Questions and answers on the implementation of the MiFID II Directive

30 October 2017

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This document is not regulatory. Its purpose is to transmit to the sector and, in particular, the entities providing investment services, interpretation criteria for the proper implementation of the requirements that according to Directive 2014/65/EU (MiFID II) should be applied from 3 January 2018.

1. INTRODUCTION

CNMV has been in contact with the main associations of the sector related to the provision of investment services in recent years in order to identify and collate MiFID II issues that may raise doubts or concerns about their interpretation prior to the entry into force of this Directive.

Given the imminent entry into force of MiFID II, CNMV is publishing a set of questions and answers on various issues that the sector has raised based on the information currently available.

This document sets out the interpretative criteria that are considered appropriate in relation to the issues raised, although these could be affected depending on the final text of the transposition into the Spanish legal system of the MiFID II regulations. It should also be borne in mind that issues relating to the interpretation of the MiFID II regulations continue to be discussed within ESMA in order to achieve adequate supervisory convergence.

For all these reasons, the criteria set out in this document shall be reviewed once more information is available, both with regard to transposition into the Spanish legal system and the interpretation at European level of the issues under discussion.

To the extent that other issues are considered necessary to clarify, they will be added to this question and answer document with an identification of the update date.

Main Abbreviations List

FI(s)	Financial instrument(s)
PRIIPs	Packaged Retail and Insurance-based Investment Products
KID	Key Investor Document
KIID	Key Investor Information Document
UCITS	Undertakings for the Collective Investment of Transferable Securities
AIFMD	Alternative Investment Funds Managers Directive
MiFID II	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 http://cnmv.es/portal/MiFIDII_MiFIR/MapaMiFID.aspx
MiFIR	Regulation (EU) No 600/2014 of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Regulation (EU) No 648/2012 http://cnmv.es/portal/MiFIDII_MiFIR/MapaMiFID.aspx
Delegated	Commission Delegated Regulation (EU) 2017/565 of 25 April 2016

Regulation/RD	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 http://cnmv.es/Portal/MiFIDII_MiFIR/ESI-Actos-Delegados.aspx
Delegated Directive/DD	Commission Delegated Directive (EU) 2017/593 of 7 April 2016 supplementing Directive 2014/65/EU of the European Parliament and of the Council with regard to safeguarding of financial instruments and funds belonging to clients, product governance obligations and the rules applicable to the provision or reception of fees, commissions or any monetary or non-monetary benefits http://cnmv.es/Portal/MiFIDII_MiFIR/ESI-Actos-Delegados.aspx
ESMA Q&As	ESMA Questions and Answers On MiFID II and MiFID investor protection and intermediaries topics http://cnmv.es/Portal/MiFIDII_MiFIR/ESI-FAQ-ESMA.aspx
Delegated Regulation of PRIIPs	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 http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32017R0653&from=EN
Q&A´s on the KID of PRIIPs	Questions and answers on the Key Investor Document on PRIIPs products, published by the Joint Committee of the European Supervisory Authorities https://esas-joint-committee.europa.eu/Pages/Activities/Packaged-Retail-and-Insurance-Based-Investment-Products.aspx

2. PRODUCT GOVERNANCE REQUIREMENTS (Last update: 13 July 2018)

2.1. Are the product governance requirements established in Article 9 of the Delegated Directive (hereafter, DD) for manufacturers applicable to Collective Investment Scheme Management Companies (CISMCs) (Last update: 13 July 2018)?

CNMV's reply

CNMV considers that, in accordance with Recital 16 of the Delegated Directive (hereafter, DD), the product governance requirements established in Article 9 of the DD for manufacturers also applies to CISMC to the extent that they provide an investment service in relation to the CIS they manage.

However, it should be remembered that Article 10(2) of the DD, in its third paragraph, provides that the entities that provide investment services must take all reasonable measures to ensure that they obtain adequate and reliable information from manufacturers which are not subject to MiFID to allow them to ensure that the products are distributed according to the characteristics, objectives and needs of the target public. This implies that, at the request of the distributing entities, CISMC will have to provide them with the appropriate and necessary information about the CIS they manage to guarantee that they are offered or marketed when it is in the interests of the client and in accordance with the characteristics, objectives and needs of the target market.

2.2. What information must a distributor provide to an entity as a manufacturer of financial instruments (hereinafter, FIs) not subject to MiFID? (Last update: 30 October 2017)

CNMV's reply

In cases where the manufacturer is not subject to the requirements of MiFID manufacturers, Article 10(2)(3) of the DD states that distributors must take all reasonable steps to ensure that they obtain adequate and reliable information from manufacturers not subject to MiFID II in order to ensure that the products are distributed according to the characteristics, objectives and needs of the target market. Where the relevant information is not publicly available, the distributor shall take all reasonable steps to obtain such information from the manufacturer or its agent. Acceptable and publicly available information will be that which is clear and reliable and is prepared to meet regulatory requirements.

For its part, section 62 of the Product Governance Guidelines establishes that the information contained in the documents prepared in accordance with the requirements of the Brochures Directive, Transparency Directive, UCITS Directive and AIFMD or other equivalent legal documents of third countries. It also determines that if all relevant information were not publicly available, it would be reasonable to conclude an agreement with the manufacturer or its agent.

These obligations to obtain information from the manufacturer must be applied proportionally depending on the level of complexity of the product.

2.3. Should the distributor of an FI in any case provide information to the manufacturer on the sales of the FIs? (Last update: 30 October 2017)

CNMV's reply

CNMV considers that, to the extent that the manufacturer is not obliged under MiFID II to process the information that may be received from the distributor (as an entity not subject to MiFID), the receipt of such information must be understood as a good practice. In this case, it is the distributor that has to review its product governance procedures to ensure that they remain robust and meet the objectives, so that appropriate action is taken if necessary.

2.4. Should the target market be defined at the level of the portfolio or at the level of each of its products? (Last update: 30 October 2017)

CNMV's reply

The definition of the target market must be established for each product. However, when considering the product's compatibility with the client, the level of the portfolio can be taken into account in the case of portfolio management or portfolio-based advice (see the ESMA Product Governance Guidelines).

2.5. In the case of customized products for eligible counterparties, e.g. portfolio management or advice for an eligible counterparty, are product governance obligations also applicable? (Last update: 30 October 2017)

CNMV's reply

On the one hand, it should be noted that according to the answer 78 of the Commission Q&As document regarding Directive 2004/39/EC (MiFID I), the eligible counterparty category only applies in relation to the services identified in Article 24(1), i.e. reception and transmission of orders, dealing as agent and dealing on own account. It does not apply in a situation of investment advice or portfolio management.

On the other hand, the product governance obligations set forth in Art. 16.3 of MiFID II apply regardless of the nature of the client. The Product Governance Guidelines address the application of target market requirements for entities operating with eligible counterparties in paragraphs 75 et seq.

2.6. If portfolio management is delegated to a CISMC by an IF or a credit institution, do the product governance obligations apply to the CISMC to which it has been assigned? (Last update: 30 October 2017)

CNMV's reply

Yes, they do apply; the treatment is identical if the delegated entity is a CISMC (which provides the portfolio management service) or an IF. In accordance with Article 31 of the Delegated Regulation (hereinafter, DR) on outsourcing of relevant operational functions, the IF or credit institution that delegates is fully responsible for ensuring compliance with the product governance obligations. Compliance with these obligations is also the responsibility of the entities to which the provision of the investment service is delegated, and apply to portfolio management even when the client of the entity to which it is delegated is an eligible counterparty. In order to ensure compliance with these obligations by the delegated entity (CISMC in this case) responsibilities should be clearly assigned in a written agreement with the IF or credit institution.

2.7. If a CISMC provides an investment service in relation to some of the CIS that it manages, will only the product governance obligations apply to it in relation to those CIS or to all the CIS it manages? (Last update: 13 July 2018)

CNMV's reply

Under MiFID II, CISMC are subject to product governance obligations as distributors in relation to the CIS with respect to which they provide investment services (whether they manage them or not).

Product governance obligations for manufacturers must be applied in relation to managed CIS with respect to which investment services are provided.

Additionally, as indicated in reply 2.1, CISMC, at the request of distributing entities, have to provide them with the appropriate and necessary information about the CIS they manage to guarantee that they are offered or marketed only when it is in the interests of the client and in accordance with the characteristics, objectives and needs of the target market.

3 INDUCEMENTS (Last update: 27 January 2020)

3.1 Would the inducement rules apply in the case of a distribution model in which there is vertical integration? (Last update: 30 October 2017)

CNMV's reply

CNMV considers that the new regulation of the perception (or prohibition) of inducements cannot be avoided through vertical integration practices, in which the explicit payment of inducements by the CISMC to the group marketer is simply abolished without the other conditions in the provision of services being modified. The economic fund would be the same, since the bank would provide the management company with a service (the distribution of its CISs) which, instead of

being paid explicitly through the fee rebate, would be paid via dividend distribution or reserve accumulation in the subsidiary.

In particular, it is understood that there will be an inducement, to which the corresponding regulations would apply, when the distributor does not expressly receive a reversal from the CISMC, or receive an abnormally low reversal, through the marketing of CISs whose management fees are the same (or similar) to those that would exist with an express remuneration policy, or when they exceed those normally applied in the market for similar CISs that do not generate rebates (clean classes), taking into account a reasonable margin differential between management companies.

3.2 Is a CISMC that distributes CISs from third parties subject to the rules on inducements? (Last update: 13 July 2018)

CNMV's reply

CISMC that provide investment services must comply with the obligations related to inducements set out in Article 24, sections 7(b), 8 and 9 of MiFID II and Articles 11 and 12 of the Delegated Directive. In relation to the activity of marketing third-party CIS, see question 23.1.

3.3 Are the inducement registration obligations additional to the content of the inducement register of the CNMV Resolution of 7 October 2009 or, conversely, can they already be understood as included in the current inducement register? (Last update: 30 October 2017)

CNMV's reply

Yes. The registration obligations of Article 11(4) of the Delegated Directive (DD) deal with matters additional to those included in the CNMV Resolution of 7 October. The DD establishes that it is necessary to record how the payments granted or received by the entity or those that the entity tries to use, reinforce the quality of the services provided to the clients and the steps adopted so as not to damage the duty of the entity to act in a way that is honest, fair and professional in accordance with the best interests of the client. In section 20 of the CNMV Resolution of 2009 registration refers only to the communications issued to clients on inducements granted or received and client requests for information on inducements.

3.4 Should the remuneration that a tied agent would receive from an entity be considered as an inducement? (Last update: 30 October 2017)

CNMV's reply

The remuneration received by agents of an entity for the provision of investment services or ancillary services to clients on behalf of the entity are not considered inducements but, in accordance with the criteria set out in the ESMA Guidelines on Remuneration Practices and Policies (published in June 2013), they are considered as an internal payment of the entity, and not as a payment to a third party.

3.5 How should the term "wide range of suitable instruments" be understood for the purpose of fulfilling the obligation contained in Article 11(2)(a) of the DD? Would this requirement be fulfilled if all the instruments were CISs, without the need for any type of financial instrument other than a CIS, when there is adequate diversification in terms of investment vocations, risk profiles, geographical and sectoral areas, etc.? (Last update: 30 October 2017)

CNMV's reply

The concept of a wide range of instruments is a concept that has not been specified in Level 2 regulations or in the ESMA Q&As. In principle, CNMV considers that the requirements established in Art. 24.7.a of the Level 1 Directive and Art. 53 of the Delegated Regulation (DR) regarding the consideration of independent advice could be used as a reference. The Directive states that they must be sufficiently diversified by type of product and issuer or supplier and in the DR there are several conditions that could serve as a reference: (i) that they are adequately representative of the financial instruments available on the market and (ii) that for the selection of products all relevant aspects such as risks, costs and complexity have been considered, as well as the characteristics of the entity's clients.

In addition, it should be considered that, in accordance with Art. 53 of the RD, it would be possible to meet this "wide range of suitable financial instruments" requirement by offering a single type of financial instrument provided that the investment service being provided to the client (in this case, non-independent advice or marketing) is circumscribed to that type of financial instruments, which is considered appropriate for the client and in which the client has expressed interest.

3.6 In the event that new classes of CIS shares are issued in order to comply with the prohibition of inducements, what entity (the CISMC or the distributor) should urge the exchange of the shares in question? (Last update: 30 October 2017)

CNMV's reply

The CISMC must communicate to the distributors the issuance of new share classes and the distributor is responsible for urging the exchange of the shares in question.

3.7 How should the prohibition of the perception of inducements in the discretionary management of portfolios be applied as from the entry into force of MiFID II in relation to third-party payments from positions arising from transactions carried out prior to 3 January 2018? (Last update: 30 October 2017)

CNMV's reply

CNMV considers that portfolio managers will not be able to continue receiving and retaining inducements from third parties for positions that arise from transactions made prior to 3 January 2018. In relation to this issue it should be noted that in MiFID II there is no transitional clause or grandfathering in this regard.

