Question and Answers on the implementation of the MiFID II Directive

30 October 2017

Last updated on: 18 June 2026

1. INTRODUCTION

The CNMV maintains regular contact with the main industry associations related to the provision of investment services in order to identify and compile MiFID II issues that may give rise to questions or concerns regarding their interpretation.

In 2017, in light of the imminent application of MiFID II, the CNMV published a set of Questions and Answers (Q&A) on various issues raised by the sector. The document set out the interpretative criteria considered appropriate in relation to those issues.

Since the publication of that initial set of Questions and Answers, the CNMV has updated the document on an ongoing basis, taking into account the criteria periodically published by ESMA, as well as those adopted by the CNMV based on its supervisory experience.

Following the recent amendments to MiFID II introduced through various European legislative initiatives (Quick Fix, Listing Act, MiFID/MiFIR Review), this document has been further updated to reflect the latest regulatory developments and the supervisory experience acquired in recent years.

The CNMV will continue to update this Questions and Answers document whenever it considers it appropriate, indicating in each case the date of the update.

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 https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:02014L0065-20260606
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 https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:02014R0600-20251123
DR 565/2017 - MiFID Delegated Regulation	Commission Delegated Regulation (EU) 2017/565 of 25 April 2016 supplementing Directive 2014/65/EU of the European Parliament and of the Council as regards organisational requirements and operating conditions for investment firms and defined terms for the purposes of that Directive.

	https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:02017R0565-20220802
Delegated Directive - MiFID II Delegated Directive	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 **https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:02017L0593-20221122**
ESMA Q&A	ESMA Questions and Answers on MiFID II and MiFIR investor protection and intermediaries topics http://cnmv.es/Portal/MiFIDII_MiFIR/ESI-FAQ-ESMA.aspx ESMA Q&A tool
PRIIPs Delegated Regulation	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 **https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:02017R0653-20230101**
Q&A on the PRIIPs KID	Questions and answers on the PRIIPs Key Information Document on products, published by the Joint Committee of the European Supervisory Authorities https://www.esma.europa.eu/document/consolidated-qas-priips-key-information-document
MiFID II Quick Fix	Directive (EU) 2021/338 of the European Parliament and of the Council of 16 February 2021 amending Directive 2014/65/EU as regards information requirements, product governance and position limits, and Directives 2013/36/EU and (EU) 2019/878 as regards their application to investment firms, to help the recovery from the COVID-19 crisis https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32021L0338
LMVSI	Spanish Law 6/2023 of 17 March on Securities Markets and Investment Services https://www.boe.es/eli/es/l/2023/03/17/6/con
RD 813/2023 - Royal Decree 813/2023	Spanish Royal Decree 813/2023 of 8 November on the legal regime for investment firms and other entities providing investment services https://www.boe.es/eli/es/rd/2023/11/08/813/con

2. PRODUCT GOVERNANCE REQUIREMENTS (Last update: 18 June 2026)

2.1 Do the product governance requirements for manufacturers set out in Article 9 of MiFID II Delegated Directive apply to Collective Investment Scheme Management Companies (CISMCs) providing investment services (advice or discretionary portfolio management) in respect of the Collective Investment Schemes (CISs) they manage? (Last update: 13 July 2018)

CNMV's reply

The CNMV considers that, in accordance with Recital 16 of the Delegated Directive, the product governance requirements for manufacturers set out in Article 9 also apply to CISMCs to the extent that they provide an investment service in relation to the CISs they manage.

However, it should be noted that the third subparagraph of Article 10(2) of the Delegated Directive specifies that firms providing investment services must take all reasonable measures to ensure that they obtain adequate and reliable information from manufacturers not subject to MiFID, enabling them to ensure that the products are distributed in accordance with the characteristics, objectives and needs of the target public.

Accordingly, at the request of the distributing entities, CISMCs have to provide appropriate and necessary information on the CISs they manage to guarantee that those products are offered or marketed in the best interests of clients and in accordance with the characteristics, objectives and needs of the target market.

2.2 What information must an entity acting as a manufacturer of financial instruments that is not subject to MiFID provide to a distributor? (Last update: 30 October 2017)

CNMV's reply

In cases where the manufacturer is not subject to the requirements for manufacturers of MiFID, Article 134(2) of RD 813/2023 states that distributors must take all reasonable measures 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.

In this regard, Section 75 of the Product Governance Guidelines establishes that information contained in documents prepared in accordance with the requirements of the Prospectus Directive, the Transparency Directive, the UCITS Directive, the AIFMD or equivalent legal documents issued in third countries, may be regarded as acceptable. It also determines that, where all relevant information is not publicly available, it would be reasonable to enter into 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

The CNMV considers that, insofar as the manufacturer is not subject to MiFID II and is therefore not required to process any information it may receive from the distributor, the provision of such information to the manufacturer should be regarded as good practice. In such circumstances, it is the distributor that must 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 portfolio level or at the level of each individual product comprising the portfolio? (Last update: 30 October 2017)

CNMV's reply

The definition of the target market must be identified for each product. However, when assessing whether a product is compatible with a client, account may be taken of the portfolio as a whole in the context of portfolio management or portfolio-based investment advice (see ESMA Guidelines on product governance).

2.5 In the case of customised products for eligible counterparties (e.g. portfolio management or advice for an eligible counterparty), are product governance obligations also applicable? (Last update: 18 June 2026)

CNMV's reply

On the one hand, it should be clarified that, according to Answer 78 of the European Commission Q&A regarding Directive 2004/39/EC (MiFID I), the classification of a client as an eligible counterparty applies only in relation to the services of reception and transmission of orders, execution of orders on behalf of clients, and dealing on own account. It does not apply in the context of investment advice or portfolio management.

On the other hand, following the amendments to MiFID II introduced by Directive (EU) 2021/338 ('Quick Fix' Directive), the product governance requirements set out in the second to fifth subparagraphs of Article 16(3) and Article 24(2) of MiFID II—transposed into Articles 176(2)(c) and 199(3) of Spanish Law 6/2023 of 17 March on Securities Markets and Investment Services, (LMVSI)—do not apply to financial instruments marketed or distributed exclusively to eligible counterparties.

