waiver" under the heading of "Subsequent information").

R/253/2017 and R/431/2017: in these complaints, the entities undertook not to charge custody fees to their client for as long as they maintained the delisted securities deposited with them. In addition, in the second of the aforementioned complaints, the entity demonstrated in the complaint proceedings that it had reversed the last fee due for this item.

R/681/2016 and R/210/2017: the entity demonstrated that it had returned the fees charged to the client.

R/17/2017, R/77/2017 and R/411/2017: the entity made no statement with regard to any refunds or future changes relating to the charging of fees.

R/224/2017: a different case would be the one in which although the securities are delisted, they are not unproductive, as in this case the issuer would continue with its usual activity and would merely have ceased to be listed. In these cases, it is appropriate for the entity to apply the custody and administration fee set out in its fee prospectus for securities that are not traded on a market.

➢ Operational cash account linked to the securities 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.[133]

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 secu-

133 Section 2(b) of Rule Four, of CNMV Circular 7/2011, of 12 December, on the fee prospectus and the content of standard contracts.

rities, 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 of the cash account are 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 and therefore the entity could charge fees for said cash account. However, this would be a purely banking fee and it would therefore correspond to the Bank of Spain, as the competent body in this matter, to rule on whether the fee applied to the cash account is correct or not (R/601/2016, R/618/2016, R/24/2017 and R/17/2017).

R/545/2016, R/20/2017, R/33/2017 and R/367/2017: in these cases, the entities engaged in bad practice on charging fees to their clients for maintaining a current account associated with the securities account when the sole purpose of said current account was to support the client's investments in securities.

➢ Securities transfers

Transferring securities is necessary for cancelling the contract/commercial relationship with the depository. Therefore, without prejudice to the freedom that entities have to set their rates, if the fee established for providing that service is excessively high, this might prevent or make it difficult for clients to terminate the contractual relationship. An excessively high transfer fee could even be identified as an abusive clause. It should be clarified that the CNMV is unable to decide on this hypothetical abusive nature, as this can only be done by an ordinary court of justice.

Therefore, the transfer fee may never serve as a penalty or deterrent and it may only be used to remunerate, in a proportionate manner, the service provided by the investment firm.

It is also important to highlight the need for securities transfer fees to be proportionate. In this regard and on the basis of the information obtained from the complaints, as well as the conclusions drawn from an analysis of the fee rates contained in the fixed part of the entities' fee prospectuses, at the end of 2016, the CNMV modified the regulations governing the rate applicable to securities transfers.[134]

In this regard, 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, where appropriate, a maximum amount in euros without the possibility of establishing a minimum amount. If the transferred securities are equity, the basis for calculation will be the effective value of such securities on the date on which the transfer is performed and, if they are fixed-income securities, the nominal value.[135]

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134 CNMV Circular 3/2016, of 20 April, amending Circular 7/2011, of 12 December, on the fee prospectus and the content of standard contracts.

135 Section 2(e) of Rule Four of CNMV Circular 7/2011, of 12 December, on the fee prospectus and the content of standard contracts.

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.

➢ Intermediation in equity markets

The first aspect that must be taken into consideration in this type of fee is that it is standard practice that for such operations the entity should include in its the prospectus two types of fee: firstly a percentage applied to the cash value of the operation, and secondly a fixed fee stated in euros, to be applied to all those operations where the percentage of the effective value involved in the operation is no greater than said fixed or minimum fee.

As a result, if as a consequence of the type of order given by the client the order is executed in several tranches, it is fairly common for the entity providing investment services to charge fees for each tranche.

This is not particularly significant in those cases where the percentage fee calculated on the basis of the effective value of each of the charges would result in an amount greater than the fixed or minimum fee established by the entity in its prospectus.

However, it is relevant where, as a consequence of the execution of the overall order in several tranches, the percentage calculated on the basis of the effective value of each of the tranches is lower than the minimum fee established by the entity, since in such cases the fee that would ultimately be payable by the client for the execution of their order (the amount of the fixed fee, charged as many times as the tranches into which the order is divided) could ultimately be significantly higher than the amount that would have been paid if the order had been executed in one single tranche (a percentage of the total effective value or, where applicable, one single fixed fee).

This Complaints Service therefore views as good practice on the part of entities that, in those cases where the order given by the client is executed in several tranches, the fee ultimately applied in this regard is no greater than that which would have applied if the order had been executed in one single tranche.

The clarifications about this rate that are included in some fee prospectuses point towards this criterion as they make it possible to interpret that, when one single order is placed with regard to one single class of security, one single minimum intermediation fee will accrue, irrespective of the type of order given and the subdivisions carried out (tranches).

That is why in complaints R/45/2017 and R/345/2017, the Complaints Service considered that it was incorrect for the entities to accrue several minimum intermediation fee amounts in the context of one single order relating to one single security class that had been executed in tranches. This had meant that the fee finally charged – sum of the various minimal amounts – was higher than that which would have been charged if the order had been executed in one single transaction – a percentage of the effective value – as it was considered that this practice was not in line with the provisions set out in their fee prospectuses.

Summary of complaints relating to securities fees

EXHIBIT 9

– Entities are **free** to set their rates of fees and expenses with the sole requirement of publishing them and reporting them to the CNMV (the prospectuses of maximum fees are available at the website www.cnmv.es).

  Fee prospectuses must be written in a manner that is clear, specific and easily understandable for customers, avoiding the use of irrelevant or unnecessary concepts. They must set out unambiguous descriptions of the different items and include explanatory notes with clarifications or examples of the transactions that may fall within this scope of the items that give rise to the fee.

– Customers should be aware of the fees that they will have to pay before the start of the commercial relationship, given that they affect the return on their investment. This information is included in the financial instrument custody and administration contract. This contract establishes the items, frequency and amounts of the remuneration when these are lower than those established in the fee prospectus. Otherwise, said prospectus will be delivered and the **acknowledgement of receipt of the customer** will be kept.

– In the event that the rates are **modified upwards**, the customer must be previously informed and given a minimum period of one month to amend or cancel the contractual relationship, with the old rates, rather than the new rates, being applicable during this period.

– In the case of the rates for the provision of ongoing services (securities custody and administration, advisory services or discretionary portfolio management), periods that are shorter than the ordinary agreed settlement will be billed **in proportion to the number of calendar days during which the service is provided.**

– The CNMV'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 customer may de-register the shares from his/her securities account.

– **Transferring securities** is necessary for cancelling the contract/commercial relationship with the depository. Therefore, without prejudice to the freedom that entities have to set their rates, if the fee established for providing that service is excessively high, this might constitute a breach of the rights recognised in favour of consumers by consumer and user legislation.

  A transfer fee that is too high might be an obstacle to the investor's right to terminate a service agreement and may even be identified as an abusive clause. However, this hypothetical abusive nature can only be decreed by an ordinary court of justice and not by the CNMV.

– The item of custody and administration of financial instruments contained in the fee prospectus will include both the maintenance of the securities

account, together with the maintenance of the **operational cash account** in the event that this is exclusively linked to the securities account.

– **Brokerage in equity markets** usually includes two types of fee: a percentage fee, calculated on the cash amount of the transaction, and a minimum fixed fee, quantified in euros, which is applied to all transactions in which the percentage of the cash amount of the transaction does not exceed said fixed amount or minimum fee.

When **the order is executed in several tranches**, it is usual for the intermediary to charge fees for each of these tranches. This is not particularly relevant in those cases in which the percentage rate calculated on the cash amount of each of the tranches gives a result higher than the fixed or minimum rate established by the entity in its prospectus. In other cases, the fee that customers must eventually pay for executing their order – the amount of the fixed fee charged as many times as the tranches into which the order is divided – may be substantially higher than what they would have paid if the orders had been executed in one single tranche. In these cases, it is considered **good practice** for the fee applied to be no greater than that which would have been applied if the order had been executed in one single tranche.

4.6.2 Investment funds

➢ Prior information - Full prospectus and KIID with the items and maximum percentages

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

Investment fund management companies and depositories may receive management and deposit fees, respectively, from the fund. Furthermore, management companies may charge unit-holders subscription and redemption fees and may establish subscription and redemption discounts in favour of the funds themselves.

The prospectus and the KIID must contain the method of calculation and the maximum limit of the fees, the fees effectively charged and the beneficiary of the fees.[136]

Consequently, any information that is included in any other document must match the conditions and characteristics established in the fund's prospectus.

➢ Items 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 it. They are calculated as a percentage of the invested capital, reducing the amount invested in the case of subscription or the disinvested

136 Article 8 of Law 35/2003, of 4 November, on collective investment schemes.

capital at the time of redemption. The redemption fee sometimes varies depending on the time for which the units have been held in the fund. Both fees are optional and, therefore, it depends on the fund as to whether or not they are established in its prospectus.[137]

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.

The subscription and redemption fees in real estate funds may be no greater than 5% of the net asset value of the units.

✓ *Management fees*

The management fee is implicit, i.e. it is deducted from the fund's net asset value. The management fee in investment funds is established based on the assets, the yield or both variables.[138] 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 are 1.35% of assets and 9% of results in financial funds, while in real estate funds, the limits are 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, as is the case with the management fee, it is implicit, i.e., it is deducted from the net asset value and charged directly to the investment fund.

✓ *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. Nor

137 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.

138 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.

may they lead to additional costs for services inherent to the work of its CIS management company or its depository, as these are already remunerated by their respective fees.

➢ Redemption fees

Prior to their first subscription of an investment fund, investors must receive documents that include the KIID and, when requested, the full prospectus, and that contain information on the investment fund's fees in the aforementioned terms.

In order to provide evidence that unit-holders were duly informed about the applicable redemption fee and its exemptions, entities usually submit the KIID in force on the date when the fund was subscribed, duly signed. This document contains information about the redemption fee that could be established in this document as a maximum fee, and refer to the full prospectus to obtain detailed information as to those cases in which said fee would be reduced or would not be applied (for example, because of the age of the units).

As a result, the information set out in the KIID and in the full prospectus determines, in principle, the applicable redemption fee and the exemptions from this. However, consideration must also be given as to whether modifications have been made to the redemption fee after subscription by the unit-holders and prior to the moment of redemption, such that a fee other than that initially agreed would be applicable.

Bearing in mind the information set out in the above paragraphs, the fee applicable at the moment of redemption is determined, and this must coincide with that ultimately charged to the unit-holder by the entity.

In response to complaints about the lack of information on the applicable redemption fee, the entity demonstrated that it had duly informed the investor by submitting a signed copy of the KIID (R/616/2016, R/426/2017 and R/437/2017). However, in complaint R/306/2017, although the entity submitted a copy of the KIID allegedly delivered to the complainant, it was not signed by the complainant. It was therefore not demonstrated that the entity had delivered this documentation to its client and, therefore, that it had informed them about the redemption fee disputed in the complaint.

R/407/2017*:* in this complaint, it was considered that the entity had not acted correctly as it was demonstrated that the information relating to the redemption fee for some foreign CIS set out in the KIID did not match the fee that was eventually applied by the entity in the redemption subject to the complaint.

✓ *Transfers between CIS*

A transfer of an investment fund, even when it has special tax treatment, involves a final redemption in the source fund and a subscription in the target fund. Both redemption and subscription fees may therefore be applied as there is no specific transfer fee.

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 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 unit-holder, 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 allows the investor to know about the redemption fees that would be applied in the event of a transfer of their fund. In complaint R/262/2017, the entity did not provide any documentation demonstrating that it had previously informed its client of the redemption fee that they would be charged.

✓ *Liquidity windows*

The dates laid down in the fund's prospectus in which unit-holders may redeem their units without paying a redemption fee are referred to as liquidity windows. In other words, on the basis of the content of the fund prospectus in force at the time of subscription, exemptions to the redemption fee may be established when the redemption takes place on the specific dates laid down in the prospectus (liquidity windows).

In the case of transfers of units of funds whose prospectus provides for these fee-free days, it is considered that the source entity has acted correctly when charging the redemption fee provided for in the prospectus provided that it is demonstrated that the unit-holder ordered, through the target entity, the transfer of their investment fund on a date other than those established as liquidity windows in the fund's prospectus; that the prospectus of the source fund provided for a redemption fee which is the one that was charged; and that the source entity informed the unit-holder of said fee in the aforementioned terms.

With regard to the obligations of the target entity, it is important to highlight the obligation to inform the unit-holder of issues *ex novo*, i.e., arising as a result of the transfer itself (for example, the change that applies when the source or the target fund is denominated in a foreign currency).

It should be noted that for the application of redemption fees on transfers of funds with liquidity windows, the CNMV's Entity Authorisation and Registration Department[139] published guidelines which stated the following: "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".

The following complaints related to the issue covered by this recommendation:

R/262/2017, R/309/2017 and R/440/2017: the source entities received a transfer order and had two business days to perform the appropriate verifications and carry

139 CNMV Communication about application of redemption fees in transfers of guaranteed funds with "liquidity windows" dated 16 October 2007.

out the redemption. The liquidity window took place several days after the deadline applicable to the source entities for verification and redemption. Therefore, no incorrect conduct was found as when the source entities had to perform the redemption, the disputed fee was applicable.

R/268/2017: however, it was demonstrated in this complaint that the respondent source entity should not have charged the redemption fee. While the exact date the source entity received the transfer order could not be determined, the period during which it could have been received was established. Bearing in mind the possible period during which the order was received, the liquidity window would have coincided either with the date the order was received or on one of the dates within the verification period.

✓ *Essential modifications: right of free separation*

When there are essential modifications to the management regulations of an investment fund or, where applicable, to the prospectus or the KIID, current legislation establishes the requirement for the management company to set a period within which the unit-holders may redeem the units without any fee for this item in exercise of the right of voluntary separation.[140] 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.

Essential modifications may be the result of a substantial change in the investment policy or the results distribution policy; the replacement of the management company or of the depository; the delegation of management of the scheme's portfolio to another entity; a change in control of the management company or of the depository; the transformation, merger or demerger of the fund or compartment; the establishment or raising of fees; the establishment, raising or elimination of discounts in favour of the fund to be applied in subscriptions and redemptions; modifications to the frequency of calculation of the liquidation value; or transformation into a CIS by compartments, or into compartments of another CIS.

Unit-holders must be informed of essential modifications, giving them the right of separation, without deduction of the redemption fee or any charge, which they may exercise within 30 calendar days following notification. Entities may demonstrate that they have complied with this obligation of notifying unit-holders of these modifications by submitting to the CNMV the certification from the management company, together with a copy of the letter sent to the unit-holders. Entities are required to submit all this documentation prior to registration of the modification in question in the corresponding administrative register.

Said modifications will enter into force at the time of their registration.

R/100/2017: the unit-holder claimed that the entity had not informed them of the modifications enacted in the fund or the right of separation to which they were entitled. However, in the course of the complaint, it was established that, contrary to

140 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 complainant's assertion, the entity had informed them of those changes and of the right of separation available to them. Given that the unit-holder had not exercised the right of separation during the available period, it was considered that the client accepted the modification.

➢ Funds with different unit classes

There are investment funds that have several classes of units. The difference between them mainly lies in the amount that needs to be invested in order to access the class and the fees applied.

When, as a result of the amount of the subscription order, the unit-holder may access the more advantageous class of the investment fund – 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, with the unit-holder having accessed the funds through the less beneficial class, 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.), the unit-holder reaches the minimum mandatory investment required to access the more beneficial class, it is considered good practice for the entity to make an automatic transfer of its client's units to the more beneficial class and to inform the investor of said change.

In accordance with the CNMV Communication dated 15 March 2012 referred to in previous sections, it is 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, are eligible to access a more beneficial class and to automatically reclassify their units after having informed them that it would take such action. However, implementation of this good practice is optional, given that the regulations in force do not establish any provisions in this matter.

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 are able to access the most beneficial class is to request the transfer from one class to the other, with the value date being the date on which the aforementioned transfer is executed.

The following complaints relate to this matter:

R/93/2017, R/94/2017 and R/95/2017: these three complaints were submitted by three heirs of the same deceased. The complainants expressed their disagreement as the units of an investment fund had not been reclassified to the more beneficial class, although the complaints referred to different moments in time.

– At first, when the investment fund in which the complainant was a unit-holder was absorbed by another fund with different classes of units, the unit-holder obtained units of the class with the highest fees in the absorbing fund, despite the fact that the exchanged volume exceeded the minimum amount required to access the more beneficial class. When the entity informed about the essential modification entailed by the merger performed by the entity, it had informed that, following execution of said merger, the units of the

absorbed funds would become part of the less beneficial class, although investors could request a transfer to the class with lower fees in the event that they held the minimum balance required for access. However, there was no evidence that the unit-holder had given an order to transfer to that class.

It should be noted that in a fund merger, the delivery of the units corresponding to the unit-holders as a result of said merger may not be considered, in the strictest sense, a subscription, but rather an exchange of the pre-existing units. This is extremely important as entities, as indicated above, are required in the event of a subscription of units in a fund with several classes to provide the unit-holder with those units which are most beneficial to them providing all the corresponding requirements are met. However, in the case of a reclassification of units, although it is considered good practice for the entity to automatically reclassify the units, it is not obliged to do so.

– Subsequently, following the death of the unit-holder, the units with the higher fees were awarded to their heirs, even though each of them acquired, *mortis causa*, a sufficient volume of investment to gain access to the more beneficial class.

  In this regard, in an acquisition *mortis causa*, the heirs are subrogated to the rights and obligations of the deceased, which is why it cannot be considered, in a strict sense, that in these cases there is a subscription of the units, but merely a change in ownership. Therefore, there will be no obligation at that time for the entity to automatically reclassify the units towards the class that is more beneficial for the unit-holders, although it would be good practice for the entity to have informed the new owners of the units of the possibility of requesting that the units be transferred to the more beneficial class.

– At a later date, when the fund manager performed a general restructuring of the units of the investment fund, but did not reclassify the complainant's units, the entity argued that on the reclassification date the units were subject to an attachment that prevented their reclassification.

  However, the argument put forward by the entity was not considered sufficient to justify the failure to reclassify the units since, if the entity had been able to award to the heirs the units that were subject to an attachment order and, therefore, blocked (as indicated by the entity), it should also have been able to reclassify them to the class which, as a result of the amount of the investment held by the unit-holders of the investment fund, would have corresponded to them, without prejudice to the fact that they would remain blocked following reclassification. The respondent entity accepted this criterion.

R/420/2017: in this case, the entity subscribed a fund before the time it stopped providing the portfolio management service to the complainant.

As the fund in question had different unit classes, the entity subscribed the more favourable class for its client, bearing in mind that at that time it was providing a portfolio management service and the fund had a class aimed "only at investment portfolios of clients with discretionary management entrusted to the group by means of a contract concluded to that effect".

➢ Custody and administration for investment in investment funds

Distributors of Spanish investment funds may charge the unit-holders that have subscribed units through them fees for their custody and administration providing this is indicated in the CIS prospectus and the following requirements are met:[141]

– 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 distributor provides evidence of ownership of the units with regard to the investor.

– The general requirements on fees and contracts for the provision of investment and ancillary services are met.

– The distributor does not belong to the same group as the management company.

However, 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 occurs 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.

If the complainants expressed their disagreement with the custody fees charged by the marketing entity of foreign CIS, it would be ascertained whether 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 sets out the applicable fees.

In this block of complaints (R/83/2017, R/120/2017, R/121/2017, R/122/2017, R/123/2017 and R/124/2017), the complainants had invested in foreign CIS, some with a legal form of investment funds and others with a legal form of investment companies, registered with the CNMV and marketed in Spain. All these complaints were filed against the same entity.

In these cases, with regard to the charging of custody fees, as these were foreign CIS, the Complaints Service verified several issues in order to decide on the entity's actions: firstly, whether the entity that charged for said service was authorised to provide it; secondly, whether this fee was included in its fee prospectus; and thirdly, whether the entity actually provided the service.

– With regard to the first issue, it was demonstrated that the respondent entity was authorised to provide the custody service in general and custody of CIS in particular.

141 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.

– With regard to the second issue, the respondent entity set out the disputed fee in its fee prospectuses.

– With regard to the third issue, for foreign investment funds, it was demonstrated that the entity kept an individualised record of the units of the disputed funds and, for the cases in which the CIS subject to the complaint was a foreign investment company, the purchased investments are not units, but rather shares, which must, at any event, be deposited in a securities account. Therefore, in this case, the custody and administration service is always provided.

Consequently, the entity could charge fees providing these were in line with those set out in the respective maximum fee prospectuses in force. In addition, in these complaints there was not only a change in the location of the fee in the prospectus, but also an increase in the applicable fee, which should have been duly notified to the client, informing them of the corresponding right of separation that the client could exercise within a period of 30 days if they did not agree with the new fees.

Consequently, the Complaints Service considered that the entity did not act correctly, even though no evidence was presented to the proceedings that made it possible to determine the rate effectively applied, as a result of one of the following reasons: a) if up to the entry in force of the modification, the entity had charged the fee in force according to the prospectus, the entity would not have demonstrated that it had informed the client of the increase in the fee and, therefore, the aforementioned right of separation or b) if, in contrast, up to that time the fee that it charged was the new fee (prior to its entry into force), the entity would not have been charging the correct fee in accordance with the fee prospectus in force, but rather a higher fee.

R/254/2017: the complainant considered it inappropriate to charge a custody fee for the shares of foreign investment companies. However, the entity submitted the contract signed with the client which included precise information on the existence of custody fees for foreign CIS, which the entity was therefore entitled to charge.

➢ Exchange rate in transactions with CIS denominated in foreign currencies

As indicated in the fees for securities, in operations with CIS denominated in a currency[142] other than the euro, entities are free to establish the exchange rate to be applied to foreign currency sale and purchase operations; in other words the exchange rates are freely determined and may be modified any time, with credit entities and currency exchange establishments being entitled to apply in their operations any exchange rate they might agree with their clients, without prejudice to the obligation of the entity to publish the minimum buy and maximum sell rates or, where applicable, the only rates to be applied to operations involving less than 3,000 euros.

As a result, for this type of operation entities may apply exchange rates other than those officially published.

142 It is particularly common in foreign CIS to find unit or share classes denominated in a currency other than the euro.

Nonetheless, in accordance with standards of conduct,[143] the entity receiving the order must inform its client, sufficiently in advance of the execution of the investment service provision contract, or provision of the service itself (where this is earlier), of the foreign currency in question, the corresponding value and the applicable costs.

Entities must therefore inform their clients in advance about the exchange rate and the applicable costs, or in default thereof, of the way in which this would be determined. This Complaints Service has likewise established the criterion that if the exchange rate applied is not the market rate, entities should inform of the spread that they were going to apply to this rate.

The exchange rate applied by entities is not, strictly-speaking, a fee, although it may constitute a surcharge applied to the market exchange rate for the operation to be performed.

R/32/2017: the complainant received a communication informing them that "the exchange rate to be applied in this type of transaction would be based on different cut-off times during the session or the exchange rate in force in the foreign exchange market on the business day following the transaction", which was information found in the annex of the fee prospectus. However, as the said documents did not contain any distinctive information that would make it possible to clearly and specifically identify what exchange rate would be applied to the transaction, the Complaints Service found that the entity had not demonstrated that it had informed the complainant about the specific exchange rate applicable.

R/350/2017: with regard to a transfer of foreign investment funds denominated in Canadian dollars, it was not demonstrated that the respondent entity had informed the unit-holder, prior to performing the transfer, that said transfer required conversions from Canadian dollars to euros and from euros to Canadian dollars as the entity did not have a settlement account in its name denominated in Canadian dollars at the depository.

➢ Change in marketer

Some maximum fee prospectuses include the possibility of applying a fee for the processing of the registration or cancellation of foreign CIS balances due to a change in the marketer in which the balances or positions are to be registered. In these cases, the general legislation on fees referred to in the section on securities fees applies. Entities may not, therefore, charge clients fees or expenses that are higher than those set in their rates, apply more stringent conditions or charge expenses there were not provided for, or for items not mentioned, in their rates.[144]

R/173/2017: the complainant disagreed with the application of fees for a change in marketer of a Spanish investment fund and a foreign investment company. The entity had informed the client by means of an email of the modification in the fee for

143 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.

144 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 the legal regime of investment companies and other entities that provide investment services, on fees and standard contracts.

changing marketer, although this fee only referred to foreign CIS. The entity was therefore entitled to charge a fee for the change in marketer of the foreign investment company and, with respect to this investment product, it was verified that the amount charged to the complainant did not exceed the rate in force at the time of its application. However, as this item only referred to foreign CIS, no fee could be charged for the change in marketer of the Spanish investment fund. It was therefore considered that the entity had acted incorrectly on charging the fee with regard to this fund.

➢ CIS portfolio management

Clients sometimes contract CIS portfolio management services in which they make contributions and grant powers to an entity so that, for and on behalf of the client, it may perform transactions with CIS. The fees applicable for this service are subject to the legislation on rates in the same way as when the service is provided with regard to other securities.

Accordingly, entities that provide investment advisory services or discretionary portfolio management must establish rates depending on the amount of the assets under advice, the increase in their value or both items. An express indication must be given as to whether the two fees are complementary or exclusive. If this is not indicated, it will be understood that they are exclusive, with whichever is more beneficial for the client being taken as the maximum fee.[145]

R/610/2016: the complainant had contracted an advisory service with the respondent entity, which was exempt from fees, and a discretionary portfolio management service for investment funds, for which the corresponding fees were set. The complainant requested the cancellation and refund of fees charged by the entity that were incorrect (in the client's opinion), as the fee concept on the submitted statement clearly indicated that the fee was charged as a result of the provision of the portfolio management service and not for the advisory service.

As indicated in the section on securities fees, if at the start of the contractual relationship, remunerations that are lower than those of the fee prospectus are agreed, these must be set out in the standard contract itself. In the event that no such agreement exists, the entity must provide the client with the aforementioned prospectus and keep the client's acknowledgement of receipt.[146] The standard contract must provide that the customer shall be informed, at least one month in advance, of any increase in the rates and the consequent possibility of amending or cancelling the contractual relationship within said period, with the current, and not the new, rates applicable during said period.[147]

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145 Section 3(a) of Rule Four of CNMV Circular 7/2011, of 12 December, on the fee prospectus and the content of standard contracts.

146 Section 1(e) of Rule Seven of CNMV Circular 7/2011, of 12 December, on the fee prospectus and the content of standard contracts.

147 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 Section 1(e) of Rule Seven 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, the legislation indicated that clients should be informed of an amendment in 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.

In this case, the documentation submitted by the entity was not considered sufficient to prove that it had notified the complainant of the increase in the fees for investment fund portfolio management as it was a non-personalised standard letter, with no mailing date and which, furthermore, contained no information on the right of separation that the complainant might exercise in the event of disagreement with the proposed changes, or information on any costs that might arise in the event that said right was exercised.

As indicated in the above sections, entities may not charge clients fees or expenses that are higher than those set in their rates, apply more stringent conditions or charge expenses there were not provided for, or for items not mentioned, in their rates.[148]

R/234/2017 and R/440/2017: the entities demonstrated that they had informed the complainants of the existence of a CIS portfolio management fee by submitting the portfolio management contracts signed by their clients.

R/435/2017: the complainant had subscribed a CIS portfolio administration and management service and an advisory service. The entity demonstrated in the complaint proceedings that it had informed its client about the fees set for each one of these services by submitting the contract signed by the client.