3.8 How should the inducement regime be applied to services other than portfolio management and independent advice as from the entry into force of MiFID II in relation to third-party payments from positions arising from transactions carried out prior to 3 January 2018? (Last update: 13 July 2018)

CNMV's reply

For services other than portfolio management and independent advice, it is reasonable to apply the same criteria indicated in question 3.7. However, entities must comply with what is definitively established in the SMA, once MiFID II has been transposed.

In any case, and subject to the content of such transposition, so that an IF or credit institution can continue to receive retrocessions for positions acquired, prior to the implementation of MIFID II regulations related to services other than portfolio management or independent advice, it should be sufficient for the distributor to implement a modification in its general procedures, or in the model for the provision of investment services, so that the conditions established in the Directive are met.

Regarding the requirement to increase service quality, it should be sufficient for the distributor to meet any of the following conditions, which are the same as those required to receive inducements for new investments made by those same or new clients (assuming that the transposition at this point corresponds to the published drafts):

a. Provide a non-independent advisory service to such clients regarding a wide range of financial instruments, of which an appropriate number should not have close links with the distributor, giving access to the same instruments.

b. Provide a non-independent advisory service to such clients that includes a continuous assessment of the suitability of the instruments in which they have invested or of the optimal allocation of their investments.

c. Give access to, that is, offer a wide range of financial instruments at a competitive price of which an appropriate number must not have close links with the distributor, together with a tool that provides added value to the investor.

3.9 How should the inducement regime be applied to the provision of the portfolio management service that includes CIS when there is a distribution model with vertical integration? (Last update: 13 July 2018)

CNMV's reply

As indicated in reply 3.1, it is considered that the prohibition of inducements in the field of portfolio management cannot be circumvented through vertical integration practices. In this respect, it is considered that a clear criterion to avoid a breach of the prohibition to receive inducements in relation to CIS that are going to be included in the managed portfolios would be that in the funds/sub-funds/classes allocated to portfolio management clients a higher management fee is not applied to the net management fee of the distribution fee applied to the same or similar funds/sub-funds/classes of the same CISMC that are distributed by paying inducements to the distributor.

For these purposes, it is not appropriate for the comparison of the fees to be made with respect to the average of other CISMC (regardless of the conditions agreed within the group itself), given that each group has a specific policy in this regard according to its business model. Therefore, comparison with the policy for margins and price of services (management/distribution) of the group itself is more appropriate, since there do not seem to be technical arguments that justify departing from such policy exclusively for the service of discretionary portfolio management.

3.10 Are the “platform fees” received by the entities that act as a CIS platform of the CISMCs considered inducements? (Last update: 27 January 2020)

CNMV's reply

What are known as "platform fees" or variable fees paid periodically by CISMCs to the platform, as a percentage of the brokered volume, are inducements insofar as they are directly linked to the provision of an investment service to the client and are linked to the total net asset valueof the fund that the platform markets as intermediary.

Platform fees may be considered permitted inducements for the entity acting as a platform, insofar as they are related to the RTO service if the conditions laid down in Article 11(2) of the Delegated Directive are met.

However, if the entity that acts as a platform also provides portfolio management (or independent advice) services to end clients, then it will not be able to receive and retain inducements for the CIS positions included in the managed (or independently advised) portfolios. Furthermore, if the inducement does not stem directly from the CIS investment of the managed (or independently advised) portfolios, but from the indirect investment through fund of funds, it would equally be forbidden to receive and retain it.

Considering platform fees as permitted inducements is also deemed applicable if the distribution platform provides the RTO service to other group entities that manage portfolios or provide independent advice. Exempted is the case where the structure of individual entities is for the purpose of circumventing the rules on inducements. In any event, when the platform is an entity of the group itself, the entity providing portfolio management or investment advice shall carefully manage conflicts of interest, and in particular, verify that the costs borne are market costs.

3.11 For the purposes of complying with the requirements under Article 62(2)(a) of Spanish RD 217/2008 of offering at least two alternative third parties in each category of funds marketed, what categorisation is considered acceptable for use? (Last update: 27 January 2020)

CNMV's reply

Article 62(2)(a) of Spanish RD 217/2008 requires justifying the provision of any additional service or of a higher level to the client, for the purposes of complying with the conditions for the receipt of inducements. Two of the situations envisaged for this in the RD (subparagraphs 1 and 3 of Article 62(2)(a)) stipulate, among other requirements, the incorporation of an appropriate number of instruments from third-party product providers who have no close links with the IF. For these purposes, it is mandatory to offer at least two alternatives in each category of funds marketed and which represent no less than 25% of the total products offered.

The general criteria to be fulfilled is that the categories of financial instruments be established at a sufficient level of granularity so as not to pool financial instruments with different characteristics and levels of complexity and risk. In the case of CISs, the categories must be determined according to their investment objective.

Given that there is no categorisation by investment objective that is unique and homogeneous at European level, and that in certain categories of funds it may be difficult or not very reasonable to comply with this requirement, the CNMV considers that it is not necessary to hold two products for each category referred to in CNMV Circular 1/2019 on categories of collective investment schemes according to their investment objective, although they should at least use the following CIS categories: 1) money market, short-term fixed income and target maturity CISs (whether guaranteed or not); 2) fixed income; 3) domestic equities; 4) international equities; 5) mixed; 6) global; 7) tracker funds; 8) alternative investment; 9) real estate; and 10) others. Therefore, in the case of marketing guaranteed target maturity funds, it would be possible to offer the aforementioned alternatives in respect of any of the funds in category 1).

With regard to this requirement, it should be borne in mind that an entity may market certain categories of CISs, not all of them. Therefore, the obligation of offering at least two alternative third-party providers with no close links should be fulfilled for those CIS categories marketed.

3.12 How should the term "offer" at a competitive price a wide range of financial instruments contained in subparagraph 3 of Article 62(2)(a) be interpreted? Should it be considered more proactive than the term "provision of access" contained in Article 11(2)(a) of MiFID II Delegated Directive? (Last update: 27 January 2020)

> CNMV's reply
>
> Even though the final wording of the third condition to justify the provision of a higher quality or a higher-level service to clients has used the term "offer" instead of "provision of access", which is used by the MiFID II Delegated Directive, the CNMV considers that there is no difference between these terms, hence they would be equivalent. In both cases, it should be understood that they imply offering to clients effective and easy access to such products, such that clients also consider the alternative of investing in products of other providers.

3.13 In accordance with the provisions of Article (62)(2)(a) of Spanish RD 2017/2008, when an entity chooses the third condition of enhancing the quality of the service by offering a wide range of financial instruments that includes third-party instruments, together with the provision of periodic reports on return and the costs and charges associated with the financial instruments. Should these periodic reports refer to the instruments in which the client has invested? (Last update: 27 January 2020)

> CNMV's reply
>
> As stipulated in subparagrah 3 of Article 62(2)(a), it is considered that the quality of the service is enhanced when the entity offers, at a competitive price, a wide range of financial instruments that would probably meet the client's needs, which include an appropriate number of instruments from third-party product providers who have no close links with the investment firm, together with the provision of value-added tools, such as objective information tools that help the client concerned to take investment decisions or enable it to monitor, model or adjust the range of financial instruments in which it has invested, <u>or the provision of periodic reports on return and the costs and charges associated with the financial instruments.</u>
>
> In order to consider that the quality of the service has been enhanced, the periodic reports on return and the costs and charges associated with the financial instruments, or the tools that provide this information to clients, must include information on return and the costs and charges associated with the range of instruments that the entity is considering in order to comply with the duty of offering a wide range of financial instruments, which include third-party instruments, and not only in respect of financial instruments in which the client has invested, such that these reports represent an effective value-added tool.
>
> The entity already has the legal obligation to provide periodic information to clients on the costs and charges associated with the products in which they have invested, as well as an example of the effect of costs on the return of such products. It is considered that the mere fulfilment of a legal obligation does not entail enhancing

the quality of the service provided to clients.

3.14 Can intermediaries that use CIS platforms receive from CISs services (mediation or others) free of charge when these intermediaries, in turn, provide portfolio management or independent advice to end clients? (Last update: 27 January 2020)

CNMV's reply

In accordance with the provisions of Article 63(2) of Spanish RD 217/2008, entities providing portfolio management or independent advice shall not accept non-monetary benefits that cannot be considered as minor.

For its part, Article 63(3) of Spanish RD 217/2008 stipulates the minor non-monetary benefits that are acceptable when such services are provided. Its subparagraph e) includes "other minor non-monetary benefits that enhance the quality of the service provided to clients. Taking into account the total level of benefits provided by an entity or a group of entities, regardless of whether their level or nature are such that undermining the fulfilment of an investment firm's duty to act in the client's best interest would be improbable."

In view of current market circumstances and without excluding the possibility of analysing the issue again in the future, and with a different conclusion, it is considered that the receipt of services (mediation or others) free of charge by intermediaries that use a CIS platform may be considered as a minor non-monetary inducement that does not undermine the intermediary's duty to act in the best interest of its clients.

3.15 Should an entity that provides portfolio management or investment advice, purchase or recommend to its clients, in any case, the so-called clean class, specifically aimed at this type of client? Or on the contrary, if there is a class with better economic conditions (after deducting potential rebates received by the entity and passed on to its client), should the entity purchase or recommend this other class? (Last update: 27 January 2020)

CNMV's reply

In view of the general duty of acting in the best interest of clients, the entity must purchase or recommend the class which each client may objectively access and which has the best overall economic conditions for it (i.e. after considering potential rebates received by the entity and passed on to the client, as well as tax effects calculated on the basis of general and prudent criteria), regardless of the existence of a class (the so-called clean class), which in principle, is aimed at this type of client.

3.16 In the sphere of mere marketing of CISs (whithout providing investment advice - whether independent or not - or portfolio management services), can an entity offer its client only one or certain classes of shares or units of a CIS when other classes of the same CIS, with the same investment policy and better

economic conditions to which the client could access, are available for marketing in Spain? (For clarifications purposes, the condition refers to the case where the entity acts by receiving and retaining inducements related to the service pursuant to Article 62 of Spanish Royal Decree 217/2008). (Last update: 27 January 2020)

CNMV's reply

Taking into account the principle of transparency, the obligation of preventing conflicts of interest and the duty to act honestly, fairly and professionally in the client's best interest, which has been reinforced with MiFID II, the reply to the question differs depending on whether the client is marketing such more beneficial classes among its clients or not:

- If the entity is not marketing more beneficial classes among other clients, it may offer only the class that it is marketing, providing that it effectively and clearly informs the client beforehand (i.e. indicating the economic conditions of the classes), about the existence of these other more beneficial classes which it may access in Spain.

- On the other hand, if the entity is marketing more beneficial classes among some of its clients, it must also offer such classes to clients not advised or managed that may access these classes, clearly informing them of the inducements that the entity would receive if they purchased such classes, and the specific fees that would be applicable.

(This reply partially amends the criteria related to the issue referred to in the last section of the CNMV's Statement, of 5 June 2009 - prior to MiFID II - on the marketing of funds with the same investment policy.)

3.17 Are placement or underwriting fees considered inducements? (Last update: 23 April 2024)

CNMV's response

Placement or underwriting fees should be considered as inducements in cases where the entity involved in the placement or underwriting also provides investment services (receipt and transmission of orders/execution, advice, portfolio management, etc.) relating to the placed product. This is because the remuneration received by the placement company from the issuer or equivalent is connected to the service it provides to the investors to whom it sells the financial instrument.

In such cases, the corresponding transparency should be present in such payments received from third parties, which should be disclosed to clients as inducements.

In regards to the requirement to enhance the quality of the service, in line with Article 120.2 of the Spanish Royal Decree 813/2023 of 8 November, an inducement received from the issuer for the provision of placement or underwriting services is deemed to be designed to improve the quality of the service provided to investors if granted

access to the primary market.

On the other hand, placement or underwriting fees are not considered an inducement when the receiving entity does not provide investment services directly or indirectly to its clients in relation to the financial instrument placed.

It is considered that there is no inducement in the strict sense of the term when the placing agent applies an implicit margin to the price at which the corresponding instrument is sold and does not receive explicit payments from the issuer, that is, when the placing entity establishes an implicit charge that it retains by applying a spread between the price the issuer receives from the placing entity and the price it applies to its clients. In any case, this implicit margin must be disclosed to the client as part of the costs. To such effects, the entity must estimate the implicit costs in the price paid by the client as the spread between the latter and the fair value or theoretical (mid) value of the instrument.

4. INDUCEMENTS IN RELATION TO RESEARCH (Last update: 22 December 2017)

4.1 What should the periodicity of the budget be? Annual or could it be less than a year or multi-annual? (Last update: 30 October 2017)

CNMV's reply

Article 13(1) of the DD states that the entity receiving the research service must annually report the costs to the clients. In this regard, it does not seem appropriate to prepare multi-annual budgets; rather they should be drawn up with a periodicity equal to or less than one year.

4.2How can the agreement between the entity and the client on the budget and its method of payment be formalized? (Last update: 30 October 2017)

CNMV's reply

Art. 13.5 of the DD states that the charge for research budgeted by the entity and the frequency of the charge in each year may be agreed with the clients, in the management agreement or in the general conditions of the contract. These documents could also include the method of payment.