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

CNMV's reply

Yes, they do apply. The treatment is identical whether the delegated entity is a CISMC (authorised to provide portfolio management services) or an investment firm. Pursuant to Article 31 of the MiFID II Delegated Regulation on the outsourcing of relevant operational functions, the delegating investment firm or credit institution 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 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 investment firm or credit institution.

2.7 If a CISMC provides an investment service in relation to certain CISs under its management, do the product governance obligations apply solely to those CISs, or do they apply to all managed CISs? (Last update: 13 July 2018)

CNMV's reply

CISMCs providing investment services (financial advice or portfolio management) are subject to product governance obligations as distributors in relation to the CISs for which they provide investment services, regardless of whether they manage those CISs.

Product governance obligations for manufacturers must be complied in relation to the managed CISs for which investment services are provided.

In addition, as indicated in reply 2.1, at the request of the distributing entities, CISMCs have to provide them with the appropriate and necessary information regarding the CISs they manage to ensure that such CISs are offered or marketed only when it is in the client's best interest and is consistent with the characteristics, objectives and needs of the target market.

2.8 In the distribution of derivatives that constitute bilateral OTC transactions with clients, what features should those derivatives have in order for it to be considered appropriate to market them to clients pursuing a hedging objective? (Last updated: 9 December 2025)

CNMV's reply

First, it should be clarified that the guidance set out below in response to this question does not alter the accounting criteria that firms must apply when preparing their financial statements in accordance with the accounting standards in force.

It should also be noted that, pursuant to Article 10(1)(b) of Delegated Regulation (EU)

2017/565 of 25 April supplementing Directive 2014/65/EU of the European Parliament and of the Council, certain foreign-exchange-related derivatives may cease to be regarded as financial instruments subject to the MiFID framework where they are used as a means of payment. To this end, the CNMV's Technical Guide 2/2020 sets out specific criteria under which certain foreign exchange derivatives may be regarded as means of payment rather than financial instruments.

In all other cases, as indicated in Question 2.1 of the 'Questions and answers document regarding the implementation of the CNMV's Resolution of 11 July 2023 on product intervention measures relating to financial contracts for differences and other leveraged products', derivatives are not inherently hedging or speculative instruments.

From the perspective of conduct of business rules applicable in securities markets, including the obligation to act honestly, fairly, professionally and in the best interests of clients, and to provide appropriate information on the nature and risks of financial instruments, the term '**hedging**' should only be used when marketing derivatives where the derivative instrument eliminates uncertainty or achieves a sufficiently significant reduction in risk, regardless of whether the final settlement results in a gain or a loss for the client.

Where a product is marketed to a client as a hedging instrument, the firm must possess sufficient information regarding the client's commercial activities to determine that there are no scenarios in which the derivative ceases to provide protection when the risk being hedged materialises, or that, even in the least favourable hedging scenarios, protection is materially significant.

A derivative instrument may be distributed as appropriate for hedging purposes only where the firm offering the instrument for that purpose has first assessed (and is able to substantiate following such assessment) that the derivative is aligned with a client's specific needs and substantially fulfils the intended hedging objective. When carrying out this assessment, the following factors should be considered, among others: the alignment of the derivative with the direction of movement of the underlying exposure being hedged; the alignment of its notional amount with the exposure to be hedged; the desired hedge duration; and the consistency between the settlement schedules of the exposure and the derivative.

Conversely, certain derivative instruments do not satisfy the above conditions. Such instruments have features (such as knock-out barriers or leverage) which, although they can reduce risk in certain scenarios (whether in terms of the range of movement of the underlying asset or the amount of exposure), do not provide protection in other scenarios. This is in exchange for more favourable strike levels or pricing terms. These types of derivatives should not be presented as appropriate for clients whose objective is simply to obtain a hedging instrument, as they may reduce the risk associated with a client's exposure in certain circumstances, but simultaneously incorporate a speculative element. **This does not in any way preclude their offer or distribution; however, it does require that clients be clearly informed** that such instruments may reduce the risk associated with an exposure in certain circumstances, whilst leaving them unprotected against that same risk in other scenarios. As a result, the instrument also contains a speculative component and cannot be offered as a hedging product.

Nevertheless, for the purposes referred to in Question 2.6 of the aforementioned Questions and answers document regarding the implementation of the CNMV's Resolution of 11 July 2023, derivative instruments referred to in the preceding paragraph may, where distributed to retail clients, **fall outside** the scope of the requirements set out in Part Two of the CNMV Resolution of 11 July 2023 (namely, the requirement for the provider to obtain margin from the retail client and to provide negative balance protection through position-closing mechanisms). For this to be the case, distributing firms must first assess (and be able to adequately substantiate following such assessment) that, having regard to clients' specific positions, the derivative enables clients to reduce exposure risk, even though it may cease to provide protection against that risk in certain scenarios. The firm must also determine that, **under no circumstances, can derivatives increase the level of risk** previously assumed by clients.

3. INDUCEMENTS (Last update: 18 June 2026)

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 vertical integration practices cannot be used to avoid the regulation (or prohibition) of inducements perception whereby the explicit payment of inducements by the CISMC to the group marketer is simply abolished without any other conditions of service provision being modified. The economic substance would be the same, since the bank would be providing the management company with a service (the distribution of its CIS) which would be paid for via dividend distribution or reserve accumulation in the subsidiary, rather than through an explicit fee rebate.

In particular, it is understood an inducement will be provided, to which the corresponding regulations would apply, when the distributor does not receive an express reversal from the CISMC, or receives an abnormally low reversal, for the marketing of CISs whose management fees are the same (or similar) to those that would apply under an express remuneration policy, or when such management fees 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 provides investment services in relation to third-party CISs (investment advice or discretionary portfolio management) subject to the MiFID II inducements rules? (Last update: 13 July 2018)

CNMV's reply

Regarding the investment services they provide (investment advice and discretionary portfolio management), CISMCs must comply with the inducements requirements set out in Articles 214 to 216 of the LMVSI and Articles 120 and 121 of RD 813/2023.

