CNMV
Comisión Nacional del Mercado de Valores

Attention to complaints and enquiries by investors
2022 Annual Report

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Comisión Nacional del Mercado de Valores
Edison, 4
28006 Madrid

Bolivia, 56
08018 Barcelona

Heros, 3
48009 Bilbao

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Table of contents

Index of figures

Index of tables

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	Spanish Executive Resolution Authority
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 and summary of financial year 2022

1 Introduction and summary of financial year 2022

This Annual Report on Complaints shows the actions taken by the CNMV Investors Department to deal with claims, complaints and enquiries made by investors in 2022.

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 enquiries 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 entities concerned, 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 with the Complaints Service with regard to specific incidents arising from actions or omissions by the financial institutions against which the complaint is made, 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 issue, by the Complaints Service, of a reasoned report that pronounces on the issues raised in the complaint, 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, on 4 November 2017, the Official State Gazette (*BOE*) published Law 7/2017, of 2 November, transposing Directive 2013/11/EU of the European Parliament and of the Council, of 21 May 2013, on alternative dispute resolution for consumer disputes (Directive on consumer ADR) into Spanish law. The Complaints Service has had to adjust its functioning and procedure to the provisions of Law 7/2017, in line with the first additional provision of the law. The manner in which this adjustment took place was extensively 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 2022, the third provides a general view of the most significant criteria applied in the resolution of complaints in 2022, the fourth deals with the most salient issues dealt with during the year, and the annex includes statistical data on cases submitted by natural persons and not-for-profit entities as against legal persons.

Structure of the Annual Report

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

The second chapter reports on the activity carried out by the Complaints Service in 2022. This chapter contains data related to the processing of complaints and includes graphs and diagrams to facilitate the understanding of the complaints procedure with this Service. Statistical data are also 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 2022. Thus, the Report establishes the number of proceedings and the reasons that gave rise to the pre-processing stage (consisting of 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 issue of a report favourable to the complainant or the responses by complainants to the non-admissions or reports unfavourable to the complaints).

The Report also 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 confirmation of subsequent actions and 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 giving rise to 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.

In order to provide information on the work carried out by the Customer Service Departments (CSD) of the entities supervised by the CNMV in processing the complaints received on issues that fall under the remit of the Complaints Service, specific information about the complaints they receive has been requested from the entities. This Annual Report includes the data that the entities have provided on the complaints related to the securities market that were filed with their CSD or with the Customer Ombudsman (CO) in 2022, as well as the complaints that were not admitted or those that were admitted and resolved by them in that year.

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 2022.

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 15th Annual Meeting of the INFO Network, held on Wednesday, 27 September 2022.

The third chapter presents an overview of the main criteria applied in the resolution of complaints in 2022. In this regard we would point out that these criteria arise from the interpretation of sector regulations and good practices that are generally accepted and recognised by market participants. The criteria derive from the exercise of the supervisory tasks with which the CNMV is entrusted, applied to the specific cases analysed in each of the complaints processed in 2022. 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, in publishing these criteria the intention is merely to give an updated catalogue of the regulatory interpretations and good practices that apply to the sector on a specific date, that of their publication, and nothing prevents them from being subsequently modified or nuanced.

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.

The issues are classified with the following criteria: i) the analysis of the product's appropriateness 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; and vi) the ownership of securities.

The fourth chapter deals with the Investment Department's handling of investors' enquiries and shows statistical data of the enquiries received broken down by communication channel (electronic office, telephone or mail), as well as the main subjects of enquiry in 2022, with a specific section where the most significant issues (in terms of frequency or specificity) are further developed.

Annex 1 contains statistical data on cases submitted by natural persons and not-for-profit entities (acting as ADR bodies) as 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 complaints with the complaints services of the Bank of Spain, the CNMV and the Directorate-General of Insurance and Pension Funds.

The activity as an ADR body is regulated by the same Order ECC/2502/2012, although adapted to the provisions of Law 7/2017, of 2 November, transposing Directive 2013/11/EU of the European Parliament and of the Council, of 21 May 2013, on alternative dispute resolution for consumer disputes into Spanish law. This adapted 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 the transposed Directive 2013/11/EU, which defines only natural persons as consumers, this being the reason why in the data provided on activity as an ADR body, a distinction is made between natural persons, who are considered consumers under both Spanish and EU legislation, and not-for-profit entities, which are considered consumers under Spanish law only.

Key figures of financial year 2022

In general, the percentage of complaints that, after passing through the CSD, are subsequently processed by the Complaints Service in the same year is very low, with an average of 6%. It must be taken into account that complainants have a period of one year, from when their complaint was resolved by the CSD of the entity or from when the latter should have resolved it without having done so, to submit their complaint to the Complaints Service. The figure of 6% would seem to indicate that the system is working properly, with customers going first to the entity and then turning to the Complaints Service if the case cannot be resolved. In exercising this function, the Complaints Service received 1,371 complaints in 2022. Of these documents, in addition to those pending from the previous year, 435 were not admitted by the Complaints Service and 783 were admitted and processed as complaints.

In relation to the 783 documents processed, the Complaints Service issued a reasoned report establishing that the entity had acted incorrectly in 271 cases (34.6%) and correctly in 267 cases (34.1%). 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.

The rest of the documents processed (245) correspond to acceptances or compromises, withdrawals and cases subsequently ruled inadmissible. Strikingly, in 229 of these cases (29.2% of the total number of documents processed) the complainant obtained complete satisfaction or reached an agreement with the entity, thus avoiding the need for a ruling on the substantive issues. This figure has been increasing progressively in recent years. 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, 21% in 2021 and 29.2% in 2022.

Equally striking is the increase in recent years in the percentage of acceptances or rectifications reported by entities following the issue of a report in favour of the complainant by the CNMV's Complaints Service. 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, 81.5% in 2021 and 77.2% in 2022. In other words, taking the figures from the last financial year, in 77% of the cases in which the CNMV ruled in favour of the complainant, the entity agreed to the complainant's request.

Taking into account the data from the last three years, acceptances and agreements have represented an average of 22% of the documents processed and the acceptances or rectifications of the entities an average of 76.3% of rulings in favour of the complainant.

It is also interesting to note that, if the 230 acceptances or mutual agreements that took place in the year were added to the figure of 77.2% – which are after all rectifications made by entities with respect to their clients, albeit carried out on their own initiative during the process – the percentage of rectifications in the 2022 financial year would amount to 87.5%.

In relation to the queries received, in 2022 a total of 9,630 queries were answered. Most of them were made by telephone (82.5%) and responses were mostly limited to providing information existing on the website (www.cnmv.es). By volume, the second most used medium was the enquiry form of the electronic office (15%).

The issues raised by investors in 2022 were, among others, the following:

- Training courses linked to non-existent job offers.
- Non-personalised advice by unauthorised entities.
- Payment in advance to recover a supposed investment.
- Impersonation of registered entities.
- Takeover bids.
- Capital increase of Urbas Grupo Financiero, S.A.
- Companies listed on BME Growth, such as Greenalia, S.A. and Izertis, S.A.
- Bankruptcy or insolvency of the Spanish securities depository entity.
- Bankruptcy or insolvency of the investment fund management company.

– Doubts as to whether certain investment funds are guaranteed.

– Sustainable finance.

Finally, Annex 1 contains statistical data on the activity of the Complaints Service as an ADR body as opposed to its activity as a Complaints Service as such.

2 Activity in 2022

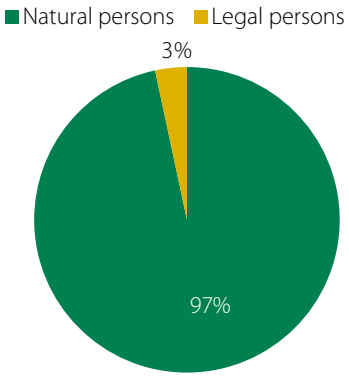
2 Activity in 2022

2.1 Documents filed with the CNMV Complaints Service

In 2022, 1,371 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 203 cases, the investor acted through a representative (40 of them represented legal persons and 139 represented natural persons), although in only nine of these cases were the representatives consumer and user associations.

Types of investors that address the Complaints Service FIGURE 1



Source: CNMV.

Both private individual (natural person) investors and not-for-profit entities are covered by the complaints procedure set forth in Order ECC/2502/2012, albeit adapted to the provisions of Law 7/2017, of 2 November, transposing Directive 2013/11/EU of the European Parliament and of the Council, of 21 May 2013, on alternative dispute resolution of consumer disputes to Spanish law. 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.

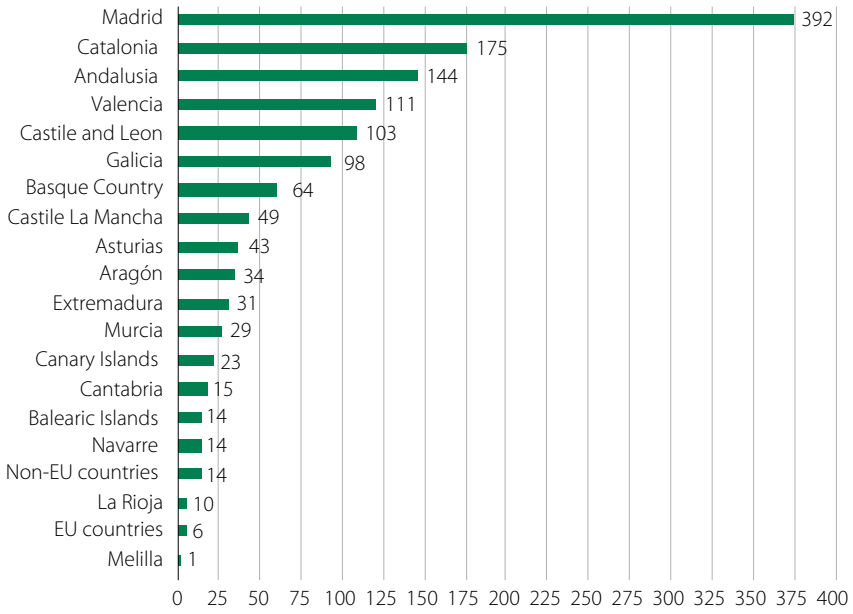
In this regard, of the 40 documents submitted by legal entities, two corresponded to not-for-profit entities.

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 (392), followed, albeit in a notably lower number, by residents of Catalonia, Andalusia and the Valencia Region.

Origin of the investors that address the Complaints Service

FIGURE 2

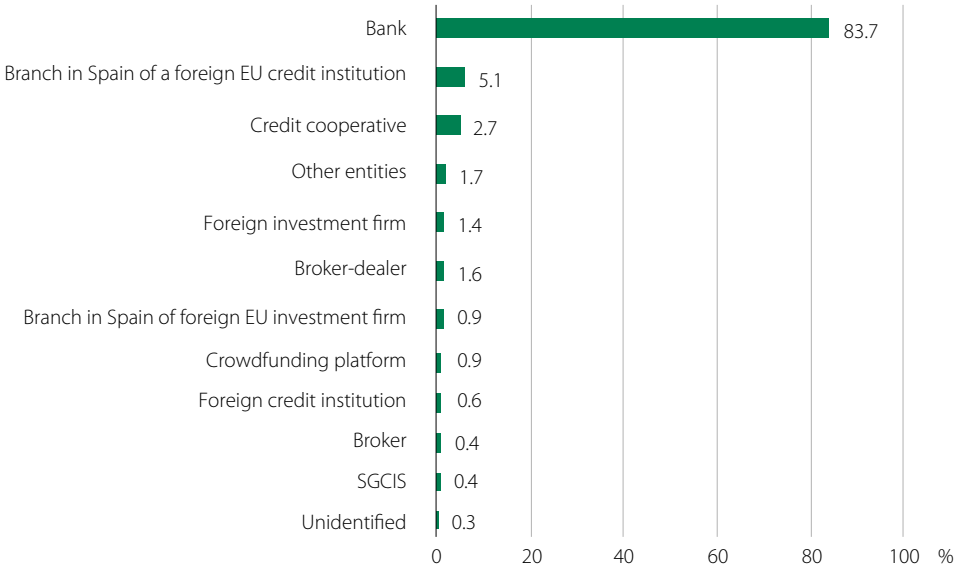


Source: CNMV.

The types of entities concerned[1] by investor complaints were as follows:

Types of entities

FIGURE 3



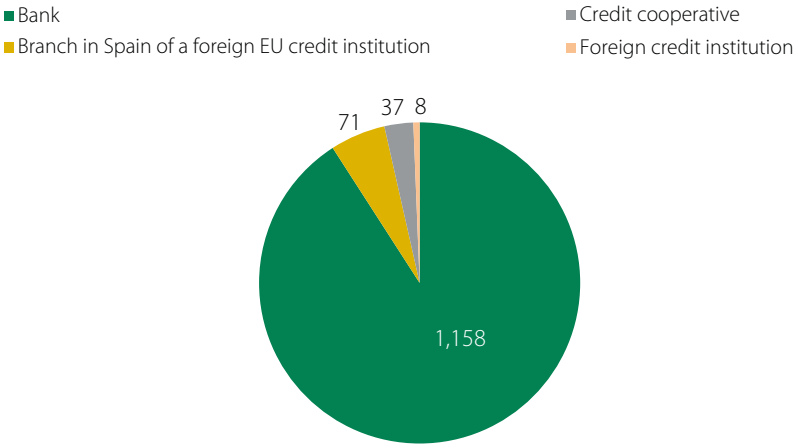
Source: CNMV.

As shown in Figure 3, the type of entity mainly concerned by investor complaints were Spanish credit institutions: 86.4% (83.7% of which were banks and 2.7%, credit cooperatives). A further 5.7% corresponded to foreign credit institutions: specifically, 5.1% to branches of EU credit institutions and 0.6% in which the entities complained about were foreign credit institutions acting from their country of origin.

1 The entities concerned by investors' complaints numbered 1,383, since some documents concerned more than one entity.

Complaints against credit institutions

FIGURE 4

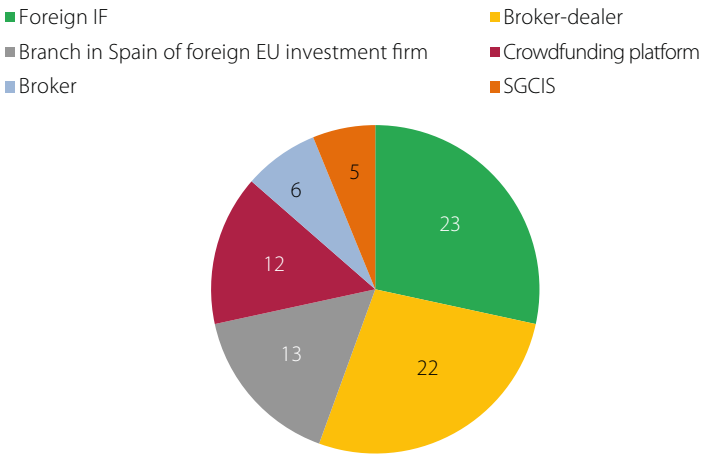


Source: CNMV.

Regarding investment firms (IFs) and other entities authorised by the CNMV, shown in Figure 3, in only 2% of cases was the company against which the complaint was filed a Spanish investment firm (1.6% referred to broker-dealers and 0.4% to brokers), or a management company for collective investment schemes (CISMC) (0.4% of cases). In 2.6% 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 (1.7%) and those directed against branches of EU IFs (0.9%). Lastly, in 0.9% of cases, the respondent entity was a crowdfunding platform.

Complaints against IFs and other entities authorised by the CNMV

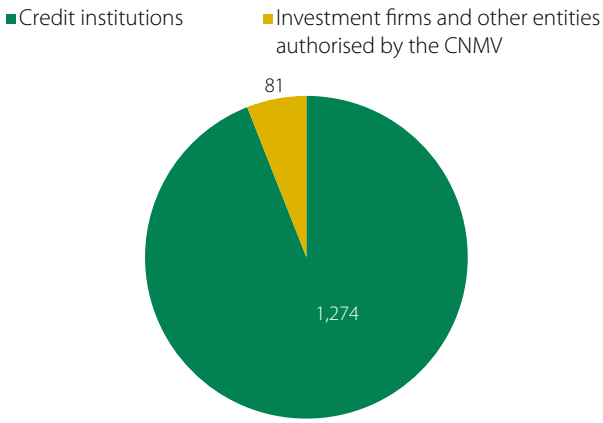
FIGURE 5



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. This is in line with the relative weights of the two types of entities in terms of market share.

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



Source: CNMV.

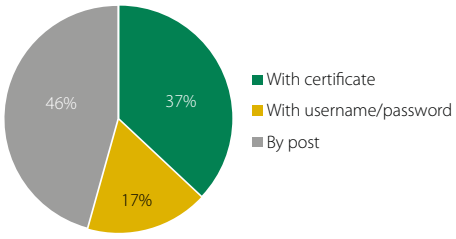
54% of investors communicated with the Complaints Service using electronic channels and 46% used paper. A change in trend was observed that began in 2020, when both percentages were equal, which contrasts with 2019 and previous years, in which presentation on paper accounted for the majority.

Means of presentation FIGURE 1

Number of documents	
With certificate	507
With username/password	238
By post	626
Total	**1,371**

Source: CNMV.

Percentage breakdown FIGURE 7



Source: CNMV.

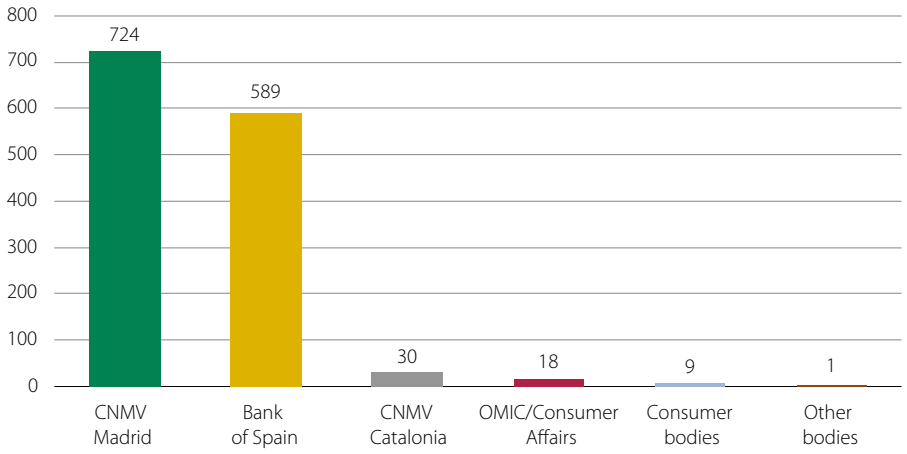
To facilitate the electronic submission of complaints by investors and their subsequent follow-up, given the exceptional situation caused by the COVID-19 crisis, the Complaints Service drew up an explanatory guide. It explains the submission process, which includes four simple steps, indicating how to 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[3] published for this purpose.

Lastly, as regards the place of presentation, most investors filed their documents at the CNMV headquarters (724 in Madrid and 30 in Barcelona), although it is worth mentioning that a significant number of documents referring to issues related to the

2 https://www.cnmv.es/DocPortalInv/OtrosPDF/PPT_InstrucReclamElectro.pdf
3 https://www.youtube.com/watch?v=zYkQvaJKzuY

securities markets were filed directly with the Bank of Spain (589), which subsequently forwarded them to the Complaints Service. It is also worth mentioning the cases in which the complainants filed their documents with entities related to consumer services, both public (18 documents) and private (9 documents) and with other bodies (one with the Spanish Tax Agency AEAT).

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 the one hand, whether the 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-admissibility 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 applies. 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 RR) or to plead about the cause of non-admission detected (petition for pleas or RA).

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 pleas 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. It would be the case of the so-called "direct non-admissions" – for example, because this Complaints Service lacks the competence to resolve the matter 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 request, the entity has several options:

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.

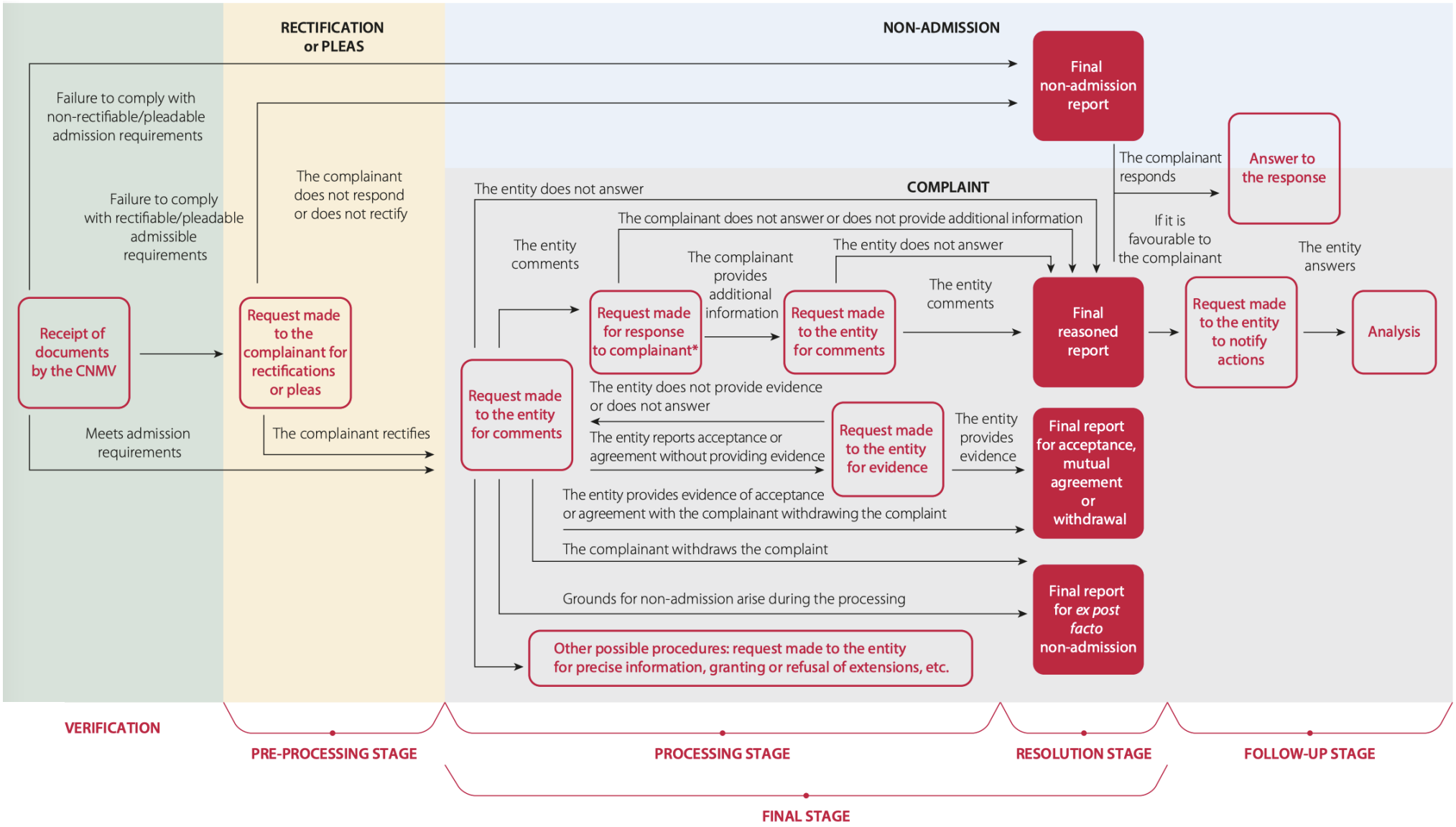
Once the complaint processing process has finished, the resolution stage begins. This involves the issue of a reasoned report analysing all the facts and/or events complained about (provided that they are not subject to any other circumstance that prevents said analysis) and a final pronouncement on 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, 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 that the entity does not accept the conclusions contained in the report.



(*) The entity itself sends the comments to the complainant and informs it of the deadline for submitting pleas to the CNMV Complaints Service.

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.

2.3 Complaints resolved in 2022

This chapter analyses how the documents received by the Complaints Service in 2022 were processed, differentiating between each of the aforementioned stages.

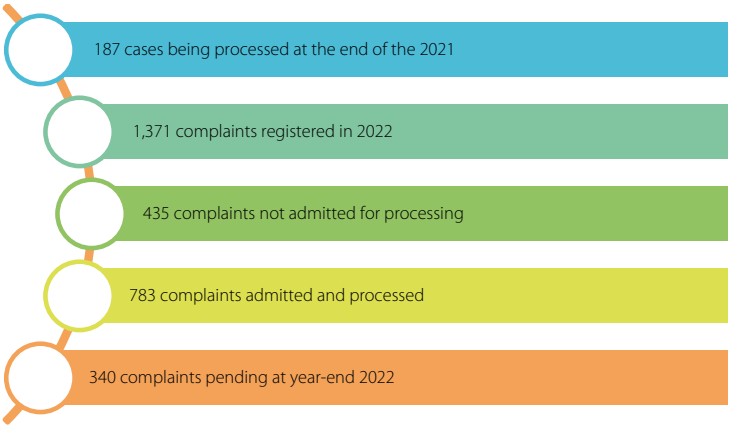
Complaints processed in full in 2022

TABLE 2

Number of documents

	No.
+ Complaints outstanding at year-end 2021	**187**
Outstanding non-admissions	4
Outstanding complaints	164
Outstanding petitions for rectifications or pleas	19
Outstanding petitions for rectifications or pleas that concluded in complaints	7
Outstanding petitions for rectifications or pleas that concluded in non-admissions	12
+ Complaints submitted in 2022	**1,371**
Direct non-admissions	141
Direct complaints	639
Petitions for rectification or pleas	591
Petitions for rectification or pleas that concluded in complaints	282
Petitions for rectification or pleas that concluded in non-admissions	309
- Outstanding complaints at year-end 2022	**340**
Outstanding non-admissions	5
Outstanding complaints	290
Outstanding petitions for rectifications or pleas	45
Outstanding petitions for rectifications or pleas that concluded in complaints	19
Outstanding petitions for rectifications or pleas that concluded in non-admissions	26
= Complaints completed in 2022	**1,218**

Source: CNMV.



2.3.1 Pre-processing stage

Written complaints that do not meet all the legally established requirements to be admitted as complaints or to which any of the legal reasons for non-admission applies 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 187 complaints outstanding at 31 December 2021, 19 were in this pre-processing stage of petitions for rectification or pleas, known as the PRP stage (39 PRs and 4 PPs).

In addition, of the 1,371 complaints filed with the Complaints Service in 2022, the pre-processing stage was initiated in 591 cases (467 PRs and 95 PPs).

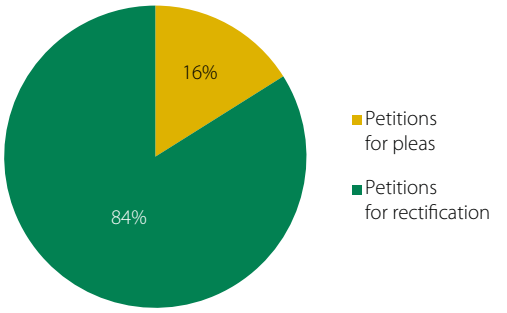
Lastly, at 31 December 2022, 45 complaints (15 PRs and 8 PPs) were in this pre-processing stage.

Consequently, in 2022 the pre-processing stage (or PRP stage) was concluded in 565 complaints submitted by investors (19 initiated in 2021 and 546 in 2022).

PRPs concluded in 2022 TABLE 3

Number of complaints	
+ Outstanding PRPs in 2021	**19**
Petitions for rectification	15
Petitions for pleas	4
+ PRPs submitted in 2022	**591**
Petitions for rectification	496
Petitions for pleas	95
- Outstanding PRPs in 2022	**45**
Petitions for rectification	37
Petitions for pleas	8
= PRPs concluded in 2022	**565**

Breakdown of PRPs concluded in 2022 TABLE 9



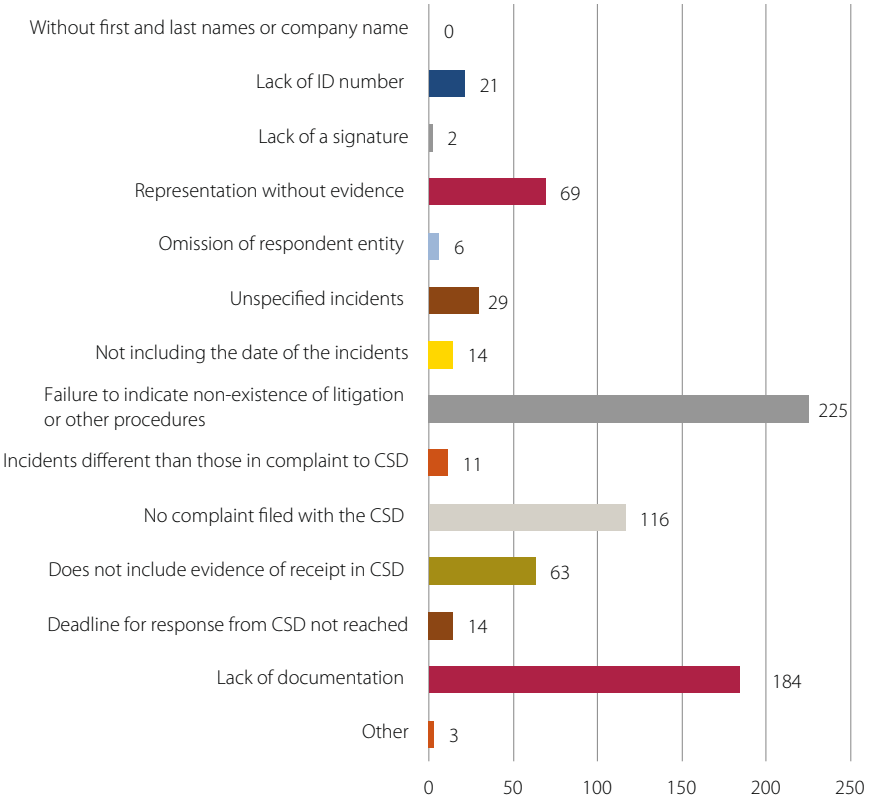
Source: CNMV.

➢ Petitions for rectification (PRs)

A petition for rectification was made in 474 of the 565 complaints for which the pre-processing or PRP stage was concluded in 2022.

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

Grounds for petitions for rectification[1] FIGURE 10



Source: CNMV.

1 Rectification is often requested for more than one reason, which is why the number of reasons (757) is greater than the number of processed petitions for rectification.

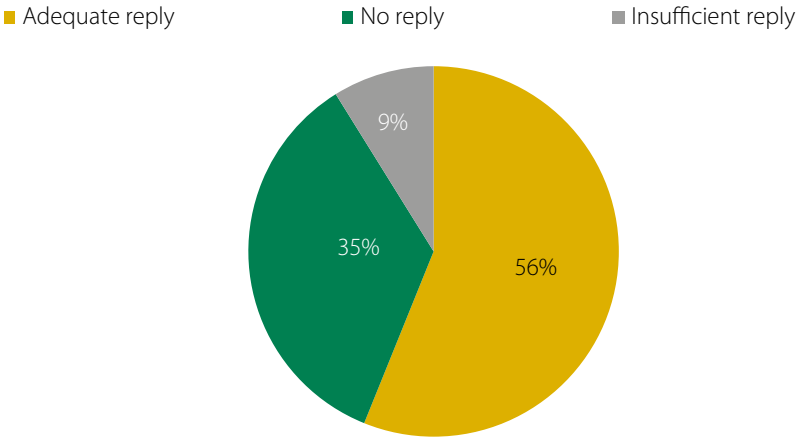
As shown in Figure 10, the most recurrent cause for rectification is failure to provide information on parallel judicial, administrative or arbitration proceedings for the same incidents that are the subject of the complaint (225 cases). To facilitate compliance with this requirement, the Complaints Service sends a pre-printed form along with the written petition for rectification. Submission of the duly completed form is sufficient to resolve this deficiency.

The second reason for rectification (184 cases) is failure to provide supporting documentation for the facts/events raised in the complaint, followed by the non-accreditation of having previously filed a complaint with the CSD[4] (116 cases), together with the other three requirements linked to the CSD (88 cases).

4 The complaints procedure is designed so that the entity concerned has the opportunity, prior to the intervention of the Administration, to try to solve the problems of its customers. 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.

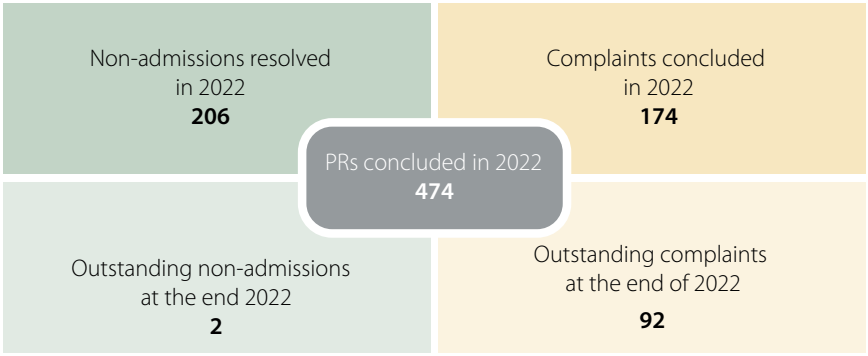
Half of the complainants properly rectified what was requested of them. However, there are also a significant number of cases in which the complainant does not answer the RR made (35%) or provides an insufficient response (9%), as shown in Figure 11.

Response to petitions for rectification FIGURE 11



Source: CNMV.

The final classification of the 474 complaints for which a RR was issued is shown below:



Likewise, it should be noted that at the end of 2022, there were 37 petitions for rectification outstanding, of which 18 have been processed as complaints and 19 as non-admissions during 2023.

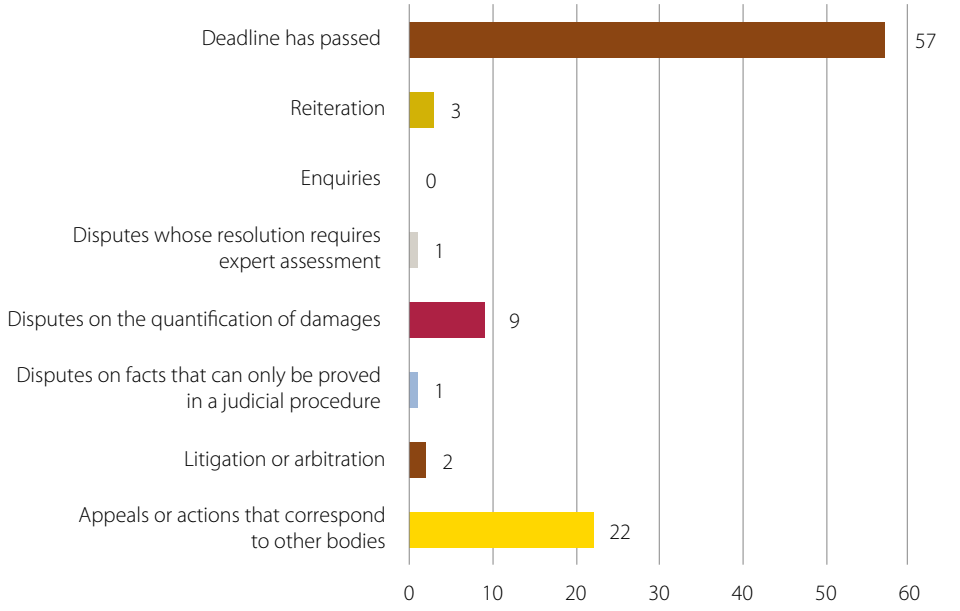
➢ Petitions for pleas (PPs)

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 as a complaint.

A petition for pleas was made in 91 of the 565 complaints for which the pre-processing or PRP stage was concluded in 2022.

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

Grounds for petitions for pleas FIGURE 12



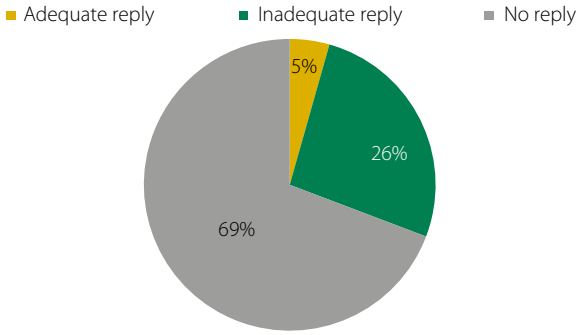
Source: CNMV.

Therefore, the number of reasons for which pleas are requested (95) is very similar to the number of petitions for pleas processed (91). However, as seen above, the number of reasons for which rectification is requested (757) is considerably higher than the number of PRs processed (474). This is because, while in a RA it is common for a single reason for non-admission to exist (or two at most), in a RR 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 (57). Other notable reasons for non-admission, although much less common, are the filing of appeals or actions whose competence corresponds to other bodies (22), and disputes over the economic quantification for damages (9).

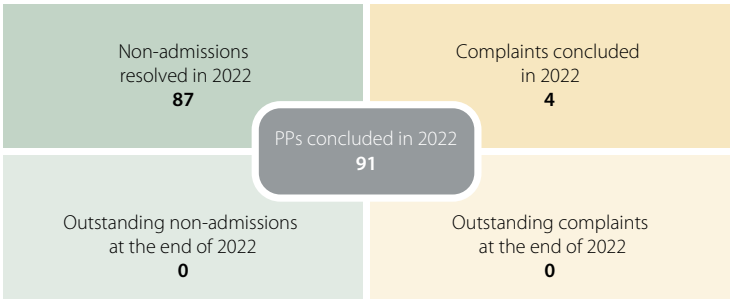
Complainants responded to less than half of the petitions for pleas made and in only 5% of cases did they discredit the reason for non-admission and thus have their complaints admitted.

Response to petitions for pleas FIGURE 13



Source: CNMV.

The final classification of the 91 complaints is as shown below:

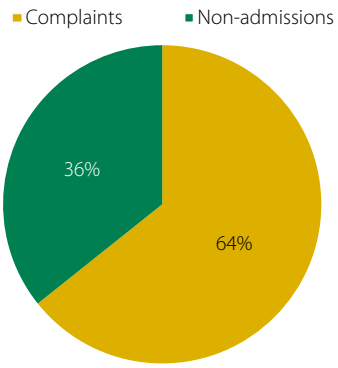


At 31 December 2022, eight PPs remained unclosed, of which one has since been processed as a complaint and three as non-admissions in 2023.

