CNMV
Comisión Nacional del Mercado de Valores

Attention to complaints and enquiries by investors
2021 Annual Report

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Abbreviations

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

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

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

1 Introduction

1 Introduction

This Annual Report on Attention to Complaints shows the actions taken by the CNMV Investors Department to deal with claims, complaints and enquiries made by investors in 2021.

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

The Annual Report therefore responds to this legal obligation.

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

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

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

This procedure is specified in CNMV Circular 7/2013, of 25 September, which was issued in development of the aforementioned Order ECC/2502/2012, on the resolution procedure for complaints against companies that provide investment and addressing enquiries in the field of the securities market.

However, Law 7/2017, of 2 November, incorporating Directive 2013/11/EU of the European Parliament and of the Council into the Spanish legal system, dated 21 May 2013, on the alternative resolution for consumer disputes (ADR) was published in the Official State Gazette (*BOE*) on 4 November 2017. In line with its first additional provision, the Complaints Service has had to accommodate its functioning and procedure as provided in Law 7/2017. The manner in which this accommodation took place was widely reported in the Annual Reports of 2017 and 2018.

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

This Annual Report is divided into four chapters and one annex. The first chapter is the introduction, the second reports on the activity of the Complaints Service in 2021, the third provides a general view of the most significant criteria applied in the resolution of complaints in 2021, the fourth deals with the most outstanding issues dealt with during the year, and the annex includes statistical data on cases submitted by natural persons and not-for-profit entities against legal entities.

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

Chapter 1, as indicated, contains the introduction, which includes a brief presentation of the Investor Department, some of its functions and the content of this Report.

Chapter 2 reports on the activity carried out by the Complaints Service in 2021. In line with the structure of the latest Annual Reports, data related to the processing of complaints are collected in more detail and figures and diagrams are included to facilitate understanding of the Service's complaint procedure. In this regard, and as is usual, statistical data are provided on the documents submitted to the Complaints Service with a detailed explanation of how the documents received are processed, indicating the different stages. Accordingly, individualised information is provided in the documents processed in each of the stages in 2021. Thus, the Report establishes the number of proceedings and the reasons that gave rise to the pre-processing stage (including those cases in which the documents submitted by the investor fail to comply with any of the conditions required by law for them to be admitted, and others where there is a legal cause for non-admission), to the resolution stage (in which the documents filed are decided on either as complaints or as non-admissions) and to the follow-up stage (which includes the actions of the entities after the issuance of a report favourable to the complainant or the responses by complainants to the non-admissions or reports unfavourable to the complaints).

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

In line with the new format for presenting the data of the last three Annual Reports, the rankings differentiate between the entity against which the complaint is filed and the entity responsible for the incidents motivating the complaint, which may or may not be the same. They would not be the same in cases in which the entity

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

As is customary in the last Annual Reports and to provide information on the work carried out by the Customer Service Department (CSD) of the entities supervised by the CNMV in processing the complaints received on issues that fall under the remit of the Complaints Service, specific information about the complaints they receive has been requested from the entities. This Annual Report includes the data that the entities have provided on the complaints related to the securities market that were filed with their CSD or with the Customer Ombudsman (CO) in 2021, as well as the complaints that were not admitted or those that were admitted and resolved by them in that year.

In general, according to the data provided by the entities from which information was requested, the percentage of complaints that are followed up by the Complaints Service after passing through the CSD in the same year is very low (it should be noted that complainants have a period of one year, from the date on which entity's CSD has resolved their complaint or should have resolved it but did not do so, to submit their complaint to Complaints Service). On average it is less than 5%, indicating that the system is working properly, whereby customers first go to the entity and if the case cannot be resolved, they turn to the CNMV Complaints Service. In exercising this function, the Complaints Service received 1,254 complaints in 2021. Of these documents, in addition to those pending from the previous year, 484 were not admitted by the Complaints Service and 851 were admitted and processed as complaints.

In relation to the 851 documents processed, the Complaints Service issued a reasoned report establishing that the entity had acted incorrectly in 356 cases (41.8%) and correctly in 296 cases (34.8%). The Complaints Service therefore acts as an independent expert and issues a report that can be very useful for the complainant, as it can be used before judicial bodies if favourable to their interests.

It is also worth mentioning the cases which, following submission to the Complaints Service and prior to the issue of a final reasoned report, were resolved in favour of the complainant or where an agreement was reached with the entity, thereby resolving the case without issuing a ruling on the issues subject of the complaint. Of the total number of complaints filed, acceptances and mutual agreements accounted for 11% in 2017, 13.9% in 2018, 16.3% in 2019, 15.8% in 2020 and 21.1% in 2021. Therefore, the percentage of acceptances and mutual increased in 2021 compared to previous years, with an average of 13.5% for the last eight years, marking an increasing trend.

It should also be noted that in recent years the percentage of acceptances or rectifications made by entities following the issue of a report in favour of the complainant by the CNMV's Complaints Service has increased significantly, to stand at 81.5% in 2021. The latest reports of the Complaints Service show a growing percentage of acceptances or rectifications: 7.3% in 2014, 31.3% in 2015, 45.8% in 2016, 58% in 2017 and 2018, 80.2% in 2019, 70.3% in 2020 and 81.5% in 2021.

It is interesting to note that, if the 179 acceptance or mutual agreements that took place in the year were added to the figure of 81.5% —which are still rectifications made by entities with respect to their clients, carried out on their own initiative during the process – the percentage of rectifications in 2021 would stand at 87.7%.

Regarding international cooperation mechanisms, the activity of the Financial Dispute Resolution Network (FIN-NET) is included. This is a network for the out-of-court settlement of cross-border financial disputes between consumers and service providers in the European Economic Area, which the CNMV joined in 2008. The Complaints Service participated in the two plenary meetings that were held in 2021.

Further, since September 2018, the Complaints Service has been a member of the Steering Committee of FIN-NET, made up of 12 members and in charge of the FIN-NET work programme that is discussed in the plenary meetings.

Since 2017, the Investors Department has also been a member of the International Network of Financial Services Ombudsman Schemes (INFO Network), whose general aim is to cooperate on the resolution of disputes, sharing experiences and information in different areas. The Complaints Service took part in the 14th Annual Meeting of the INFO Network, held on Wednesday, 29 September 2021.

Chapter 3 presents an overview of the main criteria applied in the resolution of complaints in 2021. It should be noted that these criteria arise from the interpretation of sector regulations and good practices that are generally accepted and recognised by market participants. The criteria are derived from the exercise of the supervisory tasks that the CNMV is entrusted with, applied to the specific cases that were analysed in each of the complaints processed in 2021. Consequently, they respond to specific times and circumstances. Future regulatory changes or variations in the specific circumstances of each case could lead to changes in these. In short, the publicity given to these criteria is not intended to be more than an updated catalogue of the regulatory interpretations and good practices resulting from the CNMV's supervisory activities that apply to the sector on a specific date, that of its publication, and nothing prevents them from being modified or nuanced in a later time.

The issues are classified with the following criteria: i) the analysis of the product's suitability for the client's investor profile in the cases of simple order execution, provision of advisory services or portfolio management; ii) product information, which must be provided before and after entering into the contract; iii) order execution; iv) fees applicable to CISs, other securities and portfolio management services; v) testamentary execution; vi) ownership of the securities; and vii) the ownership of securities.

Chapter 4 deals with the activities carried out by the Enquiries Area and shows statistical data of the enquiries received broken down by communication channel (either through the electronic office, by telephone or by mail), as well as the main issues that throughout 2021 have been the subject of enquiries, with a specific section where the most relevant issues are developed.

In 2021, 10,421 enquiries were dealt with, most of which were made by telephone (83.2%).

Investors preferred to use the electronic form to send their written enquiries (13.8%), which led to a drop in presentation through the general registry of 21.3% compared with the previous year.

The average response time, apart from enquiries received by telephone and dealt with immediately, stood at 19 calendar days in 2021. This figure excludes telephone enquiries.

Some of the main issues raised by investors in 2021 were as follows:

- Unregistered entities (financial boiler rooms).
- Suspension of the activity of Cypriot IFs in Spain.
- Fees and expenses for providing information to clients on paper.
- Changes in contractual conditions as a result of the merger of investment firms.
- Operational limitations or the scope of services offered by investment firms.
- Takeover bids.
- The agreement reached by some OHL shareholders to support the recapitalisation of the company through an injection of own funds.
- Potential dilution effect in the capital increase agreed by Distribuidora Internacional de Alimentación (DIA), S.A.
- Failure to submit the audited annual accounts of Abengoa, S.A. (for 2019 and 2020) and reasons why, once these accounts had been presented, the suspension was maintained.
- Restructuring process and subsequent dissolution of Codere, S.A. (in liquidation).
- Companies admitted to trading on BME Growth.
- Investment transfers between collective investment schemes (CISs).
- Fees and commissions for changing the distributor of CISs and for the transfer of investments between CISs.
- Situations in which fees and commissions for the custody of shares and CIS units may be charged.
- Accounts held in the name of the final investor or global accounts (omnibus accounts).
- Private investments.

Lastly, Annex 1 shows statistical data on cases submitted by natural persons and not-for-profit entities (acting as an ADR body)[1] against legal entities (acting as a Complaints Service).

The activity as a Complaints Service that applies when the complainant is a legal person is governed by Order ECC/2502/2012, of 16 November, which regulates the procedure for filing claims with the complaints services of the Bank of Spain, the CNMV and the Directorate-General of Insurance and Pension Funds.

1 Alternative dispute resolution (ADR) methods.

The activity as an ADR body is regulated by the same Order ECC/2502/2012, adapted to the provisions of Law 7/2017, of 2 November, by which Directive 2013/11/EU of the European Parliament and of the Council, of 21 May 2013 applies, relating to the alternative resolution of consumer disputes, is incorporated into the Spanish legal system. This procedure applies to natural persons and not-for-profit entities in accordance with the definition of "consumer" set out in Law 7/2017, which extends the subjective scope of transposed Directive 2013/11/EU, which only defines as a natural person as a consumer and therefore in the data provided on activity as an ADR body, a distinction is made between natural persons, who are considered consumers both under national and European legislation, and not-for-profit entities, which are only considered consumers under Spanish law.

2 Activity in 2021

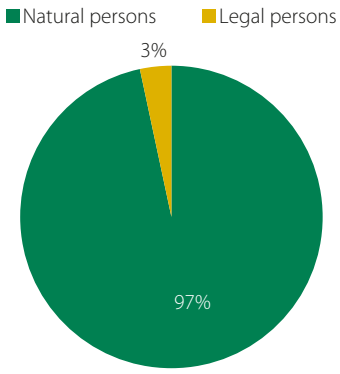
2 Activity in 2021

2.1 Documents filed with the CNMV Complaints Service

In 2021, 1,254 investor documents were filed with the Complaints Service that, due to their characteristics, could be processed as complaints.

These documents were submitted mainly by natural persons. In 181 cases, the investor acted through a representative (42 of them represented legal persons and 139 represented natural persons), although in only ten of these cases the representatives were consumer and user associations.

Types of investors that apply to the Complaints Service FIGURE 1



Source: CNMV.

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

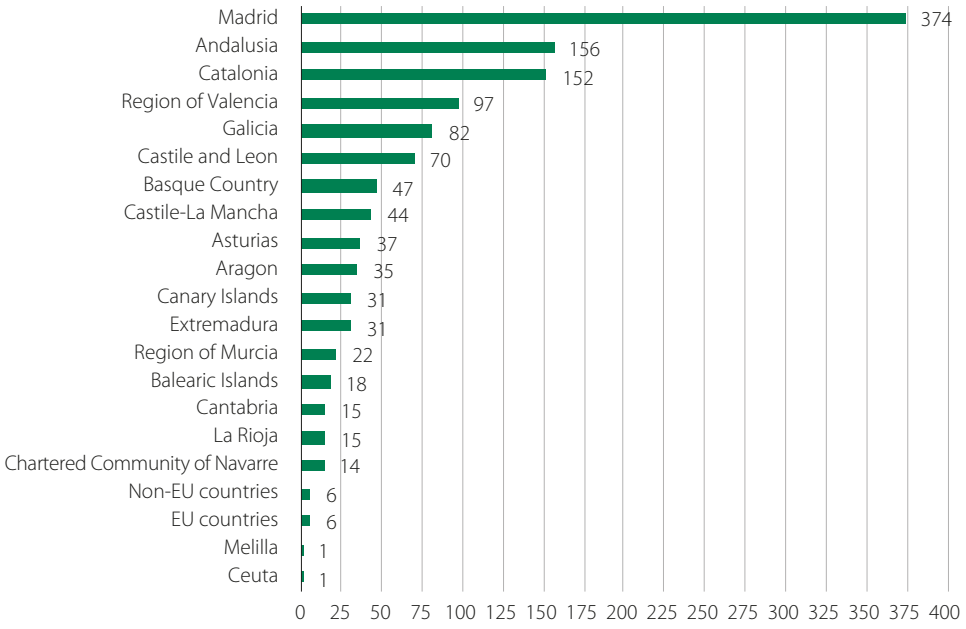
None of the 42 documents submitted by legal entities corresponded to a foundation, i.e. a not-for-profit entity.

The differences between the procedures were explained in detail in the 2017 and 2018 Complaints Reports, to which we refer.

A large majority of the investors that approached the Complaints Service resided in Madrid (374), followed, albeit in a notably lower number, by residents of Andalusia, Catalonia and the Valencian Community.

Origin of the investors that address the Complaints Service

FIGURE 2

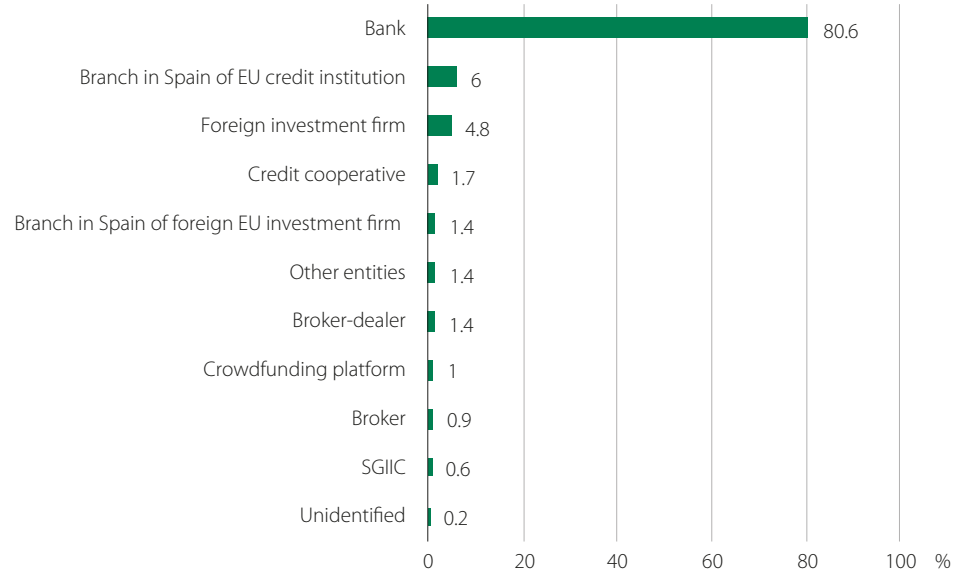


Source: CNMV.

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

Types of entities

FIGURE 3

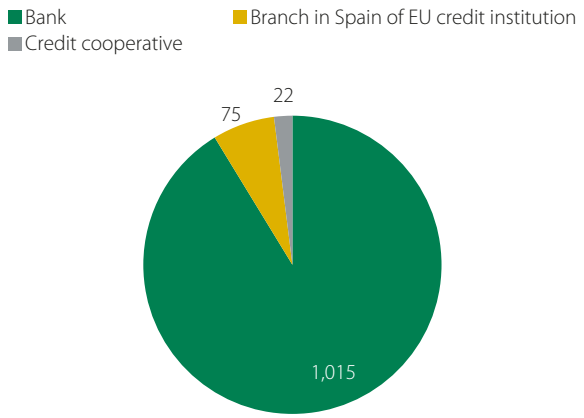


Source: CNMV.

As shown in Figure 3, the type of entity to which investors mostly addressed their complaints were Spanish credit institutions: 82.3% (80.6% of which were banks and 1.7%, credit cooperatives). A further 6.0% corresponded to foreign credit institutions: specifically, branches of EC credit institutions

1 The entities affected by investor documents amounted to 1,259, since some documents were addressed to several entities.

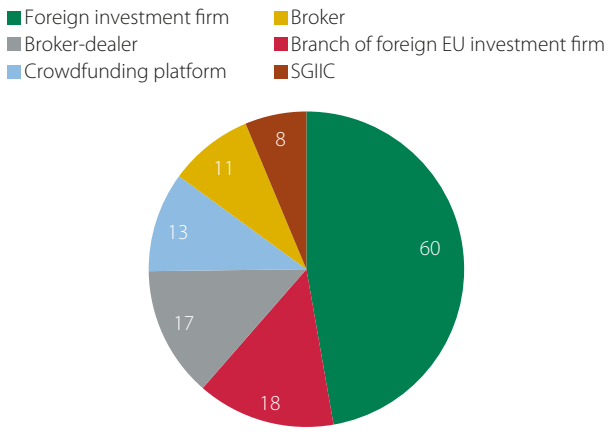
Complaints against credit institutions FIGURE 4



Source: CNMV.

Regarding investment firms (IFs) and other entities authorised by the CNMV, shown in Figure 3, in only 2.3% of cases was the company against which the complaint was filed a Spanish investment firm (1.4% referred to broker-dealers and 0.9% to brokers), or a management company for collective investment schemes (CISMC) (0.6% of cases). In 6.2% of the documents filed by investors with the Complaints Service, the entity against which said complaint was addressed was a foreign IF. A distinction is made between those directed against foreign IFs acting from their country of origin (4.8%) and those directed against branches of EU IFs (1.4%). Lastly, in 1% of cases, the respondent entity was a crowdfunding platform.

Complaints against IFs and other entities authorised by CNMV FIGURE 5



Source: CNMV.

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

Complaints against IFs and other entities authorised by the CNMV compared with credit institutions FIGURE 6

Source: CNMV.

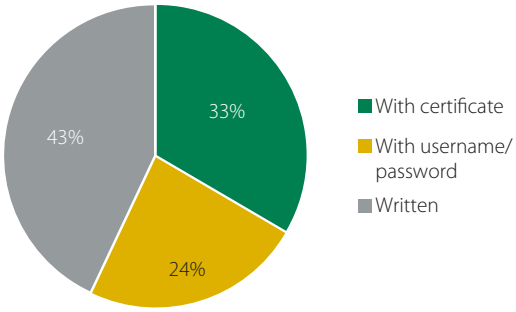
57% of investors approached the Complaints Service using electronic channels and 43% used paper. A change in trend was observed that began in 2020, when both percentages were equal, which contrasts with 2019 and previous years, in which presentation on paper was more popular.

Manner of presentation TABLE 1

Number of documents	
With certificate	419
With username/password	296
Written	539
Total	**1,254**

Source: CNMV.

Percentage breakdown FIGURE 7



Source: CNMV.

To encourage the electronic submission of complaints by investors, given the exceptional situation caused by the COVID-19 crisis, the Complaints Service drew up a guide to encourage the submission of electronic complaints and their subsequent follow-up. It explains the submission process, which includes four simple steps, indicating how to access the complaint after it has been presented to provide additional documentation, and how to find out the processing status. This remote procedure is fast, secure and easily accessible through different types of electronic devices. Investors may consult the guide[2] or view the explanatory video published for this purpose.[3]

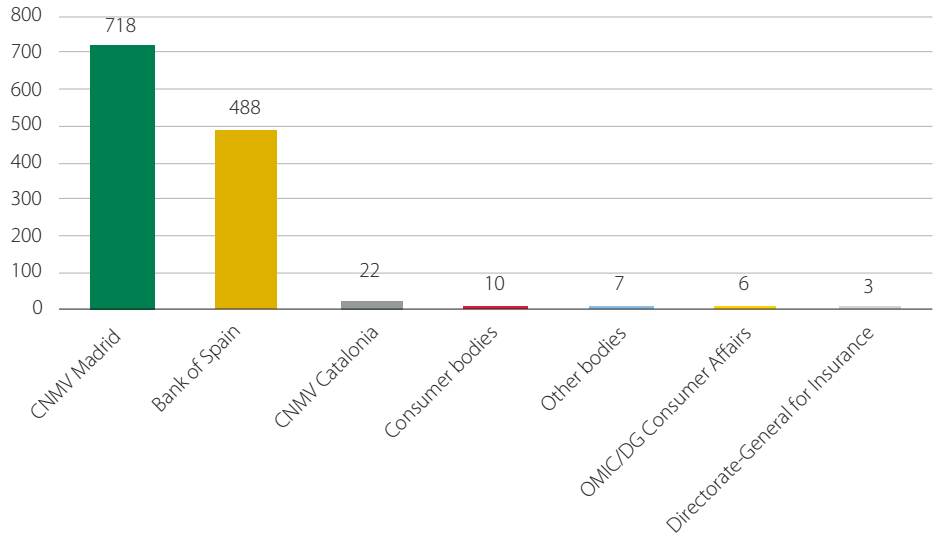
Lastly, most investors filed their documents at the CNMV headquarters (718 in Madrid and 22 in Barcelona), although it is worth mentioning that a significant number of documents referring to issues related to the securities markets were filed directly with the Bank of Spain (488) and were subsequently sent to the Complaints Service.

2 https://www.cnmv.es/DocPortalInv/OtrosPDF/PPT_InstrucReclamElectro.pdf

3 https://www.youtube.com/watch?v=zYkQvaJKzuY

It is also worth mentioning the cases in which the complainants filed their documents with entities related to consumer services, both private (10 documents) and public (6 documents).

Place of filing FIGURE 8



Source: CNMV.

2.2 Processing of the documents

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

2.2.1 Pre-processing stage

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

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

2.2.2 Processing and resolution stage

➢ Non-admissions

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

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

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

➢ Complaints

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

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

i) Submit pleas on the merits of the case, as requested.

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

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

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

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

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

Continuing with the ordinary processing of the complaint proceedings, the entity has the obligation to submit its pleas to both the Complaints Service and the complainant so that the latter, within 21 calendar days (if a natural person or a not-for-profit entity) or 15 business days (if a legal person) from the day after the notification is received, may formulate and submit to the Complaints Service the comments deemed appropriate in respect of the entity's pleas. If the complainant's comments provide new information on the subject matter of the complaint, they are sent back to the respondent entity, which is granted a period of time to submit pleas equivalent to the first period granted.

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

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

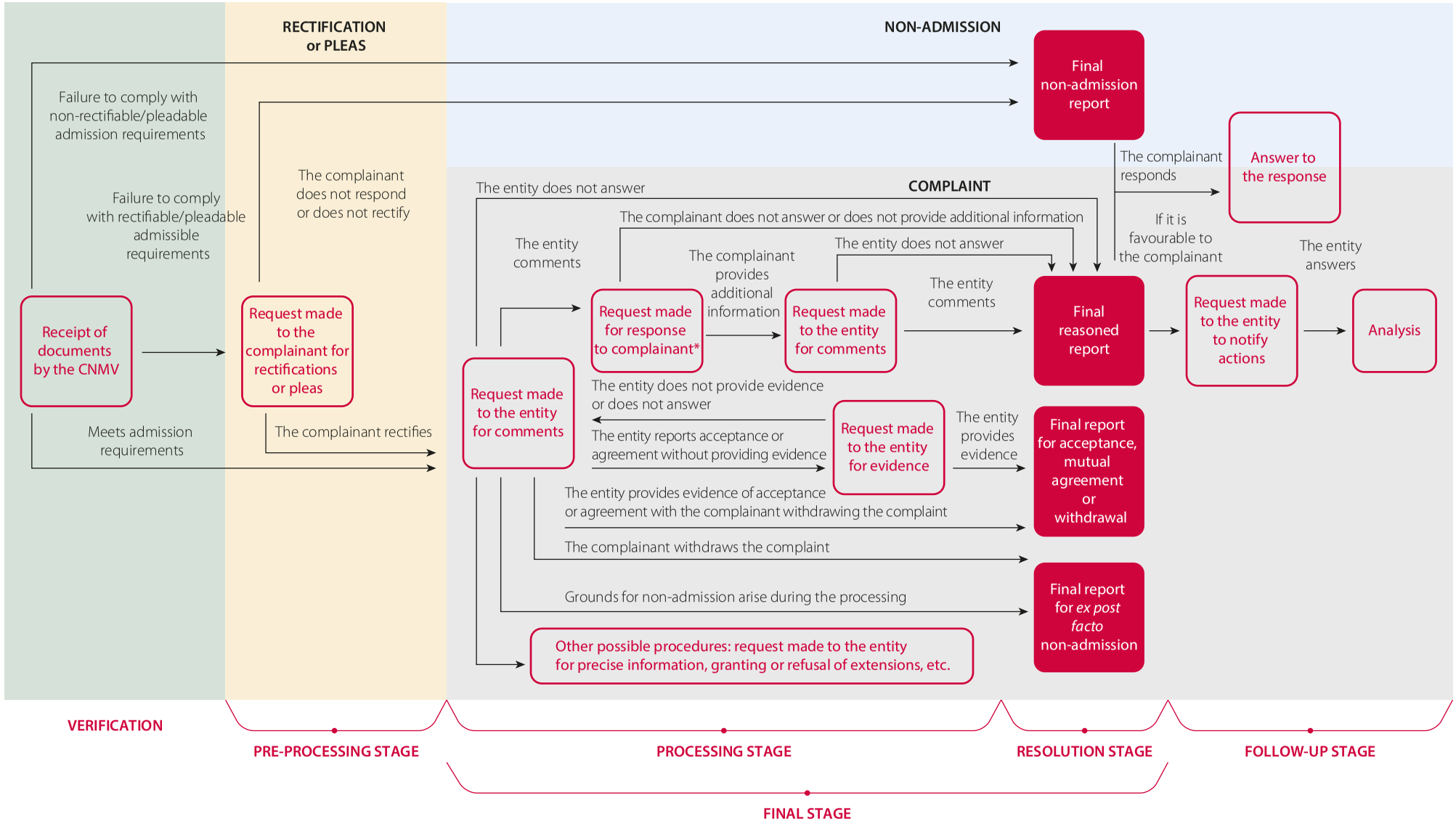
2.2.3 Follow-up stage

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

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

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

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



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

2.3 Complaints resolved in 2021

This chapter analyses how the documents received by the Complaints Service in 2021 were processed, differentiating between each of the aforementioned stages.

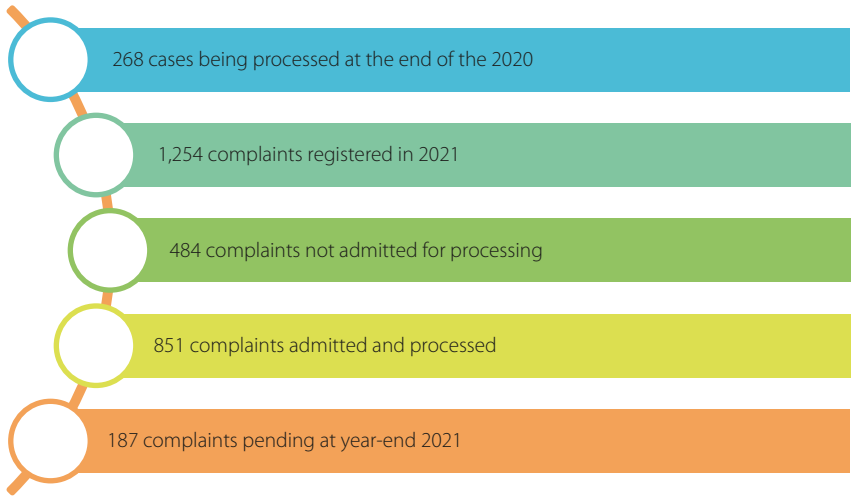
Complaints processed in full in 2021

TABLE 2

Number of documents

	No.
+ Complaints outstanding at year-end 2020	**268**
Outstanding non-admissions	4
Outstanding complaints	218
Outstanding requests for rectifications or pleas	46
Outstanding requests for rectifications or pleas that concluded in complaints	14
Outstanding requests for rectifications or pleas that concluded in non-admissions	32
+ Complaints submitted in 2021	**1,254**
Direct non-admissions	159
Direct complaints	543
Requests for rectifications or pleas	552
Requests for rectifications or pleas that concluded in complaints	247
Requests for rectifications or pleas that concluded in non-admissions	305
– Outstanding complaints at year-end 2021	**187**
Outstanding non-admissions	4
Outstanding complaints	164
Outstanding requests for rectifications or pleas	19
Outstanding requests for rectifications or pleas that concluded in complaints	7
Outstanding requests for rectifications or pleas that concluded in non-admissions	12
= Complaints completed in 2021	**1,335**

Source: CNMV.



2.3.1 Pre-processing stage

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

Of the 268 complaints outstanding at 31 December 2020, 46 were in this pre-processing stage of requests for rectification or pleas, known as the PRP stage (39 PRs and 7 PPs).

In addition, of the 1,254 complaints filed with the Complaints Service in 2021, the pre-processing stage was initiated in 552 cases (467 PRs and 85 PPs).

Lastly, as at 31 December 2021, 19 complaints (15 PRs and 4 PPs) were in this pre-processing stage.

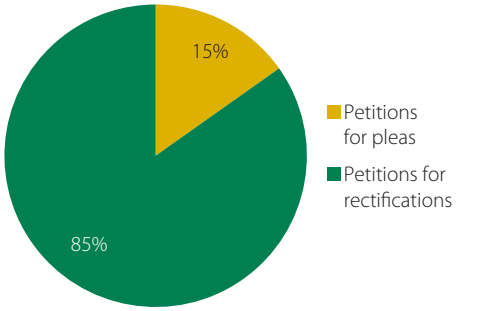
Consequently, in 2021 the pre-processing stage (or PRP stage) was concluded in 579 complaints submitted by investors (46 initiated in 2020 and 533 in 2021).

PRPs concluded in 2021 TABLE 3

Number of complaints	
+ outstanding PRPs in 2020	**46**
Petitions for rectifications	39
Petitions for pleas	7
+ PRPs submitted in 2021	**552**
Petitions for rectifications	467
Petitions for pleas	85
– Outstanding PRPs in 2021	**19**
Petitions for rectifications	15
Petitions for pleas	4
= PRPs concluded in 2021	**579**

Source: CNMV.

Breakdown of PRPs concluded in 2021 FIGURE 9



Source: CNMV.

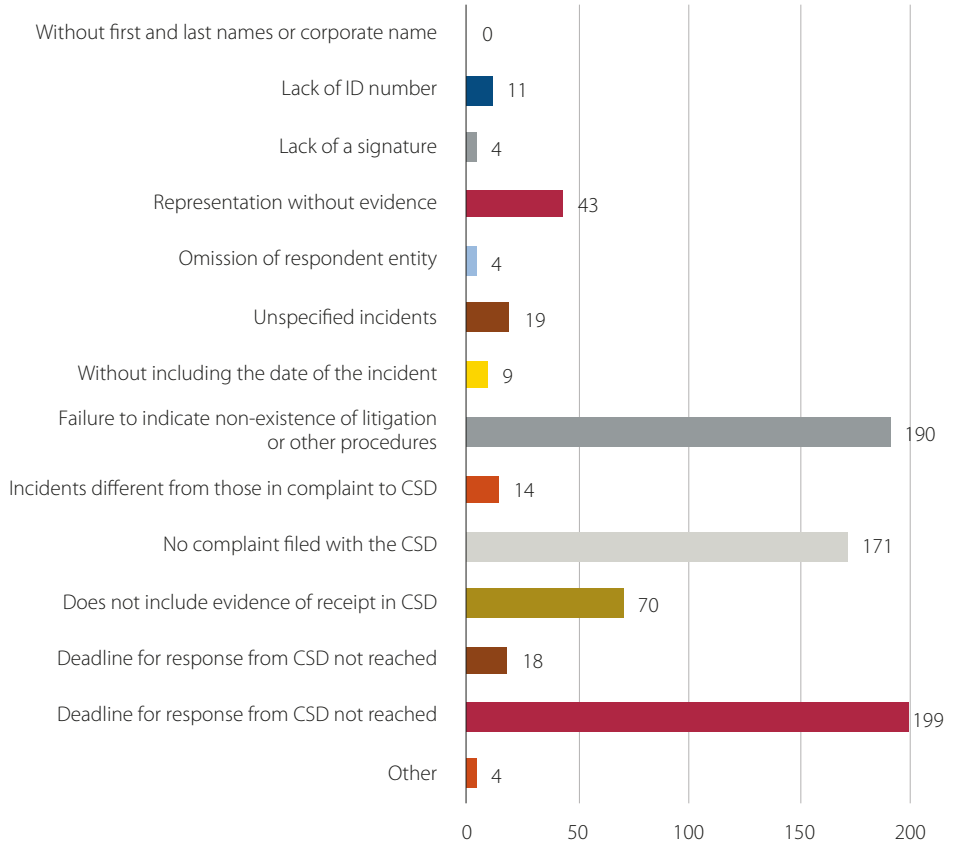
➢ Petitions for rectification (PRs)

A petition for rectification was made in 491 of the 579 complaints for which the pre-processing or PRP stage was concluded in 2021.

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

Grounds for petitions for rectification[1]

FIGURE 10



Source: CNMV.

1 It is usual for a petition for rectification to request rectification of more than one reason, which is why the number of reasons (756) is greater than the number of processed petitions for rectification.

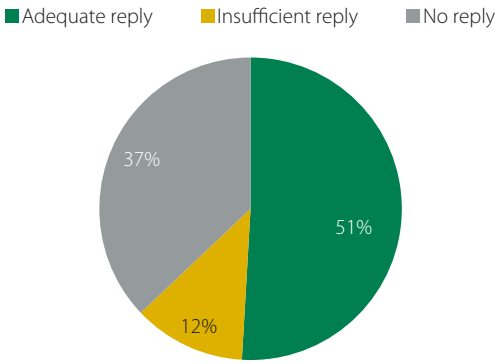
As shown in Figure 10, the most common reason for rectification is the failure to provide supporting documentation for the facts raised in the complaints (199 cases).

The second most common reason for rectification (190 cases) is failure to provide 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. To facilitate compliance with this requirement, the Complaints Service submits a pre-printed form along with the written petition for rectification. Submission of the duly completed form is sufficient to resolve this deficiency.

Demonstration that the complainant has previously filed a complaint with the CSD (171 cases), together with the other three requirements linked to the CSD (102 cases) are extremely important, given that the complaint procedure is designed so that the respondent entity has the opportunity to attempt to resolve its clients' problems prior to the intervention of the public authorities. If this process is omitted, the entities do not have the opportunity to review their actions, and, where appropriate, correct them beforehand. Entities must also help their clients comply with this requirement by sending them the corresponding acknowledgements of receipt after receiving their complaints so that they can easily demonstrate to the Complaints Service that they have contacted the entity's Customer Service Department, particularly in those cases in which this department has not replied to the complainant by the established deadline.

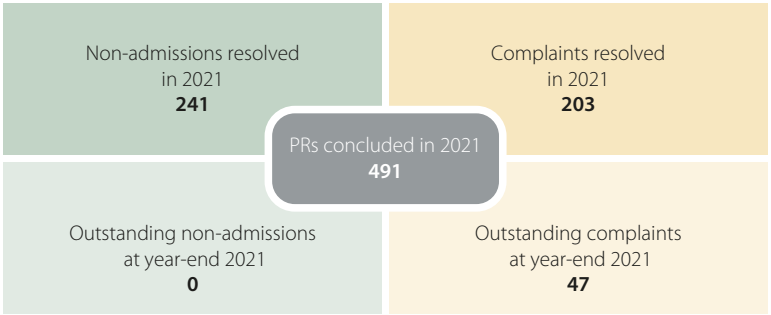
Half of the complainants properly rectified what was requested of them. However, there are also a significant number of cases in which the complainant does not answer the PR made (37%) or provides an insufficient response (12%), as shown in Figure 11.

Response to petitions for rectification FIGURE 11



Source: CNMV.

The final classification of the 491 complaints for which a PR was issued is shown below:



Likewise, it should be noted that at the end of 2021, there were 15 petitions for rectification outstanding, of which six were processed as complaints and nine as non-admissions during the following year.

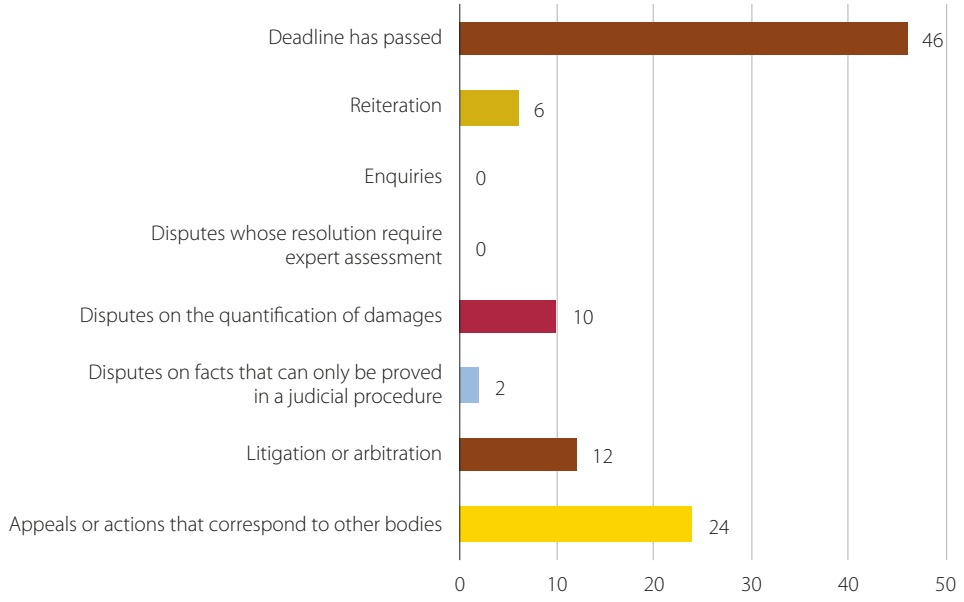
➢ Petitions for pleas (PPs)

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

A petition for pleas was made in 88 of the 579 complaints for which the pre-processing or PRP stage was concluded in 2021.

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

Grounds for petitions for pleas FIGURE 12



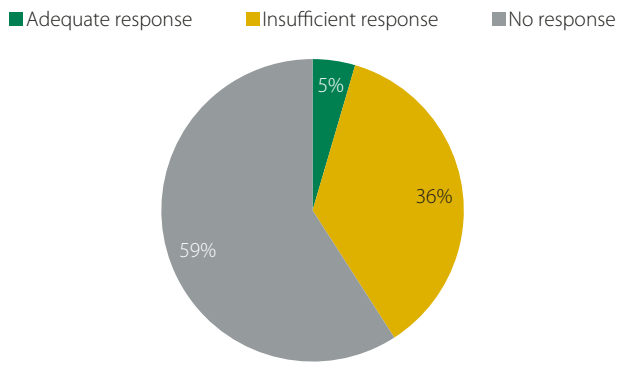
Source: CNMV.

Therefore, the number of reasons for which pleas are requested (100) is very similar to the number of petitions for pleas processed (88). However, as seen above, the number of reasons for which rectification is requested (756) is considerably higher than the number of PRs processed (491). This is because, while in a PP it is common for a single reason for non-admission to exist (or two at most), in a PR it is usual for rectification to be requested for several reasons.

In the case of petitions for pleas, the most common reason for non-admission is that the period available to the complainant to file their complaint from the date on which the events occurred has elapsed (46). Other notable reasons for non-admission, although much less common, are the filing of appeals or actions whose competence corresponds to other bodies (24), appeals or actions whose competence is judicial or arbitral (12) and disputes over the economic quantification for damages (10).

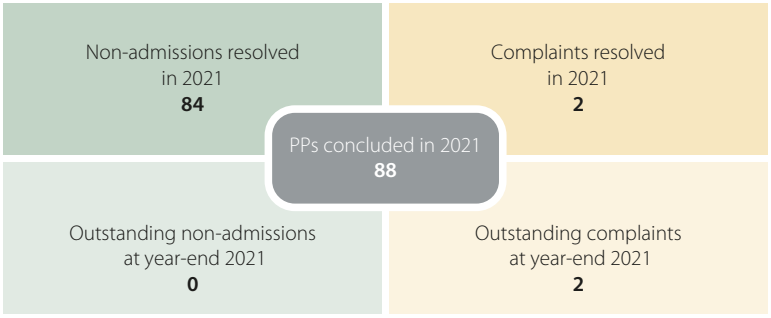
Complainants responded to less than half of the petitions for pleas draw up and in only 5% of cases did they discredit the reason for non-admission and their complaints were therefore admitted.