As regards the distribution of third-party CISs, see Question 23.1.

3.3 What record-keeping obligations apply in relation to inducements? (Last update: 30 October 2017)

CNMV's reply

The record-keeping obligations regarding inducements set out in Article 120(4) of RD 813/2023 cover matters that are not included in the general records relating to services, activities and transactions. This provision requires firms to keep records demonstrating how any amounts paid or received by them, or intended for use by them, enhance the quality of the service provided to clients. Firms must also keep records of the measures adopted to ensure compliance with their duty to act honestly, fairly and professionally in accordance with the best interests of their clients. This requirement results from the transposition of Article 11(4) of the Delegated Directive and supplements the record-keeping obligation outlined in Annex I to RD 565/2017, which pertains exclusively to disclosures made to clients regarding 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

Remuneration received by an entity's tied agents for the provision of investment or ancillary services to clients on behalf of the entity do not constitute an inducement. Rather, in accordance with Recital 41 of the Delegated Regulation, which treats tied agents as relevant staff of the entity for the purposes of implementing remuneration policies, such remuneration is regarded as an internal payment within the entity rather than a payment to a third party.

Accordingly, its treatment must follow the principles applicable to remuneration arrangements (see Question 5.3).

3.5 How should the term 'wide range of suitable instruments' be understood for the purpose of fulfilling the obligation contained in Article 120 of RD 813/2023 on the enhancement of the quality of service required to justify the receipt of inducements? 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

As provided for in Article 120 of RD 813/2023, a sufficient quantity of financial instruments from third-party providers will be deemed to be included where at least two third-party alternatives are offered within each distributed fund category and at least 25%

of the total products offered are third-party products. Financial instrument categories must be defined with a sufficient degree of granularity to prevent grouping instruments with different characteristics and differing levels of complexity and risk.

As regards whether this requirement may be met by offering only CISs, the answer is yes.

The CNMV considers that Article 53 of the MiFID II Delegated Regulation may be used as a reference. Under that provision, the requirement to offer a sufficiently diverse range of suitable financial instruments may be met by offering a single type of instrument, provided that the service being provided to the client (in this case, non-independent investment advice or marketing) is limited to that type of instrument, that it is suitable for the client, and that the client has expressed an interest in it.

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 (Deleted: 18 June 2026)

3.8 (Deleted: 18 June 2026)

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

CNMV's reply

As indicated in Reply 3.1, the prohibition of inducements in the field of portfolio management cannot be circumvented through vertical integration practices. In this respect, a clear criterion to avoid breaching the prohibition on receiving inducements in relation to CISs to be included in managed portfolios would to ensure that a higher management fee is not applied to the net management fee of distribution fees applied to the same or similar funds/sub-funds/classes of the same CISMC distributed by paying inducements to distributors.

For these purposes, it is not appropriate to compare the fees with the average those charged by CISMCs (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, it is more appropriate to compare the policy for margins and price of services (management/distribution) within the group itself, since there do not seem to be any technical argument that justify departing from this policy exclusively for discretionary portfolio management services.

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

CNMV's reply

'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 value of 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 What categorisation may be used to comply with the requirement under Article 62(2)(a) of RD 217/2008 to justify the receipt of inducements by offering at least two third-party alternatives in each marketed fund category? (Last update: 27 January 2020)

CNMV's reply

Article 120(2)(a) of RD 813/2023 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 investment firm. 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 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 120(2)(a) of RD 813/2023 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**
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> 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 120(2)(a) of RD 813/2023, 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 subparagraph 3 of Article 120(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, or the provision of periodic reports on return and the costs and charges associated with the financial instruments.
>
> 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, <u>must include information on return and the costs and charges associated with the range of instruments</u> 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, <u>and not only in respect of financial instruments in which the client has invested</u>, 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 121(2) of Spanish RD 813/2023, entities providing portfolio management or independent advice shall not accept non-monetary benefits that cannot be considered as minor.
>
> For its part, Article 121(3) of Spanish RD 813/2023 stipulates the minor non-monetary benefits that are acceptable when such services are provided. Subparagraph (e) includes 'other minor non-monetary benefits that enhance the quality of the service provided to clients and, taking into account the overall level of benefits provided by an entity or a group of entities, are of such a scale and nature that they are unlikely to impair compliance with the duty of an investment firm to act in the best interests of the client.'
>
> 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 (without 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 120 of RD 813/2023). (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: 18 April 2024)

CNMV's reply

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 RD 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: 18 June 2026)

4.1 How often should the budget be reviewed? Should it be annual, less than a year, or multi-annual? (Last update: 18 June 2026)

CNMV's reply

The 2021 Quick Fix Directive, transposed into Spanish law through RD 813/2023, and the Listing Act Directive adopted in 2024 (not yet transposed), have made it possible to combine payments for execution and research services, subject to certain conditions ensuring that the entity acts in the client's best interest. This framework allows for different payment models: using the entity's own resources, through a separate research payment account, or a combined approach together with execution services.

Where the entity opts to pay separately for execution and research services, and to charge clients for research via a separate research payment account controlled by the entity, the entity receiving the research service must disclose annually to its clients the total costs incurred for third-party research, in accordance with Article 122(1)(c)(2) of RD 813/2023. In this context, multi-annual budgeting does not appear appropriate.