2.3.2 Final stage

In 2022, the Complaints Service concluded 1,218 proceedings, of which 435 were not admitted and 783 were processed as complaints with the issue of a final report.

Complaints concluded in 2022 FIGURE 14



Source: CNMV.

In 2022, the Complaints Service decided not to admit 435 requests to open complaint proceedings.

Non-admitted complaints concluded in 2022

TABLE 4

Number of complaints

	No.
+ Non-admitted complaints outstanding at year-end 2021	4
+ Non-admitted complaints in 2022	436
- Non-admitted complaints outstanding at year-end 2022	5
= Non-admitted complaints concluded in 2022	**435**

Source: CNMV.

The complaints submitted by investors may be directly non-admitted (146 proceedings) or non-admitted after the pre-processing stage, as explained in the previous point (289 proceedings).

Types of non-admissions

TABLE 5

Number of complaints

	No.	%
Direct non-admissions	**146**	**33.6**
Bank of Spain	62	14.3
Directorate-General for Insurance and Pension Funds	37	8.5
Bank of Spain and Directorate-General for Insurance and Pension Funds	1	0.2
Against entities under the freedom to provide services regime from FIN-NET member countries	15	3.4
Against entities under the freedom to provide services regime from non FIN-NET member countries	15	3.4
Other	16	3.7
Non-admission following request to complainant for rectification/pleas	**289**	**66.4**
No response	227	52.2
Insufficient response	62	14.3
Total non-admissions	**435**	**100.0**

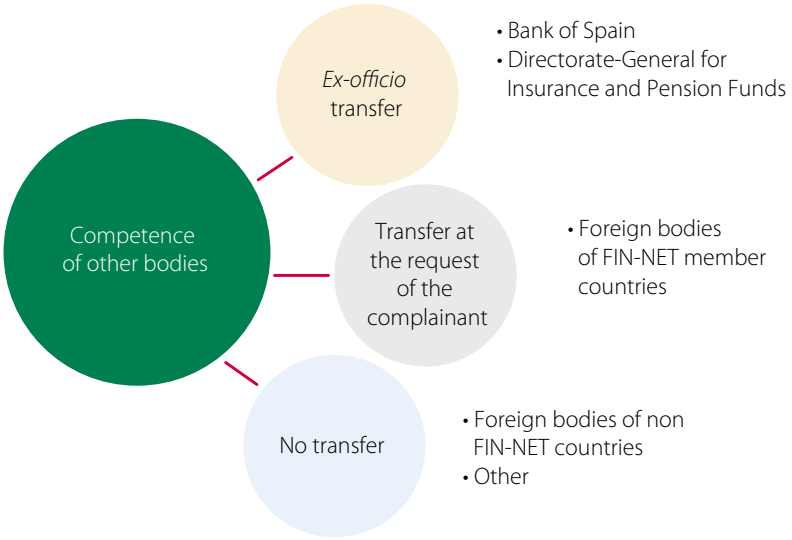
Source: CNMV.

Direct non-admissions occur mainly in two cases:

i) When having analysed the issues raised in the complaint filed by the complainant with the Complaints Service, either because of the product or the type of service to which the incidents refer, they do not fall within its jurisdiction, and another national supervisor is responsible for assessing the incident, namely the Bank of Spain or the Directorate-General for Insurance and Pension Funds (100 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 (30 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:

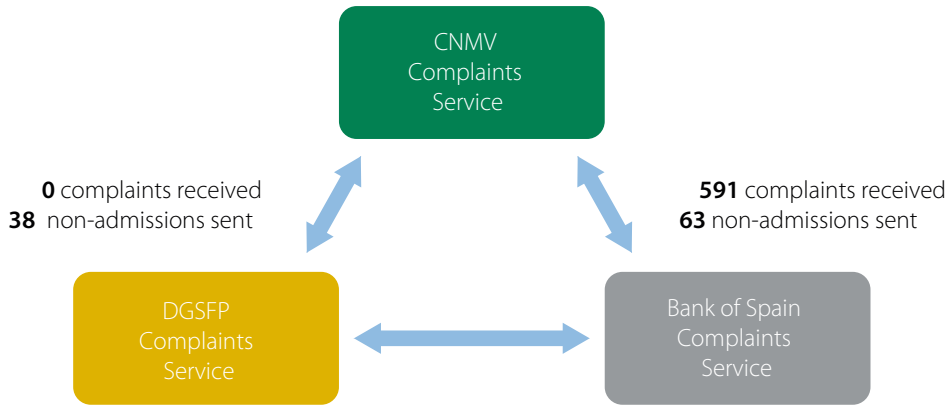


With regard to national bodies, complaints relating to banking products or services correspond to the Bank of Spain's Market Conduct and Complaints Department, and the Directorate-General for Insurance and Pension Funds (DGSFP) is responsible for insurance and pension plans. In accordance with current 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 8.5% of total non-admissions completed, and 4.5% and 2.7% of the total number of complaints submitted, respectively. In addition, we must add a case that had to be transferred to both complaints services since it complained about various events within the competences of each of them.

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.



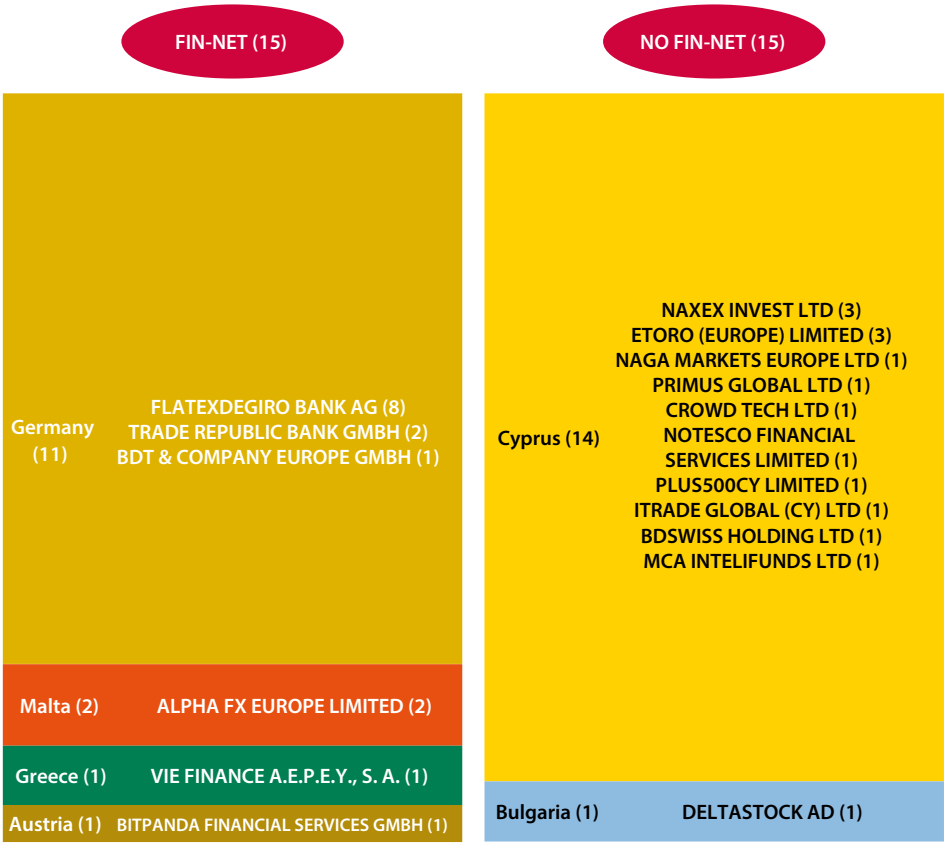
However, that country of origin may or may not be a member of the FIN-NET network, which is responsible for settling out-of-court cross-border conflicts in the area of financial services in the European Economic Area.[5]

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 (in case 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 2022, 15 complaints (3.4% 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 to make use of the possibility offered by the Complaints Service to transfer the complaint to the competent body in four of these cases.

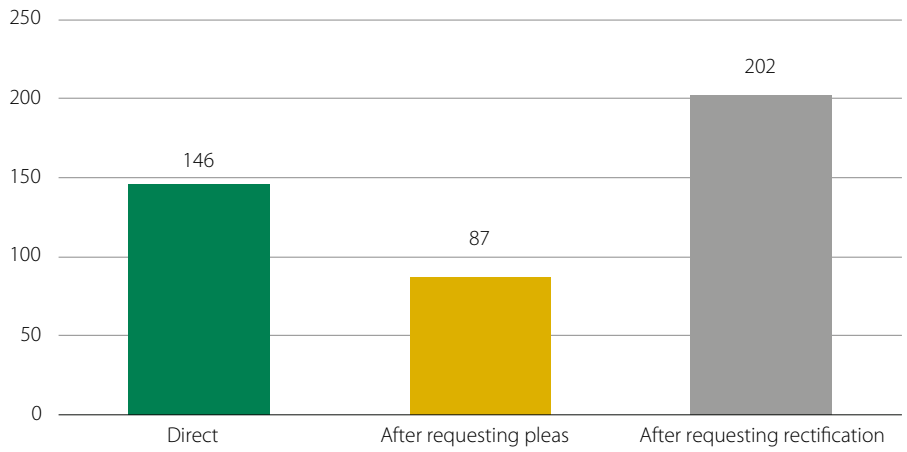
For complaints filed against foreign entities that operate under the freedom to provide services regime but whose country of origin is not a member of FIN-NET, the Complaints Service provides the complainant with the same information indicated above, although in this case it does not offer them the possibility of managing the submission of their complaint to the corresponding supervisor. In 2022, 15 cross-border complaints were received outside the scope of FIN-NET (3.4% of the total non-admissions concluded).

5 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 consumers can obtain faster responses to their complaints.



In addition to direct non-admissions, complaints filed by complainants who have gone through the pre-processing stage of pleas may finally be non-admitted if a reason for non-admission (87) or rectification (202) is noted.

Types of non-admissions FIGURE 15

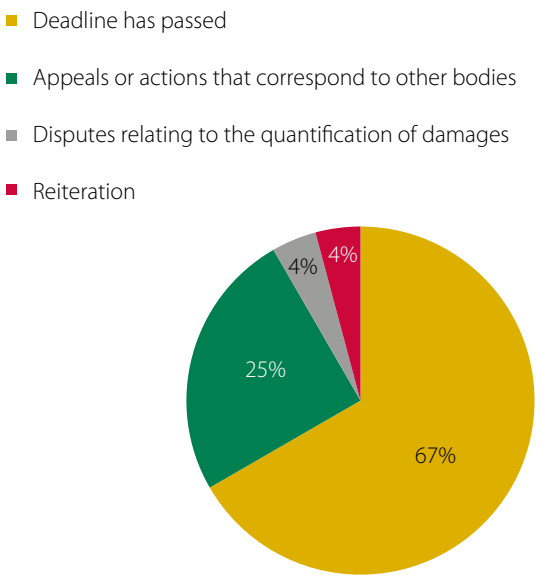


Source: CNMV.

Of the 87 cases in which pleas had been requested at the pre-processing stage and which were ultimately rejected, 63 received no response within the period granted for that purpose, while in the remaining 24 cases 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[6] was exceeding the deadline for submitting the complaint (16 cases). Other reasons for inadmissibility of the file were the filing of appeals or actions whose jurisdiction corresponds to other bodies (6 cases), controversies over the economic quantification of damages (1 case), and reiteration (1 case). 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 202 complaints not admitted after the petition for rectification, in 164 the complainant did not answer within the specific period granted for this purpose and in 38 cases a partial response was provided (with one request not rectified in 31 cases and two in seven cases).

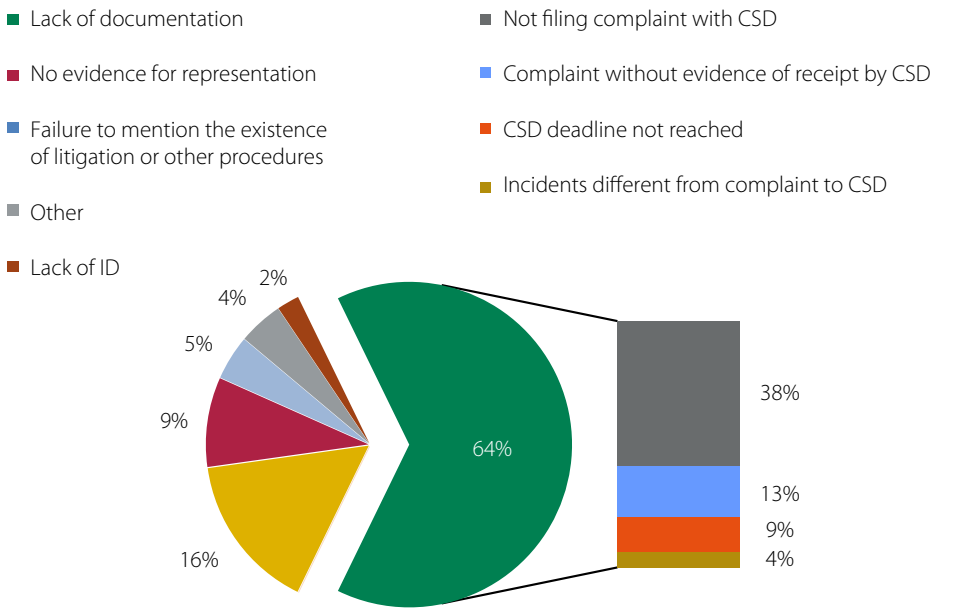
The admission requirements that were not rectified by the complainants, despite having responded to the petition for rectification, were:[7]

- Deficiencies in providing evidence that a prior complaint had been filed with the entity's CSD (29).
- Lack of documentation (7).
- Failure to provide evidence of representation (4).
- Lack of a declaration that the incident was not subject to resolution or litigation before administrative, judicial or arbitration bodies (2).
- Other (2).
- Lack of complainant's identifying data (1).

6 In each non-admission there was only one reason for non-admission.

7 In some proceedings several requirements were not rectified.

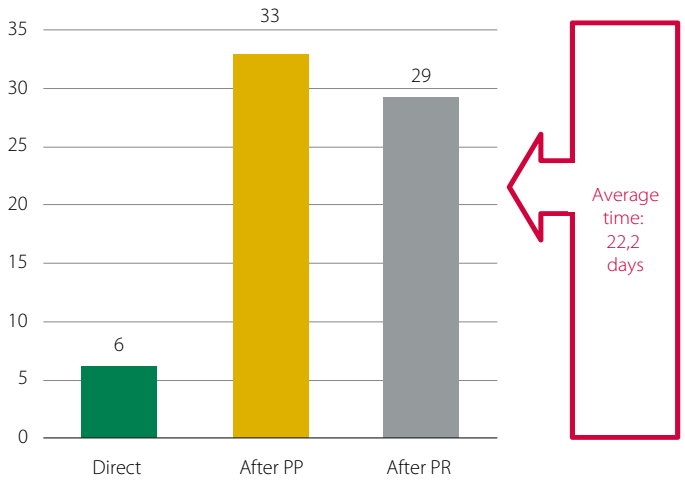
Reasons for non-admission not rectified after response FIGURE 17



Source: CNMV.

On average, direct non-admissions were resolved most quickly (6 days), followed by non-admissions deriving from a petition for rectification (29 days) and a petition for pleas (33 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 22.2 days, compared to 20.2 days in 2021.

➢ Complaints

During 2022, 783 complaint files that had been admitted were admitted to processing by the Complaints Service.

Complaints concluded in 2022

TABLE 6

Number of complaints

	No.
+ Outstanding complaints in 2021	164
+ Complaints initiated in 2022	909
- Outstanding complaints in 2022	290
= Complaints concluded in 2022	**783**

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 (the commonest case being where 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 issue 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 2022

TABLE 7

Number of claims and complaints

	2020		2021		2022		% 22/21 change
	No.	%	No.	%	No.	%	
Processed without final reasoned report	**137**	**18.5**	**199**	**23.4**	**245**	**31.3**	**23.1**
Acceptance or mutual agreement	117	15.8	179	21.0	229	29.2	27.9
Withdrawal	15	2.0	15	1.8	10	1.3	-33.3
Ex post facto non-admission	5	0.7	5	0.6	6	0.8	20.0
Processed with final reasoned report	**602**	**81.5**	**652**	**76.6**	**538**	**68.7**	**-17.5**
Report favourable to the complainant	311	42.1	356	41.8	271	34.6	-23.9
Report unfavourable to the complainant	291	39.4	296	34.8	267	34.1	-9.8
Total processed	**739**	**100.0**	**851**	**100.0**	**783**	**100.0**	**-8.0**

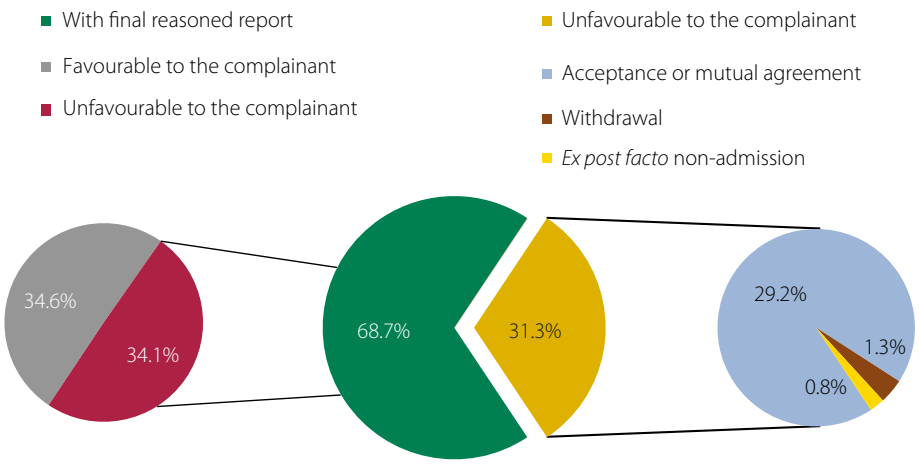
Source: CNMV.

31.3% of the complaints concluded in 2022 did not require the issue of a final reasoned report: 29.2% because the entity accepted the complainants' requests or a mutual agreement was reached between the two parties, 1.3% due to the complainant withdrawing the complaint and 0.8% due to *ex post facto* non-admission.

Of the 538 complaints that concluded with a final reasoned report (68.7% of those processed), the complainant obtained a report favourable to their complaint in 50.4% of cases and an unfavourable report in the remaining 49.6%.

Distribution of types of complaint resolution

FIGURE 19

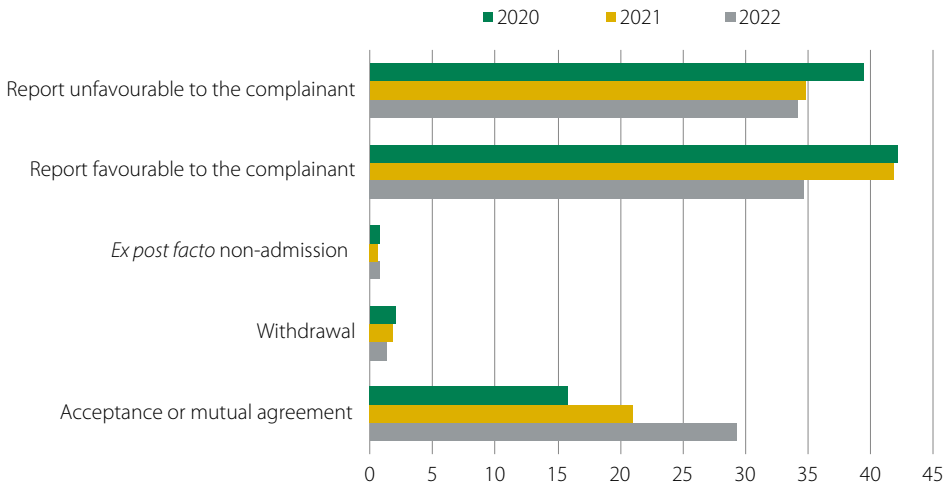


Source: CNMV.

Figure 20 shows the evolution of the types of resolution as percentages of the total number of complaints completed in the last three years, which reflects how the relative weight of acceptances and settlements has increased notably in recent years (15.8% in 2020, 21% in 2021 and 29.2% in 2022). As the complaints in which the complainant was satisfied during the processing of the file increased, so the complaints that concluded with a final reasoned report favourable or unfavourable to the complainant decreased.

Percentage changes in types of resolution[1]

FIGURE 20



Source: CNMV.

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

Complainants state in their complaints that they are dissatisfied with the respondent entity for various different reasons, and therefore one single 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 783 complaints concluded in 2022, a total of 998 causes of complaint were recorded, prominent among which were those relating to the fees charged by the entities for products contracted and services provided (24.6%), the information provided about the product or service after contracting (21.5%) and incidents in purchase and sale orders (19.3%).

With regard to the type of product, 48.9% 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 equity instruments, bonds and financial derivatives.

Reasons for complaints concluded in 2022

TABLE 8

Investment service/reason	Reason	Securities	CIS	Total
Marketing/execution Advisory service Portfolio management	Appropriateness/suitability	9	50	**59**
	Prior information	19	69	**88**
	Purchase/sale orders	105	82	**187**
	Fees	146	73	**219**
	Transfers	30	49	**79**
	Follow-up information	100	91	**191**
	Ownership	13	6	**19**
Acquisition *mortis causa*	Appropriateness/suitability	1	–	**1**
	Prior information	4	–	**4**
	Purchase/sale orders	3	3	**6**
	Fees	23	4	**27**
	Transfers	4	3	**7**
	Follow-up information	11	13	**24**
	Ownership	38	38	**76**
CSD operation		**4**	**7**	**11**
Total		**510**	**488**	**998**[1]

Source: CNMV.

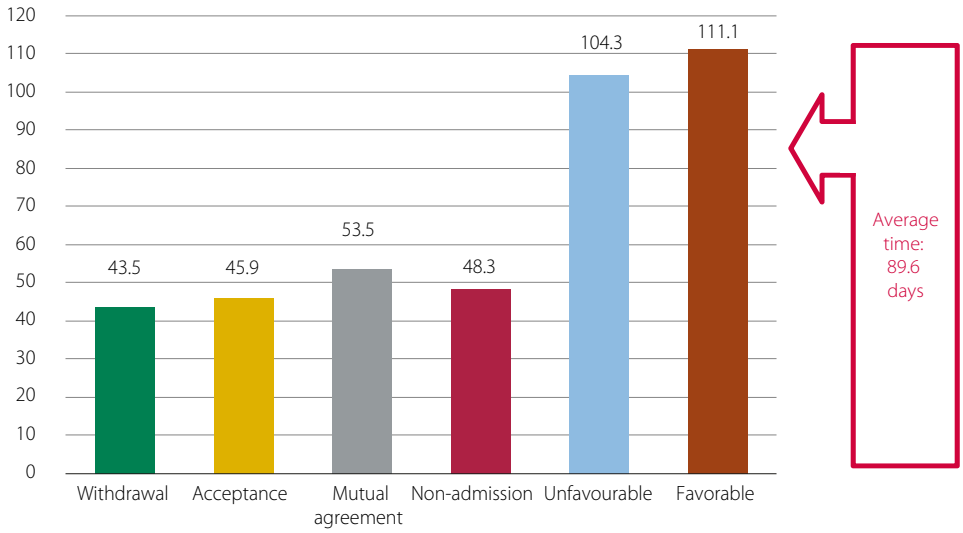
1 There is very often more than one reason stated in the same complaint file.

Regarding the evolution of the causes of complaint, a downward trend has been observed in complaints for issues related to the analysis of appropriateness and suitability, while on the other hand we have seen an upward trend in complaints regarding follow-up information, purchase and sale orders and fees. The rest of the causes remain at more or less constant figures, experiencing small annual variations both upwards and downwards.

In regard to the processing time for complaints resolved with no final reasoned report, on average complainants withdrew in 43.5 days, entities fully accepted the complainant's request in 45.9 days, agreements were reached to the satisfaction of the complainant (mutual agreement) in 53.5 days and proceedings were closed as a result of *ex post facto* non-admission in 48.3 days. Complaints that were resolved with a final reasoned report were processed on average in 104.3 days in cases that were unfavourable to the complainant and 111.1 days in cases that were favourable to the complainant.

The issue of a reasoned final report requires ruling on the substantive issues raised in the complaint. This requires the issue of 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 complaints processed with a final reasoned report (favourable or unfavourable) was 107.7 days, compared to 121.2 days in 2020, 120.1 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 49.7 days, compared to 49.3 days in 2021, 51 days in 2020, 50.2 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 request 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 request or request.[8]

8 For example, entities sometimes submit requests 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 materialised or not. The Complaints Service believes that improved investor protection involves facilitating, as far as possible, agreements between the complainant and the respondent entity. Therefore, in these cases, it requires the entity to submit documentation providing evidence both of the result of the negotiations and of their having effectively taken place, within 30 days, informing it: 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 will 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 it 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 271 complaints resolved in 2022 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, 276 resolutions favourable to the complainant were issued.

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

	Follow-up actions reported by the entity					Entities not reporting follow-up actions	
	Accepts criteria or rectifies		Does not accept or rectify		Total		
Year	No.	%	No.	%		No.	%
2020	220	70.3	53	16.9	273	40	12.8
2021	291	81.5	37	10.4	328	29	8.1
2022	213	77.2	37	13.4	250	26	9.4

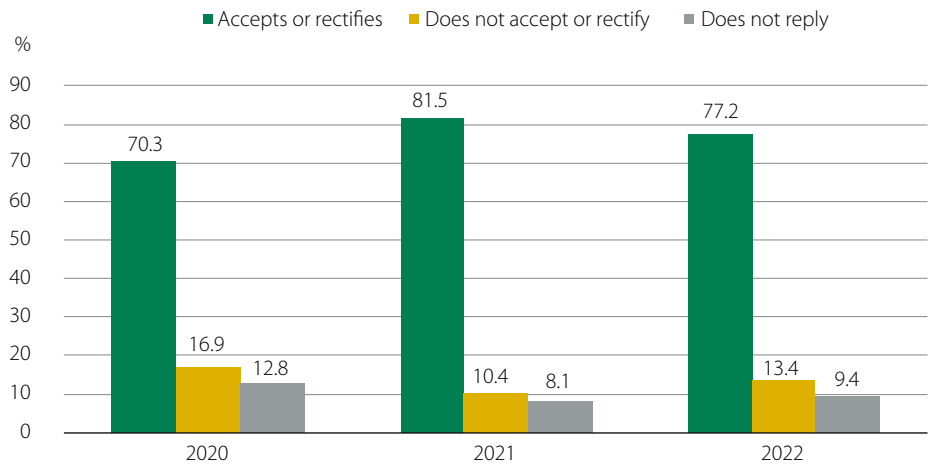
Source: CNMV.

In 77.2% of the cases, respondent entities stated that they accepted the criteria and rectification of the situation decided on in the report.

On the other hand, as clarified above, some complaints are filed against more than one entity. In the 229 files closed by agreement or settlement, there was a file in which the two entities claimed reached an agreement with the client, so 230 agreements or settlements were concluded in 2022.

It is interesting to note that, if the 230 acceptance or mutual agreements that took place in the year were added to the figure of 77.2% – which after all are rectifications made by entities with respect to their clients, albeit on their own initiative during the process – the percentage of rectifications in 2022 would stand at 87.5%.

Follow-up actions FIGURE 22



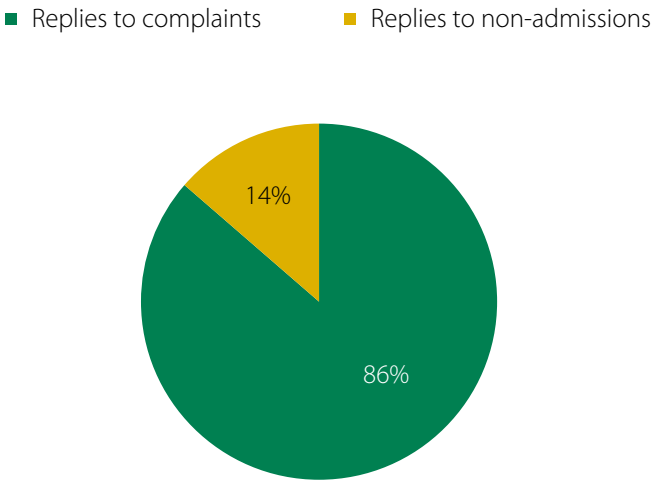
Source: CNMV.

➢ 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 was resolved with an unfavourable report as it did not detect any improper actions by the entity. The Complaints Service responds to these complaints to try and resolve all doubts raised by the complainant.

In 2022, six replies to non-admissions and 38 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 request for comments sent by the Complaints Service to the entity; iii) deadline for replying to the request 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

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 9 positions are occupied by: CaixaBank, S.A. (223); Banco Santander, S.A. (153); Banco Bilbao Vizcaya Argentaria, S.A. (92); Unicaja Banco, S.A. (62); ING Bank N.V., Sucursal en España (38); Bankinter, S.A. (30); Banco de Sabadell, S.A. (28); MyInvestor Banco, S.A. (20) and Kutxabank, S.A. (16).

Ranking of entities by number of complaints resolved[9]

TABLE 10

Entity with which the complaint is processed	Total	Entity responsible for the incidents	Total
1. CAIXABANK, S.A.	223	BANKIA, S.A.	5
		CAIXABANK, S.A.	218
2. BANCO SANTANDER, S.A.	153		
3. BANCO BILBAO VIZCAYA ARGENTARIA, S.A.	92		
4. UNICAJA BANCO, S.A.	62	LIBERBANK, S.A.	9
		UNICAJA BANCO, S.A.	53
5. ING BANK N.V., SUCURSAL EN ESPAÑA	38		
6. BANKINTER, S.A.	30		
7. BANCO DE SABADELL, S.A.	28		
8. MYINVESTOR BANCO, S.A.	20		
9. KUTXABANK, S.A.	16		
10. IBERCAJA BANCO, S.A.	15		
11. DEUTSCHE BANK, SOCIEDAD ANÓNIMA ESPAÑOLA	15		
12. ABANCA CORPORACIÓN BANCARIA, S.A.	14		
13. SINGULAR BANK, S.A.	11		
14. RENTA 4 BANCO, S.A.	9		
Other entities[1]	59		
Total	**785**		

Source: CNMV.

1 30 entities with fewer than eight complaints.

➢ Ranking of entities by time taken to read the complaint

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

9 The initiation of complaints proceedings with the Complaints Service indicates the client's disagreement with the performance of the entity, which has not been resolved in the earlier stage of complaint to the Customer Service Department or the Customer Ombudsman and that justifies the processing of the complaints pending to the extent that there is no cause for *ex post facto* inadmissibility.

Ranking of entities by time taken to read the notification of opening complaint procedures[10]

TABLE 11

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

Source: CNMV.

1 30 entities with fewer than eight complaints.

Four entities had reading periods greater than the average of two calendar days (Deutsche Bank, Sociedad Anónima Española; Renta 4 Banco, S.A.; Bankinter, S.A, and Kutxabank, S.A); two read the notifications in the general average period of two days (Singular Bank, S.A. and Abanca Corporación Bancaria, S.A.) and eight did so within a period of less than average (CaixaBank, S.A.; Banco Santander, S.A.; ING Bank N.V. , Sucursal en España; Banco Bilbao Vizcaya Argentaria, S.A.; MyInvestor Bank, S.A.; Banco de Sabadell, S.A.; Ibercaja Banco, S.A., and Unicaja Banco, S.A.).

➢ Ranking of entities by time taken to respond

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 request for comments, with the corresponding adjustments when an extension has been granted.

10 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 request 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. Said notification is considered rejected if, after ten calendar days have elapsed since the notification was made available to the entity, it has not accessed its content (article 43 of Law 39/2015, of 1 October, on Common Administrative Procedure of Public Administrations).

On average, entities responded to the initial petition for pleas in 20 calendar days. Seven of them took longer to respond (Banco Bilbao Vizcaya Argentaria, S.A.; Bankinter, S.A.; CaixaBank, S.A.; Deutsche Bank, Sociedad Anónima Española; Unicaja Banco, S.A.; Ibercaja Banco, S.A., and Renta 4 Banco, S.A.) and the other seven took less (MyInvestor Banco, S.A.; Banco Santander, S.A.; ING Bank N.V., Sucursal en España; Kutxabank, S.A.; Singular Bank, S.A.; Abanca Corporación Bancaria, S.A., and Banco de Sabadell, S.A.).

Ranking of entities by time taken to respond to the initial petition for pleas[11] TABLE 12

Entity with which the complaint is processed	Calendar days
1. BANCO BILBAO VIZCAYA ARGENTARIA, S.A.	24
2. BANKINTER, S.A.	22
3. CAIXABANK, S.A.	22
4. DEUTSCHE BANK, SOCIEDAD ANÓNIMA ESPAÑOLA	21
5. UNICAJA BANCO, S.A.	21
6. IBERCAJA BANCO, S.A.	21
7. RENTA 4 BANCO, S.A.	21
8. MYINVESTOR BANCO, S.A.	19
9. BANCO SANTANDER, S.A.	18
10. ING BANK N.V., SUCURSAL EN ESPAÑA	18
11. KUTXABANK, S.A.	17
12. SINGULAR BANK, S.A.	17
13. ABANCA CORPORACIÓN BANCARIA, S.A.	16
14. BANCO DE SABADELL, S.A.	16
Other entities[1]	20
Average	**20**

Source: CNMV.
1 30 entities with fewer than eight complaints.

Entities requested an extension to draw up their pleas on 205 occasions. Only 5 of them were denied and the remaining 200 were granted. The entities requesting extensions were: CaixaBank, S.A. (73); Banco Santander, S.A. (45); Banco Bilbao Vizcaya Argentaria, S.A. (38); Unicaja Banco, S.A. (30); Bankinter, S.A. (8); Ibercaja Banco, S.A. (5); ING Bank N.V., Sucursal en España (2); Banco de Sabadell, S.A. (1); Open Bank, S.A. (1); Kutxabank, S.A. (1), and Deutsche Bank, Sociedad Anónima Española (1).

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

Table 13 ranks the entities by the percentage of reports favourable to the complainant, calculated as a portion of the total number of rulings (favourable and unfavourable). Seven entities have percentages of reports favourable to the complainant

11 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.

above the general average of 50.6% (Deutsche Bank, Sociedad Anónima Española; Ibercaja Banco, S.A.; Singular Bank, S.A.; MyInvestor Banco, S.A.; Bankinter, S.A.; ING Bank N.V. , Sucursal en España, and Banco de Sabadell, S.A.) and 7 have a percentage below this average (CaixaBank, S.A.; Unicaja Banco, S.A.; Banco Santander, S.A.; Kutxabank, S.A.; Banco Bilbao Vizcaya Argentaria, S.A., Abanca Corporación Bancaria, S.A., and Renta 4 Banco, S.A.).

Ranking of entities by percentage of decisions favourable to the complainant[12]

TABLE 13

Entity against which the complaint is processed	% favourable	Entity responsible for the incidents	Unfavourable	Favourable	% favourable
1. DEUTSCHE BANK, SOCIEDAD ANÓNIMA ESPAÑOLA	85.7		2	12	85.7
2. IBERCAJA BANCO, S.A.	80.0		2	8	80.0
3. SINGULAR BANK, S.A.	75.0		2	6	75.0
4. MYINVESTOR BANCO, S.A.	73.7		5	14	73.7
5. BANKINTER, S.A.	68.0		8	17	68.0
6. ING BANK N.V., SUCURSAL EN ESPAÑA	58.3		10	14	58.3
7. BANCO DE SABADELL, S.A.	57.9		8	11	57.9
8. CAIXABANK, S.A.	50.4	BANKIA, S.A.	1	4	80.0
			63	61	49.2
9. UNICAJA BANCO, S.A.	50.0	LIBERBANK, S.A.	2	7	77.8
			20	15	42.9
10. BANCO SANTANDER, S.A.	47.8		59	54	47.8
11. KUTXABANK, S.A.	38.5		8	5	38.5
12. BANCO BILBAO VIZCAYA ARGENTARIA, S.A.	33.3		38	19	33.3
13. ABANCA CORPORACIÓN BANCARIA, S.A.	25.0		9	3	25.0
14. RENTA 4 BANCO, S.A.	22.2		7	2	22.2
Other entities[1]	49.0		25	24	49.0
Total	**50.6**		**269**	**276**	**50.6**

Source: CNMV.

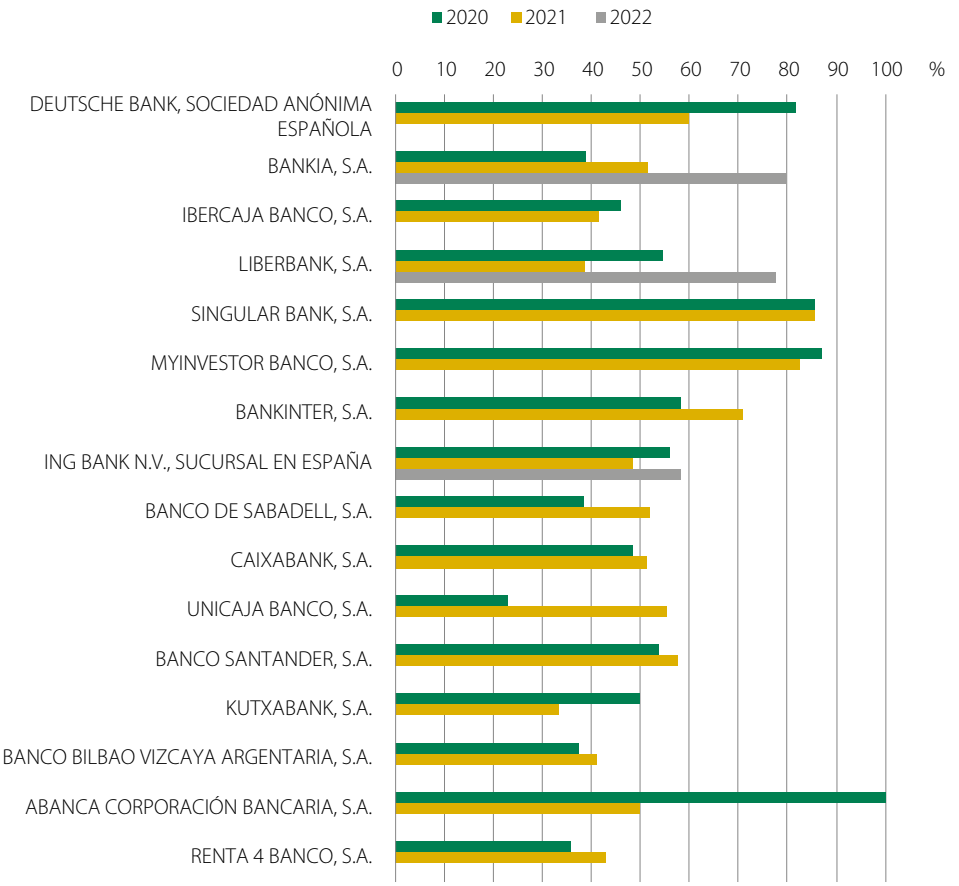
1 30 entities with fewer than eight complaints.