4.3 What should the content of the written policy on the research inducements of an entity be? (Last update: 30 October 2017)

CNMV's reply

Art. 13.8 of the DD states that the policy to be provided in writing to clients shall include all the elements necessary to assess the quality of the research purchased based on robust quality criteria and its ability to contribute to better investment decision- making. It will also address the extent to which the research can benefit clients' portfolios and the approach to allocate costs fairly among client portfolios.

4.4 What criteria for allocating the cost of research between clients of the entity could be considered valid? (Last update: 30 October 2017)

CNMV's reply

An allocation criterion included in the ESMA Q&A 1 and 10 on "Inducements (research)" is that it be a transparent method that is set out in writing in the research policy provided to the client. But the main requirement to take into account is that it must be a fair method for allocation among client portfolios. ESMA indicates that the research budget can be established for a group of client portfolios or accounts that have similar third-party research needs. The budgeted cost could be prorated among all client accounts benefiting from the research, based, for example, on the value of each client's portfolio. Other elements that could also be valued are the expected relevance of the research to certain investment strategies or the level of use by individuals or teams that manage or advise certain portfolios or accounts. Under no circumstances is it possible to use the intermediate volume, the number of transactions or the cost of intermediation as criteria.

In any case, institutions should not draw up a research budget for a group of client portfolios or accounts that do not share sufficient investment objectives or similar research needs. For example, when portfolios have material differences in the types of financial instruments or geographic regions or market sectors in which they can invest or are investing.

4.5 In what way and in what detail should the "ability to contribute to the adoption of a better investment decision" be justified in the management and assessment of the RPA [Research Payment Account]? (Last update: 30 October 2017)

CNMV's reply

The justification must be made in writing and in sufficient detail so that the entity can justify to CNMV that the research received is useful for the adoption of investment decisions.

4.6 Would it be possible for an entity to have different criteria for allocating research expenditure according to the type of products? That is, if an entity is provided with research that is used for different products (managed portfolios, Pension Funds, EPSV (individual pension plans), CISs), would it be possible for the cost of the research of some of them to be borne by the client and the research of others by the entity? (Last update: 30 October 2017)

CNMV's reply

We see no impediment provided that the requirements are met and, therefore, the different allocation criteria are duly informed and justified. Art. 13 of the DD states that the analyses provided by third parties will not be considered an inducement if they are received in exchange for: (i) payments with funds of the entity itself or (ii) payments of an RPA (Research Payment Account) controlled by the entity that meet the established operating conditions.

4.7 Does the inclusion of the research in the prospectus of a CIS as an expense borne by the Investment Fund require the right of separation to be granted to the unitholder of said Fund? (Last update: 22 December 2017)

CNMV's reply

In the case of a fund whose prospectus already envisages the existence of brokerage fees that incorporate the analysis service, the substitution of the above with the analysis expense (separate from the brokerage fee) would not give the right to information.

If it is a question of funds whose prospectus does not envisage that brokerage fees incorporate the analysis service, the inclusion for the first time of the analysis expense, as attributable to the investment fund, would entail granting unitholders the corresponding right to information. In such case, the said expense may only be attributed to the fund from the time when the prospectus is updated.

4.8 How can one determine when the research in relation to fixed income securities should be considered as an inducement? (Last update: 30 October 2017)

CNMV's reply

ESMA Q&A 9 on "Inducements (research)" considers that for fixed income, currency and commodities (FICC) products, material produced in relation to these FICC markets could be considered as research or as a minor non-monetary benefit. For this type of product there is no established market practice with regard to the inclusion of research costs in explicit execution fees. ESMA also considers that there are many similarities between the macroeconomic reports and the FICC research. It would therefore be a question of assessing whether they meet the requirements as minor non-monetary benefits.

In accordance with recital 29 of the DD, minor non-monetary benefits are non- substantive material consisting of short-term market commentaries on the latest economic statistics or company results which contain only a brief summary of their own opinion on such information that is not substantive or includes a substantive research, such as simply repeating a vision based on an existing recommendation. In addition, reports on fixed income securities that are received free of charge when paid by a potential issuer or issuer to promote a new issue would also be considered minor non- monetary benefits as long as they are published and made available to the public.

In addition, Art. 12.3 of the DD contains a non-exhaustive list of minor non-monetary benefits. It includes: (i) information or documentation on a financial instrument that is generic or customized to reflect the circumstances of an individual client and (ii) material received free of charge from an issuer with a contractual relationship under which the issuer produces the research on an ongoing basis provided that the relationship is clearly revealed within the research and that the material is available at the same time to all entities wishing to receive it or to the general public.

ESMA Q&A 6 on "Inducements (research)" points out that the assessment of whether the material is substantive should be linked only to its content and not to the consideration given to it by the supplier of the research. Examples of minor non-monetary benefits include:

- brief market updates with limited comments or opinions and
- material that repeats or summarizes news, stories or public statements by issuers, such as quarterly results or other market announcements.

5. CONFLICTS OF INTEREST (Last update: 13 July 2018)

5.1 Should the information provided to clients be changed regarding conflicts of interest, is it also necessary to inform the existing clients of the entity with whom an ongoing relationship is maintained? (Last update: 30 October 2017)

CNMV's reply

Yes, to the extent that the change entails a material change in the information provided to the client in advance.

5.2 If communication were necessary to existing clients, could it be conducted through a communication on the entity's website? (Last update: 30 October 2017)

CNMV's reply

Yes, as long as the conditions established in Art. 3 of the DR for the provision of information in a durable medium other than paper and through a website are met.

5.3 In relation to the remuneration policies and practices to be defined by the entities that provide investment services, is it possible to establish a 100% variable remuneration scheme for tied agents? (Last updated on: 19 April 2023)

CNMV response

MiFID II has introduced certain provisions on remuneration that were already included in the ESMA Guidelines. Specifically, Article 27 of the DR establishes that remuneration policies and practices will be designed so that they do not generate a conflict of interest or incentives that may lead relevant persons to favour their own interests, or the interests of the company in possible detriment to a client.

Thus, it is determined that remunerations and similar incentives shall not be based exclusively or primarily on quantitative commercial criteria, and that they will take fully into account appropriate qualitative criteria that reflect compliance with the applicable standards, fair treatment of clients and quality of the services provided to clients.

On the other hand, it is established that a balance between the fixed and variable remuneration components shall be maintained at all times, so that the structure of the remuneration does not favour the interests of the investment firm or of the relevant persons within it, to the detriment of the interests of clients.

In relation to the possibility of establishing a 100% variable remuneration in the case of agents, in principle, while ESMA does not take a stand to the contrary, it is considered acceptable that the remuneration of agents be 100% variable, provided that conflicts of interest that arise from this situation are adequately managed. In any case, a remuneration scheme in compliance with the principle of neutrality should be adopted, so as not to favour products over others of the same type, not including accelerators, and which significantly incorporates qualitative, and not only quantitative, criteria that are conducive to compliance with the rules of conduct.

In this regard, it is important to recall that MiFID II points out that remuneration should not be based solely on commercial quantitative criteria but must consider adequate qualitative criteria that reflect compliance with regulations, the fair treatment of clients and the quality of the services provided to clients. The weight of the qualitative criteria in the determination of agents' remuneration should be sufficient to achieve a relevant influence of the qualitative aspects.

Notwithstanding the above criteria and as an example, the following remuneration practices would not be considered acceptable:

(i) Those based on percentages of the volume of sales that are different for products of the same type, given the high risk that they may lead to sales of the products to which a higher remuneration is applied within a product typology rather than those that best serve the interests of clients.

(ii) Those based on establishing the same percentage of the income generated by each product of the same type or of the acquisition or sale fees of each product of the same type, since they encourage the sale of products with a greater profit margin for the entity within a typology of products and not those that best meet the interests of clients. On the other hand, schemes in which agents receive a percentage of the volume of assets of the clients assigned to them are considered acceptable, although this percentage could differ according to the different services provided when the value added by the agent in advising or marketing justifies it (as it demonstrably implies a different effort in terms of dedication and resources on the part of the agent depending on the complexity, sophistication or peculiarities of the specific product) and for different categories of instruments that include instruments of a very different nature. To such effects, for example, different harmonised equity, fixed-income or mixed investment funds are generally not considered to be sufficiently differentiated products.

(iii) Those based on establishing a percentage of the total income generated by the agent, or depending on the investor's profile, since they encourage the sale of the product of the same type which generates higher income for the agent. On the other hand, it is acceptable, as quantitative criteria, to establish a fixed percentage of the total sales volume in a given period, as it eliminates any possible incentive to favour the sales of a certain product.

(iv) Those which consider a concept of remuneration in addition to that generated by the product itself, linked to currency operations, generating additional income for the agent to that usually obtained according to the type of product contracted, due to the sole fact that the client invests in instruments denominated in a currency that is not the Euro (returning the agent a percentage of the margin obtained by the entity in the exchange of currencies). Such schemes are not in line with the principle of neutrality, as they promote the sale of foreign currency denominated products.

(v) Those that establish certain very demanding minimums to meet the objectives that condition the receipt of remuneration, particularly in the case of specific products or campaigns. Additionally, those that determine the establishment of schemes in which the % of commissions received by agents are scaled with high differentials depending on the volume of activity ("accelerators") which provide excessive and unjustified incentives for sales.

Said criteria would also apply to the remuneration systems of agents that only present clients to the firm (introducers), given that a different remuneration by product of the same type would imply a clear risk that the agent goes beyond a mere presentation work and tries to influence the client to opt for that investment that provides them with a higher percentage of returns. However, it must be clarified that in this case the weight of the qualitative criteria in the determination of remuneration may be less relevant.

5.4 Can firms providing discretionary portfolio management services apply explicit or implicit fees for the placing of financial instruments or transmitting orders regarding managed portfolios? (Last update: 23 April 2024)

CNMV's response

In line with Article 215 of the LMVSI (Spanish Securities Markets and Investment Services Law), entities providing portfolio management services shall not accept and retain fees, commissions or other monetary or non-monetary benefits paid or provided by a third party or by a person acting on behalf of a third party related to the provision of the service to clients.

Additionally, discretionary portfolio management services include, besides an investment decision by the firm to deal in financial instruments on behalf of its client, the selection of the intermediary and the transmission of the order. In other words, the selection of markets' or intermediaries' with which the orders are placed is an essential part of the discretionary portfolio management service, remuneration for which is obtained through the management fee paid by the client, reason why the client cannot be charged (explicitly or implicitly) in general, for the selection of the market or intermediary and the transmission of the order; while it is possible to charge for the execution of the order or, where appropriate, to pass on the costs of the third party intermediary to whom such orders are trasmitted (in compliance with "best execution" obligations).

The different situations that may arise in the common practice of entities providing discretionary portfolio management services are described below:

- In primary market placements (usually fixed income or structured bonds):
  - Third-party issuance: The entity providing the discretionary portfolio management service would not be able to retain any amount received, not even implicitly (by price spread), as it corresponds to a distribution margin which should not be borne by the client considering the investment decision on behalf of the client is included in the discretionary portfolio management service.
  - Own issuance: It is considered acceptable for entities to be able to apply an implicit spread, but exclusively for the design concept and issuance of the product, as long as such spread does not include other costs associated to distribution. In any case, entities must properly manage the obvious conflicts of interest inherent in the placement of their own products in their clients' managed portfolios. They must also be able to justify, in particular, what part of the implicit cost corresponds to distribution (as applied by the entity in the placement of own issues in areas other than discretionary management) and what part corresponds to issuance costs.
- Relative to secondary market:
  - Charging explicit brokerage fees for deciding to which intermediary orders are transmitted is not acceptable. However, where an appropriate best

execution policy has been applied in the scope of discretionary portfolio management, the portfolio manager may choose to transmit such orders to its own entity's trading desk (if applicable), and, in such a case, the entity's trading desk may apply (and retain) a fee for the work of directing such orders to other intermediaries members of trading venues of which the entity itself is not a member. Nonetheless, the portfolio manager's best execution policy cannot simply consist of systematically transmitting all trading to its own trading desk without proving, at least annually, that such form of operation is appropriate to act in the best interests of the client. In this regard, the cost of intermediation is a determining factor.

- Relative to the application of implicit fees to managed portfolios, by price spreads (usually on fixed-income instruments): the same criteria apply as detailed above for explicit brokerage fees. Should the order be transferred to the entity’s trading desk due to the conflict of interests, the portfolio manager must ensure, in each case, that the transaction is ordered in the exclusive interest of the managed client, i.e., the transaction is not executed at a price with worse conditions compared to that accessed through another intermediary, especially if the applied price spread (implicit spread) is not common.

6. GENERAL INFORMATION REQUIREMENTS FOR CLIENTS (Last update: 30 October 2017)

6.1 For the purposes of delivering pre-contractual information to clients, how should the term "in good time" in recital 83 of MiFID II be understood? (Last update: 30 October 2017)

CNMV's reply

As set out in recital 83 of MiFID II, the information should be provided it so that the client has sufficient time to read and understand it before making an investment decision. A fixed minimum period of time is not established, so that entities can establish the delivery times that they consider appropriate in each case, taking into account, as established in the aforementioned recital, whether it is a complex product or not, or if the client is familiar with it or has no experience of it.