4.2 If the entity opts to pay separately for execution and research services and charges research costs to the client via a separate research payment account controlled by the entity, how can the agreement between the entity and the client on the budget and its method of payment be formalised? (Last update: 30 October 2017)

CNMV's reply

Article 122(6) of the RD 813/2023 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 (Deleted: 18 June 2026)

4.4 Where a firm uses a separate research payment account through which research costs are charged to clients, what methods for allocating research costs among the entity's clients may be considered acceptable? (Last update: 18 June 2026)

CNMV's reply

A cost allocation criterion included in Questions 1 and 10 of ESMA Q&A (ESMA_QA_1789) on 'Inducements (research)' is that the method used must be transparent. However, the key requirement is that the allocation method is fair across clients' 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 level of detail should the 'ability to contribute to the adoption of a better investment decision' be justified? (Last update: 18 June 2026)

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. ESMA may issue Guidelines establishing criteria for assessing whether research is capable of contributing to improved investment decision-making.

4.6 Where the entity chooses to pay separately for third-party execution and research services, 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: 18 June 2026)

CNMV's reply

We see no impediment provided that the requirements are met and, therefore, the different allocation criteria are duly informed and justified. Where the entity chooses to pay separately for third-party execution and research services, said research must be received in exchange for: (i) payments with funds of the entity itself or (ii) payments of a Research Payment Account (RPA) 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**
>
> Question 9 of ESMA Q&A 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 Delegated Directive, 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, Article 12(3) of the Delegated Directive 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.
>
> Question 6 of ESMA Q&A ((ESMA_QA_1794) 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

- Material that repeats or summarises news, stories or public statements by issuers, such as quarterly results or other market announcements.

5. CONFLICTS OF INTEREST (Last update: 18 June 2026)

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 Article 3 of Delegated Regulation 565/2017 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: 18 June 2026)

CNMV's reply

Article 27 of Delegated Regulation 565/2017 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.

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 structure for tied agents, ESMA clarified in Q&A ESMA_QA_2784 published in February 2027 that, although Article 27 applies to them as they are considered relevant persons for these purposes, Recital 41 of the Delegated Regulation introduces a degree of flexibility in determining their remuneration, taking into account their nature and national specificities. ESMA considers that this allows the variable component of remuneration for tied agents to represent a higher proportion of total remuneration than for other categories of relevant persons. Where compatible with national law, the fixed component should be sufficient to ensure that the interests of the entity or of relevant persons are not promoted to the detriment of clients' interests.

In light of this clarification, the CNMV considers that a remuneration model based solely on variable remuneration may be applied to tied agents, taking into account the implications that may arise from the interpretation of labour law requirements regarding a fixed component. In any case, appropriate quantitative and qualitative criteria should be combined, and entities should be able to demonstrate adequate management of the evident conflicts of interest arising from such arrangements.

In any case, supervisory activity will focus in ensuring that a remuneration scheme in compliance with the principle of neutrality has been 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 entities providing discretionary portfolio management services apply explicit or implicit fees for the placing of financial instruments or transmitting orders regarding managed portfolios? (Last update: 18 April 2024)

CNMV's reply

In line with Article 215 of the LMVSI, 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 the trading venues or intermediaries through which buy and sell orders are executed are an essential part of the discretionary portfolio management service. The remuneration for these services is received through the management fee paid by the client. Therefore, clients cannot be charged (explicitly or implicitly) for the mere selection of the venue or intermediary and the transmission of the order. By contrast, entities may charge for the execution of the order or, where appropriate, to pass on the costs of third-party intermediaries to which such orders are routed (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.

- Regarding secondary markets:

    - 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.

- As for 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: 18 June 2026)

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: 18 June 2026)

CNMV's reply

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

For other financial instruments, or where the information does not relate to specific instruments (for example, where it concerns a category of products or an investment service), the legislation does not prescribe a specific methodology. In such cases, a generally accepted methodology should be used, while complying with the requirements set out in Article 44(6) of Delegated Regulation 565/2017. In particular, the information must be based on reasonable assumptions supported by objective data and must reflect the nature and risks of the specific types of instruments covered by the analysis.

For these purposes, all estimates must be based on quantifiable market data that can be verified by the CNMV. Where the information relates to several assets and historical data is used, the periods selected must be comparable and applied consistently across all assets. In addition, the information used must be up to date and reflect current market conditions.

It should also be noted that, in all cases, entities must present outcome scenarios reflecting different market conditions, including both positive and negative scenarios. It is not sufficient to have merely considered different scenarios when calculating the figure presented.

7.2 (Deleted: 18 June 2026)

8. INFORMATION ABOUT THE ENTITY AND THE SERVICES (Last update: 18 June 2026)

8.1 Does the information about the entity and its services apply to the marketing of investment firms 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 investment firms and, in particular, to the cases of execution only.

8.2 Does the prohibition on setting remuneration by reference to sales targets, or in any other way that may create an incentive for staff to recommend a particular financial instrument to a retail client where another financial instrument would better meet the client's needs, apply to a CISMC providing investment advice or discretionary portfolio management services? If so, may compliance with this requirement be deemed to be covered by the remuneration policies applicable to management companies? (Last update: 13 July 2018)

CNMV's reply

Yes, it does apply. Article 1(1) of the 565/2017 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 2023 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 ESMA 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.

- 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 CISs.

8.3 What information must be provided to professional clients and eligible counterparts relating to the entity and its services? (Last update: 18 June 2026)

CNMV's reply

The February 2021 amendments to MiFID II exempt transactions carried out with eligible counterparties from the information requirements. This exemption has been transposed into Spanish law through Article 196(3) of the LMVSI.

The regime applicable to professional clients was also relaxed. In particular, firms are not required to provide professional clients with costs and charges information (including information on inducements), except where investment advice or portfolio management services are provided. In the case of investment advice, firms are also exempt from the obligation to inform the client whether the benefits of switching financial instruments outweigh the associated costs, and from the obligation to provide a suitability report, unless requested by the client. These exemptions are reflected in Spanish law in Article 143(5) of RD 813/2023 and Article 202(2) of the LMVSI, respectively.

9. INFORMATION ON FINANCIAL INSTRUMENTS (Last update: 18 June 2026)

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: 18 June 2026)

CNMV's reply

In relation to CISs, the criteria established in the CNMV Communication of February 2009 concerning, among other matters, the implementation of Circular 4/2008 on the content of the quarterly, semi-annual and annual reports of CISs and the position statement referred to therein, remain applicable. Accordingly, neither the prospectus nor the periodic reports need to be provided, as the purpose of this information is to enable investors to make informed investment or divestment decisions, and, in the context of discretionary portfolio management, such decisions are taken by the portfolio manager on behalf of the client.