Figure 24 shows variations by entity in the percentage of complaints resulting in a decision favourable to the complainant in the last three years. The percentage of pronouncements favourable to the complainant shows a growing trend in the cases of Bankia, S.A. and Banco de Sabadell, S.A. On the contrary, the percentage of pronouncements favourable to the complainant decreases in the case of MyInvestor Banco, S.A. and Abanca Corporación Bancaria, S.A. The rest of the entities show an irregular evolution.

12 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 an indication of the specific reasons why the Complaints Service considers that the entity has not complied with the regulations on transparency and customer protection or with good financial practices and uses.

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

Table 14 ranks the entities by number of acceptances and mutual agreements reached with the complainant. On the one hand, CaixaBank, S.A.; Santander Bank, S.A.; Banco Bilbao Vizcaya Argentaria, S.A.; Unicaja Banco, S.A., and ING Bank N.V., Sucursal en España stand out as the entities with the highest number of agreements and settlements and at the other extreme are MyInvestor Banco, S.A. and Renta 4 Banco, S.A., which reached no agreements or settlements with their clients in this period.

Figure 25 ranks the entities by percentage of acceptances/mutual agreements reached in 2022, presenting a comparison with the two previous years.

Ranking of entities by number of acceptances and mutual agreements[13]

TABLE 14

Entity against which the complaint is processed	Total	Entity responsible for the incidents	Acceptance	Mutual agreement	Total
1. CAIXABANK, S.A.	92		39	53	92
2. BANCO SANTANDER, S.A.	38		12	26	38
3. BANCO BILBAO VIZCAYA ARGENTARIA, S.A.	35		12	23	35
4. UNICAJA BANCO, S.A.	18		12	6	18
5. ING BANK N.V., SUCURSAL EN ESPAÑA	12		9	3	12
6. BANCO DE SABADELL, S.A.	8		4	4	8
7. IBERCAJA BANCO, S.A.	5		3	2	5
8. BANKINTER, S.A.	5		3	2	5
9. KUTXABANK, S.A.	3		1	2	3
10. SINGULAR BANK, S.A.	3		2	1	3
11. ABANCA CORPORACIÓN BANCARIA, S.A.	2		2		2
12. DEUTSCHE BANK, SOCIEDAD ANÓNIMA ESPAÑOLA	1		1		1
13. MYINVESTOR BANCO, S.A.	0				
14. RENTA 4 BANCO, S.A.	0				
Other entities[1]	8		3	5	8
Total	**230**		**103**	**127**	**230**

Source: CNMV.

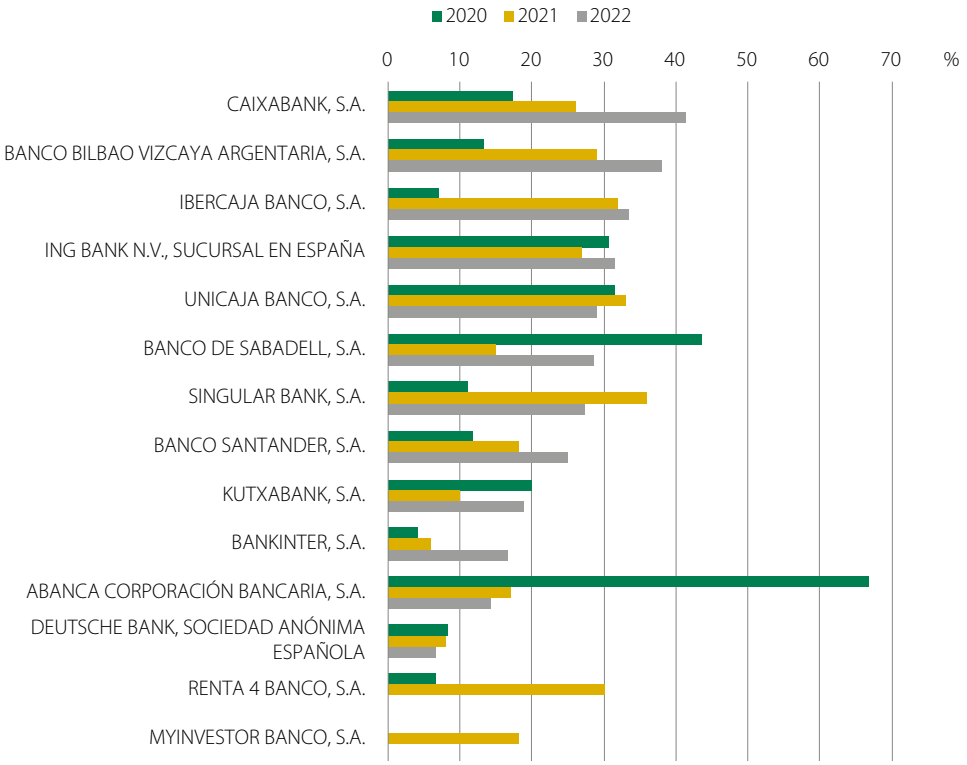
1 30 entities with fewer than eight complaints.

In the year 2022, CaixaBank, S.A.; Banco Bilbao Vizcaya Argentaria, S.A.; Ibercaja Banco, S.A., and ING Bank N.V., Sucursal en España present a percentage of agreements/compromises above 30%, followed by Unicaja Banco, S.A.; Banco de Sabadell, S.A.; Singular Bank, S.A., and Banco Santander, S.A. with percentages between 30% and 20%, and Kutxabank, S.A.; Bankinter, S.A., and Abanca Corporación Bancaria, S.A. with percentages between 20% and 10%. Below 10% is Deutsche Bank, Sociedad Anónima Española. As previously stated, MyInvestor Banco, S.A. and Renta 4 Banco, S.A. did not reach any settlements or agreements with complainants.

Regarding the evolution of the percentages since 2020, an upward trend can be seen in CaixaBank, S.A.; Banco Bilbao Vizcaya Argentaria, S.A., Ibercaja Banco, S.A.; Banco Santander, S.A., and Bankinter, S.A. The entities that did not reach agreements or settle in 2022 did so in previous years, particularly Renta 4 Banco, S.A. in 2020 and 2021 and MyInvestor Banco, S.A. in 2021.

13 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.

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

Table 15 shows that the entities responded to this request for information in 90.6% of cases on average.

The response rate of ten of the entities listed in the table was above average, and in four cases it was below average.

Ranking of entities by percentage of follow-up actions reported after a decision favourable to the complainant[14]

TABLE 15

Entity against which the complaint is processed	% yes	Entity responsible for the incidents	No	Yes	Total	% yes
1. ABANCA CORPORACIÓN BANCARIA, S.A.	100.0			3	3	100.0
2. BANCO BILBAO VIZCAYA ARGENTARIA, S.A.	100.0			19	19	100.0
3. BANCO DE SABADELL, S.A.	100.0			11	11	100.0
4. BANCO SANTANDER, S.A.	100.0			54	54	100.0
5. IBERCAJA BANCO, S.A.	100.0			8	8	100.0
6. ING BANK N.V., SUCURSAL EN ESPAÑA	100.0			14	14	100.0
7. MYINVESTOR BANCO, S.A.	100.0			14	14	100.0
8. RENTA 4 BANCO, S.A.	100.0			2	2	100.0
9. SINGULAR BANK, S.A.	100.0			6	6	100.0
10. UNICAJA BANCO, S.A.	95.5	LIBERBANK, S.A.		7	7	100.0
		UNICAJA BANCO, S.A.	1	14	15	93.3
11. CAIXABANK, S.A.	89.2	CAIXABANK, S.A.	5	56	61	91.8
		BANKIA, S.A.	2	2	4	50.0
12. BANKINTER, S.A.	82.4		3	14	17	82.4
13. KUTXABANK, S.A.	80.0		1	4	5	80.0
14. DEUTSCHE BANK, SOCIEDAD ANÓNIMA ESPAÑOLA	25.0		9	3	12	25.0
Other entities[1]	79.2		5	19	24	79.2
Total	**90.6**		**26**	**250**	**276**	**90.6**

Source: CNMV.

1 30 entities with fewer than eight complaints.

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

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 2022 was 77.2% – nine entities are above this average and five fall short of it.

14 Usually, complaint proceedings conclude with the Complaints Service issuing a final reasoned report, the complainant being notified and the report passed on to the entity. When this report is favourable to the complainant, it is conveyed to the entity together with 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.

Ranking of entities by percentage of acceptance of the conclusions included in the reports or rectification after a ruling favourable to the complainant[15] TABLE 16

Entity against which the complaint is processed	% acceptance	Entity responsible for the incidents	Accept or corrects/ rectifies	Neither accepts nor agrees/ rectifies	No response	Total	% acceptance
1. BANCO DE SABADELL, S.A.	100.0		11			11	100.0
2. ING BANK N.V., SUCURSAL EN ESPAÑA	100.0		14			14	100.0
3. SINGULAR BANK, S.A.	100.0		6			6	100.0
4. BANCO BILBAO VIZCAYA ARGENTARIA, S.A.	89.5		17	2		19	89.5
5. CAIXABANK, S.A.	87.7	CAIXABANK, S.A.	55	1	5	61	90.2
		BANKIA, S.A.	2		2	4	50.0
6. IBERCAJA BANCO, S.A.	87.5		7	1		8	87.5
7. BANCO SANTANDER, S.A.	87.0		47	7		54	87.0
8. UNICAJA BANCO, S.A.	81.8	LIBERBANK, S.A.	7			7	100.0
		UNICAJA BANCO, S.A.	11	3	1	15	73.3
9. KUTXABANK, S.A.	80.0		4		1	5	80.0
10. BANKINTER, S.A.	70.6		12	2	3	17	70.6
11. DEUTSCHE BANK, SOCIEDAD ANÓNIMA ESPAÑOLA	25.0		3		9	12	25.0
12. MYINVESTOR BANCO, S.A.	7.1		1	13		14	7.1
13. ABANCA CORPORACIÓN BANCARIA, S.A.	0.0			3		3	0.0
14. RENTA 4 BANCO, S.A.	0.0			2		2	0.0
Other entities[1]	66.7		16	3	5	24	66.7
Total	**77.2**		**213**	**37**	**26**	**276**	**77.2**

Source: CNMV.

1 30 entities with fewer than eight complaints

2.4 Information provided by the entities

Prior to the preparation of this Annual Report, the CSDs of investment firms with six or more complaints against them were asked to provide information on a number of issues.

The information requested from the CSDs was divided into two categories:

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

– Action 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 go on to this second stage in their attempt to obtain satisfaction.

15 While respondent entities must expressly report on the acceptance of the criteria or the rectification of the complainant's situation in the response to the form previously sent by the Complaints Service, non-acceptance may be notified expressly (explicit non-acceptance) or otherwise. In other words in accordance with the applicable regulations, merely not replying to the form sent by the Complaints Service signifies (implicit) non-acceptance.

The aim of this request is to show the effort being made by these Customer Service Departments to improve their procedures, adapt to new legislative requirements and to solve their clients' problems in an increasingly suitable manner.

The information provided by the CSDs of the entities[16] is assessed in detail below.

The following conclusions, shown in Table 17, were obtained from the information provided by the entities:

– The CSDs receiving the most complaints in 2022 were those of CaixaBank, S.A. (3,607); Banco Santander, S.A. (2,704); Banco Bilbao Vizcaya Argentaria, S.A. (1,689); ING Bank N.V., Sucursal en España (771); and Unicaja Banco, S.A. (560).

  These five entities accounted for 84.6% of the total number of complaints received in the year by the CSDs of investment firms.

– As in previous years, there was a decrease in the number of complaints filed with the Customer Ombudsman by clients of entities that have one. The Customer Ombudsman of Banco Santander, S.A. processed the largest number of complaints (77), 2.8% 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. (32 complaints, representing 14.4% of the complaints received by the entity); Deutsche Bank, S.A.E. (13 complaints, representing 10.6% of the total received); Bankinter, S.A. (55 complaints, 9.2% of the total received) and lastly Banco Bilbao Vizcaya Argentaria, S.A. (35 complaints, 2%). As indicated above, the remainder of the entities analysed do not have a Customer Ombudsman.

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

– According to the data provided by the entities, the percentage of complaints that, after going to the CSD of the entity or its Customer Ombudsman, are forwarded to the Complaints Service in the same year has increased relative to the previous year. In 2022, the average number of complaints filed with the Complaints Service, after going through the CSD or Customer Ombudsman, was 6% compared to 4.8% in the previous year. However, at Renta 4 Banco, S.A. this average is exceeded (10 complaints, which represents 26.3% of the total complaints received in 2022 by the CSD of the entity). Likewise, the cases of Ibercaja Banco, S.A. (15 complaints, 14.9%) and Unicaja Banco, S.A. (83 complaints, 14.8% of the total) should be highlighted.

16 All entities responded to the request for information.

It should be noted that the number of complaints received or processed by the Complaints Service in 2022 is higher than the number of complaints reported by the entities as having been forwarded to the Complaints Service after passing through the entity's CSD. This is because complainants have a period of one year, in the case of natural persons or not-for-profit entities, after receiving a reply from the CSD or after the deadline for that reply, in which to approach the Complaints Service. This means that the complaints processed by the CNMV in 2022 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 2022 are compared with the data provided in 2021, the following conclusions can be drawn:

– The number of complaints filed with the CSDs in 2022 was much lower than in 2020. Banco Santander, S.A. stands out here with 115.2% fewer complaints received (5,820 in 2021 compared to 2,704 in 2022).[17] It is followed by Bankinter, S.A. with a decrease of 27.5% compared to the previous year (695 in 2021 compared to 545 in 2022).

– In contrast, there was a considerable increase in the number of complaints received by CaixaBank, S.A. (1,815 in 2021 compared to 3,607 in 2022).[18] The increases in complaints filed against Kutxabank, S.A. (55 in 2021 compared to 139 in 2021) and Ibercaja Banco, S.A. (52 in 2021 compared to 101 in 2022) also stand out.

– As regards complaints filed with the Customer Ombudsman, the only increase was at Bankinter, S.A. (26 in 2021 compared to 55 in 2022).

– However, the number of complaints filed with the Customer Ombudsman of Banco Bilbao Vizcaya Argentaria, S.A. decreased substantially (101 in 2021 compared to 35 in 2022). The number of complaints filed with the Customer Ombudsman also decreased – albeit to a lesser extent – in the case of Banco Santander, S.A. (100 in 2021 compared to 77 in 2022).

17 It must be borne in mind 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.

18 Contrary to the previous case, in this case CaixaBank is still resolving the complaints that originated in actions carried out by Bankia or in the merger by absorption of the latter by the former.

Complaints filed relating to the securities market

TABLE 17

	No. of complaints on issues of the stock market received in 2022			No. of complaints forwarded to the CNMV Complaints Service in 2022	%[1]
	By the CSD	By the CO	By the CSD or CO		
ABANCA CORPORACIÓN BANCARIA, S.A.	204	-	204	18	8.8
BANCO BILBAO VIZCAYA ARGENTARIA, S.A.	1,689	35	1,724	72	4.2
BANCO DE SABADELL, S.A.	190	32	222	20	9.0
BANCO SANTANDER, S.A.	2,704	77	2,781	132	4.7
BANKINTER, S.A.	545	55	600	20	3.3
CAIXABANK, S.A.	3,607	-	3,607	230	6.4
DEUTSCHE BANK, SOCIEDAD ANÓNIMA ESPAÑOLA	110	13	123	11	8.9
IBERCAJA BANCO, S.A.	101	-	101	15	14.9
ING BANK N.V., SUCURSAL EN ESPAÑA	771	-	771	42	5.4
KUTXABANK, S.A.	139	-	139	4	2.9
MYINVESTOR BANCO, S.A.	219	-	219	10	4.6
RENTA 4 BANCO, S.A.	38	-	38	10	26.3
SINGULAR BANK, S.A.	151	-	151	12	7.9
UNICAJA BANCO, S.A.	560	-	560	83	14.8
Total	**11,028**	**212**	**11,240**	**679**	**6.0**

Source: Data provided by the entities.

1 Percentage of complaints received by CSDs or COs in 2022 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 drawns:[19]

– The number of non-admissions is proportional to the number of admissions, such that the entities with the most complaints also had the most non-admissions: CaixaBank, S.A. (503 of 3,607); Banco Santander S.A. (275 of 2,704), and Banco Bilbao Vizcaya Argentaria, S.A. (87 of 1,689).

  In percentage terms – number of rejections with respect to the number of complaints filed with the CSD –, this would be equal to or greater than 10% in the cases of CaixaBank, S.A. (13.9%); Banco de Sabadell, S.A. (12.1%); Abanca Corporación Bancaria, S.A. (11.3%); and Banco Santander, S.A. (10.2%).

  The case of the CSD of Singular Bank, S.A. stands out: it did not reject any complaints at all.

19 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 the non-admissions agreed by the Customer Ombudsmen of the entities, the number of non-admissions of the CO of Banco de Sabadell, S.A. (10 complaints out of a total of 31) is noteworthy.

Complaints relating to the securities market not admitted by entities in 2022

TABLE 18

	CSD			CO		
	Not admitted	Received	%[1]	Not admitted	Received	%[1]
ABANCA CORPORACIÓN BANCARIA, S.A.	23	204	11.3	0	0	-
BANCO BILBAO VIZCAYA ARGENTARIA, S.A.	87	1,689	5.2	1	35	2.9
BANCO DE SABADELL, S.A.	23	190	12.1	10	32	31.3
BANCO SANTANDER, S.A.	275	2,704	10.2	0	77	0.0
BANKINTER, S.A.	23	545	4.2	0	55	0.0
CAIXABANK, S.A.	503	3,607	13.9	0	0	-
DEUTSCHE BANK, SOCIEDAD ANÓNIMA ESPAÑOLA	10	110	9.1	0	13	0.0
IBERCAJA BANCO, S.A.	8	101	7.9	0	0	-
ING BANK N.V., SUCURSAL EN ESPAÑA	65	771	8.4	0	0	-
KUTXABANK, S.A.	2	139	1.4	0	0	-
MYINVESTOR BANCO, S.A.	3	219	1.4	0	0	-
RENTA 4 BANCO, S.A.	3	38	7.9	0	0	-
SINGULAR BANK, S.A.	-	151	0.0	0	0	-
UNICAJA BANCO, S.A.	27	560	4.8	0	0	-
Total	**1,052**	**11,028**	**9.5**	**11**	**212**	**5.2**

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 cases resolved by the CSD, the following observations can be made:

– The CSD that resolved the most complaints was that of CaixaBank, S.A. (3,124) followed by Banco Santander, S.A. (2,505) and Banco Bilbao Vizcaya Argentaria, S.A. (1,553).

– Regarding the result obtained by the complainants in their complaints to CSDs, the CSDs of the entities with a higher than average percentage (38%) in complaints favourable to their clients were: Banco Bilbao Vizcaya Argentaria, S.A. (49.1%); CaixaBank, S.A. (47.1%); MyInvestor Banco, S.A. (46.3%), and Renta 4 Banco, S.A. (45.7%).

– As regards Customer Ombudsmen, the one that resolved the most complaint files in 2022 was that of Banco Santander, S.A. (77), followed by the COs of Bankinter, S.A. (49); of Banco Bilbao Vizcaya Argentaria, S.A. (32); of Banco de Sabadell, S.A. (21) and of Deutsche Bank, S.A.E. (13).

– The Customer Ombudsman that issued the highest proportion of resolutions in favour of complainants in 2022 was that of Banco de Sabadell, S.A. (52.4%), followed by those of Banco Santander, S.A. (40.3%), Banco Bilbao Vizcaya Argentaria, S.A. (31.3%), Bankinter, S.A. (28.6%) and Deutsche Bank, S.A.E. (15.4%).

A comparison of the data provided by the entities in 2022 and 2021 shows significant variations in terms of the percentage of reports favourable to the complainants.

In the year 2022 in four entities the percentage of favourable reports was higher than 40%: Banco Bilbao Vizcaya Argentaria, S.A. (49.1%); CaixaBank, S.A. (47.1%); MyInvestor Banco, S.A. (46.3%), and Renta 4 Banco, S.A. (45.7%). However, this percentage of favourable reports corresponded to just three CSDs in 2021: those of Unicaja Banco, S.A. (55.5%); MyInvestor Banco, S.A., (50.3%), and CaixaBank, S.A. (42.8%).

In two entities, the number of cases resolved in favour of the complainant noticeably increased, specifically in ING Bank N.V., Sucursal en España (33.2% in 2022 compared to 3.2% in 2021) and Banco Santander, S.A. (27.4% in 2022 compared to 12.9% in 2021).

In contrast, the number of reports favourable to the complainant fell significantly in Ibercaja Banco, S.A. (7.5% in 2022 compared to 37.5% in 2021) and Unicaja Banco, S.A. (32.1% in 2022 vs. 55.5% in 2021).

There was a slight increase in reports favourable to the complainant made by the customer ombudsmen of Banco Santander, S.A. (40.3% in 2022 compared to 33.1% in 2021) and Banco de Sabadell, S.A. (52.4% in 2022 compared to 50% in 2021) and a more significant decrease in reports favourable to the complainant made by the COs of Deutsche Bank, Sociedad Anónima Española (15.4% in 2022 compared to 30.8% in 2021).

Complaints relating to the securities market admitted and resolved by entities in 2022

TABLE 19

	CSD			CO		
	Favourable	**Unfavourable**	**%[1]**	**Favourable**	**Unfavourable**	**%[1]**
ABANCA CORPORACIÓN BANCARIA, S.A.	25	155	13.9	-	-	-
BANCO BILBAO VIZCAYA ARGENTARIA, S.A.	763	790	49.1	10	22	31.3
BANCO DE SABADELL, S.A.	52	104	33.3	11	10	52.4
BANCO SANTANDER, S.A.	686	1,819	27.4	31	46	40.3
BANKINTER, S.A.	201	325	38.2	14	35	28.6
CAIXABANK, S.A.	1,472	1,652	47.1	-	-	-
DEUTSCHE BANK, SOCIEDAD ANÓNIMA ESPAÑOLA	14	70	16.7	2	11	15.4
IBERCAJA BANCO, S.A.	7	86	7.5	-	-	-
ING BANK N.V., SUCURSAL EN ESPAÑA	225	452	33.2	-	-	-
KUTXABANK, S.A.	24	76	24.0	-	-	-
MYINVESTOR BANCO, S.A.	100	116	46.3	-	-	-
RENTA 4 BANCO, S.A.	16	19	45.7	-	-	-
SINGULAR BANK, S.A.	20	131	13.2	-	-	-
UNICAJA BANCO, S.A.	153	324	32.1	-	-	-
Total	**3,758**	**6,119**	**38.0**	**68**	**124**	**35.4**

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

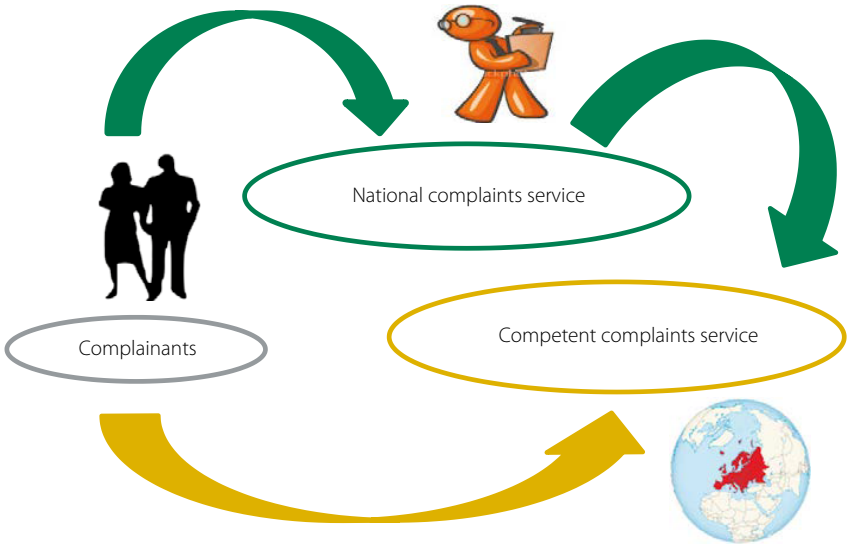
2.5.1 Financial Dispute Resolution Network (FIN-NET)

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).[20] FIN-NET was created through Commission Recommendation 98/257/EC of 30 March 1998 on the principles applicable to the bodies responsible for 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 European Economic Area. 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.

FIN-NET affiliates are dispute resolution bodies from European countries or territories which are not part of the EEA and where the 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 affiliate, 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.



20 FIN-NET has members in countries of the EEA, which means the EU, Iceland, Liechtenstein and Norway.

The members of this network undertake to comply with a memorandum of understanding,[21] 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 comply with them. The document was revised in May 2016 to adapt to the ADR[22] Directive.

Since September 2018, the Complaints Service has been a member of the FIN-NET Steering Committee, consisting of 12 members and in charge of the FIN-NET work programme that will be discussed in plenary meetings. The term of office of Steering Committee members is two years. However, given the situation caused by the global pandemic in 2020, it was last renewed in 2021.

➢ Plenary meetings

The FIN-NET plenary assembly meets twice a year, mainly to inform on regulatory developments in the EU in the area of ADR[23] and financial services, on regulatory developments specific to each Member State and on developments that affect their respective areas of ADR, 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 participated in the two plenary meetings that were held in 2022. It is necessary to point out that the second of the meetings was once again held in person in the city of Brussels, specifically on 24 November 2022, given that since the health crisis experienced in 2020, meetings had been held electronically. Currently, it is planned that of the two annual meetings, one will be held electronically and the other in person.

The main topics discussed in the plenary meetings were:

– Review of the ADR Directive and ODR Regulation: It was reported that a process is being carried out to evaluate the implementation of EU regulations on ADR.[24]

  This process is detailed in the Commission's work programme for the year 2023, and the revised legislative instruments are foreseen for the second quarter of 2023. The EC is not thinking of far-reaching changes in the procedure, but rather of adjustments to the current ODR Regulation, specifically to the platform, since during the study of the information it has been detected that many merchants do not usually participate in the procedure (in those cases in which it is not

21 Memorandum of Understanding (MoU).

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

23 An alternative dispute resolution (ADR) entity is any type of agency or department that extra-judicially resolves disputes between investors and entities that provide investment services.

24 Directive 2013/11/EU of the European Parliament and of the Council, of 21 May 2013, on alternative dispute resolution for consumer disputes and amending Regulation (EC) No. 2006/2004 and Directive 2009/22/EC. Regulation (EU) 2017/2394 of the European Parliament and of the Council, of 12 December 2017, on cooperation between national authorities responsible for the enforcement of consumer protection laws and repealing Regulation (EC) No. 2006/2004. Regulation (EU) No. 524/2013 of the European Parliament and of the Council, of 21 May 2013, on online dispute resolution for consumer disputes and amending Regulation (EC) No. 2006/2004 and Directive 2009/22/EC.

mandatory to participate) and that there are obstacles to accessing fair reparation solutions in cross-border cases.

– Instant payments: The draft regulation on instant payments was presented. Instant transfers are an important technological innovation in payments that allow money to be transferred 24 hours a day, 7 days a week, 365 days a year and in less than 10 seconds. Currently, around 13% of all transfers in euros in the EU are processed as instant transfers and with a variable cost depending on each entity; for this reason, harmonised legislation is required in this regard. Once the regulation enters into force, a phased application is expected, depending on whether or not the payment service provider is established in a Member State whose currency is the euro.

– Fraud in payment services: Due to the increase that is taking place in fraud complaints in payment services, in one of the plenary meetings one of the members of that sector explained the types of fraud that are being detected, such as phishing, spoofing (identity theft) and SIM swap fraud.

  In this type of complaint, it is a question of differentiating when there is gross negligence on the part of the payer in complying with custody obligations of the payment instrument and security keys, and of having notified the entity of said circumstance without delay.

– Credit protection Insurance (CPI) sold via banks – Presentation by EIOPA: At one of the meetings, a presentation was made on the study of the functioning of the EU market for credit protection insurance (CPI) products sold through banks (acting as insurance intermediaries), with the aim of providing guidance and evidence for coherent supervisory and reasoned policy proposals. From the data obtained the following problems could be identified: limited consumer choice and barriers to comparing prices, high product diversity and price dispersion at national and EU level, problems with insurance product cancellation and the change of providers, and high risk of conflicts of interest (between banks and insurers) due to unusually high profitability (the biggest problem, since it results in a higher price for the consumer).

  Likewise, EIOPA issued a warning to insurance companies and banks to address high fees and the risk of conflicts of interest in the context of bancassurance business models and discussions will continue with the competent authorities of each country to monitor heeding of the warning

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.

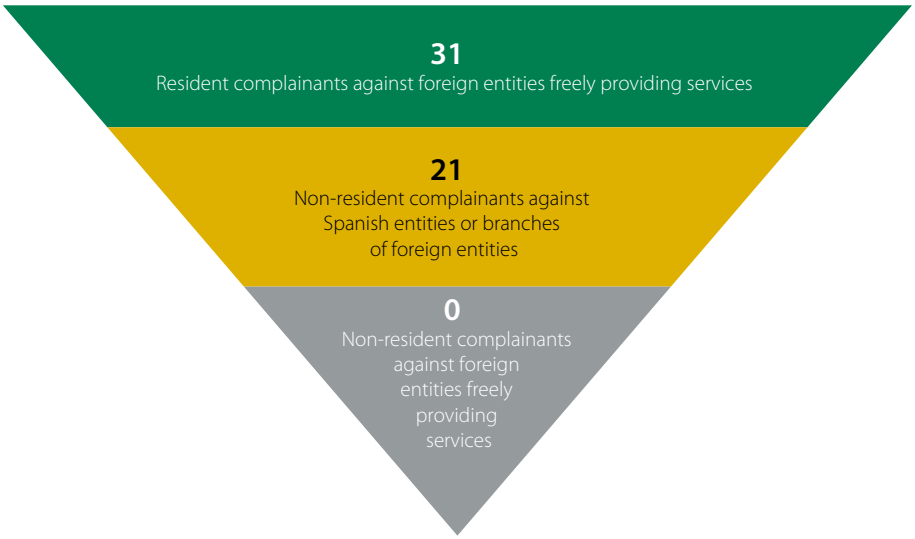
INFO Network members are entities that operate as independent out-of-court bodies that resolve disputes in the financial sector. Depending on their powers, these entities provide dispute resolution services to consumers who have not been able to resolve the matter directly with the company providing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

The Complaints Service took part in the 15th Annual Meeting of the INFO Network, held via video conference on Wednesday, 27 September 2022. 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.

2.5.3 Cross-border complaints

In 2022, the Complaints Service received a total of 52 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 31 cases. Since the Complaints Service lacks competence to process these files, since the foreign entities are acting under the free provision of services regime, the complainants were provided with information on the bodies in charge of out-of-court settlement of complaints in the countries where the companies complained about were established.

Of the 15 files against entities established in FIN-NET member countries, one was sent to the Complaints Service of the Bank of Spain since it concerned matters within its competence and in the remaining 14 cases the Complaints Service offered to forward the complaint to the competent body, which offer was accepted in four cases. The 16 complaints filed against entities established in non FIN-NET member countries related to entities established in Cyprus, except one case which concerned an entity established in Bulgaria.

Fourteen residents in other EU countries and seven non-EU residents 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 files, eight were inadmissible (five because the Complaints Service of the Bank of Spain was the competent authority and three cases for not having answered the petition for rectification of the requirements for admission of the complaint or the petition for pleas in a cause of non-admission). The remaining 13 were admitted and of these, six were resolved with a final reasoned report favourable to the complainant, three were resolved with a final reasoned report unfavourable to the complainant, two were resolved with the entity's acceptance of the complainant's claims, another was resolved with an agreement between the complainant and the respondent, and one is pending resolution at the date of preparation of the Report.

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 2022

3 Main criteria applied in the resolution of complaints in 2022

This chapter presents an overview of the main criteria applied in the resolution of complaints in 2022.

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 derived from the exercise of the tasks entrusted to the CNMV, applied to the specific cases that were analysed in each of the complaints processed in 2022. 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, in publishing these criteria the intention is merely to give an updated catalogue of the regulatory interpretations and good practices that apply to the sector on a specific date, that of their publication, and nothing prevents them from being subsequently modified or nuanced.

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's website.

3.1 Appropriateness of marketing/simple execution

The appropriateness assessment assumes that, when services other than investment advisory or portfolio management services are provided, the company providing investment services must request the client – including potential clients if applicable – to provide information about their knowledge and experience in the investment field corresponding to the specific type of product or service offered or requested, so that the entity can assess whether the investment product or service is appropriate for the client. In the event that, based on this information, the entity considers that the investment product or service is not suitable for the client, it will warn him. If the client does not provide the information or it is insufficient, the entity will warn him that said decision prevents it from determining whether the investment service or product envisaged is suitable for him.[2]

On 19 April 2022, the CNMV announced the adoption of the ESMA Guidelines on certain aspects of the MiFID II appropriateness and execution-only requirements[3]

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

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

3 Guidelines on certain aspects of the MiFID II appropriateness and execution-only requirements 12 April 2022 (ESMA 35- 43-3006).

and the approval of a Technical Guide on appropriateness assessment.[4] In addition to the most significant complaints in the field of appropriateness, this section highlights some new features involving the application to these of the aforementioned ESMA guidelines and the CNMV Technical Guide.

➢ Customer initiative and warning model for the exemption from the obligation to assess the appropriateness of non-complex products

There are exceptional cases in which the entity is exempt and does not have to assess the appropriateness of a product or service for the client. For this exemption to apply, the following strict requirements must be met:[5]

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

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

iii) The entity must have clearly informed the client that it is not obliged to perform an appropriateness assessment on the instrument offered or the service provided and that, therefore, the client does not enjoy the protection established in the rules of conduct of legislation on the securities market. This warning may be issued in a standardised format.

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

This provision is limited to cases in which the entity exclusively provides the service of execution or reception and transmission of client orders, with or without provision of ancillary services. These ancillary services expressly exclude the granting of credits or loans[6] that do not refer to existing credit limits on loans, current accounts and authorised client overdrafts.

Under the ESMA Guidelines, companies must be able to determine whether a customer has placed his order in response to a personalised communication from or on behalf of the company. In such cases, the company must disqualify the transaction for the purposes of the execution-only exemption.[7]

The CNMV Technical Guide has indicated some cases in which it is unlikely that the initiative came from the client. In particular:

– In distribution channels such as the branch network or, in some cases, the telephone (specifically when it is the telephone operator who has called the client), it is more likely that personalised communications can be conveyed to clients since there is personal contact with the client, whereas in other channels such as online channels, where there is generally no personal contact with the client, they are much less frequent. In the event that during the personal

4 *Technical Guide 2/2022 on Appropriateness Assessment*, 19 April 2022.

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

6 By virtue of Article 141.b) of Royal Legislative Decree 4/2015, of 23 October, approving the recast text of the Securities Market Act.

7 Guideline 12, paragraph 90, of the Guidelines on certain aspects of the MiFID II appropriateness and execution-only requirements of 12 April 2022 (ESMA 35-43-3006).

contact with the client, various alternatives are presented to him, it should not be considered that there is a personalised communication.

– When internal sales campaigns are carried out for a specific product through a branch network or by telephone (without the support of advertising campaigns aimed at the general public in the media), for a short period, it is not reasonable to consider that in most cases, or in many of them, the initiative has corresponded to the clients.[8]

In the event that the warnings are given in documents separate from the order, the appropriate procedures must be established so that they refer unequivocally to the transaction in question.[9] In R/743/2021, in the case of a purchase transaction for a non-complex product at the request of the client, the entity decided to avail itself of the exemption and provided a document with a warning to that effect. However, to the extent that the warning lacked the customer's signature and any other indication that it was duly provided before the purchase order was processed, the Complaints Service did not consider it proven that the entity had correctly warned the client about the exemption of the assessment of appropriateness and that he would not enjoy the protection provided by law.

The CNMV's Technical Guide clarified that in cases where the entity is not obliged to assess appropriateness ("execution-only"), Circular 3/2013 does not determine a regulated text of the warning, but it must clearly indicate that the entity is not obliged to assess the appropriateness of the transaction and that, therefore, the client lacks the protections provided for this case. The following warning model is considered appropriate:

> *We inform you that this entity is not obliged to assess the appropriateness of (the transaction to be carried out by the client must be specified) since the product in which you propose to trade is classified as "non-complex" and the transaction to be carried out is on your initiative and not that of this entity. Because it has not made this assessment, the entity cannot form an opinion as to whether or not this transaction is appropriate for you and, therefore, should the transaction prove inappropriate for you, it will not be able to warn you of this.*[10]

Additionally, the aforementioned CNMV Technical Guide envisages the possibility of not issuing the warning in certain cases. In this regard, it indicates that "Exceptionally, in the case of brokerage clients that are highly active in listed shares, it is not necessary to advise them regarding "execution only", in each transaction that they carry out, after having given this warning on several occasions (for example, after the first four warnings), it would not be necessary to give it again as long as clients carry out, from then on, at least two transactions every six months.[11]

However, the entity may decide not to avail itself of this exemption and to assess the appropriateness of the non-complex product requested by the client. Paragraph 30 of ESMA's Guidelines on MiFID II product governance requirements,[12] which the CNMV announced it would adopt on 12 December 2017 states that "the distributor

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8 Third section, paragraph 6, of *Technical Guide 2/2022 on Appropriateness Assessment*, of 19 April 2022.

