



Procedure for reporting potential infringements in the field of securities markets through the Whistleblowing channel (P16)

Index

1. Scope
2. Applicable regulations
3. Departments responsible for processing and management
4. Information regarding the receipt of infringement reports and their follow-up
5. Minimum content of the reports
6. Record-keeping of the reports
7. Confidentiality regime
8. Procedural manual
9. Effect

1. SCOPE

This internal procedure is implemented in accordance with the provisions of Article 39 of the Spanish National Securities Market Commission Internal Regulations, and shall be applicable for the receipt, processing and record-keeping of the reports of potential infringements laid down in Title VIII, Chapter IV bis of the Recast Text of the Spanish Securities Market Act, approved by Spanish Royal Legislative Decree 4/2015, of 23 October.

2. APPLICABLE REGULATIONS

The regulations that apply to this procedure are set out in the following precepts:

- Article 32 of Regulation 596/2014, of the European Parliament and of the Council, of 16 April 2014, on market abuse, repealing Directive 2003/6/EC of the European Parliament and of the Council, and Directives 2003/124/EC, 2003/125/EC and 2004/72/EC of the European Commission (MAR).
- Commission Implementing Directive (EU) 2015/2392, of 17 December 2015, on Regulation (EU) 596/2014 of the European Parliament and of the Council as regards reporting to competent authorities of actual or potential infringements of that Regulation.
- Article 73 of Directive 2014/65/EU of the European Parliament and of the Council, of 15 May 2014, on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU (MiFID II).
- Articles 276(a), 276(b), 276(c), 276(d) and 276(e) of the Recast Text of the Spanish Securities Market Act, approved by Spanish Royal Legislative Decree 4/2015, of 23 October¹.

Any guidelines or recommendations issued by the European Securities and Markets Authority (ESMA) pursuant to Article 16 of Regulation (EU) 1095/2010 of the European Parliament and of the Council, of 24 November 2010, establishing a European Supervisory Authority, shall be incorporated into this procedure, insofar as the CNMV has confirmed that it has complied or intends to comply with the provisions of paragraph three of said article.

3. DEPARTMENTS RESPONSIBLE FOR PROCESSING AND MANAGEMENT

In accordance with Article 31(4)(b) of the CNMV's Internal Regulations, the Investor Service Department of the Legal Affairs Directorate-General, shall be responsible for the receipt and promotion of reports of potential infringements of the rules of order and discipline of the securities market (whistleblowing).

¹ These articles were incorporated into the Spanish Securities Market through Spanish Royal Decree-Law 14/2018, of 28 September.

The staff members responsible for handling the infringement reports shall exercise the following functions:

- a) provide any interested parties with information on the procedures for reporting infringements;
- b) receive and follow-up infringement reports; and
- c) maintain contacts with the whistleblowers where the latter have identified themselves as such.

The reports received shall be handled, analysed and assessed by the competent Directorate-General, Department or Area, depending on the subject-matter.

4. INFORMATION REGARDING THE RECEIPT OF INFRINGEMENT REPORTS AND THEIR FOLLOW-UP

An identifiable and easily accessible section related to the receipt of reports has been made available on the CNMV's website (www.cnmv.es).

This section contains the following information:

- a) Specific, autonomous, independent and secure communication channels that ensure confidentiality for receiving and following up on the reporting of infringements.

The communication channels made available comply with the following requirements:

1. they are separated from the general communication channel of the CNMV, including those through which the CNMV communicates internally and with third parties in its ordinary course of business;
2. they are designed, set up and operated in a manner that ensures the completeness and confidentiality of the information and prevents access to non-authorised staff members; and
3. they enable the storage of durable information to allow for further investigations.

The channels made available for reporting to the CNMV potential infringements in the field of the securities markets are:

1. By telephone, by calling 900 373 362. It is a voice mailbox that records the entire conversation.
2. Using the form available on the section "Communication of infringements" on the CNMV's website (www.cnmv.es).
3. By email to: comunicaciondeinfracciones@cnmv.es.
4. By post, addressed to: Comunicación de Infracciones - Departamento de Inversores - CNMV. Edison 4, 28006 Madrid / Passeig de Gràcia 19, 08007 Barcelona.

5. Through a face-to-face meeting at the CNMV's offices.

Infringement reports received through non-specific communication channels shall be forwarded on a one-off basis and with no amendment to the staff specialised in the matter via internal communication channels.