R/202/2017: the complainant had contracted a discretionary portfolio management service for investment funds and did not agree with the modification of the fees charged for provision of the service. The portfolio management contract provided for lower fees than those established in the entity's fee prospectus and referred to the obligations established in legislation for increases in the fees agreed. With regard to this complaint, the entity demonstrated, by means of a communication addressed to the complainant, that it had informed its client about the rate increase with the necessary advance notice. However, the Complaints Service noted existence of a formal defect given that said communication did not make any reference to the right of separation that needed to be granted to the complainant or whether or not exercising said right had any costs for the client. In addition, on a subsidiary basis, it did not refer to the clause in the contract where the client's right of separation in the event of an increase in the applicable rates was explained.

R/214/2017: the client complained about fees charged as a result of the cancellation of a contract for discretionary management of portfolios that primarily invested in CIS. In this case, the entity had acted incorrectly because the item of fees for portfolio management cancellation was not laid down in the entity's maximum fee prospectus and was not therefore applicable.

Summary of complaints relating to CIS fees EXHIBIT 10

- In the case of **investment funds**, the fees are available in the prospectus and in the KIID.
- In transfer orders between investment funds in which the **liquidity window** coincides with the day the order is received by the source management

148 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 the legal regime of investment companies and other entities that provide investment services, on fees and standard contracts.

company, or within the verification period, the redemption fee cannot be charged, in accordance with the duty to execute orders under the best terms for the customer.

– The maximum fee prospectuses include the possibility of applying a fee for the processing of the **registration or cancellation of foreign CIS balances due to a change in the distributor** in which the balances or positions are to be registered. Entities may not charge customers 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 items not mentioned, in their rates.

4.7 Execution of wills

➢ Reporting the death to the entity and blocking of the deceased's securities accounts

Heirs or legitimate interested parties must report the death of the deceased to the entity as soon as possible. The ideal way to certifiably report the death of the deceased is to provide the death certificate. However, it must be the entity that determines which document or certificate it considers sufficient to provide evidence of the death.

Following notification of the death, the entity must block the deceased's financial instruments deposited in the entity. This blocking prevents other co-holders of the account – under the indistinct or joint and several system – or authorised parties being able to access the shares, investment fund units and other financial instruments owned by the deceased.

Firms providing investment services are therefore deemed to be acting correctly when they prevent the redemption of investment fund units or the sale of securities – or any other manner of making use of such instruments – by other co-holders (indistinct or joint and several) or authorised parties.

Consequently, in cases where the death has not been reported, firms that provide investment services must allow the other co-holders (indistinct or joint and several) or the authorised parties to have access to the securities deposited in the account.

Sometimes, the securities deposit and administration contracts or the portfolio management contracts signed with the entities contain detailed provisions with regard to the consequences resulting from the death of one of the owners.

In this regard, generic contractual clauses of the following type have been observed: "For all matters not provided for herein, the parties submit to the regulating provisions of the Civil Agency Contract and the conduct of business rules and information requirements established in Securities Market legislation".

In these cases, the provisions in the Civil Code and, more specifically, in Article 1732 therein will apply. This article establishes that one of the causes of termination of the mandate is the death of the principal.

Consequently, in accordance with this contractual clause, the client's death triggers the termination of the contract, although for termination to take effect on these grounds, the entity must know of said death.

Therefore, the powers granted to the agent (entity providing the investment services) under said contract remain in force for all effects until the heirs or persons with a legitimate interest, duly accredited, certifiably report the death of the principal (investor). Up to that moment, the entity is not liable *vis-à-vis* third parties for transactions that may be performed subsequent to the death and up to the certifiable notification of said death by the co-holder(s) or authorised parties in a securities account under an administration or deposit contract, or by the entity itself under a portfolio management contract.

In view of the above and, in particular, the manner of reporting the deceased's death to the entity, the following complaints may be highlighted:

R/603/2016: after the death of the account holder, the entity continued to perform transactions under a portfolio management contract. The complainant, the surviving spouse, believed that the entity had breached the obligation to block transactions and also the validity of the contract on stating that they had reported the death of the deceased and even requested the certificate of balances. For its part, the respondent entity claimed that the certificate was issued for information purposes only and that at the date of issue no proof of death had been provided.

In this regard, a discretionary investment portfolio (fund portfolio) management contract was submitted. Clause Seven of this contract (Other obligations of the client) indicated the following:

> *The client assumes the obligation to inform the Bank of any fact or circumstance that may modify the data provided for concluding this contract, such as a change of address or tax residence, marital status, marital property system, alteration of ownership or unrestricted availability of the securities that make up the portfolio, corporate dissolution or bankruptcy situations that affect the client. [...]*
>
> *As from this moment, the Bank is exempt from any liability for the transactions that may be performed with the securities and instruments of the portfolio after death or declaration or admission to processing of any bankruptcy or liquidation proceedings affecting the client, until such time as said circumstances have been certifiably communicated and proved.*

Consequently, the entity was not found to have acted incorrectly as on the date indicated by the complainant, the death had not been certifiably demonstrated, but was demonstrated months later upon submission of the death certificate. At that time, the entity stopped providing the portfolio management service and cancelled the contract.

R/131/2017: following the death of the successor, a redemption of an investment fund was carried out through online banking, ordered by a person authorised in the portfolio management contract. In accordance with a clause laid down in the portfolio management contract, in the event of the death of any of the owners, the contract would remain in force until the death was reported in a certifiable manner. At the time when the heirs of the deceased submitted the death certificate, as provided for in the contract, the units of the funds making up the managed portfolio were transferred to one single low-risk investment fund until the execution of the will was resolved.

In other complaints, it was demonstrated that the entity had acted correctly on not allowing the heirs of the deceased or the indistinct co-holders to access these securities accounts until completion of the process of executing the will (R/539/2016 and R/591/2016).

➢ Providing evidence of status of heir and exercising the right to information on the deceased's securities accounts

Entities must ensure that whoever claims to be an heir or legitimate interested party holds this status. They must prove it by presenting the following documents to the entity:

– Certificate of the General Registry of Last Wills and Testaments

– Authorised copy of the last will and testament or the declaration of heirs in intestate proceedings

Once the status of heir has been demonstrated, the heir may exercise their right to request information on the balances held by the deceased with the financial institution. The first information requested is the certificate of balances on the date of death.

If the status of heir is not demonstrated, the entity will act correctly if it refuses to provide any type of documentation and information to the applicant in this respect.

This matter was dealt with in the following complaints:

R/462/2017: in this case, the status of heir was not demonstrated and therefore the entity acted correctly on refusing to provide the applicant with the information requested. In these proceedings, the complainant requested access to certain information in her status as her father's heir. Specifically, she requested information on the units that her father held in the joint ownership system set up by the heirs of the deceased's mother (the complainant's grandmother), who had died prior to her father and who, in turn, had been declared the heir of her sister (the complainant's great aunt). This great aunt was the owner of some securities and investment funds deposited in the entity, with regard to which the complainant requested information. In this case, although the entity acknowledged that the complainant had demonstrated the status of her father's heir, it was not considered that she had demonstrated her status as heir of the ascendants of her father (namely his mother).

The Complaints Service considered that as the complainant had demonstrated her status as her father's heir and had accepted the inheritance, she was subrogated to all the rights and obligations corresponding to her father and, in consequence, took his place in the succession of the grandmother. A significant part of the grandmother's estate was made up of the assets in turn acquired from her sister (the complainant's great aunt). It was therefore concluded that, in view of the information submitted to the proceedings, the entity had the right to request further information from the complainant about the situation of the procedures for executing the wills based on which her father's estate would be determined as well as on whether the complainant had accepted the inheritance of her deceased father, at which time she would be subrogated to his position and, consequently, to the rights and obligations corresponding to him.

R/211/2017: in contrast, in this claim, the entity, in its pleading, did not comment on the issue raised by the heirs, who requested an explanation of the fact that the number of shares shown in the certificate of balances on the deceased's date of death did not correspond with the number of shares shown in other documents that the entity had asked the heirs to sign.

The Complaints Service considered that, in accordance with good financial customs and practices, in response to a request for information such as that which it received, the entity should have been able to offer information on the reasons why the number of shares belonging to the deceased subject to the inheritance had increased.

However, the Complaints Service verified, and thus informed the complainant, that said increase in the number of shares was due to the payment of dividends on shares made by the share issuer during the period in which the execution of the will was being processed.

Consequently, once the heirs demonstrated their status as such, they had the right to make specific requests for information on transactions performed by the deceased during a period of time before and after death.

There are, however, certain limits to this right of heirs to information.

Firstly, there are time limits, such that the Complaints Service believes that this right is limited to a period that is equal to or less than the documentation storage period established by legislation for this purpose.

In this regard, it is relatively common for heirs to request a copy of the purchase orders for certain financial instruments given by the deceased. Entities are required to comply with these requests for information provided no more than five years have elapsed since they were placed, as, if said period is longer, the entity has no obligation to keep them in accordance with the corresponding legislation.[149]

On other occasions, the heirs ask the entity to provide supporting evidence of the assessment of the appropriateness of a product included in an inheritance to the deceased's profile when they have doubts as to whether such products match said investment profile, either due to age or to personal circumstances.

In this regard, the period for keeping the client's information and documentation obtained by the entity in order to assess the appropriateness of a specific product or service to the client's characteristics based on their knowledge and experience, as well as the documentation or information in which, as the case may be, the warnings made by the company that provides investment services have been issued, is five years following the assessment.[150]

Another limit to the heirs' right to obtain information relates to the content of the request. These must be proportionate and justified.

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

150 This obligation was introduced by Law 47/2007, of 19 December, amending the Securities Market Act 24/1988, of 28 July, and by Royal Decree 217/2008, of 15 February, on the legal regime of investment firms and other entities that provide investment services.

Finally, there may be special or exceptional circumstances that lead the entity to object to providing the requested information.

The Complaints Service considers that in all those cases in which one of the aforementioned limits is not present, the entity is required to deliver the documentation and information requested by the heirs.

Complaint R/592/2016 involved one of the situations entitling the entity not to provide certain information on the position and the transactions performed in life by the deceased. In this case, the entity was not required to keep the documentation relating to a purchase of subordinated bonds that took place in 2004 due to the fact that, on the request date, the five-year storage period for orders provided for in legislation had elapsed.

However, in complaints R/602/2016 and R/758/2016, it was concluded that the entity had acted incorrectly by not keeping the contracts because, on the date of the heir's request, the legally required storage period had not elapsed.

In complaint R/385/2017, the complainant asked the entity to provide information on events that took place after the deceased's death, such as the amount of the deposits made in the account, withdrawals made after death, and information on the cancellation of an investment fund. In its written pleading, the entity considered that the request made by the heir was generic and disproportionate. Nevertheless, the client was requested to submit a document specifying their request relating to the contracts that the deceased held in joint ownership with the entity.

The entity eventually submitted to the proceedings documents that were considered sufficient in order to comply with its information obligations with the heir and it was therefore concluded that the entity had acted correctly.

➢ Certificates of ownership

The deceased's heirs or persons who provide evidence of a legitimate interest must request issuance of the corresponding certificates of ownership, which show, among other issues, the identity of the owner or owners of the financial instruments.

This request is necessary as the 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.

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 issue the corresponding certificate of ownership, which 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 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 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.

With regard to this point, it should be noted that full ownership of said securities is 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.

Another aspect to consider is the consequences that the legislation regulating the representation of securities by means of book entries[151] (listed securities) establishes as resulting from the issuance of such certificates.

The issuance of ownership certificates with regard to securities entered in the account necessarily involves freezing the securities and no sales orders affecting said securities may be placed except in the case of transfers resulting from enforcement of judicial or administrative rulings.

In 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.

It is common to receive complaints in which the co-holders of the securities accounts demand the availability of the part which they consider not subject to the inheritance. This is particularly the case when the surviving spouse is unable to access 50% of the securities account.

With regard to the units in investment funds, although it is true that there are listed and non-listed funds – the former would be subject to the legislation provided for other listed securities – it is also true that in accordance with the sector legislation[152] applicable to them, the units of non-listed funds must be registered in the register of

151 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.

152 Law 35/2003, of 4 November, on collective investment schemes.

unit-holders[153] of the management company in the name of the unit-holder or unit-holders, or in the unit-holder identifying register held by the marketing entity. 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 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.

Said freezing shall be maintained until the heirs provide the entity with all the necessary documentation for changing the ownership of the financial instruments acquired *mortis causa*, 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.

➢ Dissolution of joint ownership of property

The joint ownership of property concludes as a matter of law when the marriage is dissolved,[154] which may take place as a result of the death or declaration of death of one of the spouses or through divorce.[155]

In other words, following the death of one of the spouses, the marriage is dissolved and the assets assigned to joint ownership of property become part of the assets available for distribution (post-marital joint ownership), which will last until the liquidation of the joint ownership of property, which will involve the surviving spouse and the deceased's heirs.

Therefore, once the marriage is dissolved as a result of death, the joint ownership of property will be liquidated in accordance with Article 1396 of the Civil Code: "[...] will start with an inventory of the corresponding assets and liabilities". Once the inventory has been formalised, the liquid assets will be determined by following the steps set out in Articles 1399 to 1403. Finally, Article 1409 states the following: "Once the inventoried estate assets have been awarded as predetermined by the above articles, the remainder shall constitute the assets of the joint ownership of property, which will be divided in half between the spouses and their respective heirs".

The division and awarding must be carried out in accordance with the rules on inheritance partition, in accordance with the reference contained in Article 1410 of the aforementioned Code, without prejudice to the provisions contained in Articles 1406 and 1407 thereof.

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153 Law 16/2013, of 29 October, establishing certain environmental tax measures and adopting other tax and financial measures, in force as from 1 January 2014.

154 On the dissolution and liquidation of the joint ownership of property. Article 1392 of the Civil Code.

155 On the dissolution of marriage. Article 85 of the Civil Code.

For its part, the applicable legislation does not require that the liquidation of the joint ownership of property, which must be performed on a mandatory basis after the death of one of the spouses as a prior step to determining the estate of the deceased spouse, be performed in a public document. A different case would be the liquidation of the joint ownership of property between living spouses.

Consequently, the *mortis causa* liquidation of the joint ownership of property may be formalised in a private document and does not need to be converted into a public notarised instrument providing that it complies with the sole requirement that said document be executed by mutual agreement between the surviving spouse and the other heirs. In this liquidation, a decision will be made on, *inter alia*, the financial instruments that become the private property of the surviving spouse and those which will pass on to the deceased's estate and which will be divided amongst the heirs.

Noteworthy with regard to this issue was complaint R/191/2017, with a favourable result for the complainant. In this case, the entity opposed processing the change in ownership of some units of an investment fund based on a private document in which the universal heir and the surviving spouse had agreed the liquidation of the joint ownership of property, awarding to the latter, as a result of said liquidation, all of the units of the investment fund subject to the dispute, amongst other assets.

The entity opposed the change as a result of the principle of prudence and diligence and maintained the need for said liquidation to be formalised in a public instrument as it had no record of the identity and signature of the parties to the private document liquidating the joint ownership of property. It also argued that private documents only have effect between the signatory parties and their successors,[156] but not *vis-à-vis* third parties, in contrast to the effect of a public document (public instrument), which serves as evidence *vis-à-vis* third parties.[157] Therefore, the creation of a notarised public instrument for the liquidation of the joint ownership of property was a requirement for probative value *vis-à-vis* third parties.

In response to the entity's arguments, the Complaints Service concluded that the private document provided was duly signed by the surviving spouse and by the deceased's universal heir. Therefore, if the entity had any doubts about the authenticity of the signatures (as can be deduced from the written pleading), it should have requested, in any event, their appearance so as to verify their legality.

With regard to the legitimate interest claimed by the entity for considering a possible third party harmed by the decision adopted in the private document submitted and for requesting the additional "protection" that would be provided by a public document, the Complaints Service clarified that the document submitted was signed by the appropriate persons and was therefore a perfectly valid document. Therefore, the entity had the obligation to comply with the provisions of said document: changing the ownership of the units in favour of the surviving spouse so that she would appear in the accounting register of the investment fund as the authentic owner of said units and not another person.

156 Article 1225 of the Civil Code.

157 Article 1218 of the Civil Code.

For all of these reasons, the Complaints Service concluded that the entity had acted incorrectly as it should have carried out the change in ownership of the investment fund in accordance with the request and documentation submitted by the complainant.

On this matter, it is interesting to note that the entity notified the Complaints Service of an action subsequent to the issuance of the final reasoned report concluding the complaint in which it accepted the criteria contained in the report and informed that it had changed the ownership in accordance with the private document previously submitted by the complainant.

➢ Establishment of a joint ownership system

The community of heirs arises when all those entitled to an inheritance accept it, whether expressly or tacitly, and is terminated with the partition and the awarding of the specific inherited assets to each one of the heirs. As long as the community of heirs continues, its members hold an abstract right over all the assets without any specific portion corresponding to each of them.

This arrangement is therefore temporary and ceases with the partition of the inheritance. At that time, 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, all the heirs of the deceased and, as the case may be, the forced heirs, must consent and sign the sale order. 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.

At any event, the change of ownership, as agreed, must be carried out prior to the execution of any order relating to the assets inherited.

R/212/2017: the complainants requested redemption of the units of an investment fund owned by the deceased and the surviving spouse because they understood that a community of heirs had been established for the assets making up the inheritance (50% of the fund) with the other 50% belonging to the surviving spouse, who, in turn, was usufructuary of the 50% of the fund that became part of the deceased's estate.

In this case, the complainants did not provide any document demonstrating that they had expressly accepted the assets that became the private property of the surviving spouse – following the liquidation of the joint ownership of property – and those which made up the deceased's estate. Nevertheless, it was considered that the heirs had given tacit agreement of the assets that became part of the deceased's estate as a copy of the settlement of the inheritance and donation tax for the value of these assets was submitted to the complaint proceedings. In this regard, the taxable person who settled the tax for the units of the investment fund was the surviving

spouse, with no record that the heirs had settled any tax for said units. Therefore, in accordance with the doctrine of estoppel with regard to the actions carried out by the heirs when paying the inheritance and donation tax, the units of the fund seemed to belong exclusively to the surviving spouse. In response to this confusion, the Complaints Service considered that the entity should not have executed the redemption order for the units placed by the heirs established in a community of heirs until it was clearly determined to whom ownership of these units corresponded.

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 deceased's burial or funeral expenses or to pay the inheritance tax. In this case, we would be dealing with the exceptions established by law.

An example of this was highlighted in complaint R/276/2017. After having executed the instrument awarding the inheritance, which determined the amounts and the payment of various bequests, the entity received a request from a part of the legatees to settle the payment of the inheritance tax with a corresponding part of the bequeathed assets. This had the consequence that, once the tax had been settled, there were changes in the amount of the items making up the bequests, which resulted in the entity requesting a private document executed by the heirs in which they would establish the new terms of the division. This request led to a delay in the processing of the execution of the will.

➢ Processing of the execution of the will and change of ownership in favour of the heir

✓ *Necessary documentation*

The heirs, after proving their status, must provide the financial institution with certain documentation in order to be able to access the securities deposited in the deceased's securities accounts.

The essential document is the 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.

With regard to the payment of inheritance tax, it should be noted that once the estate has been determined, the heirs must pay the inheritance and donation tax and, subsequently, provide evidence of this fact to the entity in which the financial instruments are deposited.

Failure to provide evidence of being up-to-date with payment of inheritance and donation tax may lead to the entities objecting to continue processing execution of the will given that, in the event that said tax is not paid by the heirs, the entity would be legally liable on a subsidiary basis to pay the tax in *mortis causa* transfers.

On a separate issue, as already indicated above, the accounts where the securities or investment fund units are deposited will remain blocked until the heirs provide all the documentation necessary to process the execution of the will, even if the request for access comes from the indistinct co-holder of the account or the investment fund.

Therefore, no sale and redemption orders may be processed until execution of the will with regard to the financial instruments owned by the deceased and deposited in the entity has been completed.

The following are complaints in which the entity was deemed to have acted correctly when it refused to process the execution of the will of its client as it had not received the required documentation from the heirs:

R/619/2016: the complainant, together with his/her brother, as the deceased's universal heirs, disagreed with the impossibility of dividing the investment fund. Given that the complaint proceedings had no record that the heirs had submitted any document for the partition and awarding of the inheritance or any receipt of payment of the tax of one of them, it was considered that the entity acted correctly on refusing to conclude the execution of the will.

With regard to the document for the partition and awarding of inheritance, it is important to bear in mind that in the event that the heirs have submitted to the entity an instrument for the awarding and partition of the inheritance and, subsequently, they wish to amend it, they will need to notarise said document in accordance with Article 1230 of the Civil Code, which establishes the following: "Private documents made to alter the points agreed in a public instrument do not produce any effect *vis-à-vis* third parties".

An example of this is given in the following complaint:

R/40/2017: the client complained about the manner in which the partition had been carried out as they understood that the will and the inheritance acceptance instrument established a universal usufruct in favour of the surviving spouse, which had not been guaranteed by the awards made by the respondent entity. The complainant therefore requested that a single securities account be opened with joint ownership of all the heirs in which the shares and units forming part of the deceased's estate would be deposited and over which a usufruct in favour of the surviving spouse would be established.

In other words, the client aimed to modify the distribution and award of the assets established by the heirs in the public instruments submitted to the respondent entity. According to this, the heirs had agreed to commute[158] the usufruct to the surviving spouse, meeting this part of the usufruct with the awarding of certain assets as private property, specifically investment fund units and listed shares.

In this regard, the entity argued that the awards established in the public instrument could not be amended by way of *de facto* proceedings, by requesting awards of assets that contravene the points agreed in said instrument, as the heirs had done in this case. The Complaints Service followed the same line of argument in concluding that the entity had acted correctly by refusing to perform the partition of the inheritance that was not in accordance with the points accepted by the heirs and the surviving spouse in the inheritance acceptance and partition instrument.

Nevertheless, for informative purposes, it was pointed out that if they believed that there had been an error in the awarding of the inheritance as it undermined the

158 Articles 839 and 840 of the Civil Code.

request of lifetime usufruct set out in their father's will, they should have gone to a notary so as to perform, as the case may be, the appropriate amendments and to once again notarise these in a public instrument.

✓ *Change of ownership*

Once the documentation has been submitted, financial institutions begin a period of checks and recognition in order to verify whether it is correct and sufficient. If this is not the case, they must inform the heirs clearly, fully and specifically with regard to all the deficiencies detected so that they may rectify them, facilitating, as far as possible, the process of executing the will so that it may be carried out without delay.

Once the adequacy of the documentation has been verified, the financial institution must change the ownership of the financial instruments as soon as possible. In this regard, it is important to highlight that in order for the heirs to have access to the securities acquired as a result of death, it is necessary for the ownership to be changed beforehand. This is the last step that must be completed in order for the heirs to be able to exercise all the rights linked to the ownership of the securities acquired in accordance with the provisions set out in the partition papers.

Prior to performing the change of ownership of financial instruments acquired *mortis causa*, the beneficiaries need to open securities accounts whose holders must be the same people as those awarded the inheritance assets – with shared ownership in the event that the inheritance remains *pro indiviso* or individual ownership if the assets forming the inheritance are awarded to each heir – in order for the awarded securities to be deposited therein. These accounts may be with the same entity with which the deceased had deposited the securities or with any other entity.

In other words, there is nothing to prevent the awarded shares from being deposited in a securities account opened with an entity other than that which awards the assets. Therefore, the heir may place an order with said entity to transfer the awarded securities to the entity in which the heir has a security account opened in their name, with the change of ownership and the transfer of the securities performed in the same act. However, in the event that the holder of the target account does not match the name of the person awarded the securities, the entity would be entitled to refuse to transfer the securities.

R/7/2017: the entity was considered to have acted incorrectly as following completion of the process for executing the will whereby the complainant was assigned some shares, the complainant expressed their intention not to deposit them with the respondent entity, but to transfer them to another entity. In this case, the entity should have processed the change of ownership and the transfer of the securities to another depository in the same act. However, the entity opened an account for the client to deposit the securities and then transferred them.

R/74/2017: the entity failed to duly explain the reasons why it did not change the ownership as it was noted in the complaint proceedings that the complainant had submitted all the documentation in order to carry this out.

There is a specific process when the assets acquired *mortis causa* are investment fund units. It is important to point out that, as a general rule, the acquisition of

investment fund units does not usually entail the obligation to have a securities account (having a securities account is necessary at any event when acquiring shares in an investment company) or a current account associated with the fund in the depository or distributor.

However, the fact is that most entities use standard form contracts or investment fund contracts to manage these financial instruments. This practice is acceptable providing it does not involve any cost for the unit-holder. In these cases, the entity must provide the client with clear and precise information on the procedures to be followed for the change in ownership of the units acquired *mortis causa*.

R/212/2017: it was concluded that the entity had acted incorrectly as it did not clearly and fully inform the complainants about how to access the investment fund units acquired by inheritance.

R/600/2016: It was not classified as bad practice that the entity asserted the need to open a fund account for each one of the heirs in which the corresponding units might be deposited given that it did so for purely operational reasons and without any cost for the heirs. This action was a result of the specific tax features entailed in the distribution of investment funds through inheritance.

Finally, it should be pointed out that 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 linked payment account. Only in cases where the entity has warned the heir of the need to open a linked cash account – with that entity or with any other – and the latter has refused to do so, would the entity be exempt from liability for not having modified said payment account.

✓ *Time limits*

Current legislation in relation to the conduct of business rules of securities markets does not expressly provide for a maximum time limit for execution of a change of ownership through the execution of a will.

In this regard, although entities must carry out the change of ownership of the securities subject to the succession process quickly, 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 is required to execute as quickly as possible the mandatory steps in the procedure for executing the will once it has the documentation in its possession.

However, there is a range of reasons for delays, as noted in the following complaints:

R/7/2017: the respondent entity requested that a series of totally unnecessary procedures be completed in order to carry out the change in ownership, such as the performance of an appropriateness test, the signing of the delivery of the KIID, the last half-yearly report of the awarded investment funds and the signing of fund subscription orders.

In this regard, the final report of the complaint indicated that the heir, after accepting the inheritance, was a successor to the deceased as a result of the fact of his death in all rights and obligations, i.e., the heir was subrogated to the position of the deceased, who was the person that the entity, at the time the securities were marketed, should have required to comply with all these procedures.

It was therefore considered that the entity did not appropriately inform the complainant and that it requested that a series of procedures be completed that were not necessary for changing the ownership of the securities acquired as a result of the inheritance, which led to an unnecessary delay in the securities being delivered and made available to the complainant.

R/90/2017: although the Complaints Service considered it positive that the entity took extreme precautions when processing the execution of the will, given the importance and complexity involved in this type of action, it was concluded that the respondent entity did not act with due diligence in the interest of its client as it requested documentation from said client at different times instead of identifying all the issues that required rectification and passing them on to its client in one single act, which would have speeded up the process of executing the will.

In addition, over four months elapsed from the time that the heirs submitted to the entity the documentation necessary to begin the process of executing the will up to the date of the last request for documentation. The Complaints Service classified this time as excessive.

R/211/2017: the respondent entity acknowledged that there was a delay in the processing of the execution of the will as a result of the closure of the branch. It was demonstrated that three months elapsed from the time at which the complainants opened the securities account until the time at which the change of ownership took place and the securities were deposited in their accounts. In these cases, once the execution of the will is approved and the securities account is opened, the change of ownership takes place in just a few days.

R/276/2017: there was an unjustified delay in the processing of the execution of the will which made it impossible to place redemption orders for the units of the fund in order to comply with the bequest subject to the complaint.