Response to petitions for pleas FIGURE 13



Source: CNMV.

The final classification of the 88 complaints is as shown below:

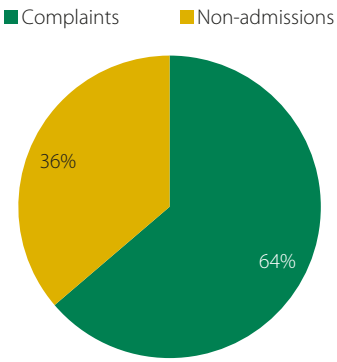


As of 31 December 2021, four PPs remained unclosed, of which one was processed as a complaint and three as non-admissions in the current year.

2.3.2 Final stage

In 2021, the Complaints Service concluded 1,335 proceedings, of which 484 were not admitted and 851 were processed as complaints with the issue of a final report.

Complaints concluded in 2021 FIGURE 14



Source: CNMV.

In 2021, the Complaints Service decided not to admit 484 requests to open complaint proceedings.

Non-admitted complaints concluded in 2021 TABLE 4

Number of complaints

	No.
+ Non-admitted complaints outstanding at year-end 2020	4
+ Non-admitted complaints in 2021	484
– Non-admitted complaints outstanding at year-end 2021	4
= Non-admitted complaints concluded in 2021	**484**

Source: CNMV.

The complaints submitted by investors may be directly non-admitted (162 proceedings) or non-admitted after the pre-processing stage, as explained in the previous point (322 proceedings).

Types of non-admissions TABLE 5

Number of complaints

	No.	%
Direct non-admissions	**162**	**33.5**
Bank of Spain	69	14.3
Directorate-General for Insurance and Pension Funds	20	4.1
Against entities under the freedom to provide services regime from FIN-NET member countries	24	5.0
Against entities under the freedom to provide services regime from FIN-NET associated countries[1]	4	0.8
Against entities under the freedom to provide services regime from non-FIN-NET member countries	33	6.8
Other	12	2.5
Non-admission following petition to complainant for rectification/pleas	**322**	**66.5**
No response	234	48.3
Insufficient response	88	18.2
Total non-admissions	**484**	**100.0**

Source: CNMV.

1 "Against entities under the freedom to provide services regime from FIN-NET associated countries" is a new section, in which complaints against entities established in the United Kingdom have been included because after Brexit the country fell into this category, as stated on the FIN-NET website (https://finance.ec.europa.eu/consumer-finance-and-payments/retail-financial-services/financial-dispute-resolution-network-fin-net/fin-net-network/members-fin-net-country_en).

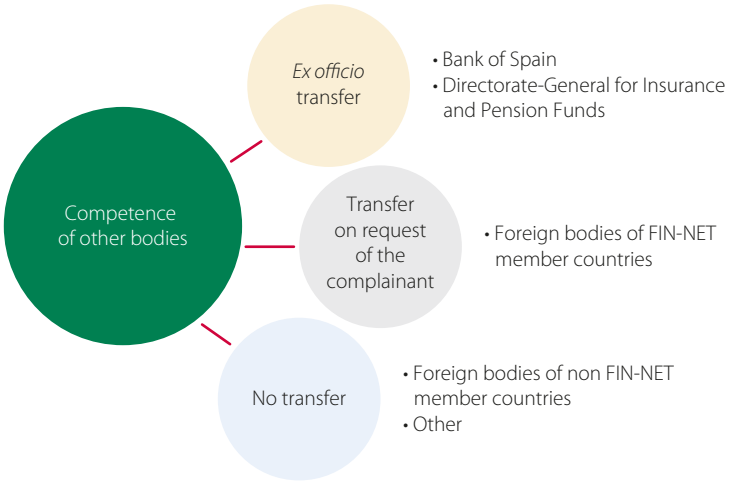
Direct non-admissions occur mainly in two cases:

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

The Bank of Spain of the Directorate-General for Insurance and Pension Funds (89 cases).

ii) When the issues raised by the complainant refer to products or services related to the securities market, but the supervision of the entity against which the complaint is filed corresponds to a foreign body (61 cases).

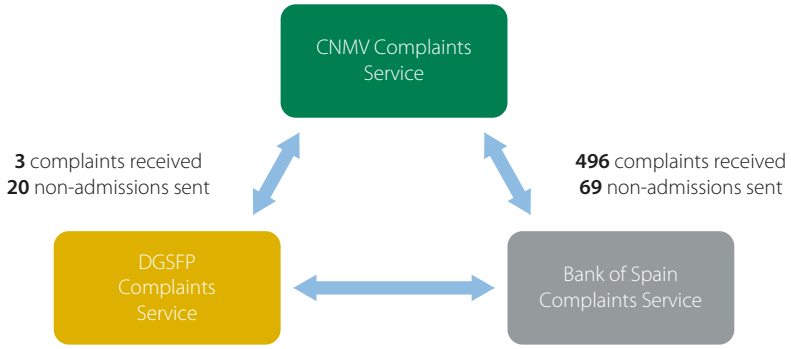
In the case of direct non-admissions, the Complaints Service may transfer the proceedings (*ex officio* or at the request of the complainant) or not, depending on the national or foreign body, as shown below:



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

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

Non-admissions and transfers to complaints services of the Bank of Spain and the DGSFP accounted for 14.3% and 4.1% of total non-admissions completed, and 5.5% and 1.6% of the total number of complaints submitted, respectively.



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

However, that country of origin may or may not be a member of the FIN-NET network, which is responsible for settling out-of-court cross-border conflicts in the area of financial services in the with the European Economic Area.[4]

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

In 2021, 24 complaints (5.0% of total non-admissions) were filed against entities operating under the freedom to provide services regime, whose country of origin belonged to the FIN-NET network. The complainant chose only to use the possibility offered by the Complaints Service to transfer their complaint to the competent body in 9 cases.

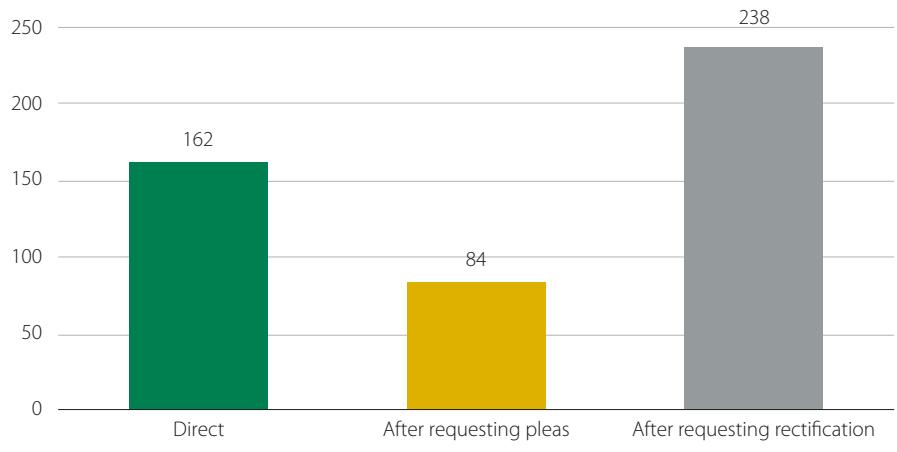
For complaints filed against foreign entities that operate under the freedom to provide services regime but whose country of origin is not a member of FIN-NET, the Complaints Service provides the complainant with the same information indicated above, although in this case it does not offer them the possibility of managing the submission of their complaint to the corresponding supervisor. In 2021, a total of 33 cross-border complaints were received outside the scope of FIN-NET (6.8% of total non-admissions closed) and 4 cross-border complaints against entities established in the United Kingdom (0.8%).

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

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

In addition to direct non-admissions, complaints filed by complainants who have gone through the pre-processing stage of pleas may finally be non-admitted if a reason for non-admission (84) or rectification (238) is noted.

Types of non-admissions FIGURE 15

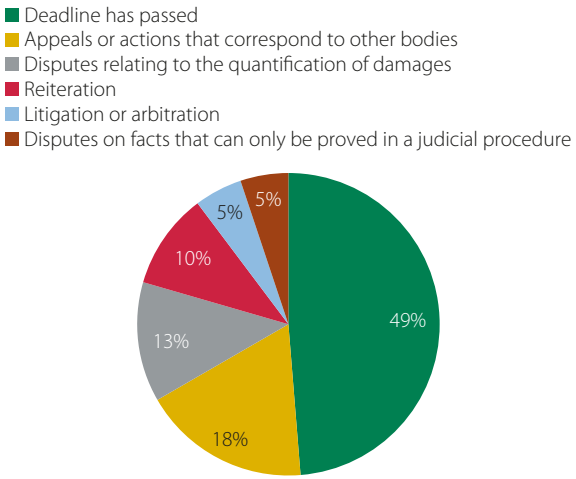


Source: CNMV.

Of the 84 proceedings in which pleas had been requested at the pre-processing stage and which were ultimately rejected, 52 received no response within the period granted for that purpose, while in the remaining 32 proceedings the argument provided by the complainant did not discredit the reason for non-admission initially detected.

In these cases, the main cause of non-admission[5] was exceeding the deadline for submitting the complaint (19 cases). Other reasons for non-admission were the filing of appeals or actions whose competence corresponds to other bodies (7 cases), disputes over the economic quantification of damages (5 cases), repetition (4 cases), litigation or arbitration (2 cases) and disputes over facts that can only be proved in legal proceedings (2 cases). In these cases, the complainant was duly notified of the non-admission in a reasoned report.

Grounds for non-admission after petition for pleas FIGURE 16



Source: CNMV.

Of the 238 complaints not admitted after the petition for rectification, in 182 the complainant did not answer within the specific period granted for this purpose and in 56 cases a partial response was provided (with one request not rectified in 42 cases, two in 12 cases and three in two cases).

The admission requirements that were not rectified by the complainants, despite having responded to the petition for rectification, were:[6]

– Deficiencies in providing evidence that a prior complaint had been filed with the entity's CSD (43).

– Lack of documentation (14).

– Other (7).

– Lack of a declaration that the incident was not subject to resolution or litigation before administrative, judicial or arbitration bodies (4).

– Failure to provide evidence of representation (2).

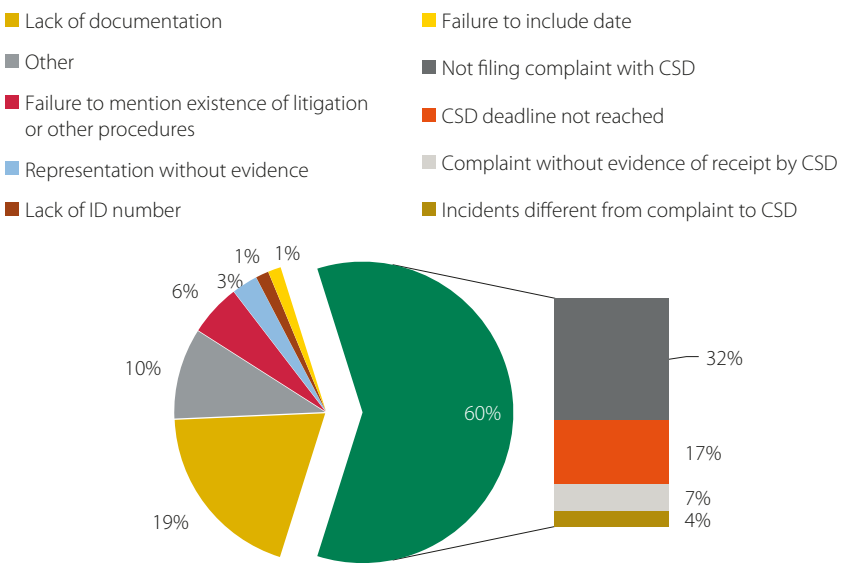
5 For each non-admission there was only one cause, except in two cases where there were two simultaneous causes of non-admission, one case in which there were three causes and one case in which there were four reasons for non-admission.

6 In some proceedings several requirements have not been rectified.

– The date on which the events occurred was missing (1).

– Lack of complainant's identifying data (1).

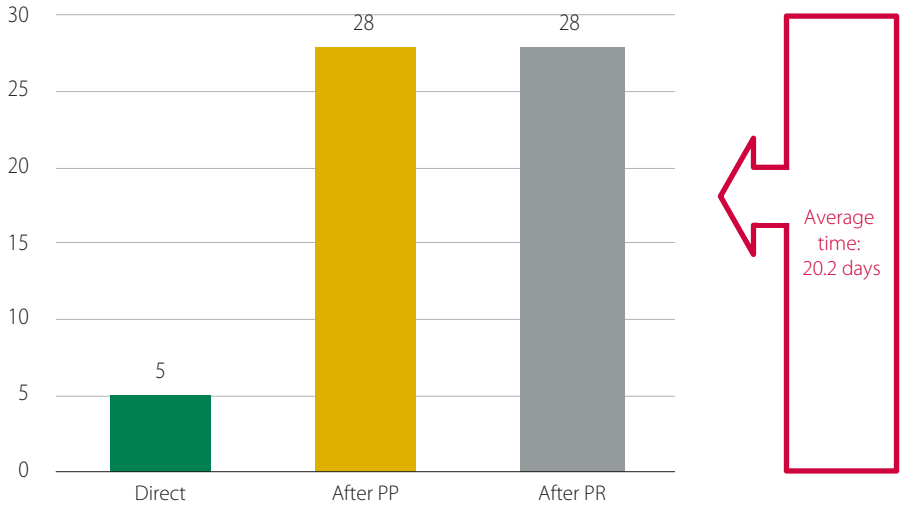
Reasons for non-admission not rectified after response FIGURE 17



Source: CNMV.

On average, direct non-admissions were resolved most quickly (5 days), followed by non-admissions deriving from a petition for pleas (27.8 days) and a petition for rectification (27.9 days). This is because for the latter two circumstances, a greater number of procedures must be carried out prior to non-admission.

Time to completion by type of non-admission FIGURE 18



Source: CNMV.

The average time to completion for non-admissions was 20.2 days, compared to 25.6 days in 2020.

In 2021, 851 complaints that had been admitted for processing by the Complaints Service were resolved.

Complaints concluded in 2021

TABLE 6

Number of complaints

	No.
+ Outstanding complaints in 2020	218
+ Complaints initiated in 2021	797
– Outstanding complaints in 2021	164
= Complaints concluded in 2021	**851**

Source: CNMV.

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

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

Resolution of complaints concluded in 2021

TABLE 7

Number of claims and complaints

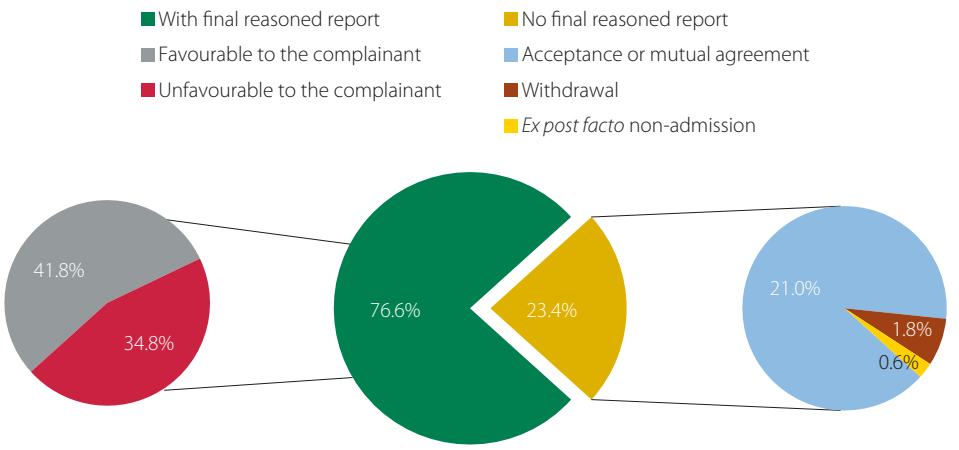
	2019		2020		2021		% change 21/20
	No.	%	No.	%	No.	%	
Processed without final reasoned report	**129**	**18.8**	**137**	**18.5**	**199**	**23.4**	**45.3**
Acceptance or mutual agreement	112	16.3	117	15.8	179	21.0	53.0
Withdrawal	12	1.7	15	2.0	15	1.8	0.0
Ex post facto non-admission	5	0.7	5	0.7	5	0.6	0.0
Processed with final reasoned report	**557**	**81.2**	**602**	**81.5**	**652**	**76.6**	**8.3**
Report favourable to the complainant	285	41.5	311	42.1	356	41.8	14.5
Report unfavourable to the complainant	272	39.7	291	39.4	296	34.8	1.7
Total processed	**686**	**100.0**	**739**	**100.0**	**851**	**100.0**	**15.2**

Source: CNMV.

23.4% of the complaints concluded in 2021 did not require the issuance of a final reasoned report: 21% because the entity accepted the complainants' requests or a mutual agreement was reached between the two parties, 1.8% due to the complainant withdrawing the complaint and 0.6% due to *ex post facto* non-admission.

Of the 652 complaints that concluded with a final reasoned report (76.6% of those processed), the complainant obtained a report favourable to their complaint in 54.6% of cases and an unfavourable report in the remaining 45.4%.

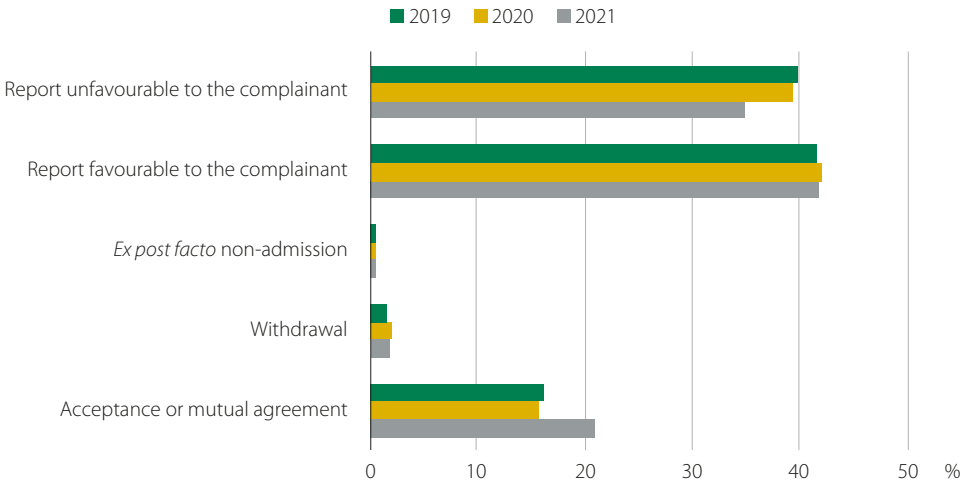
Distribution of types of complaint resolution FIGURE 19



Source: CNMV.

Figure 20 shows the percentages of the type of resolution as a portion of total complaints concluded in the last three years. In this comparison, it can be observed that in 2021 the percentage of acceptances and mutual agreements increased and the percentage of reports unfavourable to the complainant decreased, while all other figures are largely unchanged.

Percentage changes in types of resolution[1] FIGURE 20



Source: CNMV.

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

Complainants state in their complaints that they are dissatisfied with the respondent entity for various different reasons, and therefore one single case may include different reasons for the complaint. The Complaints Service must study, analyse and provide an *ad hoc* decision in the final reasoned report issued on each one.

In the 851 complaints concluded in 2021, a total of 1,109 causes of complaint were recorded, highlighting those related to the information provided about the product after its contracting (23.3%), the commissions charged by entities (21.4%) and purchase and sale orders for products (21%).

With regard to the type of product, 41.1% of the reasons for the complaints resolved were related to collective investment schemes, while the others related to different types of transferable securities, such as capital instruments, bonds and financial derivatives.

Reasons for complaints concluded in 2021

TABLE 8

Investment service/reason	Reason	Securities	CIS	Total
Marketing/execution Advice Portfolio management	Appropriateness/suitability	51	62	**113**
	Prior information	49	68	**117**
	Purchase/sale orders	161	66	**227**
	Fees	142	87	**229**
	Transfers	25	47	**72**
	Subsequent information	160	78	**238**
	Ownership	12	12	**24**
Acquisition *mortis causa*	Appropriateness/suitability	1	1	**2**
	Prior information	1	–	**1**
	Purchase/sale orders	3	3	**6**
	Fees	5	3	**8**
	Transfers	–	–	**–**
	Subsequent information	9	11	**20**
	Ownership	21	12	**33**
CSD operation		**13**	**6**	**19**
Total		**653**	**456**	**1,109**[1]

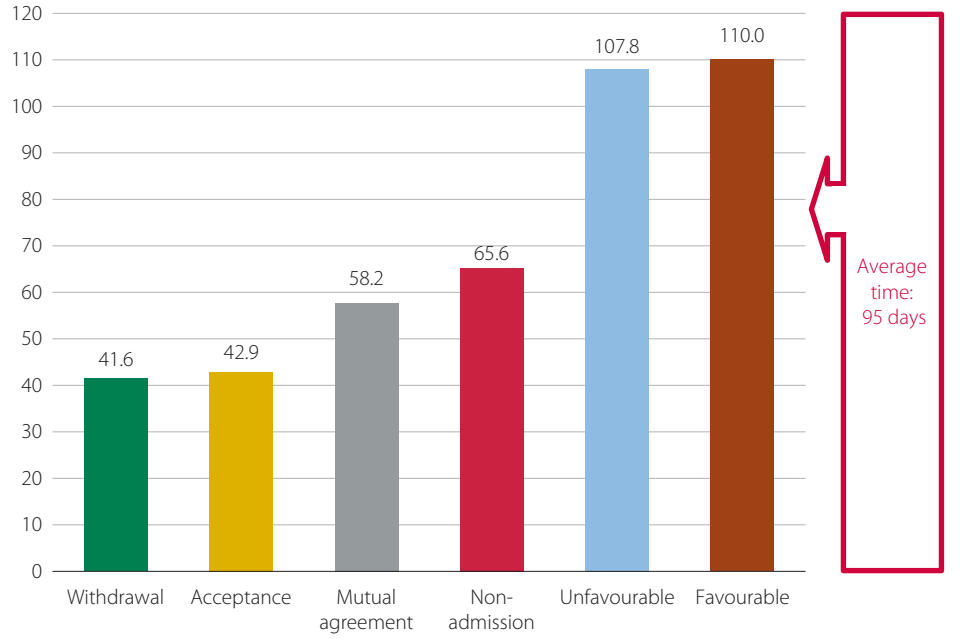
Source: CNMV.

1 There is very often more than one reason stated in the same claim or complaint file.

In regard to the processing time for complaints resolved with no final reasoned report, on average complainants withdrew in 41.6 days, entities fully accepted the complainant's petition in 42.9 days, an agreement was reached to the satisfaction of the complainant (mutual agreement) in 58.2 days and the proceedings were closed as a result of *ex post facto* non-admission in 65.6 days. Complaints that were resolved with a final reasoned report were processed on average in 107.8 days in cases that were unfavourable to the complainant and 110.0 days in cases that were favourable to the complainant.

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

Time to completion by complaint type FIGURE 21



Source: CNMV.

The average time to completion of the complaints processed with a final reasoned report (favourable or unfavourable) was 109 days, compared to 121.2 days in 2020, 120.12 days in 2019. 106.4 days in 2018 and 121.5 days in 2017.

In the case of complaints resolved with no final reasoned report (withdrawals, acceptance, mutual agreement and *ex post facto* non-admissions), the average time was 49.3 days, compared to 51 days in 2020, 50.17 days in 2019, 52.5 days in 2018 and 67.5 days in 2017.

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

➢ Follow-up actions for reports favourable to the complainant

The reasoned report that resolves complaint proceedings is not binding. However, if this report is favourable to the complainant, the Complaints Service requires the respondent entity to state whether or not it accepts the criteria contained in the report and, where appropriate, that they provide documentation demonstrating that the situation referred to by the complainant has been rectified. The entity has one month to respond to this requirement; if it does not, according to prevailing regulations, it will be considered that it does not accept the conclusions contained in the report and that, therefore, will not rectify the conduct shown therein.

It should be noted that in some of the 356 complaints resolved in 2021 with a report favourable to the complainant, there was more than one respondent entity. In these cases, an individual assessment of the performance of each of the entities participating in the events is carried out, so that it is possible that the decision is favourable to the complainant with regard to the actions of all the entities or only of some of them. This is communicated to each of the respondent entities so that they may individually inform about their acceptance of the conclusions of the resolution, if applicable, and, where appropriate, the rectification of the complainant's situation. Factoring in this situation, 357 resolutions favourable to the complainant were issued.

Follow-up actions for reports favourable to the complainant TABLE 9

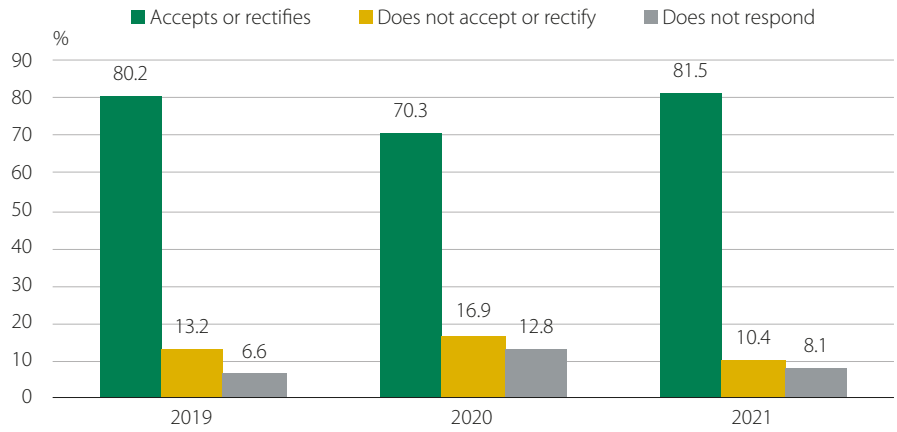
	Follow-up actions reported by the entity						
	Accepts or rectifies		Does not accept or rectify			Entities not reporting follow-up actions	
Year	No.	%	No.	%	Total	No.	%
2019	231	80.2	38	13.2	269	19	6.6
2020	220	70.3	53	16.9	273	40	12.8
2021	291	81.5	37	10.4	328	29	8.1

Source: CNMV.

In 81.5% of the cases, respondent entities stated that they accepted the conclusions and rectification of the situation referred to in the report, marking an increase compared to the two previous years.

It is interesting to note that, if the 179 acceptance or mutual agreements that took place in the year were added to the figure of 81.5% – which are still rectifications made by entities with respect to their clients, carried out on their own initiative during the process – the percentage of rectifications in 2021 would stand at 87.7%.

Follow-up actions FIGURE 22



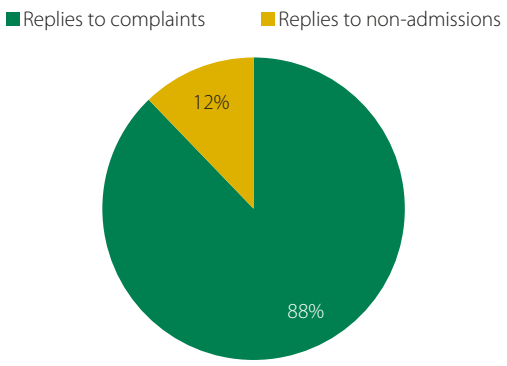
Source: CNMV.

➢ Replies to non-admissions and complaints

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

In 2021, five replies to non-admissions and 36 replies to complaints were received, to which the Complaints Service responded to try to clarify in detail the issues for which the complainants had requested clarification or showed their disagreement. However, complainants are always informed that the decisions of the Complaints Service cannot be appealed.

Replies from complainants FIGURE 23



Source: CNMV.

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

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

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

Likewise, the 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 complaints resolved

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

Table 10 shows the entities in order of the number of complaints admitted in which there was no *ex post facto* reason for non-admission. The first nine positions are held by Banco Santander, S.A. (221); CaixaBank, S.A. (151); Banco Bilbao Vizcaya Argentaria, S.A. (89); ING Bank N.V., Sucursal en España (45); Bankia, S.A. (42); Bankinter, S.A. (36); Banco de Sabadell, S.A. (34); Andbank España, S.A. (28) and Ibercaja Banco, S.A. (19).

Ranking of entities by number of complaints resolved

TABLE 10

Entity with which the complaint is processed	Total	Entity responsible for the incidents	Total
1. BANCO SANTANDER, S.A.	221	BANCO SANTANDER, S.A.	217
		BANCO POPULAR ESPAÑOL, S.A.	4
2. CAIXABANK, S.A.	151	CAIXABANK, S.A.	119
		BANKIA, S.A.	32
3. BANCO BILBAO VIZCAYA ARGENTARIA, S.A.	89		
4. ING BANK N.V., SUCURSAL EN ESPAÑA	45		
5. BANKIA, S.A.	42		
6. BANKINTER, S.A.	36		
7. BANCO DE SABADELL, S.A.	34		
8. ANDBANK ESPAÑA, S.A.	28		
9. IBERCAJA BANCO, S.A.	19		
10. OPEN BANK, S.A.	15		
11. LIBERBANK, S.A.	15		
12. UNICAJA BANCO, S.A.	15	UNICAJA BANCO, S.A.	14
		LIBERBANK, S.A.	1
13. ABANCA CORPORACIÓN BANCARIA, S.A.	12		
14. DEUTSCHE BANK, SOCIEDAD ANÓNIMA ESPAÑOLA	12		
15. SINGULAR BANK, S.A.	11		
16. KUTXABANK, S.A.	10		
17. RENTA 4 BANCO, S.A.	10		
18. X-TRADE BROKERS DOM MAKLERSKI, S.A., SUCURSAL EN ESPAÑA	8		
Other entities[1]	76		
Total	**849**		

Source: CNMV.

1 41 entities with fewer than eight complaints.

Bankia, S.A. and Liberbank, S.A. provided investment services and were deregistered on 26 March and 30 July 2021, respectively.

➢ Ranking of entities by time taken to read the complaint

Once a complaint is admitted for processing, the complainant is notified of the start of the proceedings and the respondent entity is asked to provide comments. This petition is sent electronically using the CNMV's CIFRADOC system (ALR procedure), so that the date of submission of the notification is the date on which the notification is read. This notification is considered to have been rejected if, ten calendar days after it has been made available, the entity has not accessed its content.[7]

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

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

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

TABLE 11

Entity with which the complaint is processed	Calendar days
1. DEUTSCHE BANK, SOCIEDAD ANÓNIMA ESPAÑOLA	9
2. RENTA 4 BANCO, S.A.	8
3. BANKINTER, S.A.	6
4. BANKIA, S.A.	6
5. OPEN BANK, S.A.	4
6. LIBERBANK, S.A.	3
7. BANCO BILBAO VIZCAYA ARGENTARIA, S.A.	2
8. SINGULAR BANK, S.A.	2
9. BANCO SANTANDER, S.A.	1
10. X-TRADE BROKERS DOM MAKLERSKI, S.A., SUCURSAL EN ESPAÑA	1
11. KUTXABANK, S.A.	1
12. CAIXABANK, S.A.	1
13. BANCO DE SABADELL, S.A.	1
14. IBERCAJA BANCO, S.A.	1
15. ABANCA CORPORACIÓN BANCARIA, S.A.	1
16. UNICAJA BANCO, S.A.	0
17. ING BANK N.V., SUCURSAL EN ESPAÑA	0
18. ANDBANK ESPAÑA, S.A.	0
Other entities[1]	6
Average	**2**

Source: CNMV.

1 41 entities with fewer than eight complaints.

Bankia, S.A. and Liberbank, S.A. provided investment services and were deregistered on 26 March and 30 July 2021, respectively.

Six entities took longer than the average of two calendar days to read the notifications (Deutsche Bank, Sociedad Anónima Española; Renta 4 Banco, S.A.; Bankinter, S.A.; Bankia, S.A.; Open Bank, S.A. and Liberbank, S.A.), two read the notifications in the average period of two days (Banco Bilbao Vizcaya Argentaria, S.A. and Singular Bank, S.A.) and ten took less than the average time (Banco Santander, S.A.; X-Trade Brokers Dom Maklerski, S.A., Sucursal en España; Kutxabank, S.A.; CaixaBank, S.A.; Banco de Sabadell, S.A.; Ibercaja Banco, S.A.; Abanca Corporación Bancaria, S.A.; Unicaja Banco, S.A.; ING Bank NV, Sucursal en España and Andbank España, S.A.).

➢ Ranking of entities by time taken to respond

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

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

On average, the entities responded to the initial petition for pleas in 19 calendar days. Seven of them took longer to respond (Bankinter, S.A.; CaixaBank, S.A.; Unicaja Banco, S.A.; Singular Bank, S.A.; Liberbank, S.A.; Bankia, S.A. and Deutsche Bank, Sociedad Anónima Española), three did so within the average time period (Open Bank, S.A.; ING Bank NV, Sucursal en España and Banco Santander, S.A.) and eight responded more rapidly than the average time period (Andbank España, S.A.; Banco Bilbao Vizcaya Argentaria, S.A.; Renta 4 Banco, S.A.; Banco de Sabadell, S.A.; X-Trade Brokers Dom Maklerski, S.A., Sucursal en España; Abanca Corporación Bancaria, S.A.; Ibercaja Banco, S.A. and Kutxabank, S.A.).

The entities that did not submit any pleas were CA Indosuez Wealth (Europe), Sucursal en España, on one occasion and Esfera Capital, Agencia de Valores, S.A. on another.

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

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

Source: CNMV.

1 41 entities with fewer than eight complaints.

Bankia, S.A. and Liberbank, S.A. provided investment services and were deregistered on 26 March and 30 July 2021, respectively.

Entities requested an extension to draw up their pleas on 175 occasions. All of these requests were granted. The entities requesting extensions were: Banco Santander, S.A. (83); CaixaBank, S.A. (37); Banco Bilbao Vizcaya Argentaria, S.A. (26); Unicaja Banco, S.A. (7); Bankia, S.A. (6); Bankinter, S.A. (5); Open Bank, S.A. (4); Deutsche Bank, Spanish Limited Company (2); Kutxabank, S.A. (1); Novo Banco, S.A., Sucursal en España (1); X-Trade Brokers Dom Maklerski, S.A., Sucursal en España (1); BNP Paribas S.A., Sucursal en España (1) and Targobank, S.A. (1).

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

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

Table 13 ranks the entities by the percentage of reports favourable to the complainant, calculated as a portion of the total number of findings (favourable and unfavourable). Seven entities had a percentage of reports favourable to the complainant that was higher than the general average of 54.5% (Singular Bank, S.A.; Andbank España, S.A.; Open Bank, S.A.; Bankinter, S.A.; Deutsche Bank, Sociedad Anónima Española; Banco Santander, S.A. and Unicaja Banco, S.A.) and 11 had a percentage that was lower than the average (Banco de Sabadell, S.A.; Bankia, S.A.; CaixaBank, S.A.; Abanca Corporación Bancaria, S.A.; ING Bank NV, Sucursal en España; Renta 4 Banco, S.A.; Ibercaja Banco, S.A.; Banco Bilbao Vizcaya Argentaria, S.A.; Liberbank, S.A.; Kutxabank, S.A. and X-Trade Brokers Dom Maklerski, S.A., Sucursal en España).

Ranking of entities by percentage of decisions favourable to the complainant

TABLE 13

Entity against which the complaint is processed	% favourable	Entity responsible for the incidents	Unfavourable	Favourable	% favourable
1. SINGULAR BANK, S.A.	85.7		1	6	85.7
2. ANDBANK ESPAÑA, S.A.	82.6		4	19	82.6
3. OPEN BANK, S.A.	75.0		2	6	75.0
4. BANKINTER, S.A.	71.0		9	22	71.0
5. DEUTSCHE BANK, SOCIEDAD ANÓNIMA ESPAÑOLA	60.0		4	6	60.0
6. BANCO SANTANDER, S.A.	57.6	BANCO SANTANDER, S.A.	72	101	58.4
		BANCO POPULAR ESPAÑOL, S.A.	3	1	25.0
7. UNICAJA BANCO, S.A.	55.6	UNICAJA BANCO, S.A.	3	5	62.5
		LIBERBANK, S.A.	1		0.0
8. BANCO DE SABADELL, S.A.	51.7		14	15	51.7
9. BANKIA, S.A.	51.5		16	17	51.5
10. CAIXABANK, S.A.	51.4	BANKIA, S.A.	8	14	63.6
		CAIXABANK, S.A.	46	43	48.3
11. ABANCA CORPORACIÓN BANCARIA, S.A.	50.0		5	5	50.0
12. ING BANK N.V., SUCURSAL EN ESPAÑA	48.5		17	16	48.5
13. RENTA 4 BANCO, S.A.	42.9		4	3	42.9
14. IBERCAJA BANCO, S.A.	41.7		7	5	41.7
15. BANCO BILBAO VIZCAYA ARGENTARIA, S.A.	41.0		36	25	41.0
16. LIBERBANK, S.A.	38.5		8	5	38.5
17. KUTXABANK, S.A.	33.3		6	3	33.3
18. X-TRADE BROKERS DOM MAKLERSKI, S.A., SUCURSAL EN ESPAÑA	0.0		8		0.0
Other entities[1]	62.5		24	40	62.5
Total	**54.5**		**298**	**357**	**54.5**

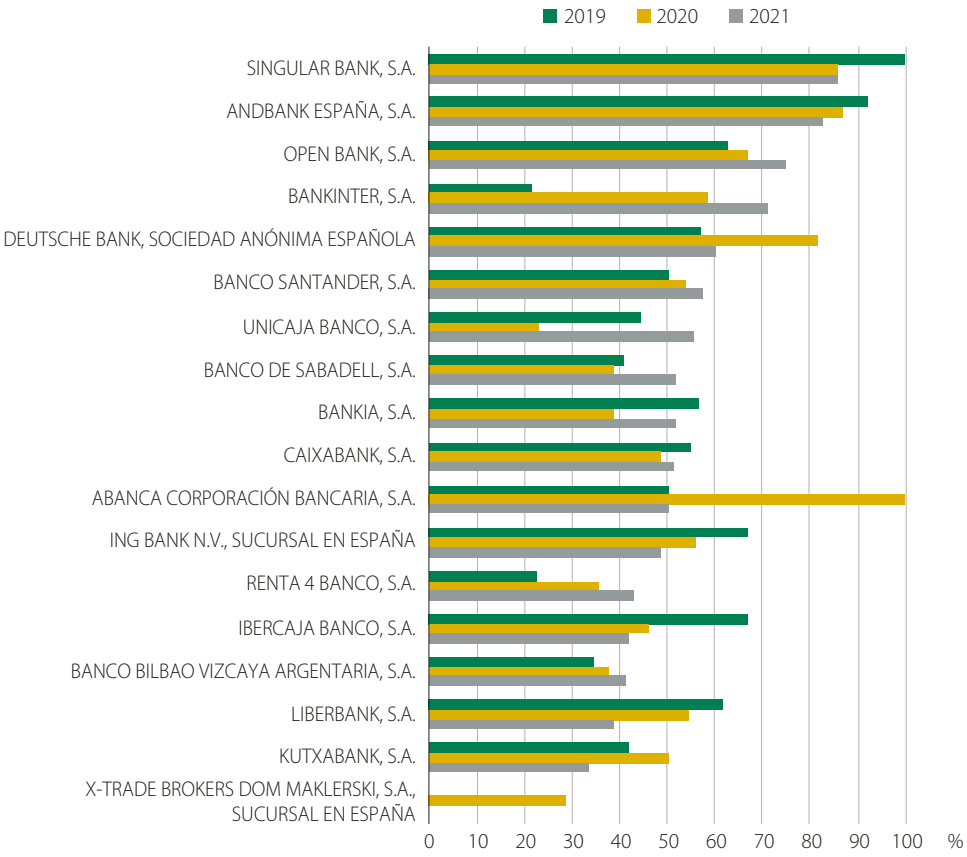
Source: CNMV.

1 41 entities with fewer than eight complaints.

Bankia, S.A. and Liberbank, S.A. provided investment services and were deregistered on 26 March and 30 July 2021, respectively.