The same approach applies to all other financial instruments: where transactions are executed by the portfolio manager on behalf of clients, there is no need to provide detailed information in advance in respect of each individual financial instrument.

This is without prejudice to the obligation to provide clients with adequate information regarding the proposed investment strategy and the types of financial instruments that may be included in the portfolio at the time the discretionary management mandate is entered into. Where the discretionary management model limits investments to a defined range of financial instruments, the entity should provide at least general information on those instruments at that stage, particularly if they are complex.

9.2 (Deleted: 18 June 2026)

9.3 In relation to the 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: 18 June 2026)

CNMV's reply

In the case of PRIIPs, these requirements may be considered to be met through the provision of the Key Information Document (KID).

For all other financial instruments, it is sufficient to provide information on the factors that determine a product's performance, together with a reasonable range of potential outcomes under different market conditions, including both favourable and unfavourable scenarios.

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 Articles 200 and 201 of LMVSI and Article 48 of MiFID II 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—Article 24(4)(c)—or inducements—Article 24(9)—.

As for PRIIPs products, KIDs may cover the information obligations included in Articles 200 and 201 of LMVSI as long as they include all the information mentioned above.

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: 18 June 2026)

CNMV's reply

As regards eligible counterparties, following the flexible measures introduced to MiFID in 2021, the information requirements set out in the above-mentioned article do not apply to transactions carried out with such counterparties.

As regards professional clients, a degree of proportionality may be applied to the content of the information provided on financial instruments, taking into account the instrument's complexity and the client's nature. In particular, there is room for flexibility regarding the level of detail provided to per se professional clients where it can be assumed they have sufficient knowledge.

In addition, it should be noted that the 2021 legislative amendments also relaxed the costs and charges disclosure regime for professional clients. As a result, firms are no longer required to provide professional clients with said information, except in the case of investment advice or portfolio management services, as explained in Question 8.3.

9.6 (Deleted: 18 June 2026)

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 RD 565/2017, 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).

9.8 What type of instrument is a perpetual future? Is its marketing subject to restrictions in Spain? (Last update: 18 June 2026)

CNMV's reply

As indicated by ESMA (ESMA35-243228190-8024, February 2026), entities should assess a product's characteristics, rather than its commercial name, in order to determine its type of instrument and whether product intervention measures apply.

Accordingly, a financial product that is a derivative but does not meet the definition of a futures contract, option or swap, and whose purpose is to provide the holder with long or short exposure to fluctuations in the price, level or value of an underlying asset, and which must or may be cash-settled at the option of one of the parties for reasons other than default or another contract termination event, should be regarded as equivalent to a CFD for the purposes of the CNMV Resolutions on CFDs establishing restrictions on their marketing.

A derivative product should not be regarded as a future, option or swap if the terms used to determine its value do not include a reference future price. In other words, if the value of the product is determined by reference to the spot price of the underlying asset, the product should be considered a CFD, regardless of whether it has a fixed maturity date.

This classification is also independent of whether the product is traded on a trading venue.

A product will likewise retain the characteristics of a CFD if additional ancillary features are incorporated, such as an early termination mechanism or a stop-loss feature.

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 financial instruments 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 24 of RD 813/2023 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 176 of LMVSI, 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 93 of RD 813/2023, 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 Article 76 of RD 813/2023 requires investment firms to have arrangements in place with entities outside their group for the bulk transfer of clients' financial instruments and cash at the request of the CNMV. May this requirement be met through agreements with the investment firm's sub-custodian(s)? (Last update: 27 January 2020)

CNMV's reply

Nothing will prevent an investment firm 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 76 of RD 813/2023. 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: 18 June 2026)

11.1 Is the information provided by the PRIIPs KID sufficient to fulfil the ex-ante information obligations on costs and expenses? (Last update:18 June 2026)

CNMV's reply

In many cases, the information contained in the KID is not sufficient, as it only reflects information available to the manufacturer, so distributors must therefore supplement it to ensure that clients receive complete information.

For PRIIP products, entities must also inform the client of any costs or expenses related to the financial instrument not included in the KID, including the costs and charges associated with the services provided (such as investment advice, custody, foreign exchange conversion or other services). In addition, where distribution costs are disclosed in the KID as a maximum amount, firms must inform the client of the actual distribution costs that will be applied.

Additionally, firms must disclose the portion of the costs and charges that is paid to the investment firm providing the investment service in the form of 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 (ESMA_QA_1818) on how entities should use the costs of the products presented in the PRIIPs KID.

Furthermore, the distributing firm is responsible for ensuring that the information contained in the KID is reasonable and sufficiently up to date to provide a representative indication of the costs that clients are expected to incur at the time of the transaction. This is particularly relevant for products with a subscription period where the KID's information is calculated at the beginning of that period.

11.2 (Deleted: 18 June 2026)

11.3 (Deleted: 18 June 2026)

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 answer to this question can be found in ESMA Q&A 24 (ESMA_QA_1836) and 31 (ESMA_QA_1844), in the section on costs and charges information, which refers to ex-ante and ex-post information, respectively.

As regards ex-ante disclosures, ESMA clarifies that, although information on costs and charges is not required for each individual transaction, firms must still provide clients with aggregated information on the costs of the service and an estimate of the costs of the financial instruments in which their assets are expected to be invested prior to providing the service. It should be noted that this calculation should be based on an annual period. In addition, where firms charge initial investment costs that clients may incur during the first year, these costs must be included in the ex-ante disclosure.

As regards ex-post disclosures, firms must provide information on the actual costs and charges incurred, covering both product and service costs, at least on an aggregated basis. Clients must also be informed that they may request a more detailed breakdown.