The delay in processing the execution of the will and the change in ownership allowing the heirs to access the securities sometimes has significant consequences, as shown in the following complaint:

R/312/2017: the complainant, as the interested party in the inheritance, disagreed with the delay in the awarding of 30 Popular Capital Conv. V 2013 bonds, which were expected to be divided into six equal parts amongst the heirs. The instruments that needed to be awarded were subordinated bonds mandatorily exchangeable for shares of Banco Popular Español, S.A. I/2009, issued by Capital Popular, S.A., with maturity on 23 October 2013.

These bonds were exchangeable for mandatory exchangeable subordinated bonds of Banco Popular Español, S.A., which in turn were necessarily convertible into newly issued ordinary shares of Banco Popular Español, S.A. on the days provided in the securities note on a voluntary basis and, in any event, on the maturity date (23 October 2013).

Before the maturity date, specifically in 2012, the entity offered its holders their exchange for subordinated bonds in convertible bonds of Banco Popular Español SA-V11-15. These bonds were also necessarily convertible into shares of the entity, albeit with a new maturity on 25 November 2015.

Finally, it is important to highlight the resolution adopted by the Fund for Orderly Bank Restructuring (Spanish acronym: FROB) on 7 June 2017 in execution of the decision taken by the Single Resolution Board (SRB) after Banco Popular Español, S.A. was declared to be failing by the European Central Bank, whose enforcement was immediate. This led, among other aspects, to the write-down of all the existing shares in the company (those which were outstanding at that time) with no payment of any sum of compensation to the holders of those shares and the subsequent loss of their entire investment.[159]

Due to the delay in processing the inheritance, when the heirs were going to access the shares they were no longer deposited in the securities account given that with their write-down in June 2017 they had been cancelled.

After explaining the reasons which led to the delay in processing the inheritance – which had begun in 2013 – the respondent entity argued that at any event, the complainant would not have been able to trade with these securities over these years as, in accordance with the documentation submitted to the proceedings, lifetime usufruct of all the assets corresponded to the widow. Therefore, it would not have been possible to trade with the instruments without the signature and authorisation of the usufructuary even if confirmed as bare owner of the securities.

However, these apparent justifications did not preclude the conclusion in the complaint that the entity had not duly demonstrated who was responsible for the error in the distribution of the securities or the reasons for the delay in the change of ownership.

✓ *Acts of conservation, monitoring and administration of financial instruments*

During the period for processing the execution of the will, financial transactions or corporate events often take place with the issuers of the financial instruments making up the estate, or agreements of different types, such as the merger between CIS in which the investment funds subject to the inheritance are involved.

These are some of the situations that might arise:

R/539/2016: as a consequence of the redemption of some preference shares, the complainants questioned the fact that the entity had allowed access to the proceeds from that redemption without respecting the rights of the heirs. However, the entity was deemed to have acted correctly. The issue prospectus provided the possibility of early redemption, which supported the transaction performed. In addition, at the time of the redemption, the heirs had not yet distributed the inheritance. Therefore, the financial institution was required to deposit the cash resulting from the redemption

159 The CNMV issued a communication on 7 June 2017 on the actions of the single resolution mechanism of the European Union and of the FROB with regard to Banco Popular Español, S.A., and on 14 June 2017, the FROB published a question-and-answer document relating to the resolution of Banco Popular Español, S.A.

in the linked current account, in which the deceased and their surviving spouse appeared as indistinct holders.

R/591/2016: during the inheritance processing period, there may be mergers between CIS or guarantees may expire. In these cases, the heirs usually express their dissatisfaction because they believe that they were not informed of their right of separation and they even claim a lack of consent for subscribing a new fund. Accordingly, in these proceedings, the complainant claimed that she had informed the entity of her intention to redeem the units in the absorbed fund held in co-ownership with the deceased. However, it was not demonstrated that the complainant had placed a joint order for redemption of the investment fund during the time established for this purpose – signed by her and by the heirs of the deceased co-owner – and it was therefore concluded that the entity had not acted incorrectly.

R/757/2016: a payment of dividends was made in the time between the death of the deceased and the change of ownership of the shares. These were credited to the current account associated with the securities account in which the deceased was the indistinct co-holder with another person. Since at the time the dividends were distributed, not all the necessary steps had been taken to change the ownership of the shares, said shares were still in the deceased's name and, consequently, the proceeds from the dividends were credited to the current account designated for this purpose. This does not mean that said dividends did not correspond to the complainant, but since they were credited to the aforementioned current account, the holder of said account was responsible for paying said dividends to the complainant. Therefore, the Complaints Service concluded that the entity acted correctly by crediting the dividends to the current account designated for this purpose.

R/99/2017: the complainant expressed their disagreement with the distribution of the units of a guaranteed investment fund in which the entity undertook, on maturity, to return 100% of the investment and to make a series of periodic payments (which it denominated income) during the life of the complainant. In the investment fund, it was recorded that the income payments "will be made effective by means of mandatory deferred redemptions of units". The entity indicated that, after starting the execution of the will, it was not possible to credit the corresponding income payments as the units were frozen and, by the time that it was possible, the complainant had already transferred all the fund units to another entity. Therefore, the entity was unable to perform the redemption of the units necessary to pay the rent income. The Complaints Service therefore considered that the entity had acted correctly.

➢ Fees

The 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 of an entity or online, they may do so immediately.

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 Bank of Spain is responsible for hearing all matters relating to fees for processing the execution of the will as these are purely banking fees.

However, the CNMV is responsible for hearing matters relating to the fee for the change of ownership of financial instruments whether *mortis causa* or *inter vivos*.

Nevertheless, the Complaints Service understands that if the entity charges its client a fee for processing the execution of the will, this fee must include the change of ownership fee as this is one of the stages of the previous process (specifically the one with which it concludes). Therefore, it would not be possible to charge both fees simultaneously.

The information provided in the following complaint followed this line:

R/194/2017: the complainant disagreed with the charging of a fee for the change of ownership of securities resulting from the processing of the execution of a will. On the basis of the documentation submitted to the proceedings, it was demonstrated that there had been no bad practice by the entity as it had informed the client about said fee, prior to the transaction, and said information was also contained in the respondent entity's maximum fee prospectus.

➢ Right of heirs to file complaints in relation to the marketing of the product

It may be the case that when they become aware of the investment products making up the inheritance, the heirs consider them inappropriate to the investment profile of the deceased for various reasons, which leads them to file a complaint for bad practices in marketing said instruments. One of these reasons may be the advanced age at which the deceased, without knowledge or experience in the heirs' opinion, purchased a product classified as complex according to the corresponding legislation.[160]

In this regard, Article 661 of the Civil Code provides as follows: "The heirs succeed the deceased by the mere fact of their death in all their rights and obligations", albeit once those entitled to receive the inheritance have accepted it. Therefore, once their status as heirs, and their acceptance, have been proven, the heirs may file complaints with the financial institutions of which the deceased was a client, objecting to the entity's actions in marketing the product at the time it was subscribed or acquired by the deceased.

However, it is important to bear in mind in such cases that if the time between the facts and the moment at which the complaint is filed is greater than six years, then the time period under the statute of limitations will have expired.

If the time period under the statute of limitations has not expired for the events subject to the complaint, the Complaints Service will analyse the actions of the entity at the time the financial instrument inherited was marketed to the deceased. It will examine the legal relationship that the deceased had with the entity (advisory service or simple execution), what type of product was contracted (complex or non-complex) and, as the case may be, whether the suitability or appropriateness of

160 Article 217 of Royal Legislative Decree 4/2018, of 23 October, approving the recast text of the Securities Market Act.

the product was analysed, as well as whether the deceased received information on the features and risks of the product prior to acquisition.

R/175/2017: the complainant, in their capacity as heir, disagreed with the marketing of some atypical financial contracts signed by their father. The entity argued that there was no legal advisory relationship and therefore there was no need to assess suitability prior to marketing the product and it therefore limited itself to assessing the appropriateness of the product.

However, despite the statements made by the entity and the warnings in the contract and in its annex, it was determined that there was a personalised recommendation to the deceased given that the entity made a personalised investment proposal to its client aimed at offsetting the loss made in a previous investment. As the entity did not assess the client's profile, it was unable to verify whether or not the recommendation matched the client's financial position and investment objectives. It was therefore considered that there was bad practice by the entity as it had not performed a suitability test on the deceased at that time.

In contrast, prior to the awarding of the inherited financial instruments to the heirs, financial institutions are not required to obtain information on the appropriateness or suitability of the product inherited with regard to the acquiring heir's profile or to offer them information on the product's features and risks, given that this is a case of a change of ownership of the awarded securities and not a new marketing process.

R/187/2017: the heirs stated that, at the time the entity marketed the product to their father, he was considered a professional client. The entity claimed that it was the client who requested the modification of his classification so as to be classified as a professional client instead of a retail client, certifying compliance with two of the three requirements in this regard set out in Article 206 of the Securities Market Act and assuming the consequences of his waiver of the classification as a retail client.

However, with the documentation submitted to the complaint proceedings, it was considered that part of the documentation reflected a self-assessment by the client that did not exempt the entity from complying with the requirements established in legislation in order to classify him as a professional client. The entity was therefore found to have acted incorrectly.

Summary of complaints on execution of wills EXHIBIT 11

- Heirs must inform the entity as soon as possible and in s reliable manner of the death of the deceased by providing the **death certificate**, which is considered sufficient for this purpose. The entity must then block the securities accounts and financial instruments of the deceased deposited therein so as to prevent other co-holders of the accounts or the instruments having access to them.

- It is then necessary to prove to the entity the **status of heir** or legitimate interested party by submitting: i) certificate of the General Registry of Last Wills and Testaments and ii) an authorised copy of the last will and testament or the declaration of heirs in intestate proceedings.

- Once said status has been demonstrated and the inheritance accepted, the **right of the heir to request information on the deceased's positions** in the financial institution is recognised, although with certain limits (the period for keeping the documents required by law has not expired, the requests are not disproportionate and unjustified, and there are no exceptional circumstances in which the entity may object to handing over such information).

- Similarly, it is necessary for the entity to issue **ownership certificates** so as to know all the securities of the deceased deposited therein, both individually and under shared ownership, so as to then determine all the assets to be included in the deceased's estate. This will allow the heirs to pay inheritance tax and initiate the processing of the execution of the will.

- Following the death of one of the spouses and as a prior step to determining the estate of the deceased spouse, the joint ownership of property, where applicable, must be dissolved. The surviving spouse and the deceased's heirs participate in the liquidation of the joint ownership of property.

  The deceased's estate is made up of his/her private property and the assets awarded following liquidation of the joint ownership of property.

- Once accepted by all the heirs, the **community of heirs** is established. While this community is maintained (which terminates with the partition and specific awarding of the assets), the owners have an abstract right over all of the assets and no heir may sell the assets held by said community. It is possible that the joint ownership system may sell one or some of the financial instruments making up the estate, although this requires the consent of all of the heirs.

- In order to proceed with the awarding of the inheritance, the heirs must submit to the entity: i) the notarised instrument of partition of inheritance or a private partition document signed by all the heirs, and ii) the documents demonstrating that all the successors are up-to-date with payment of inheritance tax. Once the adequacy of this documentation has been verified, the entity shall proceed with the change of ownership without delay.

- The conduct of business rules of securities markets do not expressly provide for a **maximum time limit** for execution of a change of ownership through the execution of a will. The speed of its implementation is the result of diligent cooperation between the parties involved.

- The fee for processing the execution of the will includes the **fee for change of ownership** and therefore both fees may not be charged at the same time.

4.8 Ownership

➢ Proof of ownership of the financial instruments

In order to buy securities, it is necessary to open a securities account, sign a securities custody and administration contract with a financial institution and have a cash account. Through the securities account, the financial institution manages the investor's portfolio. The cash account is used for the cash inflows and outflows corresponding to the securities trading performed by the client.

In general, ownership of a financial instrument is assumed to be held by the holder of the securities account, with the ownership of the security established in the account contract. Therefore, the shares will be registered in the accounting registers in the name of the same holders that appear in the securities account held with the entity.

When ownership of the shares appears in the name of several people in the corresponding accounting registers, there is an assumption of co-ownership for tax purposes, although this assumption may be rebutted by evidence to the contrary.[161]

Co-holder accounts (with two or more holders) are the other main source of the complaints received, with the main cause being one of the holders making use of the financial instruments without the knowledge or consent of the other owner(s).

The rules of operation of the security account provided for in the registration and deposit contract will be essential for concluding whether or not an entity acts correctly in response to an order from one of the co-holders to make use of the securities.

R/16/2017: the complainant did not acknowledge having consented with their signature to the opening of a current account and the transactions reflected therein. However, the movements in the account corresponded to transactions resulting from four securities accounts held by the complainant's children and in which the complainant himself appeared as representative. Furthermore, the proceedings were provided with an account statement that reflected a history of the movements, together with cash withdrawal orders that had even been made by the complainant himself, which served as evidence that he had knowledge of the account contrary to his claim in the complaint.

A notarised power of attorney executed by the securities account holder designating the other person as their representative is sometimes submitted to the complaint proceedings. In addition, sometimes a judicial judgement appointing a legal representative as tutor or conservator is provided. In order for the legal representative to make use of the securities, they must provide a copy of the power of attorney or judgement and the entity must carry out verifications and acceptances in order to confirm that said use is in line with the powers granted to the representative by said power of attorney or judgement. In other cases, the entity may oppose the order submitted by the representative to make use of these securities.

R/116/2017: the complainants opposed the entity's actions due to the financial damage caused to their principal as they were prevented from making use of the power of attorney granted before a notary to make use of a series of financial instruments of the person they represented. On the basis of the documentation provided, the Complaints Service considered that the notarial power of attorney did not expressly include among the powers granted to the representatives the sale of securities or investment funds. In other words, the power of attorney granted powers of administration and not of use of the securities and it was therefore concluded that the entity acted correctly in not allowing the sale of certain securities deposited with the respondent entity.

161 Article 108.3 of Law 58/2003, of 17 November, on general taxation.

However, given that the written pleading showed that there is currently a process of declaration of incapacity of the principal in progress, it was indicated that it was in the scope of said process to determine, as from that time, who holds the representation, as well as the scope of this representation.

R/371/2017: the complainant, as a representative of her brother, submitted to the proceedings a copy of a redemption order for investment fund units owned by said brother. The entity opposed their redemption arguing that, in accordance with the complainant's certificate of acceptance and oath of the office of conservator, the complainant required judicial authorisation to order said sale.

In accordance with the certificate of acceptance and oath of the office of conservator: "JUDICIAL AUTHORISATION WILL BE REQUIRED for the actions provided for in Article 271 of the Civil Code and specifically [...] to dispose of or encumber real estate, commercial or industrial establishments, precious objects and securities of the minors or disabled persons, or to enter into contracts or carry out any acts of disposition or acts which require registration. The sale of pre-emptive share subscription rights is excepted".

On the basis of said document, the Complaints Service concluded that the entity acted correctly by refusing to carry out the redemption of the fund units.

However, the complainant also complained that, at the time that she subscribed, in her brother's name, the funds that the complainant now intended to sell, the entity had not requested the now required judicial authorisation. With regard to this issue, it was verified that Article 271.2 of the Civil Code also required judicial authorisation for "[...] entering into contracts or carrying out acts of disposition which require registration".

It was therefore considered that, as subscription of the aforementioned funds required the signing of a series of contracts for the opening of funds and that the units of non-listed funds must be registered either in the management company's register of unit holders in the name of the unit-holder(s) or in the identification register of unit-holders kept by the distributor, it could be understood that judicial authorisation was required both in the subscription of the funds and in the redemption.

However, it was indicated that wherever the complaint relates to the correct interpretation of the judgement decreeing the conservatorship, as well as the obligations resulting from the certificate of acceptance and oath of the office of conservator, the competent court must decide on the correct interpretation that should be made of this matter, both with regard to the subscription of the fund and the redemption. This will be decided in view of the provisions of Article 271.2 of the Civil Code.

Separate treatment is required for CIS, more specifically, the investment funds in which ownership is assumed for the person with the status of holder in the register of the fund's distributor or management company. The standard contract or subscription contract or other document used for this purpose will establish the ownership and the rules of operation for the investment fund units, which may be indistinct (joint and several) or joint.

As stated for other financial instruments, also in the case of investment funds, when the fund units are in the name of several people in the corresponding registers, it is

assumed that they are co-owned for tax purposes, which, however, may be refuted by means of evidence to the contrary[162] (R/366/2017).

➢ Rules of operation: joint and several and joint

When there are two or more holders, access may be joint, which means that it requires the agreement of all the holders through the signatures of all of them, or access may be indistinct or joint and several, in which case any of them may access the funds with only their own signature without the need for the consent of the other holders.

In other words, indistinct (joint and several) access implies that co-holders give mutual authorisation to access the funds. Any of the holders is therefore authorised by the others to perform transactions. On the other hand, joint access requires the prior express consent of all the co-holders to order transactions.

It may be the case that one of the holders of an account opened on an indistinct basis requests a modification of the rules of operation of the accounts so as to change 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 in this regard (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, i.e., whether it is sufficient that one of the holders notifies the entity of their objection to the securities account continuing on an indistinct basis in order for operation to be changed to a joint basis or whether, in contrast, access to the securities by a co-holder must be considered valid despite the request to change the rules of operation made by the other co-holder.

In this regard, the Complaints Service considers that there may be extraordinary circumstances justifying a change in the rules of operation of a securities account. Thus, when irreconcilable differences arise between the account holders – due to a breach of trust or the occurrence of certain events that justify the suspension of the normal operation of the account (dissolution of companies, conflicts between their representatives, separations or divorces, etc.) – the entity may receive contradictory orders from the co-holders that are impossible to comply with. In these cases, most legal doctrine considers that, in situations such as these, it seems unreasonable to force one holder, who has disagreements with the other co-holders and wishes to prevent access to the securities until an agreement is reached on how to divide them, to perform something that they do not wish to do (sale of the securities) when the problem could be solved by simply modifying the rules of operation of the securities account so that it may only be accessed jointly until the differences are resolved and the pertinent settlements made or, failing that, the courts decide on the matter.

It is therefore considered that any of the holders of an account operating on an indistinct basis may, if they consider it appropriate to their interests, request that the entity change said rules of operation. The entity must accept this change with the sole

162 Article 108.3 of Law 58/2003, of 17 November, on general taxation.

requirement that it must inform, prior to implementing the change, the other co-holder(s) of the account. However, once the request for a change in the rules of operation has been received, the Complaints Service considers that the entity may not accept any order accessing the financial instruments deposited in the account by any of the holders unless said order is signed by all of them.

The following complaints highlighted disputes arising from the access of one of the co-holders without the consent of the others.

R/56/2017: the complainant and her husband contracted an investment fund. A year later, her husband cancelled it with only his signature alone, without the complainant's knowledge. The contract signed by the complainant and her husband expressly provided that the indistinct rules of operation could only be changed with the consent of all the co-holders.

However, the complainant did not provide to the proceedings any request for a change in the rules of operation of the investment fund. Therefore, the accessing of the funds by her husband was in line with the rules of operation set out in the standard fund contracts signed by both, i.e., the indistinct rules of operation.

In cases of separation, nullity or divorce, the mere admission of the petition results in, among other effects, the revocation of the consents and powers that either of the spouses has granted to the other. However, in order for this to take place, one of the spouses or the competent court must inform the bank of said circumstance.

Therefore, either of the spouses may request a change in the rules of operation of the securities account, which the entity must comply with after informing the other co-holder of said change.

In the event that either of the spouses or the court provides evidence to the entity of the admission to processing of a petition for nullity, separation or divorce, the entity must also change the rules of operation of the account from indistinct to joint. However, in this case, it is not necessary to inform the spouses of the situation when the request is made by the court, or the non-requesting spouse, in the event that the request has come from the other member of the couple.

It would therefore be considered bad practice for the respondent entity to block a securities account based on the subjective perception of the entity's staff based on their personal relationship with any of the account holders and not to process an order given by one of the indistinct co-holders when none of them have requested a change in the rules of operation and the entity does not have any document justifying the blocking of the account.

R/760/2016 and R/56/2017: the mere existence of a procedure for divorce or separation of the holders of a securities account does not affect its rules of operation unless this situation has been notified to the entity. Consequently, with no record of said notification, when the rules of operation of the account establish indistinct access, this will continue and either of the spouses may dispose of the units of an investment fund. In these cases, the respondent entity may not refuse to process the redemption ordered by either of the co-holders.

➢ Separation agreement

Entities must keep clients properly informed.[163] In view of this obligation, the entity must inform the client of the documentation required in order to process orders for the distribution of securities after a divorce, and accordingly if the client only submits, for example, the separation agreement, they should be informed of the need to provide evidence of court approval of the agreement in order to be able to process the order.

Once the documentation has been submitted, the entity must make the changes in ownership in accordance with the provisions of the separation agreement ratified before the judge or issued in the divorce decree.

R/110/2017: in this complaint, it was revealed that, following a divorce decree whereby the assets making up the joint ownership of property would be divided between spouses at 50%, and once the distribution had been carried out, the respondent entity, by mistake, maintained in the information provided online with regard to the complainant's current account an incorrect balance which the entity did not detect and correct until notified by the complainant. Once it was notified, the entity corrected the error and contacted the complainant to assess possible financial compensation for any harm caused, which the Complaints Service assessed as very positive.

➢ Current account associated with a securities account with different holder

It is an essential requirement that on opening a securities account, it is associated with a current account so that the amounts received as dividends or the amount obtained following the sale of the deposited securities may be credited to said account.

The holders of the securities and the cash accounts do not necessarily have to match. It may be the case that both spouses are co-holders of the securities account but only one of them is the holder of the associated account. 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.

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 decide on the liability, where appropriate, of the aforementioned holder of the cash account.

If any of the co-holders of the securities account disagree with the fact that the amounts received as dividends or for any other reason are credited to the current account held by only one of the co-holders of the securities account or even by a third party, they may request that the depository modify the cash account, although this must be ratified by all the co-holders of the securities account. This is the case for the complaint below:

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163 Article 209 of Royal Legislative Decree 4/2015, of 23 October, approving the recast text of the Securities Market Act.

R/301/2017: in this complaint, the client stated that her aunt (deceased) acquired shares in the client's name when she was still a minor. However, the client was not included as holder in the associated cash account and was therefore never able to make use of the profits generated. In addition, the client complained that the co-holder of the associated cash account withdrew part of the money generated by the shares following the death of her aunt. The complainant therefore requested a solution to this situation so as to have access to the cash obtained from the dividends of their shares.

In this case, it was concluded that ownership of the shares deposited in the securities account subject to the complaint was held by the complainant together with the community of heirs of the deceased with joint access. Therefore, the complainant required the express consent of the community in order to make any change to the associated cash account.

Finally, the complainant was informed that in the event that she considered that the co-holder of the cash account made improper use of the proceeds of the securities, she should take the matter, if deemed appropriate, to the ordinary courts of justice in order for them to decide on the matter.

➢ Establishing rights *in rem*

Sometimes, in order to obtain financing from third parties, the holder of financial instruments offers them as guarantee for the payment and, consequently, successful completion of the financing operation. In these cases, these financial instruments are pledged.

This pledging of securities involves, from the start, the freezing of the financial instruments designated as collateral, which implies a restriction to their free transferability. Consequently, depositories may not process transfers affecting these securities while this situation continues except in the case of transfers resulting from compulsory enforcement of judicial or administrative rulings.

Any use made of the pledged financial instruments requires prior lifting of the pledge in accordance with the provisions of the clauses of the loan or prior extinction of the cause of the pledge, i.e., cancellation of the debt that gave rise to it. However, Spanish law[164] assumes, in the absence of evidence to the contrary, cancellation of the obligation when the pledged item, after having been delivered to the creditor, is in the power of the debtor.

R/300/2017: the complainant, acting as representative of a limited liability company, disagreed with the failure to execute an order to sell shares pledged as collateral for a loan entered into with the respondent entity.

The documentation submitted to the complaint proceedings included an email in which the complainant placed an order with the entity to sell the shares pledged in favour of the bank in order to obtain sufficient cash with which to settle the loan guaranteed with the pledging of said shares.

164 Article 1.191 of the Civil Code.

The staff of the respondent entity replied that as soon as the pledge was lifted, the shares would be sold.

In view of the failure to execute the order to sell, the complainant requested information, but received contradictory messages about the reason why said transaction had not been executed.

Consequently, it was considered that the entity had not demonstrated that it had appropriately kept the client informed of the reasons why the sale of the securities had not been executed or whether or not it had taken steps to obtain the lifting of the pledge of the shares that the complainant wished to sell.

When an attachment takes place, a financial asset is withheld by judicial or administrative order for the purpose of ensuring payment of a debt. The freezing of the asset continues until payment of the debt contracted in the period established for this purpose or, if it is not paid, until enforcement of the ordered attachment by selling the affected assets in order to obtain liquidity and thus pay the debt that gave rise to said attachment.

R/388/2017: the complainant held in the respondent entity units of an investment fund that were given as collateral for compliance with an obligation. Once this obligation had been fulfilled and the pledge lifted, the complainant requested that the entity recover the amount invested in said units. However, the entity informed the complainant that they were subject to an attachment. Similarly, the Customer Service Department of the respondent entity informed the complainant that the units would be subject to an attachment after receiving an order from the City Council of Madrid and that, on the date of the document, they had not received an order to lift said attachment. The entity also informed the complainant that when it received said order, it would conduct the appropriate verifications to unblock the fund units. They also suggested that the complainant contact the City Council of Madrid for further information about the attachment proceedings.

In the pleading submitted to the Complaints Service, the entity informed that the complainant had submitted to its branch the order for the lifting of the attachment, which the fund manager had executed. As they were now free of charges, the unit-holder was able to order redemption of the units.

➢ Spin-offs

In recent years, there have been certain corporate operations consisting of the spin-off of part of the business of a listed company which then becomes a subsidiary. In these cases, the parent company delivers shares in the subsidiary to its shareholders. The initial shareholder in the parent company thus holds shares in both companies, which may have different business approaches.

This operation was carried out by awarding to the initial shareholders of the parent company a certain number of shares of the subsidiary awarded part of the spun-off business in proportion to the number of shares that they held in said company on a particular date.

These operations may be accompanied by a capital increase, so that, in this case, the new shares issued are placed through a public offering.

Sometimes, after a spin-off, errors may occur in the allocation of the shares of the subsidiary, awarding shares to shareholders who do not meet the conditions established in the operation. In these cases, to which the following complaint relates, the entity must correct the error immediately.

R/702/2016: the client complained that the bank had cancelled their order to sell the shares awarded to the client following a spin-off. That right had apparently arisen from the complainant's acquisition of shares in the parent company in the days prior to the operation. Consequently, the complainant requested payment of the proceeds of the cancelled sale or, if not possible, financial compensation for the fall in the listed price of the parent company's shares linked to the spin-off.

The parent company, under the conditions of the spin-off, announced the delivery of a certain number of shares of the company resulting from the spin-off in proportion to the shares that the shareholder had in the parent company, setting for this purpose an accrual date for the operation and a subsequent date for delivery of the shares.

Due to a technical error that it acknowledged, the bank awarded the complainant shares to which they were not actually entitled (the complainant had acquired the shares in the parent company after the accrual date). After these shares were awarded, the complainant ordered their sale. After it had detected the incorrect awarding of the shares subject to the order to sell, the entity reversed said transaction.