Figure 24 shows variations by entity in the percentage of complaints resulting in a decision favourable to the complainant in the last three years. The percentage of rulings favourable to the complainant increased in Open Bank, S.A.; Bankinter, S.A.; Banco Santander, S.A.; Renta 4 Banco, S.A. and Banco Bilbao Vizcaya Argentaria, S.A., while the percentage of rulings favourable to the complainant decreased in Singular Bank, S.A.; Andbank Spain, S.A.; ING Bank NV, Sucursal en España; Ibercaja Banco, S.A. and Liberbank, S.A. The rest of the entities showed an uneven performance.

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



Source: CNMV.

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

➢ Ranking of entities by number of acceptances and mutual agreements

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

Table 14 ranks the entities by number of acceptances and mutual agreements reached with the complainant. Banco Santander, S.A.; CaixaBank, S.A.; Banco Bilbao Vizcaya Argentaria, S.A.; ING Bank NV, Sucursal en España and Bankia, S.A.

stand out as the entities with the highest number of acceptances and mutual agreements, while X-Trade Brokers Dom Maklerski, S.A., Sucursal en España, did not report any acceptances or mutual agreements with its clients in this period.

Ranking of entities by number of acceptances and mutual agreements TABLE 14

Entity against which the complaint is processed	Total	Entity responsible for the incidents	Acceptance	Mutual agreement	Total
1. BANCO SANTANDER, S.A.	40		25	15	40
2. CAIXABANK, S.A.	39	CAIXABANK, S.A.	15	14	29
		BANKIA, S.A.	7	3	10
3. BANCO BILBAO VIZCAYA ARGENTARIA, S.A.	26		13	13	26
4. ING BANK N.V., SUCURSAL EN ESPAÑA	12		4	8	12
5. BANKIA, S.A.	8		7	1	8
6. OPEN BANK, S.A.	7		3	4	7
7. IBERCAJA BANCO, S.A.	6		3	3	6
8. BANCO DE SABADELL, S.A.	5		2	3	5
9. ANDBANK ESPAÑA, S.A.	5		4	1	5
10. UNICAJA BANCO, S.A.	5		3	2	5
11. SINGULAR BANK, S.A.	4		2	2	4
12. RENTA 4 BANCO, S.A.	3		2	1	3
13. LIBERBANK, S.A.	2			2	2
14. ABANCA CORPORACIÓN BANCARIA, S.A.	2		2		2
15. BANKINTER, S.A.	2		2		2
16. KUTXABANK, S.A.	1		1		1
17. DEUTSCHE BANK, SOCIEDAD ANÓNIMA ESPAÑOLA	1		1		1
18. X-TRADE BROKERS DOM MAKLERSKI, S.A., SUCURSAL EN ESPAÑA	0				0
Other entities[1]	11		6	5	11
Total	**179**		**102**	**77**	**179**

Source: CNMV.

1 41 entities with fewer than eight complaints.

Bankia, S.A. and Liberbank, S.A. provided investment services and were deregistered on 26 March and 30 July 2021, respectively.

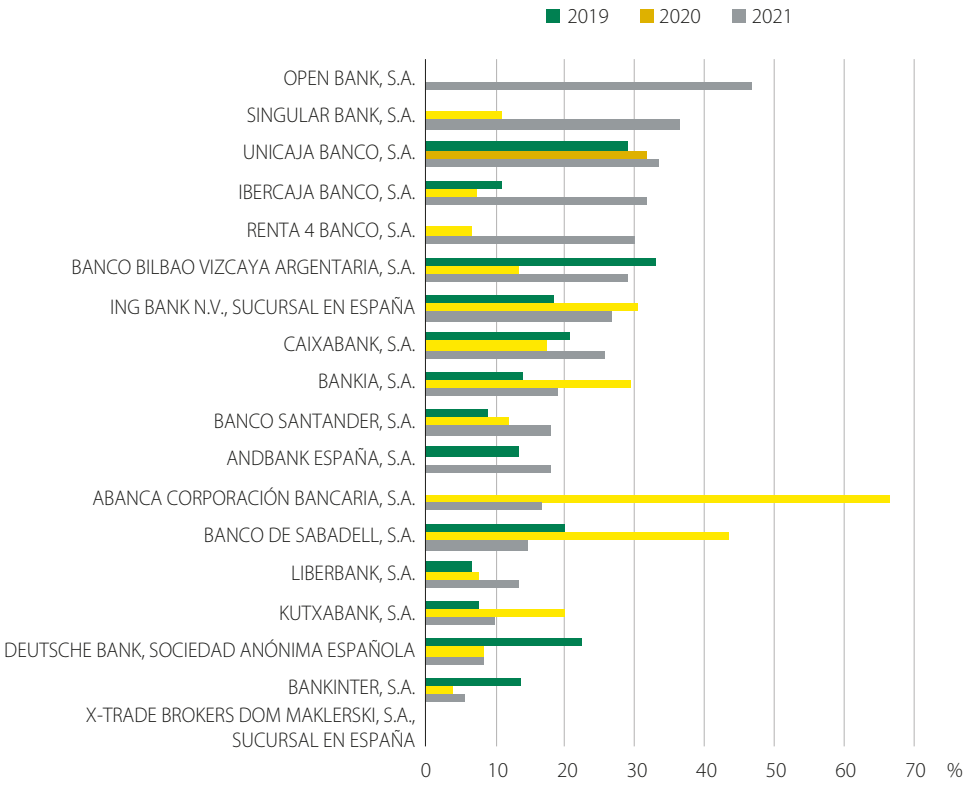
Figure 25 ranks the entities by percentage of acceptances/mutual agreements reached in 2021, presenting a comparison with the two previous years.

In 2021, Open Bank, S.A.; Singular Bank, S.A.; Unicaja Banco, S.A. and Ibercaja Banco, S.A. had acceptances and mutual agreements of more than 30%, followed by Renta 4 Banco, S.A.; Banco Bilbao Vizcaya Argentaria, S.A.; ING Bank NV, Sucursal en España and CaixaBank, S.A. with between 20% and 30%, and Bankia, S.A.; Banco Santander, S.A.; Andbank Spain, S.A.; Abanca Banking Corporation, S.A.; Banco de Sabadell, S.A.; Liberbank, S.A. and Kutxabank, S.A., with between 10% and 20%. Deutsche Bank, Sociedad Anónima Española and Bankinter, S.A. had less than 10%, and as mentioned above, X-Trade Brokers Dom Maklerski, S.A., Sucursal en España, made no acceptances or agreements with its complainants.

Since 2019, an upward trend can be noted at Singular Bank, S.A.; Unicaja Banco, S.A.; Income 4 Bank, S.A.; Banco Santander, S.A. and Liberbank, S.A., while Open Bank, S.A., the entity with the highest percentage of acceptances and mutual

agreements in 2021, reported no acceptances or agreements in 2019 and 2020. X-Trade Brokers Dom Maklerski, S.A., Sucursal en España, did not register any acceptances or mutual agreements in the last three years.

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



Source: CNMV.

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

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

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

Table 15 shows that the entities responded to this request for information in 91.9% of cases on average.

The response rate of 12 of the entities listed in the table was above average, and in five cases it was below average. There were no rulings in favour of the complainant in the cases brought against X-Trade Brokers Dom Maklerski, S.A., Sucursal en España, and therefore it was not asked to report subsequent actions.

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

TABLE 15

Entity against which the complaint is processed	% yes	Entity responsible for the incidents	No	Yes	Total	% yes
1. ANDBANK ESPAÑA, S.A.	100.0			19	19	100.0
2. BANCO BILBAO VIZCAYA ARGENTARIA, S.A.	100.0			25	25	100.0
3. BANCO DE SABADELL, S.A.	100.0			15	15	100.0
4. BANCO SANTANDER, S.A.	100.0	BANCO POPULAR ESPAÑOL, S.A.		1	1	100.0
		BANCO SANTANDER, S.A.		101	101	100.0
5. IBERCAJA BANCO, S.A.	100.0			5	5	100.0
6. ING BANK N.V., SUCURSAL EN ESPAÑA	100.0			16	16	100.0
7. LIBERBANK, S.A.	100.0			5	5	100.0
8. OPEN BANK, S.A.	100.0			6	6	100.0
9. RENTA 4 BANCO, S.A.	100.0			3	3	100.0
10. UNICAJA BANCO, S.A.	100.0			5	5	100.0
11. CAIXABANK, S.A.	96.5	BANKIA, S.A.		14	14	100.0
		CAIXABANK, S.A.	2	41	43	95.3
12. BANKIA, S.A.	94.1		1	16	17	94.1
13. ABANCA CORPORACIÓN BANCARIA, S.A.	80.0		1	4	5	80.0
14. KUTXABANK, S.A.	66.7		1	2	3	66.7
15. SINGULAR BANK, S.A.	66.7		2	4	6	66.7
16. DEUTSCHE BANK, SOCIEDAD ANÓNIMA ESPAÑOLA	50.0		3	3	6	50.0
17. BANKINTER, S.A.	36.4		14	8	22	36.4
18. X-TRADE BROKERS DOM MAKLERSKI, S.A., SUCURSAL EN ESPAÑA	–		–		–	–
Other entities[1]	87.5		5	35	40	87.5
Total	**91.9**		**29**	**328**	**357**	**91.9**

Source: CNMV.

1 41 entities with fewer than eight complaints.

Bankia, S.A. and Liberbank, S.A. provided investment services and were deregistered on 26 March and 30 July 2021, respectively.

➢ Ranking of entities by percentage of acceptance of the conclusions contained in the Complaints Service reports

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

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

The average percentage of acceptance of criteria or rectification of the complainant's situation in 2021 was 81.5% – nine entities are above this average and eight fall short of it. There were no rulings in favour of the complainant in the cases brought against X-Trade Brokers Dom Maklerski, S.A., Sucursal en España, and therefore it was not asked to report subsequent actions.

Ranking of entities by percentage of acceptance of conclusions included in the reports or rectification after rulings favourable to the claimant

TABLE 16

Entity against which the complaint is processed	% acceptance	Entity responsible for the incidents	Acceptance or mutual agreement/ rectification	No acceptance or mutual agreement/ rectification	No response	Total	% acceptance
1. BANCO DE SABADELL, S.A.	100.0		15			15	100.0
2. IBERCAJA BANCO, S.A.	100.0		5			5	100.0
3. ING BANK N.V., SUCURSAL EN ESPAÑA	100.0		16			16	100.0
4. LIBERBANK, S.A.	100.0		5			5	100.0
5. OPEN BANK, S.A.	100.0		6			6	100.0
6. BANCO SANTANDER, S.A.	97.1	BANCO POPULAR ESPAÑOL, S.A.		1		1	0.0
		BANCO SANTANDER, S.A.	99	2		101	98.0
7. CAIXABANK, S.A.	96.5	BANKIA, S.A.	14			14	100.0
		CAIXABANK, S.A.	41		2	43	95.3
8. BANKIA, S.A.	94.1		16		1	17	94.1
9. BANCO BILBAO VIZCAYA ARGENTARIA, S.A.	84.0		21	4		25	84.0
10. ABANCA CORPORACIÓN BANCARIA, S.A.	80.0		4		1	5	80.0
11. UNICAJA BANCO, S.A.	80.0		4	1		5	80.0
12. KUTXABANK, S.A.	66.7		2		1	3	66.7
13. SINGULAR BANK, S.A.	66.7		4		2	6	66.7
14. DEUTSCHE BANK, SOCIEDAD ANÓNIMA ESPAÑOLA	50.0		3		3	6	50.0
15. BANKINTER, S.A.	36.4		8		14	22	36.4
16. RENTA 4 BANCO, S.A.	33.3		1	2		3	33.3
17. ANDBANK ESPAÑA, S.A.	5.3		1	18		19	5.3
18. X-TRADE BROKERS DOM MAKLERSKI, S.A., SUCURSAL EN ESPAÑA	–		–	–	–	–	–
Other entities[1]	65.0		26	9	5	40	65.0
Total	**81.5**		**291**	**37**	**29**	**357**	**81.5**

Source: CNMV.

1 41 entities with fewer than eight complaints.

Bankia, S.A. and Liberbank, S.A. provided investment services and were deregistered on 26 March and 30 July 2021, respectively.

2.4 Information provided by the entities

As is customary, prior to the preparation of this Annual Report, the CSDs of the entities providing investment services against which six or more complaints had been processed in 2021 were requested to supply information.

The purpose of requesting this information is to highlight the effort that these CSDs are making to resolve their clients' problems, and thus obtain real information on the work they are doing.

The information requested from the CSDs can be divided into two categories:

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

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

The information provided by the CSDs of the entities to the requests of the Complaints Service is then assessed.

The aim of this analysis is to provide an approximate overview of the actions carried out by the CSDs. However, the data and results obtained must be viewed with some caution as it is not possible to know whether the entities use the same criteria to collect and provide the information requested, even though this year clearer guidelines have been given about what should be included in the data provided in order to ensure a certain level of harmonisation.

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

– The CSDs receiving the most complaints in 2021 were those of Banco Santander, S.A. (5,820); CaixaBank, S.A. (1,851); Banco Bilbao Vizcaya Argentaria, S.A. (1,677); ING Bank NV, Sucursal en España (922); and Bankinter, S.A. (695).

  These five entities accounted for 85.4% of the total complaints received in the year by the CSDs of investment firms.

– There was a decrease in the number of complaints filed with the customer ombudsman by clients of entities with this figure. The customer ombudsman of Banco Bilbao Vizcaya Argentaria, S.A. processed the largest number of complaints (101), 5.3% of those received by the entity. In the rest of the entities with a customer ombudsman, the number of complaints filed was lower. However, an analysis of the number of complaints processed by the customer ombudsman as a percentage of total complaints received by the entity, would show the following results: Banco de Sabadell, S.A. (31 complaints, representing 14.2% of the complaints received by the entity); Deutsche Bank, S.A.E. (12 complaints, representing 10.3% of the total received); Bankinter, S.A. (26 complaints, 3.6% of the total received) and Banco Santander, S.A. (100 complaints, with 1.7%). As indicated above, the remainder of the entities analysed do not have a customer ombudsman.

– In general, according to data provided by the entities, the percentage of complaints raised to the Complaints Service in the same year, after passing through the entity's CSD or customer ombudsman, is very low, although in 2021 the figure increased compared to the previous year. In 2021, the average number of complaints raised to the Complaints Service, after going through the CSD or customer ombudsman, was 4.8% compared to 1.7% in the previous year. However, at Ibercaja Banco, S.A. this average was amply exceeded (22 complaints, representing 43.3% of the total complaints received by the entity's CSD in

2021). Liberbank, S.A. (12 complaints, 15.6% of the total); Andbank España, S.A. (28 complaints, 12.3% of the total), and Renta 4 Banco, S.A. (5 complaints, 12.2% of the total) also stand out.

It should be noted that the number of complaints received or processed by the Complaints Service in 2021 is higher than the number reported by entities to have approached the Complaints Service after contacting the entity's CSD. This is because complainants have a period of one year, if they are a natural person or a not-for-profit entity, after receiving a reply from the CSD or the period available to reply to the complaint, to approach the Complaints Service. This means that the complaints processed by the CNMV in 2021 may have originated in incidents resolved by the CSD or the customer ombudsman in that year or in incidents resolved in the previous year, which would justify the difference in the data processed.

Additionally, if the data provided by the entities in 2021 are compared with the data provided in 2020, the following conclusions can be drawn:

– The number of complaints filed with the CSDs in 2021 was much lower than in 2020. Banco Santander, S.A. stands out here with 77.8% fewer claims received (26,191 in 2020 compared to 5,820 in 2021).[8] The entity is followed by Banco de Sabadell, S.A. with a decrease of 61.8% compared to the previous year (489 in 2020 compared to 187 in 2021).

– In contrast, there was a considerable increase in the number of complaints received by CaixaBank, S.A. (1,137 in 2020 compared to 1,815 in 2021).[9] The increases in complaints filed against Singular Bank, S.A. (103 in 2020 compared to 143 in 2021) and against Andbank España, S.A. (186 in 2020 compared to 228 in 2021) also stand out.

– The number of complaints filed by the customer ombudsman of Deutsche Bank, S.A.E. was higher (four in 2020 compared to 12 in 2021).

– However, the number of complaints filed with the customer ombudsman of Banco Bilbao Vizcaya Argentaria, S.A. decreased substantially (263 in 2020 compared to 101 in 2021). The number of complaints filed with the customer ombudsman also decreased – albeit to a lesser extent – in the case of Banco de Sabadell, S.A. (137 complaints in 2020 compared to 100 in 2021) and Bankinter, S.A. (30 complaints in 2020 compared to 26 in 2021).

8 It must be taken into account that in the previous year Banco Santander resolved many complaints corresponding to Banco Popular or referring to the acquisition of one bank by the other.

9 In contrast to the previous case, CaixaBank is still resolving complaints that arose from actions carried out by Bankia or from the merger in which the former took over the latter.

Complaints filed relating to the securities market

TABLE 17

	No. of complaints relating to securities market issues received in 2021			No. of complaints received by the CNMV Complaints Service in 2021	%[1]
	By the CSD	By the CO	By the CSD or CO		
ABANCA CORPORACIÓN BANCARIA, S.A.	173	–	173	12	6.9
ANDBANK ESPAÑA, S.A.	228	–	228	28	12.3
BANCO BILBAO VIZCAYA ARGENTARIA, S.A.	1,677	101	1,778	82	4.6
BANCO DE SABADELL, S.A.	187	31	218	14	6.4
BANCO SANTANDER, S.A.	5,820	100	5,920	149	2.5
BANKINTER, S.A.	695	26	721	39	5.4
CAIXABANK, S.A.	1,851	–	1,851	183	9.9
DEUTSCHE BANK, SOCIEDAD ANÓNIMA ESPAÑOLA	105	12	117	4	3.4
IBERCAJA BANCO, S.A.	52	–	52	22	42.3
ING BANK N.V., SUCURSAL EN ESPAÑA	922	–	922	41	4.4
KUTXABANK, S.A.	55	–	55	3	5.5
LIBERBANK, S.A.	77	–	77	12	15.6
RENTA 4 BANCO, S.A.	41	–	41	5	12.2
SINGULAR BANK, S.A.	143	–	143	10	7.0
UNICAJA BANCO, S.A.	316	–	316	15	4.7
X-TRADE BROKERS DOM MAKLERSKI, S.A., SUCURSAL EN ESPAÑA	445	–	445	9	2.0
BANCO MEDIOLANUM, S.A.	56	–	56	4	7.1
Total	**12,843**	**270**	**13,113**	**632.0**	**4.8**

Source: Data provided by the entities.

1 Percentage of complaints received by CSDs or COs in 2021 that were subsequently submitted to the Complaints Service.

With regard to complaints that were not admitted by the CSD because they do not meet all the requirements, the following conclusions can be drawn:[10]

– There were more than one hundred non-admissions by the CSDs of the three entities that presented the highest number of complaints: CaixaBank, S.A. (228 of 1,851); Banco Bilbao Vizcaya Argentaria, S.A. (240 of 1,677), and Banco Santander, S.A. (471 of 5,820).

  In percentage terms, i.e. the number of non-admissions with respect to the number of complaints filed with the CSD, this would be equal to or greater than 10% for: Banco de Sabadell, S.A. (33.7%); Liberbank, S.A. (19.5%); Abanca Corporación Bancaria, S.A. (17.3%), Banco Bilbao Vizcaya Argentaria, S.A. (14.3%); Banco Mediolanum, S.A. (12.5%), and CaixaBank, S.A. (12.3%).

  Two CSDs did not reject any complaints filed – Singular Bank, S.A. and X-Trade Brokers Dom Maklerski, S.A., Sucursal en España.

10 It should be borne in mind that data obtained take as their starting point that the non-admissions reported refer to complaints filed in 2021, while it is possible that in that year complaints were rejected that were filed at the end of the previous year.

– In relation to non-admissions by the customer ombudsman, the number of complaints not admitted by the CO of Banco de Sabadell, S.A. (nine of a total of 31) and Deutsche Bank, S.A.E. (two of a total of 12) stand out.

Complaints relating to the securities market not admitted by entities in 2021

TABLE 18

	CSD			CO		
	Not admitted	Received	%[1]	Not admitted	Received	%[1]
ABANCA CORPORACIÓN BANCARIA, S.A.	30	173	17.3	0	0	–
ANDBANK ESPAÑA, S.A.	8	228	3.5	0	0	–
BANCO BILBAO VIZCAYA ARGENTARIA, S.A.	240	1,677	14.3	2	101	2.0
BANCO DE SABADELL, S.A.	63	187	33.7	9	31	29.0
BANCO SANTANDER, S.A.	471	5,820	8.1	2	100	2.0
BANKINTER, S.A.	12	695	1.7	0	26	0.0
CAIXABANK, S.A.	228	1,851	12.3	0	0	–
DEUTSCHE BANK, SOCIEDAD ANÓNIMA ESPAÑOLA	8	105	7.6	2	12	16.7
IBERCAJA BANCO, S.A.	2	52	3.8	0	0	–
ING BANK N.V., SUCURSAL EN ESPAÑA	67	922	7.3	0	0	–
KUTXABANK, S.A.	1	55	1.8	0	0	–
LIBERBANK, S.A.	15	77	19.5	0	0	–
RENTA 4 BANCO, S.A.	1	41	2.4	0	0	–
SINGULAR BANK, S.A.	–	143	0.0	0	0	–
UNICAJA BANCO, S.A.	11	316	3.5	0	0	–
X-TRADE BROKERS DOM MAKLERSKI, S.A., SUCURSAL EN ESPAÑA	–	445	0.0	0	0	–
BANCO MEDIOLANUM, S.A.	7	56	12.5	0	0	–
Total	**1,164**	**12,843**	**9.1**	**15**	**270**	**5.6**

Source: Data provided by the entities.

1 Percentage of complaints not admitted as a percentage of the complaints received.

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

– In line with the number of complaints received, the CSD of Banco Santander, S.A. Resolved the most cases (6,632) followed by CaixaBank, S.A. (1,577) and Banco Bilbao Vizcaya Argentaria, S.A. (1,467).

– Regarding the result obtained by the complainant from the CSD, the following entities saw a percentage of more than 40% of cases resolved in favour of their clients: CaixaBank, S.A. (42.8%), Andbank España, S.A. (50.3%), and Unicaja Banco, S.A. (55.5%).

– The customer ombudsman that resolved the largest number of complaints in 2021 was that of Banco Bilbao Vizcaya Argentaria, S.A. (121), followed by the COs of Banco Santander, S.A. (113); Bankinter, S.A. (30); Banco de Sabadell, S.A. (22), and Deutsche Bank, S.A.E. (13).

– The customer ombudsman that issued the highest proportion of resolutions in favour of complainants in 2020 was Banco de Sabadell, S.A. (50%), followed by those of Bankinter, S.A. (36.7%), Banco Bilbao Vizcaya Argentaria, S.A. (33.1%), Banco Santander, S.A. (31.9%) and Deutsche Bank, S.A.E. (30.8%).

A comparison of the data provided by the entities in 2021 and 2020 shows significant variations in terms of the percentage of reports favourable to the complainants issued.

In two entities, the number of cases resolved in favour of the complainant noticeably increased, specifically in Ibercaja, S.A. (37.5% in 2021 compared to 20% in 2020) and CaixaBank, S.A. (42.8% in 2021 compared to 29.8% in 2020). In contrast, only two CSDs saw a decrease in the number of resolutions in favour of the complainant, those of Renta 4 Banco, S.A. (36.1% in 2021 compared to 60% in 2020) and Abanca Corporación Bancaria, S.A. (18.6% in 2021 vs. 37.7% in 2020).

There was an increase in reports favourable to the complainant made by the customer ombudsman of Banco de Sabadell, S.A. (50% in 2021 compared to 38.8% in 2020) and Bankinter, S.A. (31.9% in 2021 compared to 17.24% in 2020) and a decrease in reports favourable to the complainant made by the CO of Deutsche Bank, Sociedad Anónima Española (30.8% in 2021 compared to 37.5% in 2020).

Complaints relating to the securities market admitted and resolved by entities in 2021

TABLE 19

	CSD			CO		
	Favourable	**Unfavourable**	**%[1]**	**Favourable**	**Unfavourable**	**%[1]**
ABANCA CORPORACIÓN BANCARIA, S.A.	31	136	18.6	–	–	–
ANDBANK ESPAÑA, S.A.	93	92	50.3	–	–	–
BANCO BILBAO VIZCAYA ARGENTARIA, S.A.	568	899	38.7	40	81	33.1
BANCO DE SABADELL, S.A.	42	185	18.5	11	11	50.0
BANCO SANTANDER, S.A.	853	5,779	12.9	36	77	31.9
BANKINTER, S.A.	262	483	35.2	11	19	36.7
CAIXABANK, S.A.	675	902	42.8	–	–	–
DEUTSCHE BANK, SOCIEDAD ANÓNIMA ESPAÑOLA	26	73	26.3	4	9	30.8
IBERCAJA BANCO, S.A.	18	30	37.5	–	–	–
ING BANK N.V., SUCURSAL EN ESPAÑA	20	596	3.2	–	–	–
KUTXABANK, S.A.	16	36	30.8	–	–	–
LIBERBANK, S.A.	16	35	31.4	–	–	–
RENTA 4 BANCO, S.A.	13	23	36.1	–	–	–
SINGULAR BANK, S.A.	30	113	21.0	–	–	–
UNICAJA BANCO, S.A.	127	102	55.5	–	–	–
X-TRADE BROKERS DOM MAKLERSKI, S.A., SUCURSAL EN ESPAÑA	94	352	21.1	–	–	–
BANCO MEDIOLANUM, S.A.	13	30	30.2	-	-	-
Total	**2,897**	**9,866**	**22.7**	**102**	**197**	**34.1**

Source: Data provided by the entities.

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

2.5 International cooperation mechanisms

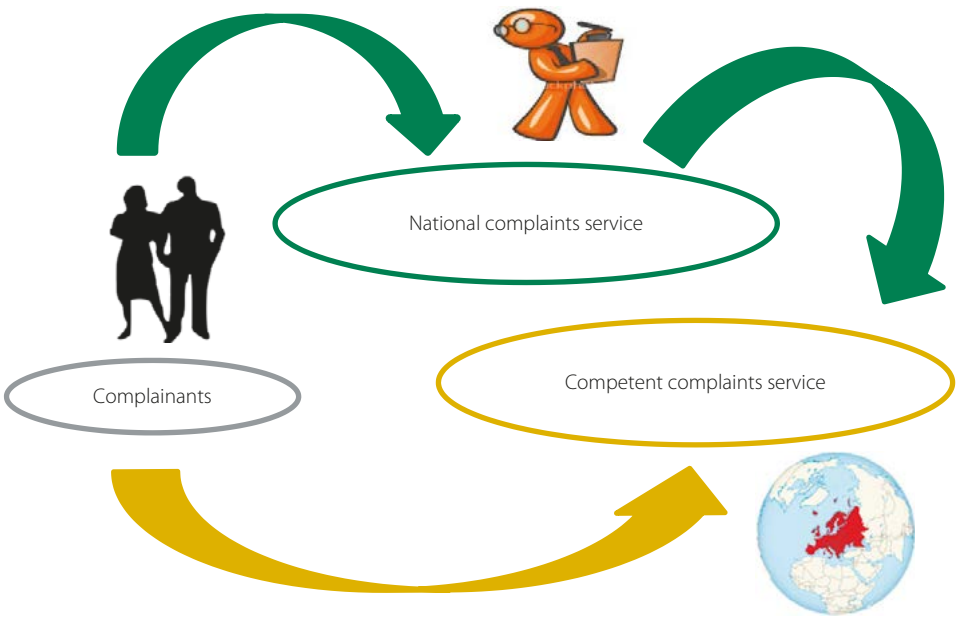
2.5.1 Financial Dispute Resolution Network (FIN-NET)

The Financial Dispute Resolution Network (FIN-NET) is the network for the out-of-court settlement of cross-border disputes between consumers and financial service providers in the European Economic Area (EEA).[11] FIN-NET was created through Commission Recommendation 98/257/EC of 30 March, on the principles applicable to the bodies responsible for the out-of-court settlement of consumer disputes. It was set up by the European Commission in 2001 and its purpose is to provide access to out-of-court settlement procedures in cross-border financial disputes within the EEA. The CNMV joined FIN-NET in 2008.

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

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

Until 2021, the United Kingdom was one of the most active FIN-NET members. However, as a result of Brexit, it has become an associated entity, together with Switzerland and the Channel Islands, all of which collaborate with the FIN-NET network and adhere to the main principles of the European Union regulations on alternative dispute resolution.



11 FIN-NET has members in most of the countries of the EEA, i.e. the European Union, Iceland, Liechtenstein and Norway.

The members of this network undertake to comply with a memorandum of understanding,[12] which includes the mechanisms and conditions of cooperation to facilitate the resolution of cross-border disputes. Although the provisions of the MOU are not legally binding on the parties, the CNMV has made a commitment to fulfil them. The document was revised in May 2016 to adapt to the ADR Directive.[13]

Since September 2018, the Complaints Service has been a member of the FIN-NET Steering Committee, consisting of 12 members and in charge of the drawing up the FIN-NET work programme that will be discussed in plenary meetings. The mandate of Steering Committee members lasts for two years. However, given the situation caused by the global pandemic in 2020, the last renewal of the mandate took place in 2021.

In recent years, a link to the FIN-NET network has been included in "Investors" section of the CNMV's website,[14] under "Complaints", through which investors can access information on how to file a complaint against a financial service provider from another EEA country, in order to help investors resolve cross-border disputes through out-of-court settlements, and provide general information about the network and its members.

Likewise, in order to collaborate with the campaign to promote the network, a promotional video is included with a graphic explanation of the mechanism for out-of-court dispute resolution at European level.

➢ Plenary meetings

The FIN-NET plenary association meets twice a year, mainly to inform on the regulatory developments in the European Union in the area of alternative dispute resolution[15] and financial services, on the regulatory developments specific to each Member State and on the developments that affect their respective areas of alternative dispute resolution, as well as to exchange and share specific examples of complaints both on a national and cross-border level. In other words, the meetings deal with issues not only relating to investment products, but also those that concern banking and insurance products.

The Complaints Service took part in the two plenary meetings that were held in 2021 (it should be noted that since the health crisis in 2020, these meetings have been held remotely).

The main topics discussed in the plenary meetings were:

– *Crowdfunding:* A representative of the European Commission presented the main aspects of the Crowdfunding Regulation, which has been in force since

12 Memorandum of Understanding (MOU).

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

14 http://www.cnmv.es/portal/Inversor/FIN-NET.aspx

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

November 2020 but applicable from November 2021. In particular, he explained the scope (mainly the activities of the platforms and also some obligations for issuers), in relation to legislation such as MiFID II, outlining the authorisation regime and the investor protection framework.

– *Instant payments:* Other representatives of the European Commission presented the draft regulation for "instant money transfers". They spoke about the main lines of this regulations and described the main benefits for consumers, encouraging FIN-NET members from the banking field to contribute to the public consultation.

– *Guidelines on loan origination and monitoring:* A representative from the European Banking Authority (EBA) presented the main aspects of these guidelines, applicable from 30 June 2021. He explained that they derive from the Board's action plan to deal with non-performing loans (NPL), and that its main objective is financial stability, seeking a balance between consumption and prudent credit risk taking and management.

– *Guidelines on complaints handling for the securities and banking sectors:* Another representative from the EBA presented both guidelines, which entered into force in June 2014 although their scope was extended to new financial institutions in May 2019, as well as the report of the Joint Committee on the evaluation of the application of the guidelines in the area of complaints services published in March 2021. With regard to the former, he detailed the scope, objectives and main points, specifying that the guidelines apply to the competent authorities to ensure they supervise the handling of complaints made by the entities in their jurisdiction and that they aim to provide guidance on the provision of information to complainants and on the procedure for responding to and harmonising the processing of complaints.

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

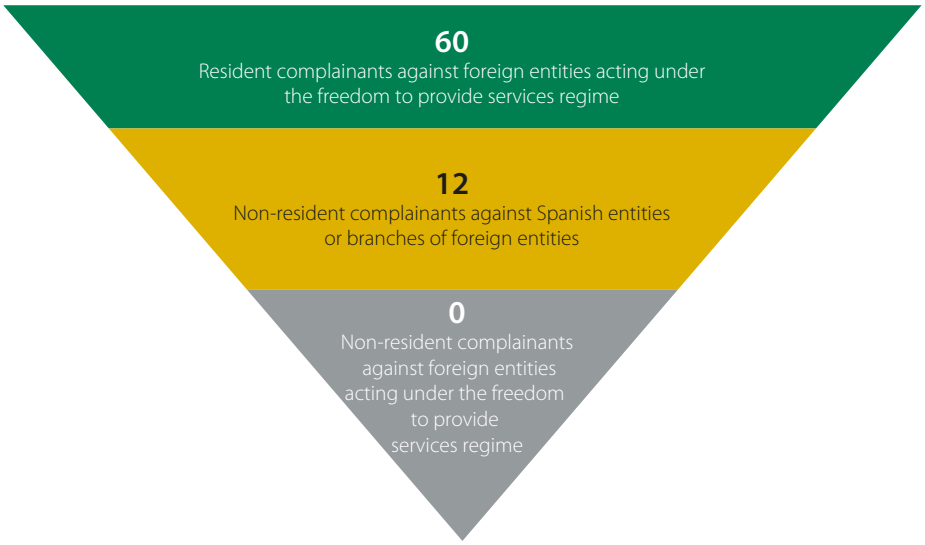
In 2017, the Investors Department joined the International Network of Financial Services Ombudsman Schemes (INFO Network). This body was created in 2007 with the broad aim of working together in the development of dispute resolution, exchanging experiences and information in different areas: management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

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

The Complaints Service took part in the 14th Annual Meeting of the INFO Network, held via video conference on Wednesday, 29 September 2021. In addition to institutional issues, It is important to highlight the international networking opportunities that this type of event offers to participants, in addition to the exchange of experiences and knowledge sharing.

In 2021, the Complaints Service received a total of 72 complaints in which the complainant or the respondent entity was established abroad, broken down as follows:

Number of cross-border complaints



Residents in Spain submitted complaints against foreign entities acting under the freedom to provide services regime in 60 cases. As the Complaints Service lacks the powers to process these cases when foreign entities act under the freedom to provide services regime, the complainants were provided with information on the bodies in charge of out-of-court settlements in the countries where the companies were established. In the 24 complaints filed against entities established in FIN-NET member countries, the complainant was also offered the possibility of the Complaints Service relaying the complaint to the competent body, which was requested in 8 cases. The 32 complaints filed against entities established in non-FIN-NET member countries related to entities established in Cyprus, and in one case to an entity established in Bulgaria. In addition, four cases referred to entities established in the United Kingdom.

Six residents in other countries of the European Union and six residents outside the European Union submitted requests to open complaint proceedings against entities established in Spain or entities established in other countries that operated in Spain through a branch. Of these, five were not admitted (in one case because it fell to the competence of the Bank of Spain's Complaints Service, in one case because its fell to the competence of the Complaints Services of the Directorate-General for Insurance and Pension Funds, and in three cases because they did not respond to the request for rectification of admission requirements, or the request for pleas in a cause of non-admission). The remaining seven were admitted and three of these were resolved with a final reasoned report that was favourable to the complainant, three were resolved with a final reasoned report that was unfavourable to the complainant and one was resolved through the entity acquiescing to the complainant's demands.

Lastly, no cases were received against foreign entities operating in Spain under the freedom to provide services regime initiated by complainants residing outside Spain.

3 Main criteria applied in the resolution of complaints in 2021

3 Main criteria applied in the resolution of complaints in 2021

This chapter presents an overview of the main criteria applied in the resolution of complaints in 2021.

It should be noted that these criteria arise from the interpretation of sector regulations and good practices that are generally accepted and recognised by market participants. The criteria are derived from the exercise of the supervisory tasks that the CNMV is entrusted with, applied to the specific cases that were analysed in each of the complaints processed in 2021. Consequently, they respond to specific times and circumstances and thus future regulatory changes or variations in the specific circumstances of each case could lead to changes.

In short, the publicity given to these criteria is not intended to be more than an updated catalogue of the regulatory interpretations and good supervisory practices carried out by the CNMV that apply to the sector on a specific date, that of its publication, and nothing prevents them from being modified or nuanced in a later time.

The criteria applied in the resolution of complaints in previous years that expand and complement the contents of this Report are available in the publications[1] on the CNMV website.

3.1 Marketing/simple execution

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

Entities may make an exemption and not assess the appropriateness of a product or service for the client, as long as the strict requirements indicated below are met:[2]

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

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

iii) The entity must have clearly informed the client that it is not obliged to perform an appropriateness assessment on the instrument offered or the service provided and that, therefore, the client does not enjoy the protection established

1 https://www.cnmv.es/portal/Publicaciones/PublicacionesGN.aspx?id=23

2 Article 216 of the recast text of the Securities Market Act as approved by Royal Legislative Decree 4/2015, of 23 October.

in the rules of conduct of legislation on the securities market. This warning may be issued in a standardised format.

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

This provision is limited to cases in which the entity exclusively provides the service of execution or reception and transmission of client orders, with or without provision of ancillary services. Exemptions to these ancillary services expressly exclude the granting of credits or loans[3] that do not refer to existing credit limits on loans, current accounts and authorised client overdrafts.

However, the entity may decide not to implement such an exemption and assess the appropriateness of the non-complex product requested by the client. Paragraph 30 of ESMA's Guidelines on product governance requirements under MiFID II,[4] whose implementation the CNMV announced on 12 December 2017 states that "the distributor could decide that some non-complex products which could potentially be offered under the execution-only regime will only be offered in accordance with appropriateness or suitability requirements, so as to grant a higher degree of protection to clients". In complaints R/219/2021 and R/292/2021, the entities that decided to make use of this exemption submitted proof of compliance with the requirements identified in points ii) and iii) through a document signed by the complainant stating that he had acted on his own initiative and specifying that information had been provided by the entity as to its not being obliged to assess the appropriateness of the product and the consequent lack of protection for the client. However, in complaint R/219/2021, in a second subscription to the same product by the same client, the entity did not make use of the exemption, and assessed the client's knowledge and investment experience, reaching the conclusion that the CIS was appropriate for his investor profile. The Complaints Service considered that the entity had acted correctly in both cases.

In case R/559/2021, the complainant wanted to purchase some shares on his own initiative, with no recommendation from the respondent entity.

As ordinary shares are considered non-complex products, the entity could apply the exemption from the appropriateness assessment provided that the rest of the requirements described had been met. However, as indicated above, the entity is not required to apply the exemption from the appropriateness assessment, so it may perform this assessment if it considers that it will provide the retail investor with greater protection. In this case, the entity assessed the appropriateness of the product given that there was a potential conflict of interest – as stated by the entity, since the product acquired by the complainant consisted of shares it had issued itself. The Complaints Service upheld the control measures adopted for this purpose by the entity with respect to its own shares to prevent any potential conflicts of interest.

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

4 Guidelines on product governance requirements under MiFID II (05/02/2018 | ESMA35-43-620 E).

➢ Irregularities in the completion of the appropriateness assessment

Investors often disagree with the answers collected in the appropriateness assessments performed by the entities and allege certain irregularities in the tests (submission of an assessment previously performed by the entities) or question the truthfulness of certain answers.

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

This statement also mentions the regulatory obligations to which it applies, specifically those of Article 54.7 of Commission Delegated Regulation (EU) 2017/565, of 25 April, which refers to the appropriateness and suitability assessment, and establishes that investment firms must take reasonable measures to ensure that the information collected about their clients or potential clients is reliable, mentioning, among other issues, that "appropriate measures must be adopted to ensure the consistency of customer information, for example, by examining the information for obvious inaccuracies" and of "ensuring that customers are aware of the importance of providing accurate and up-to-date information".

Article 55 of the same Regulation establishes that entities have the right to trust the information provided by their clients to assess their appropriateness and suitability, except when they "know, or should know, either that it is clearly out of date or that it is inaccurate or incomplete".

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

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

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

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

To properly identify and correct these situations, entities must have proper procedures in place to supervise the contracting process, periodically review the information obtained and correct incidents. "If inconsistencies, discrepancies or a large volume of atypical situations (situations that may arise for a variety of reasons, for instance, that the client information has not been collected correctly) are detected, the proper steps must be taken to compare and validate the data using means other than simply checking that the information agrees with that shown in the completed questionnaires".

The Complaints Service does not consider that the entity has acted with due diligence to ensure the reliability of the information when there are contradictions in the same assessment or between different assessments or statements from the same client.