It should also be noted that an eventual urgency of contracting in the case of volatile markets or instruments with a contracting period nearing its end should not prevent clients from having sufficient time to analyse the information, understand the product and make a well-founded investment decision.

6.2 What format should be used to provide pre-contractual information to clients?

(Last update: 30 October 2017)

CNMV's reply

CNMV does not plan to develop standardized pre-contractual information documents in principle. Entities may use the format they deem appropriate to comply with MiFID II pre-contractual information obligations.

7. FAIR, CLEAR AND NON-MISLEADING INFORMATION (Last update:30 October 2017)

7.1 In relation to the profitability scenarios on which information containing future performance data should be based, what is the methodology to be applied for the calculation of these scenarios corresponding to different market conditions? (Last update: 30 October 2017)

CNMV's reply

The Delegated Regulation of PRIIPS includes in its Annex IV the methodology for the calculation of scenarios for PRIIPs products.

This Regulation will apply to CISs from January 2020. Until that date, performance scenarios for structured UCITS will be in accordance with the methodology established in the CNMV Communication of January 2015 on measures to strengthen transparency in the marketing of CISs.

For the other FIs, no methodology is established in the regulation; hence a recognised methodology of common use should be used.

7.2 Should the new requirements established in Art. 44 of the Delegated Regulation to the information already submitted or to the advertising communications made before 3 January 2018? That is, will it be necessary to send back to the clients the information or advertising communications adjusted to the new requirements? (Last update: 30 October 2017)

CNMV's reply

It will not be necessary to re-send the information or advertising communications adjusted to the new requirements. In any case, the information adjusted to the new requirements should be used to provide information or to issue advertising communications to retail or professional clients as of 3 January 2018. For these purposes, communications issued close to that date and that could take effect as of 3 January 2018 should comply with the provisions of the new regulations.

8. INFORMATION ABOUT THE ENTITY AND THE SERVICES (Last update: 13 July 2018)

8.1 Does the information about the entity and its services apply to the marketing of IFs and, in particular, in cases of "execution only" in which the entity is limited to attending a specific request by the client? (Last update: 13 July 2018)

CNMV's reply

Yes, the reporting obligations apply to the marketing of IFs and, in particular, to the cases of execution only.

8.2 Is the prohibition of setting the remuneration based on sales targets or otherwise that could provide an inducement for staff to recommend a particular financial instrument to a retail client if a different financial instrument can be offered that is better suited to the needs of the client applicable to the activity of advising and marketing the IFs of a CISMC? And, in that case, can it be understood as included in the remuneration policies applicable to CISMC? (Last update: 13 July 2018)

CNMV's reply

Yes, it does apply. Article 1(1) of the DR states that obligations relating to remuneration policies and practices are applicable to CISMCs when they provide investment services. It should be noted in this regard that the ESMA Guidelines on Remuneration Policies and Practices of June 2013 were already applicable to CISMC when providing investment services.

The different remuneration rules have a different approach: UCITS, AIFMD and CRD IV have a prudential approach and are aimed at staff who have influence over the entity's prudential risks while MiFID II targets staff that affect compliance of the rules of conduct. It could be the case that the UCITS and MiFID Compensation Guidelines apply to the same person when that person is managing a portfolio of a fund and is also providing investment services. This case is envisaged in the UCITS Compensation Guidelines, dated October 2016, which establish the following:

When CISMC employees perform activities subject to different sectoral remuneration principles, they will be remunerated according to the following two options:

- applying the principles of sectoral remuneration pro rata according to objective criteria such as the time spent on each service or assets managed for each service or
- applying the sectoral criteria that are considered most effective in order to discourage inappropriate risk-taking and better align individual interests with those of the investors of CIS.

8.3 Is the information to be provided to professional clients and eligible counterparts in accordance with Art. 47 of the Delegated Regulation applicable only to new professional clients and eligible counterparties of entities from 3 January 2018 or also for those already existing at that date? (Last update: 30 October 2017)

CNMV's reply

The obligation is applicable to new and existing clients who are offered an investment service from 3 January 2018. The information will be provided in a durable medium or through the web provided that the requirements established in Art. 3.2 of the DR are met.

9. INFORMATION ON FINANCIAL INSTRUMENTS (Last update: 13 Juñy 2018)

9.1 Will the obligation to provide information on financial instruments continue to be non-applicable in the case of the discretionary portfolio management service? (Last update: 13 July 2018)

CNMV's reply

In relation to CIS, the criteria established in the CNMV Communication of February 2009 on the implementation of Circular 4/2008 on the content of the quarterly, semi-annual and annual reports of collective investment schemes and the state of their position to which they refer will continue to apply. It is therefore not necessary to provide the prospectus or the periodic reports, since this information is intended to enable investors to make informed decisions on investment or divestment and in the case of discretionary portfolio management these decisions are taken by the manager.

These criteria are extended to other financial instruments: in the transactions carried out by the manager on behalf of the client, it is not necessary to provide prior detailed information on financial instruments.

9.2 How should the new client information obligations on financial instruments established in Art. 48 of the DR be applied? Can it be understood that it only applies to the new financial instruments on which advice is given or which are marketed from 3 January 2018? (Last update: 30 October 2017)

CNMV's reply

As of 3 January 2018, entities that provide advice on or market financial instruments to clients (retailers, professionals or eligible counterparties) must provide them with all the information set forth in Article 48 of the DR, in the case of new financial instruments as well as in the case of the financial instruments that they had already been marketing or recommending.

9.3 In relation to the new information required by Article 48 of the Delegated Regulation, does "operation and results of the financial instrument in different market conditions, both positive and negative" refer to the development of scenarios? If this were the case, additional information would be needed on the types of scenarios to which it relates and on the methodology to be used for their development, in accordance with different market conditions. (Last update: 30 October 2017)

CNMV's reply

The required information can be assimilated to the development of scenarios. Although not specified, it may be understood that at least three favourable, moderate and unfavourable market scenarios should be considered. Regarding the methodology, we refer to response 7.1 given in the section on fair, clear and non-misleading information.

9.4 What information should be provided to retail clients about the characteristics and risks of financial instruments? Would the KID on PRIIPS be sufficient? And for products that are not PRIIPS would the information contained in Order ECC/2316/2015 be sufficient? (Last update: 30 October 2017)

CNMV's reply

In general, entities must comply with the information obligations on financial instruments included in Article 24(4)(b) of MiFID II and Article 48 of the Delegated Regulation. The latter establishes that a description should be provided explaining the nature of the specific type of financial instrument in question, the operation and performance under different market conditions, including positive and negative, as well as the particular risks of the financial instrument in sufficient detail so that the client can make a well-founded investment decision. It should be noted that MiFID II set forth additional information obligations in relation to the marketed financial instrument, such as costs and charges information (in Article 24.4.c) or inducements (in Article 24.9).

In the case of PRIIPs products, the KID could cover the information obligations included in Article 24.4.b of MiFID II as long as it includes all the information previously mentioned in Article 48 of the Delegated Regulation.

In the case of non-PRIIP products, the information contained in Order ECC/2316/2015 is not sufficient since the risk indicator specified in the Order does not include all information obligations mentioned in the first paragraph.

9.5 How should the principle of proportionality be applied to the content of information on financial instruments referred to in Article 48 of the Delegated Regulation? Can it be agreed with the eligible counterparties for them to be provided the information only at their own request? (Last update: 13 July 2018)

CNMV's reply

It is considered that there is some scope to apply the principle of proportionality to the content of information on financial instruments (general description of the nature and risks, including their operation and performance in different market situations, as well as the specific risks of the financial instrument) depending on the category of the client, specifically for professional clients per se and eligible counterparties. However, even in these cases, clients need to know the essential conditions of the specific financial instrument that they intend to purchase.
Therefore, for eligible counterparties and professionals per se, some flexibility is admitted regarding the detail of the information, provided that it can be assumed that the client already knows it sufficiently.

Regarding the possibility of specifying with the client what level of detail they would like to receive, although the rule only allows it expressly in the case of information on costs and expenses to be provided to eligible and professional counterparties in certain cases, it seems reasonable that it can be agreed with the client what level of detail will be received by the eligible counterparties and professionals per se, in relation to the information on financial instruments, taking into account what was mentioned in the previous paragraph.

Finally, it should be clarified that the obligations in terms of prior information to be provided to eligible counterparties on financial instruments must be complied with in any case, it not being possible for it to be provided only at the request of the client.

9.6 Given that the UCITS KID model does not generally include estimates of product results in different scenarios, is it necessary for entities to provide additional information as to the operation and results of the financial instrument under different conditions, in accordance with the provisions of Article 48 of the Delegated Regulation? (Last update: 13 July 2018).

CNMV's reply

In relation to CIS that prepare a KID in accordance with the provisions of CNMV Circular 2/2013, of 9 May, the information contained in the KID is sufficient to comply with the obligations of Article 48 of the Delegated Regulation in a consistent manner with the transitional period established in the PRIIPs Regulation for products with a KID until January 2020. However, it should be made clear that the UCITs KID is not sufficient to comply with the cost information obligations established in Article 50 of the Delegated Regulation, since Article 51 expressly states that additional information must be provided on all the costs and expenses associated with the product and the service that has not been included in the UCITs KID. In this regard, see question 11.1.

9.7 Should the fact that the shares can be subject to bail-in be disclosed? How should it be disclosed (Last update: 13 July 2018)

CNMV's reply

Article 48 of the DR, which is applicable to shares, establishes in section 2(a) that information must be provided on *"the risks related to this type of financial instrument, including an explanation of the leverage and its effects, the risk of the investment's total loss, as well as the risks associated with the insolvency of the issuer or related events, such as internal recapitalisation"*.

Therefore, regardless of the information that must be disclosed and the warnings that CNMV stipulates must be included in the prospectus or other documents, on the occasion of public offerings for the sale and subscription of shares, the entities that provide services for the reception and transmission or execution of orders or advice must take into account this reporting obligation and, consequently, establish the appropriate procedures to be able to prove proper compliance therewith.

Although the information to be provided in compliance with this obligation does not have to comply with the text provided in the third rule of Circular 1/2018, nor is it necessary to obtain the client's signature, it is important to emphasise that the information must always be clear and sufficient for the client to understand the nature and extent of the risk of the shares being affected by an internal recapitalisation.

On the other hand, CNMV considers that the foregoing does not imply that the client has to be informed about the risk of internal recapitalisation prior to each share purchase transaction by credit institutions or investment firms, in the event that the client submits orders on said instruments for their execution in trading venues on a frequent basis, it being sufficient for the information to be periodically provided (for example, once a year).

10. INFORMATION ON THE SAFEGUARDING AND USE OF FINANCIAL INSTRUMENTS (Last update: 27 January 2020)

10.1 Will the person designated as responsible for safeguarding FIs be able to perform other functions within the entity? (Last update: 30 October 2017)

CNMV's reply

An entity may decide whether the designated person responsible for safeguarding assets may reconcile that task with other responsibilities, provided that it performs its functions effectively.

10.2 Are structured deposits - pursuant to the definition under Article 4(1)(43) of MiFID II- included under the scope of the analysis of the CAPR (Client Asset Protection Report)? (Last update: 27 January 2020)

CNMV's reply

No. Article 145(3) of the Recast Text of the Spanish Securities Market Act specifically states the securities market rules to be applied by credit institutions and investment firms when marketing or providing advice on structured deposits, in accordance with the definition under Article 4(1)(43) of MiFID II. Regarding the internal organisational rules under Article 193(2) of the Recast Text of the Spanish Securities Market Act subparagraphs a), b), c), d) and e) are included. No reference is made to subparagraph f) containing the obligation to make adequate arrangements so as to safeguard the ownership rights of clients when holding financial instruments belonging to clients.. Stemming from this is the obligation laid down in Article 47 of Spanish RD 217/2018, which requires auditors to prepare an annual report on the appropriateness of the arrangements made by firms to safeguard the ownership rights of clients on financial instruments.

10.3 In order to comply with the obligation under Article 30 quater of Spanish RD 217/2008 requiring investment firms to reach agreements with entities outside the group so that, upon the request of the CNMV, in certain cases, they may agree the block transfer of the financial instruments and cash of their clients to one or various entities, would it be acceptable that such agreements be concluded with the sub-custodian(s) used by the investment firm? (Last update: 27 January 2020)

CNMV's reply

Nothing will prevent an IF from reaching an agreement with one or all of the sub-custodians with which it normally operates. However, the agreement between the sub-custodian and the entity should envisage the possibility of agreeing the block transfer of the financial instruments and cash of clients under the terms and conditions of Article 30 quater. The sub-custodian, whether national or foreign, must comply with the conditions for providing the service directly to retail clients when at least part of the entity's clients are retail clients.