In this regard, it is important to point out that entities should make as few errors as possible. To do this, they must allocate all the necessary time to each client in order to identify the client appropriately, correctly interpret their instructions, pay attention to their complaints and quickly and effectively correct any error that might arise. They must also assume the damages caused by any errors that might arise.

In this complaint, it was concluded that the complainant had received an incorrect communication from the entity when it informed the client that they were entitled to a specific number of shares of the new company as, in fact, when the complainant acquired such shares, the date set by the listed company to acquire the status of shareholder, and therefore access to said right, had already passed.

➢ Loyalty programmes

Incidents in the awarding of shares to investors as a result of loyalty programmes also give rise to technical and operational errors by entities. In these cases, once the entity detects the error, it must inform the client and resolve the error, restoring the situation to the initial moment and rectifying any tax effects.

R/561/2016: the complainant was awarded a share of the respondent entity despite having expressly waived any shares corresponding to them as a consequence of contracting a programme linked to the allotment of free shares under certain circumstances. The entity acknowledged the operational error and regretted that at the time the complaint was made it was no longer possible to waive the unduly allotted share. It therefore proposed two solutions to the complainant: selling the share without applying a fee – crediting to the client the difference in value resulting from the sale – and cancelling the securities deposit and administration contract that had been opened to deposit the delivered share, or maintaining it in the account at no cost.

Even though the Complaints Service considered that the solutions proposed by the entity were reasonable, it deemed that the entity had acted incorrectly as it had not detected the error committed with due diligence.

It is important to clarify, with regard to other issues that may arise resulting from the delivery of shares in loyalty programmes, that the Complaints Service may only assess whether the fact referred to in the complaint is in accordance with the rules and requirements to form part of the loyalty programme.

R/27/2017: in this case, the complainant considered that the purchase price, and the tax withholding made, of the shares assigned to them as a result of complying with the requirements of the loyalty programme were not correct.

After analysing the rules of the programme and the quoted price of the share on its assignment date, it was considered that the entity had complied with the conditions of the rules with regard to the assigned purchase price. With regard to the tax withholding, the complainant was informed that in order to resolve such tax matters, they should contact, where considered appropriate, the State Tax Administration Agency.

➢ Restitution of ownership of securities

R/80/2017: A client filed a complaint with the Complaints Service because the respondent entity, in their opinion, had poorly executed the nullity judgement obtained in the courts with regard to an investment in preferred shares. Once all the documentation in the complaint proceedings had been analysed, it was possible to demonstrate, as the client had indicated, that the entity had made a mistake when settling the amount of the investment. The entity had thus deprived the complainant of ownership of some shares which, in accordance with the calculations made in the aforementioned judgement, the complainant should maintain in order to recover their initial investment.

Therefore, the Complaints Service concluded that the entity had not acted diligently in the manner in which it settled said debt. After receiving the report issued by the Complaints Service, the entity reported the rectification of the situation and that it had replaced the shares in the complainant's securities account.

Summary of complaints relating to ownership EXHIBIT 12

- The purchase of securities requires the opening of a securities account by signing a custody and administration contract with a financial institution and the opening of a cash account linked to the securities account. **Ownership of a financial instrument is assumed to correspond to the holder of the securities account**, and the name of said holder is set out in the contract for opening said account.

- In those cases in which there is more than one holder of the securities account, the contract should include **rules for operation with regard to the financial instruments,** which may allow for indistinct/joint and several access (the holders give their mutual authorisation to make use of the financial

instruments) or operations on a joint basis (which require the prior consent of all of the holders for ordering transactions).

Any of the co-holders may request a change in the rules from a joint and several basis to operating on a joint basis, although the entity must inform the other holder or holders prior to said change.

– As indicated above, the opening of a securities account requires the designation of a **linked cash account** against which all movements of money resulting from transactions with the financial instruments generated in the securities account are debited or credited. The holders of both accounts (securities and cash) do not necessarily have to match. Ownership of financial instruments is only assumed in respect of the holders of the securities account.

  When one of the holders of the securities account considers that improper use is being made of the balance of the linked cash account, he/she must raise the issue with the courts.

– In order to deal with orders for the **distribution of securities in the event of divorce**, it is necessary that either of the spouses provides the entity with certain information, such as the separation agreement ratified before a judge or issued in a divorce decree. If the customer does not provide the necessary documentation for this distribution, the entity is required to inform the customer about what documentation he/she needs to provide.

– The holder of financial instruments may offer them as guarantee for payment for the successful completion of a financing transaction. The **pledging of securities** entails, from the outset, the blocking of the financial instruments designated for such purpose.

  Any use made of the pledged securities requires prior lifting of the pledge in accordance with the provisions of the clauses of the loan or prior extinction of the cause of the pledge, i.e., cancellation of the debt that gave rise to it. However, Spanish law assumes, in the absence of evidence to the contrary, cancellation of the obligation when the pledged item, after having been delivered to the creditor, is in the power of the debtor.

– When shares have been **mistakenly assigned or awarded** to an investor, whether as a result of a spin-off in which the shareholders of a parent company are given a certain number of shares of the company that has been spun off or as a result of loyalty programmes consisting of the delivery of shares, the entity must detect and communicate the error to the customer quickly, restore the situation to the initial position or to the correct position and accept liability for the tax effects that may arise from its poor performance.

4.9 Operation of entities' Customer Service Departments

Complaints were received in 2017 that revealed deficiencies in the operation of the Customer Service Department of financial institutions in the matters indicated below.

➢ Place for filing complaints

Article 11 of Order ECO/734/2004, of 11 March, on the Customer Service Departments and Customer Ombudsman of financial institutions provides the following: "Claims and complaints may be filed with the Customer Service Departments, the customer ombudsman, where appropriate, at any of the entity's offices open to the public, as well as at the email address that every entity must establish for this purpose".

For its part, Article 12 of the aforementioned Order 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 their complaint or claim".

The following complaints highlighted a failure to comply with these procedural requirements:

R/128/2017 and R/159/2017: it was concluded that there was bad practice on the part of the entity as the office did not pass on the complaint to the Customer Service Department.

➢ Calculation of period for termination

In accordance with Article 12 of Order ECO/734/2004, of 11 March, "the maximum period for termination will start to be calculated from the filing of the claim or complaint with the Customer Service Department or, as the case may be, the Customer Ombudsman. At any event, a written acknowledgement of receipt must be given and a record made of the filing date for the purposes of calculating said period".

R/677/2016: it was considered bad practice for the office staff to refuse to stamp the complaint filed with the office.

It is the criterion of the CNMV's Complaints Service that in the event that the entity's Customer Service Department has submitted the aforementioned acknowledgement of receipt, the date for starting the calculation of the two-month resolution period for the complaint will be that indicated on said acknowledgement of receipt. Otherwise, i.e., if receipt has not been acknowledged by the Customer Service Department, the period will start to run from the date stated in the document filed by the complainant in any of the places authorised for this purpose.

➢ Period for resolution

Article 15 of Order ECO/734/2004, of 11 March, establishes the following with regard to the period for resolution: "The proceedings shall conclude in a maximum period of two months from the date on which the complaint or claim was filed with the Customer Service Department or, where appropriate, the Customer Ombudsman" (R/218/2017).

Article 15 also establishes the following: "The decision will at all times be reasoned, and will contain conclusions as to the request raised in each grievance or complaint, based on the contractual clauses, the applicable standards of transparency and client protection, and good practice and financial norms".

These obligations are also set out in the operating regulations of the Customer Service Departments of entities that provide investment services

R/314/2017: the Customer Service Department's resolution was classified as bad practice as it was considered partial and it contravened the operating regulations of the entity's Customer Service Department as the request made by the complainant was not answered.

➢ Criteria of the Complaints Service

In addition to the provisions of Order ECO/734/2004, of 11 March, and the operating regulations of the different Customer Service Departments, it is important to refer to Order ECC/2502/2012, of 16 November, regulating the procedure for filing complaints with the complaints services of the Bank of Spain, the CNMV and the Directorate-General for Insurance and Pension Funds. The criteria followed by the Complaints Service in resolving complaints are highlighted below:

– The Complaints Service considers it bad practice for entities to fail to respond to requests for comments, clarifications or cooperation that this Service may make during the processing of a complaint. This failure to cooperate makes it impossible to issue a suitable resolution on the issues raised by the complainant (R/178/2017, R/201/2017 and R/226/2017).

– It also classifies the operation of the entity's Customer Service Department as inappropriate when it does not respond to clients' requests for information or documentation. It is relatively frequent for entities not to submit 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 transactions with the entity, clients are forced to file a complaint with the CNMV. This is based on two reasons: firstly, as a result of the delay that this causes in achieving the investor's claims and secondly, because it makes it necessary to start up the administrative machinery for inappropriate purposes.

– The decisions taken by the entity's Customer Ombudsman (as appropriate) are binding on the entity and therefore it must also be understood that the commitments made by the entity to its Ombudsman to resolve its client's complaint must also be deemed binding, and it is bad practice for the entity to breach these commitments. For this same reason, the resolutions adopted by the Customer Service Department in favour of the complainant must also be deemed binding on the entity, with it considered bad practice for the entity not to consider them as such (R/88/2017).

Summary of complaints relating to the operation of the Customer Service Department or Customer Ombudsman

EXHIBIT 13

– The **operation of entities' Customer Service Departments** and Customer Ombudsman are regulated in Order ECO/734/2004, of 11 March, on the Customer Service Departments and Customer Ombudsman of financial institutions.

– Each entity or group approves a **Customer Protection Regulation,** which regulates the activity of the Customer Service Department and, where appropriate, the Customer Ombudsman, as well as the relations between both.

– Order ECC/2502/2012, of 16 November, regulates the procedure for filing complaints with the Complaints Service of the CNMV. This Service maintains, among other things, the following criteria:

  - The start date for **calculating the period for resolution** is indicated on the acknowledgement of receipt of the complaint filed with the entity's Customer Service Department or Customer Ombudsman. If receipt has not been acknowledged, the period will start to run from the date stated in the document filed by the complainant in any of the places authorised for this purpose.

  - It is considered **bad practice** for entities to fail to respond to the requests for comments, clarifications or cooperation that this Service may make during the processing of a complaint. This failure to cooperate makes it impossible to issue a suitable resolution on the issues raised by the complainant.

  - When the complaint relates to **requests for documentation** that have not been responded to, it is relatively frequent for entities not to submit to their customers the documentation requested in the first instance, but rather to postpone said submission until the time they make pleadings before the Complaints Service after the complaint proceedings have been initiated by the dissatisfied customer.

    In these cases, the reports resolving the complaints indicate that it is not considered appropriate that in order to obtain a copy of the documentation generated in their commercial transactions with the entity, customers are forced to file a complaint with the CNMV.

  - The **decisions taken by the entity's Customer Ombudsman** (as appropriate) are binding on the entity and therefore it must also be understood that the commitments made by the entity to its Ombudsman to resolve its customer's complaint must also be deemed binding, and it is bad practice for the entity to breach these commitments. For the same reason, the resolutions adopted by the Customer Service Department in favour of the complainant must also be deemed binding on the entity, with it considered bad practice for the entity not to consider them as such.

5 Enquiries area

5 Enquiries area

5.1 Enquiries

The CNMV's Investors Department, among other functions, handles investor enquiries on topics of general interest concerning the rights of financial service users and the legal channels available to defend 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. Prominent among those are 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.

5.1.1 Volume and channels of enquiries

The CNMV dealt with 11,199 enquiries in 2017. Most of the enquiries were made by telephone (88.5%) 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 (8%), located on the CNMV's website, followed by ordinary post or submission through a general register (3.6%).

As shown in Table 20, the total number of enquiries dealt with by the CNMV rose by 39.5% on 2016.

This increase was mainly the result of the higher number of telephone enquiries (3,393 up on 2016) and enquiries received by ordinary post or submitted through the general register (68 up on 2016), while enquiries received through the virtual office fell (290 fewer than in 2016).

One of the reasons behind the increase in the number of enquiries dealt with in 2017 compared with 2016 was the resolution adopted by the Single Resolution Board (SRB) regarding Banco Popular Español, S.A. In view of the number of enquiries received in this regard, a question-and-answer document was drawn up and given to the call centre so they could deal with the enquiries as accurately as possible.

With regard to response times, excluding enquiries received by telephone, which are dealt with on the same day, the average for 2017 stood at 15 calendar days.

Number of enquiries by channel TABLE 20

	2015		2016		2017		% change
	No.	% / total	No.	% / total	No.	% / total	17/16
Telephone	6,974	78.7	6,514	81.1	9,907	88.5	52.1
Ordinary post	512	5.8	331	4.1	399	3.6	20.5
Form/Virtual Office	1,380	15.6	1,183	14.7	893	8.0	-24.5
Total	**8,866**	**100.0**	**8,028**	**100.0**	**11,199**	**100.0**	**39.5**

Source: CNMV.

The channels available for submitting enquiries to the CNMV are:

– Electronically through the CNMV virtual office (https://sede.cnmv.gob.es/sedecnmv/sedeelectronica.aspx), using a digital 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 (900 535 015). This line is manned by call centre operators, and is confined to enquiries about information held in the CNMV's official registers or posted on its website (www.cnmv.es).

Finally, it is important to point out that the email mailbox serviciodeclamaciones CNMV@cnmv.es is in no case authorised to admit new enquiries for processing, but only deals with issues relating to previously filed complaints or enquiries, in accordance with the appropriate procedures. Complainants or enquirers must identify themselves and provide the reference number assigned to the complaint or enquiry, which interested parties are informed of so that they might submit their enquiries through the appropriate channels.

5.1.2 The subjects of enquiries

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

- The resolution of Banco Popular Español, S.A. adopted on 7 June 2017 by the Single Resolution Board (SRB).[165]

- Requests for information on purchase prices of securities listed on an official Spanish secondary market.

- Issues relating to the company Abengoa, S.A. regarding: i) alleged manipulation of the price of its shares between 23 and 31 March, ii) alleged promotion of mass purchases and manipulation of its shares through significant events and iii) alleged irregularities in the capital increase of March 2017 and failure to comply with the requirements of the capital increase prospectus published in English.

- The suspension from trading of the shares of Urbas Grupo Financiero, S.A.

- Enquiries relating to the requirement to have a Legal Entity Identifier (LEI code).

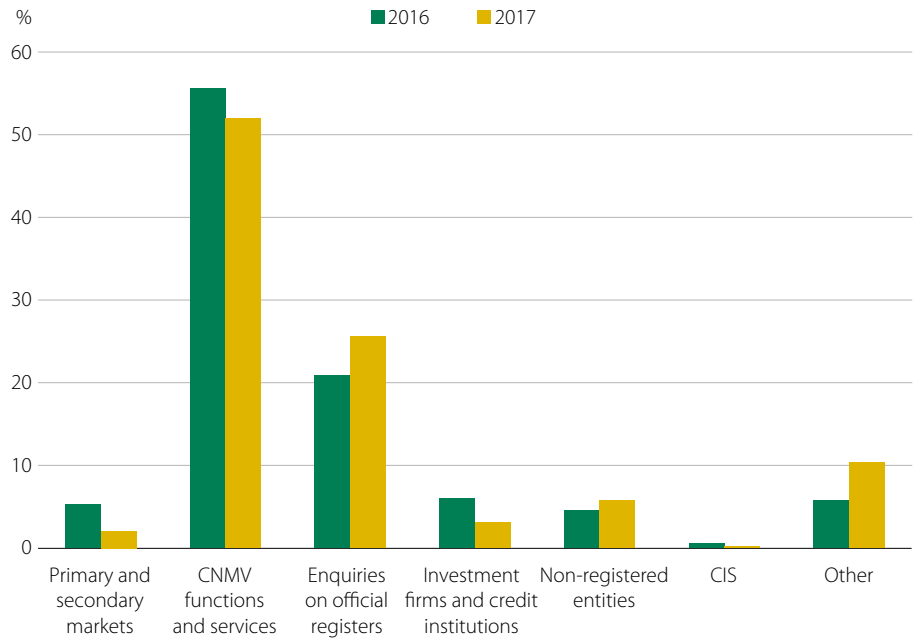
- Administration and custody fees relating to suspended and delisted securities.

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").

165 The SRB is the resolution authority of the European Union. It is a key element of the Banking Union and its Single Resolution Mechanism. Its mission is to ensure an orderly resolution of failing banks with minimum impact on the real economy and the public finances of the participating Member States and third countries.

Enquiries by subject FIGURE 26



Source: CNMV.

5.1.3 Key subjects of enquiries

This chapter singles out enquiry subjects considered of particular importance.

5.1.3.1 Enquiries regarding the resolution of Banco Popular Español, S.A. adopted on 7 June 2017

Based on the various issues raised by interested parties about the aforementioned resolution, the main information given was as follows:

i) It was adopted by the Fund for Orderly Bank Restructuring (Spanish acronym: FROB), in execution of the decisions taken by the competent European Union authorities in this area.

Specifically, Banco Popular Español, S.A. (hereinafter, Banco Popular) is subject to the supervision of the European Central Bank and is subject to Regulation (EU) No. 806/2014 of the European Parliament and of the Council, of 15 July 2014, establishing uniform rules and a uniform procedure for the resolution of credit institutions.

In this regard, on 6 June 2017, the European Central Bank determined that Banco Popular was failing or likely to fail as it was unable to pay its debts or other liabilities as they fell due or because there were objective elements that indicated that it would have been unable to do so in the near future and the Single Resolution Board (SRB) agreed to declare the resolution of Banco Popular and approve the resolution scheme which contained the resolution measures to be applied.

The FROB, as executive resolution authority, took the necessary measures, through the aforementioned resolution of 7 June 2017, to apply the resolution procedure determined by the SRB in accordance with the resolution process regulated in the

aforementioned Regulation (EU) No. 806/2014 of the European Parliament and of the Council, of 15 July 2014.

ii) The holders of Banco Popular shares lost all their investments.

The execution of this FROB resolution, which took immediate effect, entailed the write-down of all of the company's shares with no payment of any sum or compensation to the holders of the shares.

They therefore lost their entire investment.

iii) The holders of contingent convertible bonds and subordinated bonds of Banco Popular also lost their entire investment.

Execution of this resolution led to the conversion of the contingent convertible bonds into shares and a second capital reduction to zero euros, which led to their write-down without their holders receiving any sum.

It also led to the conversion of the subordinated debt of Banco Popular into shares and the subsequent sale to Banco Santander, S.A., through a competitive tender process won by the latter, of all of the shares resulting from this conversion for a total of one euro.

This led to the holders of these contingent convertible bonds and subordinated bonds losing their entire investment.

Specifically, the list of Banco Popular issues affected by this resolution may be consulted in the significant events received from the FROB and Banco Popular on 7 June 2017 with register numbers 252996 and 252998.

iv) Banco Santander, S.A. (hereinafter, Banco Santander), as part of the aforementioned competitive tender process, became the sole shareholder of Banco Popular.

v) In the context of these adopted measures, the FROB announced that Banco Santander had undertaken in the agreement to take the necessary steps to ensure the continuity of Banco Popular's activities, services and operations.

vi) The measures adopted by the FROB did not affect the securities deposited in said entity issued by other entities or the assets of the mutual funds marketed by Banco Popular, or those in which Banco Popular was the depository or in which their management company was an entity of the Banco Popular Group.

The above of course does not apply to the extent that the portfolios of said mutual funds contain some of the aforementioned assets affected by the resolution, in which case those specific assets would lose their value.

In particular, in the cases of guaranteed funds in which Banco Popular acted as guarantor, this guarantee would remain in force, with the particular feature that, as Banco Santander acquired all the share capital of Banco Popular, the guarantee of the fund would henceforth be granted by an entity that forms part of the Santander group.

vii) Effectiveness of the transactions executed in the Spanish Stock Market Interconnection System (SIBE) with regard to Banco Popular shares which had not yet been settled at the time the FROB Resolution was adopted.

Share purchase and sale transactions executed in the SIBE are effective from the time they are executed on the stock market, with it therefore not being necessary to wait until their settlement.

Specifically, these trades are settled and the book entries executed two business days after their execution date on the stock exchange (T+2), as in fact happened with the sale of Banco Popular shares executed in their last days of stock market trading.

Therefore, although the effectiveness of the measures adopted by the FROB in its resolution of 7 June 2017 was immediate, the actions resulting from said resolution were executed in the accounting records of Iberclear, Euroclear and Clearstream using the positions registered at these entities at the end of the settlement processes on 8 June 2017 ("record date").[166]

Therefore, stock market purchases and sales of Banco Popular shares executed up to and including 6 June 2017 – the last day on which those shares were tradable on the SIBE – are fully effective and valid.

viii) Open positions in MEFF in derivative contracts whose underlying assets were Banco Popular shares.

MEFF informed through notices 20/17 and 21/17 dated 7 and 8 June 2017, respectively, that, in accordance with the general conditions of the group of underlying financial asset contracts, its Supervision and Monitoring Committee adopted the decision to settle, in advance and at the theoretical price, the open positions in derivative contracts on Banco Popular on 9 June 2017.

In particular, they communicated the following: "Since the underlying shares of the derivative contracts on BANCO POPULAR ESPAÑOL, S.A. have been written off and therefore do not exist, all derivative contracts on BANCO POPULAR ESPAÑOL, S.A. will be settled for differences, irrespective of whether their original settlement method was defined as for delivery or for differences".

Consequently, persons who enquired about the possibility of receiving the underlying shares of Banco Popular corresponding to their derivative contracts were informed that, as set out in the aforementioned MEFF notices, it was not possible for the shares to be delivered to them as they no longer existed after having been written off in the context of the resolution adopted by the FROB on 7 June 2017.

ix) The actions or adjustments, where applicable, made to the open positions at the time of adoption of the FROB resolution on contracts for differences (CFDs) whose underlying asset was Banco Popular shares had to be those provided for in the contractual documentation of each CFD.

166 See the significant event filed by Banco Popular Español, S.A. with the CNMV on 7 June 2017, under register number 252998.

CFDs are non-standardised contracts whereby an investor and a financial institution agree to exchange the difference between the purchase price and the sale price of a particular underlying asset (marketable securities, indices, currencies, interest rates and other assets of a financial nature) that do not require the full payment of the nominal amount of the purchase and sale transactions.

These products generally involve bilateral trading outside regulated markets.

Similarly, since these are non-standardised products, their terms, conditions and functioning differ from one issuing entity to another and are determined by the contractual documentation concluded for this purpose by the parties.

Accordingly, when corporate events occur or, as in this case, extraordinary events that affect the underlying of a CFD, the adjustments or actions, as the case may be, made on the positions of the parties in the CFDs in question must be those provided for in the CFD contractual documentation.

x) With regard to the appeals that might be filed against this resolution, in the significant events received from the FROB and Banco Popular on 7 June 2017, it was reported that the following appeals might be lodged against this resolution:

Against the resolution scheme approved by the Single Resolution Board.

In accordance with Article 86 of Regulation (EU) No. 806/2014, proceedings may be brought before the Court of Justice of the European Union contesting the resolution scheme approved by the Single Resolution Board referred to in Background Fact Three of this Resolution within two months of the publication of this Resolution.

Against this Resolution through which the resolution scheme approved by the Single Resolution Board is implemented.

The current agreements through which the FROB implements the resolution scheme approved by the Single Resolution Board bring to a close the administrative appeal process. An appeal requesting reversal may be filed in accordance with Articles 123 et seq. *of Law 39/2015, of 1 October, on the Common Administrative Procedure of Public Administrations, within 1 month from the day after the Resolution is published. An appeal for judicial review may also be filed before the Contentious Administrative Chamber of the National High Court within the two-month period provided for in Article 46 of Law 29/1998, of 13 July, on the Contentious-Administrative Jurisdiction.*

xi) With regard to the possibility of initiating legal actions against Banco Popular as the issuer of the shares, it was communicated that this would require going through the courts.

When the investors' disagreements related to the actions of Banco Popular as a securities distributor, it was also communicated that a complaint might be filed with the Complaints Service in accordance with the procedure established for this purpose.

xii) The role of the CNMV in relation to the financial reporting of issuers and, in particular, of Banco Popular.

The CNMV has an important supervisory role, but it is obviously not a second accounts auditor.

Accordingly, the CNMV may collect from issuers or account auditors information or documents or require issuers to disclose additional information, reconciliations, corrections or, where appropriate, restatements.

However, the reviews of the financial information carried out by the CNMV, in a manner consistent with the guidelines of the European Securities and Markets Authority (ESMA), are mainly based on the off-site review of the breakdowns and accounting policies contained in the annual accounts and other periodic financial reporting, and are not intended to replicate the work and on-site tests carried out by the external auditors.

However, any investigations, supervision or inspections which the CNMV may perform in this area are subject to the duty of secrecy imposed by Article 248.1 of the Securities Market Act (recast text approved by Royal Legislative Decree 4/2015, of 23 October).

xiii) The details of the measures adopted may be consulted in the aforementioned significant events received by the CNMV from the FROB and from Banco Popular, dated 7 June 2017, with register numbers 252996 and 252998, respectively; and in the press release published by the FROB on that same date.

In addition, the CNMV issued a communication on 7 June 2017 on the actions of the Single Resolution Mechanism of the European Union and of the FROB with regard to Banco Popular, and the FROB published a question-and-answer document relating to the resolution of Banco Popular.

xiv) Contingently redeemable perpetual bonds (hereinafter, loyalty bonds) of Banco Santander, offered by Banco Santander and Banco Popular to certain customers affected by the resolution adopted by the FROB.

These bonds were offered in the context of a commercial action, which both Banco Santander and Banco Popular communicated by means of significant events on 13 July 2017[167] and which, as they indicated, aimed to build the loyalty of their retail customer networks (Banco Santander, Banco Popular, Banco Pastor and Popular Banca Privada) who had been affected by the resolution of Banco Popular and who met certain conditions.

This offer was therefore not made as a result of a legal imposition, but rather, as indicated, a commercial decision taken by said entities within the scope of their autonomy and for which they therefore freely decided the terms, conditions and beneficiaries.

Specifically, these terms, conditions and beneficiaries were set out in the securities note[168] which, as a result of the public offering of these loyalty bonds, Banco Santander registered with the CNMV on 12 September 2017.

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167 CNMV register numbers 254,573 and 254,574.

168 CNMV register number: 10,814.

5.1.3.2 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 provides 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.

5.1.3.3 Issues relating to the company Abengoa, S.A.

Numerous enquiries/complaints were received about the following issues: i) the alleged manipulation of the price of shares between 23 and 31 March; ii) alleged encouragement of a mass purchase and manipulation of shares through significant events; and iii) alleged irregularities in the capital increase of March 2017, and failure to comply with the requirements of the capital increase prospectus published in English.

After collecting the pertinent information from the corresponding CNMV area, the Investors Department informed the interested parties that there was no record of any actions aimed at a possible manipulation of the value of the shares of Abengoa, S.A. during the indicated period or of the alleged encouragement of a mass purchase or manipulation of the value through significant events. With regard to the language of the prospectus, the Investors Department informed that Article 23.1 of

Royal Decree 1310/2005, of 4 November, partially implementing the Securities Market Act 24/1988, of 28 July, in matters relating to the admission of securities to trading on official secondary markets, public offerings for sale or subscription of securities, and the required prospectus for such purposes, establishes that the prospectuses approved by the CNMV for admissions to trading on an official secondary market will be drawn up at the choice of the person requesting the admission in Spanish, in a common language in the field of international finance or in another different language accepted by the CNMV, with English being a common language in the field of international finance.