In case R/233/2021, contradictions were found to exist between an assessment carried out on 26 January 2018, another completed on 9 December 2020, and a customer statement also dated 9 December 2020.

To the question "Have you held any professional position (including in banking and finance) that is directly related to financial instruments and stock markets?", the complainant responded "None of the above" in the assessment performed in 2018 and "b) No, but I am an entrepreneur, exercise a liberal profession, a director or executive of a company or a senior civil servant, with knowledge of the financial markets" in the assessment performed in 2020, while in the client's statement, made on the same day as the second test, he indicated in the his job description that he was "Retired".

To the question about training, in both assessments he marked "Other higher-level studies (Bachelor's degree, diploma or similar)", while in his activity statement he described his level of education as "Baccalaureate, BUP, vocational training or special training".

The Complaints Service concluded that the entity had committed bad practice by not carrying out an effective control of the information provided by the complainant about his profession and training. Furthermore, taking into account, that the client's level of education should have been "Baccalaureate, BUP, vocational training or special training", he was retired and that his response to the question about his profession should have been "None of the above" and also that he did not have sufficient previous experience in products with similar characteristics in the last three years, the Complaints Service concluded that his knowledge and experience could not be considered "Very extensive" and consequently it should not have been considered appropriate for him to contract an OTC derivative.

In case R/559/2021, the entity maintained, in contrast to the complainant's opinion, that according to the information provided in the assessment, a share purchase order was a transaction that was "Not appropriate" for him.

However, the complainant already held shares of the same issuer in his securities account and positions in 14 other types of shares listed on the Spanish stock exchange, in addition to some warrants.

In the opinion of the Complaints Service, this indicated that the complainant had extensive investment experience in these types of securities and he had held outstanding positions in them when he requested the acquisition of more shares, for which reason the assessment should have been considered appropriate. However, the entity did not use the data it already had on its client but based its assessment on a new test carried out for a specific transaction, which the Complaints Service did not consider to be appropriate since it did not fit in with usual market practices and regulations, which state that one way for entities to determine possible inconsistencies between the answers submitted in the assessments and the information that the entity already holds on its client is to compare the results of the test with the other information available.

In addition, the Complaints Service looked at whether the appropriateness assessment carried out by the entity had been performed properly.

The entity had provided a two-page document with two questions about education and general knowledge, two about the client's investment experience with the entity and another three relating to his financial knowledge. The document did not refer to shares but to investment products in general, did not throw up any results – appropriate or inappropriate – and in the summary of the responses only indicated that the complainant had a university education or higher and had never worked in any job that required knowledge of markets and financial instruments.

Consequently, the Complaints Service revealed that the assessment did not show any real results, nor did it apparently take into account all the responses marked by the client. It appeared that only the questions relating to education and general knowledge had been taken on board, while the answers to one of the most important topics, investment experience, where the complainant indicated a high level of experience with listed equity products and knowledge of these, were omitted.

The Complaints Service considered that if the entity had properly assessed all the answers that the complainant had provided to the questions in the assessment, basically those referring to his experience with the product to be acquired (shares) and financial knowledge, the product would have been considered appropriate.

Consequently, the Complaints Service concluded that the entity had committed bad practice by not having properly assessed all the responses provided to the questions in the appropriateness assessment, and expressed its opinion that all the information that the entity has about its client, not only the answers indicated in a specific test, must be taken into account to assess the appropriateness and suitability of a product or family of products for an investor, as set out in the regulations, which is the only way to establish any potential inconsistencies between the content of the assessment and the information available to the entity about its client.

➢ Target market or recipient of financial instruments

The regulations include a series of requirements applicable to entities that produce and distribute financial instruments.

In particular, Article 208 *ter* of the Securities Market Act establishes, in relation to the manufacture and distribution of financial products, that:

> *1. Investment firms that manufacture financial instruments to sell to clients must ensure that these instruments are designed to meet the needs of a defined target market of end clients within the relevant client category.*
>
> *Likewise, they must guarantee that the distribution strategy for the financial instruments is compatible with the defined target market, and must also adopt reasonable measures to ensure that the instrument is distributed in the defined target market.*
>
> *2. An investment firm must understand the financial instruments they offer or recommend, assess the compatibility of the financial instruments with the needs of the clients to whom it provides investment services and activities, also*

> *taking account of the identified target market of end clients as referred to above, and ensure that financial instruments are offered or recommended only when this is in the interest of the client.*[5]

To implement the above, Royal Decree 217/2008 was amended by Royal Decree 1464/2018[6] to regulate the following requirements for the internal organisation and operation of investment firms and other entities that provide investment services.

In regard to internal organisation measures in matters of conflict of interest, Article 30 *bis* was included in Royal Decree 217/2008, according to which:

> *2. The product approval process shall specify an identified target market of end clients within the relevant category of clients for each financial instrument and shall ensure that all relevant risks to such identified target market are assessed and that the intended distribution strategy is consistent with the identified target market.*
>
> *3. An investment firm must also regularly review the financial instruments it offers or markets, taking into account any event that could materially affect the potential risk to the identified target market, to assess at least whether the financial instrument remains consistent with the needs of the identified target market and whether the intended distribution strategy remains appropriate.*[7]

In regard to other internal organisation methods, Article 30 *sexies* was added to Royal Decree 217/2008, which determines that:

> *1. Likewise, every company that manufactures financial instruments for sale to clients will maintain, manage and review a process for the approval of each one of the instruments and the significant adaptations of existing instruments before they are marketed or distributed to clients, in accordance with Article 208* ter *of the recast text of the Spanish Securities Market Act and this Royal Decree.*
>
> *An investment firm which manufactures financial instruments shall make available to any distributor all appropriate information on the financial instrument and the product approval process, including the identified target market of the financial instrument.*

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5 Article 208 of the recast text of the Securities Market Act as approved by Royal Legislative Decree 4/2015, of 23 October.

6 Fourth final provision of Royal Decree 1464/2018, of 21 December, which implements the recast text of the Securities Market Act, approved by Royal Legislative Decree 4/2015, of 23 October, and Royal Decree-Law 21/2017, of 29 December, on urgent measures for the adaptation of Spanish law to European Union regulations on the securities market, and partially amending Royal Decree 217/2008, of 15 February, on the legal regime of investment firms and other entities that provide investment services and partially amending the regulation of Law 35/2003, of 4 November, on Collective Investment Schemes, approved by Royal Decree 1309/2005, of 4 November, and other royal decrees concerning the securities market.

7 Article 30 *bis* of Royal Decree 217/2008, of 15 February, on the legal regime of investment firms and other entities that provide investment services, partially amending the regulations of Law 35/2003, of 4 November, on Collective Investment Schemes, approved by Royal Decree 1309/2005, of 4 November.

Where an investment firm offers or recommends financial instruments which it does not manufacture, it shall have in place proper arrangements to obtain the information on these and on the product-approval processes, including the target market for the financial instrument, and to understand the characteristics and identified target market of each instrument.

The policies, processes and mechanisms referred to in this article shall be understood without prejudice to all the other requirements set forth in the recast text of the Securities Market Act and this Royal Decree, including those relating to publication, assessment of appropriateness or suitability, identification and management of conflicts of interest and incentives.[8]

In relation to these issues, on 5 February 2018, the European Securities and Markets Authority (ESMA) published its Guidelines on product governance requirements under MiFID II, which the CNMV had previously announced that it would implement on 12 December 2017.

These guidelines state that the manufacturer of the financial instrument must ensure that its intended distribution strategy is consistent with the identified target and must take reasonable steps to ensure that the financial product is distributed in the defined target market. The manufacturer must define its distribution strategy to favour the sale of each product in its target market. This includes that, when the manufacturer can choose the distributors of its products, the manufacturer makes its best efforts to select distributors whose type of clients and services offered are compatible with the target market of the product.[9]

However, the identification of the actual target market for the product must be done by the distributor. Therefore, the actual target market identification should occur at an early stage, when the firm's business policies and distribution strategies are defined by the management body and, on an *ex-ante* basis (i.e. before going into daily business).[10]

In particular, distributors should take responsibility to ensure, from the very beginning, the general consistency of the products that are going to be offered and the related services that will be provided with the needs, characteristics and objectives of target clients.[11]

In particular, distributors will decide which products will be recommended, or actively marketed to certain groups of clients (characterised by common features in terms of knowledge, experience, financial situation, etc.). Distributors should also decide which products will be made available to (existing or prospective) clients at

8 Article 30 *sexies* 1 of Royal Decree 217/2008, of 15 February, on the legal regime of investment firms and other entities that provide investment services, partially amending the regulations of Law 35/2003 of 4 November on Collective Investment Schemes, approved by Royal Decree 1309/2005 of 4 November.

9 Paragraph 25 of ESMA Guidelines on product governance requirements under MiFID II (05/02/2018 | ESMA35-43-620 E).

10 Paragraph 27 of ESMA Guidelines on product governance requirements under MiFID II (05/02/2018 | ESMA35-43-620 E).

11 Paragraph 28 of ESMA Guidelines on product governance requirements under MiFID II (05/02/2018 | ESMA35-43-620 E).

their own initiative through execution services (i.e. with an appropriateness assessment) or without active marketing (execution only), considering that in such situations the level of client information available may be very limited.[12]

In case R/77/2021, the complainant was dissatisfied that he could not subscribe certain bonds through the respondent entity even though the issue was open to the general public and not subject to any conditions.

The entity alleged that the MiFID II Directive allows investment firms to establish a more restrictive target audience than that established by the manufacturer. Therefore, the entity had limited the bond issue to specific segments of retail clients, taking into account parameters such as the rating, term or the sector of the issue. Since the disputed issue did not have a rating, it was only distributed to retail clients in the private banking segment, to whom the entity provided an advice service that included monitoring the investment.

The complainant did not meet the conditions set by the entity for the target clients so it rejected his subscription request, and the complainant was duly informed by his branch when he submitted the request and by the entity's CSD when he filed the complaint.

The Complaints Service stated that although the target audience for the bond issue was not subject to any conditions and the respondent entity was one of the placement entities through which investors could subscribe the instruments, it had decided to restrict the distribution, a decision that it was entitled to adopt under current regulations. Therefore, as the complainant did not belong to the client segment that the entity had designated as the actual target audience of the bond issue, it could not provide the execution service requested by him.

➢ Particularly complex financial instruments that are generally not suitable for retail clients (including binary options and CFDs)

Some financial instruments are considered particularly complex and are therefore generally not suitable for retail clients. These include:

– Financial instruments that under solvency regulations for credit institutions are eligible as Tier 1, additional Tier 1 or Tier 2 capital, in addition to equivalent instruments from third countries.[13]

– Bonds, debentures and other similar negotiable debt securities and financial contracts that are not traded on official secondary markets through which a credit institution receives cash from its clients and takes on a repayment obligation within a specified period, consisting of the delivery of securities, the payment of a sum of money, or both, when the issuer fails to meet its obligation to pay, at maturity, a percentage equal to or greater than 90% of the

12 Paragraph 31 of ESMA Guidelines on product governance requirements under MiFID II (05/02/2018 | ESMA35-43-620 E).

13 Shares that, in accordance with Article 217 of the recast text of the Securities Market Act, approved by Royal Legislative Decree 4/2015, of 23 October, are considered non-complex financial instruments are excluded.

amount received and when the profit or amount to be paid is linked to the occurrence of credit risk events in one or more entities.

– Bonds, debentures and other similar negotiable debt securities when their issuer fails to meet its obligation to pay, at maturity, a percentage equal to or greater than 90% of the initial investment, the return of the remaining percentage being conditional on the performance of one or several specific underlying assets, when they also incorporate complex structures that make it difficult for a retail client to understand the risks associated with the instrument.

– Financial contracts that are not traded on official secondary markets through which a credit institution receives cash from its clients taking on a repayment obligation within a specified period, consisting of the delivery of securities, the payment of a sum of money, or both, conditional on the performance of one or several specific underlying assets, when the credit institution fails to meeting its obligation to pay, at maturity, a percentage equal to or greater than 90% of the amount received and when they also incorporate complex structures that make it difficult for a retail client to understand of the risks associated with the instrument.

– Collective investment schemes with a specific return target – guaranteed or otherwise – for a given period, when the target is not equal to or greater than 90% of the investment, the achievement of the target being conditional on the performance of one or several specific underlying assets and calculated using an algorithm, when they also incorporate complex structures that make it difficult for a retail client to understand the risks associated with the instrument.

– Financial contracts for differences and binary options.

– Certain contracts on options, futures, swaps, interest rate agreements and other derivative financial instrument contracts and derivative financial instruments for the transfer of credit risk, except for derivatives instruments traded on regulated markets, multilateral trading facilities or organised trading facilities, and when they incorporate complex structures that make it difficult for a retail client to understand the risks associated with the instrument. Derivative financial instruments offered by the entity to the client for the purpose of hedging or mitigating the financial risks of other financial positions or specific and identified pre-existing commercial operations are excluded, provided that the financial entity that markets them has previously verified that they substantially comply with that purpose.

– Other instruments established by the CNMV following a specific analysis, once it has communicated or published said decision.

CNMV Circular 1/2018, of 12 March, includes the warnings and handwritten declarations to be collected from clients in the event that the entity considers that the trading of these particularly complex financial instruments is appropriate for them. The Circular also establishes a link between the warning and the handwritten declaration with those which the entity would have to obtain under Circular 3/2013[14] when the entity considers that these particularly complex instruments are not

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

suitable for the retail client or that a lack of information prevents it from determining whether they are suitable.

The warnings and the handwritten declarations to be added in each case are:

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

  Warning:

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

  The entity must obtain the retail client's signature on the warning together with a handwritten declaration that states:

  This is a product that is difficult to understand. The CNMV generally considers that it is not appropriate for retail clients.

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

  Warning:

  You are about to purchase a product that is not simple and can be difficult to understand: (the product must be identified). The National Securities Market Commission (CNMV) generally considers the acquisitions of this product by retail clients to be non-appropriate due to its complexity.

  The handwritten declaration in this case will state: This product is complex and is considered inappropriate for me.

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

  Warning:

  You are about to purchase a product that is not simple and can be difficult to understand: (the product must be identified). The National Securities Market Commission (CNMV) generally considers the acquisitions of this product by retail clients to be non-appropriate due to its complexity.

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

In addition, in the case of particularly complex financial instruments in which the retail client can take on financial commitments for an amount greater than the acquisition cost of the instrument, a second paragraph will be added to the warning with the following content:

> *This is a leveraged product. You should be aware that your losses may be greater than the amount initially paid for its acquisition.*

However, it will not be necessary to issue the warnings or collect the handwritten declarations referred to in Circular 1/2018 when the retail client holds at least two outstanding positions in instruments with a substantially similar nature and risk, for which warnings have already been issued. Nor will it be necessary to issue them when investments have been made previously, at least twice and in instruments of a substantially similar nature and risk, except when the last warning issued is more than three years old or the entity must warn the client that it considers that a service or product is not suitable, or that it cannot establish whether the investment service or product is suitable due to a lack of information.

Lastly, it should be clarified that binary options and financial contracts for differences (CFDs) are particularly complex financial instruments, characterised by their complexity and high risk, and their high short-term volatility. CFDs are also leveraged instruments where the investor may incur losses that are greater than the amount initially disbursed. For this reason, the CNMV has issued a resolution[15] that:

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

– Restricts the trading, distribution or sale of CFDs to retail clients unless the following conditions are met:

  i) The CFD provider requires the retail client to pay the initial margin.

  ii) The CFD provider provides the retail client with margin close-out protection.

  iii) The CFD provider provides the retail client with negative balance protection.

  iv) The CFD provider does not directly or indirectly provide to the retail client payment, or any monetary or non-monetary benefits in connection with the marketing, distribution or sale of a CFD, other than the benefits obtained in the CFD transaction itself.

  v) The CFD provider does not directly or indirectly send communications to the retail client or publish information that can be accessed by the retail client about the trading, distribution or sale of a CFD, unless it includes the proper risk warning as set out in the resolution.

  The "Prior information" section sets out the warnings that must be made in relation to the risks of this type of product, i.e. CFDs.

15 CNMV Resolution, of 27 June 2019, on product intervention measures related to binary options and contracts for differences.

With regard to the links between the measures established in the resolution and CNMV Circular 1/2018, the requirement to collect the handwritten declaration or a verbal recording from the retail client is maintained for at least the first two transactions to open positions, in accordance with the Circular, which must accompany or be typed along with the text of the warning contained in the resolution, which replaces the text provided in the Circular in the case of CFDs.

In case R/582/2020, the entity stated that since it only performed a service to receive and transmit orders, it provided the corresponding legal warnings on CFDs before the first two transactions were made for all its clients who traded with these instruments. As proof of this, the entity provided a copy of the legal warnings issued together with the acceptance logs.

However, it did not provide a copy of the declaration that the client should have typed prior to placing the CFD orders: "This is a product that is difficult to understand. The CNMV generally considers that it is not appropriate for retail clients", a handwritten declaration that the entity should be able to prove was written by its clients. Consequently, the Complaints Service concluded that the entity had committed bad practice.

➢ Non-complex, complex and particularly complex collective investment schemes

CISs can be of different types depending, among other aspects, on their characteristics or the regulation to which they are subject. Thus, harmonised CISs comply with Directive 2009/65/EC[16] and non-harmonised CISs do not comply with this Directive.

Structured harmonised CISs are understood to be those that provide investors, on predetermined dates, with remuneration calculated in accordance with an algorithm and linked to the performance of financial assets, indices, reference portfolios or harmonised CISs with similar characteristics, or to the materialisation, in relation to these assets, of indices, reference portfolios or harmonised CISs with similar characteristics, price variations or other conditions.[17]

Based on these definitions, the following are considered:

– Non-complex, harmonised CISs, excluding structured CISs.[18]

– Complex, structured harmonised CISs and non-harmonised CISs.[19]

16 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).

17 Article 36.1.2 of Commission Regulation (EU) No. 583/2010, of 1 July 2010, implementing Directive 2009/65/EC of the European Parliament and of the Council as regards key investor information and conditions to be met when providing key investor information or the prospectus in a durable medium other than paper or by means of a website.

18 Article 217.1.d) of the recast text of the Securities Market Act as approved by Royal Legislative Decree 4/2015, of 23 October.

19 Question 17.1 of the CNMV document *Q&A on the application of the MiFID II Directive*.

– Particularly complex: CISs with a specific return target – guaranteed or otherwise – for a given period, when the target is not equal to or greater than 90% of the investment, the achievement of the target being conditional on the performance of one or several specific underlying assets and calculated using an algorithm, when they also incorporate complex structures that make it difficult for a retail client to understand the risks associated with the instrument.

Therefore, depending on the type of CIS in question, the appropriateness assessment, warnings and handwritten declarations must comply with regulations according to their level of complexity (i.e. stock market regulations and, particularly, Circular 3/2013 or, if applicable, Circular 1/2018, which, among other aspects, establishes requirements for particularly complex products and resolves the links with the 2013 Circular).

The complaints resolved in 2021 on the marketing of CISs basically referred to non-complex CISs in accordance with the regulations applicable at the time they were subscribed. The Complaints Service considered that the entities acted correctly, meeting the requirements to make use of the exemption from the obligation to carry out an appropriateness assessment (R/219/2021 and R/292/2021) or collecting information on the investment knowledge and experience of their clients and deeming the product to be appropriate (R/563/2020, R/584/2020, R/627/2020, R/645/2020, R/648/2020, R/743/2020, R/170/2021, R /311/2021 and R/558/2021).

3.2 Suitability consulting and portfolio management

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

As indicated in the section "Irregularities in the completion of the appropriateness assessment", in terms of marketing, investors who are provided with advice and carry out a suitability assessment sometimes allege that the responses are false or made with the aim of overvaluing the parameters for contracting the product referred to in the complaint.

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.[20] Likewise, they will take reasonable measures to ensure that the information they collect on their clients or potential clients is reliable and, among other actions, implement the appropriate measures to ensure the consistency of the client's information, e.g. looking for obvious inaccuracies in the information provided by clients.[21]

As mentioned above, on 21 December 2018, the CNMV published a statement adopting the ESMA guidelines regarding the suitability requirements under MiFID II.[22] General guideline 4 states: "Firms should take reasonable steps and have appropriate

20 Article 55.3 of Commission Delegated Regulation (EU) 2017/565, of 25 April 2016, supplementing Directive 2014/65/EU of the European Parliament and of the Council as regards organisational requirements and operating conditions for investment firms and defined terms for the purposes of that Directive.

21 Article 54.7 of Commission Delegated Regulation (EU) 2017/565, of 25 April 2016, supplementing Directive 2014/65/EU of the European Parliament and of the Council as regards organisational requirements and operating conditions for investment firms and defined terms for the purposes of that Directive.

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tools to ensure that the information collected about their clients is reliable and consistent, without unduly relying on clients' self-assessments".

This guideline is implemented through other supporting guidelines, such as that establishing that:

> *[...] 50. In order to ensure the consistency of client information, firms should view the information collected as a whole. Firms should be alert to any relevant contradictions between different pieces of information collected, and contact the client in order to resolve any material potential inconsistencies or inaccuracies. Examples of contradictions would be clients with little knowledge and experience but who have an aggressive attitude towards risk, or those with a cautious risk profile but ambitious investment objectives [...].*

Subsequently, on 5 February 2019, the CNMV issued a statement on the obligation of entities to take measures to ensure the reliability of the information obtained from clients in order to assess the appropriateness and suitability of their investors. This refers to certain situations that seem atypical and establishes the obligation to have procedures to detect these during the contracting process and through periodic reviews of the information, as well as correction procedures.

It should be remembered that in order to assess whether there situations are atypical, entities may consider:

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

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

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

"If inconsistencies, discrepancies or a large volume of atypical situations (situations that may arise for a variety of reasons, for instance, that the client information has not been collected correctly) are detected, the proper steps must be taken to compare and validate the data using means other than simply checking that the information agrees with that shown in the completed questionnaires".

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

The Complaints Service considers that an entity does not act with due diligence to ensure the reliability of the information obtained when there are inconsistencies (for example, in cases where the client declares that he or she has little investment experience and a limited level of education while at the same time claims to have a

high level of knowledge of the markets, financial instruments, terminology and the implicit risks of the products).

In case R/538/2020, several assessments carried out on the same day were submitted with the following responses: in an appropriateness assessment for fixed income and equities: "I have a university education, but in an area unrelated to economics or mathematics"; in an appropriateness assessment for preemptive and future subscription rights and options: "I have non-university education", and in a suitability assessment: "Customer education level: Basic education". Taking into account that the entity had collected different information on the client's education in different assessment, which were also carried out on the same date, the Complaints Service considered that the entity had not acted with due diligence to ensure the reliability of the information obtained from its client.

Furthermore, on the same day, two appropriateness assessment were signed which deemed investment funds to be appropriate and preemptive subscription rights, futures and options to be inappropriate, in addition a suitability assessment the threw up a "high-risk" result. The entity decided to provide a portfolio model in which investments were to be made in derivative products, i.e. those that the entity had considered unsuitable for the complainant. The Complaints Services noted that clearly these discrepancies between results showed that the entity's procedures to detect the consistency of the information it had about its client had not worked.

In case R/38/2021, the Complaints Service considered that it made no sense that after the client had stated that he had completed "compulsory post-secondary education", had never worked in positions that required financial knowledge, had no financial experience in more than two transactions for more than €3,000 in financial products and had only performed one transaction in an investment fund, the response about his knowledge was that he had a very high level of knowledge of the different financial markets, financial instruments, etc. Therefore, the Complaints Service concluded that the entity had not taken reasonable measures to ensure that the information collected in the suitability assessment was reliable and did not (apparently) present inconsistencies, in order to establish the corresponding risk profile based on the responses provided.

In case R/153/2021, before contracting a portfolio management service, the entity carried out two suitability assessments, which, it was noted, were carried out for the same investment service (i.e. the same questions were asked) on the same date and in which the responses to the question about the investment profile in which the investment limits for fixed income and equities were detailed were different. In one assessment a level 2 profile was indicated, which corresponded to investment of up to 60% in equities, but in the other a level 3 profile was indicated, which corresponded to an investment of up to 100% in equities. Bearing in mind that the entity collected different information on risk tolerance with respect to investment limits in fixed income and equities for the different assessments, information that was also key for establishing the investor profile and the products that best suited this profile, the Complaints Service considered that the entity had not adopted the necessary measures to guarantee the consistency and reliability of the responses obtained in the tests, especially given that they were both carried out on the same date.

In case R/191/2021, the entity collected different information on the client's financial situation from different assessments, which were also performed just one day apart. To the question about the client's annual income, the complainant answered

"less than €20,000" (answer 1 of 3 possible responses, the lowest income bracket) in the first test, and "between €20,000 and €60,000" (answer 2 of 3, intermediate income level) in the test performed the next day. To the question about the number of years the complainant anticipated that he would need to save an amount equivalent to that he had invested in the entity's funds, the complainant answered "more than 3 years" (answer 3 of 3 possible responses, in this case the most conservative) in the first assessment and "between 1 and 3 years" (answer 2 of 3, intermediate response) in the test performed the following day. Taking this information into account, the Complaints Service considered that the entity had not acted with due diligence to guarantee the reliability of the information obtained from its client.

In case R/530/2021 it was stated in the suitability assessment that the complainant, despite having a basic education and not having any investment experience in transactions of more than €3,000 in any family of investment products, had a high level of financial knowledge and was familiar with the following financial concepts: capital guarantee (return of 100% of the capital invested), credit rating, market value (quoted market price), volatility (deviation from average performance), liquidity risk (not finding a counterparty on the market), investment risk (loss of value), interest rate risk (fluctuation of interest rates), exchange rate risk (currency risk), market risk (total or partial loss of the investment), concentration risk (poorly diversified portfolio), counterparty risk (credit risk of the issuer), etc.

The Complaints Service concluded that the entity had committed bad practice by not detecting and managing the potential basic inaccuracies revealed in the suitability assessment, especially considering that the answers provided were to serve as the basis for establishing the client's investment profile and that, based on that profile, the entity would make periodic investment recommendations under the recurring advice contract signed with the entity.

➢ Updating the information collected

Entities that have a continuous relationship with their clients – for example, those that provide ongoing advice or portfolio management services – must have appropriate policies and procedures to keep proper and updated information on clients and must be able to demonstrate that they have such policies and procedures in place.[23]

Entities that provide a portfolio management service must use a standard contract,[24] which must establish in a manner that is clear, concrete and easily understandable for retail investors the procedure for updating the information on the client's knowledge, financial position and investment objectives, to enable the entity to provide the best possible service, as appropriate.[25]

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23 Article 54.7 of Commission Delegated Regulation (EU) 2017/565, of 25 April 2016, supplementing Directive 2014/65/EU of the European Parliament and of the Council as regards organisational requirements and operating conditions for investment firms and defined terms for the purposes of that Directive.

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

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

Entities that provide investment advice and periodic assessments of the suitability of the financial instruments or recommended services are obliged to sign a standard agreement with their clients in writing, on paper or any other durable medium, which will establish the essential rights and obligations of the company and the client.[26] To improve the service they provide, entities that offer periodic suitability assessments must re-examine the suitability of the recommendations made at least once a year. These assessments will be made more frequently according to the client's risk profile and the type of financial instruments recommended.[27]

ESMA guidelines on MiFID II suitability requirements, adopted by the CNMV through a statement dated 21 December 2018, refer to the updating of client information in general guideline 5 and its supporting guidelines.[28]

General guideline 5 states that:

> *Where a firm has an ongoing relationship with the client (such as by providing ongoing advice or portfolio management services), in order to be able to perform the suitability assessment, it should adopt procedures defining:*
>
> *(a) What part of the client information collected should be subject to updating and at which frequency.*
>
> *(b) How the updating should be done and what action should be undertaken by the firm when additional or updated information is received or when the client fails to provide the information requested.*

Its supporting guidelines state that:

> *53. Firms should regularly review client information to ensure that it does not become manifestly out of date, inaccurate or incomplete. To this end, companies should have procedures in place to encourage customers to update the information they originally provided when significant changes occur.*
>
> *54. Frequency of update might vary depending on, for example, clients' risk profiles and taking into account the type of financial instrument recommended. Based on the information collected about a client under the suitability requirements, a firm will determine the client's investment risk profile, i.e. what type of investment services or financial instruments can in general be suitable for him taking into account his knowledge and experience, his financial situation (including his ability to bear losses) and his investment objectives (including his risk tolerance). For example, a risk profile giving the client access to a wider range of riskier products is an element that is likely to require more frequent updating. Certain events might also trigger an updating process; this could be so, for example, for clients reaching the age of retirement.*

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26 Article 58 of Commission Delegated Regulation (EU) 2017/565, of 25 April 2016, supplementing Directive 2014/65/EU of the European Parliament and of the Council as regards organisational requirements and operating conditions for investment firms and defined terms for the purposes of that Directive.

27 Article 54.13 of Commission Delegated Regulation (EU) 2017/565, of 25 April 2016, supplementing Directive 2014/65/EU of the European Parliament and of the Council as regards organisational requirements and operating conditions for investment firms and defined terms for the purposes of that Directive.

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55. Updating could, for example, be carried out during periodic meetings with clients or by sending an updating questionnaire to clients. Relevant actions might include changing the client's profile based on the updated information collected.

56. It is also important that firms adopt measures to mitigate the risk of inducing the client to update his own profile so as to make appear as suitable a certain investment product that would otherwise be unsuitable for him, without there being a real modification in the client's situation.[17] As an example of a good practice to address this type of risk, firms could adopt procedures to verify, before or after transactions are made, whether a client's profile has been updated too frequently or only after a short period from last modification (especially if this change has occurred in the immediate days preceding a recommended investment). Such situations would therefore be escalated or reported to the relevant control function. These policies and procedures are particularly important in situations where there is a heightened risk that the interest of the firm may come into conflict with the best interests of its clients, e.g. in self-placement situations or where the firm receives inducements for the distribution of a product. Another relevant factor to consider in this context is also the type of interaction that occurs with the client (e.g. face-to-face vs through an automated system).[18]

[17] Also relevant in this context are measures adopted to ensure the reliability of clients' information as detailed under guideline 4, paragraph 44.

[18] In this regard, see the clarifications already provided by ESMA in the Q&As on MiFID II investor protection topics (Ref.: ESMA35-43-349 – Question on "Transactions on unsuitable products").

57. Firms should inform the client when the additional information provided results in a change of his profile, whether it becomes more risky (and therefore, potentially, a wider range of riskier and more complex products may result suitable for him, with the potential to incur in higher losses) or vice-versa more conservative (and therefore, potentially, a more restricted range of products may as a result be suitable for him).

In case R/38/2021, the entity made an investment proposal based on a suitability assessment carried out a year earlier when a test completed on the same day that the proposal had been made was also available. The Complaints Service considered that the entity had committed bad practice since it should have used the last suitability assessment carried out to make the investment proposal, given that the financial situation and investment objectives could have changed from one date to another.

In case R/530/2021, on 28 November 2018 the complainant signed, among other documents, a suitability assessment for an advice service and a non-independent recurring advisory contract. Between November 2018 and October 2019, there was no record that the entity had made any investment recommendations on the portfolio it was provided advice for. However, on 18 October 2019, as part of the recurring advice service, the entity issued an investment proposal, based on the suitability assessment of 2018, in which it recommended the complainant keep his investment portfolio unchanged and to invest an amount received *ex novo* in a high-risk international equity investment fund at the entity.

The Complaints Service considered that before making this investment proposal, the entity should have carried out a new global suitability assessment for the

complainant according to the type of advice provided, since not only had almost a year elapsed since the previous test, but the recommendation was based on new information obtained by the entity – the transfer of an external investment fund –, which not only clearly affected the complainant's previous investment experience as he had an amount invested in another investment fund when in the previous test he stated that he had no investment experience in this type of product, but was also likely to affect his investment objectives, since the portfolio in question would increase significantly when the fund was transferred.

➢ Investment advice

✓ *Personalised recommendation*

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

That recommendation shall be presented as suitable for that person, or shall be based on a consideration of the circumstances of that person, and shall constitute a recommendation to take one of the following sets of steps:

– To buy, sell, subscribe for, exchange, redeem, hold or underwrite a particular financial instrument.

– To exercise or not to exercise any right conferred by a particular financial instrument to buy, sell, subscribe for, exchange, or redeem a financial instrument.[29]

When providing investment advice, before the transaction is made, the firm must provide the client with a statement on suitability in a durable medium specifying the advice given and how that advice meets the preferences, objectives and other characteristics of the retail client.[30]

In case R/466/2021, although the subscription order for an investment fund specified that the transaction had been carried out under advice in accordance with a recommendation with a reference number, this was not included in the file. Consequently, the Complaints Service ruled that the entity had committed bad practice by not including the investment proposal or recommendation, which it was obliged to deliver to the client prior to subscribing the investment fund referred to in the complaint, having provided him with non-independent advice.

29 Article 9 of Commission Delegated Regulation (EU) 2017/565, of 25 April 2016, supplementing Directive 2014/65/EU of the European Parliament and of the Council as regards organisational requirements and operating conditions for investment firms and defined terms for the purposes of that Directive.

30 Article 213.5 of the recast text of the Securities Market Act as approved by Royal Legislative Decree 4/2015, of 23 October.

✓ *Adjustment of the maturity of the product to investment targets*

When providing investment advice or portfolio management the investment firm must obtain the necessary information regarding the client or potential client's knowledge and experience in the investment field relevant to the specific type of product or service, that person's financial situation – including their ability bear losses – and their investment objectives – including their risk tolerance – so as to enable the investment firm to recommend to the client or potential client the investment services and financial instruments that are suitable and, in particular, are in accordance with their risk tolerance and ability to bear losses.[31]

When the firm does not obtain this information, it must not recommend investment services or financial instruments to the client or potential client.[32]

As indicated above, when providing investment advice, before the transaction is made the firm must provide the client with a statement on suitability in a durable medium specifying the advice given and how that advice meets the preferences, objectives and other characteristics of the retail client.[33] This statement must contain an explanation of the reasons why the recommendation is suitable for the client, including how it responds to their objectives and personal circumstances with reference to the investment term required, their knowledge and experience, attitude towards risk and ability to tolerate losses. It must also point out that the recommended services or instruments may require that the client request a periodic review of the agreement made with the firm.[34]

In case R/580/2020, the entity provided a suitability assessment document as part of a recurring advice service informing the complainant that given the characteristics of the transaction and previous recommendations and suitability assessments referring to exactly the same financial instruments, in the firm's opinion, an atypical financial contract was suitable for the client.

The Complaints Service ruled that an atypical financial contract was an unlikely fit with the complainant's profile, given that it had a maturity of five years, while the preferred investment time horizon stated by the client was one year. Consequently, the Complaints Service considered that the firm had committed bad practice by offering the client a product with a maturity of five years as a suitable investment, when the time horizon set as the investment objective in the complainant's suitability assessment was much shorter.

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31 Article 213.1 of the recast text of the Securities Market Act as approved by Royal Legislative Decree 4/2015, of 23 October.

32 Article 54.8 of Commission Delegated Regulation (EU) 2017/565, of 25 April 2016, supplementing Directive 2014/65/EU of the European Parliament and of the Council as regards organisational requirements and operating conditions for investment firms and defined terms for the purposes of that Directive.

33 Article 213.5 of the recast text of the Securities Market Act as approved by Royal Legislative Decree 4/2015, of 23 October.

34 Article 54.12 of Commission Delegated Regulation (EU) 2017/565, of 25 April 2016, supplementing Directive 2014/65/EU of the European Parliament and of the Council as regards organisational requirements and operating conditions for investment firms and defined terms for the purposes of that Directive.

✓ *Advice on more beneficial classes*

ESMA guidelines on MiFID II suitability requirements, adopted by the CNMV through a statement dated 21 December 2018, refer to the costs and complexity of equivalent products in general guideline 9 and its supporting guidelines.[35]

General guideline 9 states that:

> *Suitability policies and procedures should ensure that, before a firm makes a decision on the investment product(s) that will be recommended, or invested in the portfolio managed on behalf of the client, a thorough assessment of the possible investment alternatives is undertaken, taking into account products' cost and complexity.*

The supporting guidelines state that:

> *84. Firms should have a process in place, taking into account the nature of the service, the business model and the kind of products that are provided, to assess products available that are "equivalent" to each other in terms of ability to meet the client's needs and circumstances, such as financial instruments with similar target markets and similar risk-return profile.*
>
> *85. When considering the cost factor, firms should take into account all costs and charges covered by the relevant provisions under Article 24(4) of MiFID II and the related MiFID II Delegated Regulation provisions. As for the complexity, firms should refer to the criteria identified in the above guideline 7. For firms with a restricted range of products, or those recommending one type of product, where the assessment of "equivalent" products could be limited, it is important that clients are made fully aware of such circumstances. In this context, it is particularly important that clients are provided appropriate information on how restricted the range of products offered is, pursuant to Article 24(4)(a)(ii) of MiFID II.[26]*
>
> *[26] Pursuant to the provisions of MiFID II, firms are therefore not expected to consider the whole universe of possible investment options existing in the market in order to comply with the requirement under Article 54(9) of MiFID II Delegated Regulation.*
>
> *86. Where a firm uses common portfolio strategies or model investment propositions that apply to different clients with the same investment profile (as determined by the firm), the assessment of cost and complexity for 'equivalent' products could be done on a higher level, centrally, (for example within an investment committee or any other committee defining common portfolio strategies or model investment propositions) although a firm will still need to ensure that the selected investment products are suitable and meet their clients' profile on a client-by-client basis.*
>
> *87. Firms should be able to justify those situations where a more costly or complex product is chosen or recommended over an equivalent product, taking into account that for the selection process of products in the context of investment advice or portfolio management further criteria can also be considered (for*

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example: the portfolio's diversification, liquidity, or risk level). Firms should document and keep records about these decisions, as these decisions should deserve specific attention from control functions within the firm. The respective documentation should be subject to internal reviews. When providing investment advice firms could, for specific well-defined reasons, also decide to inform the client about the decision to choose the more costly and complex financial instrument.

In regard to the costs of investment funds, the CNMV issued a statement on 5 June 2009 that referred to clone funds or classes of shares that differ exclusively according to their different levels of management (or depository) fees, indicating that:

When the investment is made as part of a portfolio management or investment advice service, the entity must choose the fund or class of shares that is most beneficial for its client, provided that its objective conditions are suitable for the investor. This is required by the nature of the service provided, since there is an investment decision, or a personalised recommendation, that must be made in the best interest of the investor.

[...]

Outside the scope of portfolio management or investment advice, and, while there is no personalised recommendation, the clone fund that is most beneficial for the investor should also be offered, provided that: i) the sale is made on the initiative of the firm, or ii) on the initiative of the investor, it is generic in nature and the firm offers the sale of the specific fund. The initiative can only be considered as that of the client when the client requests to buy into the specific fund with no prior personal contact with the firm in relation to the fund.

On 15 March 2012, the CNMV published another statement on the possibility of carrying out procedures for the automatic reclassification for investment fund unitholders between classes of units or other equivalent cases.

In this statement, the CNMV stated that is considered it to be good practice for managers to have control procedures to periodically identify investors who meet the requirements to gain access to more beneficial unit classes than those they have subscribed (in terms of fees and commissions) and where appropriate, proceed with the reclassification.

Lastly, on 24 October 2016, the CNMV issued a statement on the distribution to clients of CIS share classes and clone funds, which highlighted the bad practices detected through its supervisory activity in relation to the distribution to clients of CIS share classes with the same investment policy and different economic conditions and clone CISs, where to receive incentives firms failed to act in the best interest of their clients and consequently breached the rules of conduct. The bad practices exposed in the statement included the following:

– *Firms that recommend, or acquire on behalf of their clients with a managed portfolio agreement, different classes of shares without considering the specific characteristics of the investment made or the client's pre-existing positions in the same CIS, and without ensuring that they are accessing the most beneficial class of shares according to the conditions established in the CIS prospectuses.*

The obligation to act in the interest of their clients requires firms to recommend or acquire on behalf of their clients the class of shares that is most beneficial for their client, even when the entity does not charge any explicit fee or commission for the service, and must respect the objective conditions established in the CIS prospectus.

– *Firms that offer investment advice or discretionary portfolio management services, which for operational reasons pre-select a single class of shares that they distribute to all their clients. This implies that they fail to ensure that any clients who meet the conditions established in the CIS prospectus to invest in other classes which offer better conditions than the pre-selected terms will not do so.*

It should be noted that there are frequently recommendation classes with high minimum access amounts, whose distribution, in accordance with the conditions established in the CIS prospectus, is not restricted exclusively to institutional investors and that can therefore be offered to retail clients if they meet the minimum access requirements.