11. INFORMATION ON COSTS AND EXPENSES (Last update: 27 January 2020)

11.1 Is the information provided by the PRIIPS KID sufficient to fulfil the ex-ante information obligations on costs and expenses? (Last update:13 July 2018)

CNMV's reply

For PRIIPS products, entities must inform the client of any costs or expenses related to the financial instrument not included in the KID, the costs and expenses of the service, except for those that may have been included in the KID, and on what part of the costs paid are reimbursed to the company which provides the investment service (inducements).

In relation to this matter, the Q&As published by ESMA in this field should be taken into account, and in particular Q&A 7 on how entities should use the costs of the products presented in the PRIIPS KID.

11.2 With regard to the transaction costs of CIS that in accordance with MiFID II should be provided, what methodology should be applied for their calculation? (Last update: 13 July 2018)

CNMV's reply

ESMA Q&A 10 states that the methodology that would be expected to be used by entities is the methodology established in the PRIIPs Delegated Regulation, in paragraphs 21-23 of Annex VI. The KID on PRIIPS issued by the Joint Committee of the European Supervisory Authorities on 4 July 2017, which clarifies some aspects of this methodology, should also be taken into account.

In any case, as is reflected in the Activity Plan, CNMV plans to modify PPI Circular 4/2008 to provide transparency on transaction costs and other costs not included in the KID, developing its calculation method.

11.3 Is the information provided by the KID on PRIIPS sufficient to fulfil the ex-ante information obligations on costs and expenses? (Last update: 30 October 2017)

CNMV's reply

For PRIIPs products, entities must inform the client of any costs or expenses related to the financial instrument not included in the KID, the costs and expenses of the service and on what part of the costs paid are reimbursed to the company which provides the investment service (inducements).

11.4 How would information on annual ex-post costs and expenses on CISs be obtained? (Last update: 30 October 2017)

CNMV's reply

The data will be provided by the CISMCs to the distributor annually, and if a material change occurs, the information provided will be updated.

Distributors may use the information provided annually by the CISMCs to deliver personalized, annual ex-post information to their clients, calculating costs and expenses on a pro rata basis or on an average basis.

11.5 What are the ex-ante and ex-post disclosure requirements on costs and charges of the discretionary management service? (Last update: 27 January 2020)

CNMV's reply

The reply to this question can be found in ESMA's Q&A 24 and 31 in the section on costs and charges information, which refers to ex-ante and ex-post information, respectively. However, it should be noted that, in the case of ex-ante information, the basis for calculation should be annual, and that, where relevant, entities which, pass initial investment costs incurred by clients during the first year on to clients, must include such costs in the ex-ante information.

11.6 Confirmation that, in the case of marketing of a CIS by a CISMC, annual ex-post information should not be provided to the client, since it should be understood that there is no continuous relationship between the client and the CISMC. (Last update:13 July 2018)

CNMV's reply

With regard to this issue, it is necessary to take into account Q&A 23.1 in relation to the application of the MiFID II rules of conduct to the marketing of CIS by CISMCs.

11.7 Is it possible to meet the ex-ante cost disclosure requirements by referring to a list of standardised transactions on the website? (Last update: 27 January 2020)

CNMV's reply

Pursuant to Articles 24(4)(c) and 24(5) of MiFID II and Article 50 of the Delegated Regulation, all information on costs and charges related to the service and financial instrument must be disclosed ex-ante in such a way that it is understandable to the clients for whom it is intended. In addition, payments received from third parties in relation to the provision of the service to the client (inducements) must be detailed.

In general, ex-ante information on costs must refer to the real fees applicable to each client for each transaction.In this regard, questions 22 and 23 of the information block on costs and charges of EMSA's Q&As on issues related to investor protection indicate that this information must be submitted to clients separately and be related to specific transactions, instruments and services. Regarding the possibility of referring to predefined or standardised investment amounts,

envisaged in question 22, question 23 of the aforementioned document also indicates the possibility of its use (even using tables), for instruments that do not incorporate product costs (e.g., equity instruments or derivatives traded on organised markets), insofar as sufficiently granular information is submitted and that by means of these tables, the client is fully informed and with the same accuracy as if it had been informed prior to each transaction. Furthermore, question 29 of this same document, also considers the possibility, in accordance with Recital 78 of the Delegated Regulation, of using estimated investment amounts where the costs vary depending on the amount (i.e., when these are not applied linearly). However, in this case, such estimated investment amount should be close to the amount that the client wishes to invest, and the entity should reflect the range of costs applicable to the transaction. Finally, question 30 of the aforementioned document, states that ex-ante information on costs and charges cannot be submitted with reference to tranches, ranges or thresholds, but be completely individualised.In light of the foregoing, in instruments such as equity instruments or derivatives traded on organised markets, when the real costs payable by clients do not vary according to the amount (e.g. in situations where the same percentage fee is always applied), the use of this type of ex-ante information, based on tables and standardised investment amounts, is appropriate providing that such information includes an example with amounts and refers to the real costs applicable to each client. However, in these cases, it must be ensured that the ex-ante standardised information appropriately reflects all the real costs applicable to the client (inter alia, exit costs, recurring costs, etc.).In the case of CISs, standardised investment amounts may also be used.However, where the charges may vary significantly depending on the amount of each transaction (minimum amounts, variable charges and brokerage fees linked to the amount ordered, etc.), this estimation would not be acceptable as the exclusive use of standardised amounts or tables would not ensure the submission to the client of the real costs payable. In these cases, if the client is provided with standardised ex-ante information or information based on predefined investment amounts (which as mentioned above, must refer to the real costs payable by each client, be complete and appropriately reflect all costs, including also examples with amounts), such information must be supplemented with the specific costs payable by the client for the transaction. However, when regular equity transactions or derivative trades are closed on organised markets by the client on a regular basis, it is not necessary that such information be submitted for each transaction. This information would be necessary, however, at least for the first trade closed each calendar year for a specific type of asset, insofar as, in addition, at that point in time, a more general description is provided (without a reference to a specific amount being required), of the fees that would be applicable to any other transactions closed later on in the year.Finally, in the case of instruments such as fixed income where implicit costs vary and are determined for each transaction, standardised ex-ante information reflecting the real costs payable by the client cannot be submitted. In this case, the information must refer to the real fees applicable to each client for each specific transaction.

11.8 Is it possible to use the PRIIPs methodology (defined to provide cost estimates ex ante) for the purposes of the ex post calculation of costs to be disclosed to the client? (Last update: 22 December 2017)

CNMV's Reply

Article 50(9) of the Delegated Regulation indicates that ex post cost disclosure must be based on costs incurred. Furthermore, section 4 of this article states that in relation to the disclosure of the costs and charges that are not included in the UCITS KIID, , investment firms must calculate and disclose such costs, for example, by liasingwith UCITS management companies to obtain the relevant information.

Indeed, Q&A's 9 and 12 published by ESMA in relation to the cost disclosure requirements indicate that, in general terms, it is expected that the methodology set out in PRIIPS be applied for the calculation of the fund portfolio transaction costs , also for the purposes of the information to be provided to clients on costs required by MiFID II. But the reference to the PRIIPS methodology must be understood in relation to the method used to calculate the cost of each operation (as the difference between the execution price – including explicit costs – and the "arrival price" – in general terms, the average market price at the time the order is made). These data are generally real costs. An exception to this is that for illiquid instruments, transaction costs will be estimated on the basis of fair value.

On the other hand, in ESMA Q&A 9 it is indicated that distributors are expected to contact manufacturers to obtain the necessary data to comply with their obligations. Manufacturers of a PRIIP, for their part, should already have calculated the data that the distributor needs (those relating to the fund portfolio transactions during the last 12 months), since the manufacturer needs to calculate these data on a recurring basis in order to be able to calculate and keep the ex-ante cost estimate that must be included in the PRIIPS KID updated

11.9 Ex-post information on costs must be provided on an annual basis. How must the term 'annual' be interpreted? When should this information be provided? (Last update: 27 January 2020)

CNMV's Reply

The CNMV considers, among other reasons, that in order to apply a homogeneous criteria for all entities, the term 'annual' for the purposes of the provision of ex-post information on costs should be understood to refer to the calendar year. Thus, as of 2018, the costs incurred for each calendar year should be reported.

Regarding when such information should be submitted to clients, although the regulation has not set a deadline for delivery, ESMA has clarified in its question 21 of the information block on costs and charges that entities should submit the information to clients as soon as possible after the end of the reporting period. The CNMV shares ESMA's criteria and considers that this information should be submitted to clients prior to 31 March following the end of each calendar year being reported.

11.10 Is it possible to comply with ex ante cost information obligations to eligible counterparties

by means of a website through a list of costs, without providing the exact cost of the operation? (Last update: 13 July 2018)

CNMV's reply

In those cases in which a limited application of the cost information obligations on eligible counterparties is allowed, in accordance with Article 50(1) of the Delegated Regulation, it is reasonable that when it is very complicated to provide this information ex ante (for technical or operational agility reasons) the exact cost of the transaction is not previously provided and the estimated cost is reported through a website provided that the following conditions are met: (i) a sufficiently detailed list is provided by type of instrument, underlying, type of client, term, etc; (ii) the estimated cost is not reported using ranges or maximum costs; (iii) the exact cost is subsequently reported and (iv) it has been expressly agreed with the counterparty.

11.11 Is it possible to limit the ex post information on costs with eligible counterparties if this is agreed with the clients? (Last update: 13 July 2018)

CNMV's reply

Art. 50(1) of the Delegated Regulation envisages the possibility of agreeing on a limited application of obligations to provide information on costs included in the article itself to eligible counterparty clients, but not in all cases. It would not be possible when an investment service is provided on financial instruments that involve a derivative and the eligible counterparty intends to offer them to its clients. In any case, it should be remembered that limited application can never be understood as a complete absence of information.

11.12 Is it possible to limit the scope of ex post information on costs to portfolio management clients if agreed with the client? If the client agrees with another entity to provide a service linked to portfolio management, which entity would be responsible for providing the ex post information on custody costs? (Last update: 13 July 2018)

CNMV's reply

Regarding the possibility of limiting the scope of ex post information on portfolio management costs, note that no possibility of limiting the information provided in Art. 60(2) of the Delegated Regulation is envisaged. In fact, Article 50(1) explicitly excludes portfolio management from the possibility of agreeing a limited application of obligations to provide information on costs with professional clients. Therefore, entities must periodically provide, in accordance with the requirements established in Article 60(3) of the DR, information on all costs incurred by clients during the period in relation to the services provided by the entity or by other entities to the client.

In the event that a service related to portfolio management (such as the custody and administration service) is provided by another entity, chosen by the client, the entity that provides the portfolio management service would not be obliged to add these costs, the entity providing the related service being responsible for informing the client.

11.13 When should the cost and expense information be sent in the event of termination of the relationship with the client? (Last update: 13 July 2018)

CNMV's reply

According to ESMA Q&A 21 on cost and expense information, it is considered that the information must be provided as soon as possible, after termination of the relationship with the client. However, a certain degree of flexibility with regard to these criteria is acceptable, depending on the proximity to the end of the year or, for example, the existence of other periodic information to be sent to the client which is to be sent soon.

11.14 What is the information on costs to be provided by an entity providing the advisory service that does not offer the services of reception, transmission or execution of orders or custody? (Last update: 13 July 2018)

CNMV's reply

In advance, the entity must provide information on the costs of the advisory service as well as on all the costs of the recommended financial instruments. These costs must be taken into account in the selection process used to recommend these financial instruments.

Regarding annual periodic information, Article 50(9) of the DR establishes that information must be provided on all costs and expenses actually incurred in relation to financial instruments and investment services when the entity has recommended or sold a financial instrument and has or has had a continuous relationship with the client during the year. The term "continuous relationship" has been clarified in ESMA's Q&A 1 in the Section on "Other Issues"; it is considered that there is a continuous relationship when the entity and the client have concluded a contract for the provision of an investment service that is not provided on a one-off basis, citing as an example a service that is not permanent such as the case of advice when the client is provided with a periodic suitability assessment. It is also considered that there is a continuous relationship when there is an agreement for the entity to continuously receive an inducement. Therefore, in these cases, the advising entity will be obliged to provide the ex post cost information when the advice is followed up or is going to continuously be receiving inducements for the recommended financial instruments.

11.15 What types of costs should be included in the total cost figure? (Last update: 27 January 2020)

CNMV's reply

Annex II includes a list of the types of costs that entities must communicate to clients, basically differentiating between product and service costs, and also between specific costs (entry and exit), recurring and ongoing costs (such as fund management fees), transaction costs (such as intermediary fees) and incidental fees (like performance fees).

In this regard, it is important to clarify that both third-party charges and brokerage fees, such as corporate transaction costs – like the collection of dividends or coupons - or FX transaction costs must be added to the total cost figure. Likewise, with regard to CISs, it is important to bear in mind the obligation of communicating all costs and related charges associated with

the product, which are not included in the key information document, such as fund transaction costs, as well as costs and charges related to the provision of investment services in respect of the CIS.