5.1.3.4 Suspension from trading of the shares of Urbas Grupo Financiero, S.A.

The suspension agreed on 13 September 2017 was adopted after receiving a document from Central Examining Court Number 4 of the National High Court informing that said court was conducting the preliminary proceedings initiated by virtue of a criminal action brought by the Anti-Corruption Prosecutor's Office against Juan Antonio Ibáñez Fernández, Urbas Grupo Financiero, S.A. and others, for the investigation of an alleged offence of fraud, offences relating to the market and consumers and the corporate offence of fraudulent management.

Said suspension was lifted on 29 December 2017. At any event, it was deemed necessary to draw the attention of investors to the information contained in the periodic financial reporting corresponding to the first half of 2017 and in the significant events published by the company since the date of its suspension from trading (especially that published on 28 December 2017), which contain, among other items, the following information:

– The consolidated interim financial reporting corresponding to the six-month period ending 30/06/17, the management report and audit report of the consolidated interim financial statements.

– The valuation reports commissioned for the preparation of the consolidated financial statements for 30/06/17.

– Statements by Urbas regarding a report by the State Tax Administration Agency referred to in the criminal action brought by the Anti-Corruption Prosecutor's Office and the valuation reports used by the company for preparing the interim financial reporting.

5.1.3.5 Enquiries relating to the obligation to have an LEI code

The LEI (Legal Entity Identifier) code is a 20-character alphanumeric code that uniquely identifies legal entities worldwide. The LEI is unique, permanent, consistent and portable for each entity.

Several European Union regulations require this code in order to identify legal persons that participate in financial markets through repos, derivatives or securities transactions. Investment firms and credit institutions that execute transactions in financial instruments admitted to trading on a market on behalf of clients that are legal persons must obtain from said clients the LEI that identifies them prior to executing the transactions.

If the client does not provide its LEI to the financial intermediary, the latter cannot execute the transactions instructed by those clients that are required to have an LEI and which have not provided it.

Legal persons giving orders to financial intermediaries to conduct transactions in instruments admitted to trading would have to complete all the necessary procedures for obtaining an LEI initially before 3 January 2018[169] if they wish those intermediaries to continue executing the transactions that they instruct them to carry out.

The issuance and management of LEIs in Spain has been entrusted to the commercial registrars, with the Association of Registrars of Spain being the institution in charge of coordinating the operation of the system in Spain and of ensuring strict compliance with the technical and quality standards defined by the Regulatory Oversight Committee (ROC) and the Global Legal Entity Identifier Foundation (GLEIF). In order to obtain the LEI, the applicant must complete an application in which he/she provides basic information on the entity and must provide proof that he/she is acting on behalf of the entity or is making the application in the interest of another entity by virtue of an express mandate. The process is quick and easy and, in most cases, takes no longer than 48 hours.

The CNMV has published a relevant information document on the LEI code available at the following link:

http://cnmv.es/docportal/MiFIDII_MiFIR/CodigoLei.pdf

Further information can be obtained on the LEI on the website of the Association of Registrars of Spain:

https://www.justicia.lei.registradores.org/pgSolicitudIdentificador.

5.1.3.6 Administration and custody fee in suspended or delisted companies

Numerous enquiries are received every year 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.

It is 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

169 A transitory period of six months was adopted, which will end on 3 July 2018. During this transitory period, the reporting of transactions in which the code issue date is later than the execution date may be accepted under certain circumstances. As from that time, the reporting of transactions executed by clients must in all cases include an LEI issued prior to the trade date.

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 the suspended companies, the enquiries mainly focused on the companies Nyesa Valores Corporación, S.A.,[170] Vértice Trescientos Sesenta Grados, S.A.[171] and Reyal Urbis, S.A. (in liquidation).

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 2017 mainly with regard to Papelera Española, S.A.,

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170 On 22 December 2017, the CNMV agreed to lift the cautionary suspension of trading in the Spanish Stock Market Interconnection System of the shares or other securities which give right to subscription or acquisition of Nyesa Valores Corporación, S.A.
In view of the company's special situation, the CNMV deemed it necessary to draw the attention of investors to the information contained in the registration document filed with the CNMV on 22 December 2017 and in the significant events published by Nyesa Valores Corporación, S.A. in recent months (especially that published on 22 December 2017), which are available on the CNMV's website.

171 On 19 January 2018, the CNMV agreed to lift the cautionary suspension of trading on the Spanish Stock Market Interconnection System of the shares or other securities which give right to the subscription or acquisition of Vértice Trescientos Sesenta Grados, S.A.
In view of the company's special situation, the CNMV deemed it necessary to draw the attention of investors to the information contained in the registration document filed with the CNMV on 19 January 2018 and in the significant events published by Vértice Trescientos Sesenta Grados, S.A. in recent months (especially that published on 19 January 2018), which are available on the CNMV's website.

Gran Tibidabo, S.A. and Española del Zinc, S.A. Said procedure may be adopted with regard to Española del Zinc, S.A. as from 11 August 2017.

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 about the delisted companies Fergo-Aisa, S.A. (in liquidation); Martinsa-Fadesa, S.A. (in liquidation); Indo Internacional, S.A. (in liquidation) and La Seda de Barcelona, S.A. (in liquidation), although in these cases the waiver procedure cannot be applied 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.

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, irrespective of whether a waiver procedure exists or has been authorised.

5.2 Warnings about unauthorised firms (boiler rooms)

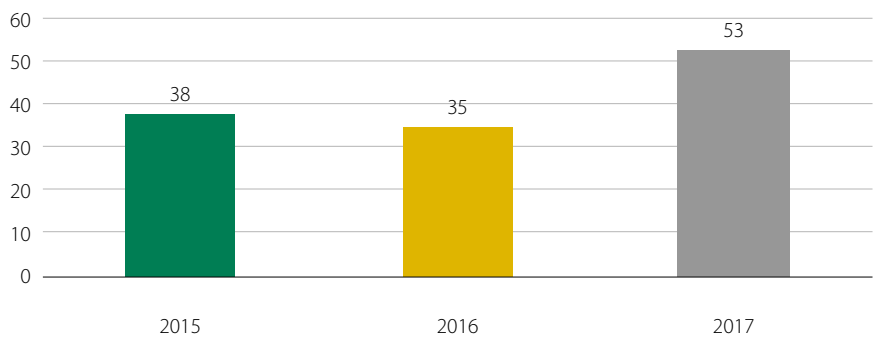
In compliance with Articles 17 and 144 of the Securities Market Act, the CNMV issues warnings on its website to investors about firms that are not authorised to provide the investment services provided by law – also known as boiler rooms – that have been detected by it or by other supervisors.

➢ Total number of warnings

As part of this activity, a total of 500 warnings were issued in 2017 (5% up on 2016), of which 53 (35 in 2016) were based on investigations conducted by the CNMV itself and 447 (441 in 2016) related to notifications from supervisory bodies of other European Union Member States.

Figure 27 shows the number of warnings about unauthorised firms made by the CNMV over the last three years:

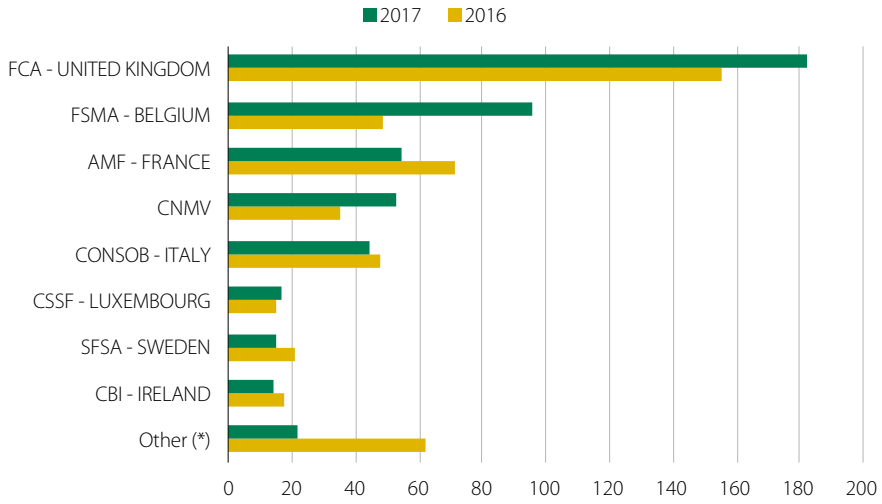
Number of warnings from the CNMV on unauthorised firms FIGURE 27



Source: CNMV.

Similarly, Figure 28 shows the number of warnings made by the CNMV in 2017 in the context of the warnings from supervisory bodies of European Union Member States. It should be noted that the FCA (United Kingdom) and the FSMA (Belgium) are regulators which also have responsibilities in the banking and insurance sectors and their warnings therefore also include these areas.

Number of CNMV warnings about unauthorised firms notified by supervisory bodies of EU Member States FIGURE 28



Source: CNMV.

➢ Detection of boiler rooms

In the process that is followed in order to manage the proceedings relating to boiler rooms, one of the most critical stages is the detection of the potential activity of firms providing investment services without the mandatory authorisation of the CNMV.

In general terms, the sources of information about possible irregular activities may be grouped into institutional sources (law enforcement and judicial bodies) and non-official sources (submitted by investors or detected by different media, such as the Internet) and may take different forms, such as claims, complaints, written enquiries, telephone enquiries etc.

With regard to the results of the activity performed with respect to non-official sources, it should be noted that, although the CNMV already had as a source of information the written enquiries submitted by the investors, in the last two years an attempt has been made to identify new sources of information on the activity of these entities and to optimise the handling of the already available sources, by systematising their use and centralising their management.

Sources of information on boiler rooms

TABLE 21

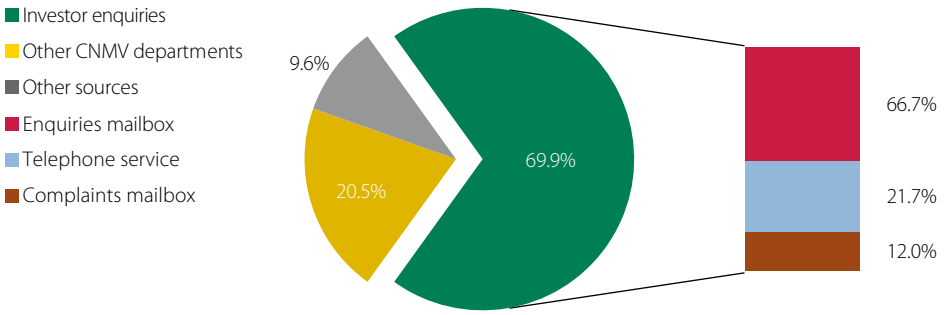
Number of cases

Source		2016 No.	2016 %	2017 No.	2017 %	Evolution
Investor enquiries	Enquiries mailbox	27	60.0	30	66.7	11.1%
	Telephone enquiries	0	0.0	18	21.7	n/a
	Complaints mailbox	7	15.6	10	12.0	42.9%
	Total enquiries	**34**	**75.6**	**58**	**69.9**	**70.6%**
CNMV departments		5	11.1	17	20.5	240.0%
Sources external to the CNMV		6	13.3	8	9.6	33.3%
Total		**45**	**100.0**	**83**	**100.0**	**84.4%**

Source: CNMV.

Sources of information in 2017

FIGURE 29



Source: CNMV.

The information obtained from different sources on the irregular provision of investment services allowed 83 cases of potential boiler rooms to be analysed, 84.4% more than in the previous year.

The main source of information remains the enquiries submitted in writing by investors (66.7% in 2017), which rose by 11.1% on the previous year. However, the incorporation of new sources of information (such as telephone enquiries) and the centralisation of the management of evidence obtained from other CNMV departments explain part of the growth in the total number of cases analysed.

In this regard, it should be noted that the number of telephone enquiries in 2017 rose by 79.3% on 2016, particularly as a result of enquirers having problems in recovering the balance of their operating accounts opened in boiler rooms.

Telephone enquiries about boiler rooms

TABLE 22

Number of cases

Purpose	2016 No.	2016 %	2017 No.	2017 %	Evolution
In order to discover the registry situation of the entity	192	64.2	225	42.0	17.2%
As a result of problems in recovering the balance of the accounts	100	33.4	311	58.0	211.0%
As a result of receiving an offer from a salesperson	7	2.3	0	0.0	n/a
Total	**299**	**100.0**	**536**	**100.0**	**79.3%**

Source: CNMV.

➢ Opening of informative investigation proceedings on boiler rooms

Opening of proceedings on boiler rooms

TABLE 23

Number of proceedings

Resolution		2016	2017	Evolution
Entities served with requests		44	74	68.2%
Official requests	Issued	58	91	56.9%
	Answered	21	38	81.0%

Source: CNMV.

As a result of the assessment of the availability of sufficient evidence and proof on the irregular provision of investment services – based on the information and documentation provided by the above sources of information and that obtained in the investigations performed by the CNMV – the opening of informative proceedings was rejected for 21 cases, with investigations focusing on 62 informative proceedings (74.7% of the total number of cases analysed).

In 2017, in the processing of the 62 informative proceedings, a total of 91 official requests were issued (56.9% up on 2016) to 74 entities (up 68.2%), of which 41.8% were answered (up on the 36.2% of the previous year).

➢ Resolution of informative investigation proceedings on boiler rooms

As a result of the evaluation of the documentation provided both by the information sources that led to the opening of the informative proceedings, and by the entities' responses to the official requests issued by the CNMV, warnings were made to the public about 53 websites, or about the trademarks and natural and legal persons linked to them, corresponding to 47 informative proceedings (38.2% up on the previous year).

Resolution proceedings relating to boiler rooms

TABLE 24

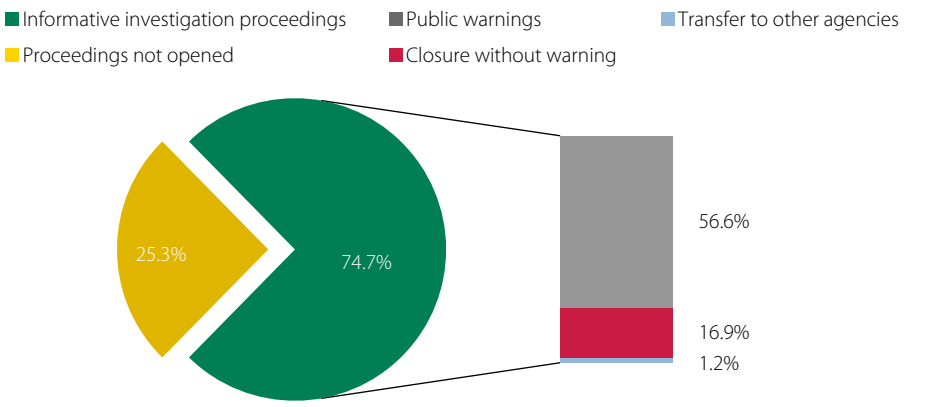
Number of proceedings

		2016		2017		Evolution
	Resolution	No.	%	No.	%	
Unauthorised firm proceedings	Public warning	34	75.6	47	56.6	38.2%
	Closed	4	8.9	14	16.9	250.0%
	Transfer to other agencies	0	0.0	1	1.2	n/a
	Total proceedings	**38**	**84.4**	**62**	**74.7**	**63.2%**
Closed		7	15.6	21	25.3	200.0%
Total		**45**	**100.0**	**83**	**100.0**	**45.0%**

Source: CNMV.

Resolution of proceedings in 2017

FIGURE 30



Source: CNMV.

Similarly, in 2017, public warnings were rejected in 14 cases (16.9% of those opened) for various reasons, such as regularising the situation and ceasing to act as a non-authorised entity; modify the nature of the services provided – as long as there was no reliable evidence of these services having been offered previously or being currently offered – or where the activity falls outside the scope of the CNMV (the case being transferred, on one occasion, to the Bank of Spain).

With regard to the source of the information that led to the opening of the proceedings, written enquiries remain the main source for public warnings (accounting for 51.1% of the informative proceedings), although it should be noted that systematic exploitation of telephone enquiries accounted for 27.7% of the proceedings which concluded with a public warning in 2017.

In any event, as a result of the quality of the documentation provided, written enquiries offer the highest probability that the reported case will conclude with a public warning (80.0%), although telephone enquiries also recorded a high percentage (72.2%).

Public warnings by source of proceedings

TABLE 25

Number of proceedings

	Source	2016 No.	2016 %	2017 No.	2017 %	Evolution	Warnings Index (*)
Investor enquiries	Enquiries mailbox	23	67.6	24	51.1	4.3%	80.0%
	Telephone enquiries	0	0.0	13	27.7	n/a	72.2%
	Complaints mailbox	2	5.9	3	6.4	50.0%	30.0%
	Total enquiries	**25**	**73.5**	**40**	**85.1**	**60.0%**	**69.0%**
CNMV departments		4	11.8	3	6.4	-25.0%	17.6%
Sources external to the CNMV		5	14.7	4	8.5	-20.0%	50.0%
Total		**34**	**100.0**	**47**	**100.0**	**38.2%**	**56.6%**

(*) Warnings index: percentage of reported cases that end in a public warning.

➢ **Dissemination of warnings on boiler rooms**

In 2017, in parallel with the dissemination of the public warnings through the CNMV's website on the activity of entities not authorised to provide investment services, the *Ten tips to avoid boiler rooms* in the "Investors Section" within the CNMV's website (http://cnmv.es/portal/Inversor/Decalogo-chiringuitos.aspx), with an inventory of tips to help investors identify such entities, continued to be published and updated.

These tips refer to specific conduct of such entities (such as, *inter alia*, customer acquisition techniques and the type of products marketed) detected in the processing of the informative investigation proceedings regarding boiler rooms managed by the CNMV and supplement the information set out in the *Guide on boiler rooms* published by the CNMV and available on its website (http://cnmv.es/DocPortal/Publicaciones/Guias/chiringuitos.pdf).

Similarly, in parallel with each publication of the public warnings corresponding to the completed proceedings, a list is published of all the warnings made since the start of the year with the aim of optimising the dissemination of said warnings over time.

5.3 Other activities of the Investors Department

5.3.1 Analysis of possible crowdfunding platforms

In 2017, the CNMV analysed 58 cases of entities offering services that might fall within the scope of crowdfunding platforms, which are regulated by Law 5/2015, of 27 April, on promoting business financing, which regulates, *inter alia*, said platforms.

The activity of crowdfunding platforms, regulated by means of Law 5/2015, of 27 April, on promoting business financing, 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, referred to as investors, with natural or legal persons that request funding on their own behalf for use in a crowdfunding project, referred to as promoters".

This activity may only be performed once the entities have obtained the mandatory authorisation and are registered in the corresponding CNMV register, which requires compliance with the requirements established in the aforementioned Law 5/2015.

Therefore, at the first stage, the objective of the analysis performed – based on Article 90 of said Law – was to discover the services offered by possible crowdfunding platforms that had not applied for authorisation for their registration with the CNMV at the time of the start of the investigations after 29 July 2016, as provided for in the Eleventh Transitory Provision of said Law.

Informative proceedings are subsequently opened with regard to this type of entity based on the enquiries submitted by investors or the information gathered through various sources of information.

5.3.2 Extension of the scope of the warnings to other types of entity

In relation to the above activity (although not exclusively), at the end of 2017, the CNMV commenced activities aimed at including on its website a new type of public warning about entities that might be performing any type of fund-raising activity or providing any financial service, other than those laid down for the above-analysed unauthorised entities, without having any type of authorisation or being registered for any purpose with the CNMV.

5.3.3 Analysis of the marketing of complex products by Cypriot entities under the freedom to provide services

➢ Background

Article 17 of the Securities Market Act entrusts the CNMV with protecting investors by disseminating any information necessary to that end.

In this context, the marketing of contracts for differences (CFDs), Forex products or binary options to retail customers has long been of concern to the CNMV, among other reasons, because they are "products and risks that are difficult for most retail investors to understand" and these investors "mostly [...] lose money".

In this regard, on 21 March 2017, the CNMV issued a communication which contained "measures on the marketing of CFDs and other speculative products to retail investors", which indicated that "without ruling out similar actions" to those that have been proposed by some European Union countries, the "CNMV has set in motion several measures to enhance the protection of retail investors in Spain when investing in CFDs, Forex products or binary options"; and "also plans to approach the securities supervisors of other countries to ask them to require that similar warnings be given and actions be taken by entities that provide these products to Spanish retail investors under the freedom to provide services".

In this regard, by means of a communication dated 22 May 2017 entitled *Entities domiciled in Cyprus that trade CFDs and other speculative products to Spanish retail clients*, the CNMV reported that "the Cyprus Securities and Exchange Commission (CySEC), the Cypriot financial market regulator, in response to a request from CNMV, has issued a circular so that entities domiciled in Cyprus that trade CFDs, Forex products or binary options in Spain, issue the same warnings and measures required of entities registered in Spain. Through this communication, the CNMV will be able to act in the event that the entities of the aforementioned country under the regime of free provision of services do not apply the measures communicated by the CySEC in transactions with Spanish investors".

➢ Objective of the analysis

The purpose of the analysis was to compare the effective level of compliance with regard to the performance of the "same warnings and measures required of the entities registered in Spain" with regard to complex financial products (CFDs, Forex products and binary options) marketed to retail investors resident in Spain by Cypriot investment firms registered with the CNMV under the regime of free provision of services – following the deadline set out for compliance with the Cypriot

circular – through what is considered the main vehicle for providing these services: the websites of said entities.

➢ Conclusions of the analysis

In 86% of the cases, some of the warnings analysed have been included, either satisfactorily (54%) or partially (32%).

54% of the warnings are included on the homepage and, in the case of pages in Spanish, 36% are written in English.

The most published warnings are those relating to products not suitable for retail investors and to the leveraged nature of the products, while the warning that is least included is that corresponding to their complex nature.

The result of this assessment of the level of compliance, including qualitative criteria, is 2.69 out of 5.

The websites in Spanish (42% of the total) obtain higher average scores than those written in English.

5.3.4 Participation in training courses for judges, prosecutors and state law enforcement agencies

In 2017, various training courses were given relating to the activity performed by the Investors Department with regard to boiler rooms and the handling of enquiries and complaints to members of the judiciary, prosecutors and State law enforcement agencies with the aim of transmitting the experience accumulated by the CNMV in these areas.

With regard to boiler rooms, the training informed about the problems related to detecting and combating these entities, as well as the *modus operandi* and the products offered by a sector that is continually changing. With regard to enquiries, the training provided information on the contact channels available at the CNMV for submitting enquiries, as well as the corresponding procedure and processing.

5.3.5 Cooperation with other CNMV directorates, departments and units

The Investors Department maintains constant and close cooperation with the other directorates and departments of the CNMV.

This cooperation translates, firstly, into requests for information from other CNMV directorates or departments. The Investors Department responds to these requests with detailed information on the matters requested. Specifically, in 2017 it dealt with 65 requests for information, of which 37 were submitted by the Entities Directorate-General, 20 by the Litigation Unit, 6 by the International Affairs Unit and 2 by the Markets Directorate-General.

In addition, and in order to provide a proper response to the enquiries, the Investors Department needs to request information from other directorate-generals or departments.

It therefore requested or forwarded information on 77 occasions, with recipients being the Entities Directorate-General (33), the Markets Directorate-General (35), the Litigation Unit (6) and the Directorate-General of Strategic Policy and International Affairs (3).

In turn, specific work has been performed as requested by the Entities Directorate-General for the meetings of the ESMA Joint Group related to Cypriot investment firms, as well as specific work at the request of the Resolution and Financial Stability Affairs Unit.