It should also be considered that in order to access certain recommendation classes, some prospectuses require separate fee agreements with the client.[3] In general, these classes can be accessed when the distributor charges fees to its clients for providing an investment service that relates to the CIS in question (specifically a fee for portfolio management or advice), which must be confirmed with the management company itself or the distributor with which agreements are arranged if there are any doubts.

[3] In these cases, it is usually noted that a certain class is restricted to "distributors and their clients who have a separate fee arrangement/ agreement between them".

– *Firms that fail to establish regular procedures to detect when, due to the subsequent performance of the client positions under management or advice, their investments in CISs have been made in classes that are not optimal.*

In the case of advice, this issue must be considered when recommendations are regularly presented in which the client's global position in the firm is taken into account, where the sale of certain positions held by the client at the firm are recommended, or when the firm undertakes to periodically monitor the positions under advice.

It is not acceptable for a client receiving regular recommendations to hold investments in a less beneficial class when this was acquired on his or her own initiative in the past, since the firm's recommendations should include transferring the client's position to the cheapest series.

– *Firms that do not carry out regular checks to verify the classes of shares available in the different CISs that they distribute, to request, if necessary, the CIS management companies or the distribution firms with which they have agreements to provide access to all the available classes for distribution in Spain.*

The firm that provides the investment service to the final investor cannot act in the best interest of its clients if certain classes are not available in the offer of a distributor as it would not be able to recommend or the investor acquire a certain class of shares that are generally available to all investors. If the firm that provides

the investment service to the final client cannot persuade the distributor with which it operates to include a certain class of shares in its offer that is available for distribution in Spain, it must use another channel that does allow this.

In case R/449/2021, the complainant expressed her disagreement with the class of units she held in the investment funds in which she had been investing for years, since she considered that these units were not suitable for her as they belonged to more unfavourable classes, and that she had consequently been paying inappropriate fees on her fund portfolio.

According to the documentation provided, there was no evidence that the entity had provided the complainant with a portfolio management or advice service at the time she had subscribed the funds. Therefore, the case corresponded to one of the cases set out in 2009 statement and the authority looked into whose initiative it had been to subscribe for the funds.

The firm acknowledged that it had only distributed the investment funds online and through face-to-face meetings. This would suggest that at least a part of the funds had been subscribed in person at the firm's offices, and consequently that there had been prior contact, and at that moment the firm should offered the complainant a more favourable investment recommendation, as set out in the 2009 statement described above.

In addition, when the complainant subscribed at least part of her funds, the 2012 CNMV statement had already been published, so the firm should have triggered an automatic reclassification procedure for investment fund unitholders between classes of units or other equivalent instruments, or at very least, a system to regularly identify clients who could be in the situation described in the statement, for whom it is recommended to transfer their units to the most beneficial class.

Even though both statements had already been published when the complainant subscribed the funds, the firm failed to inform her of the most beneficial classes in face-to-face meetings – in accordance with the 2009 statement – or offer to transfer her units to the cheapest classes in the subscriptions that the complainant had made online – as per the 2012 statement.

In addition, most of the funds had been subscribed after the 2016 statement had been released, which identified the failure to inform a client of the cheapest classes of investment in their recommendations as bad practice. Furthermore, it was stated in the case file that the firm had made investment proposals to the complainant at least twice on dates when the three statements had already been published and that in these proposals, while it did suggest slight changes to her portfolio, they failed to recommend changing the funds to more beneficial classes.

Consequently, the Complaints Service concluded that the firm had committed bad practice by not offering the most favourable class of the funds that had been contracted in person by not having an automatic reclassification procedure in place, as provided for in the statement issued by the CNMV in 2012 or, at very least, the capacity to perform a periodic review that would have made it possible to detect that the complainant could have accessed more beneficial classes, and by not informing the complainant, when the investment proposals were made, that beneficial classes were available or offering to transfer her units to these vehicles.

✓ *Advice on particularly complex financial instruments that are generally not suitable for retail clients (including binary options and CFDs)*

As described in the section "Marketing/simple execution", some financial instruments are considered to be particularly complex and are therefore generally not suitable for retail clients. The firms that provide investment advice on these financial instruments must include the following warning in the event that, having assessed their suitability, they recommend them to their client:

> *This investment proposal includes the following financial instruments: YYY (instruments to be identified) that are not simple and can be difficult to understand. The National Securities Market Commission (CNMV) generally considers the acquisitions of this product by retail clients to be non-appropriate due to its complexity. However, ZZZ (name of the entity) has positively assessed that they are suitable for.*

When the retail client can take on financial commitments for an amount greater than the acquisition cost of the instrument, a second paragraph must be added to the warning with the following content:

> *This is a leveraged product. You should be aware that your losses may be greater than the amount initially paid for its acquisition.*

The regulations provide that the warnings about particularly complex financial instruments must be included in the description of how the recommendation is adapted to fit the characteristics and objectives of the retail client that must be provided to all clients.[36] That description has now been superseded by a durable media suitability statement specifying the advice provided and how this advice is tailored to the retail client's preferences, goals and other characteristics.[37]

There are exceptions to these warnings, which do not have to be issued when the retail client holds at least two outstanding positions in instruments whose nature and risks are substantially similar and for which he or she has already received these warnings, or when at least two previous transactions have been made on instruments of with a substantially similar nature and risk, except in the event that the last warning issued is more than three years old.

Lastly, it should be remembered that particularly complex financial instruments include binary options and financial contracts for differences (CFDs), whose marketing, distribution or sale is prohibited and restricted respectively in accordance with CNMV Resolution of 27 June 2019, on product intervention measures related to binary options and financial contracts for differences.

36 Rule Two, Section 8, and Rule Three, Section 3, of CNMV Circular 1/2018, of 12 March, on warnings relating to financial instruments.

37 Article 213.5 of the recast text of the Securities Market Act as approved by Royal Legislative Decree 4/2015, of 23 October.

➢ Client portfolio management

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

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

As noted above, when providing investment advice or portfolio management services, the firm providing these services will obtain the necessary information about the knowledge and experience of the client or potential client in the area of investment corresponding to the specific type of a product or service, their financial situation, including their ability to bear losses, and their investment objectives, including their risk tolerance.[38]

The ESMA Guidelines for suitability requirements under MiFID II, adopted by the CNMV through a statement dated 21 December 2018, raise some specific issues in the assessment of suitability when a portfolio management service is provided.

In regard to the extent of information to be collected from clients (proportionality), the ESMA Guidelines state that:

> *[...] when portfolio management is to be provided, as investment decisions are to be made by the firm on behalf of the client, the level of knowledge and experience needed by the client with regard to all the financial instruments that can potentially make up the portfolio may be less detailed than the level that the client should have when an investment advice service is to be provided. Nevertheless, even in such situations, the client should at least understand the overall risks of the portfolio and possess a general understanding of the risks linked to each type of financial instrument that can be included in the portfolio. Firms should gain a very clear understanding and knowledge of the investment profile of the clients.*[39]

In regard to the measures required to ensure the suitability of an investment, the ESMA Guidelines clarify that:

> *When conducting a suitability assessment, a firm providing the service of portfolio management should, on the one hand, assess – in accordance with paragraph 36.b) of these guidelines – the knowledge and experience of the client regarding each type of financial instrument that could be included in his portfolio, and the types of risks involved in the management of his portfolio. Depending on the level of complexity of the financial instruments involved, the firm should assess the client's knowledge and experience more specifically than solely on the basis of the type to which the instrument belongs (e.g. subordinated*

38 Article 213.1 of the recast text of the Securities Market Act as approved by Royal Legislative Decree 4/2015, of 23 October.

39 Paragraph 38 of the Guidelines for certain aspects of suitability requirements under MiFID II (06/11/2018 | ESMA35-43-1163 ES).

debt instead of bonds in general). On the other hand, with regard to the client's financial situation and investment objectives, the suitability assessment about the impact of the instrument(s) and transaction(s) can be done at the level of the client's portfolio as a whole. In practice, if the portfolio management agreement defines in sufficient details the investment strategy that is suitable for the client with regard to the suitability criteria defined by MiFID II and that will be followed by the firm, the assessment of the suitability of the investment decisions could be done against the investment strategy as defined in the portfolio management agreement and the portfolio of the client as a whole should reflect this agreed investment strategy.[40]

Prior to arranging a portfolio management service, in accordance with current regulations, firms carry out a suitability assessment to establish the client's investment profile. They then sign the portfolio management contract, which must not exceed the limits of the investment profile obtained in the suitability assessment.

Therefore, the Complaints Service considered that the entity had acted correctly in the cases in which it had carried out a suitability assessment and, without passing the limits established by the results obtained, agreed with the client on the profile of the portfolio management contract. The investment profile of the portfolio management contract (moderate) was lower than the result obtained in the suitability assessment (high risk) in case R/568/2020, and the investment profile established in the contract was in line with the profile established in the suitability assessment (both conservative), in cases R/570/2020, R/35/2021, R/225/2021 and R/366/2021 and "balanced" in complaints R/92/2021, R/113/2021 and R/376/2021.

However, in case R/634/2020, the client contracted a portfolio management service with a "very high risk" profile and the following day the entity performed a suitability assessment, which resulted in a "high risk" profile. In the suitability assessment it was stated that the result of the test would determine the profile of the model portfolio to be selected by the client, although the client could select a model portfolio with a lower associated risk even if the result of the suitability assessment indicated a higher risk than the model portfolio selected.

The Complaints Service considered that the entity had not acted correctly since the suitability assessment had been performed one day after the portfolio management contract had been signed, while the selection of the portfolio management model should have been based on the result of the assessment. Consequently, the complainant was not aware of the result of the assessment before he contracted the portfolio offered by the entity and was not able to opt for a lower risk profile for his portfolio, as indicated in the assessment. In addition, according to the contractual documentation provided, the portfolio management service was based on a "very high risk" profile, which contradicted the "high risk" result thrown up by the assessment, and indicated that the selected portfolio was not suitable.

40 Paragraph 80 of the Guidelines for certain aspects of suitability requirements under MiFID II (06/11/2018 | ESMA35-43-1163 ES).

3.3 Prior information

➢ Fund that invests in cryptocurrency firms

The assets in which financial CISs can invest are governed by the provisions of Article 30 of Law 35/2003, of 4 November, on Collective Investment Schemes, and Article 48 of Royal Decree 1082/2012, of 13 July, approving the implementing regulations for Law 35/2003, of 4 November, on Collective Investment Schemes.

In relation to the assets that are suitable for investment by financial CISs, CNMV document *Questions and answers on the regulations of CISs, venture capital firms and other closed-ended collective investment vehicles* clarifies:

> ***10ter. Can CISs invest in cryptocurrencies?*** *(Last update: 7 May 2021)*
>
> *If the CISs are UCITS or harmonised CISs they can have exposure to cryptocurrencies through financial instruments whose performance is linked to such currencies, which do not include an embedded derivative (ETC, ETN and any "Delta one" instrument). These instruments would be suitable as long as they are subject to daily trading, in which the market price is determined by the purchase and sale transactions carried out by third parties (since in this case it would not be necessary to carry out a "look-through" of the instrument). They could also invest in listed securities or financial instruments of entities that meet the requirements of Article 48.1 a) CISR, and which, in turn, have investments in cryptocurrencies.*
>
> *In addition to the above, QuasiUCITS regulated by Article 72 of the CISR can invest within the freely available coefficient in Spanish or similar foreign hedge funds (and derivatives on these undertakings), or in other non-UCITS CISs that have exposure to cryptocurrencies (Article 72.1.d) CISR). However, they cannot invest in derivatives whose underlyings are cryptocurrencies, since these are not included in the eligible underlyings set out in Article 2.6 of Order 888/2008, of 27 March, on transactions made by financial CISs with derivative financial instruments.*
>
> *On the other hand, funds of hedge funds regulated by Article 73 CISR can also have exposure to cryptocurrencies through derivatives, given that there are no limitations on the underlying, and provided that the settlement of the derivative does not require the delivery of the cryptocurrency, although these CISs can only be distributed among professional investors.*
>
> *Lastly, bearing in mind that investment in cryptocurrencies is a high risk investment, the price of which entails a high speculative component (as clarified in the joint statement made by the CNMV and the Bank of Spain on the risk of investing in cryptocurrencies of 9 February 2021), the prospectus and the KIID must include an express and prominent mention of exposure to cryptocurrencies and the risks that this may entail, including the specific risks relating to price formation and liquidity mentioned in the statement.*

In terms of compliance with the rules of conduct, if this type of investment is made on a one-off or occasional basis by the management company, while holding a diversified portfolio of different securities with a low weight of investment in

companies linked to crypto-assets – the risk that the fund would assume would be only the market risk of that investment –, it would not be necessary for prospectuses to include warnings about exposure and risks for this type of product. In contrast, if the fund follows a more sectoral investment approach, that is, it invests fundamentally in this type of asset, even directly, assuming market, custody, valuation risk, etc., it would be necessary to include such warnings in the prospectus and in the KIID.

In case R/469/2021, the complainant stated that after observing a drop in the net asset value of the fund that he had contracted over a few days, he contacted the management company by telephone and they confirmed that the fund invested in cryptocurrencies. He considered that this information should have been specified in the fund's prospectus.

The Complaints Service verified that the portfolio held by the fund was highly diversified, with multiple and varied assets, including securities such as Facebook, Apple, etc., and that its investments in companies linked to crypto-assets were occasional and limited to the first half of the year. It also noted that while the investment in this type of company had shown losses, these losses had not had a significant impact on the portfolio as a whole.

In short, the Complaints Service considered that the management company had not acted incorrectly, to the extent that the investment it had made for the fund had been carried out through companies linked to the crypto-assets (not through direct investment in cryptocurrencies) and these had been occasional investments with a reduced weight with respect to the portfolio as a whole, and therefore it was not necessary to include them in the fund's prospectus.

➢ Key Investor Information Document

The PRIIP Regulation, applicable from 1 January 2018,[41] establishes the obligation for the creators of packaged retail and insurance-based investment products (PRIIPs) to prepare a standardised information document that must be delivered to potential clients sufficiently in advance of their purchase. The key investor information document must be no longer than three sides of A4 paper and its objective is to clearly and summarise relevant information about the products to facilitate their understanding and comparison with other investment products.

The Regulation applies to creators of packaged or insurance-based products and to the individuals who advise on or sell such products.[42]

PRIIPs are investments in which, regardless of their legal form, the amount repayable to the retail investor is subject to fluctuations due to exposure to certain reference values or the performance of one or more assets that are not directly acquired

41 Article 1 of Regulation (EU) No. 2016/2340 of the European Parliament and of the Council, of 14 December 2016, amending Regulation (EU) 1286/2014 on key information documents for packaged retail and insurance-based investment products in regard to their application date.

42 Article 2.1 of Regulation (EU) No. 1286/2014 of the European Parliament and of the Council, of 26 November 2014, on key information documents for packaged retail and insurance-based investment products. Article 2.2 of this Regulation indicates, however, the products to which it is not applicable.

by the investor[43] (for example, structured products, derivatives[44] and convertible bonds).[45] Investment funds are also PRIIPs. However, for those funds that draw up a KIID in accordance with UCITS regulations or an equivalent document, there will be a transitional period ending in 31 December 2022[46] during which time they can use this KIID instead of the KIID for PRIIPs.

The KIID must contain specific identifying data and a warning if applicable: "You are about to purchase a product that is not simple and can be difficult to understand" in addition to sections entitled: What is this product?; What are the risks and what could I get in return? What if [PRIIP manufacturer] is unable to pay out?; What are the costs?; How long should I hold it and can I take money out early?; How can I complain? and Other relevant information. The section "What are the risks and what could I get in return?" must include a summary risk indicator of risk with a numerical scale from 1 to 7, the possible maximum possible loss of the invested capital and return scenarios.[47]

In relation to this document, investment firms that distribute packaged or insurance-based products must also inform their clients of any other costs and expenses associated with the product, that may not have been included in the KIID for packaged or insurance-based products, as well as the costs and expenses corresponding to the provision of investment services in relation to the financial instrument.[48]

The person advising on or selling a packaged retail investment product must deliver the KIID to retail investors using one of the following means:[49]

– On paper, which should be the default option when the packaged or insurance-based product is offered face-to-face, unless the retail investor requests to receive the information using a different medium.

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43 Article 4.1 of Regulation (EU) No. 1286/2014 of the European Parliament and of the Council, of 26 November 2014, on key information documents for packaged retail and insurance-based investment products. Article 2.2 of this Regulation indicates, however, the products to which it is not applicable.

44 Question 2.1 of the CNMV document containing questions and answers on the implementation of Regulation 1286/2014 on key information documents for packaged retail and insurance-based investment products (PRIIPs).

45 Joint ESA Supervisory Statement – Application of scope of the PRIIPs Regulation to bonds (24/10/2019 JC-2019-64).

46 Amendment of Article 32.1 of Regulation (EU) 1286/2014 by Article 1 of Regulation (EU) 2021/2259 of the European Parliament and of the Council, of 15 December 2021, amending Regulation (EU) No. 1286/2014 as regards the extension of the transitional arrangement for management companies, investment companies and persons advising on, or selling, units of undertakings for collective investment in transferable securities (UCITS) and non-UCITS.

47 Commission Delegated Regulation (EU) 2017/653, of 8 March 2017, supplementing Regulation (EU) 1286/2014 of the European Parliament and of the Council, on key information documents for packaged retail and insurance-based investment products (PRIIPs) by laying down regulatory technical standards with regard to the presentation, content, review and revision of key information documents and the conditions for fulfilling the requirement to provide such documents.

48 Article 51 of Commission Delegated Regulation (EU) 2017/565, of 25 April 2016, supplementing Directive 2014/65/EU of the European Parliament and of the Council as regards organisational requirements and operating conditions for investment firms and defined terms for the purposes of that Directive.

49 Article 14 of Regulation (EU) No. 1286/2014 of the European Parliament and of the Council, of 26 November 2014, on key information documents for packaged retail and insurance-based investment products. Article 2.2 of this Regulation indicates, however, the products to which it is not applicable.

– On a durable medium other than paper, provided that certain conditions are met.[50]

– Through a website, provided certain requirements are met.[51]

Where the KIID is delivered on a non-paper durable medium or via a website, a paper copy will be provided free of charge to retail investor on request. Retail investors will be informed of their right to obtain a paper copy free of charge.

The entities acted correctly by delivering the duly signed KIID for several financial contracts without a commitment to repay the full principal (R/450/2021 and R/64/2021) for some US call options on OTC euro/dollar contracts (R/233/2021).

➢ Particularly complex financial instruments that are generally not suitable for retail clients (including binary options and CFDs)

As noted in the sections "Marketing/simple execution" and "Suitability. Investment advice and portfolio management", some financial instruments are considered to be particularly complex and are therefore generally not suitable for retail clients.

Circular 1/2018 includes warnings in the area of appropriateness and suitability to reflect, among other aspects, that the CNMV generally considers that their purchase by retail customers is not appropriate due to their complexity and, where appropriate, handwritten statements must be collected from clients.

In the case of these particularly complex financial instruments in which the retail client can take on financial commitments for an amount greater than the acquisition cost of the instrument, a second paragraph will be added to the warning with the following content:

> *This is a leveraged product. You should be aware that your losses may be greater than the amount initially paid for its acquisition.*

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50 The KIID may be delivered on a durable medium other than paper if the following conditions are met:
- i) The use of durable media is appropriate to the context in which the transactions take place between the person who advises on or sells a packaged or insurance-based product and the retail investor.
- ii) The retail investor has been offered the possibility of choosing between receiving the information on paper or on a durable medium and it can be proved that he or she has opted for the latter.

51 The KIID may be delivered through a website that cannot be classified as a durable medium if all of the following conditions are met:
- i) The delivery of the KIID through a website is appropriate to the context in which the transactions take place between the person advising on or selling a packaged or insurance-based product and the retail investor.
- ii) The retail investor has been offered the possibility of choosing between receiving the information on paper or through a website and it can be proved that he or she has opted for the latter.
- iii) The retail investor has been notified, electronically or in writing, of the website address and the location on the website where the KIID can be accessed.
- iv) The possibility of accessing the KIID on the website, downloading it and storing it on a durable medium remains in place for as long as the retail investor may need to consult it.

This warning will be included regardless of whether the KIID that must be delivered to the client contains a warning of understanding.[52]

Particularly complex financial instruments include binary options, whose marketing, distribution or sale to retail clients is prohibited, and contracts for differences (CFDs), whose marketing, distribution or sale to retail clients can only be carried out if certain conditions are met.[53] The conditions that the CFD provider must comply with stipulate the CFD provider may not directly or indirectly send communications to the retail client or publish information that can be accessed by the retail client about the trading, distribution or sale of a CFD, unless it includes the proper risk warning, as set out below.

The risk warning must include an up-to-date provider-specific loss percentage based on a calculation of the percentage of CFD trading accounts provided to retail clients by the CFD provider that lost money. The calculation shall be performed every three months and cover the 12-month period preceding the date on which it is performed.

i) Provider-specific risk warning on durable medium or through a webpage.

If the communication or published information is on a durable medium or web page, the following format should be used in the risk warning:

CFDs are complex instruments and come with a high risk of losing money rapidly due to leverage.

[insert percentage per provider] % of retail investor accounts lose money when trading CFDs with this provider.

You should consider whether you understand how CFDs work and whether you can afford to take the high risk of losing your money.

ii) Abbreviated provider-specific risk warning.

If the published communication or information is in a medium other than a durable medium or a webpage, the risk warning must indicate:

[insert percentage per provider] % of retail investor accounts lose money when trading CFDs with this provider.

You should consider whether you understand how CFDs work and whether you can afford to take the high risk of losing your money.

52 Article 8.3 of Regulation (EU) No. 1286/2014 of the European Parliament and of the Council, of 26 November 2014, on key information documents for packaged retail and insurance-based investment products, in terms of the application date.

53 CNMV Resolution, of 27 June 2019, on product intervention measures related to binary options and financial contracts for difference.

iii) Reduced character provider-specific risk warning.

However, if the number of characters in the risk warning exceeds the character limit allowed in the standard terms of a third party marketing service provider, the risk warning may be made using the following format:

[insert percentage per provider] % of retail CFD accounts lose money.

If this risk warning is used, the communication or published information will also include a direct link to the CFD provider's website that includes the risk warning in the format specified in paragraph i).

If in the last 12-month calculation period a CFD provider has not provided an open CFD associated with a retail client's CFD trading account, the CFD provider must employ one of the following standard risk warnings, as applicable:

– Durable medium and webpage standard risk warning:

CFDs are complex instruments and come with a high risk of losing money rapidly due to leverage.

Between 74% and 89% of retail investor accounts lose money when trading CFDs.

You should consider whether you understand how CFDs work and whether you can afford to take the high risk of losing your money.

– Abbreviated standard risk warning:

Between 74% and 89% of retail investor accounts lose money when trading CFDs.

You should consider whether you understand how CFDs work and whether you can afford to take the high risk of losing your money.

– Reduced character standard risk warning:

74-89% of retail CFD accounts lose money.

In case R/582/2020, the Complaints Service found that the entity's website provided detailed information on the nature, characteristics and risks of CFDs, and any person visiting the CFD website was able to see the following warning:

CFDs are complex instruments and come with a high risk of losing money rapidly due to leverage. Between 74% and 89% of retail investor accounts lose money when trading CFDs. You should consider whether you understand how CFDs work and whether you can afford to take the high risk of losing your money.

CFDs and Forex are complex leveraged products and are not suitable products for all investors.

Trading CFDs and Forex requires constant monitoring and surveillance of your investment.

3.4 Subsequent information

➢ 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 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.

✓ *Submission of the communication*

Once the issuer of the capital increase implements the transaction, the entities must send a statement to shareholders informing them of the type of transaction, the rights that correspond to them, the options and terms available. the action that will be followed if no instructions are issued and the fees and expenses associated with each of these options.

In this regard, to provide custody and administration services for financial instruments, a standard contract should be used,[54] which must indicate the means and the form and procedures which the parties will use to communicate with each other, as well as the information that the entity must make available and send to clients, how often it will be sent and how it will be received.[55]

However, Spanish legislation does not require information on this type of transaction to be communicated by certified post or with an acknowledgement of receipt and therefore delivery by ordinary post or by alternative means agreed between the parties will be sufficient to comply with the legal requirements.

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

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

The Complaints Service considers that the reasonable course of action is for entities to have procedures in place which, as far as possible, automate the immediate dispatch of these communications to all clients affected by the transaction in question and which, furthermore, allow them to choose to receive these kinds of communications through fast communication channels.

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

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

In case R/338/2021, the complainant, who was a shareholder of the issuing company, stated that he had not received the communication about a capital increase. However, the entity provided a copy of the communication describing the transaction for preemptive rights, as well as a computer image that proved that the communication had been made available to the client through the remote banking system. In addition, it provided the remote banking contract signed with the client, under which he expressly accepted that all notifications, communications and information that the entity was obliged to send or deliver to him in association with the subscribed transactions would be made using electronic means, together with the copy of an electronic record that proved that the client had agreed to this service. The Complaints Service therefore considered that the entity had acted correctly in this case.

In case R/212/2021, the complainant stated that he had not received any information from the entity about the subscription rights that corresponded to him in a capital increase and, having found out about this from other sources, he had contacted his manager who failed to provide him with sufficient information. Although the entity submitted a communication containing information on the capital increase, there was no proof that this had been sent to the complainant. Furthermore, once the process had started, the complainant requested information about the corporate event directly from his manager, specifically on 29 May. The manager replied a few hours later and only provided him with general information about the transaction that did not include any mention of the deadline for submitting instructions (which was 5 June). On 8 June, the complainant requested further information and the manager provided him with specific information about the transaction only at this date, after the deadline for submitting instructions of which he had not been advised by the manager.

Therefore, the Complaints Service concluded that the entity had committed bad practice since it had not provided full information on the transaction with preemptive rights assigned to the complainant in a capital increase or on the deadline for submitting instructions in a timely manner.

In case R/439/2021, the complainant stated that he had not been informed by the entity about a capital increase that affected him. The entity provided a copy of the capital increase notice addressed to the complainant as the owner of the shares. However, given the lack of a postal address in the communication and the fact that it had been created on the same day that the securities were listed, the Complaints Service considered that the entity had committed bad practice that there was no proof that the information had been sent correctly or generated sufficiently in advance.

✓ *Communication content*

As described above, the communication about a capital increase to be sent to shareholders must inform them of the type of transaction, the rights that correspond to them, the options and terms available, the action that will be followed if no instructions are issued and the fees and expenses associated with each of these options.

The content must include the deadline for subscribing to the increase and, if applicable, the time frame for submitting instructions to the entity (it is usual for the instruction period to be one or two days less than the time frame of the increase or, if they are submitted online, hours before the deadline for the increase), as

well as the time period that will be available to shareholders to sell their rights on the market.

In case R/176/2021, the entity sent a letter to the complainants informing them of a capital increase in which a disbursement to acquire new shares is required carried out by IAG, specifying that the deadline for submitting instructions was 24 September 2020. However, through an exchange of messages with the entity's staff, the branch manager called a meeting with the complainants on 25 September 2020 so that they could issue instructions to subscribe new IAG shares, that is, one day after the deadline.

The Complaints Service considered that the branch staff had acted incorrectly by calling the complainants to a meeting after the deadline for issuing instructions for the IAG capital increase had expired. Even though the entity expressly acknowledged that the branch had made a mistake, it did not prove whether or how this error had been corrected.

In case R/313/2021, the entity made a communication available to the complainant on its website about a transaction for IAG's preemptive rights, which indicated that the deadline for placing subscription orders was 23 September 2020 (inclusive). As it was demonstrated that the complainant was an online banking customer and the aforementioned communication had been sent to his electronic mailbox on 14 September 2020, the Complaints Service considered that the entity had informed the complainant correctly and sufficiently in advance about the steps he should follow in regard to his preemptive rights for IAG shares, and had informed him that the deadline for submitting the subscription orders was 23 September 2020 (inclusive).

Nonetheless, the complainant contacted the entity by telephone on 24 September 2020 to enquire about the deadline for the subscription of new shares and their future price once they had been acquired, and was informed that he the deadline for operating on the market or subscribing the shares was the market close on 25 September 2020. The Complaints Service concluded that bad practice had occurred here, as the entity had given the complainant wrong information in the telephone consultation, generating the erroneous expectation that he would be able to subscribe the new shares until 25 September 2020.

In case R/521/2021, it was proved that the complainant had received information about a capital increase carried out by Euronext. While the communication clearly specified that the deadline for subscribing the capital increase was 10:00 a.m. on 6 May 2021, nothing was said about the dates on which the subscription rights would be listed on the market or whether the time frame for exercising these rights coincided with the period in which their holders could issue instructions to sell them.

At 7:30:50 p.m. on 6 May 2021, the complainant placed an online order to sell his Euronext subscription rights on the market and the sale order was rejected by the stock exchange because it had been placed on a closed market and when the rights were no longer listed. As the sale order for the subscription rights could not be executed, on 17 May 2021 the rights were withdrawn, in accordance with the event terms and conditions.

The Complaints Service considered that the communication content was deficient as it did not clearly and precisely state the time frame the complainant had to sell his rights on the market, which could have caused confusion.

✓ *Failure to provide instructions on time*

In capital increases with preemptive rights and a required disbursement, investors who are assigned rights due to their holdings of shares in the company that is increasing its capital, and if no instructions are issued in the time frame specified by the entity, must unilaterally adopt the decision to place a sale order for these rights before the end of the trading period.

This is because once the rights trading period has ended, their value generally slumps (from an economic, legal and corporate standpoint). For this reason, this is the best possible option for the client once this situation has been reached.

However, there are securities custody and administration contracts that stipulate that the automatic sale of unexercised subscription rights at maturity would only apply in capital increases that involve securities traded on the Spanish continuous market. If a contract with this type of clause has been signed, the entity would not have the obligation to sell the rights derived from capital increases linked to shares listed on foreign markets if it has not received instructions to do so.

On the other hand, investors who acquire these rights, not in their capacity as shareholders of the issuing company but as a result of a purchase order made on the secondary market, should take the precaution of giving specific instructions to their intermediary about what they wish to do with them, regardless of when the purchase order was issued. If these instructions are not mediated, the depository would not be obliged to carry out any type of action and the rights could even be extinguished, with the consequent loss.

Generally speaking, and unless different actions have been established by the entity and made known to the client in a timely and appropriate manner, it will be necessary to adhere to the provisions of the contract signed by the parties.

In case R/189/2021, the complainant placed an order to sell the subscription rights of IAG that had been deposited in his securities account because he was a shareholder of the listed company and the order was executed. He subsequently performed purchase and sale transactions with IAG subscription rights through the complainant's online broker and complained that at 2:00 p.m. on the last day of trading his rights had been sold.

The entity provided a copy of the digital footprint log of email, SMS and Internet activity relating to a communication in which, among other issues, the complainant was informed that he could subscribe the capital increase online before 10:00 a.m. on 25 September 2020 or not subscribe the increase, in which case, unless he indicated otherwise, the sale of the rights would be ordered on the last day of trading. The entity informed him that in the second option, when the time came, if there was a counterparty, the order would be executed and the amount of the sale would be credited to his account and, if there no counterparty was found before the end of the sale period, he would lose the value of the rights. Furthermore, a clause in the contract for the custody and administration of securities relating to the entity's obligations established that, if it did not receive express instructions from the client, the entity would dispose of the unexercised subscription rights before they expired, as long as the market permitted, and only for securities traded on the Spanish market.

Consequently, as on 25 September 2020, the complainant had not given instructions on what to do with his IAG rights and there was no registered sale order in the entity's systems, the entity proceeded, in accordance with the provisions of contract and the informative communication sent out, to sell all of the deposited subscription rights. The order was executed and the amount obtained from the sale was credited to the complainant's account.

The Complaints Service considered that the entity had acted correctly when it sold the rights deposited in the securities account since there was no record showing the complainant had given instructions on how to proceed in light of the different options proposed by the entity, nor was there evidence that he had registered a sale order for the rights that were deposited in the securities account.

In cases R/10/2021 and R/261/2021, the complainants expressed disagreement with the loss of subscription rights deriving from a capital increase of foreign securities.

The entity provided a copy of the standard securities custody and administration contracts that established that, if it did not receive express instructions from the client, the entity would dispose of any unexercised subscription rights on the expiry date, as long as the market permitted, and only for securities traded on the Spanish continuous market (which was not the case in these complaints as they referred to foreign securities).

In addition, the entity sent the complainants two communications that, among other issues, indicated that they could subscribe the increase, specifying the corresponding payment for each new share and the deadline (date and time) for issuing the order, or not subscribe the increase, in which case the client was required to sell the rights himself since it was a capital increase involving foreign securities.

In case R/10/2021, when the deadline expired with the entity not having received instructions on how to proceed with the rights it had in its portfolio, these were extinguished without value, in accordance with the provisions of the securities contract. The Complaints Service considered that the entity had acted correctly in these cases. However, the Complaints Service considers that it would be good practice for the communication of a capital increase in a foreign company to expressly reiterate that in the event that the expiry date is reached without the rights being sold or exercised, these would become worthless, as stipulated in the securities contract.

In case R/261/2021, the communication indicated that the orders had to be processed before 10:00 a.m. on 22 January 2021 if the investors wished to subscribe the capital increase. The complainant contacted the entity by telephone at 7:08 p.m. on 22 January 2021, indicating that he wanted to subscribe the capital increase and was informed that the deadline had already expired. The Complaints Service considered that the entity had acted correctly given that the complainant had called the entity well after 10:00 a.m., so there was no doubt that he had exceeded the deadline for issuing instructions.

In case R/386/2021, the complainant owned some shares and as the result of a capital increase informed the entity of his intention to subscribe new shares, and that he had two rights remaining. On the last day of trading of the subscription rights, he bought 2,000 more rights which, added to his two remaining rights, made a total of 2,002, and his intention was to exercise the rights and subscribe new shares.

The complainant expressed his disagreement with the fact that while he had not placed any orders to sell the rights and held a sufficient balance in his cash account to cover the exercise of the subscription rights, the entity had not subscribed the new shares and his rights had been extinguished without any value.

However, the complainant had received a communication from the entity, the last paragraph of which stated: "If we do not receive a response, we will proceed to: Not subscribe and sell the rights, unless you buy or sell the rights, in which case those that have not been sold or exercised at the end of the capital increase, will expire and become worthless. In "partial" subscriptions, unsubscribed rights will be sold".

In view of that content, although the entity's usual procedure was to sell the subscription rights if there was no response from a client, an exemption to this rule was established when the client bought or sold rights on the market, in which case the investor was responsible for ordering the sale or exercise transaction.

In short, as the 2,000 rights had been purchased on the market by the client, the aforementioned exemption was applied: "[...] unless you buy or sell the rights, in which case those that have not been sold or exercised at the end of the capital increase, will expire and become worthless". Therefore, the Complaints Service concluded that the content of the information received had been correct and clear enough for the investor to be aware of the characteristics of the transactions, as well as the consequences of acquiring rights on the market.

In regard to the two surplus rights, given the listed price of the rights and the costs that their sale entailed, it was not profitable to sell them (it would only be profitable to sell ten or more rights) and therefore the two rights were not sold. In other words, the two rights were not sold because the cost of sale was higher than the return that would have been obtained, which caused them to expire, also without value. Consequently, the Complaints Service considered that the entity had acted in accordance with good practices and financial uses of the stock market and in the interest of its client, by not selling the two subscription rights on their last day of trading.

➢ Restrictions on the transferability of foreign securities

Securities listed on foreign markets are sometimes subject to operating restrictions imposed by the international broker with which a Spanish entity operates.

The powers of the Complaints Service in relation to the securities markets are limited exclusively to Spaniards and entities involved in the Spanish market and does not have information about trading securities in foreign markets or the entities involved in these. For such cases, the Complaints Service refers only to the action of the Spanish entity in terms of compliance with the rules of conduct that are applicable to it.

Investment firms must act honestly, impartially and professionally, in the best interest of their clients, and observe, in particular, the principles established in the rules of conduct applicable to those who provide investment services.[56]

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

The obligations of investment firms include keeping their clients properly informed at all times.[57] Likewise, in their capacity as final custodians and administrators of the securities, entities must report any relevant circumstances that could affect their clients' investments, so that they make the decisions that they consider most appropriate for their interests.

The Complaints Service considers that restrictions on securities imposed by an international custodian is an issue that substantially affects transactions with the security. Therefore, prior to placing purchase orders for these types of securities, entities should warn their clients of the specific risks of acquiring these financial instruments.

In addition, when the risk is detected (restricting operations), the entity should inform all clients who have shares deposited in the entity's securities accounts, so that their holders can take the measures they deem appropriate, such as transferring the shares free of charge to an entity that does not have restrictions on trading with the shares, selling the shares before the restriction becomes effective, etc.

Some complaints referred to restrictions on the transferability of foreign securities that have been in place since 2020, when the corporate social responsibility policies of some international securities brokers and settlement entities prevented them from providing processing or settlement services for orders on certain securities with exposure to cannabis-related activities.

In case R/550/2021, the entity acted correctly as, through an email sent on 13 March 2020 to the mailbox validated by the complainant, which was logged in the entity's internal records, it notified him of the operating restrictions communicated by its international intermediary, offered him the opportunity to operate with the security until 31 March 2020 and warned him that as of that date it would not be possible to process purchase and sale orders on that security through the entity.

However, in case R/463/2021, the entity committed bad practice by not informing the complainant, prior to the acquisition, of the existing risk that these types of shares in companies with exposure to cannabis-related activities could be affected or blocked by certain operating restrictions imposed by international brokers. The entity had been aware of the risk of potential restrictions since 2020 and failed to demonstrate that it had warned the client about this risk before the latter acquired, on 11 February 2021, shares whose transferability was restricted a few days afterwards for that reason. However, once the communication from the sub-custodian about the inclusion of the company in question on the list of companies affected by the foreign broker's code of conduct had been received, the entity contacted the complainant in a timely manner (on the third business day after the communication) to inform him of what had happened and obtain instruction, calling him by telephone (on 24 February) and sending him an email (on 25 February).

In case R/266/2021, the entity also committed bad practice by not informing the complainant of the operating restrictions immediately it became aware of them. When the entity was informed that its international intermediary had decided to

57 Article 209 of Royal Decree Law 4/2015, of 23 October, which approves the recast text of the Securities Market Act.

impose restrictions on the security on 16 February 2021, it should have communicated this to its clients. However, this bad practice was resolved through a statement sent out on 23 February 2021 in which the entity informed the complainant of the incident and offered him an alternative method for selling the shares.

Other complaints referred to the restrictions on foreign securities imposed by the compliance department of the international custodian, due to specific circumstances such as the company's situation, volatility, etc., or because the shares were acquired in OTC markets, outside the organised markets.

In case R/3/2021, the entity acted incorrectly, as although it informed the complainant about the restrictions imposed by the international custodian on transactions with the security after the sale order for the shares had been placed, the complainant did not receive any type of warning or prior information that transactions with the security could be restricted by the international custodian under certain circumstances. However, in case R/592/2020, the entity acted correctly as its staff warned the client of the risks of acquiring foreign shares in OTC markets. Thus, in the telephone conversation in which the client placed the purchase order, the entity's staff expressly warned him that the security on which he was going to place the order could be subject to restrictions by the broker and, if this happened, he would not be able to sell the shares that he intended to buy, to which the complainant responded that he was aware of that risk.

In case R/399/2021, the respondent entity sent a communication to the complainant on 3 March 2021 informing him that for regulatory reasons it was going to place indefinite restrictions on trading in the OTC market as of 15 March, and also warned him that transaction on some securities on that market could already be restricted (this affected the foreign security that was the subject of the complaint and the reason that prevented it from being sold).

In this case, the securities came from a transfer received by the respondent entity from another entity on 14 May 2015, when transactions on it had already been restricted. In other words, the security had been delisted from the market on 14 September 2009, prior to the transfer of the shares to the respondent entity. As the shares had been transferred from another financial entity, the respondent entity was not required to report this type of risk.

In regard to the obligation to inform the client at the time additional restrictions on transactions were established, the Complaints Service concluded that the entity had acted correctly, since it did inform him that it was going to indefinitely limit transactions in the OTC market as of a certain date, advising him that if he wanted to sell the securities he had to place a sale order, provided that the securities had not been the subject of previous restrictions, and, if he could not sell them, he had to transfer them to another entity that would allow them to be sold.