11.6 Confirmation that, where a CISMC distributes Cis, it is not required to provide clients with annual ex-post information, as there is no ongoing relationship between the client and the CISMC. (Last update: 18 June 2026)

CNMV's reply

In this regard, reference should be made to Q&A 23.1 on the application of MiFID II conduct of business rules to the distribution of CISs by CISMCs.

Regarding the specific obligation for CISMCs to provide annual ex-post cost and charges disclosures to clients under Article 50 of RD 565/2017, it is confirmed that this requirement applies where the relationship between the management company and the unitholder/shareholder is of an ongoing nature, given that the investor receives periodic information on their investment.

However, where the relationship with the investor is established exclusively through a one-off, investor-initiated subscription to a CIS, CISMCs are not required to provide the ex-post cost and charges report referred to in Article 50(9) of the Delegated Regulation. That said, where following such subscription the management company maintains an ongoing relationship with the investor, including the regular sending of letters or communications by any means in order to offer new products or investment opportunities, the obligation to provide the cost and charges information under Article 50(9) will apply, as this constitutes an ongoing client relationship. In such cases, the annual ex-post disclosure of costs and charges must therefore be provided.

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: 18 June 2026)

CNMV's reply

Pursuant to Articles 24(4)(c) and 24(5) of MiFID II—transposed into Articles 143(1)(c) and 142(4)(5)(6) of RD 813/2023—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. Only where a cost cannot be determined precisely at that stage of the process may a reasonable estimate be provided, together with an explanation of how the cost will be calculated.

With regard to the possibility of using standardised information, Questions 22 (ESMA_QA_1834) and 23 (ESMA_QA_1835) in the costs and charges section of the ESMA Q&A on investor protection and intermediaries state that information on costs and charges must be provided to clients on a fully personalised basis, reflecting the specific transactions, financial instruments and investment services concerned. However, they also acknowledge that such information may be based on estimated investment amounts (whether predefined or standardised).

Question 23 (ESMA_QA_1835) of the above-mentioned Q&A sets out the circumstances in which the use of standardised lists or tables to provide ex-ante information is considered acceptable. In particular, it indicates that such an approach may be used for financial instruments that do not include product costs (such as equities or exchange-traded derivatives), provided that the information is presented with a sufficient level of granularity and firms ensure that, by means of those tables, clients are provided with complete information and with the same degree of accuracy as if the information had been provided prior to each individual transaction.

As for the use of estimated investment amounts, Question 29 (ESMA_QA_1842) also confirms that this is permissible, in accordance with Recital 78 of the Delegated Regulation, where charges vary depending on the amount invested (i.e. where they are not applied on a linear basis).

Finally, Question 30 (ESMA_QA_1843) states that ex-ante costs and charges information cannot be provided by reference to bands, ranges or maximum amounts, but on a fully individualised basis.

Taking all of the above into consideration:

- For financial instruments such as equities and exchange-traded derivatives, the use of this type of ex-ante information, based on standardised tables and estimated investment amounts, is considered appropriate, provided that such information clearly and accurately reflects all the actual costs applicable to the client (including, among others, exit costs and ongoing costs).

- In the case of UCITS, standardised investment amounts may likewise be used. However, for these products, the use of generic tables or lists on a website will not generally be appropriate, since clients must be informed of the product costs and the inducements received in relation to each specific UCITS. The use of bands or ranges, including in relation to inducements, is therefore not sufficient.

- Where charges may vary significantly depending on the amount of the transaction (minimum charges, exchange fees or brokerage charges linked to the value of the order), the information should be presented in such a way that clients can readily understand the charges that would apply to the specific investment amount under consideration. In particular, where minimum charges apply, their existence should be clearly highlighted.

- Furthermore, where a client trades frequently in equities or exchange-traded derivatives, it is not considered necessary to provide costs and charges information prior to each individual transaction. However, such information should be provided at least in relation to the first transaction in each calendar year for each relevant asset class.

- Lastly, in the case of fixed-income instruments and other financial instruments where variable implicit costs are determined on a transaction-by-transaction basis, it is not possible to provide standardised ex-ante information that accurately reflects the actual costs to be borne by the client. In such cases, the ex-ante information must instead reflect the actual charges applicable to the individual client in respect of 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: 18 June 2026)

CNMV's reply

Article 50(9) of the Delegated Regulation indicates that ex-post cost disclosure must be based on costs incurred.

ESMA Q&A 9 (ESMA_QA_1820) and 12 (ESMA_QA_1824) on cost disclosure requirements indicate that PRIIPs methodology is generally expected to be applied to calculate fund portfolio transaction costs, including those required by MiFID II to be provided to clients. This principle may also be applied to other costs that require a methodology for their determination, such as the costs implicit in the price of a financial instrument.

Nevertheless, 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, ESMA Q&A 9 (ESMA_QA_1820) indicates that distributors are expected to contact manufacturers to obtain the necessary data to comply with their obligations. PRIIP manufacturers should already, in turn, already have available the data that the distributor needs (for example, 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.

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: 18 June 2026)

CNMV's reply

The CNMV considers, among other reasons, that in order to apply a homogeneous criterion 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 (ESMA_QA_1833) 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 (Deleted: 18 June 2026)

11.11 (Deleted: 18 June 2026)

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 Article 60(2) of Delegated Regulation 565/2017 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 Delegated Regulation 565/2017, 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 (ESMA_QA_1833) 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: 18 June 2026)

CNMV's reply

As a general rule, entities must provide information on the costs of their advisory services and of any recommended financial instruments prior to providing investment advice. This information must include, where applicable, breakdowns of any inducements that the firm would receive. These costs must be taken into account when selecting financial instruments to recommend.