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				
16/01/2017	AAOPTION HTTP://WWW.AAOPTION.COM/ES/	Unauthorised entities	CNMV	
16/01/2017	IB INVERSIONES IB INVERSIÓN BURSÁTIL HTTP://IBINVERSIONES.COM/	Unauthorised entities	CNMV	
06/02/2017	OPV ADVISOR LTD HTTP://WWW.OPV-ADVISOR.COM	Unauthorised entities	CNMV	
20/02/2017	ATLANTIC GLOBAL ASSET MANAGEMENT, S.A. HTTP://ATLANTICGAM.ES/	Unauthorised entities	CNMV	
20/02/2017	HTTP://ENKAIZEN.NEWS/INFO/	Unauthorised entities	CNMV	
20/02/2017	ANTONIO ABELLÁN GARRIDO	Unauthorised entities	CNMV	
20/02/2017	ANÁLISIS GLOBAL ASESORÍA EMPRESARIAL, S.L. JOSÉ LUIS BALSERA AMORÓS	Unauthorised entities	CNMV	Related party: José Luis Balsera Amorós
20/02/2017	EUROPEA DE FINANZAS Y MERCADOTECNIA S.L. JOSÉ LUIS BALSERA AMORÓS	Unauthorised entities	CNMV	Related party: José Luis Balsera Amorós
27/02/2017	VORTEX ASSETS HTTPS://WWW.VORTEXASSETS.COM/	Unauthorised entities	CNMV	
06/03/2017	TITAN TRADE HTTP://TITANTRADE.COM WWW.TITANSBINARY.COM	Unauthorised entities	CNMV	
06/03/2017	GRIZZLY LIMITED WWW.MXTRADE.COM WWW.TRADINGBANKS.COM	Unauthorised entities	CNMV	
06/03/2017	BFOREX LTD WWW.BFOREX.COM HTTP://ES.BFOREX.COM/	Unauthorised entities	CNMV	
06/03/2017	FX-BOUTIQUE HTTP://FX-BOUTIQUE.COM/SP	Unauthorised entities	CNMV	
04/04/2017	WWW.OEXGROUP.COM/	Unauthorised entities	CNMV	
04/04/2017	MT4INVEST HTTP://WWW.MT4INVEST.COM/ES-ES	Unauthorised entities	CNMV	
22/05/2017	FIRST INVESTMENTS CAPITAL MARKETS WWW.FIRSTINVESTMENTSCAPITALMARKETS.COM/ WWW.FIRS-TUNIONESP.COM	Unauthorised entities	CNMV	

Public warnings in respect of unauthorised entities *(continuation)*

Date	Company to which the warning relates	Type	Regulator	Comments
22/05/2017	HTTPS://WWW.TOROPTION.COM/ES/	Unauthorised entities	CNMV	
22/05/2017	DGX SYSTEM LTD WWW.OPTIONCM.COM	Unauthorised entities	CNMV	
22/05/2017	DGX SYSTEMS LTD (PRIME FX BANK / PFXBANK) HTTPS://WWW.PFXBANK.COM WWW.PFX-BANK.COM	Unauthorised entities	CNMV	
22/05/2017	53 CAPITAL TRADE LIMITED WWW.53CAPITALTRADE.COM WWW.53OPTION.COM	Unauthorised entities	CNMV	
22/05/2017	TRADEV LTD WWW.TRADEV.COM	Unauthorised entities	CNMV	
22/05/2017	ARC GLOBAL TRADER, S.L. WWW.ARCTRADER.COM WWW.ARCTRADER.ES ANDRÉS RAÚL CANO OLIVARES (ADMINISTRADOR ÚNICO)	Unauthorised entities	CNMV	Related party: Andrés Raúl Cano Olivares (sole director)
29/05/2017	BINARY OPTIONS ROBOT WWW.BINARYOPTIONROBOT.COM HTTPS://BINARYOPTIONSROBOT.COM	Unauthorised entities	CNMV	
29/05/2017	IALPHAGROUP WWW.IALPHAGROUP.COM	Unauthorised entities	CNMV	
05/06/2017	RICARDO CÁSCALES MONGE	Unauthorised entities	CNMV	
05/06/2017	WING PEGASUS, S.L. RICARDO CÁSCALES MONGE	Unauthorised entities	CNMV	Related party: Ricardo Cáscales Monge
26/06/2017	PLUS TRADES LTD WEALTH MANAGEMENT WWW.PLUSTRADESTD.COM	Unauthorised entities	CNMV	
03/07/2017	WHITE SEA LTD WLT INVESTMENTS WWW.WLTINVESTMENTS.COM	Unauthorised entities	CNMV	
03/07/2017	BALI LIMITED, LTD WINMORE ALLIANCE WWW.GBOCAPITAL.COM	Unauthorised entities	CNMV	
03/07/2017	AIOPERATOR ARTIFICIAL INTELLIGENCE FINANCE HTTP://AIOPERATOR.COM/	Unauthorised entities	CNMV	Related entity: Trisca Investments, S.L., http://www.triscainvestments.com
03/07/2017	NETO TRADE GLOBAL INVESTMENTS LTD (NTGX LTD) WWW.NETOTRADE.COM	Unauthorised entities	CNMV	
10/07/2017	YFX CAPITAL WWW.YFXCAPITAL.COM	Unauthorised entities	CNMV	
24/07/2017	WWW.GSIMARKETS.COM MEDIA SOFT LIMITED NETSOFT LIMITED NETMEDIA MARKETS OU	Unauthorised entities	CNMV	
11/09/2017	HTTPS://WWW.CURSOSDEFOREX.ES MANUEL CABANILLAS JURADO	Unauthorised entities	CNMV	Related party: Manuel Cabanillas Jurado
25/09/2017	SMART CHOICE ZONE LP WWW.BINARYUNO.COM	Unauthorised entities	CNMV	

Public warnings in respect of unauthorised entities *(continuation)*

Date	Company to which the warning relates	Type	Regulator	Comments
25/09/2017	MARKETIER HOLDING LIMITED WWW.STOXMARKET.COM	Unauthorised entities	CNMV	
25/09/2017	CAPITAL MARKETS BANC JOSHUA CONSULTING LTD JOSHUA DEVELOPMENT LIMITED WWW.CAPMB.COM WWW.CAPMBES.COM HTTPS://MY.CAPITALMARKETBANC.COM	Unauthorised entities	CNMV	
30/10/2017	TRADEVIEW LTD WWW.TRADEVIEWFOREX.COM/ WWW.TRADEVIEWESPANOL.COM/ WWW.TVMARKETS.COM/	Unauthorised entities	CNMV	
30/10/2017	GRUPO SECURITAS WWW.ASESORIASECURITAS.COM	Unauthorised entities	CNMV	
30/10/2017	INTEGRATED MARKETS LLC WWW.INMARKETFX.COM/	Unauthorised entities	CNMV	
30/10/2017	CAAMAR ALTAS FINANZAS CAAMAR INVERSIONES HTTP://CAAMAR.ES ALBERTO MARTÍN VERA	Unauthorised entities	CNMV	Related party: Alberto Martín Vera
30/10/2017	TRISCA INVESTMENTS, S.L. HTTP://WWW.TRISCAINVESTMENTS.COM ÁLVARO RUIZ RUIZ (SOLE DIRECTOR) AIOPERATOR	Unauthorised entities	CNMV	Related parties: Álvaro Ruiz Ruiz (sole director) / Aioperator (CNMV warning 03/07/2017)
20/11/2017	WWW.FOREX.CAT	Unauthorised entities	CNMV	
20/11/2017	WWW.FOREXTRADING.CAT	Unauthorised entities	CNMV	
27/11/2017	EPIC VENTURES LTD WWW.72OPTION.COM	Unauthorised entities	CNMV	
27/11/2017	GLOB CAPITAL LIMITED HTTPS://GLOBCAPITAL.COM/ES/	Unauthorised entities	CNMV	
27/11/2017	INNOWAY PROJECT LTD WWW.INTERBANCTRADING.COM	Unauthorised entities	CNMV	
11/12/2017	BT SYSTEMS LTD HTTPS://FXCMARKETS.COM/ES/	Unauthorised entities	CNMV	
11/12/2017	SEÑALES 365 WWW.SENALES365.COM	Unauthorised entities	CNMV	
11/12/2017	PANDORX VENTURES LTD CMS VENTURES LTD SAFE SIDE CONSULTING LTD WWW.CMSTRADER.COM	Unauthorised entities	CNMV	
11/12/2017	BAUMANN AND KRAUS ENTERPRISES LTD HTTPS://DINEROLIBRE.COM/	Unauthorised entities	CNMV	
18/12/2017	EXO CAPITAL MARKETS LIMITED WWW.TRADE12.COM	Unauthorised entities	CNMV	
18/12/2017	TIBURON CORPORATION LIMITED HTTPS://BINOMO.COM	Unauthorised entities	CNMV	

Public warnings in respect of unauthorised entities *(continuation)*

Date	Company to which the warning relates	Type	Regulator	Comments
Public warnings forwarded to the CNMV by foreign regulators				
18/01/2017	MULVEY & HANSON LLP WWW.MULVEYANDHANSONLAW.COM	Unauthorised entities	FCA (United Kingdom)	
18/01/2017	ROTHSCHILD PRIVATE WEALTH (CLONE)	Unauthorised entities	FCA (United Kingdom)	
18/01/2017	HORSESHOE CREDIT UNION LTD (CLONE) WWW.HORSESHOECREDITUNION.COM	Unauthorised entities	FCA (United Kingdom)	Unrelated to the duly registered entity with a similar name.
18/01/2017	LITTLE LOANS LIMITED	Unauthorised entities	FCA (United Kingdom)	
18/01/2017	SAVAGE FINANCE LIMITED WWW.SELFFINANCE.LOAN WWW.SAVAGEFINANCE.LOAN	Unauthorised entities	FCA (United Kingdom)	
18/01/2017	LIFFE EXCHANGE (CLONE) WWW.LIFFEXCHANGE.COM WWW.LIFFEXCHANGE.ORG WWW.LIFFEXCHANGE.CO WWW.LIFOEX.ORG WWW.LIFFEXACCOUNTS.COM WWW.LIFOEXACCOUNTS.ORG WWW.LIFUTURESACCOUNT.COM WWW.INTERCOMMEXCHANGE.COM	Unauthorised entities	FCA (United Kingdom)	
18/01/2017	STOCKFIELD ASSOCIATES GROUP WWW.STOCKFIELDASSOCIATES.COM	Unauthorised entities	FCA (United Kingdom)	
18/01/2017	COLBERT & WELLING WWW.COLBERT-WELLING.ORG	Unauthorised entities	FCA (United Kingdom)	
18/01/2017	RHINE & ASSOCIATES / RHINE ASSOCIATES WWW.RHINEANDASSOCIATES.COM	Unauthorised entities	FCA (United Kingdom)	
18/01/2017	DIAMOND LOANS (CLONE) WWW.DIAMONDLOANS.CO.UK WWW.DIAMOND-LOANS.CO.UK	Unauthorised entities	FCA (United Kingdom)	
18/01/2017	LOANINGO (CLONE) HTTP://LOANINGO.COM	Unauthorised entities	FCA (United Kingdom)	
18/01/2017	WILLIAM PAULSTERN WWW.WILLIAMPAULSTERN.COM	Unauthorised entities	FSAN (Norway)	
18/01/2017	WALLACE ASSOCIATES INC WWW.WALLACEASSOCIATESINC.COM	Unauthorised entities	FSAN (Norway)	
18/01/2017	COLLARDI CAPITAL MANAGEMENT S.A. WWW.COLLARDI-CAPITAL.COM	Unauthorised entities	CSSF (Luxembourg)	
18/01/2017	PAGEON BANK S.A.	Unauthorised entities	CSSF (Luxembourg)	
18/01/2017	WWW.ATOS-LIMITED.CO.UK	Unauthorised entities	ESMA (France)	
18/01/2017	ADVANCED BINARY TECHNOLOGIES LTD WWW.AYREX.COM	Unauthorised entities	CONSOB (Italy)	
18/01/2017	WWW.BOURSOTRAD.COM	Unauthorised entities	AMF (France)	
18/01/2017	CUMBERLAND CAPITAL LTD WWW.TROPICALTRADE.COM	Unauthorised entities	CONSOB (Italy)	

Public warnings in respect of unauthorised entities *(continuation)*

Date	Company to which the warning relates	Type	Regulator	Comments
18/01/2017	WWW.BROOKFIELD99.COM	Unauthorised entities	AMF (France)	
18/01/2017	WWW.CHS-FNDS.COM	Unauthorised entities	AMF (France)	
18/01/2017	ALTAIR ENTERTAINMENT NV / PAYIFIC LTD / CAPITAL FORCE LTD WWW.OPTION888.COM	Unauthorised entities	CONSOB (Italy)	
18/01/2017	WWW.COLONUS-HEDGING.COM	Unauthorised entities	AMF (France)	
18/01/2017	WWW.COMEXPARTNERS.COM	Unauthorised entities	AMF (France)	
18/01/2017	WWW.LESOPTIONSDUWEB.COM	Unauthorised entities	AMF (France)	
18/01/2017	BROOKS PARTNERS / PEL LTD / S&Y MARKET KFT WWW.BROOKS-PARTNERS.COM	Unauthorised entities	CONSOB (Italy)	
18/01/2017	WWW.LONDONGLOBALMARKETS.COM	Unauthorised entities	AMF (France)	
18/01/2017	WWW.TRADOBOURSE.COM	Unauthorised entities	AMF (France)	
18/01/2017	WWW.SILVERBINARY.COM	Unauthorised entities	AMF (France)	
18/01/2017	BROKER YARD / TECHOFIN LTD / OCAPITAL LP CUMBERLAND CAPITAL LTD WWW.BROKERYARD.COM	Unauthorised entities	CONSOB (Italy)	
18/01/2017	BINARY OPTION AUTO TRADING WWW.BINARYOPTIONAUTOTRADING.COM	Unauthorised entities	DFSA (Denmark)	
25/01/2017	GO 4 UK LOANS (CLONE) WWW.GO4UKLOANS.CO.UK	Unauthorised entities	FCA (United Kingdom)	
25/01/2017	RIGHT CAPITAL PARTNERS LIMITED WWW.RIGHTCAPITALPARTNERS.COM	Unauthorised entities	FCA (United Kingdom)	
25/01/2017	ONO VENTURES WWW.ONOVENT.COM	Unauthorised entities	FCA (United Kingdom)	
25/01/2017	UK MONEY LENDERS (CLONE)	Unauthorised entities	FCA (United Kingdom)	
25/01/2017	BUSINESS GRANTS AND LOANS WWW.UKGRANTS.ORG.UK	Unauthorised entities	FCA (United Kingdom)	
25/01/2017	TECHOPTION WWW.TECHOPTION.COM	Unauthorised entities	DFSA (Denmark)	
25/01/2017	23 TRADERS WWW.23TRADERS.COM	Unauthorised entities	DFSA (Denmark)	
25/01/2017	TITAN TRADE WWW.TITANTRADE.COM	Unauthorised entities	DFSA (Denmark)	
25/01/2017	EBEL & PARTNER LUXEMBOURG S.A. WWW.EBELUNDPARTNERS.COM	Unauthorised entities	CSSF (Luxembourg)	
25/01/2017	HTTP://WWW.FXDDTRADE.COM/	Unauthorised entities	MFSA (Malta)	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
01/02/2017	HAYASHI AND PARTNERS / HAYASHI INTERNATIONAL EQUITY SECURITIES WWW.HAYASHIANDPARTNERS.COM	Unauthorised entities	FCA (United Kingdom)	
01/02/2017	DRAKEFIELD CORPORATE PARTNERS (USA)	Unauthorised entities	CBI (Ireland)	
01/02/2017	COLBERT & WELLING LLP (USA)	Unauthorised entities	CBI (Ireland)	
01/02/2017	JJ MATTHIAS ASSET MANAGEMENT (CLONE) WWW.JJMATTHIAS.COM	Unauthorised entities	FCA (United Kingdom)	
08/02/2017	HANSFORD / HANFORD AND ASSOCIATES WWW.HANFORDLAW.COM	Unauthorised entities	FCA (United Kingdom)	
08/02/2017	AMBROSIA CAPITAL	Unauthorised entities	FCA (United Kingdom)	
08/02/2017	THE FINANCE SOLUTIONS WWW.THEFINANCESOLUTIONS.CO.UK WWW.THEFINANCIALSOLUTIONS.CO.UK	Unauthorised entities	FCA (United Kingdom)	
08/02/2017	BLACKSMITH INVESTMENTS LIMITED WWW.BLACKSMITHINVESTMENTS.CO.UK	Unauthorised entities	FCA (United Kingdom)	
08/02/2017	KEYSTONE MANAGEMENT LTD / KEYSTONE CAPITAL WWW.KEYSTONE-CAPITAL.CO.UK	Unauthorised entities	FCA (United Kingdom)	
08/02/2017	BROAD REACH INVESTMENTS (CLONE) WWW.BROADREACH-INVESTMENTS.COM	Unauthorised entities	FCA (United Kingdom)	
08/02/2017	MARKETS CAPITAL LTD WWW.PAYDAYOPTION.COM	Unauthorised entities	CONSOB (Italy)	
08/02/2017	HANSA EQUITY SPA WWW.HANSA-EQUITY.COM	Unauthorised entities	CONSOB (Italy)	
15/02/2017	WWW.SMARTBOTPRO.COM	Unauthorised entities	CONSOB (Italy)	
15/02/2017	JAZZ LOANS HTTP://WWW.JAZZONTHEHILL.CO.UK/	Unauthorised entities	FCA (United Kingdom)	
15/02/2017	WAINSCOTT CONSULTING GROUP WWW.WAINSCOTTCONSULTING.COM	Unauthorised entities	FCA (United Kingdom)	
15/02/2017	BOSTON PRIVATE LAW GROUP LLP WWW.BOSTONPLG.ORG	Unauthorised entities	FCA (United Kingdom)	
15/02/2017	DONALDSON FINDLAY WWW.DONALDSON-FINDLAY.COM	Unauthorised entities	FCA (United Kingdom)	
15/02/2017	ASASHI MERGERS & ACQUISITIONS (JAPÓN)	Unauthorised entities	CBI (Ireland)	
15/02/2017	AMICUS INVESTMENT	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).
15/02/2017	ASASHI MERGERS & ACQUISITIONS GROUP	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
15/02/2017	ATLANTIC GLOBAL ASSET MANAGEMENT	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).
15/02/2017	BROOKFIELD99 / BROOKFIELD INVESTMENT MANAGEMENT (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).
15/02/2017	CAPITAL INVEST EUROPE	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).
15/02/2017	CRESSMAN FINANCIAL GROUP / TIAN XI FU LIMITED / HONGKONG ZTWOW TRADE 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).
15/02/2017	EASTERN QUAY ASSET MANAGEMENT	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).
15/02/2017	FUJITSU GLOBAL / ASIAN MERCANTILE EXCHANGE / CENTRIC 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).
15/02/2017	GLOBAL CONSULTING EUROPE	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).
15/02/2017	MONEX FINANCIAL / MONEX BMO SECURITIES / SYMANDO CORPORATION LIMITED / DFAN 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
15/02/2017	NIKKO DESJARDINS ASSET MANAGEMENT / XIEZE INTERNATIONAL TRADING LIMITED / GRADUAL INVESTMENTS 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).
15/02/2017	RED SHIELD FINANCIAL / RONG AVIVA 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).
15/02/2017	RUBIN DUNN	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).
15/02/2017	TATSUNO INTERNATIONAL	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).
15/02/2017	THORNWOOD FINANCIAL / LONG WILL 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).
15/02/2017	WILLIAM PAULSTERN / CAMDAN 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).
22/02/2017	KAWANO AND ASSOCIATES (JAPÓN)	Unauthorised entities	CBI (Ireland)	
22/02/2017	FX JUPITER WWW.FXJUPITER.COM/EN WWW.FXJUPITER.COM/ZH-CN	Unauthorised entities	FCA (United Kingdom)	
01/03/2017	GRAUMANN & PARTNER S.A. WWW.GRAUMANNUNDPARTNER.COM	Unauthorised entities	CSSF (Luxembourg)	
01/03/2017	MCKINLEY THOMAS & ASSOCIATES (USA)	Unauthorised entities	CBI (Ireland)	
01/03/2017	GMOPTION WWW.GMOPTION.COM	Unauthorised entities	CONSOB (Italy)	
01/03/2017	LINKGM LIMITED WWW.GMOPTION.COM	Unauthorised entities	CONSOB (Italy)	
01/03/2017	BT SYSTEMS LTD WWW.GMOPTION.COM	Unauthorised entities	CONSOB (Italy)	

Public warnings in respect of unauthorised entities *(continuation)*

Date	Company to which the warning relates	Type	Regulator	Comments
08/03/2017	BOSTON PRIVATE LAW GROUP LLP (USA)	Unauthorised entities	CBI (Ireland)	
08/03/2017	GEM LOANS / JEM LOANS (CLONE) WWW.JEMLOANS.CO.UK	Unauthorised entities	FCA (United Kingdom)	
08/03/2017	MR INSTANT CASH (CLONE) WWW.MRINSTANTCASH.CO.UK	Unauthorised entities	FCA (United Kingdom)	
08/03/2017	TIDE U OVER (CLONE) WWW.TIDEUOVER.COM	Unauthorised entities	FCA (United Kingdom)	Unrelated to the duly registered entity with a similar name.
08/03/2017	LOAN AND GO HTTP://WWW.LOANANDGO.COM/	Unauthorised entities	FCA (United Kingdom)	
08/03/2017	DIREKT FINANZ AG WWW.DIREKTFINANZ.NET	Unauthorised entities	CSS (Luxembourg)	
15/03/2017	GOLDMAN REEVES LTD WWW.GOLDMANREEVES.CO.UK	Unauthorised entities	FCA (United Kingdom)	
15/03/2017	LOANS 2 GO (CLONE)	Unauthorised entities	FCA (United Kingdom)	
15/03/2017	GE MONEY FINANCING (CLONE) HTTP://WWW.GEMONEYFN.COM	Unauthorised entities	FCA (United Kingdom)	
15/03/2017	JP MORGAN COURTAGE (CLONE)	Unauthorised entities	FCA (United Kingdom)	
15/03/2017	ASSET MANAGEMENT PROTECTION (AMP) WWW.ASSETMANAGEMENTPROTECTION.COM	Unauthorised entities	FCA (United Kingdom)	
15/03/2017	VENICE INVESTMENT GROUP LTD WWW.VENICEINVESTMENTGROUP.COM	Unauthorised entities	CONSOB (Italy)	
15/03/2017	CAMPBELL & BROWNE ASSOCIATES HTTP://CAMPBELLBROWNEASSOCIATES.COM/	Unauthorised entities	CSSF (Luxembourg)	
22/03/2017	ABSA WEALTH MANAGEMENT (CLONE)	Unauthorised entities	FCA (United Kingdom)	
22/03/2017	ALLIED CAPITAL CONSULTANTS	Unauthorised entities	FCA (United Kingdom)	
22/03/2017	GODHAND EDGE FUND MANAGEMENT LLC	Unauthorised entities	CONSOB (Italy)	
29/03/2017	PRIME FX LTD HTTPS://WWW.PFXBANK.COM	Unauthorised entities	FCA (United Kingdom)	
29/03/2017	GLOBAL ATTORNEY SERVICES BOSTON (CLONE) WWW.GLOBALATTORNEYSERVCICESBOSTON.COM	Unauthorised entities	FCA (United Kingdom)	
29/03/2017	RELOAN UK (CLONE)	Unauthorised entities	FCA (United Kingdom)	
29/03/2017	GUARANTEED LOANS (CLONE) WWW.GUARANTEEDLOANS.CO.UK	Unauthorised entities	FCA (United Kingdom)	
29/03/2017	LAZARD ASSET MANAGEMENT (CLONE)	Unauthorised entities	FCA (United Kingdom)	
29/03/2017	WWW.AGENDA-INVEST.COM	Unauthorised entities	AMF (France)	
29/03/2017	WWW.FINANCIAL-FUTURESLTD.COM	Unauthorised entities	AMF (France)	
29/03/2017	WWW.GMSA-INVESTMENTS.COM	Unauthorised entities	AMF (France)	

Public warnings in respect of unauthorised entities *(continuation)*

Date	Company to which the warning relates	Type	Regulator	Comments
29/03/2017	WWW.GROUP-INVESTMENT.COM	Unauthorised entities	AMF (France)	
29/03/2017	WWW.LABASTILLEANDPARTNERS.COM	Unauthorised entities	AMF (France)	
29/03/2017	WWW.LEPARTENAIREFINANCIER.COM	Unauthorised entities	AMF (France)	
29/03/2017	WWW.MARKETOPTIONS.COM	Unauthorised entities	AMF (France)	
29/03/2017	WWW.OWPREMIUM.COM	Unauthorised entities	AMF (France)	
29/03/2017	WWW.SWISSXM.COM	Unauthorised entities	AMF (France)	
29/03/2017	WWW.TP-MARKETS.COM	Unauthorised entities	AMF (France)	
29/03/2017	AAOPTION / CFDSTOCKS / PACIFIC SUNRISE UK LTD	Unauthorised entities	FSMA (Belgium)	Warning against entities that operate in Belgium with binary options, forex products and CFDs without being duly authorised.
29/03/2017	BENEDICT MORRIS / BMBOPTION / LOG TRADING CAPITAL LTD	Unauthorised entities	FSMA (Belgium)	Warning against entities that operate in Belgium with binary options, forex products and CFDs without being duly authorised.
29/03/2017	BIGOPTION / WIRESTECH LIMITED	Unauthorised entities	FSMA (Belgium)	Warning against entities that operate in Belgium with binary options, forex products and CFDs without being duly authorised.
29/03/2017	BINARYNVEST	Unauthorised entities	FSMA (Belgium)	Warning against entities that operate in Belgium with binary options, forex products and CFDs without being duly authorised.
29/03/2017	BREVAN INVEST / KASUAR VENTURES LTD	Unauthorised entities	FSMA (Belgium)	Warning against entities that operate in Belgium with binary options, forex products and CFDs without being duly authorised.
29/03/2017	CAPITAL EPARGNE	Unauthorised entities	FSMA (Belgium)	Warning against entities that operate in Belgium with binary options, forex products and CFDs without being duly authorised.
29/03/2017	CFDSTOCKS / PACIFIC SUNRISE UK LTD	Unauthorised entities	FSMA (Belgium)	Warning against entities that operate in Belgium with binary options, forex products and CFDs without being duly authorised.

Public warnings in respect of unauthorised entities *(continuation)*

Date	Company to which the warning relates	Type	Regulator	Comments
29/03/2017	CITY BANK CFD	Unauthorised entities	FSMA (Belgium)	Warning against entities that operate in Belgium with binary options, forex products and CFDs without being duly authorised.
29/03/2017	COMEX PARTNERS	Unauthorised entities	FSMA (Belgium)	Warning against entities that operate in Belgium with binary options, forex products and CFDs without being duly authorised.
29/03/2017	EDGEDALE FINANCE / GOLD HORIZEN LTD	Unauthorised entities	FSMA (Belgium)	Warning against entities that operate in Belgium with binary options, forex products and CFDs without being duly authorised.
29/03/2017	FINANCES CAPITAL	Unauthorised entities	FSMA (Belgium)	Warning against entities that operate in Belgium with binary options, forex products and CFDs without being duly authorised.
29/03/2017	FINANCIAL FUTURES LTD (CLONED FIRM) / DIGIFIRST HUNGARY KFT	Unauthorised entities	FSMA (Belgium)	Warning against entities that operate in Belgium with binary options, forex products and CFDs without being duly authorised.
29/03/2017	FMTRADER / TERAPAD SERVICES LTD / FM MARKETING LTD	Unauthorised entities	FSMA (Belgium)	Warning against entities that operate in Belgium with binary options, forex products and CFDs without being duly authorised.
29/03/2017	IVORYOPTION / ARYA GROUP LTD / ARIANUS MARKETING LTD	Unauthorised entities	FSMA (Belgium)	Warning against entities that operate in Belgium with binary options, forex products and CFDs without being duly authorised.
29/03/2017	LONDON GLOBAL MARKETS	Unauthorised entities	FSMA (Belgium)	Warning against entities that operate in Belgium with binary options, forex products and CFDs without being duly authorised.
29/03/2017	MARKETS CENTRAL INVESTMENT	Unauthorised entities	FSMA (Belgium)	Warning against entities that operate in Belgium with binary options, forex products and CFDs without being duly authorised.
29/03/2017	OPTIONXCHANGE / GLOBE & CO LTD / STERLING CONSULTANCY OPTIONS (SC-OPTIONS)	Unauthorised entities	FSMA (Belgium)	Warning against entities that operate in Belgium with binary options, forex products and CFDs without being duly authorised.

Public warnings in respect of unauthorised entities *(continuation)*

Date	Company to which the warning relates	Type	Regulator	Comments
29/03/2017	OWPREMIUM	Unauthorised entities	FSMA (Belgium)	Warning against entities that operate in Belgium with binary options, forex products and CFDs without being duly authorised.
29/03/2017	SWISS CAPITAL INVEST (SWISS -CAPITALINVEST / SWISSCAPITALINVEST) / ATLASREFERENCE UNIPESSOALLDA	Unauthorised entities	FSMA (Belgium)	Warning against entities that operate in Belgium with binary options, forex products and CFDs without being duly authorised.
05/04/2017	ADMIRAL MARKETS GLOBAL SOLUTIONS LTD WWW.ADMIRALMARKETSLTD.COM	Unauthorised entities	AMF (France)	Entities and websites that offer investments in the forex market without being authorised.
05/04/2017	FM MARKETING LTD WWW.FMFX.COM	Unauthorised entities	AMF (France)	Entities and websites that offer investments in the forex market without being authorised.
05/04/2017	GOPROBANK WWW.GOPROFINANCE.COM	Unauthorised entities	AMF (France)	Entities and websites that offer investments in the forex market without being authorised.
05/04/2017	TRADE24 GLOBAL LTD WWW.TRADE-24.COM	Unauthorised entities	AMF (France)	Entities and websites that offer investments in the forex market without being authorised.
05/04/2017	FIN GROUP LTD WWW.31OPTION.COM	Unauthorised entities	CONSOB (Italy)	
05/04/2017	CARTWRIGHT & BLYTH ASSOCIATES (CARTWRIGHT & BLYTH/ CARTWRIGHTS, CARTWRIGHT INVEST./CARTWRIGHT ASSOC.) WWW.CARTWRIGHTBLYTH.COM	Unauthorised entities	FCA (United Kingdom)	
19/04/2017	INVESTING GROUP TRADING WWW.INVESTINGGROUPTRADING.COM	Unauthorised entities	CONSOB (Italy)	
19/04/2017	BINARY OPTION ROBOT WWW.BINARY-OPTIONROBOT.COM	Unauthorised entities	CONSOB (Italy)	
19/04/2017	MONEY INFORMATION SERVICE HTTP://MONEYINFORMATIONSERVICE.ONLINE WWW.MONEYINFORMATIONSERVICE.ORG.UK	Unauthorised entities	FCA (United Kingdom)	
19/04/2017	LAWSON CONSULTANCY LIMITED WWW.LAWSONCONSULTANCY.COM	Unauthorised entities	FCA (United Kingdom)	
19/04/2017	RALSTON CONSULTANCY LTD WWW.RALSTONLTD.COM	Unauthorised entities	FCA (United Kingdom)	
19/04/2017	MATCHPOINT FINANCE PLC (CLONE) WWW.MATCHPOINTFINANCE.CO.UK	Unauthorised entities	FCA (United Kingdom)	Unrelated to the duly registered entity with a similar name.
19/04/2017	AICHI BMO INTERNATIONAL (ABMOI) / LEIYU TRADE LIMITED / GHY PARTNERS LIMITED	Unauthorised entities	FSMA (Belgium)	Warning against unauthorised entities that offer investment services (boiler rooms).
19/04/2017	APEX ALLIANCE	Unauthorised entities	FSMA (Belgium)	Warning against unauthorised entities that offer investment services (boiler rooms).
19/04/2017	CITIC TOKYO INTERNATIONAL / BAI XIN CHENG LIMITED / JIN YAM (HK) TRADE CO., LIMITED	Unauthorised entities	FSMA (Belgium)	Warning against unauthorised entities that offer investment services (boiler rooms).