11.16 How should the example of the cumulative effect of costs on return be provided? (Last update: 27 January 2020)

CNMV's reply

Article 50(10) of the Delegated Regulation requires entities to provide clients with an example of the cumulative effect of costs on the return of the product. This example must be provided both ex-ante and ex-post and must comply with the following requirements: (i) include all costs that have an effect on return; (ii) reflect any fluctuation or peak of costs that can be anticipated; and (iii) include a description of the example. To date, the regulation has not provided details or the calculation methodology to be borne in mind, nor the format or the form of presentation. Regarding the **ex-ante** example to be provided, as no methodology has been established in the regulation, in the case of investment services other than portfolio management, it is considered that an appropriate form for submission would be itemising an estimated annual return of the product to enable the client to compare it with the costs communicated. Therefore, it is essential that the return and costs refer to the same period, and the percentage figures be expressed on the same basis. Such information must be accompanied by an appropriate itemisation solely for information purposes, indicating whether the return is gross or net of costs. To calculate the estimated annual return, in the case of equity the average annual return of the share could be calculated, or alternatively, a stock market benchmark of the market on which the share is traded for the five previous years. In the case of fixed income, the IRR of the transaction ordered by the client could be calculated. In the case of CISs or PRIIPs, this would not be necessary as the KID already includes information on the return of the instruments.

The ex-ante example must be complemented by an **ex-post** example of the cumulative effect of costs on the actual return of the product. As no methodology has been established in the regulation, it is considered that for services other than portfolio management, an appropriate form for the submission of the example could be itemising the product return for the calendar year to which the summary of the periodic information refers, or at least, the total return of the portfolio as a whole, to enable the client to compare it with the costs communicated. Therefore, it is essential that the return and costs refer to the same period, and the percentage figures be expressed on the same basis. Such information must be accompanied by an appropriate itemisation solely for information purposes, indicating whether the return is gross or net of costs. In order to calculate the actual return for the calendar year, the unrealised gains or losses may be considered, by comparing the market value or the estimated fair value of the instruments at the beginning and at the end of the period, adding the gains or losses and other returns (dividends, coupons, etc.) actually received during the year.

In the case of portfolio management services, the regulation specifically requires the submission of a periodic management report, detailing the portfolio return and including a comparison between the portfolio and the benchmark. Therefore, in general, it is considered that the information on the return, together with the details of the costs of the products and services, enables duly complying with the duty of submitting an example on the cumulative effect of costs on return, insofar as the example indicates whether the return is gross or net of costs (in full or in part).

11.17 How could the ex-ante information on costs and charges be provided when the financial advisory firm (FAF) has an agreement with the product marketer? (Last update: 27 January 2020)

CNMV's reply

If a financial advisory firm (EAF) has reached an agreement with the product marketer, and this can be substantiated, in order to avoid duplicating the information, it would be acceptable for only one of the entities (advisor or marketer) to inform the client about the costs of the product. The advisor and the marketer will communicate the cost of the service provided, respectively. With regard to inducements, and in order to avoid duplicating the information, it would be acceptable for the marketer to inform the client about the inducements received from third parties, and the part of these that is passed to the advisor. Therefore, it is not necessary for the advisory firm to inform the client about the inducements.

11.18 How should fair value be calculated to the effects of estimating implicit costs? (Last update: 23 April 2024)

CNMV's response

In compliance with Article 24 of MiFID II, entities must provide information to clients, ex ante as well as ex post, on all costs, including implicit spreads.

In order to determine the total cost, any difference between the fair value and the price at which the client trades should be considered a cost to be reported to the client, in line with recital 79 of Commission Delegated Regulation (EU) 2017/565 that states: " (...) The costs and charges disclosure is underpinned by the principle that every difference between the price of a position for the firm and the respective price for the client should be disclosed, including mark-ups and mark-downs."

Regarding the fair value, present or theoretical, question 17 in ESMA's Q&A document on investor protection in the section on information related to cost and expenses highlights: "*(...) implicit spreads and structuring costs implicit in the transaction price have to be identified and disclosed by the entity to clients. In line with recital 79, the entity should identify such costs by calculating the difference between the price of the position for the entity and the price for the client".*

Question 17 of the section on information on costs and charges of ESMA's Q&A document on issues concerning investor protection clarifies that: "*(...) In the case of PRIIPs, ESMA would hope for the entity to apply the calculation methodology set in paragraphs 36 to 46 of Annex VI of the RTS of PRIIPs*". That is to say, the fair value should be determined according to the criteria established in the Commission Delegated Regulation (EU) 2017/653 on the development of PRIIPs, criteria that are also consistent with those provided in Rule 4 of the Circular 1/2018.

According to Annex VI of Delegated Regulation (EU) 2017/653 (paragraphs 28, 29, 30, 38 and 40) and Rule 4 of CNMV's Circular 1/2018 (last paragraph of section 2), the fair value must reflect the price at which the financial instrument could be exchanged between duly informed and knowledgeable participants acting in independent conditions in the principal market.. This fair value shall be the same for purchase and sale transactions (i.e., a mid-fair value), shall conform to generally accepted methodologies and shall not include specific operating or distribution costs that different entities may incur, inter alia, hedging or un-hedging costs,

funding costs, order-size costs or other costs that entities incur in structuring or distributing products.

As provided in Annex VI of Delegated Regulation (EU) 2017/653 (paragraphs 41 et seq.), entities may use the market prices of such instruments as a reference to establish a fair value, provided that such prices have been efficiently formed in deep and liquid markets. Otherwise, they must use an estimate of fair value taking into account the foregoing. In this regard, in the absence of efficiently formed prices, observable in deep and liquid markets, the fair value to be estimated for the purposes of informing clients of costs implicit in the financial instrument, must be calculated solely on the basis of the elements of each product which have an impact on the payments due to the client. From this perspective, in these cases, a mid-theoretical value is an appropriate estimation of the fair value for these purposes, given that it is free of implicit spreads which, as mentioned above, are in any event a cost for investors.

Moreover, as previously mentioned, the difference between fair value and the price for the client should be considered a cost to the client, regardless of whether or not it constitutes, in full or in part, a profit for the entity.

The above also applies to the calculation of costs in the context of compliance with the obligations provided in the PRIIP Regulation.

Lastly, it is worth highlighting that, without prejudice to the procedures applied by entities to select products and determine the price for clients, they should be able to identify all costs included in the price and disclose them to clients.

It is therefore inappropriate for entities to use the lowest prices requested from various counterparties as the fair value of an instrument. Given that prices offered by counterparties may contain costs, entities should ensure informing clients of all costs implicit in the price by calculating such costs in relation to a fair value estimated in alignment with the criteria outlined herein.

12. INDEPENDENT ADVICE: INFORMATION AND DEFINITION (Last update: 30 October 2017)

12.1 Can the information set out in Art. 24.4 of Directive 2014/65 and Art. 52 of the Delegated Regulation be provided to the client in a standard document? (Last update: 30 October 2017)

CNMV's reply

Yes, to the extent that it is standardized information common to a particular type of advice model.

12.2 May the revisions and consequent updates of the consulting contracts existing before 3 January 2018 be understood as accepted by the clients by tacit consent, once a period of 15 days has elapsed after they are submitted to the client without the client having expressed his/her opposition to them. (Last update: 30 October 2017)

CNMV's reply

Yes, although the 15 days will be counted from the reception of the information by the client.

12.3 In order for the advice to be considered as independent, how should the requirement to evaluate a sufficiently diversified range of financial instruments available on the market be understood? (Last update: 30 October 2017)

CNMV's reply

The L1 Directive states that diversification refers to the type of instrument and the issuers or suppliers of products, although it is considered in the implementing regulations that it is possible to provide independent advice on a category or range of financial instruments. In short, the entity is required to analyse a universe of products broad enough to decide which ones it recommends to its clients. For these purposes, this requirement is not considered to have been fulfilled simply because the entity enables clients to purchase several of the financial instruments included in MiFID II.

The entity must define and implement a process to select the products to be evaluated in order to make a recommendation to the client. This selection process must include, according to Article 53 of the Delegated Regulation, inter alia, the following requirements:

(i) the number and variety of the financial instruments considered must be in proportion to the scope of the investment advisory service offered

(ii) the number and variety of the financial instruments considered must be representative of the financial instruments available on the market.

12.4 In order for the advice to be considered as independent, how should the requirement that the financial instruments analysed be limited to "tied" financial instruments be understood? (Last update: 30 October 2017)

CNMV's reply

The entities providing independent advice may not only consider financial instruments issued by the entity itself, an entity in their group or another entity in which there is a stake in the capital (of 20% or more of the voting rights) or a control relationship, or by other entities with legal or economic relationships, such as contractual relations (see question 12.5).

It is therefore possible to provide independent advice including a number of "tied" financial instruments provided that the following criteria are met:

(i) that the number of financial instruments issued by the entity or by related entities does not represent a relevant portion of the total amount of financial instruments considered

(ii) that the criteria for comparing different financial instruments include all relevant aspects such as risks, costs and complexity as well as the characteristics of the clients, and ensure that the selection of the instruments that can be recommended is not biased.

12.5 How should the requirement of "contractual legal or economic relationships" be understood with the issuer or distributor of the financial instruments? (Last update: 30 October 2017)

CNMV's reply

Contractual legal or economic relationships should be assessed on a case-by-case basis to determine whether such a relationship could jeopardize the independent nature of the advice. In such a case, the entity may not present itself to its clients as an independent advisory service provider.

13. PERIODIC INFORMATION ON THE PORTFOLIO MANAGEMENT SERVICE (Last update: 13 July 2018)

13.1 Would it be possible to agree with the client that non application or limited application of periodic information to eligible counterparties and professional clients is not possible, given that it is currently only mandatory for retail clients? (Last update: 13 July 2018)

CNMV's reply

First of all, remember that in the field of portfolio management services it is not possible to classify a client as an eligible counterparty (see Q&A 2.5 for this purpose).

Regarding the specific question, it is considered that it is not possible. Art. 60 of the DR has been extended to professional clients and the possibility of agreeing with these clients on a limited application has not been established, as has been established in Articles 50). Therefore, it is not possible to apply it or to apply it to a limited extent.

13.2 Do Arts. 62.1 and 62.2 of the DR apply to CISMCs? (the entity shall inform the client when the overall value of the portfolio is depreciated by 10%, and thereafter by a multiple of 10%, no later than the end of the business day on which the threshold is exceeded or the following day if that occurs on a non-business day) (Last update: 30 October 2017)

CNMV's reply

CNMV understands that it does apply. Article 1(1) of the DR contains an error due to a failure to update the references to the articles of an earlier version. In principle, the entire Section 4 applies to CISMCs. The European Commission is expected to correct this error.

13.3 There is currently a similar requirement in the case of discretionary portfolio management for retail clients, which requires that the client be notified immediately when there is a loss level equal to or greater than 25% of the managed assets (Rule 9 of Circular 7/2011). Will the obligation to inform the client of the losses in the portfolio managed be maintained in the current terms of Rule 9 of Circular 7/2011? (Last update: 13 July 2018)

CNMV's reply

No. Article 62(1) prevails over Rule 9(4) of Circular 7/2011, which had set a threshold of 25% given that the equivalent Article 42 of the MiFID I Directive 2006/73/EC did not specify any threshold and it was left to be agreed with the retail client. Therefore, the threshold of losses to be taken as a reference as of 3 January 2018 is that of 10% of the value of the portfolio. It should also be remembered that not only retail clients but also eligible professionals should be informed.

13.4 Which entity is responsible for providing the information required in Article 62(2) of the Delegated Regulation, in relation to the depreciation of 10% or multiples of the positions in leveraged financial instruments or operations of contingent liabilities? (Last update: 13 July 2018)

CNMV's reply

Article 62(2) of the DR establishes that the entity that maintains an account with the retail client shall inform the client of the depreciation. According to ESMA’s Q&A 11 in the ex post information section, the term "maintain an account with the retail client" could be understood as: (i) the provision of the custody and administration service or (ii) the maintenance of an account for registration of transactions on financial instruments in the context of the provision of an investment service to the retail client.

14. RECORD KEEPING OBLIGATIONS (Last update: 13 July 2018)

14.1 Should cost and expense information be included in a new register or could it be included in any of the existing registers in accordance with the Resolution of 7 October 2009? (Last update: 30 October 2017)

> CNMV's reply
>
> The entity must keep a record of the information on costs and expenses. This information can be incorporated into an existing register or a new one can be created.

14.2 What should the content of the register named in Annex I of the Delegated Regulation of MiFID II "Obligation in respect of services rendered to clients" be? (Last update:13 July 2018)

> CNMV's reply
>
> The reference of this register to "Reporting to clients" in Annex I of the DR is to articles 24(1) and 6 and articles 25(1) and 6 of MiFID II and articles 53 to 58 of the DR. This last reference is incorrect, articles 59 to 63 corresponding to Section 4, Reporting to clients, of the DR that develop article 25(6) of level 1 are correct.