- b) The procedure applicable to the infringement report, which includes:
 1. The possibility of submitting the report anonymously.
 2. The manner in which the CNMV may request the whistleblower to clarify the information reported or to provide additional information that is available to the whistleblower.
 3. The type, content and time frame of the feedback of the results of the infringement report that the whistleblower can expect after such reporting.
- c) The confidentiality regime applicable to the infringement reports.
- d) The legal means for protecting persons working under an employment contract.
- e) A statement clearly explaining that persons submitting information to the CNMV in accordance with Title VIII, Chapter IV bis of the Recast Text of the Spanish Securities Market Act, approved by Spanish Royal Legislative Decree 4/2015, of 23 October, are not deemed to infringe any restriction on disclosure of information imposed by contract or by any legislative, regulatory or administrative provision, or to incur liability of any kind in relation to such disclosure.

5. MINIMUM CONTENT OF THE REPORTS

Reports may be anonymous or may include the identity of the person submitting them. In any event, they shall contain factual evidence on which, at least, a well-founded suspicion of an infringement may reasonably be based.

No later than 20 days after receiving the information, it shall be determined whether or not there is a well-founded suspicion of an infringement. In the absence of such suspicion, the person shall be requested to forward the information to clarify the content or to provide additional information within a period of 20 business days.

Once the deadline set for clarifying the information or submitting additional information has elapsed, without a well-founded suspicion being detected, such circumstance shall be reported to the whistleblower by reasoned notification.

In any case, the whistleblower shall be informed, where appropriate, of the initiation of a sanctioning procedure on the basis of the factual evidence submitted or of the referral of the factual evidence to other Authorities, both in Spain and abroad.

The requirements and communications of the CNMV with the anonymous whistleblower, in any event, shall be carried out in such a way that anonymity is maintained, unless expressly decided otherwise by the whistleblower.

6. RECORD-KEEPING OF THE REPORTS

The Investor Service Department keeps a record of all the reports received.

In the case of reports submitted in writing (using the form, by email or by post), an acknowledgement of receipt is forwarded to the postal address, electronic address or via the website (in the case of the form), if no contact details are provided or the whistleblower expressly requests otherwise, or if it is considered that the acknowledgement of receipt could jeopardise the protection of the whistleblower's identity.

When a recorded telephone line is used for reporting infringements, the whistleblower's conversation shall be recorded on a durable medium.

When the whistleblower requests a face-to-face meeting, a complete audio recording will be made of the conversation on a durable medium.

7. CONFIDENTIALITY REGIME

The records shall ensure the confidentiality of the information received, with access restricted to the staff members responsible for processing and handling the reports.

Any transmission of the report, within or outside the CNMV, shall be made such that the whistleblower's data are not revealed, either directly or indirectly, or that of persons referred to in the report, except in the following cases:

- a) the personal data of the alleged infringing party are required for the preliminary proceeding, to initiate, investigate or conclude an administrative sanctioning procedure, or for a legal proceeding, which in any event, shall have a level of protection equivalent to that of any other person subject to investigation or a penalty by the CNMV;
- b) the personal data of the whistleblower when known, and as such are requested by the competent judicial body in the course of an investigation procedure or criminal proceedings, when they constitute an essential element for such process; and
- c) all the personal data contained in the report which are required by authorities equivalent to national supervisory authorities at the EU level, upon complying with the requirements under applicable EU or national regulations, or those of third States, insofar as the protection level of the confidentiality of the personal data is equivalent to that in force in Spain.

In this regard, whistleblowers shall be informed that there may be exceptional cases where the confidentiality of their data cannot be guaranteed, such as when the necessity and proportionality of the obligation to disclose information is required by EU or national law in the context of investigations or subsequent judicial proceedings or to safeguard the freedom of others, including the rights of defence of the reported person, and in all cases, subject to appropriate safeguards under such laws.

8. PROCEDURAL MANUAL

The Director General of the Legal Affairs Department may adopt the “Procedural Manuals” required for compliance with and the practical application of the provisions contained in this procedure.

The criteria or standards included in the “Procedural Manuals” shall provide basic guidelines and specific operational rules to ensure that duties are performed in the most appropriate and effective way.

The “Procedural Manuals” shall contain the controls deemed necessary under the terms of the CNMV’s Risk Management System, in order to ensure effective compliance with the provisions laid down by law, and in this procedure.

The criteria or standards issued by ESMA to promote common supervisory practices shall be used in the preparation process of the “Procedural Manuals”, in accordance with the provisions of Article 29(2) of Regulation (EU) 1095/2010, as well as the guides that may be published by the CNMV on this procedure.

The “Procedural Manuals” shall be submitted to the CNMV’s Executive Committee.

9. EFFECT

This procedure shall apply from 25 July 2019 and shall be reviewed on an annual basis, and when a regulatory change affects its content.