Public warnings in respect of unauthorised entities *(continuation)*

Date	Company to which the warning relates	Type	Regulator	Comments
19/04/2017	DRUKENMILLER INVESTMENT SERVICES / TIMMERMANS ASIA LTD / HANSEN PETERS LTD / SARANDON ASIA LTD	Unauthorised entities	FSMA (Belgium)	Warning against unauthorised entities that offer investment services (boiler rooms).
19/04/2017	LEXUS GROUP / MCA ADVISORS / RAEAT HOLDINGS LIMITED	Unauthorised entities	FSMA (Belgium)	Warning against unauthorised entities that offer investment services (boiler rooms).
19/04/2017	SINO LINK JAPAN / MYPAL INTERNATIONAL CO, LIMITED / BAI XIN CHENG LIMITED	Unauthorised entities	FSMA (Belgium)	Warning against unauthorised entities that offer investment services (boiler rooms).
19/04/2017	WEST PACIFIC DEALERS	Unauthorised entities	FSMA (Belgium)	Warning against unauthorised entities that offer investment services (boiler rooms).
19/04/2017	CARMINE HOFFMAN LAW FIRM LLP WWW.CARMINEHOFFMANLAW.COM	Unauthorised entities	FCA (United Kingdom)	
26/04/2017	ZENITH INVESTOR WWW.ZENITHINVESTOR.COM	Unauthorised entities	FCA (United Kingdom)	
26/04/2017	MWI CONSULTANTS WWW.MWICONSULTANTS.COM	Unauthorised entities	SFSA (Sweden)	
26/04/2017	THE ELLIOT PRIVATE EQUITY WWW.ELLIOTPE.COM	Unauthorised entities	SFSA (Sweden)	
26/04/2017	BLUE SEAL LIMITED / BLONDE BEAR OU WWW.CAC400.COM / WWW.MIB700.COM	Unauthorised entities	CONSOB (Italy)	
26/04/2017	INNOVATE MARKETS LTD WWW.INNOVATEMARKETS.COM	Unauthorised entities	CONSOB (Italy)	
26/04/2017	FX CHOICE LIMITED WWW.MYFXCHOICE.COM	Unauthorised entities	CONSOB (Italy)	
26/04/2017	S.O. STRATEGIC PARTNERSHIP LP / FINTECH TECHNOLOGIES LIMITED WWW.TRADEFINTECH.COM	Unauthorised entities	CONSOB (Italy)	
26/04/2017	ZEB INSURANCE WWW.ZEB-INSURANCE.COM WWW.ZEB-INSURANCE.CO.UK	Unauthorised entities	FCA (United Kingdom)	
03/05/2017	AF TECHNOLOGIES LTD KHO TECH LTD WWW.MRTMARKETS.COM	Unauthorised entities	CONSOB (Italy)	
03/05/2017	GLOBAL MARKETING ONLINE LIMITED / ADS SECURITIES (CLONE) WWW.ADS-SECURITES.COM/HOME	Unauthorised entities	FCA (United Kingdom)	
03/05/2017	PSI RESEARCH WWW.PSI-RESEARCH.COM	Unauthorised entities	SFSA (Sweden)	
03/05/2017	FDS RESEARCH GROUP WWW.FDSRESEARCH.COM	Unauthorised entities	SFSA (Sweden)	
03/05/2017	ENTRADA CAPITAL	Unauthorised entities	DFSA (Denmark)	
03/05/2017	QUESTRA HOLDINGS / QUESTRA WORLD / ATLANTIC GLOBAL ASSET MANAGEMENT	Unauthorised entities	FSMA (Belgium)	Repeat of warning published in September 2016 on a possible pyramid or "Ponzi" scheme. Warnings from other regulators in this regard.

Public warnings in respect of unauthorised entities *(continuation)*

Date	Company to which the warning relates	Type	Regulator	Comments
10/05/2017	UP4X LTD WWW.UP4X.COM	Unauthorised entities	CONSOB (Italy)	
10/05/2017	ACG -AMERICAN COMMODITIES GROUP WWW.AMERICANCG.CO	Unauthorised entities	CONSOB (Italy)	
10/05/2017	BBS CONSULTING / BEST BROKER SERVICE WWW.BBSCONSULTING.CO.UK	Unauthorised entities	FCA (United Kingdom)	
10/05/2017	INDIGO FINANS AS HTTP://INDIGO-GRUPPEN.NO/INDIGO-FINANS/	Unauthorised entities	FSAN (Norway)	
17/05/2017	INTERINVESTGROUP WWW.INTERINVEST-GROUP.COM	Unauthorised entities	CSSF (Luxembourg)	
17/05/2017	BEST CONNECTION FINANCE (CLONE) HTTP://BESTCONNECTIONLOAN.CO.UK HTTP://GLOBAL.LENDINVESTS.COM	Unauthorised entities	FCA (United Kingdom)	
17/05/2017	EXXONFX HTTPS://WWW.EXXONFX.COM/EN	Unauthorised entities	FCA (United Kingdom)	Owned and operated by Revolution Markets Lp
17/05/2017	MARKUS SPIELMANN INC (CLONE) WWW.MARKUSSPIELMANN.COM	Unauthorised entities	FCA (United Kingdom)	
17/05/2017	JW GLOBAL (CLONE) WWW.JWGLOBAL.CO.UK	Unauthorised entities	FCA (United Kingdom)	
17/05/2017	CLAYTON WEALTH ADVISORY / CLAYTON WORTH ADVISORY / CLAYTON WELLS WWW.CLAYTONWEALTH.COM	Unauthorised entities	FCA (United Kingdom)	
17/05/2017	WILLIAMS & CHASE ASSOCIATES WWW.WILLIAMSANDCHASEASSOCIATES.COM WWW.WILLIAMSCHASEASSOCIATES.COM	Unauthorised entities	FCA (United Kingdom)	
23/05/2017	LONDON GLOBAL MARKETS WWW.LONDONGLOBALMARKETS.COM	Unauthorised entities	FCA (United Kingdom)	
23/05/2017	VRS LAW FIRM WWW.VRSLAWFIRM.COM	Unauthorised entities	FCA (United Kingdom)	
23/05/2017	IZUMI VENTURES WWW.IZUMIVENT.COM	Unauthorised entities	FCA (United Kingdom)	
23/05/2017	CHICAGO LAW GROUP (USA)	Unauthorised entities	CBI (Ireland)	
23/05/2017	BLAKESTONE PROPERTY / BLAKESTONE BOND FUND WWW.BLAKESTONEPROPERTY.COM	Unauthorised entities	FCA (United Kingdom)	
23/05/2017	ARKWRIGHT PROPERTY MANAGEMENT / ARKWRIGHT PROPERTY DEVELOPMENT WWW.ARKWRIGHTPROPERTY.COM	Unauthorised entities	FCA (United Kingdom)	
23/05/2017	PIONEER ASSET MANAGEMENT (CLONE) WWW.PIONEER-MANAGEMENT.CO.UK	Unauthorised entities	FCA (United Kingdom)	
23/05/2017	SECURITY CAPITAL CONSULTANTS WWW.SCCGRPINTL.COM	Unauthorised entities	FCA (United Kingdom)	
31/05/2017	SAVAS INVESTORS HTTP://WWW.SAVASINVESTORS.SI/	Unauthorised entities	SSMA (Slovenia)	
31/05/2017	ASHIDA ASSOCIATES WWW.ASHIDAASSOCIATES.COM	Unauthorised entities	AFM (Netherlands - Holland)	

Public warnings in respect of unauthorised entities *(continuation)*

Date	Company to which the warning relates	Type	Regulator	Comments
31/05/2017	GLOBAL ALLIANCE CAPITAL WWW.GLOBALALLIANCECAPITAL.COM	Unauthorised entities	AFM (Netherlands - Holland)	
31/05/2017	RIVERSIDE ESCROW LTD (CLONE)	Unauthorised entities	FCA (United Kingdom)	Unrelated to the duly registered entity with a similar name.
31/05/2017	FIRST PLUS FINANCIAL GROUP (CLONE) WWW.FIRSTPLUSFINANCEGROUP.COM	Unauthorised entities	FCA (United Kingdom)	
31/05/2017	CAMPBELL & BROWNE ASSOCIATES / CAMPBELL BROWN WWW.CAMPBELLBROWNEASSOCIATES.COM	Unauthorised entities	FCA (United Kingdom)	
07/06/2017	OLIVIER AND MANN INC. WWW.OLIVIERANDMANN.COM	Unauthorised entities	AFM (Netherlands - Holland)	
07/06/2017	GC VENTURE CAPITAL WWW.GC-VC.COM	Unauthorised entities	FCA (United Kingdom)	
07/06/2017	SPOT2TRADE LTD WWW.SPOT2TRADE.COM	Unauthorised entities	CONSOB (Italy)	
07/06/2017	BT SYSTEMS LTD / CRLINK LIMITED WWW.FXCMARKETS.COM	Unauthorised entities	CONSOB (Italy)	
07/06/2017	KEYDS LYDYA LTD / KEYDS SCOTLAND LP WWW.PIPS-FX.COM	Unauthorised entities	CONSOB (Italy)	
14/06/2017	BARTON & ROSE WWW.BARTONANDROSE.COM	Unauthorised entities	FCA (United Kingdom)	
14/06/2017	FMP FUHRER MARBACH AND PARTNERS	Unauthorised entities	FCA (United Kingdom)	
14/06/2017	CHICAGO LAW GROUP WWW.CHICAGOLG.COM WWW.CHICAGOGOLD.COM WWW.CHICAGOLAWGROUP.US	Unauthorised entities	FCA (United Kingdom)	
14/06/2017	CHARLES VAN DEURSEN	Unauthorised entities	FSMA (Belgium)	Warning against unauthorised entities that offer investment services (boiler rooms).
14/06/2017	CTI CHINA RENAISSANCE (CTICR) / XW TECHNOLOGY HONG KONG LIMITED	Unauthorised entities	FSMA (Belgium)	Warning against unauthorised entities that offer investment services (boiler rooms).
14/06/2017	TORONTO SUMITOMO TRADING INTERNATIONAL (TST INTERNATIONAL)	Unauthorised entities	FSMA (Belgium)	Warning against unauthorised entities that offer investment services (boiler rooms).
14/06/2017	TOSHIKATSU GROUP	Unauthorised entities	FSMA (Belgium)	Warning against unauthorised entities that offer investment services (boiler rooms).
14/06/2017	WOORI BRIDGEWATER BROKERAGE	Unauthorised entities	FSMA (Belgium)	Warning against unauthorised entities that offer investment services (boiler rooms).
14/06/2017	WOORI BRIDGEWATER BROKERAGE WWW.WBBMANAGEMENT.NET	Unauthorised entities	SFSA (Sweden)	
14/06/2017	CTI CHINA RENAISSANCE WWW.CTIMANAGEMENT.COM	Unauthorised entities	SFSA (Sweden)	
21/06/2017	AEQUITAS FINANCIAL LLP HTTP://WWW.AEQUITASFINANCIAL.CO.UK/	Unauthorised entities	FCA (United Kingdom)	

Public warnings in respect of unauthorised entities *(continuation)*

Date	Company to which the warning relates	Type	Regulator	Comments
21/06/2017	GLOBAL FIN SERVICES LIMITED (OPERANDO CON LA MARCA TRADE 12) WWW.TRADE12.COM	Unauthorised entities	FCA (United Kingdom)	
21/06/2017	MRTMARKETS.COM HTTP://MRTMARKETS.COM/FX/EN	Unauthorised entities	FCA (United Kingdom)	
21/06/2017	HBFX MARKETS LIMITED WWW.HBFXMARKETS.COM	Unauthorised entities	FCA (United Kingdom)	
21/06/2017	BLACKROCK ASSET MANAGEMENT (CLONE) WWW.BLACKROCK.GA	Unauthorised entities	FCA (United Kingdom)	
28/06/2017	DASH LOANS (CLONE)	Unauthorised entities	FCA (United Kingdom)	
28/06/2017	CALEDONIAN EQUITY GROUP WWW.C-EQUITYGROUP.COM	Unauthorised entities	FCA (United Kingdom)	
28/06/2017	FIRST STOP LOANS (CLONE) WWW.FIRSTSTOPLOANS.COM	Unauthorised entities	FCA (United Kingdom)	
28/06/2017	EAST COAST LAW FIRM / EAST COAST LAW FLORIDA WWW.ECLAWFLORIDA.COM	Unauthorised entities	FCA (United Kingdom)	
05/07/2017	AIG OPTIONS / CMC OPTIONS WWW.AIGOPTIONS.COM	Unauthorised entities	FCA (United Kingdom)	
05/07/2017	YUKON GLOBAL LTD / TRADETECH FIN LTD / TOP MEDIA LTD WWW.FOREX-POINT.COM	Unauthorised entities	CONSOB (Italy)	
05/07/2017	MARKETS BROKER / AGE CAPITAL LTD WWW.MARKETSBROKER.COM	Unauthorised entities	CONSOB (Italy)	
05/07/2017	VERENT CAPITAL WWW.VERENTCAPITAL.COM	Unauthorised entities	SFSA (Sweden)	
05/07/2017	PIMMIT PARTNERS WWW.PIMMITPARTNERS.COM	Unauthorised entities	SFSA (Sweden)	
05/07/2017	EXCON FUJI WWW.EFSECURITIES.COM	Unauthorised entities	SFSA (Sweden)	
05/07/2017	PROGRESSION TRUST WWW.PROGRESSIONTRUST.COM	Unauthorised entities	SFSA (Sweden)	Also refers to a fake regulator (Department of securities and exchange regulation) to enhance its credibility.
05/07/2017	NIHON INTERNATIONAL WWW.NIHONINTERNATIONAL.COM	Unauthorised entities	SFSA (Sweden)	
05/07/2017	X90 WWW.X90.COM	Unauthorised entities	AMF (France)	Entities and websites that offer investments in the forex market without being authorised.
05/07/2017	MT4 INVEST WWW.MT4INVEST.COM	Unauthorised entities	AMF (France)	Entities and websites that offer investments in the forex market without being authorised.
05/07/2017	GSS FINANCIAL WWW.GSS-FI.EU	Unauthorised entities	AMF (France)	Entities and websites that offer investments in the forex market without being authorised.
05/07/2017	BOOM FOREX WWW.BOOMFOREX.NET	Unauthorised entities	AMF (France)	Entities and websites that offer investments in the forex market without being authorised.

Public warnings in respect of unauthorised entities *(continuation)*

Date	Company to which the warning relates	Type	Regulator	Comments
05/07/2017	PROMFX WWW.PROMFX.COM	Unauthorised entities	AMF (France)	Entities and websites that offer investments in the forex market without being authorised.
12/07/2017	WWW.CHS-CAPITAL.COM	Unauthorised entities	AMF (France)	This website offers investments in France in start-ups, property investment companies, savings plans, commodities, etc. without being duly authorised.
12/07/2017	JOSEF FRANK GLOBAL, OPERANDO COMO JF GLOBAL (CLONE) WWW.JOSEFFRANKGLOBAL.COM	Unauthorised entities	FCA (United Kingdom)	
12/07/2017	STAMFORD WEALTH / STANFORD WEALTH / STANFORD WELLS (CLONE) WWW.STAMFORDWEALTHADVISORY.COM	Unauthorised entities	FCA (United Kingdom)	
12/07/2017	DIXON ASSOCIATES LTD WWW.DIXONASSOCIATESLTD.COM	Unauthorised entities	FCA (United Kingdom)	
12/07/2017	BLUELIGHT FINANCIAL	Unauthorised entities	FCA (United Kingdom)	
19/07/2017	1875-FINANCE INVEST (CLONE)	Unauthorised entities	CSSF (Luxembourg)	Unrelated to the duly registered entity with a similar name.
19/07/2017	ALPHA CONSULTING (CLONE) WWW.ALPHACONSULTINGUK.COM	Unauthorised entities	FCA (United Kingdom)	
19/07/2017	ROTHSCHILD ASSET MANAGEMENT (CLONE)	Unauthorised entities	FCA (United Kingdom)	Unrelated to the duly registered entity with a similar name.
19/07/2017	AXA IM ASIA (CLONE) WWW.AXAIM-ASIA.COM	Unauthorised entities	FCA (United Kingdom)	
09/08/2017	B4MARKETS LTD WWW.B4MARKETS.COM	Unauthorised entities	CONSOB (Italy)	
09/08/2017	IFOREXX24 LTD WWW.IFOREX24.COM CHARLES VAN DEURSEN	Unauthorised entities	CONSOB (Italy)	
09/08/2017	CLARION GLOBAL GROUP WWW.CLARIONINTL.COM	Unauthorised entities	FCA (United Kingdom)	
09/08/2017	GTP CAPITAL	Unauthorised entities	DFSA (Denmark)	
09/08/2017	PACIFIK CHIBA TRUST	Unauthorised entities	DFSA (Denmark)	
09/08/2017	ZURICH CAPITAL, OPERANDO COMO ZURICHCAP.COM WWW.ZURICHCAP.COM	Unauthorised entities	FCA (United Kingdom)	
09/08/2017	WESTMOUNT ASSOCIATES WWW.WESTMOUNTASSOCIATES.COM	Unauthorised entities	FCA (United Kingdom)	
09/08/2017	POLEN CAPITAL INVESTMENT FUNDS / PCIF (CLONE) WWW.POLENCAPITALINVESTMENTFUNDS.COM	Unauthorised entities	FCA (United Kingdom)	
09/08/2017	QUICK QUID / LOAN POINT (CLONE) WWW.LOANPOINT.UK	Unauthorised entities	FCA (United Kingdom)	
09/08/2017	SAKAI, YAO AND PARTNERS WWW.SAKAIYAO.COM	Unauthorised entities	FCA (United Kingdom)	
09/08/2017	MULTI STRATEGY INVESTMENTS LIMITED, OPERANDO COMO LONDON INVESTMENTS WWW.LONDON-INVESTMENTS.CO.UK	Unauthorised entities	FCA (United Kingdom)	

Public warnings in respect of unauthorised entities *(continuation)*

Date	Company to which the warning relates	Type	Regulator	Comments
09/08/2017	KENNEDY KILBRIDE (UK)	Unauthorised entities	CBI (Ireland)	
09/08/2017	DEBT ADVICE TRUST (CLONE) WWW.DEBTADVICETRUST.CO.UK 247 MONEY EXPRESS AND THE MONEY SOURCE	Unauthorised entities	FCA (United Kingdom)	
09/08/2017	TILNEY FUND MANAGERS (CLONE) WWW.TILNEYFUNDMANAGERS.COM	Unauthorised entities	FCA (United Kingdom)	Unrelated to the duly registered entity with a similar name.
09/08/2017	DONALDS AND BRINKLEY WWW.DOBRINLAW.COM	Unauthorised entities	FCA (United Kingdom)	
09/08/2017	ADMIRAL MARKETS LTD (CLONE) WWW.ADMIRALMARKETSLTD.COM	Unauthorised entities	FCA (United Kingdom)	Unrelated to the duly registered entity with a similar name.
09/08/2017	GSI MARKETS WWW.GSIMARKETS.COM	Unauthorised entities	FCA (United Kingdom)	
09/08/2017	LONDON FINANCE AND INVESTMENT CORPORATION (CLONE)	Unauthorised entities	FCA (United Kingdom)	
09/08/2017	MERIT LOANS (CLONE) WWW.MERITLOANS.CO.UK	Unauthorised entities	FCA (United Kingdom)	
09/08/2017	TORONTO SUMITOMO TRADING INTERNATIONAL WWW.TSTINTERNATIONAL.COM	Unauthorised entities	AFM (Netherlands - Holland)	
09/08/2017	AMC CAPITAL INVEST / AMC CAPITAL MANAGEMENT (CLONE) WWW.AMCCAPITALUK.COM WWW.AMCCAPITALMANAGEMENT.COM	Unauthorised entities	FCA (United Kingdom)	Unrelated to the duly registered entity with the same name.
09/08/2017	UK TECH PROTECT LIMITED WWW.UKTECHPROTECT.COM	Unauthorised entities	FCA (United Kingdom)	
09/08/2017	ASASHI MERGERS AND ACQUISITIONS GROUP WWW.ASASHIMA.COM	Unauthorised entities	FCA (United Kingdom)	
09/08/2017	LDN EXCHANGE, OPERANDO COMO TRIDENT GROUP LIMITED WWW.LDNEXCHANGE.COM	Unauthorised entities	FCA (United Kingdom)	
09/08/2017	OXFORD CAPITAL PARTNERS (CLONE) WWW.OXFCAPITAL.COM	Unauthorised entities	FCA (United Kingdom)	Unrelated to the duly registered entity with a similar name.
09/08/2017	E MONEY LIMITED/EVOLUTION MONEY LIMITED (CLONE) WWW.EMONEYLIMITED.CO.UK	Unauthorised entities	FCA (United Kingdom)	Unrelated to the duly registered entity with a similar name.
16/08/2017	PARAMOUNT LAW BOSTON WWW.PARAMOUNTLAWBOSTON.COM	Unauthorised entities	FCA (United Kingdom)	
16/08/2017	MONEY SOLUTIONS UK (CLONE)	Unauthorised entities	FCA (United Kingdom)	
16/08/2017	HIGA AND PARTNERS WWW.HIGAANDPARTNERS.COM	Unauthorised entities	FCA (United Kingdom)	
16/08/2017	KLEINWORT BENSON (VENTURES) (CLONE) WWW.KWBENSON.COM	Unauthorised entities	FCA (United Kingdom)	
16/08/2017	THE BRITAIN LOAN / BRITAIN LOANS / BRITT LOANS WWW.BRITAINLOANS.CO.UK	Unauthorised entities	FCA (United Kingdom)	
23/08/2017	CDN LAW FIRM WWW.CDNLAWFIRM.COM	Unauthorised entities	FCA (United Kingdom)	
23/08/2017	ASHTON MOORE DEVELOPMENTS/ ASHTON MOORE WWW.ASHTONMOOREDEVELOPMENTS.COM	Unauthorised entities	FCA (United Kingdom)	

Public warnings in respect of unauthorised entities *(continuation)*

Date	Company to which the warning relates	Type	Regulator	Comments
23/08/2017	FXCM INTERNATIONAL FINANCE GROUP (CLONE)	Unauthorised entities	FCA (United Kingdom)	Unrelated to the duly registered entity with a similar name.
30/08/2017	GLOBAL INVEST NETWORK	Unauthorised entities	CSSF (Luxembourg)	
30/08/2017	INDIGO LOANS WWW.INDIGOLOANS.CO.UK	Unauthorised entities	FCA (United Kingdom)	
30/08/2017	BEMBRIDGE ASSURANCE WWW.BEMBRIDGEASSURANCE.COM	Unauthorised entities	FCA (United Kingdom)	
30/08/2017	DESERT FINANCE SERVICES LIMITED, OPERANDO COMO DESERT FINANCE (CLONE) WWW.DESERTFINANCE.LOAN	Unauthorised entities	FCA (United Kingdom)	
30/08/2017	ATSUKO VENTURES WWW.ATSUKOVENT.COM	Unauthorised entities	FCA (United Kingdom)	
30/08/2017	GRUBER & TAYLOR CO WWW.GRUBERANDTAYLORCO.COM	Unauthorised entities	FCA (United Kingdom)	
30/08/2017	BELLMORE GROUP WWW.BELLMOREGROUP.COM	Unauthorised entities	FSMA (Belgium)	Warning against unauthorised entities that offer investment services (boiler rooms).
30/08/2017	DEVIN CONSULTANTS WWW.DEVINCONSULTANTS.COM	Unauthorised entities	FSMA (Belgium)	Warning against unauthorised entities that offer investment services (boiler rooms).
30/08/2017	EXCON FUJI SECURITIES WWW.EFSECURITIES.COM	Unauthorised entities	FSMA (Belgium)	Warning against unauthorised entities that offer investment services (boiler rooms).
30/08/2017	OLIVIER AND MANN INC. WWW.OLIVIERANDMANN.COM	Unauthorised entities	FSMA (Belgium)	Warning against unauthorised entities that offer investment services (boiler rooms).
30/08/2017	ORIX CAPITAL TRADING WWW.ORIXTRADING.COM	Unauthorised entities	FSMA (Belgium)	Warning against unauthorised entities that offer investment services (boiler rooms).
30/08/2017	WESTWARD HOLDINGS WWW.WESTWARDHOLDINGS.COM	Unauthorised entities	FSMA (Belgium)	Warning against unauthorised entities that offer investment services (boiler rooms).
30/08/2017	EASYGESTIONS WWW.EASYGESTIONS.COM	Unauthorised entities	FSMA (Belgium)	Warning against unauthorised entities that offer investment services (boiler rooms).
30/08/2017	FXUNITED / UNITED GLOBAL HOLDINGS LIMITED WWW.FXUNITEDGLOBAL.COM	Unauthorised entities	FSMA (Belgium)	Warning about entities that operate in Belgium with binary options.
30/08/2017	MARKETS PREMIUM WWW.MARKETS-PREMIUM.COM	Unauthorised entities	FSMA (Belgium)	Warning about entities that operate in Belgium with binary options.
30/08/2017	ONETWOTRADE / UP & DOWN MARKETING LTD WWW.ONETWOTRADE.COM	Unauthorised entities	FSMA (Belgium)	Warning about entities that operate in Belgium with binary options.
30/08/2017	SUISSE OPTION / PRIMARY STREAM LIMITED WWW.SUISSEOPTION.COM	Unauthorised entities	FSMA (Belgium)	Warning about entities that operate in Belgium with binary options.