14.3 Does the registration of orders apply to the orders derived from the discretionary portfolio management service? (Last update: 30 October 2017)

> CNMV's reply
>
> The registration of client orders and trading decisions established in Article 74 of the DR does apply to orders derived from the discretionary portfolio management service. The specific mention in the standard of "every trading decision taken when providing the portfolio management service" has been deleted in order to also include the orders arising from the own account trading activity as proposed by ESMA in its technical advice to the EC.

14.4 Does the registration of transactions apply to the transactions derived from the discretionary portfolio management service? (Last update: 30 October 2017)

> CNMV's reply
>
> Yes, it does apply. Article 75 of the DR, which establishes the registration of transactions and the processing of orders, is applicable both to orders received from clients and to trading decisions taken by the entities in relation to the provision of the discretionary portfolio management service. This is confirmed by ESMA in its technical advice to the EC.

15. RECORDING OF TELEPHONE CONVERSATIONS OR ELECTRONIC COMMUNICATIONS (Last update: 30 October 2017)

15.1 Does the obligation to record telephone conversations or electronic communications apply to the transmission of orders made as part of the discretionary portfolio management service? (Last update: 30 October 2017)

> CNMV's reply
>
> Article 16(7) stipulates that the register shall include recordings of telephone conversations or electronic communications relating, at least, to transactions carried out when trading on own account and the rendering of services related to the receipt, transmission and execution of orders of clients, even if such conversations or communications do not ultimately lead to the performance of such transactions or the provision of such services.
>
> The general purpose of these recordings is therefore the follow-up of conversations with clients whose intention is the provision of a client service order; given that in portfolio management orders are not given by the client but the manager, who is the one who adopts the specific investment decisions, the recording obligation does not apply to this service.

What if the transaction is performed as a consequence of the receipt by the manager of an instruction from a managed client? (Last update: 30 October 2017)

> In this case telephone conversations or electronic communications should be recorded to record the instruction given by the client.

15.2 Confirmation that the obligation to record telephone and electronic conversations does not apply to the advisory service, even if as a result of the transaction an operation is carried out on a financial instrument that would already be in the framework of another investment service, i.e. the reception and transmission of orders. (Last update: 30 October 2017)

> CNMV's reply
>
> The recording obligation in relation to advice has been addressed in ESMA Q&A 13 included in Section 3. Recording of telephone conversations and electronic communications. ESMA considers in this regard that if advice is provided when there is an intention to provide an order service to the client, the content of the advice has to be recorded.

15.3 Is the obligation to record telephone and electronic conversations only applicable when, through a given channel, the execution and transmission of the order is allowed in addition to the transmission and reception of the order? (Last update: 30 October 2017)

CNMV's reply

No. As explained in ESMA Q&A 12 in Section 3, Recording of telephone conversations and electronic communications, ESMA considers that the content of Article 16(7) of MiFID II and the corresponding Article 76 of the Delegated Regulation do not support this interpretation. In fact, Article 16(7) of MiFID II makes clear that the conclusion of an operation is not a prerequisite to apply the recording obligation.

15.4 When must minutes of face-to-face conversations with clients be drawn up? Can orders be used as minutes of relevant face-to-face conversations with the client? (Last update: 30 October 2017)

CNMV's reply

Article 76(9) of the DR establishes that entities must register in a durable medium the relevant information from the relevant face-to-face conversations with the clients in relation to the client order services established in Article 16(7) of MiFID II. One option to do this is through minutes as determined by Article 16(7) itself. In any case, at least the following information must be included: (a) the date and time of the meetings, (b) the location, (c) the identity of the attendees, (d) the "initiator" of the meetings and (e) the price, volume, type of order and when it will be transmitted or executed.

Considering the above, only the client's order would be sufficient if it contains all the required information.

An important aspect is to determine when the conversation and information are considered to be "relevant". For example, the information that makes it possible to determine who takes the initiative in the contracting of a certain product is relevant, as is the information that makes it possible to prove how long in advance the client was informed of the characteristics and risks of the product and any oral information that was provided to the client on the characteristics, risks and costs.

15.5 What are the technical requirements for storing telephone conversations and electronic communications? (Last update: 30 October 2017)

CNMV's reply

Telephone conversations and electronic communications should be stored in a durable medium that makes it possible to reproduce or copy in a format that does not alter or erase the original record.

15.6 What should the content of the order and transaction registration fields be? (Last update: 30 October 2017)

CNMV's reply

The order and transaction registration fields are listed in Sections 1 and 2, respectively, of Annex IV of the MiFID II Delegated Regulation. The detail or explanation of the content of the fields has not been developed, although it is pointed out that for fields that are also included in articles 25 and 26[1] of MiFIR, relating to transaction reporting, they must be maintained according to the same MiFIR standards.

[1]These articles have been developed respectively by the Delegated Regulation (EU) 2017/590 of the EC and the Delegated Regulation 2017/580 of the EC.

15.7 If the client requests the recordings of telephone conversations, can a transcription be delivered? (Last update: 30 October 2017)

CNMV's reply

The MiFID II rules states very clear that the client is entitled to be provided with the recordings (Article 76 (10) of the Delegated Regulation). Having said that, CNMV considers acceptable to provide the client only with the transcription of the recordings, provided that the client has been informed of the right to have the proper recordings and the client agrees on that.

15.8 What is the detail and the retention period of the records associated with the underwriting and placement service? (Last update: 30 October 2017)

CNMV's reply

These records have not been specifically included in the list of minimum records in Annex I of the MiFID II Delegated Regulation, nor have the fields or possible technical specifications been detailed. CNMV considers that the entities should store and keep the information required by the Delegated Regulation in the way it deems appropriate in one or more registers whenever the required information is included[2].

[2]This information includes: (i) the content and date of instructions received from clients, (ii) assignment decisions made in a way that allows complete tracking to be carried out between the transactions of client accounts and instructions received from clients, and (iii) the final assignment to the clients.

16. SUITABILITY AND APPROPRIATENESS ASSESSMENT (Last update: 30 October 2017)

16.1 Can the client suitability test be automatically updated by the entity in the event that it has sufficient information to determine the risk tolerance of said client and communicate the result to the client? (Last update: 30 October 2017)

CNMV's reply

In relation to the method of updating the suitability test, if the entity had sufficient information that pointed to a change in the characteristics of the client that should be taken into account for the suitability assessment, it would be reasonable to update the suitability test and report the result to the client. For example, the entity may have information about a change in the client's financial situation and it would be reasonable to update the test based on this information, informing the client. Communications may also be made when maintaining the characteristics that allow the client to be profiled. In contrast, it is not acceptable to make these communications to make certain changes not formally agreed with the client, such as establishing an increase in the risk tolerance of the client as a result of having performed certain operations or by providing a service with a level of risk superior to that derived from a suitability test given that the client may have a different risk profile or objective for different parts of his or her assets or mandates.

16.2 Can the registration obligations set forth in Art. 56.2 of the Delegated Regulation be considered included in CNMV Circular 3/2013? (Last update: 30 October 2017)

CNMV's reply

The registration obligations provided in Article 56(2) of the DR are included in part in Circular 3/2013. The fifth rule of this Circular requires the maintenance of an updated record of evaluated clients and non-adequate products that will reflect for each client the products whose appropriateness has been evaluated with a negative result. The appropriateness assessment records are also included in the CNMV Resolution of 7 October 2009, according to which the information or documentation must be registered in order to evaluate the appropriateness and all the warnings sent or made by the company that provides investment services, which would include both warnings regarding the non-appropriateness of the product and warnings regarding the impossibility of evaluating appropriateness when faced with a lack of client information.

Article 56(2) of the DR requires that a record be kept of not only the assessment carried out and of the warnings regarding the non-appropriateness or lack of information but also: (i) if the client requested to proceed with the transaction despite the warning and, if applicable (ii) if the entity accepted the client's request to proceed with the transaction. In principle, it is considered that if the client gives an order and the entity processes it, these two facts are recorded in the register.

16.3 How should the obligation to globally assess the appropriateness or suitability of a product package be understood? (Last update: 30 October 2017)

CNMV's reply

This obligation should be understood as a single product consisting of several components being offered. Therefore, when assessing appropriateness or suitability, the characteristics of the product as a whole should be considered in terms of performance, risk, costs, etc.

The suitability assessment should take into account the joint risk of the product or the recommended time horizon of the investment as a whole in order to conclude whether it is suitable to the client's risk profile or investment objectives.

An example of a combined sale would be a non-complex, low-risk fund together with a complex structured deposit or structured insurance product with a higher risk. It should be evaluated jointly if the package is advisable (or suitable). For these purposes, it should be taken into account that the structured deposit or structured insurance would add complexity and risk with respect to the non-complex investment fund.

16.4 For the purposes of the suitability assessment, what responsibility does the entity have vis-à-vis the information obtained from the client? (Last update: 30 October 2017)

CNMV's reply

Entities have the right to rely on the information provided by their clients or potential clients unless they know, or should know, that the information is manifestly out of date, inaccurate or incomplete. Likewise, entities must take reasonable steps to promote that the information obtained about their clients or potential clients is reliable. In this respect, CNMV considers it important that entities have systems that allow them to verify that the information obtained in the suitability test is consistent with any other information that they may have on the client.

17. NON-COMPLEX FINANCIAL INSTRUMENTS (Last update: 30 October 2017)

17.1 Can it be understood that CISs other than UCITS (except structured UCITS which are in any case complex financial instruments) regulated in the LCIS and RCIS, insofar as they comply with the six criteria established in Art. 57 of the delegated regulation, will be a non-complex financial instrument that can be acquired through "execution only", without having to carry out the assessment of its appropriateness for the client? (Last update: 30 October 2017)

CNMV's reply

No. According to ESMA Q&A 1 on Appropriateness/Complex Financial Instruments, shares of CISs that are not UCITS are explicitly excluded from the universe of non-complex products in accordance with Article 25(4) of MiFID II and cannot be reassessed according to the criteria of Article 57 of the MiFID II DR.

This treatment is consistent with the general criterion applicable to any other financial instrument; if the instrument is explicitly exempted from the list of non-complex products of Article 25(4) of MiFID II, the instrument will be considered complex and cannot be reassessed as not complex according to the criteria of Article 57 of the DR as reflected in Recital 80 of MiFID II. This is the case, for example, of stocks and bonds that incorporate a derivative, bonds that incorporate a structure that makes it difficult to understand the associated risks, or structured UCITS. Their treatment as a complex product responds to the objective of improving investor protection by requiring entities to conduct an appropriateness assessment before providing execution services in relation to these instruments.

17.2 Would funds with a fixed income return objective that invest only in a portfolio of term purchased bonds have the status of structured CISs? (Last update: 30 October 2017)

CNMV's reply

No. Funds with a fixed income return objective do not qualify as structured CISs regulated in Art. 36 of EU Regulation 583/2010.

18. STRUCTURED DEPOSITS (Last update: 30 October 2017)

18.1 MiFID II equates the marketing of structured deposits with financial instruments in relation to; inter alia, the rules of conduct. Could structured deposits be included in the managed portfolios? (Last update: 30 October 2017)

CNMV's reply

Although structured deposits are not a financial instrument within the scope of MiFID II, Art. 1(4) set out the provisions that apply to investment firms and credit institutions when they provide advice on and sell these products to clients. These provisions include several that affect the portfolio management service. In addition, Article 1(2) of the MiFID II Delegated Regulation states that, “References to (...) financial instruments shall encompass structured deposits in relation to all the requirements referred to in (....)1(4) of Directive 2014/65/EU and their implementing provisions as set out under this Regulation”.

Furthermore, it is reasonable to consider that the inclusion of structured deposits in clients' managed portfolios, within the framework of the provision of the discretionary portfolio management service, has the broader concept of providing advice on and selling these products to clients. Therefore, CNMV considers that structured deposits can be offered as an alternative in the discretionary portfolio management, if the product fits the profile and contract of the client, along with other products that are considered financial instruments.

19. CONTRACTS WITH CLIENTS (Last update: 30 October 2017)

19.1 Is it necessary to formalize a basic contract with retail and professional clients for the mere reception and transmission of orders? Can CISs' subscription and redemption orders be considered valid for the purpose of complying with these requirements, especially in those cases in which there is no securities custody agreement linked to such transaction? (Last update: 30 October 2017)

CNMV's reply

Article 58 of the MiFID II Delegated Regulation establishes that a basic agreement must be concluded that establishes the essential rights and obligations of the company and the client, and does not provide for any exception regarding the service of receipt and transmission of orders on CISs. To the extent that the subscription and redemption orders of CISs contain the information indicated, they may be considered valid to fulfil the obligation to have a basic contract for the reception and transmission of orders.

19.2 Can it be understood that the revisions and consequent updates of the contracts will be understood as accepted by the clients by tacit consent, once a period of 15 days has elapsed after they are submitted to the client without the client having expressed his/her opposition to them? (Last update: 30 October 2017)

CNMV's reply

CNMV considers that it can, although the 15 days will be counted from the reception by the client.