9 Twelfth section, paragraph 37, of *Technical Guide 2/2022 on Appropriateness Assessment*, of 19 April 2022.

10 Twelfth section, paragraph 38, of *Technical Guide 2/2022 on Appropriateness Assessment*, of 19 April 2022

11 Twelfth section, paragraph 39, of *Technical Guide 2/2022 on Appropriateness Assessment*, of 19 April 2022.

12 Guidelines on MiFID II product governance requirements (05/02/2018 | ESMA 35-43-620E).

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 cases R/737/2021, R/14/2022 and R/80/2022, although the orders referred to products considered non-complex, the entities provided appropriateness tests signed by the complainants according to whom the purchase was appropriate, so either one of the other requirements for application of the exemption was not met or the entity decided not to avail itself of it.

In complaint R/28/2022, the entity provided a signed document with the warning, dated 28 December 2017, relating to the fact that the entity was not obliged to assess the appropriateness of the transaction and that, therefore, the client lacked the protections provided for this case. However, the Complaints Service considered that this warning should have been issued prior to joining the investment fund forming the subject of the complaint, which had already occurred on 21 December 2017.

➢ Assessment of client knowledge and experience

Investment firms shall ensure that the information regarding a client's or potential client's knowledge and experience in the investment field includes the following, to the extent appropriate to the nature of the client, the nature and extent of the service to be provided and the type of product or transaction envisaged, including their complexity and the risks involved:

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

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

– The level of education and the occupation or, where applicable, the previous occupation of the client or prospective client (training and professional experience).[13]

The ESMA Guidelines indicate that, in order to determine the scope of information that should be asked about the knowledge and experience of the client or potential client, companies must take into account the type and characteristics of the investment products or services to be considered (i.e. the level of complexity and risk of the investment products or services) and the nature of the client.[14]

✓ Financial knowledge

Financial knowledge refers to the types of financial instruments, transactions and services with which the client is familiar.

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13 Article 55.1 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.

14 Guideline 3, paragraph 31, of the Guidelines on certain aspects of the MiFID II appropriateness and execution-only requirements 12 April 2022 (ESMA 35- 43-3006).

The CNMV Technical Guide states that entities should not presume appropriateness without first having verified with sufficient precision that the client has an adequate level of financial knowledge. In other words, entities must always ask the client about this aspect (it could be said that it is a necessary but not a sufficient condition) regardless of whether the client may have previous investment experience or a certain level of academic training, with the sole exception of finance professionals.[15]

✓ Prior investment experience

Previous investment experience must meet a series of requirements:

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

– Two or more previous transactions have been carried out.

– No more than five years have elapsed since the financial instruments in question were held in the client's portfolio (for non-complex products) and three years (for complex products).

– The entity is not aware of any circumstances that might indicate that the previous transactions did not allow the client to acquire the necessary experience.[16]

Before 19 April 2022, when the previous experience met all the aforementioned requirements, it could be presumed that a new transaction was appropriate without the need to analyse the other factors (level of general education, professional experience or financial knowledge).[17]

Since 19 April 2022, the CNMV Technical Guide has clarified that, as an additional requirement to previous investment experience, the context in which said transactions have been processed must be considered, evaluating whether the investment decision was made by the client or whether on the contrary it was taken by a manager within the scope of a discretionary portfolio management mandate.[18] Furthermore, it appropriateness must bot be assumed on the basis of the mere existence of previous investing experience without gathering information and analysing other aspects that must be considered when assessing appropriateness (level of financial knowledge, level of academic education and professional experience).[19]

As regards similar products in nature and risks ("family"), when assessing the previous investment experience, the transactions do not necessarily have to refer to exactly the same financial products; those referring to other products that are different but similar to those, in terms of their nature and risks can also be considered. In other words, transactions with a type of product which, if not the same, has characteristics and risks similar to the product in question.

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15 Sixth section, paragraph 14, of *Technical Guide 2/2022 on Appropriateness Assessment*, of 19 April 2022.

16 Seventh section of *Technical Guide 2/2022 on Appropriateness Assessment*, of 19 April 2022.

17 Question 4 of the *Operational guide to the analysis of appropriateness and suitability*. Investment Firms and Credit & Savings Institutions Supervision Department. 17 June 2010.

18 Seventh section, paragraph 21, of *Technical Guide 2/2022 on Appropriateness Assessment*, of 19 April 2022.

19 Seventh section, paragraph 22, of *Technical Guide 2/2022 on Appropriateness Assessment*, of 19 April 2022.

✓ **Training and professional experience**

The CNMV's Technical Guide establishes that the information that the entity obtains in relation to the client's general level of studies or other training or his occupation can only provide a general idea of his financial knowledge, so it would only allow general presumptions to be made.[20]

✓ **Assessment according to the complexity and risk of the investment product or service**

The complexity of the investment product or service affects the information to be collected and the assessment made of it for the purpose of considering whether or not it is appropriate to contract it.

In relation to financial knowledge, the CNMV Technical Guide points out that, in general, in the case of complex products, it is not prudent to presume appropriateness based exclusively on the positive assessment of financial knowledge.[21]

Regarding previous investment experience in products or services of the same family, the CNMV Technical Guide indicates that it is not reasonable to consider prior transactions that have been processed within the scope of a discretionary portfolio management mandate in assessing the appropriateness of complex products. The greater the complexity and the potential risks, the more difficult it will be to identify other products similar to that being considered. In other words, the number of products in the families will decline as the level of risk and complexity of these products increases. Therefore, it is difficult to classify into families of products those more specific and sophisticated products that have a high level of complexity.[22]

With the exception of finance professionals, the CNMV's Technical Guide stresses that when the transaction being assessed related to complex products, in general it must not be assumed that they are appropriate if the customer does not have a minimum level of academic education as well as the necessary level of financial knowledge and appropriate previous investor experience.[23] When it comes to evaluating products with a higher level of complexity, before assuming the appropriateness of the transaction, in general it should be verified that, in addition to having adequate financial knowledge, the client meets at least one of the following requirements:

– Has a minimum level of academic training (equal to or higher than baccalaureate) and demonstrable prior investment experience,

– Or has university studies with a high technical or mathematical component or related to economics and finance.[24]

In R/729/2021, in relation to the subscription of an interest rate cap option contract (CAP) by the representative of a limited company, the representative responded that he had university or postgraduate studies related to economics or financial markets or that he held or had held a professional position directly related to financial

20 Eighth section, paragraph 25, of *Technical Guide 2/2022 on Appropriateness Assessment*, of 19 April 2022.
21 Sixth section, paragraph 15, of *Technical Guide 2/2022 on Appropriateness Assessment*, of 19 April 2022.
22 Example 6 of *Technical Guide 2/2022 on Appropriateness Assessment*, of 19 April 2022.
23 Eighth section, paragraph 27, of *Technical Guide 2/2022 on Appropriateness Assessment*, of 19 April 2022.
24 Example 4 of *Technical Guide 2/2022 on Appropriateness Assessment*, of 19 April 2022.

markets; and that he understood how market, credit and liquidity risks affected financial instruments and that, during the last three years, he had carried out transactions, or maintained at least two or more transactions in equities and investment funds, ETFs, etc., and had carried out a deposit transaction and other OTC derivatives. In view of the responses to the test, the entity concluded that the company representative had extensive knowledge and experience to carry out transactions in complex products of the interest rate option purchase (CAP) family.

In R/433/2022, regarding the investment in a purchase option on equities with settlement for differences, the entity concluded, as a result of said test carried out on the client, a very high financial knowledge and experience and sufficient financial culture to understand the nature and risks of more complex products. Therefore, the entity considered that the OTC equity purchase option contract was appropriate.

✓ Assessments according to the nature of the client

Investment firms may presume that a professional client has the necessary experience and knowledge to understand the risks involved in those specific investment services or transactions, or types of transactions or products, for which the client is classified as a professional client.[25]

The CNMV's Technical Guide points out that in the case of financial professionals (understanding this to mean persons who hold or have held for at least one year a professional position in the financial sector that requires knowledge of financial transactions or services, and who therefore have a very high level of knowledge of these matters), it is reasonable to assume appropriateness, even in the case of complex products, exclusively on the basis of their professional experience, without collecting other information. However, for this, the entity must be certain that the client has adequate professional experience directly related to the securities markets, their products and their risks, particularly and specifically, when it comes to complex derivative products, products with a high credit risk and unsecured structured products. The information available from the client must be considered together as a whole so that the result of the assessment is consistent and prudently weighs up his real level of financial knowledge, so it would in no case be reasonable for the entity to consider the client as a finance professional if it has other information indicating that the client does not have a high general level of financial knowledge.[26]

Standing to initiate the procedure with the Complaints Service is limited to users of investment services and activities who have the status of retail client.[27] However, complaints have been received from entities classified as retail clients whose investment decisions were made by a department or financial director with powers in this regard, which was taken into account by the entity for the purposes of determining the appropriateness of the transaction.

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25 Article 56.1 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.

26 Eighth section, paragraph 26 of *Technical Guide 2/2022 on Appropriateness Assessment*, of 19 April 2022.

27 Rule 4 of CNMV Circular 7/2013, of 25 September, regulating the procedure for resolving claims and complaints against firms providing investment services and attending to queries in the field of the securities market.

In R/338/2022, in relation to the signing of an interest rate swap contract by an association, the entity provided a copy of the appropriateness test carried out in 2016 for OTC derivatives signed by the representative of the association. In said test, the latter responded that the association had a financial department or financial director who made the decisions to contract financial instruments and investment services and, based on said response, the entity considered that the product was appropriate for the association.

➢ Completion and consistency of the appropriateness test

Investors often disagree with the answers collected in the appropriateness assessments performed by the entities and allege certain irregularities in the tests such as submission of pre-completed tests by entities or question the truthfulness of some of the answers.

In these cases, the Complaints Service considers that determining whether the test has been delivered to the complainants pre-filled, as well as the veracity or authenticity of the responses collected in said test provided to the complaints files by the entities or by the investors themselves is a matter that, with the information available in a complaint file cannot be resolved since there are not enough elements of judgement to rule on such facts, and it must be the courts that resolve the matter through the different means of evidence available to them.

The ESMA Guidelines state that where firms pre-populate responses based on the client's trading history with the firm in question (e.g. through another investment service), they must ensure that the answers pre-populated use only fully objective, relevant and reliable information, and that the client is given the opportunity to review and, if necessary, correct or complete each of the previously completed responses, in order to ensure the accuracy of all information.[28]

In relation to the reliability of customer information, the ESMA Guidelines state that companies must take reasonable measures and have adequate tools in place to ensure that the information provided by their customers is reliable and consistent, without unduly relying on the self-assessment of clients. If the information collected is not sufficiently reliable and consistent, this would be equivalent to not having received sufficient information to carry out the appropriateness assessment, and firms shall issue the corresponding warning.[29]

In order to ensure the consistency of client information, firms must analyse the information collected as a whole. Entities must remain alert to detect significant contradictions between the different data collected in order to resolve the most significant possible inconsistencies or inaccuracies. Companies must ensure that the evaluation of information collected about their customers is carried out in a consistent manner regardless of the means used to collect such information.[30]

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28 Guideline 2, paragraph 29, of the Guidelines on certain aspects of the MiFID II appropriateness and execution-only requirements 12 April 2022 (ESMA 35- 43-3006).

29 Guideline 4, paragraphs 38 and 39, of the Guidelines on certain aspects of the MiFID II appropriateness and execution-only requirements 12 April 2022 (ESMA 35-43-3006).

30 Guideline 4, paragraph 42, of the Guidelines on certain aspects of the MiFID II appropriateness and execution-only requirements 12 April 2022 (ESMA 35- 43-3006).

Regarding the analysis of the information collected and the controls of its consistency, the CNMV Technical Guide determines that entities must adopt measures and carry out reasonable actions to verify that the information provided by customers is reliable, accurate and consistent in general terms. To that end, entities must assess whether *prima facie* there are any atypical situations that it would be reasonable to expect not to arise or only to arise in an occasional or isolated manner, with a view to identifying groups of clients for whom the available information might not appropriately reflect their general level of academic education, financial knowledge or experience, irrespective of the fact that these data may have been taken from formalised appropriateness questionnaires.[31]

These measures should include appropriate procedures that allow staff collecting customer information to detect, at the time of collection, any situations that may appear *prima facie* to be atypical.[32] Some examples of these situations could be the following:

– Clients with a low level of academic education and little or no investment experience who declare a high degree of financial knowledge.

– Clients who declare investment experience with complex products in other entities that does not correspond to the types of products usually acquired in the entity.

– Clients who state that they hold or have held a professional position in the financial sector with an academic background that does not correspond to said professional experience, or who show little knowledge of the financial markets.

– Clients who show a low general level of financial literacy, but who state that they are aware of the characteristics and risks of specific highly complex products.[33]

These measures must also include a periodic (for example annual) ex post assessment of the reasonableness at the global or aggregated level of the information used to assess appropriateness.[34]

In R/729/2021, the entity carried out an appropriateness test on 4 May 2021 on the representative of a construction company. To the question regarding the profession of the representative performing the test: "Have you received training or have you held any professional position (including in banking or finance) bringing you directly in touch with financial instruments and stock markets?", the answer was: "a) I have university or postgraduate studies related to economics or financial markets or I hold/have held a professional position directly related to financial markets".

31 Tenth section, paragraph 31, of *Technical Guide 2/2022 on Appropriateness Assessment*, of 19 April 2022.

32 Tenth section, paragraph 32, of *Technical Guide 2/2022 on Appropriateness Assessment*, of 19 April 2022.

33 Example 9 of *Technical Guide 2/2022 on Appropriateness Assessment*, of 19 April 2022.

34 Tenth section, paragraph 33, of *Technical Guide 2/2022 on Appropriateness Assessment*, of 19 April 2022.

However, the deed of power of attorney dated 11 February 2019 that the entity produced, indicated that the company representative was a technical architect, and there was no mention of financial or stock market studies. Consequently, the Complaints Service considered that the entity had not carried out any effective checks on the information contained in the appropriateness test in relation, at least, to the training and profession of the company representative.

➢ Cases of joint ownership or representation

The ESMA Guidelines state that firms must have a policy defining on an *ex ante* basis how to conduct the suitability assessment in situations where a client is a legal person or a group of two or more natural persons or where one or more natural persons are represented by another natural person.[35]

The CNMV Technical Guide specifies that:

– In general, where a natural or legal person appoints a holder of power of attorney/representative, it is considered reasonable that, for the purposes of the appropriateness test, the knowledge and experience of the holder of the power of attorney/representative be considered, when it is this person that operates.[36]

– In cases where several co-holders or joint representatives are appointed, it is considered reasonable that the appropriateness assessment be carried out on the holder/representative agreed upon by the clients. In the absence of client agreement, in accordance with the ESMA Guidelines, prudent judgement should be applied and the knowledge and experience of the holder/representative with the least experience and knowledge should be taken into account.[37] This provision represents a change with respect to the previous criterion of the CNMV, whereby, in this same case of designation of several co-owners or joint authorised persons, it considered it reasonable that the evaluation of appropriateness should be carried out considering the holder/authorised party with the most knowledge and experience.[38]

– Likewise, where several co-holders or joint representatives are appointed, it is considered reasonable that, in the absence of a more specific agreement from the clients, the assessment be carried out considering the knowledge and experience of the holder/representative giving the order, since it is that client who is acting on behalf of the others in that transaction.[39]

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35 Guideline 6, paragraph 50, of the Guidelines on certain aspects of the MiFID II appropriateness and execution-only requirements of 12 April 2022 (ESMA 35-43-3006).

36 Thirteenth section, paragraph 41, of *Technical Guide 2/2022 on Appropriateness Assessment*, of 19 April 2022.

37 Thirteenth section, paragraph 42, of *Technical Guide 2/2022 on Appropriateness Assessment*, of 19 April 2022.

38 Question 15 of the *Operational guide to the analysis of appropriateness and suitability.* Investment Firms and Credit & Savings Institutions Supervision Department. 17 June 2010.

39 Thirteenth section, paragraph 43, of *Technical Guide 2/2022 on Appropriateness Assessment*, of 19 April 2022.

– In any case, it is necessary for the parties involved to be informed prior to the provision of the service as to which regime the entity is going to apply.[40]

Taking the above into account and the complainant being a company in R/617/2021 and an association in R/338/2022, the entities collected information on the knowledge and experience of their representatives who subscribed to the disputed products.

➢ The entity must provide the client with a copy of the document containing the assessment performed

The entity must provide the client with a copy of the document containing the appropriateness assessment performed.[41]

The CNMV Technical Guide indicates that entities must be able to prove compliance with this obligation. For these purposes, it is considered necessary that, in the document that includes the evaluation carried out that is delivered to them, the questions asked and the answers given by the client be detailed. In the event that the assessment carried out refers to different products or families of products, the result of the assessment for each family assessed must be clearly communicated to the client.[42]

In R/28/2022, the subscription order for an investment fund stated that it was a suitable product according to the appropriateness test carried out. However, it did not provide said appropriateness test, so the Complaints Service did not consider it proven that the entity had carried out said mandatory evaluation in a timely manner.

In R/311/2022, the entity provided a copy of an appropriateness test in the name of the complainant, which consisted of 7 pages:

– On the first page (1/1), signed, the complainant indicated that she had received the MiFID test with her reference number, stated that she had read and accepted that documentation and stated that the signature of that document had the effect of a contractual signature with respect to the detailed documents.

– From the second page to the seventh, the referred test was observed (pages 1/6 to 6/6) with its corresponding reference number. On page 3/6 the test result appeared and on page 6/6 were the boxes for the signatures of the parties (client and entity). However, both were blank.

Therefore, notwithstanding that page 1/1 was signed, the Complaints Service considered that the test should have been signed by both parties and stamped by the entity on page 6/6 in order to validate the document as a whole.

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40 Thirteenth section, paragraph 44, of *Technical Guide 2/2022 on Appropriateness Assessment*, of 19 April 2022.

41 Article 214.3 of Royal Legislative Decree 4/2015, of 23 October ,approving the recast text of the Securities Market Act.

42 Ninth section, paragraph 28, of *Technical Guide 2/2022 on Appropriateness Assessment*, of 19 April 2022.

➢ Purchase of shares by granting a loan or credit

When contracting a package of combined services and products is envisaged, the entity must ensure that the package considered as a whole is appropriate for the client.[43]

In relation to the above, the ESMA Guidelines state that, when the company intends to provide a service without advice that has specific characteristics, it must also, before providing said service, carry out an evaluation of the relative appropriateness of these specific characteristics. This would be pertinent, for example, when a package of services or products is planned for which the company will evaluate whether the package considered as a whole is suitable. For example, if a company intends to provide both execution services and auxiliary lending services that allow the client to carry out the transaction, this package of services will have risks that are different from those of each component considered in isolation. In order to take these differences into account when making the appropriateness assessment, reference must be made not only to the intended investment products, but also to the auxiliary loan-granting service and the risks deriving from the combination of both.[44]

Shares admitted to trading on a regulated market or on an equivalent market in a third country or on an MTF are generally considered to be non-complex financial instruments.[45] However, the Complaints Service has highlighted that, when such shares are purchased on credit, the transaction is considered complex, since the requirement that it not imply any real or potential liability for the client in excess of the acquisition cost of the instrument is not met.[46]

In the case of a purchase of shares on credit, the tests carried out on clients only evaluated the investment products grouped under the heading "Shares classified as non-complex". The Complaints Service considered that, since the purchase of shares had been financed with a loan, the entity should have assessed the appropriateness of a complex product, which was not proven to have been done and as such was considered bad practice (R/617 /2021 and R/710/2021). In addition, taking into account ESMA's considerations, the appropriateness assessment should not only refer to the shares, but also to the auxiliary loan-granting service and the risks deriving from the combination of both.

3.2 Suitability consulting and portfolio management

When providing advice on investment or portfolio management the investment firm shall obtain the necessary information regarding the client's or potential client's knowledge and experience in the investment field relevant to the specific type

43 Articles 214.2 and 219.2 of Royal Legislative Decree 4/2015, of 23 October, approving the recast text of the Securities Market Act.

44 Guideline 3, paragraph 36, of the Guidelines on certain aspects of the MiFID II appropriateness and execution-only requirements. 12 April 2022 (ESMA 35- 43-3006).

45 Article 217.1d) of Royal Legislative Decree 4/2015, of 23 October, approving the recast text of the Securities Market Act.

46 Article 57c) 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.

of product or service, that person's financial situation including his ability to bear losses, and his investment objectives including his 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 for him and, in particular, are in accordance with his risk tolerance and ability to bear losses.[47]

Since 2 August 2022, entities have had to include client sustainability preferences when analysing client investment objectives in the suitability assessment process when providing advice on investment or discretionary portfolio management.[48] In addition to significant complaints in the area of suitability, this section highlights some new features brought into play by integrating such sustainability preferences into the suitability analysis.

➢ Assessment of client knowledge and experience, financial situation and investment objectives

Firms that provide advisory services in the field of investment or portfolio management shall obtain from clients or potential clients the necessary information to be able to understand the essential circumstances of the client and have a reasonable basis to determine whether, taking due account of the nature and scope of the service provided, the specific transaction to be recommended or carried out in the framework of the provision of a portfolio management service meets the following criteria:

– It is in line with the investment objectives of the client in question, including his risk tolerance and possible sustainability preferences.

  Information regarding the investment objectives of the client or prospective client will include, where appropriate, information on the desired time horizon for the investment, client's preferences in relation to taking risks, his risk tolerance, the purpose of the investment and, additionally, his sustainability preferences.[49]

– It is such as to allow the client, from a financial point of view, to assume any investment risk consistent with his investment objectives.

  The information relating to the financial situation of the client or potential client will include, when appropriate, information on the source and magnitude of his ordinary income, his assets – including liquid assets –, investments and real estate, as well as his ordinary financial commitments.[50]

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47 Article 213.1 of Royal Legislative Decree 4/2015, of 23 October, approving the recast text of the Securities Market Act.

48 Commission Delegated Regulation (EU) 2021/1253, of 21 April 2021, amending Delegated Regulation (EU) 2017/565 as regards the integration of sustainability factors, risks and preferences into certain organisational requirements and operating conditions for investment firms.

49 Article 54.5 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.

50 Article 54.4 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.

– It is of a nature such that the client has the necessary experience and knowledge to understand the risks involved in the transaction or in the management of his portfolio.[51]

Sustainability preferences are defined as:

> *[...] a client's or potential client's choice as to whether and, if so, to what extent, one or more of the following financial instruments shall be integrated into his or her investment:*
>
> *a) a financial instrument for which the client or potential client determines that a minimum proportion shall be invested in environmentally sustainable investments as defined in Article 2, point (1), of Regulation (EU) 2020/852 of the European Parliament and of the Council; (*1);*
>
> *b) a financial instrument for which the client or potential client determines that a minimum proportion shall be invested in sustainable investments as defined in Article 2, point (17), of Regulation (EU) 2019/2088 of the European Parliament and of the Council; (*2);*
>
> *c) a financial instrument that considers principal adverse impacts on sustainability factors where qualitative or quantitative elements demonstrating that consideration are determined by the client or potential client.*[52]

When providing investment or portfolio management advisory services, the investment firm shall refrain from making recommendations or deciding to trade if none of the services or instruments is suitable for the client.

A firm providing investment services shall refrain from recommending or deciding to trade financial instruments such as those that respond to the sustainability preferences of a client or potential client when said financial instruments do not conform to those preferences. The investment firm shall explain to the client or potential client the reasons for which it abstains and will keep a record of said reasons.

Where no financial instrument meets the client's sustainability preferences, the client will be able to adapt his or her sustainability preferences and the investment firm will keep a record of the client's decision, including the reasons for such decision.[53]

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51 Article 54.2 of Commission Delegated Regulation (EU) 2017/565, of 25 April 2016, supplementing Directive 2014/65/EU of the European Parliament and of the Council with regard to organisational requirements and operating conditions for investment firms and defined terms for the purposes of that Directive.

52 Article 2.7 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.

53 Article 54.10 of Commission Delegated Regulation (EU) 2017/565, of 25 April 2016, supplementing Directive 2014/65/EU of the European Parliament and of the Council with regard to organisational requirements and operating conditions for investment firms and defined terms for the purposes of that Directive.

In R/646/2021, in the context of investment advice, the entity was at fault in that the recommended fund did not suit the profile of the complainant, because the appropriateness test specified that the recommended investment term was two years, whereas the fund, in accordance with the provisions of the key investor information document, was not suitable for investors who planned to withdraw their money in less than three years.

➢ Target or destination market 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 design and marketing 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.*[54]

In development of the foregoing, Royal Decree 217/2008 was amended by Royal Decree 1464/2018[55] to regulate the following internal organisational and operational requirements 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 added to Royal Decree 217/2008, whereby:

> *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*

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

55 Fourth final provision of Royal Decree 1464/2018, of 21 December, implementing the recast text of the Securities Market Act as 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 as approved by Royal Decree 1309/2005, of 4 November, and other royal decrees concerning the securities market.

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.[56]

Regarding other internal organisation measures, Article 30 *sexies* was added to Royal Decree 217/2008, determining that:

1. Likewise, every company that manufactures financial instruments for sale to clients shall 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 the provisions of Article 208 ter of the recast text of the Spanish Securities Market Act and of 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.

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 appropriateness, identification and management of conflicts of interest and incentives.[57]

In relation to these issues, on 5 February 2018, ESMA published its Guidelines on MiFID II product governance requirements, which the CNMV had announced on 12 December 2017 that it would implement.

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

56 Article 74.3 of Royal Decree 217/2008, of 15 February, on the legal regime of investment firm and other entities that provide investment services and partially amending the Regulation of Law 35/2003, of 4 November, on Collective Investment Schemes as approved by Royal Decree 1309/2005, of 4 November.

57 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 regulation of Law 35/2003, of 4 November, on Collective Investment Schemes, approved by Royal Decree 1309/2005, of 4 November.

its best efforts to select distributors whose type of clients and services offered are compatible with the target market of the product.[58]

However, the identification of the actual target market for the product must be done by the distributor. Therefore, the actual target market identification must 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).[59]

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.[60]

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 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.[61]

In R/682/2021, the complainant expressed his disagreement because the entity did not allow him to buy a bond but did allow him to purchase a structured note that had that same bond as its underlying.

The entity clarified that the bond was a complex instrument in view of its characteristics and risks and, in accordance with the information and legal documentation available in the entity as marketer, at the date of the purchase request by the complainant, access to it was limited to professional clients.

However, the note that the complainant acquired was a structured product referenced to the bond that the entity marketed under an investment proposal and could only be acquired if it was found to be suitable after a suitability test had been conducted. The entity produced the signed appropriateness test, the result of which was that the complainant had sufficient knowledge and experience to acquire more complex financial products, had an aggressive investor profile, and would assume capital losses seeking to maximise his investment. As the complainant had been interested in acquiring the bonds, the entity proposed contracting the structured bond and submitted an investment proposal.

In addition, prior to the acquisition of the structured note, all its characteristics, costs and risks were reported, the corresponding legal documentation was signed and delivered prior to subscription: the KID, the key information document for the

58 Paragraph 25 of ESMA Guidelines on product governance requirements under MiFID II (05/02/2018 | ESMA 35-43-620 E).

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

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

61 Paragraph 31 of ESMA Guidelines on product governance requirements under MiFID II (05/02/2018 | ESMA 35-43-620 E).

investor prepared by the entity, the investment proposal and the document of terms and conditions of the issue.

The Complaints Service verified that the key information document prepared by the issuer of the structured product specified that the financial instrument was aimed at retail investors with:

– *Some relevant financial knowledge and/or moderate experience of the financial markets.*

– *The capacity to bear the total loss of capital (up to the notional amount).*

– *A high risk tolerance (speculative risk profile).*

– *A long-term investment horizon of more than three years and less than 5 years.*

– *An investment goal in a product that pays an income.*

In view of the documentation produced, the Complaints Service concluded that the structured note that the complainant acquired was aimed at retail investors who met a series of requirements, while the bond, due to a commercial policy decision of the entity, was intended exclusively for professional clients. Consequently, since the complainant was not classified as a professional client by the entity but as a retail client, he could not acquire the bond in the respondent entity but could acquire the structured note.

➢ Completion and consistency of the suitability test

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 that it is inaccurate or incomplete.[62] Likewise, they must 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.[63]

On 21 December 2017, the CNMV published a statement adopting the ESMA guidelines on MiFID II suitability requirements. General guideline 4 states: "Firms should take reasonable steps and have appropriate tools to ensure that the information collected about their clients is reliable and consistent, without unduly relying on clients' self-assessment".

This guideline is developed by other supporting guidelines, such as that establishing that:

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62 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.

63 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 with regard to organisational requirements and operating conditions for investment firms and defined terms for the purposes of that Directive.

> *[...] 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 such contradictions are clients who have little knowledge or experience and an aggressive attitude to risk, or who have a prudent risk profile and 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 investments. This refers to certain situations that seem atypical *prima facie* 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 are *prima facie* atypical situations, 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.

In R/545/2022, the complainant expressed his disagreement due to the inappropriateness to his risk profile of discretionary portfolio management contracted on the basis of a recommendation from the entity.

According to the documentation provided in the file, on 7 November 2019, the complainant signed a non-independent advisory contract with the entity and the entity performed a suitability test. On 2 December 2020, the entity carried out another suitability test, formulated a proposal for investment in a discretionary and individualised management of CIS portfolios, and the complainant contracted the recommended portfolio management.

Taking into account the tests carried out on the complainant, the recommendation made was actually based on the results of the suitability test carried out on 7 November 2019 and not on the one carried out before contracting the portfolio management service.

Comparing both suitability tests, there was consistency in the answers given in practically all the questions, with the exception of the one referring to the time horizon, which is what most determines the expected duration of the investment. The test of 7 November 2019 said:

> *2. Indicate the time horizon (or average duration) of the investment: "1 year". While in the evaluation of 2 December 2020 "2. Indicate the time horizon of this investment:*
>
> | | |
> |---|---|
> | *Up to 4 years* | X |
> | *From 4 to 6 years* | |
> | *More than 6 years"* | |

The Complaints Service considered that the last test was configured to determine which of the three types of managed portfolios that the entity had would best suit the complainant. In this regard, the recommended portfolio complied with the parameters set in said test.

However, the Complaints Service pointed out that, since the ranges for the estimated investment time were predetermined, the entity fell into the trap of thinking that the portfolio with the shortest duration – up to 4 years (medium term) – should be the right one for the complainant, when in reality none of the options clearly fitted the time horizon for which said service was recommended, as there is no type of portfolio with a limit of up to 1 year. In other words, the complainant had marked one year as the average duration of the investment (short term) whereas in reality the recommended product could last up to four times longer, which was in contradiction with his wishes.

For all these reasons, the Complaints Service considered that the entity should not have recommended to the complainant the investment in managed portfolios with an estimated duration of more than one year. Consequently, it concluded that the entity was at fault, since it had recommended to the complainant the investment in a managed portfolio whose duration could reach up to four years, when according to the previous test his time horizon was one year.

➢ Suitability report on investment advice

When providing investment advice, investment firms shall provide the retail client with a report that includes a summary of the advice provided and explains why the recommendation is appropriate for the retail client, including how the recommendation responds to the investment objectives and personal circumstances of the client with reference to the required investment period, his knowledge and experience, attitude to risk, ability to assume losses and sustainability preferences.[64]

In R/258/2022, the complainants received a non-independent advisory service on the subscription of nine structured notes, according to the documentation and arguments of the entity.

64 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.

The entity produced several questionnaires in which it collected sufficient information on the financial situation, investment experience and investment objectives of the complainants, and some investment proposals for the contracted notes, except for two of them. The investment proposals indicated that, prior to the preparation of the proposal, the knowledge and experience, the financial situation and the investment objectives of the complainants had been evaluated, that the products were suitable as they had a profile of investment equal to or less than their dynamic investor profile and that the investment term had been taken into account since the products did not exceed the maximum term determined in the suitability test.

However, the Complaints Service considered that the entity was at fault in that it should have made investment proposals for the other two structured notes and there was no record that they had been made.

➢ Periodic suitability assessment service

Some investment firms offer a periodic assessment of the suitability of the recommendations made, in which case they must report all of the following information:

– The frequency and scope of the periodic suitability assessment and, where appropriate, the conditions that give rise to such assessment.

– The extent to which previously collected information will be subject to re-evaluation.

– How an updated recommendation will be communicated to the client.[65]

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 depending on the client's risk profile and the type of financial instruments recommended.

The requirements intended to satisfy the sustainability preferences of clients or potential clients, when applicable, will not alter the conditions established in the previous paragraph.[66]

When an investment firm provides a service that includes periodic suitability assessments and reports, subsequent reports submitted once the initial service has been established may include only changes in the corresponding services or instruments or in the client's circumstances, without having to repeat all the data from the first report.[67]

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65 Article 52.5 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.

66 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 with regard to organisational requirements and operating conditions for investment firms and defined terms for the purposes of that Directive.

67 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.

In R/257/2022, the complainant tried to carry out a transfer transaction between two funds of the entity's group and there was a total operational block for seven days, since, following a periodic evaluation of the suitability of his funds in the portfolio, it transpired that one of the funds held in the entity and not involved in the transfer had turned out to be unsuitable.

According to the documentation produced on 7 March 2022, the complainant electronically signed an investment fund custody agreement, a simplified non-independent advisory document of CIS of the entity group and a suitability test.

The appropriateness test was referenced to the investment products marketing service; it consisted of 12 questions – duly answered – and determined the appropriateness for the complainant of public debt, non-complex private and bank fixed income, ordinary investment funds (UCITS), investment funds and non-harmonised SICAVs (non-UCITS) or leveraged ETFs.

For its part, the simplified non-independent advisory document stipulated that, in order to provide an additional service to the marketing of UCITS or funds from the entity's group, the latter needed to gather information to be able to assess whether the UCITS of the entity group of which the client was the owner or co-owner were suitable for him. In order to provide this value-added service, the entity would annually assess the continued suitability of the CISs of the group in which the client had invested. On an annual basis, the entity would send the client a follow-up report on the suitability of the group's CIS portfolio, which would indicate whether the joint risk of the group's CIS portfolio was higher than what the entity considered appropriate for his level of financial capability. In such a case, it would recommend readjusting the portfolio taking into account the risk profiles that would be indicated to him in the report.

The aforementioned document analysed three investment funds owned by the client and indicated that, based on the result of the suitability test, these CISs were suitable according to the knowledge and experience of the client, but after collecting information on the financial situation and the objectives with respect to each of these CISs, one of them was not suitable for him (the rest were suitable).

On the same day, 7 March 2022, the client tried to make a transfer between funds on three occasions and the CIS transaction was blocked for seven days, without the client's being given any alternative to solve the problem and be able to dispose of his investments.

From the documentation provided and the statements made by both parties, it was clear that the total operational block was carried out as a result of an attempt to carry out a transfer transaction between two group funds and that the transaction was carried out at the request of the client, without there being a recommendation by the entity on the possible transfer, so the transaction was within the "execution only" service.

The provision of said intermediation service does not require the performance of a suitability test, but of an appropriateness test – unless, meeting the requirements for this purpose, the entity avails itself of the exemption from analysing the appropriateness of non-complex products. In this case, the appropriateness test carried out on 7 March 2022 resulted in the appropriateness of all the UCITS and, therefore, the entity should have allowed the client the requested transfer.

In this regard, as the simplified non-independent advisory document itself indicated, this was an additional service, on the CISs already contracted and, in the event of *ex post facto* inappropriateness, the corresponding recommendation would be issued. Specifically, it was a subsequent advisory service, that is, follow-up, which should not have prevented the client from operating on his own initiative or disposing of his investments.

In this case, prior to placing the order, the entity forced the client to carry out a suitability test on an additional service and, after completing the test, without issuing any type of recommendation regarding the funds of origin and destination object of transfer – the source fund moreover being suitable for the client –, the respondent entity did not allow the transfer transaction to be carried out and later totally blocked the transaction because another fund in the portfolio – not involved in the transfer transaction – turned out, according to the criteria of the entity at 7 March 2022, not to be suitable for the client.

For all of the above reasons, this Complaints Service considered that the entity had committed a malpractice by not executing the transfer order issued at the request of the client, without any prior advice from the entity in this regard, for reasons beyond the control of the funds involved in the transfer, and also causing an undue and prolonged blockage, of no less than seven days, which prevented the client from operating with all his CISs, without offering any alternative solution.

➢ Adaptation of the portfolio management contract to the client's profile

The ESMA Guidelines on MiFID II suitability requirements, 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 client".[68]

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 the second bullet point of paragraph 38 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

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

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 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.[69]

In R/401/2022, the entity acted correctly, since it provided a test signed by the complainant for which it collected information on his investment profile.

As a result of the test, it was concluded that the complainant had low financial knowledge and experience, which is why products of a certain complexity were not suitable, he had a balanced investor profile, he did not foresee having the investment in the medium term nor did he need income, and his aggregate position should not exceed 60% in equities or in assets with equivalent risk.

After signing the test, the client signed a standard investment portfolio management contract, the annex of which specified a "Balanced" profile, which would invest 40% in fixed income, 40% in equities and 20% in liquidity.

3.3 Prior information

➢ Key Information Document for PRIIPs

Packaged Retail Insurance-Based Investment Products (PRIIPs) are investments in which, regardless of their legal form, the amount repayable to the retail investor is subject to fluctuations because of exposure to reference values or to the performance of one or more assets which are not directly purchased by the retail investor.[70]

PRIIP producers must prepare a standardised information document that must be delivered to potential customers sufficiently in advance of their acquisition. 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 KID 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.[71]

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

70 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 does not apply.

71 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.

Any person advising on or selling a PRIIP to a retail investor must provide the KID sufficiently in advance to allow the retail investor sufficient time to review the document before being bound by any contract or offer related to said product, regardless of whether or not the retail investor is provided with a cooling off period in which the right of withdrawal is recognised.[72] This obligation may be fulfilled by providing the KID to a person authorised in writing to make investment decisions on behalf of the retail investor in respect of transactions carried out pursuant to such written authorisation.[73]

As regards sufficient advance notice, the person advising on or selling a PRIIP should assess the amount of time each retail investor needs to review the KID, taking into account the following aspects:

– The knowledge and experience of the retail investor with respect to the PRIIP or other PRIIPs of a similar nature or that carry similar risks to those derived from the PRIIP.