Regarding annual periodic information, Article 50(9) of the Delegated Regulation 565/2017 states that when an entity has recommended or sold a financial instrument and has or has had a continuous relationship with the client during the year, it must provide information on all costs and expenses actually incurred in relation to financial instruments and investment services. The term 'continuous relationship' is clarified in ESMA Q&A 1 in the 'Other Issues' section (not found in the Q&A tool). A continuous relationship is considered to exist when the entity and the client have entered into a contract for the provision of an investment service that is not one-off. Examples include services that are not permanent, such as advice based on periodic suitability assessments. A continuous relationship also exists when there is an agreement for the entity to continuously receive an inducement. Therefore, in these cases, the advising entity would be obliged to provide ex-post cost information when advice is acted upon, or inducements are continuously received for recommended financial instruments.

Nevertheless, where a firm providing investment advice (whether an investment advisory firm or another type of firm not providing the client with order reception, transmission, execution or custody services) has entered into an arrangement with a firm providing those other investment services, and can demonstrate the existence of such an arrangement, it would be acceptable for either firm to provide the client with information on costs and charges in order to avoid duplicating information. Alternatively, the firms could agree on how responsibility for providing the different elements of that information is to be allocated between them. Therefore, if an investment adviser does not include all the costs and charges that will be incurred by the client in its recommendation, it must clearly inform the client of this and indicate where that information can be obtained before the transaction is carried out, so that the client is able to make an informed investment decision.

Furthermore, where an investment adviser includes all costs and charges in their recommendation and the recommended transaction is subsequently executed, firms may also agree that the distributor is not required to provide the client with this information again before the transaction is executed, provided that the information remains accurate and complete when the investment service is provided.

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

CNMV's reply

Under Article 200(3) of the LMVSI and Article 50 of the MiFID II Delegated Regulation, information must be provided on all associated costs and charges. These must include both the costs of the financial instruments and the costs of the services provided, as well as both explicit and implicit costs.

Annex II of the MiFID II Delegated Regulation 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 (e.g. the collection of dividends or coupons) and FX transaction costs, must be added to the total cost figure. Likewise, with regard to CISs, it is important to note the obligation to communicate all costs and charges related to the product that have not been included in the KID, 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: 18 June 2026)

CNMV's reply

Article 50(10) of the MiFID II Delegated Regulation requires entities to provide clients with an example of the cumulative effect of costs on the product's return. This example must be provided both ex-ante and ex-post and must comply with the following requirements: (i) include all costs influencing return; (ii) reflect anticipated cost fluctuations or peaks; 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 yet 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 equities, the average annual return of the share, or, if unavailable, of a representative stock market index based on at least the previous five years, may be used. For fixed-income instruments, the internal rate of return (IRR) of the client-ordered transaction may be estimated. For instruments that qualify as PRIIPs, referring to the KID is sufficient, as it already includes information on the expected performance 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 yet 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 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. Returns calculated after deducting implicit costs must not be described as gross returns (for example, in the case of investment funds, where the figures are based on changes in the net asset value, which is already net of product 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 a periodic management report detailing the portfolio return, including a comparison between the portfolio and the benchmark, to be provided to retail and professional clients upon request. Therefore, it is generally considered that providing information on returns, together with details of product and service costs, enables compliance with the duty to provide an example of the cumulative effect of costs on returns, insofar as the example indicates whether the return is gross or net of costs (in full or in part).

11.17 (Deleted: 18 June 2026)

11.18 How should fair value be calculated to the effects of estimating implicit costs? (Last update: 18 April 2024)

CNMV's reply

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 Q&A document (ESMA_QA_1829) 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 Q&A (ESMA_QA_1829) 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 considering 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 Article 24(4) of Directive 2014/65 and Article 52 of the MiFID II Delegated Regulation in relation to investment advice services be provided to the client in a standardised document? (Last update: 30 October 2017)

CNMV's reply

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

12.2 (Deleted: 18 June 2026)

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

Article 214 of the LMVSI 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 for selecting the products to be assessed before making a recommendation to clients. According to Article 53 of the MiFID II Delegated Regulation, the selection process must comply with the following requirements, among others:

(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: 18 June 2026)

13.1 Would it be possible to agree with a client not to apply, or to apply on a limited basis, periodic reporting to eligible counterparties and professional clients? (Last update: 18 June 2026)

> **CNMV's reply**
>
> First, it should be noted that, in the context of the provision of portfolio management services, it is not possible to classify a client as an eligible counterparty (see Q&A 2.5 in this regard).
>
> Second, the amendments introduced by the MiFID II 'Quick Fix' in February 2021 established that the periodic reporting requirements do not apply to services provided to professional clients unless they request otherwise (either in electronic or paper form). This easing of requirements covers the periodic reporting obligations in portfolio management and has been incorporated into Article 202(2) of Law 6/2023 of 17 March (LMVSI).

13.2 Do Article 62(1) of the DR 565/2017 apply to CISMCs? (the entity shall inform the client when the overall value of the portfolio is depreciated by 10%, and thereafter by multiples 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: 18 June 2026)

> **CNMV's reply**
>
> Yes, it does apply. Article 1(1) of DR 565/2017, which sets out the articles applicable to management companies, contained an error due to a failure to update references to the articles of a previous version. This article was amended in April 2021 to clarify that, among other provisions, all of Section 4 applies to management companies (SGIICs), including Article 62(1).

13.3 (Deleted: 18 June 2026)

13.4 Which entity is responsible for providing the information required in Article 62(2) of the Delegated Regulation 565/2017, 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 565/2017 establishes that the entity that maintains an account with the retail client shall inform the client of the depreciation. According to ESMA Q&A 11 (ESMA_QA_1811) 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: 18 June 2026)

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

CNMV's reply

The entity must keep a record of the information on costs and expenses, pursuant to the provisions of DR 565/2017. This information can be incorporated into an existing register, or a new one can be created.

14.2 (Deleted: 18 June 2026)

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 565/2017 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 565/2017, 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: 18 June 2026)

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) of MiFID II 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)

CNMV's reply

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

This is not true. The recording obligation in relation to advice has been addressed in ESMA Q&A 13 (ESMA_QA_1779) 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 advisory service 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 (ESMA_QA_1779) 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 565/2017 establishes that entities must register in a durable medium the relevant information from face-to-face conversations with clients in relation to 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, the client's order alone would be sufficient if it contains all the required information. This approach has been reflected in ESMA Q&A 2415, published in January 2025, which states that if a client order does not include all the information set out in Article 76(9) of DR 565/2017, the firm should ensure that any missing information is recorded in additional records.