➢ Requests for information on shares

Investment firms must keep a record of all the services, activities and operations that they carry out. This record must be sufficient to allow the CNMV to perform its supervisory functions, and apply the appropriate executive measures and, in particular, be able to determine whether the investment firm has fulfilled all its

obligations, including those relating to its clients or potential clients and the integrity of the market.[58]

The records shall be provided to the client involved upon request and kept for a period of five years and, where requested by the competent authority, for a period of up to seven years.[59] Therefore, entities must properly address all requests for information or documentation made by clients, provided that they are not disproportionate to the ordinary information obligations to their clients or lack the minimum required specificity. Likewise, if they do not have the requested documents, either because they do not keep them due to the expiry of the indicated deadlines or for another reason, they must clearly indicate this to the client.

In case R/21/2021, the complainant stated that he had unsuccessfully requested an extract from his securities portfolio at his branch and that they had given him some paper printouts of screenshots that, in his opinion, were not valid as a historical performance document, since they did not include the information that he had requested (actual date of acquisition of the securities, file number of the securities and number of shares).

The entity alleged that the complainant had approached the CSD to complain about the information that had been provided by the branch in relation to the deposited shares in his securities contract, as it was his understanding that it lacked documentary value, and asked the CSD to provide information about the securities deposited in his securities portfolio. The CSD sent a certificate to the complainant's address showing the movements in his securities account from 1999 until the date of the CSD's response (March 2020) and provided a copy of the aforementioned letter and certificate.

In regard to the certificate, the entity specified that in some cases the acquisition price (marked with an asterisk) could not be offered, for example, in cases in which the securities had been transferred from another entity or as part of a will, or if they were shares that came from capital increases, exchanges or splits, for which the application did not show an acquisition price.

For all these reasons, the entity concluded that it had not failed to respond to the request for information and submitted additional documentation showing the tax information relating to the securities contract for year 2020 (which it also claimed to have sent to the client) as well as the contract for the custody and administration of securities signed in 2015, which was updated in 2017.

Although the client indicated in his letter of complaint that having asked the respondent entity to make the documentation related to his securities account available, they had ignored his request, based on the information submitted in the case, the Complaints Service considered that the entity had responded to the request for information in March 2020, sending out a certificate containing information on the shares to the notification address provided for the securities custody and administration contract, which reflected the information it had from 1999 onwards.

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58 Article 194.1 of Royal Decree Law 4/2015, of 23 October, which approves the recast text of the Securities Market Act.

59 Article 194.3 of Royal Decree Law 4/2015, of 23 October, which approves the recast text of the Securities Market Act.

However, the Complaints Service clarified that if, as the entity had indicated, the depository had changed since the client acquired the shares, both the source entity and the target entity would be obliged to keep records of the transactions made for the specified regulatory period (five years), while the regulations in force did not require a history of past transactions made by the client with other investment firms be submitted in the transfer.

➢ Tax information

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

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

In case R/716/2020, the complainant had repeatedly requested information on the tax withholdings applied to the redemption of his investments under two CIS portfolio management contracts.

The taxation of capital gains/losses on different CISs that make up a portfolio is deferred until the definitive redemption date, so that the seniority and acquisition cost of the initial fund units are preserved until their effective redemption at a later time. Therefore, to calculate the capital gain or loss obtained by each fund in a portfolio, the acquisition cost of the units contributed to it must be considered, as well as all the movements, including redemptions, that have taken place since the corresponding initial investment was made.

In this case, it was striking that the returns obtained (and, consequently, the tax withholdings) by the CISs redeemed in portfolio 1 were on the whole greater than those obtained on portfolio 2 when, at least apparently, the difference between the gross amounts redeemed and the contributions made had been larger in portfolio 2 than in portfolio 1.

The respondent entity did not offer any further explanations about this matter, either to the complainant or in the case, that is, it did not put forward or justify the real cost (and tax cost) of the CISs in each portfolio at the time of redemption, which was key to understanding the returns obtained and, consequently, the tax withholdings made. Therefore, so it was not possible to make a more detailed assessment of whether the tax withholdings had been correctly or incorrectly implemented. Based on the above, the Complaints Service considered that the entity had not properly informed the complainant of certain relevant aspects of the events that were the subject of the complaint.

In case R/195/2021, the complainant had received dividends on some Portuguese shares, which were subject to a 35% withholding at source and 19% in Spain. The client filed a complaint on 14 December 2020 to seek clarification on the excess withholding charge on the dividend payments he received for the Portuguese shares.

The entity explained that according to the agreement signed between Spain and Portugal the source country always applies an initial tax rate of 35%. However,

residents in Spain could subsequently request a withholding of up to 15% and recover the excess amounts withheld. The entity explained that there were two ways of doing this:

i) Accreditation in the source country. At the beginning of each year, the investor could submit the documentation required for this purpose through his custodian in Portugal. In this way, the reduced withholding amount would be applied directly in the dividend payment. However, the respondent entity did not provide this service.

ii) Subsequent recovery. The investor, in a private capacity and by virtue of the agreement to avoid double taxation, had the right to claim a refund of the excess withholding tax charged at source from the Portuguese Treasury. To do this, he had to submit a claim request together with the documentation that the respondent entity could provide him, according to the procedure established by the custodian in Portugal.

   Therefore, the investor had to attach to the claim submitted to the Portuguese Treasury the Tax-Voucher (source certificate) that would be issued by the custodian in Portugal at the request of the respondent entity, which had to be requested within a one month from the date the dividend was paid into the client's account.

The entity argued that in order to meet this deadline to recover the excess withholding it needed to have the request made by the client authorising the respondent entity to ask for this document on his behalf and there was no record of any such request. In addition, it clarified that the deadline to request the documentation had expired on 11 January 2021, the same date on which the CSD had responded to the client's complaint. However, based on this information and exceptionally, for commercial reasons, the entity decided to return the excess amount withheld.

The Complaints Service considered that the CSD had responded to the client appropriately and within the designated period, and highlighted the fact that the entity had paid the client the amount of the excess withholding tax applied in the source country.

In case R/17/2021, the complainant expressed his disagreement with the tax treatment applied in the redemption of some preferred shares of the entity in 2019 that he had acquired in 2009 in a Lehman Brothers bond swap.

The entity's CSD responded to the complainant, explaining the taxation situation, both at the time of the exchange in 2009, and at the time of the redemption in 2019, providing the tax information corresponding to years 2009 and 2019, and the swap of 2009, in which different provisions for tax treatment were shown.

The Complaints Service concluded that the information provided by the entity on the valuation of the preferred shares at the time of the swap in 2009, as well as the calculations made in the settlement, were consistent with the tax regulations applied and the tax conditions of the swap contract. Therefore, it considered the entity had acted correctly in terms of the information provided and the calculation of the return obtained following the redemption of the securities referred to in the complaint, although it recommended that, in order to resolve any doubts of a fiscal nature, the complainant should approach the AEAT.

In case R/33/2021, the complainant expressed his disagreement with the fact that on 14 January 2021 he had bought some shares and had been charged the tax on financial transactions, which came into force on 16 January 2021. The complainant considered that there had been a delay in the execution of his order and requested that the respondent entity be responsible for the tax.

On 14 January 2021, the share purchase order had effectively been executed and had been settled on 18 January 2021, a transaction that was taxed in accordance with the tax on financial transactions. Looking at the dates mentioned, 14 January (Thursday) and 18 January (Monday), the Complaints Service understood that there had been no extension in the settlement period for the transaction (D 2), and, with the entry into force of Law 5/2020 on 16 January, on the day the transaction was settled, the entity was already obliged to apply the corresponding percentage for the aforementioned tax.[60]

In case R/571/2021, the complainant stated that the entity had not responded to his request for information on three charges of fees for the transfer of securities of Teva Pharm, Petróleos Mexicanos and General Motors that he claimed to need in order to meet his tax obligations. He requested from the entity a "standardised" document (excerpt) containing a series of data, specifically the accounts charged for the amounts owed, the holders of these accounts, the concept for which the amounts had been charged and the name, type, ISIN and nominal value of the securities and, in the two securities that were denominated in US dollars, their consideration in euros and the exchange rate at which the conversion had been made on the day of the charge.

The Complaints Service verified that most of the information had been provided separately, that is, not in a single extract, but in various documents that had been delivered to the complainant, such as data on the securities, the identification of the product in the transfer document, the target entity and the rate applied that appeared in the transfer orders, in addition to a certificate showing the amount of the fee, the charge account, the holders of the account, the concept and nominal amount.

However, with regard to the consideration in euros and the exchange rate at which the conversion requested by the complainant had been made, although he had one account in euros and another account in US dollars, the conversion was not strictly necessary as the currency of the account coincided with the currency of the fee applied. The Complaints Service verified in an extract referring to the custody and administration fee for securities issued by Petróleos Mexicanos and General Motors (denominated in US dollars) that the entity had converted the custody fee to its amount in euros, so the complainant's request that the entity inform him of the equivalent fee in euros charged for the transfer of the securities and the exchange rate applied was consistent and justified.

Consequently, the Complaints Service considered the entity had acted incorrectly by failing to provide sufficient information on the amount in euros and the exchange rate applied in the fee for the transfer of the Petróleos Mexicanos and General Motors securities.

60 CNMV Statement, of 6 June 2016, on the progress of the clearing, settlement and registration reform and publication of a new date of D+2.

➢ Exchanges of foreign CIS sub-funds

Foreign CISs are not supervised by the CNMV but by the competent body in their respective home country. However, the CNMV supervises the performance of distributors in Spain in accordance with national regulations on foreign CISs authorised for marketing in Spain.

Thus, the regulations on information for foreign CISs in relation to the obligation to inform unitholders or shareholders establish that the distributors of harmonised foreign CISs in Spain that are filed in the corresponding CNMV register must send (free of charge) to unitholders or shareholders who have acquired units or shares in Spain, all the information required under the legislation of the State in which they have their headquarters, adhering to the same terms and deadlines set down in the legislation of their home country.[61]

Investment firms that have executed an order on behalf of a client that is unrelated to portfolio management, must:

i) Promptly provide the client on a durable medium the key information on the execution of the order.

ii) Send a notification to the client on a durable medium confirming the execution of the order as rapidly as possible and no later than the first business day after execution or, if the investment firm receives confirmation from a third party, no later than the first business day after receiving confirmation from the third party.[62]

Based on the above, entities that market foreign CISs in Spain must provide their clients with detailed information on exchanges of foreign CIS sub-funds both before the transaction has been carried out and once it has been completed.

In case R/352/2021, the complainant alleged that an exchange transaction had not been authorised and he had not been aware of it. The transaction had been carried out in December 2018, with shares of a Luxembourg investment sub-fund for another newly-created sub-fund, both of which were identified with the same ISIN code, and requested that the entity return the amount of tax that he had had to pay for the capital gains generated in the exchange, as well as the amount of the fees that had been charged.

The documentation submitted in the case demonstrated that on 8 November 2018 the entity had delivered to the complainant a letter addressed to him personally about the investment sub-fund that was the subject of the complaint. This letter notified the client of the future exchange of the shares of the sub-fund for shares of another newly-created sub-fund, the effective date of the change, the deadline for receiving transfer/redemption orders and the options available to the holders of the sub-fund shares:

i) Take no action, in which case the shares would be automatically exchanged for shares of the new sub-fund.

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

62 Article 59.1 of Commission Delegated Regulation (EU) 2017/565, of 25 April 2016, supplementing Directive 2014/65/EU of the European Parliament and of the Council as regards organisational requirements and operating conditions for investment firms and defined terms for the purposes of that Directive.

ii) Transfer the investment to another sub-fund or another class of shares in the sub-fund.

iii) Redeem the investment.

The entity also advised the complainant of the tax consequences of the different options and suggested that he look over these options with a tax or financial advisor.

Therefore, the Complaints Service considered that the respondent entity had complied with its duty to offer its client the information on the corporate transaction that it had received from the sub-fund manager. Consequently, the entity's actions complied with the CIS's own regulations, as it was demonstrated that it had sent the complainant detailed information on the transaction reasonably in advance.

The complainant also stated he had not received any information on the execution of the exchange transaction, and for that reason he had not been aware of it until he was preparing to submit his income tax return.

However, the entity indicated that as it had not received any instructions about the exchange, on 25 December 2018, the source sub-fund was redeemed and the new sub-fund was subscribed – statements of these transactions were submitted in the proceedings, which it also sent to client on the same day they were carried out.

Consequently, the Complaints Service considered that once the exchange had been carried out the entity had complied with its obligation to notify the complainant of the execution.

3.5 Orders

In general, an order is defined as the mandate or instruction that the investor passes on to the investment firm of which he or she is a client (which acts as an intermediary in the transaction) to carry out transactions on a specific financial product.

The basic types of orders – depending on the intentions of the interested party – are usually:

– Subscription orders: when an issuer's recently-issued securities are obtained or investment fund units are acquired.

– Purchase orders: when securities that are already listed on secondary markets or shares in CISs are acquired.

– Sale orders: when securities that are already listed on secondary markets or shares in CISs are sold.

– Redemption orders: orders to divest (sell) investment fund units.

– Transfer orders: the transfer of shares between securities accounts of the same holder (normally between different intermediary companies) or the transfer of shares/units between CISs (which implies implicit redemption/sale transactions at source and subscription/purchase transactions at target).

With regard to the types of orders that are made in the secondary market, a distinction can be made between: limit orders, market orders, and at-best orders.[63] This is a fundamental distinction as it affects the price at which the order is executed. Only in the first case (limit orders) is a client guaranteed an execution price (price that acts as the maximum price for the buy order and minimum for the sell order). With market orders, no price limit is specified, so they are traded at the best price offered by the counterparty at the time the order is entered.

Lastly, at-best orders are orders that are entered without a price. The trade is made at the best counterparty price at the time they are entered. They can be entered in both auctions and open market periods. If the at-best price does not provide sufficient volume to cover the entire order, the portion that is not covered will be limited to that price (it cannot be crossed to another, more unfavourable, price). At-best orders are used when the investor wants to ensure an immediate execution but also wants to exercise some control over the price. The objective is to ensure the order is not executed at different prices.

It should also be highlighted that when executing client orders, investment firms must 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. Therefore, they must act with care and diligence in their transactions, have an order execution policy in place, inform their clients about this execution policy, obtain their consent before it is applied, and be in a position to demonstrate that they have executed their clients' orders in accordance with their best execution policy. However, the entity must also comply with any specific instructions given by the client.

➢ Errors in form in completion of orders

Securities orders that contain the client's instructions must be completed so that both the ordering party and the entity responsible for receiving and processing the order accurately and clearly know the scope and effects.

The order must have the following content:[64]

– Identification of the investor.

– Identification of the type of security.

– Purpose of the order: purchase or sale.

– Execution price and volume, if limits or conditions are to be applied. If the client does not specify a price, the order is deemed to be a market order and to remain in force until the close of the session.

– Period of validity.

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63 Section 6.2.2 of Circular 1/2001, of Sociedad de Bolsas, on the Operating Rules of the Spanish Stock Market Interconnection System (SIBE).

64 For more information about orders, see the CNMV's *Securities Order Guide*. Available at: https://www.cnmv.es/DocPortal/Publicaciones/Guias/guia_ordenesvalores_engen.pdf

– Securities debit or credit accounts.

– Associated cash account.

– Any other necessary information depending on the channel used or market regulations.

As an example, in case R/165/2021, the complainant stated that the entity had delayed the execution of his order to purchase some foreign shares that he had sent by email to an employee at his branch. He was informed that email was not the best way to issue orders for transactions and that these should be made in writing, via telematic channels or by telephone, calling one of the numbers provided by the entity for this purpose.

In addition, in this case it was proved that even though the holder regularly communicated with his manager by email and that the latter had processed and confirmed orders placed using this channel, the complainant had always signed the corresponding order afterwards. In the transaction in the complaint, the order had been signed and processed four business days after the email had been sent and it had been settled correctly, executed at below the limit price indicated.

➢ Contingent stop loss orders. Operation and types

Some entities that provide investment services offer their clients more sophisticated securities orders than those available on the market for all investors. These are contingent orders, according to which the order will only be entered in the market if a specific condition is met, for example the financial asset reaching a certain price.

The best-known are stop-loss orders, which are widely used by investors in order to protect themselves against any possible falls in the price of the financial asset in which they have invested. They are activated when the quoted price falls to a level at which the investor no longer wants to take risks and therefore wants to unwind the position. They are orders that do not involve entering an order into the market immediately. The quoted price of the security must reach the condition established for the order to be activated and enter the market. Consequently, the activation condition of any mandate of these characteristics can only be met when transactions have been crossed in the secondary market at the price pre-established by the originator.

Once the order has been activated, it will be executed on the market according to the type of order that the client has selected (market, limit or at-best). Therefore, it should be clarified that this type of order does not guarantee execution at a certain price, but that it has been entered on the market, and the execution will depend on the type of order it is – with no guarantee of the execution itself or speed at which it is executed in the case of a limit price; the order could be rejected by the market, or the cross price itself in the case of the market order.

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

The Complaints Service considers that it would not be correct for entities to allow their clients to place these types of order through its website in cases where they are not admitted by the financial intermediary market member, as the order would be rejected when it is entered into the system.

In case R/346/2021, the investor complained about the rejection of a sell-stop sale order on US shares. In the case it was explained to him that this type of order allowed clients to place a sale order below a market price and therefore it was an essential condition that the stop price be below the listed price and once the price touched or fell below that stop price, an order would be placed on the market. In this case the ordering party had placed a contingent order before the market opened at US$23.44 and when the market opened the market bid price was US$22.71. Therefore, when the entity's broker received the order, it rejected it in less than one minute as it was impossible to cover and did not comply with the conditions for this type of order.

In case R/214/2021, a sale order had been placed on IAG shares with the following format: "sell at-best with a trailing stop at 1.70". The complainant particularly disagreed with the fact that the condition that had been set had not worked and his order had been executed well below the indicated price, at €1.46, while insisting on the use of a "trailing stop", a modality offered by the bank that allowed a margin to be applied with respect to the listed price, which this case was 1.5%.

It should be noted that "trailing stop loss" orders are similar to the traditional "stop loss" orders, but instead of remaining at a specific price level, they follow the price of the asset when it moves favourably although they also allow the potential fall to be limited if the asset price movement is unfavourable.

In the case in hand, the entity claimed that the order had been executed correctly, entering a stop at €1.70 (on a non-business day, taking as a reference the last cross price on the previous business day: €1.728). This resulted in the order being entered into the market, given that the next business day it opened at €1.484. Consequently, the order was crossed shortly afterwards at the price of €1.464.

However, the stop condition that had been entered order had the following parameters: "at-best", "trailing on stop", "change on stop: €1.7, margin on stop: 1.5%". In other words, it had signs of both a fixed stop order and a trailing stop order (with a margin) and according to the conditions that regulate this type of order set by the entity itself, it could be placed in either of these formats, but not both. Therefore, clarification was requested from the respondent entity regarding the true type of the order and its activation and execution. This request was not addressed by the bank and for this reason it was considered to have committed bad practice, since it was not proved that the order had been executed correctly.

➢ International securities transfer orders

Before presenting the criterion adopted by the Complaints Service with respect to international securities transfer transactions, the criterion applied for national transactions of this nature should be mentioned.

Iberclear's procedures for the execution of securities transfers[65] provide that the participating institutions (source and target) may carry out transfers of securities between their respective accounts in Iberclear and the processing of the transfer will require the express communication of the transaction by the entity or entities involved. In other words, the procedures allow the transfer of securities between Spanish entities to be initiated by either of the two entities involved.

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

Additionally, if the international transfer entails some kind of extraordinary cost or tax impact for the investor requesting the transaction, it is considered that the investor should be informed of these aspects at the time of placing the order.

In case R/101/2021, the complainant, dissatisfied with the securities administration and custody fees charged, requested the transfer of his securities portfolio from foreign entities on two occasions. Bad practice was deemed to have been committed in the request made to the first of the entities, as the respondent entity did not comply with the request for additional information submitted by the Complaints Service, which hindered the investigation and prevented it from being resolved correctly. However, with regard to the transfer order made to the second foreign entity, it was concluded that although the source entity had correctly rejected the transfer as there were insufficient funds in the associated current account to meet the corresponding fee, it had not acted diligently as it had informed the complainant of the reason why the order had been rejected with several days' delay.

➢ Orders rejected due to insufficient balance

As we have already seen, intermediaries are obliged to attend to the orders received from their clients. However, sometimes these orders cannot be executed as there are insufficient funds in the current account associated with the securities contract to cover the expenses deriving from the transaction that has been ordered.

For example, when some securities are sold or transferred in their entirety, apart from the transaction fee, payment of a fee for the deposit and administration of securities is required (for the corresponding time). There may also be charges pending for other expenses, or expected and unpaid fees (for the redemption of other securities, the payment of dividends, capital increases, etc.) that will reduce the available balance in the associated current account and hinder the orderly execution of the transaction.

In these cases, it is not incorrect to reject the transfer/sale/purchase/subscription of the securities because there are not sufficient funds to cover any justifiable fees and expenses.

65 PR240 procedure on securities transfers.

Cases R/428/2021 and R/259/2021 involved securities transfer orders that were rejected by the source entities as there were insufficient funds in the associated cash accounts to cover the expenses that would be charged to the complainants. However, in the first case, although the client contributed more cash after the initial rejection of the order, the entity once again rejected his next two orders for the same reason, signalling that this was due to new charges on the current account. Lastly, bad practice was established as the respondent entity did not provide additional details about the new expenses or specify the transfer cost and custody fees, or their basis of calculation.

In the second case, it was explained that although it was not incorrect to reject the transfer of the securities because there were not sufficient funds to cover the pending fees and expenses that would be passed on by the source entity, it falls to the bank receiving the order to advise the client of the reasons for the rejection to prevent processing delays. In this case, it was not proved that there were insufficient funds, although the initial transfer had been rejected for this reason.

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

In relation to the previous point, it is worth noting the particularities of purchases of investment products with an insufficient balance of funds in the associated current account.

Regulations[66] establish that members of the official secondary market are required to execute, on behalf of their clients, any orders they receive from them for trading of securities in the corresponding market. However, with regard to spot transactions, the entity may subordinate compliance with this obligation to the ordering party delivering the funds used to pay for the amount of the transaction.

This subordination referred to in the legislation may be incorporated into the securities deposit and administration contracts.

In any event, it seems necessary for entities to have implemented appropriate procedures and control measures so as to avoid overdraft situations, given the negative consequences this causes for both parties. Thus, it is common that when a purchase order is executed at-best or at market price, given that the price may be extremely volatile, the final amount to be charged to the account will differ substantially from the forecast amount, which would not occur if the orders were limited.

In regard to this issue, it is important to take into account of whether this type of incident – purchase of assets with insufficient balance – happens on a one-off basis, in which case the responsibility may fall on the complainant, or whether it occurs systematically, which is a situation that the entity should avoid.

In fact, entities may make the processing and execution of their clients' securities orders contingent on the client providing the necessary funds, not only the amount of the investment, but the total amount, including the transaction fees.

66 Article 71 of the recast text of the Securities Market Act as approved by Royal Legislative Decree 4/2015, of 23 October.

In case R/95/2021, an overdraft was produced after the purchase of preemptive rights. This happened because the order was given in "market" mode before the stock market opened, based on the closing price of the previous day, €0.0368, to calculate the amount required to cover the transaction, estimating a total purchase amount of €7,948.80, which the complainant had in his account. However, the price when the market opened was almost double this, and the transaction was executed at €0.068 per right, for a total sum of €14,687.99, creating an overdraft of more than €3,000 in the client's current account due to insufficient funds. The signed contract did not require a greater prior provision of funds and stipulated the steps to be followed in the event of an overdraft, and therefore the Complaints Service considered the entity had acted correctly in the execution of the order.

In case R/585/2021, the complainant made two purchases of US shares in the same day, the first for 500 shares and the second for 5,000 shares. However, the second transaction triggered an overdraft of €54,963.17. The complainant argued that the system had erroneously added an additional zero to his order and also that the entity should not have allowed the order to be made because his balance was clearly insufficient.

It was proved that the orders had been correctly executed as market orders, that the ordering party had confirmed the parameters of the second purchase, that at that time he only had €3,879.19 available in his account and that the deposit and administration contract did not require a provision of funds in the associated current account prior to placing a purchase order. However, given the enormous difference between the balance available in the account and the amount charged, the financial company clarified that it had control mechanisms in place, namely, when placing the order, the transaction was valued at the last known price and if there was an insufficient balance of funds in the associated account, a message to this effect was displayed. The second order was placed on the open market and the last reference price should have been very close to the execution price and not the previous day's closing price, as the entity indicated. Consequently, it was considered that the control mechanisms established by the entity had not worked and that it had acted incorrectly.

➢ Unilateral execution of positions by the entity

Investment firms can unilaterally close positions opened by their clients in certain financial instruments, a possibility that is usually included in the contractual documentation signed between the parties.

Although this may be justified in some cases, the Complaints Service considers that prior to the investment, the entity must inform its clients of the cases in which it could act in this manner.

The most common case of unilateral closure of client positions by entities is related to trading with certain financial derivatives products, which, due to their leveraged nature, lead to the 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 (close of positions).

In this respect, for derivatives contracts or contracts for differences (CFDs), the obligations assumed by the parties are generally laid down in the contract itself. This usually includes the client's obligation to set up and maintain a series of margins that depend on the price of the underlying asset on the secondary market. Also, in the event that these margins are exceeded, the positions will be closed if the investor does not provide the requested funds.

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

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

Furthermore, the European Securities and Markets Authority (ESMA) published in the *Official Journal of the European Union* a series of product intervention measures related to the marketing of CFDs and binary options to retail investors.

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

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

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

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

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

– The prohibition of incentives to promote transactions.

– A standardised risk warning.

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

> *[...] (e) "margin close-out protection" means the closure of one or more of a retail client's open CFDs on terms most favourable to the client in accordance with Articles 24 and 27 of Directive 2014/65/EU when the sum of funds in the*

CFD trading account and the unrealised net profits of all open CFDs connected to that account falls to less than half of the total initial margin protection for all those open CFDs;

(f) "negative balance protection" means the limit of a retail client's aggregate liability for all CFDs connected to a CFD trading account with a CFD provider to the funds in that CFD trading account.

➢ Sales order without updated data

For the correct processing of their clients' orders, financial institutions keep their records duly updated and inform the holders in a timely manner of any relevant event that may affect their deposited securities and transactions on these – capital increases, splits, reverse splits, delistings, mergers, limits imposed by the markets themselves or the intermediaries used, etc.

In 2021, several improper executions of securities transactions were observed, generally in telematic transactions, caused by the failure to update the ISIN entity's systems or the overlapping of a new share issue with the previous, which should have been separated from the operating securities listings.

In cases R/518/2021 and R/519/2021 the complainants sold some foreign shares when there was reverse split (1 x 15) in progress. Thus, their orders were placed with the previous number of shares they held but with the quoted price of the new shares. This irregularity was subsequently corrected by the entity, which had performed transactions on behalf of the holders without their express consent. Although the respondent entity was empowered to resolve the situation, bad practice was identified as it had not correctly listed the securities and had not informed the complainant in advance about the reverse split made by the issuer.

➢ Cancellation order for a portfolio management service

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

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

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

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

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

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

It is important to note that, as long as the amount of the redeemed units of the managed funds used to subscribe units of the bridge fund is not made available to the holder, the transaction will have no tax effects[67] and the capital gain or loss implicit in the CIS transfer will be deferred in time until the units are definitively redeemed. In this way, the use of a bridge fund for the total or partial cancellation of the portfolio means that if the client does not wish to incur tax effects at that moment, an order can be issued to transfer the units from the bridge fund (source fund) to another managed portfolio or one or more other CIS (target fund), thus postponing the tax effects of the cancellation.

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

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

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

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

Consequently, the period in which entities carry out the total or partial cancellation of the managed portfolio may vary in accordance with the circumstances of each specific case (transactions pending processing, settlement of accrued fees, etc.). In general, entities establish a maximum period of between 8 and 15 business days to carry out this task.

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

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

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

In case R/622/2020, the complainant stated that he had requested to redeem his fund and that the bank had taken several days to make the order effective so that in the end he had obtained a lower amount than expected. It was verified that the respondent entity acted correctly in this instance as the holder had a managed portfolio of CISs, for which the portfolio redemption procedure in the contract included a period of 15 days and the use of a bridge fund, the value of the portfolio was taken the day after the order had been issued, the five CISs in the portfolio were transferred to the bridge fund two days later, and four days after that the CISs were redeemed at the corresponding net asset value, so the entire transaction had been completed in a period that was considerably shorter than the period stipulated in the contract.

In case R/579/2021, the complainant was dissatisfied with the redemption dates for the funds in his managed portfolio, which he considered to be "random". Once again, the entity was deemed to have acted correctly as it had a maximum period of 15 business days to make the cash available to the client and had carried out the transaction in around ten calendar days. In this case, the funds were redeemed directly without a bridge fund.

➢ Verification period for the internal transfer of CISs

The transfer of shares or units between CISs must be reflected in a transfer order accrediting the willingness of the unitholder to redeem units or shares of a certain CIS (the source CIS) and to subscribe units or shares of another CIS (target CIS), whose specific characteristics and conditions are defined in the prospectus.

Transfers of investments between CISs are governed by the provisions laid down in Article 28 of Law 35/2003 of 4 November on Collective Investment Schemes and, for matters not provided therein, by general legislation regulating the subscription and redemption of investment fund units. Withdrawing from a fund, even when reinvesting the resulting amount in another fund (which is treated differently for tax purposes), involves a redemption of the units of the source fund and a subscription of the units of the target fund. This transaction is therefore subject to all general legislation on CIS subscriptions and redemptions.

The aforementioned regulation indicates that in order to initiate the transfer, the unitholder 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 entity will have a maximum of two business days following receipt of the request in which to perform the verifications that it deems necessary. Both the transfer of cash and transmission by the source company to the target company of all the financial and tax information necessary for the transfer must be performed from the third business day following receipt of the request.

Similarly, both the deadlines established for setting the NAV applicable to transfer operations and the period provided for settlement of the transactions will be governed by the provisions in the prospectus of each fund for subscriptions and redemptions.

Notwithstanding, in transfers between CISs in which the entity is the distributor of the source and target CISs subject to the orderly transfer and, as occurred in case R/595/2020, the source and target management company belong to the same group as the distributor, the Complaints Service considers that the deadlines established in the regulations for transmitting information from target to source and for carrying out the necessary checks are not applicable, so for the execution of the redemption of the source fund in the transfer, the date of the transfer request must be taken as the redemption date.

In other words, it is not necessary to carry out checks on the requests received directly from the investor by the distributors of the CISs in the order, other than those that must be carried out within the framework of the redemption and subscription to the CISs, under the terms extended to carry out these transactions by the regulations. In short, the redemption implicit in the transfer will be processed as an ordinary redemption.

3.6 Fees

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

Among the basic principles that underpin the relationship between the entities that provide investment services and their clients is the duty to act with honesty, impartiality and professionalism, in the best interest of the clients, observing the rules and principles established in the Securities Market Act and its implementing regulations. One of these obligations is to keep their clients properly informed at all times[68] providing them with proper advance notice of all the costs and expenses associated with the services offered by the entity or related to the financial instruments.

In this sense, a distinction is made between the criteria maintained by the Complaints Service on compliance by entities that provide investment services with the obligation to provide prior information on costs and expenses in the complaints processed in 2021 referring to negotiable securities, or to CISs and the provision of portfolio management services.

3.6.1 Negotiable securities

The MiFID II regulation[69] determines that investment service providers must report *ex ante* of all the costs and expenses of the service – including the cost of the platforms

68 Articles 208 and 209 of the LMV and Section 1 of Chapter III of the Commission Delegated Regulation (EU) 2017/565, of 25 April 2016.

69 Article 50.2 of Commission Delegated Regulation (EU) 2017/565, of 25 April 2016, supplementing Directive 2014/65/EU of the European Parliament and of the Council as regards organisational

or applications made available to the client to operate in the markets and of the financial instrument – so that they are understandable to the clients to who the information is addressed. Furthermore, payments received from third parties in relation to the provision of the service to the client (inducements) must be broken down.

When it comes to specific transactions (e.g. transfers), *ex ante* information on costs must refer to the real rates, be tailored to the specific transaction or service and be provided at the time the transaction is requested, as long as it is requested through the source entity, as, if it is requested through the target entity, the source entity will only need to certify that the client had been informed of the fee at the start of their relationship (R/563/2021).

In the case of recurring transactions or services (e.g. custody), the information should only be provided at the start of the relationship and in a non-tailored, standardised manner.

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

Clients should be aware of the fees that they will have to pay before the start of the commercial relationship, given that they affect the return on their investment. This information is usually collected or attached to the administration and custody contract for financial instruments, although, as indicated above, for non-recurring transactions entities must inform their clients before they are carried out.

In the event that fees are increased, entities must inform their clients before the new fees are applied and give them a minimum of one month to modify or cancel their contractual relationship with the entity, and the new fees may not be charged during this time. However, if the right of separation is exercised by the client during this period, the rates previously in force will be applied unless the entity decides not to charge any fees at all. If the fees are decreased, the entity must also inform the client without prejudice to the immediate application of the new rates (R/548/2021).

In regard to the way that clients must be informed of these changes, although entities are not obliged to send their clients the information by certified post with acknowledgement of receipt – in other words, they are not legally obliged to provide proof of delivery –, the Complaints Services considers that they do have an obligation to prove that the information has been dispatched, through a copy of the personal and separate communication sent to the client at a valid notification address. The information on the fee changes, both upwards and downwards, may be included in any periodic communication that the entity must submit to its clients or sent

requirements and operating conditions for investment firms and defined terms for the purposes of that Directive. CNMV document *Q&A on the application of the MiFID II Directive.*

by any means of communication agreed by the parties in the contract, such as SMS, or an alert on the private area of the website.

One of the most common securities orders are transfers between entities. A transfer is usually necessary to cancel a contract or commercial relationship with the depository. Therefore, a transfer fee that is too high could be an obstacle to the right of the investor to end their commercial relationship with the entity. For this reason, although entities are free to set their fees as they see fit, if the amount charged for the provision of this service is excessively high, it could imply a breach of consumer and user rights or even be considered an abusive clause, although it can only be classified as such by an ordinary court of justice (R/236/2021).

Standard contracts for the custody and administration of financial instruments must establish, among other aspects, the form and terms in which the entity will make the deposited or registered financial instruments available to its clients, as well as, where appropriate, their funds and the procedure for their transfer when the contract is terminated, expressly indicating the requirements for this, such as the fees charged for carrying out the transactions pending settlement at the time the contract is resolved and the proportional part of the fees accrued that corresponds to the time of the termination.[70]

Spanish legislation, adapted to MiFID II, establishes that when an investment service is offered together with another service or product as part of a package or as a condition for the same agreement or package – cross selling – the investment firm must inform the client whether it is possible to buy the different components separately and provide separate evidence of the costs and charges of each component.[71] In addition, ESMA published Guidelines on cross-selling practices, which address, among other issues, the full disclosure, prominent presentation and timely communication of price and cost information for cross-selling. The CNMV notified ESMA of its intention to comply with these guidelines and disseminated that decision through a statement.[72]

When more than one investment firm provides investment services or ancillary services to a client, MiFID II establishes that each of them must provide information on the costs of the investment or ancillary services provided. An investment firm that recommends or sells the services provided by another firm to its clients must add the costs and expenses of its own services to those of the services provided by the other firm. The investment firm must take into account the costs and expenses associated with the provision of other investment or ancillary services by other firms when it has referred the client to them.[73]

In relation to the aggregate cost figure provided for in the MiFID II Directive, the CNMV has clarified that it includes, among others, third-party fees and brokerages.[74]

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

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

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

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

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

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

✓ *Method of sending the notification of fee changes*

As we have already seen, entities must inform the clients about any changes in fees and applicable expenses that have been agreed following the procedure described in the previous section.

However, in regard to way in which the investor must be notified, regulations do not require these changes to be sent by registered post or with acknowledgement of receipt. Therefore, it is sufficient that the communication be delivered by ordinary mail or using any alternative means agreed by the parties (SMS, email). In any case, entities must be able to prove that they have sent the information to the client, while its receipt is subject to circumstances, in principle, beyond their control.

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

Therefore, if there have been any changes in fees since the start of the contractual relationship, the entity must prove that it has sent its clients the information about this change in the required terms (R/643/2020 and R/101/2021).

In regard to sending communications of changes in a personal and separate manner, the Complaints Service considers that the entity acts correctly when the letter is addressed to the client and sent to the address indicated in the custody and administration contract for notification purposes. Consequently, a general communication in which the recipient is not identified or the address to which it has been sent is not stated would not be correct (R/54/2021 and R/133/2021).

✓ *Date of application of changes*

As mentioned above, clients must be informed of any increase in fees and given a minimum period of one month from the receipt of the information (or such other minimum notice period as the parties may have agreed or the entity has committed to, case R/54/2021) in which to change or cancel the contractual relationship, during which time the new fees will not be applied. Any reduction must also be communicated, without prejudice to its immediate application. These provisions must be included in the specific regulation of standard contracts.

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

✓ *Content of the notification of changes*

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

With reference to the client's right of separation in the event he or she disagrees with the proposed changes, the term for its exercise and the potential costs associated with exercising this right should also be indicated, which would correspond to the rates still in force (R/631/2020, R/679/2020, R/76/2021, R/298/2021 and R/381/2021).

➢ Foreign currency transactions. Exchange rate applied

When part of the total price to be paid for the investment service is paid by the retail client in a currency other than the euro, the entity receiving the order must inform the client, prior to executing the instructions or signing the contract, of the equivalent value of the currency in question or, failing that, the way in which this will be established or the spread on the official exchange rate that will be applied. Investment firms must also inform clients about the payment conditions or other forms of execution.[75] This information must also be available on the entity's website (R/558/2020, R/751/2020, R/324/2021, R/430/2021, R/479/2021, R/574/2021 and R/127/2021).

In case R/127/2021, the Complaints Service considered that the respondent entity had acted incorrectly as it had not only applied the cost of the stock market exchange rate differential but had also charged a fee for the currency exchange and another fee for the transfer of funds – these were mostly banking fees and their application, in the opinion of the Complaints Service, served only to tax the same service that had already been remunerated by the cost of the exchange rate differential applied, which would have included all the costs and expenses inherent to the payment in foreign currency on the financial instrument.

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

Some complaints refer to the collection of custody and administration fees by entities from their clients relating to securities that have been delisted (R/758/2020, R/33/2021, R/147/2021, R/198/2021 and R/341/2021).

In these cases, even if the securities are delisted, they must remain deposited in an account opened with an authorised financial institution under a securities deposit and administration contract until the company has been wound down (unless the securities are transformed into physical certificates, which requires a specific procedure).

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

However, when this occurs, the Complaints Service considers that it is good practice for the depository of the delisted securities to choose not to charge custody 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 for the client to delist the shares from his or her securities account.

Delisted foreign securities are subject to the regulations of their country of origin. For this reason, given that the supervisory powers of the CNMV are limited exclusively to the Spanish securities markets, and although its criteria for collecting fees is the same as that described above for Spanish securities, the Complaints Service considers it to be good practice when the client wishes to waive foreign securities, for the entities that hold them in custody to do everything in their power to inform the client of whether or not there are any procedures available for delisting this type of share in the accounting records of the source country (R/71/2021 and R/75/2021).

Likewise, the Complaints Service considers it good practice for entities not to charge custody fees on securities that are suspended from trading for long periods of time (R/520/2021 and R/561/2021), since the effect of a prolonged period of suspension for the holder of the securities is similar to delisting.

In case R/188/2021, the complaint received periodic income from some Lehman Brothers securities through redemptions (not from the agreed coupon) until their definitive extinction, and for this reason they could not be considered unproductive securities. In addition, the entity stated that the securities were listed on a specific market so it would have been possible to issue an order for the sale of Lehman Brothers securities on that market. In these circumstances, the Complaints Service considered that until a counterparty had been found for the order, the entity would be following good practices by limiting the fees for the administration of foreign securities to the amount actually received by the client through the redemptions.