– The complexity of the PRIIP.

– When the advice or sale is at the initiative of the retail investor, the urgency indicated explicitly by the latter to enter into the contract or accept the proposed offer.[74]

Notwithstanding the foregoing, and subject to certain provisions of Directive 2002/65/EC concerning the distance marketing of consumer financial services, a person selling a PRIIP may provide the retail investor with the key information document after conclusion of the transaction, without undue delay, where all of the following conditions are met:

– The retail investor chooses, on his own initiative, to contact the person selling a PRIIP and conclude the transaction using a means of distance communication.

– Provision of the key information document before the retail investor is bound by any contract or offer relating to the PRIIP in question is not possible.

– The person advising on or selling the PRIIP has informed the retail investor that provision of the key information document is not possible and has clearly stated that the retail investor may delay the transaction in order to receive and read the key information document before concluding the transaction.

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72 Article 17.1 of Commission Delegated Regulation (EU) 2017/653, of 8 March 2017, supplementing Regulation (EU) No. 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.

73 Article 13.2 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.

74 Article 17.2 of Commission Delegated Regulation (EU) 2017/653, of 8 March 2017, supplementing Regulation (EU) No. 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.

– The retail investor consents to receiving the key information document without undue delay after conclusion of the transaction, rather than delaying the transaction in order to receive the document in advance.[75]

Where successive transactions regarding the same PRIIP are carried out on behalf of a retail investor in accordance with instructions given by that retail investor to the person selling the PRIIP prior to the first transaction, the obligation to provide a key information document shall apply only to the first transaction, and to the first transaction after the key information document has been revised.[76]

The person advising on, or selling, a PRIIP shall provide the key information document to the retail investor in one of the following media:[77]

– On paper, which should be the default option where the PRIIP is offered on a face-to-face basis, unless the retail investor requests otherwise.

– Using a durable medium other than paper, providing certain conditions are met.[78]

– By means of a website, providing certain conditions are met.[79]

Where the key information document is provided using a durable medium other than paper or by means of a website, a paper copy shall be provided to retail investors upon request and free of charge. Retail investors shall be informed about their right to request a paper copy free of charge.

In R/433/2022, the complainant complained about the information received about a purchase option on equities with settlement for differences, acquired on 14 January 2019.

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75 Article 13.3 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.

76 Article 13.4 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.

77 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.

78 The KID may be provided using a durable medium other than paper if the following conditions are met:
i) The use of the durable medium is appropriate in the context of the business conducted between the person advising on, or selling, a PRIIP and the retail investor.
ii) The retail investor has been given the choice between information on paper and in the durable medium, and has chosen that other medium in a way that can be evidenced.

79 The KID may be provided by the means of a website that does not meet the definition of a durable medium if all of the following conditions are met:
i) The provision of the key information document by means of a website is appropriate in the context of the business conducted between the person advising on, or selling, a PRIIP and the retail investor.
ii) The retail investor has been given the choice between information provided on paper and by means of a website and has chosen the latter in a way that can be evidenced.
iii) The retail investor has been notified electronically, or in written form, of the address of the website, and the place on the website where the key information document can be accessed.
iv) The key information document remains accessible on the website, capable of being downloaded and stored in a durable medium, for such period of time as the retail investor may need to consult it.

The entity provided a framework contract for financial transactions, all 17 pages of which were signed by the complainant on 11 January 2019. This established the general conditions that regulated derivative transactions between the parties, such as settlement by netting, the causes and consequences of early maturity of the transactions and the calculation of the amount to be paid, if any. and reference was made to the risks of the transactions.

Likewise, on 11 January 2019, an informative document was signed between the parties with the particular conditions of the equity option that confirmed the terms and conditions of the transaction for the purposes established in the framework contract of financial transactions and contained the particular conditions of the product that is the object of the complaint.

Given that the purchase order for the purchase option was issued at 4:13 p.m. on 14 January 2019, the entity had previously provided the client with detailed and sufficient information about the characteristics and risks of the derivative product.

Notwithstanding the foregoing, as it is a PRIIP,[80] the entity contributed the KID signed by the complainant on its three pages. However, the document was delivered almost two hours after the order was signed, at 6:03 p.m. on 14 January 2019, without its being proven that the conditions were met to provide it after the transaction was carried out and without undue delay. Consequently, the Complaints Service considered that the entity had not acted correctly in providing the client with the KID after conclusion of the purchase option that is the subject of the complaint.

➢ Delivery of prior information on CISs

Sufficiently in advance of subscribing units or shares in a CIS, subscribers must be provided free of charge with the latest half-yearly report and the key investor information document (KIID) and, on request, the prospectus and the latest published annual and quarterly reports.[81] In the case of the first delivery, compliance with this obligation must be proven by keeping a copy, on a durable medium, of all the information signed by the participants/unitholders/shareholders, as long as they maintain that status. In the event of additional subscriptions to the same CIS, the delivery obligation will only be enforceable with respect to the first subscription.[82]

In order to provide evidence that the entity has delivered the prior information to the investor, it is not sufficient for the framework agreement for CIS transactions to provide that the KIID and the corresponding periodic information will be delivered prior to the purchase or for the CIS subscription order or client statement to mention that said documentation was delivered beforehand. The entity must provide evidence that it was actually delivered.

In addition to the aforementioned documentation, the entity must report the costs and expenses of the product and service that have not been included in the key

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

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

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

information document. In application of EU[83] and Spanish,[84] regulations, from 1 January 2023 the KIID regulated by the Regulation implementing the UCITS Directive[85] is replaced by that regulated in the PRIIP Regulation.[86]

In R/646/2021, the entity provided a copy of the KIDs and the latest semi-annual report duly signed, of various investment funds subscribed by the complainant and, in addition to the above, a document of delivery of documentation for each of the funds in which it was specified that a copy of the costs and expenses annex, the KID and the semi-annual report had been delivered free of charge, in the place and on the date stated. In view of the documentation provided, the Complaints Service considered it proven that, prior to the subscription of the funds, the entity had complied with its obligation to provide information.

Notwithstanding the foregoing, there was no record on file of the KID or the semi-annual report of a fund subscribed by means of a transfer order on 28 September 2017 having been delivered, which was considered bad practice.

In R/311/2022, the Complaints Service did not consider it proven that the entity had delivered the mandatory delivery documents at a time prior to joining and subscribing the shares of an investment fund, which was bad practice. In this regard, in each of the documents established by law, the signatures of both co-owners should be recorded, rather than a mere declaration on an individual basis by each of them regarding having received said documentation.

➢ Absence of information on operational limitations of CISs

Entities must deliver the documentation required by law sufficiently in advance of the subscription of CIS units or shares. Taking this documentation into account, the Complaints Service considers that entities are acting incorrectly when they apply operating limitations of which the investor has not been previously informed.

In R/48/2022, the complainant indicated that he gave a subscription order for an investment fund on 23 November 2021, although he went back to the office on 24 November 2021 to request the cancellation of the subscription order he had passed the day before. The complainant stated that, when he was informed at the office of the impossibility of cancelling the order because it had already been processed, he requested the reimbursement of all the shares subscribed the day before, but the entity's staff told him that the shares of the fund were not yet effectively subscribed, so the refund request could not yet be processed, and they asked him to come back on 30 November 2021. On 29 November 2021 the complainant appeared at the office and issued an order for reimbursement of his investment fund shares.

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83 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.

84 Rule Three, section 5 of CNMV Circular 3/2022, of 21 July, on prospectuses of collective investment schemes and the registration of the key investor information document.

85 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.

86 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 (PRIIPs).

Consequently, the complainant requested that the net asset value applicable to the refund be that of 25 November 2021, corresponding to the refund requested on 24 November 2021, which was not met by the entity.

The entity claimed that, according to the fund's prospectus, the subscription order issued on 23 November 2021 corresponded to the net asset value of the following business day, that is 24 November. In addition, it indicated that the underlying portfolio of the fund should calculate its net asset value using the prices of the reference day, therefore, until the values of the underlying assets in which the investment fund invested were known, the calculation of its net asset value could not be done. In this regard, the entity reported that the net asset value of the shares on Wednesday, 24 November 2021 was known in the nightly valuation processes on Friday, 26 November 2021, and the settlement of the subscription was made on Monday, 29 November 2021, with a net asset value date of 24 November 2021.

In this way, the entity stated that it was not possible to issue the redemption order until 29 November 2021, on which date said order was issued at 9:33 a.m., corresponding to the net asset value of the next business day, Tuesday 30 November 2021, whose value was known in the nocturnal valuation processes on Thursday, 2 December 2021 and was settled on Friday 3 December 2021 with a value of 30 November 2021.

According to the documentation provided, on 23 November 2021, the complainant submitted a subscription order for shares in the investment fund and on this date the entity delivered the semi-annual report for the first quarter of 2021 and the KID.

The key investor information document stated that: "If you wish to subscribe or redeem shares, the net asset value will be that of the business day following the date of request. However, orders placed after 3:00 p.m. or on a non-business day will be processed together with those made the next business day". In addition, the fund's prospectus stipulated that: "For these purposes, a business day is understood to be Monday through Friday, except holidays throughout the national territory".

On 26 November 2021, with a value date of 24 November, the subscription movement of the investment fund shares was recorded.

On 29 November 2021, the complainant issued a redemption order for all his shares in the investment fund. On 2 December 2021, with a value date of 30 November, the fund's shares were redeemed.

Taking into account what is indicated regarding the subscription and redemption procedure defined in the informative documentation of the fund itself that is the object of the complaint, and since the informative documentation does not mention what is alleged by the entity regarding the alleged impossibility of marking the redemption transaction before 29 November 2021 (settlement date of the subscription transaction), the Complaints Service understood that said operational restriction was due to operational characteristics of the entity's own systems (or those of the management company of the fund in question).

However, and regardless of the fact that it was a particular feature of the entity's operating system in relation to redemption orders, this requirement implied an operational limitation of which the complainant should have been duly informed by

the entity, which was not evidenced in the file, taking into account the documents provided.

In view of the foregoing, the Complaints Service considered that, if the systems worked as the entity described in its arguments, it should have warned the client of said limitation. The information contained in the fund subscription order did not cover the circumstances described in the complaint, and there was no evidence of the client's having been warned of it in any other way.

3.4 Subsequent information

Investment firms shall act honestly, impartially and professionally, in the best interest of their clients, and shall observe, in particular, the principles established in the applicable rules of conduct.[87]

One of the obligations of these entities is to keep their clients properly informed at all times, ensuring that all information provided is impartial, clear and not misleading.[88]

➢ Information to apply double taxation agreements

Financial institutions must have adequate means and procedures to diligently attend to customer requests in relation to the provisions of treaties for the avoidance of double taxation, providing the respective documentation or performing the procedure required by the tax authorities of origin so that customers can benefit from them and can obtain a refund of excess withholdings made in that country. If this is not feasible, entities must inform clearly and concisely about the reasons that prevent it and provide clarifications about the existing alternatives.

In R/216/2022, the entity indicated on its website that, according to the regulations approved by the US tax authorities, it had to obtain sufficient proof of resident or non-resident status in the United States from all clients who had investments in US securities and, for this, the clients had to sign the certificate that corresponded to them.

Regarding the moment in which the form was to be sent to the client, the entity communicated in its arguments that, according to the protocol established for those clients who acquired United States shares, at the end of the month in which shares were purchased the form was sent to the mailing address of the client, one for each holder, and re-sent every month until the client returned it signed. The process lasted a year; if the client had not returned it by then, it was closed.

From the protocol established by the entity it was deduced that the form was sent to the client due to his having purchased US shares and not based on whether or not those shares might pay dividends in the future. For this reason, and given that the complainant had provided documentation proving that he had already carried out transactions in US shares in July 2020, the entity must be able to prove that it

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

88 Articles 209.1 and 209.2 of Royal Legislative Decree 4/2015, of 23 October, approving the recast text of the Securities Market Act.

followed its own protocol and complied with the obligation it assumed on its website, to obtain said information, an aspect that was not evidenced by the entity in the documentation provided.

Consequently, the Complaints Service concluded that the entity had not acted with due diligence by not having proven that it had complied with its action protocol and with the obligation established on its website, consisting of obtaining the forms from its client to avoid double taxation.

➢ Omission of positions held in the absorbed entity after its integration into the absorbing entity

Due to the integration of various entities in an absorption process, some complainants could not view certain positions in their personal area of the absorbing entity's website. In this regard, it should be noted that, when the entity intends to provide services by telematic means, it must have the appropriate means to guarantee the security, confidentiality, reliability and capacity of the service provided.[89]

In R/321/2022, the complainant could not view in the personal area of the website an investment fund that he owned together with his two children and that he had contracted with an entity that was subsequently absorbed by the respondent entity. The CSD informed the complainant that the lack of display of his position was due to an operational change deriving from the integration of the absorbed entity. Specifically, the investment fund was not linked to the complainant's account that was included in the digital banking service and, therefore, he could not view it. Additionally, the CSD indicated that it had given instructions to carry out the necessary actions to resolve the situation and that the office would contact the complainant as soon as possible to link the investment funds file to an account owned by him. In addition, a subsequent response from the CSD was provided in which it stated that it was once again reiterating instructions for the managing office to contact the complainant.

Taking into account that the lack of display of the position seemed to be due to an operational change deriving from the integration of the systems – that is, due to an operational restriction of the entity itself –, it had not been proven that said circumstance had been reported to customers prior to the integration, but rather, on the contrary, the incident was communicated by the complainants themselves to the entity, which the Complaints Service considered bad practice.

In addition, since no element had been provided to indicate that the office had taken steps to resolve the situation since the CSD's first response, the Complaints Service considered that the entity had not acted with the required diligence and professionalism. In this regard, the Complaints Service finds that it is not appropriate for a client to be forced to file a complaint with the CSD in order to resolve an apparently computer-related incident, and, furthermore, not only was the issue not resolved with the intervention of the CSD, but also the client was obliged to start the administrative machinery with the filing of the complaint with the Complaints Service, there being no evidence of the incident's having been resolved even during the processing of this complaint.

89 Article 14.1 h) of Royal Decree 217/2008, of 15 February, on the legal regime of investment firms.

In R/325/2022, the complainants could view their positions in investment funds and operate with them in the absorbed entity, but once the merger took place and the systems were integrated into those of the respondent (absorbing) entity, it was no longer possible to do so until a cash account was opened.

The respondent entity indicated that the Internet access problem occurred because the holders of the investment fund did not match those of the associated cash account, which the Complaints Service considered to be a restriction of the entity itself, since apparently it did not exist in the absorbed entity. The respondent entity also provided a copy of a communication sent to the complainants in which it informed them of the changes deriving from the unification of the operating systems of the affected entities.

Having analysed the letter, we did not see that it communicated that, in the event that they were holders of investment funds deposited in the entity, it would be necessary, to operate online, for the holders of the investment funds to be shown as identical to those of the associated cash accounts. Nor was it proven that said circumstance had been communicated to the clients prior to the integration of the systems, but rather, on the contrary, the incident was communicated by the complainants themselves to the entity, which from then on took the pertinent measures to solve said incident, but not in a very timely manner.

Therefore, the Complaints Service considered that the entity had not guaranteed its customers its capacity to provide the telematic service effectively, nor had it acted with the diligence and professionalism required in resolving the issue that is the subject of the complaint.

Other complainants complained that, after a process of integration of the entities, they requested a statement of positions of their assets from the absorbing entity and one of the investment funds that had been contracted with the absorbed entity did not appear.

In R/724/2021 it was proven that the investment fund had been removed from the register of the absorbing entity, since after the integration it was not going to replace the absorbed entity as the marketing entity of the CIS in question.

The Complaints Service made it clear that the removal of the investment firm as fund marketer was an important event, since it made its main monitoring and operational channel with the investment fund disappear. Therefore, it considered that the respondent entity had committed a malpractice in not having informed the complainant about the cessation of the latter as the entity that sells the investment fund and about the actions that it could undertake, all prior to deregistration of the fund from its records.

Additionally, with the aim of providing the complainant with more information about the situation of his shares, the Complaints Service requested information from the investment fund manager, which issued a nominative certificate in which the complainant was listed as the owner. Likewise, the fund manager stated that, in compliance with its legal information obligations, it had been sending the holders the periodic public information (quarterly, semi-annual and annual report) directly since the subscription of the fund, since the sending of this had at no time been delegated to the marketer, as well as the sending of the position statement, to the address that appeared in its records.

On the other hand, the fund manager reported that, following the decision of the respondent entity to terminate the distribution contract for the subscribed fund, the fund manager itself had communicated to all affected participants, through individual letters, the different options for operating with their shares and which included being able to go directly through the manager or operate through the different marketing entities of the fund. In relation to this last option, the holders could go to any of the fund's marketers and request registration with them. In this case, the new trading entity would contact the managing entity to request the change of trading company and from that moment the complainants could have access to the information on their positions, being able to also operate on them if they decided to make additional subscriptions, refunds or transfers.

➢ Information on the decision to liquidate a foreign CIS

When the client's financial instruments can be deposited in a global account of a third party, the investment firm shall inform the client of this fact and warn him clearly of the resulting risks.[90]

In transactions with foreign financial instruments it is common to use omnibus or global accounts. In these types of accounts, there is no record of who is the final owner of the securities, since it is the entity that provides the investment service to the client who appears as the owner of the total balance of its clients in the account opened with said third party.

Entities that provide investment services often argue their correct action, excusing the delay or lack of communication of certain corporate transactions to their clients by referring to the delay in providing this information by the sub-custodian of the securities abroad. However, the Complaints Service considers that the deficiencies or errors committed by those with whom the entity providing an investment service subcontracts the service must be attributed to the person who subcontracts said service and not to the final client to whom it is provided, since any other consideration would leave said client in a defenceless position, without prejudice to the entity providing the service to the client demanding performance by its sub-custodian and/or holding it liable.

Taking into account the above, in R/656/2021 the entity was at fault, since it did not notify the early liquidation/redemption of the sub-fund of a foreign CIS and indicated, as the only reason for not doing so, that its sub-custodian had not previously notified it.

In R/726/2021, the entity acted incorrectly, since it did not notify the market delisting and anticipated amortisation/liquidation for a foreign exchange-traded fund. The issuer had issued two communications (on 20 May and 5 June 2020) about this event and its conditions, with the possibility of operating with the securities in the market until 10 June 2020. However, the entity acknowledged that it had informed the complainant of the event on 15 July 2020, after the execution of the liquidation ordered by the issuer of the securities.

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90 Article 49.3 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.

➢ Inclusion of electronic links in the periodic information on foreign CISs sent on paper

Entities marketing foreign CISs in Spain must send to the participants or shareholders, free of charge and to the address indicated by them, the successive reports of economic content and annual reports that are prepared after registration with the CNMV, and this within one month of its publication in the country of origin, unless the participants or shareholders have waived their right to having them sent in a separate written document and duly signed after receiving the first periodic remittance. However, the marketing entity will be obliged to send said documents to the unitholder or shareholder when the latter so requests, even if he has previously waived the right. The waiver will be revocable.

Likewise, they must send free of charge to the unitholders or shareholders who have acquired their participations or shares in Spain all the information provided for by the legislation of the State in which they have their headquarters, in addition to that indicated, in the same terms and deadlines provided in the legislation. of the country of origin.

When the participant or shareholder expressly requests it, said reports of economic content will be sent by telematic means.[91]

In R/170/2022, the complainant indicated that the periodic and occasional information on his foreign CISs sent in physical format did not inform him correctly, since it referred to long internet links that had to be typed manually.

In this case, as both parties recognised, the complainant had agreed with the entity to receive the periodic and specific communications in paper format, the entity correctly sent such communications to the postal address of the complainant and the complainant received them. The two communications provided indicated that the entity contacted the complainant in his capacity as holder of shares of certain foreign CISs and, in compliance with its obligations as a marketer, transferred the information received from the manager of the CIS, which could be accessed through a three-line link with alphanumeric characters and signs.

The Complaints Service pointed out that the entity did not provide the corresponding document/report on the event that was the subject of notification, but rather provided an electronic link to access the information. That is, the CIS marketer did not provide the corresponding information on the durable support chosen by the complainant, on paper – an entirely valid option in correspondence between the parties –, but rather forced him to use electronic methods to access the relevant documentation. In addition, the links of the communications provided were extremely long, which made manual typing and actual access to the information very difficult.

Due to all of the above, the Complaints Service considered that there had been malpractice on the part of the entity, for not having adequately and completely provided the complainant with timely or periodic information regarding the foreign CISs marketed by it.

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91 Rules 2 & 3 of CNMV Circular 2/2011, of 9 June, on information of foreign collective investment schemes registered with the CNMV.

➢ Information on events that affect securities

Entities that provide securities administration or depository services must establish in a contract the details of the main actions involved in the administration of the financial instruments in their custody and how instructions are to be received from their clients where necessary. In particular, the entity's procedure for dealing with a lack of instructions from the clients in connection with any subscription rights that might be generated by the securities in custody must be specified, and this procedure must in all cases be in the best interests of the client.[92]

In this regard, entities must provide their clients, with due diligence and speed, with information on the procedure to follow to issue instructions in the context of those corporate transactions carried out by the issuing companies whose securities are held by their clients and that require specific instructions from them, as well as the consequences that would result if said instructions were not received, in due time and form, at the entity providing the investment service. In any case, entities must act as agreed with the client and always in the client's best interest.

However, in the opinion of the Complaints Service not only corporate transactions requiring precise instructions from the client should be the subject of prior communication from the depository to the client, but any corporate transaction, insofar as it may affect the rights and interests of the investors, must be properly communicated to them by the depository

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

In R/706/2021, the entity committed a malpractice because it did not prove that it had notified the client of a merger that affected the client's foreign shares prior to its occurrence.

Likewise, in R/270/2022 the entity acted incorrectly, since it did not prove that it had sent the client detailed information on a lock up and subsequent exchange offer that affected the customer's bonds. In this regard, on 21 January 2021, the issuer had communicated that an agreement had been reached between the largest shareholders and a group of bondholders through the signing of a basic commitment contract or lock-up agreement to which the rest of the shareholders and bondholders could accede or not. On 3 March 2021, the issuer launched an exchange offer with different conditions depending on the type of bondholder and whether or not the bondholder had accepted the January 2021 agreement. However, during the processing of the file, the entity expressed its willingness to reach an economic agreement to rectify the situation with the complainant and confirmed that it had been reached after the issue of the reasoned report from the Complaints Service.

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

➢ Transmission of market prices on the web platform

All information addressed to clients must be impartial, clear and not misleading[93] and, among other requirements, it must be up-to-date and relevant for the purposes of the means of communication used.[94]

In R/583/2021, the complainant stated that the data provided through the entity's graphic platform about futures traded on the CME market in the United States did not correspond to actual market prices and, based on that information, the complainant had made erroneous investment decisions.

From the contractual documentation submitted, it emerged that the entity was not only dedicated to executing orders, but also to providing data in real time through different telematic channels offered and advertised on its website.

The respondent entity acknowledged that between 4:00 p.m. and 4:05 p.m. on 27 August 2021 there were slight delays in the transmission of market prices on the web platform. Among the data displayed on the platform – such as quotes and accumulated profit – and the actual market prices at that time, there could be a time difference of about a minute and a half.

Although a real-time information and graphics service was provided, the Complaints Service considered that it was practically impossible for the data reflected on the web platform to be reproduced without a minimum of delay with respect to the market itself. In these cases, the entities depend on the speed of transmission both from the markets and from other international intermediaries and it is completely logical and probable that, in the face of strong volatility in the market, as well as in the face of an increase in data due to a multitude of transactions, the transmission of prices will take place with a certain delay. In addition, the delays in the visualisations on the platform with respect to real time in the market could also occur due to a poor internet connection of the user himself.

In this case, although the orders were executed correctly, the graphical platform was offered as its own and was not only used to consult data, but also to execute orders and also took the parameters entered by the user as executed at the time to dynamically calculate your profits or losses. In other words, instead of subsequently registering the true execution price in the market, the platform, due to a delay in the transmission of the data, miscalculated the yield obtained from the investment, taking the input as the initial data (without being certain of its effective execution), which caused the client to have a false expectation that could condition his future decisions.

Therefore, the Complaints Service concluded that the respondent entity should have warned about the possibility of suffering discrepancies in the data and graphs provided, especially in cases of high volatility in the price of the securities in the markets, as well as about the fact that the calculation of the yields indicated on the

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93 Article 209.2 of Royal Legislative Decree 4/2015, of 23 October, approving the recast text of the Securities Market Act.

94 Article 44.2 g) 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.

platform was merely indicative and might not match the data of the transactions actually executed.

➢ Untimely or disproportionate requests for information

Investment firms must keep a record of all the services, activities and transactions 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. This record must include recordings of telephone conversations or electronic communications related to the investment firm's activities.

These records will be made available to customers upon request. However, if the requests for information are manifestly disproportionate and unjustified, or if there are special circumstances that so advise, the Complaints Service would allow the entity to refuse to provide the information.

It is important to highlight that requests for information should be directed mainly to the office or branch of the entity that provided the investment service from which the obligation to keep the documentation derives, since it is here that the information should be kept. However, if the office or branch does not properly respond to these requests, the client should file a complaint with the entity's CSD stating that their request for information has not been attended.

In the same way, requests for information can be declared irrelevant because they are untimely. Records will be kept for a period of five years and, when the CNMV so requests, for a period of up to seven years,[95] and the entity providing investment services does not have the obligation to keep documentation referring to transactions in which, at the time of the request, these minimum mandatory retention periods have been exceeded.

In R/697/2021, the complainant addressed a complaint document to the entity requesting the delivery of the dated documentation signed by him for the acquisition of some securities and that relating to their exchange, after more than 12 years had elapsed. The CSD told the client that he should go to the office where the securities were deposited and this would provide him with all the information and documentation available in this regard. In addition, the entity provided the file with a copy of the subscription order for the securities with the delivery receipt, as well as the informative leaflet of the issue. The Complaints Service considered it a good practice for the entity to provide this documentation despite the fact that more than 12 years had elapsed since the purchase and the entity had no obligation to keep the requested documentation in its records.

In R/790/2021, the complainant requested the delivery of the history of movements of his investment funds and their results until their transfer to another entity. The entity stated that the information had been available to the customer during the life of the contract through the digital banking service that the customer regularly used; that the client could request duplicates of the informative communications that had

95 Article 194 of Royal Legislative Decree 4/2015, of 23 October, approving the recast text of the Securities Market Act.

been made available through the digital banking service itself, accessing, at any time, all the documentation and information of the last 10 years that he needed on the file of the investment funds and downloading it, completely free of charge, and that the client could also request the information at their management office, although the issue of these duplicates was not free.

Despite the foregoing and in order to fully satisfy its complaints, the entity provided the informative position statements of the investment funds from 2012 to 2018; the informative statements of the capital gains and losses when the shares of the investment funds were reimbursed in 2011, 2013, 2016 and 2017; informative statements on wealth tax in 2011, 2013, 2014, 2015, 2016, and the detail of the transactions carried out in each of the investment funds.

The Complaints Service considered that the entity had acted correctly, having made the requested documentation available to the client and having delivered the requested documentation in the file, without prejudice to the fact that the client could have obtained it previously by any of the means at his disposal as indicated by the respondent entity.

In R/13/2022, in response to a request for information from the complainant on the shares of an issuer held in the entity, the latter provided detailed information on the initial acquisition of shares and on subsequent acquisitions through the option dividend system and through the dividend reinvestment system.

Thus, the entity provided the complainant with information on the initial acquisition of shares in 2010, in the context of a monetary capital increase in which, not being a previous shareholder, the complainant had to acquire subscription rights in the secondary market. In this regard, it informed the client of the unit price, the number of shares, the total amount paid and the date of the transactions for the purchase of shares and pre-emptive subscription rights and, in addition, it explained the cost and the date of acquisition for tax purposes.

Likewise, the entity communicated to the client the number and dates of acquisition of the shares through the dividend option or scrip dividend, which were articulated through a bonus capital increase charged to reserves without the need for the client to make any disbursement. It also explained that, in these cases, for the distribution of profits, the issuer allows its shareholders to choose between acquiring shares or selling the subscription rights and, when the complainant opted for the acquisition of shares, the cost of each share was zero euros, since he did not have to pay any amount.

Finally, in relation to the acquisition of shares through the dividend reinvestment system, the entity indicated to the complainant the number, the unit price, the effective amount settled in the account linked to the securities account, the effective amount settled in the dividend reinvestment account and the acquisition dates.

The Complaints Service considered that the entity had acted correctly by providing the client, both during the processing of the file and in the responses to previous complaints, information and documentation on the date of acquisition and the price paid for all the shares. that he kept deposited in his securities account.

In R/67/2022, the complainant requested a report on the purchase value of the shares deposited in the entity over the years and their current value, together with

the historical variations that could have occurred in the shares – due to corporate transactions such as takeovers, mergers, etc.

The Complaints Service considered that the request for documentation was disproportionate and lacking in specificity. In addition, it pointed out that entities are not obliged to prepare *ad hoc* reports at the request of clients, although, in the event that the entity agrees to carry them out, given that it would be providing a service, it would be entitled to charge a fee that the client should be informed of and should accept in advance of the provision of such service.

Taking into account the foregoing and that the entity sent the client a copy of the tax information corresponding to the years 2002 to 2021, and available information regarding movements of the securities in the year 2022, the Complaints Service considered it a good practice for the entity to provide abundant historical information despite the time elapsed and not being obliged to keep a large part of the requested documentation in its records.

In R/105/2022, the complainant requested explanations of purchase and sale transactions from more than 13 years ago and more than 7 years since the securities accounts were cancelled. The Complaints Service considered the request untimely and described it as good practice that, despite the fact that the entity was not obliged to keep any documentation of the claimed facts in its records, it provided a copy of the tax information for financial years 2004 to 2014, as well as the extracts of the accounts.

➢ Request for information on transactions during the provision of a portfolio management service

In some cases, the complainants request documentation justifying transactions in securities and investment funds during the provision of a portfolio management service that they have authorised.

In R/73/2022, the entity informed the complainant, through the response of the Customer Ombudsman, that the contract signed by her was an individualised and discretionary management contract that included the characteristics and the transaction of the contracted product – general risk profile, time horizon, portfolio of assets that comprise it, etc. – and the risks assumed in the contract. Said contract included the client's authorisation for the entity to contract certain investment products and specified a list of the type of assets in which transactions or investments could be carried out.

The Complaints Service indicated that, indeed, as the entity stated in its arguments and as the Customer Ombudsman explained in its resolution, by signing the portfolio management contract, the owner authorised the entity to make the investments it deemed appropriate, as long as these were within the criteria and asset classes agreed in the contract. In other words, once the contract was signed, the owner delegated the management of the investments to the entity and, consequently, the latter did not need any authorisation to acquire financial instruments within the provision of the portfolio management service.

Likewise, in the resolution of the Customer Ombudsman, the entity certified the transactions that had been carried out in the contract in the name of the owner.

Consequently, the Complaints Service considered that the entity, through its Customer Ombudsman, had delivered the documentation on the transactions carried out in the portfolio management contract and informed of the reason for not needing authorisation from the owner, or their legal representatives, to carry out said transactions in financial instruments, when such transactions are carried out under a portfolio management contract duly signed by the owner thereof.

Furthermore, entities providing a portfolio management service must provide clients with a periodic statement of the portfolio management activities carried out on their behalf, on a durable medium. This statement, among other data, includes for each transaction executed during the period: information on the trading day; the trading hour; the type of order; the identification of the venue; instrument identification; the buy/sell indicator; the nature of the order if it is not a buy/sell order; the amount; the unit price, and the total consideration.[96]

In this regard, the client and the entity had agreed that the provision of this information would be monthly. The entity produced a copy of the personalised communications in the name of the complainant and addressed to her address, which included detailed information on the managed portfolio. Therefore, in view of the documentation provided, the Complaints Service concluded that the entity had been duly reporting both the transactions carried out within the scope of the portfolio management contract and its evolution.

➢ Request for tax information

In some complaints, aspects related to taxation are called into question. In these cases, the Complaints Service cannot issue any type of statement as to whether the tax treatment of investments carried out by the entities is correct or not, as this falls to the State Tax Administration Agency (AEAT) as the competent body.

However, the Complaints Service does assess compliance with the information obligations of the entities as providers of investment services. Except in cases of disproportionate or unjustified requests or other exceptional circumstances, entities must properly respond to clients' requests for information concerning their investment funds.

In R/773/2021, the complainant had contracted in 2015 a managed portfolio of CISs, whose initial contribution was made by transferring the funds that made up another managed portfolio of the complainant opened a few years earlier. On 31 January 2020 he ordered the cancellation of the portfolio and the transfer of the funds forming it to an investment fund. On 18 January 2021, he ordered the total redemption of this last investment fund and expressed his disagreement with the information on the withholding practised on the occasion of this redemption.

The entity stated that the shares in the investment fund reimbursed were acquired by the transfer of the shares in the investment funds that made up the managed portfolio and, in turn, the contributions to this portfolio came from the transfer of the shares in investment funds that made up another previous portfolio.

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96 Article 60.2 of Commission Delegated Regulation (EU) 2017/565, of 25 April 2016, supplementing Directive 2014/65/EU of the European Parliament and of the Council as regards organisational requirements and operating conditions for investment firms and defined terms for the purposes of that Directive.

Therefore, to determine the acquisition value of the shares redeemed from the last investment fund, the entity applied the provisions of the tax regulations, by which, when the amount of the redemption or transfer of shares of the investment fund is used to acquire or subscribe other shares in investment funds, no capital gain or loss is computed, and the new shares or shares subscribed retain the value and date of acquisition of the shares or shares transferred or redeemed.

The entity added that this meant that, for the calculation of the capital gains from the sale of the shares in the last investment fund, the FIFO rule had been applied. These shares were acquired by transferring the shares in the investment funds that made up the managed portfolio and, in turn, the contributions to this portfolio came from the transfer of the shares in the investment funds that made up another previous portfolio.

The application of this FIFO rule implied that the entity did not compute any gain or loss in the transfers that occurred between the constitution of the initial managed portfolio and the acquisition of the shares in the last investment fund, and that the value and the initial acquisition date of the shares acquired in the first investment funds that made up the initial portfolio, so that, to determine the losses or capital gains attributable to the sale of the shares in the last investment fund, the entity took into account the net asset value that these shares had on the date they were acquired when the initial portfolio was set up.

In addition, the entity provided a file proving that the acquisition date of all the share items went back to December 2012 or June 2014, and justified the difference recorded with respect to the redemption value.

The Complaints Service considered that it had acted correctly in responding to the request for clarification on the method of calculating the withholding practised.

In R/76/2022, the complainant requested clarification on the withholding practised after the reimbursement of an investment fund, considering that the capital gain did not correspond to reality and that the respondent entity had erroneously taken the acquisition price.

According to the documentation provided, the complainant, together with another co-owner, had subscribed to shares of two investment funds that had the same date, 12 March 2014, as their net asset value date, and the same co-owners. On 24 April 2021, one of the subscribed funds was absorbed by the other investment fund and the resulting new fund took another name. On 28 December 2021, the complainant ordered a partial refund of the resulting investment fund.

As in the previous case, the entity informed the complainant that the calculation of the capital gains from the sale of the shares took into account the FIFO rule. In addition, the entity clarified that, since the complainant had two contracts with the same ownership over the same CISs reimbursed, the corresponding older price had been applied. In this regard, since the shares of the absorbed fund were exchanged and the contract number was modified as a result of the absorption by the other fund in 2021, this contract was treated as the most recent contract.

The Complaints Service considered that the entity had acted correctly in responding to the request for information and, if the complainant was not satisfied, he should submit the matter to the Tax Agency, the only competent authority to interpret the application of tax regulations.

3.5 Orders

➢ Purchase of shares on ex-dividend date without right to dividend

The reform of the securities clearing, settlement and registration system that was launched in 2016 introduced several changes, among which was the modification of the date of the last day of trading of shares with the right to payment of dividend.

Thus, currently, several dates are identified:

– Last trading date (three days prior to the payment of the dividend): last trading date on which the security is traded with the right to receive the dividend.

– Ex-dividend date (two days before the dividend payment): date from which the security is traded on the market without the right to a dividend.

– Date of record (one day before the payment of the dividend): date on which the holders and the positions to be taken into account for the payment of the dividend are determined, and there may be transactions pending settlement that will be adjusted.

– Payment date: date on which the dividend is paid.

Last trading date	Ex-date	Record date	Dividend payment (Payment date)
D	D+1 (P-2)	D+2 (P-1)	P

The investors who will be entitled to the dividend will be those who appear registered in the registry the day before the payment of the event (date of record), that is, those who have acquired the securities prior to the ex dividend date (on *D* or before).[97] However, if a shareholder buys the shares on the ex dividend date, he will not have the right to collect the dividend and it will be the seller who collects it despite no longer owning the shares.

In R/284/2022, the complainant expressed his disagreement at not receiving the dividend corresponding to some shares that he acquired on 14 April 2022 and sold on 20 April the same day the dividend was paid.

In this case, the note on privileged information, published in the CNMV on 8 April 2022 included various pieces of information relating to the payment of the dividend, setting the ex dividend date at 14 April 2022, which meant that the security was traded in the market without the right to a dividend. On the other hand, according to the Madrid Stock Exchange calendar, 15 April and 18 April 2022 were non-business days for the purposes of market transactions.[98]

When the complainant acquired the shares on 14 April 2022, the Complaints Service considered that the entity had acted correctly, since, in accordance with the provisions of the privileged information note and with the non-business days

97 https://www.cnmv.es/docportal/aldia/Publicacion_MARZO_2016-Eventos_D2.pdf
98 https://https://www.bolsasymercados.es/bme-exchange/en/Trading/Trading-Calendar?year=2022

mentioned, the shares acquired by the complainant did not allow the collection of the dividend that was paid on 20 April 2020.

