

**Procedure for the issue of demands and requests for data or reports to persons and firms operating in the securities markets (P02)**

## Contents

1. Scope	3
2. Applicable legislation	3
3. Competent departments and units	3
4. Issue of demands	4
5. Deadlines and effects of demands	5
6. Procedure manuals	5
7. Effect	6

## 1. SCOPE

This internal procedure has been prepared in accordance with article 39 of the Internal Regulation of the National Securities Market Commission (CNMV in the Spanish acronym), and its terms apply to the issue of demands for information made in the exercise of the CNMV's official functions in relation to the securities markets and the activity of all and any firms or persons concerned with trading in said markets.

## 2. APPLICABLE LEGISLATION

The regulatory framework applicable to this procedure is defined, inter alia, by the following legislation:

- Consolidated text of the Securities Market Act approved by Royal Legislative Decree 4/2015, of 23 October. Articles 21.3, 106, 122, 144.3 and 4, 183.3, 188, 193.2, 210.3, 225.3 and 234.
- Collective Investment Schemes Act (Law 35/2003, of 4 November). Articles 14.4 and 40.9.
- Law 22/2014, of 12 November, regulating venture capital schemes, other closed-ended collective investment schemes and asset management firms operating closed-ended collective investment schemes, and amending the Collective Investment Schemes Act (Law 35/2003, of 4 November). Articles 41.3, and 70.1 and 3.
- Bank Restructuring and Resolution Act (Law 9/2012, of 14 November). Tenth additional provision.
- Business Financing Act (Law 5/2015, of 27 April). Articles 31.2 and 90.7.
- Public Administration and Ordinary Administrative Procedures Act (Law 30/1992, of 26 November).<sup>1</sup>
- Decision of the National Securities Market Commission of 16 November 2016 creating and regulating the CNMV Electronic Registry.
- Resolution of the National Securities Market Commission Board of 11 March 2015 on the delegation of competences.

## 3. COMPETENT DEPARTMENTS AND UNITS

1. The demands regulated in this procedure will be issued by the General Directors and the Directors of Departments reporting directly to the CNMV President within their respective remits.
2. The General Directors and the Directors of Departments reporting directly to the CNMV President may delegate the issue of demands to the heads of their Divisional or Departmental units under the terms of article 16 of the Public Administration and Ordinary Administrative Procedures Act (Law 30/1992, of 26 November). In accordance with the aforesaid article 16, the delegating authority shall be expressly mentioned in decisions and measures issued by delegation.

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<sup>1</sup> The Ordinary Administrative Procedures Act, 2015 (Law 39/2015, of 1 October) will apply as of 2 October 2016.

## 4. ISSUE OF DEMANDS

1. CNMV demands will be issued in writing, except in matters of relevant information, as provided in paragraph 4 of this section. Demands may be issued electronically in accordance with article 234.6 of the Securities Market Act.
2. Demands concerning the correction of applications made to the CNMV will set out the omissions or defects concerned, and interested parties will, in general, be allowed a period of 10 business days as of service in which to respond.

The CNMV may grant an extension of up to five days in the deadline either *ex officio* or at the request of interested parties.

In any event, demands must state expressly that the applicant will be deemed to withdraw from the application in the event of failure to comply with content within the deadline, subject to a decision issued under article 42 of the Public Administration and Ordinary Administrative Procedures Act (Law 30/1992, of 26 November).

3. In discharging its functions, the CNMV may approach the persons or firms falling within the scope of this procedure in order to:
  - Request any data or information necessary for the discharge of the competences assigned to it by law.
  - Demand and verify compliance with prevailing legislation and regulatory provisions.

In such cases, the CNMV will approach the firms and/or persons concerned to ensure compliance with its demands within the deadlines established in specific legislation or, in default thereof, within a period of 10 business days of the service of notice.

Notwithstanding the foregoing, demands and requests for information or data made in the course of supervisory and inspection procedures may establish reasonable deadlines in view of the nature, contents and market impact of the procedure and/or of the information requested, and in view of the difficulty or workload inherent in compliance, in accordance with article 234.2 b) of the Securities Market Act.

4. The CNMV may order persons or firms falling within the scope of this procedure immediately to publish any information it may see fit with regard to activities related with, or which could in any way influence, the securities markets.
5. Where persons or entities subject to any reporting obligations established by prevailing legislation fail to file mandatory information or reports, or where the content of such information or reports is found to be insufficient or otherwise inadequate, the CNMV may demand compliance with the reporting obligation in question within such deadline as it may reasonably set, in accordance with article 234.2 b) of the Securities Market Act.

In such cases, interested parties will be warned that failure to file reports or information in accordance with the provisions of prevailing legislation could result in their being found in contravention of articles 282.2, 3, 4 and 7, 283.11, 285.1 and 2, 286.1 and 2, 289.2, 296.1, 297.1 and 300.2 a) of the Securities Market Act; articles 80.a) and n), 81.g), and 82.a) and e) of the Collective Investment Schemes Act; articles 93.a) and 95.a) of the Venture Capital Schemes Act; articles 39.b), d) and h), 40.b) and c), 41.b) and 92.2.e) of the Business Financing Act (Law 5/2015, of 27 April); and the tenth additional provision of the Bank Restructuring and Resolution Act (Law 9/2012, of 14 November).

6. If the CNMV issues any electronic demand under a public employee certified digital

signature, such document will be filed in the subject entity's reserved space in the CIFRADO/CNMV system, which the addressee will be able to access only by means of the certified digital signature of the persons duly authorized to receive demands. In such cases, the deadlines established in the demands concerned will commence as of the moment at documents are accessed via an authorized digital signature.

## 5. DEADLINES AND EFFECTS OF DEMANDS

1. Article 48 of the Public Administration and Ordinary Administrative Procedures Act (Law 30/1992, of 26 November) applies to the computation of deadlines established in CNMV demands, specifically as follows:<sup>2</sup>
  - a) Where deadlines are established in days, this will mean business days, so that Sundays and public holidays will be excluded from the computation.
  - b) When the last day of any period is not a business day, the deadline will be understood to be extended to the next business day.
  - c) Periods will be computed as of the day following the date of notification.
2. In accordance with article 42.5 a) of the Public Administration and Ordinary Administrative Procedures Act (Law 30/1992, of 26 November), and notwithstanding the application of any special legislation, the CNMV may suspend the maximum legal period allowed to reach and notify the decision in any proceeding, where it may be necessary to instruct any interested party to cure any shortcomings and/or provide documents or other evidence required. Such suspension may last for the period between service of the pertinent demand and effective compliance therewith by the addressee, or by default until the end of the deadline allowed for compliance, notwithstanding the option of holding the interested party to have withdrawn from the process, in accordance with section 4, paragraph 2 above. The demand will explain these matters.

## 6. PROCEDURE MANUALS

1. The General Directors and the Directors of Departments reporting directly to the CNMV President may approve the necessary "Procedure Manuals" within their respective remits, as necessary to ensure compliance with and application of the terms of this procedure, whether in isolation or in combination with other internal procedures.
2. The criteria and standards set forth in the "Procedure Manuals" constitute the basic operational guidelines and specific rules to ensure the proper, efficient conduct and completion of work.
3. The "Procedure Manuals" will be submitted to the Executive Committee of the CNMV.

## 7. EFFECT

This procedure become effective as of 21 September 2016, and it will be revised annually or wherever its contents are materially affected by any regulatory change.

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<sup>2</sup> Article 30 of the Ordinary Administrative Procedures Act, 2015 (Law 39/2015, of 1 October) will apply as of 2 October 2016.