➢ Operational cash account linked to the securities account

In relation to the collection maintenance fees for the cash account associated with the securities account, while cash accounts are usually the responsibility of the Bank of Spain, if they are accounts that are ancillary to the securities account, they will fall under the remit of the Complaints Service, as in this case the entity would not be acting as a bank but as an investment firm. It has been the long-standing position of the Complaints Service and the Bank of Spain that when cash accounts (current and savings accounts, etc.) are required to be opened or maintained by the entity solely to support the movements in securities accounts, as long as in practice these movements relate only to securities, investors should not be charged any costs for opening, maintaining and closing them (R/731/2020, R/123/2021, R/271/2021, R/290/2021, R/303/2021, R/440/2021, R/425/2021, R/446/2021, R/467/2021, R/477/2021, R/487/2021 and R/499/2021).

This position adopted by the Complaints Service became a legal obligation[76] and rules were established to ensure that the custody and administration of financial

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

instruments included both the maintenance of the securities account and the cash account, if this was an ancillary account, i.e. with movements linked exclusively to the securities account.

However, if not all the movements in the cash account are related to the securities account and the account is used for purposes other than supporting the investments in securities, the aforementioned exemption would not apply and therefore the entity could charge maintenance fees for the cash account in question. Consequently, as indicated above, the Bank of Spain would be the competent body for assessing the correction of the fee charged and, in particular, whether or not that exemption would be applicable for the other use (R/147/2021).

To close these types of ancillary cash accounts, the securities account must be closed first as its sole purpose is to process the charges and fees corresponding to the securities deposited in the securities account, and thus the closure of this account is linked to the transfer or sale of the financial instruments deposited therein (R/467/2021).

Therefore, the cash account, whether it is considered part of a "bundled package" or as a "component product" – as defined in ESMA Guidelines of 11 July 2016 (ESMA/2016/574) –, [77] remains an ancillary account and implies an additional cost for the client as an unwanted good or service, and thus the fee exemption is applied.

Lastly, it should be noted that this criterion would also be applicable to the opening of cash accounts for the subscription of investment funds, as while opening such an account can facilitate the management of subscriptions and redemptions of CISs, Article 133 of Royal Decree 1082/2012 allows both subscriptions and redemptions to be made without an ancillary account (via transfer, cheque or cash delivery), so this would be optional and not mandatory (R/160/2021 and R/358/2021), required by entities to accommodate the management of these assets to their internal systems.

➢ Fees for limit orders not executed and collection of different fees for one single order

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

In the trading of shares on the secondary market, there are three types of orders: limit orders, market orders and at-best orders.[78] This is a fundamental distinction as it affects the price at which the order is executed. Only in the first case (limit orders) is a client guaranteed an execution price (price that acts as the maximum price for the buy order and minimum for the sell order).

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

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

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

Likewise, the client may place a single order for a certain number of securities but given the market conditions at the time (normally, insufficient counterparties to cover the order due to the purchase or sale volume initially requested) the order has to be executed in several tranches, which implies that the percentage fee calculated for each of these tranches could be substantially higher than the amount the client would have paid if the order had been executed in its entirety. In this case, the Complaints Service considers it good practice for the entities to ensure that the fee applied for this concept is not higher than the amount that would have been applied if the order had been executed in a single tranche (R/273/2021 and R/305/2021).

➢ Fees for issuing tax withholding certificates in other countries

In accordance the double taxation agreements in place with other countries (France, Germany, etc.) to ensure that non-residents can recover excess withholdings at source in the collection of dividends from foreign shares or in other transactions that imply a withholding tax at source, entities must provide any clients who request it the necessary documentation with diligence and speed or, if this is not possible because the entity does not provide that service or for any other reason, inform them clearly and accurately as to how they can obtain it.

In cases in which it has not been possible to avoid withholdings at source and it is necessary to obtain a withholding certificate for tax purposes in the target country, entities would be entitled to pass on the fees that they have established for the issuance of this tax certificate showing the withholdings made at source on foreign shares. It should also be clarified that the fees for issuing these certificates are not necessarily included in the cost of the securities custody and administration service. However, the Complaints Service considers that the fees must never serve as a penalty or deterrent and may only be used to remunerate, in a proportionate manner, the service provided by the investment firm. For this reason, a very high fee charged for issuing such a certificate may make it economically unprofitable for the client to request a refund for double taxation, e.g. on dividends received on foreign shares, and may even be considered disproportionate in certain circumstances (R/414/2021 and R/618/2021).

3.6.2 CISs

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

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

➢ Information on fees and expenses of investment funds

The information on investment fund fees and expenses that are directly payable by the unitholder is contained in the KIID and in the prospectus, which must include the

calculation method used and the maximum fee that can be imposed, the fees actually collected and the beneficiary entity[79] (R/336/2021, R/339/2021 and R/501/2021).

Investment funds expenses must relate to services effectively provided to the fund that are essential for its normal activities. They must not involve an additional cost for services inherent to the work of the CIS management company or depository, which are already remunerated through their respective fees.[80]

Most complaints relating to information on investment fund fees refer to the unitholder's not being aware of the subscription and redemption fees that the fund manager charges for investing or disinvesting in the fund. These fees are usually calculated as a percentage of the capital invested or redeemed, reducing the amount that is invested in the fund in the case of subscription or the capital received by the investor on redemption.

Unlike management and deposit fees, which are implicit (they are charged directly and periodically to the investment fund itself) and are stipulated in the prospectus, subscription or redemption fees are explicit (they are charged to the unitholders when they invest or disinvest in the fund) and are also included in the prospectus, which sometimes specifies exemptions due to the seniority of the units or due to being ordered on certain dates or in certain periods (liquidity windows).

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

The same reporting obligations will be required for funds that have established an anti-dilution mechanism – known as "swing pricing" – in subscriptions or redemptions, which would consist of an adjustment to the net asset value to allow operating costs to be passed on to the unitholders who incur them in order to preserve equality among investors of the CISs,[81] increasing the net asset value in subscriptions and decreasing it in redemptions (R/586/2021).

➢ Notification of changes in CIS fees

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

There are certain changes, such as those establishing or increasing fees or establishing, increasing or eliminating discounts in favour of the fund upon subscription and redemption, of which unitholders must be informed individually and at least 30 calendar days in advance of their entry into force. The notification must mention the unitholder's right to opt, for a period of 30 calendar days, for the total or partial

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

80 Article 5.11 of Royal Decree 1082/2012, of 13 July, approving the implementing regulations for Law 35/2003, of 4 November, on Collective Investment Schemes.

81 *Q&A on the regulations of CISs, venture capital firms and other closed-ended collective investment vehicles*. Available in: https://www.cnmv.es/docportal/Legislacion/FAQ/QAsIIC.pdf

redemption or transfer of their units, with no deduction of redemption fees or any expenses, at the net asset value of the last day of the 30-day period.[82] In general, failure to exercise the right of separation within the specified period automatically implies that the unitholder wishes to maintain the investment, and hence the changes.

Even though these changes must be communicated to unitholders in writing, with the minimum advance notice required, regulations do not require that the information be sent by registered post or by any other means that allows proof of delivery, although the entity must always be in a position to prove that the communication has been delivered to the name and address of the holder or, where applicable, through the channel established in the contract.

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

➢ Custody and administration for investment in CISs

Entities may charge fees for the custody and registration of shares or units in foreign CIS and for a change of distributor. They must always inform investors about these fees before they are applied, and the changes must be accepted by the client (R/655/2020, R/217/2021, R/262/2021, R/289/2021 and R/614/2021).

Further, distributors of Spanish investment funds may charge the unitholders that have subscribed units through them fees for their custody and administration providing this is indicated in the CIS prospectus and the following requirements are met:[83]

– The units are represented by means of certificates and appear in the register of unitholders of the management company or the distributor through which they have been acquired on behalf of the unitholders and, consequently, the distributor provides evidence to the investor of ownership of the units.

– The general requirements for fees and contracts for the provision of investment and ancillary services are met.

– The distributor does not belong to the same group as the management company. However, in the case of foreign CISs, it is not the CNMV that supervises the CIS prospectus, but the home authority. For this reason, in the case of foreign CISs, it is understood that custody services are provided and therefore the corresponding fee can be charged when the distributor keeps an individualised register of the CIS units, i.e., one that details the holders of the units which, on an aggregate basis, appear in the corresponding management company in the name of the distributor. This occurs when the

82 Article 5.11 of Royal Decree 1082/2012, of 13 July, approving the implementing regulations for Law 35/2003, of 4 November, on Collective Investment Schemes.

83 Article 5.14 of Royal Decree 1082/2012, of 13 July, approving the implementing regulations for Law 35/2003, of 4 November, on Collective Investment Schemes.

distribution of the investment fund is made through omnibus accounts (global accounts), which is usually the case.

However, in order to be able to collect this fee, entities must inform their clients of it before it is applied, as with prior information on costs and expenses and changes in initial fees in the section on fees charged on negotiable securities.

➢ Redemption fees: collection in funds with liquidity windows

The dates laid down in the fund's prospectus in which unitholders may redeem their units without paying a redemption fee are referred to as "liquidity windows". In other words, on the basis of the content of the fund prospectus, exemptions to the redemption fee may be established when the redemption takes place on specific established dates.

The fund prospectus also states whether the orders issued by unitholders will be processed the day of the order or whether there is a cut-off time, after which any orders received will be processed the next business day.

The redemption of an investment fund in a liquidity window may arise from a direct redemption order or be the result of a transfer order known as an "outgoing transfer" order.

In redemption transactions, the entity should not charge a redemption fee if the order is issued during the liquidity window, according to the procedure provided in the prospectus for this purpose. In other cases, and in accordance with the prior information on costs and expenses, the entity must inform its clients about the applicable redemption fee prior to executing the order (R/294/2021, R/357/ 2021, R/373/2021, R/567/2021, R/608/2021 and R/609/2021).

For orders for transfers between investment funds in which the liquidity window coincides with the day the order is received or one of the verification days available to the source management company, the redemption fee should not be charged pursuant to the entity's duty to execute the orders on the best terms for the client (in this case, within the liquidity window).

However, if the fund prospectus establishes a cut-off time, the redemption fee will be applicable when the source management company receives the transfer order on the day of the liquidity window, but after the cut-off time, as it is considered that the request has been made the next business day.

In case R/246/2021, the charging of a redemption fee was considered bad practice by the entity as it did not comply with the provisions of the CNMV communication on the application of redemption fees in transfers of guaranteed funds with "liquidity windows", dated 16 October 2007, as the order was placed on 3 December 2018 (a date that according to the fund prospectus, coincided with a liquidity window) before the cut-off time, and the redemption implicit in the transfer was executed at the net asset value of that same date.

In case R/567/2021, the complainant stated that target entity in a transfer had not properly informed him about the fees that the source entity could charge if the redemption was requested outside the liquidity window established in the prospectus.

In this case, although the target entity is not required to inform the complainant of whether or not there is a redemption fee in the source fund, the Complaints Service considered that the target entity should have warned its clients about the possibility of such a fee (based on the characteristics of the fund to be transferred, which was a guaranteed fund), recommending that prior to the transfer they find out from the source entity whether there is such a fee and how much it is, as this is considered vitally important for investors to make well-founded investment decisions.

3.6.3 Portfolio management

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

As in the other cases described above, clients and potential clients of portfolio management companies will be provided by the investment firm, with sufficient advance notice, information on all the costs and expenses associated with the provision of this service (normally a fixed fee and another variable fee relating to the success of the management carried out by the entity). These information obligations on costs and expenses are listed in the MiFID II Delegated Regulation and the particularities of this information in the case of discretionary portfolio management have been clarified in the FAQ documents on MiFID II published by ESMA and the CNMV (R/254/2021 and R/510/2021).

The portfolio management service must be formalised through a specific contract,[84] which must include the type of fees, the calculation basis used and the settlement period, and, where appropriate, the corresponding discounts. The standard contract for portfolio management must establish the obligation to inform the client, prior to their application, of any increase in the fees and expenses applicable to the service provided, and that had been previously agreed with the client. In this case, the client must be given a minimum period of one month (or more if stated in the contract) from the receipt of this information in which to change or cancel the contractual relationship, during which time the new fees will not be applied. If the fees are reduced, the entity must also inform the client without prejudice to the immediate application of this change (R/26/2021, R/220/2021 and R/494/2021).

Discretionary portfolio management contracts usually establish provisions for the collection of fees in the event that the service is not provided throughout the full settlement period (for example, if the service has been contracted or cancelled during that period).

As for most of the services provided by entities, the fees accrued through discretionary portfolio management services should be structured in such a way that invoice periods that were shorter than the agreed ordinary settlement period would be billed in proportion to the number of calendar days during which the service was provided.[85]

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84 Rules Seven and Nine of CNMV Circular 7/2011, of 12 December, on the fee prospectus and the content of standard contracts.

85 Rule Four, Section 3.b), of CNMV Circular 7/2011, of 12 December, on the fee prospectus and content of standard contracts.

➢ Portfolio management fees. Success and management fees

Among other information, entities that offer discretionary portfolio management services must provide their clients with information on the types of financial instruments that may be included in their portfolios, as well as the types of transactions that can be carried out with them, including any limits, management targets, the level of risk that must be reflected in the discretionary management and any specific limitations on this discretionary power. They must also provide information on the valuation methods and frequency of the financial instruments and the benchmark used to compare the results of the portfolio.

In portfolio management contracts, there are two types of fees – a fixed fee and a variable fee – or a mixed fee combining the two. The fixed fee is an annual fee that is paid at the end of every six month period, applied to the effective value of the portfolio with a minimum amount. The variable fee (also known as the success fee) is normally charged once a year based on the performance of the portfolio. To calculate this fee, the value of the portfolio on 1 January (or the starting date, if later) is compared with the value on 31 December each year, subtracting the (fixed) cash fees charged to the client. The mixed fee would be a combination of both options.

The mixed or combined fee is currently the most commonly used by entities when providing this investment service.

On cancellation of the management contract, the entity will calculate the proportional part of the fixed fee for the days on which the service was provided and the corresponding fee for the performance of the funds, if positive, between the cancellation date and 1 January of the same year, or the date on which the calculation of the accrual period for this fee begins (R/560/2020, R/714/2020, R/250/2021, R/412/2021, R/475/2021, R/480/201 and R/494/2021).

Case R/714/2020 stands out here, as the client had been paying the management fee through the redemption of shares in one of the CISs included in his fund portfolio management contract. However, the client requested the cancellation of the portfolio management contract and the transfer of the shares to another entity, which prevented this fee from being collected for the days that had elapsed from the last management fee charged until the cancellation through the redemption of shares. The entity therefore charged the client's current account for this amount, which generated an overdraft. In view of the contract signed by both parties, the Complaints Service considered that the entity was entitled to charge the management fee after the cancellation of the contract, although, as in this case the fee would not be charged on the redemptions made but to the current account associated with the managed portfolio, the entity should have warned the complainant so that the overdraft could have been prevented.

➢ Capital gains in funds under management when the service creates capital losses

When an investment fund portfolio management service is provided, regardless of the positive or negative returns obtained through this service, the entity must assess each of the CISs in the portfolio separately to establish whether, in light of the tax deferral for this type of investment product, any of them have produced a capital gain, which would require the entity to apply the corresponding tax withholding.

It is common practice for clients to contribute shares from funds that have been previously acquired to their portfolios or even for these funds, or those initially acquired by the manager with the economic contribution made to the portfolio, to be transferred to one or more other funds during the course of the management service. In these cases, as indicated above, to establish the capital gain or loss in each individual fund, the acquisition date of the fund must be taken as that on which the first shares were acquired – that originate those that are now being redeemed after various transfers – and the acquisition value to be taken for the purposes of tax calculations is that of the initial date.

Thus, in some cases the performance of a portfolio as a whole may be negative but at the same time taxes will be paid by the investor (on redemption) for the capital gains obtained from one or more of the funds in the managed portfolio (R/118/2021 and R/592/2021).

➢ Calculation of capital gains and losses in fund portfolios when fees are collected by selling shares

In certain fund portfolio management contracts, the entity includes clauses that authorise the payment of fees accrued through the redemption of shares of any of the CISs the portfolio has invested in and for a sufficient amount to cover these fees. This is not considered bad practice. In these cases, to calculate the real returns of the funds affected by this practice, these periodic redemptions must be taken into account.

3.7 Wills

➢ Processing of the will and change of ownership. Will documentation

✓ *Notification of death: effects*

The heirs or legitimate interested parties must report to the financial institution in which the deceased had deposited his or her securities the death of the owner of the securities deposited. The most reliable way to report a death is by providing the death certificate. However, the entity must determine which documents or acts it considers necessary for this purpose.

Once the death has been reported, the entity must proceed to freeze the financial instruments deposited with the entity in which the deceased had deposited his or her financial instruments. In other words, the securities account or the units in investment funds will be frozen, thus preventing other co-holders of the account under the joint and several regime from having access to the securities which will be included in the deceased's estate.

However, as long as the entity is unaware of the death, the other joint owners or authorised parties may have free access to the securities – depending on the provisions established. For this reason, and in order to prevent unwanted access to the financial instruments owned by a deceased person, which can only be claimed through the courts, it is important that the entity providing investment services in which the deceased held accounts be promptly informed of the event.

It is also usual, in some cases, for securities deposit and administration contracts or portfolio management contracts signed by with the investment services

provider, to include a detailed description of the consequences of the death of one of the co-holders.

However, for this type of clause to take effect it the entity must obviously be aware of the death of the holder.

In financial instrument portfolio management contracts account blocking clauses are usually contemplated once the death of the holder has been reported, without prejudice to any acts that the entity may perform to protect the assets under management, such as the collection of coupons and dividends, participation in bonus issues or any mandatory exchanges.

In case R/276/2021, the complainant disagreed with the blocking of his securities and cash accounts and requested that he be allowed to access the securities deposited in a securities account of which he was the sole owner.

According to the pleas submitted, the entity confirmed that once the client had informed the entity of the death of the deceased, the branch had informed him that he needed to file a probate processing request in order to release the accounts.

From the documentation provided, it was demonstrated that the complainant had reported the death of his wife and requested a block on 50% of both the securities account and the cash account, since he considered that they were the property of the deceased, with whom he had been married under a joint ownership regime.

It was also demonstrated that the complainant had delivered the certificate of last will and testament to the entity, however, there was no record that he had delivered a document for the dissolution of joint ownership of assets signed both by him and by the rest of the heirs to his wife's estate.

Consequently, the complainant was informed that in order to release the accounts he had to present this document.

It is common for the same document establishing the partition of the deceased's inheritance to include the dissolution of the joint ownership regime, thus determining which assets will be added to the deceased's estate and be distributed among the heirs.

Furthermore, in the case in question, since the cash account associated with the securities account was marital property, it was considered that even though the complainant appeared as the sole owner of the securities account, it was also marital property. It was concluded that the securities account should be included in the dissolution of the joint ownership of assets, *mortis causa*, and for this reason both accounts had been blocked by the respondent entity.

✓ *Conservation: right of separation and consent of the surviving co-owner. Notification of CIS mergers*

It should be noted that the block imposed by the entity affects the disposal of the securities by the surviving joint owners and the heirs of the deceased, but not the financial transactions or corporate events carried out by the issuers of the financial instruments included in the estate.

Thus, it is common that during the processing of a will there are investment funds in the estate that may be included in mergers between CISs undertaken by the management companies of these investment funds. In these cases, when there is a merger, the fund units are not released but there is an exchange of the units of the absorbed fund for units of the absorbing fund.

However, as in this type of transaction changes occur – in the investment policy, fees, etc. – which imply a substantial alteration in the characteristics of the fund, the managers grant the unitholders a separation right that must be exercised within a limited period of time.

Thus, as there is a deadline, which if not met may result in the investor keeping an unwanted investment, the Complaints Service considers that investment firms must comply with the redemption orders made by the heirs in what can be considered an act of conserving and provisionally administrating the inheritance. However, in order to exercise this right it is essential for all the heirs to have accepted the inheritance.

If the inheritance has been accepted by all the heirs, they will occupy the position of the deceased and therefore the right of separation granted to the owners of the CIS shares can be exercised. To do this, all the heirs must submit a redemption order in mutual agreement with the surviving co-owner in the case of shared accounts (R/237/2021).

The Complaints Service also considers that in these cases it is necessary to change the ownership of the fund account in favour of the joint owners and, where appropriate, the surviving co-owner prior to exercising the right of separation, as otherwise the execution of the redemption order would have unfavourable tax effects, since it would be issued from the account of a deceased person.

In contrast, if on the date on which the right of separation can be exercised the entity has issued the probate report having reviewed the documentation provided, the fund accounts will have to be opened and distributed according to the provisions of the private document or in the public deed of partition. Once the change of ownership has been made, the right of separation can be exercised.

✓ *Certificate of the deceased person's positions*

The first document that the heir or person of legitimate interest must request from the financial institution is the certificate of the deceased person's positions on the date of their death. The entity must issue a certificate including all securities and cash accounts, as well as a list of the financial instruments that the deceased held in the financial institution on the date of their death, both individually owned and co-owned.

For heirs or interested parties to obtain this information they must first prove their status as such.[86]

86 To prove their status as heir, the parties must provide a death certificate, a certificate of the General Registry of Last Wills and Testaments and an authorised copy of the last will and testament of the deceased. In the event that the deceased has not left a will, a declaration of heirs intestate proceedings from the notary must be provided.

The importance of this document lies in that it is one of the instruments that will be used to establish the content of the estate and the *mortis causa* acquisition price of the financial instruments that must be set when the securities have been awarded to the heirs.

R/710/2020: The complainant stated that after redeeming some inherited shares, the entity had applied an acquisition price that differed from the value reflected in the certificate of the deceased person's positions in the fund on the date of her death. This error caused the entity to register a capital gain and consequently it erroneously applied a withholding tax at source.

The entity explained that the reason why the acquisition price and the name of the fund differed from those stated in the certificate was that between the date of death and before the shares had been awarded, the inherited fund had merged with another one that was ultimately awarded to the inheritors.

However, the Complaints Service noted that in these cases the acquisition price of the investment fund units corresponds to their value at the time they are acquired, either by sale or acquisition *mortis causa* and this value cannot be altered by any subsequent mergers involving the fund.

Consequently, the acquisition price of the units that were exchanged at the time must remain unchanged, a value which, where appropriate, corresponds to the net asset value of the fund's units on the date of death, when the complainant acquired the shares, regardless of the award date, and which corresponded to the value reflected in the certificate issued by the entity on the date of death. This amount was also used in the inheritance tax statement.

After analysing the case, the Complaints Service deduced that what had happened was that since the 2,072.34100 units of the inherited fund were exchanged for 16,417.9046 units of another fund before the awarding, when calculating the acquisition prices of the units, the entity took that latter into consideration, not the merged units, and applied the net asset value of the units of the absorbing fund on the date of the death instead of the value of the units of the absorbed fund at that date.

Thus, it was considered that the acquisition price included in the tax settlement statement issued after the redemption of the fund units was incorrect.

It was concluded that if the correct acquisition price had been applied no capital gains would have occurred and the entity would not have charged any tax withholdings.

✓ *Partition and awarding of the inheritance and payment of inheritance tax*

Once they have proved their status as such, the heirs must provide the financial institution with certain documentation in order to gain access to the securities deposited in the deceased's securities accounts.

The key document is the public deed of partition of the inheritance or the private document of partition signed by all the heirs in order to proceed with the corresponding change of ownership.

They must also demonstrate to the entity that the inheritance and donation tax has been paid. It should be noted that once the estate has been established, the heirs must pay the inheritance and donation tax. If they are unable to prove that this tax has been paid, the entity may decide not to continue processing the will as if the tax is not paid by the heirs, by law, the entity is responsible for the payment in the *mortis causa* transfer.

Furthermore, as explained above, the deposit accounts of the securities or investment fund units will remain blocked until the heirs provide all the necessary documentation for processing the will, even if the request to make the accounts available comes from a co-owner of the account or investment fund under the joint and several regime. Thus, no sale or redemption orders can be issued until the financial instruments owned by the deceased deposited therein have been processed as part of the will.

The partition is an agreement that puts an end to the joint ownership in order to distribute the deceased's assets and rights among the heirs in proportion to the share corresponding to each of them according to the type of inheritance (will or notarial declaration of heirs in intestate proceedings).

The partition and awarding of the inheritance can be drawn up in a public deed or in private partition document signed by all the heirs.

However, when the partition is reflected in a private document, prior to the awarding of the estate entities will require confirmation of the signatures of the heirs or, where appropriate, their signatures must be certified by a notary.

R/415/2021: The complainant considered that there had been a delay in processing the inheritance. However, it was proved that after the presentation of a private inheritance partition document, the entity had asked the heirs to submit an explanatory note about the amounts to be distributed and the signatures of all the parties involved in the inheritance documents.

In other words, the entity had doubts about how to make the distribution and whether the private document had been signed by all the heirs.

Subsequently, a partition document was presented to the entity with the authorisation of the signature of the complainant's sister and a notarial document recognising the full effectiveness of the partition made in the private document.

It was considered that the notarial document submitted to the entity completed the documentation and the entity was then able to validate the partition of the inheritance and carry out the necessary actions for the change of ownership and subsequent redemption of the fund in question.

Consequently, the period between 14 May (the date on which the document authorising the signature had been sent via email) and 7 June, when the redemption and cancellation of the inherited fund had been ordered, was not considered to be excessive.

R/272/2021: The complainant maintained that an investment fund had been distributed without an agreement to partition the inheritance or a judicial order to that effect. However, the entity stated in its pleas that the distribution had been made at

the request of the co-heirs and the fund units had been distributed in six equal parts among them.

In the case, it was demonstrated that all the heirs had accepted the inheritance, but not its awarding and distribution. Four of the six heirs of the deceased has signed a document in which they recognised that they were waiting to reach an agreement with the rest of the heirs to carry out the partition or, otherwise, go to court. The entity was unable to demonstrate, as the Complaints Service expressly requested, that all the heirs had agreed on how the deceased's assets should be distributed. For this reason, the entity's actions were deemed to have been incorrect.

✓ *Analysis of documentation*

Once the documentation has been presented, financial institutions must start a series of checks and reviews to verify whether it is correct and sufficient. If this is not the case, they must inform the heirs in a clear, precise and concrete manner about all the deficiencies detected, so that these can be corrected, speeding up the probate process, as far as possible.

If the documentation submitted is correct, the entities shall carry out the last remaining procedure to allow the heirs exercise all the rights related to ownership of the securities acquired in accordance with the provisions of the partition record, i.e., the change of ownership. This procedure to change ownership of the shares or units in the funds must be carried out without delay once the previous step has been completed.

Otherwise, the entity must ask the heirs to correct the documentation presented as rapidly as possible, indicating the reasons why it considers that the documentation is not sufficient or does not comply with the law.

The entity must be able to prove that it has informed the heirs clearly and without delay about the documents or issues that have to be completed or rectified (if possible, listing them in detail) to be able to conclude the execution of the will and carry out the change of ownership of the securities or units in the investment funds.

✓ *Term*

The regulations governing the rules of conduct of the securities markets do not expressly stipulate any legal deadline for processing a will.

The Complaints Service considers that all the procedures to be carried out in the processing of a will must be completed quickly. A speedy execution of inheritance procedures is the result of diligent collaboration between the parties involved, namely the heir or heirs and other interested parties (beneficial owners, legatees, etc.) and the entity. The former must provide all relevant documentation to carry out these procedures and the entity must promptly carry out all the necessary steps to complete the process, once the required documentation is in its possession.

Furthermore, once the heirs have submitted the necessary documentation to gain access to the securities deposited in the deceased's securities accounts, investment firms must spend some time verifying that the documentation provided is valid and sufficient.

R/603/2021: The complainant considered that the additional data requested by the entity was irrelevant and this had delayed the release of the investment fund units acquired *mortis causa*.

The entity recognised that on 3 May 2021 all the necessary documentation had been presented for processing the will of the deceased and on 26 July 2021 the inheritance document had been issued. Once the accounts of the heirs had been activated, the investment fund units were distributed. The entity indicated that the accounts had been activated on 8 and 15 July and 23 September 2021.

It also explained that the data about the family relationship of one of the heiresses with the holder of a public position had to be verified in compliance with money laundering regulations, and that once it had been verified, the accounts had been activated.

In this case, it was concluded that the entity had not acted correctly as while the regulations do not establish a maximum period for processing the will, entities must act without delay and in the best interest of their clients or potential clients. Here, an unjustified delay had occurred between the date of presentation of the relevant documentation and the date the accounts were opened and activated.

In addition, in regard to the block on the distribution due to money laundering regulations as a result of an alleged investigation into one of the heiresses, the Complaints Service clarified that it did not have the power to rule on the admissibility or otherwise of such an investigation, in accordance with the provisions of Law 10/2010, of 28 April, on the prevention of money laundering and its subsequent amendments, or on the way it should be carried out or the protocols that should be employed.

However, it noted that the block on the fund seemed strange because the acquisition of the assets was linked to her condition as an heiress and after the financial instruments had been awarded, these would become proprietary assets of known origin.

It was also considered that under no circumstances should the investigation have stopped the inheritance being awarded to the rest of the heirs, since current regulations allow the inheritance to be accessed at different times, that is, once the will has been processed, the opening of accounts and consequent change of ownership of the securities does not have to be carried out simultaneously, but as each heir fulfils his or her corresponding requirements.

✓ *Change of ownership as part of a will and transfer of shares in the same act, without having to open a securities account with the entity*

The last procedure in the will process is to execute the change of ownership. This process must be carried out as rapidly as possible.

Prior to the change of ownership of the financial instruments acquired *mortis causa*, the beneficiaries must open securities accounts in the name of the same owners who are awarded the assets in the inheritance – co-ownership if the inheritance is *pro diviso* or individual ownership if it has been split – so that the awarded shares can be deposited, either at the same entity or at a different one.

For securities such as shares, bonds and debentures, subscription rights, etc., securities accounts must be opened to execute the change of ownership and deposit the securities that have been inherited.

However, if the assets acquired *mortis causa* are units of investment funds, the rules do not oblige the heirs to open an investment fund account with the entity, since these types of financial instruments are not usually deposited at the banking institution. Nor is it mandatory to open a current account associated with the fund.

Although it is not obligatory to open an investment fund account in order to access units of an investment fund, in their banking operations most entities use adhesion contracts or investment fund contracts to manage this type of asset, as well as cash accounts associated with these contracts through which to credit or debit any cash movements linked to the investment fund – a practice that is considered to be correct. In these cases, it is the entity's responsibility to provide clear and precise information about the procedures to be followed to achieve the intended purpose, in this case, changing the ownership of shares.

If entities ask the heirs to open a current account, securities account or any other account associated with the investment fund, provided that they are linked exclusively to the operations of these fund, the Complaints Service's criterion is that the entity should not charge any maintenance fees.

However, there is nothing to prevent the inherited shares, bonds, etc. from being deposited in a securities account opened in a different financial institution to that making the allocation. To do this, the awardee can issue an order to transfer the securities awarded to the entity in which a securities account has been opened in his or her name, effecting the change of ownership and transfer of the shares simultaneously.

The entity's requirement in these cases is that the heir provide a certificate of ownership of the securities account of the third entity to which he or she wishes to transfer the shares in order to verify the identity of the inheritor and the owner of the target account.

In the event that the inherited securities are investment fund units, it would not be possible to carry out the change of ownership and transfer simultaneously if the investment fund is not being distributed by the target entity to which the securities are to be transferred.

If the intent is to units of an investment fund to different fund, it is essential that prior to the transfer, the ownership of the units is changed at source and to do this the heir must open a fund account at the entity, although this may be closed once the transfer has been made.

R/638/2020: The complainant disagreed with having to open a securities account at the respondent entity to execute a change of ownership and a transfer to another entity of a portfolio of shares that had been acquired *mortis causa*.

However, the entity argued that nothing prevented the deceased's shares from being awarded to him through a simultaneous change of ownership and transfer to a securities account opened in another entity of which he was the sole owner, for which he would need to provide a certificate proving ownership of the account at the third entity.

The entity maintained that the certificate of individual ownership of the account in the third entity had not been provided until 9 December 2020, when it proceeded to transfer the securities.

However, in his reply to the entity's pleas, the complainant stated that the entity "misrepresents and manipulates the facts".

Effectively, he stated and demonstrated that on 7 August 2020 he had presented all the mandatory documentation required for the probate process and that on 31 August 2020, in an email sent to the entity, he expressed his wish to transfer the securities that he would inherit to a third entity, enclosing a certificate of ownership of the account in said entity.

The respondent entity, ignoring the complainant's request, asked him to open a securities account on 7 September 2020 together with an associated cash account.

It was therefore considered that contrary to the pleas put forward by the respondent entity, it had not complied with the complainant's instructions and had not executed the change of ownership and transfer of the shares awarded in the inheritance to the third entity simultaneously, but forced him to open a securities account and an associated cash account at the respondent entity to gain access to the inherited securities, which was classified as bad practice.

The situation was made worse as the entity forced him to open not only the securities account but also a new associated cash account even though he already had an active cash account at the entity.

R/280/2021: It was concluded that the respondent entity had committed bad practice because it failed to provide documentary evidence that it had informed the heirs that it was necessary to open a securities account and a cash account to distribute the inheritance.

➢ Fees: bank fees vs. change of ownership, proportionality and extension of the fee for change of ownership to the co-owners of the deceased

Investment firms are free to set the fees or expenses charged for any service effectively provided.

It should be clarified that the service provided by the entity is to ensure that the financial instruments deposited in the accounts of the deceased are awarded to their legitimate heirs or legatees. To do this, as explained above, the entity must review the documentation provided and ensure that the inheritance and donation tax has been paid.

A prerequisite for the collection of these fees is that they must be communicated to the inheritors before the service is provided.

In relation to fees for the processing of wills, it should be clarified that financial institutions usually charge two types of fees: a fee for processing the will and another fee for the change of ownership.

The fee for processing of the will, as a pure banking fee, fall within the remit of the Bank of Spain, while the fee for the change of ownership of financial instruments is the responsibility of the CNMV.

The Complaints Service understands that if the entity passes on to its client a will processing fee this must include the change of ownership, since this is one of the phases of that process (the last one). Therefore, it would not be possible to charge both fees at the same time.

When a fee is charged only for the change of ownership after the will has been processed, the principle of proportionality must be taken into account. In other words, in cases where due to the number of securities for which ownership or their value, the minimum fee for type of services is applied, which in many cases is more or only slightly less than the value of the inherited securities, the application of the minimum fee would not adhere to the principle of proportionality that should exist between the amount charged to each heir and the service actually rendered, but would have a multiplier effect on the fee that would not be justified by the service provided by the entity (the actual and effective expense generated by the service is the same, regardless of the effective value of the securities subject to the change of ownership).

Therefore, the Complaints Service considers it good practice that in cases in which the actual and effective expense generated by providing the service to each heir is the same regardless of the effective value of the securities affected by the change of ownership, they should try to avoid the aforementioned multiplier effect (R/721/2020).

It must also be taken into account that the fee charged for the change of ownership extends to all shares that are deposited in the account owned jointly with the deceased.

The reason why the fee extends to all shares is that the listed securities are represented by book entries in the name of several holders and following the death of one of these the necessary steps must be taken to amend the records and change the ownership of all securities deposited in the account.

This happened in case R/602/2021. In this case it was proved that the entity had informed the complainant about the fee that would be charged to her before the change of ownership service was provided.

Nonetheless, the complainant expressed her disagreement with the fact that her client had been charged 1% of the total effective amount of the securities portfolio, even though the securities were joint assets. In other words, she considered that the fee charged for the change of ownership should have been charged to the heirs of the deceased for 50% of the shares deposited in the securities account, but not to her mother, who was already a co-owner of the account.

The Complaints Service clarified that that when a joint ownership of assets regime is established, it extends to all the profits or benefits obtained by its owners and when the dissolution of the marriage occurs,[87] these are divided between the two parties equally.

87 Dissolution of joint ownership of assets. Article 1392 of the Commercial Code.

Likewise, on the death of one of the spouses, the joint ownership of assets is finalised, the marriage is dissolved[88] and hence the joint ownership of assets.

In other words, after the death of one of the spouses, the assets included in the joint ownership of assets regime become part of the group assets (post joint ownership) that will exist until the dissolution of joint ownership of assets, which will involve the surviving spouse and the heirs of the deceased.

Consequently, after the dissolution of joint ownership of assets, it is usual for the surviving spouse to become the sole owner of a part of the shares that had until that time belonged to the joint ownership regime, which involves amending the ownership details that appear in the book-entry register for each those shares.

In the Spanish market this is the second tier register. This means that Iberclear is responsible for the central register and the participating members are responsible for the second tier register. In both cases, the entity must amend the registers to show that the shares are registered exclusively under the name of the surviving spouse.

Consequently, given that the entity is providing a service, it is entitled to charge a fee.

➢ Usufruct matters

Many complaints are filed which refers to cases in which a beneficial owner is named as the owner of the securities account or is related to it. Given the varied nature of these types of complaints, some of most representative cases are described below.

In case R/53/2021, the complainant expressed his disagreement with the fact that the respondent entity had prevented his client from placing sales orders for a package of shares deposited in a securities account. The reason given by the entity for this action was that one of the securities account holders was listed as a beneficial owner, and when the sale order had been processed she was already deceased.

The complainant understood that this issue would be resolved by presenting the death certificate of the beneficial owner, and that his client would then be able to continue with her sale. However, the entity maintained that the bare owner, who is required to expedite the change of domain due to the death of the beneficial owner, was obliged to declare this to the tax authorities using form 655 (tax on inheritance and donations. Change of domain due to death of the beneficial owner).

As it had not been demonstrated that this form had been filed with the tax authority, it was concluded that as the change of domain had not been properly, the entity had acted correctly by stopping the sales orders.

It was indicated that in order to execute the sales orders a letter demonstrating payment of the tax corresponding to the death of the beneficial owner to the tax authority would have to be presented.

88 Dissolution of the marriage. Article 85 of the Commercial Code.

R/61/2021: The complainant alleged that for unknown reasons the securities he had received from an inheritance had been deposited in securities accounts that had been open prior to the death, in which the deceased was listed as the beneficial owner and the heirs as the bare owners.

Although the entity had informed him that the issue would be resolved, either by eliminating the title of beneficial owner for the deceased in the securities accounts or by transferring the securities to accounts in which the heirs were the sole owners, no such changes had been made.

In this case, it was proved that instead of executing a change of ownership in favour of the beneficiaries mentioned in the award deed and depositing the securities in a sole ownership account, the change of ownership had been made by depositing the securities in accounts in which the deceased was named as the beneficial owner.

It was also surprising that once the error had been detected – an error that was exclusively attributable the entity – it was not resolved quickly and diligently, but took a long period of time (not until the heirs approached the entity's CSD).

Consequently, it was considered that the entity had committed two counts of bad practice because, on the one hand, it had been wrong to execute the change of ownership of the securities acquired from the inheritance by including them in accounts in which the deceased was named as the beneficial owner instead of acting in accordance with the provisions of the award deed and, on the other, once the error had been detected, the entity did not resolve it, that is, it did not act quickly and diligently to deposit the securities in accounts owned individually by each of the heirs.

R/505/2021: The complainant expressed his disagreement with a charge for capital gains that occurred in 2020 as a result of the dividends paid on shares deposited in the securities portfolio of which the deceased was the co-owner and beneficial owner.

The complainant understood that the entity had sent "incorrect data" to the tax authority because it had not taken into account either the death of the co-owner of the account or the fact that in December 2020 the probate process had been completed.

In its pleas, the respondent entity explained that after the heirs had submitted all the documentation required to process the will on 17 December 2020, the entity had processed it quickly, preparing the final probate report on 22 December 2020, which was signed by the complainant on 24 December 2020. On that date, the entity began the process of changing of ownership of the securities in the portfolio, which was completed in January 2021.

Consequently, it was considered that the entity had acted with due diligence, taking into account that the complainant had not presented all the required documents to start processing the will until 17 December 2020. Furthermore, it was considered that the entity had acted quickly, as three days later, on 22 December 2020, the probate service had prepared the final report which, as confirmed by the complainant, had been signed on 24 December 2020.

Therefore, it was concluded that the entity had processed the will with due diligence and had allocated the capital gains to the deceased because at the time the dividends were paid, she was the co-owner and beneficial owner of the securities account in which the securities were deposited.

3.8 Ownership

➢ Failure to include the legal representative of a disabled person

Sometimes the designated representative in a power of attorney or in a court ruling requests to issue orders on securities deposited in a client's account or units in their investment fund. In order for a representative to carry out transactions in securities account, the entity must previously review the power of attorney or the court ruling granting this authority and confirm that the transactions can be carried out accordingly. If these documents are not reviewed or entity considers that the power of attorney is not sufficient for the transactions to be performed, it may refuse to make the securities ordered by the representative available.