➢ Sale of shares in lots

In accordance with the operating rules of the Stock Market Interconnection System,[99] those securities whose price is less than or equal to €0.01 will be subject to the requirement of contracting a minimum lot of securities. The minimum lot established for each affected security will be applied to the entry of orders in the system and will allow, where appropriate, the breakdown by a number less than the minimum lot of securities in the phases subsequent to the negotiation.

By means of an operating instruction, the list of those securities traded to which, due to their listing value, the requirement of contracting through a minimum lot of securities is applicable, and the minimum lot of securities applicable to each stock, which is necessary to be able to enter the orders in the system on each of these securities, as well as the moment from which this trading requirement applies to them.

In R/206/2022, the complainant was dissatisfied with the impossibility of selling 87 shares for which an operating instruction required trading in minimum multiples of 100 from 17 March 2020. The entity claimed that it could not proceed with its sale in accordance with such operating rules of the Stock Market Interconnection System.

Regarding the impossibility of trading shares in lots with a volume lower than that established, the Complaints Service indicated that it was an operational limitation that was imposed on the entity by a regulatory provision that affected the normal functioning of the market.

Notwithstanding the foregoing and also taking into account the obligation of entities to act in the best interest of their clients, as well as what, if applicable, may be provided in this regard in the order execution policy of each entity, the Complaints Service considered that acting in accordance with good stock market practices would mean that entities accumulated orders from their clients until they reached a number of shares that was a multiple of the minimum lot set, provided they met all the requirements established in the regulations on accumulation and attribution of orders[100] and, in particular, that "it is unlikely that overall the accumulation of orders and transactions would harm any of the clients whose orders are going to be accumulated", given that otherwise the transaction could not be executed.

Therefore, the Complaints Service concluded that the entity should adopt the indicated good practice consisting of accumulating orders from its clients until reaching a number of shares that is a multiple of the minimum lot set, in application of the principle of acting in the interest of its client.

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99 Section 5.7 of Sociedad de Bolsas Circular 1/2021 on the Operating Rules of the Spanish Stock Market Interconnection System (SIBE).

100 https://www.cnmv.es/DocPortal/Publicaciones/Guias/G05_Ordenes_de_valores.pdf

➢ Execution of market order after a stop-loss order is triggered

A contingent order is an order to buy or sell shares which is delivered to the market only if the established price condition is met. 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.

These types of orders cannot be entered directly into the market, since they are not provided for in the platform of the Stock Market Interconnection System. Its acceptance by the entities will depend on the commercial policy of each entity. However, entities that accept this type of order must establish the necessary mechanisms to manage them correctly.

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).[101]

– **Limit**: a maximum price is established for the purchase and a minimum for the sale. If it is for purchase, it would only be executed at a price equal to or lower than that set and if it is for sale, at a price equal to or higher. These orders can be entered in both auctions and open market periods.

  A limit order is filled, in whole or in part, immediately if a match is found at that price or better. If there is no counterparty or the one that exists does not provide sufficient volume, the order – or the remaining part of it – remains on the order book, awaiting counterparty.

  This order is more convenient when the investor prefers to secure the price and is not concerned about the speed of execution.

  Limit orders can be partially filled if the counterparty does not cover the entire mandate. Likewise, a limit order can be automatically cancelled if it exceeds the maximum limit (if it is a buy) or minimum (for sales) of the fluctuation range established for that security.

– 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. They can be entered in both auctions and open market periods.

  The risk in this type of order is that the investor cannot control the execution price. If the order cannot be fully executed against the counterparty order, the remaining tranche will still be executed at the next purchase or sale prices offered, as many times as necessary until the order has been fully completed.

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101 Article 68 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.

Typically, market orders are executed immediately, even if in several tranches. These types of order are useful when the investor is more interested in performing the transaction than in trying to obtain a better price.

– 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.

Therefore, conditional orders do not guarantee the execution of the order at a certain price, but its launch on the market, execution depending on the type of order indicated in it –with the aforementioned risks in terms of the possibility of execution or its speed in the event that a limit order is activated and in terms of the crossover price in the event that a market order is launched.

The best-known conditional orders are stop-loss orders, which are widely used by investors in order to protect themselves against any possible falls in the price of the financial asset in which they have invested. They are activated when the quoted price falls to a level at which the investor no longer wishes to take risks and therefore wishes to unwind the position.

Regarding the general contracting of securities, it should be noted that it is carried out through an opening auction (between 8:30 and 9:00 a.m.), an open session (between 9:00 a.m. and 5:30 p.m.) and a closing auction (between 5:30 p.m. and 5:35 p.m.). Whenever certain circumstances occur, the open session can be interrupted by volatility auctions with a duration of 5 minutes whose objective is to control excessive price fluctuations. During the opening, volatility and closing auctions orders can be entered, modified and cancelled, but no trades are executed and they have a random end of a maximum of 30 seconds.[102]

In R/420/2022, the complainant issued a stop loss order on shares with a trigger price equal to or less than €0.36 and with a market order type. According to the complainant, when the share was trading at €0.34, there was a suspension of trading due to an auction and at 5:37 p.m. the order was executed at a price of €0.17, that is, with a difference of price of €0.19 per share, which he claimed.

The Complaints Service verified in the listing records available at the CNMV that the shares crossed at the trigger price stated in the order (€0.36) at 14:03:16.4740000000 hours and the listing fell below €0.36 euros at 14:03:21.9510000000 hours.

After it fell below the trigger price, only six sell orders were executed until 14:03:23.0690000000 because a volatility auction began at that time. In total, three

102 Section 3.2.1 of Sociedad de Bolsas Circular 1/2021 on the Operating Rules of the Spanish Stock Market Interconnection System (SIBE).

volatility auctions were carried out and in none of them was it possible to match purchase and sale transactions.

The entity provided a document on the best execution policy and the order execution policy, which indicated: "3.Stop-loss: A sell order is activated when the price set is reached, allowing the maximum loss that the client is willing to bear to be controlled. Available only in the Spanish continuous market".

The Complaints Service considered that there was some ambiguity about when an order is issued ("equal to or lower"). Therefore, it required the entity to explain whether the order was launched at the moment the trigger price (€0.36) was equalled or touched (equal), or when the trading price fell below the trigger price (€0.36) (less) and, in any case, it was asked to indicate the exact time the order was launched on the market.

In its clarification letter, the entity confined itself to informing that the sell order was launched on the market when information arrived that the price of the security was equal to or lower than the trigger price and confirmed that the exact time the sell order was launched to market was 14:03:27.2485510000.

In view of the entity's response, the Complaints Service made it clear that it was not possible to determine whether the order was triggered at the moment the price touched €0.36 or when it fell below said price, given the lack of specificity in the response, which was considered bad practice to the extent that it prevented a more in-depth analysis of the alleged facts.

Notwithstanding the foregoing, in view of the fact that the entity's broker acted as an intermediary executing sales orders on the shares, the Complaints Service also required it to explain why the complainant's sell order for shares was not executed given that a total of 493,894 shares were traded at the price of €0.36 and, of these, a total of 154,800 sales orders were mediated by the entity's broker.

The entity broke down the orders of 154,800 securities that were executed by the broker between 14:03:16.594833 and 14:03:21.960351 and had a trigger price of more than €0.36, so they were activated before the complainant's order.

In view of the sales orders handled by the broker, the Complaints Service considered that, regardless of whether the stop loss order was activated when the trigger price was touched or when it was passed downwards, in any case the market order linked to the stop loss was not executed, taking into account the number of orders placed prior to that of the complainant and at higher trigger prices.

In short, the complainant's market order was launched and remained in the order book pending execution, and then trading was suspended and the first volatility auction began. However, in the closing auction, transactions were matched, including the sales order that was the subject of the complaint, but at a much lower price of €0.17.

In this regard, the Complaints Service clarified that in placing an order to market after the activation of the stop loss order, the complainant assumed a price risk, since, in this type of order, the price at which the order will be matched once it is launched on the market is not controlled, and concluded that the entity had correctly passed and executed the stop loss order.

➢ Incident when issuing a telematic order and absence of alternative remote channel

When the entity intends to provide services by telematic means, it must have the appropriate means to guarantee the security, confidentiality, reliability and capacity of the service provided.[103] Likewise, entities that provide investment services must adopt and have reasonable measures to guarantee the continuity and regularity of the performance of investment services and activities.[104]

The Complaints Service understands that the adequacy of the means includes the need to have a contingency plan that, in situations of service interruption, allows the customer to be informed immediately of the alternatives and, as far as possible, of the causes and the estimated resolution time of the incident.

In R/484/2022, the complainant was dissatisfied with the functioning of the online service of the entity because, he claimed, it prevented him from issuing a sale order to the issuer of his subscription rights. In this regard, the entity had communicated a bonus issue with free allocation of subscription rights in which the complainant could choose to receive new shares in the company, sell the subscription rights on the market or receive cash remuneration with the sale of subscription rights to the company. In addition, it warned him that, if it did not receive instructions before 27 January 2022, the entity would understand that the complainant opted to receive shares, so it would assign shares free of charge, that is, without disbursement per share awarded, and proceed to order the sale of excess rights.

The complainant produced a copy of a chain of messages that he had exchanged with the personnel of the respondent entity. On 21 January 2022, at 8:43 a.m., the complainant wrote that he was trying to process the options for his share rights and wanted the cash remuneration option, but was not getting it. On 21 January 2022, the entity's staff responded at 1:55 p.m., providing him with the customer service telephone number in case they could help him to see why he could not take advantage of that option and, if he still could not do so, he could make an appointment to request it at the office.

The entity claimed that it was aware that the complainant informed his account executive that there was an incident in the service, without clarifying what it was. For his part, the account executive provided him with a contact to try to solve the supposed problem and, in addition, offered him the alternative of going to the office where the chosen option would be processed. The entity also pointed out that the complainant did not specify or prove what kind of incident existed and the entity itself was not aware of any technical problem in the online service. Lastly, it pointed out that no loss or harm had been suffered since, alternatively, the complainant was awarded the corresponding shares for the extension of rights and documentary justification was provided in this regard.

The Complaints Service pointed out that, in this case, no document was provided to prove that the entity's online service suffered some type of incident or computer failure that would prevent the client from processing the order to sell the

103 Article 14.1 h) of Royal Decree 217/2008, of 15 February, on the legal regime of investment firms.

104 Article 193.3 a) of Royal Legislative Decree 4/2015, of 23 October, approving the recast text of the Securities Market Act.

subscription rights to the issuer. In other words, it was not proven that the cause of the complainant's inability to carry out the dividend payment option was attributable to the respondent entity.

In this regard, the complainant provided a series of messages from which it emerged that he could not operate with the subscription rights – without indicating the cause of this fact – and, in view of this difficulty, the entity's staff urged him to stop by the office to place the order.

Although, in general, the criterion of the Complaints Service is that, when operational problems arise that prevent them from operating through telematic means, entities must act in accordance with the rules of conduct if they offer their clients another channel in order to operate on the stock market, in this case the Complaints Service also specified that the alternative operating channel must be comparable to the channel through which the client initially wished to carry out the transaction. In this case, given that the complainant wanted to carry out a remote transaction, it was logical that the entity would have offered him a remote channel to carry out the transaction, especially since there was a deadline for pursuing the option desired by the client; for example, the phone channel might have been appropriate.

Consequently, the Complaints Service considered that the entity had not acted with due diligence by not offering the customer an alternative channel comparable to the one he wished to use to pursue the option for exercising his rights that he favoured most at that time.

➢ Requirement to appear in person at the branch to cancel an electronically signed portfolio management contract

To provide portfolio management and custody and administration services for financial instruments, it is necessary to use a standard contract (that is, an accession contract that entities offer their retail clients for the provision of said services).[105] These contracts must include the content provided for in the regulations (specifying, among other issues, the specific clauses related to modification and termination by the parties); in addition, they must be made available to the public on any durable medium at the registered office of the entity, at all branches and at the address of its agents, and must be published on the entity's website in an easily accessible place.[106]

In R/327/2022, the complainant was dissatisfied with the impossibility of cancelling a portfolio management contract electronically, despite the fact that her contract had been made through that channel. In this regard, the complainant claimed to have sent a cancellation order with cash reimbursement of the managed portfolio, providing all the necessary data and signed with an electronic certificate by the contract holders on 20 May 2022, which, however, was not processed because, she was informed, she had to go in person to the office to sign the cancellation order.

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105 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.

106 Rules 7 et seq. of CNMV Circular 7/2011, of 12 December, on fee schedules and the content of standard contracts.

The entity alleged that it had sent the complainant a communication about the change in the conditions of the products and, in particular, a change in the online *modus operandi* for portfolio management contracts that did not allow for the possibility of operating through the remote banking service.

In accordance with the provisions of the particular conditions of the discretionary portfolio management service which were produced, the amendment of the contract or of the fees and billable expenses would be regulated by the provisions of the contract for the provision of investment services.

In this regard, the contract for the provision of investment services, a copy of which, signed by the complainant, was produced, indicated that the entity could amend the conditions of the contract, as well as the particular conditions of the products or services contracted in connection with it and even incorporate new ones, by sending the client written information on the amendments one month in advance of their entry into force, the client being able, in that period, to terminate the contract or the particular conditions, without the aforementioned amendments or additions being applicable until then. After a period of one month has elapsed without the client having objected, they will be understood as accepted. In the event that the new conditions are more favourable for the client, they will be applied immediately.

Pursuant to the provisions of the contract conditions, on 5 September 2021 the entity sent the complainant a duly personalised communication in her name and addressed to her address, informing her of a series of changes in contractual conditions as a result of a merger. The changes would enter into force on 12 November 2021 and, among the various amendments, the following was indicated regarding online transactions:

Before	**Now**
Contribution, partial withdrawal and total withdrawal (cancellation) transactions can be carried out through the online banking service.	*The management service is configured as a more personalised service and therefore does not include the possibility of operating through the remote banking service. For those clients who prefer a discretionary portfolio management service that allows full transactions online there are other options. Consult your account executive to find out about them.*

In addition, the statement recalled that, if clients wished to avoid the application of the new conditions, they had the right to communicate their opposition, asking to terminate the contract before the date scheduled for its entry into force, without this causing any expense. However, it warned that if such right had not been exercised before the indicated date, the proposed changes would be understood to have been accepted.

The Complaints Service concluded that the entity had acted correctly since, in not opposing the statement, the complainant had accepted the contractual amendments communicated and, after their entry into force, the cancellation of the portfolio management contract could only be processed in person at the office of the respondent entity.

However, and without prejudice to the foregoing, the entity reported that on 1 June 2022 the complainant cancelled the managed portfolio after the mandatory signature in the office, for which reason the Complaints Service considered that the

substantive issue raised – not being able to cancel the portfolio management contract – had already been resolved.

A similar situation occurred in R/201/2022 against the same entity. which produced the communication of 5 September 2021, sent personally to the complainant. In this case, given the impossibility of ordering the cancellation of the portfolio electronically, the complainant's son went to the office on 24 December 2021 with a request signed by his mother to cancel the managed portfolio, although the staff did not process it, alleging that it was necessary for the mother to attend or for the son to provide a power of attorney. Given the lack of any power of representation, the Complaints Service considered it correct for the office staff to inform that, in order to process the cancellation of the managed portfolio, it was necessary for the mother to appear at the office or for the son to obtain a power of attorney.

Thus, from the moment a valid portfolio cancellation order was provided to the entity on 26 January 2022, duly signed by the mother by means of an electronic signature in the entity's app, the latter began to undo the portfolio managed in order to cancel the provision of the service.

➢ Incidents in the processing of transfers between CISs

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. In this regards, 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.

In order to initiate the transfer, the unitholder or shareholder must contact, as appropriate, the target management company, distributor or investment company, which they must instruct to perform the necessary procedures. In any case, once the transfer request has been received, the target company must notify the source management, marketing or investment company, within a maximum period of one business day from when it comes into its possession, the duly completed request with indication, at least, of the name of the destination CIS and, where applicable, of the compartment or sub-fund, of the identifying data of the CIS account to which the transfer must be made, of its depositary, where applicable, of its management company, and of the CIS of origin and, where applicable, of the corresponding compartment or sub-fund.

The source company has a maximum of two business days following receipt of the request in which to perform the verifications that it deems necessary.

Both the transfer of cash and the transmission by the company of origin to the company of destination of all the financial and tax information necessary for the transfer must be carried out from the third business day after receipt of the request, within the terms established by regulation for the payment of redemptions or for the sale of shares.

The net asset values applicable in transfer transactions will be those established in the regulations of each fund for subscriptions and redemptions or in the Articles of Association of the company for the acquisition and disposal of shares.

However, in the case of transfers between CISs both – origin and destination – marketed by the same entity, as long as both CISs have the same manager or, not having one, one of the CISs is foreign – all cases in which omnibus accounts are used and, consequently, the detailed record of the clients of the distributor is kept by itself –, the CNMV's criterion is that the terms established in the regulations to transmit the information from destination to origin and to carry out the necessary verifications are not applicable, so that for the execution of the reimbursement of the source fund implicit in the transfer transaction, the date of the transfer order must be taken as the reimbursement date. This is because, in this case, no additional period is needed to check the transfer request as the entity carrying out the checks would be the same as the entity receiving the transfer, beyond of course those that must be carried out as part of the procedure for redeeming and subscribing units in the CIS referred to in the order, within the regulatory deadlines for performing such transactions.

In short, when the entity that receives the transfer order is a marketer of the CISs of origin and destination and any of the aforementioned conditions apply, it must be processed as if it were an ordinary refund.

In R/622/2021, the complainant complained about the unjustified delays and the steps taken by the entity's staff in relation to the transfer requests of a series of investment funds. Initially, the complainant made a request for an internal transfer so that the shares of various funds owned by her were unified into one and so that various funds owned by each of her two daughters, of whom she was a representative, also would be merged into a single fund.

Once the shares were unified in a fund, the complainant requested the external transfer to a fund of another entity both in relation to her shares and in respect of the shares of each of the daughters she represented.

In relation to the request for the unification of the funds through internal transfers for the complainant and her daughters (represented by her), the entity's staff did not act with due diligence, since, after an email of 3 December 2019 making such a request, the entity should have made the transfer orders available for the complainant's signature immediately, as she urged. However, some funds transfer orders were not made available to the complainant for her signature and others were made available several days later, on 10 and 12 December.

In relation to the orders for the transfer of funds owned by the complainant, the Complaints Service considered that some were executed on time to the extent that the complainant submitted the order on the 12th (Thursday) and the funds were received at destination on 17 and 18 December (Tuesday and Wednesday). However, one of the funds was received on 24 December 2019, after the deadline, and this was referred to by the entity's staff in an email dated 23 December 2019, in which they recognised that there had been a delay that was to be claimed from the origin manager. In addition, the Complaints Service considered it a bad practice that the transfer order from another fund was not executed, this bad practice having been aggravated by not having informed the complainant of the causes for not being able to carry out the transfer.

In relation to the order for the external transfer to another entity of two investment funds owned by the complainant, the Complaints Service indicated that, as the orders had been received on 27 December 2019, the entity had two business days to carry out the corresponding checks and proceed with the transfer from the third

business day of receipt of the order. Even though the transfer order of one of the funds was executed in a timely manner, the transfer order of the other was delayed until 7 January 2020, without a just cause for it appearing in the file.

In relation to the transfer of the investment funds owned by one of the daughters to unify them into a single fund, the orders for which were signed by the complainant on 10 December 2019, according to the emails exchanged with the entity's staff, it could not be executed due to problems with ownership. The Complaints Service verified that the orders did not provide for the complainant to act as representative of her minor daughter. Therefore, these orders would not have been executed as the ownerships did not correspond, although the Complaints Service considered that this fact was the responsibility of the entity since they were the ones who completed the orders and made them available to the complainant for her signature.

The transfer orders of the 12 international funds that were signed on 24 December 2019 were executed correctly, with the exception of the one received on 7 January 2020. However, it should be taken into account that it was an international transaction and that on the dates on which the orders were processed there were non-business days in the international markets as a result of the Christmas holidays.

Finally, in relation to the order for the external transfer of the daughter's fund that was received by the respondent entity on 15 January 2020, the Complaints Service considered that it had been executed correctly, taking into account that it was transferred on 17 January 2020.

In R/633/2021, some transfers requested on 31 March, 30 April, 12 July and 21 September 2021 were rejected due to the lack of correct identification of the contract numbers of a fund, the client owning several contracts on the same fund. The complainant disagreed with the rejections and lack of attention by the company of origin to her requests for information about them.

Regarding the reasons for the rejection, the detail of the sequence of the transfers requested through the records of the SNCE showed that the transfers were rejected due to an incorrect identification of the code of the participant's account in the source fund. Therefore, the Complaints Service considered it proven that the transfers were rejected for an objective reason that was determined in the SNCE's instruction booklet.

Regarding the complainant's requests for information through emails addressed to the manager of the entity of origin on 10, 16 and 30 June 2021, and a complaint to the CSD on 13 July 2021, the Complaints Service declared that there had been a malpractice, because there was no evidence that the entity of origin had reported correctly and in a timely manner. In this regard, the entity informed the complainant in the response to the complaint before the Complaints Service of the causes of the rejection of the transfer of funds, but not before.

Therefore, the Complaints Service considered that, in view of the complainant's request for information in the mail of 10 June 2021 and in view of the repeated number of rejections of her transfer orders, the office staff should have informed her in time and form, of what was the reason for the rejections of the transfers.

In R/11/2022, the controversy focused on the impossibility of transferring the shares of an investment fund because, even though the shares were owned by the same

owner, the applicant was listed as a representative in the entity of origin and as authorised in the destination entity.

In view of the documentation provided, the four transfer requests (dated 18 November 2020, 18 March 2021, and 7 and 14 May 2021) were rejected by the company of origin due to incorrect identification of the holders, and the destination entity informed the complainant of the reasons for the rejection of the requests.

Consequently, the Complaints Service considered that the company of origin had informed the company of destination which in turn had informed the originator of the reasons for the rejection of the transfers. Since the mismatch of holders was an objective cause of rejection, the Complaints Service considered that the rejections had been justified and the originating entity had acted correctly in rejecting them.

On the other hand, the impossibility of carrying out the transfer was due to a mismatch of ownership, since, even though the holder was the same, the person empowered by the holder was listed as a representative in the company of origin and as authorised in the target company.

In relation to the funds account maintained in the company of origin, the Complaints Service considered it correct, in accordance with the provisions of the power of attorney that was provided and approved by the entity, that it incorporate the applicant in the account as a representative.

Given that, according to the documentation provided, the destination entity only allowed the opening of fund accounts with an authorised person – not admitting a representative – and that the holder of power of attorney appeared as legal representative in the fund account of origin, the Complaints Service contacted the two entities to find a solution to the problem raised.

In this specific case, the solution to be able to transfer the shares of the funds was for the holder of the power of attorney to unsubscribe from each of the fund accounts, as authorised person at destination and as representative at origin, leaving only one holder. Subsequently, once the transfer of the shares to the target fund is executed, the holder of power of attorney would have to be registered as authorised person in the target fund account.

In R/94/2022, the complainant was dissatisfied with the date and net asset value applied to two CIS transfer orders issued on 15 December 2021. The complainant considered that, since the confirmation of the withdrawal of the funds took place on 16 December 2021, the net asset value of that day should have been applied to the redemption orders, while the net asset value of 17 December should have been applied to the subscription orders.

In this case, the entity acted as a marketer of both CISs, both the origin and destination CIS and, in addition, both CISs being foreign, the entity managed the detail registry of its clients, so it was not necessary to use any additional term to carry out verifications to execute the reimbursement implicit in the transfer order.

The entity explained that, once it received the transfer orders, they were recorded, validated and transmitted to the platform it used to contract different funds from international managers, providing a copy of the computer records of the transfers, which stated that the orders were submitted to the platform at 09:59:55 on 15

December 2021. As the orders were placed and received on the platform prior to the cut-off time that appeared in the CIS prospectuses, the redemption orders implicit in the transfer orders were executed on the same day, 15 December 2021, and the entity provided supporting documentation showing that the redemptions took the net asset value of 15 December 2021.

In relation to the execution of the subscription orders implicit in the transfer orders, the entity indicated that, as the redemption orders were confirmed by the international managers on 16 December 2021, the subscription orders were executed on that same day. In this regard, it provided an email from the platform confirming the departure of the funds to be transferred at 3:15 a.m. on 16 December 2021. Upon receiving confirmation of the redemptions on 16 December before the cut-off time, the subscription orders for the funds were executed on that same day, 16 December. The entity clarified that the entry transfer orders were generated automatically on the same day that the exits were confirmed and therefore the subscription order implicit in the transfer took the value date of the same day, 16 December 2021.

Regarding the settlement of the funds, the entity indicated that, according to the legal documentation, they were settled on D+3, therefore, having a net asset value of 16 December 2021 (Thursday), they were settled on 21 December 2021 (Tuesday).

Consequently, in view of the documentation provided, the Complaints Service considered that the entity had acted correctly in the facts set forth in this complaint in executing the transfer order in the best interest of its client, having processed and executed the orders efficiently in the shortest possible time. Consequently, it concluded that the date and net asset value of the CIS redemption and subscription orders implicit in the transfer orders were correct and in accordance with the criteria maintained by the Complaints Service.

3.6 Fees

Entities that provide investment services must fulfil certain obligations regarding information on costs and associated expenses.[107] In order to ensure that customers are informed of all the costs and expenses that they will bear, as well as the evaluation of said information and the comparison with different financial instruments and investment services, investment firms must provide clients with clear and understandable information on all costs and expenses before providing the services.[108]

➢ Prior information on the costs and transactions of investment funds

✓ *Before an investment fund subscription or redemption order*

Sufficiently in advance of the subscription of the CIS shares or units, among other information a document with the key information containing information on the fees and expenses of the CIS must be delivered free of charge to subscribers. However, information on some fees, such as subscription and redemption fees, could refer to the complete prospectus, which is delivered upon client's request, to obtain

107 Article 65 of Royal Decree 217/2008, of 15 February, on the legal regime of investment firms.

108 Recital 78 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.

detailed information on the cases in which said fees would be reduced or would not be applicable (for example, due to the age of the shares). In addition, the distribution entities must inform clients of the related costs and expenses that the product entails and that may not have been included in the KID, as well as of the costs and expenses corresponding to the provision of investment services in relation to the product.[109]

Even though the aforementioned information has been delivered at the time of subscription of the CIS, the Complaints Service considers that, by virtue of the principles of diligence, professionalism and acting in the best interest of the client that must govern the actions of the entities,[110] coupled with the obligation for entities to report all actual costs and expenses before placing an order[111] they must explicitly notify customers of the fees or expenses that will be applied to them when they request a redemption transaction.

Likewise, the KID may establish the subscription fee as a maximum amount, leaving the investor to refer to the distributor/advisor to find out the amount actually applied, in which case the distributor/advisor should abide by such subscription fee lower than that maximum as may previously have been communicated to the client.

In R/119/2022, the entity acted correctly since, before the transaction was carried out, it had informed the client in the redemption order of the existence of a fee for this reason, the percentage involved and that the first 30 days from the subscription would be applied.

Other entities were at fault in not having explicitly warned about the actual costs and expenses applicable at the time of redemption of the units of an investment fund for the following reasons:

– In R/662/2021, regardless of whether the entity had delivered to the client, prior to the subscription, the documentation that included the characteristics of a foreign CIS and the costs to be applied depending on the holding period, the entity had not explicitly warned the client of the redemption fee that it applied at the time of the redemption of the shares. In this regard, the redemption order was provided, electronically signed by the complainant, in which the "Redemption Fee" section stated 0.00%, along with a cost and expense information document, also signed by the complainant on the day of the redemption, the first paragraph of which warned that the detail, among other things, of the costs and expenses that would be applied to the transaction was shown. However, no redemption fee was shown.

– In R/719/2021, the client only provided a screen print of the entity's web platform in which he was informed of the result of the redemption transaction, although the amount that was deposited in the account of the customer was

109 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.

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

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

lower due to charging a redemption fee. Therefore, the documentation provided did not show that information on the redemption fee had been provided, on the contrary, erroneous information was provided, by omitting the redemption fee.

– In R/728/2021, the entity provided the client in the redemption order itself with a table with the fees, costs and expenses applicable to the transaction. However, that table omitted a discount for redemptions in favour of the fund, which was covered in the prospectus for shares with an age of less than three months and that applied to the client, who had requested the redemption before the aforementioned three months had elapsed.

– In R/364/2022, the KID delivered to the complainant, prior to the subscription of an investment fund, established a subscription fee and indicated that it was the maximum percentage to be deducted and that the distributor/advisor should be consulted as to the amount actually applied, while a screen of the entity's application, at the time prior to placing the fund subscription order, indicated that the subscription fee was 0%

  The Complaints Service revealed that the entity had communicated to the client, prior to the transaction, that no subscription fee would be charged and, furthermore, the information was in line with the fund's KID , which delegated the consultation of the fee to the distributor or advisor with whom the shares were subscribed. The entity therefore committed a malpractice since it indicated to the complainant in the application, before issuing the order, that it would not charge him a subscription fee and, nevertheless, once the subscription was settled, it charged a fee for this transaction.

✓ *Before an investment fund transfer order*

In the event that the dispute concerns a transfer of investment funds, it should be remembered that this type of transaction ultimately involves reimbursing the source fund and subscribing the destination fund, so both a redemption fee as well as a subscription fee could be applied.

To determine the information obligations regarding these fees prior to the transfer, the Complaints Service distinguishes whether it is an external or internal transfer of investment funds.

– **External transfer of investment funds.**

  This case would occur when two different marketing entities participate in the transfer. Given that the transfers are requested at the destination entity, the source entity must certify that the client was informed of the source fund's fees when he began his relationship with it or, as the case may be, of the subsequent amendment of the fees. With regard to the destination entity, it would have the obligation to inform the participant of the destination fund fees, as well as any new issues arising during the transfer itself (for example, currency exchange, when the source fund is denominated in another currency).

  In R/739/2021, the Complaints Service clarified to the complainant that the information obligations regarding the implicit redemption fee in an external transfer order are limited to the time of the initial subscription of the shares.

For this reason, at the time the transfer was processed at the destination entity, the origin entity had no obligation to inform the client of the fee that would be charged for the redemption because transfer requests are not made to it but to the target entity.

The originating institution provided a copy of the KIID, signed by the client, and in which the redemption fee subject to controversy was established. Consequently, the Complaints Service considered that the original entity had acted correctly at the time of subscription of the fund's shares – the only moment, in a transfer, at which said entity could provide information in this regard –, since it informed the client of the redemption fee that would be applicable if the shares were redeemed.

– **Internal transfer of investment funds.**

In an internal transfer only a single entity participates. In this regard, complaints have been received in which the two investment funds involved in the transfer are marketed by the same entity and, furthermore, are managed by the same manager of the marketer's group.

To initiate the transfer, the unitholder or shareholder must contact, as appropriate, the destination management, marketing or investment company (hereinafter, the destination company), which must notify the transfer request to the management, marketing company or original investment (hereinafter, original company). In this particular case, the target company and the source company would be the same entity.

The only entity involved must comply with the obligations of the destination entity: report the destination fund fees and such new issues as arise during the transfer itself and that include, for example, currency exchange, when the source fund is denominated in another currency.

In addition, in its capacity as source entity, it would not be enough for the sole intervening entity to certify having reported the redemption fees at the time of subscribing the source fund or their subsequent amendments, but rather, by virtue of the principles of diligence, professionalism and acting in the best interest of the client that must govern the actions of the entity, together with the obligation that entities report all costs and expenses before placing an order, the Complaints Service considers that the entity must explicitly warn, on the occasion of the transfer, of the fee that would be applied for the redemption of the shares of the source fund, in addition to reporting the fees of the destination fund and the rest of issues.

In cases R/624/2021 and R/637/2021, in the case of an internal transfer, the only entity involved provided the file with a copy of the KID of the fund of origin duly signed and delivered to the client at the time of subscription of the fund. However, the Complaints Service considered that the entity had not acted with all the diligence and professionalism that was required of it in the framework of a transfer of investment funds marketed by the same entity and managed by the same group manager, and that it should have warned at the time of the transfer that, as the redemption implicit in the transfer was going to be made outside the liquidity window, it would charge a fee of a certain percentage on the cash repaid.

➢ Prior information on securities market transactions and services

✓ *Recurring or one-off transactions*

Before the start of a commercial relationship, the entities provide clients with information on the costs and expenses derived from the provision of services and investment activities and ancillary services (for example, the reception and transmission of orders, the execution of orders, custody and administration of securities, portfolio management or investment advice). Entities must also report subsequent changes in costs and expenses, under the terms provided by law and contract.

In addition to the above, when the client requests a transaction or service from the entity, the Complaints Service considers the following particularities in terms of the prior information on costs and expenses that the entity must provide:

– In the case of a specific transaction or service, the information (*ex ante*) regarding costs must refer to the real rates and to that specific transaction or service, and must be provided at the time the transaction is requested. If the transaction were a transfer and it was requested at the source entity, the latter would have to report the real costs of the transfer at the time of the request, while if it were requested at the destination, it would suffice for the origin entity to certify that the client was informed of the fee when embarking upon its relationship with it or, as the case may be, of the subsequent modification of the fee.

– In the case of transactions or services that may be recurring (e.g. custody), it is considered sufficient for the information to be provided only at the start of the relationship or upon its subsequent modification and in a standardised manner.

Taking into account the foregoing, in relation to specific transactions or services, complaints have been received on the collection of fees by the source entity due to a transfer of securities requested to the destination entity. The source entity acted correctly when it proved that it had reported the transfer fee in the securities custody and administration contract digitally signed by the complainant (R/101/2022) or in the communication that, in compliance with the provisions of the regulations, the entity sent to the complainant regarding the modification of the rates initially agreed (R/479/2022). However, there was a malpractice on the part of the originating entity in a case where the depository and securities administration contract electronically signed by the complainant were produced but the contract did not specify the fees applicable for transfers to another entity (R/263/2022).

Another occasional transaction object of complaint has been the contrasplit of some foreign shares that in R/307/2022 determined the charging of a management fee by the respondent entity and some market fees by the agent bank.

Regarding the management fee, the entity claimed that it was provided for in the securities depository contract signed by the complainant with the entity, in which a fee percentage was established on the effective amount in the event of exchanges, conversions and other corporate transactions involving securities traded in international markets. However, as it is a non-recurring transaction, the Complaints Service found that the complainant should have been informed of it prior to carrying out

the transaction in question and, therefore, it found malpractice on the part of the entity, since it did not show that it had informed the client.

Regarding the market fees charged by the agent bank through the entity, the latter claimed that it did not provide advance notice of possible market expenses because these were unknown before the execution of the event and, therefore, they were communicated once. the agent bank collected them from the entity, at which time they were passed on to the client. However, this Complaints Service considered that there was a malpractice on the part of the entity, by not having notified the complainant of the collection of market fees prior to being charged, having been accredited in the file that the day before the transaction the entity was aware of the existence of said fees based on the terms of an announcement of the event from the agent bank.

On the other hand, in the case of recurring transactions or services, the entity acted correctly when it accredited having informed the client of the fees through the contract signed by him or the communication of its subsequent modification in relation to the auxiliary service of custody and administration of foreign CISs (R/667/2021 and R/614/2021) and shares (R/767/2021 and R/73/2022) or regarding the discretionary and individualised portfolio management service (R/756 /2021).

✓ *Actual rates (not maximum)*

In general, the *ex-ante* information on costs must refer to the real fees applicable to each client for each transaction. ESMA has already made it clear that this information cannot be provided referring to tranches, ranges or maximums, but that it must be provided on a fully individualised basis.[112]

In this regard, it should be noted that with effect from 17 April 2019, Royal Decree 1464/2018 of 21 December eliminated the obligation for companies and entities that provide investment services to prepare an informative brochure of maximum rates. In fact from that date entities are not required to submit such fee schedules to the CNMV.

For this reason, there is nothing to prevent entities from having brochures that include the rates that will be passed on to their clients for the services provided. However, in accordance with the provisions of Commission Delegated Regulation (EU) 2017/565, of 25 April 2016, the Complaints Service considers that said brochures should reflect the actual rates and not the maximum rates.

Therefore, in the event that the corresponding securities custody and administration contract has been signed, in which only maximum rates have been included and the actual rates have not been reported, the Complaints Service considers that the obligation to inform the client has not been complied with in accordance with the relevant EU regulations.

In R/245/2022, even though the entity provided the client with information on what the fees for administration and custody of securities would be in the contract for the

112 Question 11.7 of the CNMV document *Questions and answers on the application of the MiFID II Directive* and question 30 of the section "Information on costs and charges" of the document *Questions and Answers on MiFID II and Mi*FIR investor protection and intermediaries topics (ESMA 35-43-349).

provision of these services, in view of the wording of the signed contract, the Complaints Service considered that the entity did not act correctly in providing the client with only information on maximum rates, as reflected in one of the annexes. In addition, in this case it was evident that these rates were not the real ones, but the maximum ones, since the entity had applied custody fees significantly lower than those included in the contract, real fees for which there was no evidence that the client had been informed prior to the provision of the securities custody and administration service.

✓ *Modification of the initially agreed rates*

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

In the event that fees are adjusted upwards, the entity must inform its clients and grant them a minimum period of one month in which to modify or cancel their contractual relationship. The new fees will not be applied during this period. In relation to the latter, it should be clarified that the former rates will continue to be charged, unless the entity indicates otherwise. In the event of a downward change, the client will also be informed, without prejudice to its immediate application.[113]

Based on the above, although entities are not obliged to send their clients the corresponding information by certified post with acknowledgement of receipt – in other words, they are not obliged to provide proof of delivery –, they do have an obligation to prove that the information has been dispatched, which can be done with a copy of the personal and separate communication sent to the client at a valid notification address.

In relation to the fees for the discretionary portfolio management service, entities acted correctly when they provided the contract initially signed by the complainant – in which their postal address and the agreed fees were stated – and a communication – duly personalised with the name and postal address of the complainant – in which she was informed of the new fees for the discretionary portfolio management service. In this regard:

– In R/73/2022, the October 2017 communication indicated to the complainant that from 1 January 2018, the new annual fee would be applied, calculated based on the effective value of her portfolio and on the annual profit, and it warned her that, if she did not agree with the new rates, she had a period of two months, from the receipt of the communication, to request the termination of the contract.