Public warnings in respect of unauthorised entities *(continuation)*

Date	Company to which the warning relates	Type	Regulator	Comments
30/08/2017	TOROPTION WWW.TOROPTION.COM	Unauthorised entities	FSMA (Belgium)	Warning about entities that operate in Belgium with binary options.
30/08/2017	TP-MARKETS / HUBSTONE HOLDINGS LTD WWW.TP-MARKETS.COM	Unauthorised entities	FSMA (Belgium)	Warning about entities that operate in Belgium with binary options.
30/08/2017	VIP MARKETS WWW.VVIPMARKETS.COM	Unauthorised entities	FSMA (Belgium)	Warning about entities that operate in Belgium with binary options.
30/08/2017	XFR FINANCIAL (CLONE) / E NEW SP Z.O.O. WWW.XFR-FINANCIAL.COM	Unauthorised entities	FSMA (Belgium)	Warning about entities that operate in Belgium with binary options.
06/09/2017	GENWORTH CONSULTANT GROUP (USA)	Unauthorised entities	CBI (Ireland)	
06/09/2017	KOENIG ROWE / CAMPBELL ALLIANCE WWW.KRC-ALLIANCE.COM	Unauthorised entities	DFSA (Denmark)	
06/09/2017	EDUARD STEINBACH (CLONE) WWW.EDUARDSTEINBACH.COM	Unauthorised entities	FCA (United Kingdom)	
06/09/2017	STANDARD FIDELITY WWW.STANDARDFIDELITY.COM	Unauthorised entities	FCA (United Kingdom)	
06/09/2017	SWISS LIFE (CLONE) WWW.AAARATEDBOND.COM	Unauthorised entities	FCA (United Kingdom)	
06/09/2017	QUICK LOANS LTD (CLONE) WWW.QUICKLOANSLTD.CO.UK	Unauthorised entities	FCA (United Kingdom)	
06/09/2017	SAVOY ASSET MANAGEMENT WWW.SAVOYAM.COM	Unauthorised entities	FCA (United Kingdom)	
06/09/2017	WILKINS DEVELOPMENTS / WILKINS PROPERTY DEVELOPMENTS WWW.WILKINSDEVELOPMENTS.COM	Unauthorised entities	FCA (United Kingdom)	
13/09/2017	FISHER INVESTMENTS INSTITUTIONAL FUNDS PLC (CLONE) HTTP://FISHERFUNDSPLC.CO.UK	Unauthorised entities	FCA (United Kingdom)	
13/09/2017	GENWORTH CONSULTANT GROUP WWW.GENWORTHCONSULTANTGRP.COM WWW.GENWORTHCONSULTANT.COM	Unauthorised entities	FCA (United Kingdom)	
13/09/2017	POSITIVE LENDING (CLONE)	Unauthorised entities	FCA (United Kingdom)	
13/09/2017	CATHAY DUPONT WWW.CATHAYDUPONT.COM	Unauthorised entities	CSS (Luxembourg)	
13/09/2017	ITO VENTURES WWW.ITOVENTURES.COM	Unauthorised entities	SFSA (Sweden)	
13/09/2017	CMC GAO HUA WWW.CMCALLIANCE.COM	Unauthorised entities	SFSA (Sweden)	
13/09/2017	JOHNSTON AND JAMES CONSULTANCY / J&J CONSULTANCY WWW.JOHNSTONANDJAMESCONSULTANCYFIRM.COM	Unauthorised entities	FCA (United Kingdom)	
13/09/2017	NAFTOIL	Unauthorised entities	AMF (France)	Warning also issued against its director, Raphael Comté.
20/09/2017	ASSET CONSULTING / CONSULTANT SERVICES WWW.ASSETCONSULTINGSERVICES.COM WWW.ASSETCONSULTANTSERVICES.COM	Unauthorised entities	FCA (United Kingdom)	

Public warnings in respect of unauthorised entities *(continuation)*

Date	Company to which the warning relates	Type	Regulator	Comments
20/09/2017	DBL ASSET MANAGEMENT S.A. WWW.DBL-AM.ORG	Unauthorised entities	CSSF (Luxembourg)	
27/09/2017	FCA MARKET / FINANCIAL CONTRACT AUTHORITY HTTPS://FCAMARKET.COM/INDEX.PHP?LANG=EN	Unauthorised entities	FCA (United Kingdom)	
27/09/2017	PASCAL GRANDE CAPITAL PARTNERS (CLONE) WWW.PASCALGRANDE.COM	Unauthorised entities	FCA (United Kingdom)	
27/09/2017	WWW.BARCLAYS-TRADINGINVEST.COM	Unauthorised entities	AMF (France)	Websites that offer investments in binary options without being authorised.
27/09/2017	WWW.BINARYMATE.COM	Unauthorised entities	AMF (France)	Websites that offer investments in binary options without being authorised.
27/09/2017	WWW.FINRALLY.COM	Unauthorised entities	AMF (France)	Websites that offer investments in binary options without being authorised.
27/09/2017	OPZIONE FINANZA OF ANTONIO VACCARO WWW.OPZIONEFINANZA.COM	Unauthorised entities	CONSOB (Italy)	
04/10/2017	INSTANT LOLLY (CLONE)	Unauthorised entities	FCA (United Kingdom)	
04/10/2017	CAL INVESTMENTS LTD (CLONE)	Unauthorised entities	FCA (United Kingdom)	
04/10/2017	AMAC MORTGAGES & LOAN LTD (CLONE) WWW.AMACMTGLTD.COM	Unauthorised entities	FCA (United Kingdom)	
04/10/2017	LEND MUTUAL (CLONE)	Unauthorised entities	FCA (United Kingdom)	
04/10/2017	1875 FINANCE INVEST WWW.1875-FINANCEINVEST.COM	Unauthorised entities	AMF (France)	Entities and websites that offer investments in the forex market without being authorised.
04/10/2017	LONDON B CAPITAL WWW.LONDONBCAPITAL.COM	Unauthorised entities	AMF (France)	Entities and websites that offer investments in the forex market without being authorised.
04/10/2017	GLOBE AND CO LTD WWW.FXANDCO.COM	Unauthorised entities	AMF (France)	Entities and websites that offer investments in the forex market without being authorised.
04/10/2017	STARTMARKETS WWW.STARTMARKETS.COM	Unauthorised entities	AMF (France)	Entities and websites that offer investments in the forex market without being authorised.
04/10/2017	CBRE-SECURITYPLACE WWW.CBRE-SECURITYPLACE.COM	Unauthorised entities	AMF (France)	Entities and websites that offer investments in the forex market without being authorised.
04/10/2017	AKAMAI GROUP WWW.AKANAGI-GROUP.COM	Unauthorised entities	FSMA (Belgium)	Warning against unauthorised entities that offer investment services (boiler rooms).
04/10/2017	ASHTON WHITELY WWW.ASHTONWHITELEY.COM	Unauthorised entities	FSMA (Belgium)	Warning against unauthorised entities that offer investment services (boiler rooms).
04/10/2017	ATB HOLDINGS WWW.ATBHOLDINGS.COM	Unauthorised entities	FSMA (Belgium)	Warning against unauthorised entities that offer investment services (boiler rooms).

Public warnings in respect of unauthorised entities *(continuation)*

Date	Company to which the warning relates	Type	Regulator	Comments
04/10/2017	FAIRWAY CAPITAL INVESTMENTS WWW.FAIRWAYCAPITALINVESTMENTS.COM	Unauthorised entities	FSMA (Belgium)	Warning against unauthorised entities that offer investment services (boiler rooms).
04/10/2017	NAGAHARU GLOBAL WWW.NAGAHARU.COM	Unauthorised entities	FSMA (Belgium)	Warning against unauthorised entities that offer investment services (boiler rooms).
04/10/2017	NOVATURE GROUP WWW.NOVATUREGROUP.COM	Unauthorised entities	FSMA (Belgium)	Warning against unauthorised entities that offer investment services (boiler rooms).
04/10/2017	ONEX BUSAN FINANCIAL WWW.OBALLIANCE.COM	Unauthorised entities	FSMA (Belgium)	Warning against unauthorised entities that offer investment services (boiler rooms).
04/10/2017	PACIFIC CHIBA TRUST WWW.PCTMANAGEMENT.COM	Unauthorised entities	FSMA (Belgium)	Warning against unauthorised entities that offer investment services (boiler rooms).
04/10/2017	FIRST SKYWAY INVEST GROUP LIMITED / SKYWAY CAPITAL HTTPS://SKYWAY.CAPITAL/EN/	Unauthorised entities	FSMA (Belgium)	
04/10/2017	IFT ADVISORY GROUP IRLANDA	Unauthorised entities	CBI (Ireland)	
11/10/2017	CTI GROUP ADVISORS WWW.CTIGROUPADVISORS.COM	Unauthorised entities	FCA (United Kingdom)	
11/10/2017	TRADELUX GROUP LTD WWW.OPTIONINT.COM	Unauthorised entities	CONSOB (Italy)	
11/10/2017	GATCO BANK PLC HTTP://WWW.GATCOBANK.COM	Unauthorised entities	FCA (United Kingdom)	
11/10/2017	OSBOURNE MULLIGAN CONSULTING WWW.OSBOURNE-MULLIGAN.COM	Unauthorised entities	FCA (United Kingdom)	
11/10/2017	CHINATSU AND PARTNERS (JAPÓN)	Unauthorised entities	CBI (Ireland)	
11/10/2017	ELLIS AND TATE WWW.ELLISANDTATE.COM	Unauthorised entities	FCA (United Kingdom)	
11/10/2017	CHINATSU & PARTNERS WWW.CHINATSUPARTNERS.COM	Unauthorised entities	FCA (United Kingdom)	
11/10/2017	ASTON WEALTH WWW.ASTONWEALTH.COM	Unauthorised entities	FCA (United Kingdom)	
18/10/2017	TRADE INVEST 90 WWW.TRADEINVEST90.COM	Unauthorised entities	FSMA (Belgium)	
18/10/2017	AVALLON PATRIMOINE WWW.AVALLON-PATRIMOINE.COM	Unauthorised entities	FSMA (Belgium)	
18/10/2017	IMPROVEMENT LOANS (CLONE)	Unauthorised entities	FCA (United Kingdom)	
18/10/2017	FOREST ADVISORY SERVICE / FOREST HILL INVESTMENTS / FOREST HILL MANAGEMENT WWW.FORESTHILLADVISORY.COM	Unauthorised entities	FCA (United Kingdom)	
18/10/2017	SAMEDAY LOANS / SAME DAY LOANS (CLONE) WWW.SAMEDAY-LOANS.ORG.UK	Unauthorised entities	FCA (United Kingdom)	

Public warnings in respect of unauthorised entities *(continuation)*

Date	Company to which the warning relates	Type	Regulator	Comments
18/10/2017	FIVE WINDS ASSET MANAGEMENT / QW LIANORA SWISS CONSULTING SA / RELACIONADA: QUESTRA; ATLANTIC GLOBAL	Unauthorised entities	FSMA (Belgium)	Warning issued on its relationship with entities already subject to a warning: Questra World, Questra Holdings and Atlantic Global Asset Management.
25/10/2017	TOKAI NATIONAL PARTNERS WWW.TNPSECURITIES.COM	Unauthorised entities	DFSA (Denmark)	
25/10/2017	BRITANNIA CAPITAL MANAGEMENT (CLONE) WWW.BRITANNIACAPMANAGEMENT.COM	Unauthorised entities	FCA (United Kingdom)	
25/10/2017	CENTURY FINANCE/CENTURY FINANCE SERVICES LIMITED/ CENTURY FINANCE UK LIMITED (CLONE) WWW.CENTURYFINANCE.LOAN	Unauthorised entities	FCA (United Kingdom)	
25/10/2017	GREENSHIELDS CAPITAL GROUP WWW.GREENSHILEDSCAPITALGRP.COM	Unauthorised entities	FCA (United Kingdom)	
25/10/2017	TRADING TRINITY WWW.TRADING-TRINITY.COM	Unauthorised entities	FCA (United Kingdom)	
02/11/2017	CROWN MANAGERS WWW.CROWNMANAGERS.COM	Unauthorised entities	CSSF (Luxembourg)	
02/11/2017	LE PAY BANK WWW.LE-PAY.EU	Unauthorised entities	CSSF (Luxembourg)	
02/11/2017	SPOT INVESTICIJE POSLOVNO SVETOVANJE HTTP://SPOT-INVESTICIJE.COM/	Unauthorised entities	SSMA (Slovenia)	
02/11/2017	BAKER HAMLIN WWW.BAKERHAMLIN.COM	Unauthorised entities	FCA (United Kingdom)	
02/11/2017	YF ASSET MANAGEMENT (CLONE) WWW.YFASSETMANAGEMENT.COM	Unauthorised entities	FCA (United Kingdom)	
08/11/2017	WILLIAMS BEACON ADVISORY LTD WWW.WILLIAMS-BEACON.COM	Unauthorised entities	AFM (Netherlands - Holland)	
08/11/2017	AMERGERIS WEALTH MANAGEMENT GROUP (CLONE)	Unauthorised entities	FCA (United Kingdom)	
08/11/2017	GET MY LOANS (CLONE)	Unauthorised entities	FCA (United Kingdom)	
08/11/2017	SIX SWISS EXCHANGE LTD (CLONE)	Unauthorised entities	FCA (United Kingdom)	
15/11/2017	LEVINE & LEVINE LAW SPECIALISTS WWW.LEVINEANDLEVINELAWS.COM	Unauthorised entities	FCA (United Kingdom)	
22/11/2017	NÆRINGSSPAR AS / NÆRINGSSPAR EIENDOM AS WWW.N-SPAR.NO	Unauthorised entities	FSAN (Norway)	
22/11/2017	GTI NET (GLOBAL TRADING AND INVEST NETWORK) WWW.GTI-NET.COM	Unauthorised entities	FSMA (Belgium)	
22/11/2017	JUSTITIA GRUPPEN AS WWW.JUSTITIAGRUPPEN.NO	Unauthorised entities	FSAN (Norway)	
22/11/2017	REDTHORNE REALISATIONS LIMITED (OPERANDO COMO REDTHORNE MARKETS) HTTPS://REDTHORNEMARKETS.COM	Unauthorised entities	FCA (United Kingdom)	
29/11/2017	GLOBAL FINANCIAL PROTECTION COMMISSION (USA)	Unauthorised entities	CBI (Ireland)	

Public warnings in respect of unauthorised entities *(continuation)*

Date	Company to which the warning relates	Type	Regulator	Comments
29/11/2017	MAXWELL FINANCIAL SERVICES (USA)	Unauthorised entities	CBI (Ireland)	
29/11/2017	HUSH WWW.HUSH.LU	Unauthorised entities	CSSF (Luxembourg)	
29/11/2017	SOLIDCFD WWW.SOLIDCFD.COM	Unauthorised entities	DFSA (Denmark)	
05/12/2017	STX GLOBAL LIMITED (OPERANDO COMO STX MARKETS) HTTP://WWW.STXMARKETS.COM/	Unauthorised entities	FCA (United Kingdom)	
05/12/2017	CHESTERFIELD INTERNATIONAL PARTNERS WWW.CHESTERFIELDINTLPARTNERS.COM	Unauthorised entities	FCA (United Kingdom)	
05/12/2017	AFFORDABLE LOANS (CLONE)	Unauthorised entities	FCA (United Kingdom)	Unrelated to the duly registered entity with a similar name.
05/12/2017	MICHAEL ULLRICH HARTMANN (CLONE) WWW.MICHAELULRICHHARTMANN.COM	Unauthorised entities	FCA (United Kingdom)	
05/12/2017	MBQ INTERNATIONAL INCORPORATED	Unauthorised entities	FCA (United Kingdom)	
05/12/2017	THE CAPITAL ADVISORY GROUP (IRLANDA)	Unauthorised entities	CBI (Ireland)	
05/12/2017	OTM CAPITAL WWW.OTMCAPITAL.COM	Unauthorised entities	DFSA (Denmark)	
05/12/2017	ASHIDA ASSOCIATES WWW.ASHIDAASSOCIATES.COM	Unauthorised entities	FSMA (Belgium)	Warning against unauthorised entities that offer investment services (boiler rooms).
05/12/2017	SAPPORO INTERNATIONAL WWW.SAPPOROINTERNATIONAL.COM	Unauthorised entities	FSMA (Belgium)	Warning against unauthorised entities that offer investment services (boiler rooms).
05/12/2017	TOKAI NATIONAL PARTNERS WWW.TNPSECURITIES.COM	Unauthorised entities	FSMA (Belgium)	Warning against unauthorised entities that offer investment services (boiler rooms).
05/12/2017	CMS TRADER / PANDORX VENTURES LIMITED WWW.CMSTRADER.COM	Unauthorised entities	FSMA (Belgium)	Warning against entities that operate in Belgium with binary options, forex products and CFDs without being duly authorised.
05/12/2017	FXANDCO / GLOBE AND CO LTD WWW.FXANDCO.COM	Unauthorised entities	FSMA (Belgium)	Warning against entities that operate in Belgium with binary options, forex products and CFDs without being duly authorised.
05/12/2017	IFT ADVISORY GROUP WWW.IFOREXTRADING.CO.UK	Unauthorised entities	FSMA (Belgium)	Warning against entities that operate in Belgium with binary options, forex products and CFDs without being duly authorised.
05/12/2017	KIN CAPITAL / CHEMMI HOLDINGS WWW.KIN-CAPITAL.COM	Unauthorised entities	FSMA (Belgium)	Warning against entities that operate in Belgium with binary options, forex products and CFDs without being duly authorised.

Public warnings in respect of unauthorised entities *(continuation)*

Date	Company to which the warning relates	Type	Regulator	Comments
05/12/2017	MARKETS BROKER / AGE CAPITAL (PAYMENTS SOLUTIONS) LTD WWW.MARKETSBROKER.COM	Unauthorised entities	FSMA (Belgium)	Warning against entities that operate in Belgium with binary options, forex products and CFDs without being duly authorised.
05/12/2017	SHTERN GROUP / EUROPEAN SOFT LTD (UK) WWW.SHTERNGROUP.COM	Unauthorised entities	FSMA (Belgium)	Warning against entities that operate in Belgium with binary options, forex products and CFDs without being duly authorised.
05/12/2017	SLS TRADE WWW.SLSTRADE.COM	Unauthorised entities	FSMA (Belgium)	Warning against entities that operate in Belgium with binary options, forex products and CFDs without being duly authorised.
05/12/2017	SWISS ROYAL BANC / SRB GROUP WWW.SWISSROYALBANC.COM WWW.SRBGROUP.COM	Unauthorised entities	FSMA (Belgium)	Warning against entities that operate in Belgium with binary options, forex products and CFDs without being duly authorised.
05/12/2017	TRADE24 / TRADE 24 WWW.TRADE-24.COM	Unauthorised entities	FSMA (Belgium)	Warning against entities that operate in Belgium with binary options, forex products and CFDs without being duly authorised.
05/12/2017	TRADEV WWW.TRADEV.COM	Unauthorised entities	FSMA (Belgium)	Warning against entities that operate in Belgium with binary options, forex products and CFDs without being duly authorised.
05/12/2017	HUME CAPITAL MANAGEMENT WWW.HUMECLONDON.COM	Unauthorised entities	FCA (United Kingdom)	
14/12/2017	INDEPENDENCE LOANS (CLONE)	Unauthorised entities	FCA (United Kingdom)	
14/12/2017	TAYLOR & CLARK / TAYLOR AND CLARK / TC WEALTH WWW.TC-WEALTH.COM	Unauthorised entities	FCA (United Kingdom)	
14/12/2017	ADN UK FINANCE / ADN UK / ADN/ ADN UK LOANS WWW.ADNUK.COM	Unauthorised entities	FCA (United Kingdom)	
14/12/2017	ASSET LINK INTERNATIONAL WWW.ASSETLINKCONSULT.COM	Unauthorised entities	FCA (United Kingdom)	
14/12/2017	AMUNDI ASSET MANAGEMENT (CLONE)	Unauthorised entities	FCA (United Kingdom)	Unrelated to the duly registered entity with the same name.
14/12/2017	HOWLAND LAW FIRM / HOWLAND LAW LLP WWW.HOWLANDLAW.COM	Unauthorised entities	FCA (United Kingdom)	
14/12/2017	GOLDBRIGDE FUND MANAGEMENT (CLONE) WWW.GOLDBRIGDEFUNDMANAGEMENT.COM	Unauthorised entities	FCA (United Kingdom)	
14/12/2017	LOAN SYNDICATE WWW.LOANSYNDICATE.NET	Unauthorised entities	FSMA (Belgium)	
14/12/2017	CYBERTRUST S.A. WWW.CYBERTRUST.IO	Unauthorised entities	CSSF (Luxembourg)	

Public warnings in respect of unauthorised entities *(continuation)*

Date	Company to which the warning relates	Type	Regulator	Comments
14/12/2017	VOGEL CAPITAL / COMMERCIAL SUPPORT LP WWW.VOGELCAPITAL.COM	Unauthorised entities	SFSA (Sweden)	
14/12/2017	PRIMECFDS / WM OPTION / ORION SOLUTIONS SRL WWW.PRIMECFDS.COM	Unauthorised entities	SFSA (Sweden)	
20/12/2017	NEW YORK LAW SPECIALISTS WWW.NEWYORKLAWSPECIALISTS.COM	Unauthorised entities	FCA (United Kingdom)	
20/12/2017	REVIVE CAPITAL GROUP HTTP://REVIVECAPITALGROUP.COM/ HTTP://RCLIMITED.COM/	Unauthorised entities	FCA (United Kingdom)	
20/12/2017	BULWARK INSURANCE HTTP://BULWARKINSURANCE.CO.UK/	Unauthorised entities	FCA (United Kingdom)	
20/12/2017	MORGAN CONSULTANCY GROUP WWW.MORGANCONSULTANCYGRP.COM	Unauthorised entities	FCA (United Kingdom)	
20/12/2017	FALCON FINANCIAL MANAGEMENT	Unauthorised entities	MFSA (Malta)	
20/12/2017	HOLLIS KOOKMIN FINANCIAL HTTPS://HKFGLOBAL.COM	Unauthorised entities	AFM (Netherlands - Holland)	
20/12/2017	WWW.CAPITALDEPOSIT.NET	Unauthorised entities	AMF (France)	Websites that offer investments in binary options without being authorised.
20/12/2017	WWW.EMFI-PLACESECURITY.COM	Unauthorised entities	AMF (France)	Websites that offer investments in binary options without being authorised.
20/12/2017	WWW.XFR-FINANCIAL.COM	Unauthorised entities	AMF (France)	Websites that offer investments in binary options without being authorised.
20/12/2017	EPARGNE BANQUE WWW.EPARGNE-BANQUE.COM	Unauthorised entities	CSSF (Luxembourg)	
20/12/2017	SUTTON JOHNSON HOLDINGS WWW.SUTTONJOHNSONHOLDINGS.COM	Unauthorised entities	FCA (United Kingdom)	
20/12/2017	AXEWORTH SECURITIES WWW.AXEWORTHSECURITIES.CH	Unauthorised entities	FCA (United Kingdom)	
20/12/2017	GOLDBRIGDE FUND MANAGEMENT (CLONE) WWW.HANSAGRP.CO.UK	Unauthorised entities	FCA (United Kingdom)	
20/12/2017	CARUS SOLUTIONS LTD WWW.CARUSSOLUTIONS.CO.UK	Unauthorised entities	FCA (United Kingdom)	
18/01/2017	SUNDRY (FRANCE)	Other warnings	AMF (France)	Warning about offers of investment in diamonds.
18/01/2017	SUNDRY (ITALY)	Other warnings	CONSOB (Italy)	
25/01/2017	SUNDRY (FRANCE)	Other warnings	AMF (France)	Warning about marketing of an investment product in France without being duly authorised.
08/02/2017	SUNDRY (ITALY)	Other warnings	CONSOB (Italy)	Warning about offers of investment in diamonds.
15/02/2017	SUNDRY (ITALY)	Other warnings	CONSOB (Italy)	Warning about risks of investing in CFDs, rolling spot forex and binary options.

Public warnings in respect of unauthorised entities *(continuation)*

Date	Company to which the warning relates	Type	Regulator	Comments
15/02/2017	SUNDRY (ITALY)	Other warnings	CONSOB (Italy)	
15/03/2017	SUNDRY (ITALY)	Other warnings	CONSOB (Italy)	
05/04/2017	SUNDRY (FRANCE)	Other warnings	AMF (France)	Repeat warning about offers of investment in diamonds.
05/04/2017	SUNDRY (LUXEMBOURG)	Other warnings	CSSF (Luxembourg)	Fraudulent and deceitful use of the logo, name and address of Bank of Luxembourg, S.A.by the companies Bdl France and Auror Patrimoine.
05/04/2017	SUNDRY (ITALY)	Other warnings	CONSOB (Italy)	Financial investment offers to public resident in Italy on Internet.
19/04/2017	SUNDRY (MALTA)	Other warnings	MFSA (Malta)	Warning on website https://www.onecoin.eu/en/ and a Facebook page "Onecoin Malta" promoting what appears to be a virtual currency "onecoin".
26/04/2017	SUNDRY (ITALY)	Other warnings	CONSOB (Italy)	Suspension of investment programme "rent to buy" offered through web page www.dianesis.com
03/05/2017	SUNDRY (ITALY)	Other warnings	CONSOB (Italy)	Ban on advice through web page www.coinspace1.com related to public offer of "cryptocurrency extraction packages" promoted by Coinspace Ltd.
10/05/2017	SUNDRY (BELGIUM)	Other warnings	FSMA (Belgium)	Recommendations to general public that receive offers to invest in alternative products (strange lands, precious metals, diamonds, etc.).
07/06/2017	SUNDRY (ITALY)	Other warnings	CONSOB (Italy)	Warning about investment offers in diamonds through web page www.paydiamond.com.
05/07/2017	SUNDRY (BELGIUM)	Other warnings	FSMA (Belgium)	Warning about risks of accepting investment offers in diamonds and advice from regulator.
09/08/2017	SUNDRY (FRANCE)	Other warnings	AMF (France)	Publication by regulator of a list of web pages that offer investments in diamonds without being duly authorised.
09/08/2017	SUNDRY (ITALY)	Other warnings	CONSOB (Italy)	Precautionary suspension of advertising activity carried out by Mario Ongaro on investment portfolios promoted by Questra World, Questra Holdings and Atlantic Global Asset Management.

Public warnings in respect of unauthorised entities *(continuation)*

Date	Company to which the warning relates	Type	Regulator	Comments
09/08/2017	SUNDRY (ITALY)	Other warnings	CONSOB (Italy)	Warning about various investment offers.
27/09/2017	SUNDRY (FRANCE)	Other warnings	AMF (France)	Publication by regulator of a list of web pages that offer investments in diamonds without being duly authorised.
27/09/2017	SUNDRY (ITALY)	Other warnings	CONSOB (Italy)	
04/10/2017	SUNDRY (BELGIUM)	Other warnings	FSMA (Belgium)	
11/10/2017	QUESTRA WORLD / QUESTRA HOLDINGS / ATLANTIC GLOBAL ASSET MANAGEMENT	Other warnings	CONSOB (Italy)	Ban on dissemination of public offers on financial products before publication of issue prospectus.
18/10/2017	SUNDRY (BELGIUM)	Other warnings	FSMA (Belgium)	Recommendations to general public to prevent fraud by entities that offer their assistance to victims of previous frauds to recover their investment (recovery rooms).
18/10/2017	SUNDRY (BELGIUM)	Other warnings	FSMA (Belgium)	Recommendations to general public to prevent fraud by entities that propose investments without being authorised (boiler rooms).
18/10/2017	SUNDRY (BELGIUM)	Other warnings	FSMA (Belgium)	Recommendations to general public to identify possible fraud regarding loan offers.
05/12/2017	SUNDRY (FRANCE)	Other warnings	AMF (France)	Warning of risks associated with investments in cryptocurrencies (bitcoin) due to their volatility and speculative nature. Investor recommendations.
05/12/2017	SUNDRY (FRANCE)	Other warnings	AMF (France)	Publication of a new list of web pages that offer atypical investments (wine products, precious metals, strange lands and diamonds) without being duly authorised.
05/12/2017	HTTPS://CROWDPARTNERS.COM/	Other warnings	AMF (France)	Web sites that mention "crowdfunding platforms regulated by French authorities" without being authorised.

Abbreviations

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

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

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

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