There are many complaints in which the complainants – legal representatives of the holder of investment fund units – disagree with a source entity's decision to reject an order for the external transfer of investment fund units made through the target entity.

In these cases, it should be clarified that the identification data of the order issued by the target management company must coincide with the data held by the source management company, in accordance with the Inverco protocol[89] for CIS transfers in force at the time the transfer order is issued.

If there is a mismatch in the ownership in the order or in the unitholder accounts of the funds involved, the transfer will be objectively rejected.

In other words, in a transfer it is essential that the holder and, where appropriate, the representative or authorised party, be exactly the same in the accounts of the two funds involved in the transfer. Otherwise the order will be rejected.

This is what happened in case R/599/2020. In this case, the complainant disagreed with the repeated rejection of some transfer orders issued through the target entity in her capacity as legal guardian of the account holder.

The respondent entity argued that the orders had been rejected as the holders had been incorrectly or incompletely identified in all of them, as the holder of the fund account and the complainant had been identified as the legal representative. However, in the unitholder account of the source funds, the complainant did not appear as a legal representative, therefore, until she had been registered in the account the requested transfer could not be executed.

Consequently, the Complaints Service considered that, in accordance with the Inverco protocol, the orders had been correctly rejected. However, in the case it was proved that after the change in the ownership in the source fund account, the transfer of the shares to the target fund had been carried out correctly.

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

➢ Inability to cancel a securities account: redeemed securities

It is important to note that as a prerequisite to cancel a securities account it must be free of deposited securities. Therefore, prior to cancellation, the clients of the financial institutions must issue orders to sell or transfer the securities deposited in such accounts to a third entity in order to cancel the securities account and, where appropriate, the associated cash account. Otherwise, it will not be possible to cancel the securities account or the associated cash account.

In case R/591/2020, the entity stopped the cancellation of a securities account because the client had two delisted shares in it. However, the complainant alleged that he was not the owner of the shares because he had managed to sell them to a third party outside the market in mid-2016 and 2017, respectively. He thus requested that the entity acknowledge that he was not the owner of the shares and allow him to cancel the securities account in which they were apparently deposited.

However, the entity maintained that the complainant was listed as the owner of two shares in its registers and that it had no evidence to date that they had been sold.

In this case, the two securities were represented by book entries, delisted from their corresponding secondary markets and the respondent entity had not been involved either as the depository or intermediary in any sale transaction.

Although the complainant did not provide any document of sale validated by a public notary, he did provide documentary proof that he had sold the shares to a third party and that the latter had paid the corresponding consideration into his account.

Moreover, the Complaints Service confirmed that the two issues of the securities in the case had been redeemed and their respective ISIN codes withdrawn from the Spanish National Securities Numbering Agency.

For all these reasons, it was considered that since the securities had been redeemed and the complainant had also proved they had been sold a few years earlier, the entity should have changed its register by removing his ownership of the shares, thereby permitting him to cancel the securities account as he had requested.

➢ Waiver of foreign and domestic securities

When a security is delisted from the stock markets, it is common for investors to file complaints requesting to waive the securities in order to cancel their securities accounts and associated cash accounts.

In the Spanish market, Iberclear has established a procedure for waiving maintenance of registration (Iberclear procedure PR230) that is applicable to delisted equity securities provided that the issuer is also inactive.

Therefore, if the requirements set out in the waiver procedure are met (i.e. the securities are delisted and there has been no entry in the Mercantile Registry in the last four years), the depository of the securities may request Iberclear, as stated in this manual, to apply a procedure for waiving the securities of issuing company so that the securities account can subsequently be cancelled.

However, when the securities are issued abroad and traded on an official secondary market other than a Spanish market, any waiver procedures for these securities are not governed by Spanish law, but by the law of the issuer's home country or the country of the market on which the securities are listed.

As the Complaints Service does not know the procedures for allowing registered holders to request the voluntary waiver of register-entry maintenance in foreign markets over which the CNMV has no supervisory powers, it cannot assess any potential course of action in this regard. However, the actions of respondent entities in terms of their compliance with Spanish rules of conduct that are applicable in their relationships with clients can be assessed.

In these cases, entities act in accordance with the rules of conduct when they inform the complainants of whether there is a waiver procedure on the market on which the securities are listed and, if so, whether they can be waived.

If the securities cannot be waived, the only remaining option is to transfer them to another entity or to a third party using other legal channels, such as donation, etc. Otherwise, the securities account cannot be cancelled (R/71/2021, R/315/2021 and R/460/2021).

➢ Sale of securities for the execution of attachment orders

The Public Administration service or judges can issue orders to seize securities that are deposited in an investment firm to settle outstanding debts run up by the holder of a securities account.

In these cases, entities are legally obliged to block and execute the attachment order, acting as mediators.

However, the Complaints Service considers that once the attachment order has been received and the securities have been blocked, the entity must notify its client of the attachment order so that he or she can implement any pertinent measures to prevent the execution of the order.

For this purpose and taking into account the mandatory nature of the deadlines for this type of action, such notifications should be made using fast communication channels, e.g. email.

R/547/2020: The Complaints Service considered that the entity had acted solely as an intermediary, complying with the attachment order and acting in accordance with the provisions of Article 591 et seq. of the Civil Procedure Act. In other words, before the attachment order had been applied, the entity had complied with the mandate received, retaining and subsequently selling the securities to transfer the required cash amount to the account designated in the official letter.

However, it also incurred in bad practice as there was no evidence that the entity had informed its client that it had received the attachment order.

4 Enquiries

4 Enquiries

The CNMV Investors Department, among other functions, handles investor enquiries on topics of general interest concerning the rights of financial service users and the legal channels available to defend these rights. These requests for advice and information are provided for in Article 2.3 of Order ECC/2502/2012, of 16 November, which regulates the procedure for filing claims with the complaints services of the Bank of Spain, the CNMV and the Directorate-General of Insurance and Pension Funds.

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

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

4.1 Enquiry channels and volume

There are three channels available for submitting enquiries: by telephone, by post or through the electronic office (available at www.cnmv.es), where there is a section for submitting claims, complaints and enquiries and where identification is required by means of an electronic certificate or identity card or through a user name and password, which can be used for enquiries or claims with the CNMV (https://sede.cnmv.gob.es/sedecnmv/sedeelectronica.aspx?lang=en).

In 2021, 10,421 enquiries were dealt with, most of which were made by telephone (83.2%) and in which information available on the website (www.cnmv.es) was provided. By volume, the second most used channel was the electronic office form (13.8%) followed by submission through the general registry (3%).

As shown in Table 20, the total number of enquiries dealt with in 2021 decreased by 6.5% compared with 2020. Investors preferred to use the electronic form to send their written enquiries (13.8%), with presentation through the general registry falling by 21.3% compared with the previous year. The average response time was reduced to 19 calendar days. This figure excludes enquiries received by telephone, which are answered on the same day.

It was found that numerous written submissions that were actually queries from professionals were filed with the CNMV using the wring channel – that for submitting enquiries from retail customers. Queries of a professional nature should be addressed to the CNMV department with competence on the matter, through the "Any

document, request or communication to be addressed to the CNMV" procedure in the Open Area of the CNMV's Electronic Office.

Enquiries by channel of reception TABLE 20

	2019		2020		2021		% change
	No.	% of total	No.	% of total	No.	% of total	21/20
Telephone	6,471	85.6	9,382	84.1	8,667	83.2	-7.6
Letter	289	3.8	399	3.6	314	3.0	-21.3
Form	800	10.6	1,369	12.3	1,440	13.8	5.2
Total	**7,560**	**100.0**	**11,150**	**100.0**	**10,421**	**100.0**	**-6.5**

Source: CNMV.

4.2 Subjects of enquiries

Regarding the subject matter of enquiries, once again this year investors requested information on data available in the official registries of the CNMV. In particular, information was requested on registered entities; where to find prospectuses; access to price-sensitive information notices of CISs and other entities and inside information, financial and corporate governance information of issuers. Other information available on the CNMV website was also requested and given: CNMV communications, statistics and publications, among other content freely accessible to the public.

Year after year, many of the written queries received through the electronic form or the general registry relate to losses on investments, either direct or through investment firms. Enquiries about losses on investments made through unregistered entities increased by 25% relative to the previous year (see Figure 26). Written enquiries about investment firms usually concern, among other matters, fees for holding shares that are suspended or delisted, depositories' obligations, investment guarantee schemes, the possibility of waiving securities excluded from trading, or fees for the transfer of securities to another financial entity and administration fees on current accounts linked to securities accounts.

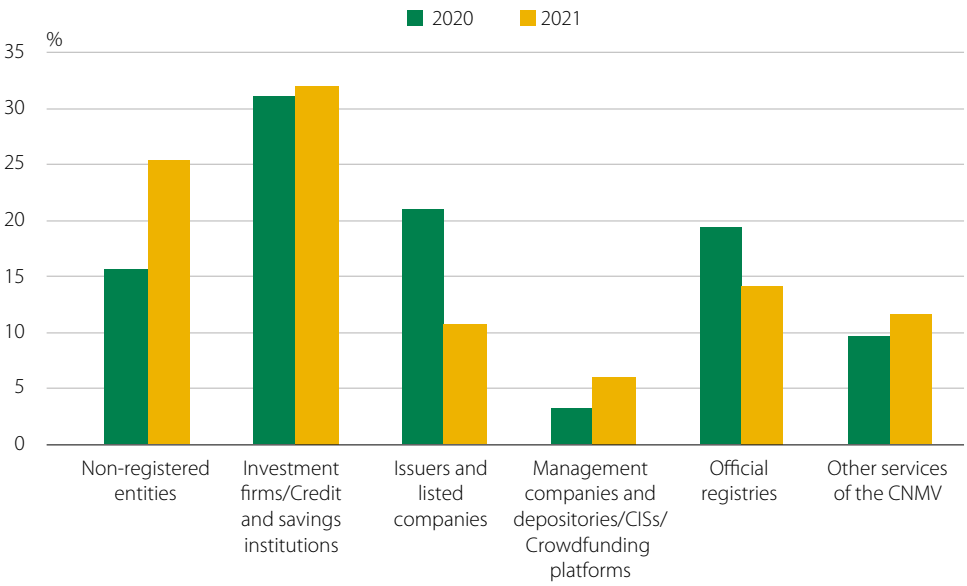
In the third block of Figure 26, dedicated to issuers and listed companies, as in the previous year, queries about loans assigned to securitisation funds were repeated, as were those about corporate transactions and IPOs. The latter include aspects such as the acceptance process, calendar, authorised price and the possibility of exercising a squeeze-out. It should be noted that during 2021 further enquiries were received relating to the holding of warrants relating to restructuring processes issued by Deoleo, S.A. and Abengoa, S.A., and on their potential sale, liquidation or waiver as well as complaints relating to the resolution of Banco Popular Español, S.A. and the resolution measures adopted by the Fund for Orderly Bank Restructuring (FROB) on 7 June 2017.

Among the queries on management companies, depositories and CISs, there were many repeats of those relating to the characteristics of CISs, custody fees for shares and units in Spanish and foreign CISs, crowdfunding platforms and venture capital firms.

Lastly, there were enquiries about the information in the official registries and about other services offered by the CNMV, such as claims and complaints handling,

publications, press releases and communications, investor alerts, etc. These types of consultation notably included many about the register of investment firms, queries about the content of price-sensitive information notices and the presentation of new technological projects and initiatives in relation to the securities markets.

Subjects of enquiries FIGURE 26



Fuente: CNMV.

4.3 Main subjects of enquiries

This heading includes the subjects of enquiries considered of particular importance in 2021, due to their relevance or recurrence, and thus worthy of special mention.

4.3.1 Unregistered entities (financial boiler rooms)

Enquiries and complaints received in 2021 about unregistered entities that offer investment services without the corresponding authorisation increased by 25% compared to the previous year, the second largest in volume.

The losses arising from investments in these "financial boiler rooms" give rise to other types of fraud, such that practised by companies known as "recovery rooms", which contact people who have been victims of financial boiler rooms offering to recover their losses or repurchase shares or securities through unauthorised companies.

This type of fraud may derive from the boiler room that carried out the initial fraud or from other people or companies that have acquired lists of the parties involved.

Recently, this practice has involved the improper use of the CNMV's identify by such individuals or companies, leading victims to believe that the authority is offering to oversee the recovery of their investments.

The CNMV publicly stated it has not signed or authorised the recovery of losses suffered by investors to any national or foreign company or to any natural person.

They may also contact the investor offering investments in exchange for a certain amount of money for fees, taxes or similar.

As in the previous case, the individuals or companies that perpetrate this practice may also impersonate the identity of the CNMV in documents or emails, even stating that they are CNMV employees or that they are calling from its Anti-Fraud Department.

The CNMV has issued warnings about these different methods, which can be found in the "Investors and financial information" section of the CNMV website. For further details of these warnings see the *2020 Annual Report. Attention to complaints and enquiries by investors.*

4.3.2 Suspension of Cypriot investment firms in Spain

These enquires related specifically to Depaho Ltd. (www.fxgm.com) or Forex TB Ltd. (www.forextb.com).

Depaho Ltd., currently Naxex Invest Ltd., according to information provided by the Cyprus Securities and Exchange Commission (CySec), is registered with the CNMV as an investment firms in the European Economic Area that has been authorised to operate in Spain under the freedom to provide services regime since 29 November 2012.

In addition, on 21 June 2019, Depaho Ltd. was authorised to carry out the investment and ancillary services contained in its programme of activities through a branch in Spain, which was eventually deregistered on 17 December 2021.

In 2021 Depaho Ltd. was not allowed to carry out investment services and activities in Spain, specifically from 9 July 2021 onwards, as a result of the suspension of its authorisation notified by the competent Cypriot authority (CySec). The relevant information notice was published on 8 July 2021 (No 294498), and is available for consultation on the CNMV website.

Forex TB Ltd., with the trademark FXTB and registered with the CNMV on 11 January 2016 as an investment firm in the European Economic Area under the freedom to provide services regime, was banned from seeking new clients in Spain on 10 June 2021, as indicated by the Cypriot supervisor and reported on the CNMV website.

These events gave rise to enquiries and complaints from investors who were given the option to file a complaint, although bearing in mind their cases would be treated differently depending on whether the events had taken place before or after the aforementioned suspension of authorisation and whether or not the company had provided the service through the branch in Spain.

Thus, the CNMV does not generally have supervisory powers over investment firms from the European Economic Area authorised to provide investment services in Spain under the freedom to provide services regime, in accordance with the regulations on cross-border transactions that apply in the European Union, which allow the authorisation obtained in one EU member state to be used in other EU Member States, without any need to obtain another authorisation (known as the "community passport"). This task, as well as the task of responding to the complaints and claims

of the entity's clients in Spain, correspond to the competent authorities of its country of origin (in this case Cyprus).

However, when that investment firm of the European Economic Area is authorised to provide investment services in Spain through a branch, it would fall to the CNMV to ensure that the branch complies with Spanish rules of conduct and consequently to address complaints filed by clients of the investment firm relating to the services carried out by said body.

4.3.3 Fees and expenses for providing information to clients on paper

With regard to this matter, which arose as a result of dealing with enquiries from investors in 2021, it is interesting to note that the CNMV classified as good practice in 2021 the fact that entities provide their clients with the corresponding information, on paper or using electronic means (as freely chosen by the client) at no additional cost and only in cases in which the client, having signed up to receive online notifications, decides that he or she also wishes to receive the information on paper, must cover the cost of sending this information, if there is an established fee.

This ensures that clients who do not have sufficient means (e.g. suitable mobile phones or computers) do not have a proper connection or do not have the necessary skills to manage these tasks are not penalised.

Directive (EU) 2021/338 of the European Parliament and of the Council, of 16 February 2021, whose purpose is to contribute to recovery from the COVID-19 crisis, is currently pending transposition into Spanish regulations. Article 4.1. of this Directive provides that:

> *Member States shall adopt and publish, by 28 November 2021, the laws, regulations and administrative provisions necessary to comply with this Directive. They shall forthwith communicate to the Commission the text of those measures.*
>
> *These provisions will apply from 28 February 2022.*

The aforementioned Directive establishes, among other matters, that the default option for investment firms to provide information to their clients is by electronic format, although retail clients must also have the option of requesting to receive the information on paper, and investment firms must inform their retail clients of this option.

4.3.4 Changes in contractual conditions as a result of the merger of investment firms

The merger of Bankia, S.A. and CaixaBank, S.A., and the possible changes in contractual conditions for clients of the merged company, especially in relation to applicable fees, gave rise to questions among investors.

When a merger by absorption takes place between two companies, the merging company acquires all the rights and obligations of the merged company by universal succession. This implies the merged company is wound down and that the clients of that company become clients of the merging company.

In this situation, entities must inform their clients of any upward revisions to the fees and expenses charged for the services provided that had been previously agreed with the client. In this case, the client must be given a minimum period of one month from the receipt of this information in which to change or cancel the contractual relationship, during which time the new fees will not be applied, although the previously-agreed fees will. If the fees are reduced, they will be applied immediately and the clients must also be informed.

Therefore, although increases in securities fees implemented unilaterally by an entity give the client the possibility of disassociating from the entity during the minimum period indicated, during which time the new fees will not apply, it does not exempt the client from having to pay the fees that were applicable before the change or, in particular, the transfer fee for moving the securities to another entity that had been previously applicable.

However, if the entity offers its clients the possibility of terminating or cancelling its securities contract at no cost, to the extent that the cancellation of the contract cannot occur separately from the transfer, the latter being an unavoidable consequence of the former, the Complaints Service considers that the entity, by offering the free cancellation, would have acquired a commitment not to charge its client transfer fees, since otherwise the termination of the contract would not be cost free.

4.3.5 Operational limitations or on the scope of services offered by investment firms

Another noteworthy issue arises as a result of investor complaints about the refusal of entities to provide a specific service that is of interest to them.

Entities can freely decide which services they offer their clients and, in particular, they can establish limitations on the financial instruments or securities on which they provide services.

These decisions fall within the scope of autonomy of each entity.

In compliance with the information obligations to their clients, entities must inform them of the operational limitations of the services they offer to their clients in a timely and appropriate manner.

4.3.6 Takeover bids

Special mention should be made of the 2021 bid by Barón de Ley, S.A. with a view to its delisting, as well as the voluntary bid presented on Zardoya Otis, S.A. by Opal Spanish Holdings, S.A. The consultations focused on knowing the procedure, the terms for its authorisation and the price at which the bids were set.

It was reported that the resolutions relating to the authorisation of the bid will be carried out carried out in accordance with the terms and other requirements set out in Article 21 of Royal Decree 1066/2007, of 27 July, on the legal regime of investment firms.

It was also reported that the actions carried out by the CNMV in the processing of a takeover bid are not public, and the bid prospectus and accompanying documentation

can be consulted on the CNMV's website (www.cnmv.es) in the Official Register of takeover bids once it has been authorised.

4.3.7 The agreement reached by some OHL shareholders to support the recapitalisation of the company through an injection of own funds

This transaction was carried out through a capital increase with preemptive rights with a monetary contribution for a total effective amount of €35 million and a second capital increase without preemptive rights aimed a specific shareholders – the second increase gave rise to investor enquiries.

As some of the aforementioned documents were styled more as a complaint than an enquiry about the recapitalisation transaction, they were forwarded to the competent CNMV department, and the parties concerned were reminded that any actions carried out by the CNMV would be subject to the duty of secrecy pursuant to Article 248.1 of the Securities Market Act, approved by Royal Legislative Decree 4/2015, of 23 October.

4.3.8 Potential dilution effect in the capital increase agreed by Distribuidora Internacional de Alimentación (DIA), S.A.

The enquiries and complaints motivated by the possible dilutive effect that could occur by including a first tranche to offset the €769 million loan of the majority shareholder L1R Invest1 Holdings S.à r.l., at an issue price, applicable to all tranches, of €0.02 for each new share (€0.01 face value and €0.01 share premium).

As on other occasions, the written document was styled more as a complaint than an enquiry and therefore it was transferred to the competent department.

The parties concerned were informed that, on an ordinary, general basis and within the scope of its supervisory tasks, the CNMV permanently supervises and inspects the securities markets and the activity of all natural and legal persons involved their activities, in application of current regulations on market transparency and efficiency, also recalling that any actions carried out by the CNMV are subject to the duty of secrecy imposed by Article 248.1 of the recast text of the Securities Market Act, approved by Royal Legislative Decree 4/2015, of 23 October.

4.3.9 Failure to submit the audited annual accounts of Abengoa, S.A. (for 2019 and 2020) and reasons why, once these accounts had been presented, the suspension was maintained

In this case, the parties were informed that on 14 July 2020, the CNMV resolved to suspend, under Article 21 of Royal Decree-Law 21/2017, of 29 December, on urgent measures for the adaptation of Spanish law to European Union regulations on the securities market, all trading on the Spanish Stock Market Interconnection System (SIBE) of the shares and other securities that give the right to their subscription, acquisition or sale of Abengoa, S.A.

The suspension will be maintained for as long as the CNMV considers that circumstances persist that will disrupt the normal trading of the securities.

In terms of its market position, it was reported that the suspension of trading, which is a transitory measure, may lead to the future delisting of the shares or to the lifting of the measure and a return to trading, provided that the circumstances which caused it no longer exist. For this reason, it was recommended that interested parties periodically consult the news about the company through the CNMV website (www.cnmv.es).

4.3.10 Restructuring process and subsequent dissolution of Codere, S.A. (in liquidation)

The restructuring and subsequent dissolution was approved by the Extraordinary General Shareholders' Meeting on 10 December 2021, which led to the suspension from trading of the shares on 17 December 2021, which was maintained indefinitely until the removal from trading on 28 April 2022, as the company was in liquidation.

The parties were informed of the powers and functions of the CNMV, noting that Spanish corporations are governed by the provisions of the recast text of the Spanish Corporate Enterprises Act, approved by Royal Legislative Decree 1/2010, of 2 July, and that the CNMV does not have the power to get involved in this process or in any decisions that the governing bodies of public limited companies and their creditors as autonomous bodies may take.

Specifically, any potential discrepancies between investors and the administrators of a public limited company or with the agreements made by the governing bodies of this entity and its creditors must be processed through the corporate channels in order to challenge corporate agreements or liability actions of administrators, in which the CNMV cannot intervene.

4.3.11 Companies admitted to trading on BME Growth

The Investors Department informed the parties concerned that in accordance with title VIII of the general regulations of BME MTF Equity, Bolsas y Mercados Españoles, Sistema de Negociación, S.A. (BMESN) is responsible for inspecting and supervising the operation of the market and for any tasks relating to the actions carried out by market members and participants, and issuers and any other participants.

The powers of the CNMV in relation to BME Growth (formerly MAB) are limited to monitoring market abuse and compliance with the procedures that govern the operations of BME Growth.

In regard to the companies listed on BME Growth, it is worth noting the consultations presented in which the potential application of takeover bid regulations was raised. The parties were informed that, in accordance with Article 129 of the recast text of the Securities Market Act (approved by Royal Legislative Decree 4/2015, of 23 October) and Article 1 of Royal Decree 1066/2007, of 27 July, on the regime of takeover bids, the powers of the CNMV in regard to takeover bids are limited to companies whose shares are, in whole or in part, admitted to trading on an official Spanish secondary market and have their registered office in Spain, and do not extend to shares of entities that are traded exclusively in a multilateral trading facility, as is the case of BME Growth – a segment aimed at small and medium-sized companies of BME MTF Equity.

4.3.12 Transfers of investments between CISs

Queries were once again raised about the requirements that must be met to benefit from the tax deferral regime in the transfer of an investment transfer between different CISs, that is, not paying taxes for the redemption of the investment at source at the moment of the transfer but when the transferred investment is redeemed or sold.

To benefit from this regime, both CISs must be registered with the CNMV for their distribution in Spain and, in the case of foreign CISs regulated by Directive 2009/65/CE of the European Parliament and of the Council, of 13 July 2009, the acquisition, subscription, transfer or redemption of CIS units or shares must be carried out through marketing entities registered with the CNMV and, if the source CIS in the transfer has a corporate legal form, it must have more than 500 shareholders. On this point, the regulations indicate that the number of shareholders stated in the last quarterly report should be taken into consideration for Spanish CISs and, for foreign CISs, the number of shareholders stated in the last annual communication submitted to the CNMV, prior to the date of transfer or redemption.

The quarterly reports of Spanish CISs can be consulted on the CNMV's website (www.cnmv.es), under the information available for the specific CIS, in particular its "Periodic public information".

For foreign CISs, it is necessary to consult the information available for the CIS to which the compartment or sub-fund for which the information being sought belongs and then consult the last notice containing the annual communication of the fund under "Price-sensitive information of collective investment scheme (CISs) and other authorised entities".

Specifically, for foreign CISs, the aforementioned communication must include the name of the compartments or sub-funds marketed in Spain with more than 500 shareholders and of the classes of shares that make up these compartments or sub-funds (that is, there is no obligation to include compartments or sub-funds that do not have more than 500 shareholders in the communication).

Therefore, if CIS, or a compartment of a CIS, has a corporate form, fewer than 500 shareholders and meets the other requirements referred to above, it would be eligible as a target CIS in the transfer of investments between CISs, but it would not be eligible as the source CIS in a transfer of investment between CISs and consequently it would not be possible to transfer the investment in that CIS to another scheme.

This also implies that depending on the changes in the number of shareholders of the CIS or its compartment with corporate form marketed in Spain and, in particular, if this number exceeds 500 or falls below that number, it may be eligible for the investment transfer regime when it acts as the source CIS on some occasions, and at other times it may not.

4.3.13 Fees and commissions for changing the distributor of CISs and for the transfer of investments between CISs

With regard to the fees that may be applicable to changes in the distributor of investments made in transferable CISs, there are two categories of investment vehicles:

i) in the case of foreign CISs, listed Spanish investment funds or Spanish CISs with corporate form, and ii) unlisted Spanish investment funds.

In the first case, the ownership of the investment is normally represented by shares or units that are deposited in a securities account, so to change distributor it is necessary to transfer the securities to a securities account that has been opened with the new distributor.

In this case, the fees established by the source and target funds for the provision of this service apply.

In the second case, the unitholder should not pay any fee for changing distributor, unless the collection of custody and administration fees by the distributor is mentioned in the prospectus of the fund registered with the CNMV and the following conditions are met: i) "the units are represented by means of certificates and appear in the register of unitholders of the management company or the distributor through which they have been acquired on behalf of the unitholders and, consequently, the distributor provides evidence to the investor of ownership of the units", ii) "the general requirements for fees and contracts for the provision of investment and ancillary services are met" and iii) "the distributor does not belong to the same group as the management company".

With regard to investment transfers between CISs, all fees, commissions, discounts in favour of the CIS and any other expenses for the redemption or units of shares of the source CIS, such as for the subscription or acquisition of the units or shares of the target CIS, will apply.

4.3.14 Situations in which fees and commissions for the custody of shares and CIS units may be charged

Distributors of unlisted Spanish investment funds may charge the unitholders that have subscribed units through them custody and administration fees, providing this is indicated in the CIS prospectus and the following requirements are met:

> *i) The units are represented by means of certificates and appear in the register of unitholders of the management company or the distributor through which the units have been acquired on behalf of the unitholders and, consequently, the distributor provides evidence to the investor of ownership of the units.*
>
> *ii) The general requirements for fees and contracts for the provision of investment and ancillary services are met.*
>
> *iii) The distributor does not belong to the same group as the management company.*

Therefore, in order to charge fees for the custody of shares in unlisted Spanish investment funds, the aforementioned requirements must be met and properly set out in the contractual documentation.

4.3.15 Accounts held in the name of the final investor or global accounts (omnibus accounts)

In general, the shares traded on the Spanish stock exchanges are identified in accounts in the name of the final investor, either in the accounts of the central securities depository (Iberclear), or in the second tier registers of one of its participating members.

Therefore, entities' clients are currently able to: i) hold their positions in individual accounts in the central securities depository in which their securities balances are entered, or ii) reflect their positions in the general third-party accounts, in which, for each ISIN, the balances of the securities corresponding to the clients of each participating member are entered, or the clients of a third entity that has entrusted the applicant participating member with custody and the second tier registration of the securities of these clients. In turn, participating members with general third-party accounts must keep a second tier register for each category of securities with the same ISIN identification code.

In international markets, it is common practice for the trading of securities and financial instruments on behalf of clients to be registered in omnibus or global accounts for clients of the same entity, in which the final investor does not appear as the registered owner, but rather the entity under whose name the account has been opened. However, it is possible for entities to agree with their clients to deposit shares acquired in foreign markets in individual accounts opened in the name of the final investor in which they are their registered owners instead of through omnibus or global accounts. The cost that this would entail for investors would be contractually agreed in each case between the entities and their clients.

The CNMV's public registers contain no information on the way in which the securities of different clients of the entities are deposited or registered.

For information on this matter, investors should contact the entity in which they have deposited their securities or consult the contractual documentation they have arranged with the entity, mostly their securities deposit and administration contract.

One legal effect of entries made in the name of the holder, both in the individual accounts of the Spanish central securities depository and in the second tier registers of its participating members, is that the person whose name appears in the register entries will be assumed to be the legitimate owner and may consequently ask the issuer to perform the services to which the security represented through the book-entry system is entitled.

These entries also have other effects. Thus, entering the transfer in the name of the buyer will have the same effects as the transfer of securities – either the transfer will be upheld against third parties from the moment in which the entry is made and the third party that acquires securities represented by register entries of a person who, according to the entries in the accounting register, is authorised to transfer them will not be subject to claim, unless at the time of acquisition they have acted in bad faith or with gross negligence.

In Spain, the hypothetical default of the holder of the global account, the entity in which the global account has been opened or the entity with which the client has contracted the deposit and administration of securities and financial instruments in

that global account, would not normally affect the clients' ownership of the securities that belong to them in the global account.

It should therefore be noted that investment firm must meet certain requirements in order to protect client assets.

In addition, for the custody of clients' financial instruments there are provisions to ensure the same protection.

With regard to the entity with which investors arrange the deposit and administration of their securities, it should be noted that in Spain, once the bankruptcy of an entity in charge of keeping the book-entry securities register or a participating member of the register system has been declared, the holders of the securities registered in these will enjoy the right of separation with respect to the securities registered in their favour and may exercise this right by requesting their transfer to another entity.

In addition, once the insolvency proceedings for a securities depository have been initiated, the CNMV, without prejudice to the powers of the Bank of Spain and the FROB, may order, immediately and at no cost to the investor, the transfer of the securities deposited on behalf of its clients to another entity authorised to carry out this activity, even if the assets are deposited in third-party entities in the name of the entity that provides the deposit service.

All of the above would be valid without prejudice to any guarantees that are offered by the investment guarantee fund to which the bankrupt depository may have adhered, in the event that it is unable to return the securities or financial instruments to its client.

Spanish credit institutions must adhere to the Spanish credit institutions deposit guarantee fund.[1] This guarantee fund is a body with its own legal personality, which is independent from the CNMV and not under its supervision, but that of the Bank of Spain.

4.3.16 Private investments

It should be clarified that there are no data in the CNMV's official registers about shares listed on the Spanish market that could have been traded by investors.

To obtain data on investments that have been made a formal request must be submitted to the depository, which should provide the supporting documents for the transactions it has a record of and, with for those that it does not have a record of – either because they are not kept or for any other reason – this should be clearly indicated.

For purchase transactions, it should be noted that under current regulations depositories must keep certain information for a period of five years, such as information on the transactions carried out, the periodic statements or clients' financial instruments.

1 www.fgd.es

Therefore, if the purchases were carried out after that period had expired, the entity providing the brokerage service or the custody and administration of securities would no longer be legally obliged to keep information on these transactions. Furthermore, if the requests for information are manifestly disproportionate, unjustified or generic, or there are special circumstances that so advise, the entity could refuse to provide such information.

It should be clarified that the obligation to retain the data corresponding to the transaction (and the respective documentation) falls to the entity that processed the order but not to other entities that were not involved in the purchase and that received the securities later through a transfer. In this sense, it should be noted that the transfer of the securities to a new custodian is not required to be accompanied by a history of the transactions carried out by the client on those securities with other investment firms for tax purposes.

In any case, for each stock market transaction performed, the investor should receive sufficient supporting documentation from its financial intermediary (dates, prices, fees and expenses incurred, etc.) about the terms and conditions of execution to calculate the tax losses or gains that would arise.

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

Enquiries submitted frequently to the CNMV that are relevant due to their recurrence include enquiries about quoted prices or net asset value, in the case of investment funds.

As in the previous case, it should be clarified that the CNMV's functions do not include the dissemination of information on stock market prices.

Nor does the CNMV disclose the net asset value of investment funds, information on which can be found in the fund prospectus, to which reliable, rapid and non-discriminatory access should be guaranteed, and neither the unitholders nor the general public may be charged a specific fee to obtain the information. The management company will provide said data through the selected channel at the latest the day after the day on which it calculates the net asset value.

Annex 1 Statistical data on cases submitted by natural persons and not-for-profit entities (acting as an ADR body) against legal entities (acting as a Complaints Service)

Annex 1 Statistical data on cases submitted by natural persons and not-for-profit entities (acting as an ADR body) against legal entities (acting as a Complaints Service)

The action of the Complaints Area as an ADR body stems from the obligation to accommodate the complaints procedure set out in Order ECC/2502/2012, of 16 November, which regulates the procedure for submitting complaints to the complaints services of the Bank of Spain, the CNMV and the General Directorate of Insurance and Pension Funds as established in Law 7/2017, of 2 November, which transposes Directive 2013/11/EU of the European Parliament and of the Council, of 21 May 2013, on the alternative resolution of consumer disputes, into the Spanish legal system. This procedure applies only to complainants who meet the subjective characteristics established in said Law, that is, to natural persons and not-for-profit entities in accordance with the definition of "consumer" set out in Law 7/2017,[1] which extends the subjective scope of transposed Directive 2013/11/EU, which only defines a natural person as a consumer.[2]

Given this disparity in the subjective scope of the two standards and to provide information for both Spanish and cross-border regulations, the column "Natural persons + not-for-profit entities" separately identifies the cases that have been initiated following the submission of a complaint by any of these subjects in the reference period.

Thus, in 2021, only one complaint filed by a foundation, pending resolution from the previous year, was resolved with a reasoned report that was unfavourable to the complainant and no additional complaints were filed in that year for this type of subject. The case has been correctly filed in the different statistical tables shown below.

Furthermore, the Complaints Service acts as usual in relation to legal person investors to whom the procedure defined in Order ECC/2502/2012 is applicable, with no adaptation or accommodation.

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1 Article 2 of Law 7/2017, of 2 November, incorporating Directive 2013/11/EU of the European Parliament and of the Council into the Spanish legal system, dated 21 May 2013, on the alternative resolution for consumer disputes:
a) "Consumer": any natural person who acts for purposes unrelated to their commercial, business, trade or profession, as well as any legal person and entity without legal personality that acts is not-for-profit in a field other than a commercial activity or unless the regulations applicable to a certain economic sector limit the presentation of complaints before the accredited entities referred to in this Law exclusively to natural persons.

2 Article 4 of Directive 2013/11/EU of the European Parliament and of the Council, of 21 May 2013, on the alternative resolution of consumer disputes:
a) "Consumer": any natural person acting for purposes unrelated to their commercial or business activities, their trade or their profession.

Complaints processed by type of resolution (natural persons and not-for-profit entities versus legal entities)

TABLE A1

Number of claims and complaints

	Natural persons + not-for-profit entities		Legal entities		Total	
	Number	%	Number	%	Number	%
Being processed at the end of 2020	**259 + 1**	**–**	**8**	**–**	**268**	**–**
Registered with the CNMV's Complaints Service	**1,212**	**–**	**42**	**–**	**1,254**	**–**
Not accepted for processing	**471**	**–**	**13**	**–**	**484**	**–**
Processed without final reasoned report	**197**	**23.9**	**2**	**7.7**	**199**	**23.4**
Acceptance or mutual agreement	177	21.5	2	7.7	179	21
Withdrawal	15	1.8	–	–	15	1.8
Ex post facto non-admission	5	0.6	–	–	5	0.6
Processed with final reasoned report	**627 + 1**	**76.1**	**24**	**92.3**	**652**	**76.6**
Report favourable to the complainant	343	41.6	13	50.0	356	41.8
Report unfavourable to the complainant	284 + 1	34.5	11	42.3	296	34.8
Total processed	**824 + 1**	**100.0**	**26**	**100.0**	**851**	**100.0**
Being processed at the end of 2021	**176**	**–**	**11**	**–**	**187**	**–**

Source: CNMV.

Types of non-admissions (natural persons and not-for-profit entities versus legal entities)

TABLE A2

Number of complaints

	Natural persons + not-for-profit entities		Legal entities		Total	
	Number	%	Number	%	Number	%
Direct non-admissions	**161**	**34.2**	**1**	**7.7**	**162**	**33.5**
Bank of Spain	68	14.4	1	7.7	69	14.3
Directorate-General for Insurance and Pension Funds	20	4.2	–	–	20	4.1
Against entities under the freedom to provide services regime from FIN-NET member countries	24	5.1	–	–	24	5
Against entities under the freedom to provide services regime from FIN-NET associated countries	4	0.8	–	–	4	0.8
Against entities under the freedom to provide services regime from non-FIN-NET member countries	33	7.0	–	–	33	6.8
Other	12	2.5	–	–	12	2.5
Non-admission following petition to complainant for rectification/pleas	**310**	**65.8**	**12**	**92.3**	**322**	**66.5**
No response	229	48.6	5	38.5	234	48.3
Insufficient response	81	17.2	7	53.8	88	18.2
Total non-admissions	**471**	**100.0**	**13**	**100.0**	**484**	**100.0**

Source: CNMV.

Reasons for complaints completed in 2021 (natural persons and not-for-profit entities versus legal entities)

TABLE A3

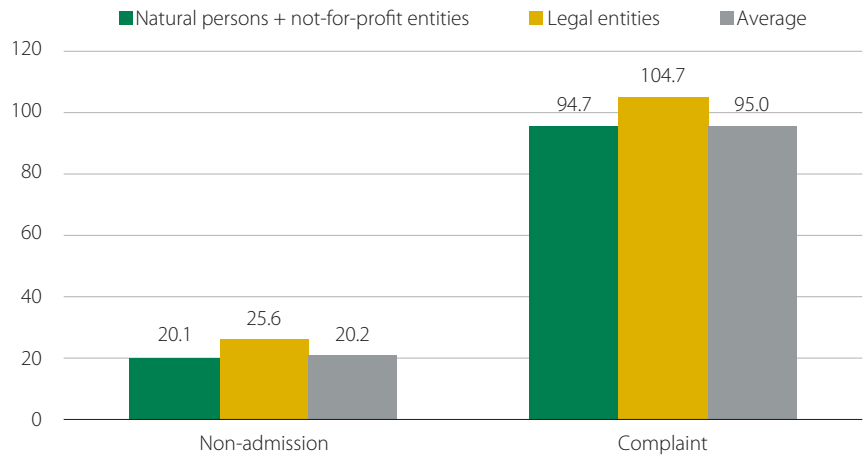
		Natural persons + not-for-profit entities		Legal entities		
Investment service/reason	**Reason**	**Securities**	**CIS**	**Securities**	**CIS**	**Total**
Marketing/execution Advice Portfolio management	Appropriateness/suitability	47	62	4	–	**113**
	Prior information	49	68	–	–	**117**
	Purchase/sale orders	155 + 1	65	5	1	**227**
	Fees	138	87	4	–	**229**
	Transfers	25	47	–	–	**72**
	Subsequent information	147	77	13	1	**238**
	Ownership	12	12	–	–	**24**
Acquisition *mortis causa*	Appropriateness/suitability	1	1	–	–	**2**
	Prior information	1	–	–	–	**1**
	Purchase/sale orders	3	3	–	–	**6**
	Fees	5	3	–	–	**8**
	Transfers	–	–	–	–	**–**
	Subsequent information	9	11	–	–	**20**
	Ownership	21	12	–	–	**33**
CSD operation		13	6	–	–	**19**
Total		**626 + 1**	**454**	**26**	**2**	**1,109**[1]

Source: CNMV.

1 There is very often more than one reason stated in the same claim or complaint file.

Time to completion (natural persons and not-for-profit entities versus legal entities)

FIGURE A1



Source: CNMV.