– In R/217/2022, the communication of 5 September 2021 indicated to the complainant which were the fees on the effective annual value of the managed portfolio and on the revaluation of the managed portfolio during the same period in the time of communication and what the fees would be from 1 January 2022, at which time the fee on the effective value of the managed portfolio

113 Rule Seven, section 1 e), of CNMV Circular 7/2011, of 12 December, on fee schedules and the content of standard contracts.

would increase annually, but the success or revaluation fee would not be applied. In addition, they reminded her that, if she wanted to avoid the application of the new conditions, the law granted her the right to communicate her opposition requesting to terminate the contract before the date scheduled for its entry into force, without this causing her any expense. However, they also warned her that if she had not exercised that right before the indicated date, the proposed changes would be understood as accepted.

Regarding the administration and custody fees of some shares, in R/377/2022 the entity sent an email on 21 December 2021 – which the complainant himself acknowledged having received –, in which he was provided with the new rates and they told him that if he was not satisfied with the new economic conditions, he could terminate his contract immediately and at no additional cost before 27 February 2022, the date on which the new rates would come into force. Taking the foregoing into account, the Complaints Service considered that, since no notice of termination of the contract had been received from the client, the entity correctly began to apply the new stipulated fees.

However, the Complaints Service considered the existence of various bad practices in R/506/2021, in which the client was dissatisfied with the time taken to carry out a transfer of shares and with the custody fee charged by the source entity until the transfer of the shares to the destination entity:

– In relation to the transfer, the Complaints Service considered that the original entity was at fault, since, for internal reasons, it delayed the execution of the transfer of the shares from 4 February to 17 February 2021. Thus, on 4 February 2021, the securities transfer unit of the source entity received the transfer request and requested a response from the client's office to authorise the transfer in accordance with the procedure of this entity. But the compliance response from the office did not take place until 15 February 2021.

– Regarding the justification of the custody fees charged, the source entity provided a communication sent to the client on 24 December 2020 informing him of the new fees that would be applied from 30 January 2021. The Complaints Service considered it a bad practice that the statement did not contain any allusion to the right to modify or cancel the contractual relationship with the entity without the new conditions being applied (although the previous ones did contain this).

– In addition, the Complaints Service concluded that there was a malpractice because the calculation of the custody fee was incorrect. In this regard, the entity applied the new custody fee to a period of 45 days, while, according to the statement sent, the new custody fee began to be applied on 30 January 2021 and, therefore, it could only have been applied to a maximum of 18 days (17 days in February and one in January) and without taking into account the delay in processing the order attributable to the entity. Consequently, if the source entity had been diligent in processing and executing the transfer order received on 4 February 2021, the shares would have been transferred around 8 February 2021 (Monday), so that the custody fee to apply would have been for a maximum of nine days.

In R/371/2022, although the entity was empowered to charge the client the fees claimed, it committed a bad practice since the individual communication that it sent

to the client about the new fees for custody and administration of securities suffered from a formal irregularity, by not informing the client of the right to modify or cancel the contractual relationship, in the event that he was not satisfied with the new conditions, without the new conditions being applied to him.

In R/450/2022, the entity sent the client a personalised communication on 3 May 2019, both to the address agreed for this purpose and through digital banking, in which it informed him of the new custody and administration fees of securities applicable from 21 June 2019, and indicated that in the event of disagreement with the new rates, he could exercise the right to terminate the securities contract until the entry into force of the new rates, without these new conditions being applied. Although it had not been proven that there was a pact or agreement signed between the parties to apply a discount of 50% of the rates communicated in 2019, it emerged from the extracts provided that the entity applied said discount and stopped applying it, without prior notice, in the second half of 2021.

Consequently, the Complaints Service considered that the entity had committed a bad practice, since it should have communicated to the client the decision to start applying the current custody fee without any bonus from the second half of 2021, giving him at that time the option to exercise his right to terminate the securities contract for a minimum period of one month until the effective application of the general rates.

➢ Custody and administration for investment in CISs

Distributors of Spanish investment funds may pass on to 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:[114]

– 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 distribution of the investment fund is made through omnibus accounts (global accounts), which is usually the case.

114 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.

In cases R/107/2022 and R/208/2022, the entities acted correctly, since it was proven that they signed investment fund custody contracts with the complainants in which they agreed that the entity would charge a fee on the effective daily amount for the custody of some foreign investment funds.

➢ Funds with different classes of shares/units

There are investment funds that have several classes of shares. The difference between these various classes lies mainly in the minimum amount that the participant can invest and in the amount of the fees that are applied (lower fees in the class that requires a larger investment).

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 where appropriate, proceed with the reclassification.

In this regard, the participant must know in advance how the manager will act in a situation of reclassification of its investment.

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 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 actually do so.*

  It should be noted that there are frequently 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 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 discharge its responsibility for acting in the best interest of its clients in the absence of certain classes from the offer of a particular distributor by not recommending or acquiring a certain class of shares that is generally available to 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 R/431/2022, the complainant was the owner of shares in an investment fund and, due to the creation of new classes of shares, and taking into account his position at the time of making the complaint, he considered that he should have been reclassified from Standard class to Plus class.

In this regard, the manager of the fund that is the subject of the complaint published a relevant fact in 2011 informing that two new classes of shares were created (Plus and Premium) and calling the already registered shares of the CIS the Standard class. The complainant was informed, through communications sent to him by the respondent entity, that his shares became of the Standard class.

In this case, in order for the shares of the standard class of the fund to be reclassified, the minimum initial investment and the minimum investment to be maintained is €50,000.

As at the time the new class was created, the valuation of the complainant's shares (€22,124.01) did not reach the amount of the minimum investment to be maintained of €50,000 and did not meet it at the time of formulating the complaint, the Complaints Service considered that the entity had acted correctly and had no reason to reclassify the shares, since the requirements established in the fund's prospectus were not met.

➢ Foreign currency transactions. Change applied to currencies

When a portion of the total costs and expenses is to be paid in a foreign currency or represents a foreign currency amount, investment firms must provide, sufficiently in advance, an indication of the currency in question, as well as the exchange rate and costs applicable. Investment firms must also provide information on the conditions of payment or other form of execution.[115] This information will be provided sufficiently in advance before the provision of investment services or ancillary services to clients or potential clients.[116]

Even if the entity has provided this information before the start of the contractual relationship or the modification of the initially agreed conditions, it must provide

115 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.

116 Article 46.2 of Commission Delegated Regulation (EU) 2017/565, of 25 April 2016, supplementing Directive 2014/65/EU of the European Parliament and of the Council as regards organisational requirements and operating conditions for investment firms and defined terms for the purposes of that Directive.

full information on the costs and expenses that it provides prior to subsequent purchases or sales of currency-denominated securities. Taking the above into account, the following cases were resolved:

– In R/128/2022, despite the fact that the pre-contractual documentation provided related to spot transactions on shares, it was proven that the entity informed the client that it would apply the rate set by it daily, as well as a differential on the exchange rate of a certain percentage. The Complaints Service considered it a bad practice that the entity had not informed the client of the exchange rate conditions prior to issuing purchase and sale orders for shares in foreign currency that the client gave almost a year after the start of the contractual relationship.

– In R/638/2021, the entity acted correctly since, in addition to a personalised communication with the name and address of the complainant in which it informed him of the change in the differential on the exchange rate that would apply to transactions that required currency exchange, provided pre-contractual information signed by the complainant for the purchase of shares denominated in dollars a year and a half after the modification. Said pre-contractual information contained the percentage that the differential would represent over the fixing by currency exchange in a table of fees and costs of international equities.

– However, in R/2/2022, even though the entity also provided a personalised communication on the modification of the differential, the entity committed a bad practice by not proving that it had provided such information in the estimates of fees and expenses prior to the effective confirmation of purchase and sale orders. In this regard, the complainant provided a screen print of the purchase of some dollar-denominated securities with all the information on the costs and expenses applicable to the transaction, provided by the system prior to his explicit agreement, and in said document there was no mention of the exchange rate or the differential that was going to be applied. For its part, the entity provided a simulation with three screen prints on the information that was provided via the web when making a purchase and sale of securities and on the last screen, prior to the digital signature of the order, it indicated "Review information" and included all the parameters of the transaction and, lastly, a warning about the percentage of differential on the fixing. However, such simulation did not serve to prove the provision of information on the exchange rate and the differential applicable at the time the claimed facts occurred, since it did not refer to a transaction in the claimed period, but to a hypothetical transaction several months later. A similar situation occurred in case R/63/2022.

Likewise, if the entity has published the settlement conditions for transactions in foreign currency, the published information must be complete and does not exempt the entity from the obligation to inform the client of the exchange rate and the applicable costs before the effective confirmation of the order.

In R/214/2022, the entity stated in a publication that the currency exchange rate applied in the settlement of transactions would be calculated by applying a differential of a certain percentage – plus or minus depending on whether it was a purchase or a sale – on the daily exchange rate used by the entity's treasury desk (which was different from the official exchange rate). Although the entity had published the

applicable spread, said spread was calculated on a fixing different from the official one and, therefore, the place of publication of the latter should have also been reported or, failing that, what it was or how it was calculated, since it was useless to report the differential if the base was not indicated. on which it was to be applied. Consequently, given that said reference information could not be found in the documentation provided, the Complaints Service considered that there had been a malpractice by the entity for not having informed the complainant of the place of publication of the exchange rate to which the informed differential would be applied or, failing that, its method of calculation.

In addition to the above, the intermediary entity should have indicated or estimated the costs applicable to the given transaction prior to its confirmation. Since the entity had not provided any evidence proving compliance with this obligation, the Complaints Service considered an additional incorrect action for not having informed the complainant of the estimate of fees and expenses – including the exchange rate expected – prior to the effective confirmation of the sale order of the securities denominated in US dollars.

On the other hand, the entity must be in a position to prove that the exchange rate applied to transactions in foreign currency has been calculated with the parameters informed by it, so that the Complaints Service considers bad practice those cases in which the entity does not accredit or justify the calculation of the exchange rate subject to the complaint, as in R/110/2022.

Finally, it should be noted that it would not be necessary to change the currency to euros in the case of securities contracts that have one or more settlement accounts associated with a currency other than the euro and corresponding to the currency of the transaction itself.

In R/251/2022, the complainant expressed his disagreement with the conversion to euros of certain transactions carried out with his investments denominated in US dollars, since he considered that, having a cash account in that currency, said conversion should not have been made. Although it was proven that the account associated with the securities contract was an account in euros, the conversion coincided with a moment in which the complainant transferred his dollar-denominated securities and opened a cash account in this currency at the entity in which he deposited a significant sum of this currency.

Consequently, even though it was not recorded that the client explicitly expressed his wish to include the account in dollars as a cash account linked to his securities account until after one year had elapsed, the Complaints Service considered that the entity had not acted with all the professionalism required or in the best interest of its client, by not asking him or suggesting that he use his account in dollars as a linked cash account for transactions in securities denominated in this currency, taking into account that the transfer of the dollar-denominated securities and the opening of the dollar account coincided in time, that the reason for the opening was to support investments in dollars and, furthermore, that, in accordance with the provisions of the securities contract, in the case of foreign financial instruments, there could be a linked account in each currency, which would have prevented the transactions subject to complaint from being converted to euros.

➢ Instrumental cash account linked to securities accounts, investment funds and structured products

In relation to the charging of 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.

This position adopted by the Complaints Service became a legal obligation[117] and rules were established to ensure that the custody and administration of financial 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.

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.

In this regard, the cash account, whether it is considered part of a bundled package or as a component product – as defined in the ESMA Guidelines of 11 July 2016 (ESMA/2016/574)[118] – remains an ancillary account and implies an additional cost for the client as an unwanted good or unsolicited service, therefore applying the aforementioned fee exemption criterion.

In complaints R/17/2022 and R/369/2022, the list of movements in the cash account reflected charges for items not related to holding the securities, which prevented it from being considered that in the settlement period the account met the requirements to be considered an instrumental associated account and, therefore, exempt from maintenance fees.

In cases R/655/2021, R/681/2021, R/791/2021, R/112/2022, R/149/2022 and R/236/2022, the entities acted incorrectly when applying maintenance fees in a cash account when its sole function was to serve as support for a securities account, and

117 Rule Four, section 2 b), of CNMV Circular 7/2011, of 12 December, on fee schedules 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.

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

therefore had a merely instrumental nature. Additionally, in R/681/2021 the entity acted incorrectly by executing at its discretion and without the client's consent a redemption order on shares of a CIS in order to cover the overdraft generated in the associated account by the charging of maintenance fees that the entity was not empowered to charge. In complaints R/112/2022 and R/149/2022, the entities returned the fees charged and attached supporting documents to that effect; and the rest of the complaints correspond to an entity that neither accepts this criterion maintained by the Complaints Service nor rectifies the situation of the complainant.

The above criterion would also be applicable to the case of opening cash accounts in the subscription of investment funds, since, although their opening may facilitate the management of CIS subscriptions and redemptions, the regulations[119] allow both subscriptions and redemptions (transfer, registered cheque or cash delivery) to be made without the need to have an instrumental account, so its opening would be optional and not mandatory and would be required by the entities to accommodate the management of these assets to their internal systems. In R/29/2022, the entity acted incorrectly, by applying maintenance fees to a cash account when its only function was to support the movements of investment funds, for which reason it had consequently, a merely instrumental character. However, after the issue of the report by this Complaints Service, the entity communicated that it had issued instructions for the fees to be reversed.

This criterion would also be applied to the requirement to open a current account as an account associated with the contracting of a structured product, in which all the corresponding credits and debits are made by virtue of said product. In R/695/2021, the entity acted correctly, since it returned to the complainant all the fees charged for the account in dollars linked to the product structured in dollars.

- **Fees for custody and administration of non-performing securities and those delisted or suspended from trading for an extended period of time**

Sometimes complaints arise as a result of entities charging custody and administration fees for securities after they have been delisted.

In these cases, even if the securities are delisted, they must remain deposited in an account opened with an authorised financial institution under a securities deposit and administration contract until the company has been wound down (unless the securities are transformed into physical certificates, which requires a specific procedure). However, 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.

This situation affected securities issued by companies in liquidation and delisted, such as the subordinated financial contributions of Fagor, Sociedad Cooperativa and the shares of La Seda de Barcelona, S.A., Fergo Aisa, S.A. and Codere, S.A.

119 Article 133 of Royal Decree 1082/2012, of 13 July, approving the implementing regulations for Law 35/2003 of 4 November, on Collective Investment Schemes.

In R/178/2022, the entity acted correctly by proving that it had returned the custody fees for subordinated financial contributions issued by Fagor, Sociedad Cooperativa. In R/187/2022, the action of the entity was also correct, since the exclusion of Codere, S.A. occurred after the period for which the last semi-annual custody and administration fees were charged and, nevertheless, the entity reversed the fees applied and gave instructions for fees no to be charged in future for the custody and administration service with respect to these excluded securities.

The entities had not carried out a good practice, having charged fees for the administration and custody of the shares of La Seda de Barcelona, S.A. and Fergo Aisa, S.A. in R/160/2022, and for some shares of La Seda de Barcelona, S.A. in R/306/2022. However, in both cases, the entity reversed the fees charged in the last five years and stated that it no longer charged fees nor would it do so in the future as long as the situation persisted.

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 criterion for charging 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 renounce 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.

In the case of non-performing securities that are suspended from trading for long periods of time, this Service considers it a good practice for entities not to charge custody fees, since a prolonged suspension produces an effect similar to exclusion on the owner of the securities. The foregoing occurred with the shares or other securities giving the right to subscription, acquisition or sale of shares of Abengoa, S.A. (in liquidation), which were suspended from trading from 14 July 2020 until their delisting from 26 September 2022.

In R/253/2022, the entity acted correctly, since it proved that it had returned the custody fees for the shares and warrants of Abengoa, S.A. since they ceased to be quoted and promised not to charge such fees while the situation persisted.

In cases R/50/2022 and R/135/2022, the entities acted incorrectly by charging the complainant administration and custody fees for such warrants of Abengoa, S.A. since 14 July 2020. However, in R/50/2022, after the issue of the report from this Complaints Service, the entity communicated that it had returned the fees charged for these securities and that they would not be charged in said situation of prolonged suspension.

Finally, it is worth mentioning the case of the *cuotas participativas* (shares in all but name) issued by the Caja de Ahorros del Mediterráneo (CAM), with respect to which the CNMV agreed to suspend trading on 9 December 2011, and the special foundation into which the CAM was transformed reported on 31 March 2014 that it would carry out the appropriate procedures for the formal amortisation of the *cuotas* and, consequently, their delisting.

In R/684/2021, it was proven that for the period between 1 January 2020 and 17 November 2021, the complainant was charged three semi-annual charges for administration and custody of these instruments. Months after each of these charges was

challenged, the entity reversed them, together with other expenses related to the maintenance of the current account.

On 18 November 2021, the entity again charged an amount for the recovery of unpaid fees. The entity stated that said charge had been due to a specific error, provided an image of an extract related to its return on 16 December 2021 and pointed out that the associated current account had been exempt from maintenance and administration fees since 15 September 2021, as long as its purpose was exclusively the management of the securities contract in which the CAM instruments were deposited.

Based on all of the above, the Complaints Service considered that, even if the entity, in order to apply the indicated good practice, had returned the fees charged and had promised not to apply any more fees, it should have implemented a mechanism that prevented the automatic application of these fees, without the need for the customer to file a complaint for their refund each time a new charge was made. Consequently, the entity did not act correctly because it did not implement the appropriate filters to prevent the periodic collection of fees already exempted and, in this way, avoid the recurrent need to present complaints for the reversal of the amounts charged.

3.7 Wills

➢ Notification of death, blocking of securities accounts: effects on accounts in co-ownership

In general, after the death of a person, the opening of the succession process takes place, consisting of a series of stages and through which the deceased's assets pass to the heirs.

In the event of the death of the holder of a securities account, the first thing that the heirs or legitimate interested parties must do is notify the financial institution, as soon as possible, of his death.

The reliable way to communicate the death of the owner is by presenting his or her death certificate in the entity.

From that moment on, the securities accounts will be blocked, and not only the accounts in which the deceased appears as the sole owner, but also those that he maintains in co-ownership with another or others.

This implies that, from the moment the entity becomes aware of the death, the co-owner of the deceased's account or the person authorised therein may not make acts of disposition of the securities.

However, if the heirs or interested parties do not report the death, the entities will not be responsible for the dispositions made by the authorised person(s) or co-owners of the securities accounts with a joint or several disposition system.

For this reason, and in order to prevent unwanted access to the financial instruments owned by a deceased person, it is important that the entity providing investment services be promptly informed of the event.

In R/658/2021, the complainant complained that he was not allowed to reimburse the shares of the funds owned by the deceased or carry out the change of ownership of these, divided equally between him and his sister.

The deceased – mother of the complainant – had died having made a will leaving her estate to her three children in equal parts and, in the absence of these, to the descendant children they left behind and, in case of not leaving them, the share of the remaining heirs would increase in the legally established formula.

Since one of the heirs had predeceased the deceased, the entity explained to the heirs that, in order to resolve the estate of the deceased, they had to prove that her predeceased son had died without descendants, and to that end they must present a copy of the *libro de familia* of the predeceased brother.

The complainant, however, considered that the entity could not deny him a procedure to which he was entitled, namely the reimbursement of the fund's shares or the change of ownership thereof. In addition, he assured that he did not have the *libro de familia* of the deceased brother and, therefore, the entity's request was impossible to comply with.

However, the Complaints Service considered that in order to proceed with the distribution of the deceased's assets, the first thing that had to be determined was who the heirs were. And for this, it was essential to prove that the brother had died without issue.

Therefore, it was concluded that until it was proven that the brother had died without issue, the distribution of the shares of the fund would remain on hold and the securities accounts of the deceased would be blocked.

In R/392/2022, the complainant was dissatisfied with the refusal of the entity to deregister its client in a securities account and a cash account associated with it that she maintained in co-ownership – in a joint and several regime – with her deceased brother.

In this file, the complainant, relying on the fact that the entity did not know that her brother had died, placed an order to sell half of the shares deposited in the securities account.

In this way she allocated 50% of the shares deposited in the securities account to herself without the intervention or consent of the heirs of her deceased brother.

Although the Complaints Service considered that the circumstances in which the sale of the shares had occurred released the entity from any responsibility for said sale, the truth is that this spurious act harmed the heirs of the other co-owner for two reasons: first, because they were not allowed to participate in the distribution of the shares that could belong to the brother in a greater percentage than to the complainant and, second, because the complainant, after the sale of the shares, continued to appear as co-owner of the account and as such to hold a right to obtain part of the shares that were still deposited in it.

In this regard, assuming that at least the shares remaining in the account corresponded to the heirs of the deceased brother and in order to protect their rights, the Complaints Service considered, contrary to the criterion maintained until

then, that it would be ideal if, in this case, the surviving co-owner of the securities account were to be deregistered, the account thus remaining the exclusive ownership of the deceased co-owner, as the only way to preserve the hereditary rights of their heirs to the shares, without prejudice to their possibly initiating such action as they saw fit against the complainant if they considered that the deceased was entitled to an amount greater than 50% of the shares deposited in the securities account.

However, this way of proceeding was not possible, since, according to the entity, it was necessary to change the ownership of the shares in the registry of the Iberclear securities depository – where the remaining shares were in the name of both siblings – for which it was a requirement that the heirs of the co-owner give their consent.

Therefore, after the entity learned of the death of the co-owner of the securities and cash account, these had to be blocked until his heirs resolved the estate.

Consequently, it was considered that the entity had acted correctly by refusing to derecognise the surviving co-owner from the securities and cash account associated with it until the inheritance of the other co-owner was processed and it was determined how to award the remaining shares in the securities account.

When a portfolio management contract is found instead of a securities account, it is common for there to be clauses in the contract itself that establish how the entity will act in the event of the death of one of its owners. However, for these clauses to be activated, it is necessary for the heirs or persons with a legitimate interest to notify the financial institution that the contract holder has died. Otherwise, the investment decisions in the scope of the provision of the portfolio management service carried out by the entity will be valid and effective.

In this regard, in R/481/2022, in accordance with the conditions established in the portfolio management contract, the entity had to refrain from carrying out management transactions under said contract once it became aware of the death of its owner, beyond liquidating pending transactions.

In this case, it was proven that on 4 June 2021 the entity learned that the holder of the portfolio management contract had died on 6 April 2021. Consequently, in the period between the death of the contract holder and the entity being informed of this fact, it could continue to carry out management transactions, as was the case. This caused the position of the deceased in the entity to have varied from the date of death – to which the certificate of positions of the deceased must be referenced – and the date on which the distribution and adjudication of the assets of this person was made. However, the Complaints Service, for the reason stated, considered that the entity had acted correctly.

➢ Information on the deceased person's estate: steps to follow

✓ *Certificate of the deceased person's positions*

Once the entity providing investment services is notified in a reliable manner that the holder of the securities account has died, the heirs or legitimate interested

parties may request, subject to prior accreditation of their status,[120] the certificate of positions of the deceased.

In this regard, the entity must issue a document certifying the securities and cash accounts available to the deceased on the date of his death.

In relation to securities accounts, the certificate will identify the number of account holders, the financial instruments deposited, the number of securities and their valuation at the date of death.

However, if the applicant for such information does not prove his status as heir or legitimate interested party, the financial institution may refuse to provide the information.

In R/495/2022, the complainant expressed his disagreement with the entity's refusal to issue position certificates for an investment fund account owned by his deceased parents.

In this case, the complainant did not report the death of the fund holders until 16 March 2021, despite the fact that they had died on 9 March 1983 and 28 January 2020 respectively.

Moreover, the entity was equally unaware of the death of the complainant's brother, joint heir to the parents' estate.

The entity understood that the request for the issue of the position certificate was untimely because the death took place on 9 March 1983 and the issue of the certificate was requested in March 2021.

However, this Complaints Service considered that the request for the position certificate cannot be considered untimely to the extent that it is a necessary document for the heirs to carry out the testamentary procedures and, ultimately, proceed to the change of ownership of the securities.

In this regard, failure to notify the entity of the death at the time it occurs results in events such as the one that occurred in this case.

However, since the complainant was the sole heir, the entity suggested that he go to its office to open a funds account with the respondent entity and process the change of ownership.

✓ *Dissolution of community property* mortis causa

Community property is the matrimonial regime in which the profits obtained during the marriage are common to the spouses.

Therefore, once the marriage has been dissolved as a result of death, the community property will be liquidated in accordance with Article 1396 of the Civil Code: "Once

120 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 notarised declaration of heirs intestate must be provided.

the community property has been dissolved it will be liquidated, starting with an inventory of the corresponding assets and liabilities".

However, between the dissolution and the liquidation of the community property, its assets and liabilities form part of the assets (post joint ownership) that are administered by the surviving spouse and heirs in accordance with Articles 392 et seq. of the Civil Code.

For the liquidation of the post-community property, the surviving spouse and the heirs must agree and distribute the assets and liabilities of the community property. After its liquidation, half of the patrimonial value of the community property will become the exclusive property of the surviving spouse and the other half will go to the remaining estate of the deceased.

The liquidation of the community property *mortis causa* must be granted by mutual agreement by the surviving spouse and the rest of the heirs and can be formalised in either a public or a private document.

As a step prior to changing the ownership of the financial instruments acquired in fee simple due to the liquidation of community property, it is necessary for the surviving spouse to have an individually owned securities account open, either in the same entity or in another, for the adjudicated securities to be deposited in it.

In other words, in no case is it possible, as claimed by the complainant of R/175/2022, for the securities to be kept in the same securities account shared by both spouses, simply eliminating the deceased owner.

In complaint R/54/2022, the complainant submitted to the entity a document signed by all the heirs and by the surviving spouse called "Request for extinction of undivided ownership of the shares of an investment fund account at the request of the heirs of the deceased unitholder" in relation to units of a fund.

However, the entity did not process it, since it did not clearly indicate the calculation basis on which the percentages assigned to the heirs and the co-owner of the account should be applied.

Indeed, as the document was drafted, it raised doubts as to whether the calculation basis was on 50% of the shares of the fund, that is, on the shares assigned to the remaining estate of the deceased after the liquidation of the community property, or on 100%.

In this case, the Complaints Service considered it correct that, given the ambiguity of the distribution document provided, the entity requested new instructions in order to proceed with an appropriate distribution of the fund's shares.

Moreover, in this case it was verified that, later, two of the heirs presented a document to the entity showing their disagreement with the distribution of a cash account that was part of the assets assigned to the inheritance.

Consequently, it was concluded that the heirs should resolve their disagreements and present a single common position to the entity, sending clear and precise instructions on how to proceed with the distribution of the inheritance as a whole and, in particular, on how to distribute the shares of the investment fund.

Finally, and regarding the liquidation of the community property *mortis causa*, two clarifications should be made:

i) Although 50% of the patrimony of the community property must become the exclusive property of the surviving spouse and the other 50% must become part of the estate of the deceased, this does not mean that 50% of each asset making up the marital patrimony is assigned to each, but that the survivor and the deceased must each be assigned assets whose value amounts to 50% of the whole. This means that the transferable securities deposited in financial institutions do not always have to be shared 50% between the surviving spouse and the deceased; the holdings of one or the other may be increased by 100% of some or all of these assets or in a percentage other than 50%. The assets that are part of either estate, that of the surviving spouse and that of the deceased, must be determined by mutual agreement between the surviving spouse and the heirs.

ii) Once the community property is liquidated, the widowed spouse can take possession of the corresponding part of said liquidation, without having to wait for the estate of the deceased spouse to be resolved. To do this, as previously indicated, he or she must have the corresponding accounts open to acquire his or her part of the community property individually.

➢ Accounts under co-ownership: inherited pro indiviso

When opening a securities account, a securities account opening contract is signed in which ownership is established, and the securities that are acquired in that account will be registered in the accounting records in the name of the same owners that appear in the securities account.

From the moment a security is deposited in a securities account in co-ownership, *de facto*, a community of property, condominium or undivided property arises in which the co-ownership is not related to a percentage, but is an abstract share of the totality of the property.

In the cases of jointly owned securities accounts, even when shared ownership is presumed, the fact that some financial instruments are in the name of various owners does not necessarily mean that their proprietary ownership corresponds to all of them in equal parts, but only that the ownership of the account in which these securities are deposited, with all its attached powers, corresponded to all of them until the moment of death, either jointly or jointly and severally, as agreed in the account opening contract.

In this regard, ownership or proprietary ownership of said securities will be determined by the internal relations between the different co-owners and, more specifically, by the original ownership of the funds with which said financial instruments have been acquired. although this issue must be proven according to law.

In short, even if there is a presumption, in the case of co-ownership, regarding ownership shared equally between the different co-owners of an account, said presumption admits proof to the contrary.

In those cases in which a co-owner of a securities account dies, it is necessary to determine what is the percentage of ownership that corresponds to the latter with

respect to the financial instrument deposited in the account, and this must be determined by means of an agreement reached between the surviving co-owners and the heirs of the deceased.

For this reason, it is advisable that, prior to determining the relict estate of the deceased, the heirs of the deceased agree with the co-owner or co-owners of the securities account, in a public or private document, on the percentages of ownership that correspond to each. That is, it is recommendable that before assigning the percentage of property that corresponds to the remaining estate of the deceased, to avoid future problems with the other co-owners, the common property be divided and the pre-existing joint ownership extinguished (R/788 /2021).

However, it is common for the heirs of the co-owner to presume that the same percentage of ownership corresponds to the percentage of participation in the joint account and they usually include the valuation of said percentage in the relict estate of the deceased.

Subsequently, once the probate has been processed, when the heirs to whom the assets that were in the shared account have corresponded go to the financial institution to regularise their inheritance, they find that said assets are deposited in a securities account in pro indiviso and the entities refuse to allocate them, arguing that it is necessary for all the co-holders of the securities account to first give their consent to the distribution. In short, it is necessary to break the undivided property prior to allocation.

Therefore, in order to individually award the percentage of the inherited value when it is deposited in a jointly owned securities account, it is necessary that, in advance, all the co-owners agree to the division of the common property and the extinction of the undivided property. To do this, a document, public or private, must be presented to the entity, awarding each co-owner the corresponding number of securities of the financial instrument deposited in the account (R/488/2022).

However, Article 400 of the Civil Code stipulates: "No co-owner shall be required to remain in the community. Each of them may request at any time that the community be divided". That is to say, in those cases in which there is no agreement to divide the community and extinguish the undivided property, any of the co-owners may request a judicial procedure for the division of the community property.

➢ Heir's right to information

Once the heirs or interested parties have proved their status as such to the entity, they can exercise their right to request information on the accounts and financial instruments of the deceased.

However, some entities have doubts as to whether the person seeking to access the inheritance as heir has the right to obtain information or documentation from a securities account if the co-holder objects.

It is obvious that heirs have the right to obtain information on the balances held by the deceased in the financial institutions on the date of death, this information being essential to establish the relict estate, pay the corresponding taxes and proceed with the distribution of the estate.

On the other hand, it is a unanimous jurisprudential and doctrinal principal that the acquisition by the heirs of the rights and obligations that correspond to the deceased does not occur at the time of death, but is postponed to the time of acceptance of the inheritance, from which moment the heirs are subrogated in the position of the deceased, in this case from the moment of death.

Consequently, the Complaints Service considers that, as long as the inheritance is not accepted, the heirs of the deceased may not request documentation or information on transactions or movements in the securities account produced prior to the death of the deceased.

Therefore, in the event that the deceased's securities account was jointly owned, the surviving co-owner may oppose the delivery to the heirs of documentation relating to movements that occurred prior to the death of the co-owner.

This is so because it is possible that the heirs will never accept the inheritance and, consequently, will never subrogate themselves in the position of the deceased, this criterion being applicable to both individual and shared ownership accounts.

In summary, for the succession to have the effects established in Article 661 of the Civil Code: "The heirs succeed the deceased pursuant to the sole fact of his death in all rights and obligations", it is necessary that the prospective heir accepts the inheritance.

Therefore at the moment when the prospective heir accepts the inheritance, he or she is placed in the same legal position previously held by the deceased in respect of all assets and debts, with effect from the date of death. Therefore, from that moment, neither the surviving co-holder of the securities account nor the financial institution can object to the delivery of the documentation, since the heir assumes the same position as the deceased by replacing him as co-holder of the securities account.

Consequently, upon acceptance, the heirs have the right to receive documentation on the transactions carried out prior to the death.

However, it is necessary to qualify this. All the heirs of the deceased would be subrogated in his position if the inheritance has been accepted and not distributed. In the event that the inheritance has been adjudicated, only those heirs to whom the asset or assets deposited therein have corresponded may occupy the position of the deceased in the securities account and only with respect to the assets(s) awarded to them.

In short, only the person who is awarded what is deposited in the securities account may request information on the movements or transactions prior to death that refer to that asset, and the rest of the heirs may not request said information except, as has been indicated, in the event that the inheritance has been accepted and not awarded, in which case, any of the heirs may request it.

In any case it should be noted that the right to obtain this documentation is limited, in principle, to the time period that entities are legally required to keep it. However, if the requests for information are manifestly disproportionate, unjustified or generic, or there are special circumstances that so advise, the entity could refuse to provide such information.

In this regard, the intended objective of informing the heirs cannot be confused with their attempt to present, after the event, a kind of retroactive amendment to the entire relationship between the financial institution and the deceased throughout a very long period, requiring the entity to once again offer explanations about the transactions carried out by it.

In this respect it should be noted that entities have the obligation to keep a record of all supporting documents on securities orders for a minimum of five years. This retention period is equally applicable to appropriateness and suitability assessments. Lastly, in the case of contracts, the duty of retention extends for the duration of the contractual relationship and up to five years after it ends.

In R/340/2022 it was concluded that the respondent entity had committed a malpractice by not having delivered the accession contract of an investment fund subscribed by the deceased following the request made by her heir. However, in R/672/2021 and R/394/2022 it was concluded that the entity was not obliged to keep in its records the documentation requested by the heirs, given the period of time elapsed from the moment to which the request referred and its formulation.

Sometimes, despite the fact that a long period of time has elapsed, the entities locate the requested documentation, which the Complaints Service values highly (R/404/2022 and R/86/2022).

➢ Partition and awarding of the inheritance and payment of inheritance tax

Partition is an agreement that puts an end to the community of heirs and allows the deceased's assets and rights to be distributed among the heirs in proportion to the share corresponding to each of them according to the type of inheritance.

The agreement for partition of the inheritance and allocation of the assets can be drawn up in a public deed or in private partition document signed by all the heirs.

The criterion followed by the Complaints Service is that financial institutions must allocate the deceased's assets in accordance with the provisions made by the heirs in the public deed or private allocation document.

However, in the event that the partition is made in a private document, the financial institution will require one more procedure, since the heirs must go to their offices to proceed to the recognition of their signatures. This procedure will not be required in the event that the adjudication and division of the inheritance is carried out in public deed, since in this case the notary authenticates the signatures of the heirs and legatees.

It should be noted that if the distribution of assets between the heirs is performed using amounts resulting from dividing the value of a series of financial assets on a given date by the number of heirs, no specific assets are being awarded only a share or a percentage. In short, a distribution by amounts requires that the heirs, at the time of carrying out their effective adjudication by the financial institution, confirm the amounts or – even better – the number of securities that must be assigned to each heir – it must be taken into account that financial instruments change their value continuously, and therefore.

In the event that the adjudication is carried out jointly, an ordinary community (joint ownership) will be constituted by quotas in accordance with the provisions of article 392 of the Civil Code: "Community exists when ownership of a thing or a right belongs pro indiviso to several persons. In the absence of a contract or special regulations, community will be governed by the requirements of this title".

However, the unanimous agreement of the heirs (now members of the community of heirs) is sufficient to end the situation of ordinary community or joint ownership and award the financial instruments in specific parts for each one. In this regard, it must be taken into account that there are divisible financial instruments, such as investment fund shares, and others, such as shares, which may be indivisible, depending on the number of shares to be distributed and the number of heirs acquiring them (R/24/2022 and R/488/2022).

In those cases in which, for some reason, the values cannot be awarded as determined in the document provided to the entity, or there may be reasonable doubts as to how to assign the reported distribution percentage to each of the assets subject to inheritance, the entities must, prior to the change in the ownership of the securities, ask all the heirs for new instructions on how to undertake said distribution, and must not adopt decisions in this regard that have not been previously ratified by them (R/182 /2022, R/204/2022 and R/533/2022).

Finally, it is necessary to remember that it is an essential requirement to justify to the financial institution the payment of the inheritance and donation tax prior to carrying out the distribution of the assets deposited in it. Otherwise, financial institutions may oppose continuing with the probate processing, since they have subsidiary responsibility for the payment of the tax.

In R/261/2022, the complainant complained about the entity's actions because it allegedly distributed the shares of an investment fund without being empowered to do so and prior to the granting of the inheritance award deed.

In view of the documentation in the file, it was proven that the entity cancelled a portfolio management contract owned by the deceased and, instead of transferring the shares of the CISs that made up the managed portfolio to a bridge fund in the name of the deceased, what it did was to award the same number of shares of the bridging or pivot fund to each of the heirs individually.

The entity made this decision based on the will and the inheritance and gift tax returns (form 650) that the heirs had presented to the entity. However, with the presentation of said documents to the entity, the heirs only intended to request that the tax settlement procedure be initiated in accordance with the provisions of the tax regulations for that purpose, that is, to sell assets from the deceased's account. until reaching a sufficient balance to settle the inheritance tax.

Consequently, it was considered that the entity had exceeded its remit, since, instead of proceeding as established by the tax legislation for that purpose, it awarded the balance of the portfolio managed in equal parts without, at that time, having a private or public award document granted by all the heirs.

In this regard, it should be clarified that the fact that the will established an equal distribution among the five heirs does not mean that the heirs are obliged to distribute each of the assets that make up the inheritance in equal percentages.

Consequently, the Complaints Service concluded that the entity had committed bad practice.

➢ Analysis of the documentation and change of ownership: opening of securities accounts or investment funds

Once the heirs have submitted the necessary documentation to gain access to the securities deposited in the deceased's securities accounts, investment firms must spend some time verifying that the documentation provided is valid and sufficient.

If the documentation submitted is correct, the entities 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.

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.