19.3 What types of clients affect the obligation to sign a contract in the provision of investment services? (Last update: 30 October 2017)

CNMV's reply

MiFID II requires that a basic contract be entered into with professional clients as well as with retail clients. This obligation will be applied in the provision of investment services and the auxiliary service of custody and administration, although in the advisory service it will only be obligatory to enter into a contract in those cases in which the entity is to perform a periodic assessment of the suitability of financial instruments or recommended services. It is not appropriate, as from the entry into force of MiFID II, for this obligation to apply only to new professional clients. Rather, all professional clients must have entered into a contract.

20. BEST EXECUTION (Last update: 30 October 2017)

20.1 How must the execution obligations be applied to CISMCs in both their collective management and discretionary portfolio management activities? (Last update: 30 October 2017)

CNMV's reply

As far as collective management is concerned, there have been no developments and it should be remembered that CIS regulations already contain specific rules on better execution.

Regarding discretionary portfolio management, as mentioned above, Article 1(1) of the DR contains an error due to a failure to update the references to the articles of an earlier version. In principle, Articles 64(4) and 65 of Section 5 on best execution (and Articles 66(2) to 66(9) by reference to Article 65) apply to CISMCs.

Furthermore, in general, those entities, when providing portfolio management services or receiving and transmitting orders must identify in their execution policy, for each class of FI, the entities to which they are to transmit the orders for execution. The mention of the execution centres in Article 66 should be understood in this case as the entities to which orders are transmitted for execution. The execution policy for

20.2 Does the annual publication requirement of the five main investment firms to which client orders have been placed or transmitted, for each type of FI, for their execution in terms of volume, as well as information on the execution obtained, apply to CISMCs? If so, should this publication be made with the content contained in RTS 28[3]? (Last update: 30 October 2017)

CNMV's reply

Yes. Article 65(6) states that such information to be published shall coincide with the information published in accordance with RTS 28.

21. KNOWLEDGE AND COMPETENCE (Last update: 14 December 2020)

21.1 Must portfolio managers meet the knowledge and competence criteria of staff providing information or advising on investment? (Last update: 30 October 2017)

CNMV's reply

In accordance with the scope of application of the CNMV Technical Guide, relevant personnel of the financial entities (including the agents) are those who provide information or advice to clients or potential clients, those staff who assist clients in relation to discretionary portfolio management contracts also being considered advisers.

[3] COMMISSION DELEGATED REGULATION (EU) 2017/576 of 8 June 2016 supplementing Directive 2014/65/EU of the European Parliament and of the Council with regard to regulatory technical standards for the annual publication by investment firms of information on the identity of execution venues and on the quality of execution.

21.2 Confirmation of the application of the measures for the assessment of the indicated knowledge and competence to the foreign entities that render investment services in Spain through branches or to related agents in Spain. (Last update: 30 October 2017)

CNMV's reply

Given that the provision of services is carried out in Spain, the measures for the assessment of knowledge and competence will also apply to relevant personnel of foreign entities providing investment services in Spain, either through branches or tied agents.

21.3 What are the criteria that must be taken into account, according to Technical Guide 4/2017, to consider that the relevant staff of an entity obliged to provide information have the necessary qualifications? (Last update: 13 July 2018)

CNMV's reply

Technical Guide 4/2017 on knowledge and competencies of the staff that provide information and advice, approved by the CNMV Board on 27 June 2017, establishes criteria on the knowledge and competencies that the staff that provide information to and/or advise clients on behalf of the entities must have, as well as on the manner in which said knowledge and competencies must be evaluated/accredited.

In order for it to be considered that relevant staff have the necessary qualifications, their knowledge and competencies must comprise, inter alia, all the aspects envisaged in sections Five/Six of the aforementioned Guide.

The Guide acknowledges three ways to accept that relevant staff have the required knowledge and competencies:

- That the relevant staff have any of the qualifications or certificates included in CNMV’s published list of qualifications and certificates of specialised entities in relation to advisory and information services.
- That the training accreditation of relevant staff rests with the financial institution itself, fulfilling the requirements established for such purpose.
- That the financial institution, under its own responsibility, considers the qualifications or certificates other than those included in the list of qualifications published by CNMV to be appropriate, for which purpose the entity's Regulatory Compliance Unit, taking into account the procedures and criteria established by the board of directors, must verify the equivalence between the training and evaluation activities corresponding to such qualifications or certificates and the criteria and characteristics developed in the Guide.

21.4 Should knowledge accreditation exams be done in person in all circumstances without exception? (Last update: 14 December 2020)

CNMV’s reply

This issue is expressly provided for in the amendment to TG 4/2017, of 3 December 2020

21.5 Are the qualifications issued by certifying entities valid before they are included in the CNMV list? (Last update: 14 December 2020)

CNMV’s reply

The inclusion of the qualifications in the CNMV's list is effective from the date on which the CNMV adopts the corresponding resolution.

Accordingly, the issued certificates in which the evaluation has been performed prior to their incorporation into the CNMV’s list may not be issued as an entity included in the list of the eighth rule of the Technical Guide, nor may the certifying entity carry out any type of validation in such case.

This does not prevent the financial institution, under its own responsibility, from considering those qualifications or certificates granted before the date of their inclusion in the CNMV’s list, as appropriate.

21.6 What is the consideration of the operators of a Securities Company for the purposes of the provisions of CNMV Technical Guide 4/2017? (Last update: 13 July 2018)

CNMV's reply

Technical Guide 4/2017 establishes in its scope that relevant staff of financial institutions (including agents) will be understood as those persons who provide information to or advise clients, advisory staff also being considered as those who attend to clients with discretionary portfolio management contracts.

Likewise, the purpose of the Technical Guide is to establish criteria on the knowledge and competencies that staff who provide information to and/or advise clients or potential clients on behalf of entities must have, as well as the manner in which said knowledge and competencies must be evaluated.

Consequently, if the staff referred to in the consultation did not perform or provide any of the aforementioned activities or services, they would not be considered relevant staff, since they would not be included in the scope and purpose of Technical Guide 4/2017.

21.7 Do the obligations established in Technical Guide 4/2017 apply to Spanish branches of foreign Investment Firms? (Last update: 13 July 2018)

CNMV's reply

Technical Guide 4/2017 establishes criteria on the knowledge and competencies that staff who provide information to and/or advise clients on behalf of entities must have, as well as the manner in which said knowledge and competencies must be evaluated.
In this regard, the Guide, in its scope, mentions financial institutions "that provide investment services in Spain and the relevant staff thereof". Therefore, the branches of foreign financial institutions that provide investment services in Spain and the relevant staff thereof will be obliged to comply with Technical Guide 4/2017.

21.8 Will CNMV evaluate the validity of certificates at the request of the persons who hold them? (Last update: 13 July 2018)

CNMV's reply

Technical Guide 4/2017 specifies the manner in which entities obliged to provide information (that is, financial institutions) must demonstrate their compliance to CNMV.

Consequently, CNMV's evaluation of qualifications and certificates at the request of persons who hold them is not envisaged, but rather exclusively at the request of the issuers thereof.

The evaluation, as the case may be, of qualifications and certificates at the request of persons who hold them will be the responsibility of the financial institution to which the interested party renders their services.

21.9 In relation to the minimum number of ongoing training hours referred to in Technical Guide 4/2017, must this ongoing training be carried out the year in which the Training Programme was carried out and the Accreditation Certificate acquired? Must temporal criteria be applied to this question? (Last update: 13 July 2018)

CNMV's reply

Article 12(i) of Technical Guide 4/2017 establishes that entities shall carry out a review, at least once a year, of the development and needs of the relevant staff. This review will ensure that the relevant staff have the appropriate qualifications and that they maintain and update their knowledge through ongoing professional training.

Additionally, Article 19(6) of the aforementioned Guide informs of the minimum number of annual teaching hours that this training should consist of, although under the responsibility of the entity's board of directors, the number of hours may be lower.

Therefore, the entity's criteria and decision will dictate whether in the same year that the training programme is carried out and the Certificate acquired, some additional training must be taken, taking into account the need and opportunity to provide training on new developments in markets or financial instruments.

22. OTHER ORGANIZATIONAL REQUIREMENTS (Lat update: 13 July 2018)

22.1 How is the compliance verification function modified under MiFID II regarding the principle of authority and independence? (Last update: 13 July 2018)

CNMV's reply

Under MiFID II, the guiding principles of "authority" and "independence" that the compliance verification function must observe have been reinforced, since Article 22 of Delegated Regulation (EU) 217/565 of the Commission, of 25 April 2016, explicitly establishes, among others, the following requirements not included in Article 6 of Directive 2006/73/EC of the Commission, of 10 August 2006 (previously in force):

The person discharging the compliance verification function must inform the Board of Directors, at least annually, about the implementation and effectiveness of the general control environment for investment services and activities, the risks that have been identified and the reports related to the processing of claims, as well as the solutions applied or that should be applied.

- The person discharging the compliance verification function must report "ad hoc" directly to the Board of Directors if he/she detects a significant risk of non-compliance by the company.

- The Board of Directors is the body responsible for appointing and, where appropriate, replacing the person discharging the compliance verification function.

In view of the above, in large and/or very complex entities, it is considered that the ideal situation would be for the person discharging the compliance verification function to directly report hierarchically to the Board of Directors (or any Delegated Committee thereof, such as Control or Compliance) as this maximises his/her authority and independence and facilitates his/her free access to this body, as provided for by the regulations.

For such entities it is also appropriate for the person discharging the compliance verification function to report hierarchically to the entity's Chairman or CEO (as these are the senior management members who hold the greatest executive powers), since with this position in the organisational chart, the necessary authority of the person discharging the compliance verification function could essentially be considered safeguarded as it is at least hierarchically equivalent to the rest of the entity's business and advisory areas.

Finally, also with regard to large and/or very complex entities, although the person discharging the compliance verification function may simultaneously exercise other functions that do not pose conflicts of interest, such functions may not include the business, internal audit or legal advisory areas.

In the case of smaller and less complex entities, the criteria of proportionality must be considered and, therefore, other approaches may be adopted (which should be assessed on a case-by-case basis), provided that the general regulatory principles are followed and any functions that are combined are appropriate.

In any case, the following regulatory provisions must be complied with: the person directly responsible for said function must be appointed and dismissed by the Board of Directors (or Delegated Committee of which the most senior executive to whom he/she reports is not a member). In addition, free access and direct reporting to this body by the person responsible for the regulatory compliance function must be ensured.

23. MiFID II SCOPE (Last update: 22 October 2020)

23.1What are the MiFID obligations applicable to the CIS management companies in the marketing of CIS (own or third-party)? And in the case of closed-ended collective investment scheme management companies? (Last update: 22 October 2020)

CNMV's reply

The answer for CISMCs is contained in Article 65 of Spanish Law 35/2003 on CISs, which refers, in general, to the provisions of Title VII of the Spanish Securities Market Act (conduct of business rules) on the marketing activities carried on by management companies.

Firstly, it is important to clarify that the provisions of Article 141 of the Spanish CIS Regulation (referral to Title IV, Chapter III of Spanish Royal Decree RD 217/2008, which originally only contained the rules on the appropriateness assessment and which currently refers to other matters) cannot restrict or affect in any way the regime deriving from said legal provision.

Furthermore, the fact that the current Title VII of the Securities Market Act has included, on the occasion of the transposition of MiFID II, new codes of conduct (in addition to those existing when Article 65 of the Spanish Collective Investment Scheme Act originally entered into force) does not mean that these are also not applicable to CISMCs when they carry on the activity of marketing CISs (own or third party), since during the MiFID II transposition process, the wording of said article of the Spanish Collective Investment Scheme Act remained unchanged. In addition, it is logical to apply the same codes of conduct to the marketing activity regardless of whether it is carried on by CISMCs or by other firms authorised to provide investment services.

With regard to closed-ended CISMCs, the situation is identical since Article 84 of Spanish Law 22/2014 on venture capital firms also makes a general referral to the provisions of Title VII of the Spanish Securities Market Act (conduct of business rules) in respect of the marketing activity carried on by said management companies.

The foregoing implies applying to the marketing activity carried on by CISMCs and closed-ended CISMCs, both of own and third-party vehicles or instruments, the same obligations that affect other intermediaries in respect of product governance, knowledge and skills required to the sales staff, remuneration policies of such staff, inducements,

disclosure obligations, updates related to the appropriateness assessment and classification of clients, as well as the record-keeping obligations laid down in said Title VII.

23.2 If a CISMC markets third-party CISs using global accounts should the individual record keeping of unitholders be considered as custodian service? (Last update: 27 January 2020)

CNMV's reply

In this case, the CISMC that keeps individual records of unitholders of third-party CISs is providing the custodian service. Therefore, the CISMC must register in its programme of activities the custodian service for CIS shares and units, with all the provisions contained in the Spanish Securities Market Act and the implementing regulations thereof being applicable.

Thus, among other provisions applicable are Articles 30 quater and 42(4) of Spanish RD 217/2008, which lay down the duty of reaching agreements with third-party entities for the block transfer of client assets if the entity is facing difficulties, as well as Article 47 of Spanish RD 217/2008 on the preparation of an annual report by the entity's auditors and CNMV Circular 5/2009, of 25 November, regulating the Annual Audit Report on the Protection of Client Assets.