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.

In any event, where the conversation does not result in the client placing an order, there is no requirement to record the minutes.

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.

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 clearly that the client is entitled to be provided with the recordings (Article 76(10) of the Delegated Regulation). Having said that, the 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. The 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].

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

[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.

[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.

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 Article 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 565/2017 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.

Article 56(2) of the DR 565/2017 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. Annex I of the DR 565/2017 expressly provides for a record of the suitability and appropriateness assessment, specifying all the aspects to be recorded.

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 structured deposits or 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, the 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 Article 57 of the MiFID II 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 (ESMA_QA_1846), CISs shares 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 Delegated Regulation.

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 565/2017 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 Article 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, the 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 their opposition to them? (Last update: 30 October 2017)

CNMV's reply

The 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: 18 June 2026)

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 565/2017 contained an error due to a failure to update the references to the articles of an earlier version. The EC amended the mistake in April 2021, so that Articles 64(4) and 65 of Section 5 of RD 565/2017 on best execution (and Articles 66(2) to 66(9) by reference to Article 65) would 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 of DR 565/2017 should be understood in this case as the entities to which orders are transmitted for execution. The execution policy for CISMCs provided by the portfolio management service must therefore, where appropriate, include information on the selected intermediaries and not necessarily on the execution centres.

20.2 (Deleted: 18 June 2026)

21. KNOWLEDGE AND COMPETENCES (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.

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 5 and 6 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 the 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 the 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 the 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 the 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 the CNMV.

Consequently, the 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: 9 December 2025)

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.

22.2 Is it possible for an investment firm or a credit institution to enter into agreements with influencers or third parties for the acquisition of clients for their investment services? What elements should be considered to distinguish client acquisition activity from mere advertising activity? (Last updated: 9 December 2025)

CNMV's reply

Under Article 129(1) of the LMVSI, the marketing of investment services and activities and the acquisition of clients may only be carried out professionally by authorised investment firms or credit institutions, either directly or through their agents.

This exclusive right of activity does not prevent an investment firm or a credit institution from entering into agreements with influencers or third parties for advertising purposes, provided that their activity is limited to the dissemination of promotional content and does not include any additional actions that would constitute marketing or client solicitation.

For the purpose of determining whether a collaborator is carrying out marketing and client solicitation activities or merely advertising, the following criteria apply:

- Agreements with third parties to disseminate advertising in exchange for a fixed remuneration not linked to the volume of activity or number of clients introduced are permitted (without prejudice to the possibility of including a small success fee). In such cases, the entity on whose behalf the advertising is carried out is responsible for selecting appropriate collaborators and for the content disseminated.

- Remuneration based on the number of clients or the volume of business generated is considered indicative that the collaborator is not limited to mere advertising, but is in fact introducing clients to the firm, which requires authorisation to provide investment services.

- Even where remuneration is fixed, a collaborator is also considered to be engaging in client solicitation where they disseminate favourable opinions and recommendations about the remunerating firm and, in their interactions with potential clients, engage in activities aimed at establishing an ongoing client relationship (for example, by responding to queries about the firm and its products). If the collaborator is limited to publicly disseminating information, or even favourable opinions, in exchange for a fixed fee per piece of content, this is not considered client solicitation, but mere advertising.

23. MiFID II SCOPE (Last update: 18 June 2026)

23.1 What are the MiFID obligations applicable to the CISMCs 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' (now Title VIII of the LMVSI in force), on the marketing activities carried on by management companies.

The fact that the current Title VIII of the LMVSI has included 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' (now Title VIII of the LMVSI in force), 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 VIII.

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 LMVSI and the implementing regulations thereof being applicable.

Thus, among other provisions applicable are Article 76 of RD 813/2023 laying down the obligation of reaching agreements with third-party entities for the block transfer of client assets if the entity is facing difficulties, Article 78 on the custody of clients' financial instruments, and Article 93 on the preparation of an annual report by the entity's auditors, as well as CNMV Circular 5/2009, of 25 November, regulating the Annual Audit Report on the Protection of Client Assets.

23.3 **In the placement of issues that are not subject to the obligation to publish a prospectus and are offered to the general public through any form of advertising communication, what are the responsibilities of the authorised investment firm involved?** (Last update: 18 June 2026)

CNMV's reply

Article 36 of the LMVSI provides that, where issues that are not subject to the obligation to publish a prospectus are offered to the general public through any form of advertising communication, an authorised investment firm must be involved. At a minimum, its role must include validating the information to be provided to investors and carrying out general oversight of the marketing process.

The practices, methodologies and procedures that the CNMV considers appropriate for compliance with Article 36 of the LMVSI by the authorised investment firm are as follows:

- When accepting the engagement, the firm should clearly inform the issuer that it must provide all documents intended to be made available to potential investors, including all advertising material it intends to use, even where such material will not be delivered directly to investors (for example, advertisements intended for the general public to be published in the media, on websites or through other channels). The firm must validate that the information and advertising comply with the applicable requirements and are fair, clear and not misleading.

- The firm should have a clear understanding of the overall marketing process. It should be aware of and exercise general oversight over the means and channels used to approach investors, the information to be obtained from them, and the manner and timing of the execution and settlement of the investment.

- The firm must ensure that all documents provided to investors clearly state that 'the CNMV has not authorised or registered the prospectus or information document relating to the issue'. Where the advertising refers to the CNMV in any way, it must also include, with equal prominence, a clear warning that 'the CNMV has not verified the issue or the information provided by the issuer'.

The authorised investment firm involved must also inform the issuer that any action departing from the arrangements agreed and verified by the firm (for example, providing investors with documents that have not been previously validated by the authorised investment firm) would be contrary to Article 36 of the LMVSI.