However, it must be taken into account that in order to carry out the change of ownership of securities acquired through inheritance, the beneficiaries must open a securities account, as well as an associated cash account, in the same financial institution in which the securities held by the deceased are deposited, or in a different one. The only requirement for this account is that the holder must be the same as the person to whom the securities are allocated. In other words, the ownership of the account must be shared, where the inheritance remains pro indiviso, and individual (one in the name of each heir) when the financial instruments are distributed.

If the holder of the target account is not the same as the person to whom the securities are allocated, the entity would be acting correctly by refusing to transfer the securities.

However, if the assets acquired *mortis causa* are units of investment funds, the heirs are not obliged to open a securities 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.

However, a securities account (and an associated cash account) would be necessary if the acquired assets are shares of an investment company (another type of CIS) and not investment fund units.

Although it is not obligatory (as indicated above) to open a securities account in order to access units of an investment fund, in their banking transactions most entities use membership 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 correct. In these cases, it is the entity's responsibility to provide the heir with clear and precise information about the procedures to be followed to achieve

the intended purpose, in this case, changing the ownership of shares in an acquisition *mortis causa* (R/71/2022 y R/256/2022).

In any case, if as indicated 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 transactions of said fund, the Complaints Service's criterion is that the entity should not charge any maintenance fees.

Finally, it is necessary to highlight that the change of ownership of the shares and investment funds does not have to be executed simultaneously by all the heirs. Once the respondent entity has issued the testamentary report, the heirs can open the securities accounts at different times and the entity must proceed to change their ownership successively, that is, as each of them comply with this procedure (R/754/2021).

✓ *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*

In the event that the assets awarded by inheritance are shares, bonds, etc., it is possible to deposit them in a securities account opened in a financial institution other than the one making the award. To this end, the person to whom the securities are allocated may file a change of ownership order and a transfer of the securities in the entity where the securities remain deposited in the name of the deceased, which will be executed 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 case of investment fund shares acquired *mortis causa*, they are usually kept in the same entity, since, unlike what happens with other types of securities, said shares can only be transferred to another entity that markets the same fund, which is not always the case. In short, in this case we would be facing a change of marketer, which requires that both entities – origin (where the deceased has the account) and destination (where the heir wants to receive them) – market the fund being acquired *mortis causa.*

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.

However, if the intent is to transfer units of an investment fund to a 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.

In R/649/2021, the complainant requested in the same act the change of ownership and the transfer of the shares of a portfolio of shares acquired *mortis causa.*

Although the order referring to the Spanish shares was executed in accordance with the instructions of the complainant, the same was not the case with some shares of

Bayer, AG. Regarding these shares, the entity informed the complainant of the need to open a securities account in the source entity for operational reasons, committing to transfer the securities free of charge and not charge fees for opening the accounts.

In the event that operational difficulties arise in simultaneously carrying out the change of ownership and the transfer of the shares to a third entity, investment service companies should not charge any additional cost to that which would be implied in carrying out the transaction. in the same act.

Consequently, although for operational reasons it was not possible to apply the criteria maintained by the Complaints Service, given that the entity undertook not to charge fees to the complainant for the transfer of the shares and the opening of the account, it was considered that it had acted correctly.

➢ Deadlines

The regulations governing the rules of conduct of the securities markets do not stipulate any deadlines for the execution by investment firms of change of ownership in acquisitions *mortis causa.*

On this issue, the criterion reiterated by the CNMV Complaints Service is that entities must promptly change the ownership of securities subject to an inheritance process. It has been stated on multiple occasions that 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 (usufructuaries, 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.

In 2022, complaints were resolved in which it was considered that the entity acted incorrectly, describing the time it spent on changing the ownership of investment fund units in an inheritance to be excessive.

Thus, in R/444/2022 it was proven that the securities account in which to deposit the inherited securities was opened in the entity on 7 April 2022 and the entity's testamentary report was accepted by the heirs on 19 April 2022. However, the change of ownership was not carried out until August 2022, without the entity justifying said delay. Consequently, it was considered that there had been an excessive delay in the change of ownership.

In R/326/2022, the complainant complained about the delay in the distribution of part of the shares acquired by inheritance.

However, in this case it was proven that, from the presentation of the documentation to process the inheritance to the change of ownership of most of the shares that corresponded to the complainant after the distribution of the inheritance, only six calendar days passed.

However, three types of shares (Iberdrola, Sacyr and Bankinter) were pending awarding, as their issuers were immersed in corporate transactions (capital increases by Iberdrola and Sacyr, and spin off by Bankinter of Línea Directa Aseguradora), which prevented their distribution. Once the corporate transactions were completed, the respondent entity proceeded to change ownership of the shares, the

Complaints Service considering that the time elapsed had been reasonable considering the circumstances.

Notwithstanding the foregoing, it was considered that the entity had committed a malpractice because, for approximately a month, the entity did not respond to the complainant's requests for information on the reasons for the non-distribution of said shares. In this regard, it was considered that the entity had not responded to the express requests for information from the complainant on the causes of the delay.

➢ **Fees: bank fees vs. fees for change of ownership, prior information, extension of the fee for change of ownership to the co-owners of the deceased, abusiveness and proportionality**

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 analysis of the fee for the probate processing, as it is purely banking, corresponds to the Department of Conduct of Entities of the Bank of Spain, while the fee for change of ownership of financial instruments is the responsibility of this Complaints Service.

However, if the entity charges its client a fee for the probate processing, the Complaints Service considers that this must include the change of ownership, since this change is simply one of the phases of the processing, the last one to be exact. Therefore, it would not be possible to charge both fees at the same time.

In any case, and with respect to the fee for change of ownership –which is the one that the Complaints Service is responsible for analysing –, the entities that provide investment services are free to set fees or expenses applicable to any service effectively provided by them, with the sole obligation that they be communicated to clients prior to the provision of the service in question, as established by Article 50 of Commission Delegated Regulation (EU) 2017/565, of 25 April 2016, supplementing Directive 2014/65/EU of the European Parliament and of the Council as regards organisational requirements and operating conditions for investment firms and defined terms for the purposes of that Directive.

During the 2022 financial year, the number of complaints has increased in which the complainants show their disagreement with the fees charged for the change of ownership of securities after the processing of a will.

The most common causes adduced in this type of complaint correspond to the lack of information, in advance, of the fee for the change of ownership; that the fee for change of ownership is also charged to the co-owners of the deceased's account, or that the fee charged is excessive.

– In relation to the lack of prior information, in all the complaints (except for complaints R/774/2021 and R/492/2022) it was proven that the entities informed at least one of the heirs claiming to act on behalf of the fee that would apply for change of ownership.

  The way for entities to prove that they have provided information on the fee for change of ownership is to keep a duplicate of this communication signed by at least one of the heirs providing this heir indicates that he is acting on his own behalf and that of the other heirs (R/114/2022, R/379/2022 and R/391/2022).

In this regard, it must be taken into account that at the time the probate proceedings begin, the entity does not know which heir or heirs will be awarded the specific assets deposited therein and whether or not they are clients of the entity.

In this regard, in the processing of probate, it is common practice, as indicated above, for one of the heirs to go to the entity to initiate the probate proceedings, said heir being the one who acts as the liaison between the entity and the rest.

Consequently, the Complaints Service considers that entities act in accordance with good securities market practices when they provide documentary evidence that, prior to executing the change of ownership of the securities, they inform said heir of the fee they will charge for the change of ownership of the securities deposited therein.

In case R/6/2022, it was proven that the entity informed one of the heirs – the complainant's sister – of the fee that it would charge for the change of ownership. Subsequently, the complainant once again asked the entity, by email, for information on the fee applicable for the change of ownership and, in the response, the entity informed him that it would not charge him anything for providing this type of service.

In this case it was concluded that, although the entity was entitled to charge the fee for the change of ownership as one of the heirs had been informed of it, it had nonetheless committed a malpractice in providing the complainant with information that was contradictory to that provided to his sister.

– In relation to the charging of the fee for change of ownership to the co-owners of the deceased's account, the Complaints Service considers that entities are entitled to charge for this to the extent that a service is being provided.

The reason for this is the following: when the securities accounts are jointly owned, the securities deposited in them are in the name of all the owners who share said account. Therefore, when one of these co-owners dies, the entity must take the necessary steps to proceed to modify the records and change the ownership of all the values deposited in the accounts, both those that will be acquired by the heirs of the deceased and those that remain in the name of the rest of the co-holders of the account (R/731/2021, R/776/2021 and R/275/2022).

In R/643/2021, the securities account was in the name of two holders. After the death of one of them and once his inheritance was processed, the entity had to modify the records of all the securities deposited in the securities account, both those acquired by the deceased's heiress and those that remained in the name of the surviving co-owner – now sole owner.

In this case, the circumstance arose that the complainant was the co-owner of the account and the sole heir of the deceased co-owner, for which reason 50% of the shares were awarded as inheritance and the other 50% as co-holder of the account. In short, both in one and in the other the ownership had to be changed and registered as the exclusive ownership of the complainant, although with different acquisition dates.

For this reason, in this case it was clarified that, for tax purposes, the shares that originated from joint ownership with the deceased would maintain the original acquisition date and 50% of the shares acquired by inheritance would have as date of acquisition the date of the deceased's death.

In short, since in these cases the entity is providing the service of a change of ownership of all the shares, it is entitled to charge a fee.

– Finally, it is important to bear in mind that the change of ownership of shares after the death of the owner is a necessary and essential transaction to be able to complete the probate process with the depository entity, therefore, without prejudice to the freedom that entities have to set their rates, if the fee established for the provision of this service were excessively high, this could constitute a violation of consumers' rights as recognised by the General Law for the Defence of Consumers and Users.[121]

  However, in the cases processed in the year 2022, the Complaints Service considered that the fees for the change of ownership charged after the provision of this service were fees that were within the margins normally applied by all the financial entities (R/27/2022 and R/568/2022).

  In any case, as the hypothetical abusive nature of the fee cannot be decreed by the Complaints Service, given that it is a matter that exceeds the administrative powers entrusted to it, complainants are informed that, if they consider it opportune, they should go to the courts of justice so that they are the ones that rule on the alleged abusive nature of the fee applied.

Lastly, 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 Complaints Service considers that 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). (R/6/2022)

3.8 Operation of the Customer Service Department (CSD)

Before going to the Complaints Service, investors must prove that they have complied with the complaint procedure before the Customer Service Department or the entity's Customer Ombudsman. This preliminary procedure leads to a decision, always reasoned, containing clear conclusions as to the request raised in each grievance or complaint, based on the contractual clauses, the applicable standards of transparency and client protection, and good practice and financial norms. In the

121 Royal Legislative Decree 1/2007, of 16 November, approving the revised text of the General Law for the Defence of Consumers and Users.

event that the decision departs from the criteria stated in previous similar cases, the reasons that justify it must be provided.[122]

In R/634/2021, the complainant gave successive orders to transfer his shares in order to cancel the securities account and the cash account linked to it, but the orders were rejected due to insufficient funds in the associated account to attend fees generated by the transfer transaction. As can be seen from the emails produced, the destination entity was informed of the reason for the rejection of the transfer and in turn informed the complainant of why the transfer order had not been executed.

The complainant went to the CSD of the entity of origin on several occasions requesting the cancellation of the sight account, the return of the fees charged to his account and the transfer of his shares to a third entity. Having regard to the resolutions of the CSD, the Complaints Service considered that they had not examined in depth what was the real reason that prevented the complainant from transferring his portfolio of shares to another entity. Instead of informing him that the reason preventing the transfer was the lack of balance to cover the fees that would be charged for that transaction, the resolutions were limited to referring the complainant to his branch office for them to deal with the matter, indicating that they had given instructions for the shares to be transferred and repeatedly urging him to withdraw the balance that he had in the cash account, which was in clear contradiction with the cause that prevented the transfer.

Additionally, the complainant complained that, when he received the allegations from the entity, he went to his branch to deposit the necessary amount in his account to pay the transfer fees and the entity charged him a maintenance fee equal to the amount paid in. In this regard, the complainant provided a resolution from the CSD of the entity that informed him that if he kept his account solely for the use of products (for example, paying loan or card bills, collecting dividends, etc.) and not using it for other purposes (such as making transfers or direct debiting receipts), it would not charge him the maintenance fee.

In relation to the above, the Complaints Service considered that the entity had committed a malpractice because it had not respected the commitment it had assumed with the complainant in the resolution of the complaint, in which he was informed that it would not charge a maintenance fee if the cash account was used as an instrument to the securities account. This fact meant that the money that the client deposited in his account destined to pay the transfer costs was applied to another purpose and, once again, he could not carry out the transfer of his shares.

122 Article 15.2 of Order ECO/734/2004, of 11 March, on customer service departments and the Customer Ombudsman of financial institutions.

4 Enquires

4 Enquires

The CNMV's Investors Department responds to enquiries on matters of general interest relating to the rights of users of financial services and the legal routes for exercising such rights. These requests for advice and information are provided for in Article 2.3 of Order ECC/2502/2012, of 16 November, regulating the procedure for filing complaints with the complaints services of the Bank of Spain, the CNMV and the Directorate-General of Insurance and Pension Funds.

In addition to responding to the enquiries defined in the aforementioned Order, the CNMV also helps investors search for information on its website (www.cnmv.es). This information is found in the official public records and in other documents released by the CNMV.

It also attends **all kinds of writings**, including **opinions, complaints or any proposal** from investors on matters that concern the CNMV.

4.1 Enquiry channels and volume

In 2022, 9,630 enquiries were dealt with, most of which were made by telephone (82.5%) and in which information available on the website was provided (www.cnmv.es). By volume, the second most used channel was the electronic office form (15%) followed by submission through the general registry (2.4%).

As shown in table 20, **the total number of enquiries dealt with in 2022 decreased by 7.6% compared with 2021.** Investors preferred to use the electronic form to submit their queries (15%), so their submission by other means through the general registry decreased. The average response time was 21 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 wrong 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

	2020		2021		2022		% change 22/21
	No.	% of total	No.	% of total	No.	% of total	
Telephone	9,382	84.1	8,667	83.2	7,947	82.5	-8.3
Letter	399	3.6	314	3.0	235	2.4	-25.2
Form	1,369	12.3	1,440	13.8	1,448	15.0	0.6
Total	**11,150**	**100.0**	**10,421**	**100.0**	**9,630**	**100.0**	**-7.6**

Source: CNMV.

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 complaints with the CNMV (electronic office of the CNMV).

4.2 Subjects of enquiries

The written enquiries received through the electronic form or the general registry dealt with various issues, some being reiterated issues from previous years and others specific to the 2022 financial year.

Written enquiries related to the losses experienced by investors due to disbursements made through **unregistered entities**. It should be noted that these enquiries represented 25% of all written enquiries, a very similar figure to that of the previous year (see figure 26).

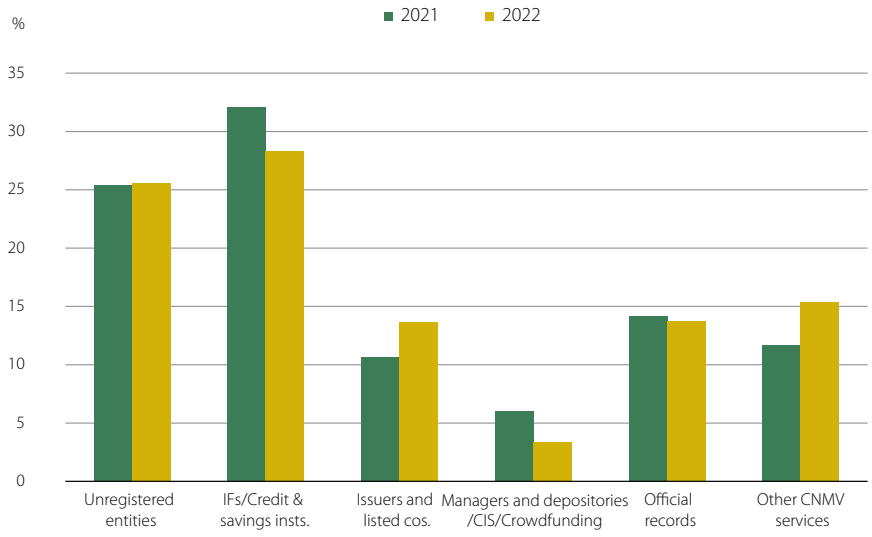
Written enquiries regarding the rights of investors in their relations with companies that provide investment services usually deal with fees for holding shares of companies suspended or delisted, obligations of depositories, investment guarantee systems or possibilities of renouncing delisted securities. Many of these issues are also resolved through the corresponding complaints procedures, in which the CNMV Complaints Service issues a reasoned report.

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 takeover bids. The latter include aspects such as the acceptance process, calendar, authorised price and the possibility of exercising a squeeze-out. During the year 2022 we continued t receive queries relating to the possession of warrants derived from restructuring processes issued by Abengoa, S.A, and the possibility of sale, liquidation or renunciation of these securities.

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, and queries about transfers between CISs.

An important part of the consultations is resolved with **the information contained on the CNMV website**, either incorporated into official registers (register of crowdfunding platforms, foreign CISs, information brochures or relevant facts, among others), or through other content disseminated by the CNMV: warnings or alerts to investors about unauthorised entities, complaint procedure, statistics and other publications, press releases and published communications.

Subjects of enquiries FIGURE 26



Source: CNMV.

4.3 Main subjects of enquiries

This section covers the issues considered most notable in the 2022 financial year, due to their specificity or recurrence.

4.3.1 Training courses linked to non-existent job offers

During 2022 enquiries began to be received from investors that revealed the improper use of the name of the CNMV, other supervisory bodies and entities authorised to offer training courses, which does not necessarily constitute (even if they are about trading) the development of a reserved activity that requires authorisation and registration with the CNMV, even if the service is offered in Spain.

These courses are linked to job offers and require the prior payment of an amount for attending that attendees lost.

Due to the volume of enquiries that continue to be received, the CNMV published an alert in May 2023 to warn users about some of these companies that clearly have fraudulent intent by illegally using the name of the CNMV, as well as those of other duly registered financial entities making false job offers (this alert can be accessed through the link): https://www.cnmv.es/webservices/verdocumento/ver?t=%7bd8a6fd88-6b43-4325-a705-a35d22293e57%7d

4.3.2 Non-personalised advice by entities without authorisation

The preparation and dissemination of non-personalised investment recommendations to clients is not an activity reserved for authorised entities registered in the CNMV's records. There is considerable confusion among investors as to whether or not this activity is reserved.

Investment advice involves the provision of an investment service reserved for investment firms, credit institutions and management companies of collective investment schemes duly authorised to do so and registered in the corresponding administrative records of the CNMV or of the Bank of Spain, provided that the advisory activity refers to specific instruments and is carried out taking into account the personal circumstances of the investor.

Therefore, when investment recommendations are not made taking into account the personal circumstances of the investors receiving them, they do not constitute a reserved investment advisory activity, but rather a general investment recommendation service not subject to activity reservation and regulated in Regulation (EU) No. 596/2014 of the European Parliament and of the Council of 16 April 2014 on market abuse (the market abuse regulation or MAR) and in Commission Delegated Regulation (EU) 2016/958 of 9 March 2016 supplementing Regulation (EU) No. 596/2014 of the European Parliament and of the Council with regard to regulatory technical standards for the technical arrangements for objective presentation of investment recommendations or other information recommending or suggesting an investment strategy and for disclosure of particular interests or indications of conflicts of interest.

4.3.3 Payment in advance to recover a supposed investment

In 2022 the Investors Department was contacted by victims of unexpected calls or unsolicited emails from entities falsely offering to recover a blocked investment after payment of a fictitious fee in advance for their services, or to cover administrative or legal expenses, or for the payment of taxes. After receiving this money, they disappeared, making it almost impossible to recover the advance payment.

Victims of "boiler room" scams may fall victim to this fraud again, either while they are supposedly investing through these companies which require them to pay a percentage of the investment in advance to recover it, or later, offering them the necessary support for the recovery of the blocked investment of which they are supposedly the holders.

After making deposits through the designated channels and having obtained considerable benefits, when they request the return of the investment and the benefits, they face demands for payment of an amount of money for taxes or any other excuse to proceed with said refund.

In these cases, the Investors Department has responded to the queries recommending not to accept this type of offers that come from companies that present themselves as platforms for investments in cryptocurrencies or use identifying data of companies authorised by or registered with the CNMV (especially foreign ones) in order to confuse the investor by giving an appearance of legality. It has been observed that on occasions they identify themselves posing as supervisory bodies (CNMV, FCA, FSMA, etc.).

Financial supervisors such as the CNMV are not in charge of recovering lost money and, therefore, will never contact victims of financial fraud for such purposes.

In addition, investors are alerted to take into account any of these signs, in order to avoid being victims of this fraud:

- If the company contacts the investor without having been requested to do so and asks for money in advance for payment of taxes, fees or insurance policies as a prerequisite for providing the service offered, it is an indication that it is a "recovery room" type of fraud. An advance payment should never be made for this type of service.

- You should be wary if you are contacted by anyone purporting to be the CNMV or another supervisory body in order to recover losses suffered. The CNMV will never contact potential affected parties directly or authorise the use of their identity or corporate image in order to recover losses. Other times they pretend to be companies authorised to provide investment services using identifying data corresponding to another company authorised to provide investment services.

- The contact person becomes inaccessible.

- They contact the investor to let him know that he has a profit of which he was not aware, and must make an advance payment to receive it.

- At the moment you request the reimbursement of your investment or profits, they ask you to pay an amount in advance in order to "unblock your account".

- It is very important to protect personal data. Access codes should not be shared with third parties and emails, text messages or phone calls that request this data should always be distrusted. You should not access any link in an email without having verified its origin.

4.3.4 Impersonation of registered entities

During 2022, the identity theft of EU entities authorised by other EU supervisory bodies to provide investment services in Spain through what is known as the community passport.

Fraudulent companies used names similar to those of authorised entities to deceive potential investors and created domains or email addresses that were very similar to those of other duly registered entities.

Not having jurisdiction over these entities registered in EU countries, the CNMV notified this circumstance to the supervisors of the entities affected by the theft of their identity so that they, in turn, communicate it to said entities so that they could adopt the measures they deem appropriate.

Thus, the Cypriot supervisory body CySEC, in response to the CNMV's request regarding CrowdTech, confirmed that said entity was not related to the email address withdrawals@trade360.eu.com to which the respondents referred.

In this regard, it should be noted that the CNMV has been publishing warnings in which the word "Clone" appeared. This is the case of WWW.FNZEurope.eu (Clone) for which it was noted that it was NOT related to FNZ (Europe) DAC, duly registered in Spain as an investment firm of the European Economic Area in free provision (without permanent establishment) with No. 5,027.

Information can be found in the "Warnings" search engine about unauthorised entities and other entities through the following link: https://www.cnmv.es/Portal/BusquedaAdvertencias.aspx?lang=en

In cases of doubt about the legality of an entity, it is recommended to ensure that the entity with which it is envisaged operating or contracting any kind of stock market transaction is registered with the CNMV as an entity authorised to provide investment services, since otherwise you would be operating with an entity not authorised to carry out these reserved activities. To do this, it is recommended to contact the registered investment firm directly through the data available on the CNMV website or on that of the home supervisor.

4.3.5 Takeover bids

The consultations related to the takeover bid processes that were presented throughout the year 2022 are noteworthy. Specifically, regarding Zardoya Otis, S.A., Mediaset España Comunicación, S.A. and Siemens Gamesa Renewable Energy, S.A. In all cases, they were voluntary acquisition offers to take control, except in the case of the offers presented for Zardoya Otis and Siemens Gamesa Renewable Energy, which had the purpose of delisting the aforementioned companies.

The consultations were mainly focused on finding out when the CNMV planned to authorise the offer, the terms established for its acceptance by investors, the consequences of not accepting the takeover bid and the implications of the exercise of squeeze out or forced sale.

In the specific case of Zardoya Otis, the interested parties were informed that the requirements for the exercise of squeeze out, provided for in article 136 of the consolidated text of the Securities Market Act (current article 116 of Law 6/2023, of 17 March on Securities Markets and Investment Services) and in article 47 of Royal Decree 1066/2007 for the exercise of forced sales, and that, in accordance with what is stated in the offer brochure, Opal Spanish Holdings, S.A., the offeror, had decided to proceed to demand the forced sale of all the shares of Zardoya Otis that it did not own for the same consideration at which the offer was settled (that is, €7.07 per share) and set 3 May 2022 as the date of the forced sale transaction, which entailed the delisting of all Zardoya Otis shares. In this case, the interested parties were informed that the forced sale exercise by the offeror did not require the shareholders to carry out any type of action through their securities depositories.

In the case of Siemens Gamesa Renewable Energy, the offeror expressed its intention to promote the delisting of the company's shares from the Barcelona, Bilbao, Madrid and Valencia stock exchanges after the offer, availing itself of the exception to the rules on delisting provided in article 82.2 of the Securities Market Act (current article 65 of Law 6/2023 of 17 March on Securities Markets and Investment Services) and in article 11 d) of Royal Decree 1066/2007 if Siemens Energy does not meet the requirements established in article 136 of the Securities Market Act for squeeze

outs, but does reach a minimum stake of 75% of the capital with voting rights of Siemens Gamesa on the settlement date.

In this case, the offeror did not meet the necessary requirements for the exercise of the right of squeeze out, but its holding exceeded as a result of the offer 75% of the share capital of Siemens Gamesa. The offeror facilitated the sale by all shareholders who did not initially attend the offer of all their shares in the company by means of a sustained purchase order, announced by Siemens Gamesa through the communication of other relevant information which it sent to the CNMV on 20 December 2022, thereby complying with the provisions of article 11 d) of Royal Decree 1066/2007.

Consultants were informed that they could review the terms and conditions of the takeover bid authorised by the CNMV in the informative brochure available through the CNMV website (www.cnmv.es), in the section "Registration Files", "Takeover bids", and that more detailed information could be found on the chronological events of the transaction within the section "Inside information", as well as within the section "Other relevant information".

4.3.6 Capital increase of Urbas Grupo Financiero, S.A.

This corporate transaction was carried out in September 2021, but the shares issued during the 2022 financial year had not been admitted to trading. This led to the receipt of various enquiries in which, due to the CNMV's duty of professional secrecy, it was not possible to provide confidential information or data, among which is the processing of the application for admission to trading of shares on the stock market by any issuing company. However, the interested parties were informed that, in their capacity as shareholders and in the exercise of their rights, they could request the pertinent explanations from the issuer, who would also be responsible for initiating with the CNMV the procedures for the admission of shares and responding to requests for information that the CNMV might make during the procedure.

4.3.7 Companies listed on BME Growth, such as Greenalia, S.A. and Izertis, S.A.

These consultations mainly dealt with issues relating to possible price manipulation in said market and the CNMV's powers in terms of takeover bids on this market and on the companies listed on it.

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.

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 transactions of BME Growth.

4.3.8 Bankruptcy or insolvency of the Spanish securities depository entity

Some questions have been received about what would happen in the hypothetical case that an entity where financial instruments were deposited went bankrupt.

The bankruptcy or insolvency of a Spanish securities depository entity should not, in principle, affect the ownership by its clients of the securities that they have deposited with it.

Thus, in general, the clients of the bankrupt entity can recover those securities or financial instruments deposited by transferring them to another entity that provides the custody or deposit service with respect to those same financial instruments.

In this regard, articles 15.1 and 92.2 of Law 6/2023, of 17 March, on Securities Markets and Investment Services provide, respectively, that:

> *In the event of the insolvency of an entity in charge of keeping the register of negotiable securities represented by book entries, or of an entity participating in the registration system, or of an entity responsible for the administration of the registration of securities in systems based on distributed ledger technology, the holders of negotiable securities listed or registered in said registries will enjoy the* ***right of separation*** *with respect to the negotiable securities registered in their favour and may exercise it by requesting their transfer to another entity, all without prejudice to the provisions of articles 92 and 176.2.e) of this law.*

And:

> *In the event of the insolvency of an entity participating in the systems referred to in this article, 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 their securities accounting records to another entity authorised to carry out this activity. If no entity is in a position to take charge of the indicated records, this activity will be assumed by the corresponding central securities depository on a provisional basis, until the holders request the transfer of the record of their securities. For these purposes, both the bankruptcy judge and the bankruptcy administration will facilitate the access of the entity to which the values are going to be transferred to the documentation and accounting and computer records necessary to make the transfer effective*
>
> *The existence of the bankruptcy procedure shall not prevent the securities purchased in accordance with the rules of the registration, clearing and settlement system or the cash from the exercise of economic rights or from the sale of the securities from being delivered to the clientele.*

However, in the event that the bankrupt depositary entity could not return to its clients the money, securities or financial instruments that they had deposited in it, the coverage offered by the investment guarantee fund would come into play (in the

case of member investment firms) or, as the case may be, the Deposit Guarantee Fund for Credit Institutions (in the case of member entities).

However, the coverage of these funds does not include losses in the value of the investment or any other credit risk, such as would happen if the issuer, guarantor or counterparty of the financial instrument went bankrupt or insolvent, in which case the investor, unless he could recover part or all of the investment in the framework of the insolvency proceedings of the bankrupt entity, could lose all of his investment in said product.

In particular, with regard to the General Investment Guarantee Fund (FOGAIN), this covers up to the limit established by law. Non-restitution by its member entities of the money or securities or financial instruments deposited by the client in the member entity (global creditor position vis-à-vis the company) may well occur because it has been declared in a state of bankruptcy or because the declaration of suspension of payments of the entity has been requested by the court and these situations entail the suspension of the restitution of money or securities or financial instruments, or because the CNMV declares that the investment firm cannot, in view of the facts of which it has become aware and for reasons directly related to its financial situation, comply with the obligations contracted with the investors. For this, it is necessary that 21 business days have elapsed since the investor had unsuccessfully requested the restitution of his assets (cash or securities).

The determination of the investor's position will be made by recording all the accounts or positions opened in his name in the investment firm, taking into account the sign of their balances, whatever the denomination currencies, until the investor's final overall creditor position vis-à-vis the firm is established.

The calculation of this position will be carried out taking into consideration the amount of the monetary resources and the market value of the securities or instruments that belong to the investor on the date of the declaration referred to above.

Specifically, the quantitative limit of the coverage offered by FOGAIN is €100,000 per investor.

Interested parties have been given, in addition to the corresponding explanation, a link to the regulations governing investment guarantee funds, with the quick guide *Investment guarantee fund (FOGAIN)* published by the CNMV and on the FOGAIN website:

– http://www.cnmv.es/Portal/legislacion/legislacion/tematico.aspx?id=7

– https://www.cnmv.es/DocPortal/Publicaciones/Fichas/GR14_FOGAIN.pdf

– https://www.fogain.es

For its part, with regard to the Deposit Guarantee Fund for Credit Institutions (FGD), investors have been informed that the aforementioned guarantee fund is a body with its own legal personality and independent from the CNMV, not under the supervision of the CNMV but rather of the Bank of Spain, and whose purpose is to guarantee, up to the limits established in the applicable regulations, deposits in its affiliated credit institutions, both in money and in securities.

They have also been informed of the existence of a link that redirects to the FGD website (www.fgd.es), where they can find out more precisely about the scope and limits of the coverage offered by said fund.

4.3.9 Bankruptcy or insolvency of the investment fund management company

Queries have been received about the bankruptcy and insolvency of the management company of an investment fund. In this regard, it has been reported that Spanish investment funds are assets belonging to a plurality of investors (participants), in which the assets of each investment fund are independent of the assets of their management company and not part of its balance sheet.

The fact that bankruptcy proceedings are initiated with respect to the management company of an investment fund is independent of the financial situation of the investment funds (or other CISs) that they manage.

The bankruptcy procedure of the management company of an investment fund implies that it ceases to manage the fund and that procedures must be initiated for the replacement of the management company in the manner and conditions established by regulation or, otherwise for the dissolution and liquidation of the investment fund.

4.3.10 Doubts as to whether or not certain investment funds are guaranteed

In all cases, it was recommended to access, through the CNMV website, the prospectus and the KIID corresponding to the investment funds that investors enquired about, which explain the investment policy of the fund, its category and the indicative term of the investment, as well as the rest of the data of interest for the purpose of adopting a well-founded investment decision.

This is without prejudice to the fact that the entities must deliver the latest semi-annual report published, in addition to the aforementioned KIID and, upon request, must also deliver the prospectus, which contains the management regulations and the latest published annual and quarterly reports.

In view of the analysis of said documents, the Investors Department verified that none of the cases questioned were guaranteed investment funds, despite the confusion shown in the first instance by the investors.

4.3.11 Sustainable finance

Commission Delegated Regulation (EU) 2022/1288 of 6 April 2022 supplementing Regulation (EU) 2019/2088 of the European Parliament and of the Council with regard to regulatory technical standards specifying the details of the content and presentation of the information in relation to the principle of 'do no significant harm', specifying the content, methodologies and presentation of information in relation to sustainability indicators and adverse sustainability impacts, and the content and presentation of the information in relation to the promotion of environmental or social characteristics and sustainable investment objectives in pre-contractual documents, on websites and in periodic reports.

Specifically, this professional asked to what extent the publication of the qualification obtained in accordance with the aforementioned Delegated Regulation 2022/1288 would affect a company. His query was forwarded to: finanzassostenibles@cnmv.es.

Annex 1 Statistical data on cases submitted by natural persons and not-for-profit entities (acting as an ADR body) as against legal entities (acting as a Complaints Services)

Annex 1 Statistical data on cases submitted by natural persons and not-for-profit entities (acting as an ADR body) as against legal entities (acting as a Complaints Services)

The action of the Complaints Service as an ADR body stems from the obligation to accommodate the complaints procedure set out in Order ECC/2502/2012, of 16 November, regulating 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, transposing Directive 2013/11/EU of the European Parliament and of the Council, of 21 May 2013, on alternative dispute resolution for consumer disputes into Spanish law. 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, where the definition of consumer is confined to natural persons.[2]

Given this disparity in the subjective scope of the two laws 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 2022, two complaints were filed by not-for-profit entities: one of them was inadmissible for not responding to the petition for rectification made and the other was in process at the end of the year. These two cases are appropriately classified in the various statistical tables shown below.

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1 Article 2 of Law 7/2017, of 2 November, transposing Directive 2013/11/EU of the European Parliament and of the Council, of 21 May 2013, on alternative dispute resolution for consumer disputes to Spanish law:
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 not for profit in a field other than a commercial activity 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 alternative dispute resolution for consumer disputes:
a) "Consumer": any natural person who is acting for purposes which are outside his trade, business, craft or profession;

Complaints processed by type of resolution (natural persons and not-for-profit entities versus legal persons)

TABLE A1

Number of claims and complaints

	Natural persons + not-for-profit entities		Legal persons		Total	
	Number	%	Number	%	Number	%
Being processed at the end of 2021	**176**	-	**11**	-	**187**	-
Registered with the CNMV's Complaints Service	**1,331 + 2**	-	**38**	-	**1,371**	-
Not accepted for processing	**417 + 1**	-	**17**	-	**435**	-
Processed without final reasoned report	**234**	**30.9**	**11**	**42.3**	**245**	**31.3**
Acceptance or mutual agreement	219	28.9	10	38.5	229	29.2
Withdrawal	10	1.3	-	-	10	1.3
Ex post facto non-admission	5	0.7	1	3.8	6	0.8
Processed with final reasoned report	**523**	**69.1**	**15**	**57.7**	**538**	**68.7**
Report favourable to the complainant	261	34.5	10	38.5	271	34.6
Report unfavourable to the complainant	262	34.6	5	19.2	267	34.1
Total processed	**757**	**100.0**	**26**	**100.0**	**783**	**100.0**
Being processed at the end of 2022	**333 + 1**	-	**6**	-	**340**	-

Source: CNMV.

Furthermore, the usual activity as Complaints Service is carried on in relation to legal person investors to whom the procedure defined in Order ECC/2502/2012 is applicable, with no adaptation or accommodation.

Types of non-admissions (natural persons and not-for-profit entities versus legal persons)

TABLE A2

Number of complaints

	Natural persons + not-for-profit entities		Legal persons		Total	
	Number	%	Number	%	Number	%
Direct non-admissions	**138**	**33.0**	**8**	**47.1**	**146**	**33.6**
Bank of Spain	56	13.4	6	35.3	62	14.3
Directorate-General for Insurance and Pension Funds	37	8.9	-	-	37	8.5
Bank of Spain and Directorate-General for Insurance and Pension Funds	-	-	1	5.9	1	0.2
Against entities under the freedom to provide services regime from FIN-NET member countries	15	3.6	*	-	15	3.4
Against entities under the freedom to provide services regime from non FIN-NET member countries	15	3.6	-	-	15	3.4
Other	15	3.6	1	5.9	16	3.7
Non-admission following request to complainant for rectification/arguments	**279 + 1**	**67.0**	**9**	**52.9**	**289**	**66.4**
No response	219 + 1	52.6	7	41.2	227	52.2
Insufficient response	60	14.4	2	11.8	62	14.3
Total non-admissions	**417 + 1**	**100.0**	**17**	**100.0**	**435**	**100.0**

Source: CNMV.

Reasons for complaints concluded in 2022 (natural persons and not-for-profit entities versus legal persons)

TABLE A3

		Natural persons + not-for-profit entities		Legal persons		
Investment service/reason	**Reason**	**Securities**	**CIS**	**Securities**	**CIS**	**Total**
Marketing/execution	Appropriateness/suitability	6	48	3	2	**59**
Advisory service	Prior information	16	67	3	2	**88**
Portfolio management	Purchase/sale orders	104	81	1	1	**187**
	Fees	137	68	9	5	**219**
	Transfers	28	49	2		**79**
	Subsequent information	96	89	4	2	**191**
	Ownership	12	6	1	-	**19**
Acquisition *mortis causa*	Appropriateness/suitability	1	-	-	-	**1**
	Prior information	4	-	-	-	**4**
	Purchase/sale orders	3	3	-	-	**6**
	Fees	23	4	-	-	**27**
	Transfers	4	3	-	-	**7**
	Subsequent information	11	13	-	-	**24**
	Ownership	38	38	-	-	**76**
Functioning of CSD		**4**	**6**		**1**	**11**
Total		**487**	**475**	**23**	**13**	**998**[1]

Source: CNMV.

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

Time to completion (natural persons and not-for-profit entities versus legal persons)

FIGURE A1

Source: CNMV.